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Executive summary

This report examines the implementation and challenges of cross-border energy communities in the border region between Austria and Germany, with a particular focus on the Euregio via salina. The analysis is conducted within the framework of the b-solutions initiative, which aims to support border regions in overcoming legal and administrative obstacles.

Energy communities have emerged as an important element of the energy transition, involving citizens and embodying key characteristics such as openness, citizen participation and democratisation. The legal framework provided by the Renewable Energy Directive (RED II) and the Electricity Directive provides a basis for the creation of such communities. Despite the various directives and regulations at EU level, the energy sector remains strongly determined by national legislation. In particular, the legal framework explicitly includes cross-border energy communities, but leaves it up to each Member State to decide whether to implement cross-border energy communities within its national legislation. In the case of Germany and Austria, both countries have chosen not to include provisions for cross-border energy communities in their national legislation. This decision has resulted in significant differences between the two countries in terms of the forms of implementation and requirements for energy communities. The lack of harmonisation in national legislation creates barriers to cross-border cooperation and hampers the potential for synergies and shared benefits.

One of the key challenges identified is the restrictive requirements imposed on participants in energy communities. These requirements often create obstacles for individuals from across the border, either by explicitly excluding them or by creating significant difficulties for participation. Such barriers not only hinder cross-border cooperation, but also reduce the potential for energy transition, limit the establishment of renewable energy production, and thus limit the full potential of energy communities to realise their social, economic and environmental objectives.

Technical barriers also hinder the development of cross-border energy communities. These barriers arise from differences in grid infrastructure, regulatory frameworks and administrative procedures between Austria and Germany. While some technical challenges may be difficult to overcome without a complete reorganisation of energy grids across Europe, the analysis highlights that regulatory barriers can be removed or minimised through coordinated efforts and cross-border consultation.

To promote cross-border cooperation and unlock the potential of energy communities, the report recommends several actions. First and foremost, it is crucial to establish clear rules for cross-border energy communities in national legislation. Removing the 'grey area' that currently exists in the legal framework will allow communities to be implemented on a sound legal basis. Furthermore, the harmonisation of national legislation is another key aspect to be considered. Aligning participation requirements, benefits and incentives across borders would facilitate seamless integration and create a level playing field for all participants. This harmonisation process should be guided by the principles of openness, fairness and non-discrimination to ensure that cross-border energy communities can fully realise their intended benefits.

The report also makes recommendations on how to work within the current regulatory framework. While none of the proposed solutions is equivalent to a “true” energy community, some elements can be addressed. For example, solutions that allow for cross-border financing and participation in joint projects can be implemented, establishing cross-border energy cooperation even without simplified market access or reduced electricity prices for members.

Keywords: cross-border energy communities, energy transition, citizen participation, national legislation, legal barriers, technical barriers, b-solutions, cross-border obstacles

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

Cross-border cooperation in the joint production of electricity from renewable energy sources faces a number of legislative/administrative and other barriers. These barriers include different legal requirements for the construction of renewable energy infrastructure (such as hydropower, photovoltaics and wind energy) and different application, authorisation and appeal procedures. In addition, the EU framework for cooperation is set out in directives only, leaving considerable leeway for Member States to transpose them into law. Despite these challenges, several municipalities in the Bavarian-Austrian border region have expressed a strong interest in investing in renewable energy facilities and exploring joint cross-border financing and ownership formats.

Legal barriers in national legislation for the construction of wind turbines have already been examined by the region and do not relate to specific cross-border barriers. However, there are two main elements that pose potential cross-border barriers and are described in detail below:

- Cross-border energy communities – even though they are allowed by the EU level framework legislation – have not been taken up in the legal framework of either Germany or Austria. While not explicitly prohibited, several obstacles for establishment of such cross-border communities are included in the national legislation
- Legal requirements for construction of wind-turbines with regards to spatial planning and environmental protection are defined by national legislation. In the cross-border area, an unclear situation potentially leading to conflicts is created if such turbines are constructed in close proximity to the border.

In both cases, significant regulatory gaps regarding the situation at border regions can be identified. These lead to effects where:

- Although technically possible, the legal framework prohibits cooperation
- Legal framework developed with a country-centric view creates significant difficulties in establishing energy communities for administrative reasons
- Specific actions are legally allowed, but create considerable potential for conflict in the cross-border area

Austria, for example, has limited participation in some types of energy community to participants connected to the same distribution system operator (at national level). Germany, on the other hand, requires participants to live in the vicinity of a production site, but determines proximity by registration in the national register (Melderegister). The implementation of renewable energy projects, and in particular the establishment of energy communities, is therefore much more difficult in cross-border areas than in other regions. The obstacle is rooted in legislation at national and EU level.

1.1. Understanding the obstacle

The core obstacle for cross-border energy communities is the optional nature of such communities as defined by the two relevant legislative acts on EU level:

- Article 22 of 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
- Article 16 of 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

Both directives stipulate, that citizen energy communities respectively renewable energy communities ***may*** be opened to cross-border participation by the member states legal framework. Both Member States addressed in this report chose not to implement this optional cross-border element as outlined below.

Legal framework for energy communities in Austria

The main legal framework for energy communities in Austria is the Renewable Energies Expansion Act package, which came into force in July 2021. Its adoption led to the amendment of several national laws. These include the amendment of the Green Electricity Act (Ökostromgesetz 2012), the Electricity Industry and Organisation Act (Elektrizitätswirtschafts- und -organisationsgesetz 2010), the Gas Act (Gaswirtschaftsgesetz 2011), the Energy Intervention Act (Energielenkungsgesetz 2012) and a new federal law on the development of energy from renewable sources, known as the Renewable Energy Expansion Act (Erneuerbaren-Ausbau-Gesetz 2021). This framework regulates two main forms of energy communities that are relevant to the task, namely *"renewable energy communities"* and *"citizen energy communities"*. The third type of energy community is only relevant for

small-scale projects that do not feed into a public electricity grid (e.g. installations for an apartment building) and are therefore generally not feasible for cross-border cooperation.

The Renewable Energy Expansion Act defines the rights and obligations of a ***renewable energy community.*** It stipulates that energy can only be generated from renewable sources and that membership of a renewable energy community is open and voluntary. Membership is open to natural persons, municipalities, legal entities of public authorities, other legal entities under public law and small and medium-sized enterprises. A minimum of two members is required. Commercial actors in the energy sector may not be members of a renewable energy community. The cooperation of these actors may be organised as an association, cooperative, partnership, company or similar association with legal personality. If the community structure itself does not prohibit financial profit as the main benefit, this aspect must be included in the statutes of the community (EAG 2021, §79). However, renewable energy communities under Austrian law are linked to benefits for their members if the energy produced is consumed by them. In this case, members of renewable energy communities pay 57% less in fees to the Austrian electricity grid for their self-produced energy if the energy is fed into the local grid levels 6 and 7. For regional renewable energy communities, grid levels 4 to 7 are available and the reduction in fees ranges from 28% to 64% (Systemnutzungsentgelt-Verordnung 2018, §5, paragraph 9).

The relevant legislation for citizen energy communities can be found in the Electricity Industry and Organisation Act 2010. The possible types of organisational structures are the same as for renewable energy communities and, similarly, a citizen energy community may not be established with the primary objective of generating financial benefits for its members. Membership is open to natural persons, municipalities, legal entities of public authorities, other legal entities under public law and small and medium-sized enterprises. A minimum of two members is required. However, natural persons, local/regional authorities and small enterprises that are not registered as electricity companies must form the majority of the members in order to be able to control decisions within a citizen energy community (ElWOG 2010, §16b).

The national level provides funding for consulting and planning services for energy communities as well as training for their members. An innovative and concrete concept for an energy community is required (Umweltförderung.at, 2023).

Legal framework for energy communities in Germany

The latest version of the German Renewable Energy Act came into force at the beginning of 2023 and introduced significant changes for energy communities. For the first time, the requirements of the EU framework have been duly taken into account and energy communities can be implemented in accordance with the EU definitions. Only one form of energy community will be implemented, namely citizen energy communities.

A citizen energy community in Germany is open to participation by natural persons, SMEs, public authorities and other associations, but it must consist of at least 50 natural persons who are entitled to vote on community matters. 75% of the voting rights must be held by natural persons and 75% of the members may not live more than 50 kilometres from the community's power plant(s) according to the national register (Bundesmeldegesetz). German citizen energy communities can be organised as cooperatives, associations and other forms (e.g. GmbH) (EEG 2023, §3, paragraph 15).

The EEG provides some incentives to organise in the form of a citizen energy community by reducing the administrative burden for smaller projects. Wind and solar projects are exempted from public tendering in order to reduce bureaucracy and incentivise further construction by citizen energy communities. The limit for tendering is set at wind farm projects with an expected energy output of more than 18 megawatts and solar plants with more than 6 megawatts. In addition, special funds will be made available to citizen energy communities to support the application, approval and planning phase of a specific project (BMWK, 2022).

The legal framework does not allow energy communities to use the public electricity grid to directly share energy within their community (Energy Future, 2022). Energy communities can therefore act like any other energy producer on the market (with several legal options to sell the produced energy to final consumers, grid operators, aggregators, etc.) and share the resulting financial benefits among their members, but they cannot allow their members to directly participate in the consumption with special conditions. Therefore, there are no financial incentives (e.g. in terms of reduced grid fees, as implemented in Austria) and energy sharing is not common in energy communities (Deutsche Energie-Agentur, 2023).

Cross-border aspects

No regulations in either Member States legal framework explicitly or implicitly addresses cross-border aspects of energy communities.

1.2. Assessing the obstacle

The obstacle stems from three main aspects, both legal and technical:

- The fact that the framework legislation at EU level does not oblige Member States to include cross-border energy communities, but only mentions it as an option at the discretion of Member States, limits the uptake of this option. This results in a "regulatory gap" where cross-border aspects are not explicitly regulated, leading to uncertainty for citizens.
- In addition, the cross-border perspective has not been taken into account when defining community energy in national legislation. In some cases, this leads to legal requirements for energy communities that, due to administrative regions (which do not reflect the reality in a cross-border region), can only be met by non-cross-border communities.
- The technical design and regulation of the European energy grid does not allow cross-border citizen energy communities to actually consume the energy produced within the community or to benefit from reduced energy prices when consuming energy from the community. The absence of this aspect greatly reduces the incentive to implement a cross-border energy community. These aspects lead to the following concrete challenges for the implementation of cross-border energy communities:

The energy sector has historically been, and still is, dominated by a national perspective. Established cross-border cooperation in the energy sector focuses mainly on the higher network level, especially the transmission network. This indicates a limited scope of cooperation, with less attention paid to the distribution network level, where local communities and small-scale energy producers are more directly involved. Linked to this element is a major challenge posed by the existence of different distribution system operators and concession areas within and between countries. This fragmentation is a barrier to the integration and operation of cross-border citizen energy community, as the coordination and harmonisation efforts required to ensure effective cross-border cooperation are rooted in complex legal and technical issues that can only be addressed through coordinated efforts across countries.

Crucially, the optional cross-border aspect of the European Energy Regulation has not been taken up at all in the national legislation of the countries involved. As a result, the establishment of cross-border citizen energy communities is not explicitly regulated, leading to grey areas in implementation. Clarification of the legal aspects involved could be costly and involves considerable risk, which is likely to discourage small-scale energy producers in local communities. Furthermore, even if a community were willing to take these risks, the legal requirements strongly discourage the establishment of cross-border citizen energy communities. Restricting participation in cross-border citizen energy communities established under German law to mostly individuals with a German residential address inherently limits inclusivity and cross-border potential. Similarly, tying participation in cross-border citizen energy communities to specific network operators (usually operating only within the borders of one country) further limits the cross-border cooperation aspect.

A support framework (funding and subsidies) is available from the respective national governments, however it is (mostly) limited to legal and administrative matters related to the application, approval and construction of the energy facility itself. Matters related to the establishment of the energy community itself are (mostly) excluded from the support scheme.

Especially for communities established under German law, the implementation of "energy sharing" at the municipal level shows gaps and challenges. The lack of a comprehensive framework for energy sharing at the municipal level undermines the potential for cooperation due to the lack of benefits for the community. For the Austrian renewable energy communities, this aspect is well addressed, providing some clear benefits to the local communities and thus encouraging cooperation – however, due to the legal structure of these financial benefits, they are limited to in-country cooperation and not available to citizen energy communities at all.

While some of these aspects are technical and difficult to overcome (e.g. the establishment of cross-border connections in the electricity grid at the level of distribution networks), others are purely legal/administrative.

They lead to a paradoxical situation where immediate neighbours only a few hundred metres apart are not considered 'local' by law, but households more than 100 km away (in an extreme case) are. Apart from the general regulatory gap regarding cross-border energy communities in both national legislations, the following provisions are particularly problematic for citizen energy community:

- German law: Determination of eligibility for membership (relevant for meeting the criteria for establishing a citizen energy community) on the basis of registration in the German Land register. No potential member (natural person or otherwise) resident outside Germany can be registered in this register, so Austrian members do not count towards the location-based establishment criteria for a citizen energy community.
- Austrian law: Requirement to be registered in a specific concession area and/or connected to the same distribution network in order to participate in the same energy community. In general, concession areas and distribution networks are limited to the same country and are not established across borders. Even in cases where the only physical grid connection is cross-border (e.g. for the Austrian exclaves of Jungholz and Kleinwalsertal) and there is no connection to the national grid, concession areas are defined by the country to which a region belongs.

2. Description of possible solution(s)

There are few possible solutions for the main objective of implementing a cross-border citizen energy community due to a regulatory gap in the legal systems of both Member States. For a comprehensive long-term solution to the obstacle, a change in national legislation is necessary. However, an amendment of the legislation at EU level is not mandatory, as the current legal framework allows the establishment of cross-border energy communities, but does not oblige Member States to include them in their legal framework. The following legislative changes are therefore recommended or required:

- At EU level:
  - A revision of Article 22 of 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 and Article 16 of 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 requiring Member States to include provisions for cross-border energy communities would clarify the legal situation and ensure, that there are at least some basic legal principles for the establishment of such communities
- At the national level in Austria:
  - A revision of Renewable Energy Expansion Act 2021 and Electricity Act 2010 explicitly including provisions for cross-border energy communities is required. The revision should include clear rules for establishment of cross-border energy communities and take into account the different situation for citizen energy communities and renewable energy communities.
  - Establishment of an administrative procedure and respective legal basis for information exchange and respective billing procedures between Distribution Systems Operators to allow for cross-border energy sharing
- At the national level in Germany:
  - A revision of Renewable Energy Act 2023 explicitly including provisions for cross-border energy communities is required. The revision should include clear rules for establishment of cross-border energy communities and take into account the different situation for citizen energy communities and renewable energy communities.
  - A revision of the requirements for spatial criteria for participation in energy communities linked to registration in a German state register. In order to reduce the administrative burden for non-cross-border energy communities, a specific criterion could be introduced that only applies to cross-border participants (e.g. verification via non-German registers of residents in these cases).
  - Establish an administrative procedure and legal basis for information exchange and billing procedures between distribution system operators to enable cross-border energy sharing.
- The proposals are necessary to provide long-term solutions and to fully overcome the cross-border obstacle identified. They require changes not only in the legal framework, but also in the technical and organisational aspects of the energy network and the respective practices and legal frameworks for distribution system operators. In addition to changes in the legal framework, national governments need to find a common solution to these issues and conclude binding agreements to provide long-term planning security.

Apart from long-term comprehensive solutions, some recommendations can be made for the short to medium term, working within the current legal framework. While the obstacle cannot be fully overcome without changes to the legal framework at national level, some form of cross-border cooperation in energy production can be implemented. These solutions would not be fully equivalent to a formal cross-border energy community and would not be able to benefit from all the advantages (such as access to specific funding, special energy prices or reduced administrative procedures), but they can provide an interim solution.

- For small-scale energy production at a regional level, various solutions have been applied in the past, which in many respects correspond to energy communities. However, most applications have taken place within one country and have not included a cross-border element. Nevertheless, the approaches are open to cross-border participation with few restrictions and can therefore be implemented in the cross-border region:
- Establishment of an energy cooperative under cooperative law. The majority of citizen-led energy projects are established in this form in Germany, allowing citizens to organise themselves, exercise control and formalise the financing of projects (e.g. wind turbines). The (mandatory) statute of a cooperative can be used to codify common goals of energy communities, such as working together for goals other than financial gain, striving for ecological and social development, etc. Furthermore, the decoupling of financial investment and decision-making power is in line with the stated goals at EU level for citizen energy communities. However, organising in a cooperative does not guarantee the same benefits as a dedicated citizen energy community (i.e. access to specific funding and simplified administrative procedures). The open nature of a cooperative allows for the participation of residents from different countries, but a clear regulation in the statutes is recommended.

- Organisation in the form of a European Cooperative Society under the relevant regulation is possible. This form of organisation facilitates cross-border cooperation (with mandatory participation of members from more than one Member State). Examples of energy cooperatives organised under this legal form already exist[1].
- Membership of a "virtual power plant", ideally by a supplier operating in both Member States, allows the financial benefits of operating small-scale energy production to be reaped, while reducing the administrative and operational burden. The solution facilitates the sale of the energy produced and the generation of income for citizens, but does not (in most cases) allow the direct consumption of the energy produced. Furthermore, an additional legal structure is required to finance the project (e.g. the wind turbine) and to codify the distribution of financial benefits. Such a structure can take the form of an association, a GmbH or several other forms under German and Austrian law. This approach is less linked to the common principles of citizen energy communities.

Although the legal framework creates a grey area and strongly discourages cross-border energy communities, neither Austria nor Germany explicitly exclude cross-border participation in energy communities. Therefore, a pilot project could be implemented to try to establish such a community in relation to an energy production project. However, the nature of such a pilot project requires additional support for regional stakeholders:

- National funding frameworks for citizen energy communities generally do not support the establishment of the community, but rather provide funding for administrative processes related to the establishment. However, the Connecting Europe Facility provides funding for preparatory actions for cross-border renewable energy projects[2], with calls for proposals several times a year.
- Pilot cross-border energy community projects are currently being implemented between Germany and Poland, and Austria and Hungary, with support from both EU-funded projects[3] and national sources[4]. Although these projects do not focus on energy production but on other aspects (e.g. cross-border sustainable mobility), coordination with such pilot approaches will allow a more efficient and effective development of a new pilot project on cross-border energy production and sharing.
- EU funding programmes in the region explicitly focus on (renewable) energy and support projects in this field. In particular, the INTERREG Bavaria-Austria programme supports energy-related projects in 3 of its 5 priorities. In particular, priority 5 identifies the creation of "cross-border energy regions" as an area of potential support.

While communication with policymakers, underlining the experienced limitations and suggested solutions in relation to the legal framework is crucial, an improvement of the situation for border regions in the short term is unlikely. Furthermore, a framework agreement between the involved Member States aligning the intended changes to the legal framework and establishing cooperation on the technical aspects is required.

As an interim and short-term solution, the organisation in a well-established form of cooperation (such as e.g. an energy cooperative) could be supported. However, as a possible medium-term solution, the implementation of a pilot project which -once successful – also encourages replication across the border area would be a more ambitious goal.

[1] See ENERGIE 2030
[2] See Cross-border renewable energy projects (CEF Energy) – new (europa.eu)
[3] See SHAREs: SHAREs (shares-project.eu)
[4] See Publikationsdetailansicht – Deutsch-Polnische Energieplattform (d-p-plattform.de)

3. Full list of all legal provisions relevant to the case with the correct citation both in original language and in English

3.1. Germany

Erneuerbare-Energien-Gesetz 2023. BGBl. I S. 1066/2014 idF. BGBl. I Nr. 133/2023
Renewable Energy Sources Act 2023. BGBl. I S. 1066/2014 as amended by BGBl. I Nr. 133/2023

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Gesetz zur Digitalisierung der Energiewende 2016. BGB1. I S. 2034/2016.
Law on the digitization of the energy transition 2016. BGB1. I S. 2034/2016.

Windenergieflächenbedarfsgesetz 2022. BGBl. I S. 1353/2022 idF. Art. 13 BGBl. 2023 I Nr. 88/2023
Wind Energy Area Requirement Act 2022. BGBl. I S. 1353/2022 as amended by Art. 13 BGBl. 2023 I Nr. 88/2023

Windenergie-Erlass AllMBl. 2016/10 S. 1642
Wind Energy Decree AllMBl. 2016/10 S. 1642

Energiewirtschaftsgesetz 2005. BGBl. I S. 1970; 3621/2005 idF. BGBl. 2023 I Nr. 133
Energy Industry Act 2005. BGBl. I S. 1970; 3621/2005 as amended by BGBl. 2023 I Nr. 133

Gesetz über die Umweltverträglichkeitsprüfung (UVPG) 1990. BGBl I S. 540/2021 idF. BGBl 2023 I Nr. 6.
EIA law (Germany) 1990. BGBl I S. 540/2021 as amended by BGBl 2023 I Nr. 6.

Genossenschaftsgesetz 2006. BGBl. I S. 2230 idF BGBl 2022 I Nr. 1166
Cooperative law 2006. BGBl. I S. 2230 as amended by BGBl 2022 I Nr. 1166

3.2. Austria

Erneuerbaren-Ausbau-Gesetz 2021. BGBl. Nr.150/2021 idF. BGBl. Nr. 233/2022
Renewable Energy Expansion Act 2021. BGBl. Nr.150/2021 as amended by BGBl. Nr.233/2022
Elektrizitätswirtschafts- und -organisationsgesetz 2010. BGBl. Nr.110/2010 idF. BGBl. Nr.5/2023
Electricity Act 2010. BGBl. Nr.110/2010 as amended by BGBl. Nr.5/2023

Systemnutzungsentgelte-Verordnung 2018. BGBl. 398/2017 idF. BGBl. 52/2023
System Usage Fees Ordinance 2018. BGBl. 398/2017 as amended by BGBl. 52/2023

Vorarlberger Raumplanungsgesetz 1996. LGBl.Nr. 39/1996 idF. LGBl.Nr. 4/2022
Spatial planning act of Vorarlberg 1996. LGBl.Nr. 39/1996 as amended by LGBl.Nr. 4/2022

Vorarlberger Baugesetz 2001. LGBl.Nr. 52/2001 idF. LGBl.Nr. 85/2022
Building Law of Vorarlberg 2001. LGBl.Nr. 52/2001 as amended by LGBl.Nr. 85/2022

Tiroler Raumordnungsgesetz 2022. LGBl. Nr. 43/2022
Spatial planning act of Tirol 2022. LGBl. Nr. 43/2022

Tiroler Bauordnung 2022. LGBl. Nr. 44/2022
Building Law of Tirol 2022. LGBl. Nr. 44/2022

Umweltverträglichkeitsprüfungsgesetz 2000. BGBl Nr. 697/1993 idF. BGBl Nr. 26/2023
EIA law (Austria) 2000. BGBl Nr. 697/1993 as amended by BGBl Nr. 26/2023

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Energielenkungsgesetz 2012. BGBl Nr. 150/2021 idF. BGBl Nr. 68/2022
Energy security act 2012. BGBl Nr. 150/2021 as amended by BGBl Nr. 68/2022

3.3. Europe

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

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).

Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

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

4. Other relevant aspects to this case

In addition to the question of the establishment of an energy community, the implementation of the case has raised the question of additional barriers related to spatial planning laws and required minimum distances between certain forms of renewable energy production (namely wind turbines). However, these issues pose minimal cross-border barriers and are therefore addressed in the following section.

Minimum distance requirements for the construction of wind turbines in the cross-border area are regulated by spatial planning laws (in the broad sense, including Raumplanungsgesetz, Landesplanungsgesetz, Bauordnung, etc.) and, in specific circumstances, e.g. by environmental protection laws. The application of these laws is generally limited to the jurisdiction of each country and, without specific cross-border provisions, they do not apply across national borders. Common elements, such as requirements for public consultation on the designation of certain zones, allow for, but generally do not require, cross-border consultation.

Legally, cross-border consultation requirements become relevant when the construction of wind turbines in one country may have potential impacts on neighbouring countries. Such consultation requirements are prescribed by the Environmental Impact Assessment Directive (2011/92/EU) and codified in the national EIA laws of Germany and Austria. In Germany, the EIA law (§54-56) contains specific provisions on transboundary consultation. In Austria, the relevant provisions are contained in §10 of the EIA Act.

The specific thresholds triggering the requirement for transboundary consultation vary between jurisdictions. In Germany, larger wind energy projects with 20 or more turbines in a single area require an EIA and thus trigger the requirement to address potential transboundary impacts. For smaller projects, a differentiated approach is applied, where projects with 6-19 turbines require a general assessment of the need for an EIA and projects with 2-5 turbines require a specific assessment of the need for an EIA (EIA Law (Germany) Annex I).

In Austria, an EIA is required for all projects with more than 20 turbines or more than 30 MW capacity or all projects above 1000 ASL with more than 10 turbines or more than 15 MW capacity. A review of the need for an EIA is required for all projects proposed in protected areas with more than 10 turbines or more than 15MW capacity (EIA Law (Austria) Annex I).

There are therefore no specific cross-border barriers to implementation for smaller projects. Larger projects require a review of cross-border consultation requirements, but these are an explicit element of EIA both at EU level and in national and regional legislation.

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