



# Legal and Policy Recommendations in Response to the Green Paper on Energy Policy in Ireland Consultation

24 July 2014

---

## Introduction

Ireland is highly dependent on imported energy. As of 2012, 84.8% of Ireland's energy needs were met by imports.<sup>1</sup> In the same year only 7.2% of gross energy consumption was met from renewable sources, although this figure is slowly increasing.<sup>2</sup> The Green Paper states that "Ireland is now on a path towards [its] legally binding 2020 renewable energy targets."<sup>3</sup> These targets require that 16% of gross energy consumption comes from renewable sources by 2020. In order to effectively reach this target there is a need to recognise the role of community participation in the energy system.

'Community energy' – where citizens own and participate in the energy system – has a strong role to play in Ireland's pursuit of its climate and energy objectives. For citizens to participate in a transition to a sustainable energy future there is a need to raise awareness and create a wider consciousness about energy issues generally. If citizens continue to be treated as passive consumers, their desire and ability to be a part of the energy transition will be limited. In order build 'energy citizenship', there is a need to build capacity of citizens to engage in energy policymaking processes and to enable them to participate in operational aspects of a more democratic energy system.

### The purpose of this report on recommendations

This report is intended to supplement and support the submission of the "*Community Energy Policy Position Paper*",<sup>4</sup> which was the product of cooperation between a number of practitioners, consultants, researchers community workers and NGOs in Ireland that are working actively on community energy, energy efficiency, renewable energy policy and community engagement. It contains legal and policy recommendations for addressing barriers to community energy projects, for creating a more enabling environment for community energy and energy citizenship generally.

---

<sup>1</sup> Eurostat. Available at <http://epp.eurostat.ec.europa.eu/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tsdcc310&language=en>

<sup>2</sup> Eurostat. Available at [http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=t2020\\_31&plugin=1](http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=t2020_31&plugin=1)

<sup>3</sup> Department of Communications, Energy and Natural Resources (2014). *Green Paper on Energy Policy in Ireland*, p. 7.

<sup>4</sup> Friends of the Earth Ireland (2014). *Community Energy Policy Position Paper: A joint report by 18 groups on a new approach to renewable energy generation, distribution and energy efficiency*. Available at <http://www.foe.ie/documents/community-energy-policy-position-paper/>.

### What do we mean by 'community energy' and 'energy citizenship'?

The *Community Energy Position Paper* describes 'community energy' as a broad term that refers to citizen and local ownership and participation in renewable energy generation, distribution and energy efficiency.<sup>5</sup> Indeed, community ownership and participation can take a number of different organisational forms. It ranges from individual households to various forms of social enterprises and public ownership by municipalities.

Depending on the actors and what goals the project aims to promote, community energy can take on a number of different legal forms. In a new report, "*Community Power: Model legal frameworks for citizen-owned renewable energy*",<sup>6</sup> ClientEarth's research across four Member States shows that communities often come together to create a small or medium-size enterprise with a social or 'community' purpose. These socially-oriented enterprises often form as partnerships, co-operatives, community trusts or foundations, non-profit customer-owned enterprises, housing associations or municipal companies. Members/owners of these enterprises usually (but not exclusively) reside within the local area or region, and start with little or no expertise. This means that many community projects rely on the voluntary efforts of their members, with limited availability of professional assistance. Furthermore, they tend to situate projects within the local area. This is distinct from traditional renewable energy developers, which usually develop projects based on traditional corporate entities to realise profit opportunities.

On the other hand, 'energy citizenship' relates to the idea that through triggering wider consciousness among citizens and communities, they can contribute more broadly to the energy transition. It acknowledges that in the way our energy system is transforming, citizens now have an active role to play as 'prosumers' – that is producers and managers of energy – as opposed to simply passive consumers. This includes but also goes beyond micro-generation and participation in community power projects. It extends to participation in other operational aspects of the energy system, including operating distribution grids, engaging in green energy supply as a utility, and providing other energy services (e.g. through energy service companies, or ESCos). However, as a precondition for engaging in these roles energy citizenship recognises that individuals and communities need to be provided with the capacity to become knowledgeable participants and to exercise their rights to effectively participate in the political dimension of energy policy.

While community energy projects tend to be less resourced and experienced than professional developers, they still have enormous potential to contribute to developing local green economies. For instance, in Germany approximately half of installed renewable capacity can be considered under community ownership.<sup>7</sup> In Denmark, community ownership of wind turbines is higher than in any other country in the EU with 70-80% of wind turbines in the country under community ownership.<sup>8</sup> It is no wonder then that both Germany and Denmark are considered leaders in the EU for growth of renewable energy and having strong records of regulatory stability for investment.

It is with this understanding of community energy and energy citizenship that the following recommendations have been formulated.

---

<sup>5</sup> *Ibid.* at p. 6.

<sup>6</sup> See Roberts, J *et al* (2014). "What do we mean by 'community power'?" in *Community Power: Model legal frameworks for citizen-owned renewable energy*. (ClientEarth: London). Available at <http://www.clientearth.org/reports/community-power-report-250614.pdf>.

<sup>7</sup> Agentur für Erneuerbare Energien (AEE) (2013). *Renewable Energy in the Hands of the People*. Available at <http://www.unendlich-viel-energie.de/media-library/charts-and-data>.

<sup>8</sup> Kingsley, P (2012). "Windfarms: is Community Ownership the Way Ahead?" *The Guardian* (5 November 2012). Available at <http://www.theguardian.com/environment/2012/nov/05/windfarms-community-ownership>.

## 1. Prioritising grid access for community and micro-installations

In general, community energy projects experience a number of challenges in securing grid access including lack of capacity, high connection costs, and complicated connection procedures. These challenges tend to be exacerbated by the fact that community power projects are by definition 'local'. Therefore, they have limited options for where to connect, increasing the need for technical adaptations, particularly for bigger community power projects.

### 1.1 Ensuring non-discrimination of community energy projects in grid access procedures

EU law on maintaining a non-discriminatory approach does not prevent regulations that proportionately account for the unique disadvantages faced by community groups in accessing the grid. Under Directive 2009/72/EC (Third Internal Energy Market Directive on Electricity),<sup>9</sup> third-party access to transmission must be granted and managed "on a non-discriminatory basis between system users or classes of system users." Furthermore, distribution system operators (DSOs)

*"must not discriminate between system users or classes of system users. Access to the transmission and distribution systems ... has to be based on published tariffs, applicable to all eligible customers, including supply undertakings and applied objectively and without discrimination between system users."*<sup>10</sup>

Everyone who falls under the concept of 'system user' as defined in relevant directives has the right to non-discriminatory access to an energy system, under the principle of equality or non-discrimination.<sup>11</sup> It is within the general objectives of the national regulatory authority (NRA) in each Member State to ensure non-discriminatory systems. This however does not prevent different treatment where actors are in sufficiently different positions or situations. There is a test as to whether different treatment of an individual or group of users over another is warranted:

- 1) Are system users similar?
- 2) Are the system users in an analogous situation?
- 3) Can the difference in treatment be objectively justified?<sup>12</sup>

It has been suggested that the non-discrimination rule should not be applied too strictly, or else it could operate at odds with general principles of equality or non-discrimination.<sup>13</sup> NRAs are also tasked with "integration of large and small-scale production of electricity from renewable energy sources and distributed generation in both transmission and distribution networks."<sup>14</sup> NRAs also have the authority to require transmission system operators (TSOs) and DSOs to modify terms and conditions of access "to ensure that they are proportionate and applied in a non-discriminatory

---

<sup>9</sup> Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (Third Internal Energy Market Directive on Electricity), OJ 2009 L211 p 55, Article 17 (2)(c); Article 18(5); Article 23; and Article 32.

<sup>10</sup> Third Internal Energy Market Directive on Electricity, Article 25(2); Article 32.

<sup>11</sup> *VEMW and Others* (Case C-17/03) [2005], paras. 41-48; and *Citiworks AG* (Case C-439/06) [2006], para. 42. The European Commission has described 'non-discrimination' as follows: "Non-discriminatory access implies, for example, that neither size, the relationships between suppliers and network operators, nor portfolio considerations in the case of large system users should affect the tariffs and other conditions. This implies that tariff systems should not contain structural elements, such as distance related charges, which tend to discriminate, for example, against companies with a small portfolio." European Commission (2005). Technical Annex to the Report from the Commission to the Council and the European Parliament on Progress in Creating the Internal Gas and Electricity Market. COM(2005) 568 final, section 2.

<sup>12</sup> *Ghaidan v Godin-Mendoza* (2 AC 557) [2004]. See also Kruimer, HT (2011). "Non-Discriminatory Energy System Operation: What Does it Mean?" *Competition and Regulation in Network Industries*, Vol 12(3), pp. 260-286, at p. 273.

<sup>13</sup> See Kruimer, HT (2011), *supra* note 12, at p. 275.

<sup>14</sup> Third Internal Energy Market Directive on Electricity, Article 36(1)(d).

manner.”<sup>15</sup> Lastly, NRAs must facilitate access to networks for new generation capacity, in particular removing barriers that could prevent access for new market entrants of electricity from renewable energy sources.<sup>16</sup>

There is an argument that community energy projects are distinct enough to warrant proportionately different treatment, particularly with regard to grid access. First, its aims are different from a traditional commercial enterprise. This is reflected in the use of a socially-oriented ownership model for the project. Community projects often combine behavioural initiatives with efficiency measures, usually build on local knowledge and networks to develop projects as solutions to local contexts, and go beyond financial benefits.<sup>17</sup> For instance, many community projects have established funds where a portion of the profits go towards addressing specific community needs, such as addressing energy poverty or providing local social programmes.<sup>18</sup>

Second, as mentioned above community energy projects face distinct hardships that are not experienced by other actors in the sector. Community projects suffer from ‘postcode lottery’ syndrome, whereby they do not have an option of location due to their local nature, which often increases connection costs.<sup>19</sup> Research conducted by the University of East Anglia also shows that most community-scale projects rely on active members to volunteer time, and very few have a high number of active employees. In a survey, 68% of respondents reported no employees at all.<sup>20</sup> Furthermore, it was found that a significant number of projects often lack technical expertise, and require advice to fill gaps in skills and knowledge.<sup>21</sup>

From the above, it follows that community projects do not stand on an equal footing with other developers in terms of human or financial capacity to participate in the Group Processing Approach (GPA), which is the current framework for connecting renewable energy projects to the grid. Certain measures may be appropriate for mitigating these unique disadvantages so that community power projects are not discriminated against. Under the Electricity Regulation Act 1999 (ERA),<sup>22</sup> the grid operator is prohibited from discriminating “unfairly between any persons or classes of persons” when connecting renewable energy plants. Furthermore, the Commission on Energy Regulation (CER) has the authority to monitor:

*“the terms, conditions, and tariffs for connecting new producers of electricity of guarantee that these are objective, transparent and non-discriminatory taking full account of the costs and benefits of the various renewable energy sources technologies, distributed generation and combined heat and power.”<sup>23</sup>*

**Recommendation #1:** In line with its duties as a NRA, the CER should enact certain measures to ensure that community energy projects are not unfairly excluded from participating in renewable energy generation, particularly regarding grid access.

<sup>15</sup> Third Internal Energy Market Directive on Electricity, Article 37(10).

<sup>16</sup> Third Internal Energy Market Directive on Electricity, Article 36(e).

<sup>17</sup> Seyfang, G *et al* (2012). *Community Energy in the UK*, 3S Working Paper 2012-11, University of East Anglia School of Environmental Science, p. 5.

<sup>18</sup> See e.g. Brixton Energy in Roberts J *et al* (2014), *supra* note 6, at p. 20.

<sup>19</sup> Cornwall Energy (2013). *Overcoming grid connection issues for community energy projects*” research done for Co-operatives UK and the Co-operative Group, p. 8. Available at <http://www.cornwallenergy.com/Research/Our-experience/Community-energy>.

<sup>20</sup> Seyfang, G *et al* (2012), *supra* note 17, at p. 16.

<sup>21</sup> *Ibid.*

<sup>22</sup> Electricity Regulation Act 1999 (ERA), Section 34(8).

<sup>23</sup> ERA, Section 9(1)(d).

## 1.2 Expansion of criteria for connecting 'community' wind projects outside the GPA

In Ireland, micro-generation,<sup>24</sup> which includes wind, photovoltaic and combined heat and power (CHP), is exempt from the GPA process. Furthermore, 'small plants'<sup>25</sup> may be treated outside the GPA as long as their connection is within the public interest and the regulatory authority agrees to grant an exemption. Valid public interest considerations include:

- Diversity of Fuel Mix;
- Predictability and power system support;
- Environmental benefits; and
- Experimental/Research.

The CER has decided that several technology classes are presumed to exhibit public interest benefits, and are therefore preapproved for processing outside the GPA. This means that community projects related to solar, hydro and CHP, among others, with a MEC below 5MW, are eligible to be considered outside the GPA.

However, the threshold of only 0.5MW for wind limits grid connection outside the GPA to projects for self-consumption. Even if a relatively small community wind project wants to connect to the grid, it must apply under the same GPA process as a large commercially developed project. This framework limits community participation and fails to account for the inherent challenges that community projects experience or the potential local public interest benefits of such projects.

In its Decision Paper on "*Treatment of Small, Renewable and Low Carbon Generators outside the Group Processing Approach*", the CER stated that it could not consider socio-economic considerations in its decision-making processes because they are not covered in relevant legislation. However, community renewable projects present both socio-economic and environmental benefits above and beyond traditional generation methods. Community energy projects promote public support for renewable projects, produce financial and development benefits for communities, contribute to fuel poverty reduction, raise citizen awareness of climate and energy issues, and increase uptake in other measures such as energy efficiency.<sup>26</sup> Furthermore, because of their smaller size they generally have less of an impact on the surrounding landscape and environment.

**Recommendations #2:** Criteria for connecting projects outside the GPA for the Fourth Gate should be expanded to include 'community' wind farms with a MEC below 5MW, either through clearly and narrowly defined criteria of community or socio-economic benefits in relevant legislation, or through recognition of community wind as a class of renewable production that is presumed to exhibit public interest 'environmental' benefits under existing criteria.

## 1.3 Mitigating inherent disadvantage faced by community projects in obtaining grid access

The GPA process is long, complicated and uncertain. The European Wind Energy Association (EWEA) has documented the lead time and costs of grid access procedures to be a "key challenge in Ireland,"

<sup>24</sup> Micro-generation covers small scale generators where customers produce their own electricity and export the surplus onto ESB Networks LV System. This is subject to a rated maximum output of 6kW when the connection is single phase, and 11kW when the connection is three phase. See Electric Ireland, "Micro-generation Scheme", available at <https://www.electricireland.ie/ei/residential/price-plans/micro-generation-scheme.jsp>.

<sup>25</sup> Commission for Energy Regulation (CER) (2009). *Decision Paper on Treatment of Small, Renewable and Low Carbon Generators outside the Group Processing Approach* (CER/09/099). Wind projects with a maximum export capacity of less than 0.5 MW, and non-wind renewable projects with a maximum export capacity less than or equal to 5 MW.

<sup>26</sup> The Community Power Project (2013). *The Benefits of an Energy Revolution: Community Power*. Available at <http://www.communitypower.eu/en/publications.html>.

and “costs of the grid access, which represent 7.5% of the total project's costs, are higher than the EU average of 5.13%.”<sup>27</sup>

These costs impact community projects particularly hard. First, uncertain and long time frames add risk and expense to potential projects, decreasing the likelihood that community groups can access required finance to realise the project. Second, the lack of financial and human resources by community groups to participate in the GPA process place them at a disadvantage vis-à-vis larger professional developers, virtually excluding them from the process. In order to ensure ‘community’ projects that fall within the GPA are able to participate, they should be eligible for assistance within the GPA in order to balance out the inherent challenges they face.

As mentioned above, the GPA could be refined in order to provide equitable access for community projects accounting for the unique challenges they face, while maintaining a non-discriminatory approach that is compliant with both national and EU laws. Several options could help to alleviate burdens felt by community power. First, where planning permission has not been achieved by a developer, or where a connection offer has expired, interested ‘community’ projects within the region should be provided with a first option to connect. This would allow communities that have not been able to participate in the GPA in the first instance due to lack of capacity a chance to realise their project. This would not be an action that prioritises community projects over others, but seeks to mitigate and level the playing field for community projects.

Furthermore, capacity bonds should be replaced by a conditionality requirement based on the generator's ability to show they have received appropriate licenses and planning permissions. Currently, applicants are not required to arrange for planning permission and landowner agreements as a precondition to an offer from the grid operator. Instead, capacity bonds are the preferred method to prevent grid hoarding.<sup>28</sup> However, this has not prevented developers from ‘rushing’ to apply with system operators. Moreover, capacity bond requirements have been significantly relaxed, decreasing their usefulness in preventing grid hoarding. Specifically, under a new bonding regime CER/09/138 removed the requirement for large bonds to be paid upfront by developers at offer acceptance.

Alternatively, access rules should prioritise a certain percentage of existing grid access points for community power projects through a ‘sub-gate’ within the GPA. Clear and transparent procedures for connection within this sub-gate would be established, and reasonable connection times would be provided. This could be presented as an option for community projects that do not qualify to obtain grid access outside the GPA. The threshold for the sub-gate could be set at 10MW, and be eligible to projects that meet both the existing public interest test, plus an additional ‘community interest test’. Applicants could also be required to demonstrate need based on objective criteria to participate in the GPA, for instance their reliance on volunteers, the number of full-time employees, upfront capitalisation, etc. to complete the project.

**Recommendation #3:** Community energy projects need to be provided with equitable grid access opportunities, which do not exist in the current legal framework on grid connections. Specifically:

- Where planning permission has not been achieved by a developer, or where a connection offer has expired, interested ‘community’ projects within the region should be provided with a first option to connect;
- In order to prevent hoarding, capacity bonds should be replaced or supplemented with a conditionality requirement based on the generator's ability to show they have received

<sup>27</sup> European Wind Energy Association (2010). *Wind Barriers: Administrative and Grid Access Barriers to Wind Power*, p. 111. Available at [http://www.windbarriers.eu/fileadmin/WB\\_docs/documents/WindBarriers\\_report.pdf](http://www.windbarriers.eu/fileadmin/WB_docs/documents/WindBarriers_report.pdf).

<sup>28</sup> CER (2005). *Group Processing Approach for Renewable Generator Connection Applications: Connection and Pricing Rules, Direction to System Operators* (CER/05/049), p. 14.

appropriate licenses and planning permissions;

- A sub-gate for 'community' energy projects under 10MW should be created to prioritise projects that do not have the capacity to compete with large developers in the GPA.

## 2. Ensuring financial incentives for the production of community energy

A fixed and reliable source of income for energy produced and exported to the grid is one of the most important criteria for whether a community project goes forward. In particular, feed-in tariffs (FiTs) are key sources of income for community energy projects. FiTs are trusted by community projects because they are uncomplicated to participate in. As a material consideration for loan providing institutions, FiTs are also a straightforward for assessing risk, because they guarantee relatively certain returns over the life of the investment. As we have detailed in our report, "*Community Power: Model legal frameworks for citizen-owned renewable energy*", FiTs have been instrumental for achieving high levels of uptake of renewable energy sources in a number of EU Member States. The European Commission has even acknowledged that "[FiTs] achieve greater renewable energy penetration, and do so at lower costs for consumers."<sup>29</sup> In order to promote participation of citizens in renewable energy development and increase public acceptance of certain technologies such as wind, proper incentives should be in place. The recommendations below detail how financial support could be optimised for community-generated renewable energy in Ireland.

### 2.1 Feed-in Tariffs as a pillar for support of community energy generation post-2017

The EU Commission recently finished revising its State aid guidelines,<sup>30</sup> which impacts how Member States support future renewable energy projects, including community power. It is still possible under the new guidelines to support community power through the use of FiTs, which we conclude is the most appropriate support system for such projects.

Under the new guidelines, from 1 January 2016 only projects with a capacity of less than 500kW, and wind projects with a capacity of 3MW or 3 generation units will be eligible to receive fixed FiTs.<sup>31</sup> Projects above this threshold will be required to participate in a feed-in premium system. From 1 January 2017, the Commission also wants Member States to transition towards competitive bidding processes open to all generators based on non-discrimination and technology neutrality.<sup>32</sup>

Nevertheless, the argument could be made that under the new State aid guidelines there is considerable room for Member States to maintain FiTs if they so choose. First, smaller community power projects should still be eligible for fixed FiTs until the end of 2016. It is conceivable that a FiT scheme for community solar under REFIT could potentially be proposed by the government and cleared by the Commission by that date. Moreover, even from 1 January 2017 installations with a capacity of 1MW, and wind installations with a capacity of up to 6MW or 6 generation units will be exempt from competitive bidding processes.<sup>33</sup> There are also stated exceptions to competitive bidding for projects over the threshold, as long as a Member State can show:

- 1) Only one or a very limited number of projects or sites could be eligible; or
- 2) A competitive bidding process would lead to higher support levels; or
- 3) A competitive bidding process would result in lower realisation rates.

<sup>29</sup> European Commission (2008). *The Support for Electricity from Renewable Energy Sources. Accompanying document to the Proposal for a Directive of the European Parliament and of the Council on the Promotion of the Use of Energy from Renewable Sources*, COM(2008)19, p. 8.

<sup>30</sup> European Commission (2014). Communication from the Commission: Guidelines on State aid for environmental protection and energy 2014-2020 (State aid guidelines), OJ 2014/C 200/01.

<sup>31</sup> State aid guidelines, para. 125.

<sup>32</sup> State aid guidelines, para. 127.

<sup>33</sup> State aid guidelines, para. 128.

**Recommendation #4:** In revisiting future support for renewable energy production, focused support should be provided to community energy schemes through FiTs, in particular for solar projects (see below). This will provide a proper framework for supporting citizen-led growth in renewable energy production. Furthermore, combined with energy efficiency and demand management measures, it will help citizens to become more active in local energy management.

## 2.2 A REFIT programme that does not discriminate against community energy

The REFIT 2 programme, which applies to small and large-scale onshore wind projects, provides generators of renewable energy with financial incentives to produce and export electricity to the grid. However, REFIT 2 does not properly incentivise community energy, and is currently designed to support the dominant positions of fully licensed suppliers (utilities).

REFIT 2 places utilities in an overly-advantageous position vis-à-vis small generators. In particular, rather than the generator receiving a FiT under REFIT 2, the supplier purchasing electricity from the generator under a power purchase agreement (PPA) receives the FiT. On the one hand, in order to receive any remuneration for the renewable energy that is produced, the generator must enter into a PPA with a utility. On the other hand, however, there is no obligation for a licensed supplier to enter into a PPA with a community energy project. This places the generator at the mercy of the utility, unless it is able to become a fully licensed supplier itself, as was experienced by Templeberry Wind Farm. Because no utility would enter into a PPA, Templeberry had to become a fully licensed supplier to realise its 4.5MW project, which took three years and cost in excess of €20,000.

The arrangement between suppliers and generators under REFIT perpetuates market dominance by the small number of utilities that exist in the Single Electricity Market (SEM), three of which currently make up almost the entire retail market.<sup>34</sup> REFIT 2 arguably promotes conflicts of interest, as these utilities also generate their own energy from conventional (fossil fuel) sources and are not fully unbundled. For example, while Ireland has made efforts to implement the Third Internal Energy Market Directive on Electricity, the Electricity Supply Board (ESB) owns the transmission system, and is the number one supplier in Ireland's single energy market (SEM), both in wholesale and retail. This has led to a number of infringement proceedings against Ireland, with an EU Commission referral to the EU Court of Justice as recent as February 2014 for failing to unbundle transmission system operators and transmission systems.<sup>35</sup>

The current arrangements also go against the spirit of Articles 13 of Directive 2009/28/EC (Renewables Directive).<sup>36</sup> First, Article 13 requires administrative procedures, regulations and codes relating to authorisation, certification and licensing procedures for the production of electricity from renewable energy sources be "proportionate and necessary." Under Article 13(2), Member States must clearly define technical specifications that energy systems must meet in order to benefit from support schemes, stating that they "should not impede the operation of the internal market."<sup>37</sup>

First, the requirement under REFIT to enter into a PPA with a licensed supplier to receive operational support for the generation of renewable energy is not proportionate or necessary, and there are a

<sup>34</sup> As of 2011, State-owned ESB accounted for 57% of domestic electricity consumption, BGE for 23% and Airtricity for 20%. European Commission (2011). *Ireland: Key Issues*. Available at [http://ec.europa.eu/energy/gas\\_electricity/doc/ie\\_energy\\_market\\_2011\\_en.pdf](http://ec.europa.eu/energy/gas_electricity/doc/ie_energy_market_2011_en.pdf).

<sup>35</sup> European Commission (2014). *Press Release: Commission refers Ireland to Court for failing to Transpose EU rules* (20 February 2014), IP/14/155. Available at [http://europa.eu/rapid/press-release\\_IP-14-155\\_en.htm](http://europa.eu/rapid/press-release_IP-14-155_en.htm).

<sup>36</sup> Directive 2009/28/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, OJ 2009 L 140 p16.

<sup>37</sup> See also Directive 2009/72/EC, Article 37(13), which requires Member States to "create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of a dominant position, in particular to the detriment of consumers, and any predatory behaviour."



number of 'fairer' alternatives. In Germany, under the Renewable Energy Act (*Erneuerbare-Energien-Gesetz – EEG*) access to the grid is guaranteed through a requirement that the grid operator purchase all energy produced from renewable sources. In the UK, all generators with installations that produce less than 5MW are eligible to receive a fixed FiT. Generators are provided with two options: 1) accept a fixed payment based on the amount of electricity (kWh) generated and exported to the grid; or 2) opt out and enter into a PPA with a Licensed FiT Supplier. This regime ensures that smaller generators are guaranteed to receive fair incentives as long as the installation produces electricity.

Second, requiring small renewable energy generators to enter into a PPA but not obliging the supplier impedes the operation of the internal market. As mentioned above, REFIT 2 suppliers in a position to dominate or discriminate against smaller generators in favour of its own sources. This arrangement perpetuates market dominance by utilities such as ESB at the expense of small generators, which stifles competition in the generation sector and affects the consumer. Under the current framework it is the supplier that receives the REFIT payment, not the generator. Regardless of the wholesale market price for electricity, the generator receives the fixed price that is agreed under the PPA, according to a stated technology-specific reference price. If the reference price plus balancing payment is higher than the market price, the supplier receives a REFIT payment (as compensation) for the difference between the two. However, if the market price is higher than the reference price plus balancing payment the utility pockets the extra price for itself.<sup>38</sup> Under this approach, the supplier always wins because it always receives a benefit regardless of the market price. This result comes both at the expense of the generator, which will always receive the same price, and the consumer, which in the end pays more regardless of whether the market price is higher or lower than the REFIT reference price.

**Recommendation #5:** In order to encourage community participation and promote competition in the generation of renewable energy, REFIT should be reformed to provide generators with a MEC up to 5MW with the option of receiving a fixed FiT or entering into a PPA with a REFIT-registered supplier. This would ensure that generators are able to sell their electricity regardless of whether a supplier is willing to cooperate. Alternatively, the PPA system should be replaced in favour of creating a requirement for the grid operator or suppliers to purchase electricity from renewable energy generators according to a fixed FiT or FiT premium. Furthermore, compensation for suppliers should be revisited to ensure they do not experience windfall profits at the expense of consumers.

### 2.3 A stable regime for citizen ownership of solar PV

As countries like Denmark and the UK are showing, solar photovoltaic (PV) can help contribute to the attainment of renewable energy targets. Furthermore, solar is ideal for individual – as a 'prosumer' – and community ownership. However, there is currently no stable support regime for solar PV. In 2009, the ESB provided an incentive scheme for solar micro-generation, whereby exporters of electricity were offered 9 cents per kWh, with the first 3,000 kWh exported annually receiving 10 cents per kWh. It was to last until either 4,000 generators were connected or three years had elapsed. However, this programme was not replaced and it only applied to micro-generation. As such, no financial incentive scheme for small, medium or large-scale solar PV projects exists.

Before the existing REFIT schemes expire in 2017, there is an opportunity to develop support for community solar ownership. In order to promote further uptake by individuals and community groups, the government should develop a net-metering programme. By using a special device and pricing calculation (which can vary), net metering systems are designed to run backwards when the installation is producing energy. This method allows the consumer – also the owner and producer – to use the onsite installation to offset their consumption from the public grid. This helps the

<sup>38</sup> CER (2012). *REFIT Terms and Conditions*, section 5.2; CER Decision Paper CER 08/236.

consumer to save on their electricity bills (helping to combat fuel poverty), and where allowed provides a small income stream if the net export to the grid is greater than overall consumption. It also assists in load balancing when combined with storage, taking pressure off the grid.

Denmark used 'yearly net metering' to increase the uptake of solar PV. This programme was incredibly successful, with an increase from 17.5MW of installed PV capacity in 2011 to 482MW at the end of 2013. Since then, Denmark has attempted to switch to an 'hourly net metering system', whereby self-production offsets consumption costs only during hours in which they both occur. Otherwise, if there is no consumption the energy generated is exported to the grid and the installation receives a FiT. In order to manage the growth of solar PV and to manage costs, the Danish government has also proposed two caps: one for the uptake of private individuals and co-owned facilities and another for municipal ownership.

In its first report on its implementation of measures contained in its national renewable energy action plan (NREAP), the government said it would introduce a micro-generation FiT, and that this commitment would be reviewed in 2012. However, to this date the government has not followed through on its commitment.

**Recommendation #6:** In devising renewable energy support schemes post-2017, a stable support regime should be created to incentivise micro-solar and larger community-owned installations. In particular, solar PV installations should be eligible for a net metering scheme that combines energy savings for self-consumed energy production along with a modest FiT for excess energy produced and exported to the grid. This scheme should also be coupled with promotion of storage to contribute towards demand side management.

### 3. Ensuring investment support for community energy

While operational support is key to attracting investment, upfront investment support for community power projects is crucial during early planning stages. There are many upfront costs associated with feasibility and planning studies and obtaining licenses and permits, to name a few. While community projects have been proven to be economically viable, where it is not well understood investment is seen as high risk. This affects the ability of community groups to develop what are otherwise economically viable projects.

Recital 3 of the Renewables Directive recognises this challenge, stating that:

*"The Commission and the Member States should therefore support national and regional development measures in those areas, encourage the exchange of best practice in production from renewable sources between local and regional development initiatives and promote the use of structural funding in this area."*

Many governments have addressed this challenge by establishing upfront financial support for the planning stages of projects, including grant or loan schemes, guarantees and other credit support. In addition, a number of governments use special tax treatment to incentivise socially-oriented investment in community power. This support places community groups in a better position to approach private financial institutions. Therefore, by providing upfront assistance for investments, governments can help to facilitate and unlock private investment in community energy.

#### 3.1 Grants, loans, guarantees and other credit schemes for preliminary investigations and works

In the UK, a number of funds have been established with the aim of supporting early aspects of community project planning. As already mentioned by FoE Ireland, the Community and Renewable

Energy Scheme (CARES) in Scotland provides grants and loans for specific preliminary works. The Welsh government also established *Ynni-r Fro*, which provides advice and support, including grants up to £300,000 and loans of up to £250,000 for community power projects. Interestingly, *Ynni-r Fro* was established with European Regional Development Funds (Structural Funds). In 2013, England launched a £15 million Rural Communities Energy Fund, which provides grants to eligible community groups to undertake feasibility studies, and loans for planning applications for renewable electricity and heating projects. In 2014, it launched an additional £10 million Urban Community Energy Fund.

Perhaps the most successful example of providing investment support to promote citizen uptake in renewables comes from Germany. Over the last decade, Germany's State-owned development bank, *Kreditanstalt für Wiederaufbau* (KfW) has helped pave the way for creating a stable investment environment for renewable energy. Specifically, it has provided favourable interest rate loans (particularly to smaller enterprises), grace periods for repayment to account for the start-up phase of projects and repayment subsidies. Small grants have also been made available for micro-generation installations – particularly solar – on domestic, commercial and public buildings. Combined with a guaranteed FiT, this lending and small grants support has resulted in successful uptake of solar by individual citizens and community groups. In addition, these measures have contributed towards local investor confidence in lending to community energy projects, and have helped to dramatically bring down the price of technologies such as solar.

**Recommendation #7:** Structural Funds are already available in Ireland for energy efficiency measures. This programme should be expanded to provide upfront investment support for both micro-scale projects and community projects, including those that are led by local authorities. For micro-scale projects, support could be integrated with both energy efficiency and energy performance measures that are included when buildings are retrofitted, or where new constructions take place.

### 3.2 Special tax treatment for investment in community power

Citizen participation in energy production can also be facilitated through providing favourable tax treatment to individual investments made by households into community projects. This particular incentive has been used both to promote investment in social enterprises, and to encourage investment in community projects.

The UK is a particular leader in promoting social enterprises – particularly co-operatives – as legal vehicles for owning renewable energy production. In the UK, there is no legal definition of a 'co-operative' per se. However, several other legal entities that demonstrate common aspects of co-operatives have been created. The most popular is potentially Industrial Provident Societies (IPSS), which take one of two forms: 1) a community benefit society ('BenCom'); or 2) a co-operative society. BenComs are intended to benefit the wider community as a whole, whereas co-operative societies are mainly intended to benefit their members. Nevertheless, they are not created solely to obtain a financial return, but to contribute to the purposes of the 'community' – however that is defined. As such, they have special limitations on how they are created and how they are governed. Another type of enterprise, a Community Interest Company (CIC), is established as a private limited company, but is designed to benefit the community rather than its shareholders. It must pass a 'community interest test' and commit to an 'asset lock', which means that if the company is closed down assets cannot be distributed to the shareholders beyond the original investment.

Because of their orientation towards meeting social needs as well as financial, these types of enterprises can qualify for special support. For example, because they generally allow for a modest return instead of maximising profit, they may be eligible for special tax incentives. The Seed Enterprise Investment Scheme (SEIS) and the Enterprise Investment Scheme (EIS) provide investors in social enterprises with eligibility for tax breaks. Under the scheme, individuals may offset 50% or

30% of their investment against their personal tax liability, respectively. IPSs and CICs both qualify, and this is seen as an important way to encourage social and green development.

**Recommendation #8:** The government should develop special tax incentives for investment in community energy.

- A scheme similar to SEIS/EIS in the UK should be developed to incentivise investment in enterprises with a social purpose, such as co-operatives. This type of incentive could work to provide additional investment security in exchange for accepting lower/modest annual returns on investment. Special tax breaks should act as a supplement for relief in investment in renewable energy generation, which already exists under the Business Expansion Scheme or the Tax Consolidation Act, which should also be extended in order to continue incentivising investment in renewable energy projects.
- Under S.I. 201 of 2012, farmers can apply for a refund of VAT on qualifying equipment for the purposes of micro-generation of electricity for use in a farm business. This should be expanded to individual households in order to make uptake of solar PV more attractive.

#### 4. Innovating smart grids

Prioritising smart grid developments will not only result in additional capacity to integrate more sustainable sources of energy, improving security of supply. It will also promote energy citizenship, enabling individuals to become more active in energy production and management. However, this requires an appropriate legal framework that ensures financing is available, incentives for innovation exist, and that the roles and responsibilities of relevant actors (e.g. DSOs, regulatory authorities and customers) are clear.

Under Directive 2009/72/EC, the national regulatory authority (NRA):

*“shall strongly recommend that electricity undertakings optimise the use of electricity, for example by providing energy management services, developing innovative pricing formulas, or introducing intelligent metering systems or smart grids, where appropriate.”<sup>39</sup>*

Furthermore, under Directive 2009/28/EC, Member State are required to “take appropriate steps to develop transmission and distribution grid infrastructure, intelligent networks, storage facilities and the electricity system” in order to accommodate further development of electricity production from renewable energy sources.<sup>40</sup> Article 15 of Directive 2010/ (Energy Efficiency Directive) also requires, among other things, the promotion of access to and participation in demand response.

##### 4.1 Clarifying a role for Distribution System Operators in developing smart grids

Distribution system operators (DSOs) have a particular role to play in leading the development of smart grids.<sup>41</sup> In Ireland, DSOs must “operate and ensure the maintenance of and develop, as necessary, a safe, secure, reliable, economical and efficient electricity system ... having due regard for the environment.”<sup>42</sup> Furthermore, DSOs must “In planning the development of the distribution system ... have regard to the fact that energy efficiency/demand-side management measures, and

<sup>39</sup> Third Internal Energy Market Directive on Electricity, Article 3(11).

<sup>40</sup> Third Internal Energy Market Directive on Electricity, Article 16(1).

<sup>41</sup> See Energy Research Centre of the Netherlands (2014). *The Role of DSOs in a Smart Grid Environment*.

<sup>42</sup> S.I. 445 of 2000, Part 5, Section 22(2)(a).

distributed generation might supplant the need to upgrade or replace parts of the distribution system.”<sup>43</sup>

Transmission system operators (TSOs) are required “to plan the long term ability of the transmission system to meet reasonable demands for the transmission of electricity.”<sup>44</sup> Furthermore, as a condition of its license, Eirgrid, the TSO, is required to develop and publish a “*Transmission Forecast Statement*”, which analyses how it will develop and reinforce the transmission grid over the next seven years. A Smart Grids Roadmap has been developed by the Sustainable Energy Authority of Ireland (SEAI). Furthermore, under the Delivering a Secure Sustainable Energy System (DS3) programme, EirGrid and the System Operator for Northern Ireland (SONI) are cooperating to increase the capacity of the SEM to integrate further intermittent energy from renewable sources. This has resulted in the planning and development of large infrastructure projects, which have proved controversial with local communities, but less action the local level.

The provisions above for TSOs equate to a continuing duty to develop the grid, while DSOs have no specific duty to address or invest in smart grids. The government is right to prioritise development of transmission grid, including interconnectors. However, it could also do more to further incentivise development of smart grids at distribution level. This would incentivise participation of local actors, such as consumers as energy citizens. It would also alleviate pressure on the overall grid, reducing the need for transmission grid upgrades and reducing resulting impacts they entail.

**Recommendation #9:** In addition to rolling out smart meters and specialised time of use tariffs, a regulatory framework should be defined that better articulates duties as well as incentives for developing smart distribution grids. The Commission for Energy Regulation (CER) should be enabled to clarify the role of DSOs in developing smart grids, and a duty should be created to ensure that DSOs prioritise investment in smart grid development. In order to incentivise and facilitate this development, funds could be made available through government support, for instance a tax attached to the connection of conventional sources of energy, or through Structural Funds. This would fit particularly well with the existing mandate to fund energy efficiency measures through Structural Funds.

#### 4.2 Incentivising energy citizens to become active participants in energy management

Consumers need to be empowered with appropriate incentives to act as ‘prosumers’, particularly in generation and demand response measures that can assist with load management of distribution grids. Combined with smart meters, developing a net metering scheme to incentivise solar production by individual households could contribute to development of smart grids. This could be accompanied by incentives to invest in storage systems, so that distributed generation can be matched with demand side management. Since 2013, Germany has been supporting solar storage by providing grants based on a solar system’s installed capacity. This has been combined with the availability of low-interest KfW loans for the installation of new systems, as well as retrofitting existing systems with solar batteries.<sup>45</sup>

**Recommendation #10:** In line with Recommendation #6 above, the government should develop a net metering programme that incentivises both micro-generation and storage from individual households. This should be coordinated with the government’s existing National Smart Metering Programme.

<sup>43</sup> S.I. 60 of 2005, Section 10.

<sup>44</sup> S.I. 60 of 2005, Section 6.

<sup>45</sup> See Solar Energy Storage (2013). *State Incentive Programme is Launched for Solar Storage Systems*. Available at <http://www.solarenergystorage.org/en/staatliche-forderung-von-solarstromspeichern-gestartet/>.

## 5. Developing a “Community Energy Strategy for Ireland”

We welcome the government's ambition to “empower energy citizens.” An excellent place to start would be to develop a comprehensive strategy at national level for how to support and promote community power. A “Community Energy Strategy for Ireland” would define community energy, allowing appropriate participation by local citizens and municipalities, and provide a framework for integrating community energy into energy law and policy from the national down to the local level. A strategy would also produce a list of targeted action areas where the government could address particular barriers to community ownership and participation in the energy system. A community energy strategy should be developed with open participation processes, including both the general public and community energy stakeholders.

In January 2014, the UK government released its own “Community Energy Strategy”.<sup>46</sup> The aim of the Strategy is to help existing community energy groups to grow and to inspire more to set up and expand. It was developed based on two extensive calls for evidence, which analysed the potential benefits of community energy and the main barriers. The calls for evidence and the Strategy itself were informed by a Community Energy Contact Group, which was established as a standing working group of 11 individuals from the sector to assist the government develop policies and identify barriers and solutions for community-led energy development. The resulting Strategy covers many areas, including ownership of renewable production, energy efficiency and reduced energy use and energy poverty. It created a list of priority areas for further work between relevant government bodies and stakeholders in areas such as grid access; opportunities to become licensed suppliers; access to finance; partnerships and co-ownership between communities, local authorities and developers; land use planning issues; and other regulatory barriers.

Even though the community energy sector in Ireland is currently small, development of a community energy strategy would help to create awareness of the potential benefits of community energy and energy citizenship in Ireland. As evidenced by the large number of organisations that were involved in the submission of the *Community Energy Policy Position Paper*, there is significant interest in developing a vibrant community energy sector. A community energy strategy will be a key first step in realising that goal.

**Recommendation #11:** The government should commit to developing a “Community Energy Strategy for Ireland” in order to identify and address barriers for community projects, and to integrate community energy into national energy law and policy. The strategy should specifically define community energy to ensure appropriate support and participation. In addition, a standing ‘energy citizen’s contact group’ should be established with leading stakeholders in the community energy sector to provide expert input and coordinate public participation in the development of measures to promote community energy, and energy citizenship more broadly.

## 6. Ownership requirements

In order to ensure that communities have a positive stake in the development of local renewable energy, particularly wind, governments are increasingly enacting ‘right to buy’ requirements for commercial projects. These laws have been enacted for primarily two reasons: 1) in order to increase public acceptance of such projects; and 2) where community power already exists, to ensure a certain level of community ownership is maintained.

<sup>46</sup> Department of Energy and Climate Change (DECC) (2014). *Community Energy Strategy: Full Report*. Available at <https://www.gov.uk/government/publications/community-energy-strategy>.

In Denmark, the Promotion of Renewable Energy Act<sup>47</sup> was enacted to ensure that community ownership is maintained. Renewable energy development began in Denmark as a grass-roots movement. Therefore, communities have always played a large role in the growth and uptake of renewable energy, particularly wind. However, due to liberalisation, industry growth and technology advancement, commercial developers became more dominant. This led to a government response to maintain community ownership. Under the statute, shares of ownership in commercial projects must be offered to residents within 4.5 km of the project, after which residents from the municipality get second preference.<sup>48</sup> The offer must be clearly advertised over a specified amount of time and must include specified and relevant information.<sup>49</sup> Furthermore, in order to ensure buyers are conveyed influence, dividend and risk corresponding to their investment wind turbines under citizen ownership must be operated by a separate legal entity.<sup>50</sup>

In Belgium and the UK, similar schemes have been developed in order to provide communities the opportunity to participate in renewables development. In the UK, wind projects have been primarily led by large developers, leading to backlash from citizens. To promote public acceptance, the government has been working with community stakeholders to devise best business practices for developers, whereby they enter into partnership agreements with communities so that they can obtain a part-ownership stake in the project. If best business practice does not work, the government will legislate a requirement. In Belgium, a 'wind rush' has also led to public discontent over wind farms. In order to ensure communities can participate in these types of projects, local authorities have been passing 'direct participation' laws that allow both the municipality and local citizens to obtain part-ownership in wind projects.

**Recommendation #12:** A 'citizen's right to purchase' shares in commercial wind projects should be enacted into statutory law. It should require developers to offer at least 30% of ownership shares to local citizens within a specified area and/or municipalities. Citizen ownership should be distinct from that of the developer. Furthermore, requirements and guidance for participation in individual projects should be established to convey interested individuals influence during the actual development of the project while it is still being planned.

## 7. Promoting energy citizenship in local renewable energy planning

Local approaches are key to empowering energy citizens. Local government leadership can help provide valuable political support and vision for community energy development. A good starting point for setting out this vision is to integrate community energy into relevant aspects of local planning. This can help to drive targeted and desired development, acting as policy guidance to local decision-makers. Furthermore, local plans are good starting points for integrating aspects of community energy into concrete local regulations, for instance in land use planning.

Renewable energy planning is specifically promoted in the Renewables Directive. Under Recital 23, "Member states may encourage local and regional authorities to set targets in excess of national targets and to involve local and regional authorities in drawing up national renewable energy action plans..." In 2011, the Sustainable Energy Authority (SEAI) set out to assist local authorities in developing Local Authority Renewable Energy Strategies (LARES). To this end, through the establishment of a steering group and engaging stakeholders, the SEAI developed out a

<sup>47</sup> Promotion of Renewable Energy Act 2008, Act no. 1392 of 27 December 2008, Part 1.

<sup>48</sup> Promotion of Renewable Energy Act 2008, section 15(1)-(4).

<sup>49</sup> Promotion of Renewable Energy Act 2008, section 15(5)-(7).

<sup>50</sup> Explanatory note to the Promotion of Renewable Energy Act 2008, section 13, subsection 5, first clause.

“Methodology for Local Authority Renewable Energy Strategies”.<sup>51</sup> The Methodology aims to assist local authorities in developing robust, co-ordinated and sustainable strategies, and to address the most common issues regarding renewable energy technologies and projects.

### 7.1 Integrating community energy into LARES

The SEAI's Methodology for LARES provides a good starting point for developing localised strategies to support and develop renewable energy, particularly small and micro-scale. The Methodology does “suggest” that development plans and planning guidelines contain positive policies and objectives in relation to “the promotion of small-scale RE development and for small community-based proposals.”<sup>52</sup> There is also a stand-alone section on micro-generation and autoproduction. To this effect, the Methodology specifically mentions planning permission exemptions for small-scale and micro-scale projects, stating that outside these exemptions, “developments should be considered in all areas of the county, subject to compliance with the policies and objectives of the RE strategy and the proper planning and sustainable development of the area.”<sup>53</sup>

However, it does not sufficiently account for the potential of community-led projects, nor does it provide guidance for how community energy should be integrated into LARES. Such guidance would be useful for community-planned renewable energy development. As most development thus far has been large-scale, local acceptance of technologies such as wind is lacking. There is a desire by communities to be involved in local renewable development, and therefore more attention should be paid to promoting and supporting community-led approaches, including active participation.

In the UK, communities are currently testing out community-led renewable energy plans. This has resulted in a number of policies integrating community-specific aspects into local development frameworks. In Cornwall, due to efforts from active members of the local community, the local council has integrated support for local community renewable energy projects in its Local Development Plan. Under “Policy 15 – Renewable and Low Carbon Energy”, it states:

*“Particular support will be given to renewable and low carbon energy generation developments that:*

- a. Are led by, or meet the needs of local communities; and*
- b. Create opportunities for co-location of energy producers with energy users, in particular heat, and facilitate renewable and low carbon energy innovation.”*

This policy provides a basis for providing direct local support to community power projects in the area. Furthermore, it will allow the nature of the applicant to be taken into account (e.g., a locally-established co-operative) in the planning process so that procedures can be tailored.

Additionally, under the UK's Localism Act<sup>54</sup> there is an opportunity for communities to develop ‘neighbourhood’ scale planning. While still new, communities are using it to make sure that renewable energy development is community-centred. Integration of similar aspects into LARES could provide a basis for prioritising more community-led projects around Ireland. For instance, supportive vision statements for the provision of renewable energy and associated infrastructure could include community-led and owned projects. This would help empower communities to participate in the development and operational aspects of local energy generation and increase public support for local renewable energy development.

---

<sup>51</sup> SEAI (2013). Methodology for Local Authority Renewable Energy Strategies. Available at [http://www.seai.ie/Archive1/Renewables\\_Publications/Wind\\_Power/Methodology\\_for\\_Local\\_Authority\\_RE\\_Strategies/Methodology\\_for\\_Local\\_Authority\\_Renewable\\_Energy\\_Strategies.html](http://www.seai.ie/Archive1/Renewables_Publications/Wind_Power/Methodology_for_Local_Authority_RE_Strategies/Methodology_for_Local_Authority_Renewable_Energy_Strategies.html).

<sup>52</sup> *Ibid.* at p. 43.

<sup>53</sup> *Ibid.*

<sup>54</sup> UK Localism Act 2011, Chapter 3.



It is problematic that only a few forward-thinking local authorities have developed LARES since the Methodology was developed. This is a missed opportunity for local authorities to provide vision on leadership for how they would like to prioritise local renewable energy development.

**Recommendation #13:** Local authorities should be legally required to develop LARES. The SEAI should work with the Department of Environment to further integrate LARES into the planning duties of local authorities. Furthermore, relevant aspect of community energy should be integrated into LARES so that it can be considered and prioritised in local development policies and planning regulations. As a first step, national level guidance should be developed on how local authorities can integrate community energy into LARES.

## 7.2 Meaningful public participation and engagement in the development of LARES

In order to ensure public support for local renewable energy development, the local public needs to be engaged. This goes further than mere consultation, and requires that members and/or representatives of the local community be involved in the development of LARES as active participants. This is particularly important for establishing legitimacy for plans as a basis for individual projects.

The Methodology states that public consultation “is important to ensure that community inputs and views are adequately considered,” and that “authorities may need to consider community engagement during the course of LARES development.”<sup>55</sup> Furthermore, the Methodology provides guidance on relevant consultation procedures provided under legislation such as the Strategic Environmental Assessments and Assessments under the Habitats and Birds Directives. However, the Methodology concludes that consultation is not compulsory, as it is not a statutorily mandated planning document.<sup>56</sup>

There are a number of requirements in EU legislation with regard to dissemination of information so that the general public can become aware of, and participate in, sustainable energy solutions. Under Article 14 of the Renewables Directive, Member States must “ensure that information on support measures is made to all relevant actors,” and must “ensure that guidance is made available to all actors, notably planners and architects.” Importantly, Article 14 also calls for local and regional authorities to “develop suitable information, awareness-raising, guidance and training programmes in order to inform citizens of the benefits and practicalities of developing and using energy from renewable sources.” This implies that governments at all levels have an active duty to disseminate information to citizens on how to participate in meeting objectives under the Renewables Directive.

More importantly, Recital 90 of the Renewables Directive states that implementation, where relevant, “should reflect the provisions of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environment Matters [Aarhus Convention], in particular as implemented through Directive 2003/4/EC on public access to environmental information.” While EU legislation on the matter only applies to plans and programmes that are required by “legislative, regulatory or administrative” provisions, the Aarhus Convention does not apply this distinction and hence all plans and programmes that relate to the environment are required to allow for public participation. It follows that the development of LARES without providing for public participation would contravene Ireland’s international commitments under the Aarhus Convention.

**Recommendation #14:** National guidance on LARES should clarify that meaningful public participation is required in the development and implementation of LARES. Furthermore, as the

<sup>55</sup> *Ibid.* at p. 40.

<sup>56</sup> *Ibid.* at p. 8.

*Community Energy Policy Position Paper* suggests, LARES should be mandatory on local authorities. This would ensure that the public is provided with a chance to input into the development of LARES, and to consider different options including community-led and owned renewable energy development.

For more information, please contact:

**Josh Roberts**

Lawyer, Climate and Energy  
274 Richmond Road  
London E8 3QW  
t 020 7749 5975  
e jroberts@clientearth.org  
[www.clientearth.org](http://www.clientearth.org)

### About the Community Power Project

These recommendations are a part of the Community Power project, a project in 12 European countries aiming to put people first at the heart of increased renewable energy. Check out the website of the project at [www.communitypower.eu](http://www.communitypower.eu).

The partners in the Community Power project are:

**Friends of the Earth Europe** [www.foeeurope.org](http://www.foeeurope.org)

**Amigos de la Tierra** [www.tierra.org](http://www.tierra.org)

**CEE Bankwatch Network** [www.bankwatch.org](http://www.bankwatch.org)

**ClientEarth** [www.clientearth.org](http://www.clientearth.org)

**Ecopower** [www.ecopower.be](http://www.ecopower.be)

**ICLEI** [www.iclei-europe.org](http://www.iclei-europe.org)

**Friends of the Earth Ireland** [www.foe.ie](http://www.foe.ie)

**Friends of the Earth Scotland** [www.foe-scotland.org.uk](http://www.foe-scotland.org.uk)

**Hnuti Duha** [www.hnutiduha.cz](http://www.hnutiduha.cz)

**Magyar Természetvédők Szövetsége** [www.mtvsh.hu](http://www.mtvsh.hu)

**NOAH** <http://noah.dk/>

**WIP-Renewable Energies** [www.wip-munich.de](http://www.wip-munich.de)



Co-funded by the Intelligent Energy Europe  
Programme of the European Union

The sole responsibility for the content of these recommendations lies with the authors. It does not necessarily reflect the opinion of the European Union. Neither the EACI nor the European Commission are responsible for any use that may be made of the information contained therein.