PROCUREMENT GUIDE FOR COMMUNITY ENERGY

Based on the Municipal Guide
of the H2020 COMPILE project

RESCOOP.EU

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Authors: Stanislas d'Herbemont, REScoop.eu, Joshua Roberts, REScoop.eu.

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REScoop.eu is the European federation of citizen energy cooperatives. We are a growing network of 1.900 cooperatives operating across Europe and jointly represent over 1,25 million citizens.

Online version of this guide with annexes.

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CONTEXT

Municipalities are key actors in empowering citizens in the energy transition and the development of energy communities across Europe. Local authorities have a clear role to play in the transition to a more sustainable future, as expressed in the Sustainable Development Goals (SDGs) published by the United Nations, as well as in the European Commission's policy framework.

On the other hand, energy communities across Europe are already contributing to the penetration of renewables in the European system. However, today, energy communities face strong market barriers to their development at the local level. European municipalities have the challenge to support the development of community energy in their territory, through direct means like grant funding and direct investment, – and indirect means like public procurement decisions.

Public procurement has a decisive influence on the development of innovative and renewable energy services at the local level. Public procurement represents approximately 14% of the annual European GDP.[1] This figure might not seem relevant to smaller municipalities, but it is. Public procurement procedures are a great way to durably impact the territory of the municipality, while avoiding overburdening municipal budgets.

In this short guide, we attempt to support local authorities collaborating with energy communities. Based on existing experience and research, the guide provides different options in which municipalities may be able to adapt their procurement processes to better support the participation of renewable energy communities in the procurement process.

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THE ORGANISATION BEHIND THIS PROCUREMENT GUIDE

REScoop.eu is the European federation of citizen energy cooperatives. It is a growing network of 1,900 European energy cooperatives and their 1,250,000 citizens who are active in the energy transition. Through REScoop.eu, energy cooperatives wish to make their voices heard in the European energy debate. REScoop.eu empowers citizens and cooperatives, and aims to achieve energy democracy. REScoop.eu has a close relationship with different city netwoks in Europe.

This guide is based on the work carried out through the H2020 COMPILE project and its partners. To find more information on the COMPILE project, and find the many tools for energy communities and municipalities built by the project, you can visit the following website: **compile-project.eu.**

1 https://single-market-scoreboard.ec.europa.eu/policy_areas/public-procurement_en

METHODOLOGY

This guide is based on documentary research, on qualitative interviews of community energy practitioners and municipal staff, as well as on a documentary review of the procurement database of cases for Green Public Procurement of the European Commission.[2] It intends to create transparency around the ways municipalities can engage and support the growth of Renewable Energy Communities (RECs) and Citizen Energy Communities (CECs) on their territory. Specifically, we will focus on tools widely available to European municipalities – and on a way to integrate these tools into the standard processes of local public action.

Municipal support mechanisms can be divided into two categories:

- **Direct support mechanisms** – These include all support mechanisms that local authorities can use to directly engage with local initiatives.
- **Indirect support mechanisms** – These create opportunities for energy communities to engage in local economic activities on a level playing field. They focus on various processes such as procurement, concessions and partnerships,

In this guide, the focus is on indirect supports such as municipal procurement and concessions. It will clarify the EU legal framework for public procurement, and identify opportunities to create supportive procurement procedures for energy communities. In particular, it will explore the various ways that social and environmental criteria may be integrated into the procurement procedure. It will also analyse examples of how municipalities have adapted their procurement procedures to promote energy communities.

This guide intends to inform and help community energy organisations and municipal allies to develop procurement procedures coherent with the objectives of the movement. A transition in the hands of citizens will necessarily involve their municipal government and public authorities at large. Public procedures should reflect this partnership. We will examine European legislation, which is often invoked as a barrier to this type of procedural support and provide concrete examples of success stories. This guide does not intend to be the definitive solution to all procurement issues, but rather a conversation starter with procurement professionals and regulators concerning the best way to implement a successful procedure at local level.

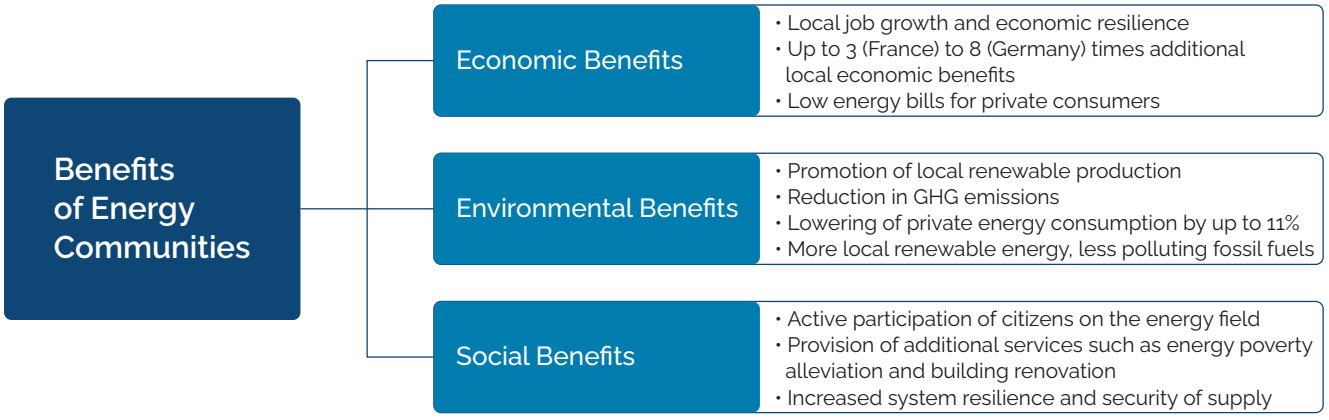
2 Find more at: https://ec.europa.eu/environment/gpp/index_en.htm

1

BENEFITS OF ENERGY COMMUNITIES

Energy communities provide a wide range of benefits for its members, their local communities, as well as society at large.

FIGURE 1: **BENEFITS OF ENERGY COMMUNITIES**



ECONOMIC BENEFITS

Energy communities create an additional economic stimulus that is durably attached to the local territory. They promote **job creation and economic growth** in both urban and rural areas. A 2019 survey supported by the French energy agency (ADEME) showed that the economic output of community RES projects is 3 times greater than a similar privately held project.

ENVIRONMENTAL BENEFITS

Energy communities are driven by the will of **local actors to promote local resilience and to protect** their environment. In 15 European Member States, energy communities have been collaborating with municipalities to develop a decarbonised energy system using a bottom-up approach. A 2018 study in the context of the H2020 REScoop PLUS project shows that members of energy cooperatives are able to lower their energy consumption by up to 11 per cent in comparable households. Energy Communities not only promote a systemic approach of the energy transition, but also support building renovation and infrastructure resilience.

SOCIAL BENEFITS

Energy communities are primarily **community driven**. Solidarity within the community is often a big part of the reason energy communities are created. Many energy cooperatives have developed poverty alleviation programmes that use the profits from renewables to support the most vulnerable members of their communities. In 2021, the H2020 Community Energy for Energy Solidarity (CEES) project collected and analysed more than 80% of the mechanisms-to-tackle-energy-poverty developed by the energy communities surveyed.

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THE ROLE OF LOCAL AUTHORITIES

There are a number of ways that local authorities can promote energy democracy in action at the local level. The examples used in this guide identify four roles that municipalities can play in supporting the development of community energy initiatives:

- **Role 1 – Municipal sponsor**: In most of the cases that we explored, municipalities do not play an active role in the investment in or construction of the energy community. Yet, energy communities often share political objectives around climate action adopted by the municipality. In this case, the municipality provides endorsement, visibility and sometimes capacity building or small grants to the starting renewable energy community.
- **Role 2 – Municipal contractor**: The second role that municipalities can play relates to their purchasing and contracting strategies. Municipalities often purchase energy services (related to supply, increased efficiency, upgrades, etc.), or contract services for the purpose of developing renewable energy production and energy efficiency measures in public buildings. In this case, the municipality will fully outsource the service, and a public tendering procedure will be necessary.
- **Role 3 – Municipal co-owner**: Municipalities can be a partner and co-owner of local projects together with an energy community. In this scenario, two separate entities invest jointly, and public funds are allocated to a joint investment vehicle.
- **Role 4 – Municipal utility**: Municipalities have the right to participate in an energy community and become a member or shareholder. With direct participation, the municipality invests in the REC or the CEC, and the resulting semi-public utility is then mandated to develop energy projects on the municipality's territory.

Scenarios 1, 3 and 4 require direct municipal action, while scenario 2 relates mostly to indirect municipal action. These roles are often mixed based on the policy goals of the municipality. In this report, we will focus mainly on the second scenario, since it is the role that is most accessible to smaller European municipalities.

According to European Commission figures, the purchase of goods and services by municipalities represents 14% of the EU's yearly Gross Domestic Product (GDP).[3] This immense buying power, particularly in the energy sector, allows municipalities and other public bodies to pursue clear political goals through their purchases.

3 Source: Europa website; DG Grow on public procurement; consulted on 14/04/22; www.ec.europa.eu/growth/single-market/public-procurement_en

The **Clean Energy for All Europeans** legislative Package (CEP), in particular Directive (EU) 2018/2001 (the Renewable Energy Directive) and Directive (EU) 2019/944, define and establish provisions in support of RECs and CECs. This legislative package highlights municipalities as one of the three actors eligible to participate in energy communities. In their enabling frameworks, Member States are required to provide regulatory and capacity building support to:

1. enable public authorities to facilitate the establishment of renewable energy communities; and
2. help public authorities participate directly in renewable energy communities.[4]

The recast Energy Efficiency Directive also highlights the leading role municipalities play in renovating and purchasing socially responsible and energetically efficient products.[5] Furthermore, there is specific EU legislation governing public procurement.[6] These rules largely exist to regulate and promote the equal treatment of, and ensure effective competition between, all economic actors in the public procurement of goods and services.

Within this EU legal framework, local authorities have significant opportunity to promote energy communities as a way to pursue policy objectives around encouraging public participation in the energy transition, inclusion, the circular economy, local economic resiliency, energy poverty and other social objectives.

4 Renewable Energy Directive, Article 22 Par. 4(h).

5 https://ec.europa.eu/info/news/commission-proposes-new-energy-efficiency-directive-2021-jul-14_en

6 Directive 2014/23/EU, Directive 2014/24/EU, Directive 2014/25/EU

3 LEGISLATIVE BACKGROUND

The European legal framework governing public procurement spans multiple levels. The hierarchy of norms is as follows:

- **The 2012 Agreement on Public Procurement (GPA), negotiated through the World Trade Organisation (WTO):** This international agreement defines the major principles governing procurement in the signatory states.
- **EU public procurement directives**[7]: These EU directives establish minimum conditions for public procurement decisions made by contracting authorities in the Member States. Together, they establish a common framework of procedural rules that contracting authorities must follow when making procurement decisions, in order to create an internal market for products and services. These directives are supplemented with delegated regulations issued by the European Commission. The latest regulation updating the thresholds is dated November 2021.
- **National legislation.** National legislation, which is based on international agreements and EU directives, contains more detailed rules for local contracting authorities on how to define and implement their procurement and decision-making procedures.

EU public procurement legislation is rather broad, and most of the regulatory boundaries are set by case law of the Court of Justice of the EU (CJEU). Due to their broad nature, they often do not by themselves create sufficient legal certainty for smaller municipalities looking to support RECs through their procurement strategy.

The directives require that all conditions are based on objectively verifiable and non-discriminatory criteria.

7 Directive 2014/24/EU on public procurement (Public Services Directive); Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors (Utilities Directive); and Directive 2014/23/EU on the award of concession contracts (Concessions Directive).

THE ROLE OF PUBLIC PROCUREMENT IN SUPPORT OF COMMUNITY DEVELOPMENT

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Public procurement represents approximately 14% of the annual EU GDP.[8] This figure might not seem relevant to smaller municipalities, but it is. Public procurement procedures are a great way to durably impact the territory of the municipality, while avoiding overburdening municipal budgets. The goal of this evolution should not be to create "favourites", but rather to level the playing field and create local impact in the community.

A very good example of the positive impact public procurement can have in promoting community energy is one of the largest European energy cooperatives: Ecopower. In 1999, Ecopower won a concession tender contract to develop two wind turbines on municipal grounds in the Belgian city of Eeklo. This first wind project was an important step in the development and growth of this energy community. Ecopower won this public tender thanks to specific citizen participation criteria that allowed the young cooperative to edge big incumbent energy companies. Eeklo is a city with 21 000 inhabitants, located in the Flemish Region of Belgium. Today, Ecopower counts 70 000 members across the Flemish Region and provides 1,7% of the Flemish households with their own green electricity at cost..

This guide will propose a number of ideas and describe examples of municipalities that have adapted procurement and concession procedures to support the development of energy communities.

We will start with a review of the European legislative background on developing policy objectives around energy communities, and on integrating policy objectives into public procurement procedures, including recent Commission guidance on developing green and social criteria for procurement. Finally, we will present examples (best practices) of municipalities that have adapted public procurement procedures to promote energy communities.

GUIDANCE

To create additional certainty for contracting authorities, the European Commission publishes Guidance Notes on specific topics. To assist contracting authorities in making sustainable procurement decisions, the European Commission, together with the Member States and other stakeholders, develops non-binding Green Public Procurement (GPP) criteria for different product groups. GPP criteria help contracting authorities understand the impacts of certain products, and establish clear, verifiable, justifiable and ambitious environmental criteria for products and services based on solid evidence. GPP criteria also help avoid internal market distortions and create a level playing field for companies across the EU.

In line with this, the Commission developed GPP to assist contracting authorities procure green electricity through 'Green Public Procurement Criteria for Procurement for Electricity'.

The growth in the number of energy communities and their increasing importance for promoting the energy transition at local level demands specific adaptation of procurement procedures to provide the security municipalities need to take advantage of this opportunity.

EU SECTORAL LEGISLATION ON ENERGY

The public procurement directives are supplemented with sector-specific legislation (e.g. on energy efficiency), which provide rules for the purchases made by contracting authorities.

8 https://single-market-scoreboard.ec.europa.eu/policy_areas/public-procurement_en

The Energy Efficiency Directive

The main instrument governing public procurement of energy services and buildings is Directive 2012/27/EU (the Energy Efficiency Directive). The Energy Efficiency Directive calls on public bodies to lead by example. According to Article 6, Member States must "ensure that central governments purchase only products, services and buildings with 'high energy-efficiency performance'" consistent with "cost-effectiveness, economic feasibility, wider sustainability, technical suitability and sufficient competition." This obligation applies to all contracts covered by Article 7 Directive 2004/18/EC and, after April 2016, Directive 2014/24/EU. High energy-efficiency service contracts are defined in Annex III of the Directive as those that require service providers to use only equipment and products with high energy-efficiency.

Article 6 also requires Member States to 'encourage' non-central public bodies to apply these requirements when tendering service contracts with significant energy content in order to assess the possibility of concluding long-term energy performance contracts that provide long-term energy savings. According to Article 5, Member States must encourage public bodies to use energy service companies and energy performance contracts to finance renovations and implement plans to maintain or improve long-term energy efficiency.

Energy efficiency requirements for purchasing products, services and buildings by central government are governed by Annex III of the Energy Efficiency Directive. With regard to the procurement of buildings, Annex III requires authorities to "purchase, or make new rental agreements for, only buildings that comply at least with minimum energy performance requirements."

Annex III does not apply to buildings if the "purpose of the purchase is:

1. to undertake deep renovation or demolition;
2. in the case of public bodies, to resell the building without using it for [its] own purposes; or
3. to preserve it as a building officially protected as part of a designated environment, or because of its special architectural or historical merit."

The Energy Efficiency Directive gives Member States flexibility on how to require or encourage public bodies to set public procurement standards.

The Renewable Energy Directive

The main legal instrument in support of public procurement of green energy is EU Directive 2018/2001 (Renewable Energy Directive). It is important to note that public procurement of renewable energy is not supported to the same extent as other energy-related services and products. In fact, the Renewable Energy Directive does not reference public procurement at all.

Certain provisions of the Renewable Energy Directive may be indirectly relied upon by local authorities to support green purchasing objectives.

The recitals to the Renewable Energy Directive acknowledge that, among other benefits, decentralised renewable energy production can foster community development and cohesion.[9] Furthermore, the recitals acknowledge that RECs have substantial added value in terms of local acceptance of renewable energy, access to additional private capital for investment, greater choice for consumers, and increased participation in the energy transition.[10]

The added benefits of local citizen and community-led initiatives are very much in line with policy objectives that municipalities have set for themselves, for example through their Sustainable Energy and Climate Action Plans (SECAPs). As such, municipalities can promote citizen initiatives, including RECs, through public procurement. The integration of different policy objectives into the public procurement process is discussed in greater detail below.

9 Recital 65 of the Renewable Energy Directive.

10 Recital 70 of the Renewable Energy Directive.

EU-LEVEL PRINCIPLES OF PUBLIC PROCUREMENT

The basic principles of public procurement that are laid out in the GPA are reflected in EU public procurement directives. They include:[11]

1. **Equal treatment and non-discrimination:** In the European translation of this principle, the procurement rules aim to preserve open competition on the European single market. This includes the communication and advertisement of the tendering procedure on the single European procurement registry, and the application of more favourable conditions for local suppliers of both goods and services. The WTO also highlighted the "rules of origin", which are meant to avoid discrimination against foreign products in favour of local products. This principle is reflected at EU level in the transferability of standards throughout the EU. This implies the need for contracting authorities to consider adopting a similar standard from another country of the Union.
2. **Fairness and objectivity:** The European rules intend to create a level playing field for all European companies when competing for public tenders. The principle is expressed in three ways: first by creating objective procurement criteria, second by ensuring clear and consistent procurement processes, and finally by avoiding conflict of interest and corruption.
3. **Transparency:** Any procurement procedure carried out across the European zone shall be documented and made available as widely as deemed necessary. This point again touches on the European procurement registry. Although the use of this registry is not mandatory, it is recommended by the European directive.
4. **Legal certainty:** This principle requires that persons be certain of their legal rights and obligations.

WHERE DO PUBLIC PROCUREMENT RULES APPLY?

Public procurement rules only apply to certain situations. These include:

- The presence of a public entity/contracting authority;
- The use of a public contract; and
- The public contract must pertain to works, supplies, services or concessions that meet specific thresholds.

Public entities

Public procurement rules apply to all entities governed by public law, associations formed by one or more such authorities, or one or more such bodies governed by public law. According to the Public Procurement Directive, these entities must meet the following 3 criteria:[12]

1. Have a legal personality;
2. Be established for the purpose of meeting needs in the general interest, i.e. not commercial or industrial;
3. Be financed *"in most part, by the State, regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law".*

In certain countries, public utilities are bound by rules similar to those that bind public authorities and administrations.

11 GPA 2012; https://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.pdf

12 2014/24 Art 2 Par. 4

COULD RECs BE CONSIDERED A PUBLIC ENTITY?

Under the Renewable Energy Directive and the Electricity Directive, local authorities (including municipalities) are eligible to become members of RECs and CECs.[13] Direct and indirect participation should actually receive regulatory support from Member States under their enabling frameworks for RECs.[14] The potential for local authority involvement in energy communities raises the question of whether public procurement rules could apply directly to energy communities themselves.

Recital 10 of Directive 2014/24 attempts to clarify such situations. It states that when an entity that receives significant public investments is included in a particular legal entity:

"it should be clarified that a body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity should not be considered as being a 'body governed by public law'."

Since RECs and CECs are envisioned to develop in a market setting, they should generally be excluded from the definition of entities that must comply with public procurement legislation. Nevertheless, the line may become more blurred if the local authority maintains majority control of an energy community, either through a majority of investment (shares), or in terms of voting (decision-making) power. Under such circumstances, the local authority would have a controlling position in the energy community.

Given that the rules of public procurement are much more stringent than procurement rules for private companies, we would recommend that energy communities avoid falling under the scope of public procurement rules.

Public contracts

EU public procurement rules apply to written public contracts with a pecuniary interest (valuable consideration). Covered here are public works contracts, public supply contracts or public service contracts. Works contracts are contracts to carry out a specific type of work or works, while a supply contract is for the acquisition of products, for example through purchase or lease. Service contracts cover a number of services. These are listed in Annex II of the Public Procurement Directive.

Depending on the type of contract being entered into by a public authority, it may be also covered by other directives. Under potential types of contracts that municipalities could enter into when creating or interacting with an energy community, we identify the following:

- **Concessions contracts:** Concessions are covered by Directive (EU) 2014/23/EC (Concessions Directive). A concession contract is similar to a public works contract, except that the works to be carried out consist either solely of the right to exploit the work or of this right together with payment. This would include a concession to operate and manage local electricity or gas networks, or to extract resources used to produce energy on a particular publicly owned space.
- **Utility contracts:** Utility contracts relate to 'utility' activities in sectors such as energy, transport, water and postal services, and are covered by the Utilities Directive. The Utilities Directive not only applies to public bodies but also to other entities engaged in utility activities, including private actors.

EU THRESHOLDS

EU legislation defines specific thresholds for when public procurement rules apply. These thresholds are set at a minimum level, although Member States are free to set more restrictive thresholds. Different thresholds

13 RED II Article 2(16) and IEMD Article 2(11).

14 RED II Article 22(4)(h).

are indicated for specific types of services in the Annexes of Directive 2014/24/EU (Annex XIV), Directive 2014/25/EU (Annex XVII) and Directive 2014/23/EU.[15]

We summarise here the relevant thresholds that might apply to local authorities contracting services from an energy community. Each threshold is expressed in net euros (including VAT):[16]

Best value for money

'Value for money' has often been expressed as an underlying objective to be pursued by the public procurement legal framework. Even though, as we will see below, it is possible to integrate other policy objectives into public procurement decisions, the principle of value for money should still be respected. This stems from the idea that the internal market and competition can result in lower prices and more efficient suppliers for goods and services purchased with taxpayer money. The main objective is not necessarily to get the cheapest price per se, but to allocate expenditures wisely in order to improve the quality of the goods and services being purchased.

TABLE 1: **THRESHOLDS CONTRACTING SERVICES**

Directive	Managing Authority	Contract type		Thresholds
2014/24 Procurement	Central Government authorities	Works contracts, subsidised works contracts		€ 5,382,000.00
		All services concerning social and other specific services listed in Annex XIV		€ 750,000.00
		All subsidised services		€ 215,000.00
		All other service contracts and all design contests		€ 140,000.00
		All supplies contracts awarded by contracting authorities not operating in the field of defence		€ 140,000.00
		Supplies contracts awarded by contracting authorities operating in the field of defence	Concerning products listed in Annex III	€ 140,000.00
			Concerning other products	€ 215,000.00
	Sub-central contracting authorities	Works contracts, subsidised works contracts		€ 5,382,000.00
		All services concerning social and other specific services listed in Annex XIV		€ 750,000.00
		All other service contracts, all design contests, subsidised service contracts, all supplies contracts		€ 215,000.00
2014/25 Utility		Works contracts		€ 5,382,000.00
		All services concerning social and other specific services listed in Annex XVII		€ 1,000,000.00
		All other service contracts, all design contests, all supplies contracts		€ 431,000.00
2014/23 Concession		All works or services concessions		€ 5,382,000.00

15 These thresholds were last amended in 2021 by Delegated Regulation 2021/1953 (amending 2015/25) 2021/1952 (amending 2014/24) and 2021/1951 (amending 2014/23).

16 This table is extracted from the information page of the European Commission on thresholds. https://ec.europa.eu/growth/single-market/public-procurement/legal-rules-and-implementation/thresholds_en.

POLICY OBJECTIVES OF PROCUREMENT

The 2014 revisions to the Public Procurement Directives clarify a number of legal issues that contracting authorities have faced in the past, making it easier to sustainably procure products and services. They stipulate that the Most Economically Advantageous Tender (MEAT) should be the main basis for contract criteria, and no longer the cost/price element alone. This makes it possible for contracting authorities to include social factors as well as considerations of quality and sustainability of the services in the procurement process.[17]

Contracting authorities now have more scope to incorporate costs of environmental externalities (e.g., life cycle costing and product process impacts) in deciding a 'most economically advantageous tender' (MEAT). Contracting authorities can better take social aspects into account when awarding procurement contracts on the basis of the 'best price-quality ratio (BPQR)', i.e. they can choose the tenders that provide more social benefits.

Tenders may be scored based on environmental and social criteria as long as they are linked to the subject matter of the contract and also include price or cost criteria. Furthermore, certification and labelling schemes now play a more prominent role in helping to prove that desired environmental or social characteristics of technical specifications and tender award criteria are fulfilled. Lastly, it is now the Member States' responsibility to ensure that economic operators comply with environmental, social and labour laws (e.g., relevant climate or energy laws) in the performance of public contracts.

The Directives also offer flexibility in order to encourage the use of 'strategic' procurement to achieve EU objectives. In 2021, however, the Commission confirmed the preference for using the lowest price as an award criterion and indicated difficulties contracting authorities faced in formulating meaningful quality criteria for socially responsible public procurement (SRPP).[18]

Socially responsible public procurement

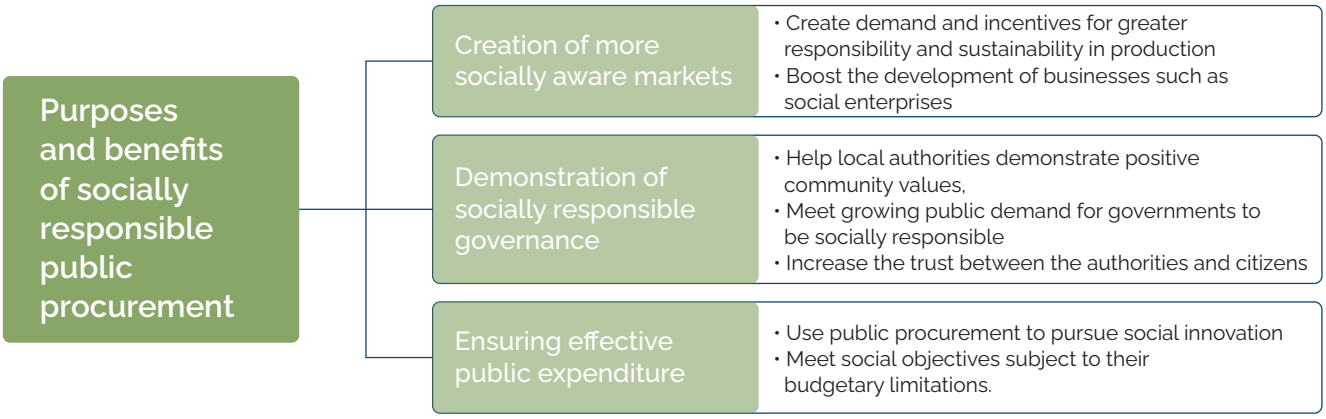
According to guidance issued by the Commission, Socially Responsible Public Procurement (SRPP) aims to address the impact on society of the goods, services and works purchased by the public sector. Specifically, it asks public buyers to look beyond the price of products or services, and also consider how they are produced, sourced and delivered. Among other things, it ensures that procurement achieves social benefits.

It allows local authorities to consider social objectives throughout the entire procurement process, provided these are non-discriminatory and linked to the subject matter of the contract. Social considerations can be combined with green (7) and circular (8) criteria and the procurement of innovation (9). The guidance notes that in the context of the COVID-19 crisis, Recovery and Resilience Facility funds will often be put to use through public procurement, and that "moving away from a lowest price logic and introducing considerations related to social integration, equality, fair and inclusive employment and ethical supplies is key to maximise the recovery effect of these resources."

17 odiaconia

18 Explanatory Memorandum to COM(2021)245 - Implementation and best practices of national procurement policies in the Internal Market - EU monitor

FIGURE 2: **PURPOSES AND BENEFITS OF SOCIALLY RESPONSIBLE PUBLIC PROCUREMENT**



The European Commission also maintains an online support tool that contains best practices on the use of socially responsible procurement.[19]

A number of social objectives may be considered within the scope of socially responsible public procurement. Criteria that may be relevant for energy communities include the following:

- Promoting fair employment opportunities and social inclusion
- Providing opportunities for social economy and social enterprises;
- Delivering high quality social, health, education and cultural services.

For implementing socially responsible public procurement, the guidance suggests that authorities develop a strategic approach. This can include the integration of EU objectives, as well as setting objectives at the local level. The guidance also suggests integrating social considerations into public procurement procedures and policies, although there is little concrete detail provided on how to do this, other than to identify what resources might be needed. Nevertheless, the guidance suggests that a needs assessment may be conducted, which might justify a certain approach taken by a public authority, while consultation and engagement with market actors is also suggested. For tenders themselves, it may be advisable to apportion the tender into separate 'lots', to provide different opportunities to different types of market actors. The conclusion of a framework agreement may also help to avoid a new public procurement process for multiple tenders that pertain to the same subject matter.

For social enterprises whose main aim is to integrate disadvantaged people in the workplace, contracting authorities may restrict some tendering procedures for all types of social enterprises if 30% of the companies' employees are disadvantaged.

19 Available at: https://ec.europa.eu/info/policies/public-procurement/support-tools-public-buyers_en. See "Making socially responsible procurement work - 71 good practice cases" and "Buying for social impact - Good practice from around the EU".

Green public procurement

Green public procurement enables public buyers to use their purchasing power to choose goods, services and works with a lower environmental impact, while also contributing to sustainability goals at the international, national, and local level. Public authorities may require that bidders not only comply with environmental obligations, but also deliver goods fulfilling the requirements of environmental labels.

Innovation procurement

Innovation procurement includes:

- The development of innovative solutions through the procurement of research and development services;
- The procurement of innovative solutions that are not yet available or do not exist on the market;
- The procurement of innovative solutions that do exist, but are not yet widely available on the market.

TABLE 2: **GREEN PUBLIC PROCUREMENT & INNOVATION PROCUREMENT**

Type of procurement	Includes
Green public procurement	Green public procurement enables public buyers to use their purchasing power to choose goods, services and works with a lower environmental impact, while also contributing to sustainability goals at the international, national, and local level. Public authorities may require that bidders not only comply with environmental obligations, but also deliver goods fulfilling the requirements of environmental labels.
Innovation procurement	The development of innovative solutions through the procurement of research and development services.
	The procurement of innovative solutions that are not yet available or do not exist on the market.
	The procurement of innovative solutions that do exist, but are not yet widely available on the market

DIFFERENT TYPES OF PROCUREMENT PROCEDURES AT EU LEVEL

The public procurement rules describe several procedures to select contractors. Directives 2014/24/EU and 2014/25/EU provide a choice between five procurement procedures:

- Open procedure – bids can be submitted by any operator;
- Restricted procedure – at least five bidders are selected to submit bids based on objective criteria;
- Competitive procedure with negotiation – at least three bidders are selected to submit bids based on objective criteria; bids can be negotiated;
- Competitive dialogue – at least three candidates are chosen to supply solutions based on a description of the public buyer's requirements;
- Innovation partnership – at least three candidates are chosen to develop and supply goods or services which do not yet exist on the market, using a phased contract structure.

DIFFERENT STAGES OF THE PUBLIC PROCUREMENT PROCESS

5

There are different stages of the procurement process where it may be possible to integrate social responsibility considerations. These include:

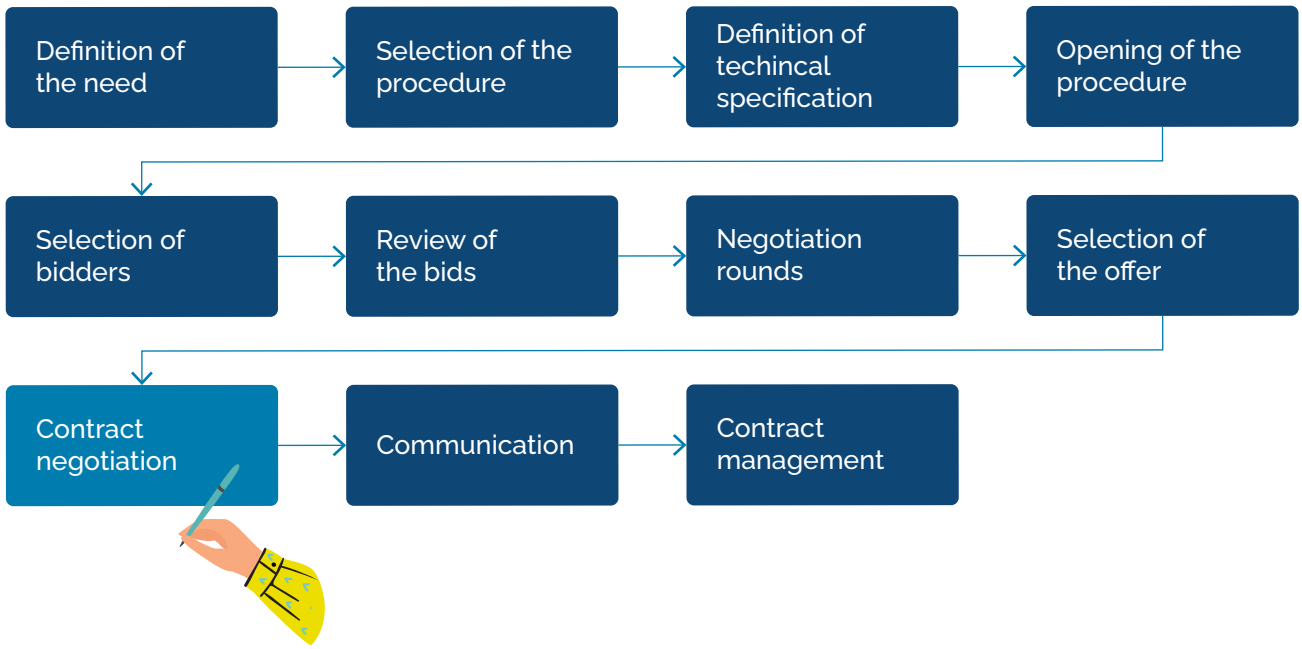
- **Defining the subject matter and the relevant rules.** It is possible to define different social criteria, as long as they are linked to the subject matter, or relate to the conditions under which the works, supplies or services are to be provided or undertaken.
- **Advertisement and publicity**. The publicity around the publication of requests for tender is often a difficult process for small municipalities. In order to receive the highest number of relevant tenders, it is important to communicate through the right channels, and sometimes even to convince bidders to submit a tender. The European Commission has implemented a Europe-wide platform for public tenders which can used by all managing authorities (TED[20]). The communication must be relevant to the size and "market relevance" of the contract. Market relevance here refers to the level of potential interest by market actors.
- **Technical specifications.** Technical specifications may refer to the specific process or method of production or provision of the requested works, supplies or services. Technical specifications tell the market precisely what the public authority wants (e.g. to make a purchase, grant a concession, etc.) and may include social aspects where this is an essential part of what is to be delivered. Whatever the specifications, they need to be elaborated objectively so that they can be understood by all potential competitors.
- **Exclusion and selection criteria.** Grounds for excluding specific competitors are allowed, for example based on poor previous performance or criminal or unethical practices. They are divided into two categories: Mandatory (which must be applied in all tenders) and discretionary (which public buyers can choose to apply, or which may be made mandatory under national law). On the other hand, selection criteria can help identify actors that might be best placed to deliver the social aspects of your contract. These may include criteria based on economic and financial standing, technical and human resources, as well as demonstrable experience and expertise in delivering what is being requested by the public authority. All selection criteria need to be related and proportionate to the subject matter of the contract.
- **Award criteria.** Public authorities are allowed to apply a wide range of qualitative and cost-related criteria to create a basis for what is called the 'most economically advantageous tender' (MEAT). Award criteria must relate to the specific goods, services or works being tendered. Social aspects may be mentioned as factors that can be included in award criteria. It is important to formulate these clearly and transparently, ascribe the proportionate weight to each criterion, and define how each will be evaluated. The guidance states that there is no maximum or minimum score that you can assign to social award criteria, although it will depend on the specific situation. Where the social benefits are high, for example, it may make sense to strongly weight social award criteria.

20 https://ted.europa.eu/TED/browse/browseByMap.do

- **Evaluation.** The evaluation process is about assessing claims made by different bidders in order to come to an overall decision. The public procurement directives do not prescribe any particular evaluation method, although the principles of transparency and equal treatment must be applied. This can even be done through consultation with impacted (e.g. user) groups, social partners or other representatives/experts.
- **Contract management.** Once the contract has been awarded, the contract management and the relationship development between the municipality and the contractor is often a deciding factor for the success of the service. Contract management refers to all the elements of execution and coordination related to delivery of the service.

We will now walk through each of the steps of the procurement procedure and explore potential adaptations that can be made to level the playing field for community energy organisations.

FIGURE 2: **PROCUREMENT PROCEDURE STEPS**



PUBLIC PROCUREMENT IN PRACTICE

6

EXAMPLES OF PROCEDURES TAILORED TO PROMOTE LOCAL CITIZEN AND COMMUNITY PARTICIPATION

The above sections summarised a number of the key legal principles that are relevant for municipalities that want to support local community energy initiatives through their public procurement process. The following section describes situations in which different municipalities have managed to orient aspects of their procurement procedures to create a more level playing field for citizens and energy communities wishing to be involved in the development of local renewable projects. Interestingly, supportive elements for energy communities have been integrated into different parts of the process, suggesting a number of approaches that might be taken.

MUNICIPAL PLANNING AND COMMUNICATION

An energy community is first and foremost a community project. Despite the limitations placed on municipalities regarding direct public action, clear political support and communication efforts in support of local initiatives often go a long way. Local citizens tend to trust their local government more than national institutions.[21] A strong positive signal in favour of a local initiative is often what is needed to trigger growth of the energy community.

Municipal resolutions and procedures

All European municipalities are supported in the creation of a Sustainable Energy and Climate Action Plan (SECAP). Beyond the municipal objectives and scenario,[22] this plan is also an opportunity to trigger a broad conversation about territory transition and the potential synergies between sectors. This planning exercise is also an opportunity for the municipal council to take concrete political steps to support the development of citizen energy projects on its territory. This can be done through a municipal council resolution/communication. Such resolutions are often non-binding, but nevertheless still create a policy justification for taking other concrete actions, such as the adaptation of procurement procedures at municipal level.

The Joint Research Centre (JRC)[23] also points out a number of potential measures that can be taken to support the development of local renewables through regulation and planning:[24]

- Ordinance on the mandatory use of renewable energy and renovation mandates: such measures aim to force the renovation of public buildings and maximise the renewable potential of the city;
- Review and revise planning regulations to support the deployment of district heating;
- Create advantageous administrative procedures for projects in the 'public interest';
- Clarify and simplify the urban planning process to allow renewable projects to emerge.

21 Trust, local governance and quality of public service in EU regions and cities; Węziak-Białowolska, D.; Dijkstra L; Joint Research Center; 2015

22 Guidebook 'How to develop a Sustainable Energy and Climate Action Plan (SECAP)' Part 1, JRC and Covenant of Mayors, 2018

23 https://ec.europa.eu/info/departments/joint-research-centre_en

24 See 11

EXAMPLES OF MUNICIPAL REGULATORY ACTIONS

In Belgium, municipal councils voted on a resolution requiring all energy production installations on municipal land to offer 50% of its capital to investments by local citizens. These resolutions are not legally enforceable. However, they are indicative of the will of the municipality and therefore create a clear framework for discussion around procurement and development on municipal lands. They were adopted by at least 10 municipalities in Flanders. These resolutions are also supported by guidelines at the provincial level.

As an example, here is the text of the resolution by the city of Leuven:

"Agree for any new renewable energy projects (from the public and from the private sector) on the city's land and on city property, to strive for at least 50% direct participation (of citizens; local government; Leuven institutions, organisations and companies) through cooperatives that respect the ICA principles, so that natural resources are managed as a common good to the maximum extent possible."[25]

There are three elements that will strongly impact future procurement procedures. The first is the objective of 50% **direct** participation, which refers to equity investments, and therefore excludes loans and other means of raising private capital. The second element is the selection of the format of governance for this participation – a cooperative (which in Belgium refers to a specific legal form) respecting the ICA principles. This is an important element of the resolution and highlights the need for governance rights to be added on top of financial investments. Finally, the element of governance by the commons is also a basis for the inclusion of specific requirements in potential Public Private Partnerships (PPPs) or concessions (see the example of the municipality of Eeklo below).

Source: **REScoop Vlaanderen - www.rescoopv.be**

In the Netherlands, the Klimaatakkoord (National Climate Pact, 2020) encourages new onshore wind and solar PV projects to include a 50% citizen participation component in their capital. The National Climate Pact does not create a legal obligation, but it allows municipalities to adopt specific planning policies that include citizen participation in the permitting process. Municipal councils have the opportunity to reject and/or place permit requests on hold until the citizen participation threshold is reached as defined in their local planning policies. The participation is often a private contract between the development company and an energy community. These planning resolutions allow municipalities to enforce a mandatory participation criteria.

Source: **Energie Samen – www.energiesamen.nu**

25 Translated with www.DeepL.com/Translator (free version)

Promotion and platform support

The JRC report on the implementation of SECAPs[26] describes several options for communications and platform actions around support for the development of local renewable production:

- Promotional campaigns such as solar energy campaigns, and supporting tools based solar land registries;
- Communication campaigns to promote behavioural changes;
- Promoting competitions, awards and contests for climate protection and GHG reduction efforts;
- Showcasing the results obtained in order to raise citizen awareness;
- Supporting tools and information sessions for citizen empowerment.

EXAMPLE OF PARTICIPATION PLATFORM

Decidim is a public participation platform created by the city of Barcelona as part of the municipal plan called "73 neighbourhoods, one Barcelona, Towards the city of rights and opportunities". The goal of this platform is to enhance the link of citizens with the municipal government and agencies. The platform was used to develop the participatory budget orientation of the city of Barcelona as well several transition projects. The platform allowed the municipal services to gather feedback from more than 40 000 local citizens, but more importantly it created a standard process for public participation in city projects. The platform was developed as open source and was provided to any organisation that wanted to use it for public participation purposes. The Som Energia cooperative, for example, adopted and used the platform to host its 2018 General Assembly and support collective dialogue between members.

Source: **Energy Cities - www.energy-cities.eu**

26 Guidebook 'How to develop a Sustainable Energy and Climate Action Plan (SECAP)' Part 3, JRC and Covenant of Mayors, 2018

TECHNICAL SPECIFICATIONS

Definition: technical requirements included in the tender scope that define the service or product that is the object of the procedure.

In the further goal to support community ownership and to select local community actors, municipalities can adapt the technical criteria of the tender to include a participatory component, a requirement on the financing structure of the service or the service type that will create greater incentive for RECs to participate in the tendering procedure.

Participatory component

In the examples that we reviewed, several municipalities adapted their tender specifications by creating requirements around 'citizen participation'[27] or 'citizen ownership'[28] and by providing clear standards and definitions around these concepts. The municipality of Saint-Gilles explored this concept by relying on two main resources to qualify the type of participation mechanism:

- The International Cooperative Alliance principles: The municipality assesses the participation mechanism proposed by the contractor on the basis of the ICA principles. The implementation of each criterion is defined by the ICA implementation guideline. The contractor is required to make a written statement explaining the mechanism of direct participation.
- Validation of previous experience in participative renewable projects. The contractors were required to justify one example of experience they have with participatory projects of a similar size.

The VEB (Flemish Energy Agency) launched a procedure to select a contractor for a framework contract to develop a solar PV installation with citizen participation components.[29] The participation was defined specifically in the tender specification as: *"Citizen participation consists on the one hand of a committed effort to raise the financial resources needed to realise the installations from stakeholders such as citizens, companies, associations, etc. in the territory of the contracting authority. This mandatory financial participation must also result in a (financial) return for those who participate. In addition, this includes communicating the achievements in order to create support for the energy transition by, for example, supplying communication material, supporting the client in communicating with its stakeholders or organising information evenings".* This specification was especially interesting since the contractor had to prove previous experience with this specific type of community-led PV project. This made it possible to assess the details of the community building process for each contractor and therefore to promote the best approach.

Structure of financing vehicles for local citizen energy projects

The contracting authority can also put limitations on the source of the financing used by the contractor. The municipalities that we interviewed usually required that a special purpose vehicle (SPV) be created that allows for joint investments. This is a common practice for renewable development. This also allowed citizens to directly invest in the project, but attached specific requirements to the construction of the SPV.

The municipality of Eeklo,[30] in its concession procedure for the development of district heating, required that the SPV be 20% owned by citizen capital. On top of which the tender specifications added a qualification on the governance model: *"where citizens are treated as equal partners to the developing company."* This last provision created a specific governance right without necessarily creating mandatory capital investment from citizens.

27 Annex 1, p30

28 Wording used by REScoop Flanders in the guidance document to municipalities.

29 Annex 7

30 Annex 4

In Eeklo, the municipality also included another interesting clause – a right to scrutinise the SPV structural relationship between partners of the consortium. This was an added precaution that allowed the municipality to ensure achievement of the final goals of the operator through the tender process.

The municipality of Saint-Gilles,[31] in its concession procedure for municipal solar roofs, required that the SPV adopt a specific governance mechanism – namely the 7 cooperative principles. The municipality also put a limitation on the nominal price of the share (100 euros). This allowed a greater number of citizens to invest, and preserved direct control.

Tailoring the type of service requested to what energy communities can deliver

Certain service types also allow supporting the involvement of citizens by creating technical constraints. The municipality of Crevillent, for example, created a concession procedure for rooftop solar,[32] but at least 80% of the electricity had to be shared with local citizens of Crevillent. This implies a technical service that could only be achieved through a collective self-consumption mechanism. This mechanism would entail the signing of individual contracts with local participants. This is an easy requirement to meet for a community with members in the municipality, but it creates a strong barrier to external actors.

The second example comes from the municipality of Lorient. The municipality opened a procurement procedure for the sourcing of its electricity supply. In the technical specifications of the tenders, the municipality defined the principle of environmental additionality, which was defined as "additional renewable energy that would not have been added to the system if not for the contract."[33] It is clear that the municipality was looking for a supplier willing to develop local production. This is a great way to support the development of a local supplier. Unfortunately, in the case of Lorient, the contracting authority was unable to find a contractor to meet this requirement.

Community based outcomes

Several municipalities included community benefit mechanisms in their technical specification to encourage contractors to consider the social, environmental and ecological impacts of their tenders. The contracting authority requires the contractor to invest part of the profits of the concession or procurement in alternative services provided to the municipality itself or the community at large. This creates a technical specification that is tailored to the objectives of RECs, since they are primarily intended to deliver community benefits.

The municipality of Eeklo[34] opened a concession procedure for the development of wind turbines on municipal grounds. In this requested outcome of the concession, the managing authority included on open call to contractors to propose in their tenders any added benefits for municipal transition planning. This call was purposefully vague in order to encourage creativity. Contractors had to propose ways to support the production of the SECAP and to support concrete transition actions. The result was that the Ecopower cooperative offered to the municipality part-time support staff committed to realising a study on the utilisation of waste heat on municipal grounds and providing efficiency advice to local inhabitants. This was a win-win situation since it allowed Ecopower to develop new activities and projects at a later stage while supporting the municipal staff.

The municipality of Crevillent[35] opened a concession procedure for the installation of solar panels on 20 municipal buildings. This procedure included a requirement for the creation of both a municipal energy management app that could be used by municipal staff and consumers, and the creation of information points across the city for consumers to learn about energy communities and self-consumption. This created a win-win situation for the Enercoop cooperative (which ended up winning the bid), since information points allowed the cooperative to reconnect with it members. The cooperative gathered almost 28 000 members across the City of Crevillent.

31 Annex 1

32 Annex 5, p. 12 (administrative documentation)

33 Annex 6, p. 5

34 Annex 3

35 Annex 5

EXCLUSION AND SELECTION CRITERIA

Definition: criteria used by the contracting authority to either reject or consider a firm's bid.

Exclusion criteria are the first step in the procurement process and are often the most direct way to ensure the participation of energy communities in the procedure. However, there are many barriers to using this tool.

One way to use criteria to promote energy communities is by limiting participation in tenders to specific legal forms, which is possible in some Member States. However, there are practical and legal limitations to the use of this approach. First, in many Member States, dictating the use of a particular legal form does not guarantee that private citizens will be able to participate. Second, limiting participation to one legal form could be difficult to justify in light of the objectives being pursued in the tender.

Exclusion through governance principles

The municipality of Saint-Gilles opened a call for tenders to develop solar production on three municipal buildings. This procedure had two main objectives:

1. To develop solar production on the municipal territory;
2. To support the creation of energy communities in the municipality.

To realise these objectives, the municipality inserted three criteria to select the bidders allowed to participate in the procedure: a first criterion on existing project experience with a similar service, a second criterion on the capability to develop efficiency projects (valid for both energy sobriety and renovation) and finally a citizen participation criterion defined according to the 7 cooperative principles.

This final criterion states that "the contractor must demonstrate its capacity to implement citizen participation according to the ICA principles". Each principle is then defined according to the guidance note produced by the ICA.[36] This criterion provides a basis for excluding contractors that are unable to implement a democratic governance model in their projects. The choice to use cooperative principles as a criterion was easy to make, because it is a well-known and well-regarded standard.

The descriptions of the principles also added a number of interesting nuances that allowed for community actors to participate more efficiently in the procedure if they decided to do so:

- **Democratic control defined both for a primary cooperative and networks of cooperatives:** this allows for a definition based on both a single organisation as well as networked organisations, which can be useful if a developing energy community might need the support of a network organisation and/or a consortium of collaborating energy communities.
- **Economic participation:** the cooperative's values define an appropriate use of the benefit of the organisation, which in this case creates an obligation for the potential contractor to use the benefits of the project to continue developing the energy community. This is especially interesting considering that the secondary objective of the tender is to develop a community energy actor in the municipality.

The added value of these principles is that they provide an incentive for community-friendly actors to submit a tender, as well as a qualification on execution of the contract and the resulting engagement of local citizens in the final project.

36 https://www.ica.coop/sites/default/files/basic-page-attachments/guidance-notes-en-221700169.pdf

On the other hand, a potential barrier to using cooperative principles as a criterion is the difficulty in assessing whether they have been implemented correctly by the project developer. The cooperative principles can be implemented in a number of ways, and their efficacy is difficult to assess without in-depth experience.[37] This experience is available to the municipal team of Saint-Gilles.

Exclusion through legal form

The municipality of Strasbourg,[38] in its procedure to allocate concessions for solar roof development, created specific criteria that specified that only organisations taking the form of "citizen energy communities" could participate in the tender. The definition used refers back to Directive (EU) 2019/944 (The Electricity Directive) and its French transposition. This definition narrows eligibility to the types of legal form that can implement specific governance principles instead of identifying one specific legal form. Nevertheless, this allowed the municipality to limit the types of organisations participating.

This criterion made the tender widely accessible to actors across Europe since it is a standard shared across the continent. This is an official objective of the European commission for public procurement. Yet, despite this openness, it provides a unique right for a municipality to qualify or disqualify organisations based on organisational principles.

37 See the REScoop versus FINcoop paper published by the COMPILE project in April 2021 as part of the Financing Guide of the COOLKIT. Available at https://www.compile-project.eu/products/coolkit/financing/

38 Annex 2, p. 8

AWARD CRITERIA

Definition: criteria used by the contracting authority to rank the bids. Each criterion can be graded on a scale from 0 to 100 – individual criterion grades may then be added together to provide a final ranking of bids in support of awarding the contract.

Considering the risks of creating stringent criteria during the selection process, it is often easier to simply reward the specific added value that is created by energy communities in the procurement process. RECs have primary objectives that aim to deliver socio-economic and environmental benefits. Therefore, they specialise in providing added value to the community.

Including social criteria

In 2000, the municipality of Eeklo created the following list of criteria for its concession procedure for wind development:

- **Financial criteria (30 points):** the municipality grades the financial aspect of the tender submitted by the contractors. The financial aspect consists of two parts: first, a lump sum to the municipality, and second, a financial contribution to the inhabitants of the city (through a financial contribution to a local fund dedicated to neighbourhood development, managed by the King Baudouin Foundation).
- **Social criteria (30 points):** the municipality grades the participative mechanism of the contractor, based on two points: one, the amount of ownership opportunity offered to local citizens, and two, the credibility of the engagement plan.
- **Technical criteria (40 points):** the municipality assesses the credibility of the technical solution offered by the contractors for developing the actual project.

These criteria still left the majority of the points to be determined by the technical aspects of the tender. However, the municipality incentivised potential contractors to propose a way to deliver community benefits by creating a fund that would fulfil part of the financial criteria. The municipality also offered to contractors a number of solutions to make contributions to local inhabitants. A first fund is an "environmental fund" managed by a well-known foundation (King Baudouin Foundation[39]). It aims to take actions to benefit citizens living close (within 800 metres) to the wind turbines. The second fund is the Eeklo "municipal climate fund" dedicated to the transition of the city of Eeklo. These two funds made it easy for contractors to create local community benefits.

In its procurement process for developing solar PV rooftop projects, the metropolis of Strasbourg applied two main community-based criteria. These two criteria allowed the municipality to qualify not only the type of actor competing for the tender, but also the use of the profits generated by the solar production. The criteria breakdown used by the municipality is especially detailed, creating transparency and providing clear goals for the tenders of contractors. The criteria breakdown is as follows:

- **Strategy to mobilise citizens to finance the project (25 points):** this strategy criterion is divided into three parts, a first related to mobilising building inhabitants themselves (10 points), then neighbourhood inhabitants (10 points), and finally general communication (5 points).
- **Financing mechanism (20 points):** the financing criterion is also divided into three parts: ROI (5 points), own funds (5 points) and the number of planned investors (10 points). This is especially interesting since it reinforces the criteria around the engagement strategy.
- **Governance mechanism for citizen participation in the operation of the project (25 points).**
- **Technical aspects of the project (30 points).**

39 King Baudouin Foundation add reference

In total, if we count the number of points allocated to the community participation aspects of the tender, we arrive at 60 points. The contracting authority also strongly signal the importance of community development in its tender – highlighting the main success criteria expected from the contractor concerning ownership by citizens as well as community outreach activities. This will create strong added benefits to the municipality with a minor investment.

Adapting quality criteria

The municipality of Saint-Gilles opened a concession tender for the development and operation of solar installations on the roofs of municipal buildings. This large contract covered 11 municipal buildings. The criteria used to assess tenders left considerable room for community-based criteria. These criteria were as follows:

- **Total installed power (25 points):** this criterion is defined according to categories of installed capacity. Contractors are invited to optimise the number of PV systems installed and therefore the renewable kilowatt hours produced.
- **Quality guarantee (25 points):** this criterion is defined according to the plan typology of the installation and the maintenance procedure selected by the contractor.
- **Plan for community added value projects (25 points):** the contracting authority defines this added value based on two main pillars: supporting the participation of local citizens, and social and environmental projects developed by the contractor.
- **Financing plan through community participation (25 points):** the contracting authority defines this criterion through the creation of a financing model that corresponds to the 7 cooperative principles of the ICA. This is a direct link that reinforces community ownership.

This tendering procedure corresponds to the rather large project size being implemented for the municipality of Saint-Gilles. This type of solar project is particularly profitable in the Brussels Capital Region. Once again, the different factors (financing + added-value projects) incentivise contractors to provide community ownership as well as to allocate revenues from the project to projects that benefit the community, thus creating a comparative advantage for energy communities.

Utilising bonus points and discounts

PROCEDURAL EVOLUTION

Definition: Procedures are standard workflows of the procurement process.

Procedural adaptation refers to all adaptations to the procurement procedure itself. The public procurement procedure is complicated for both the managing authority and the contractor. The complexity of the procedure as well as the long duration and qualitative threshold mean that the opportunity cost for the bidder is often high. But it is always higher for smaller actors and actors less accustomed to the bidding process. Therefore, it is important to adapt the procedure to correct for these intrinsic imbalances.

Adapting the subject matter

The subject of a contract is linked to the higher political objectives pursued by the contract. In many of the municipalities that we interviewed, the procedures were applied within the framework of the political strategy defined by the municipal council and in line with the prerogatives of the municipality (see Section 1.1).

The municipality of Krizevci was looking to create an energy community on municipal territory to support their efforts to be climate neutral by 2030. With the support of ZEZ, the KLIK cooperative was created in 2020 by local inhabitants of Krizevci. In order to support the energy community's development, the municipality opened several tenders for service contracts that were awarded to the energy community via restricted procedures. These service contracts were in line with the political objectives of the municipality and the community goals of the cooperative. This allowed KLIK to quickly employ staff that could then also work on developing the cooperative.

Selecting the right tendering rules

In Section 2.1.5, we describe several types of tendering procedures that can be used by managing authorities. All of the municipalities that we interviewed used the simplest and most open type to select a contractor: the open procedure. It was noted, however, that there often was not a conscious choice to use this procedure, but rather it emerged due to the lack of clarity around the use of other more selective procedures.

The use of short lists and pre-selection mechanisms can be a good way to adapt the procurement procedure to the needs of the local market. These mechanisms often rely on direct support mechanisms (see Section 1 of this guide). However, it is also an opportunity for the local authorities to leverage the existing knowledge in network organisation or in an existing energy community at the local level.

The goal, finally, is to compensate for the intrinsic imbalance related to experience and resources that benefits large contractors over smaller ones. However, there is a thin line between creating opportunity and creating a competitive advantage for one contractor over another.

In 2019, the Flemish Energy Agency (Vlaams EnergieBedrijf/VEB) opened a procurement procedure for the creation of a framework contract with the goal of developing solar production with a citizen participation component and the supply of renewable electricity.[40] This contract utilised the competitive dialogue procedure to explore with local actors the possibilities of citizen participation at regional level. The VEB created a framework contract for the development and financing of solar projects at the provincial level, and the supply of electricity to municipalities through renewable sources, with a citizen component. The framework could then be used for a "mini-tender" by provincial and municipal governments with the pre-selected actors in order to award the project quickly. The competitive dialogue procedure allowed the contracting authority to explore the various models available, but also to provide more efficient consulting support to local government. The framework contract itself allowed the municipalities to simplify and accelerate their further tendering procedure.

40 Annex 7

Direct capacity building support

Municipalities can provide capacity building support to energy communities acting or developing on their territory. This should include specific training on participation in public procurement procedures or workshops on writing that provide direct experience with developing initiatives.

The metropolis of Strasbourg provided capacity building to the "Les Brasseurs de l'Energie"[41] initiative, an energy community developed by inhabitants of the municipality. This included support of metropolis administrative staff in organising and facilitating the meetings of the community, technical support regarding the contracts and business models available to the group, as well as a direct investment. With this support, the energy community participated in a tendering procedure launched by the municipality of Strasbourg for the development of solar roofs. The metropolis of Strasbourg includes the city itself, but the two entities are separate (despite sharing a joint administration team). This allowed the tendering procedure to remain open and fair.

Using network organisations

In 2018, the municipality of Krizevci adopted an ambitious plan to be carbon neutral by 2030. Its strategy included ambitious objectives on the development of renewables and the participation of local citizens. The municipality planned to request tenders for two projects: the first was a municipal information desk dedicated to keeping citizens informed.

Taking its leadership role seriously, the municipality was looking to develop a call for tenders to develop a large 5 MW ground-mounted solar project, and to use this project to raise the private investment levels of its citizens. To launch the process, the municipality sought support from ZEZ, the Green Energy Cooperative from Zagreb. The role of ZEZ was to support the creation of a local cooperative in Krizevci, through capacity building and technical support: legal support regarding legislation and financial support regarding the financial plan. This allowed for the KLIK cooperative to be developed relatively quickly (6 to 8 months). The local cooperative then became a strong partner of the municipality in developing the production project as well as other service contracts.

Contract management: Contract management with energy communities is a process of integration between the public authorities and the energy community. This is usually a relatively standard process, but complications are present in the management of the "community projects" that are often added in the examples that we explored. Our analysis is limited on this point, since most of the tender procedures that we analysed are recent. However, a number of good practices did emerge:

- **Creating collaboration opportunities:** The municipality of Eeklo implemented several funds that contractors are invited to contribute to in order to support the development of community initiatives in the city. The first fund is managed by the King Baudouin Foundation and is dedicated to the development of neighbourhood activities around the production installations. The second is the city climate fund, which is directly managed by the city. These funds allowed the city to develop an ambitious transition strategy and to involve Ecopower (the energy community contractor) in the process.
- **Creating an oversight process for the scope of the contract:** it is crucial for the managing authority to create objective criteria for assessing the success of community projects developed by the contractor. These criteria should be agreed on at the beginning of the contract and will be the basis for discussions on the successes and barriers faced by energy communities in delivering the contracted service.
- **Respecting the governance mechanism of the energy community:** an energy community is by design an autonomous organisation, and often relies on democratic governance principles. It can be tempting for municipal staff to intervene and accelerate the decision-making process inside the energy community. To avoid conflicts of interests, except for a proviso regarding the quality of service offered by the energy community, the municipality should refrain from intervening in the governance of the energy community. Conflicts of interest can permanently damage the community's standing and therefore its potential growth.

41 www.brasseursdenergie.eu

Summary of the cases reviewed

Strasbourg	
Country (Region)	France (Grand Est)
Population	277 270 (2015, source INSEE)
Administrative layers and type	Metropolis of Strasbourg (coalition of multiple municipalities).
Project type	Concession (5 to 30 years) and operation of rooftop solar system.
Project size	1 school building owned by the municipality of Strasbourg. The installation size is estimated at 75 kW peak. The rent paid to the municipality for the roof is 1 euro.
Political support and communication	The municipality of Strasbourg aims to promote citizen-led initiatives on its territory, especially as these relate to the deployment of renewable production sources. The metropolis provided grant support and capacity building support for the creation of the energy community. Adapting the procurement procedure. Pre-feasibility studies were conducted and the rent was set at a low level.

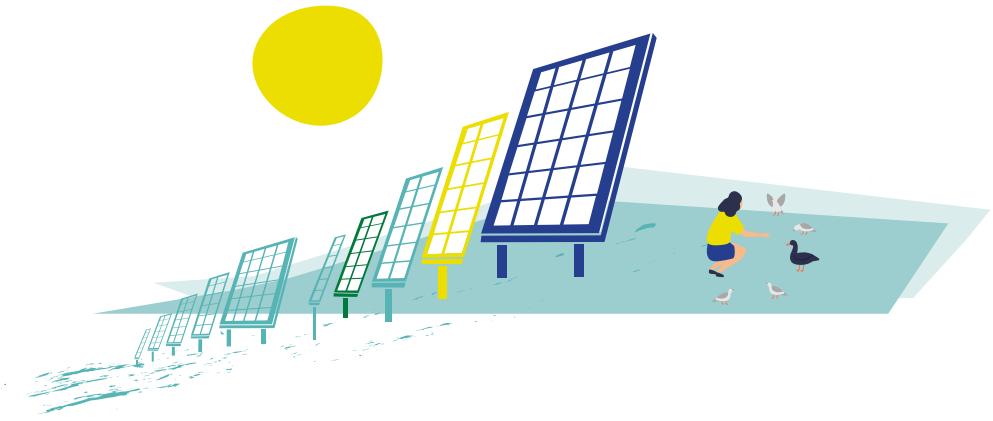
Eeklo (Wind)	
Country (Region)	Belgium (Flanders)
Population	20 890 (2018, source STATBEL)
Administrative layers and type	Municipality of Eeklo
Project type	Concession for wind production on municipal grounds.
Project size	Construction of 2 wind turbines of 7.4 MW and 5.4 MW. The project also covers a 50% FTE for extra staffing of the municipality's energy team.
Political support and communication	The municipal council of Eeklo signed a declaration requiring 50% of the ownership of all renewable energy projects on municipal ground to be offered to local citizens.

Eeklo (district heating)	
Country (Region)	Belgium (Flanders)
Population	20 890 (2018, source STATBEL)
Administrative layers and type	Municipality of Eeklo (heat source is managed by a conglomerate of neighbouring municipalities)
Project type	Concession for deployment and operation of district heating based on waste heat. The concession is valid for 30 years.
Project size	The heating network is meant to cover the entire municipality of Eeklo, with renewable heat sources at its core (including a preference for waste heat). The price per Kj allows for a maximum 15% margin. The contractor must also contribute to several local development funds and invest at least 50 000 euros in the creation of an engagement campaign.
Political support and communication	In 2016, a municipal council decision required the participation of Eeklo citizens in ownership of the district heating project. This decision refers back to the decision around the ownership level for renewable production on municipal grounds.

Saint-Gilles	
Country (Region)	Belgium (Brussels Capital)
Population	50 002 (2018, source STATBEL)
Administrative layers and type	Municipality of Saint-Gilles
Project type	Concession for developing and operating a solar system on 11 municipal roofs for 20 years.
Project size	The estimated value of the project is 1 750 000 euros excluding VAT

Crevillent	
Country (Region)	Spain (Alicante)
Population	28 957 (2018, National Statistics Institute)
Administrative layers and type	Municipality of Crevillent
Project type	Concession for solar rooftop development and operation, including information points for the population and energy management software.
Project size	The municipality is offering 21 buildings representing 12 500 m^2 of rooftop space.
Political support and communication	The municipality of Crevillent benefits from one of the oldest Spanish cooperatives on its territory. Enercoop operates the local grid and most electricity production installations in the municipality.

Flemish Energy Agency	
Country (Region)	Belgium (Flanders)
Population	6 589 million (2019, Statbel)
Administrative layers and type	Regional agency
Project type	Framework contract to support the pre-selection of the contractor. The first lot is dedicated to developing PV projects with citizen participation and a finance component. The second lot concerns pre-selection for the renewable electricity supply through a power purchase agreement (PPA).
Project size	The overall contract is expected to have a value of 5 million euros. The framework contract was valid throughout the 5 provinces and available to the 581 municipalities.



RISKS ASSOCIATED WITH PROCUREMENT PROCEDURES

Despite the significant burden that public procurement rules place on managing authorities, a procurement procedure's level of certainty is often low. The risk of the procedure being contested, and the ensuing potential legal action can be devastating for both the managing authority and the successful bidders. This is especially true for energy communities, which often do not have the financial resources to survive drawn-out legal proceedings. This is why certain market actors in Flanders have the habit of systematically attacking municipal procedures that include community criteria.[42]

Public procurement is largely based on precedent, which makes the sector difficult to approach for municipalities without strong legal support. Adapting the procurement procedure is more a matter of risk calculation than a strong procedural exercise. In order to better appreciate this risk calculation, the municipalities that we interviewed often refer back to three main issues:

- **Competition and relevance:** the market relevance of the project is key to understanding the risk inherent in the procedure. The greater the potential interest and competition, the greater the scrutiny given to the procedures. However, the larger projects and larger tenders are also often the most profitable ones. The municipality of Crevillent found a way through this dilemma by creating a first pilot procedure for the development of a single solar roof. The successful bidder in this smaller procedure then had an advantage in the larger concession procedure for developing more than 20 solar roofs. This allowed the municipality to test the market as well as have strong evidence in support of the participation of an energy community.
- **Advertising and publicity:** it is crucial that publication of the tender is as open and as transparent as possible. This is one of the obligations created by the European regulator to ensure open competition. However, it is also important that the relevant actors participate. Certain municipalities therefore tend to send the tender to known partners. This is allowed, but these partners should not receive more information than the other bidders. In many cases, networks of energy communities or energy communities themselves support the municipality in developing the tender, since there often is a shared interest. It is crucial to ensure that this collaboration is tracked and communicated openly.
- **Administrative coordination:** often procedures cover multiple administrative levels and involve other public institutions. Several of the municipalities that we interviewed mentioned the importance of coordination beforehand between public authorities and ensuring that the scope of the tender is controlled by the managing authority, or that each stakeholder is on board. This is the case for example with the metropolis of Strasbourg,[43] which opened a procedure for solar development on the roofs of a municipal building, controlled by the city of Strasbourg.

42 The best example of this is the procedure carried out by the municipalities of Amel and Büllingen for wind developments on municipal grounds. The dispute was settled out of court after the challenge was withdrawn for lack of grounds by the unsuccessful bidder.

43 Annex 2

Managing procedural risks

Public procurement is based on case law, and therefore precedent and the status quo are often considered large barriers to the creation of new and innovative procedures. In the process promoting the GPP procedures and criteria, the European Commission therefore made a specific effort to highlight successful procedures – which can be used as a foundation for procedures that include additional social and environmental components.

In our documentary review of the GPP case study database, we reviewed the fact sheets of 24 examples from 11 EU countries of successful GPP-driven procurement procedures for municipalities and other local public organisations. Our goal is to obtain an aggregate view of best practice procedures – allowing public authorities to reduce procedural risk by using precedent.

See below table for a summary of the procedural evolution of these cases.

Technical specifications

The technical specifications used by the contracting authorities were rather standard regarding the technical criteria. The guidelines for such criteria are described by the European Commission[44] – and were often included verbatim by contracting authorities.

However, many authorities, especially as it related to examples of supply contracts, added specific local criteria relating to, for example, Guarantees of Origin tracked at national level. This allowed these municipalities and regions to ensure that the electricity was at least being produced at national/regional level. This experience was also repeated for authorities that have access to national level standards for renewables and efficiency projects. Using these standards – some even created by NGOs – allowed contracting authorities to simplify their procedure and obtain the expected result: a partner that invests locally.

Summary of the procedural evolution	
Cases reviewed	24
Type of contract	Procurement (22), Concession (1), PPP (1)
Countries covered	BU, DE, DK, ES, FI, FR, IE, IT, NL, NW, PL, SW
Policy objectives	Innovation (5), Environment (18), Social (1)
Type of contracting authority	Municipality, regional government, municipal company, energy agency

44 GPP criteria are available here: https://ec.europa.eu/environment/gpp/gpp_criteria_en.htm

Award criteria

Award criteria	
Type of award components	**Number of cases**
Price dominant	10
Quality dominant *(of which quality only)	14 (4)
Social criteria dominant	0
Local component**	5

* In this analysis, we defined quality has all the criteria that are not directly related to the economic aspects of the bidder's tender (i.e., price, capital investment by managing authority, maintenance costs). In a number of the procedures we examined, the quality of the tender was the only criteria used – usually as part of a life cycle assessment.
** In this analysis, the local authorities added a specific criterion to support participation by local actors and/or the development of local projects. Local here refers to the geographic territory covered by the contracting authority.

Many of the procedures we analysed focused on quality rather than price. Which is not to say that the price criteria were absent from those procedures, but rather that contracting authorities were applying a 60/40 (quality/price) ratio for the award criteria. In many of the lessons learned, however, the contracting authorities highlighted the added burden on contract management that is triggered by this focus on quality.

But the trade-off is often a more suitable product that will have a greater environmental impact (since this is the focus of the GPP process).

It is also to be noted that many authorities used a local component in their criteria, creating an obligation for bidders to invest part of the contract budget in local projects, or to partner with local actors.

Procedures used		
Procedure used	**Number of cases**	**Countries**
Open procedure	13	Ireland/Netherlands/Germany/Spain/Denmark/Poland/Sweden
Innovation partnership	1	Denmark
Competitive dialogue	4	France/Bulgaria/Netherlands/Norway
Restricted procedure	3	Finland/France
Aggregated procedure (framework contract followed by individual procurement procedure)	3	Netherlands/Germany/Norway

Procedures used

The procedural lesson learned is that managing authorities often discount alternative procedural forms, despite them being of great help when there is a lack of capacity or knowledge at the municipality. Many of the cases we reviewed included positive feedback about specifically competitive dialogues, where the managing authorities were able to explore various options with contractors leading to a better outcome for the procurement.

The second point to lowering risk that was highlighted by many of the best practices reviewed was the creation of aggregated procedures – similar to that of the VEB (Annex 7). These framework procedures allow for smaller municipalities to lower the overall cost of the procurement while supporting an innovative component. Larger public organisations are often able to manage more complex procedures. A good example of this is the municipality of Oslo,[45] where the municipality's single procedure allowed 52 separate schools to source an innovative decarbonised heating system based on a framework procedure carried out by the municipality.

45 https://ec.europa.eu/environment/gpp/pdf/news_alert/Issue25_Case_Study55_Oslo_heating.pdf

NEXT STEPS TO FURTHER IMPROVE THE PROCUREMENT EXPERIENCES

7

The different roles that municipalities can play in supporting the development of energy communities are crucial. In order to successfully deploy a democratic and just energy transition, links between municipalities and their citizens need to be reinforced and supported.

The key issues that municipalities should consider in supporting the development of collective action schemes are:

- Allowing **local citizens** to take **ownership** and **participate** in the initiatives, which entails taking various governance formats into consideration;
- Allocating public funds to obtain the **best value** possible for the **community** at large; and
- Supporting **bottom-up citizen initiatives** that can go hand-in-hand with other local policy objectives, including a **renewable transition**, other **climate goals**, **cohesion**, and a **resilient** and **circular economy**.

Municipalities can be members of energy communities but they can also support the development of bottom-up initiatives. As highlighted in this report, municipalities can support community energy initiatives through public procurement, in particular socially responsible procurement. As is highlighted by this report, local authorities developed varying approaches throughout the different stages of the public procurement process in support of participation from community energy initiatives. However, procurement rules are highly complex, and effectively navigating these can be difficult for municipalities that are not well resourced. There is a need to lessen the risk attached to municipal approaches in order to adapt procurement and concession procedures to support the development of local citizen and community-led clean energy initiatives.

Public procurement rules are legally complex and often not well understood by municipal staff. Public procurement rules have traditionally been framed around cost-efficiency and value for money. While newer approaches have recently been developed, for example around socially responsible, environment-friendly and innovative procurement, there is still a high degree of uncertainty regarding how to design tailored approaches in line with internal market rules. The risk of legal challenges by market actors often dissuades municipalities from using public procurement procedures to support community energy initiatives. Since national procurement rules are driven by EU legislation, the European Commission has a role to play in clarifying how municipalities can adapt their procurement to favour energy communities. In particular, there is a need for guidance at the EU level so that municipalities can design procedures for community energy initiatives with confidence and legal certainty.

Municipalities can benefit from national support of smaller actors (SMEs) and community-driven projects. The examples provided in this report demonstrate that national governments are capable of supporting local authorities in developing innovative procurement procedures in the form of assistance such as the expert support teams that have been deployed in Flanders, Belgium. The Flemish support team is partly responsible for the procedures developed by the Eeklo municipalities.

Sector-specific EU legislation can help local authorities orient public procurement towards meeting climate and energy policy objectives, including support for energy communities. EU legislation, namely the Energy Performance of Buildings Directive and the Energy Efficiency Directive, contains provisions that can support local authorities in taking a leadership role in driving energy savings by orienting public procurement around local approaches to energy. Likewise, the Renewable Energy Directive, which contains policy objectives in support of renewable energy communities, can help local authorities use procurement to support local renewable energy ownership initiatives. Additional guidance would be helpful in further orienting procurement procedures towards promoting these EU level climate and energy objectives.

Regional and national authorities, as well as their support networks, have a crucial role to play in developing and communicating tools and approaches to designing procedures in support of community ownership. This report highlights many successful innovative approaches that have already been taken by municipalities to orient public procurement procedures towards supporting community energy. Several of the examples in this report come from Belgium, and specifically Flanders. This unique perspective arises from the interaction between two existing structures in Flanders: the advisory board for public procurement[46] (at federal level) and the procurement specialist team that the Flemish government has implemented.[47] These two institutions allowed municipalities such as Eeklo to receive support and to create certainty around their procedures. The second example is the effort of the Flemish REScoop movement[48] that has fostered partnerships with regional institutions to develop appropriate criteria and procedures that make possible the successful participation of energy communities in public procurement procedures.

46 https://www.publicprocurement.be/nl/federale-diensten/de-cel-aankoopbeleid-en-advies-aba

47 https://publicaties.vlaanderen.be/view-file/28270

48 https://www.rescoopv.be/

ANNEXES

Annexes	
Annex	**Contracting authority**
Annex 1	Municipality of Saint-Gilles (BE)
Annex 2	Municipality of Strasbourg (FR)
Annex 3	Municipality of Eeklo (BE) – Wind concession
Annex 4	Municipality of Eeklo (BE) – District heating
Annex 5	Municipality of Crevillent (ES)
Annex 6	Municipality of Lorient (FR)
Annex 7	Flemish Energy Agency

Annexes are only available in the online version.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