



CROWD THERMAL DELIVERABLE D 2.2.

Regulative Framework for community funding

Summary:

CROWD THERMAL aims to study the necessary conditions for the development of community-based financing of geothermal projects. To be able to ascertain the possibilities the regulative framework is an important element. In the three case study countries the infrastructure formed by ownership structures, energy production and distribution legislation and financial legislation is quite different. Different government instruments increase these differences. This means that the countries can learn from each other concerning the possibilities and obstacles created by the regulative framework.

Authors:

Georgie Friederichs, Ronald Kleverlaan Crowdfundinghub



Title: Regulative Framework for community based funding

Lead beneficiary: Crowdfunding hub

Other beneficiaries: -

Due date: 15- November 2020

Nature: Public

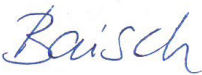
Diffusion: all Partners

Status: Final

Document code: CROWDTHERMAL DELIVERABLE 2.2

Revision history

Version 01	02.11.2020	Creation first draft	
Version 02	06.11.2020	Version 2	
Version 03	12.11.2020	Version 3	
Version 04	15.11.2020	Version 4 final	

	Name	Function	Date	Signature
Deliverable responsible	Georgie Friederichs	Consultant	15-11-2020	
Work package leader	Ronald Kleverlaan	Project Manager	15-11-2020	
Reviewer	Christina Baisch	Project Manager GeoThermal Engineering GmbH	16-11-2020	
Project coordinator	Isabelle Fernández	Project coordinator	16-11-2020	

This document reflects only the author's view and the European Commission is not responsible for any use that may be made of the information it contains.



This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 857830.



An aerial photograph of a geothermal field. In the upper left, several people are walking on a dirt path. To the right, a large circular structure, possibly a geothermal well or reservoir, is visible, showing concentric rings of different colors: a bright blue center, a light blue ring, a greyish ring, and a dark brown outer ring. The surrounding terrain is rugged and brownish.

REVIEW OF REGULATORY FRAMEWORK FOR COMMUNITY BASED FUNDING

GEORGIE FRIEDERICHS & RONALD KLEVERLAAN
CROWDFUNDINGHUB



THIS PROJECT HAS RECEIVED FUNDING FROM THE EUROPEAN UNION'S HORIZON 2020 RESEARCH
AND INNOVATION PROGRAMME UNDER GRANT AGREEMENT N° 857830.



CONTENT

INTRODUCTION	3
SUMMARY	4
LOCAL CONDITIONS AND COMMUNITY FUNDING	7
DIFFERENT KINDS OF COMMUNITY FUNDING	9
THE RELEVANT REGULATIVE FRAMEWORKS	11
INTRODUCTION	11
DEFINING THE RELEVANT REGULATIVE FRAMEWORK	11
REGULATIVE FRAMEWORK FOR GOVERNANCE AND OWNERSHIP STRUCTURES	13
LEGAL ENTITIES, EUROPEAN LAW	13
OWNERSHIP OF GEOTHERMAL ENERGY SITES AND PRODUCTION PLANTS, EUROPEAN LAW	13
GOVERNANCE AND OWNERSHIP FORMS IN SPAIN	14
GOVERNANCE AND OWNERSHIP FORMS IN HUNGARY	15
GOVERNANCE AND OWNERSHIP FORMS IN ICELAND	17
REGULATIVE FRAMEWORK FOR ELECTRICITY AND HEATING, PRODUCTION AND DISTRIBUTION	19
EUROPEAN LEGISLATION FOR ELECTRICITY AND HEATING, PRODUCTION AND SUPPLY	19
MEMBER STATES: THE CIRCUMSTANCES AND LEGISLATION IN THE ENERGY MARKET	20
SPAIN	20
HUNGARY	22
ICELAND	23
FINANCIAL LEGISLATION	25
FINANCIAL REGULATION EUROPEAN AND WORLDWIDE LEVEL	25
NEW CROWDFUNDING DIRECTIVE FOR EUROPEAN CROWDFUNDING	26
EUROPEAN LEGISLATION FOR DIRECT LENDING	28
FINANCIAL REGULATIVE FRAMEWORKS IN SPAIN, HUNGARY AND ICELAND	29
SPAIN	29
HUNGARY	31
ICELAND	31
POSSIBLE LEGISLATIVE OBSTACLES AND RECOMMENDATIONS	35

INTRODUCTION

Community finance can be useful to involve communities in new geothermal projects. It can realize a commitment of the community and a part of the financing at the same time.

A new geothermal project means change. A different way of generating the energy, construction of new distribution channels and possibly changes in the local environment. As investors, community members are directly involved in the development of the project and can share in the future profits and other benefits of the project. Community finance can also help to generate funding for a project as it shows the commitment of the community, which can be a critical success factor for other investors.

A community finance campaign is a project in itself. To be able to realize it successfully the legal and financial infrastructure under which the community finance is set up, must be considered. As these infrastructures vary between member states of the European Union, the possible steps and choices to be made to realize a successful community finance project, can be different in different member states.

This report will study the effect of the legal and financial infrastructure on the possibilities for community finance for geothermal projects. It will focus on the three case study countries that have been selected in the CROWDTHERMAL project: Iceland, Spain and Hungary.

The report will focus on the three main areas of infrastructure that effect the choices and possibilities of community finance:

1. Governance and ownership structures
2. Legislation around the generation and supply of electricity and heating.
3. Financial legislation

The main question that will be answered in the report is:

What relevant regulative framework do we find in case study countries and does this framework form possible restrictions for the use of community finance in Geothermal projects? If so what can we recommend to developers and regulatory bodies.

Next to relevant legislation we will also include information about local interesting government instruments like subsidies or funding schemes that can be used in geothermal developments.

SUMMARY

In the three case study countries the infrastructure formed by ownership structures, energy production and distribution legislation and financial legislation are quite different. Different government instruments increase these differences. This means that the countries can learn from each other concerning the possibilities and obstacles created by the regulative framework.

The differences are too many to summarize here but they can be read in the different tables on Governance and ownership structures, Legislation around the generation and supply of electricity and heating and Financial legislation.

This table contains the main best practices we have found in the three case study countries

COUNTRY	BEST PRACTICE
OWNERSHIP STRUCTURES	
Spain	The worker owned cooperative (a special public limited company) and general partnership that offer flexible possibilities for community ownership. And the limited partnership which has the possibility to combine general partners and limited liability partners thus reducing the risks for the community of participating.
Hungary	The “egyesülés” is a local form of an European Economic Interest Grouping (EEIG). This is a type of legal entity of the European corporate law created on 1985-07-25 under European Community (EC) Council Regulation 2137/85.[1] It is designed to make it easier for companies in different countries to do business together. This would make it easier to develop geothermal projects with international parties that supply community funding
Iceland	The broad possibilities for ownership of geothermal resources and development of geothermal projects
ENERGY LEGISLATION	
Spain	The Royal Decree Law (RD law) . One of the most relevant points changed by this law is the fact that self-consumed energy from renewable sources, cogeneration or waste will be exempt from all types of charges and tolls. Others are that it is allowed to share this self-consumption with others to generate economies of scale and technical and administrative principles have been simplified to make it feasible.
Hungary	The energy market has a free part and a regulated part. In the free part prices are determined by the market which increases the possibility for the transfer of positive results to the community members.
Iceland	A new law to give multiusers the same energy price discount as large users

COUNTRY	BEST PRACTICE
GOVERNMENT INSTRUMENT TO PROMOTE SUSTAINABLE ENERGY	
Spain	The Third-Party Financing (FPT) instrument. In this FPT program IDAE is involved right from the definition phase of the project onwards and finances a large part, or the complete amount, of the money required as investment. IDAE invests this money itself, so no repayments are required by the party realizing the project. The investment and profit of IDAE are recuperated in the form of the regular energy saved by the energy generated by the project. As soon as the investment has been repaid, ownership of the production plant passes to the party developing the project.
Spain	The Lines of Aid for Investment in Renewables . A programme for Thermal and Electric Co-financed with European Union Funds
Iceland	the Iceland Energy fund (Orkusjóður) . This fund provides a loan for the first phases of a geothermal project. If the project is unsuccessful the loan will not have to be repaid, which makes it a risk absorbing loan. The fund finances small amounts per project. In case of larger projects, the government can add extra financial means to the fund
Iceland	A very involved government in developing geothermal projects, which has resulted in all geothermal projects with a depth less than 1 km being realised.
FINANCIAL LEGISLATION	
Spain	Crowdfunding is possible
Spain	Lending is not restricted to credit institutions
Iceland	Although limited (only for small projects) crowdfunding is possible without legislation

SUMMARY

Based on the material described in this report we can make the following general recommendations about possible legislative obstacles and the possibilities for developers and governments to solve them.

OBSTACLE	RECOMMENDATION FOR PROJECT DEVELOPER	RECOMMENDATION FOR GOVERNMENTS
Fixed price for electricity or heating make it difficult to generate positive returns for community investors for participating in sustainable energy projects.	Aim for other rewards for community investors like extra access to heating or electricity or a reward-based benefit participation in a unique (benefit) for example heated spa etc. for investors	Allow price differentiation or profitable sale back of self-generated energy to the grid.
A monopoly or oligopoly for energy companies may make private initiative in developing sustainable energy difficult.	Involve a government or one of the large companies to support the community initiative.	Create more room for private initiatives that can keep rewards of the project to stimulate private initiatives. Support with grants or guarantees. Make sure the market remains accessible to small initiatives.
Strict rules about crowdfunding initiatives make community funding expensive or unusable.	Try to involve a bank or other party with a license to facilitate the community funding. After new crowdfunding directive this can be an international platform.	Allow the development of local crowdfunding or direct lending initiatives.
Financial legislation can form large obstacles to raising money.	Involve a legal financial specialist to help you navigate the different rulebooks. Try to access investment through equity, while avoiding banking license or investment fund activities as this means extensive costs for yourself.	Try to keep room in national legislation for private initiative, do not increase the regulatory burden already in existence from European legislation.
Difficult to combine community funding with governmental funding.	Use international examples to show potential with local/national government and co-create public-private investment models.	Use funding from European Structural Funds or local funding to create guarantees or co-funding instruments for early phases of geothermal projects.
If the demands from different legislation are not compatible the effect can be that experimental drilling or research to find new geothermal locations is blocked (Iceland example).	Start conversation with the government as they may not be aware this is the effect of the combination of different legislation.	Make sure different legal schemes are compatible and do not lead to rules that hinder the development of new geothermal sites.
Insufficient room in policy for initiatives from small users can hamper the development of new geothermal initiatives	If necessary, combine small projects to realize necessary size for sufficient possibilities or discounts.	Make sure there is enough room for small initiatives to grow and enter and compete in the market.

LOCAL CONDITIONS AND COMMUNITY FUNDING

Community funding is defined as a financing method where funding is raised from the public, meaning that the funding is delivered by the community. Community funding is the umbrella term for a number of alternative finance methods that can be used by community projects.

The community investors can be defined as private individuals, legally referred to as natural persons, or sometimes also small businesses who, in the context of sustainable and responsible investing, participate in the financing of a geothermal project. They do this with small contributions to the financing of a project through the method offered, such as crowdfunding, direct lending campaigns, issue of green or social bonds or leasing. For definitions on these different kinds of community funding see page 9. Investments are usually in the order of magnitude of a few hundred or a few thousand Euros.

Using a form of community funding in a geothermal project can help to realise several objectives:

- Involve and inform the community in and about Geothermal projects
- Increase the sense of ownership and the commitment of community members to a geothermal project
- Raise funds in early high-risk phases of (deep) geothermal projects, when access to traditional bank finance is difficult
- Show large investors that the community supports the geothermal project
- Start a relationship with future users of geothermal energy or heat
- Give the community a voice in the choices made during the project
- Increase the visibility of the advantages of Geothermal energy

Local conditions

If any of the above options are defined as objectives for a specific geothermal project, community funding can be an interesting option to include in the financing process. However, the success of community funding depends on the local conditions of the project on a city, region or national level. The social background, public opinion and legal conditions can literally make or break a community funding project.

What is successful in one project can be a disaster in another one just because the local conditions, or even the way these local conditions work together, are different. That is why it is essential to study these local conditions precisely so the right form of community funding can be used.

Critical local conditions are, for example:

- The social circumstances in the area; social acceptance, public knowledge about Geothermal projects and experience with former projects.
- The local electricity and heating market structure and conditions; is independent supply of electricity and heat possible, is there competition or a state-led system, and can the benefits of locally sourced energy be transferred to specific end users etc? Or is the district heating price decided by the national government, such as in Hungary, so people do not care about the energy source and relative production prizes of the heat they use.

LOCAL CONDITIONS AND COMMUNITY FUNDING

- The regulative framework: does the local and national regulation allow the possibility of a successful community funding campaign for a geothermal project?

In this publication we will focus on one part of these local conditions: the regulatory framework.

DIFFERENT KINDS OF COMMUNITY FUNDING

Before we describe the relevant regulative framework, this paragraph contains a list of the different kinds of alternative finance that can be used for community funding in a geothermal project. Community funding can take different forms, as long as the funding is raised directly from the community.

In the CROWDTHERMAL project we use the following list of general categories of alternative finance that can be used for community funding in geothermal projects.

ALTERNATIVE FINANCE	
Crowdfunding	Crowdfunding is the most commonly used category of community funding, where funds are raised directly from the community (natural persons or small businesses) without going through a bank. Crowdfunding can be used in different forms: a loan (where the reward is interest), equity (where the reward is a dividend) or reward-based (where the reward is non-monetary like produce, a discount, a special occasion etc.).
Direct lending	Direct lending is lending by a financial intermediary without a banking license that attracts funding and uses this funding to give out loans to other parties.
Leasing	A lease is a contract that permits the use of an asset. A licensed leasing company (the "Lessor"). Purchases an asset on behalf of its customer (the "Lessee") in return for a contractually agreed series of payments, which usually include an element of interest.
Donation	A donation is giving gifts (e.g. money) to a charity, public institution, or project without returns.

It is useful to add some information about bonds, convertible loans (or bonds) and green and social impact bonds. These are forms of finance that can be used in different categories of community funding. Loans and bonds can be used both in crowdfunding and direct lending (although a bond is usually used in direct lending).

A bond is a special form of loan. The main difference with a regular loan is that a bond is usually tradable. This means that the ownership of this instrument can be transferred in a secondary market (i.e. can be bought, for example from the state and sold to others for a price determined in the secondary market). The tradability of a bond means that there are usually a lot more requirements for the party who handles the trading of the bonds.

A convertible loan or bond is a loan that can be converted into equity if needed. This means that the amount of the loan does not have to be repaid, and the rate of return after conversion is linked to the profit made in the project and not to a fixed rate of return per year.

Lately two specific forms of bonds have been introduced: social impact bonds and green bonds. A green bond is a bond that is specifically earmarked to raise funding for climate and environmental projects. A social impact bond is a bond that can be used for projects that create better social outcomes.

THE RELEVANT REGULATIVE FRAMEWORKS

INTRODUCTION

The regulatory framework for a geothermal project consists of the complete set of laws and other regulation that determines the conditions and legal infrastructure under which the geothermal project operates, the role that involved parties can play and how responsibilities are divided between the parties involved.

As we are looking at the possibilities and bottlenecks for the use of community funding for geothermal projects, we will focus on the regulative framework that potentially affects the use and effect of community funding.

Even if we limit the regulative framework to the topics relevant for the involvement of community funding, the framework that exists in the EU27 is extensive.

In CROWDTHERMAL we focus on applying the results of the research and the collaboration in the project to three specific case studies. Therefore, our description of the regulative framework will focus on the framework of the three countries in which these three case studies are situated, Spain, Hungary and Iceland.

DEFINING THE RELEVANT REGULATIVE FRAMEWORK

The essentials of the relevant regulative framework for community funding in geothermal projects can be found in three areas:

1. Governance and ownership structures allowed in electricity and heating generation and supply.
2. General regulation around the generation and supply of electricity and heating.
3. Financial regulation concerning the raising of funds from community investors, who can be members of the public, legal entities or professional investors.

Ad 1.

Who can own a geothermal site or well or a power plant? This can be a determining factor when developing a geothermal project. Especially for the ways the community can be involved. In some countries all sites or power plants are government owned. This may hamper the development of new and/or local small projects. It can also make it more difficult to find a way to involve the local community and give them a sense of commitment or ownership.

Luckily in most (if not all) European countries private development and ownership are possible. To see in which way the community can be involved it is relevant to look at the legal entities that can own and develop a project. Possible options are for example:

- A natural person or group of natural persons
- A limited company
- A cooperative
- A foundation

THE RELEVANT REGULATIVE FRAMEWORKS

Ownership by a natural person, or a group of natural persons, means that this person or group is liable for all debts incurred by the project or any liability due to damage caused by the project. In case of geothermal projects this can be substantial. A limited company can be a way to limit personal liability.

If the aim is to give the community a part of the ownership and a share of future profits a cooperative can be a very suitable legal structure for ownership of the project. If the aim is to realise ownership for the whole local community a foundation can also be an option¹.

Ad 2.

Another factor which determines if and how the community can be involved is the general regulative framework for electricity and heating. This regulation specifies how the process of the generation and supply of electricity and heating is organized in a country. Who owns the distribution network and what prices are used for the buying and selling of the energy and/or heat? Are prices fixed? Or can the involved community receive the product at a flexible/better price? To determine how the community can be involved and which form of community funding can be used in a certain country these factors have to be considered.

Ad 3.

Financial regulation is of course essential to be able to choose the most suited form and method of community finance used. In some countries money can only be raised from natural persons by intermediaries who have a banking licence. This means only banks and their traditional forms of finance could be used to involve the community through community finance. In other countries there are several licenses available to raise money from natural persons which means more methods of community finance are applicable. With the new European Crowdfunding Service Provider (ECSP) regime it will create more opportunities for raising funds from a local community from November 2021.

1. On both a cooperative and a foundation the liability is an issue. It is not limited as it is in a limited company. This does pose a risk for participants. Liability can be limited by insurance; or a combination with a limited company of which the cooperative is the owner.

REGULATIVE FRAMEWORK FOR GOVERNANCE AND OWNERSHIP STRUCTURES

LEGAL ENTITIES, EUROPEAN LAW

We will start the description of the regulative framework by looking at regulation for governance and ownership structures. As described, who is allowed to own a geothermal production site, or a power plant can be a determining factor in the form of community funding that can be used.

In the European Union, corporate law and codes of governance come under the purview of individual Member states. This means all European Union Members have their own legislation for, and different forms of, legal entities. In the paragraphs below we will describe per country which legal entities the three case countries have, and if there are any hindrances to ownership in geothermal project for certain entities or (groups) of natural persons.

OWNERSHIP OF GEOTHERMAL ENERGY SITES AND PRODUCTION PLANTS, EUROPEAN LAW

Geothermal resources (as part of “mineral resources”) belong to the State. The use of geothermal sources by natural persons or legal entities is made in accordance with the provisions of the concession law of that country. In the case study countries, the competent authority for the management of concessions for geothermal resources is the Mining Authority or the Water Management Directorate.

A remark from Iceland was that all countries that have an elaborate geothermal system are countries where the government participated in the projects in one way or another (ownership, risk mitigation measure or financially).

We have to emphasize that the phrase of “concession” is equivalent to “licensing”, except for a special case in Hungary, where a concession is valid for exploration and exploitation from a depth below 2500 m, above that production of thermal water is based on a water licence.

REGULATIVE FRAMEWORK FOR GOVERNANCE AND OWNERSHIP STRUCTURES

GOVERNANCE AND OWNERSHIP FORMS IN SPAIN

In Spain the following relevant legal entities exist:

RELEVANT LEGAL ENTITIES
S.A. (Sociedad Anónima) ≈ a public limited company, this is a limited company whose shares may be traded publicly, minimum capital €60,101.21.
S.L. (Sociedad limitada) ≈ a limited company, minimum capital €3,012
S.L.N.E. (Sociedad Limitada Nueva Empresa): similar to an S.L., it was introduced in 2003 to speed up new company registration (registration can be completed in one day), minimum capital €3,012
S.L.L. (Sociedad Limitada Laboral): a labour limited corporation ²
S.C. (Sociedad Colectiva): roughly a general partnership ³
S.C.P. (Sociedad Civil Privada) ⁴
S.Cra. (Sociedad Comanditaria) roughly a limited partnership ⁵
S.Coop. (Sociedad Cooperativa): a cooperative that typically is owned and democratically controlled by its workers
Other names are also used for cooperatives; Sociedad Anónima Laboral (SAL); some are region specific e.g. Sociedad Cooperativa Catalana Limitada (SCCL)

In Spain there are no limitations to who can own a production site or power plant in energy and/ or heating production. Both natural and legal persons can develop and exploit geothermal energy projects. Electricity and heating can be supplied by electricity companies or be generated through self-supply. But to obtain financial support from the Institute for Energy Diversification and Saving (IDEA), that is responsible for the government financial programs for alternative energy, you must prove that you meet the requirements of the call. I.e. that you are a real company that has realised developments and that you are up to date with all payments etc.

2. The Worker-Owned Company in Spain, or Sociedad Laboral, is a special type of Public Limited Company (Sociedad Anónima) OR Limited Liability Company (Sociedad de Responsabilidad Limitada). The shares are held by A) workers, in this case the clase laboral, and B) those who do not work for the business, the clase general. Workers who directly contribute their labor to the business must own at least 51% of the shares. Workers who do NOT own shares must not work more than 15% of the total hours worked each year, or not more than 25% if the company has less than 25 workers with shares. http://www.spainexpat.com//spain.php/information/types_of_business_entities_in_spain/information/types_of_business_entities_in_spain/#laboral

3. The General Partnership in Spain, or Sociedad Colectiva, is a type of company that is personally managed and owned by the partners. This type of sociedad is singular though in that it is a separate legal entity or "person", yet it is the partners who are personally liable for the company's debts. The partners must abide by certain requirements, which include personally managing the company unless it is agreed to be delegated to someone else, and not competing with the company.

4. The Partnership in Spain, or Sociedad Civil, is a business relationship formed by two or more people who contribute money, equipment and/or labor and divide the profits amongst themselves as they have agreed. Accordingly, any debts or financial obligations will also be divided amongst the parties.

5. The Limited Partnership in Spain, or Sociedad Comanditaria, consists of two types of partners: general partners and limited liability partners. The general partners (socios colectivos) are, as in the case of the General Partnership (Sociedad Colectiva), personally liable for the company's debts, but the limited liability partners (socios comanditarios), are not.

GOVERNANCE AND OWNERSHIP FORMS IN HUNGARY

In Hungary, legal entities are mainly regulated by the Companies Act of 2006, the Companies Registration Act of 2006 and the new Civil Code of 2013. All companies are required to indicate their type in their name.

NAME	TYPE	NOTES
e.v. (egyéni vállalkozó)	sole trader	must be a natural person
e.c. (egyéni cég)	sole venture	a company registered by and consisting of one sole trader
bt. (betéti társaság)	Limited partnership	requires one general partner with unlimited liability and one or more Members with limited liability
kkt. (közkereseti társaság)	General partnership	all Members have unlimited liability
kft. (korlátolt felelősségű társaság)	Limited liability company	company without stocks, the most common company type in Hungary
kht. (közhasznú társaság)	Community interest company	abolished in 2009, must operate as non-profit company instead
kv. (közös vállalat) (betéti társaság)	Joint venture	abolished in 2006
Nyrt. (nyilvánosan működő részvénytársaság)	Public limited company	must be listed on a stock exchange
Zrt. (zártkörűen működő részvénytársaság)	Privately held company	not listed on stock exchange, otherwise the same as Nyrt.
szöv. (szövetkezet)	cooperative	
Alapítvány	Foundation or association	a form of non-governmental, not-for-profit organization (NPO)
egyesülés		national version of European Economic Interest Grouping ⁶

There are no limitations as to who can own a production site for energy or heat or a power plant.

Heat and electricity providers in Hungary are large companies. Investors into these companies can be natural persons or legal entities, so ownership of production site or

6. A European Economic Interest Grouping (EEIG) is a type of legal entity of the European corporate law created on 1985-07-25 under European Community (EC) Council Regulation 2137/85.[1] It is designed to make it easier for companies in different countries to do business together, or to form consortia to take part in EU programmes. Its activities must be ancillary to those of its Members, and, as with a partnership, any profit or loss it makes is attributed to its Members. Thus, although it is liable for VAT and employees' social insurance, it is not liable to corporation tax. It has unlimited liability.

REGULATIVE FRAMEWORK FOR GOVERNANCE AND OWNERSHIP STRUCTURES

HUNGARY

power plant by natural persons or a group of natural persons should be possible. However, most providers are state owned and are large companies (conglomerates). So are electricity providers. The distribution network of district heating is usually owned by the municipalities or by a public private partnership.

A community interest company (közhasznú társaság) or a cooperative (szövetkezet) could be interesting forms for community participation and/or ownership.

GOVERNANCE AND OWNERSHIP FORMS IN ICELAND

In Iceland the following legal entities exist:

NAME	TYPE	NOTES
ehf. einkahlutafélag	Ltd. (UK)	Minimum capital: ISK 500,000 (£2,750; €3,260; \$4,250).
einstaklingsfyrirtæki	sole proprietorship	
hf. hlutafélag	plc (UK)	Minimum capital: ISK 4,000,000 (£22,000; €26,100; \$34,000). Minimum shareholders: 2.
ohf. opinbert hlutafélag	government-owned corporation	
saf. samlagsfélag	Limited partnership	
sv. samvinnufélag	cooperative	
sf. sameignarfélag	general partnership	abolished in 2006
sfs. sjálfseignarstofnun	non-profit organization	Minimum capital: ISK 1,000,000 (£5,500; €6,520; \$8,500). Minimum shareholders: 1.

A suitable form for community participation and/or ownership could be a cooperative (samvinnufélag) or a general partnership (sf. sameignarfélag) to realize community participation and/or ownership.

Any legal entity or private person can own a production site for geothermal energy. To produce electricity an exploitation licence is needed, from the energy authority. For the running of an actual power plant another license is needed. All legal entities can apply for this licence. For both licences' an operation insurance is needed. To get the licence to operate a power plant a legal entity has to prove it is financially solvent. This to ensure the supply of energy will not be disrupted.

REGULATIVE FRAMEWORK FOR ELECTRICITY AND HEATING, PRODUCTION AND DISTRIBUTION

EUROPEAN LEGISLATION FOR ELECTRICITY AND HEATING, PRODUCTION AND SUPPLY

Energy policy is a shared competence between the EU and its Member States, and subject to co-decision by the European Parliament (EP) and the Council (the ordinary legislative procedure). Article 194 of the TFEU (Treaty on the functioning of the European Union) makes some areas of energy policy a shared competence, signalling a move towards a common energy policy. Nevertheless, each Member State maintains its right to 'determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply' (Article 194(2)).⁷

The EU was given competences in energy policy by the Lisbon Treaty in 2009. The main objectives of EU energy policy are sustainability, affordability and security of supply. The Energy Union strategy, adopted in 2015, provides a holistic framework for further integration of European energy markets.

According to the Energy Union (2015)⁸, the five main aims of the EU's energy policy are:

- **Security, solidarity and trust** - diversifying Europe's sources of energy and ensuring energy security through solidarity and cooperation between EU countries
- **A fully integrated internal energy market** - enabling the free flow of energy through the EU through adequate infrastructure and without technical or regulatory barriers
- **Energy efficiency** - improved energy efficiency will reduce dependence on energy imports, lower emissions, and drive jobs and growth
- **Climate action, decarbonising the economy** - the EU is committed to a quick ratification of the Paris Agreement and to retaining its leadership in the area of renewable energy
- **Research, innovation and competitiveness** - supporting breakthroughs in low-carbon and clean energy technologies by prioritising research and innovation to drive the energy transition and improve competitiveness.

So, the European Legislation gives some general outlines, but possible actors in the market and their possibilities are determined by the Member state or EFTA Member themselves. One important general principle given by European legislation that is relevant for community funding, and therefore worth mentioning here, is the general rule is that the ownership of production and distribution of energy is split between two parties. However, to be able to provide energy for smaller groups as well, the splitting of production and distribution is not valid when providing energy for groups of users with less than 100.000 users. In Iceland this group size has been lowered to 10.000 users. This is the case for example in the west Fjords in the north west part of Iceland.

7. Factsheet European parliament <https://www.europarl.europa.eu/factsheets/en/sheet/68/energy-policy-general-principles#:~:text=Objectives,EU's%20energy%20policy%20are%20to%3A&text=Promote%20the%20development%20of%20new,Promote%20research%2C%20innovation%20and%20competitiveness.>

8. The energy union strategy (COM/2015/080), published on 25 February 2015

REGULATIVE FRAMEWORK FOR ELECTRICITY AND HEATING, PRODUCTION AND DISTRIBUTION

MEMBER STATES: THE CIRCUMSTANCES AND LEGISLATION IN THE ENERGY MARKET

Spain

In Spain, the distribution and sale of electricity is split between two different entities: distribuidoras (5 in total)⁹, who are responsible for the distribution of electricity, and comercializadoras, who are responsible for selling electricity to customers. As a customer, you will therefore be dealing exclusively with a comercializadora.¹⁰

The electricity grid itself is owned by Red Eléctrica de España (11), a mainly privately owned company. 20% of the company is state owned through the Spanish State Industrial Participation Society (SEPS), 80% is private owned and its shares are in the stock market).

The distribuidora's are private companies now, after the liberalization of the market process that started in 1997 (Electric sector law 54/1997).

There are hundreds of comercializadora's or energy supply' companies in Spain, all of them are private companies, see the complete list here: <https://sede.cnmc.gob.es/listado/censo/2> The energy market has a regulated and an open part. In the regulated part the prices are regulated, and the price is set by the spot market (or pool). This can lead to frequent price adjustments based on open free biddings.¹²

In 2018 a new law was introduced¹³ to benefit the energy transition and the protection for consumers, the Royal Decree Law (RD law). One of the most relevant points changed by this law is the fact that self-consumed energy from renewable sources, cogeneration or waste will be exempt from all types of charges and tolls. Others are that it is allowed to share this self-consumption with others to generate economies of scale and technical and administrative principles have been simplified to make it feasible.

Interesting government programs and instruments

There are several government programs to fund alternative energy projects in Spain. They are the responsibility of the Institute for the Diversification and Energy Savings (IDAE).¹⁴ One of these programs that is remarkably interesting is the so-called **Third-Party Financing (FPT)**.

In this FPT program IDAE is involved right from the definition phase of the project onwards and finances a large part, or the complete amount, of the money required as investment. IDAE invests this money itself, so no repayments are required by the party realizing the project. This means the party developing the project retains its investment capacity and the possibility to raise debt financing. It also means the production plant and machines are owned by IDAE until the investment has been earned back.

9. Iberdrola Distribución Eléctrica S.A., Endesa Distribución Eléctrica S.L., Unión Fenosa Distribución S.A., EDP: Hidrocarbónica Distribución Eléctrica S.A., Viesgo Distribución Eléctrica S.L.

10. <https://electricityinspain.com/electricity-suppliers-in-spain/>

11. <https://www.ree.es/en>

12. See <https://www.endesa.com/en/discover-energy/blogs/how-much-does-electricity-cost> for the explanation of pricesetting in the market

The investment and profit of IDAE are recuperated in the form of the regular energy saved by the energy generated by the project. As soon as the investment has been repaid, ownership of the production plant passes to the party developing the project.

Another interesting grant programme in execution is the **Lines of Aid for Investment in Renewables**. A programme for Thermal and Electric Co-financed with European Union Funds. The Ministry for the Ecological Transition and Demographic Challenge, through IDEA allocates 316 million euros to this line of aid, whose objective is to promote renewable installations for the production of energy, both thermal as electric, throughout the national territory. These grants, financed by the European Regional Development Fund (ERDF), are executed through calls made by the IDAE in each autonomous community, with island specificity, and distribution of resources and conditions agreed with the different territories, according to criteria and typologies included in the regulatory bases. The grants are non-refundable and are governed by the principle of competitive competition with the aim of optimizing their application as much as possible. More information here <https://www.idae.es/ayudas-y-financiacion/lineas-de-ayudas-la-inversion-en-renovables-fondos-feder>

13. The most relevant Royal Decree for renewables (electricity) is RD 413/2014 <https://www.iea.org/policies/5952-royal-decree-4132014-on-electricity-generation-by-means-of-renewable-cogeneration-and-waste-facilities>. Also recently the Auctions Royal Decree was published RD 960/2020 power installations

("RD 1955/2000"),

14. See <https://www.idae.es/la-financiacion-del-idae> and <http://www.investinspain.org/invest/en/resources/documentation/doing-business-in-spain/index.html> (pages 59-65)

REGULATIVE FRAMEWORK FOR ELECTRICITY AND HEATING, PRODUCTION AND DISTRIBUTION

MEMBER STATES: THE CIRCUMSTANCES AND LEGISLATION IN THE ENERGY MARKET

Hungary

In Hungary the state guarantees the delivery of (heat) energy, but distribution is the responsibility of municipalities.

Relevant additional legislation in Hungary concerns the pricing of energy. The most important, or at least well known, regulation in the energy sector in Hungary is the “act on the enforcement of utility cost reduction” (“2013. évi LIV. törvény a rezsicsökkentések végrehajtásáról”). Article 3§ (1) stipulates that the tariffs of district heating may not exceed 96.7% of the tariffs in effect on 1. November 2013.¹⁵

With this law the prices for all forms of energy sold to the public are regulated and fixed by the state. Prices asked may not exceed these regulated prices (since November 1, 2013.) This implies that energy providers are not allowed to increase their prices if say the price of natural gas increases. Losses of the energy providers will be covered by the state. This means that most of the providers, and certainly the largest of them being state owned, will simply not decrease the price for their customers when electricity prices for example decrease as that's either the only time they can make profit, or, even more likely, their profit is taken away in “negative contribution” by the state in those years.

This means that the price of energy is an arbitrary price. This is effectively the case for electricity, gas, water, and district heating. If the price the users pay is too low the difference is paid by the state from tax income. Lately it seems that the prices are structurally too high. This hinders energy projects as renewable energies may or may not be cheaper than fossil fuels on the long run – but this is not reflected in prices so there is no incentive for energy producers to invest into developing alternative energy sources. Developing and installing new energy generation certainly costs money which the energy providers don't have as they cannot retain profits. They are either losing money and are reliant upon state aid or make profit which they may use for system maintenance but not for large investments such as geothermal. What investments some companies do make are from EU sources.

Iceland

In Iceland, the state also guarantees the delivery of energy. 90-95% of the energy is produced by Landsvirkjun. Landsvirkjun was founded on the 1st of July 1965 in an effort by the Icelandic government to optimize the country's natural energy resources.¹⁶ Landsvirkjun established and constructed and operated hydroelectric power plants which could provide reasonably priced electricity to the domestic market as well as the power intensive industries.

Next to Landsvirkjun there are smaller energy producers owned by local municipalities and one larger private company called HS Orka. HS Orka was originally started to operate hydropower stations. HS Orka owns two Geothermal energy production plants. The national grid for energy distribution is owned by Landsnet. Landsnet's transmission system – ‘the grid’ – carries electricity from generation companies to utilities and power-intensive industries. Most generated energy is distributed over this grid. Large energy users that use more than 10 MW can talk directly to Landsvirkjun for energy supply. All small users (who use less than 10 MW) have to go through the grid owned by Landsnet. There are also some smaller distribution companies

The price paid for energy depends on the size of the user. Larger users pay a lower price. Users in a city also pay a lower price than users in a rural area because of distribution costs. Larger users can realize a direct line with Landsvirkjun (if you use more than 10 MW), that is why they can realize a lower price. Smaller users are dependent on the grid. Local production of energy is stimulated (or used to be when production sites with high potential results were still possible see explanation of the energy fund below). In rural areas the government subsidizes the energy price if the local generation of energy is too expensive. In rural areas municipalities play a larger part as they often own both the energy producing operation and the distribution company. The role of these large companies in the energy market and municipalities can make community funding more difficult. .

Ownership of the production of energy by investors is possible as shown by the position of HS Orka. There seem to be no limitations concerning investment by natural persons or legal entities.

At the moment Icelandic users indicate that there is an obstacle to for new experimental drilling projects formed by a double framework for environmental impact assessment. This will be explored for the case study in Iceland in report 2.3.

Interesting government programs and instruments

An interesting government instrument in Iceland to promote the local production of energy for smaller projects is the Iceland Energy fund (Orkusjóður). The Energy fund was established in the 60s and was targeted towards reducing the use of oil for heating purposes.

This was done by motivating local drilling for geothermal energy by providing a loan for the first phases of a geothermal project. If the project was unsuccessful the loan would not have to be repaid, which makes it a risk absorbing loan. The fund finances small amounts per project. On average 30-40 million ISK per year (€ 250.000, -), Around € 25.000, - per project. The fund is also used to help in financing larger projects around sustainable energy and can deliver more than € 500 million per year if necessary.

15. <https://net.jogtar.hu/jogszabaly?docid=a1300054.tv>

16. <https://www.landsvirkjun.com/company/history>

REGULATIVE FRAMEWORK FOR ELECTRICITY AND HEATING, PRODUCTION AND DISTRIBUTION

In case of larger projects, the government can add extra financial means to the fund. In the past the fund has given loans to projects, but the aim is to switch to donations. The fund works with a call for relevant projects. Parties can apply or approach the fund with a concept.

Result of the policy of the Icelandic government, including the fund, is that 90% of housing and industry uses geothermal energy for heating. Lately projects that have been proposed have been projects with less chance of success. Most high potential sites have been realised. Remaining projects are with larger depths (2 km), while earlier projects were mostly up to a depth of 1 km. The last large project for example in which the fund funded 100 million ISK (€ 600.000, -) did not succeed so the money was lost. That is why Iceland is looking at a strategy change for the fund. Remaining issue is the sustainability of the transport sector. Research is underway to see if and how the fund can play a part in this.

Iceland has recently introduced new regulation to insure that multiusers (parties who use at least 3 kinds of sustainable energy) can get the discount price for large energy users (who use more than 10 MW) even if they are not a large user. This increases the possibilities for small developers and small groups of users to participate in the market at a market price and develop new initiatives.

FINANCIAL LEGISLATION

FINANCIAL LEGISLATION ON EUROPEAN AND WORLDWIDE LEVEL

A large part of financial regulation in Europe consists of international laws. International can be at EU level or even higher.

The best-known example of financial regulation higher than EU level is the Basel III regulation. Basel III mainly contains stricter capital requirements, and bonus limitations for banks. All banks must increase their capital reserves which gives them more flexibility to be able to withstand unforeseen crises. Large banks, so called system banks have additional requirements to meet. Basel III was adopted by the largest 27 economies of the world and incorporated into European law in the Capital Requirements Regulation¹⁷ and the Capital Requirements Directive (CRD).¹⁸ Other relevant European legislation is the MiFID II (Markets in Financial Instruments Directive). This MIFID II determines rules for investment firms and financial trading platforms, like crowdfunding platforms.

As this legislation is in the form of directives it is translated into national legislation by the Member states. This means that the exact rules can differ in different Member states.

These European laws affect community funding because they determine who can attract repayable funds from the public and in what form and under what conditions. Special licences are needed to be allowed to attract repayable funding and use it to invest in, or lend to, a project or company. For all the forms of community funding that are described in this report: Direct lending, leasing, crowdfunding and social and green bonds this legislation is relevant as repayable funds will be attracted from community investors.

One of the licences allowing the attracting of repayable funding from the public is of course a regular banking licence. This license however comes with a lot of obligations and conditions. Most countries also have other licenses which allow the attracting of repayable funding from community investors under certain conditions. Parties with this licence do not have the same possibilities as a bank but can work in certain niches of the market of financial products. Other countries work with exemptions. For example, in the Netherlands a crowdfunding platform can work under a specific exemption from Mifid and CRD rules and can attract repayable funding from the public and use it to invest in loans or equity.

To describe the whole financial regulative framework for all 27 countries is a very extensive task that was not included in the CROWD THERMAL project. However, when considering community funding for a geothermal project, it is essential that the first step is to see what the possibilities are under the legislation in the concerning (Member) state. In this chapter we will limit the description to the new European crowdfunding directive that will have an impact on the legislation in all Member states and a presentation of the main outlines of the regulative framework in the three case study countries.

17. Regulation (EU) nr. 575/2013; de CRR.

18. Directive (Directive 2013/36/EU; de CRD), in the CRDIV directive.

FINANCIAL LEGISLATION

NEW CROWDFUNDING DIRECTIVE FOR EUROPEAN CROWDFUNDING

An important new legislative initiative for community funding, with impact for all Member states and even for the financing of projects and companies across borders (so by parties in a different Member state), is the new crowdfunding regulation and directive of the EU.

On 20 October 2020, Regulation (EU) 2020/1503 on European crowdfunding service providers for business (the "Crowdfunding Regulation") and Directive (EU) 2020/1504 amending MiFID II (the "Crowdfunding Directive") were published in the Official Journal of the European Union. They shall apply as per 10 November 2021. Although the directive still has to be translated into national law by the Member states its general outlines are clear. This new regulation will determine the possibilities for a large part of community funding projects in Europe in the future.

A brief overview of some important consequences:

- Only Crowd Services Providers (CSPs) that are structured as a legal person and established in the EU and holding a license as CSP can provide crowdfunding services.
- National exemptions will not be effective anymore, all crowdfunders providing business loans will have to adhere to the European rules.
- The Crowdfunding Regulation enables any CSP with a license as issued by the regulator of its home Member State to passport such license and to provide its crowdfunding services in the whole European Economic Area. Both for lenders and investors.
- The regulation is only applicable to crowdfunding offers that are smaller than € 5 mln. in 12 months to one project owner (by all crowdfunding platforms).
- The CSP has ongoing information obligations to its clients, which information shall be fair, clear and not misleading at all times. The information obligation includes a requirement for CSPs to provide a Key Investors Information sheet which contains all information about risks of the project, as well the requirement to publish default rates for CSPs providing crowdfunding services in respect of loans.
- An annual reporting obligation to the competent authority applies to the CSP.
- CSPs may operate a bulletin board on which their clients can advertise their interest in buying and selling their investments in crowdfunding projects that were initially offered on the crowdfunding platform operated by such CSP. This enables some sort of secondary market for crowdfunding assets.
- A CSP can provide investor portfolio management for investors for investing in loans (not allowed for shares)
- Special requirements apply when CSPs offer non-sophisticated investors¹⁹ the possibility to invest in crowdfunding offers, such as
 - An initial appropriateness test (referred to as an entry knowledge test), which test is to be repeated by the CSP on two-yearly basis.
 - The review of an initial simulation to bear loss, calculated as 10% of their net worth, to be prepared by non-sophisticated investors. The review has to be repeated on a five-yearly basis
 - Additional risk warnings and safeguards need to be complied with each time that a non-sophisticated investor invests the higher amount of either (i) €1000 or (ii) 5% of his net worth in a separate crowdfunding offer.

- Except when the CSP provides individual portfolio management of loans, a 4 calendar day pre-contractual reflection period should be offered to non-sophisticated investors during which period such an investor may revoke his offer to invest. This reflection period commences as from the moment that the non-sophisticated investor makes an offer to invest.

The Crowdfunding Regulation does not apply in the following situations:

- Provision of crowdfunding services to project owners that are consumers. Any type of lending to consumers facilitated via a crowdfunding platform remains subject to national laws and regulations in the relevant Member State. Moreover, this type of crowdfunding does not benefit from an EU passport. Which means a provider cannot offer its services in other Member states unless it has a license in that member state (except when these services are offered by a bank).
- Other services related to crowdfunding services that are provided in accordance with the applicable national laws. CSPs remain to be authorised to provide such other services.
- Crowdfunding offers with a volume of more than €5 million calculated over a period of 12 months in respect of a particular project owner through any crowdfunding platform and including any offers of transferable securities made by the project owner. This means that any project owner can no longer combine different types of crowdfunding (such as attracting a loan as well as the issuance of debt securities and/or the issuance of equity securities) to increase the aggregate size of the offer above such threshold of €5million. Any project owner is limited to the threshold of €5 million per a 12 month-period.

To summarize the most important points are that:

- CSP's under these new rules will be able to operate all over the European Economic Area once they have a licence in a certain Member state.
- CSP's will all have to adhere to the same rules which offer more information and protection for investors.

For community funding projects this means that crowdfunding can in effect be used in all Member states as international CSP's can offer their services, and that investors and project owners will be protected by the European rules. This is an important [positive change that will make community funding much easier to realise in many Member states.

19. non-sophisticated investor means a Person who, alone or together with such Person's Purchaser Representative, does not have such knowledge, sophistication and experience in business and financial matters that it is capable of evaluating the merits and risks of investments . <https://www.lawinsider.com/dictionary/non-sophisticated-investor>

FINANCIAL LEGISLATION

EUROPEAN LEGISLATION FOR DIRECT LENDING

For Direct lending European regulation mainly stems from the general regulation concerning financial services (rules for banks and investment funds). By adjusting small parts of a service one or more laws can be applicable. That is why we advise to always involve legal counsel when developing a community funding instrument. If the legislation for a bank or investment funds applies this means a lot of complex regulation (too extensive to be explained here) that cannot be handled by a project itself. So if the relevant characteristics have to be involved it is strongly recommended to involve a regular bank or investment fund to handle the raising of funds.

Below we give a short overview of possibly applicable regulation:

- When attracting investments from community investors in the form of repayable funds, that are used to give out loans to other parties, a (banking) licence is needed. Repayable funds are funds that must be repaid at a certain point in time, for any reason whatsoever, and of which it is clear in advance what nominal amount must be repaid. Examples include borrowing money and issuing bonds. Relevant Directives are: CRD IV and CRR.²⁰ **In short debt in debt out, watch out for banking licence.**
- When attracting funds from a group of investors with the goal to invest this and let the investors share in the revenue, European legislation for investment funds applies. The relevant legislation is the Alternative Investment Fund Managers Directive (AIFMD, Richtlijn 2011/65/EU)²¹: What makes this confusing is that if the investment is attracted in the form of debt instruments, and attracting funds in this way is the main activity of the company the Directive applies. If however a company whose main activities are not fund raising attracts funding the Directive does not apply. **In short equity in, debt or equity out, watch out for AIFMD licence.**
- When the financial product that is used to attract funding from investors can be traded between investors it could qualify as a security. This would mean that the Directive which determines a prospectus has to be published when securities are offered to the public, could apply (Prospectus Regulation 2017/1129). Unless certain exemptions apply. For example no prospectus is needed when less than € 1 mln. is raised, if investors all invest more than 100.000,- a head, or if the security is only offered to so called "qualified investors". : The 1 mln threshold can be raised by individual Member states. **In short when offering securities watch out for prospectus duty**
- No loans can be provided to consumers, as the directive for consumer credit would apply and a license is needed (CCD, Directive 2008/48/EC). A consumer is a natural person not acting out of his profession or company.
- There are some more specific rules about the offering of investment products in investment packages. An investment package is a combination of securities that were not bought directly by the retail investor (so called PRIIP's) (Regulation 1286/2014). For these essential information documents have to be provided.
- Last but not least there are rules both on national and European levels concerning prudent methods for credit rating but these involve more limitations and rules for the lender not the borrowers.

20. Directive 2013/36/EU and Regulation 575/2013)

21. Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010

FINANCIAL REGULATIVE FRAMEWORKS IN SPAIN, HUNGARY AND ICELAND

As the European crowdfunding directive will change the national legislative framework for community funding it is uncertain how the national regimes will be exactly after November 2021. Therefore, we will only give a short overview of the current situation for our three case study countries.

Rules for direct lending and leasing will not be affected directly by the new crowdfunding legislation but may be updated alongside of it. We limit the description of the current financial frameworks to the main points relevant for the geothermal projects like the ones we are studying in the case studies.

Spain

FINANCIAL REGULATIVE FRAMEWORK	
Legislation for crowdfunding	Since 2015 a licence is needed to facilitate crowdfunding and to be allowed to raise money from the public. So a geothermal project would always have to use a professional platform.
<ul style="list-style-type: none"> • Sustainability of platforms 	Platform has to prove sustainability <ul style="list-style-type: none"> • Equity of platform must be at least € 60.000, - at the start • Equity of platform must be at least € 120.000, - if more than 2 mln. Euros has been raised in the last 12 months
<ul style="list-style-type: none"> • Funding that can be raised 	<ul style="list-style-type: none"> • Platform can only raise € 2 mln. per project, • Investor can invest a maximum of € 3000, - per project
<ul style="list-style-type: none"> • Supervision 	By the CNMV (National Securities Market Commission)
Specific legislation for direct lending	There is no regulatory restriction to direct lending in Spain. Lending in Spain is not reserved for credit institutions. Non-bank financial intermediaries may carry out lending activities without requiring authorisation or registration in Spain. Non-Spanish lenders can thus operate on a cross-border basis or through a permanent establishment or subsidiary. In this context, direct lending funds, despite their significant size (comparable in many cases to that of some banks) do not qualify as credit entities and therefore are not subject to prudential supervision by the Bank of Spain or the European Central Bank (ECB). Thus, rules on solvency – and related capital and own funds requirements – liquidity, supervision, restructuring and resolution of financial institutions are not <ul style="list-style-type: none"> • Platform can raise € 5 mln. per project if raised from "accredited investors"²² applicable to direct lending funds.²³

22. Accredited investors: Individuals who have a total income of more than €50,000 per year or a financial asset of more than €100,000. They can invest more than €3,000 in the same project or more than €10,000 in the same platform per year.

23. <https://www.financierworldwide.com/direct-lending-in-spain-insights-and-promising-trends#.X6pn-chKhPZ>

FINANCIAL LEGISLATION

FINANCIAL REGULATIVE FRAMEWORKS IN SPAIN, HUNGARY AND ICELAND

Spain

FINANCIAL REGULATIVE FRAMEWORK	
Specific legislation for leasing	<p>Spanish law differentiates between urban leases (arrendamientos urbanos) and ground leases (arrendamientos rústicos). This regulation is generally not geared toward the kind of leasing that could be used in geothermal projects. Urban lease all concerns the leasing of housing, both commercial and residential. Commercial leases are governed firstly by the agreement of the landlord and the tenant and, in the absence of agreement, by the Title III of the Urban Leases Act (Sections 29-35). As an additional right, the Civil Code will be applied.</p> <p>The Ground Leases Act (Ley de Arrendamientos Rústicos) applies to ground leases, such as the lease of a farm including all machinery and the right to cultivate crops, etc. The ground leases are governed by what is expressly agreed by the parties, as long as they do not oppose the Ground Leases Act, in default of express regulation by the Civil Code, and, failing that, applicable custom and practice. Concluding these rules will probably not apply to geothermal leases.</p> <p>https://www.dlapiperrealworld.com/law/index.html?t=commercial-leases&s=legal-characteristics-of-a-lease&c=ES</p>
Specific legislation for working with donations	<p>In Spain, the concept of donation is regulated by articles 618 et seq. of the Spanish Civil Code (Cc) and it defines a donation as “an act of liberality by which a person has a thing for free in favour of another who accepts it.” Therefore, a donation is a legal negotiation by which a party transmits ownership of a thing to another party for profit or for free.</p> <p>There is no specific regulation for using donated funds.</p>

24. The free nature between live contracting parties (inter vivos) distinguishes the donation from other legal businesses, such as purchases and sales (where there is economic compensation) or succession (prompted by the death of an individual). The thing donated must be owned by the donor at the time of donation; it cannot contain the future assets of the donor. Future goods are those that the donor could not dispose of at the time of the donation. The donation is achieved the moment the donee (the recipient of the object donated) accepts it. In this way, a donation may be of a movable or immovable property. A donation of movable property can be made by a verbal or written contract. If the contract is verbal, the thing donated must be delivered at the time of the verbal agreement. The donation of property must be made by public deed. <https://horstenstates.com/donations-in-spain-requirements-and-documentation/>

Hungary

FINANCIAL REGULATIVE FRAMEWORK	
Legislation for crowdfunding	<p>There is no specific regulation for crowdfunding. To operate a platform would need a full registration as “financial institution” (this effectively means no ordinary platform can start). Specifics:</p> <ul style="list-style-type: none"> • If the crowdfunding Platform facilitates the offering of securities, the operator of the platform will be subject to investment services requirements i.e. licence from the Hungarian supervisory authority is required • If the Crowdfunding Platform facilitates and/or intermediates the granting of loans a licence from the Hungarian supervisory authority is required • Crowdfunding under both the equity Model and the lending Model could be structured so as to eliminate/limit the risk of triggering licensing requirements.
• Other possibilities	Offering a project to less than 150 people who invest less than € 100.000,- is allowed.
• Funding that can be raised	As crowdfunder the demands of the relevant regulation will have to be followed (see above)
• Supervision	By the Hungarian Central bank: Magyar Nemzeti Bank (MNB) and the ministry for Economics (through its operative branch for Crowdfunding, the National Innovation Office)
Specific legislation for direct lending?	No specific regulation next to European legislation
Specific legislation for leasing?	No specific regulation except European regulation that may be applicable
Specific legislation for working with donations?	The donation or rewards model does not raise any specific Hungarian regulatory issues

Iceland

FINANCIAL REGULATIVE FRAMEWORK	
Legislation for crowdfunding	There is no formal legislation
• Informal	<ul style="list-style-type: none"> • Projects must be smaller than € 1 mln., raised from non-professional investors (funds raised from professional investors can be added). And be communicated to less than 150 investors
• Funding that can be raised	lot of small shareholders do invest offline in Iceland
• Supervision	
Specific legislation for direct lending?	No specific regulation next to European legislation
Specific legislation for leasing?	No specific regulation next to European legislation
Specific legislation for working with donations?	No

POSSIBLE LEGISLATIVE OBSTACLES AND RECOMMENDATIONS

Now all the relevant regulative framework has been described at European level and for the three case study countries we can formulate which parts in the legislative frameworks can form the most difficult obstacles to the use of community funding in geothermal projects. From this we can conclude what would be recommendations for project developers and governments who want to use community funding in geothermal projects.

OBSTACLE	RECOMMENDATION FOR PROJECT DEVELOPER	RECOMMENDATION FOR GOVERNMENTS
Fixed price for energy or heating make it difficult to generate positive returns for community investors for participating in sustainable energy projects	Aim for other rewards for community investors like extra access to heating or electricity or a reward based benefit participation in a unique (benefit) for example heated spa etc. for investors	Allow price differentiation or profitable sale back of self-generated energy to the grid.
A monopoly or oligopoly for energy companies may make private initiative in developing sustainable energy difficult	Involve a government or one of the large companies to support the community initiative	Create more room for private initiatives that can keep rewards of the project to stimulate private initiatives. Support with grants or guarantees. Make sure the market remains accessible to small initiatives
Strict rules about crowdfunding initiatives make community funding expensive or unusable.	Try to involve a bank or other party with a license to facilitate the community funding. After new crowdfunding directive this can be an international platform	Allow the development of local crowdfunding or direct lending initiatives
Financial legislation can form large obstacles to raising money	Involve a legal financial specialist to help you navigate the different rulebooks. Try to access investment through equity, while avoiding banking license or investment fund activities as this means extensive costs.	Try to keep room in national legislation for private initiative, do not increase the regulatory burden already in existence from European legislation
Difficult to combine community funding with governmental funding	Use international examples to show potential with local/national government and co-create public-private investment models.	Use funding from European Structural Funds or local funding to create guarantees or co-funding instruments for early phases of crowdthermal projects



WEB: [HTTP://CROWD THERMALPROJECT.EU](http://crowdthermalproject.eu)

SOCIAL MEDIA: @CrowdthermalEU