Response from Dutch energy communities to call for evidence on the evaluation of the Public Procurement Directives

European Commission
DG GROW C.2

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Subject: Internet Consultation on the Public Procurement Directives (Directive 2014/23/EU, Directive 2014/24/EU & Directive 2014/25/EU)
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Introduction

Energie Samen is the national federation for energy cooperatives in the Netherlands, committed to a fair energy transition in which energy communities play a central role. Drawing from the experience of our members in renewable energy projects and our experience with projects focused on the development of energy communities, we would like to share our insights on the Public Procurement Directives in response to the call for evaluation by the European commission.

Exempt energy communities from state aid and procurement rules in local contexts

Energy communities have been introduced with the IEMD and the RED II[1] from the Clean Energy Package (CEP), which have been in effect since 2021. With the definition of the energy community in the IEMD and RED II, the Commission clearly distinguishes between the community and the competitive enterprise. Moreover, with the local characteristic of the renewable energy community (RED II) the community is even further set apart from a competitive enterprise in the European market.

With this, the European legislator has embarked on a path to recognize the community as a legal entity. The community is clearly set apart from competitive enterprises and governments. This will have to translate amongst other things, into changes in procurement law. Energy communities should be exempt from the procurement framework in local contexts.

Member states are currently transposing these directives to national legislation, creating national definitions of energy communities in national energy laws. At the same time, energy communities are running into difficult situations on the local level while collaborating with municipalities: questions arise as to the status of energy communities in procurement and state aid law.

IEMD and RED II grant rights to energy communities; these primarily concern opportunities for energy sharing and exceptions to the ban on illegal state aid. Secondly, these rights address mitigating the disadvantages of energy communities in the market, particularly concerning procurement.

Especially the local characteristic of the renewable energy community, has implications for the state aid and procurement regulations between municipalities and energy

[1] Internal Electricity Market Directive (EU) 2019/944 (IEMD); Renewable Energy Directive (EU) 2018/2001 (RED II)

communities. With this current evaluation, we therefor ask the commission to define the status of this new legal entity and clearly specify the exemptions of the energy community within state aid and procurement regulations.

Conclusion

The commission needs to continue along the path set by the Clean Energy Package (CEP) with the evaluation of the procurement directives. Especially in the context of the Clean Industrial Deal, and the growing need for energy and economic security, EU public procurement framework needs to be revised to align with the EU's climate and energy objectives, and to allow local authorities to engage its citizens in the economic life of the local community. This will allow us to use the energy transition as an opportunity to strengthen resilience.

Specific procedures with regards to state aid and procurement in the relation between municipalities and their local energy communities should be allowed and specified with the revision of procurement directives.

Additionally: guidance should be provided to assist local, regional and nation governments as well as energy communities to understand the possibilities and help implement them. Collaboration between national governments and national federations of energy communities should be stimulated to enable this.

We hope that these recommendations will be taken into account in the further evaluation of the procurement guidelines and we are open to further discuss them with you.

Energie Samen
Dutch federation of energy cooperatives (representing the 700+ energy cooperatives in the Netherlands)

Appendix: definition of the energy community in the IEMD and REDII

Article 2 paragraph 11 of IEMD defines "Citizen energy community" as a legal entity that:
a) is based on voluntary and open participation, and is effectively controlled by members or shareholders that are natural persons, local authorities, including municipalities, or small enterprises;
b) has for its primary purpose to provide environmental, economic or social community benefits to its members or shareholders or to the local areas where it operates rather than to generate financial profits;
c) and may engage in generation, including from renewable sources, distribution, supply, consumption, aggregation, energy storage, energy efficiency services or charging services for electric vehicles or provide other energy services to its members or shareholders.

Article 2 paragraph 16 of RED II defines "Renewable energy community" as a legal entity:
a) which, in accordance with the applicable national law, is based on open and voluntary participation, is autonomous, and is effectively controlled by shareholders or members that are located in the proximity of the renewable energy projects that are owned and developed by that legal entity;
b) the shareholders or members of which are natural persons, SMEs or local authorities, including municipalities;
c) the primary purpose of which is to provide environmental, economic or social community benefits for its shareholders or members or for the local areas where it operates, rather than financial profits.