

Renewable Self-Consumers and Energy Communities

CEER White Paper series (paper # VIII) on the European Commission's Clean Energy Proposals

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1. Introduction

This Regulatory White Paper provides the views of the Council of European Energy Regulators (CEER) on active customers, renewable self-consumers and energy communities. The aim of this White Paper is to deepen understanding and assist in assessing the “Clean Energy for All Europeans” legislative proposals of 30 November 2016¹.

2. Core Principles

Whilst welcoming the European Commission's proposals on active customers, renewable self-consumers and energy communities, CEER has a number of recommendations (e.g. improved definitions) to put consumers' rights at the core of these proposals. CEER has established seven **core principles**, that are important even beyond the current Clean Energy proposals.

- 1. New proposals, structures and roles for consumers/customers should preserve consumer rights.**
- 2. Adequate metering should be available to enable active consumption.**
- 3. Net metering² of self-generation should be avoided**
- 4. There should be no cross-subsidisation between active and non-active customers.**
- 5. Network tariffs should reflect the cost and value of the system infrastructure, including for self-consumers and energy communities.**
- 6. Rules that apply to generators/suppliers must apply to energy communities carrying out those roles, wherever applicable.**
- 7. Local energy communities that operate a network, i.e., effectively function as a distribution system operator (DSO), should be regulated as a DSO and have the same obligations on service delivery and consumer rights.**

¹ For ease of reading, references to the Electricity Directive and its Annexes refer to the re-cast Electricity Directive COM/2016/0864 final/2 – 2016/0380 (COD) and its Annexes. References to specific Articles in the proposed recast legislation relate to the revised texts (corrigenda) published by the [European Commission](#) on 23-02-2017. References to the Renewables Directive and its Annexes refer to the re-cast Directive on the Promotion of the Use of Energy from Renewable Sources COM/2016/0767 final/2 – 2016/0382 (COD) and its Annexes. References to specific Articles in the proposed recast legislation relate to the revised texts (corrigenda) of the [European Commission](#) published 23-02-2017.

² As defined in Commission Staff Working Document “Best practices on Renewable Energy Self-generation”, Commission Staff Working Document, July 2015, COM(2015) 339 final, http://ec.europa.eu/energy/sites/ener/files/documents/1_EN_autre_document_travail_service_part1_v6.pdf:

“Net metering is a regulatory framework under which the excess electricity injected into the grid can be used at a later time to offset consumption during times when their onsite renewable generation is absent or not sufficient. In other words, under this scheme, consumers use the grid as a backup system for their excess power production”.

3. CEER's Key Recommendations

CEER believes that whilst the European Commission's Clean Energy proposals help customers engage in energy markets either as active customers or collectively through energy communities, greater clarity and sound regulatory principles are needed in certain areas to effectively manage growth in the sector while maintaining reliability, fairness and consumer rights. Thus, CEER recommends the following changes to the Clean Energy proposals:

- ***Refine and make consistent the definitions in the RES and Electricity Directives***
 1. The Renewables Directive and the Electricity Directive are not always consistent with each other in terms of their definitions and approaches. Furthermore, certain articles should make reference to other articles to clarify the correct legal framework on a given issue.
 2. The definitions of a 'renewable self-consumer'; 'renewable energy community'; 'active customer'; and 'local energy community' need to be refined (see the text of CEER's proposed definitions in Section 4 below).
- ***Preserve consumer rights in the context of local/renewable energy communities***
 3. It is paramount that consumer rights are not undermined in the context of these new structures and roles in the energy sector. In particular, participation in local energy communities should be strictly voluntary; shareholders/members of local energy communities must not lose their rights as household or active customers, including the right to leave the local energy community and thereby switch suppliers quickly; and legal responsibility must remain with such communities even when management is delegated to a third party.
- ***Local energy communities acting as DSOs must have the same responsibilities and must fall under the same regulatory oversight***
 4. Local energy communities should only operate networks where there is no negative impact on consumers and where network developments can be managed in an efficient way. National Regulatory Authorities (NRAs) must have the authority to specify the conditions under which local energy communities can own, establish, lease and manage network assets, and to carry out appropriate supervision of such entities.
- ***No cross-subsidisation between active and non-active customers, whether individuals or in energy communities***
 5. Self-consumers usually rely on the energy network for electricity delivery, whenever their consumption exceeds self-generation and should face network tariffs that are cost-reflective in the same way as consumers who rely exclusively on the network for their energy supply.
 6. Cross-subsidies between customers inside and outside a local energy community should be avoided, so that the local energy community's revenue provides for investment levels and quality of service up to the same standard as public networks and so that members are not subsidised by non-members.

4. Refine and make consistent the definitions in the RES and Electricity Directives

CEER believes that the European Commission's Clean Energy proposals would benefit from correct and coherent definitions for these new concepts and roles in the energy sector. Therefore, CEER proposes revised wording in the case of four key definitions:

- 'Renewable self-consumer': This should be defined in the Renewables Directive (Article 2(aa)(bb)) as "a type of active customer who consumes, stores and delivers [renewably generated] electricity on the same geographically-confined site, without the use of the public grid". This definition excludes the sale of electricity because if selling were to occur, then there would be no effective difference between a 'renewable self-consumer' and an 'active customer' as defined in the Electricity Directive (see below). Moreover, if self-consumers supply energy to a final customer, they would be subject to the regulatory responsibilities of a supplier, including balancing. Discussion of "multi-apartment blocks and commercial or shared services" should be omitted as this would create confusing and overlapping standards, given that this aspect is already covered in the Electricity Directive under the concept of the local energy community (see Article 2(7) of that Directive). Finally, it must be specified that self-consumption refers to a geographically-confined site, without use of the public grid, in order to comply with the common understanding and limitations of what self-consumption entails.
- 'Renewable energy community': This concept, defined in Article 22(1)(2) of the Renewables Directive, should be understood as a subset of the 'local energy community' as defined in Article 2(7) of the Electricity Directive, where the difference is that the energy is supplied exclusively from renewable sources. Otherwise, local energy communities that are 100% renewably-sourced could evade the terms of the Electricity Directive. In particular, the definition should specify that a renewable energy community is a not-for-profit (i.e. it cannot be an SME), just as is the case for a local energy community. Furthermore, such a simplification leads to a much more practicable definition: the standards for a renewable energy community as a subset of a local energy community are enforceable, whereas, the fulfilment of four out of five³ special criteria for renewable energy communities (as proposed in the European Commission's draft legislation), with no mechanism for oversight on these criteria, will inevitably lead to enforcement problems. Further problems would likely ensue when a renewable energy community's fulfilment of the criteria changes over time and the consequences for the renewable energy community are then unclear. Therefore, CEER recommends that our simplified definition of a renewable energy community as a subset of a local energy community be adopted, which preserves the possibility of support schemes for renewables, but otherwise avoids contradictions and enforcement problems.
- 'Active customer': An 'active customer', as defined in Article 2(6) of the Electricity Directive, should be further specified as a type of 'final customer' (as defined in Article 2(3) of the Electricity Directive) so that it is clearly understood that an active customer is one who purchases for his own use, and not for resale, only. Otherwise, an active customer could also be a type of 'wholesale customer' (as defined in Article 2(2)) and this would contradict the intention of Article 2(6) that "...these activities [consumption, storage and sale of electricity] do not constitute their primary commercial or professional activity". CEER also notes that the definition of a 'local energy community' is the appropriate place to define a legal entity through which customers can act jointly, given the individual/group distinction between the two

³ And this also prompts the question: why should only four out of the five criteria be fulfilled?

definitions. Therefore, in the interest of clarity and effectiveness, any mention of a “group of jointly acting customers” should be omitted from the definition of an active customer.

- ‘Local energy community’: A ‘local energy community’ is a cooperative/partnership/non-profit organisation of final customers. It is self-evident, as the current text of Article 2(7) of the Electricity Directive currently states, that individuals in that community (or any community) are members, if not shareholders. Additionally, limiting local energy communities to those entities controlled by final customers more correctly captures the nature and intention of these communities as new market participants driven by active customers, as already defined in point 3. Furthermore, specifying that local energy communities consist of final customers implicitly prohibits wholesale customers. This is an important consideration, as it should not be possible for local energy communities to be a vehicle for existing energy companies to reorganise their businesses into/through local energy communities and thereby extract some sort of regulatory advantage vis-à-vis their conventionally-organised competitors. Specifying that local energy communities are in fact local, that is from a geographically confined area, is also necessary in order to accurately describe the nature of these communities. Additionally, CEER notes that some local energy communities may not be an energy supplier/aggregator, but rather an energy efficiency service provider or DSO. If a local energy community is a DSO, then it must be specified in Article 2(7) that it is subject to provisions regarding local energy communities taking on the role of a DSO, as discussed further in Section 6 of this paper.

As is the case of definitions, consistency and clarity within and between the Electricity Directive and the Renewables Directive is necessary for effective legislation including in the following areas:

- As the joint engagement of active customers in the Renewables Directive (Article 21(2)) is already covered in the Electricity Directive (in particular, referring to local energy communities), this sub-amendment should be removed from the Renewables Directive.
- For greater clarity, Article 8(3) (specific authorisation procedures for small decentralised and/or distributed generation) and Article 12 (on the “Right to switch supplier and switching-related fees”) should be cross referenced in Article 16(1) of the Electricity Directive.
- Article 59 of the Electricity Directive gives explicit duties and powers to NRAs. In order to make clear that local energy communities are not somehow exempt from the regulatory scrutiny of the NRAs, it is essential that the Electricity Directive explicitly mentions (in Article 16(1)) that Article 59 also applies to local energy communities.

5. Preserve consumer rights in the context of local/renewable energy communities

One of the core principles CEER has developed for the treatment of local/renewable energy communities in Europe is the preservation of consumer rights as these new customer roles and structures become more common. As such, certain consumer rights need to be strengthened in this area. (Note that as renewable energy communities are considered to be a subset of local energy communities, all rights applying to local energy communities apply to renewable energy communities as well.)

One such fundamental right is the right not be compelled to be a member of a local energy community, regardless of where the consumer resides. These new structures are about giving consumers new choices, and it would be against the nature of their development to limit consumer choice to be a member (or not). Hence, this should be made explicit in Article 16(1) of the Electricity Directive, where more general rules are stated.

If a consumer chooses to be a member of a local energy community, then the member must not lose any of his rights as household customers or active customers that he/she would have under the conventional supplier/distributor arrangements. Likewise, this should also be made explicit in Article 16(1) of the Electricity Directive.

Consumer must also retain the right to leave a local energy community in an easy and quick way. This follows from Article 12 of the Electricity Directive which guarantees the right to change supplier. For more information about the right to switch supplier and switching-related fees, see the CEER Regulatory White Paper on [Consumer Empowerment](#), 30 May 2017.

Finally, consumer rights are enhanced by ensuring that the management of a renewable self-consumer's installation by a third party does not imply that the owner of the installation's legal responsibility is in any way diminished by such an arrangement. Therefore, Article 21(3) of the Renewables Directive must make this explicitly clear.

6. Local energy communities acting as DSOs must have the same responsibilities and must fall under the same regulatory oversight

European energy regulators have carefully worked with national and European legislators to ensure proper regulation and oversight of DSOs in the interest of consumers. Given that some local energy communities may endeavour to own, establish, lease and/or manage network assets (with a few already doing so), they would then be, in effect, DSOs. As such, it is one of CEER's core principles that if a local energy company is in effect a DSO that it does not in any way negatively affect consumers, both in terms of rights and quality of service; and that regulation and the authority of regulators to oversee such entities is as strong and appropriate as it is for conventional DSOs. It is, therefore, fitting that this principle be introduced in the recitals of the Electricity Directive (the most appropriate would be Recital 30).

Networks are natural monopolies – they cost less when operated by a single entity, since a single entity will be able to better plan and develop the network. For the same reasons, local energy communities should be allowed to operate networks only where there is no negative impact on consumers as a whole and if they cover a coherent area where they can manage network developments in an efficient way. NRAs should define and publish criteria for situations where a local energy community owns or operates the network. This also implies that regulatory oversight has to be properly arranged, especially concerning data management, energy balancing, unbundling and quality of the network services.

As mentioned in Section 4 above, the definition of a 'local energy community' should also specify that such communities acting as DSOs are subject to particular provisions of legislation that would capture these important considerations regarding local energy communities operating networks. European energy regulators strongly recommend mandating in legislation (in Article 16(2) of the Electricity Directive) that NRAs define that conditions under which local energy communities can operate as DSOs, as part of NRAs' duty to ensure that customers and members in the local energy community receive the same quality and standard of network services that are available to customers outside the local energy community and to preserve efficient network planning.

7. No cross-subsidisation between active and non-active customers, whether individuals or in energy communities

Precluding cross-subsidisation between active and non-active customers, whether as individuals or in groups (as members of a local energy community) is a core principle for CEER in this policy area.

It is as much a matter of fairness as it is one of preventing market distortions, and as a basic principle, deserves mention in Recital 30 of the Electricity Directive.

In most Member States (MSs), self-consumers are exempted (fully or partly) from network charges for the share of self-consumed electricity. However, they usually rely on the energy network for electricity delivery, whenever their consumption exceeds self-generation. Therefore, they should face network tariffs which are cost-reflective in the same manner as consumers that exclusively rely on the network for their energy supply. In particular, network tariffs should be designed to reflect the value of the network to all those connected, in terms of both costs and benefits, irrespective of the type of consumer involved. Network tariff structures should be non-distortionary: recovery of the costs of building, operating and maintaining networks should be designed to avoid unintended distortions in decisions involving investment in self-generation. In MSs where renewables (RES) schemes are being financed by a levy imposed on the kWh of electricity consumed, they are usually exempted (in part or in full) from the payment of the RES levy on the share of self-consumed electricity. In all these cases, where the energy system (network, promotion of renewables, etc) is being financed through charges or levies imposed on electricity delivered through the network, exemptions for self-consumed electricity reduces the overall financing volume and hence, increases the costs for consumers exclusively on the network. Therefore, it is essential that Article 21(1) of the Renewables Directive, which outlines basic rules that MSs shall have for renewable self-consumers, make the aforementioned eminently clear. In order to do this, it is important to specify (in 21(1)(a)) that self-consumers should be subject to proportionate system charges that reflect the degree to which they benefit from the system.

CEER also recommends changes to 21(1)(c) with a view to ensuring that self-consumers do not supply energy to any final consumer in order not to be considered an energy supplier. For the excess electricity they feed into network, they can get a compensation. This excess electricity can be aggregated by a third party and sold on the market. The aggregator would then take on the responsibility for balancing. Self-consumers are to be understood as consumers using the power generated on-site in order to reduce, at least in part, the purchase of electricity from the grid. If they actively sell their excess electricity on the market, this would turn them into generators and suppliers, actively participating in the market and entailing additional responsibilities, such as balancing. CEER foresees the possibility of certain situations, notably where renewable self-consumers are entitled to a feed-in-tariff or a feed-in premium in addition to the market value (when sold on the market) for the share of RES electricity fed into the grid, for which non-market exemptions might be possible. An allowance for such is made by noting that the value of remuneration of self-generated electricity shall in principle, rather than absolutely, reflect the market value (21(1)(d)).

Just as self-consumers cannot be viewed in isolation from the electricity system with which they interact, neither can local energy communities. CEER strongly supports language in Article 16(2) that "...local energy communities are subject to appropriate network charges at the connection points between the community network and the distribution network outside the energy community. Such network charges shall account separately for the electricity fed into distribution network and the electricity consumed from the distribution network outside the local energy community in line with Article 59 (8)." Where non-members/shareholders are connected to such a network of a local energy community, they must also be subject to fair and cost-reflective network as well as, it is important to add, *connection* charges (Article 16(2)).

Annex 1: Relevant ACER/CEER Papers

This White Paper builds on the “[European Energy Regulators’ Overview Paper - Initial Reactions to the European Commission’s Proposals on Clean Energy](#)”, published by the Agency for the Cooperation of Energy Regulation (ACER) and CEER on 23 January 2017. It is part of a series of Regulatory White Papers covering key topics related to the Clean Energy Package.

European Energy Regulators (ACER-CEER) White Paper #1 Renewables in the Wholesale Market , May 2017
European Energy Regulators (ACER-CEER) White Paper #2 Role of the DSO , May 2017
European Energy Regulators (ACER-CEER) White Paper #3 Facilitating Flexibility , May 2017
European Energy Regulators (ACER-CEER) White Paper #4 Efficient Wholesale Price Formation , May 2017
CEER White Paper (no. I) on Distribution and Transmission Network Tariffs and Incentives , May 2017
CEER White Paper (no. II) on Technology that Benefits Consumers , May 2017
CEER White Paper (no. III) on Consumer Empowerment , May 2017
CEER White Paper (no. IV) on Efficient System Operation , June 2017
CEER White Paper (no. V) on The Independence of National Regulatory Authorities , June 2017
CEER White Paper (no. VI) on Infrastructure , July 2017
CEER White Paper (no. VII) on System Adequacy and Capacity Remuneration Mechanisms , July 2017
CEER, The Future Role of DSOs – A CEER Conclusions Paper , July 2015
ACER-CEER, Joint ACER-CEER response to European Commission’s Consultation on a new Energy Market Design , October 2015
CEER, Position Paper on the Future DSO and TSO Relationship , September 2016
CEER, Position Paper on Renewable Self-generation , September 2016
CEER, Consultation Paper on the use of flexibility at distribution level, March 2017
EG3, Smart Grid Task Force, Regulatory Recommendations for the Deployment of Flexibility , January 2015