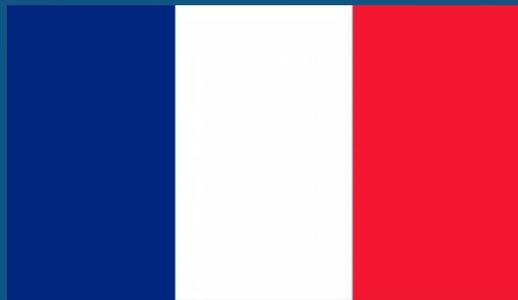


ENERGY COMMUNITIES REPOSITORY

France



OVERVIEW OF THE POLICY FRAMEWORK

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DISCLAIMER

The content of this document aims to establish an overview of the national legal developments in the context of the Clean Energy Package for the Member State mentioned above. **The document includes only final legislation which was published before the end of March 2023. It does not include provisions that are not yet applicable under law (i.e., currently drafted or discussed).**

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Overview

With the entry into force in France of the Ordinance n° 2021-236 of 3 March 2021, Renewable Energy Communities (RECs) and Citizen Energy Communities (CECs) benefit from a legislative framework in the Energy Code, including definitions, rights and obligations, enabling frameworks as well as support schemes. The definitions and rules on access to support schemes were modified by the law n° 2023-175 of 10 March 2023 related to the acceleration of the production of renewable energies. An implementing decree is expected to be published on the energy communities' provisions.

France's policy intervention in favour of local and citizen initiatives started before the discussion and implementation of the Clean Energy Package, around participative projects, collective self-consumption and crowdfunding in renewable energy projects. According to the Energy Communities Repository, the policy framework combines this former approach of participative projects and energy communities, resulting in a somehow complex framework.

The national network of local and citizen energy projects is small but rapidly growing.

1. Definitions

Two definitions exist, with associated rights and obligations. Some provisions are applied indistinctly to both RECs and CECs, grouped under the concept of energy communities (ECs). Moreover, some regulatory clauses are applied to so-called citizen energy projects based on governance models with local control by citizens and local authorities.

1.1. Renewable Energy Community

A REC is defined as a legal entity based on open and voluntary participation.¹ The legal entity must be autonomous in the sense of Article 3 of Annex 1 to the European Commission recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (2003/361/EC). According to

¹ Article L. 291.1 of the Energy Code



Article 3, an 'autonomous enterprise' is any enterprise which is not classified as a linked enterprise² or partner enterprise.³

A REC's objective is to provide environmental, economic or social benefits to its shareholders or members or to the local areas where it operates, rather than to generate financial profits.

The following categories of actors can be members of a REC:

- natural persons;
- local authorities and their groupings (joint vehicles);
- joint stock companies with public and private capital (mixed economy companies);⁴
- small and medium-sized enterprises (SMEs), as defined in Paragraph 8 of Article 2 of Directive (EU) 2018/2001 on the use of renewable energy, that are autonomous;
- funds recognised as social entrepreneurship initiatives specialised in capital investments in renewable energy projects;
- companies whose purpose is the development of renewable energies, benefiting from the license "solidary enterprise of social utility" and abiding by the aforementioned definition of SMEs; and
- associations whose members can be individuals, SMEs, local authorities and their groupings, as well as mixed economy companies.

When an SME member of a REC wishes to sell its shares, it informs the local authority or group of local authorities with the highest participation so this member can exercise a right to buy over the shares within two months of this notification. In the absence of pre-emption, the company can freely sell its shares.

² Enterprises are 'linked enterprise' if:

- an enterprise has a majority of the shareholders' or members' voting rights in another enterprise;
- an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
- an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract or to a provision in its memorandum or articles of association;
- an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

³ 'Partner enterprises' are all enterprises which are not classified as linked enterprises within the meaning of paragraph 3 and between which there is the following relationship: an enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of paragraph 3, 25 % or more of the capital or voting rights of another enterprise (downstream enterprise).

An enterprise may be considered as autonomous, and thus as not having any partner enterprises, even if this 25 % threshold is reached or exceeded by a certain categories of investors (namely 'business angels', provided the total investment of those business angels in the same enterprise is less than EUR 1 250 000; universities or non-profit research centres; institutional investors, including regional development funds; autonomous local authorities with an annual budget of less than EUR 10 million and fewer than 5 000 inhabitants), provided that those investors are not linked, either individually or jointly to the enterprise in question.

⁴ *Société d'économie mixte* (SEM)



A REC should be effectively controlled by shareholders or members located close to the renewable energy projects to which it has subscribed and which it has developed.

The following rules apply to both RECs and CECs, as defined in section 1.2 below.

When a private company participates in a REC or a CEC, this participation cannot constitute its main commercial or professional activity. Participation of associations in RECs and CECs is to be further specified by decree.⁵

Unless the legal entity is composed of at least 20 natural persons, it must include at least two different categories of "members" for RECs or of "members eligible to control the community" in the case of CECs. The list of members must include all those who benefit from the environmental, economic or social advantages that the REC or the CEC provides, free of charge or against payment.

One category of members (only once fulfilling the proximity conditions for the case of RECs, still to be detailed by decree) is presumed to exercise effective control when it owns, directly or indirectly, a fraction of the voting rights higher than 40%, and that no other category directly or indirectly holds a fraction more significant than the one of that first category of members. Individuals constitute a category when there are 20 of them (i.e. 20 citizens or more).

A REC or a CEC can take the form of:

- a limited company;
- a simplified joint-stock company;
- a cooperative of collective interest;⁶ or
- an association.

The statutes of the REC or the CEC determine the community's membership and governance conditions. The statutes of the legal entity must also guarantee that the participation of the different categories respects these ceilings mentioned above for the lifetime of the community.⁷

1.2. Citizen Energy Community

A CEC is defined as a legal entity based on open and voluntary participation of any type of members or shareholders.⁸ Similarly to a REC, the CEC must be autonomous in the sense of the European Commission recommendation 2003/361/EC. Also, a CEC provides environmental, economic or social benefits to its members, shareholders or the local areas where it carries out its activities rather than to generate financial profits.

⁵ Articles L. 291-1 and L. 292-2 of the Energy Code

⁶ *Société coopérative d'intérêt collectif* (SCIC)

⁷ Articles L. 291-3 and L. 292-4 of the Energy Code

⁸ Article L. 292.1 of the Energy Code



In a CEC, effective control can only be exercised by the categories of members who are:

- natural persons;
- local authorities and their groupings (joint vehicles);
- joint stock companies with public and private capital (mixed economy companies);
- small enterprises as defined in paragraph 11 of Article 2 of Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 concerning common rules for the internal market in electricity, to the extent they are autonomous;
- funds that are recognised as social entrepreneurship initiatives specialised in capital investments in renewable energy projects;
- companies whose purpose is the development of renewable energies, benefiting from the license "solidary enterprise of social utility" and abiding by the definition of small enterprises; and
- associations whose members can be individuals, small enterprises, local authorities and their groupings, and mixed economy companies.

1.3. Other categories related to local authorities

In addition to RECs, CECs and ECs as a concept that encompasses RECs and CECs, some regulations related to support schemes identify other categories that benefit from a similar regulatory scheme:

- if the producer is a local authority or a grouping of local authorities; or
- if the producer is a private company, a cooperative or joint stock company with public and private capital created by local authorities, of which at least 51% of the voting rights and 51% of the equity and quasi-equity are held, separately or jointly, by at least 50 natural persons or, directly or indirectly, by one or more local authorities, by one or more groupings of authorities, or by a REC.

2. Rights and obligations

2.1. Renewable Energy Community

A REC can produce, consume, store and sell renewable energy, including through renewable Power Purchase Agreements (PPAs). RECs can access all relevant energy markets, either directly or by aggregation, in a non-discriminatory manner.⁹

RECs engaging in energy sharing must maintain the rights and obligations of the REC members as customers.¹⁰

⁹ Article L.291.2 of the Energy Code

¹⁰ *ibid*



Energy sharing is allowed, provided that the rights and obligations of final consumers are maintained. In addition, for the sharing of electricity, the scope of this activity falls within the scope of individual and collective self-consumption (CSC), and relevant provisions¹¹ must apply.

Collective self-consumption (CSC) in France:

In France, CSC is the supply of electricity between one or more producers and one or more final consumers bound together within a legal entity whereby input and output metering points are located within the same building or multi-apartment block. The default geographical scope of CSC is the building level connected to the low or medium voltage distribution grid. A CSC operation can be extended to a perimeter of 2 km between the two furthest consumption or production points, if the cumulative capacity of the production installations does not exceed 3 MW, and if all the connection points are connected to the low voltage distribution grid. By exemption and upon approval by the ministry that must take into consideration in particular the isolation of the project site, the dispersed nature of its habitat and its low population density, the geographical scope can exceptionally be extended to 20 km.

The legal entity organising a CSC operation informs the DSO of how the self-produced electricity has been shared among the members (static and dynamic sharing key is possible). The DSO establishes for each consumer the share of self-consumed and supplied electricity to be billed by the "residual" supplier chosen by the member.¹² The electricity of the CSC operation transits through the public distribution grid, connecting the consumers and producers. No licensing is required but the CSC operation needs to be registered by the DSO: the legal entity, the producer and the consumers are contracting with the DSO. The DSO connects the users to the grid, and ensure they have a smart meter.

The residual supplier collects the grid tariffs also for the shared electricity, while the other taxes are collected by the entity billing the shared energy, usually the energy producer. The shared energy can be priced: in this case, the VAT is due. It can also be passed on without a price. The netting period is the same as the balancing period in France: 30 minutes until January 2025, then 15 minutes.

In a CSC scheme, the REC (or CEC) can be the legal entity in charge of organising this operation. The legal entity organising a CSC operation informs the DSO of how the self-produced electricity has been shared among the members. This way, the DSO establishes for each consumer the share of self-consumed and supplied electricity to be billed by the "surplus" supplier.¹³

2.2 Citizen Energy Community

A CEC can engage in production, including from renewable energy sources, supply, aggregation, storage, sale of electricity. It can also provide different energy services to its members, including but not limited to

¹¹ Articles L.315-1 to L.315-8 of the Energy Code

¹² Article L. 315.4 of the Energy Code

¹³ Article L. 315.4 of the Energy Code



energy efficiency and charging of electric vehicles. CECs can access all relevant electricity markets, either directly or by aggregation, in a non-discriminatory manner.¹⁴

CECs engaging in electricity sharing must maintain the rights and obligations of the CEC members as customers.¹⁵

A CEC is financially responsible for the imbalances it causes in the electricity system. They can manage their balancing obligations directly or delegate them to a third party in accordance with Article 5 of Regulation (EU) 2019/943.¹⁶

Electricity sharing is allowed, provided that the rights and obligations of final consumers are maintained. In this activity, RECs and CECs operate under the same rules, although a CEC is restricted to electricity sharing only (see section above).¹⁷

3. Assessment of obstacles and potential and removal of unjustified barriers

The Ministry has established a working group with relevant stakeholders (e.g., public entities, professional associations, banks) to assess obstacles, potential and removal of unjustified barriers. The first roadmap was presented in November 2021 (see section 5 on access to financing and support). According to the Ministry, the working group will continue meeting to process other needs for legislative and regulatory adaptations.

4. Enabling framework for energy communities

A common enabling framework for both RECs and CECs has been outlined in the law and will be applicable to both types of initiatives defined as Energy Communities (ECs). The decree to implement the law has not yet been published.

The distribution system operators (DSOs) for electricity, gas and district heating must cooperate with ECs for energy sharing.¹⁸ The decree will specify in which situations the EC has to pay a fee for this cooperation and under which conditions the fee is established.

¹⁴ Article L. 292.2 of the Energy Code

¹⁵ *ibid*

¹⁶ Article L. 292.3 of the Energy Code

¹⁷ Article L. 292.2 of the Energy Code

¹⁸ Article L. 293.2 of the Energy Code



In addition, ECs have to declare their installations to the electricity, gas, heating and cooling DSOs prior to their commissioning and use of the grid.¹⁹

To the extent that energy sharing is considered as CSC (see text box in section 2.1), the regulator establishes specific network tariffs for consumers participating in self-consumption operations so that those consumers do not pay for access fees that do not reflect the costs of the DSOs.²⁰

ECs benefit from a proportionate and non-discriminatory treatment for their rights, activities and obligations as final consumers, producers, suppliers and market operators.²¹

Furthermore, ECs are not allowed to own or manage a gas or electricity distribution network. They can establish, manage and own a district heating or cooling network, provided that they notify their will to the competent local authority of the territory where it is established.²²

In addition, ECs have a priority right to buy back their own guarantees of origin for biogas and electricity before or after they have been put on auctions.²³

5. Access to financing and support for energy communities

The feed-in premium for installations producing electricity from renewable energy sources has to be established in a way it takes into account the production costs, the revenues, the national objectives but also the cases in which RECs or CECs owns the installations, should this notified state aid be approved by the European Commission.²⁴

ECs are not exempted from tendering but could benefit from provisions that are meant for all energy initiatives engaging local communities and authorities. For instance, besides the predominant and compulsory price criterion, and other non-compulsory economical, technical, environmental, geographical and energy security criteria, one selection criterion²⁵ to assess the bids in the tenders can be the share of the capital of the legal entity developing the project owned by or offered to:

- inhabitants in the geographical proximity of the project;
- local authorities in the geographical proximity of the project;
- joint stock companies with public and private capital; or
- cooperatives.

¹⁹ Article L. 293.1 of the Energy Code

²⁰ Article L. 315.3 of the Energy Code

²¹ Article L. 293.3 of the Energy Code

²² Article L. 293.2 of the Energy Code

²³ Article L. 314.14 of the Energy Code

²⁴ Article L. 314.20 of the Energy Code

²⁵ Article L. 311-10-1 of the Energy Code



The French Ministry for Ecological Transition states its support for projects with strong involvement of local authorities and citizens in their governance on its website in the following ways:²⁶

- Although price is the primary criterion for selection projects in tendering procedures for renewable energy production, 2 to 5 points are awarded to projects involving local authorities and citizens. The more local actors and citizens are involved, the higher the bonus;
- Wind energy projects of less than six turbines and less than 3 MW per turbine controlled by natural persons or local authorities are exempted from tenders and can benefit directly from a feed-in premium without any tendering procedure;²⁷
- Cooling and heating networks, generally initiated by local authorities, are supported by a Heating Fund managed by the national environmental agency ADEME;
- Groups of farmers carrying out biogas projects can also benefit from financial support for their preliminary studies and for carrying out the project;
- The fund EnerciT finances projects in their risky developing phases; and
- The ADEME finances a network of energy governance advisors in the regions to support citizen projects and ECs.

In November 2021, the Ministry presented a roadmap for citizen renewable energy following the establishment of a working group with stakeholders on the topic. The roadmap outlines ten measures:

1. A national objective of 1.000 initiatives of citizen renewable energy initiatives including but not limited to RECs and CECs, by 2028;
2. The inclusion of a roadmap that will account for the development of ECs in the next national pluriannual energy programme²⁸;
3. The decree that will detail the characteristics and conditions under which ECs are constituted;
4. Adaptation and monitoring of the national support schemes for citizen renewable energy (see above tendering criteria and exemption from tendering for wind power). The Ministry will also clarify how regional and national support schemes can be articulated while avoiding double funding;
5. An increase of 50% in the number of energy governance advisors in the administrative regions;
6. The launch of a national campaign to promote the engagement in favour of citizen energy that will also equip local elected representatives to disseminate information;
7. The development of an observatory for renewable energy projects with local and citizen governance and an impact assessment on local support and appropriation for renewable energy;
8. The creation of a specific working group with financial stakeholders to identify and remove financial barriers for projects with local governance;
9. A lower fee for grid access connection for all installations under a certain capacity (500kW), in a way that the grid tariff covers up to 60% of the connection fee; and
10. The continuation of the working group on citizen renewable energy to discuss new possible legal and regulatory changes to support local engagement in renewable energy (e.g., heating, renewable gas, biomethane, local authorities' participation in projects and capacity to intervene in other geographical areas than their territories, energy communities).

²⁶ <https://www.ecologie.gouv.fr/energies-renouvelables-citoyennes>

²⁷ Article D.314-23 of the Energy Code

²⁸ Programmation pluriannuelle de l'énergie (PPE)



6. Other provisions on energy communities

The pluriannual energy programme will include a chapter²⁹ on the balanced development of the grid, storage, energy transformation and demand-response. This chapter aims to support local energy production, smart grids and self-consumption.

France also set up a specific framework on public offerings for the financing of renewable energy production projects by citizens and local authorities.³⁰ Under this framework, private companies and cooperatives created to own and operate one or more renewable energy units can raise capital from:

- Natural persons, in particular those living in proximity of the production units;
- Local authorities of the territory where it operates; and
- RECs.

This fundraising can be done directly by the developer or through a variety of funds, namely social funds specialised in renewable energy production and benefitting from a public license "solidary enterprise of social utility", participative investment advisors, crowdfunding counsellors and investment service providers.

Local authorities can also invest capital in private companies and cooperatives with a vote of their council, provided that they abide by the general rules on the participation of local authorities in the private sector.

²⁹ Article L.141.2 of the Energy Code

³⁰ Article L. 294-1 of the Energy Code



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