



**D3.2 Guide with political  
recommendations to adapt the energy  
community regulation to the  
specificities of the decentralized and  
depopulated rural world**

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<b>I. <i>ÍNDEX</i></b>	
<b>I. <i>ÍNDEX</i></b> .....	<b>3</b>
<b>II. <i>EXECUTIVE SUMMARY</i></b> .....	<b>5</b>
<b>III. <i>INTRODUCTION</i></b> .....	<b>5</b>
<b>IV. <i>BARRIERS</i></b> .....	<b>6</b>
<b>IV.1. <u>EUROPEAN LEVEL</u></b> .....	<b>6</b>
IV.1.1. Lack of control of implementation .....	8
IV.1.2. Lack of definition of “local authorities” that are expressly allowed to participate in REC and CEC.....	8
IV.1.3. Unclear separation of self-consumption, energy sharing and REC and CEC	9
IV.1.4. Primary purpose of REC and CEC not being to generate financial profits... 10	
IV.1.5. Ownership and development of projects requirements for REC.....	11
IV.1.6. Potential role of CEC in the distribution network .....	12
<b>IV.2. <u>SPANISH LEVEL</u></b> .....	<b>12</b>
IV.2.1. Main issue: Lack of complete implementation of Energy Communities in Spanish law .....	12
IV.2.2. Difficulties in Access and Connection .....	21
IV.2.3. Application of self-consumption modality requirements to ECs .....	22
IV.2.4. Unfair application of the Especial Tax on Electricity .....	25
IV.2.5. Limitations identified in public contract and public goods law .....	26
<b>IV.3. <u>PORTUGUESE LEVEL</u></b> .....	<b>27</b>
IV.3.1. Main issue: lack of complete implementation of Energy Communities in Portugal	27
IV.3.2. Regulation of Renewable Energy Communities as extended self-consumption	30

IV.3.3.	Obstacles in the assignment of surfaces by public authorities.....	30
IV.3.4.	Positive elements of the Portuguese regulation .....	31
<b>IV.4.</b>	<b><u>ITALIAN LEVEL .....</u></b>	<b><u>32</u></b>
IV.4.1.	Lack of complete implementation.....	32
IV.4.2.	Regulation of REC as extended self-consumption .....	33
IV.4.3.	Limitations in the development of installations .....	33
IV.4.4.	Positive elements of the Italian regulation of Energy Communities .....	34
<b>IV.5.</b>	<b><u>REGIONAL AND LOCAL LEVEL.....</u></b>	<b><u>36</u></b>
IV.5.1.	Aragón.....	36
IV.5.2.	Municipalities in the Community of Calatayud.....	41
<b>V.</b>	<b><i>CONCLUSION.....</i></b>	<b>42</b>
<b>VI.</b>	<b><i>ANNEX I.- LEGAL PROVISIONS .....</i></b>	<b>43</b>

## II. EXECUTIVE SUMMARY

1. This document identifies, analyzes and proposes solutions to the existing barriers that hinder the development of Energy Communities, at the European, Spanish, Portuguese, Italian, regional (Aragón) and local (Comarca de Calatayud) level.
2. The main barrier identified is the lack of complete implementation and development of the regulation on Energy Communities in Spain and Portugal. In Italy, further implementation and development is still necessary to guarantee access of Energy Communities to specific activities, such participation in energy markets or ownership and management of distribution networks.
3. This prevents Renewable Energy Communities and Citizen Energy Communities from developing their full potential. In the case of Spain, Energy Communities cannot act under their own legal regime stemming from EU law, having to rely to other activities already regulated in the electricity system, such as self-consumption. The thresholds for the implementation of Energy Community regulation lapsed around 4 years ago, allowing the European Commission to take action to ensure the full transposition of EU Law.
4. Additionally, a confusion between Energy Communities and self-consumption is generally present at the different levels of regulation. Energy Communities, as subjects of the electricity system, shall be adequately distinguished from self-consumption, an activity available to Energy Communities but also to any other consumer and producer. Equally, according to the existing regulation, Energy Communities shall be able to engage in other activities besides self-consumption.
5. Other barriers are identified in the document. These barriers result from direct wording of the existing regulation, but also from the absence of adequate tools to prevent abusive behavior from other participants in the electricity system, such as DSOs. Moreover, it should be highlighted that barriers from different levels interact, increasing the difficulties faced by Energy Communities. For example, the regulation of Renewable Energy Communities in EU law requires them to own and develop their own renewable energy projects. This reduces the available legal tools to structure cooperation and participation of public administrations and Renewable Energy Communities under public contracting law and public goods law.
6. Besides identifying the existing barriers, this document also proposes solutions to remove or reduce the existing hurdles in the regulation.

## III. INTRODUCTION

7. This document identifies the existing barriers in the regulation at the European -, Member State - (Spain, Portugal and Italy), Regional – and Local level, that hinder the development of Energy Communities. In this document Energy Communities

(hereinafter, “**EC**”) refers to Renewable Energy Communities<sup>1</sup> (hereinafter, “**REC**”) and Citizen Energy Communities<sup>2</sup> (hereinafter, “**CEC**”) together. Additionally, the document will propose measures that could be taken to solve or to compensate the existing obstacles to the development of ECs.

8. Most of the barriers identified in this document affect Energy Communities in general. However, this document will pay especial attention to those obstacles and difficulties that affect exclusively or especially Energy Communities developed in the rural world, in a decentralized and depopulated context. The report also considers barriers to self-consumption,<sup>3</sup> since this activity is currently widely used to structure energy sharing within energy communities.

### IV. *BARRIERS*

9. The following section identifies different barriers to the development of renewable energy communities existing in different levels of government.
10. Section IV.1 briefly outlines the regulation on EC at the European level and describes several barriers to the development of ECs from EU law. Section IV.2 analyzes the barriers resulting from Spanish law at a Member State Level. Sections IV.3 and IV.4 analyze the barriers resulting from Portuguese and Italian law, respectively. Finally, Section IV.4 considers the barriers that result from regional or local regulation in the place where CERCA, the REC in the JALÓN project, is situated: the Community of Calatayud in Aragón.

#### IV.1. EUROPEAN LEVEL

11. Two directives contain the legal framework of Energy Communities at the European level:
  - a. DIRECTIVE (EU) 2018/2001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2018 on the promotion of the use of energy from renewable sources (hereinafter, “**Renewable Energy Directive**”). The Renewable Energy Directive regulates Renewable Energy Communities in Articles 2.16 and 22.

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<sup>1</sup> Renewable Energy Communities are regulated in Articles 2.16 and 22 of DIRECTIVE (EU) 2018/2001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2018 on the promotion of the use of energy from renewable sources

<sup>2</sup> Citizen Energy Communities are regulated in Articles 2.11 and 16 of DIRECTIVE (EU) 2019/944 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU.

<sup>3</sup> Self-consumption is regulated in Articles 2.8 and 15 of the DIRECTIVE (EU) 2019/944 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU

- b. DIRECTIVE (EU) 2019/944 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (hereinafter, “**Electricity Market Directive**”). The Electricity market Directive regulates Citizen Energy Directives in Articles 2.11 and 16, and Self-Consumption in Articles 2.8 and 15.

12. Other pieces of European legislation have updated or support the regulation on Energy Communities:

- a. Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652, which introduced amendments to the Renewable Energy Directive.
- b. Directive (EU) 2024/1711 of the European Parliament and of the Council of 13 June 2024 amending Directives (EU) 2018/2001 and (EU) 2019/944 as regards improving the Union’s electricity market design, which introduced amendments to the Electricity Market Directive.
- c. Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (recast), which, in the context of energy efficiency, promotes the participation in Energy Communities and requires Member States to support and provide information to Energy Communities and to take them into account in policy making.
- d. Directive (EU) 2024/1275 of the European Parliament and of the Council of 24 April 2024 on the energy performance of buildings (recast), which, in the context of the energy performance of buildings, accepts that the energy for zero-emission buildings can come from REC and also requires Member States to support training for energy communities when promoting the objectives of the directive.

13. The regulation at the European level is not comprehensive and it is not sufficient to allow Energy Communities to operate in the different Member States of the EU. It needs to be transposed and developed in the different States for those legal figures to be fully implemented.

14. However, the Renewable Energy Directive and the Electricity Market Directive regulate the essential elements of both REC and CEC. Several significant limitations can be identified in this basic regulation. The following subsections will identify the different barriers and obstacles that EU law poses to the development of Energy Communities and propose solutions to overcome or mitigate these limitations.

IV.1.1. Lack of control of implementation

15. As mentioned previously in paragraph 13, the operation of Energy Communities requires that the different Member States transpose and develop the basic European regulation.
16. According to Article 36 of the Renewable Energy Directive, the implementation of REC should have been completed by the 30<sup>th</sup> June 2021. Similarly, the Electricity Market Directive set the limit for implementation of CEC by the 31<sup>st</sup> December 2020.<sup>4</sup>
17. However, many Member States have not complied with these time limits, which expired more than 3 years ago. Among them, Spain has only transposed partially the basic regulation of REC and CEC, but it has not developed the legal regime of ECs in detail beyond that in the European regulation. In comparison, the regulation of Self-Consumption in Spain is fully implemented and operational.<sup>5</sup>
18. In order to ensure that Member States comply with their obligations under EU law and fully transpose the regulation on Energy Communities, we propose that the Commission uses the powers it holds to protect the European legal order. Especially, the Commission is empowered to bring an infringement procedure under Article 258 of the Treaty on the Functioning of the European Union (hereinafter, “TFEU”), against those Member States that fail to adequately implement EU regulation.

IV.1.2. Lack of definition of “local authorities” that are expressly allowed to participate in REC and CEC

19. Among the different potential participants of REC and CEC, the regulation of both energy communities allows the participation of “*local authorities, including municipalities*”.<sup>6</sup> This definition makes clear that municipalities can join ECs, but it is not clear which other public authorities can join an EC.
20. We propose defining the concept of local authority as authorities that have activity within the territorial extent of the EC. Thus, local would refer to the activity of the authority, and not to its size. Authorities that have a geographical scope that is wider than that of the community shall still be able to participate, in so far they are active within the EC’s territorial scope.
21. Equally, the concept of authority is not defined either. It shall include any public law body, including universities and companies dominated by the public administration, but also semi-independent law entities, such as the “*Comunidades de Regantes*” (irrigation communities) in Spain.

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<sup>4</sup> This deadline is also applicable to the regulation of Self-Consumption.

<sup>5</sup> Royal Decree on Self-Consumption (*Real Decreto 244/2019 de 5 de abril, por el que se regulan las condiciones administrativas, técnicas y económicas del autoconsumo de energía eléctrica*).

<sup>6</sup> Article 2.11) Electricity Market Directive and Article 2.16.b) Renewable Energy Directive.

22. The definition of these concepts is especially relevant in the case of rural CEs, because the participation and involvement of the different administrations is a major element that can contribute to their success. Moreover, a wider understanding of the concept of public authority, or redefining it simple as “public law entities” as proposed in this document, allows the participation of authorities that have a regional or state-wide territorial scope, and thus, that can provide more resources and funding to the communities.

IV.1.3. Unclear separation of self-consumption, energy sharing and REC and CEC

23. The Renewable Energy and Electricity Market Directives regulate self-consumption, REC and CEC in different articles. This is appropriate, since they are different instruments falling into different categories.

24. On the one hand, REC and CEC are entities that are required by law to have their own legal personality and that are regulated as subjects of the electricity system.

25. In comparison, self-consumption is an activity that is available to any active consumer, which allows the consumption of electricity generated by installations situated in the proximity of the consumer. Self-consumption of renewable energy within the same building is regulated in Article 21 of the Renewable Energy Directive.<sup>7</sup> Self-consumption of energy beyond the same building is regulated as energy sharing in Article 15a of the Energy Market Directive, which was introduced by Directive (EU) 2024/1711 the Electricity Market Design Reform.<sup>8</sup>

26. Energy sharing under Article 15a of the Energy Market Directive includes some potential limitations to ECs, because, according to Article 15.a.3 of the Energy Market Directive, energy sharing organizers will be considered active consumers if they own or manage a storage or renewable energy generation facility, even if they do not participate in energy sharing. However, Article 15a.2. of the Energy Market Directive establishes that energy sharing cannot be the primary commercial or professional activity of active consumers engaged in energy sharing. Thus, this could restrict ownership and management of installations bigger than 6MW by ECs only to those ECs that can show that they have a primary activity other than energy sharing. This is relevant, since, for example, the current main activity of all ECs is organizing energy sharing via collective self-consumption.

27. REC and CEC may engage in self-consumption, either by themselves or through their members, as individual consumers. Especially, in the case of Spain, the regulation explicitly allows REC to be constituted as a means to organize collective self-consumption, and REC and CEC may represent consumers that participate in collective

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<sup>7</sup> Transposition required by 30<sup>th</sup> June 2021.

<sup>8</sup> Transposition required by the 17<sup>th</sup> July 2025, according to Article 3.1 of Directive (EU) 2024/1711 of the European Parliament and of the Council of 13 June 2024 amending Directives (EU) 2018/2001 and (EU) 2019/944 as regards improving the Union’s electricity market design.

self-consumption.<sup>9</sup> However, the Renewable Energy Directive and the Electricity Market Directive allow them to engage in several other activities beyond self-consumption, which shall be available once their legal regime is adequately implemented.

28. Even though they are regulated separately, the activity of self-consumption and REC and CEC are often confused. In this sense, the introduction of energy sharing in Article 15a of the Energy Market Directive is helpful. It extends the geographical scope of self-consumption beyond the same building without requiring active consumers participating in energy sharing to be part of a REC and CEC. Thus, it clarifies that REC and CEC are not tools to extend the scope of self-consumption, but subjects with their own rights and obligations, that may participate in energy sharing,<sup>10</sup> but that are entitled to participate in other activities and to access the electricity markets.

29. However, to enhance separation and to make sure that the other tools that should be available to REC and CEC under EU law are effectively implemented by the Member States, we recommend including an explicit distinction in EU law between self-consumption, including energy sharing, as an activity and REC and CEC as subjects of the electricity system.

#### IV.1.4. Primary purpose of REC and CEC not being to generate financial profits

30. The definition of both REC and CEC establishes that their primary purpose cannot be to generate financial profits, but to provide environmental, economic or social community benefits for their shareholders or members or for the local areas where they operate.

31. It is appreciated that financial profit is not explicitly rejected, but the proscription of financial profit being the main purpose of the EC may impact negatively the establishment of these communities in rural areas with limited economic opportunities. Financial benefit is a powerful incentive to join and to work within the CEC and the REC to ensure that the community works effectively. Moreover, taking into account the local character of REC and CEC, any financial profit that the community provides to its members would remain in the local area and empower it.

32. Equally, financial benefit can be coupled with economic benefits, especially in demographically threatened areas, as it is the case with the geographical scope of JALÓN.

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<sup>9</sup> See Article 12 ter.1.g of the Electricity Sector Act (*Ley 24/2013, de 26 de diciembre, del Sector Eléctrico*) and Article 4.7 of Royal Decree on Self-Consumption (*Real Decreto 244/2019, de 5 de abril, por el que se regulan las condiciones administrativas, técnicas y económicas del autoconsumo de energía eléctrica*).

<sup>10</sup> Article 15a.2 of the Energy Market Directive allows participation of energy sharing to be structured through a legal entity, which could be a REC or a CEC. Moreover, the active consumers participating in energy sharing could appoint a REC or CEC as energy sharing organizer under Article 15.a.3. of the Energy Market Directive.

33. Thus, we propose to modify the wording of the definition of REC and CEC in Articles 2.11) Electricity Market Directive and 2.16. Renewable Energy Directive, allowing financial benefit as long as it is coupled or it results in benefits for the local community, the society or the environment.

IV.1.5. Ownership and development of projects requirements for REC

34. The definition of REC in Article 2.16.a) of the Renewable Energy Directive requires REC to have developed and to own its renewable energy projects. This requirement is discriminatory and acts as an obstacle to the development of RECs, since it makes it difficult for these communities to access energy generation projects.
35. First of all, the ownership requirement can bar the access of REC to all legal forms of holding or controlling renewable energy generation projects other than private property. Thus, if the requirement is implemented in a restrictive or in a literal sense, other forms of control, such as a leasing, a rental or lending, would not be allowed.
36. Second, the development requirement may prevent RECs from accessing pre-existing installations that have been developed by third parties, such as public administrations and other RECs, but also by the REC's members themselves. Thus, if the member has individually developed an installation, depending on the specific implementation of this requirement, it may not be possible to transfer the installation under the REC regime.
37. In conclusion, if implemented in an excessively narrow sense, only new projects developed by the REC and that are the property of the REC may be covered under the REC specific regulation on market access and energy sharing. This does not mean necessarily that the REC would be forbidden from acquiring installations through legal forms other than private property, but these installations may be excluded from accessing the activities recognized for REC **under the legal regime and the conditions applicable to REC**.
38. This requirement imposes a discriminatory requirement on RECs in comparison to conventional generators, since both subjects can operate without necessarily developing nor owning their own energy generation assets.
39. The development and ownership requirements impact especially REC in rural regions, since it narrows down the instruments available to structure the collaboration and participation of public authorities in RECs, which is especially significant in rural environments. For example, it prevents transferring to the community the control or the use of energy projects already developed by the authorities, which may be not used or underexploited.
40. Another example is placing installations in roofs or land owned by third parties. The development and ownership requirements force REC to enter long term contracts on these roofs and in this land. In the case of public authorities, these long-term contracts are usually subject to complex and demanding requirements and procedures.<sup>11</sup> These

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<sup>11</sup> See section IV.2.5.

could be avoided if the installation could be developed by the third party and ceded to the REC for a specific amount of time.

41. In consequence, we propose the ownership and development requirements to be eliminated from the Renewable Energy Directive and from the Electricity Market Directive. REC should only be required to use the installation for its own purpose or for the purpose of its members directly. This would allow a more efficient allocation of resources, since it would be possible to pool under the REC existing projects. Equally, it would facilitate the development of projects for the REC and it would provide the REC with more flexibility, allowing it to rent existing installations to meet sudden increases in energy demand, for example.

#### IV.1.6. Potential role of CEC in the distribution network

42. The current regulation of CEC in the Electricity Market Directive establishes the possibility of Member States allowing CECs to own and to hold distribution networks. Allowing Member States not to permit this activity is a mistake, especially taking into account that in some states, such as Spain, DSOs own the distribution network, which put them in an especially strong situation.
43. We propose to modify Article 16.4 of the Electricity Market Directive, making distribution network managing a right of CEC throughout Europe. In the same line, a similar modification shall be introduced in the Renewable Energy Directive to allow REC to manage distribution networks too.

### IV.2. SPANISH LEVEL

#### IV.2.1. Main issue: Lack of complete implementation of Energy Communities in Spanish law

44. Even though the implementation periods set in the Electricity Market Directive and the Renewable Energy Directive have long expired, the implementation and development of Energy Communities in Spain is still incomplete.
45. Both REC and CEC are explicitly recognized as subjects of the electricity sector<sup>12</sup> and a substantial part of the content of the Electricity Market and Renewable Energy Directives has been transposed into Act 24/2013, of 26<sup>th</sup> December, on the Electricity Sector (hereinafter, “**Electricity Sector Act**” or “**ESA**”).<sup>13</sup> However, the specific regulation of REC and CEC is not developed yet, which results in these subjects being still unable to operate as such in the Spanish electricity system. In conclusion, the implementation of REC and CEC is still incomplete.

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<sup>12</sup> See Article 6.1.j) and k) of the Electricity Sector Act (*Ley 24/2013, de 26 de diciembre, del Sector Eléctrico*).

<sup>13</sup> See Articles 12 bis and 12 ter of the Electricity Sector Act (*Ley 24/2013, de 26 de diciembre, del Sector Eléctrico*).

46. On the 20<sup>th</sup> April 2023 a Project of Royal Decree regulating CEC and REC<sup>14</sup> (hereinafter, the “Project RD”) was published by the Spanish Government. An open consultation period was opened until the 17<sup>th</sup> May 2023, allowing the public to submit arguments and modification proposals in relation to the Project RD. After the open consultation period, the Spanish Government has not taken further action. Additional consultation has not taken place and no regulation developing the legal regime of REC and CEC has been enacted.
47. The Project RD has received widespread criticism from the renewable energy sector on the basis of three main grounds: First, the Project RD does not complete the development of the legal regime of CEC and REC, meaning that if it were to be published, further amendments of the existing regulation would still be needed for CEC and REC to be able to share energy between its members and to operate in the Spanish electricity sector and in the markets.
48. Second, the Project RD establishes several unjustified requirements for CEC and REC to be established and to operate, which reduce the incentive in starting and joining an energy community.
49. Finally, the Project RD does not provide tangible benefit to consumers to join an EC. Especially, in the case of REC, it fails to establish a methodology to calculate the fair contribution of REC to the overall cost sharing of the electricity system set in Article 22.4.d) of the Renewable Energy Directive. In conclusion, the Project RD neither allows ECs to operate nor facilitates the establishment of REC and CEC.
50. The main barrier to the development of REC and CEC in Spain is the lack of adequate implementation of their legal regime, which prevents REC and CEC from being able to operate in the electricity sector and makes it unattractive for consumers to join an EC. In consequence, the first and main recommendation to the Spanish authorities is to fully implement REC and CEC into Spanish Law, and specially, to take into consideration the more specific recommendations that follow in this section.
51. After this brief introduction of the state of the regulation of energetic communities in Spain, the following subsections outline the main shortcomings and barriers to the development of energy communities identified in Spanish Law. Even though the Project RD has not been enacted, and thus, it is still not applicable, it will be taken into consideration, as its provisions offer detail that may be introduced to the positive regulation in the Spanish legal system in the future.

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<sup>14</sup> Proyecto de Real Decreto por el que se Desarrollan las Figuras de las Comunidades de Energías Renovables y las Comunidades Ciudadanas de Energía, accessible in <https://www.miteco.gob.es/content/dam/miteco/es/energia/files-1/ layouts/15/Proyecto%20de%20Real%20Decreto-61313.pdf> accessed on the 22<sup>nd</sup> October 2024.

IV.2.1.1. Lack of regulation on how REC and CEC can join the electricity sector

52. Since the regulation applicable to REC and CEC has still not been fully implemented, the law still does not foresee a specific way for ECs to join and register into the electricity system.
53. The Project RD does consider the registration of REC in Article 8 and the registration of CEC in Articles 10 and 13. In both cases, the registration of the Energy Community would result from the presentation of a responsible declaration before the Ministry of Energy Transition and Demographic Challenge, in which the energy community would declare that it complies with the applicable provisions in the Project RD.
54. The regulation in the Project RD establishes that the Ministry of Energy Transition and Demographic Challenge will publish the models of the responsible declaration. Thus, even if the Project RD was enacted, the registration of Energy Communities would still not be available immediately, but it would require even further development by the Spanish executive.
55. The registration and entrance into the energy sector via responsible declaration is adequate, since it provides a fast entrance into the energy sector. Even though energy communities will be subject to all the requirements in the law, the responsible declaration results in Energy Communities not having to wait for the express approval of their request by the authorities. In this case, the control of the compliance of the applicable legal requirements may be done ex post.
56. However, we recommend including the model of responsible declaration in the piece of regulation that develops and implements energy communities. In this way, they would be able to register immediately after the enactment of the developing regulation, not having to wait for further implementation by the executive.

IV.2.1.2. Insufficient regulation of the rights and obligations of the Energy Communities

57. As explained before in section IV.2.1, the regulation of Energy Communities in Spain is still incomplete and lacks substantial development and specification for REC and CEC to be able to operate in the Spanish electricity system. Especially, even though Articles 12 bis and 12 ter of the Energy Sector Act contain an enumeration of certain rights (energy sharing, participating in the adequate markets, etc) and duties (contributing fairly to the costs of the electricity system, etc.) the necessary regulatory developments to exercise the rights and comply with the obligations have not been implemented.
58. As a result, although REC and CEC are formally recognized in the Spanish legal system, their specific legal regime still does not exist, and thus, cannot operate as Energy Communities. They can only undertake those activities that are already developed for other subjects of the energy system, such as consumers, generators and suppliers, complying with the regulation applicable to these subjects and obtaining the necessary permits and authorizations. The regime applicable to the rest of the subjects may not be attractive to REC and CEC, since it can include obligations that are superfluous to the activity of the Energy Community.

59. The Proposal RD does not offer a solution to this lack of implementation. Even though Articles 5 and 11 of the Proposal RD regulate the rights and obligations of the REC and CEC, respectively, these articles do not offer sufficient detail to allow ECs to participate in the energy system, and especially, in the energy markets. Indeed, most of the content of Articles 5 and 11 of the Proposal RD is already included in sections 3) and 4) of Article 12 bis and in Article 12 ter of the Energy Sector Act. The most significant additions are the express recognition that CEC can act as consumers<sup>15</sup> and as suppliers, subject to the regulation applicable to these subjects of the energy sector. However, expressly allowing CECs to act as a consumer or as a supplier does not contribute to regulate the rights and obligations that ECs require to operate in the electricity system.
60. In conclusion, the regulation of the rights and obligations of the ECs in the Proposal RD is redundant with the regulation already existing in the Energy Sector Act, which in its turn, transposes but does not develop the regulation of ECs in the Renewable Energy and Energy Market Directives.
61. In order to make Energy Communities operational we recommend their rights and obligations to be developed in a Royal Decree in the necessary detail to allow ECs to operate. Without being exhaustive, that Royal Decree should regulate with sufficient detail the following elements:
- a. Sale of renewable energy by ECs, and especially by RECs. This sale should be structured through renewable energy purchase contracts.
  - b. Mechanism for sharing the energy generated by the REC's projects with the members and participants in the community.
  - c. Participation of REC and CEC in the energy markets.<sup>16</sup>
  - d. Regulation of the adequate contribution of CEC and REC to the general system costs.
62. Moreover, the implementation of Royal Decree shall also introduce any necessary amendment to the existing electricity market regulation at the Royal Decree level. Equally, any other modifications of the existing ministerial orders that are necessary to fully implement and make operational the energy communities shall also be passed in coordination with the implementing Royal Decree.

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<sup>15</sup> In order to provide electrical vehicle charging services.

<sup>16</sup> This regulation can be modelled after the regulation of direct consumers in Article 46.3 of the Energy Sector Act. This article establishes that direct consumers have the rights and obligations legally established for suppliers insofar they are applicable to them. In the same line, the starting point of the rights and obligations of RECs and CECs in the energy markets could be the regulation applicable to suppliers. The necessary exemptions, exceptions and adaptations should be introduced to tailor the rights and obligations to the situation of RECs and CECs.

IV.2.1.3. Proposed limitations to the territorial scope. Conflation of the territorial scope of the community to the distance allowed for energy sharing

63. The Proposal RD details in Article 4.1.e) the distances within which the members of a REC are considered to be situated in the proximity of an energy project of the community. For example, if a REC is developed originally in a municipality that has up to 5.000 inhabitants, the scope of the REC would be limited to that municipality and any adjacent municipality that has less than 50.000 inhabitants. If the first project is set in a municipality that has more than 5.000 but less than 50.000 inhabitants, the community would be limited to that municipality.
64. These distances have the purpose of setting strong territorial limits to the REC, since Article 4.1.e) expressly forbids having energy projects in different municipalities beyond the territorial scope of the energy community resulting from its first energy project.
65. We believe that this strict limitation of the distance limits of REC results from the confusion between the territorial scope of the energy community and the territorial scope of energy sharing within the community. This is, again, a confusion between the subject (REC) and the activity (energy sharing within the REC), reflecting an understanding of RECs as extended versions of self-consumption. As mentioned earlier in section IV.1.3, this understanding is wrong, because REC are subjects of the energy system that are able to participate in self-consumption and, once fully implemented, to share the energy produced in their installations with their members, but are also legally entitled to take part in other activities within the energy system.
66. The existing regulation of self-consumption can be taken as a model of the elements and the detail that need to be regulated to make energy sharing within the REC operational. However, the regulation of self-consumption on distance, modalities and network costs shall not apply to energy sharing within REC. Instead, the territorial scope of sharing energy shall be established on the basis of technical criteria. Equally, the applicable network costs shall be calculated in a way that ensures that RECs contribute in an adequate, fair and balanced way, as required by Article 22.4.d) of the Renewable Energy Directive.
67. The impact of strict distance limitations based on municipalities is especially relevant in the case of REC in rural environments. Limiting the participation in the REC to one municipality or to a cluster of adjacent municipalities would substantially limit the pool of potential participants in the REC. In its turn, this would also limit the pool of participants that have sufficient skills and time to organize and direct the community. As such, it can constitute an unsurmountable obstacle to the establishment of REC in rural and depopulated regions.
68. Our proposal is to decouple the territorial limits of Energy Communities from the limitations of energy sharing within the community. On the one hand, Energy Communities shall not be subject to an overall territorial limit, but anyone that is able to share the energy of any of the generation installations of the EC shall be able to participate. This is especially important in rural and depopulated areas which have limited potential participants.
69. On the other hand, energy sharing within the REC shall not be based on arbitrary criteria such as municipality limits or distances, but on technical criteria. Our proposal is that the

limits of energy sharing shall result naturally from the benefits that REC and CEC create to the whole energy system, and that under EU law need to be passed on to the Energy Communities.<sup>17</sup> These benefits result from the reduction in the number of loops of the distribution network that need to be used to supply the energy generated in the production installations of the EC to the members. The more loops that need to be used, the lower the benefit. As a result, ultimately, the use of a certain number of loops will bring no benefit for the energy system to be passed on to the EC. This would eliminate the incentive for the participation in the community and would naturally define the scope of energy sharing.

#### IV.2.1.4. Lack of specification and quantification of the benefits to the energy system provided by Energy Communities and how to pass them on to REC

70. Under EU law, Energy Communities need to contribute in a fair, balanced and adequate way to the overall cost sharing of the electricity system, which, mentioned earlier in paragraph 69, means that the benefits they provide to the electricity system need to be passed on to the Energy Communities. This obligation is especially explicit in the case of REC, because Article 22.4.d) of the Renewable Energy Directive establishes that the adequate, fair and balanced contribution of REC to the overall cost sharing of the system shall be in line with a transparent cost-benefit analysis of distributed energy sources that the Member State competent authorities need to develop.

71. In Articles 5.3 and 11.1.c) the Project RD transposes the right of the Energy Communities to participate in a fair, balanced and adequate way to the energy system costs, but does not develop it. Thus, the right is recognized but the Project RD includes no specific mechanism to make it effective.

72. Our proposal is that the Royal Decree implementing Energy Communities shall include the mechanism to establish the fair, adequate and balanced share of the energy system cost shall be borne by Energy Communities. In the case of the REC, this mechanism should follow from a previous cost-benefit analysis of distributed energy sources by the competent authorities. From our point of view, the most adequate manner of determining the which costs Energy Communities have to bear is to link those costs to the actual use of the distribution network. As explained in paragraph 69, the more rings are used to provide the energy generated to the members of the community, the higher the share of the energy costs that shall be borne. In turn, this would also naturally define the boundaries of energy sharing within the EC.

#### IV.2.1.5. Limitations on financial profit

73. As explained earlier in Section IV.1.4, the regulation of ECs at the European level limits the generation of financial profits by both REC and CEC, which can exist but cannot be the primary purpose of the ECs. As we explained already in that section, we propose to modify the wording of the requirement to be modified, to allow financial profit as long as

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<sup>17</sup> See Article 22.4.d) of the Renewable Energy Directive and Article 16.1.e) of the Energy Market Directive.

it is coupled or results in environmental, economic or social benefits to its members and the local areas.

74. The Project RD details in Articles 4.1.f) and 10.6) that ECs will be considered to provide economic, environmental or social benefits to their members and to their local areas if the benefits they obtain are mainly used to reduce the cost of energy of its members, to developing activities related to their company purpose or if those benefits are invested in improvements of the environment or the social development in the area in which they operate.
75. Beyond the overall criticism of the requirement, which has already been detailed in Section IV.1.4, it is valuable that the Project RD expressly recognizes that not all economic benefits need to be used to provide environmental, economic or social benefits to the members of the EC and the zone where it operates.
76. However, the Proposal RD narrows down the economic benefits that ECs can provide to their members to reduce their energy costs. Even though savings in the energy costs is one of the main ways in which the ECs can provide economic benefits to their members, other mechanisms may also exist, that should not be limited. Thus, beyond the amendment of the requirement in the Directives, as proposed in Section III.1.4, we propose that the implementation of ECs in Spain shall not further reduce the valid environmental, economic and social benefits that are currently available under the European regulation.

#### IV.2.1.6. Lack of development of the enabling framework

77. Apart from setting the basic regulation of Energy Communities, the Energy Market and the Renewable Energy Directive establish obligations to the Member States aimed at providing an enabling regulatory framework for the development of both CECs and RECs.<sup>18</sup>
78. These obligations were partially transposed into Spanish Law in Articles 12.bis (3) and 12.ter (1) ESA, reiterating the obligations on the Spanish authorities to develop the enabling regulatory framework. However, no further step has been taken to actually develop it.
79. The Project RD does not aim at executing the enabling regulatory framework either. In Articles 6(2), (3) and (4), and 7, the Project RD reiterates, once again, some of the obligations on the Spanish authorities to develop the regulatory framework applicable to REC. Some elements of the regulatory framework would be actually executed if the Project RD was enacted.<sup>19</sup> However, key elements for the development of ECs are still missing. Without intending to be exhaustive, the following aspects are still to be

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<sup>18</sup> See Article 16(1) and (2) of the Energy Market Directive and Article 22(3) and (4) of the Renewable Energy Directive.

<sup>19</sup> For example, the regulation on accessing and leaving both REC and CEC is sufficiently developed in Articles 6(3) and 10(3) to be operational. Equally, the status of consumers within REC (insofar the REC operates in the electricity sector) and CEC is also developed in Articles 6(5) and 12(1) and (2) of the Project RD.

developed: the identification and elimination of the existing barriers to the development of REC,<sup>20</sup> setting sufficient mechanism to ensure the cooperation between the distribution system operator and the ECs and establishing the mechanisms to calculate the adequate, balanced, and, in the case of REC, fair, contribution of the ECs to the network costs.

80. Our proposal is that the enabling regulatory framework shall be introduced together with the rules developing the legal framework of ECs. This way, both REC and CEC will be able to operate in the electricity system and it will be guaranteed that they do so without discrimination and with the adequate mechanism for them to be able to achieve their full potential.

### IV.2.1.7. Ownership and management of the distribution networks

81. The Electricity Market Directive expressly recognizes in Article 16.4 that Member States may grant CECs the right to manage distribution networks in their area of operation. With regard to RECs, the Renewable Energy Directive does not recognize explicitly the possibility of Member States allowing REC to manage distribution networks. However, in Article 22.4.e), the Renewable Energy Directive recognizes the possibility that the REC may act as DSO.
82. In comparison, the transposition of both Energy Communities into Spanish law has not included the right of CEC to manage distribution networks and has erased any explicit recognition of REC being able to act as DSO.
83. We recognize that Spain is not breaching EU law, because, in exercising its autonomy in implementing EU directives, Spain may decide not to allow ECs to manage distribution networks. However, we consider it would be beneficial for both REC and CEC to be able to manage distribution networks, in case they consider it is in their interest.
84. Operating the distribution network would facilitate the access and connection of the generation and consumption installations of the energy community.<sup>21</sup> Moreover, in rural areas, the management of the network by local Energy Communities may facilitate that the distribution network is kept up to date and offers adequate quality to the local users of the network.
85. Our proposal is that Spain shall include the right of CEC, but also REC, to manage distribution networks in the territorial scope in which they operate.

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<sup>20</sup> The Project RD does not take any measure to tackle the existing barriers to the development of REC, but it requires the Institute for the Diversification and Saving of Energy (*Instituto para la Diversificación y Ahorro de la Energía*, IDAE) to analyse the existing obstacles.

<sup>21</sup> See section IV.2.2 on the difficulties in access and connection identified due to the arbitrariness of the DSO.

IV.2.1.8. Minimum quorum of 5 members

86. Albeit not yet implemented, the Proposal RD included in Articles 4 and 10 the requirement that both REC and CEC shall be formed by, at least, 5 original members. Although most Energy Communities will aim to have more than 5 members, this requirement may hinder the first steps of the Energy Community, especially taking into account that the formalization of projected Energy Communities may be triggered by subventions and public aid programs. In this situation, finding 5 persons that are willing to be founding members of the Energy Community may add an additional challenge to its establishment.

87. This requirement is arbitrary and has no basis on EU law nor in the rest of the Spanish legal order. On the one hand, EU law does not require any specific legal form for REC nor CEC, and does not mention a specific minimum of members to establish an energy community. On the other hand, the Project RD recognizes that REC and CEC can be based on any legal form in the Spanish legal order that guarantees complying with the legal requirements of the Energy Communities.<sup>22</sup> Most of the legal forms available to energy communities require more than one person to be established, but none has been identified requiring five founding members.

88. In conclusion, requiring a minimum of five founding members is an additional arbitrary requirement that has no legal basis, and shall be eliminated.

IV.2.1.9. Example of adequate implementation: Cession of energy assets developed by members of the community

89. The main objective of this deliverable is to identify the legal barriers for the development of ECs and to propose solutions to these barriers. However, it is also relevant to provide examples of how the implementation of ECs in Member State law can mitigate shortcomings stemming from EU law.

90. One of these examples is Article 5.5 of the Project RD, which interprets in a flexible way the development requirements described in Section IV.1.5. As described in that section, the development requirement, depending on how is transposed and interpreted, potentially limits energy sharing and market access within the RECs legal framework to the energy generated in installations that have been developed by the REC. Thus, installations built by third parties but acquired or managed by the REC may not be included in the legal framework specifically applicable to REC.

91. The interpretation of the development requirement in Article 5.5 of the Project RD provides substantial flexibility to the REC: it allows the REC to use and to acquire installations insofar they were owned by the members of the REC before their transmission to the Community.

92. The flexibility introduced by Article 5.5 facilitates the development of REC and allows more efficiency in the allocation of resources, since it allows the REC to use assets which may be underused otherwise. However, the shortcomings of the development

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<sup>22</sup> See Articles 3.2 and 9.2 of the Project RD.

requirement are not completely compensated, since the discriminatory effect of the requirement identified in paragraph 38 is still outstanding in relation to projects originally developed by third parties that do not participate in the REC.

93. Moreover, it must be reminded that the Project RD has not been enacted. Thus, currently the consequences of making a cession of existing energy assets to a REC are not regulated.

#### IV.2.2. Difficulties in Access and Connection

94. The current regulation of access and connection in generation results in obstacles for Energy Communities in Spain to be able to connect their energy generation projects into the network.
95. Currently, the same general regulation on access and connection is applicable to all electricity generation installations, including those belonging or held by REC and CEC. Self-consumption installations are also explicitly subject to the same regulation on access and connection insofar they feed in electricity to the grid.
96. In order to facilitate the connection of the energy generation projects of REC and CEC, it would be adequate to introduce regulation taking into account the specificities of energy sharing within ECs. Currently, some exceptions already exist that facilitate the connection of self-consumption generation installations, which, indirectly, provide benefits to ECs that rely on self-consumption to structure energy sharing. However, other additional measures could be introduced.
97. Additionally, difficulties in the relation with the DSO, the subject that has to grant access and connection to the generation installations, have been identified. Under Spanish law, developers who want to connect their generation installations to the grid have to bear the cost of any update in the distribution network necessary for the connection of their installation in the same tension of the energy they feed into the grid. In the application of this obligation in relation to self-consumption projects, several arbitrary conducts by DSO's have been identified. For example: unilaterally modifying the conditions of the connection after having granted access and connection permits; making requests for the reinforcement of distribution networks that go beyond what is needed to connect the generation installation and seem to be based on inconsistent criteria; control of the installation by subcontracted companies that do not use the official connection diagrams; inadequate application of self-consumption regulation; not executing reinforcement works of the distribution networks that have already been paid by the developers of generation installations; and requesting updates of electric installations in a sequential way, instead of identifying them all at once, lengthening the connection procedure.
98. This arbitrariness affects, especially, REC and CEC, which, generally, and especially in rural environments, develop small size installations. In the case of rural ECs, the impact is even bigger taking into account the limited resources in depopulated areas. Moreover, in the specific case of the Comarca de Calatayud, the electricity distribution network is generally not in a good state, which results in limited access to feed in energy to the grid and, in many cases, the necessity of updates in order to connect the generation installations into the grid.

99. The current regulation offers mechanisms to challenge the arbitrary conduct by DSO's before administrative authorities. In principle, these challenges should be solved within two months, or in the case of complex conflicts, four months. However, in reality, this procedure usually extends beyond the time limit set in the law, which reduces the efficacy of the procedure.
100. Equally, current regulation does not explicitly require DSOs to justify why they consider necessary the network update works they demand to connect an installation into the grid. In practice, no justification of these works is offered by the DSOs. The absence of justification makes it difficult to challenge the distribution network updates requests by the DSO on material grounds, since it is not possible to analyze the criteria followed by the DSO nor to challenge these criteria and their application in the specific case.
101. To solve this, the regulation could be either amended or interpreted by the competent administrative and judicial authorities as implicitly requiring the DSOs to provide sufficient justification of the network updates. Equally, it is essential that the competent authorities have sufficient resources and initiative to swiftly provide a solution to the claims brought forward against the DSO's arbitrary decisions and acts.

#### IV.2.3. Application of self-consumption modality requirements to ECs

102. Even though, as it has been pointed out in Section IV.1.3, it is necessary to adequately separate REC and CEC (subjects of the electricity sector), from self-consumption (activity available to REC and CEC, but also to other consumers and producers), the truth is that, in all cases, energy sharing within ECs is currently structured through self-consumption.
103. Under the applicable regulation of self-consumption in Spain, self-consumption is divided in the following modalities:
- a. Self-consumption without surplus: In this modality, all the energy that is not immediately consumed or stored is lost.
  - b. Self-consumption with surplus: In this modality, the energy that is not immediately consumed or stored can be fed in the grid. It is divided into two different sub-modalities:
    - i. Self-consumption with surplus subject to simplified compensation: Under this modality, the value of the energy consumed from the grid is offset with the value of the energy consumed from the grid by the supplier.<sup>23</sup> The energy consumed from the grid that is offset is considered to be self-consumed, meaning that it is not subject to regular network tolls and enjoys the benefits applicable to self-consumption. Self-consumption with surplus subject to simplified compensation can only applied in case some requirements are met,

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<sup>23</sup> This compensation is limited to the value of the energy consumed. If the value of the energy fed in the grid is higher, the consumer is not legally entitled to the difference.

especially, that any consumer participating is not connected to self-consumption generation installations the added power of which is higher than 100 kW.

- ii. Self-consumption with surplus not subject to simplified compensation: The energy that is not consumed or stored is fed in the grid, under the same condition of energy produced by generators, including compensation from the market.

104. An additional modality is proposed in a project of amendment of the Royal Decree on Self-Consumption that was published on the 8<sup>th</sup> October 2025.<sup>24</sup> Article 5 in the project proposes the modality of self-consumption with shared surplus, in which one main consumer consumes the energy generated and shares the surplus energy that may exist with other consumers. This modality is currently not in force, since the project of amendment of the Royal Decree on Self-Consumption is currently subject to public consultation.

105. In relation to the modalities of self-consumption, two limitations are introduced by Article 4 of Royal Decree on Self-consumption: First, consumers can only participate in one modality of self-consumption at the same time. Thus, one consumer can receive energy from several self-consumption installations, but only under the same modality. Article 1.7 of the project of amendment of the Royal Decree on Self-Consumption proposes making this regulation more flexible, allowing to combine an individual self-consumption installation without surplus with participation in self-consumption through the grid. Self-consumption through the network is a connection method between the consumer and generation installations by which the energy is shared through the distribution or transport grid. Thus, the generation installation is not directly connected to the consumption installation. This flexibilization is currently not applicable because the project of amendment of the Royal Decree on Self-Consumption is under public consultation.

106. Second, in the case of collective self-consumption (this is, when several consumers receive the energy from the same generation installation) all the consumers need to participate in the same self-consumption modality.

107. Additionally, in practice, there are difficulties in participating in more than one self-consumption project if the connection method between the consumption and the generation installation is different or if one project is individual while another is collective. When identifying the modalities of Self-Consumption, Article 4 of the Royal Decree on Self-Consumption does not distinguish between collective and individual self-consumption, nor between the different connection methods. Thus, in principle, a person

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<sup>24</sup> The Project of Royal Decree amending several aspects of electricity self-consumption and promoting distributed storage (*Proyecto de Real Decreto por el que se modifican determinados aspectos relativos al autoconsumo de energía eléctrica y de impulse al almacenamiento distribuido*) is accessible in: <https://www.miteco.gob.es/content/dam/miteco/es/energia/files-1/es-ES/Participacion/Documents/anexos/aeip-autoconsumo-2025/Proyecto%20de%20Real%20Decreto%20de%20modificaci%C3%B3n%20del%20autoconsumo%20y%20almacenamiento%20distribuido.pdf>

can participate in two self-consumption projects within the same modality, even if one is individual and the other collective or if one individual and one collective.

108. However, in practice, it is not possible to connect one consumer to two installations unless they have the same modality, connection method, and both of them are collective or individual.<sup>25</sup>
109. These limitations have a substantial impact on the projects of REC and CEC. For example, it makes it difficult to include industrial consumers and household consumers in the same project: Industrial consumers have high consumption, and in consequence, it is possible that they have an interest in participating in self-consumption from big installations or from several installations, even if this means they cannot participate in self-consumption with simplified compensation. In comparison, household consumers generally have an interest in joining projects of self-consumption with simplified compensation, which offers value for the surplus generated and considers energy compensated from the network as self-consumed, as long as it is compensated.
110. This is especially important in the case of industries that have a seasonal consumption of energy. If the self-consumption project is subject to self-consumption with surplus not subject to simplified compensation, it is more difficult to find household consumers willing to receive energy in those moments in which the industry cannot consume all the energy generated. In consequence, the amount of energy self-consumed locally is reduced and efficiency in the use of energy generation installations is deteriorated.
111. Equally, the modality requirements can prevent people that already have an installation from joining the energy projects of an Energy Community, if it means that they have to modify the modality of their own installation, in case this modality change makes them lose money or efficiency. In rural environments, with limited population and a limited number of environmentally aware inhabitants, this can limit the available participants in the early moments of the Energy Community, which are critical to allow a long-term success. Moreover, in practice it is not possible to participate in two self-consumption projects that have the same modality if one is individual and the other is collective or if they entail different connection methods, as described in paragraphs 107 and 108.
112. To some extent, the flexibilization proposed in the project of amendment of the Royal Decree on Self-Consumption can ease the barriers identified in the previous paragraphs, if it is effectively implemented.

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<sup>25</sup> This barrier seems to have its origin in the numerical keys published by the CNMC in <https://tramitesanonimos.cnmc.gob.es/tabla/AUTOCONSUMO> which are used to identify the consumption installations participating in self-consumption. Unlike modalities, these numerical keys distinguish between the different connection methods and between collective and individual self-consumption. When one consumption installation participates in self-consumption it is identified with a code that includes the corresponding numerical key. If this same consumption wishes to participate in another self-consumption project, if the numerical key is different, it is not possible in practice.

113. However, our proposal is to include an exception in the regulation of self-consumption by which self-consumption projects organized within Energy Communities are exempted from meeting the requirements that all members in collective self-consumption have to participate in the same modality and that one consumer can only participate in one modality of self-consumption at the same time. The necessary regulatory and technical action should be taken to guarantee that the exception can be applied in practice, avoiding a situation similar to the one described in paragraphs 107 and 108.

#### IV.2.4. Unfair application of the Especial Tax on Electricity

114. Under Article 92 of Law 38/1992, of December 28<sup>th</sup>, on especial taxes (hereinafter, "**Law on Especial Taxes**"), the energy supplied to a final consumer is subject to the Especial Tax on Electricity (hereinafter, "**IEE**", for *Impuesto Especial sobre la Electricidad* in Spanish). As interpreted by the General Direction on Taxes of the Spanish Ministry of Treasury,<sup>26</sup> self-consumed energy is considered to be supplied to final consumers, and is subject to the tax, which has a rate of 5.11269632 % on the value of the energy supplied, as calculated for the purpose of Value Added Tax. However, some exceptions apply, insofar the energy generated is consumed by the same person that generates the energy, this is, if the consumer is the registered holder of the installation.

115. The registered holder of the installation does not need to be the owner of the installation, meaning that it is possible for the Energy Community to own the energy generation installation, while the registry holder of the installation is the final consumer of the energy. However, it is not possible to register the same installation to different consumers, meaning that, in collective self-consumption it is only possible to register, and exempt, one of the consumers in the project. In practice, usually none of the consumers is registered as the holder of the installation, since it introduces some additional legal and bureaucratic complexity to the project.

116. As a result, collective self-consumption projects, which are the main legal tool available to Energy Communities to organize their energy-sharing projects, are subject to IEE, while individual self-consumption projects can be structured in a way that avoids IEE.

117. This is an unfair barrier, that puts ECs in a worse position than other self-consumption projects not organized around an EC. This can be contrary to Article 16.3.b) of the Energy Marke Directive (no discriminatory treatment) and Article 22.4 a) and e) of the Renewable Energy Directive (no unjustified barriers and no discriminatory treatment).

118. Taking into account that the energy that is self-consumed is not incorporated into the energy system, we propose to exclude all self-consumed energy from paying the IEE. This would add an additional incentive to self-consuming energy instead of rec

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<sup>26</sup> See *Consulta Vinculante* (Binding Consultation) V-3003/2021m of December 3rd of 2021.

IV.2.5. Limitations identified in public contract and public goods law

119. The applicable regulation of the activity, the contracts and the goods of public sector entities in Spain results in substantial limitations to the ability of administrations to participate in Energy Communities, as members but also in other more indirect ways.
120. These limitations effect especially Energy Communities situated in rural areas, since local administrations and local branches of regional and state-wide administrations are usually smaller, and thus, have less resources and personnel than average. At the same time, cooperation with local entities is one of the essential elements necessary for the success of an Energy Community in the rural environment. Thus, addressing these barriers can have a substantial impact in the ability to develop Energy Communities in the rural world.
121. The impact of the limitations in the participation of administrations in ECs is caused or is further deepened by other barriers identified previously in this document. For example, the ownership and development requirements detailed in Section IV.1.5 narrow down the instruments available to public administration to participate in energy projects of the community, and to provide suitable surfaces where the Energy Community can build its generation projects.
122. Especially, the ownership requirement, if applied strictly, limits the possibilities of setting generation projects on buildings owned by public administrations. Since the REC needs to be the owner of the energy project, it has to acquire the necessary rights to build and exploit the generation installation during its entire lifetime.<sup>27</sup> Obtaining rights over public buildings for such long times generally requires lengthy and demanding procedures, including tendering and, depending on the value of the asset, obtaining the consent of other administrations.
123. Depending on the circumstances, some flexibility already exists. For example, when acquiring the private use over a good or part of a good that is used to provide public services (for example, the roof of a local sports hall) it is necessary to obtain a public concession (*concesión demanial*). Usually, these concessions are assigned after a tender, but they can be granted directly in case the building is used to achieve a goal of public interest or if the acquirer is a non-profit or a public interest entity. This can facilitate the access of ECs to these resources, insofar they are included in one of the situations previously described. However, the procedure for granting the public concession, even if the surface is directly granted to the EC, can still be challenging to local administrations. In the case of rural ECs developed in rural areas with smaller municipalities with limited resources and very limited legal support, granting a public concession can be very difficult to achieve. In the Community of Calatayud this is a challenge, since all the municipalities have less than 1.000 inhabitants, except for Calatayud itself and 4 other villages.<sup>28</sup>

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<sup>27</sup> In the case of photovoltaic installations, which is the kind of installation more readily available to energy communities, the guarantee of the PV panels ranges between 20 and 30 years. However, the commercial lifetime can even be longer.

<sup>28</sup> The Community of Calatayud has a total of 67 municipalities.

124. In the same line, the development requirement, if interpreted in a strict way, can prevent ECs from managing existing installations originally built by public bodies that currently are either not used or could be exploited more intensively. This results in an inefficient allocation of resources and puts obstacles to the participation and engagement of local administrations in the projects.
125. If the property and development requirements were either dropped or implemented in a way favorable to the interests of REC, other mechanisms would be available, making it easier for REC and local public administrations to cooperate. For example, the REC could receive a right to use or a rent over an installation owned and developed by a public administration, which is subject to less demanding requirements. Moreover, if the installation is owned and developed by the public administration, it is not essential for the EC to obtain in advance a right over the surface and/or to operate the installation for its whole lifetime.
126. The mechanisms available to public administrations to participate as consumers in the energy projects of the ECs are also limited. Contracting the energy supply or a self-consumption service with the municipality requires public tendering if the contract is longer than one year. As mentioned hereinbefore in paragraph 123, municipalities in rural areas have very limited legal support, effectively preventing them from organizing public tenders. In consequence, energy supply and self-consumption service contracts are not adequate to structure the long-term commitments generally required in self-consumption projects. Other legal figures, such as covenants (*convenios*) allow for longer commitments of up to 8 years, but are still not sufficient to cover for the whole lifetime of ECs' energy projects.
127. In conclusion, even though some exceptions exist to the regulation of the activities, the contracts and the goods of public sector entities, it is still challenging to structure the participation and the cooperation of public administrations in ECs. Additional exceptions and mechanisms should be introduced to provide sufficient flexibility in public contracts and in the regulation of public goods to facilitate the participation of public sector entities. This flexibilization is especially needed in rural small municipalities, in which both the administration and the ECs have limited resources and limited access to technical support.<sup>29</sup>

### IV.3. PORTUGUESE LEVEL

#### IV.3.1. Main issue: lack of complete implementation of Energy Communities in Portugal

128. As in the case of Spain, the implementation of REC and CEC in Portugal is incomplete, even though the transposition periods in the Energy Market and Renewable Energy Directives have expired.

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<sup>29</sup> The competence to regulate the legal regime of goods belonging to public sector administrations is shared between the Spanish authorities (basic regulations and legal regime of the goods of the central administration) and the autonomous communities' authorities (developing the legal regime of the goods owned by the autonomous and local administration). The proposed improvements are addressed both to the central and to the autonomous administrations.

129. REC and CEC are recognized as subjects of the electricity system in Portugal,<sup>30</sup> and, according to Articles 189(2) and (3) and 191 of Decreto-Lei n.º 15/2022, de 14 de Janeiro, (*Decree-Law n.º15/2022, of January 14th*, hereinafter, “DL 15/2022”) are entitled to participate in several activities.
130. According to Article 189(2) and (3) DL 15/2022 REC can:
- a. Produce, consume, store, buy and sell renewable energy with its members or third parties.
  - b. Share and supply renewable energy produced by its own self-consumption generation installations.
  - c. Access all the energy markets, including the system services, directly or through aggregation.
131. According to Article 191 DL 15/2022, CEC can participate in production of energy, included but not limited to renewable energy, distribution, commercialization, consumption, aggregation, storage, provision of energy efficiency services, EV-charging or provide other energy services to its members or holders of their shares.
132. However, in practice, the regulation of rights and obligations necessary to fully develop the activities of ECs is not implemented. The only activity that is effectively carried out by REC is energy sharing, including generation, consumption, self-consumption, storage and the provision of aggregation. This means that the energy markets are effectively inaccessible to REC.
133. With regard to CEC, they are underdeveloped in Portugal, and in practice, they do not exist.
134. As in the case of Spain (see Section IV.2.1.2) this lack of implementing regulation prevents ECs from developing their full potential, and in the case of CECs, from being established. Thus, our recommendation is the same: the rights and obligations of both REC and CEC shall be fully developed in the necessary detail to allow ECs to operate. Without being exhaustive, the law shall regulate with sufficient detail the following elements:
- a. Sale of renewable energy by ECs, and especially by RECs.
  - b. Mechanism for sharing the energy generated by the REC’s projects with the members and participants in the community.
  - c. Participation of REC and CEC in the energy markets.
  - d. Regulation of the adequate contribution of CEC and REC to the general system costs.

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<sup>30</sup> See Article 8(o) and (p) of Decreto-Lei n.º 15/2022, de 14 de Janeiro, (Decree-Law n.º15/2022, of January 14<sup>th</sup>).

135. Apart from this general lack of implementing regulation, the following sections will address other more specific issues with regard to the current regulation of ECs in Portugal.

IV.3.1.1. Lack of definition of low-density territories

136. The regulation of Self-consumption in Portugal, which, as Section IV.3.2, is applicable to REC, establishes the distance within which it is possible to share energy in self-consumption in Article 83 of RDL 15/2022.

137. In the case of energy generation and storage installations situated in low-density territories, some of the distances are doubled. This is positive for rural ECs, since an increase of the range available to share energy has the potential of exponentially increasing the number of consumers that can participate in the ECs.

138. However, the law currently does not define nor determine which territories that are considered to be low-density, which prevents this benefit from being applied in practice. In consequence, we recommend determining which areas of Portugal are considered to be low-density.

IV.3.1.2. ECs are effectively not allowed to own nor manage distribution networks

139. Article 189 of DL 15/2022 defines in paragraph 2 the activities in which REC can engage, which do not include owning nor managing distribution networks. This is in line with Article 22 of the Renewable Energy Directive, which, as explained in Section IV.2.1.7, recognizes the possibility of REC being able to act as DSOs, but does not oblige Member States to allow it. Even though Portugal is not breaching EU law, it would be positive for REC to be able to participate in distribution.

140. With regard to CECs, Article 191(1)(b) DL 15/2022 does explicitly recognize that CEC can participate in distribution. However, since CECs are underdeveloped and effectively not existing, this does not have an effect in practice.

141. As explained in Section IV.2.1.7, the experience of the Project in Spain shows that operating the distribution network would facilitate the access and connection of the generation and consumption installations of the energy community.<sup>31</sup> Moreover, in rural areas, the management of the network by local Energy Communities may facilitate that the distribution network is kept up to date and offers adequate quality to the local users of the network.

142. Thus, Portugal shall include the right of REC, to manage distribution networks in the territorial scope in which they operate, and effectively develop CEC, in order for them to be able to participate in distribution.

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<sup>31</sup> See section IV.2.2 on the difficulties in access and connection identified due to the arbitrariness of the DSO.

#### IV.3.2. Regulation of Renewable Energy Communities as extended self-consumption

143. Even though, as indicated in Paragraph 130, Portuguese law recognizes the right of REC to engage in several activities, effectively they are regarded as a way to structure collective self-consumption.
144. Article 190 of DL 15/2022 explicitly links REC to self-consumption, establishing that in relation to the rights, duties and quantification of energy produced by REC and commercial relations, the regulation of collective self-consumption is applicable, with the necessary adaptations.
145. This regulation is problematic because, as explained earlier in sections IV.1.3, ECs and Self-consumption need to be carefully separated: Self-consumption is an activity that can be carried out by ECs but also by other persons and collectives, while ECs are subjects of the electricity sector that can participate in self-consumption, but are also entitled to engage in other activities.
146. The explicit link between self-consumption and REC in Article 190 DL 15/2022 ignores this separation and regards REC as a way to structure collective self-consumption. This deprives REC from their right to engage in other activities in the electricity system and also ignores the obligation on Member States to make sure REC contribute in an adequate, fair and balanced way to the overall cost sharing of the electricity system.<sup>32</sup>
147. With regard to CEC, as explained before, they are underdeveloped and inexistent. However, article 191(2) DL 15/2022 establishes that CECs are regulated by the legal regime applicable to RECs, with some adaptations that are irrelevant in this section. Thus, in case they existed, the regulation on self-consumption would also be applicable to its rights, duties and quantification of energy produced and commercial relations. In consequence, the analysis and recommendations provided on the relationship between RECs and self-consumption is also applicable to CECs.

#### IV.3.3. Obstacles in the assignment of surfaces by public authorities

148. Although it is possible for public authorities to provide surfaces to ECs, the applicable regulation is complex, as it is dispersed between different sources (for example, the civil code, the regulation on public procurement, the Local Finance Law and the General Law on Land Policy). Moreover, a public procurement process is always required, even in the case of short-term contracts.
149. In order to tackle these challenges, the Portuguese government has created the Mission Structure for the Licensing of Renewable Energy Projects 2030 (EMR), which also aims at consolidating and simplifying the licensing procedures of renewable energy projects.
150. The recommendation in this regard would be to simplify the procedures and include exceptions on the basis of public interest in the renewable transition and non-for-profit

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<sup>32</sup> See Article 22.4.d) of the Renewable Energy Directive.

organizations. This could facilitate the cooperation with public authorities, which is essential for the success of rural ECs.

#### IV.3.4. Positive elements of the Portuguese regulation

##### IV.3.4.1. Participation of public authorities

151. Following the definition of REC and CEC in the Renewable Energy and Energy Market Directives, Articles 189 and 191 of DL 15/2022 establish that public persons, including especially local authorities, can participate in REC.

152. It would be helpful to include a more detailed definition of local authorities as detailed in Section IV.1.2. However, it is very important that the law recognizes that all public persons can participate in REC and CEC. This allows an easier engagement of public authorities and other public law organisms, that can be certain of their right to participate in ECs. As explained in Section IV.1.2, the participation and involvement of the different administrations is a major element that can contribute to the success of rural ECs. Thus, the more certain and broader the participation of public authorities the more positive impact on rural REC.

##### IV.3.4.2. Ownership and development: Shift to control

153. As explained in Section IV.1.5, EU regulation requires RECs to own and to develop their own energy projects, which hinders the development of RECs, especially in rural environments.

154. Fortunately, in Portugal this requirement has been implemented through a more flexible approach, requiring the projects to be held and developed by the REC or by third parties in benefit or at the service of the REC.

155. This makes it easier to include in the REC installations originally not built by the REC or for the REC, providing more opportunities to the REC and a more efficient allocation of the existing resources.

##### IV.3.4.3. Network cost benefits in Self-consumption

156. Although specific benefits for ECs do not exist, they can obtain the benefits legally established for Self-Consumption.

157. With regard to self-consumption projects involving the use of the public electricity network, they benefit from some of the applicable network access tariffs, specifically the charges corresponding to the Cost of General Economic Interest. This exemption is currently applicable for a period of seven years from the date of commencement of operation of the self-consumption or CER project.<sup>33</sup>

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<sup>33</sup> See Despacho n.º 1177/2024, de 31 de janeiro (Ministerial Order n.º 1177/2024, of 31 January).

#### IV.4. ITALIAN LEVEL

##### IV.4.1. Lack of complete implementation

158. RECs are recognized as subjects of the electricity system under Legislative Decree of November 8<sup>th</sup> 2021, n. 199<sup>34</sup> (Hereinafter, “**Legislative Decree n. 199**”). CECs are also recognized as subjects of the electricity system under Legislative Decree of November 8<sup>th</sup> 2021, n. 210<sup>35</sup> (hereinafter, “**Legislative Decree n. 210**”).

159. The applicable Italian regulation recognizes that REC and CEC are entitled to engage in several activities,<sup>36</sup> including access to the electricity markets, in line with European regulation. However, in practice, some of these activities are not effectively implemented, and regulatory barriers still exist, for example, in the access to the local energy markets, or with regard to distribution in the case of CECs.<sup>37</sup>

160. In consequence, the first recommendation is that the rights and obligations of REC and CEC are fully regulated and implemented in order to allow them to engage, at least, in all the activities explicitly recognized in European legislation.

##### IV.4.1.1. EC's are effectively not allowed to own nor manage distribution networks

161. Article 31 of Legislative Decree n. 199 does not allow REC to own or manage distribution networks. This is in line with Article 22 of the Renewable Energy Directive, which, as explained in Section IV.2.1.7, recognizes the possibility of REC being able to act as DSOs, but does not oblige Member States to allow it. Even though Italy is not breaching EU law, it would be positive for REC to be able to participate in distribution.

162. With regard to CEC, Articles 3.3.d) and 14.6.c) of Legislative Decree n. 210 recognize that CEC can participate in distribution. Article 14.7 of Legislative Decree n. 210 recognizes that, under the right technical and cost-benefit situation, CECs can rent, buy and acquire parts of the distribution network and regulates the possibility of CECs receiving a concession to manage distribution networks. However, implementation in detail is still missing, which means that, in practice, CECs cannot actually engage in distribution.

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<sup>34</sup> DECRETO LEGISLATIVO 8 novembre 2021, n. 199 Attuazione della direttiva (UE) 2018/2001 del Parlamento europeo e del Consiglio, dell'11 dicembre 2018, sulla promozione dell'uso dell'energia da fonti rinnovabili. (21G00214).

<sup>35</sup> DECRETO LEGISLATIVO 8 novembre 2021, n. 210 Attuazione della direttiva UE 2019/944, del Parlamento europeo e del Consiglio, del 5 giugno 2019, relativa a norme comuni per il mercato interno dell'energia elettrica e che modifica la direttiva 2012/27/UE, nonché recante disposizioni per l'adeguamento della normativa nazionale alle disposizioni del regolamento UE 943/2019 sul mercato interno dell'energia elettrica e del regolamento UE 941/2019 sulla preparazione ai rischi nel settore dell'energia elettrica e che abroga la direttiva 2005/89/CE. (21G00233).

<sup>36</sup> In the case of REC, see Article 31.2. (b), (c) and (f). In the case of CEC, see Articles 3.3.d and 14.6.d) of Legislative Decree n. 210.

<sup>37</sup> See Section IV.4.2.

163. As explained in Section IV.2.1.7, the experience of the Project in Spain shows that operating the distribution network would facilitate the access and connection of the generation and consumption installations of the energy community. Moreover, in rural areas, the management of the network by local Energy Communities may facilitate that the distribution network is kept up to date and offers adequate quality to the local users of the network.

164. Thus, we recommend the introduction of the right of REC to manage distribution networks in the territorial scope in which they operate, and the implementation in detail of the participation of CEC in distribution, as recognized by the applicable law.

#### IV.4.2. Regulation of REC as extended self-consumption

165. Article 22.2 of the Renewable Energy Directive recognizes that RECs are entitled to carry out several activities, including energy production and energy sharing within the community, but also accessing the energy markets. However, the implementation of RECs in Italy focuses mainly on energy sharing at the expense of other available activities. This results in REC functioning as some sort of extended self-consumption.

166. Collective Self-Consumption in Italy is limited to the same building or block of flats.<sup>38</sup> In comparison, participation in REC allows energy to be shared within the same market zone.<sup>39</sup> If the energy is shared between installations connected to the same primary substation, it is also possible to access to incentives.<sup>40</sup>

167. The focus of REC as extended shared Self-Consumption is made explicit in Article 31.2.b) which establishes that it is a priority for the energy generated by the community to be self-consumed on site or shared within the community. Only surplus energy can be shared and sold. Taking into account that currently market access for ECs is not adequately implemented, this mainly limits the activities available to REC to essentially extended self-consumption.

168. In order to harmonize Italian legislation with the regulation of REC at European level, access to the energy markets shall be guaranteed and not limited to the surpluses that cannot be consumed within the REC.

#### IV.4.3. Limitations in the development of installations

169. Article 31.2.d) of Legislative Decree n. 199 establishes explicitly that generation installations of REC shall start working after the entry into force of Legislative Decree n. 199. Inclusion of existing installations is explicitly limited to 30% of the total capacity of the REC. This limits the inclusion of existing installations, forcing the REC to develop its own new projects.

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<sup>38</sup> Article 30.2.(a) of Legislative Decree n. 199

<sup>39</sup> Italy is divided in seven territorial areas.

<sup>40</sup> See Section IV.4.4.2.

170. Apart from being an unjustified barrier to the efficient allocation of resources, this also limits the access of rural ECs to existing projects, which, otherwise, could help the EC grow and develop faster without having to bear the cost of developing new projects. Thus, we recommend this requirement to be repealed.
171. On the other hand, it shall be noted that Article 31.2.a) requires REC to control its own energy generation installations, without explicitly requiring the installation to be the property of the REC. This is positive, since it allows the REC to access installations under other legal figures more flexible than property, such as a lease or a concession, which, in its turn, can facilitate the cooperation with third parties and the public administration.
172. With regard to CEC, the criterion is equivalent: the CEC must have control over its generation power plants, but it does not need to acquire their property.<sup>41</sup>

#### IV.4.4. Positive elements of the Italian regulation of Energy Communities

##### IV.4.4.1. Clear and inclusive membership

173. Article 31.1.b) of Legislative Decree n.199 defines the subjects that need to control REC in line with the definition of REC in Article 2.16 of the Renewable Energy Directive. As analyzed in Section IV.1.2, the concept of local authorities in the definition of REC in EU law is vague, both with regard to what is considered to be “*local*” and what is considered an “*authority*”.
174. In Italy, Article 31.1.b) of Legislative Decree n.199 explicitly includes, within the concept of local authorities, local administration authorities included in the list of public administrations published by the ISTAT, the Italian national statistics institute.<sup>42</sup> These authorities are considered local insofar they are in the municipality where the REC has its generation installation. Moreover, other entities such as research and education entities, religious entities, third sector entities and environmental protection entities are also explicitly included as being able to participate in the REC.
175. It is positive that the law is inclusive and clear when establishing the potential participants in a REC. However, it would also be positive to allow the participation of central authorities in REC, insofar they have activity in the area where the REC is located.
176. With regard to CEC, Article 3.3 of Legislative Decree n.210 is equivalent to Article 31.1.b) of Legislative Decree n.199, with the difference that only small enterprises are allowed to participate in the control of the CEC.

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<sup>41</sup> Article 14.8.(d) Legislative Decree n. 210.

<sup>42</sup> The most recent recent list of local authorities can be found in the following link: [https://www.rgs.mef.gov.it/Documenti/VERSIONE-I/e-GOVERNME1/SIOPE/elenco\\_delle\\_amministrazioni/Elenco-PA-pubblicato-nella-GU-n-227-del-30-settembre-2025.pdf](https://www.rgs.mef.gov.it/Documenti/VERSIONE-I/e-GOVERNME1/SIOPE/elenco_delle_amministrazioni/Elenco-PA-pubblicato-nella-GU-n-227-del-30-settembre-2025.pdf)

#### IV.4.4.2. Incentives for REC and CEC

177. Article 8 of Legislative Decree n.199 establishes an incentive applicable to REC and to Self-Consumption projects. In the case of REC, this incentive consists of a premium tariff that is paid in relation to the energy produced and shared within the REC between generation and consumption installations connected to the same primary substation. Only installations up to 1 MW can access the incentive. Decree n.414 of the 7<sup>th</sup> December 2023<sup>43</sup> further develops the regulation of this incentive, establishing higher premiums for smaller installations and a duration of the incentive of 20 years.
178. Additionally, under the National Recovery and Resilience Plan it is possible to finance up to 40% of the cost of the generation plants of CER situated in municipalities of up to 50.000 inhabitants.<sup>44</sup> The duration of this incentive is limited, and the application window finishes on the 30<sup>th</sup> of November 2025.
179. Additionally, Article 32.3.(a) of Legislative Decree n.199 establishes another incentive, which is also applicable to CEC under Article 14.10.(c) of Legislative Decree n.210. This incentive is applicable to energy shared within the EC between installations connected to the same substation, on account that this results in savings on the network costs. Thus, this incentive implements Article 22.4.d) of the Renewable Energy Directive.

#### IV.4.4.3. Definition of the territorial scope of REC on the basis of incentives

180. Article 31.2.c) technically allows REC to share their energy within the market region where their installations are situated. However, as explained in Section IV.4.4.2, access to incentives is limited to energy shared between generation and consumption installations connected to the same primary substation.
181. Thus, although the territorial scope of the REC is not established explicitly, the availability of benefits and incentives effectively limits the area of REC to the set of installations connected to the same primary substation. At the same time, these benefits and incentives are provided on the basis that REC, in their turn, provide benefits to the network, since their use of the network is less intense. Thus, it is the benefit provided to the system and transferred to the EC what limits the territorial scope of REC.

#### IV.4.4.4. Flexibility measures in cooperation between ECs and local authorities

182. Local authorities in Italy can support ECs by providing land, facilities and energy to the EC, without necessarily becoming members of the community. When offering land for the construction of renewable energy installation, it is necessary to follow public

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<sup>43</sup> Decreto n. 414 del 7 dicembre 2023, recante: «Individuazione di una tariffa incentivante per impianti a fonti rinnovabili inseriti in comunita' energetiche rinnovabili e nelle configurazioni di autoconsumo singolo a distanza e collettivo, in attuazione del decreto legislativo 8 novembre 2021, n.199 e in attuazione della misura appartenente alla Missione 2, Componente del 2, Investimento 1.2 del PNRR.» (24A00671).

<sup>44</sup> Originally limited to 5 000 inhabitants.

procurement rules,<sup>45</sup> as explicitly established in Article 12.2 of Legislative Decree of March 3<sup>rd</sup>2011 n.28.<sup>46</sup> This includes public tendering, to ensure transparency, competition and non-discrimination.

183. However, an exception has been introduced that allows municipalities with fewer than 5.000 inhabitants and with installations funded by the National Recovery and Resilience Plan to directly grant concessions of land for REC purposes until the 31<sup>st</sup> December 2025. This measure is important for rural ECs, in which the collaboration with the local authorities is essential for their success.

184. Equally, in case an EC is established as a Third Sector Entity,<sup>47</sup> it is possible for the EC to cooperate with local authorities via co-design procedures under the Third Sector Code.<sup>48</sup>

#### IV.5. REGIONAL AND LOCAL LEVEL

##### IV.5.1. Aragón

185. The regulation of Energy Communities and self-consumption in Aragón is included in Law 5/2024, of December 19<sup>th</sup>, on measures to encourage energy communities and industrial self-consumption in Aragón (hereafter, “**Law 5/2024**”).

186. In some aspects, this regulation goes beyond the existing limited and insufficient regulation at state level. Equally, some of the measures introduced provide more clarity on the requirements and regulation of REC and CEC and facilitate public administrations participating in ECs directly and by providing surfaces and aid. However, Law 5/2024 is still not sufficient to allow ECs to be developed without further implementation, either at the state or at the autonomous community level. Equally, in some places, it conflates ECs with self-consumption.

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<sup>45</sup> See Legislative Decree of April 12<sup>th</sup> 2006, n.163 ( DECRETO LEGISLATIVO 12 aprile 2006, n. 163Codice dei contratti pubblici relativi a lavori, servizi e forniture in attuazione delle direttive 2004/17/CE e 2004/18/CE.)

<sup>46</sup> DECRETO LEGISLATIVO 3 marzo 2011, n. 28Attuazione della direttiva 2009/28/CE sulla promozione dell'uso dell'energia da fonti rinnovabili, recante modifica e successiva abrogazione delle direttive 2001/77/CE e 2003/30/CE.

<sup>47</sup> Organizations such as volunteer associations, associations for social promotion, philanthropic entities, social enterprises (including social cooperatives), associative networks, mutual aid societies, associations (whether recognized or not), foundations, and other private entities (excluding companies) established for the non-profit pursuit of civic, solidarity-based, and socially useful purposes. These goals are pursued through one or more activities of general interest carried out in the form of voluntary action, free provision of money, goods, or services, mutual support, or the production or exchange of goods or services, and registered in the National Single Register of the Third Sector

<sup>48</sup> DECRETO LEGISLATIVO 3 luglio 2017, n. 117 Codice del Terzo settore, a norma dell'articolo 1, comma 2, lettera b), della legge 6 giugno 2016, n. 106.

187. Moreover, it shall be noted that the Spanish Government has announced that it will challenge Law 5/2024 before the Constitutional Court, possibly suspending the application of Law 5/2024 until a decision is reached.

#### IV.5.1.1. Positive measures

188. Law 5/2024 has introduced positive regulation on ECs that regulates more thoroughly and provides more clarity to the concept of REC and CEC. Moreover, Law 5/2024 also has introduced some specific measures that facilitate the implementation of REC and CEC, either directly or by improving the regulation on self-consumption.

189. With regard to ECs, Law 5/2024 defines REC and CEC in an equivalent way to the existing European and Spanish regulation. Moreover, Law 5/2024 includes definitions or set criteria in relation to concepts that are currently not developed under European and Spanish law. For example, Article 18 of Law 5/2024 explicitly recognizes that ECs can take any legal form available in the existing regulation insofar it is compatible with the requirements of REC or CEC. Article 19 of Law 5/2024 includes definitions of: open participation, voluntary participation, autonomy and effective control, in relation to the definition of REC and CEC. A more detailed definition provides legal certainty on the requirements ECs need to comply with.

190. Article 17 of Law 5/2024 introduces the concept of Energy Commonwealth (*Mancomunidad Energética*), (hereinafter, “ME”) which includes several RECs, and may include other persons or entities that share objectives or interests and allow these a better achievement of those objectives. MEs can provide a structure for the cooperation between ECs, and, in case RECs were implemented including a restrictive criterion on proximity,<sup>49</sup> MEs could provide a legal basis to structure common structures and services at a regional level for REC.

191. Article 23 of Law 5/2024 introduces an obligation on DSOs and TSOs to collaborate in the transferal of energy between CEC and within REC, subject to just compensation. Although this obligation is not specific, it can reinforce the position of ECs in its conflicts with the DSO described in paragraphs 99 and 100. In a similar line, Article 28 of Law 5/2024 establishes an obligation on the administration to collaborate in the simplification and the rapid processing of administrative procedures necessary for ECs to start and function. Article 29 of Law 5/2024 allows the Government of Aragón to provide support services for the establishment, management and access to public resources of ECs. Equally, this article establishes an obligation to provide grants and subsidies to ECs in Aragón and to take into account ECs when relevant public subsidies and grants that may be applicable to ECs are being designed.

192. Article 25 of Law 5/2024 explicitly allows public administrations and entities of the public sector to grant surfaces rights to ECs. It is especially significant that Article 25.2 of Law 5/2024 explicitly recognizes that public tenders on surfaces may be reserved for ECs. Moreover, Article 26 of Law 5/2024 allows local administrations to provide a right

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<sup>49</sup> This is analyzed in detail in Section IV.2.1.3.

of use over some public goods<sup>50</sup> to ECs in which a local entity participates. In case the EC is non-profit, this right of use may be granted directly and for free.

193. Finally, Articles 18 and 30 of Law 5/2024 create the Public Registry of Energy Communities in Aragón, in which the ECs need to register by presenting a responsible declaration.

194. With regard to self-consumption, Article 6 of Law 5/2024 allows the connection of energy generation installations to the grid in the most adequate point<sup>51</sup> to make self-consumption possible, and especially, to allow the maximum number of consumers to join collective self-consumption associated to the generation installation. Article 7 of Law 5/2024 establishes that, under certain conditions, direct lines only require a responsible declaration to be built, and Article 11 of Law 5/2024 allows several self-consumers to share a direct line. Article 8 of Law 5/2024 recognizes that electric installations necessary for the implementation of self-consumption installations may be declared to have public utility and social interest in order to allow for the expropriation of lands.

#### IV.5.1.2. Negative measures

##### IV.5.1.2.1. *Insufficient implementation of ECs*

195. Even though Law 5/2024 provides additional clarity in relation to the requirements and the procedure of implementation of ECs, it is insufficient for ECs to be able to operate.

196. Article 20 lists several activities that can be carried out by REC and CEC, but Law 5/2024 does not develop the legal regime of these activities. Thus, ECs can only engage in those activities insofar the regulation is developed and already allows them to participate.

197. In a similar fashion, the regulation makes several references to the regulation at state level on concepts that currently are still not developed, such as the concept of proximity between the members and the energy projects of the REC (Article 16.2 Law 5/2024).

198. Finally, although Articles 18 and 30 establish the Public Registry of Energy Communities in Aragón, in practice, this registry still does not operate.<sup>52</sup>

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<sup>50</sup> This regulation only applies to goods that are privately owned by the public administration. This excludes goods of public use (roads, pavement,) and goods that are used to provide a public service.

<sup>51</sup> One of the proximity conditions that permit self-consumption is that the meters of the generation and consumption installations are situated at a distance under 500 meters, 2.000 meters in the case of PV installations built on industrial land or on buildings, structures or rooftops. In consequence, the situation of the connection point and of the meters of the installation is relevant to determine who can participate in self-consumption.

<sup>52</sup> The analysis and recommendations in Section IV.2.1.1 on the registration of REC and CEC generally in Spain is also applicable in relation to the registration in Aragón, since the situation is equivalent.

199. In conclusion, Law 5/2024 is insufficient for ECs to be able to fully operate in Aragón. The legal regime still needs to be further developed in Aragón, and especially, at the Spanish level, for ECs to be able to develop most of their potential. With regard to this barrier, the only solution is a full implementation and development of the legal regime of ECs, including the necessary development and modifications on the regulation of the activities that REC and CEC can carry out.

*IV.5.1.2.2. Unclear separation of self-consumption and energy communities*

200. As explained in section IV.1.3, self-consumption, as an activity, shall be clearly separated from REC and CEC, which are subjects of the electricity sector that participate in self-consumption, but can also participate, or should be able to participate in many other activities.

201. The regulation in Aragón conflates ECs and collective self-consumption. For example, Article 6.5 of Law 5/2024 recognizes specifically that producers can join ECs or MEs in order to structure collective self-consumption. This specific recognition is unnecessary, since producers are already able to participate in self-consumption and in REC and CEC. In a similar fashion, Article 17 recognizes MEs the power to connect self-consumption projects of different REC, insofar it is legally possible under the energy sector law. Article 24 also recognizes that the representative of the EC may represent the members of the EC in relation to self-consumption before their supplier and DSO. Currently, the subjects that may represent participants in self-consumption are not limited in law, which means that the representative of the EC can already, by itself, represent the members of the EC.

202. This superfluous recognition of rights already existing in the regulation does not provide any benefit to ECs and reinforces the conflation between energy communities and collective self-consumption. In consequence, we propose that this superfluous and confusing regulation shall be eliminated.

*IV.5.1.2.3. Limitations to the allocation of economic benefits of ECs*

203. Article 19.e) of Law 5/2024 provides a more thorough definition of the requirement that an EC has to provide mainly environmental, economic or social benefits to its members or to the places where it develops its activities, over financial benefits.

204. It is positive that Article 19.e) of Law 5/2024 explicitly recognizes that ECs can provide economic benefits to their members beyond reduction of the energy costs, allowing REC and CEC to distribute benefits among its members. However, the article establishes that benefits cannot be mainly allocated to provide financial profit, and details some activities that are considered to provide environmental, economic or social benefits to its members or to the places where the EC develops its activities.

205. As described in Section IV.2.1.5., we propose that the implementation of ECs in Spain shall not further reduce the valid environmental, economic and social benefits that are currently available under the European regulation.

IV.5.1.2.4. *Regulation of direct lines*

206. One of the contentious elements that motivated the Spanish Government to challenge Law 5/2024 before the Spanish Constitutional Court is the regulation of direct lines introduced in Articles 11 and 58 of Law 5/2024.
207. Law 5/2024 has introduced regulation explicitly establishing that direct lines within self-consumption systems are to be regulated by the applicable law to self-consumption and explicitly establishing that a direct line can connect a generation installation with several consumers within the framework of collective self-consumption.
208. However, it shall be noted that such regulation is superfluous, because it is already possible to connect several consumers to the same generation installation with one single direct line.
209. Direct lines are defined in Article 67 of Royal Decree 1955/2000 as lines that connect directly a production installation and a consumption installation that have the same owner (in Spanish, “*titular*”).<sup>53</sup> It is therefore necessary for the owner of the consumption installation also to be the owner of the generation installation in order to link those installations with a direct line.
210. Meanwhile, Article 5.3 of the Royal Decree on Self-Consumption explicitly establishes that ownership of the generation installation is shared on a joint and several basis by all the consumers associated with the generation installation in collective self-consumption without surplus. Therefore, as there are several consumers who are joint and several co-owners of the entire generation installation, each of them can connect to the generation installation by means of a direct line.
211. This joint-and-several ownership criterion applies only in collective self-consumption without surplus precisely to facilitate the legal compatibility of the connection with a single direct line. By contrast, in a generation installation with surplus, since both the generation installation and the consumption installations have grid-connection infrastructure, the use of direct lines would be superfluous, as connection for self-consumption through the grid is possible.
212. Article 69 of Royal Decree 1955/2000 confirms the viability of the connection for each of the co-owning consumers, establishing that direct lines may only be used by their owners or by their subsidiaries. The use of the plural is relevant both with respect to “*direct lines*” and with respect to “*owners*.” This allows, in the context of collective self-consumption without surplus, the following connection options, which, insofar they are not explicitly prohibited, are permitted:
- a. A single consumer may use the direct line to connect to the generation installation.

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<sup>53</sup> The word *titular* reflects that somebody has the legal control of an asset or an object, without necessarily requiring that the asset or the object is the property of that person.

- b. Several consumers may jointly use the same direct line to connect to a generation installation. That is, a single direct line may depart from the generation installation and subsequently branch and split until it links to the consumption installations of the consumers participating in collective self-consumption without surplus.
- c. A single consumer may use several direct lines to connect to several generation installations.
- d. Several consumers may use several direct lines to connect to several generation installations.

213. The direct line connects the generation installation without surplus to the consumer's installation, downstream of the consumer's meters, in the same way as an individual self-consumption installation without surplus would be connected. Consequently, even if several co-owning consumers of the same generation installation share a single direct line, this will not entail connecting the direct line to the transmission or distribution grids, which, under Article 69.2 of Royal Decree 1955/2000 would result in the line not being considered a direct line anymore.

214. In conclusion, the adequate interpretation of the current regulation already allows several consumers to connect to the same generation installation through one single direct line. Explicit regulation is superfluous and, in this case, has contributed to conflict between the Spanish and the Aragonese governments.

#### IV.5.2. Municipalities in the Community of Calatayud

215. The main regulation of municipalities affecting the development of ECs in the Community of Calatayud is on the regulation of the Tax on Constructions, Installations and Works (*Impuesto sobre Construcciones, Instalaciones y Obras*), (hereinafter, "ICIO").

216. The main features of ICIO are regulated in Royal Legislative Decree 2/2004, of March 5<sup>th</sup>, on the recast text of the Law on Local Taxes (hereinafter, "RDL 2/2004"). ICIO is applicable to building any construction, installation or carrying out any work that requires an administrative license, a responsible declaration or a previous communication to the municipal authorities. ICIO is applicable to energy generation installations developed by ECs. Article 103.2 RDL 2/2004 allows municipalities to introduce two tax bonifications applicable to ICIO:

- a. A first bonification of up to 95% in relation to those constructions, installations or works that are declared to have special interest and usefulness by the municipality. This declaration is adopted by the municipal council by simple majority.
- b. A second bonification of up to 95% in relation to constructions, installations or works which include systems by which solar energy is used to produce heat or energy. This second bonification shall be included in the applicable tax ordinances of the municipality.

217. Both tax bonifications can be applied at the same time, resulting in a maximum reduction of 99,75% of the tax to be paid.
218. While the first bonification has to be adopted *ad hoc* in relation to every project, the second bonification requires the municipality introducing it into its applicable tax ordinances. Not all municipalities have introduced this second bonification, preventing installations from benefiting from it.
219. In order to maximize the number of installations that benefit from bonifications, while keeping municipal autonomy to regulate ICIO, we propose Article 103.2 of RDL 2/2004 to be amended so that the default rule is the application of the bonification of 95% in relation to constructions, installations or works which include systems by which solar energy is used to produce heat or energy. Municipalities would still be allowed to opt out from the bonification or to reduce the percentage, but this would require an explicit regulation in the municipal ordinances.

## V. CONCLUSION

220. This document analyzes the regulation of ECs in the European, Spanish, Portuguese, Italian, regional (Aragón) and local (Municipal) level, and has identified different legal barriers to the development of ECs, especially in rural environments.
221. With regard to the European regulation, we highlight that the property and development requirements of the renewable energy projects of REC are unfair barriers to the development of energy projects of ECs. If they are coupled with the restrictive regulation on public contracts and use of public goods, the possibilities for cooperation between REC and the public sector are very limited, and subject to demanding requirements that are especially challenging in rural areas.
222. Equally, the limitation of the primary purpose of the ECs, the lack of definition of the concept “local authorities” and the margin provided to Member States to decide whether CEC and REC can act as DSOs result in obstacles to the full development of ECs.
223. Moreover, the lack of control of the implementation of ECs in the Member States by the European Commission results in ECs not being properly implemented nor adequately developed in some countries. This is the case of Spain and Portugal, in which the main issue faced by ECs is that, even though they are expressly recognized as members of the electricity sector, with rights and obligations, the lack of development of their regulation prevents them from effectively being able to act as REC or CEC.
224. A Project Royal Decree was proposed in April 2023 by the Spanish Government to regulate REC and CEC, but since then, no regulation has been passed to implement ECs. Moreover, the Project Royal Decree did not provide a complete implementation that would permit ECs to operate, and included precepts that would result in inadequate implementation of ECs or in unjustified limitations on REC and CEC.
225. Apart from the lack of implementation, the strict regulation on public goods and on public contracting, and the lack of adequate procedures to challenge arbitrary decisions of DSOs also hinder the full development of ECs, especially in rural areas.

226. With regard to Portugal, implementation of ECs is still not complete. CEC in practice do not exist and REC do not have access to the energy markets in their own right. Additionally, the regulation of REC, which is the only EC that is partially implemented, is explicitly linked to Self-Consumption, effectively relegating REC as a structure for collective Self-Consumption. Additionally, the assignment of surfaces to ECs by public authorities is complex and always requires public procurement.
227. With regard to Italy, ECs are implemented and able to share energy with their members. However, legal barriers still exist in relation to other activities recognized under EU law, such as market access and, in the case of CEC, ownership and management of the distribution network. Additionally, limitations on the share of energy outside the REC can effectively limit it essentially to shared self-consumption beyond the same building.
228. With regard to autonomous and local regulation, legislation has been passed in Aragón contributing to the implementation of ECs. Even though several positive elements are introduced by this regulation, it is still insufficient for ECs to operate, mostly because the regulation in Aragón refers to state legislation that still has not been enacted. Moreover, it is expected that the legislation implementing ECs in Aragón will be challenged as unconstitutional by the Spanish Government, which may result in its suspension and eventual annulment. In the case of local regulation, some modifications could be introduced to facilitate municipalities to include tax benefits for the energy projects of ECs.
229. Finally, conflation between ECs and self-consumption has been identified, in different degrees, in the regulation at European, state and autonomous level.

## **VI. ANNEX I.- LEGAL PROVISIONS**

- Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources.
- Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU.
- Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652.
- Directive (EU) 2024/1711 of the European Parliament and of the Council of 13 June 2024 amending Directives (EU) 2018/2001 and (EU) 2019/944 as regards improving the Union's electricity market design.
- Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (recast).

- Directive (EU) 2024/1275 of the European Parliament and of the Council of 24 April 2024 on the energy performance of buildings (recast).
- Ley 38/1992, de 28 de diciembre, de Impuestos Especiales.
- Ley 33/2003, de 3 de noviembre, del Patrimonio de las Administraciones Públicas.
- Real Decreto Legislativo 2/2004, de 5 de marzo, por el que se aprueba el texto refundido de la Ley Reguladora de las Haciendas Locales.
- Ley 24/2013, de 26 de diciembre, del Sector Eléctrico.
- Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público, por la que se transponen al ordenamiento jurídico español las Directivas del Parlamento Europeo y del Consejo 2014/23/UE y 2014/24/UE, de 26 de febrero de 2014.
- Ley 5/2024, de 19 de diciembre, de medidas de fomento de comunidades energéticas y autoconsumo industrial en Aragón.
- Real Decreto 244/2019 de 5 de abril, por el que se regulan las condiciones administrativas, técnicas y económicas del autoconsumo de energía eléctrica.
- Proyecto de Real Decreto por el que se Desarrollan las Figuras de las Comunidades de Energías Renovables y las Comunidades Ciudadanas de Energía.
- Proyecto de Real Decreto por el que se Modifican Determinados Aspectos Relativos al Autoconsumo de Energía Eléctrica y de Impulso al Almacenamiento Distribuido.
- Decreto-Lei n.º 15/2022, de 14 de Janeiro
- Despacho n.º 1177/2024, de 31 de janeiro
- DECRETO LEGISLATIVO 8 novembre 2021, n. 199 Attuazione della direttiva (UE) 2018/2001 del Parlamento europeo e del Consiglio, dell'11 dicembre 2018, sulla promozione dell'uso dell'energia da fonti rinnovabili. (21G00214).
- DECRETO LEGISLATIVO 8 novembre 2021, n. 210 Attuazione della direttiva UE 2019/944, del Parlamento europeo e del Consiglio, del 5 giugno 2019, relativa a norme comuni per il mercato interno dell'energia elettrica e che modifica la direttiva 2012/27/UE, nonché recante disposizioni per l'adeguamento della normativa nazionale alle disposizioni del regolamento UE 943/2019 sul mercato interno dell'energia elettrica e del regolamento UE 941/2019 sulla preparazione ai rischi nel settore dell'energia elettrica e che abroga la direttiva 2005/89/CE. (21G00233).
- Decreto n. 414 del 7 dicembre 2023, recante: «Individuazione di una tariffa incentivante per impianti a fonti rinnovabili inseriti in comunità energetiche rinnovabili e nelle configurazioni di autoconsumo singolo a distanza e collettivo, in attuazione del decreto legislativo 8 novembre 2021, n.199 e in attuazione della misura appartenente alla Missione 2, Componente del 2, Investimento 1.2 del PNRR.» (24A00671).

- DECRETO LEGISLATIVO 12 aprile 2006, n. 163 Codice dei contratti pubblici relativi a lavori, servizi e forniture in attuazione delle direttive 2004/17/CE e 2004/18/CE.
- DECRETO LEGISLATIVO 3 marzo 2011, n. 28 Attuazione della direttiva 2009/28/CE sulla promozione dell'uso dell'energia da fonti rinnovabili, recante modifica e successiva abrogazione delle direttive 2001/77/CE e 2003/30/CE.
- DECRETO LEGISLATIVO 3 luglio 2017, n. 117 Codice del Terzo settore, a norma dell'articolo 1, comma 2, lettera b), della legge 6 giugno 2016, n. 106.