

OBSTACLES TO THE REALIZATION OF A RENEWABLE ENERGY COMMUNITY IN ITALY DUE TO THE (UNNECESSARY?) COMPLEXITY OF EUROPEAN AND NATIONAL REGULATIONS

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Synopsis: Directive (EU) 2018/2001 of the European Union (“RED II Directive”) promotes the use of energy from renewable sources through Renewable Energy Communities, which are legal entities based on the open and voluntary participation of citizens, small and medium-sized enterprises, and local authorities. These communities aim to develop decentralized renewable energy production and storage, to increase local energy security, to reduce energy transmission losses, to create local income and jobs, and to combat energy poverty. The creation of Renewable Energy Communities is envisioned by the RED II Directive as a bottom-up process in which the local communities play an active role in driving their incorporation. However, the interaction between different regulatory layers (both European and Italian), the varying definitions of “proximity” and “control” within the regulations, and the impact of European State aid rules can pose significant legal and practical challenges to the establishment of these Renewable Energy Communities. Legal rules must strike a balance between the benefits of detailed regulation and the deterrent effects of complexity: simpler regulations could facilitate grassroots processes and local community engagement in Renewable Energy Communities, whereas complexity tends to support top-down approaches by large energy firms, thereby restricting local communities’ autonomy. The current regulatory environment appears therefore misaligned with the initial goals and expectations.

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I. INTRODUCTION

The European Union has an important policy action to promote the use of renewable energy sources all over Europe. This policy is intended not only to bring environmental benefits but also to enhance energy supply security, to ensure sustainable and affordable energy, and to foster technological development and innovation. One of the means to reach these objectives is the support to the creation of decentralized small renewable energy projects, such as rooftop solar installations, promoting as far as possible not only the local production but also the local consumption of the electric energy locally produced (indicated as self-consumption¹). This approach not only ensures the local production of sustainable energy but also reduces the usage of the transmission grid, providing overall benefits.

The European RED II Directive² is an instrument of this policy and achieves its objectives in part through the promotion of local organization of small producers and consumers: the Renewable Energy Communities (“RECs”). Promoting and regulating local organizations to effectively enable citizens and small enterprises to operate in a coordinated manner as both producers and consumers within the complex energy market was evidently challenging.

This article aims to assess whether the objectives of straightforward and transparent regulations, as well as effective coordination among authorities, have been met or whether there are inconsistencies in the legal concepts employed and discrepancies between the involved authorities, alongside unnecessary complexities that may impede the grassroots development of RECs and the participation of local communities.

1. Self-consumption is properly speaking the consumption of energy made by the same producer; such term has been extended to refer to the local consumption of energy locally produced

2. Directive 2018/2001, of the European Parliament and of the Council of 11 December 2018 on the Promotion of the Use of Energy from Renewable Sources, 2018 O.J. (L 328) 82 [hereinafter RED II Directive].

RECs are intended by the RED II Directive as autonomous legal entities, based on open and voluntary participation of citizens, small and medium enterprises, and local authorities, effectively controlled by the local members. RECs' main purpose is to contribute to the development of decentralized renewable energy production and storage and to the promotion of local consumption, and they should be primarily concerned with providing environmental, economic, or social benefits for the local area in which they have been created. In such a way, RECs may reach the purpose to increase local security of energy supply, to reduce energy transmission losses, to create local income and jobs, to empower consumers and citizens, and to fight energy poverty.

The creation of RECs is envisioned by the RED II Directive as a bottom-up process where the local communities play an active role.

According to the RED II Directive, engaging local communities is vital to raising citizens' awareness of climate change risks and building support for the energy transition. As the RED II Directive explains:

[t]he participation of local citizens and local authorities in renewable energy projects through renewable energy communities has resulted in substantial added value in terms of local acceptance of renewable energy and access to additional private capital which results in local investment, more choice for consumers and greater participation by citizens in the energy transition.³

To support the grassroots development of RECs, EU authorities emphasize the importance of establishing clear and straightforward regulations. These regulations should govern RECs' formation and their activities. Additionally, it is crucial to outline the requirements that RECs must meet in order to qualify for the government economic support. The RED II Directive emphasizes this by stating, "the lack of transparent rules and coordination between the different authorisation bodies has been shown to hinder the deployment of energy from renewable sources."⁴ The RED II Directive refers to problems arising out of the overlapping regulation issued by many authorities (Italian and European) having jurisdiction on the same issue.

In the European legal system, a Directive is not directly binding and requires implementation by the Member States. The national implementation of the RED II Directive involved various instruments such as laws, ministry decrees, regulations, and guidelines, which have been issued by different authorities including the parliament, the government, independent electricity market authorities, and authorities responsible for approving articles of association. During the national implementation process of RECs, further involvement from European Authorities was necessary. This was due to concerns that support provided by the Italian Government to RECs could indirectly aid small and medium enterprises members of the RECs and, in this way, could potentially violate European principles against anti-competitive State aid. Consequently, Italian citizens wishing to establish a REC must comply with multiple regulations issued by various Italian and European authorities and have to deal with multiple regulatory bodies.

3. *Id.* para. 70.

4. *Id.* para. 50.

To conduct the analysis of which has been the result of such implementation process, we begin with a description of the purposes of RECs, of the main regulatory acts that govern them, and of the importance of public support, including financial support, in their development. Then we will examine some crucial aspects of this overall Italian implementation:

- (i) the notion of “proximity” between members and production plants used to qualify the RECs as local initiatives;
- (ii) the notion of “control” to assess who effectively controls RECs and the criteria to identify the members which may control the RECs, both used to assure that RECs are effectively locally governed;
- (iii) the contents of contracts between producers and RECs which may qualify a power plant as a part of the RECs and so legally relevant for the self-production and the self-consumption;
- (iv) the criteria for the distribution of the incentives granted by the Italian government among members of the RECs; and
- (v) the effective ability of the RECs to collaborate with energy producers, energy sellers, and large corporations which are in principle excluded from being a member of RECs but may have the know-how and the capacity to help the development of locally managed RECs.

We conclude that the initial objectives of the RED II Directive to facilitate the creation of RECs have not been fully reached, and existing inconsistencies, complexities, and ambiguities in the overall Italian implementation (deriving also from the requests of European authorities involved in the implementation process) may hinder the development of the RECs and, above all, their bottom-up creation as envisioned by the RED II Directive.

II. THE RED II DIRECTIVE AND THE RECS

The RED II Directive (EU) promotes RECs in the broader objective of promoting self-production and self-consumption of renewable electricity in Europe.

Self-consumption involves generating renewable electricity for end use, which can encompass the storage or the sale of any surplus electricity that has not been used. The RED II Directive aims to support all different types of self-production and self-consumption of renewable electricity and to expand the application of the concept of self-production and self-consumption from individual producers/consumers (“prosumer”) to larger local communities.

Renewable energy self-consumers are defined as final customers (residential, industrial, and commercial end users) who generate renewable electricity on their premises for their own usage and may store or sell any excess electricity generated.

The first stage of expanding individual self-consumption includes final consumers located in the same building or multi-apartment block (including complexes of multiple buildings that function as a condominium) who can collectively consume the energy they produce.⁵

RECs represent a further extension of the local self-production and self-consumption concept: the self-consumption is not limited to a single person (using one or more of his/her premises) or to a group of people living in the same building or in the same multi-apartment block, but it is extended to a group of people living in the same local area.

The legal consequence of the distinction between the various forms of self-consumption mechanisms and the RECs lies in the necessity of an additional legal entity. In the case of a single individual or a group of individuals residing in the same building or multi-apartment block, such an entity is not required, but in the context of RECs, a specific legal entity is necessary to aggregate the individuals participating in the self-consumption group.

The establishment of RECs as autonomous entities requires a detailed legal framework to identify the purposes of the REC, the distribution criteria of the benefits produced or obtained by the RECs, and the governance rules which ensure that the REC is effectively controlled by citizens, small and medium enterprises, and local authorities.

The RED II Directive recognizes the importance of RECs in promoting acceptance of the need for the energy transition and clearly states that “measures to allow renewable energy communities to compete on an equal footing with other producers also aim to increase the participation of local citizens in renewable energy projects and therefore increase acceptance of renewable energy.”⁶

The process of establishing a REC holds considerable importance. When an incorporation process is not the result of local initiatives (i.e., local citizens and local community organizations getting together to establish a REC) but derives from the passive acceptance of frameworks and models proposed by major energy corporations (interested in selling solar production plant together with the participation in a REC already organized on national basis in which the citizen has no real power), it is unlikely to meet all the goals established in the RED II Directive.

According to the RED II Directive, the Member States should promote the effective participation of citizens to the RECs: RECs are considered very important both in their role as aggregator of self-producers and self-consumers of renewable energy (which promotes the production of renewable energy) and in the

5. A condominium is a property complex comprised of individual units and each unit is owned separately, but the owners have a nonexclusive ownership in certain community property which are used by the owners of the individual units and are managed by the condominium management. The condominium may be vertical (a single building divided in apartments) or horizontal (a common lot made up of houses arranged side by side in terms of the law). There is no legal difference between vertical and horizontal property regimes: both of them have individual and community property and the community property is managed in the interest of the individual property. The store and sale of self-produced electric energy may remain an individual activity or may be collectively exercised. In any case to be granted incentive the members of the condominium should agree to act collectively on the basis of an agreement.

6. RED II Directive, *supra* note 2, para. 70.

role of spreading local awareness of environmental issues and of strengthening bonds in local communities.

RECs are established within local areas (small towns, portions of cities, etc.⁷) and stem from the efforts of volunteers and local authorities. However, they frequently lack the necessary funds and expertise to complete their projects without professional assistance and financial aid.

Therefore, RECs should be supported by public authorities to help them to reach their goals. The role of public authorities is essential in creating a supportive legal framework, granting the necessary authorizations, and providing financial aid and technical support. The RED II Directive recognizes this important role of Member States: they are required to eliminate regulatory and administrative barriers to the activities of RECs and ensure access to the financial support necessary for the establishment of RECs.

III. THE COMPLEXITY OF ITALIAN REGULATORY SYSTEM OF RECS IN THE FRAMEWORK OF EU PROVISIONS

The Italian regulatory framework consists of overlapping regulations issued by various authorities. The Italian State operates through a variety of bodies, including the Italian legislative bodies (the Parliament and the Government which may issue laws on the basis of a parliamentary delegation), the Ministry for Environment and Energy Security, the ARERA (the Italian Regulatory Authority for Energy, Networks and the Environment), and GSE s.p.a. (a company that is wholly owned by the Ministry of Finance and has been entrusted with the promotion of renewable energies and of energy efficiency).⁸

The main Italian provisions governing RECs are:

- (i) the Legislative Decree, November 8, 2021, n. 199, issued by the Italian Government on the basis of a delegation of the Italian Parliament, implementing the Directive (EU) 2018/2001 (“Legislative Decree”);⁹
- (ii) the Decree of the Ministry of the Environment and Energy Security dated December 7, 2023, n. 414 (“Decree”);¹⁰
- (iii) the Resolution 727/2022/R/eel of the ARERA, as amended on January 23, 2024 (“TIAD”);¹¹

7. The REC are established within the area covered by the primary substation of the distribution grid. The average surface area is approximately 143 km².

8. While the European Union provisions and documents are cited in their English official text, the text of Italian provisions have been translated by the authors from the original Italian language.

9. Decreto Legislativo 8 novembre 2001 n.199, G.U. Nov. 30, 2024, n.385 (It.) (the up-date text can be found at www.normattiva.it).

10. Decreto Ministeriale 7 dicembre 2023, n.414, G.U. Feb. 7, 2024, n.31 (It.).

11. Autorità di Regolazione per Energia Reti e Ambiente (ARERA) [Italian Regulatory Authority for Energy, Networks and the Environment], Resolution of Dec. 27, 2022, No. 727/2022/R/eel, <https://www.arera.it/fileadmin/allegati/docs/22/727-22.pdf> [hereinafter TIAD].

(iv) the Operational Rules dated January 23, 2024, amended on April 24, 2024, issued by the GSE (“Operational Rules”).¹²

The Italian regulation of the financial support to RECs contained in the Decree needed the prior approval of European authorities. Indeed, the financial support for RECs (which can also include small and medium enterprises as members) had to be submitted to the European Commission to ensure compliance with European State aid rules.¹³ The involvement of the European Commission significantly influenced the content of the Italian regulation: the final text of the Decree, approved by the European Commission Decision C (2023) 8086 final on November 22, 2023, differed in several respects from the initial draft and all amendments were made to accommodate European Commission’s objections; specifically, very complex rules have been introduced restricting the access of small-medium enterprises, which are members of RECs, to the State financial supports granted to RECs, and these restrictions were not contemplated in the original draft.¹⁴

Public authority rules governing the mechanisms for self-production and self-consumption, particularly RECs, which resulted from this process involving different Italian and European authorities, are highly detailed.

The regulations address several key legal concepts related to qualifying a REC as local, such as proximity and control, and outline criteria for distributing the benefits received by RECs. Additionally, these rules specifically govern the current financial aid scheme, allowing RECs to obtain the enhancement contribution (“contributo di valorizzazione”) and the premium tariff (“tariffa premio”), both provided by the Italian Government.

Both financial incentives require that the RECs invest, directly or through their members, in the establishment of new renewable energy production power plants. The members of a REC may receive the enhancement contribution and the premium tariff for each hour of electricity that is self-produced (by the new re-

12. GESTORE DEI SERVIZI ENERGETICI (GSE) [ENERGY SERVICES MANAGER], DECRETO CACER E TIAD – REGOLE OPERATIVE PER L’ACCESSO AL SERVIZIO PER L’AUTOCONSUMO DIFFUSO E AL CONTRIBUTO PNRR [CACER AND TIAD DECREE – OPERATIONAL RULES FOR ACCESSING THE DIFFUSE SELF-CONSUMPTION SERVICE AND THE PNRR CONTRIBUTION] (2024), <https://www.mase.gov.it/sites/default/files/ALLEGATO%201%20Regole%20operative%20CACER%20def.pdf> [hereinafter OPERATIONAL RULES].

13. State aid regulation refers to any benefit conferred by a Member State or through state resources that distorts competition and impacts trade within the European Union. The EU’s State aid rules are designed to foster fair competition and prevent undue advantages to specific companies or industry sectors. Member States are required to notify the European Commission of all new aid measures. The European Commission evaluates whether the proposed aid adheres to EU regulations and grants approval if it is consistent with EU regulations. In the case of the RECs, which can include SMEs (small and medium enterprises) as members, no block exemption was applicable (i.e., general exemption for whole kind of State aid actions considered not significantly affecting European competition), thus necessitating the notification of the aid scheme to the European Commission which examines it on a case-by-case basis. The European Commission demanded revisions to the draft decree from the Ministry of the Environment and ultimately approved the final text with Decision C (2023) 8086 final on November 22, 2023.

14. Commission Decision No. 8086 (Nov. 22, 2023), cited in 2024 O.J. (C 1159) 1, <https://competition-cases.ec.europa.eu/cases/SA.106777> [hereinafter Commission Decision No. 8086]. The impact of the European Commission’s involvement can be deduced by comparing the draft and the final approved version of the Decree and on these restrictions, there has been no public discussion.

newable energy production plants) and self-consumed (or “shared”) by the members of the REC within the same area of the electricity grid (the area of the primary substation).¹⁵

The self-consumption is “virtual,” meaning it is reconstructed *ex-post* from actual consumption data within the area of the same primary substation, and it is equal to the portion of electricity shared between producers and consumers belonging to the same REC who have their interconnection points to the grid in the area of the same primary substation. In particular, it is equal, each hour, to the lower value among the sum of electricity fed into the grid by the renewable power plants of the self-production and self-consumption mechanism and the sum of electricity consumption by the members of the RECs.¹⁶

The enhancement contribution compensates the fact that the transmission grid is not used due to the proximity of renewable energy power plants to consumers: one of the problems faced by the transmission and distribution grid is the loss of transmitted energy which is avoided or mitigated if producers and consumers are in the same local area.¹⁷ It is determined by ARERA and paid for each MWh of shared energy of the REC: it is equal to 10.57 €/MWh for 2024.

The premium tariff represents a general support scheme designed to facilitate the development of self-production and self-consumption mechanisms (and, among them, the RECs). Specifically, the premium tariff is paid for each MWh of shared energy of the REC and consists of a fixed part and a variable part. The fixed part varies according to the size of the plant, while the variable part depends on the market price of energy.¹⁸ The fixed part of the incentive tariff decreases as the plant power increases (from a maximum of 80€/MWh to a minimum of 60€/MWh), while the variable part ranges between 0 and 40€/MWh depending on the energy price (as the market price of energy decreases, the variable part increases up to a maximum of 40€/MWh). The sum of the fixed and variable part cannot exceed 80€/MWh. Additionally, to account for the lower productivity of the photovoltaic plants installed in the central-northern regions, where there is less

15. A primary substation connects the electric power transmission grid with the distribution grid. Basically, this device enables the transfer of high-voltage (HT) electricity to medium-voltage (MV) electricity. Each primary substation serves a specific area of the national territory and is connected to several secondary substations which transform electrical energy from medium-voltage (MV) to low-voltage (LV).

16. This is consistent with consideration No. 71 of the Directive (EU) 2018/2001: “*Renewable energy communities should be able to share between themselves energy that is produced by their community-owned installations.*” RED II, *supra* note 2, para. 71. The virtual sharing is the only technical approach possible in the existing grid structure, and it allows the Italian regulation to reach the goals of the Directive (EU) 2018/2001: making it possible for virtual self-consumption to be realized in a specific local area, which also promotes local renewable energy production.

17. TIAD, *supra* note 11.

18. D.M. n.414/2023, art. 3, annex 1. The Decree also grants financial support to build new renewable energy power plants only for people or entities residing in municipalities with less than 5,000 inhabitants. This financial support reduces the amount of the premium tariff granted for the self-consumption of energy produced by the supported plants (to avoid an excessive accumulation of State aid).

sunlight compared to those in southern Italy, a higher premium tariff is granted in these central-northern regions than in southern regions.¹⁹

Finally, restrictions on the criteria for sharing the premium tariff granted to the REC among its members have been defined in the Decree to align them with European State aid regulations. In particular, incentives that exceed the funding gap cannot be granted to small and medium-sized enterprises. The funding gap refers to the shortfall in financing required for a project that is not covered by market resources, such as equity or debt (i.e., the discounted sum of the expected future net revenues is insufficient to offset the initial investment expenditure). Therefore, State aid may be permissible up to this funding gap when the investment serves the public interest, as the market alone cannot support the investment expenditure. For RECs, the European Commission has defined this funding gap as equivalent to the incentives produced by shared energy that exceeds 45% or 55%, depending on the type of power plants and on the total energy fed into the grid by the power plants connected to the same primary substation.²⁰ Any incentives paid for shared energy surpassing the funding gap cannot be allocated to enterprises: such incentives would not only compensate for the funding gap, but they would represent an unjustified reward to enterprises.

As stipulated by the Decree, following the European Commission decision, incentives exceeding the funding gap cannot be given to enterprises. Each REC shall have to implement distribution criteria which avoid any attribution of incentives exceeding the funding gap to its members which are small and medium enterprises.

IV. THE MULTIPLE NOTIONS OF PROXIMITY TO RENEWABLE ENERGY PROJECTS USED BY THE ITALIAN EXISTING REGULATION

The definition of “Renewable Energy Community” contained in the RED II Directive states that the Renewable Energy Community is a legal entity 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.”²¹

In the RED II Directive, the concept of proximity is applied solely to identify controlling individuals and entities, with the expectation that they should be situated in the proximity of the renewable energy projects. This concept is presented in a generic manner by the European Union. Rather, the European Union authorities expected that any needed clarifications were to be integrated into the national implementing regulations, which were able to consider the particular local context of the respective member state.

19. The increase in respect of the premium tariff granted in South Italy is 4 €/MWh for the Central regions (Lazio, Marche, Tuscany, Umbria, Abruzzo) and 10 €/MWh for the Northern regions (Emilia-Romagna, Friuli-Venezia Giulia, Liguria, Lombardy, Piedmont, Trentino-Alto Adige, Valle d’Aosta, and Veneto).

20. The percentage is reduced from 55% to 45% for plants already supported by an investment grant up to 40% of the investment (on the basis of a proportional reduction); plants already supported by an investment grant exceeding 40% of the investment are completely excluded.

21. RED II Directive, *supra* note 2, art. 2, para. 16(a).

The Italian rules introduced different concepts of proximity in the regulation of RECs, each for a different purpose, and the various concepts together generated significant complexity which may be challenging for RECs.

A. *The Concept of Proximity as a Requirement to be a Member of a REC*

RED II Directive utilizes the concept of proximity solely to determine which member of the REC can act as a controlling member, i.e., members which have governance powers in the REC. When referring generally to the members of a REC, the RED II Directive specifies that they may include “natural persons, SMEs, or local authorities, including municipalities” without mentioning any proximity requirement.²² The necessity for a REC to be closely tied to a local area can be inferred from the RED II Directive’s stipulation that control should be exercised by members of a specific local area, and from consideration n. 70, which states that “local involvement is all the more crucial in an environment of increasing renewable energy capacity.”²³

Nevertheless, RED II Directive leaves unresolved whether a proximity requirement exists for membership in a REC. This issue was left to national implementing regulations. Unfortunately, Italian implementing rules are ambiguous on this matter. Legislative Decree 199/2021 mentions that all end customers may be members of a REC but does not specify any proximity requirements except for controlling members (i.e., being in the administrative area of the municipalities where there are the production plants).²⁴

The TIAD (the Guidelines issued by Arera — the Italian energy authority) indicates that shared (self-consumed) energy is only relevant when entities belong to the same market area without giving any clarification on the possible impact of this concept: “For the purposes of accessing the service for widespread self-consumption, in the case of a renewable energy community, all of the following conditions must be met: a) the entities forming part of the configuration are end customers and/or producers with connection points located in the same market area.”²⁵

The Operating Rules issued by GSE (the state-owned company that is subject to the Arera’s guidelines) state that an individual or entity may be a member of a REC even if not a consumer or producer relevant for the self-consumption of electric energy.²⁶

In conclusion, the issue remains unresolved. It is unclear whether any proximity criteria must be met to become a member of a REC in Italy, and, if such criteria exist, what they are. At the very least, it seems clear that all persons and entities of a specific Market Area may be a member of any REC included in such Market Area.²⁷

22. RED II Directive, *supra* note 2, art. 2, para. 16(a).

23. *Id.* para. 70.

24. See Decreto Legislativo 8 novembre 2021, n.199, art. 31, G.U. Nov. 30, 2021, n.285 (It.).

25. See TIAD, *supra* note 11, art. 3.2.

26. OPERATIONAL RULES, *supra* note 12, at 18.

27. The Market Areas or Zones are the different portion of the European energy market defined according to Regulation 2015/1222 of the European Commission of 24 July 2015 (*Capacity allocation and Congestion*

B. The Concept of Proximity to be a Controlling Member of a REC

The concept of the proximity to be a controlling member of a REC, which was left indeterminate by the RED II Directive, has been specified by the Legislative Decree 199/2021: the exercise of the controlling powers shall be carried out exclusively by natural persons and other eligible entities, which are located “in the territory of the same municipalities” in which the power plants relevant for the energy sharing are located.²⁸ It is not clear why the connection should be so strict: not all the municipalities of the interested local areas are relevant but only such municipalities where the renewable energy power plants are located. It is clear that little towns included in the same primary substation area are prevented to cooperate if, due to such rules, the members of a community with no plants did not have the same governance powers as the members of another community which have plants.

C. The Concept of Proximity to Share Self-Produced and Self-Consumed Electric Energy

In order to obtain economic incentives, the members of a REC should be members of the same local area, meaning that they have to be connected to the distribution grid through existing connection points belonging to the same primary substation of the distribution grid (except for small islands) as specified by art. 3, paragraph 2, of the Decree: “production plants and withdrawal points forming part of RECs are connected to the distribution network through connection points forming part of the area underlying the same primary cabin, without prejudice to the provisions for minor islands of Article 32(8)(e) of Legislative Decree No. 199 of 2021.”²⁹ To be a member of a REC whose activity as a consumer or as a producer may yield any financial incentives, it is therefore necessary to be in same primary substation area of the distribution grid: this is a reasonable requirement because the primary substation area identifies, from a technical point of view, the relevant proximity of producers and consumers in the distribution grid and, in the same time, identifies a small area where there are local communities which may easily cooperate.

D. The Concept of Proximity to Identify the Areas Where a REC May Spend the Received Incentives

As discussed, there are limits to the use of the state incentives received by a REC due to European State aid rules. The Decree, however, not only indicated that such incentives should not be given to small and medium-sized enterprises, otherwise leaving RECs free to choose their use, but also specified the possible uses. Specifically, the incentives exceeding the funding gap should only be distributed to non-enterprises or, alternatively, be directed to territories (without any

Management – CACM). The zonal configuration valid for the Italian territory has been reviewed by the Transmission System Operator and approved by Arera and, from 2021, in Italy there are seven Market Areas: North, Center-North, Center-South, South, Calabria, Sicily, and Sardinia).

28. See D.Lgs. n.199/2021, art. 31.

29. D.M. n.414/2023, art. 3, para. 2. The same principle is stated by the TIAD for the enhancement contribution.

other qualification) where the power plants are located: the concept of territories is mentioned in the Decree without any clue to understand its meaning.³⁰

In essence, not only is there a spending restriction favoring the local area over distant or unrelated areas, but there is also a possible distinction among various sections within the local area. The criteria for this distinction remain vague, unlike those used to identify controlling members, which relate specifically to the municipalities' administrative zones. The controlling members should be resident in the municipalities' administrative zones where there are the production plants while the economic support by the RECS should be directed to territories where there are the production plants. Are these territories larger, equal to, or smaller than the municipalities' administrative zones? Why such an indeterminate concept has been used in such a relevant issue? And, above all, it is unclear why such additional limitation has been inserted when the request of the European authorities was just to prevent the distribution to enterprises.

E. An Examination of the Different Existing Concepts of Proximity

To summarize these different concepts of proximity:

- (i) it is unclear whether there are or not criteria of proximity to be a member of a REC and, of course, what such criteria are; in any case, all persons and entities of the relevant Market Area seem to meet the criteria to qualify as members;
- (ii) to qualify as a controlling member of a REC it is necessary to have the point of contact to the grid in the administrative area of the municipalities where there are the renewable energy power plants relevant for the virtual self-consumption of the members of the concerned REC;
- (iii) to qualify as a member whose self-production or self-consumption is relevant for the grant of the incentives it is necessary to have the interconnection point to the grid in the area of the same primary substation of the distribution grid;
- (iv) the incentives exceeding the funding gap, if used to give benefits to the local area, may be directed only to the (not otherwise qualified) territories where there are the renewable energy power plants.

All these different concepts of proximity may create practical problems and confusion:

- (i) the proximity area to be a member and the proximity area to be a controlling member are different;
- (ii) the areas of primary substations and of the administrative zones of the municipalities do not coincide (usually a primary substation covers portion of territories of different municipalities, and a municipality's administrative zone includes areas of different primary substations);

30. *Id.* annex 1.

- (iii) there are seven Market Areas (North, Center- North, Center-South, South, Calabria, Sicily, Sardinia), and there are 2,107 primary substations distributed among all these Market Areas;
- (iv) the territory of a municipality where the power plants are located is a well-defined administrative area, but the territory where the power plants are located (relevant to receive the support using the premium tariff exceeding the funding gap) is an imprecise and indeterminate concept.

Many problems arise out of these different concepts of proximity. For instance, by-laws of the RECs might need to establish at least two member categories: controlling and non-controlling members. However, not all legal types which RECs may adopt can accommodate such distinctions.

Moreover, members living only a few kilometers or even meters apart might receive different powers due to being in different municipal areas. If a primary substation serves multiple municipalities with power plants located in only some of them, members from municipalities without power plants cannot be controlling members of a REC, even if they are energy consumers in the same primary substation area. Such disparities seem unreasonable, yet existing laws offer no room for doubt.

With reference to the territories where the power plants are located (relevant to receive the support using the premium tariff exceeding the funding gap) two different interpretative options remain open and remains unclear which is the correct one:

- (i) these territories could be the same as the areas relevant to qualify the controlling members (i.e., the administrative zones of the municipalities where there are the power plants);
- (ii) alternatively, these territories could be broader, encompassing the entire area covered by the primary substation's distribution grid.

A REC may face tough choices between complying with legal requirements and addressing social and political needs within its operational area. It seems impractical to exclude nearby local communities, which fall under the same primary substation, from support due to a lack of power plants in these areas and, in any case, may make difficult the agreement between different municipalities and communities.

Combining these rules with other requirements about RECs presents significant challenges. During the drafting process of Italy's regulations for RECs, a straightforward solution appeared feasible. This would have involved defining a single area notion to identify members, controlling members, members relevant for self-production and self-consumption, and the territories benefiting from the support of the premium tariff exceeding the funding gap, namely the primary substation area. It is puzzling why this clear-cut solution has not been adopted, especially given the potential confusion linked to different proximity definitions. In alternative, the additional limitation of the territories which may receive the support of the RECs could be simply deleted, with further simplification.

As a result, the fragmented and plural concept of proximity has the potential to significantly impact the activity of RECs, without advancing any tangible public

or social objectives. Involving citizens more extensively in the regulatory process and paying greater attention to the practical issues of local communities could have contributed to drafting simpler regulations. Practically, this can still be achieved by amending the existing regulations to incorporate and apply the single, straightforward concept of the primary substation area for all relevant purposes while also eliminating unnecessary limitations on the beneficial activities of RECs.

V. THE PECULIAR NOTION OF CONTROL OF A REC ADOPTED BY THE ITALIAN LEGISLATION

The Italian legal framework recognizes various concepts of control, as defined by the Italian Civil Code and specific sectoral regulations such as banking law, listed company law, and antitrust law. Legal scholars have long tried to develop a unified notion of control but have not succeeded in establishing a consistent general definition.

Various concepts of control have a common feature: the authority to designate an entity's managers. Essentially, that feature of control is present when one or more individuals hold the right to appoint those who manage the entity.³¹ Consequently, the true controllers are those who can select the majority of the entity's managers.

The 2024 Operational Rules introduced a specific concept of control, without relying on existing concepts from other sectors: "Control powers mean those powers that, according to the various configurations assumed by Renewable Energy Communities, are attributed to the eligible subjects in order to give directions ("indirizzi") to the Renewable Energy Communities, ensure the achievement of the statutory purpose and compliance with the relevant legal and regulatory framework."³²

This definition is perplexing from a number of perspectives.

Firstly, the power of control by a member or a shareholder of an entity is typically exercised indirectly (by appointing managers or directors of the entity) rather than directly managing the operation of the entity through directions or directives. The definition, as it stands, appears to imply a direct exercise of control.

Secondly, unlike other concepts of control in Italian law, the definition does not mention the power to appoint managers.

Thirdly, the definition encompasses the notion of ensuring compliance with the pertinent legal and regulatory framework, which is a supervisory power typically delegated in Italy to a designated board of the entity. This supervisory board is usually distinct from managing board and is usually not considered relevant for

31. See Art. 2359 c.c. (It.); See also Decreto Legislativo 24 febbraio 1988, n.58, art.93, G.U. Mar. 26, 1998, n.71 (It.); For a general overview of the concept of control under Italian and European law, see G. Mollo & D. Montesano, *Il controllo societario nel Testo unico della finanza – Problemi e prospettive di riforma* [Corporate Control in the Consolidated Finance Act – Problems and Prospects for Reform], COMMISSIONE NAZIONALE PER E SOCIETÀ E LA BORSA (June 2015), <https://www.consob.it/documents/11973/201676/qg8.pdf/228bc96a-b225-4c54-b1db-00b3f40da4fc>.

32. OPERATIONAL RULES, *supra* note 12, at 18.

control analyses (i.e., the supervisory board may be appointed by non-controlling minorities).³³

As a practical matter, it would be challenging to confer direct control powers to members of a REC, if this is the real intention of the provision. All possible REC legal types entail the establishment of a designating body (to which the members of the REC belong), a managing body, and a supervisory body. The designating body is responsible for appointing members to the managing and supervisory bodies, with the vote of the majority of its members. While the designating body may provide guidance on the conduct of management and supervision activities, it is not and should not be directly involved in the management and supervision of the entity.³⁴

It appears likely that, in practice, legal practitioners will rely on the more commonly understood concept of control rather than the specific definition outlined in the Operating Rules. However, this divergence between the standard definition of control and the one applied to RECs might cause problems in drafting the by-laws of the RECs: to meet the GSE's regulatory requirements, it is possible that peculiar clauses could be inserted into the by-laws of the RECs. This option may be not so easily adopted: the RECs have to be established according to a pre-existing legal type (association, foundation, non-profit company, etc.), and a clause drafted according to the definition of the Operational Rules potentially deviates from the standard provisions of the chosen legal type.

VI. THE COMPLEX CRITERIA TO IDENTIFY PERSONS ELIGIBLE TO BE A CONTROLLING MEMBER OF A REC

The RED II Directive states that the possible members of a RECs are "natural persons, SMEs or local authorities, including municipalities" and that control is to be given to the ones located in the proximity of the power plants (renewable energy projects).³⁵ Some categories of possible members are obviously missing from this definition under the RED II Directive: for example, non-profit organizations (not for profit associations and foundations) and non-local authorities. The approach adopted by the RED II Directive of indicating certain categories of members without giving a clear general criterion leads to obvious uncertainties of interpretation about categories that are not included. The main uncertainty concerns whether the list is exhaustive, covering all possible members: does it suggest that entities not specifically listed are excluded from joining a REC, or is it possible to include additional entities not explicitly mentioned?

The Italian Legislative Decree, deeming the RED II Directive not binding on this point, changed the approach, specifically:

33. See Mollo & Montesano, *supra* note 30 (the core concept of control is identified in the power to appoint and remove the managers of a company).

34. The designating body typically consists of a significant number of citizens, small to medium-sized enterprises, and non-profit organizations. It is not able to continuously and professionally oversee the compliance of the managing body.

35. RED II Directive, *supra* note 2, art. 2, para. 16(b).

- (i) with reference to members of the RECs, it adopted a general criterion that all end customers of energy non expressly excluded may be a member;
- (ii) with reference to controlling members, it introduced a list, but the list is different from the list in the RED II Directive.³⁶

The list specified by the Legislative Decree includes:

natural persons, SMEs, associations having legal personality under private law, territorial bodies and local authorities, including municipal administrations, research and training bodies, religious bodies, third sector and environmental protection bodies, as well as local administrations included in the list of public administrations published by the National Institute of Statistics (ISTAT) in accordance with the provisions of Article 1, paragraph 3, of Law No. 196 of 31 December 2009, which are located in the territory of the same municipalities in which the renewable power plants are located.³⁷

This definition introduces some complexities because the entities included in the list are identified on the basis of heterogeneous criteria. Some entities are identified by their legal type (e.g., associations having legal personality under private law) while others are identified by their functions or purpose (e.g., research and training bodies). In some cases, an entity may be identified by reference to another specific list compiled by the Italian National Institute of Statistics (i.e., the ISTAT list).

The rationale behind the inclusion and exclusion of specific types of entities is not readily apparent. Additionally, like with the shorter RED II Directive list, it is unclear whether the Legislative Decree list is exhaustive or not. For example, associations lacking legal personality and foundations are not specified in the list as a legal type: as a consequence, an association lacking legal personality or a foundation may be admitted as controlling member only if it may be included on the basis of other criteria (e.g., they are research bodies).

The use of a specific list just for controlling members under a possible interpretation would suggest that entities not expressly mentioned can be members of a REC but not controlling members. The existence of heterogeneous criteria means that a foundation which is a research body may be a member and a controlling member, thanks to its specific purpose. All associations without legal personality seem to be precluded from being a controlling member if not included on the basis of other criteria used by the list. Likewise, a small and medium-sized enterprise constituted as a partnership, which has no legal personality, may be a controlling member. These overlapping and contradictory possibilities lead to increased complexity for RECs trying to navigate the legal landscape.

Moreover, an alternative interpretation has been proposed to address the issue: to exclude all entities not explicitly mentioned in the list from being members of a REC based on the interpretation that the possible members and the possible controlling members should be identical. In such a scenario, the exclusion would be entirely irrational: it would prevent entities not listed not only from becoming a controlling member of a REC but also from being a member and participating in

36. D.Lgs. n.199/2021, art. 31 (It.).

37. *Id.*

a REC. This would undermine the principle of equality, as there is no clear reason to discriminate between entities included and not included in the list, and it would contradict the purpose of RECs, which is to involve all local citizens and entities.³⁸

As a result of this complexity, the bylaws of the RECs must carefully include or exclude the different entities. The most popular solution among legal practitioners is likely to be referring to the applicable rules and regulation in the bylaws without any further specification, accompanied with a guide to be given to managers of the RECs to distinguish between members and controlling members.

Navigating this complex set of rules is not the only check that a manager of a REC has to make. When an enterprise applies for admission, being only small-medium enterprises admitted, it must be checked whether or not it falls under the notion of small or medium-sized enterprises, and the rules adopted by the European Union for such a distinction are not always easy to interpret and apply.³⁹

As a result, REC managers will likely need legal guidance to distinguish between controlling and non-controlling members and between eligible and ineligible members.

VII. THE CONCEPT OF RENEWABLE ENERGY POWER PLANTS THAT ARE NOT OWNED BY RECS BUT ARE FULLY AVAILABLE AND UNDER THE CONTROL OF RECS

The RED II Directive, when referring to the power plants which may be included in a REC (crucial for the purpose of self-production), mentions only “the renewable energy projects that are owned and developed by that legal entity.”⁴⁰ The Legislative Decree inserted a wider concept for eligible power plants: “for the purposes of shared energy, only the production of renewable energy from plants that are available to and under the control of the community is relevant.”⁴¹ Therefore, the Legislative Decree envisions a wider concept of available power plants and power plants under the control of RECs, rather than the stricter concept of an owned power plant.

The Operational Rules state that a production plant is available to a REC when there is an agreement between the REC and the producer and from this agreement it can be inferred that the plant “is operated by the producer in compliance with the agreements defined with the community for the purposes of the renewable energy community and in compliance with the Operational Rules.”⁴²

38. It has been mentioned as a possible solution to the issue by GSE, being the final solution still under scrutiny.

39. The definition is contained in Commission Recommendation of 6 May 2003 Concerning the Definition of Micro, Small and Medium-Sized Enterprises, 20023 O.J. (L 124) 36. To help users apply such a definition, a sixty-page guide has been published by the European Union. See EUR. COMM’N, USER GUIDE TO THE SME DEFINITION (2015), <https://op.europa.eu/en/publication-detail/-/publication/79c0ce87-f4dc-11e6-8a35-01aa75ed71a1/language-en>.

40. RED II Directive, *supra* note 2, art. 2, para. 16.

41. See D.Lgs. n.199/2021, art. 31 (It.).

42. OPERATIONAL RULES, *supra* note 12, at 18.

Furthermore, the Operational Rule states that the energy power plant under control of the REC is still operated by the producer and the produced electric energy is sold by the producer, not by the REC.⁴³

Thus, ownership of the power production plants by the REC is not necessary under the Italian Legislative Decree: it suffices that the producer operates under agreements or directions from the REC. This is a significant deviation from RED II Directive, which required renewable energy projects to be owned and developed by the REC. Nonetheless, the European Commission, while evaluating the Decree in the light of State aid regulations, acknowledged this difference but did not express any concern.⁴⁴ From a policy standpoint, the Decree's approach aligns with the goals outlined in RED II Directive: it incentivizes members of a REC to invest in new renewable energy generation facilities, and it promotes self-production and self-consumption of new renewable energy.

The scope of the legal concept of plant "available to and under the control of the REC" is larger than the concept of plant owned but it is not so easy to understand its application, having two conflicting requirements: the energy production plant should be under the control of the RECs, but it should be still available to the producer and managed by it. Is it available to both the REC and the producer?

The idea of a renewable energy power plant being available and controlled by a REC for shared energy purposes is fully new, without any prior use in the Italian legal system. Therefore, lacking specific guidelines by Italian authorities on how to share the control and the availability of the production plant between the REC and the producer,⁴⁵ it is challenging to establish the minimum requirements necessary to confirm that a power plant falls under the control and availability of a REC so as to qualify for incentives. GSE promised to provide further clarification but has not done so at the time of this article's writing. Such clarification would significantly aid the RECs in ensuring compliance with this crucial aspect of their operations.

VIII. THE COMPLEXITY OF THE CRITERIA FOR THE DISTRIBUTION OF FINANCIAL INCENTIVES TO MEMBERS AND LOCAL COMMUNITIES

As we have already observed, the premium tariff (but not the enhancement contributions) has been considered a possible State aid under EU regulations, considering the fact that small and medium-size enterprises may be members of the REC and receive a distribution of such incentive.⁴⁶ According to the rules of the

43. *Id.* The previous Operational Rules (referring to a previous temporary regulation when RECs could be created only within the area of the secondary substations) had a significantly different provision: "*The renewable energy community must own or have full availability of the power production plants belonging to the configuration on the basis of a legal title (such as, for example, usufruct, free loan or other contractual title)*"

44. See Commission Decision No. 8086, *supra* note 14.

45. Many producers of a REC shall be citizen with solar plant on the roof of their house: such plant should be at the same time (i) available and managed by the owner of the house and (ii) under the control and available to the REC.

46. The enhancement contributions are a compensation for an avoided use of the transmission grid and are not a discretionary economic support.

European Commission, if the incentives exceed the funding gap, the small and medium enterprises members of a REC may be overcompensated.⁴⁷

The result is that the economic incentives which a REC may receive are subject to three different kinds of rules, and there is difference not only in the mandatory criteria to be adopted but also in the eligible production plants.

The enhancement contributions (granted for the avoidance of grid losses) can be distributed to anyone (enterprises or persons which are not enterprises), and there are no mandatory criteria to be complied with. Nevertheless, the production plants relevant for the self-production are different from the ones relevant for the premium tariff (for the premium tariff, only small and new renewable energy power plants built after the date of entry into force of the Italian law and with a power lower than 1 Mgw may be eligible for the premium tariff; for enhancement contribution, also those older and larger than 1 Mgw may be also relevant).⁴⁸ Therefore, the sharing of this incentive may not be the same as the sharing of the premium tariff.

The premium tariff up to the funding gap (i.e., premium tariffs granted by the sharing of up to 55% of the electric energy fed to the grid by renewable energy power plants of the REC) may be granted to anyone; the perimeter of relevant production plants is different — as above specified — from the case of the enhancement contribution.

The premium tariff exceeding the funding gap (i.e., premium tariffs granted by the sharing of the electric energy exceeding the 55% of the electric energy fed to the grid by renewable energy power plants of the REC) may be granted only to consumers which are not small-medium enterprises or to territories with energy production power plants.

So, we have three different criteria to calculate the sharing of the incentives: one for the enhancement contribution, one for premium tariff up to the funding gap, and one for the premium tariff exceeding the funding gap.

The complexity of the overall regulatory framework and the associated burden on RECs are significant. The Operational Rules stipulate that RECs should maintain separate accounting for different incentives to demonstrate compliance with the rules, which introduces an additional administrative burden. Furthermore, it is challenging to draft internal rules of the REC that align with the objectives of RECs without exceeding State aid limits: to include small-medium enterprises and their production plants may be crucial for a REC (as they provide more electric energy to shared), but the strict limit to the reward which may be granted to the small-medium enterprises may discourage them from participating.

In addition, as previously discussed, the fact that the use of the premium tariffs exceeding the funding gap is restricted to territories where power plants are located is not a reasonable policy choice: the only requirement of EU authorities was not to grant such incentives to small-medium enterprises and additional limitation to its use is an unjustified interference with the legitimate activity of the

47. Overcompensation in favor of an enterprise is an illegitimate State aid. *See, e.g.*, Commission Communication on Community Framework for State Aid in the Form of Public Service Compensation, 2005 O.J. (C 297) 4, 7.

48. In any case not exceeding the 30% of the overall small new power plants of the REC.

REC. This limitation is completely unrelated to concerns about State aid, and it is hard to understand why a local community is not permitted to aid another nearby local community through its REC.

All of these challenges raise the question of whether these restrictions and complex regulations were genuinely necessary. According to EU State aids regulation, block exemption regulations may be issued pursuant to Article 101(3) of the Treaty on the Functioning of the European Union, specifying the conditions under which certain types of agreements are exempted from the prohibition of State aids. A block exemption for the agreements between small-medium enterprises and small-scale RECs (for example, those under a specific limit for annual incentives) could have served as an effective alternative, promoting the development of RECs and renewable energy production without significantly affecting competitive fairness within the European Union.

IX. THE POSSIBLE RESTRICTIONS ON COOPERATION WITH ENERGY PRODUCERS, ENERGY SELLERS, AND LARGE ENTERPRISES

Large enterprises, electric energy producers, and electric energy sellers cannot be members of a REC, but they can cooperate with a REC as third-party producers. The Operational Rules state that “producers who are not members or shareholders of the community may mandate the Contact Person to have the electricity fed in from their plants count as shared electricity. Such persons may also carry out as their main commercial or professional activity the production and exchange of electricity, considering that they do not belong to the community (“third party” producers).”⁴⁹

Third-party producers can play a crucial role in the success of a REC. For instance, in a small town, the roof of a local supermarket could serve as the site for installing a solar power plant. However, since the supermarket is owned by a large corporation that cannot join the REC, forming an agreement with this corporation might be essential to ensure the community has sufficient self-produced electricity to share among its members.

The problem is how to remunerate such large enterprises or electric energy producers which are willing to share the energy produced by new power plants for the self-consumption of the members of the REC. As discussed, due to State aid rules, the Decree limited the possibility of giving support to enterprises which are members of the REC when the support exceeds the funding gap. It is unclear if such limitation also applies to producers which are external to the REC. If the limitation applies, then agreements with third party producers may infringe upon the provision *a posteriori*, both if they have a fixed remuneration or if they are remunerated as a percentage of the shared energy of such producer (for instance, if the energy fed in the grid by other relevant plants is lower than expected).

As a result, a safeguard clause will need to be inserted in the agreement with any third-party energy producers in order to reduce any compensation if, *ex post*, it may exceed the limits arising out of the State aid rules applicable to the REC.

49. OPERATIONAL RULES, *supra* note 12, at 18-19.

The need for such a clause and the connected legal complexities may chill cooperation with such entities to the detriment of the RECs and its policy purpose of benefiting the environment.

X. CONCLUSION

The legal problems associated with the creation of a REC and the risks of breaching the complex rules that govern it are significant, and this article discusses only a sample of some of those problems.⁵⁰

The complexity of these rules shows the clear intention of the Italian authorities to implement a detailed regime to deal with many different possible situations but may have caused the perverse result of making RED implementation difficult and costly.

The complexity of these legal problems is further exacerbated by the fact that the rules have been issued by different authorities (at least four different Italian authorities) and are based on different legal systems (Italian and European).

Moreover, the rules show the tension between the different policies followed by the European Union legislation: i.e., on one side, the EU policies in energy, climate change, and environment, and on the other side, the EU policy to prevent anti-competitive State aid to enterprises.⁵¹ These objectives may conflict within certain regulatory sectors, including with RECs, leading to tension between and within the rules.

What lessons can we learn from these complex rules and regulations, and how can they be reformed to better facilitate RECs? Ultimately, once rules surpass a certain level of complexity, inconsistencies, gaps, and ambiguities become unavoidable. Rules are necessarily complex when several different situations need to be treated in appropriately different ways. Greater complexity thus allows better control of all relevant situations. But learning and applying complex rules has costs, both *ex ante* (in terms of the cost of advice) and *ex post* (in terms of possible penalties for even unintentional non-compliance), and complexity may discourage people from learning the rules (thereby increasing the risk of breaking them) or from engaging in activities governed by complex rules (thereby losing potential benefits to themselves and the community).

50. For additional problems and open issues, see Emanuele Cusa, *Studio n. 38-2024/i – Le incentivate comunità energetiche rinnovabili e il loro atto costitutivo*, CONSIGLIO NAZIONALE DEL NOTARIATO (Mar. 25, 2024), <https://notariato.infinity.it/wp-content/uploads/Studio38-2024lec.pdf>; See also Francesca Dealessi et al., *Comunità energetiche rinnovabili. alcuni profili problematici: nozione di p.m.i., rapporto di mandato e natura imprenditoriale*, 22 RIVISTA DI DIRITTO DELL'ECONOMIA, DEI TRASPORTI E DELL'AMBIENTE 267 (2024).

51. *Compare Energy, Climate change, Environment*, EUR. COMM'N, https://commission.europa.eu/energy-climate-change-environment_en (last visited Feb. 15, 2025) (“EU policy protects the environment and seeks to minimize risks to climate, human health and biodiversity. The European Green Deal aims to make Europe the world’s first climate-neutral continent.”) *with State aid*, EUR. COMM'N, https://competition-policy.ec.europa.eu/state-aid_en (last visited Feb. 15, 2025) (“A company that receives government support gains an advantage over its competitors. Therefore, the Treaty generally prohibits State aid unless it is justified by reasons of general economic development. To ensure that this prohibition is respected, and exemptions are applied equally across the European Union, the European Commission is in charge of ensuring that State aid complies with EU rules.”).

Generally, rules should be drafted to balance the conflicting values of the benefits of a very detailed and appropriate regulation against the deterrent effects of complexity. Legislators and policymakers should aim to reach an optimal point in all areas of legislation.

In the area of RECs, if the aim was to encourage a bottom-up process, the balance should have been in favor of simplicity at the cost of disregarding or deemphasizing some other principle of law (so, for example, avoiding the application of State aid rules, streamlining the very fragmented regulation of different types of proximity, or reconsidering the detailed specification of the requirements for being a member and a controlling member). The low profitability of RECs should have been an additional reason to look for an optimal point towards regulatory simplicity, considering the fact that many RECs do not have the resources to tackle the complexities of the applicable rules.

However, choosing a simpler solution has been prevented by the need to comply with EU State aids rules and by the will of the Italian authorities to draft a detailed Italian regulation of the RECs and of their operations. Complexity tends to discourage the initiative of local communities and to benefit top-down, turnkey solutions offered by large energy companies, thereby reducing the independence and awareness of local communities who cannot rely on their own creativity to develop models tailored to their needs. However, strong backing from non-profit organizations and cooperative associations, and an information office established by the GSE for local authorities,⁵² offers a possible mitigation opportunity to this complexity problem because they assist local communities in establishing RECs by providing free guidance and information. Even with these mitigating efforts, the complexities and difficulties remain huge. The repeal of unnecessary laws or regulations that unreasonably hinder the free initiative of citizens and enterprises has been a topic of discussion in Italy for several years. However, this objective remains largely unrealized. In promoting local communities, simplicity should be a critical goal, particularly regarding RECs. Achieving this goal was feasible by adopting a unified concept of proximity, establishing straightforward eligibility criteria for members and production plants, and not applying EU State aid rules. This required the involvement of fewer authorities, improved coordination between Italian and European authorities, and a less bureaucratic regulatory approach. There is an urgent need not only to amend RECs' regulation promptly but also to revise a regulatory process whose outcomes fall short of initial expectations and intentions.

52. In addition to detailed information on the website of the GSE and to an extensive information campaign organized by the GSE.