



**Statement by the**

**Energy Community Regulatory Board**

**recommending good practices for the treatment of  
investment requests for projects of Energy Community  
interest**

*of 24 June 2024*

## **THE ENERGY COMMUNITY REGULATORY BOARD,**

Having regard to its role in accordance with Energy Community acquis,

Having regard to Regulation (EU) 2022/869 of 30 May 2022 on guidelines for trans-European energy infrastructure, incorporated and adapted by Ministerial Council Decision 2023/02/MC-EnC of 14 December 2023 amending Annex I to the Energy Community Treaty to adapt to and adopt Regulation (EU) 2022/869 on guidelines for trans-European energy infrastructure and amended by Ministerial Council Decision 2023/03/MC-EnC of 14 December 2023 amending Article 2(2) of the Energy Community Treaty (hereinafter 'Energy Community TEN-E Regulation'), in particular, Article 16(11),

Whereas

- (1) Energy Community TEN-E Regulation, provides for the identification of projects of Energy Community interest (hereinafter 'PECI'), necessary to implement the needed power transmission infrastructure, energy storages, smart electricity grids, smart gas grids, hydrogen infrastructure, electrolyzers and carbon dioxide infrastructure.
- (2) As each PECI must have an overall net positive impact at the Energy Community level, it should generally be possible to provide financial compensation to eliminate the country specific net negative impact, if such exists. Where possible, a harmonised approach should be applied in order to identify the project promoter(s) which should provide such compensation and those which should receive it.
- (3) Energy Community TEN-E Regulation facilitates investments in PECIs by envisaging decisions by National Regulatory Authorities (hereinafter also 'NRAs') or by the Energy Community Regulatory Board (hereinafter 'ECRB') on the allocation of the costs of such projects across borders if project promoters submit an investment request, including a request for a cross-border cost allocation (hereinafter also 'CBCA').
- (4) In deciding on CBCA, NRAs should allocate efficiently incurred investment costs across borders and include them in the national tariffs, and, afterwards, if relevant, determine whether their impact on national tariffs could represent a disproportionate burden for consumers in their respective Contracting Party.
- (5) As soon as such a PECI has reached sufficient maturity and is estimated to be ready to start the construction phase within the next 36 months, the project promoters, after having consulted the TSOs from the Contracting Parties which are assessed as potentially having a significant net positive impact from it, shall submit an investment request, including a request for CBCA. That investment request could include a request proposal for a cross-border cost allocation and shall be submitted to all the NRAs concerned.

- (6) Article 16(4) of the Energy Community TEN-E Regulation requires that an investment request is accompanied by a project specific cost benefit analysis (hereinafter also 'CBA') consistent with the single sector methodologies drawn up pursuant to Article 11 of the same Regulation. However, Article 16(4) does not specify the level of detail of the information to be submitted by project promoters. A clarification of the details to be submitted is essential to facilitate a consistent approach among project promoters and NRAs for a given PEI. This should at the same time enable the submission of complete investment requests of adequate quality and facilitate the minimisation of delays.
- (7) There is a time gap between the initial assessment of the positive impact of a project as PEI and when the investment request is submitted. Within this period, the level of maturity of the project as well as various elements of the assessment framework have the potential to undergo modifications, which could consequently affect the costs and benefits associated with the project.
- (8) Because of the importance of the cross-border cost allocation process for advancing infrastructure projects of Energy Community relevance, identification of good practices for NRAs across European Union and Energy Community is of utmost importance to facilitate a proper treatment of the investment requests.
- (9) Implementation of the Energy Community TEN-E Regulation should follow European Union practices to ensure consistent application across Europe.
- (10) The Agency for the Cooperation of Energy Regulators (hereinafter 'the Agency'), in accordance with the Regulation (EU) 2022/869, issued a comprehensive Recommendation no 02/2023 on good practices for the treatment of investment requests for projects of common interest.
- (11) The Agency's Recommendation takes into account previous recommendations and builds on experience gained with the assessment of the investment requests, extensive public consultation and past relevant decisions.
- (12) In the new Energy Community TEN-E Regulation, Projects of Mutual Interest (PMIs) are part of the European Union PCI/PMI selection process.
- (13) Three PEI and PMI selection processes were carried out in the Energy Community in 2016, 2018, and 2020, producing the respective PEI/PMI lists. The new PEI selection process is currently underway in accordance with the new Energy Community TEN-E Regulation.
- (14) So far, no investment request has been submitted to Energy Community NRAs or the ECRB demonstrating the need for cross-border cost allocation for any previously rewarded projects.

**RECOMMENDS:**

1. That projects qualified as Projects of Energy Community Interest in accordance with the Energy Community TEN-E Regulation, should take into consideration the Agency's Recommendation no 02/2023<sup>1</sup>. This is particularly relevant for projects promoters submitting an investment request, including a request for a cross-border cost allocation.
2. The review of these requests by the National Regulatory Authorities or, if necessary, the Energy Community Regulatory Board, should be guided by the good practices outlined in the Agency's Recommendation no 02/2023, taking into account the Energy Community specifics detailed in the Annex.

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<sup>1</sup> [Recommendation No 02/2023 of 22 June 2023 on good practices for the treatment of the investment requests, including Cross Border Cost Allocation requests, for Projects of Common Interest](#)

## ANNEX

### I. SCOPE AND OBJECTIVE

This ECRB Statement concerns project promoters submitting an investment request, which includes a request for cross-border cost allocation, as well as to NRAs seeking agreement on such requests. It is not relevant for investment requests already submitted by project promoters to NRAs before the date of its publication. Anyway, no such requests have been submitted so far to the NRAs or the ECRB.

The aim is to make use of good practices from the European Union in the preparation, submission and treatment of investment requests.

Agency's Recommendation is composed of a set of general guidelines and good practices which can be applied to any infrastructure category, plus specific section for specific project categories where adequate maturity of the current methodologies and regulatory practices already exist.

### II. ENERGY COMMUNITY SPECIFICS

For applicability in the Energy Community, where Agency's Recommendation refers to:

#### 1. Regulation (EU) 2022/869,

- the reference to the Energy Community acquis is Regulation (EU) 2022/869 of 30 May 2022 on guidelines for trans-European energy infrastructure, incorporated and adapted by Ministerial Council Decision 2023/02/MC-EnC of 14 December 2023 amending Annex I to the Energy Community Treaty to adapt to and adopt Regulation (EU) 2022/869 on guidelines for trans-European energy infrastructure and amended by Ministerial Council Decision 2023/03/MC-EnC of 14 December 2023 amending Article 2(2) of the Energy Community Treaty (hereinafter 'Energy Community TEN-E Regulation').<sup>2</sup>

#### 2. Regulation (EU) 2019/943,

- the reference to the Energy Community acquis is Regulation (EU) 2019/943 of 5 June 2019 on the internal market for electricity, incorporated and adapted by the Ministerial Council Decision D/2022/03/MC-EnC of 15 December 2022 on the incorporation of Regulation (EU) 2019/942, Regulation (EU) 2019/943, Regulation (EU) 2015/1222, Regulation (EU) 2016/1719, Regulation (EU) 2017/2195, Regulation (EU) 2017/2196, Regulation (EU) 2017/1485 in the Energy Community acquis, amending Annex I of the Energy Community Treaty, and on the amendments of the Ministerial Council Decisions No 2021/13/MC-EnC and No 2011/02/MC-EnC.<sup>3</sup>

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<sup>2</sup> [Link](#)

<sup>3</sup> [Link](#)