CLIMATE & SOCIAL SUSTAINABILITY

Energy Communities

Between the Energy Transition, the Competitive Paradigm and the Economy of Citizenship

by Eugenio Bruti Liberati

INTRODUCTION

A phenomenon beyond law and economics

In recent years energy communities have drawn analysis from many disciplines — legal, economic, political-science, sociological, even social-psychological. Their interest extends well beyond the strictly legal and economic dimension, touching significant political and social questions.

- Legal
- Economic
- Political
- Sociological
- Social-psychological

Five lenses on a single institution

Defining features

The European legislator configures energy communities as autonomous legal entities, free in their legal form, whose essential purpose is the self-production of energy.

Autonomous entity

An autonomous legal person, free to choose its legal form.

Self-production

Its essential purpose is to self-produce energy.

For its members

Energy is intended primarily for the use of members.

Surplus on the market

Any surplus not self-consumed may be sold on the market.

TWO SPECIES RECOGNISED BY EU LAW

Renewable vs. Citizen Energy Communities

Renewable Energy Community

PLANT	Must use renewable sources
MEMBERS	Need a physical link of proximity to the plant
LOGIC	Instrument of the energy transition
SUPPORT	Financial incentives explicitly permitted

Citizen Energy Community

PLANT	May also be conventional
MEMBERS	May be located at a distance from it
LOGIC	A market instrument for consumer empowerment
SUPPORT	No provision of financial assistance

DIVERGENT OBJECTIVES OF THE EU LEGISLATOR

Climate policy vs. market logic

Renewable communities

A climate-policy instrument

Active participation spreads renewable plants, stimulates efficiency and savings, and raises local acceptance — reducing resistance to construction. Hence the explicit support and incentive schemes.

Citizen communities

A market instrument

Promoted without financial assistance, to empower consumers. Active, informed customers contribute to market efficiency and to competitive dynamics — internal to the competitive paradigm adopted in the 1990s.

COMMON TO BOTH TYPES

An undeniable social character

In the elliptical language of the EU legislator, social aims emerge from the declared intent to combat energy poverty and from the choice of a non-profit purpose. Both objectives are pursued — albeit with less emphasis than the climate and efficiency aims.

Community benefit, not profit	Communities must pursue environmental, economic or social benefits at community level — rather than financial profits.
Who may be a member	Natural persons (including the vulnerable), SMEs and local authorities — not large undertakings, least of all large energy undertakings.
A supporting, not a market, role	For participating undertakings it must not be the principal activity; the community supplies members on the best terms, not as an energy company.

ITALIAN IMPLEMENTATION

Two legislators, two emphases

Implementation of the EU rules requires a clear distinction between the choices of the State legislator and those of the regional legislators.

The State

Adoption substantially in line with the EU model — with the same prevailing emphasis on climate and efficiency objectives.

The Regions

Many regional legislators have chosen to strengthen considerably the properly social function of communities.

Support, with safeguards

After initial hesitation, the State adopted the institution in line with the European model, on two fronts.

A dedicated support regime

Financial incentives combined with a reduction in infrastructure costs and general charges.

Non-profit safeguards

Rules reaffirmed to guarantee the non-profit character and to shield communities from control by energy undertakings.

Third Sector bodies admitted

Alongside natural persons, SMEs and local authorities: typically non-profit entities — Third Sector bodies, public personal-services undertakings and religious bodies.

Enhancing the social dimension

Regional rules since 2022 clearly express the will to enhance the social dimension. Solutions differ, but common tendencies emerge.

Support for vulnerable customers

Additional financial support for communities that welcome and support vulnerable customers — including via revenues from energy not self-consumed.

Resources to social ends

Surplus resources channelled to other social programmes, or membership opened to Third Sector and other non-profit bodies.

An active role for public bodies

Local authorities and regional administrations informing and encouraging customers, with dedicated funds and technical–legal assistance from regional offices.

DIFFUSION IN PRACTICE

Take-off from 2023–2024

2023–24

Strong growth in renewable communities established and genuinely active

< PNIEC

Yet still below the forecasts of the National Integrated Energy & Climate Plan

0 CEC

Citizen energy communities have not, in fact, been established

Two drivers of this positive development

State incentives begin

Actual disbursement of State incentives, partly PNRR-funded (Ministerial Decree no. 14/2023).

Shared administration

The operational impetus of certain local administrations and non-profit associations — a model of shared administration of undeniable interest.

OPEN QUESTIONS

Two problematic knots

Within the limits of this intervention, two essential observations on the principal legal problems raised by the rules recalled above.

01

Shaping regulation vs. private autonomy

How far should public law shape communities, beyond merely promoting them?

02

How stringent is the non-profit constraint?

May communities distribute among members the profits derived from selling surplus energy?

Shaping regulation, civil-law governance

Public regulation

Not only promotional but shaping: it defines the conditions under which communities may benefit from promotion.

Private autonomy

Yet communities remain largely civil-law: members freely set the legal form and the criteria for apportioning and sharing self-produced energy.

The scholarly debate

Is this arrangement satisfactory — or would a more pervasive public regulation be advisable, one shaping communities more precisely in view of their public-interest objectives?

FIRST KNOT · THE AUTHOR'S POSITION

Endorsing the Italian choice

The choice made thus far by the Italian legislator is, in my view, to be endorsed — for two reasons, and with one caution.

Horizontal subsidiarity

The flexibility and adaptability afforded to communities is consistent with the principle of horizontal subsidiarity that underlies the phenomenon.

An incisive lever

The disbursement — and possible forfeiture — of public support is in itself an extremely incisive instrument of steering.

A caution

What must be avoided is the expansion of public regulatory and enforcement powers by interpretive means, as has happened elsewhere in Italian energy law.

How stringent must it be?

Both EU and Italian rules give communities a solidaristic, non-entrepreneurial character: their principal objective must be community benefits “rather than financial profits.”

The controversial question

May communities distribute among members the profits derived — thanks also to public incentives — from selling surplus energy to third parties, or from ancillary activities?

Civil-law scholarship

Highly controversial, especially among civil-law scholars.

Case law

So far as is known, the courts have not yet ruled on the point.

Against rigid formalism

The EU's structural concern

Derogations from the competitive regime are read restrictively, to prevent their instrumental use to distort competition — as with the radical corollaries drawn for Third Sector bodies.

...but not at any cost

A restrictive approach is necessary to avoid abuse — yet it should not become a rigid formalism that sacrifices the ratio, and the very letter, of the rules on energy communities.

A possible answer

EU law allows communities economic — not only environmental and social — benefits. Why, then, deny that such profits might be allocated to reducing, or even eliminating, members' participation costs?

CONCLUSIONS

A further social and political value

The value of communities goes well beyond the objectives — important though they are — declared by the European legislator. Two perspectives reach furthest.

Energy Justice

An extraordinarily rich concept that has already produced analyses of great interest on the social value of communities.

Citizenship & the commons

The most promising — and most ambitious — reading: the political economy of citizenship together with the theory of the commons and their institutional governance.

Communities can be — they ought to be — places where people relate to an essential good not merely as consumers in a market, but as citizens: collectively assuming responsibility, taking part in production and sharing, exercising self-government on a local scale.

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The embryo of a logic different from mere economic efficiency and consumption.

It is, precisely, a logic of citizenship and of a citizenship economy — whose potential must be assessed with realism, without utopias, but cannot be underestimated a priori.

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