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Full official name of the advised entity: Municipality of Ralingen (applicant),
Municipality of Rosport-Mompach (co-applicant)

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I. Executive summary

The main objective of this mission of the b-solutions initiative was to advise the planned “Borderless Energy Region Ralingen-Rosport-Mompach” (Grenzenlose Energieregion Ralingen-Rosport-Mompach) on legal and administrative obstacles hindering the necessary formalisation of its future governance and business model and, in particular, to identify concrete solutions.

The borderless energy region between Ralingen and Rosport-Mompach faces a number of closely related legal obstacles and other potential legal-technical issues, which together form a complex problem constellation, the resolution of which is crucial for the further progress and the ultimate success of this local initiative.

A first set of legal obstacles results from the unclear EU legal framework for energy policy and the incomplete / different transposition of the provisions of the recast Renewable Energy Directive 2018/2001/EU (RED II) and the recast Internal Electricity Market Directive 2019/944/EU (IEMD) in Luxembourg and Germany.

Article 2(16) of the RED II and Article 2(11) of the IEMD define the key elements of “Renewable Energy Communities” (RECs) and “Citizens Energy Communities” (CECs), which may be established as legal entities by local actors within each Member State. In addition, Article 22(6) of the RED II and Article 16(2a) of the IEMD provide that RECs and CECs may be open to “cross-border participation”. This optional provision suggests the establishment of RECs or CECs in the form of a “cross-border energy community” (CBEC) and as a legal entity. However, the Directives do not clarify what is meant by “cross-border participation”, nor do they provide a legal definition of CBECs. Finally, Luxembourg and Germany have transposed the provisions of both Directives incompletely and in different ways, creating difficulties for local cross-border energy cooperation at the DE-LU border.

Despite (or perhaps because of) these ambiguities in the Directives and the incomplete / different transposition of their provisions in Luxembourg and Germany, the question remains as to the availability of a suitable legal instrument to create a legal entity for the borderless energy region Ralingen-Rosport-Mompach. However, unlike in a national context, the availability of legal instruments and legal forms to establish the borderless energy region as a new participant in the EU’s internal energy market is clearly more limited in a cross-border context. Another aspect that complicates the search for an appropriate legal instrument is that the borderless energy region envisages the involvement of a wide range of different local actors from both sides of the border (e.g. municipalities, local SMEs, associations, and individual citizens).

Against the background of the context described above, additional legal obstacles arise. The municipalities of Ralingen and Rosport-Mompach cannot use the EU legal instrument on a “European Grouping of Territorial Cooperation” (EGTC) or the legal instruments of the Karlsruhe Intergovernmental Agreement on cross-border cooperation to create a legal entity for their borderless energy region with a broad membership structure. This is because

- an EGTC excludes the participation of individuals (i.e. citizens) and allows the participation of private actors only under certain conditions (i.e. local SMEs and/or non-

profit associations),

- a “local grouping for cross-border cooperation” (Karlsruhe Agreement) excludes the participation of individuals (i.e. citizens) and of private actors such as local SMEs and/or non-profit associations.

Finally, other legal uncertainties may arise from specific aspects of the envisaged governance and business model of the Ralingen-Rosport-Mompach borderless energy region. These uncertainties relate to how local cross-border electricity flows can be achieved in practice and how local cross-border electricity supply and trade will actually be implemented, but also to the possibility of cross-border energy sharing within the energy region.

In view of the many obstacles described above, it makes sense to establish a legal entity for the future governance and business model of the borderless energy region on the basis of a private-law solution. In principle, two EU legal instruments are suitable for this purpose: the “European Economic Interest Grouping” (EEIG) and the “European Cooperative Society” (SCE). Both legal instruments allow for the direct and democratic participation of a wide range of different local actors from both sides of the border (e.g. municipalities, local SMEs, associations, and individual citizens). However, further legal expertise should be contracted to explore / compare possible advantages or disadvantages of both legal forms and to provide practical advice to the municipalities of Ralingen and Rosport-Mompach for the actual steps of the respective foundation processes.

In addition to an in-depth assessment of the above-mentioned aspects relating to the potential establishment of an EEIG or an SCE, other still unclear aspects relating to cross-border electricity supply/trade and cross-border energy sharing in the borderless energy region need to be further explored. It is therefore recommended that both municipalities jointly submit a project proposal to the Interreg VI “Greater Region” programme to assess the legal, technical and economic feasibility of all these aspects.

II. Description of the obstacle with indication of the legal / administrative provisions causing the obstacle

This chapter begins with a brief introduction to the general context of the initiative “Borderless Energy Region Ralingen-Rosport-Mompach” (Grenzenlose Energieregion)¹ in order to better understand its overall objectives and precise focus. This is followed by an in-depth analysis of the main legal obstacles that are likely to hamper the already started implementation of the borderless energy region.

General background of the cross-border initiative

The two small neighbouring municipalities of Ralingen (Germany / Rhineland-Palatinate) and Rosport-Mompach (Luxembourg) account together for around 6.000 inhabitants. They are separated from each other by the border river Sauer, but are directly connected by a bridge. Both municipalities are working closely together for many years on various issues of common concern (e.g. waste water disposal, drinking water supply, sport, culture and leisure). In addition to the construction and operation of a joint sewage treatment plant (in 1996 / 2002), this cooperation led to the establishment of the “International Sports, Culture and Leisure Centre Ralingen-Rosport-Mompach” in 2005 (Internationales Sport-, Kultur- und Freizeitzentrum, ISKFZ). Based on the Karlsruhe Intergovernmental Agreement of 1996, a cooperation agreement was concluded on 17 August 2005 that established the ISKFZ as a “local grouping for cross-border cooperation” (Grenzüberschreitender Örtlicher Zweckverband, GÖZ). This cross-border body is established under German public law and has its head office in Ralingen.

It was against this background of long-standing, trustful and intense cooperation that the idea emerged in both municipalities to work more closely together on the joint use of locally available renewable energy sources (RES). The two municipalities are planning to create a borderless energy region by 2025, with the ultimate aim of achieving an independent energy supply based on 100% local RES (sun, wind and water). The starting point of the borderless energy region are individual “core cells” developed in Ralingen and Rosport-Mompach. In the next phase of development, these cells will be merged to enable the cross-border use of electricity from local RES and new actors will be included. In a final phase, the scope of potential activities could be extended to include e.g. heat supply and “sector coupling” (see: Annex 1). The energy produced from local RES will be made available primarily to the inhabitants of the two municipalities at fair conditions.

Direct and active cross-border participation of citizens is emphasised in the development of the borderless energy region. Through participatory workshops, specialist presentations and the adoption of a strategy, the inhabitants of the two municipalities will be actively involved in the development and organisation of the emerging energy region. The kick-off event for the cross-border citizens' dialogue took place on 8 November 2023 and was attended by around 200 interested people from both sides of the border. The multiannual citizens' participation process (2023-2025) is funded by the Robert Bosch Stiftung GmbH in Germany as part of the

¹ Grenzenlose Energieregion Ralingen Rosport-Mompach (2024); Rathaus Rosport-Mompach / Rathaus Ralingen (no date mentioned); Rathaus Rosport-Mompach / Rathaus Ralingen (2022); Simon (no date mentioned).

programme "Common Ground - co-designing across borders"².

On the technical side, the initiative is supported by the "Transfer Centre for Rational and Renewable Energy Use Bingen" (Transferstelle für rationelle und regenerative Energienutzung Bingen, TSB) in Rhineland-Palatinate, which accompanies energy projects from the initial on-site consultation through the preparation of tailor-made energy concepts and feasibility studies to implementation-oriented planning. This technical support is also funded by the Robert Bosch Stiftung's Common Ground programme.

In order to be able to use locally available RES together, the necessary energy production infrastructure is to be established and expanded step by step on both sides of the border:

- On the German side, the planned 5.6 MWp ground-mounted PV plant in Ralingen-Kersch is an important building block on the way to an independent power supply. In a further development and expansion phase, a community solar park with a total area of 60 hectares will be created in the municipality of Ralingen, in which citizens, local companies and municipal organisations can participate financially.
- On the Luxembourg side, a very significant volume of electricity from RES (solar, wind, hydro) is already generated by different types of producers located on the territory of the municipality of Rosport-Mompach. According to data provided by the Luxembourg energy company CREOS (as of 2020)³, the total annual production is just over 38,000,000 kWh, far exceeding the total annual consumption for low voltage (around 9,750,000 kWh) and medium and high voltage (4,381,029 kWh) on the municipal territory.

In a next phase, the various renewable energy producers in both municipalities (i.e. mainly photovoltaic and wind power plants) will be bundled across the border in a virtual power plant⁴ and by setting up a separate cross-border balancing group cycle⁵ for local electricity provision and participation in electricity trading. This separate balancing group will then be used to supply citizens, companies and municipalities on both sides of the border. Ultimately, a joint legal entity will be established that operates the borderless energy region, in which every citizen will have the opportunity to participate and benefit. An essential task of this legal entity will be the organisation of cross-border energy flows, for which a "balancing group manager" draws up a

² Robert Bosch Stiftung (2024)

³ The exact data for 2021 and 2022 is currently purchased by the municipality from the energy supplier CREOS. However, it is observed that the installed capacity of solar systems in particular will increase significantly. This is due to the many new private installations approved in recent years, but also because the municipality itself has made the roof of a public building available to the Möllerdall Energy Park citizens' cooperative for the installation of solar panels. There is also a hydroelectric power station operated by the private company Soler (with a capacity of 6.5 MW) at the dam on the Rosport-Ralingen loop of the river Sauer. However, due to the damage caused by the floods in 2021, the hydroelectric plant is out of operation and is currently being repaired.

⁴ A "virtual power plant" is an interconnection of decentralised units in the electricity network that are coordinated by a common control system. The units can be electricity producers (e.g. biogas, wind, photovoltaic or hydropower plants), electricity consumers, and electricity storage or power-to-X plants (power-to-gas, power-to-heat). The purpose of a virtual power plant is the joint marketing of electricity and flexibility from the swarm of aggregated plants. Any decentralised player in the electricity market that produces, stores or consumes electricity can become part of a virtual power plant. See: Next Kraftwerke (2024).

⁵ A "balancing group cycle" refers to the process of managing the imbalances between the forecasted and actual energy/electricity consumption or production of participants within a specific balancing group. Balancing groups are organisational units or portfolios of energy consumers and producers, and they are used to balance the energy supply and demand within a given region or system.

schedule based, for example, on quarter-hourly forecasts of the planned trading transactions.

However, there are still many uncertainties surrounding this important phase. Some uncertainties stem from the still vague EU legal framework for local cross-border cooperation on RES and the limited availability of appropriate legal instruments for cross-border cooperation, which could hinder the creation of a joint legal entity for the borderless energy region. Other uncertainties arise from specific legal and administrative requirements in both countries for local cross-border electricity supply/trade and consumption, which could complicate or even prevent the establishment of a cross-border balancing group cycle.

It should already be emphasised at this point that these closely interlinked aspects form a complex problem constellation, the solution of which is crucial for the further progress and the ultimate success of the borderless energy region Ralingen-Rosport-Mompach.

Understanding of the “root causes” of the complex problem constellation

The recast Renewable Energy Directive 2018/2001/EU (RED II) and the recast Internal Electricity Market Directive 2019/944/EU (IEMD) define the key elements of “Renewable Energy Communities” (RECs) and “Citizens Energy Communities” (CECs) that can be established within each Member State (see: Table 1).

Table 1 – Key elements of RECs and CECs

Renewable Energy Communities (RECs)	Citizens Energy Communities” (CECs)
<p>Article 2(16) of the RED II defines a REC as a legal entity:</p> <ul style="list-style-type: none"> • which, in accordance with the applicable national law, 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; • the shareholders or members of which are natural persons, SMEs or local authorities, including municipalities; • the primary purpose of which is to provide environmental, economic or social community benefits for its shareholders or members or for the local areas where it operates, rather than financial profits. 	<p>Article 2(11) of the IEMD defines a CEC as a legal entity that:</p> <ul style="list-style-type: none"> • is based on voluntary and open participation and is effectively controlled by members or shareholders that are natural persons, local authorities, including municipalities, or small enterprises; • has for its primary purpose to provide environmental, economic or social community benefits to its members or shareholders or to the local areas where it operates rather than to generate financial profits; • may engage in generation, including from renewable sources, distribution, supply, consumption, aggregation, energy storage, energy efficiency services or charging services for electric vehicles or provide other energy services to its members or shareholders;

In addition, Article 22(6) of the RED II and Article 16(2a) of the IEMD provide that RECs and CECs may be open to “cross-border participation”. This optional provision may allow RECs and CECs to adopt a cross-border character. In both cases, this would lead to the creation of a cross-border energy community (CBEC) as a legal entity⁶. However, there is no legal

⁶ A legal entity, unlike a natural person, is a body created at the moment of legal incorporation, with a specific name and personality in the eyes of the relevant legal system.

definition of CBECs in either directive.

Despite this gap, a definition of CBECs has recently been developed by the European Commission for a “Handbook on Cross-Border Energy Communities”, which is currently being prepared by external service providers⁷.

A cross-border energy community is a REC or a CEC as defined by EU legislation of cross border nature. A cross-border energy community is a legal entity:

(a) which is based on voluntary and open participation in both border regions of the same cross-border region and is effectively controlled by members or shareholders of the cross-border region where it is set in place and operates, that are natural persons, local authorities, including municipalities or SMEs; and

(b) the primary purpose of which is to provide environmental, economic or social community benefits to its members or shareholders in both border regions of the same cross-border region where it operates, rather than to generate financial profits; and

(c) may engage in generation, including from renewable sources, distribution, supply, consumption, aggregation, energy storage, energy efficiency services or charging services for electric vehicles or provide other energy services to its members or shareholders in the cross-border region where it is established and operates.

Some of the aforementioned activities shall be of cross-border nature (e.g. energy is produced at least in one border region of a cross-border region and distributed, stored, supplied, or consumed in the other border region or in both border regions of the same cross-border region).

In the light of the above, it is clear that the actual implementation of CBECs depends heavily on what the notion of “cross-border participation” in RECs and CECs actually entails. However, neither Article 16(2a) of the IEMD nor Article 22(6) of the RED II provides any clarification on this aspect. The recitals of both Directives do not provide any further information either, although recital 23 of RED II refers to this notion in the context of support schemes (i.e. “*opening of support schemes to cross-border participation*”). Moreover, Member States are also free to decide whether or not to transpose the provision on cross-border participation in RECs/CECs into their national legislation.

Although the RED II and the IMED allow in principle the establishment of CBECs at all EEA borders, the lack of definition (i.e. of cross-border participation and of CBECs) and the fact that transposition is voluntary may lead to constellations that hinder or even prohibit cross-border participation (e.g. transposition of the provision on one side of a border but not on the other side; no transposition on both sides of a border; transposition on both sides of a border but with different definitions / conditions for participation).

In addition to these weaknesses in the current EU legal framework, there are further uncertainties arising from the cross-border dimension. These uncertainties relate in particular to the legal establishment of CBECs as new participants in the European energy market and the specific legal form(s) that can be used for this purpose.

⁷ European Commission, Directorate-General Regional and Urban Policy (2023), pp. 6, 7

When RECs or CECs are set up within a given country, the concerned local actors must “only” refer to a single and coherent national regulatory framework. This framework also offers a country-specific range of legal forms⁸ with which domestic CECs or RECs can be established as legal entities. The choice of legal form depends on the needs of local actors and the purpose / objectives / actions of the energy community, which also means that internal governance structures and decision-making processes or liabilities may differ between RECs and CECs within a given country⁹.

The situation is much more complex when energy-related local cooperation takes place across the borders of EEA Member States. In this case, the local actors involved have to take into account (and work with) two national energy policy frameworks and also need specific legal instruments to formalise their CBEC. Appropriate legal instruments are essential for the establishment of CBECs along the lines of CECs or RECs, as local actors are quickly faced with the question of which legal form they should (or can) choose in order to establish their CBEC as a legal entity capable of acting in the internal energy market. However, unlike in a national context, the availability of legal instruments and the choice of legal forms is clearly more limited in a cross-border context.

This complexity shows that the existence (or non-existence) of alignment between national regulatory frameworks for energy policy and the availability (or non-availability) of specific legal instruments for cross-border cooperation are key factors (or obstacles) determining the success (or failure) of CBECs.

The general situation described above also affects the specific case of the Ralingen-Rosport-Mompach borderless energy region, where **major hurdles or uncertainties arise mainly from four interrelated obstacles.**

Obstacle 1 – Incomplete and different transposition of the RED II and IMED provisions in both countries

In terms of the overall concept, the borderless energy region Ralingen-Rosport-Mompach corresponds to a cross-border energy community, which can be set up in the form of either a CEC or a REC. However, the first problem for cross-border cooperation stems from the fact that the REC/CEC concepts from the RED II and the IEMD have been transposed incompletely in Luxembourg and Germany, but also differently in the two countries.

In Luxembourg, the law of 3 February 2021 amending the national Act on the Electricity Market Organisation had only transposed the REC concept into national law (see, Article 1 (6) and Article 7). In doing so, however, substantial deficiencies in the transposition of the REC criteria were identified¹⁰. The recent law of 9 June 2023 amended again the national Act on

⁸ Depending on the country's legal framework, the legal form may be a cooperative, partnership, trust, foundation, not-for-profit association, limited company, public utility company, or a public-private partnership.

⁹ European Commission, Joint Research Centre (2020), pp.14-16; INTERREG EUROPE (2022), p. 6

¹⁰ Some of the EU criteria for the internal governance of RECs have been omitted (openness and autonomy). Geographical proximity is narrowly defined around grid features, which ignore the technical specificities of conducting different activities that may require a different geographical scope. Finally, the national regulatory authority has a duty to oversee the registration aspects of RECs and service providers are prohibited from becoming members/shareholders of a REC. See: REScoop (2024)

the Electricity Market Organisation and addressed some of these shortcomings.

An important aspect of this amending law is the introduction of the general concept of “Energy Communities”. Article 1(5) provides a definition for Energy Communities (see: Annex 2), while Article 9 describes in detail their activities and a wide range of other operational aspects. The new definition leaves the legal form open, so that any legal form could become an Energy Community. In essence, the new provisions on Energy Communities transpose the CEC concept of the IEMD and also large parts of the CEC definition into national legislation. For this reason, no geographical area has been defined in which an Energy Community can operate (i.e. an indication of the geographical area is only required for RECs). In addition, also electricity sharing within an Energy Community has been introduced as a possible activity. This transposes the provision of Article 16(3)(e) of the IEMD¹¹. Finally, the REC introduced in 2021 remains a specific form of the new Energy Community that is based exclusively on renewable energy.

Despite these significant changes, the newly introduced Energy Communities are not allowed to engage in electricity distribution and therefore are not entitled to own, establish, purchase or lease distribution networks and to manage them autonomously (i.e. foreseen as an option for CECs in Articles 2(11)(c) and 16(2)(b) of the IEMD). In addition, the optional provisions of both Directives on “cross-border participation” in RECs and CECs have not been transposed into national law.

In Germany, the 2017 Renewable Energy Sources Act (Erneuerbare-Energien-Gesetz, EEG 2017) had for the first time provided a legal definition of “Citizen Energy Companies” (Bürgerenergiegesellschaften), which are equivalent to RECs. Due to subsequent problems with the definition of the EEG 2017¹², the 2023 Renewable Energy Act (EEG 2023) provides in § 3(15) a revised definition for Citizen Energy Companies (see: Annex 2). Further provisions on operational aspects with relevance for Citizen Energy Companies are defined in § 22 and § 22(b)¹³.

Although the new definition states that a Citizen Energy Company can be a cooperative or other company, current legislation implies that cooperatives are the main legal form intended for RECs. Therefore, the general rules for cooperatives in the German Cooperatives Act continue to apply to Citizen Energy Companies. A new requirement has been added to the former definition, stating that the voting rights not held by natural persons must be held exclusively by micro, small or medium-sized enterprises or by local authorities and their associations with legal personality. The territory of a Citizen Energy Company, from which 75% of the natural persons entitled to vote must come, is now determined by a “postcode area” that is wholly or partly within a 50-kilometre radius of the planned RES plant.

¹¹ Article 16 (3) - Member States shall ensure that citizen energy communities: (...) (e) are entitled to arrange within the citizen energy community the sharing of electricity that is produced by the production units owned by the community, subject to other requirements laid down in this Article and subject to the community members retaining their rights and obligations as final customers.

¹² The definition in the EEG 2017 allowed for the creation of fake energy communities to gain specific advantages in the tender process for onshore wind projects.

¹³ Citizen Energy Companies are exempted from the tendering obligation for onshore wind power installations up to 18 megawatts and solar installations up to 6 megawatts from 2023 (§ 22). The provisions of § 22b regulate the payment of market premiums and feed-in tariffs to Citizen Energy Companies.

From the above appears that the current definition of Citizen Energy Companies transposes most elements of the REC definition from the RED II (Article 2 (16)), but not yet the CEC concept of the IEMD. The establishment of Citizen Energy Companies as RECs is thus generally possible in Germany, but they may not operate in full within the meaning of Article 22(2b) of the RED II¹⁴. This means that Citizen Energy Companies cannot engage in energy sharing among their members without becoming energy suppliers for their members with all the associated obligations¹⁵. In addition, the German EEG 2023 has also not yet transposed the optional provision on a “cross-border participation” in RECs that is foreseen in Article 22(6) of the RED II.

Overall, this comparison of the current state of transposition of the two EU Directives in both countries shows that there are relatively few common points that could help to establish the borderless energy region Ralingen-Rosport-Mompach. Regarding the basic model for cooperation in the field of renewable energy production, it seems that only a cross-border REC can be established as a common legal entity between both municipalities. However, the respective national REC concepts differ from each other and it is also not clear to what extent the new Luxembourg provisions on Energy Communities apply to the still valid sub-concept of RECs¹⁶. Finally, a more important obstacle is that neither country has yet transposed the optional provision of “cross-border participation”, which could allow the establishment of a cross-border REC.

Despite (or perhaps because of) these obvious incompatibilities, the question remains as to the availability of a suitable legal instrument to create a legal entity for the borderless energy region.

Obstacle 2 - Limited usefulness of the EGTC legal instrument

One option could be to use the EU-wide legal instrument on a “European Grouping of Territorial Cooperation” (EGTC), which was created to facilitate cross-border, transnational and interregional cooperation between Member States or their regional and local authorities. The legal basis for the EGTC is Regulation (EC) No 1082/2006, which was amended in 2013 by Regulation (EU) No 1302/2013. The revised EGTC Regulation entered into force on 22 June 2014.

The Regulation provides only relatively general guidelines for the formulation of the objectives of an EGTC. According to Article 1(2), EGTCs must, in particular, facilitate and promote territorial cooperation between its members in order to contribute to the strengthening of

¹⁴ Article 22 (2) - Member States shall ensure that renewable energy communities are entitled to: (...) (b) share, within the renewable energy community, renewable energy that is produced by the production units owned by that renewable energy community, subject to the other requirements laid down in this Article and to maintaining the rights and obligations of the renewable energy community members as customers;

¹⁵ Institut für ZukunftsEnergie- und Stoffstromsysteme (2021), p. 36

¹⁶ Of particular importance in this context are the different “geographical proximity” requirements for RECs. If the 2021 approach for RECs is still applied in Luxembourg, then geographical proximity will be limited to the control area of the distribution system operator (downstream from high or medium voltage to low voltage transformer stations). In Germany, however, geographical proximity is defined by a postal code area that is wholly or partly within a radius of 50 km of the planned installation and in which the dwellings of natural persons holding at least 75% of the voting rights are registered.

economic, social and/or territorial cohesion.

The definition of the tasks of an EGTC is set out in Article 7, which requires the observance of certain formal conditions. An EGTC shall act within the confines of the tasks given to it, namely the facilitation and promotion of territorial cooperation to strengthen the Union's economic, social and territorial cohesion, and the overcoming of internal market barriers. It is important to note that an EGTC can only take on tasks within the competences of all its members, which derive from the national law of each member. Tasks that are the sole responsibility of individual members can only be transferred to an EGTC in exceptional cases and with the authorisation of the Member State concerned (Article 7(2)). Tasks without financial support from the European Union may also be restricted by the Member States if they are outside the European investment priorities (Article 7(3)). Nevertheless, the assembly of an EGTC, may define the terms and conditions of the use of an item of infrastructure the EGTC is managing, or the terms and conditions subject to which a service of general economic interest is provided, including the tariffs and fees to be paid by the users (Article 7(4)).

Despite this narrow definition of tasks, the EGTC Regulation does not contain any explicit restrictions on the implementation of energy-related territorial cooperation activities. Therefore, an EGTC can indeed be used to establish legally structured cross-border cooperation in the field of renewable energy if local authorities and/or local public bodies are the main actors and all have competences in this field. However, in the specific case of a cross-border REC or a cross-border CEC, it should still be examined whether both concepts provide local services that fall under the EU definition of "services of general economic interest"¹⁷. This could help to clarify the status of cross-border RECs or CECs as new participants in the European energy market.

Nevertheless, the use of the EGTC instrument is not very suitable for setting up a cross-border REC or a cross-border CEC as both concepts imply a broad membership structure. Although an EGTC makes it possible to achieve the expected degree of formalisation of a cross-border REC or CEC (i.e. the creation of a legal entity), Article 3(1) of the EGTC Regulation contains restrictions on the membership of certain types of actors:

- Natural persons are not explicitly mentioned in Article 3(1), which excludes the membership of individual citizens in an EGTC.
- Private law-based local SMEs can only be included as members in an EGTC if they are entrusted with operations of services of general economic interest in compliance with applicable Union and national law.
- Restrictions also exist for private law-based associations, as only associations consisting of public bodies belonging to one or more of the defined EGTC member categories (i.e. national, regional, local authorities, public undertakings) may also be members of an EGTC.

Due to these limitations, the EGTC legal instrument cannot be used to create a legal entity for the borderless energy region Ralingen-Rosport-Mompach, if the latter intends to involve a wide

¹⁷ "Services of general economic interest" (SGEI) form part of the broader concept of "services of general interest" (SGI), which includes both economic activities and non-economic services. SGEI are basic services that are carried out in return for payment, such as postal services. These services are subject to European internal market and competition rules. However, there may be derogations to these rules if necessary to protect citizens' access to basic services. See: https://commission.europa.eu/topics/single-market/services-general-interest_en

range of other non-public local members.

Another option could be to use the appropriate legal instruments provided for in the Karlsruhe Intergovernmental Agreement on cross-border cooperation, as both municipalities already have experience in this context.

Obstacle 3 - Limited usefulness of the Karlsruhe Agreement's legal instruments

The Karlsruhe Agreement was signed on 23 January 1996 between the governments of Germany, France, Luxembourg and Switzerland¹⁸. For the border between Luxembourg and Rhineland-Palatinate, the following laws are relevant as the legal basis for the entry into force of the Agreement. In Luxembourg, the Agreement was brought into force by a single article of the law of 12 May 1997. In Rhineland-Palatinate, the provisions of the Agreement were brought into force by the State Law of 17 December 1996 (Übernahmegesetz).

The Agreement regulates regional and municipal cooperation across the five land borders of the signatory states (i.e. FR-CH, DE-CH, DE-FR, DE-LU, and FR-LU). The overall purpose of the Agreement is to facilitate and promote cross-border cooperation between German, French, Luxembourg and Swiss regional authorities and local public bodies within the framework of their competencies and in compliance with national law and the international obligations of the Contracting Parties (Article 1).

At the DE-LU border and the specific segment between Rhineland-Palatinate and Luxembourg, the Agreement applies to the following territorial authorities and local public bodies (Article 2(1)):

- DE: the federal state of Rhineland-Palatinate itself, the municipalities (Gemeinden) and associated municipalities (Verbandsgemeinden), the districts (Kreise), the regional planning community for the region Trier (Planungsgemeinschaft Region Trier), as well as the associations of the aforementioned local authorities and other legally independent public entities.
- LU: the municipalities, municipal syndicates (Gemeindesyndikate / syndicats de communes) and public-law bodies under the supervision of municipalities, as well as the nature parks in their capacity as territorial authorities.

The Agreement does not contain any restrictive provisions on the thematic activities to be covered by cross-border cooperation. Provided that a cooperation agreement is concluded first, partners can coordinate their decisions and jointly establish and manage public facilities or services of common local interest. To this end, public bodies may create cooperation structures, which may or may not have legal personality under the respective national laws of the contracting parties (Article 3(2)).

The Agreement provides for six legal instruments by means of which the above-mentioned actors can set up and legally formalise their cross-border cooperation initiatives¹⁹. Of these six

¹⁸ A bilingual online version of the agreement can be found at: CIFA - Centre juridique franco-allemand (2024).

¹⁹ (I.) Conclusion of a "cooperation agreement" between territorial authorities or local public bodies in their common areas of competence under the national law applicable to them. (Articles 3 and 4). (II.) Conclusion of a "cooperation agreement providing for the entrustment, delegation and concession of public services" (Articles 3, 4 and 5). (III.) Conclusion of a "cooperation agreement providing for the award of public contracts" (Articles 3, 4 and

legal instruments, two could enable the creation of a joint body with its own legal personality:

- (1) The set up of a “local grouping for cross-border cooperation” (LGCC), which is a legal entity governed by public law. It has legal personality from the date of entry into force of the decision setting it up. It has legal capacity and budgetary autonomy.
- (2) The possibility for a territorial authority or local public body from one country to participate in (or contribute to the establishment of) a cooperation body with legal personality²⁰ that is located in the neighbouring country.

With regard to **the first instrument of the Agreement**, it was mentioned at the beginning of this chapter that the municipalities of Ralingen and Rosport-Mompach have already established an LGCC: the “International Sports, Culture and Leisure Centre” (Internationales Sport-, Kultur- und Freizeitzentrum, ISKFZ). Theoretically, therefore, it could be considered to entrust the existing LGCC with the additional task of managing the future borderless energy region. This would require an amendment to the LGCC cooperation agreement and a change to the grouping's current statutes. In addition, these changes would have to be reviewed and approved by the respective authorisation bodies in Rhineland-Palatinate and Luxembourg.

In practice, however, it is not possible to entrust the existing ISKFZ with this task if the borderless energy region is expected to have a broad membership structure. This is because Article 2 of the Agreement contains restrictions on membership for certain types of actors. Natural persons are not explicitly mentioned, so they cannot be members of an LGCC. The same observation applies to various types of other private legal entities (e.g. local SMEs, non-profit associations etc.), as they are also not mentioned in Article 2.

When examining the possibility of using the **second instrument of the Agreement**, this presupposes that there is one or more intermunicipal cooperation bodies with energy-related activities (e.g. production and/or distribution of energy from renewable sources) on one or both sides of the DE-LU border, whose relevant national rules allow for the participation of foreign actors.

In Luxembourg, the appropriate cooperation bodies would be the “municipal syndicates”, as Article 3 of the law of 23 February 2001 on municipal syndicates allows participation of foreign municipalities or groupings of municipalities²¹. However, there are no municipal syndicates in Luxembourg that are active in energy production or distribution²² and the syndicates in which

6). (IV.) On the basis of the prior conclusion of a cooperation agreement (Articles 3 and 4), creation of a joint “body without legal personality” or budgetary autonomy (Articles 8 and 9). (V.) On the basis of the prior conclusion of a cooperation agreement (Articles 3 and 4), “creation of a body with legal personality” or “participation in such a body” that is located outside the State of the participant (Articles 8 and 10). (VI.) On the basis of the prior conclusion of a cooperation agreement (Articles 3 and 4), creation of a “local grouping for cross-border cooperation” LGCC (Articles 8, 11 - 15).

²⁰ These are mainly inter-municipal cooperation bodies, which exist in the four signatory states in various forms and with different legal statuses (public law, private law). Examples are the “local mixed economy company” (société d'économie mixte locale, SEML) and the “mixed association” (syndicat mixte) in France, the “special purpose association” (Zweckverband) in Germany, the “municipal syndicates” (syndicats de communes / Gemeindegemeinschaften) in Luxembourg, or the single purpose association and the multi-purpose association (Einzweckverband, Mehrzweckverband) in Switzerland.

²¹ Article 3: (...) foreign municipalities or groupings of municipalities may associate with Luxembourg municipalities in a municipal syndicate created by grand-ducal decree, insofar as their national law permits.

²² An online register of all municipal syndicates is available at: SYVICOL (2024)

Rosport-Mompach participates focus on wastewater treatment²³, nature park management²⁴, economic development²⁵ and solid waste treatment²⁶.

In the federal state of Rhineland-Palatinate, the relevant cooperation bodies would be “special purpose associations” (Zweckverbände), as § 2(4)(1) of the state law on intermunicipal cooperation (KomZG) allows foreign participation in these public-law bodies, provided that special interstate agreements exist²⁷. But also on the German side of the border there are no special purpose associations in the vicinity of Ralingen that are active in the production and distribution of energy.

And even if such cooperation bodies were to exist, the second instrument is still subject to the same restrictive provisions of Article 2 of the Karlsruhe Agreement. Therefore, neither natural persons nor other private legal entities could participate in (or contribute to the establishment of) a cooperation body with legal personality located in the neighbouring country.

As a general conclusion from the above, it is clear that neither of the two legal instruments of the Karlsruhe Agreement can be used to create a legal entity for the borderless energy region Ralingen-Rosport-Mompach if the latter intends to include a large number of other non-public local members.

Obstacle 4 - Legal uncertainties related to local cross-border electricity production, supply/trade, and consumption

Other legal uncertainties may arise from specific aspects related to the design of the governance and business model of the borderless energy region Ralingen-Rosport-Mompach.

The governance and business model of the borderless energy region can cover **different types of local activities related to renewable energy sources** (i.e. production, electricity supply and trade, consumption, self-consumption, etc.) carried out by **different types of local actors** (i.e. public and private legal entities, individual citizens). The combination of these two aspects leads to three basic categories (i.e. “producer/supplier”, “consumer” and “prosumer”²⁸) and, under each category, to a specific constellation of local elements (see: Table 2). The lists of local elements show only the most likely examples, as there may well be others.

²³ Syndicat intercommunal pour la distribution d'eau dans la région de l'Est (SIDERE)

²⁴ Syndicat pour l'aménagement et la gestion du Natur- & Geopark Möllerdall

²⁵ Syndicat intercommunal pour la création, l'aménagement, la promotion et l'exploitation d'une zone d'activités économiques à caractère régional dans le canton d'Echternach (SIAEE)

²⁶ Syndicat intercommunal pour la collecte, l'évacuation et l'élimination des ordures ménagères et industrielles en provenance des communes de la région de Grevenmacher, Remich et Echternach (SIGRE)

²⁷ § 2(4)(1): For the membership (...) of territorial authorities and other corporations, institutions and foundations under public law of other federal states and of other countries in special-purpose associations which have their registered office in Rhineland-Palatinate, (...) special interstate agreements shall apply. The provisions of this law shall apply in addition.

²⁸ Prosumers are defined as entities — individuals, households, small or medium-sized enterprises (SMEs), or institutions — that actively participate in the energy system. Active participation can be through self-generating renewable heat or power, and also through providing energy system services such as demand flexibility and energy storage services, enabling larger amounts of intermittent wind and solar energy to be integrated into the system. Prosumers can act as individuals (e.g. a single household) or as part of a collective (e.g. a block of apartments or an energy community). See on this: EEA (2022), pp. 13 and 14, and EEA (2024).

How and in what stage of development these local elements of the three basic categories will be either directly integrated into the borderless energy region (i.e. as members or shareholders) or only “externally” connected to it (i.e. as final electricity consumers) is not yet known. Nevertheless, this process may raise further energy law issues on both sides of the border, which will need to be clarified in detail for each integrated or connected element. In addition, the actual pattern of direct participation will also have an impact on the energy region's future relationship with the relevant transmission system operators (TSOs)²⁹ and distribution system operators (DSOs)³⁰ as well as with other private or public energy supply companies located on both sides of the border.

Table 2 – Local elements for the three categories “producers/providers”, “consumers” and “prosumers” (to be included in the borderless energy region or to be connected to it)

Producers and providers	Consumers	Prosumers
A municipality produces electricity from RES and feeds this electricity into the grid.	A municipality consumes electricity produced from RES.	A municipality produces and consumes its own electricity from RES, with surplus electricity being fed into the grid.
A local public energy utility produces electricity from RES and feeds this electricity into the grid.	An individual household (i.e. citizen) consumes electricity produced from RES.	An individual household (i.e. citizen) produces and consumes its own electricity from RES, with surplus electricity being fed into the grid.
An individual household (i.e. citizen) produces electricity from RES and feeds this electricity into the grid.	A local SME (incl. a farm or agricultural holding) consumes electricity produced from RES.	A group of households (i.e. several citizens) produces and consumes its own electricity from RES, with surplus electricity being fed into the grid.
A local SME (incl. a farm or agricultural holding) produces electricity from RES and feeds this electricity into the grid.		A local SME (incl. a farm or agricultural holding) produces and consumes its own electricity from RES, with surplus electricity being fed into the grid. ³¹
A local citizens cooperative produces electricity from RES and feeds this electricity into the grid.		

With regard to **cross-border electricity trade**, the recitals of the Electricity Market Regulation 2019/943/EU (EMR) repeatedly underline the crucial importance of this aspect for the EU's internal electricity market³². However, the current situation is rather unsatisfactory as regards **the necessary physical interconnections to allow local cross-border electricity flows**

²⁹ These are the companies “CREOS” in Luxembourg and “Amprion” in Germany.
³⁰ These are the companies “CREOS” in Luxembourg and “Westnetz” in Germany.
³¹ However, the EEA definition excludes industrial companies that produce part of their own energy from the category of prosumers, because they do not directly represent citizens. See on this: EEA (2022), pp. 13, 14.
³² Good examples are: Recital (8) - *More market integration and the change towards a more volatile electricity production requires increased efforts to coordinate national energy policies with neighbours and to use the opportunities of cross-border electricity trade.* Recital (32) - *Efficient decarbonisation of the electricity system via market integration requires systematically abolishing barriers to cross-border trade to overcome market fragmentation and to allow Union energy customers to fully benefit from the advantages of integrated electricity markets and competition.*

and local cross-border electricity provision and trade³³. The IEMD defines in Article 2(39) an “interconnector” between the electricity systems of different countries simply as “*equipment used to link electricity systems*”, while Article 2(1) of the EMR defines it more precisely as a “*transmission line which crosses or spans a border between Member States and which connects the national transmission systems of the Member States*”. This definition constitutes an obvious obstacle to the establishment of a direct cross-border grid connection at distribution system level between Ralingen and Rosport-Mompach (i.e. via a cable), as the EMR only provides for the interconnection of transmission systems across national borders.

Since a cross-border flow of energy is not possible via a direct connection of the distribution grids, **local cross-border supply of electricity** produced from RES within the energy region and the joint marketing of electricity (trade) **can only take place via the creation of a virtual power plant and the establishment of a cross-border balancing group cycle** (for the definitions of both aspects, see above “General background of the cross-border initiative”). However, there are still uncertainties regarding the establishment and day-to-day management of a cross-border balancing group cycle. These uncertainties arise from the question of whether a single balancing group manager or two separate balancing group managers (i.e. one for the German side and one for the Luxembourg side) can or must be appointed, as well as from the local availability of suitable actors to carry out these activities in practice.

Finally, there are legal uncertainties regarding “**energy sharing**”³⁴ **between the future German and Luxembourg members (or shareholders) of the borderless energy region**. Although energy sharing within a “nationally” established energy community (i.e. as REC or CEC) is allowed under EU law³⁵ and Luxembourg law (i.e. Article 8quater(1)(b) of the law of 2023), uncertainties arise because Germany has not (yet) transposed these provisions into national law. As a result of this different status of transposition in the two neighbouring countries, it is very likely that cross-border energy sharing will not be possible in the medium term. However, the Commission's recent proposal to amend the EU's electricity market organisation³⁶, on which an agreement was reached by the EU trilogue in December 2023, clarified the right to energy sharing in Article 15a. This creates a clear template for the future legal regulation of energy sharing by EU Member States.

³³ Local cross-border electricity provision and trade is understood here as an activity of the borderless energy region that involves selling its own electricity generated from RES to both members of the energy region and non-members (i.e. external final electricity consumers).

³⁴ Although there is no standardised definition of energy sharing, the concept is generally understood as a local energy approach based on community participation. It creates a new market framework that allows members of energy communities to use their collectively generated green electricity at a reduced cost through the regional distribution grid under certain conditions. Energy sharing is the sale or allocation of self-generated or stored renewable energy between active customers, either free of charge or for a fee, within a defined time period. People and communities who do not own property or land can use energy sharing to help shape the use of renewable energy and benefit from the expansion of renewable energy through lower electricity prices.

³⁵ The right to share energy / electricity is laid down in Article 22(2)(b) of the RED II (for renewable energy communities) and in Article 16(3)(e) of the IEMD (for citizen energy communities). Both provisions are “shall” provisions and must be transposed by EU Member States. The provisions allow the jointly produced electricity to be used within a REC or CEC. In each case, this means that both the legal entity (i.e. the REC or CEC) and its members or shareholders can use the jointly produced electricity.

³⁶ See: European Commission (2023a)

III. Description of possible solution(s)

The set of legal obstacles presented in the previous chapter shows that Ralingen and Rosport-Mompach will continue to face this complex constellation of problems in the medium term.

On the one hand, this is because the obvious gaps and weaknesses in the European and national legal frameworks for the use of renewable energy and the internal electricity market hinder the establishment of CBECs, be they established as RECs or CECs. Addressing these gaps and weaknesses is a task for both the European Union and the national governments of the EU Member States, in our specific case the governments of Germany and Luxembourg. However, solving these problems can only be expected to happen in the medium to long term. This will require the inclusion of appropriate corrections in the Commission's 2023 proposals for reforming the design of the EU electricity market³⁷ and in a future revision of the recently adopted Renewable Energy Directive RED III³⁸, but also a more coordinated transposition of future energy-related EU directives between neighbouring Member States.

On the other hand, this is because the existing options for creating a legal entity for the joint governance and business model of the borderless energy region on the basis of public law (i.e. EGTC, Karlsruhe Agreement) always involve significant restrictions for certain types of local actors who should become members of such a CBEC. Although in theory these weaknesses could be remedied by revising the membership provisions of the EGTC Regulation (Article 3(1)) and / or of the Karlsruhe Agreement (Article 2(1))³⁹, in practice this is very unlikely to happen due to the considerable effort involved in both revisions.

Both municipalities must therefore find an alternative solution for the creation of a legal entity to ensure the overall governance of the borderless energy region and the day-to-day operation of its envisaged business model (i.e. joint production, consumption and trading of electricity). In order to create a legal entity for the borderless energy region that also ensures the active participation of individual citizens and local companies or associations in its governance and business model, it is advisable to opt for one of the two following private-law solutions that can be set up in the short term on the basis of EU-law: The establishment of a "European Economic Interest Grouping" (EEIG), or the establishment of a "European Cooperative Society" (SCE).

³⁷ The Commission's reform proposal of March 2023 foresees revisions to several pieces of EU legislation, notably the Electricity Regulation and the Electricity Directive (COM(2023) 148 final), as well as the REMIT Regulation (COM(2023) 147 final). It introduces measures that incentivise longer term contracts with non-fossil power production and bring more clean flexible solutions into the system to compete with gas, such as demand response and storage. This will decrease the impact of fossil fuels on the consumer electricity bills, as well as ensure that the lower cost of renewables gets reflected in there. In addition, the proposed reform will boost open and fair competition in the European wholesale energy markets by enhancing market transparency and integrity. See: European Commission (2023a) and European Commission (2023b).

³⁸ The Renewable Energy Directive EU/2018/2001 (RED II) was revised in 2023. The amending Directive EU/2023/2413 entered into force on 20 November 2023. There will be an 18-month period to transpose most of the directive's provisions into national law, with a shorter deadline of July 2024 for some provisions related to permitting for renewables.

³⁹ Such an adaptation to include new types of actors would imply a renegotiation of the Agreement, as the indeed existing possibility to extend the material scope of the Agreement by an exchange of diplomatic notes with all other Contracting Parties (i.e. an "identific note") only refers to the inclusion of other territorial authorities, public bodies and persons governed by public law (Article 2(4)).

For each of these two options, the following pages provide a brief introduction to some “key points” relevant to the process of formation. However, further details should be explored at a later stage by consulting a lawyer specialised in company law.

The establishment of a "European Economic Interest Grouping" (EEIG)

The European Economic Interest Grouping (EEIG) was created in 1985 by Council Regulation (EEC) No. 2137/85 as the first form of European company for the then European Community. Although the EEIG Regulation is directly applicable throughout the EU, national implementing laws in all Member States lay down specific conditions for EEIGs established on their territory.

The **overall objective** of the EEIG legal instrument is to contribute to the completion of the Community's internal market and to strengthen its unity. It therefore creates a legal framework which facilitates effective cross-border economic cooperation between natural persons, companies, firms and other legal entities of the Member States and also helps these actors to overcome the legal, fiscal or psychological difficulties which they may encounter when cooperating across borders (see: recitals of the Regulation).

Unlike the business purpose of a company or firm, **the purpose of an EEIG** is only to facilitate or develop the economic activities of its members so as to enable them to improve their own results. Because of this ancillary nature, the activity of an EEIG must be related to the economic activities of its members but not replace them, with the concept of economic activity being interpreted in the widest sense (see: recitals of the Regulation). The above definition of the purpose of an EEIG is reproduced in Article 3(1) of the Regulation and supplemented by the statement that the purpose of an EEIG is not to make profits for itself. As a consequence of this specific purpose, a number of activities are prohibited for an EEIG (Article 3(2) of the Regulation)⁴⁰.

Members of an EEIG can be companies or firms and other entities under public law (e.g. municipalities, chambers, universities, etc.) or private law (e.g. associations, foundations, etc.), but also natural persons who carry on any industrial, commercial, craft or agricultural activity or who provide professional or other services in the Community (Article 4(1) of the Regulation). The minimum requirement for the formation of an EEIG is that there must be two members belonging to the categories of members defined above and having their registered office or principal activities in two different EU Member States (Article 4(2) of the Regulation)⁴¹. However, each member must be legally independent. Once an EEIG has been established, further members can join at a later date.

An EEIG is established by means of a “**contract for the formation**”, for which Article 4 of the Regulation prescribes only a few formal aspects:

⁴⁰ The EEIG may not, directly or indirectly, exercise management or supervisory powers over the activities of its members (prohibition on group management), may not, directly or indirectly, hold shares in a member undertaking (prohibition on holding shares), may not employ more than 500 persons (maximum number of employees), may not grant a loan to the management of a member undertaking (prohibition on granting loans) and may not itself be a member of another EEIG (prohibition on participation).

⁴¹ The Article provides for three types of formation: (1) formation of an EEIG by two companies, firms or other legal bodies, (2) formation of an EEIG by two natural persons and (3) formation of an EEIG by one company, firm or other legal body and one natural person.

- the name of the grouping preceded or followed either by the words 'European Economic Interest Grouping' or by the initials 'EEIG', unless those words or initials already form part of the name;
- the official address of the grouping;
- the objects for which the grouping is formed;
- the name, business name, legal form, permanent address or registered office, and the number and place of registration, if any, of each member of the grouping;
- the duration of the grouping, except where this is indefinite.

With regard to **the internal management structures of an EEIG**, Article 16 of the Regulation lays down only a few formal requirements. The organs of an EEIG are (1) the members, acting collectively, and (2) the manager or managers. The contract for the formation of an EEIG may provide for other organs, the powers of which must then be determined. The members of an EEIG acting collectively may take any decision necessary for the attainment of the grouping's purpose. Article 17 of the Regulation provides that each member of an EEIG shall have one vote, although the contract for the formation of an EEIG may give certain members more than one vote, provided that no member has a majority of the votes.

As regards **capital endowment**, it should be stressed that an EEIG may be formed with or without capital. However, if an EEIG is to be endowed with capital (e.g. cash contributions, contributions in kind or contributed know-how), its members can use various methods to mobilise it. For example, membership fees are common for cash contributions. The membership fee for an EEIG may be based on the turnover or profits of the members, may depend on the duration of membership or may be the same for all members. As a general rule, however, the capital of an EEIG may not be raised by means of public access to the capital market (Article 23 of the Regulation).

Overall, **practical experience with the formation of an EEIG in Germany and Luxembourg**⁴² shows that the associated costs and the time required are relatively manageable. For example, if an EEIG is to be set up without capital in either Luxembourg or Rhineland-Palatinate, the only costs incurred on formation are the mandatory costs for the notary in Germany⁴³ (no notary costs in the Grand Duchy⁴⁴) and the commercial register costs, which are either charged by the responsible district court in Rhineland-Palatinate⁴⁵ or by the national register in Luxembourg⁴⁶. However, if the documents to be submitted at the time of incorporation (i.e. contract for the formation, eventually a separate document laying down the statutes) are prepared beforehand by a specialised lawyer, the costs can be significantly higher

⁴² Stumm (2023), p. 53

⁴³ In Germany, the act of formation of an EEIG must be certified by a notary. In addition, an EEIG must be registered for entry in the commercial register of the court in whose district it has its registered office. The formation of the EEIG and the application for registration in the commercial register are usually carried out at a single meeting at the notary's office.

⁴⁴ In Luxembourg, the formation of an EEIG by means of a notarial deed (acte notarié) or other form of public deed (acte authentique) is not compulsory as the EEIG can also be formed by means of a private deed (acte sous seing privé).

⁴⁵ For an EEIG with its registered office in Rhineland-Palatinate and in the Trier district court area, the Wittlich District Court (Amtsgericht Wittlich) is responsible for the commercial, cooperative and association register (Handels-, Vereins- und Genossenschaftsregister).

⁴⁶ For an EEIG with its registered office in the Grand Duchy of Luxembourg, the relevant organisation is the "Luxembourg Business Registers" (Registre de commerce et des sociétés – RCS).

in both Germany and Luxembourg. In Germany, the entire period from the visit to the notary to the entry in the commercial register usually takes 2 to 8 weeks. Experience shows that the search for a suitable notary who is willing to notarise/register the EEIG takes the most time. Since the involvement of a notary is not required in Luxembourg, the existing online registration procedure means that an EEIG can even be formed within a few days⁴⁷.

The basic elements described above show that an EEIG is characterised by its open nature (i.e. the possibility of a broad membership structure; no restrictions on matters of socio-economic cooperation), its flexible internal management structure based on democratic principles (i.e. one member, one vote), and its non-bureaucratic handling (i.e. the procedures for setting up and dissolving an EEIG are relatively simple). Compared to the legal instruments for structuring cooperation on the basis of public law (see obstacles 2 and 3 above), the EEIG therefore seems to be much more suitable for establishing the borderless energy region as a legal entity.

The general purpose of the EEIG and its function as an “auxiliary company” is well in line with the envisaged development concept of the borderless energy region. Based on the initial cooperation between the two legally independent municipalities of Ralingen and Rosport-Mompach, the development concept foresees a gradual expansion of the borderless energy region to include other legal entities with smaller energy production capacities (e.g. private individuals) and other legal entities with larger energy production capacities, who would remain independent economic actors. Their subsequent inclusion would be reflected in a further increase in the number of members of the EEIG. Economic cooperation within the EEIG would be based on the independent production (and consumption) of energy by its members on both sides of the border, with the EEIG being mainly responsible for the overall management of the energy region, as well as for the day-to-day operation of the cross-border balancing group cycle (energy supply) and electricity trading. Through its purpose and activities, the EEIG will therefore facilitate and develop the energy-related activities of all its members and enable them to improve their own results.

Nevertheless, the possible establishment of an EEIG on either the Rhineland-Palatinate or Luxembourg side is still subject to a few uncertainties relating to the specific conditions applicable to EEIGs in both countries. These conditions are defined in the German Law of 14 April 1988 on the implementation of the EEIG Regulation (EWIV-Ausführungsgesetz) and in the Luxembourg Law of 25 March 1991 on various measures for the application of Regulation (EEC) No 2137/85.

A comparison of the provisions of the German and Luxembourg implementing laws reveals slight differences as regards the legal nature of an EEIG and the orientation of the purpose of an EEIG:⁴⁸

- In Germany, the EEIG does not have its own legal personality, but is similar to a “general partnership” (e.g. an “offene Handelsgesellschaft” OHG)⁴⁹ and in many areas also similar to a legal person. It can be the holder of rights and obligations and can conclude contracts in its own name. It can also be a party to a dispute, sue or be sued.

⁴⁷ Stumm (2023), p. 53

⁴⁸ Stumm (2023), pp. 49-53

⁴⁹ An “offene Handelsgesellschaft” is a commercial partnership with legal capacity under German company law in which at least two legal entities join together to operate a commercial business under a common company name.

Since the EEIG is considered a commercial company within the meaning of the German Commercial Code in accordance with the provisions applicable to a general partnership (see Article 1 of the national implementing law), its purpose is purely commercial (i.e., like the OHG, it aims to carry on a commercial business).

- In Luxembourg, the EEIG has its own legal personality (see Article 1 of the national implementing law). The statute of the EEIG is almost identical to that of the Luxembourg legal form of an “economic interest grouping” (groupement d'intérêt économique, GIE), since the provisions of the national law on the GIEs also apply to most aspects of the EEIG (see Article 2 of the national implementing law)⁵⁰. Depending on its purpose, the EEIG has either a civil or a commercial character (Article 4 of the implementing law).

The differences described above raise the question of the choice of the appropriate country of domicile (either Germany or Luxembourg), since the quality of the legal personality of the EEIG is of great importance for its role as an economic actor in the national and cross-border energy markets. This issue should be clarified at a later stage by a specialised lawyer.

In view of the EEIG's future role as an actor in the electricity market (i.e. energy supply including electricity trading), there is also **a need to clarify tax and liability issues**.

As the EEIG itself may not make profits (Article 3(1) of the Regulation), any surpluses (unless reinvested) must be distributed to the members, who must then pay tax on them as income in accordance with their respective national rules. An EEIG with its registered office in Germany does not pay corporate taxes (e.g. Körperschafts- oder Gewerbesteuer). In the case of an EEIG with its registered office in Luxembourg, however, tax rules for its members (Luxembourg residents and non-residents) are somewhat more complex and depend on whether the EEIG is classified as a “permanent establishment”⁵¹. If the EEIG has permanent employees at its registered office, it must pay income tax for these employees in accordance with the rules of the country in which it has its registered office. If an EEIG generates turnover, it is liable for and must pay VAT. It will also be entitled to deduct input tax and should therefore apply for an EU VAT identification number at an early stage⁵².

Since an EEIG enjoys freedom of contract and its members do not necessarily have to contribute capital, the members of a grouping have unlimited joint and several liability for its debts and other liabilities of whatever nature. National law shall determine the consequences of such liability (Article 24(1) of the Regulation). However, recourse to the members is possible only after an EEIG has been requested to pay and has failed to do so within a reasonable time. The personal liability of the members is therefore subsidiary. The liability of the members is

⁵⁰ The law of 25 March 1991 on economic interest groupings regulates, on the one hand, the contract for the formation of an EEIG (with the exception of questions relating to the status and capacity of natural persons and the capacity of legal persons) and, on the other hand, the internal operation of the EEIG and its dissolution and winding up.

⁵¹ The international tax rules applicable to an EEIG depend on the concept of “permanent establishment”. If the members of an EEIG are non-residents, the income paid to them by the EEIG will be subject to Luxembourg tax on non-residents only if the EEIG is considered to be a permanent establishment. If an EEIG is considered a permanent establishment in Luxembourg, its members, whether Luxembourg residents or non-residents, are taxed in Luxembourg on the income paid by the grouping. Otherwise, EEIG members are taxed according to the tax rules of their country of residence. The same rule applies to losses. See: The Government of the Grand Duchy of Luxembourg (2023)

⁵² Stumm (2023), p. 54

not normally associated with excessive risks, since the EEIG does not generally carry out large transactions⁵³. This usual case could change if an EEIG established for the borderless energy region acts as an economic operator on the electricity market. For this reason, an EEIG should regulate the internal allocation of liability between its members before commencing its activities. In accordance with the principle of freedom of contract, the members of an EEIG may, as far as possible, agree among themselves on the allocation of liability, for example by providing in an internal agreement for different proportions of liability between the members. If the members wish to have their liability arrangements published in the trade register (optional), they should submit the agreement at the time of formation to avoid having to amend their entry again.

The establishment of a "European Cooperative Society" (SCE)

The European Cooperative Society (SCE) is governed by the Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society and by the relevant national laws in the European Economic Area (EEA)⁵⁴ that apply to cooperatives.

According to Article 1(3) of the Regulation, the **main purpose of an SCE** is to satisfy the needs and/or promote the development of its members' economic and/or corporate activities, most notably through the signature of agreements between its members for the supply of goods or services, or the performance of works, as part of the activities undertaken or commissioned by the SCE. An SCE may also have as its object the satisfaction of its members' needs by promoting, in the manner set forth above, their participation in economic activities, in one or more SCEs and/or national cooperatives. In either constellation, an SCE may conduct its activities through a subsidiary.

An SCE has legal personality (Article 1(5) of the Regulation) and **may be formed in different ways** (Article 2(1) of the Regulation):

- by five or more natural persons resident in at least two EEA Member States;
- by five or more natural persons and companies and firms and other legal bodies governed by public or private law, resident in at least two different EEA Member States;
- by companies and firms and other legal bodies governed by public or private law, which are governed by the law of at least two different Member States;
- by a merger between cooperatives formed under the law of an EU Member State with registered offices and head offices within the EEA, provided that at least two of them are governed by the law of different Member States,
- by conversion of a cooperative formed under the law of an EU Member State, which has its registered office and head office within the EEA, if it has had an establishment or subsidiary governed by the law of another EU Member State for at least 2 years.

For the purposes and needs of the borderless energy region Ralingen-Rosport-Mompach, the second option seems to be the most suitable way of establishment. Nevertheless, if the initial cooperation were to start only at the level of the two municipalities (i.e. by merging the "core cells", as envisaged in phase 2), the third option could also be used. In this case, however, it will be necessary to examine the possibility of amending the statutes of the SCE if individuals

⁵³ Industrie- und Handelskammer Saarland (2022)

⁵⁴ i.e. the EEA covers the EU Member States, Iceland, Liechtenstein and Norway.

or other private law actors become directly involved at a later stage (see: Annex 1).

Irrespective of the way of establishment, **an SCE is a company whose subscribed capital is divided into shares**, with the number of members and the amount of capital being variable. Unless otherwise provided by the statutes of the SCE, no member shall be liable for more than the amount he/she has subscribed. When the SCE members' liability is limited, the name of the SCE must be followed by the abbreviation 'limited' (Article 1(2) of the Regulation).

The capital of an SCE shall be expressed in the national currency and the subscribed capital shall not be less than EUR 30,000. The capital may be increased by successive subscriptions by members or on the admission of new members, and it may be reduced by the total or partial repayment of subscriptions provided that the capital does not fall below EUR 30,000. Variations in the amount of the capital do not require amending the statutes (Article 3 of the Regulation).

Chapter III of the Regulation sets out the **internal governance structure of an SCE** and Article 36 defines the **basic structure of the organs**. The latter includes (a) a general meeting and (b) either a supervisory organ and a management organ (two-tier system) or an administrative organ (one-tier system), depending on the form adopted in the statutes. The following Articles of the Regulation describe in detail the one-tier system (Articles 37-41) and the two-tier system (Articles 42-44) as well as rules common to both systems (Articles 45-63).

At the very beginning of the set-up process, the founding members must draw up **the statutes of the SCE**⁵⁵. This has to be done in accordance with the rules on the formation of cooperatives laid down by the law of the Member State in which the future SCE will have its registered office. The statutes must be in writing and signed by the founding members and must contain at least the following (Article 5(2) and (4) of the Regulation):

- the name of the SCE, preceded or followed by the abbreviation 'SCE' and, where appropriate, the word 'limited',
- a statement of the objects,
- the names of the natural persons and the names of the entities which are founder members of the SCE, indicating their objects and registered offices in the latter case,
- the address of the SCE's registered office,
- the conditions and procedures for the admission, expulsion and resignation of members,
- the rights and obligations of members, and the different categories of member, if any, and the rights and obligations of members in each category,
- the nominal value of the subscribed shares, the amount of the subscribed capital, and an indication that the capital is variable,
- specific rules concerning the amount to be allocated from the surplus, where appropriate, to the legal reserve,
- the powers and responsibilities of the members of each of the governing organs,
- provisions governing the appointment and removal of the members of the governing organs,
- the majority and quorum requirements,
- the duration of the existence of the society, where this is of limited duration.

⁵⁵ The notion "statutes of an SCE" means both the instrument of incorporation and, when they are the subject of a separate document, the statutes of the SCE.

The municipalities of Ralingen and Rosport-Mompach should be aware that the establishment of an SCE involves certain costs. These include the cost of publication in a register designated by the law applicable to public limited-liability companies in the Member State in which the SCE will have its registered office (Article 11 of the Regulation)⁵⁶, notary fees (since SCEs must in both countries be registered before a notary) and any costs relating to the issue of administrative authorisations. In addition, if the statutes of the SCE are drafted “externally” by a specialised lawyer during the formation phase, the costs may be even higher.

After the publication of documents concerning an SCE in the relevant Member State, notice of an SCE’s registration (or of the deletion of such a registration) shall be published for information purposes in the EU’s Official Journal (Article 13 of the Regulation).

Concluding remarks

Which of the two legal instruments described above should (or can) be chosen by the partners of the borderless energy region has to be examined in a detailed legal opinion by one or more experts in the field of company law. It is also important for such an opinion to explain to the two municipalities in a practical and detailed way the different steps to be taken in order to set up an EEIG or an SCE, so that they will later have a precise “roadmap” for the further implementation of their initiative.

But even if the problem of how to legally establish a governance and business model for the borderless energy region can be solved by one of these options, the legal, technical, organisational and economic uncertainties surrounding the aspects of local cross-border electricity production and supply/trade via a cross-border balancing group cycle or the aspect of cross-border energy sharing still need to be addressed.

These aspects can be explored and clarified in a follow-up project based on the results of this b-solutions mission. A project proposal should be submitted relatively soon to the Interreg VI “Greater Region” programme and address at least the following (possible work packages):

- The basic concept of the borderless energy region, i.e. its establishment as a cross-border REC or CEC based on the status of national transposition of the relevant EU Directives.
- Establishment of a legal entity for the borderless energy region through a comparative legal expertise on the formation of an EEIG or an SCE, including a detailed roadmap for the founding process of each option.
- Legal, organisational and technical requirements for the creation and ongoing operation of a cross-border balancing group cycle.
- Practical feasibility of cross-border energy sharing within the borderless energy region.
- Energy-related cost-benefit calculations for joint local production/supply and general trading of electricity from RES in the borderless energy region.

⁵⁶ For an SCE with its registered office in the Grand Duchy, the relevant organisation is the “Luxembourg Business Registers” (Registre de commerce et des sociétés – RCS). For an SCE with its registered office in Rhineland-Palatinate and in the Trier district court area, the Wittlich District Court (Amtsgericht Wittlich) is responsible for the commercial, cooperative and association register (Handels-, Vereins- und Genossenschaftsregister).

IV. A full list of all legal provisions relevant to the case, both in original language and in English

EU legal provisions (in English)

Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE).

Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG)

Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652.

Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast).

Directive (EU) 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 (recast).

Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC).

Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings.

Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast).

Germany - national and regional legal provisions (in original language and in English)

Gesetz für den Ausbau erneuerbarer Energien (Erneuerbare-Energien-Gesetz - EEG 2023). Ausfertigungsdatum: 21.07.2014. Vollzitat: "Erneuerbare-Energien-Gesetz vom 21. Juli 2014 (BGBl. I S. 1066), das zuletzt durch Artikel 1 des Gesetzes vom 5. Februar 2024 (BGBl. 2024 I Nr. 33) geändert worden ist".

Act on the Promotion of Renewable Energy Sources (Renewable Energy Sources Act - EEG 2023). Date of enactment: 21.07.2014. Full citation: "Renewable Energy Sources Act of 21 July 2014 (BGBl. I p. 1066), last amended by Article 1 of the Act of 5 February 2024 (BGBl. 2024 I No. 33)".

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Interessenvereinigung (EWIV-Ausführungsgesetz). Ausfertigungsdatum: 14.04.1988. Vollzitat: "EWIV-Ausführungsgesetz vom 14. April 1988 (BGBl. I S. 514), zuletzt geändert durch Artikel 16 des Gesetzes vom 23. Oktober 2008 (BGBl. I S. 2026).

Act on the implementation of the EEC Regulation on the European Economic Interest Grouping (EEIG Implementation Act). Date of adoption: 14.04.1988. Full citation: EEIG-Umsetzungsgesetz of 14 April 1988 (BGBl. I p. 514), last amended by Article 16 of the Act of 23 October 2008 (BGBl. I p. 2026)".

Landesgesetz über die kommunale Zusammenarbeit (KomZG) vom 22. Dezember 1982, zuletzt geändert durch Artikel 14 des Gesetzes vom 02.03.2017. Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz (GVBl), 1982, 476.

State Law on Municipal Cooperation (KomZG) of 22 December 1982, last amended by Article 14 of the Law of 2 March 2017. Law and Regulation Gazette for the Land of Rhineland-Palatinate (GVBl), 1982, 476.

Landesgesetz zu dem Übereinkommen zwischen der Regierung der Bundesrepublik Deutschland, der Regierung der Französischen Republik, der Regierung des Großherzogtums Luxemburg und dem Schweizerischen Bundesrat, handelnd im Namen der Kantone Solothurn, Basel-Stadt, Basel-Landschaft, Aargau und Jura, über die grenzüberschreitende Zusammenarbeit zwischen Gebietskörperschaften und örtlichen öffentlichen Stellen. Gesetz- und Verordnungsblatt für das Land Rheinland-Pfalz (GVBl) vom 7. Januar 1997, D 3231, 1997, Nr. 1.

State Law on the Agreement between the Government of the Federal Republic of Germany, the Government of the French Republic, the Government of the Grand Duchy of Luxembourg and the Swiss Federal Council, acting on behalf of the Cantons of Solothurn, Basel-Stadt, Basel-Landschaft, Aargau and Jura, on cross-border cooperation between regional authorities and local public bodies. Law and Ordinance Gazette for the State of Rhineland-Palatinate (GVBl) of 7 January 1997, D 3231, 1997, No. 1.

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Luxembourg - national legal provisions (in original language and in English)

Loi du 9 juin 2023 modifiant : 1° la loi modifiée du 1er août 2007 relative à l'organisation du marché de l'électricité ; 2° la loi modifiée du 1er août 2007 relative à l'organisation du marché du gaz naturel. Journal Officiel du Grand-Duché de Luxembourg, Mémorial A - 288 du 9 juin 2023.

Law of 9 June 2023 amending 1° the amended law of 1 August 2007 on the organisation of the electricity market; 2° the amended law of 1 August 2007 on the organisation of the natural gas market. Journal officiel du Grand-Duché de Luxembourg, Mémorial A - 288 of 9 June 2023.

Loi du 3 février 2021 modifiant la loi modifiée du 1er août 2007 relative à l'organisation du marché de l'électricité. Journal Officiel du Grand-Duché de Luxembourg (2021), Mémorial A n° 94/2021, 05/02/2021.

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Loi du 23 février 2001 concernant les syndicats de communes. Journal Officiel du Grand-Duché de Luxembourg, Mémorial A – no. 36/2001, 26/03/2001.

Law of 23 February 2001 on the association of local authorities. Journal Officiel du Grand-Duché de Luxembourg, Mémorial A - no. 36/2001, 26/03/2001.

Loi du 12 mai 1997 portant approbation de l'Accord entre le Grand-Duché de Luxembourg, la République fédérale d'Allemagne, la République française et la Confédération Suisse, agissant au nom des cantons de Soleure, de Bâle-Ville, de Bâle-Campagne, d'Argovie et du Jura sur la coopération transfrontalière des collectivités territoriales et organismes publics locaux, fait à Karlsruhe, le 23 janvier 1996. Journal Officiel du Grand-Duché de Luxembourg, Mémorial A - no. 38, 27 mai 1997.

Law of 12 May 1997 approving the Agreement between the Grand Duchy of Luxembourg, the Federal Republic of Germany, the French Republic and the Swiss Confederation, acting on behalf of the cantons of Solothurn, Basel-Stadt, Basel-Landschaft, Aargau and Jura on cross-border cooperation between local authorities and local public bodies, done at Karlsruhe on 23 January 1996. Journal Officiel du Grand-Duché de Luxembourg, Mémorial A - no. 38, 27 May 1997.

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V. Other relevant aspects to this case

As part of the case analysis and the provision of legal advice, several face-to-face meetings in Ralingen and Rosport as well as online roundtable discussions (i.e. on 27 March 2024 and on 4 April 2024) took place. They involved, in different constellations, the mayors of both municipalities, other local stakeholders from both sides of the border and the senior technical advisor of the “Transferstelle Bingen”.

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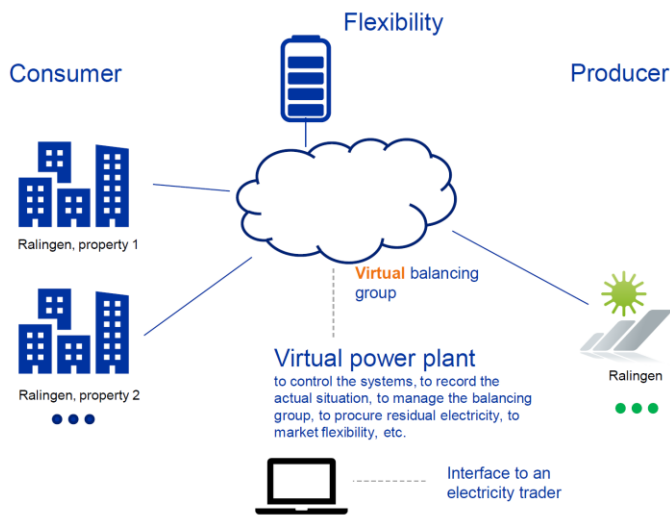
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VII. Annexes

Annex 1 – Planned development phases of the Borderless Energy Region Ralingen-Rosport-Mompach⁵⁷



Starting point of the cross-border energy region



Start with a single core cell or individual core cells

Development of an energy region for and with one municipality as the **sole legal entity**.

On the left: Example of a core cell in Ralingen, with consumers and photovoltaic plants using the public grid.

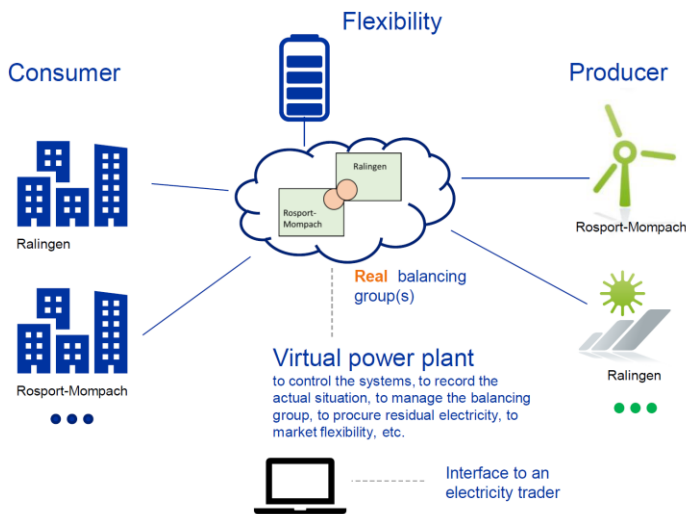
This can also be done in parallel with a core cell in Ralingen and a second core cell in Rosport-Mompach.

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Phase 2 of the cross-border energy region



Merger and expansion phase

Merger of the two energy region core cells Ralingen and Rosport-Mompach into a **cross-border energy region (CBER)** with its own legal personality and a **real cross-border balancing group** (or two local balancing groups linked by a contract).

Expansion of the CBER by including other legal entities with smaller capacities, such as **private individuals**

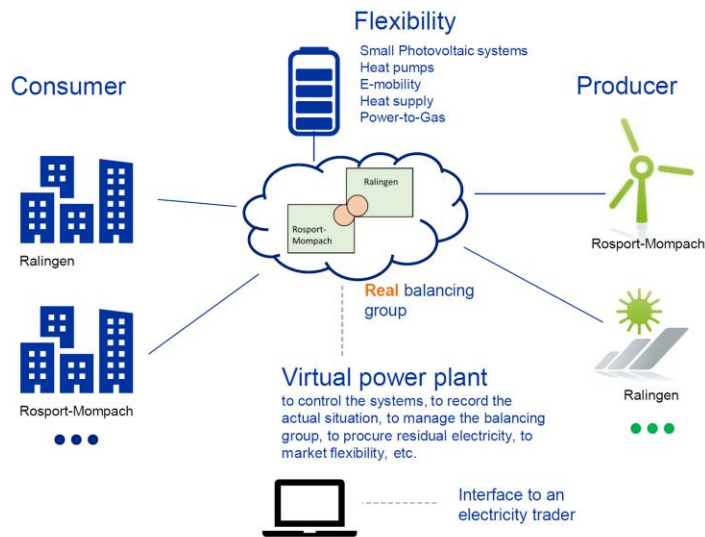
If sufficient CO₂-neutral electricity is available in the region, expansion of the CBER by inclusion of **other legal entities with greater capacity**.

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⁵⁷ Authorised adaptation of the presentation of Simon / Walter (2023)

Phase 3 of the cross-border energy region



3



Target level

Expansion of the CBER to include **heat supply** and **"sector coupling"** (i.e. sector coupling refers to the possibility of transferring energy supply from one sector to another, in particular the transfer of renewable electricity to the heating or mobility sector).

Prerequisite: Sufficient regionally generated CO2-neutral electricity volumes

Annex 2 – Comparison of definitions for RECs / CECs in the current legislations of Luxembourg and Germany (translation by the expert)

<p style="text-align: center;">Luxembourg</p> <p style="text-align: center;">Selected provisions of the revised national Electricity Market Organisation Act (2023)</p>	<p style="text-align: center;">Germany</p> <p style="text-align: center;">Selected provisions of the national Renewable Energy Sources Act of 2023 (EEG 2023)</p>
<p>Article 1 (7bis)</p> <p>"energy community": a legal person whose members or shareholders are natural or legal persons, including local authorities, but excluding undertakings which have more than 250 employees or whose annual turnover exceeds 50 million euros or whose annual balance sheet total exceeds 43 million euros. The statutes of an energy community specify that its main objective is to provide environmental, economic or social community benefits to its members or shareholders or to the local areas in which it operates, rather than to generate financial profits.</p> <p>Article 8quater:</p> <p>(1) An energy community is authorised to:</p> <p>a) produce, consume, store and sell the electricity, including electricity from renewable sources, produced by the generating units owned or leased by it or its members or shareholders, including through power purchase agreements;</p> <p>b) organise the sharing, within the energy community, of the electrical energy produced by the generating units owned by the energy community or its members or shareholders, or made available to the energy community or its members or shareholders by means of a leasing agreement, without prejudice to grid access charges, grid usage charges and other charges, levies and taxes applicable to each member of the energy community;</p> <p>(c) access on a non-discriminatory basis to all relevant energy markets directly or through aggregation;</p> <p>(d) provide energy efficiency services, electric vehicle charging services or other energy services to its members or shareholders.</p> <p>(2) The participation of a network user as a member or shareholder of an energy community shall be voluntary and shall be without prejudice to its rights and obligations as an end customer. Energy communities shall enjoy non-discriminatory and proportionate treatment with regard to their activities, rights and obligations as final customers, producers, suppliers or aggregators.</p> <p>(...)</p> <p>(12) A renewable energy community set up under the former Article 8quater as introduced by the Law of 3 February 2021 amending the amended Law of 1 August 2007 on the organisation of the electricity market is deemed to be an energy community whose</p>	<p>§ 3 (15)</p> <p>“citizen energy company” means any cooperative or other company</p> <p>(a) which consists of at least 50 natural persons as members with voting rights or shareholders with voting rights,</p> <p>(b) in which at least 75 percent of the voting rights are held by natural persons who are registered as residents in a postal code area which, in accordance with the Federal Registration Act, lies wholly or partly within a radius of 50 kilometres around the planned installation, the distance being measured in the case of solar installations from the outer edge of the respective installation and, in the case of wind energy installations, from the centre of the tower of the respective installation, and</p> <p>(c) in which the voting rights that are not held by natural persons are held exclusively by micro, small or medium-sized enterprises within the meaning of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.05.2003) or by local authorities and associations thereof having legal personality, and</p> <p>(d) in which no member or shareholder of the company holds more than 10 per cent of the voting rights in the company,</p> <p>whereby the voting rights pursuant to letter (b) must, as a rule, also be associated with a corresponding actual possibility of exerting influence on the company and participating in decisions of the shareholders' meeting, it is sufficient in the case of a merger of several legal entities or partnerships to form a company if each of the members of the company fulfils the requirements pursuant to letters (a) to (d) and it is sufficient in the case of a company in which another company holds 100 percent of the voting rights if the latter company fulfils the requirements pursuant to letters (a) to (d),</p>

production facilities are all based on renewable energies. Their existence is not called into question by the provisions of this article.