



How to mainstream energy citizenship at the national level

*Focus on improving legal frameworks
(and public understanding thereof)*

The concept of Energy Citizenship concerns rights and responsibilities for each citizen and is considered an important step towards energy transitions in a wider European energy policy context. As the third in a series of policy briefs for the EC² project, this brief attempts to provide an overview of shortcomings at the national level. It explores in further detail the kinds of actionable recommendations that can be made at this level to facilitate and accelerate a just and sustainable energy transition.





The insights contained herein are based on the transdisciplinary research results of citizen engagement conducted as part of the EC² project.

Our approach incorporates economic, legal and psychological elements and perspectives (with policy brief #3 focusing primarily on legal recommendations). These scientific insights capture and synthesise the knowledge co-created with citizens, energy communities, and municipalities in Spain, Poland, Italy and the Netherlands.¹



KEY CONCLUSIONS

1. Informing citizens about the legal situation and the process of establishing an Energy Community through **easily accessible, understandable, and reliable information, accompanied by an unambiguous and transparent legal framework**, is crucial.
2. Specific legislative measures should be undertaken to reduce the complexity and opacity of the legal situation in Member States; it is important that legislators provide **model statutes and legal forms** that are specifically designed for energy communities.
3. **Consent of a landlord or every co-owner should not be required** for the installation of a generation plant on a building in which the person lives, or for participation in an energy community.
4. There should be **more flexibility in ownership of generation plants**; it should be possible for an energy community to operate more than one generation plant, or for more than one energy community to operate a single plant.

¹ D3.3 Catalogue of potential legal and economic barriers or facilitators of energy citizenship. Available [here](#).

Introduction

This policy brief argues that streamlining complex and/or unclear aspects of the EU directives RED II² and IMED³ will facilitate citizen engagement in the energy and electricity market. This should be achieved at both EU and Member State level. While Regulations are directly applicable in Member States, Member States still need to transpose Directives into national law through legislative changes, as part of the transposition process.

The previous (second) EC² policy brief focused on strengthening energy citizenship by empowering energy citizenship and energy communities, through legal and economic recommendations at the *EU level*. For this purpose, it addressed the challenges and recommendations to bridge the gap between the authorities and the market actors that govern the energy systems, in order to facilitate citizens' participation in the market.

Yet the transposition of the EU framework into national law allows for significant *national* flexibility and certain national provisions on citizen- and renewable energy communities. It also encourages citizens to actively engage in the energy market, contributing to an increase in decentralised production and consumption of renewable energy. As part of the transposition process, it is necessary to make changes not only to energy law in the narrow sense, but also to other, broader, laws to effectively transpose the energy communities in national law. The national legislative measures required in the course of the implementation process concern in particular, but not only, housing law and planning law.



With this background, this policy brief aims at mainstreaming energy citizenship by addressing the challenges and actionable recommendations *at the national level*. Since the implementation of the EU Directives is most advanced in Austria, Austria has been taken as a case study in order to demonstrate various best practice actions and recommendations.

² Directive (EU) 2018/2001 of the European Parliament and the Council of 11 December 2018 on the use of energy from renewable sources, OJ 21. 12. 2018 L 328/82.

³ Directive (EU) 2019/944 of the European Parliament and the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU, OJ 14.6.2019, L 158/125.



CHALLENGES TO ADDRESS



» Structure of legal framework

➔ Lack of implementation of the EU directives

The Internal Electricity Market Directive (IMED) and the Renewable Energy Directive (RED II) have not been implemented in all Member States studied. Therefore, citizens may not be able to take advantage of the possibilities that energy communities offer. In other cases, incomplete implementation can also result in legal ambiguity.

➔ Unspecified legal form for energy community

Failure to commit to a specific legal form for Renewable Energy Communities (RECs) or citizen energy communities (CECs) can be a barrier for people who want to set up an energy community. The definitions of RECs and CECs in RED II and IMED, respectively, are very similar and do not specify a legal form, so the choice of which legal form is based on open and voluntary participation. This can be complex, costly, and time-consuming for those wishing to start an energy community. Since most people are not familiar with the law and the legal forms and costs involved in establishing an energy community, they will need expensive legal advice. This may ultimately discourage them from establishing new energy communities.

» Complexity of the legal framework and access to information for citizens

➔ Complexity of legal framework

Due to the existence of federal and decentralised states with *regional* legislative competencies, energy communities may be subject to regulation by different levels of government. This can result in varying legal situations depending on the region one lives in, owing to differences in spatial planning rules and other regulations related to energy communities. Considering the inherent complexity of setting up an energy community, differing regional rules can make it even more difficult for citizens to become active (even though these rules may be more context-sensitive).

➔ Different rules on collective self-consumption and energy communities

Collective self-consumption⁴ might be regulated differently from energy communities.⁵ For citizens wanting to engage collectively, it can seem complicated to find out whether they should be organised under the umbrella of collective self-consumption, as active customers acting together, or as an energy community (REC or CEC).

⁴ For a definition of collective self-consumption, refer, e.g., to the meaning of "jointly acting renewables self-consumers" in Art 2 para 15 of RED II and to DECIDE project's Energy Community Monitor, page 3. Available [here](#) (although the EC² project did not rely on this definition).

⁵ See Art 2 para 11, Art 15 para 3 and Art 16 IMED and Art 2 para 15 and 16, Art 21 and Art 22 RED II; a major difference is that collective self-consumption does not require a legal entity and the members are located in the same building or multi-apartment block, where as energy communities do require a legal entity and the membership is not limited to persons that are located in the same building or multi-apartment block.





Obtaining information on energy communities

Currently people interested in setting up an energy community need to obtain information about the various aspects (permitting, generation plant installation, community establishment, legal issues, etc.) from various sources. Obtaining this information is often time-consuming and (in the case of legal advice) also costly. Too little information can be a problem, while an overabundance of information can overwhelm consumers. This barrier hinders citizens from establishing an energy community at both the EU level⁶ as well as the national level.



Providing information on (timely) grid access

The realisation of an energy community requires information on grid access. Energy communities rely on the public grid⁷ for connection. If the grid operator fails to provide information or timely access, the establishment of an energy community can be protracted and slowed down. In some Member States this delay might be because the grid is not ready for the connection of so many small producers.



Disproportionate rights for landlords or apartment owners



Challenging consent requirements under property law

In some Member states, like Austria and Germany, tenants who want to install a generation plant on the rented property often need the landlord's consent. This is likely to deter tenants from installing one, and makes energy communities as a whole less attractive. The landlord may also refuse the installation simply due to a lack of interest (no justifiable reason being required).

⁶ See EC² Policy Brief #2 How to mainstream energy citizenship in EU laws & tools: Adapting EU regulations to best guide and support member states in furthering energy communities & energy citizenship. Available [here](#).

⁷ In Austria, see § 16c (2) ElWOG 2010 and § 16d (6) ElWOG 2010.

⁸ E.g. Austria, Germany, Spain, and the Netherlands.

Moreover, the consent of all other co-owners is often required⁸ if a condominium owner wants to install such a facility on or in the leased property. This can be time-consuming, especially in large properties, and particularly difficult or impossible if co-owners no longer live in the property.

In addition, residents in these Member States are faced with the issue that the generation plant (as a movable item) legally passes to the building owner. There are no or only case-specific regulations regarding the ownership of the generation plant, which leads to great legal uncertainty. No regulations have been passed at European level to solve this problem.



Various administrative procedures and rules to set up an energy community and spatial planning law



Different legal administrative steps to set up an energy community

Citizens who want to form a citizen energy community might have to undergo legal proceedings for creating their preferred legal form. They may also require administrative proceedings regarding the plants or installations they want to use as an energy community. Even if no administrative steps are necessary for the legal form, different administrative steps might be necessary for the establishment of a plant.



Specific laws and rules governing the construction of a plant

Spatial planning or construction laws and other administrative regulations contain rules, for example, regarding where generation plants can be built. These can significantly impede the construction of new plants.





RECOMMENDATIONS FOR CHANGES AT THE NATIONAL LEVEL:



"Providing a specific legal form for the energy community"/"Creation of model statutes as legal form for energy community"

For energy communities, a new legal form could be created by official bodies, which is easily accessible for (potential) founders of energy communities. Additionally, *model* forms could be provided (both for this legal form and for pre-existing ones).



In Austria, for example, it is possible to establish an energy community in the form of an association.⁹ This is a very low-threshold model - simple and inexpensive to set up and very easy to join or leave. Moreover, members can determine the organisational matters themselves and their personal liability is also limited. Associations are thus chosen by many energy community founders as the legal form.



"Facilitating rules on collective self-consumption and energy communities"

According to the new Dutch Energy Act the legal consequences depend on the capacity of the plants and not on the legal form. These consequences apply regardless of whether a certain plant is used for self-consumption, collective-self consumption or exchange of energy within an energy community.

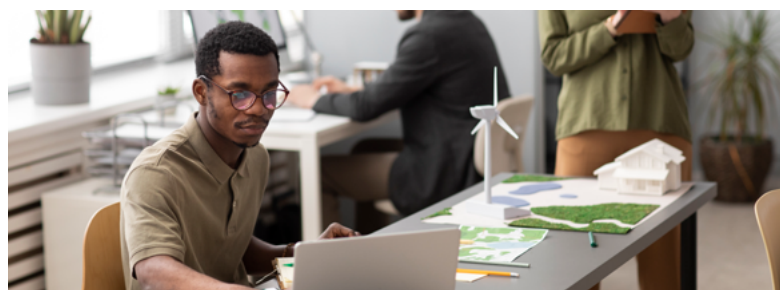
It is imperative that other member states take inspiration and implement similar systems¹⁰ at the national level, to facilitate the collective engagement of citizens.



"Providing information to citizens on the legal situation, including at sub-national level"

Lawmakers in decentralised, regionalised and federal states should consider that the legal framework can be especially confusing for citizens. Therefore, providing information in easy and accessible language on a joint webpage could help to at least achieve a higher degree of legal certainty. This could, for instance, provide explanation of how competencies are distributed between the different levels of government, as well as providing links directing to the homepages of the competent regional and local authorities competent.

Ideally this should be done at national level, based on regulations providing guidance at the EU level.¹¹



⁹ See [this example from Austria](#), in the form of an association people can find out which forms are suitable for which model, from small energy communities between private individuals to large energy communities with businesses and municipalities.

¹⁰ Energiewet Draft, available [here](#).

¹¹ See EC² Policy Brief #2 How to mainstream energy citizenship in EU laws & tools: Adapting EU regulations to best guide and support member states in furthering energy communities & energy citizenship. Available [here](#).



"Providing exemptions regarding the consent of the landlord or other condominium owners to the installation of a power generation system"

At the national level, a photovoltaic or similar renewable energy generation system could be installed on or at the condominium property without the landlord's consent requirement or only with a requirement of the consent of more than *half* of the other co-owners.

In Austria, for example, the law lists some cases in which the landlord *cannot* refuse consent, including if the change is considered a standard practice (i.e. regularly carried out in comparable rental properties), and serves an important interest of the tenant (such as reducing energy consumption). Consent is also deemed to have been given if the landlord does not oppose the proposed change within two months of the tenant's notification thereof.

In addition, in cases where consent is required, the property management should nonetheless be obliged to provide the current addresses of the co-owners, in cases where a condominium owner needs them in order to make changes.

Finally consent of co-owners may be needed for the installation of photovoltaic systems on the condominium building. In such cases, following the example of Austria, there should be the possibility to replace such consent with a court order. Such legal proceedings are costly, but could still provide an effective last resort.



"Setting legal rules to facilitate grid access"

Legal rules should be in place to ensure transparent and affordable grid access, as well as easy and understandable access to grid information at national level. These legal rules should not only force grid operators to make access to the grid as easy as possible, but also set clear time limits for responding to requests for grid access.

Ideally, such legal rules at national level should be based on regulations providing guidance at the EU level.¹²



"Further developing grids"

Governments should take steps towards strengthening the further development of the grid infrastructure (e.g. smart grids, decentralised grid system).

It is critical for the development of energy communities that the energy system is more flexible and prepared to receive energy from many sources.

¹² Ibid.





"Allowing for treatment of generation plants as separate, moveable objects, even where affixed to multi-party houses"

Regulations should be enacted at European level, otherwise at national level for each Member State, to prevent ownership of the *generation plant* from being transferred to the building owner in multi-apartment buildings, while still allowing for the possibility of transferring ownership of the *movable object* to the building owner.

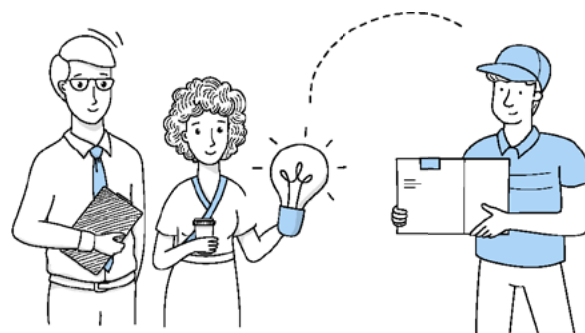
In Austria, for example, the photovoltaic plant is in many cases considered as an independent component of the building, in which case a separate ownership of the plant is possible.¹³



"Allowing for generation facilities to be owned by a third party"

Regulations should be provided at national level to allow for the possibility of a generation facility being owned by a third party, despite the energy community continuing to exercise the power of operation and disposal over it.¹⁴

Ideally, such national regulations should be based on regulations providing guidance at the EU level,¹⁶ since they guarantee a certain degree of uniformity within the EU.



In Austria, for example, it is possible for the generation plant to be owned by a third party as long as the energy community has the actual power of operation and disposal over the plant. The operation and maintenance can also be taken over by third parties, provided that the energy community retains the power of operation and disposal.¹⁵



"Participation of several energy communities in one generation plant"

Regulations should be provided at national level to allow for the possibility of several energy communities to participate in the same generation plant. This would also lead to increased legal certainty.



Ideally, such national regulations should be based on regulations providing guidance at the EU level.¹⁷

¹³ In other words, if the plant is an independent component of the building (as a movable object - actually and economically separated from the building), separate ownership of the plant should be possible and the building owner should not automatically become the owner of the plant.

¹⁴ In other words, a third party can make the generation facility available to the energy community and take over its operation and maintenance as long as the energy community exercises effective control and disposal over it.

¹⁵ Explanatory remarks to the government bill of the Renewable Energy Expansion Act Package (ErIRV 733 BlgNR 27. GP 19).

¹⁶ See EC² Policy Brief #2 How to mainstream energy citizenship in EU laws & tools: Adapting EU regulations to best guide and support member states in furthering energy communities & energy citizenship. Available [here](#).

¹⁷ Ibid



"Integrate several generation plants into one energy community"

Regulations should be provided at national level to allow for the possibility of bringing several generation plants into one energy community. This would also lead to increased legal certainty. Moreover, to compensate for the seasonal and time-of-day fluctuations, it can make sense to combine several generation plants with each other.

This will also help take into account the fact that participants in an energy community have different levels of energy consumption depending on the time of day.

The ideal should be for such national regulations to be based on regulations providing guidance at the EU level.¹⁸



"Establishing a one-stop shop for energy communities or an official information point for setting up an energy community"

This would require installing a one-stop shop (including at least all administrative issues) for energy communities, as well as providing an official point of information that guides people through the process of setting up an energy community.



A free state-funded universal assistant for energy communities and a checklist should be made available to all citizens. This should focus on aspects like the necessary steps to take, differing options in each step, and the various positive and negative aspects of each option.

This should ideally be done at national level, based on regulations providing guidance at the EU level.¹⁹



"Providing exemptions in the laws on the construction of a plant"

At national level, the law can stipulate certain rules or exemptions for the construction of power plants, for instance, in the case of small plants. Moreover, power plants can even be foreseen in the construction of certain new buildings.

For example, the *Bauordnung für Wien*, which stipulates (for certain buildings) a duty to put solar panels on new buildings.²⁰

¹⁸ See EC² Policy Brief #2 How to mainstream energy citizenship in EU laws & tools: Adapting EU regulations to best guide and support member states in furthering energy communities & energy citizenship. Available [here](#).

¹⁹ Ibid

²⁰ *Bauordnung für Wien*, § 118 para 3b and 3c, available [here](#).



This is the third in a series of Policy Briefs aimed at exploring the concept of Energy Citizenship and its requirements. The series shares key insights on how the concept can be used as an effective tool for accelerating the renewable energy transition, together with citizens. The EC² project aims to support policy and decision makers through a series of actionable recommendations, targeted primarily at policy makers - from the European through to the local level.



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