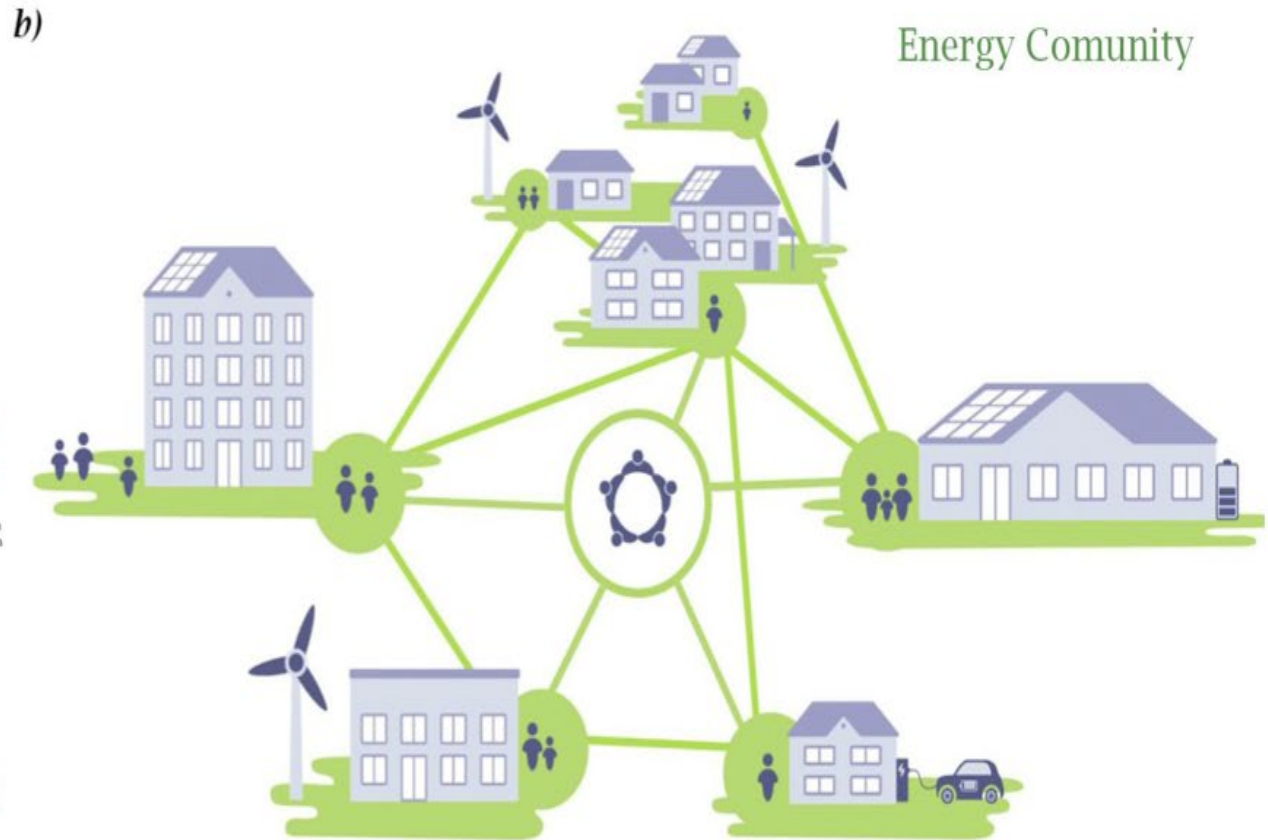
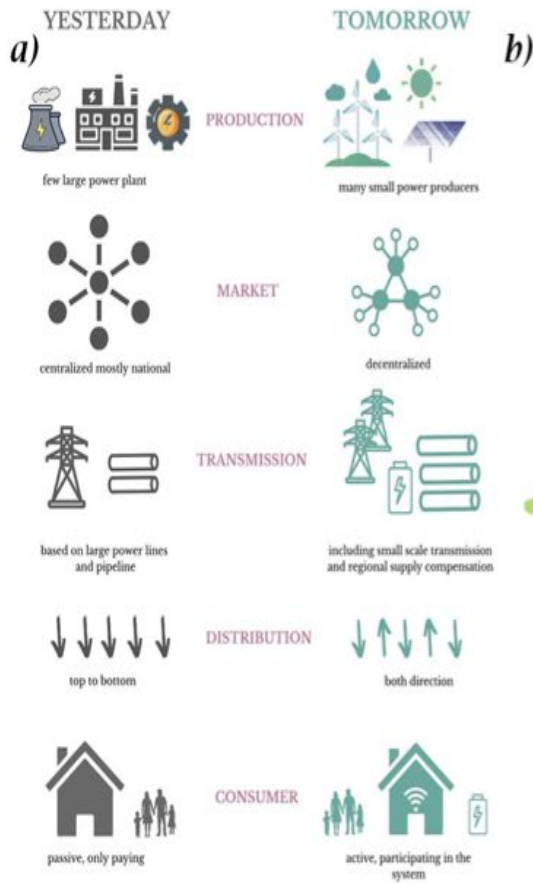




Energy communities – Choosing the right type of company

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Energy Community – what is it about?



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Renewable and Citizens Energy Communities

Renewable Energy Communities (REC)

Art 2 (16) and 22 RED II:

- legal entity
- „voluntary“ and „open“ participation, **autonomous** (democratic principle)
- effectively controlled by shareholders or members that are **located in the proximity**
- **natural** persons, **SMEs** or local authorities, including **municipalities**; large companies excluded
- primary purpose: environmental, economic or social community benefits for members or to the local areas where it operates
- produce, consume, store and sell renewable energy, including through renewables power purchase agreements

Citizen Energy Communities (CEC)

Art 2 (11) and 16 Electricity Market Directive:

- legal entity
- „voluntary“ and „open“ participation
- effectively controlled by **natural** persons, **local** authorities, including municipalities, or **small enterprises**; must not be controlled by SME / large companies
- **no membership** restrictions (large enterprises allowed)
- primary purpose: same as REC
- generation, distribution, supply, consumption, aggregation, storage, energy efficiency services or charging services for electric vehicles or providing other energy services

Eligible types of company

- In principle, no requirements regarding the type of company: Any legal form is possible that allows acting in one's own name, exercising rights and imposing obligations.

Legal criteria to be considered:

- Purpose
 - environmental, economic or social community benefits
- Organisation
 - establishment, change of members, structure of governing bodies
- Liability
 - limited or personal
- Costs
 - formation, tax, accounting

Factual criteria to be considered:

- Who establishes the community?
 - municipality, SMEs, citizens
- What activity will be carried out?
 - generation, distribution, supply, consumption, aggregation, storage, energy efficiency services
- How should it be financed?
 - Membership fees, company capital, loan financing, etc.

Practical aspects for choosing the right type of company

TOP 5 (based on personal experience)

- High level of standardization
- Limitation of liability
- “Easy” entry / exit for members
- Flexible corporate governance
- Costs of establishment, operation & management

Potential types of companies (Austria)

- In **July 2021**, the Austrian parliament adopted the **Renewables Expansion Act (EAG)** and transposed the concept of RECs and CECs into national law.
- Considering the **purpose and organizational structure** of the different types of companies in Austria, the following will be analyzed more closely:
 - Cooperatives (*Genossenschaften*)
 - Association (*Verein*)
 - Ltd (*GmbH*)



The Austrian Federal Minister of Energy presents the newly adopted Renewable Energy Expansion Act ; Foto © BMK / Cajetan Perwein

Cooperative (*Genossenschaft*)

- Advantages:
 - Legal purpose of cooperatives is identical with the idea of communities
 - Legally permitted to make a profit
 - “Dynamic membership circle”
 - Limitation of liability
 - Lower costs compared to other types of companies (e.g. Ltd)
- Disadvantages:
 - Corporate Governance as regards corporate bodies (board)
 - (Annual) review procedure
 - Costs of establishment up to EUR 2000 – EUR 3000

Association (*Verein*)

- Advantages:
 - High level of standardization
 - Straight-forward registration procedure (notification)
 - Membership and corporate governance: High level of flexibility
 - No personal liability of members
 - Lower costs compared to other types of companies (incl cooperative)
- Disadvantages:
 - Non-profit status; profits cannot be distributed to the members
 - No share capital under company law; no clear capital raising regime (membership fees, donations, etc.)

Limited liability company (*GmbH*)

- Advantages:
 - purpose: non-profit limited liability company is possible
 - legal entity enjoys trust on the market (→ financing)
 - no personal liability of shareholders (important for municipalities)
- Disadvantages:
 - change of members very formal, complicated and expensive
 - strict accounting rules
 - higher costs of establishment compared to other legal entities

Other types of companies



- Stock Corporation (*Aktiengesellschaft*)
 - Extraordinary high costs
- Open / limited partnership (OG/KG)
 - High costs and liability exposure
 - Entry/exit of members complicated

Conclusions

- There will be no single “standard” corporate type for energy communities, since the selection of the most appropriate corporate type will depend on the identity and nature of the participating actors and partners (municipalities, SMEs, suppliers, aggregators etc) and the communities’ energy activities.
- Cooperative and association most closely reflect the concept of energy communities.
- There is a slight preference for associations since their establishment and management appear straight-forward and flexible, from both founder and member perspective. The founding and operative costs are low compared to other companies (cooperatives). Members are not subject to any liability risks.
- From a mere financing perspective, cooperatives might be the preferred corporate model. Cooperatives are subject to a legally regulated capital raising regime and also allow for profit distribution.
- Limited liability companies appear to be the least appropriate model for energy communities, since they are regularly linked to high costs and entry / exit for members is rather burdensome. Same applies to partnerships.

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