



An Coimisiún  
um Rialáil Fóntais  
**Commission for  
Regulation of Utilities**

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# Proximity Requirements for Renewable Energy Communities

## Decision Paper

### Decision Paper

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## Executive Summary

The Clean Energy Package (CEP) promotes consumer empowerment and participation in the energy sector. In 2022, the CEP was transposed into Irish legislation providing the CRU with the role of developing an enabling regulatory framework for active consumers and energy communities. The enabling framework is aimed at facilitating and promoting the participation of active customers and energy communities in the energy sector. As part of this role the CRU has authority to determine the proximity requirements for Renewable Energy Communities (RECs). The proximity requirements relate to the governance of a REC. A REC is legal entity *“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 REC”<sup>1</sup>*.

In August 2023, the CRU published a Consultation Paper detailing its proposals relating to the proximity requirements for RECs. There were eight responses to the Consultation, all indicating support of the CRU’s proposed approach. This paper details the CRU’s Decision with respect to the proximity requirements for RECs following a review of the Consultation responses.

The CRU’s Decision is as follows:

- proximity requirements for a REC are to be set by those in the community.
- requirements should be established when formalising the REC as a legal entity through a written constitution.
- it should be clear from the REC’s constitution how it assesses the proximity criteria.
- the RECs constitution should be accessible such that members / shareholder (or potential members / shareholders) can see who can be involved in the control of the REC.
- membership of the REC is limited to those served by the Irish distribution network.
- the REC must satisfy itself that its constitution is in line with the intentions of the Renewables Directive and must state this in its constitution. Effective control must remain within the proximity of the renewable asset.

It is possible for there to be two categories of members / shareholders of a REC;

1. those in proximity to the renewable energy project owned by that REC who can be involved in the control of the REC, and

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<sup>1</sup> Article 2 16 (a) of EU Directive 2018/2001

2. those outside the proximity of the asset who can hold shares and participate in the activities of the REC but cannot be involved in the control of the REC.

An example of proximity requirements could be that you need to be resident (for natural persons) or located (SME's or Local Authorities) in the same town, city, or county as where the renewable energy project is located (or proposed to be located).

The CRU's Decision is an open and inclusive approach to take to determining rules on the proximity requirements for RECs. This approach meets the aims of the Renewables Directive which is for participation in renewable energy projects to be open to all potential local members based on objective, transparent and non-discriminatory criteria. Communities can vary greatly in size, the activities they engage in, and how they are resourced in terms of the skills and expertise available to them. What constitutes 'local' to one community may differ vastly to another community. By taking this approach the REC has the autonomy to determine the most suitable proximity requirements based on the individual characteristics and needs of their energy community.

This Decision further progresses the CRU's enabling framework for energy communities. The CRU will be developing a registration framework for 'Relevant Market Participants' such as RECs to engage in energy activities in suitable markets. The CRU expects that a REC's interpretation of proximity will form part of this registration framework.

## CRU Mission Statement

<b>Our Mission</b> <ul style="list-style-type: none"><li>• Protecting the public interest in water, energy and energy safety.</li></ul>	<b>Our Strategic Priorities</b> <ul style="list-style-type: none"><li>• Ensure Security of Supply</li><li>• Drive a Low Carbon Future</li><li>• Empower and Protect Customers</li><li>• Enable our People and Organisational Capacity</li></ul>
<b>Our Vision</b> <ul style="list-style-type: none"><li>• Safe, secure and sustainable supplies of energy and water, for the benefit of customer now and in the future</li></ul>	

## Public Impact Statement

The Clean Energy Package and the Climate Action Plan both have the goal of consumers and energy communities actively participating in the energy market. Participation from these groups could involve understanding the source of the energy they use, being flexible with their energy use, and supporting more renewable energy. A higher level of engagement could involve the generation of renewable energy, selling or storing of energy, and / or participating in energy sharing schemes.

The CRU is currently developing a framework to help consumers and energy communities to actively participate in the energy market. This Decision Paper details the rules with respect to setting the proximity requirements of a renewable energy community (REC). The way the proximity requirement of a REC is implemented is important as it determines who can be in control of the REC and can have implications for community investments and local acceptance of the renewable project. By increasing the supply of renewable energy, we are supporting Ireland's transition to net zero emissions by 2050.

Participation in renewable energy projects should be open to all potential local members based on objective, transparent and non-discriminatory criteria. Communities can vary greatly in size, the activities they engage in, and how they are resourced in terms of the skills and expertise available to them. The CRU's Decision gives RECs the autonomy to set the most suitable requirements based on the needs of their local community, while emphasizing the importance of local control.

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# Glossary of Terms and Abbreviations

Abbreviation or Term	Definition or Meaning
<b>CEC</b>	Citizen Energy Community
<b>CEP</b>	Clean Energy for all Europeans Package
<b>CRU</b>	Commission for Regulation of Utilities
<b>DECC</b>	Department of the Environment, Climate and Communications
<b>Electricity Directive</b>	EU Directive 2019/944
<b>MV</b>	Medium Voltage
<b>LV</b>	Low Voltage
<b>REC</b>	Renewable Energy Community
<b>Renewables Directive</b>	EU Directive 2018/2001
<b>SEAI</b>	Sustainable Energy Authority of Ireland
<b>SEC</b>	Sustainable Energy Community
<b>SRESS</b>	Small-Scale Renewable Electricity Support Scheme

# 1. Introduction

## 1.1 Background

The Clean Energy Package (CEP) promotes consumer empowerment and participation in the energy sector. The CRU has been progressing the development of an enabling regulatory framework which aims to facilitate and promote the participation of individuals and energy communities in the energy sector through uptake of various energy activities. Requirements for the development of this framework originate in two of the eight legislative files of the CEP – Directive (EU) 2019/944 (The Electricity Directive) and Directive (EU) 2018/2001 (The Renewables Directive). These directives outline conditions for the empowerment of active customers and renewable self-consumers, jointly considered as ‘active consumers’<sup>2</sup>, and renewable energy communities and citizen energy communities, jointly considered as ‘energy communities.’

**Energy Community:** a group of active consumers, who voluntarily commit to providing environmental, social, or economic welfare by engaging in

- renewable energy generation,
- energy sharing or trading,
- storage, or
- supply,

provided these activities are not for commercial purposes and do not constitute the primary profession of the members of the community.

In 2020 the CRU commenced a review on the best approach for developing a regulatory framework which would encourage innovation and participation from active consumers and energy communities. In 2022 the Renewables Directive was transposed into Irish law <sup>3</sup> providing the CRU with the legislative basis to establish the enabling regulatory framework for active consumers and energy communities.

There are some key differences between renewable energy communities (RECs) and citizen energy communities (CECs) that need to be considered when developing the energy community enabling framework. One of these differences is with respect to the governance of a REC. Those in ‘effective control’ of a REC are to be located (or resident) within the proximity of the renewable energy project owned by that REC. There is no definition of ‘proximity’ provided in the Renewables

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<sup>2</sup> An active customer is an individual who generates renewable energy for their own consumption, or sells or stores excess generated electricity, or participates in energy efficiency schemes, or provides flexibility services, provided these activities are not their primary profession.

<sup>3</sup> Statutory Instrument 76 of 2022

Directive, leaving interpretation up to each Member State. The Department of Environment, Climate Change and Communication (DECC), through legislation<sup>4</sup>, has given the CRU authority to make rules on the determination of proximity requirements in respect of RECs.

While there is no definition of ‘proximity’ for a REC, the recitals of the Renewable Directive are clear that participation from local citizens and local authorities in the development of a renewable energy project, and the governance of that project, are fundamental. Such local involvement is crucial in increasing renewable capacity and acceptance of renewable projects.

In August 2023, the CRU published a Consultation Paper detailing its proposals relating to the determination of proximity requirements for RECs. The CRU proposed that those in the community developing the renewable energy project would be best placed to set the proximity requirements of the REC. There were eight responses to the Consultation, all indicating support of the CRU’s proposed approach. During the consultation period the CRU liaised with the Sustainable Energy Authority of Ireland (SEAI) and took part in a webinar which was open to the Sustainable Energy Communities network on the topic of proximity requirements for renewable energy communities.

## **1.2 Purpose and Structure of this Paper**

This paper sets out the CRU’s Decision regarding the proximity requirements for RECs in respect to the governance (i.e., effective control) of that REC.

Establishing a REC can be challenging with significant lead times and numerous factors to consider such as financing of the project, its legal structure and management, and regulatory procedures (i.e., planning permission, grid connections etc.). The way the proximity requirement of a REC is implemented is important as it determines who can be in control of the REC. It can have implications for community investments and local acceptance of the renewable project.

The CRU intends to commence work in 2024 on a registration framework for ‘Relevant Market Participants’, to engage in energy markets. The CRU expects that for RECs, the proximity requirements may form part of the registration process.

The structure of this paper is as follows:

- Section 1 – provides background information and the legal basis for the CRU’s Decision.
- Section 2 – sets out the CRU’s Decision on the determination of proximity requirements for RECs. It also provides a high-level overview of the different approaches considered

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<sup>4</sup> Regulation 10 (4) of SI 76 2022



by the CRU when reaching its Decision, a summary of the responses received to the CRU's Consultation and guidance for RECs.

- Section 3 – sets out the CRU's next steps.

## 1.3 Related Documents

- Consultation Proximity Requirements for Renewable Energy Communities - [CRU2023101](#)
- Roadmap for the Clean Energy Package's Electricity and Renewables Directives - [CRU202350](#)
- Roadmap for the Clean Energy Package's Electricity and Renewables Directives - [CRU20043](#)
- 2021 Roadmap for the Clean Energy Package's Electricity and Renewables Directives [CRU21019](#)
- Call for Evidence on Energy Communities under the CEP - [CRU20099](#)
- Call for Evidence on Active Consumers & Jointly Acting Active Consumers under the Clean Energy Package [CRU20098](#)
- Consultation on Energy Communities and Active Consumers [CRU21028](#)
- Conclusions from Consultation CRU21028 on Energy Communities and Active Consumers [CRU21126](#)

## 1.4 Legislative Basis & Interpretation

European<sup>5</sup> and Irish<sup>6</sup> law defines a **Renewable Energy Community** as a legal entity:

- a) which 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*

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<sup>5</sup> Directive (EU) 2018/2001 (The Renewables Directive)

<sup>6</sup> Statutory Instrument 76/2022 (Renewables Regulations 2022)

*than financial profits.*

In 2022, Article 22 of the Renewables Directive was transposed into Irish law providing the CRU with a role in establishing an enabling regulatory framework for renewable energy communities. As part of this law the CRU has been given the authority to make rules with respect to the determination of proximity requirements for renewable energy communities<sup>7</sup>.

Statutory Instrument 76 of 2022, Regulation 10 (Determining proximity and confined boundaries) states:

*10. (4) The Commission may make rules on the determination of proximity in respect of renewable energy communities.*

*(6) The Commission shall publish the rules referred to in paragraphs (1) to (4) in such a manner and form as it considers appropriate.*

The CRU interprets the proximity requirement of a renewable energy community to be with respect to the **governance** arrangements of that community (i.e., the effective control).

Regulation 2 defines “**control**” as:

*any rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by –*

*(a) ownership or the right to use all or part of the assets of an undertaking, or*

*(b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking;*

Regulation 8 sets out the rights and obligations of the renewable energy community, and the activities that it should be able to engage in:

### **Renewable Energy Communities**

*8 (1) Final customers, in particular household customers, may participate in a renewable energy community while maintaining their rights or obligations as final customers, and shall not be subject to unjustified or discriminatory conditions or procedures that would prevent their participation in a renewable energy community, provided that for private undertakings, their participation does not constitute their primary commercial or professional activity.*

*(2) Renewable energy communities may –*

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<sup>7</sup> Regulation 10(4) SI 76 2022

- (a) produce, consume, store and sell renewable energy, including through renewables power purchase agreements,*
  - (b) share, within the renewable energy community, renewable energy that is produced by the production units owned by that renewable energy community, subject to the other requirements of this Regulation and to maintaining the rights and obligations of the renewable energy community members as customers, and*
  - (c) access all suitable energy markets both directly or through aggregation in a non-discriminatory manner. ....*
- (4) The Commission shall take all steps necessary to give effect to paragraph (2)*

## **2. Proximity Requirements for Renewable Energy Communities**

This section of the paper details the CRU's Decision relating to the determination of proximity requirements for RECs and the CRU's considerations in reaching this Decision, including a review of the eight responses received to the Consultation. All the responses to the Consultation supported the CRU's proposal. A summary of the responses is provided in section 2.3 below.

## 2.1 CRU Decision

**CRU Decision:** The proximity requirements for a REC are to be set by those in the community. The requirements should be established when formalising the REC as a legal entity through a written constitution. It should be clear from the REC's constitution what its interpretation of proximity is and how that interpretation will be assessed by the REC. The REC should ensure that members / shareholders (or potential members / shareholders) have visibility of the proximity requirements as they impact who can be involved in the control of the REC.

Taking this approach means there can be two categories of members / shareholders of a REC.

1. those in proximity to the renewable energy project owned by that REC who can be involved in the control of the REC and
2. those outside the proximity of the asset who can hold shares and participate in the activities of the REC but cannot be involved in the control of the REC.

A REC should be owned and controlled by the people resident (or businesses located) in Ireland, and as such, membership of the REC is limited to those served by the Irish distribution network.

The REC must satisfy itself that its constitution is in line with the intentions of the Renewables Directive and must state, commit, or note this in its constitution. Effective control of the REC must remain within the proximity of the renewable energy project.

The CRU will be developing a registration framework for 'Relevant Market Participants' such as RECs to engage in energy activities in suitable markets. The CRU expects that a REC's interpretation of proximity will form part of this registration framework.

## 2.2 CRU Rationale

The way in which the proximity requirement is implemented can impact the overarching objective of a REC which is to provide *“environmental, economic, social community benefits for members and local areas”*. This is because it determines who can control, or potentially who can be a member of the REC. It can have implications for community investments and local acceptance of the renewable project.

As set out in the Renewables Directives, participation in renewable energy projects should be open to all potential local members based on objective, transparent and non-discriminatory criteria. In reaching its Decision relating to the proximity requirements for RECs, the CRU assessed the

positives and negatives of the possible approaches and reviewed the different interpretations of the proximity requirements for RECs in other European countries to establish a best practice. The CRU also considered the existing energy community frameworks in Ireland and the potential interaction that the CRU's Decision may have on those frameworks.

The table below provides a high-level overview of the different approaches that the CRU considered when reaching its Decision, detailing the potential positives and negatives of each approach.

Approaches to Setting Proximity			
	Description	Pros	Cons
<b>Network</b>	<p>This is a technical approach to setting proximity, generally reflecting grid related factors.</p> <p>It often limits membership of the REC to a common connection to a transmission or a distribution asset.</p> <p>It tends to be adopted where energy sharing is the primary activity of the REC.</p>	<p>Limiting REC membership to the distribution network could potentially reduce network charges for energy sharing (however, in the context of Ireland this may not be the case as network tariffs are set at an urban or rural level rather than at local grid level.)</p>	<p>It can be overly restrictive; people living next to one another may not be able to join the same REC if they are not connected through the same network.</p> <p>This approach could limit the type of renewable production. For example, if the membership was restricted to a LV network, it may exclude wind technologies which typically use MV networks.</p>
<b>Distance</b>	<p>A maximum distance is set between the members of the community and / or the renewable energy project.</p>	<p>Simple and transparent approach.</p> <p>Ensures the project remains in the local area.</p>	<p>Can be overly restrictive in rural areas with low population density.</p> <p>Less transparent where there are multiple assets (for example, a network of households with PV). The 'local' aspect of the REC may be lost as the scope of the REC</p>

Approaches to Setting Proximity			
	Description	Pros	Cons
			expands with additional households.
<b>Administrative</b>	Proximity is set based on established administrative boundaries such as the municipality the renewable energy project is in, the local electorate, or the parish/village/county boundaries.	Already established boundaries that can act as a good representation of a local community.  Simple and transparent approach.	This approach can restrict consumers that live on the wrong side of an arbitrary border such as a county line which may not be relevant to the REC.

*Table 1 Approaches to setting proximity requirements.*

Mixed approaches to addressing the proximity requirement of RECs have been adopted across Europe. Some countries have addressed proximity in the context of the governance requirements of the REC, while others have taken a more technical, network approach and set proximity requirements based on the activities that members of a REC can engage in such as energy sharing or collective self-consumption<sup>9</sup> (a model for sharing energy).

The European Commission has cautioned against taking a network-based approach to setting definitions of proximity when the goals of the Renewables Directive *“is related to the governance of the community, that is, that the controlling members are in proximity to the renewable community’s energy sources.”*<sup>9</sup> Limiting membership of a REC to a common distribution asset may be an overly restrictive approach to take to setting the proximity requirements of a REC. While it is a possible approach if setting boundaries or limits on an activity such as energy sharing, the CRU does not consider this type of technical network-based approach suitable in respect to the governance of the REC. For example, ESB Networks needs to be able to change network feeding arrangements to facilitate changing demand. By limiting REC membership to those connected through a common distribution asset, if ESB Networks changes the network feeding arrangements, a member may be

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<sup>9</sup> [European Commission - ASSET Study on Energy Communities in the Clean Energy Package: Best Practices for Implementation](#)

removed from the REC as they are no longer connected to through same asset.

In reaching its Decision the CRU considered how communities can vary greatly in size, the activities they engage in, and how they are resourced in terms of the skills and expertise available to them. One community's sense of 'local' may differ vastly to another community. Community engagement is key to the success of a REC. By engaging with the local community from the early stages of the project, objections that could slow, or halt progress are less likely to be encountered. Community engagement will also encourage participation in the REC. Those involved in developing a renewable energy project need to have a deep understanding or sense of their local community. For this reason, the CRU considers they are best placed to set the proximity requirements of their REC.

The CRU's Decision gives the REC the autonomy to determine the most suitable proximity requirements based on the individual characteristics and needs of their energy community. The CRU views this as an open and inclusive approach to take. It ensures that the proximity criteria is clearly set out in the REC's constitution for members or potential members.

## **2.3 Responses to Consultation**

The CRU published a Consultation Paper in August 2023 setting out its proposal relating to the proximity requirements for RECs. In summary, the CRU proposed:

- proximity requirements for a REC are to be set by those in the community.
- requirements should be established when formalising the REC as a legal entity through a written constitution.
- it should be clear from the REC's constitution how it assesses the proximity criteria.
- membership of the REC is limited to those served by the Irish distribution network.
- the REC's written constitution must ensure that effective control remains within the proximity of the renewable energy project.

The CRU sought the views of the public on its proposal and asked if there were any other approaches to setting the proximity requirements of a REC that would better meet the objectives of the Renewables Directive. The Consultation was open to responses for eight weeks. The CRU received eight responses from a range of stakeholders, including energy communities, research institutes, ESB Networks and one supplier. All responses to the Consultation indicated support for the CRU's proposals, agreeing that the communities themselves are in the best position to set their proximity requirements. Some respondents acknowledged that the CRU's proposal is open and inclusive and meets the requirements of the Renewables Directive.

During the consultation period the CRU also engaged with the SEAI and took part in a webinar on the CRU's proposals which was open to SEAI's network of Sustainable Energy Communities. A

summary of other comments is provided below:

With respect to the potential for there to be two categories of membership under the CRU's proposed approach,

1. those in proximity to the renewable energy project owned by that REC who can be involved in the control of the REC and
2. those outside the proximity of the asset who can hold shares and participate in the activities of the REC but cannot be involved in the control of the REC.

a number of responses commented that the majority of the members would need to be in the first category (i.e., within proximity of the renewable asset) to ensure control is held and suggested the CRU consider setting a minimum percentage of shares or votes that need to be retained within this category. Under the CRU's Decision, the REC has the autonomy to decide what type of legal structure best suits their needs, as long as that structure meets the requirements of the Renewables Directive, meaning that control remains in within proximity of the renewable asset.

One respondent commented that there should be a provision for an existing energy community to establish proximity requirements through an update to the written constitution to avoid unnecessary expense. The CRU notes that any change to the constitution of an existing energy community already formed as a legal entity can be made through the Companies Registration Office and would need to be agreed amongst the members / shareholders.

Another respondent commented that communities could use a combination of distance, network, or administrative approaches in setting their proximity requirements. For communities choosing to set their proximity requirements based on distance, they suggest that the CRU sets minimum and maximum distances to provide guidance to those communities. With respect to this suggestion, the CRU's notes that under this Decision members of a REC must be served by the Irish distribution system. Section 2.4 of this paper also provides some guidance for communities to consider when setting their proximity requirements.

## **2.4 CRU Guidance for RECs**

This section of the paper provides guidance to energy communities looking to set the proximity requirements of their REC.

To formalise the REC as a legal entity, a written constitution needs to be developed by the energy community. The written constitution will set out the purpose of the REC and a set of rules on how the REC will be run. The CRU has decided that as part of this written constitution, the REC is required to include its interpretation of "*proximity of the renewable energy project*" and how that interpretation will be assessed by the REC. The REC must satisfy itself that its constitution is in line with the intentions of the Renewables Directive. It should state, commit, or note in its constitution



that its interpretation is in line with the Renewables Directive and that effective control will remain within the proximity of the renewable asset. It should be clear to members or potential members from the RECs constitution which members or shareholders can be involved in the control of the REC.

The CRU will start developing a register of Relevant Market Participants in 2024. The registration framework will outline the general requirements for participation in the market and the customer protections that must be upheld. Once registered with the CRU, a Relevant Market Participant (such as a REC), will have access to market data and will be able to participate in suitable energy markets. The CRU expects a RECs interpretation of proximity to form part of this registration process. An example of proximity requirements could be that you need to be resident (for natural persons) or located (SME's or Local Authorities) in the same town, city, or county as where the renewable energy project is located (or proposed to be located).

When setting the requirements, the REC should consider the needs of the community and the activities it intends to primarily engage in. For example, in areas with a lower population density, a community may have a wider interpretation of 'local' and may choose to set the proximity requirements broader, extending to the neighbouring town, city, or counties, and may include more than one Local Authority. Alternatively, if the primary purpose of the REC was for energy sharing, it may be sensible for the REC to align its proximity requirements with any potential geographic boundary for energy sharing.

DECC is currently developing the terms and conditions of the ([Small-Scale Renewable Electricity Support Scheme - SRESS](#)) which are expected to be published by the end of 2023. The SRESS is a support scheme aimed at providing an easier route to market for community projects than the competitive RESS auction process. Any REC seeking financial support through the SRESS will need to meet the requirements set out in the terms and conditions of the scheme. The CRU expects that those terms and conditions may influence a REC's determination of proximity.

The SEAI has developed the [Community Enabling Framework](#) which provides technical and financial support to communities interested in developing their own renewable energy. SEAI has developed a number of useful information resources and guides and should be the first point of reference for any energy community.

### 3. Next Steps

The CRU will continue to progress the workstreams outlined in its [CEP Roadmap](#) as planned to ensure the objectives of the CEP are met. As part of this work the CRU intends to commence a

consultation process in 2024 on a registration framework for 'Relevant Market Participants', to engage in energy markets. The CRU expects that for RECs, the proximity requirements will form part of the registration process.