

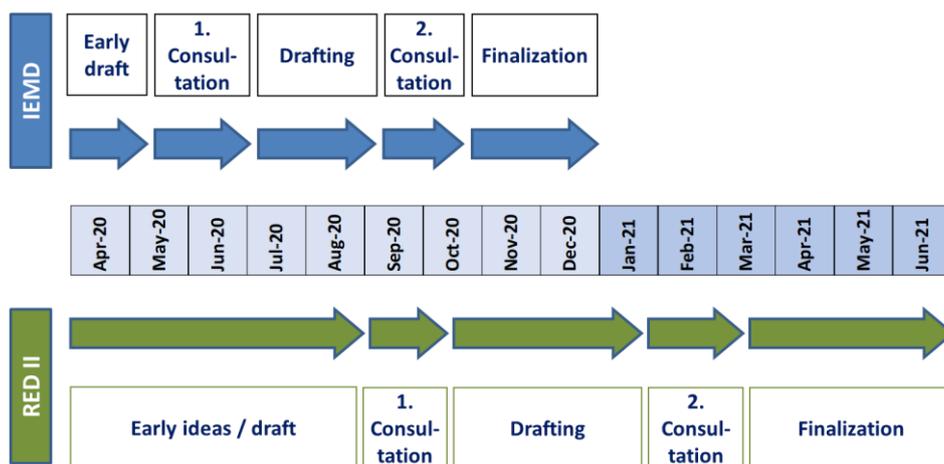
# Transposition Guidance for citizen energy policies

## Recommendations to strengthen prosumers and energy communities when transposing the Clean Energy Package (RED II, IEMD)

**Objective:** This paper aims to inform and facilitate the transposition and the implementation of the Renewable Energy Directive ([RED II, 2018/2001](#)) and the Internal Electricity Market Directive ([IEMD, 2019/944](#)) in combination with the Governance Regulation ([GR, 2018/1999](#)). It focuses specifically on the provisions regarding the newly established rights of citizens like self-consumption and energy communities. It provides recommendations to be applied when drafting national legislation and regulation; it addresses policy makers on EU and national level as well as civil society advocacy groups.

The transposition of the RED II and the IEMD into national laws will provide opportunities to define national policies that aim towards a “citizen and prosumer-centred” Energy Union and strengthen citizens’ rights. Most important is, however, that the transposition needs to ensure that national legislations align with the Paris Agreement in its ambition. To that end, laws and regulations need to be rigorously implemented and enforced. For both, implementation and enforcement, citizen engagement will be a crucial over the next years.

**Transposition Timeline:** Ideally, civil society representatives are already involved in the drafting process. We recommend a two-stage consultation process on national level so that stakeholders are involved early on when all options are still available (1<sup>st</sup> consultation) and then when a more elaborate draft is available (2<sup>nd</sup> consultation). It is proposed to have parallel stakeholder consultations in September/ October 2020 for both directives as decisions on the IEMD transposition is expected to directly impact the RED II transposition – especially since provisions on Citizen Energy Communities (defined in the IEMD) are linked to the definition of Renewable Energy Communities (defined in the RED II), see Figure below.



Recommended transposition timelines for IEMD and RED II with two-stage consultation

These timelines are proposed according to the principles of the Aarhus convention and [Regulation 1367/2006](#).

The following table provides guiding answers to typical questions arising during the transposition process. It is important to get clarification early-on in the process, i.e. by summer 2020.

**Note:** We use the term “**prosumer**” for all forms of citizens active in the (renewable) energy field including but not limited to individual & shared self-consumption, energy sharing, generation or as members of RECs or CECs.

Issues	Recommended transposition
<p><b>Citizen Energy Communities (CECs) and Renewable Energy Communities (RECs):</b></p> <p>How should they be defined in national legislation? (RED II 2.16, IEMD 2.11)</p>	<p>Ideally CECs and RECs are <b>combined in one type of Energy Community</b> to avoid confusion and to make it easier to explain. For instance, any REC that deals with electricity would automatically also be a CEC.</p> <p>In case the two concepts are kept, their <b>definitions and relation should be coherent</b>. Most important is that control by citizens is secured. Engagement of CECs in fossil fuel related or otherwise unsustainable activities should not be allowed.</p> <p>Existing energy communities – like energy cooperatives – should be allowed to <b>continue in their present form</b> unless their statutes or activities are clearly in contradiction to the spirit of the REDII/IEMD provisions. However, they may have to adapt to the stringent conditions for RECs/CECs in order to be considered as such.</p> <p>National legislation should make a <b>clear distinction between the actor</b> (the energy community) <b>and the activities</b> a community can lead. For instance, collective self-consumption must be possible without the need to establish a REC or CEC; and RECs/CECs can do more than collective self-consumption or energy sharing.</p>
<p><b>“Proximity” and “local area”:</b> How should these terms be defined? (RED II 2.16.a/c, IEMD recital 46, 2.11)</p>	<p>The terms “proximity” and “local area” should be <b>contextualised</b>, adapting them to what is nationally and regionally appropriate. For instance, large projects like a community-owned wind park may require (financial and organisational) participation beyond a single municipality; urban and rural projects involving more than one RE technology (including storage), may not be built close to each other due to planning law requirements and limited availability of suitable sites.</p> <p>Defining proximity too narrowly could disqualify projects which spread over larger distances comprising various RE technologies and demands, and which are ideally combined within one REC. Therefore, legislators should <b>define various categories of proximity</b> taking into account: diversity and <b>complementarity of RE sources</b> and other technologies applied (like storage or electric vehicles), the geographical distribution of energy supply and demand (urban and rural), demographics of investment, and heterogeneity of REC membership.</p> <p>A radius of some 50km (including across national borders) can be appropriate for RECs which favourably meet one or several of the mentioned criteria. In any case, it must be ensured that persons or companies that have their main residence or seat outside the municipality or province do not gain control within the REC/CEC.</p> <p>For collective self-consumption and district heating networks, proximity would be based on <b>technical criteria</b> where participants are connected to the same local (distribution) network. In buildings, the rights should pertain to those living in the building.</p> <p>Cooperative energy suppliers, like Som Energia in Spain with thousands of members across the country, are more a <b>virtual community</b> which could fall under the concept of CEC. They, too, would be required to ensure participation and control of local residents in new energy projects.</p>
<p><b>Barriers and potentials for RECs:</b> How should they be assessed? (RED II 22.3)</p>	<p>National governments are required by the RED to assess barriers and potential of Community Energy in their territories. <b>These assessments should take place as soon as possible, ideally by summer 2020</b>. Without having a clear picture of the barriers, it will be difficult to define the appropriate measures and to design an adequate enabling framework. Ideally <b>this exercise is extended to all forms of prosumerism</b> (individual, collective self-consumption, peer-to-peer, etc.).</p> <p>The potentials and opportunities should include aspects beyond the energy sector, e.g. impact on jobs, climate change mitigation, local economy, and other benefits that RECs (and also CECs) can provide.</p> <p>The assessment studies should also clearly define through which concrete legislative or regulatory measures the barriers will be addressed and potentials be exploited. This includes setting of binding targets. These recommendations shall be implemented within the transposition deadlines.</p>

Issues	Recommended transposition
<p><b>Enabling framework for energy communities:</b> What should it look like? How should RECs be promoted, also compared to other forms of commercial projects or organisations? (RED II 22.4, 22.7; GR 20.b.7)</p>	<p>Each national enabling framework needs to be based on the barriers and potentials identified in the assessment studies. <b>Key elements</b> of an enabling framework are:</p> <ul style="list-style-type: none"> <li>• Clear definitions</li> <li>• Targets and trajectories</li> <li>• Support schemes that are specifically designed for RECs</li> <li>• Preferential grid access for RECs</li> <li>• Lean administrative procedures, i.e. single-point of contact for advice for projects throughout their development process, reduced licencing requirements, etc.</li> <li>• Enforcement of cooperation of relevant distribution system operator (DSOs)</li> <li>• Responsibilities, governance and monitoring</li> </ul> <p>The exemptions of state aid guidelines allowing for support other than tendering for projects below 18 MW should be made use of. In case auctions are applied, these should contain reserved capacities for RECs of at least 10%. RECs may <b>bid as cleared</b> if they are willing to accept the clearing price. This way they don't have to worry on underbidding.</p> <p>However, <b>ideally RECs would get specific tariffs</b> for energy produced which could be set slightly higher than market prices (FIT, FiP, or other forms) to reward value provided to the local economy.</p>
<p><b>Enabling framework for renewables self-consumers:</b> What are the crucial points? (RED II 21.6, 21.2.d)</p>	<p>This enabling framework would have basically the same elements as the one for energy communities; they may even be defined together to be fully coherent.</p> <p>Economic viability for self-consumption projects needs to be ensured: There should be a decent remuneration for excess-energy which may need to be above market prices in order to make these projects bankable and allowing pay-back times of around 10 years. The rate design requires sufficiently high variable parts of the retail tariffs so that self-consumption is made a viable option.</p> <p>Energy sharing or shared self-consumption should be easy enough so that prosumers are incentivised to <b>make full use of their rooftops</b>. There may be discounts on grid charges given.</p> <p>While a contribution to systems costs through a reasonable connection charge, energy fed into the grid should not be charged to the generator – it must always be the goal to generate as much renewable energy as possible.</p> <p>Income taxes may be waived if revenues from energy generation stay below a certain amount. Other investment support schemes should be assessed.</p>
<p><b>New vs. adapting existing legislation:</b> What is appropriate?</p>	<p><b>Amendments</b> can be appropriate in case there are dedicated laws related to RE which cover most RE-relevant aspects (like the German EEG); prosumer-related topics will nevertheless require dedicated chapter(s) to elaborate the concepts and define supporting measures. In other cases, <b>new laws and regulations</b> dedicated specifically to RECs/CECs and prosumers may be more adequate.</p> <p>There should be cross-referencing to other laws, e.g. those concerning forms of legal entities, to ensure coherence. Laws approved by parliament are preferable to allow for more support and stability.</p>
<p><b>Targets:</b> How should they be set? (Governance Regulation EC 2018/1999, Art. 20.a.5)</p>	<p>There should be <b>binding targets</b> expressed in MW and/or GWh for all types of prosumer projects, i.e. individual and collective self-consumption, generation as well as RECs and CECs. These targets should be binding and enshrined in law (e.g. a national Energy and Climate Law).</p> <p><b>Rooftop PV is a good indicator</b> for local citizen engagement; moreover, for environmental reasons rooftop PV should be exploited to a maximum. A roof-top PV target should be defined at least up to 2030, broken down in an annual trajectory and tracked in the following categories:</p> <ul style="list-style-type: none"> <li>• Individual self-consumption and exports to the grid</li> <li>• Collective self-consumption and exports to the grid, ideally <ul style="list-style-type: none"> <li>a) within buildings and b) through the distribution/transmission grid</li> </ul> </li> <li>• Projects built by RECs &amp; CECs incl. self-consumption and export</li> </ul>

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	<p>The <b>national rooftop PV targets should be in the range of 30 - 50% of the total identified national rooftop potentials</b> (for potentials by Member State, see <a href="#">EC JRC 2019</a>; this study found that “EU rooftops could potentially produce 680 TWh of solar electricity annually”). Member States should provide easily accessible online tools to identify suitable roofs and other already built infrastructure that could be used for PV/RES generation.</p> <p>Large and small <b>RE projects initiated by RECs and CECs should have a specific target</b>, defined as a share of total national RE target, e.g. 30-50%. The share of households being members of energy communities should be at least 5% by 2030.</p>
<p><b>Monitoring of RECs/CECs and prosumption:</b> How should their development be tracked? (GR Annex 1, part of NECP)</p>	<p>There should be a <b>clearly identifiable label</b> for CECs and RECs so that they can be registered, and their numbers and development can be recorded in statistics.</p> <p>They must be distinguishable from other forms of collaboration such as pure collective self-consumption, or other legal forms that don't comply with the REC/CEC criteria. CECs/RECs should have to <b>register</b> officially (e.g. by using existing processes like the ones of FCA in UK where cooperatives register). Their activities should be monitored to identify potential misuse of the concept.</p> <p>The number of involved citizens or households should be monitored, too. Their activities should be collected, and especially RE production measured (see also targets below).</p> <p>Individual and collective self-consumption projects should also be monitored to track their uptake.</p>
<p><b>Implementation:</b> How to ensure that targets are achieved?</p>	<p>The actual implementation and the achievement of targets and measures should be monitored and published on an annual basis. Targets and measures should be <b>broken down to regions and municipalities</b> because the actual implementation lies often at the local level (permitting, etc.).</p> <p>Each administrative level should become energy accountable, at least to a certain degree, which may require a shift in energy competencies towards the local/regional level. All levels should track, report and benchmark their numbers annually (e.g. through Covenant of Mayors). National statistics offices need to be enabled to track the numbers with the EC ensuring that they are comparable across all MS. In case targets are not met, corrective actions shall be taken involving citizens.</p>
<p><b>Energy sharing for (jointly acting) self-consumers:</b> How should it be defined? (RED II 21.4, IEMD recital 46)</p>	<p>Energy sharing and self-consumption should be allowed <b>beyond a building or premise</b>, i.e. via the distribution grid, ideally over distances of several kilometres (France allows 2km, Spain only 500m).</p> <p>It should be possible to organise energy sharing as <b>jointly acting self-consumers</b> but not exclusively: Other options should be possible, like for instance <b>peer-to-peer arrangements</b> where a prosumer can sell excess energy to a neighbour or other local citizen(s). Market developments in this regard should be closely monitored and legal adjustments made in case that there is no uptake, or there are negative side effects (e.g. social distortions).</p> <p>For shared self-consumption <b>in multi-family buildings, there should be straight-forward regulation</b> and guidance in place that allow swift agreements among flat-owners and/or tenants. There may be special incentives for building owners to make self-consumption available to tenants. Energy sharing should be made possible without complicated administrative procedures or cumbersome contracts between participants.</p>
<p><b>Energy sharing within RECs:</b> How should it be defined within the REC? (RED II 22.2.b, IEMD recital 46)</p>	<p>Tapping the potential of RES complementarity and flexibility measures requires a clear definition of energy sharing within a REC between its members allowing for the necessary energy transfers. Following the definition in recital 46 IEMD there should be <b>no restrictions for energy sharing</b> within a REC, even over the public network, <b>as long as two metering points belong to that REC</b>.</p> <p>Further to ensuring the technical support by DSOs (RED II 22.4.c), to encourage the use of multiple RE sources and balance different load profiles, legislators need <b>to facilitate capacity building for and incentivize complementarity</b> among actors who produce and consume in a REC.</p>

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<p><b>Operation of distribution grids/ aggregation:</b> What role should RECs/CECs be able to play? (IEMD 2.11c, 16.4)</p>	<p>RECs/CECs should have the <b>right to operate local grids</b>, either alone or in cooperation with local utilities. They should have the possibility and be enabled to bid in concession processes where these exist (i.e. in Germany). Where distribution grids are privatized like in Spain, regulatory reforms should be undertaken to re-municipalise local grids and to introduce legal options that RECs/CECs can also bid to operate them. Where distribution system operators stay in charge, the regulator must ensure that they cooperate with RECs/CECs.</p>
<p><b>Support to public authorities:</b> What would they need to enable RECs? (RED II 22.4.h)</p>	<p>There should be <b>dedicated national funds</b> which are given to local/ regional governments, energy communities or NGOs so that these can build up capacity in energy matters. This includes especially the creation of <b>local or regional energy agencies</b> which should develop and finance municipal-led RE projects (which can also provide energy to low-income households), conduct awareness raising campaigns, offer trainings for local installers, support energy communities and prosumers, offer energy audits, etc. It is also important to create a legislative enabling framework which allows local governments to participate in RECs.</p>
<p><b>Lean administrative procedures:</b> How to address accessibility? (RED II 21.6.a/c)</p>	<p>A <b>one-stop-shop concept</b> should be defined, i.e. for each citizen or REC/CEC there must be a clearly identifiable organisation that gives support to local individual and community projects and accompanies them through the entire process of planning, permitting, applying for support, etc. Regional or national energy agencies may be an option; other options include tendering for a civil society organisation to provide these services. For certain member states one stop shops on the national level may make the most sense; for larger or more federally constituted member states (such as DE, ES or BE) regional ones may be more appropriate.</p> <p>In any case should be always a single <b>national contact point</b> for issues that need to be decided nationally (e.g. the national energy agency). This includes forms and templates, guidance, legal and regulatory issues, etc. Simplified licence procedures required for REC-led RE projects should be developed with/by the regulator.</p>
<p><b>Protecting customer's rights in RECs:</b> How to ensure that prosumers receive advice and are represented vis-à-vis to other co-investors? (RED II 22.1)</p>	<p>Legislation should specifically <b>support business models like cooperatives including SME structures (such as REScoops)</b> that make citizens' RE investments compatible for municipalities and local SMEs. This will allow for strategic partnerships with commercial investments that can scale RECs while limiting incumbent control. However, when co-investors other than individuals are involved, it is crucial to <b>safeguard consumers' rights</b> and avoid that they are manipulated.</p> <p>To protect consumers' rights vis-à-vis to other co-investors <b>trusteed schemes like Consumer Stock Ownership Plans (CSOPs)</b> can play an important role; they protect consumer-shareholders while professionalising decision-making and reducing transaction costs. Depending on the specific partnership, a <b>fiduciary agreement</b> defines which decisions are retained by the consumer and which are delegated to the trustee (i.e. day-to-day tasks jointly with the other shareholders of the REC). Benefitting from a stronger position relative to the other municipal or corporate co-owners in the REC, consumers can <b>avoid fragmentation of their voting rights</b> and rely on the trustee's expertise.</p>
<p><b>Vulnerable and low-income households:</b> How to ensure that they can participate in RECs and self-consumption schemes? (RED II 21.6.a, 22.4.f)</p>	<p>Prosumerism, the foundation of RECs, requires access to financing, know-how, and a certain willingness to take risks. At the same time, social welfare legislation across the EU Member States create a <b>'welfare dilemma'</b> as they require social benefit recipients to have no access to asset ownership or income, often prohibiting their participation in (co-)ownership of RE installations. Governments and municipalities should therefore implement concrete measures to tackle energy poverty:</p> <ul style="list-style-type: none"> <li>• Defining criteria to identify vulnerable and low-income households in order to actively approach and encourage them to participate in joint self-consumption schemes or in RECs as members or shareholders;</li> <li>• making available subsidies to integrate vulnerable consumers, both to the individuals and to the RECs;</li> <li>• exempting investments in RECs from the necessity to liquidate one's assets when applying for means-tested social transfers (e.g., cap of EUR 1,000 p.p./year);</li> </ul>

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	<ul style="list-style-type: none"> <li>allowing direct <i>energy</i> subsidies for vulnerable consumers to be capitalised as a lump sum to join a REC;</li> <li>offering participation in municipal projects without upfront costs (i.e. PV installations on schools);</li> <li>providing free energy advice which would include energy efficiency measures.</li> </ul>
<p><b>Public consultation and governance:</b> How to ensure that citizens' opinions are considered?</p>	<p>There should be guidelines on how <b>citizens and energy communities should be represented and heard</b> during all phases of the transposition and within the governance frame of the implementation. For instance, associations (like REScoop.eu) should be identified and invited; however, small, non-organised stakeholders like NGOs, individual prosumers or social actors should be represented as well. It has to be ensured that different interests are well represented.</p>
<p><b>Information and awareness-raising activities:</b> How should this be regulated?</p>	<p>There should be a number of awareness raising campaigns by national government in coordination with regional and local governments on prosumer opportunities and procedures. These actions need to be <b>repeated on a regular basis</b> (several times per year). Through surveys the awareness should be measured.</p>
<p><b>Fiscal and tax incentives for RECs:</b> How to avoid conflicts with State Aid rules when supporting RECs? (RED II 22.4.g,h)</p>	<p><b>RECs require heterogeneity of co-investors;</b> therefore, the RED II governance requirements (local majority control, i.e. 51% voting rights + 33% cap for individual shares) need to be taken into account when spelling out the preferential conditions supporting RECs. In doing so, national and regional legislators need to respect the rules for admissible State Aid (Art. 107 para. 1 TFEU).</p> <p>To ensure compliance with admissible State Aid rules, in <b>analogy to the established principles for fiscal and tax incentives for cooperatives</b> (Commission Notice on the notion of State aid, Section 5.4.1. Cooperative societies, numbers 157-160), preferential treatment should be tied to the following requisites with respect to a REC's local controlling shareholders/ members: i) the REC acts in their economic interest; ii) their relations are not purely commercial, but linked to their local individual RE energy supply; iii) they are actively involved as prosumers in the local RE project; and, iv) they are entitled to equitable distribution of the results of economic performance.</p>
<p><b>Just Transition Fund, ESI funds, and post-Covid-19 measures:</b> How to match the programme content with potential REC/CEC projects?</p>	<p>RECs are entitled to benefit from (i) the European Structural and Investment Funds (ESI funds), explicitly geared towards smaller-scale RE projects; (ii) the InvestEU scheme and the EIB loan facility and (iii) the Just Transition Fund (JTF) of the EU Green Deal.</p> <p>Unlike the more general ESI funds, the JTF as a specific application of structural and cohesion funding foresees <b>"territorial just transition plans"</b> (Art. 7.2.i) containing an exhaustive list of operations and showing how they achieve climate neutrality and substantial CO<sub>2</sub> reductions.</p> <p><b>For all funds the eligibility criteria, program requisites, application procedures, monitoring requirements are to be defined during the second half of 2020 posing two reciprocal challenges:</b></p> <ul style="list-style-type: none"> <li>insufficient awareness of the regional authorities framing these programs about existing RE projects ready to absorb them, thus hampering the inclusion of RECs as eligible projects;</li> <li>insufficient knowledge about the availability of funding programs on the side of the currently emerging RECs, thus limiting their potential.</li> </ul> <p>To provide access for RECs to funding under the general EU financing sources it is crucial <b>to include RECs in the regional programming processes and in defining their requisites for participation.</b></p>

## References:

- PROSEU 2019: “Principles for Prosumer Policy Options - Recommendations to strengthen prosumers and energy communities in NECPs and other EU, national and local policies”, [link](#)
- Community Power Coalition – Vision Statement, [link](#)
- SCORE 2020: A legal commentary on the new RED II regulation, [link](#)
- Lowitzsch et al. 2020: Consumer Stock Ownership Plans (CSOPs)—The Prototype Business Model for Renewable Energy Communities, in: *energies*, January 2020 [link](#)
- Lowitzsch et al. 2020: Renewable energy communities under the 2019 European Clean Energy Package – Governance model for the energy clusters of the future?, in: *Elsevier RSER* January 2020, [link](#)
- A more detailed guidance document by REScoop.eu and ClientEarth is forthcoming in June 2020

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**PROSEU** – Prosumers for the Energy Union (2018-21) is an EU H2020 programme funded research & innovation project. It aims to enable the mainstreaming of the renewable energy Prosumer phenomenon into the Energy Union. It brings together 11 partners from 9 EU countries.



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**Community Power Coalition** – The Community Power Coalition is a coalition of organisations across Europe working together to increase peoples’ ownership of renewable

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Co-own. Prosume. Renew.

**SCORE** – Supporting Consumer Ownership in Renewable Energy (2018-21) is an EU H2020 programme funded Coordination & Support Action. It gathers 14 partners from 5 EU countries implementing consumer (co)-owned RE-projects in 3 pilot regions. The inclusion of women & low-income households is a focus.



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**The Renewables Networking Platform (RNP)** – RNP is a multi-level governance discussion project to boost, re-think, analyse and improve RE policies. It aims at connecting the relevant European, national, regional and local actors to facilitate the development of sound policies for RE while monitoring best practices and obstacles in policies at national and sub-national levels.



The RNP project is supported and funded by the European Commission.



European Renewable Energies Federation

**EREF** – As European federation of national renewable energy associations, EREF is responsible for establishing the network of national contact points, monitoring European and national renewable energy policy and for co-organising events at European and national levels.