

**COMMUNICATION**

**from the European Affairs Committee of the Federal Council  
to the European Commission, the European Parliament and the Council  
pursuant to Article 23f (4) of the Austrian Constitution**

**15 March 2017**

**COM (2016) 862 final**

**Proposal for a Regulation of the European Parliament and of the Council on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC**

and

**COM (2016) 863 final**

**Proposal for a Regulation of the European Parliament and of the Council establishing a European Union Agency for the Cooperation of Energy Regulators**

The “Energy Union Package” is the major priority of the European Commission in the field of EU energy policy. This package of legislative proposals presented by the European Commission at the end of 2016 / beginning of 2017 contains measures relating to energy efficiency, renewable sources of energy, security of electricity supply, governance of the Energy Union, and energy prices. The package was also discussed at the Meeting of Ministers of Energy on 27 February in Brussels. The Federal Council felt that the proposals have to be considered in their entirety and therefore devoted several of its sessions to this topic.

Within the framework of the Energy Union Package of the European Commission, a new proposal regarding the Agency for the Cooperation of Energy Regulators – ACER) has been submitted. The proposal is intended to ensure more effective cooperation between national energy regulators in order to better coordinate national regulatory measures. The stated objective of the European Commission is to create an internal market in electricity. Above all, the proposal provides for the formulation and adoption of network codes and guidelines and for the creation of Regional Operational Centres; to this end, the staff of the existing Agency

is be reinforced.

Without objecting to a coordinated approach at EU level, the Federal Council is extremely sceptical as regards a further extension of the powers of ACER. The structure of ACER and the decision-making processes within ACER are not transparent enough, as has been shown in the course of a discussion about the common German/Austrian price zone. The Federal Council takes a very critical view of any additional tasks to be assigned to ACER. An improvement of the organizational framework and the procedural rules is necessary to guarantee legal certainty and transparency. The possibilities for Member States to exercise national control over ACER are insufficient. Even the legitimacy of ACER can be put into question.

The Federal Council also devoted one of its sessions to the proposed regulation on risk-preparedness in the electricity sector repealing Directive 2005/89/EC, which is to ensure that all Member States put in place appropriate tools to prevent electricity crisis situations. As a matter of principle, the idea of preparing for and managing crisis situations in the electricity sector is seen in a positive light. However, the Federal Council wishes to point out that fundamental rights and freedoms have to be respected: for instance, consequential losses resulting from inadequate electricity supply in one of the Member States must not be passed on to other Member States. Each Member State has to take the necessary precautionary measures through its transmission system operators. The bureaucratic burden resulting from the measures outlined in the proposed regulation should be kept to a minimum.