



Deliverable D2.3

“GUIDANCE ON CONTRACTUAL ISSUES FOR JOINT SERVICES AND ENERGY COOPERATION”



Organisations: SSSA

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V2, 03/12/2019

Envisioning and Testing New Models of Sustainable Energy Cooperation and Services in Industrial Parks

This project has received funding from the European Union's Horizon 2020 research and innovation program under grant agreement No 785134.

DELIVERABLE 2.3 – VERSION 2

WORK PACKAGE N°

Nature of the deliverable

R	Document, report (excluding the periodic and final reports)
DEM	Demonstrator, pilot, prototype, plan designs
DEC	Websites, patents filing, press & media actions, videos, etc.
OTHER	Software, technical diagram, etc.

Dissemination Level

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Quality procedure

Date	Version	Reviewers	Comments
04/02/2019	1	Francesco Peccianti	Suggestions on the provision of contract template
18/02/2019	1	Francesco Peccianti, Andrea Kollmann	General Comments and integration in paragr. 4.1 and 4.2
26/02/2019	1	Eleonora Annunziata	Final comments
03/12/2109	2	Andrea Kollmann	Added disclaimer

Acknowledgements

This report is part of the deliverables from the project "S-PARCS" which has received funding from the European Union's Horizon 2020 research and innovation program under grant agreement No 785134.

More information on the project can be found at <http://www.sparcs-h2020.eu/>

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Executive summary

This Deliverable 2.3 “Guidance on contractual issues for joint service and energy cooperation” aims at addressing the main contractual issues related to the definition of energy cooperation activities between companies belonging to an industrial park.

In particular, the document, after a brief introduction, deals specifically with the preliminary issues related to the need to identify within the Park the object of energy cooperation (Chapter 2). In this sense, the first topic under consideration is the need to carry out an energy audit within a park to analyse the needs of companies and then assess the most effective energy cooperative solutions. In this regard, starting from the analysis of energy cooperative solutions, as already described in the context of Deliverable 1.1 (“Inventory of S-PARCS solutions”), the same can be divided into two macro categories: 1) activities concerning the sharing a service and 2) activities involving the sharing of an infrastructure.

Chapter 3 conducted an in-depth analysis to highlight the possible strategic role played by a third party (in the form of entity, company, consortium, etc.), which on behalf of the park’s companies can effectively carry out technical, commercial and regulatory activities if such a service is needed due to a lack of specific expertise within a park or its companies. The chapter describes the possible functions attributed to this entity, underlining its importance above all with regard to the issue of sharing sensitive data. From this point of view, the third party could receive confidential data of individual companies and preserve each company from the general sharing with all other companies through specific “confidentiality agreements” or contracts containing “confidentiality clauses”.

In Chapter 4, the possible contents of a contract concerning the sharing of a service is examined. In this sense, the commercial activity (carried out by the possible third party legal entity) is examined in order to evaluate the market offers and the prices of the services. Then, some specific contents are proposed that can be treated in the context of a contract of this type, such as: consumption of the service, quality of service, monitoring of consumption, monitoring of quality, price of service, mechanism of billing, any sharing of sensitive data and other legal and management aspects.

Finally, Chapter 5 describes the content of a contract concerning the sharing of an infrastructure. After analysing the possible involvement of an ESCO, the document proposes a set of specific contents that companies should take into account to draw up a contract. In particular, companies should regulate the aspects related to the ownership of the infrastructure, its location, operational management, maintenance, the duration of the contract, the costs of installation and management, as well as the profiles related to liability for any damage caused to infrastructure itself.

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1 Introduction

This Deliverable 2.3 “Guidance on contractual issues for joint service and energy cooperation” intends to provide a framework for contractual solutions related to the implementation within an Industrial Park of energy cooperation activities. Although the cooperation solutions can be of various types, from a contractual point of view they can be categorized in two macro categories: 1) activities that concern the sharing of services and 2) activities concerning the sharing of infrastructures. In this regards, it seems opportune to clarify that the initial analysis of the possible contractual issues associated with cooperation solutions is based on the Deliverable 1.1 "Inventory of S-PARCS solutions ".

With regard to each type it is possible to identify a series of elements that represent the minimum content of a possible contractual agreement signed between the interested parties. Compared to the sharing of a service, it might be appropriate to regulate aspects such as: consumption of the service, quality of service, monitoring of consumption, monitoring of quality, the price of the service, the related billing mechanism, and any sharing of sensitive data. Differently, in the context of a contract concerning the sharing of an infrastructure (considering that in the concept of infrastructure there are also plants in the strict sense), the parties must appropriately agree on the regulation of aspects related to the ownership of infrastructure, location, operational management, maintenance, contract duration, installation and management costs, as well as liability profiles for any damage caused to the infrastructure.

From this point of view, it seems necessary to consider that sometimes certain cooperative activities could be characterized by a combination of sharing services and infrastructures. In this sense it is likely that sharing a service does not necessarily entail the sharing of an infrastructure, whereas the sharing of an infrastructure automatically includes the sharing of the service resulting from the use of the infrastructure itself. The related contractual agreements will therefore have to consider these circumstances, providing, where appropriate, to regulate both cases.

Then, there are some contractual aspects that go beyond the specific content of the chosen cooperation solution. These are issues that concern the organization of the Industrial Park compared to the possibility of effectively concluding these cooperative agreements. In this sense, the first aspect that is under consideration is linked to the possibility of identifying, within the Park, a third legal entity that, as an independent subject, can represent the interests of all the companies of the Park, acting at the same time as a meeting point between them. This subject could follow multiple activities from an organizational / commercial point of view, such as those aimed at carrying out energy audits within the Park or negotiating with service providers and technologies, possibly addressing subjects such as the Energy Service Companies.

1.1 Key message

- ▶ The present document aims to provide food for thought regarding the contracting activities linked to energy cooperation actions within an Industrial Park;

- ▶ The document specifically addresses the possibility of entrusting the contracting activities to a third legal entity, representative of the Park companies, describing their functions and skills;
- ▶ The third legal entity could simplify the contracting activities for the Park boasting specific technical, commercial and regulatory skills;
- ▶ On the basis of the different cooperation activities identified by the Park companies, it may be necessary to stipulate contracts for the sharing of services or contracts for the sharing of infrastructures: the report analyses the content of both;
- ▶ The contract for sharing a service provides for the regulation of aspects such as: consumption of the service, quality of service, monitoring of consumption, monitoring of quality, the price of the service, the related billing mechanism, any sharing of sensitive data as well as other legal and management aspects;
- ▶ The contract for the sharing of an infrastructure provides for the regulation of aspects such as: ownership of the infrastructure, its location, operational management, maintenance, the duration of the contract, the costs of installation and management, as well as the profiles related to responsibility for any damage caused to the infrastructure itself;
- ▶ Generally the sharing of an infrastructure foresees the consequent sharing of the relative service, therefore the two contractual forms in these cases must be appropriately integrated;
- ▶ One of the main problems related to the contracting of energy cooperation activities is related to sharing sensitive data; in this sense, the document analysed as a possible solution the use of a “confidentiality clause”.

2 Identification/choice of cooperation activity

This Chapter 2 provides a general overview of the activity for identifying and choosing, within an Industrial Park, possible cooperation activities in which to invest in order to achieve energy savings/efficiency. As described in Section 2.1, the first step is to perform an analysis of the specific energy needs of the companies within the industrial park; this analysis, carried out through appropriate energy audits, will allow identifying the specific needs of the Park and the possible energy efficient solutions. Such solutions may involve the sharing of a service (paragraph 2.2) and / or an infrastructure (paragraph 2.3) by all the Park companies; these activities will necessarily be subjected to different regulations at the time when the related contractual agreements will be stipulated. The following paragraphs will summarize and describe the possible solutions connected to the sharing of services and / or infrastructures, based on the model already proposed under D 1.1 (“Inventory of S-PARCS solutions”).

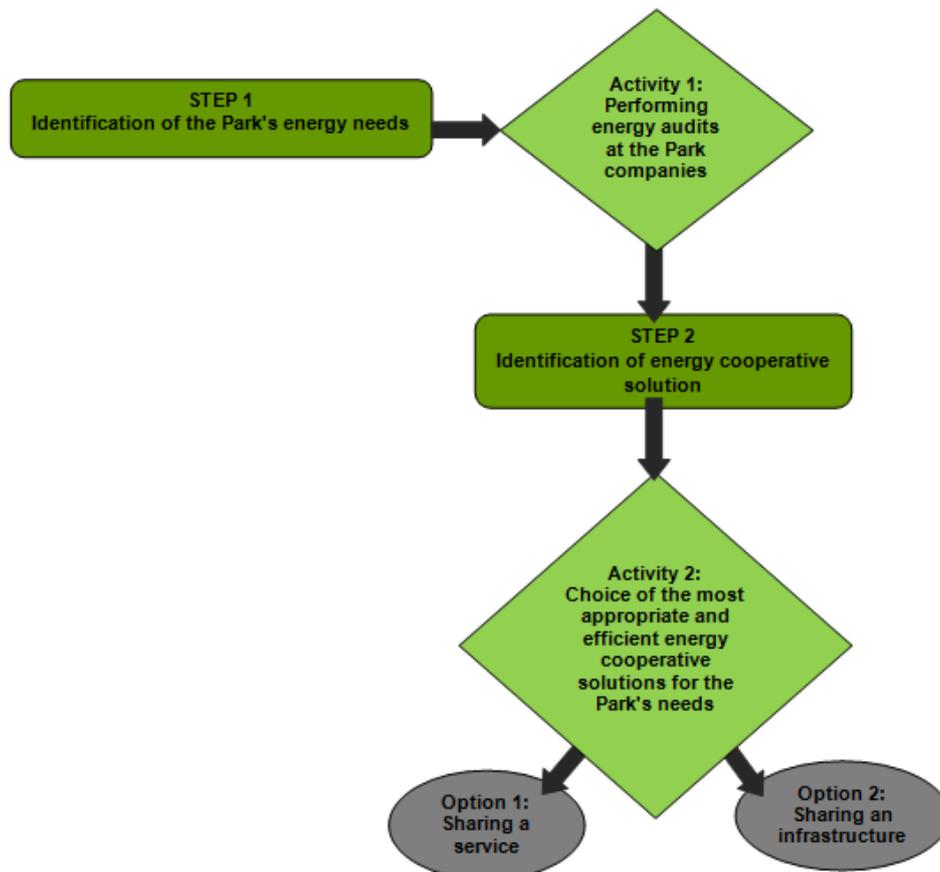


Figure 1 Process of identification of energy cooperative solution within an industrial park

2.1 Analysis of the needs of the Park companies

The first step to proceed with the identification of suitable energy cooperation solutions addressing the Park's needs, consists in an analysis of the concrete energy needs of each company. In this sense, the instrument offered by European legislation is that of "energy audits". In particular, the Directive 2012/27/EU of the European Parliament and of the Council concerning the subject of "Energy Efficiency" [1], defines in Art. 1, Point 25), the "energy audit" as: "a systematic procedure with the purpose of obtaining adequate knowledge of the existing energy consumption profile of a building or group of buildings, an industrial or commercial operation or installation or a private or public service, identifying and quantifying cost-effective energy savings opportunities, and reporting the findings".

In particular, energy audits can be performed by Energy Services Companies (ESCO), Energy Management Experts (EGE) or Energy Auditors [2]; however, the Directive 2012/27/EU establishes (point 25) that in the event that the energy audits are carried out by internal experts, the latter should not be directly involved in the activity audited so as to ensure their necessary independence.

The energy audit consists of a series of fundamental phases, in particular the following moments are foreseen [3]:

- Inspection: company visit necessary for data collection and preliminary analysis on energy management in the company;
- Data analysis: energy flows are analysed, technical data are processed and possible energy efficiency improvements are identified;
- Results and intervention proposals: a report is prepared with a detailed analysis of the possible efficiency measures, estimating the expected energy savings and verifying their feasibility.

Energy audits should take into account relevant European or international standards, such as EN ISO 50001 (energy management systems), or EN 16247-1 (energy audits) or, if they include an energy audit, EN ISO 14000 (management systems environmental) and therefore also be in line with the provisions of Annex VI of Directive 2012/27/EU.

These audits are a fundamental tool for the analysis of energy consumption within an Industrial Park; from the assessment of the specific needs of each company, it is possible to reconstruct an overall scenario on the basis of which to evaluate the best possible solutions for energy efficiency and energy cooperation.

2.2 Sharing a service

The activities of energy cooperation within an Industrial Park can consist in the sharing of a service by at least two or more companies. The types of service that can be shared are many and may concern different aspects of energy management and energy efficiency such as energy in the strict sense, but also that related to water treatment or waste management.

Examples of shared services are the common energy control activity, the joint design of buildings with high energy efficiency, the treatment and exploitation of common waste water, as well as the activities of industrial symbiosis, within which exploitation of the by-products deriving from the industrial processing of a company and their subsequent use as raw materials in the production process of a different company. These activities belong to the category of cooperative solutions already listed in detail and described in D1.1 "Inventory of S-PARCS solutions" in paragraph 3.4 "Managerial actions". The actions described in the aforementioned paragraph are typically referred to the sharing of services, as their implementation does not necessarily require the sharing of physical installations, although sometimes they could be useful.

The sharing of services can also concern common forms of purchase, including the joint purchase of electricity, the joint purchase of energy carriers (gas, fuel and wood), as well as the joint purchase of raw materials. In these cases, the Park companies exploiting the advantages deriving from the principle of economies of scale and a simplification of logistics, can enjoy discounts and more favourable prices from the service provider.

In particular, the three cited cooperative activities belong to the group of solutions listed and described in paragraph 3.5. of D1.1 "Inventory of S-PARCS solutions", defined as "Contractual instruments", containing a series of solutions for sharing services with the characteristic of being based on the possibility for companies to obtain better results from an economic point of view presenting together with a supplier service.

It is important to stress that sharing a service does not necessarily involve sharing an infrastructure or a facility. In the event that the sharing of a service is related to the sharing of an infrastructure, the contractual agreements that will be signed by the parties will have to provide a specific discipline of both aspects.

2.3 Sharing an infrastructure

The activities of energy cooperation within an Industrial Park, in addition to the sharing of services, may concern the sharing of infrastructures.

The concept of infrastructure includes not only the plants, but more generally the set of movable and/or immovable properties from which the possibility for companies to benefit from a given shared service arises. Unlike the case of the sharing of services in the strict sense described in paragraph 2.2, the sharing of a service does not necessarily require the need to share an infrastructure. The sharing of an infrastructure is also generally associated with the sharing of the service that is generated thanks to that same infrastructure. Therefore, in the latter case, the contractual provisions established by the parties' agreements must take into account the specific aspects of both cases.

The sharing of infrastructures may concern solutions such as the installation of plants of renewable energy sources (RES), the installation of district heating or cooling networks for the premises of the Park, as well as the installation of joint heat pumps for heating, among many others. The opportunities belong to the category called "Infrastructures and energy installations", described in paragraph 3.1 of D1.1 "Inventory of S-PARCS solutions", where it is possible to consult the complete list of all energy cooperation solutions. They are characterized by the need for the installation of a new element in the park for energy purposes (renewable energy plants, thermal and electrical accumulators, technologies for the recovery of residual heat, etc.), using a cooperative approach in the phase of purchase, installation and/or management.

The sharing of infrastructures may also concern the shared use of specific information and communication technologies. These solutions are specifically listed and described in paragraph 3.2 of D1.1 "Inventory of S-PARCS solutions", called "Information and Communication Technologies (ICTs)". In particular, they aim to share these technologies in order to ensure an improvement of the energy performance of companies and parks, mainly through monitoring of energy consumption associated with the various processes and equipment and the subsequent use of the data obtained. Among the solutions belonging to this category are the realization of a smart grid inside the premises of the Park, the joint purchase of monitoring equipment, as well as the use of shared central servers.

Finally, the sharing of infrastructures may concern the identification of efficient solutions from the point of view of mobility and logistics. An example of this are the solutions listed and described in paragraph 3.3 of D1.1. "Inventory of S-PARCS solutions", called "Logistics and Mobility". These include joint mobility solutions, including the use of a common fleet for employees to reach the park (e.g. bus) and the purchase of joint electric vehicles / fleet based on H₂, but also more logistic solutions efficient, such as the construction of shared office buildings.

3 Identification of the third legal entity

The companies belonging to an Industrial Park appear as single entities inserted within a broader context. In the case in which these companies operate in total autonomy, being owners of the area on which they have their own settlement and independently providing for the management of services and infrastructures connected to their business, we do not speak properly of an "industrial park", but of an "industrial district". Generally speaking, in the case of the Industrial Parks, the companies that are part of it are represented by a third party legal entity, external to them, which can provide companies with incentives for development by preparing a specific development plan [5].

In many European parks, this subject finds its natural identification in the Park itself, which in addition to being the owner of the areas where the various production / logistics settlements are located, provides for the provision of basic services and infrastructures (e.g. street lighting services, road management, parking lots, etc.). In other cases, companies voluntarily decide to associate with each other, constituting a third legal entity, with respect to which they have representative shares and to which they decide to delegate a series of commercial, economic and technical activities, for the management of common spaces, services and infrastructures.

Energy cooperation activities within an industrial park can be managed more easily through the identification of a third party legal entity. This may take different shapes according to the legislation in force in the country in which the Park is located, however, regardless of the legal quality attributed to it (Park in the strict sense, consortium, body, etc.) its role will be to take care of the needs of the various companies in the Park, with the aim of identifying possible efficient solutions, to be managed through an approach of cooperation and sharing between the various companies.

In the following paragraphs the focus will be on the type of contract through which the various companies could be linked to this third legal entity. In this sense, the issue of the possible shared management of any sensitive data by the Park companies will be discussed in detail, briefly describing the importance of using the so-called "confidentiality clauses". Finally, in the context of paragraph 3.2. the role played by the third legal entity in relation to the possible activities of development and cooperation of shared solutions for energy efficiency will be analysed, investigating the nature of the skills required by this subject.

3.1 The association contract between the companies of the Park

In the event that the companies present within an industrial Park decide to cooperate through the identification and shared management of energy efficiency activities / services, they will find themselves in the need to sign a contract, which aims to regulate the nature of the agreements between the parties. The type of contract will absolutely vary according to the type of aggregative form present among the various companies of the Park, but the content of the agreement will have as its object the same elements. In this regard, in fact, it should be recalled, as mentioned in the previous paragraph (paragraph 3), that the Park companies can be organized in different ways.

The first hypothesis is that the Park companies are autonomous entities, united only by belonging to the same industrial geographic area, independently providing for the management of their services / infrastructures and not being bound by contractual obligations of any kind; as mentioned, this is not properly the case of "industrial park", but of "industrial district".

The second hypothesis is that the companies of an industrial park are linked to one another by relationships with a common third party. In this sense, some further hypotheses may occur:

- **in the first case**, this subject could be the Park itself: as happens in many European countries, the Park owns the areas where the production / logistics settlements of the various companies are located and provides directly for the supply and management of common services within the Park, such as: public lighting, roads, parking lots, traffic signs, green areas, water, electricity, rail services, port services etc. In this case there are often bilateral contracts: between the company and the Park itself;
- **the second case** is that within the Industrial Park there is a (leading) company / company, which, by virtue of its size and its importance in the area or other (historic) reasons, provides all the other particular services and common infrastructures (e.g. roads, parking lots, railway services, etc.). Also in this case, bilateral contracts are generally drawn up: the parties that sign the agreement are the leading company and the other company in the park that uses the services made available by the former;
- **the third case** that can occur is that all the companies of the Park, as holders of specific participation quotas, are represented by a third legal entity. In this case, the nature of the legal entity may take on a different role according to the instruments and institutions provided by the various countries; in this sense, such the third party could, for example, assume the characteristics of an "organization", of a "consortium", or of a "company", but in substance, it would remain an associative and participatory form among the various companies. The companies then delegated the tasks of supply and management of services and infrastructures inside the Park to the third party and they would maintain a more or less strong control over it, being able to express itself on the decisions to be taken, generally within the framework of assemblies, and exercising their rights on the basis of internal "statutes" and "regulations". In this case the contracts that are signed are multilateral: within the same contract the relationship with all the participating companies is regulated.

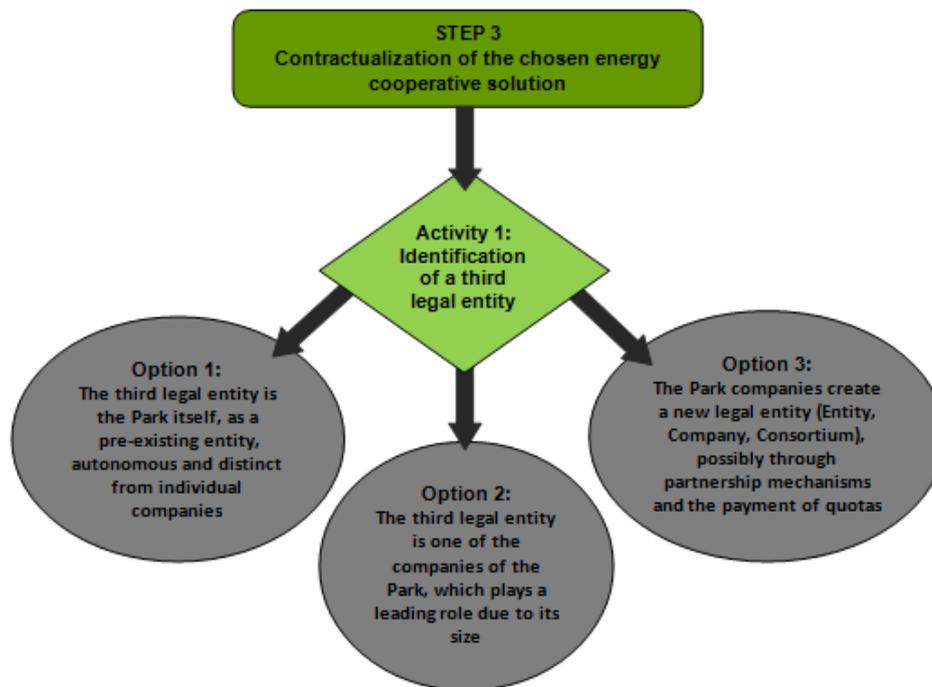


Figure 2 The identification of a third legal entity for the performance of contractual activities related to energy cooperative solutions

In the event that the companies within a Park decide to identify and initiate energy cooperation solutions, it is necessary for them to refer to a specific entity that manages these activities, in the common interest of all the companies involved. This subject, as described above, may take on a different legal form, but the contracts that will be stipulated, both in the case of bilateral contracts and in the case of multilateral contracts, will have to regulate specific aspects, which will vary according to the fact that services and / or infrastructures are shared. In particular, it is important that this third legal entity is physically represented by parties distinct from any representatives of individual companies and this guarantees and protects the privacy of the companies, which may not want to disclose to competitors any sensitive data related to their business. An aspect of particular relevance, in fact, linked to the sharing of energy efficiency solutions and the consequent need to delegate to a third party the management of technical, commercial and economic activities deriving from it, consists in the concern of companies to share any sensitive data related above all to its energy consumption and its production processes with the third party, or possibly with the other companies in the Park. In the next paragraph, the possibility of using the so-called “confidentiality clauses” will be described, to protect any such information.

Confidentiality clause

One of the main problems felt by companies in an Industrial Park associated with possible energy cooperation is the sharing of sensitive data with other companies in the Park.

The energy cooperation activity could in fact entail, for the third party identified (Park, entity, consortium, company, etc.) the need to acquire or come into contact with sensitive data of the

individual companies regarding their production cycles, and in particular the consumption of electricity, heat, gas or water. Many companies could in fact be discouraged to invest in energy efficiency and energy cooperation solutions, believing that the sharing of their energy data can provide a possible competitive advantage to the other companies located in the Park.

A possible solution to this problem is represented by the use of the so-called “confidentiality clause” in the context of the contractual agreements, drawn up in writing. The “confidentiality agreements” are also widely used, as they are distinct contracts with respect to other agreements, generally drafted in advance of the actual negotiation. In general, in fact, the “confidentiality agreements” have as their object realities considered immaterial, such as know-how, knowledge and confidential information, which, although not immediately tangible, can have great value for the company that owns them.

Through the provision of a “confidentiality clause” in the contract that is the basis of energy cooperation, it is possible to impose on the counterpart, or counterparties, the obligation of secrecy in relation to the acquisition and processing of data and information deemed sensitive. This protects the various companies signing the agreement, compared to sharing data on their energy consumption.

Within the confidentiality clause it is important to clearly and unambiguously identify the knowledge that one is interested in keeping secret; in this regard, there are some possibilities: a) provide an analytical and detailed list of the knowledge on which you want to keep the secret in the contract; b) postpone the timely identification of this knowledge / information to the technical annexes of the contract; c) provide that confidential information is identified, both in the initial phase and during the course of the relationship, by means of specific statements affixed materially to the documents, to the supporting material or in the communication of transmission of the same; d) providing categories of knowledge that constitute confidential information (with the risk, however, of falling into general definitions) [6].

The clause must expressly provide for the prohibition of the party receiving the confidential information to disclose it, and to use it for purposes other than those permitted by the contract. Furthermore, the duty to return or destroy the secret information received upon termination of the contract due to the natural expiry of the agreed term, as well as for further cases in which the main transaction no longer has any practical use, must be provided for.

Finally, in order to prevent confidentiality obligations from being circumvented, it is possible to take responsibility for the party receiving the information, obliging it to guarantee the other party regarding any violation of the confidentiality agreement set up by its employees, collaborators, affiliated or controlled companies [7].

The different form of association between companies can affect the effectiveness of the use of the confidentiality clause. In particular, some problems could arise where the identified third party legal entity was composed of members of the individual companies, not completely qualifying as an entity separate from them. For this reason it is important, as already underlined in the previous paragraph (paragraph 3.1.) that the third legal entity, although qualified as a joint venture, does not see the active presence of representatives of the individual companies with respect to the activities carried out by it.

3.2 The role of the third legal entity

Once the third legal entity has been identified as the representative of the Park companies, it is necessary to elaborate in detail its role with regard to the possible implementation of energy cooperation solutions between the various companies. The activities that this entity would be delegated to perform could focus on commercial, technical and regulatory dimensions.

First of all, the role of the third legal entity would consist in the management of commercial bargaining with any external service providers and infrastructures. In this sense, on the basis of the cooperative activity identified as more efficient, the third party would carry out extensive market research in search of the most advantageous economic solutions for the Park companies, and the most favourable prices, relying on the competitive advantage deriving from the highest purchasing power [8]. This commercial activity could concern both the purchase of services and investment in any infrastructures. In this regard, already starting from the preliminary phase of identification of the most favourable energy cooperation solution, this legal entity could decide to turn to an ESCO, entrusting it with the following stages: identification of suppliers, purchase/realization of any plants, and management of infrastructures in the operational phase. In this case, the role of the third legal entity would consist in interfacing with the ESCO, identifying it and maintaining the necessary relationships with it.

Naturally, the commercial activity carried out by the third party legal entity would not be limited to a mere initial phase, but would last over time, as it is called to constantly monitor market trends, prices, as well as the quality of services rendered and of the relevant invoices [9].

From a technical point of view, the third legal entity could manage the monitoring network for the analysis, control and accounting of energy consumption within the Park, through the adoption and use of software and specific instruments. This monitoring would allow a constant assessment of the consumption of individual companies, making possible any evaluations aimed at guaranteeing further energy efficiency actions [10].

Furthermore, the third party could carry out assistance activities regarding the problems related to the management / maintenance of the plants and infrastructures present inside the Park, or decide to outsource this activity to companies outside the Park.

Finally, the third legal entity would carry out activities for which regulatory competencies are required. In fact, it should in fact hold tenders for the selection of suppliers and deal with any disputes. The third legal entity could lastly guarantee a constant updating on the regulation of the sector and on possible savings opportunities to all the companies of the Park.

Summarizing what has been described so far, we provide below a list of the possible activities that the third legal entity, representing the industrial park enterprises, could carry out [11]:

- Collection of the needs and expectations of the Park companies;
- Collection of the characteristic data of the supply points of the Park companies;
- Reorganization of the consortium users in homogeneous consumption groups (clusters) for the optimization of the supply;
- Search for qualified suppliers from the point of view of reliability and quality of service;

- Possible search and management of relationships with ESCO or external consultants;
- Implementation of one or more tenders during the year preceding the supply, involving the major energy producers at national level;
- Detailed analysis of the offers received;
- Identification of the most competitive market benchmarks to align the contract;
- Monitoring activities of the energy consumption monitoring network;
- Control of invoices during the year of supply;
- Assistance related to problems related to the supply itself (billing, credit management);
- Assistance relating to new connections / modifications to connections;
- Update on sector regulations and on possible savings opportunities.

What has been described up to this point highlights the important role that the third legal entity would play for supporting the implementation of energy cooperation solutions. Such activities could hardly be managed by individual companies, which in many cases may not have the necessary skills to carry them out. Differently, the forecast of a third party, representative of all companies, can guarantee not only a more efficient coordination between the various companies of the Park, but also better results deriving from the high specialization of the required skills.

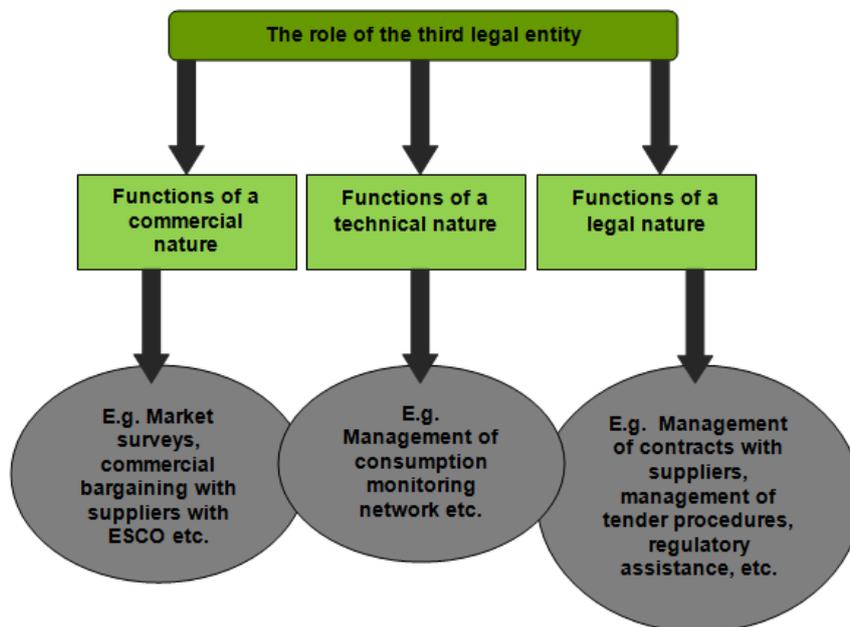


Figure 3 The role of the third legal entity

4 Sharing a service: significant contractual aspects

The energy cooperation activities carried out between the companies of an industrial park can have as their object the sharing of a service. As already described in the section 2.2 the types of service that can be shared within a Park are many and may concern different sectors such as energy in the strict sense, but also that related to water treatment or waste management.

Regardless of the specific nature of the shared service, a particular criticality linked to the sharing of a service depends on the possible difficulty in regulating and clearly establishing the way in which the service is shared, and specifically, the rights and duties of the various companies involved. In this regard, to resolve this problem, it is necessary that the activity of cooperation and sharing of the service is regulated by a contractual agreement, signed by the various parties involved.

This Chapter intends to offer some indications regarding the possible content that a contract concerning the sharing of a service should have, regardless of the specific nature of the service itself. Each of the contractual aspects presented and described in the context of the paragraph 4.2, may be subject to different regulations on the basis of the different services shared, and on the basis of the different will of the parties involved. The contractual content that is presented within this chapter is therefore a model of reference that can be regulated differently on the basis of the emerging needs in the different specific cases.

4.1 Commercial bargaining (carried out by the third party legal entity)

As part of the energy cooperation activities concerning the sharing of a service among the companies belonging to an Industrial Park, the preliminary phase of the sharing of the service is that concerning the identification of the service provider itself.

In this phase a fundamental role can be played by the third legal entity, identified by the Park companies as their representative. This entity must carry out in-depth market research, identifying the best suppliers and the most advantageous solutions. In this regard, it may exploit the greater purchasing power deriving from the aggregation of the Park companies to obtain more competitive prices.

This commercial activity carried out by the third party legal entity would not be limited only to an initial phase, but would last over time, as it is called to constantly monitor market trends, prices, as well as the quality of services rendered.

From the contractual point of view, two different forms of bargaining may occur by the third legal entity. The first hypothesis is that in which the companies confer a mandate with representation to the third legal entity, enabling it to conclude the supply contract on their behalf with the supplier. The second hypothesis provides, instead, that the third legal entity is called to carry out a mere commercial bargaining activity having as object the possibility of being able to obtain the most favourable price for the group of companies it represents, while referring the stipulation of the individual contracts to each specific company.

The first hypothesis presented is, from the contractual point of view, more complex as precise requirements and boundaries have to be set before conferring the mandate. Moreover, two

additional cases can be identified: either a single contract is signed between the third legal entity and the supplier or various ones are defined, at the same negotiated conditions, for each company. In the first case, further contracts to regulate the defined exchanges between the third legal entity and the companies that gave it the mandate have to be drafted and could be considered as a shared service, which is presented in the following section.

4.2 Features shared service

The following paragraphs will present and describe the main contractual aspects that must be regulated by the various companies in the context of a contractual agreement for the sharing of a service.

Significant contractual aspects	Contract for sharing a service
	Use/consumption of the service
	Quality of service
	Use/Consumption monitoring
	Quality monitoring
	Price
	Billing mechanism
	Sharing sensitive data
	Other legal and management aspects

Table 1 Significant contractual aspects for sharing a service

Use/consumption of the service

One of the main aspects that needs to be regulated within a contract concerning the sharing of a service between different companies belonging to an Industrial Park concerns the consumption/use of the service by each user. This aspect can be regulated differently depending on the type of service being shared. In this sense, the specific provisions envisaged in the contract may vary whether, for example, a contract concerning the sharing of a joint electricity supply service, rather than the sharing of a joint service of supply of heat or sharing a common waste management and disposal service. As part of this aspect, linked to the consumption / use of the service, the methods through which the service will be provided will be regulated, establishing the quantitative and detailed aspects connected to them.

In particular, the contract could provide indications concerning the times/days/time slots of supply/operation of the service, or of use of the same by each user. Likewise, in this section, more detailed aspects could be defined, such as (in the case of electricity supply) those related to the maximum electrical power made available to companies, or (in the case of the supply of thermal energy), the amount of heat delivered to the point of delivery.

Sharing a service could imply, although this is not necessary, the sharing of infrastructures and facilities. The specific aspects linked to this case will be examined in detail in the following Chapter 5. However, it is necessary to anticipate that where the contract relates to the sharing of a service, the section refers to the use/consumption modalities of the service itself, and could in such cases include the definitions of specific aspects related to the use of the infrastructures connected to it, as well as to the functioning of any related facilities. To give an

example, in a case in which the service is about sharing logistic spaces and/or common areas, the conditions of use/consumption can foresee and impose, in the name of all companies, that the use of these areas is appropriate to their intended use. Furthermore, the use of sharing logistic spaces and/or common areas must be compliant with any special authorizations and any non-contractual regulatory provisions.

In this framework, it is crucial to identify as well other ancillary services/operations that might be related to the main shared service. It is important to define the responsibilities for those ancillary services in order not to threaten the main shared one by a worsening of the relation between the involved parties. In addition, the subdivision of the costs and responsibilities related to, for example, maintenance should be clarified in the early stages of the process. In charge of it could be the Park itself or the involved companies according to criteria as "Who is the main beneficiary? In which premises is it located?" etc..

Quality of service

In addition to the "quantitative" aspects related to the use and consumption of the service, it is also essential to provide, within a contract for the purpose of sharing a service, the discipline concerning the "qualitative" aspects of the service itself.

These qualitative aspects can naturally vary profoundly depending on the different type of service considered. Where the sharing activity concerns waste, by-products and/or waste water, it will be essential to provide detailed qualitative characteristics of the same, identifying where necessary specific chemical/physical reference parameters. In the event that the shared service relates to the supply of thermal energy, these parameters could refer to the temperature and pressure conditions of the heat delivered to the point of delivery, but also to the parameters of air and condensate gases present in the steam [12].

Use/Consumption monitoring

After having established the characteristics and the modalities with which the service must be provided/shared, it is important to provide monitoring and control activities aimed at verifying the correct provision of the service, as well as the correct use of the same by the various companies. In particular, this is easy to understand by considering the sharing of energy services, for which it may be necessary to install monitoring networks in order to analyse, control and measure energy consumption within the Park. In this case, monitoring could be achieved through the adoption and use of a specific software and tools; this would allow a constant assessment of the consumption of individual companies, making possible any evaluations aimed at guaranteeing further energy efficiency actions. In case the service relates to the supply of thermal energy, the steam supply/consumption monitoring activities may include monitoring the steam flow, steam pressure and vapour temperature, located at the supplier and/or on the end user's side [13]. Once the aspects to be monitored have been defined, it is necessary to identify the necessary instrumentations / sensors / measurements and the relative protocols (for example: frequency of checks, accuracy, etc.).

Quality monitoring

Another important aspect in the context of the activities of sharing an energy efficiency service, concerns the monitoring of the qualitative aspects already analysed in the paragraph “Quality of service”. Despite the type of shared service, it is important to establish in the contract the methods and timing for a periodic check of the quality of the service provided by the supplier and/or in any case shared by the various companies. In the event that this service relates to the supply of thermal energy, quality control may concern parameters such as specific characteristics of steam or water. In the case of steam, the main parameters to be analysed will be the pressure and the temperature, in the case of water the parameters subject to verification will be mainly those of temperature and purity [14].

However, quality monitoring can also be envisaged and implemented on other types of services: In particular, for example, in all cases where the service concerns waste, by-products, raw materials, water discharges and / or substances / materials of various nature intended to undergo specific treatments. In these cases, in fact, the qualitative conditions of these substances / materials could condition the good outcome of the treatment and therefore be worthy of specific control.

For example, when the service provides waste water treatment/purification systems, direct control activities may be provided for the discharge points of each company, in order to verify the presence in the waters of polluting/non-compliant substances. In this regard, it is necessary to remember the existence of a double criterion of responsibility for the various parties involved: the same could in fact be called to answer for any damages/non-compliance both with regard to a contractual liability and to extra-liability profiles contract [15], where sectorial regulations are violated.

Once the characteristics to be monitored are defined, both the required sensors/measurements should be identified and the related protocols (e.g. sampling frequency, accuracy, etc.) should be established.

Price

The contract concerning a shared service must necessarily regulate the price relative to the use/consumption of the service. The methods of calculating the price will naturally vary according to the type of service. To give an example, if the same refers to the purchase of energy (supply price) the final price that the user will pay could be divided into some components or commissions [16]:

- energy consumption component: will represent total energy consumption in the billing period. It is calculated as the agreed price (€ / kWh) in the billing period, multiplied by the amount of energy supplied to the supply point within this billing period;
- power component: could take into account the load/power supply agreed in the billing period;

- any other charges, penalties¹ or costs specified in the energy supply contract or imposed from time to time.

The contract must also regulate the possible methods of indexing prices. It may apply different forms of indexing and price combinations:

- the price may vary from time to time to reflect any changes in electricity prices, raw material prices or other input costs such as raw material costs, financial costs or other input costs resulting from any changes in the law or from a regulatory authority;
- the price is changed based on inflation forecasts;
- the price index is based on the price of an important fuel, such as natural gas, for consumers of industrial families within the European Union (EU) (http://ec.europa.eu/eurostat/statistics-explained/index.php/Natural_gas_price_statistics);
- the price could increase at an agreed annual rate; for example 2% or 4%.

The supplier shall notify the price changes with an agreed time before the change enters into force.

Billing mechanism

The contract for sharing a service must necessarily include the methods by which the billing of the service will take place. Where the service had the participation of an external provider, billing mechanisms could be of two types. In the first case, the supplier could invoice the service directly to each company, collecting from it the price due; in the second case, the supplier could invoice the service to the third party body, which in turn would issue further bills to the individual companies.

Sharing sensitive data

The last important aspect that must be regulated in the context of a contract concerning the sharing of a service concerns the sharing of any sensitive data. As already described in the paragraph 3.1.1, one of the problems most felt by companies in an Industrial Park associated with the possible energy cooperation solutions is the need to share sensitive data with other companies in the Park.

The issue of the management of sensitive data could meet the suspicion of some companies, although from a strictly legal point of view valid tools are on offer, such as that related to the inclusion of appropriate confidentiality clauses, capable of resolving this criticality. From this point of view, it is necessary that the third legal entity provides a broad and comprehensive framework about possible contractual solutions to solve problems in sharing such data.

¹ The contract should define the methodology of calculation for the penalties associated with supply delivery shortfalls.

Other legal and management aspects

Finally, some management and legally related aspects concerning the shared service should be clearly defined in the contractual agreement prior to the implementation of the service itself. The topics related to above mentioned issues that should be clearly defined are linked to: decision making processes, responsibilities and obligations from the legal/safety perspective, exit strategies and tax treatment.

The first point to be defined, eventually starting from legal basis and/or consolidated procedures within the Park is the decision making process and structure: the formal legal structure, the entities with the possibility to propose changes to the agreement, how to solve potential conflicts (the voting mechanism and eventual veto rights) and formal channels and time to communicate. Such actions are mandatory to be described in advance, to avoid conflicts whenever decisions about a cooperative service are to be taken. From this point of view the third entity supervising and/or validating the process could be beneficial in order to set shared and satisfying rules.

Another important aspect to be clarified is linked to the legal/safety responsibilities and obligations: every shared service will have some interfaces between multiple companies and overlooking such aspects could be extremely dangerous from a figurative and non-figurative point of view. Indeed, clear boundaries should be defined which can coincide with physical boundaries if any (e.g. energy exchanges) or be defined according to other criteria as the main beneficiary or the entity that retain the biggest share of the service. These clear boundaries should include as well the responsibility for any necessary future intervention or responsibility with respect to safety measures by protecting each company against the possibility of issues they would not have the possibility to prevent. In addition, this would help the involved companies to check that the new service is in line with previous agreements, not conflicting with them.

Moreover, potential changes on the agreement have to be taken into account: an analysis of the impact of such modifications should be preliminary performed and mitigation actions and exit strategies defined. These could include pre-arranged timing and notification before implementing any change, the definition of penalties if necessary (that should be commensurate to the value of the service – linked to unilateral changes), etc.

Finally, a careful analysis of the taxes and incentives that could be triggered by the implementation of the shared service should be performed. As most of solutions proposed by S-PARCS could be related or to an improvement of energy and environmental performances of to direct economic benefits, the possibility that taxes or incentives are involved in more than likely. From this perspective, both a preliminary analysis of them and a defined mechanism on their split should be considered. In addition, as these external factors could change or not be too clear a priori, a preliminary identification of further improvements/arrangements to the first version of the signed agreement is beneficial. The involvement of a third party (e.g. ESCO / Park) acting as mediator between the companies could ease these procedures as it could be the beneficiary of the incentives as well as the one to pay the related taxes.

5 Sharing an infrastructure: significant contractual aspects

Energy cooperation within an industrial park may involve, in addition to sharing a service, the sharing of an infrastructure and in particular of a plant.

As seen in Chapter 4, from the sharing of a service the necessity to share also an infrastructure or a plant does not always emerge; otherwise, where there is a shared infrastructure or plant there will certainly also be the need to share the service that derives from the use/operation of this infrastructure or plant. This means that from the contractual point of view, a contract concerning the sharing of an infrastructure/plant, must necessarily also regulate the aspects related to the connected service, based on what was described in the previous Chapter 4.

This chapter will examine the main aspects related to merit of being regulated within a contract that provides the sharing of an infrastructure between the various companies of an industrial park.

As already described in paragraph 2.3, the shared infrastructure can be of various types: it may be a plant (for example for the production of energy from renewable sources or for district heating activities); an infrastructure linked to the use of information or communication technologies; or of a logistic infrastructure, such as a common fleet of electric vehicles to be used inside the Park.

The contractual aspects described in the present chapter are not intended to be exclusive, but to represent a model of reference. Each contract may in fact provide specific internal aspects, linked to the specific case, and in particular, to the nature of the shared infrastructure and the will of the parties involved.

Significant contractual aspects	Contract for sharing an infrastructure
	Ownership of the infrastructure
	Location of the infrastructure
	Operational management of the infrastructure
	Infrastructure maintenance
	Duration of the contract
	Costs
	Liability of the infrastructure

Table 2 Significant contractual aspects for sharing an infrastructure

5.1 Contracts with the technology provider for the design, construction / installation and management of the plant

The first phase, from a contractual point of view, deserving particular importance, when sharing an infrastructure and, in the specific case, a plant, is that of commercial negotiation with the technology supplier of the plant. In particular, at this stage the third party legal entity can take on an important role, which, on behalf of the various companies belonging to the Industrial Park, carries out an in-depth market survey in order to identify the best suppliers and the most

efficient technologies. In addition to supplying the technology in the strict sense, the third legal entity must also take care of the contractual aspects related to the installation and management of the plant, which could be entrusted to the same supplier or to any third parties.

With respect to this phase, it may be useful to investigate the role of the so-called Energy Service Company (ESCO), which could effectively carry out an intermediary activity between the Park and any technology suppliers by taking care of all technical, commercial and organization aspects, providing in some cases financing mechanisms, finding remuneration in the subsequent management of the plant structure.

In the next section, the role of the ESCO will be analysed closely, exploring the possible use of this organization for the implementation of an energy cooperation solution based on the sharing of an infrastructure within an industrial park.

The possible role of the ESCO

As part of the commercial and contracting phase with any technology provider, the third party entity, representative of the various companies in an industrial park, could decide to turn to an Energy Service Company (ESCO), entrusting it with all the activities of technical / organizational and possibly also financial nature. The added value would be represented by the fact that this entity, as an energy auditor, could also perform the preliminary energy diagnosis, evaluating the energy needs of the Park companies, identifying the most advantageous and efficient energy cooperation solution for the Industrial Park through a technical-economic-financial feasibility analysis of the possible projects identified.

The ESCO is a natural or legal person that delivers energy services and/or other energy efficiency improvement measures in a user's facility or premises, and accepts some degree of financial risk in so doing. The payment for the services delivered is based (either wholly or in part) on the achievement of energy efficiency improvements and on the meeting of the other agreed performance criteria [17].

The ESCO is therefore a company that carries out interventions aimed at improving energy efficiency for both public and private users, not just the substitution of individual devices, but taking on the risk of the initiative and freeing the final customer from any organizational burden and investment. In particular, the ESCO is remunerated based on the savings achieved and therefore the profit is drawn from the difference between the energy bill before and after the improvement. The customer, for his or her part, undertakes to pay a fee for a contractually established number of years as compensation for both the services and energy savings achieved by using the new plant [18].

The ESCO has the distinction of financing directly or procuring the financing that is useful for the project. In some cases, potential interventions are difficult to implement due to the lack of funds compared to the overall needs. These problems can be overcome in many cases thanks to ESCO and third party financing (FTT). In this case, the industrial park, not having to perform the efficiency measures directly, would be relieved of any form of investment without a negative weighting of the company balance sheet.

These types of companies, guaranteeing the customer the energy savings on which their investment is based, assume the commercial risk of the operation. In fact, they offer integrated services. The consultancy offered by the ESCO concerns both managerial, technical and financial aspects. This close correlation is justified by the fact that the remuneration of the service offered will derive, in variable proportions, from the agreement of the parties and the energy efficiency actually achieved.

Where the Industrial Park decides to contact an ESCO, any third party legal entity will be exempted from the complex activities related to the design / installation and management of the plant. Therefore, the only contractual entity with which to interface will be the ESCO, being able to benefit at the same time from the considerable technical, commercial and financial skills. In particular, the type of contract to be signed with the ESCO will be the so-called Energy Performance Contract, (EPC), a contractual arrangement between the beneficiary and the provider of an energy efficiency improvement measure in which the provider, an Energy Service Company, provides a guarantee of performance for the installed measures. Lenders require ESCOs with good track records and strong balance sheets that can ensure construction is completed on time and on budget and can support the performance guarantee [19].

5.2 Ownership of the infrastructure

One of the aspects of particular importance to be regulated within a contract concerning the sharing of an infrastructure is linked to the ownership of the infrastructure itself.

This aspect can be differentiated according to the type of shared infrastructure. Surely however, the possible presence of a third party legal entity can greatly facilitate the management of this aspect; any infrastructure inside the Park and object of sharing within the Park could fall under the ownership of the third party, which, representing the companies of the Park, could purchase the infrastructure using the common fund given from the shares of the individual companies, or, as analysed in the previous paragraph, using forms of financing through third parties, for example through an ESCO.

In this case, in fact, the ESCO would not acquire the ownership of the plant, which would remain the Park, but would refer exclusively to the advantages deriving from the economic management of the same.

In relation to the issue of ownership, within the contract it must also be decided how to use the infrastructure by the various companies belonging to the Park. In this sense, however, please refer to what has already been highlighted in Chapter 4, regarding the use of a service, since the use of an infrastructure / system is more properly understood as the use of the service than that infrastructure is generated. Moreover, the contract must define how owners must manage depreciation costs in their financial statements according to national/international law.

5.3 Location of the infrastructure

Another important aspect to be regulated within a contract concerning the sharing of an infrastructure is related to its location within the Park. In this sense, three situations could arise:

- in the **first case**, the infrastructure, and in particular an eventual installation, is located within a common area owned by the Park itself. This applies especially in the case where, as analysed in paragraph 3.1, the third legal entity is the Park itself, as is the case in many European countries. As already mentioned, in fact, the Park owns the areas where the production/logistics settlements of the various companies are present and provides directly for the supply and management of common services inside the Park, such as: public lighting, roads, parking lots, traffic signs, green areas, water, electricity, rail services, port services etc. In this case there would be no particular problems related to the location of the infrastructure, as it would only be necessary to identify the most suitable area for the purpose within the Park;
- in the **second case**, the infrastructure could be located within an area/space belonging to only one of the Park companies. This hypothesis is well understood when, for example, the circumstance already described under paragraph 3.1 occurs concerning the eventuality that within the Park there is a leading company, that for its size and its importance in the area, provides all other particular services and common infrastructures;
- finally, the **third case** is that there is not an adequate area within the Park for the installation of the infrastructure covered by the contract and that it is therefore necessary for the Park companies to purchase (or rent) an area outside the Park itself. In this case, the role of the third legal entity would certainly prove very useful, through which it would be easier to carry out the phases linked to the purchase/renting procedure with a possible seller/lessor.

It is important to clarify that, in the event that the infrastructure or the plant is located in an uncommon area inside the Park and therefore in an area owned by a single company (for example in the case of photovoltaic panels installed on the roof of a company), special attention must be paid to the question of accessibility. This can take on particular importance especially with regard to the possible use, management and maintenance of the infrastructure itself.

5.4 Operational management of the infrastructure

The operational management of the infrastructure is an aspect that assumes particular importance with regard to the hypothesis in which this object of sharing is a plant. In this sense, in fact, the content of the relevant contractual clause within the contract may take different forms depending on whether the following hypotheses occur:

- in the event that the Park has relied on an ESCO, the operational management of the plant will be delegated to this company. Even if it is not the owner of the plant, it will provide for its management by finding remuneration from the supply to the companies of the service connected to it;

- in the event that the Park is not entrusted to an ESCO, the management of the plant, or the infrastructure in general, could be entrusted to the third legal entity, representative of the Park companies, or delegated to external specialized companies.

The regulation of this aspect can vary considerably based on the nature of the shared infrastructure and above all on the management complexity of the same. As already mentioned, referring to infrastructure here does not only mean referring to plant engineering solutions in the strict sense, but also to the sharing of information, communication or logistic technologies.

5.5 Infrastructure maintenance

Closely related to the operational management activity of the infrastructure is its maintenance. This is particularly important if the infrastructure in question is a plant. In this case, in fact, a correct and periodic maintenance of the system can be fundamental for the correct supply of the service and for the lifespan of the system itself.

Also in this case, the situation may vary depending on whether the Park companies have relied on an ESCO or not. In the event that the management has been entrusted to an ESCO, this company will operate the related maintenance activities. Otherwise, the third legal entity, representative of the Park's companies, will have to provide it, possibly employing external specialized companies. In this sense, the maintenance of the plant could in fact be entrusted to the same company supplying the technology and this could be foreseen by the original supply contract.

What is important, compared to the maintenance of the plant, and/or any other shared infrastructure, is the provision of a detailed schedule of maintenance interventions, to be carried out periodically, an appropriate regulation of how to access the area on which it is located infrastructure, as well as a forecast of the methods of payment and allocation of costs related to the interventions.

5.6 Duration of the contract

Compared to the duration of the contract, companies must agree on the period of time for which they plan to share the infrastructure. The agreement must foresee whether the renewal takes place automatically or not, indicating the possible renewal period.

In case an ESCO has been involved, the duration of the contract will be calculated taking into account the needs related to the operational management and to the cash flows deriving from the supply contract. These contracts are generally executed for 10-15 years [20].

5.7 Costs and investments

The contract for sharing an infrastructure must necessarily also regulate any cost items connected to the installation, management and maintenance of the infrastructure itself. In particular, this aspect could easily be managed if the Park has entrusted the ESCO, as in this

case all costs will be borne by it and the companies will have to pay exclusively for the provision of the service.

Otherwise, where there is no agreement with an ESCO, companies will have to negotiate the form of allocation of the various expenses required in the various stages of the construction and management of the infrastructure. Also in this case, the presence of a legal entity third party, can facilitate the management of expenses and accounting, through the creation of a common economic fund, separate from that of the individual companies of the Park.

5.8 Liability of the infrastructure

Finally, the contract concerning the sharing of an infrastructure within an industrial park should provide a specific discipline concerning the profiles of responsibility.

In the case of an installation, the technology provider should provide a specific guarantee to protect users from all risks related to the delivery, health, safety and performance of the installation for the duration of the contract.

The aspects of responsibility linked to the maintenance activities of the plant should also be defined promptly, establishing the cases in which, in the presence of malfunctions, the responsibility of the maintenance workers is to be excluded.

Moreover, even in all those cases in which the shared infrastructure is not a plant, the responsibility for the use of the same by the individual users must be adequately regulated, exempting the Park and the Park companies from any responsibilities connected to improper use by individual companies.

In this regard, it is important to remember the existence of a two-pronged liability criterion for the various parties involved: the same could in fact be called to answer for any damages or unlawful behaviour in the use of shared infrastructure, both within the principles of responsibility contract, but also with respect to non-contractual liability profiles.

6 Conclusions

This Deliverable 2.3 aimed to shed light on a series of contractual issues related to the possibility of implementing cooperative solutions within industrial parks, both in the case where they are related to the sharing of services, and in the case of in which they are related to the sharing of infrastructures. The main conclusive considerations that can be drawn with respect to what is proposed in this document are the following:

- cooperation activities regarding the sharing of services and / or infrastructures can be simplified and facilitated by the presence of a third party legal entity, which has the function of representing all the Park's companies both inside the Park and outside;
- this legal entity can take on a different role by qualifying as an "entity", "company", "consortium" etc., taking into account the legal instruments offered by national regulations and the specific needs of the Park considered;
- the third party legal entity, representative of the Park companies, can effectively carry out technical, commercial and legal activities, exempting companies from costly activities in terms of time, resources and required skills;
- among the activities delegated to the third party legal entity there may be those related to the search for qualified experts/organizations for performing energy audits and commercial bargaining with service providers and technologies (including ESCOs);
- the commercial negotiation with suppliers by the third party, representative of the Park companies, can exploit the advantages linked to the principle of economies of scale, succeeding in obtaining more favourable market prices;
- in the context of sharing a service, companies should regulate aspects such as: consumption of the service, quality of service, monitoring of consumption, monitoring of quality, the price of the service, the related billing mechanism, the possible sharing of sensitive data as well as other legal and management aspects;
- as part of a contract concerning the sharing of an infrastructure, the parties must agree on the aspects related to the ownership of the infrastructure, its location, operational management, maintenance, the duration of the contract, the costs of installation and management, as well as the profiles related to liability for any damage caused to the infrastructure;
- The sharing of sensitive data (such as those related to energy consumption) appears to be one of the most disruptive aspects to the sharing of services and infrastructures between companies, however, from a contractual point of view, this criticality can be easily addressed thanks to the use specific tools, such as the inclusion in the contract

of special "confidentiality clauses" or the stipulation of specific "confidentiality agreements";

- The management of the aspects related to the sharing of sensitive data can be facilitated by the presence of a third party legal entity, which would receive such data from the individual companies, forcing them not to share or disseminate them in any way.

This report offers a series of support elements aimed at simplifying the understanding of any critical issues related to the stipulation of contractual agreements concerning energy cooperative solutions; however, the same does not intend to offer content of an exclusive nature. From this point of view, it is necessary to consider that the drafting of this kind of contractual agreements will be affected by the legislation in the country where the Park is located, as well as the specific will of the parties involved.

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8 Annex I - Contract Template

CONTRACT FOR THE SHARED MANAGEMENT OF THE "xxx" INFRASTRUCTURE AND THE RELEVANT SERVICE OF "yyy"

between

the THIRD LEGAL ENTITY (Entity/Society/Consortium etc.)

and

COMPANY "1"

Preamble

- <NAME OF THE THIRD LEGAL ENTITY>, with registered office in <ADDRESS>, number of the XXXX company, hereinafter referred to as the "third legal entity";
- <COMPANY NAME 1> , with registered office in <ADDRESS>, company number XXXX, hereinafter referred to as the "company";
- <NAME OF THE INDUSTRIAL PARK> site in <ADDRESS>, hereinafter referred to as the "Park".

The third legal entity and the company will be defined in the continuation of the "Parties", or individually the "Party".

Given that:

- inside the Industrial Park there are "n" companies, represented outside by the Third Juridical Subject, with whom they have signed a specific mandate contract on xx/yy/zz;
- "company name 1" is an enterprise of the industrial park;
- with respect to each company, specific energy requirements were recorded through energy audits;
- the Park companies have decided to cooperate in energy efficiency activities;
- the energy efficiency activity identified consists in the construction of a "xx" type plant and in the sharing of the "yy" service that derives from it;
- the third party legal entity undertakes to have the contract signed by each Park company that intends to participate in the energy cooperation activity of the same;

Given the above, the Parties agree as follows:

Article 1 - Premises

The Premises form an integral and substantial part of this contract.

Article 2 - Definitions

For the purposes of this contract, the following terms will have the meanings specified below.

- "Third legal entity": entity/company/consortium representing the companies of the Industrial Park despite being a separate entity from the same;
- "Company": single company belonging to the Industrial Park;
- "Plant": indicates the plant subject to energy cooperation activities;
- "Service": indicates the service that derives from the use of the plant being shared;
- "Technology supplier": indicates the system technology supplier;
- "Energy Supplier": indicates the energy supplier required for the operation of the plant;
- "User": indicates each Park company that uses the Service deriving from the Plant;
- "Energy consumption": indicates the electricity / thermal consumption of the individual Park company;
- "Duration of the contract": indicates the duration of this contract;
- "Date of entry into force": date on which the present contract was duly signed by the Parties;
- "Plant cost/s": indicates the cost of the plant technology and the related costs related to its management / maintenance to be paid to the "Technology Supplier";
- "Service Price": indicates the price that each user must pay to the "Energy Supplier" for using the service;
- "Indexing": indicates the agreed adjustment method for the "Price of the service";
- "Confidentiality agreement": agreement signed between each company and the third party legal entity, according to the model attached to the present contract, concerning the identification of confidential information for which the confidentiality requirement of the provisions of this contract;
- "Confidential Information": the information of commercial value kept confidential by the company through the signing of the Confidentiality Agreement and which can not in any way be disclosed by the third party, under penalty of breach of the confidentiality obligation set forth in this contract;
- "Environmental Regulations": means all or part of a European, state or local law in force at present or in the future, including all permits, registrations and/or authorizations issued against it and/or all judicial orders or administrative, consensus decrees and binding rulings applicable, which refer to the regulation and protection of human health, safety, the environment and/or natural resources (including ambient air, surface water, underground waters, wetlands, land area and subsoil, wildlife, aquatic species and vegetation).
- "Law" means (i) all applicable law in the COUNTRY and in the European Union and includes, by way of example, common law, statutes, regulations, acts, statutes, rules, codes, decisions, proclamations, communications, legislative acts, orders, directives, instruments, procedural rules and/or delegated laws and (ii) any regulatory policies, guidelines or industrial codes applicable to the supply of heat pursuant to this Contract; and (iii) any indications, rules or regulations issued by any competent or regulatory authority.

Article 2 - Object

The present contract intends to regulate the relationship between the individual company of the Park, and the Third Legal Entity, which intend to engage in the shared management of the

site (...) site in (...), as well as the shared use of the service of (...) the same generated, together with the other companies of the Park, which, separately, sign the same contract with the Third Legal Entity.

Article 3 - Properties of the plant

The ownership of the plant is of the Third Legal Entity which takes care of the operation of the same and the correct provision of the service deriving from it, in the name and on behalf of the Park Enterprises. *(On the basis of the different legal form assumed by the Third Juridical Subject, the Park companies could be pro-quota owners of the plant, in relation to the rules established by the sector regulations and by the internal statutes).*

Article 4 - Location of the installation and access to the site

The system is located in <ADDRESS>. The area on which the facility is located is owned by <OWN OWNER NAME>.

Access to the site is guaranteed for installation/management/maintenance needs of the system, by the persons in charge, as agreed with the technology and service provider, in compliance with the regulations issued by the owner of the area.

Anyone of the persons in charge of the installation/management/maintenance of the plant will be liable without any limitation for damage to persons or property deriving from the non-observance of such regulations and internal provisions, of the regulations in force or of the criteria of prudence, diligence, professionalism and good faith.

During the operation of the Plant, the persons in charge of the management/maintenance of the plant will in any case have the right to access it for any need, in compliance with and in application of the above regulations.

Article 5 - Operational management

The company signing this contract commits itself to entrust the operational management of the plant to the subject <NAME OF THE MANAGING COMPANY (*possible ESCO*)>, which undertakes to pay the agreed price according to the relative contractual agreements and on the basis of the following article 17.

Article 6 - Use of the service

The company signing this contract adheres to the conditions of use of the service provided by the <SERVICE PROVIDER NAME (*possible ESCO*)> (*e.g. maximum thermal energy output delivered to the point of delivery*), on the basis of the contract that the third party legal entity has signed with it in the name and on behalf of the Park companies, attached to this contract.

Article 7 - Quality of service

The company signing this contract adheres to the conditions agreed in terms of quality of service provided by the <SERVICE PROVIDER NAME (*Possible ESCO*)>, (*e.g. quality parameters of the water and steam supplied*), on the basis of the contract that the third legal entity has signed with it in the name and on behalf of the Park companies, attached to this contract.

Article 8 - Monitoring activities

The Third Legal Entity will monitor the energy consumption of each company, as well as periodically check <TO DEFINE THE TIMES>, the correct provision of the service by the Service Provider.

Article 10 - System maintenance

The plant will be maintained by the company identified by the third party entity <COMPANY NAME> (*possibly the ESCO/Technology Provider*).

The Third Legal Entity provides for the planning of a routine maintenance program to guarantee the correct maintenance/operation of the plant, providing for the regulation of any need for extraordinary maintenance.

Costs for the costs of maintenance activities will be borne by the Third Legal Entity, which will provide for payment of the same (if the same are not already included in the management costs required by the contract signed with the technology/service provider), referring pro-rate on individual companies.

Article 11 - Costs of the plant

Costs related to the installation/maintenance of the plant are borne by the Third Legal Entity, which will refer, pro-quota, to the individual companies.

In the event that the plant has been assigned to an ESCO, these costs are borne directly by the same; in this case the companies will be required to pay the "Price of the service", as provided for by the following article 12.

Article 12 - Price of the service

The company undertakes to pay the Service Provider the price of the service provided, on the basis of the conditions set out in the contract for the supply of the service that the Third Legal Entity has signed with it, in the name and on behalf of the Park companies. The price will be indexed, based on the mechanism defined by the service contract.

Article 13 - Invoicing mechanism

The Service Provider will invoice the price of the service to the Third Legal Entity, which will issue individual invoice to Park Company on the basis of its specific consumption.

Article 14 - Responsibility

The technology provider provides a specific guarantee to protect the Park companies from all risks related to the delivery, health, safety and performance of the plant for the duration of the contract.

The company does not have free access to the plant and will be liable for any damage caused to it if it has improperly carried out maintenance activities on the same or on the plant equipment it owns in its own business.

The third party legal entity and the other companies of the Park are exempted from any responsibility related to improper use by the company signing this contract. Where the responsibility of the company is found with respect to a damage caused to the plant, the same will be called to compensate for the damage.

The Company signing this contract must use the shared service in accordance with environmental legislation and current laws, remaining in any case responsible for any unlawful conduct of an extra-contractual nature put in place in the use of the service itself.

Article 15 - Confidentiality

The Third Legal Entity must consider as confidential all the Company's Confidential Information, as defined and described in the context of the Confidentiality Agreement attached to this contract. The third legal entity will not disclose such confidential information to any person other than its employees and only to those employees who necessarily need to know the same. The third legal entity guarantees that its employees are aware of and comply with the provisions of this clause.

The above obligations will remain in effect for all purposes with effect despite any termination of this contract.

Article 16 - Duration

This Agreement is valid from <DATE OF SUBSCRIPTION> to <DATE TO BE DEFINED>. Subsequently, the Contract will be tacitly renewed under the same conditions of 12 months in 12 months until the final deadline of the <DATE TO BE DEFINED>.

Article 17 - Resolution

The Company has the right to terminate this contract in advance, with respect to the due date, if the other party substantially violates any of its obligations under this Contract.

Article 18 - In the event of a dispute

In the event of any disputes over the use of the service, quality of service or other matters, both parties will seek resolution through consultation and discussion. Initially the party who wishes to bring the dispute to the notification of others will do so in writing. The other party will respond in writing within 5 working days of receipt of the notification of a potential dispute. Where the potential controversy refers to problems on the spot with one of the signatory companies with respect to the use of the service, a joint meeting will be convened within 8 working days by the third party legal entity.

If a resolution of the dispute is agreed, it must be communicated in writing and noted by both parties.

If after several attempts a resolution of the dispute can't be agreed, the parties will try to resolve it by mediation.

Article 19 - Force Majeure

An event of force majeure is considered to be any extraordinary event occurring after the signing of the Contract which can't be foreseen or preventable, even using the utmost diligence, and independent of the will of the parties which objectively makes it impossible to fulfill the obligation in question; among them, by way of example: wars, even if not declared, riots, expropriations or requisitions of equipment or installations, fires, floods, earthquakes.

The obligation of each Party to comply promptly with one or more obligations originating from the Contract will remain suspended, in whole or in part, exclusively for the period during which

the Party in question is prevented from doing so due to force majeure, to condition that the Party affected by this cause of force majeure:

- Promptly inform the other party in writing of the occurrence of such force majeure and its development;
- Do everything in your ability to resume your performance as soon as possible.

If the event of force majeure lasts for more than 6 months, the Party not affected by the force majeure event shall have the right to withdraw from the Contract.

Article 20 - Prohibition of contract assignment

The Company may not assign or transfer the present Contract to any third parties, unless such transfer or transfer has been previously and specifically authorized by the other party in writing. The Company that intends to transfer or transfer the Contract must first notify the Third Legal Entity indicating the name of the third assignee.

In faith,

Date/Place.....

Date/Place

Signature.....

Signature.....

(Third Juridical Entity)

(Company)

9 Annex II - Confidentiality agreement template

CONFIDENTIALITY AGREEMENT FOR THE MANAGEMENT OF SENSITIVE DATA

BETWEEN

(Company Data of the Industrial Park) _____, Tax Code and VAT _____, with registered office in _____, represented by Mr./Dott. _____, domiciled for the position in _____, cod. fisc. _____ as _____ (Delegated Administrator / President / other) of _____, (hereinafter referred to as the **Revealing Party**);

IS

(Data Legal entity Third) _____, Tax Code and VAT _____, with registered office in _____, represented by Mr./Dott. _____, domiciled for the position in _____, cod. fisc. _____ as _____ (Chief Executive Officer / President / other) of _____, (if natural person) Mr. _____, CF _____, born in _____, the _____, residing in _____ (hereinafter referred to as the **Receiving Party**);

Given that:

- Revealing Party is in possession of confidential information (hereinafter referred to as "Confidential Information" as defined in the following article 3);
- said Confidential Information constitutes a technical and commercial asset of considerable value for the Revealing Party;
- Receiving Party requested to have the Confidential Information available for the purpose of acquiring data relating to the company's energy consumption, in order to identify the best and possible energy cooperation solutions among the companies of the Park <NAME OF THE PARK>;
- the use of such Confidential Information requires adequate forms of protection to guarantee the corporate confidentiality of a Relevant Party;
- to this end it is necessary to define the specific confidentiality obligations imposed on the Receiving Party.

Having said this, the Parties agree as follows:

Article 1 - Premises

The premises are an integral and substantial part of this Agreement.

Article 2 - Object

This Agreement governs the confidentiality obligations to which the Receiving Party is held with respect to the Confidential Information, as defined in the following article, of which it becomes aware in carrying out the activities related to the energy audits that will be carried out at the company of the Relevant Party.

Article 3 - Confidential Information

“Confidential Information” means all information acquired by the Receiving Party, in particular concerning data relating to energy consumption and production processes owned by the Revealing Party, which are not in the public domain, provided that such information is indicated as confidential at the time of communication from the Revealing Party.

Confidential information in addition to the above mentioned energy consumption and production process data may relate, but is not limited, to proprietary and/or trade secret information, technology, services, finances, personnel or business practices or policies, market analyses or projections and forecasts.

The Confidential Information can be acquired in any form (oral, written, graphic, demonstrative, typed or with an example model), without any limitation.

The Confidential Information in question is listed in detail in the document attached to this contract.

Under no circumstances can the information that:

- a. to be in the public domain at the date of signing this Agreement or become such as a result of the aforementioned acquisition by deed or behavior not prohibited to the Receiving Party;
- b. they were known and / or can be shown to have been known by the Receiving Party at the time of transmission;
- c. they have been transmitted to the Receiving Party and expressly qualified as non-confidential;
- d. they have been independently developed by the Receiving Party without using the Confidential Information;
- e. are disclosed to the Receiving Party by a person other than the Revealing Party, which is not bound by a duty of secrecy attributable to this Agreement, and in any case becomes known to the Receiving Party by reason not attributable to it;

The Confidential Information communicated to the Receiving Party by subsidiaries, consultants, agents or representatives of the Revealing Party are also subject to the provisions of this Agreement.

Confidential information shall only be considered as such when:

- a. it has been clearly marked as confidential;
- b. the confidential nature has been presented by the Revealing Party at the time of disclosure, in case of oral disclosure.

Article 4 - Obligations of the Receiving Party

The Receiving Party agrees to maintain absolute confidentiality with respect to the Confidential Information acquired by the Revealing Party and identified as confidential within the scope of this Agreement or any other subsequent documents.

In particular, the Receiving Party agrees to the following provisions:

- a. to consider strictly confidential and, therefore, not to disclose and / or in any case not to make known to third parties the Confidential Information, meaning third parties all subjects other than those identified in Article 4 paragraph 5 of this agreement;
- b. adopt all the necessary precautions and safety measures, according to the best professional standards, in order to keep the information confidential, as well as to prevent unauthorized access, subtraction and manipulation of the same;
- c. strictly observe the current legislation on privacy and personal data protection.

The Receiving Party shall keep the number of persons having access to Confidential Information to a minimum. These persons:

- a. have been advised of the information's confidential status,
- b. must have a need to know Confidential Information in connection with the relationship and/or discussion between the Parties,
- c. are subject to legally binding obligations of confidentiality no less restrictive than those contained in this Agreement.

The receiving Party shall at all times be fully responsible for the compliance by such persons.

The Receiving Party may not use, transfer, reproduce or copy any part of such confidential information in any form transmitted, without the specific written consent of the Revealing Party.

Article 5 - Return of documents

Upon the expiration of this Agreement and / or in the event of termination of the Agreement, the Receiving Party agrees to return the original and all copies of the documents to any Revision, on any media created, containing or referring to the Confidential Information referred to in present Agreement.

The Receiving Party also undertakes to cancel or destroy any registration made on any support of the Confidential Information.

Article 6 - Duration period

This Privacy Agreement will have a term of _____ years starting from the date of subscription.

Article 7 - Prohibition of assignment

No party may assign this Agreement or any of the rights or obligations arising therefrom without the prior written consent of the other party.

Article 8 - Amendment

Any modification to this Agreement must be made in writing and signed by both Parties.

Article 9 - Applicable law and jurisdiction

This Agreement is governed by national laws.

In the event that any dispute concerning the execution and / or interpretation of this Agreement should arise between the Parties, should it not be defined in an amicable way, the competent court is that of _____.

Article 10 - Notifications

All communications relating to Confidential Information pursuant to this Agreement must be addressed to the signatories of this agreement (or to another person that each Party may designate in writing).

In faith,

Date / Place

Date / Place

Signature

Signature.....

(Revealing Party)

(Receiving Party)