



Submission by Marine Renewables Industry Association

Consultation on *Draft Rules & Guidance for Offshore ORESS 1 Community Benefit Funds*

9 September, 2022

The Marine Renewables Industry Association (MRIA) represents the principal interests in Ireland engaged in Marine Renewables, including the marine renewables emerging technologies. The Association embraces firms engaged in device development and manufacture, utilities and developer interests (almost all of the main developers are Members), professional firms and academic researchers. The Association is an all-island body. For further details, please go to the Association's web page www.mria.ie. Also, please see Twitter at *@Marineireland*.

1. Community Benefit Funds – unprecedented funding for selected communities

The Association welcomes the Consultation on the *Draft Rules and Guidance for Offshore ORESS 1 Community Benefit Funds*. MRJA believes that the draft Community Benefit Funds (CBF) scheme set out will apply (perhaps with modifications, based on experience) beyond ORESS 1 to ORESS 2 and to the Enduring Regime and that, therefore, it is of long-term importance.

We are mindful that the sums of money that will arise for selected communities from the scheme are unprecedented. A contribution level of €2 per MWh could amount to an annual contribution of perhaps €4m pa by a 500MW wind farm which implies an annual contribution in community benefit of €c50m pa by 7GW of generating capacity, the planned operational offshore energy base by 2030. Over just 15 years, there could be an injection of at least €0.75bn into beneficiary communities just from the first national target: 7GW. It represents a step change in contribution levels compared to previous schemes in the terrestrial domain.

MRIA welcomes the change from a *centrally directed* Community Benefit Fund (CBF) approach to one directly involving 'Generators' and local communities i.e., a *locally directed* approach. We endorse the proposed approach's underlying themes of openness and transparency. However, we advocate a tighter governance regime than that proposed in the Consultation document.

2. Governance proposal

The Association is concerned that the governance regime for CBFs suggested in the Consultation could lead to difficulties ranging from community disputes, boundary

definitional arguments, issues of financial probity, conflict with State agencies' policies and with local authorities to name the most obvious ones. It could result in distraction, financial waste and potentially reputational damage to the Minister for Environment, Climate and Communications, developers and local communities alike.

We are concerned about the overall approach to governance which places responsibility for CBFs for the duration of each offshore development on the 'Generators' which, moreover, are expected to be responsible for Fund Administrators over whom a Generator may have limited practical authority (unless Generators directly manage CBFs – 4. below.)

The role of Generators in the draft scheme is contradictory. In particular, 'The generator is ultimately responsible for compliance with the Terms and Conditions and Rules and Guidance' (section 5) although the CBFs are to be administered by Fund Administrators (FAs) which are to be (section 7.3) '...independent from the Generator....separately managed and... not subject to the control of the Generator...'. It will be difficult to overcome the concern that Generators have about this and other aspects to governance through the vehicle of a Service Level Agreement which has limited legal standing – agreements between Generators and FAs should be based on contracts rather than (looser) Agreements and incorporate performance reviews with provision for a 'break' in the event of poor performance.

The key issues identified are dealt with below.

3. Regulatory Role

SEAI is assigned, in the draft scheme, an oversight and co-ordination role over CBFs but one without real 'teeth'. The final version of the scheme should substantially strengthen SEAI's position, as a *regulator* in respect of the issues set out later.

4. Fund Administrators

The Association has two overriding concerns in regard to the management of CBFs. First, that projects supported are in line with community needs and involvement and are acknowledged as being supported by, and identified with, the relevant Generators. Second, that tight financial management takes place and is required at all stages in the CBF process and scheme.

Fund Administrators (FAs) have a key role to play in the proposed scheme. We believe that the choice of FA should be reserved to the Generators who should be allowed to choose from a wide range of SEAI accredited options: commercial FA firms, various existing local agencies such as Public Private Networks etc and should include the Generators themselves. The skills involved in the FA role – in administration, finance, project appraisal, development policy, community development etc – are not widely available and will be particularly

necessary in light of the substantial funds that will be annually available to various local communities identified as being within the bailiwick of individual ORE developments

One reservoir of the skills and experiences envisaged are the State agencies and consideration should be given to ensuring that the thirty-one Local Enterprise Offices (LEOs) - supported by Enterprise Ireland and connected in to the local authorities - are among the bodies eligible for the FA role. Such a move may require an uplift in staffing of the affected LEOs but it should be possible to fund this from the relevant FA fees.

Identifying, reviewing and selecting a Fund Administrator could be quite onerous, at least for some.

SEAI should be assigned responsibility to develop and operate a Fund Administrator *accreditation process*. Generators who choose not to administer CBFs themselves could choose an FA from the SEAI 'list'. The accreditation process would be similar to SEAI's practices for other energy support activities in areas in areas like energy efficiency etc. Such an approach would ensure that:

1. A minimum standard/set of qualifications would be required in order to qualify as a Fund Administrator
2. It would be open to all who meet the criteria to apply to be an FA, and FAs could therefore form part of the same parent company as the Generator
3. Generators would only have to entertain applications from the approved list of Fund Administrators
4. In choosing an FA, a Generator would only have to divulge the reason for their choice (cost, experience, etc.) but otherwise have the option to choose freely from the list of accredited FAs.

A number of Generators in Phase 1 have in-house Community Benefit efforts underway and have extensive experience of directly administering Community Benefit Funds. It would be disruptive (and contrary to their practice in other jurisdictions) to require them to change course and seek external FAs at this stage. The Association recommends that:

1. Phase 1 projects with extensive CBF experience and, perhaps, with an active community outreach effort already underway should be allowed to continue with their current arrangements which should follow the broad principles set out in the proposed CBF scheme
2. Generators should certainly have the option, from Phase 2 onwards, to act as Fund Administrators if they so choose and if they comply with SEAI's regulatory requirements.

5. Legal Structure

No guidance is given in the Consultation about the legal structure of CBFs. To take one practical issue: how is money to be disbursed – are Generators going to be involved in directly disbursing funds to projects approved by local CBF committees? Or will the funds be transferred to the FAs (in instances where the FA is not also the Generator) who will then pay project promoters? Guidance is needed from the regulator, SEAI, on the legal structures necessary in this area.

It is recommended that Generators are given the option to take up membership of the CBF committee. It is essential that the Generator is directly represented on the committee to ensure that they have direct knowledge of the wishes of the community and that there is alignment with local developments. Given the experience of onshore windfarms and other community funds, such an approach will enhance the long-term relationship between the Generators and affected coastal communities.

Local engagement could be additionally bolstered by ensuring that there is participation of further representatives of the communities (citizens not necessarily engaged in local groups or professional associations) in the CBF committees.

6. Audits

SEAI, as the regulatory body, must lay down minimum requirements in respect of audit requirements on CBFs in at least three areas:

- The selection and appointment of auditors must be approved in advance by the regulatory body
- Audits must be carried out in respect of each CBF within 6 months of the end of each financial year (which should equate with the calendar year) and in a format and to a standard mandated by the regulatory body
- Audited accounts must be provided to the regulatory body within a set period

7. Boundaries

The suggestion at 4.3 that ‘The CBF Committee and FA must work together to determine the scope and boundaries of the CBF and the local community. Given the sensitivities in establishing the boundary of the local community, it is suggested to apply a flexible or ‘fuzzy’ approach, as appropriate’ is too limited and will lead to inter-community disputes, particularly in light of the potentially enormous funding involved.

It is noted that some early Generators projects’ consenting efforts voluntarily identified the communities they deem to be likely to be impacted by the project for which consent is being sought. This may be helpful but should not be mandatory and, in any event, the definition of community boundaries ultimately requires the involvement and broad consent

of the community involved; this may be impractical at such an early stage in the development cycle.

At a minimum, the CBF regulatory body, SEAI, must set out a set of principles within which boundaries should be set. These principles should be developed by SEAI.

8. Engagement of local and national authorities

CBFs have the potential to make a significant difference to the development of beneficiary communities and this must not inadvertently undermine wider local or, indeed, national interests.

Specifically, the relevant local authority should be represented on the CBF Committee by an official nominated by the local authority Chief Executive.

Most importantly, the provision of funding to local project must not be allowed to run contrary to national policies. For example, national (Enterprise Ireland) policy renders 'displacement projects', such as concrete block manufacture for local needs, ineligible for State support. This is dealt with in more detail at 9. Below

9. Eligible projects

As has been the case with the onshore RESS, we believe community funds should be allocated in line with the UN Sustainable Development Goals. The following criteria should also apply:

- No direct income transfers to individuals - such an approach would lead to intercommunal tensions, 'community definition' challenges and tax issues for individuals.
- The Funds should support appropriate capital projects of an economic development nature (e.g., facilities such as work spaces for new enterprises and the running costs of such community ventures) and a social nature (youth and sports clubs facilities and their upkeep costs, child care and housing developments) as well as environmental projects (e.g., enhancement of local nature-interpretative centres)
- Funds should support projects that will benefit the community at large or specific groups of marine users. In the case of fishers, for example, Community Benefit could include initiatives such as training programmes, scholarships, safety apparatus, research or local charities particularly relevant to the fishing community such as the RNLI or to support families in 'Lost at Sea' tragedies. See 10. below also.

- In the normal course, private business activities should not be eligible for support under the CBF as inter alia this would possibly run counter to the sectoral etc policies of the State development agencies and potentially raise issues for certain beneficiaries under the EU's State Aids regime despite the provisions in the Consultation document on State Aid.
- In short, CBFs cannot be permitted in any way to support local enterprises and zones which run contrary to development agencies' policies.

It is recognised that the first stage of the CBF policy (associated with the Phase 1, Relevant Projects) may have to operate on a broad definition of project eligibility (but without transgressing the point made in the final indent above) but the intention to deal with the above issues, following consultation, for all subsequent ORESS auctions must be signalled clearly from the outset.

MRIA recommends that CBF benefit provisions be reviewed again when developing the Terms & Conditions for ORESS 2 and Enduring Regime RESS rounds to learn lessons from the initial approach and to ensure that it continues to be fit for purpose.

10. Support for the fisher's community

It is recommended that the CBF scheme, as finalised, should make allowance for part of the Funds to be allocated to the fishing community at a level and for purposes to be determined only following the outcome of discussions, and in accordance with that outcome, at the liaison group (between Government, the offshore renewables sector and fishers) now underway under the auspices of the Department of Housing, Local Government and Heritage

11. Timelines

The timelines suggested in the Consultation are in many cases unrealistic and too restrictive for all parties, as well as being contrary to best practice internationally and in Ireland. It would be helpful if the timescales for the delivery of CBFs (in particular for ORESS 1) could be considered alongside the other project delivery requirements, and with the best interests of the communities affected in mind. The development of CBFs is a complex process involving many stakeholders (who are often volunteers) and is not strictly linear. In many cases, activities may overlap and merge and are driven by the availability of local people. Rushing these tasks to meet the current suggested deadlines will not achieve the best outcome and will not ensure genuine community engagement, and could be reputationally damaging for both industry and government.

The Association recommends that the level of detail in regard to timelines and the individual timeframes for each task should be scaled back. Instead, the CBF scheme should include an overarching timeframe within which all tasks must be completed. The most appropriate

timeframe for this would be one year from Commencement Date (CD). This would enable Generators/FAs to make every effort to meet the dates outlined, but should that not be possible, Generators/FAs should not be penalised if they can provide or demonstrate that they are making good faith efforts to comply with what has been set out in the Rules and Guidance.