

31.03.17**Decision**
of the Bundesrat

Proposal for a Regulation of the European Parliament and the Council on the Internal Market for Electricity (Recast)**COM(2016) 861 final**

In its 956th session on 31st March 2017 the Bundesrat adopted the following Opinion pursuant to Article 12, Letter b, TEU:

1. The Bundesrat considers that the requisite legal basis authorising EU action cannot be established for the draft Regulation in its current form. The proposed text signifies an encroachment on the Member States' right to stipulate the conditions for utilisation of their energy resources, to choose between various energy sources and to determine their general energy supply structure (Article 194, Sub-section 2, Sub-sub-section 2, TFEU). The EU does not have comprehensive competences to legislate and introduce harmonisation in this field. The draft Regulation is therefore not in keeping with the TEU.
2. In the Bundesrat's view, violation of the arrangements governing the distribution of powers and responsibilities within the EU may also provide substantiation for a reasoned opinion on the non-compliance of a legislative act with the principle of subsidiarity (see on this point for example BR-Official Document 390/07 (Decision), Section 5; BR-Official Document 43/10 (Decision), Section 2; BR-Official Document 646/11 (Decision), Section 2; BR-Official Document 608/13 (Decision), Section 7). The subsidiarity principle concerns the exercise of powers and responsibilities. Scrutiny of

compliance with the subsidiarity principle therefore necessarily encompasses scrutiny of EU powers and responsibilities in the policy area in question. It would be difficult to justify authorising national parliaments to object to violations of the subsidiarity principle, yet not affording parliaments scope to object to the even more serious infringement that would arise from adoption of EU provisions in areas where the EU does not have the relevant competences.

3. Article 11 of the draft Regulation constitutes a limitation of the general provisions on priority feed-in of electricity from renewable energy sources stipulated in German law. The considerable limitations imposed on priority feed-in for such electricity encroaches on Germany's right to determine how it utilises its energy resources (Article 194, Sub-section 2, Sub-sub-section 2, TFEU). There is a risk that limiting priority feed-in would bring the energy transition - which is functioning highly successfully in Germany in particular - to a standstill. This also runs counter to the objective of decarbonisation of energy provision.
4. The transfer of competences to the Commission concerning decisions on bidding zones encroaches on Germany's right to determine its general energy supply structure of its own accord (Article 194, Sub-section 2, Sub-sub-section 2, TFEU). The decision should instead be made jointly by the countries concerned in each instance on the basis of a proposal from the transmission systems operators. The likely segmentation of existing bidding zones also stands in contradiction to the goal of a harmonised EU internal market.
5. The Bundesrat is of the opinion that it is superfluous to establish Regional Operational Centres (ROC) in the proposed form as a supplement to the existing tasks of the transmission systems operators, and is opposed to this envisaged measure. The Commission has not explained why there would be any need for a further formal coordination body, over and above the existing format of the European Transmission System Operators - ENTSO (Electricity). In particular, it has not been demonstrated that it would be essential to grant the ROC autonomous decision-making competences. The purported welfare gains that the Commission claims would arise from such a shift in competences are highly questionable. Instead, there is reason to fear that entirely superfluous duplicate structures would be created, which would ultimately lead to difficulties in delimiting the scope of powers and

responsibilities, lack of clarity pertaining to ultimate responsibility in this area and serious liability issues. Scope for autonomous regulation by individual Member States of central aspects pertaining to security of supply autonomously must be ensured in future too.

6. In as much as the proposal aims to harmonise network charges at the distribution network level, the Bundesrat is of the opinion that such uniformisation would not take the particularities of the many local distribution system operators into account in an adequate manner. The Bundesrat draws attention to the fact that the influence of distribution network charges on the electricity price is relatively small and furthermore geographically limited, so that as a general rule such charges do not per se have any cross-border significance. Given the limited impact of distribution network charges on electricity markets there is therefore no need for a coordinated European approach - inter alia also from the perspective of respect for the subsidiarity principle. The Bundesrat therefore takes a particularly critical view of the proposal to empower the Commission to adopt binding guidelines for national distribution network fee systems and in particular to adopt network codes for distribution charge structures. The latter in particular can be addressed considerably more productively at the national level than at the European level. Introducing such provisions at the European level would therefore violate the subsidiarity principle (Article 5, TEU). In the Bundesrat's view this violation of the subsidiarity principle is exemplified by Article 16, Sub-section 9 of the draft Regulation, which suggest that European harmonisation of numerous points of detail is required; in point of fact this has not been demonstrated for distribution networks, nor does any such need exist.