



EUROPEAN COMMISSION

*Brussels, 31.7.2017
C(2017) 4456 final*

Dear President,

The Commission would like to thank the Bundesrat for its reasoned opinion on the proposal for a Regulation of the European Parliament and of the Council on the internal market for electricity (recast) {COM(2016) 861 final}.

The proposal is part the "Clean Energy for All Europeans" package, adopted by the Commission in order to establish a stable and forward-looking regulatory framework to meet upcoming energy challenges. The measures included in the package focus on the following three main objectives: energy efficiency first, achievement of a global leadership in renewable energies and a fair deal for consumers.

The further integration of European energy markets is a central prerequisite for achieving the objectives of the package. This requires both adapting the rules governing the electricity market and adapting the competences and functioning of the Agency for the Cooperation of Energy Regulators (ACER).

The Commission takes seriously the concerns expressed by the Bundesrat in its reasoned opinion. It recalls, however, that the proposal aims at amending existing European Union legislation to create a more harmonized framework for cross-border trade, which can legally and practically only be achieved at European level. Furthermore national policy interventions in the electricity sector have a direct impact on neighboring Member States, in fact even more so than in the past as the increasing cross-border trade, the spread of decentralised generation and more enhanced consumer participation increases spill-over effects. Moreover, electricity networks in most of the European Union are closely meshed, with large synchronous areas operating at identical frequencies and core system operation tasks depending on efficient cross-border cooperation, resulting in structural interdependencies and direct impacts of national measures on a wider area. No Member State can effectively act alone and the externalities of unilateral action have become more important. On that basis, the Commission considers that the proposal duly respects the subsidiarity principle.

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President of the Bundesrat
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As regards the Bundesrat's comments on delegated and implementing acts, it should be noted that the principle of subsidiarity will again be fully taken into account when shaping framework guidelines and scoping individual network codes or guidelines.

In response to the more detailed comments in the Bundesrat's reasoned opinion also relating to the substantial elements of the proposal, the Commission would like to refer the Bundesrat to the attached annex.

The proposal is currently in the legislative process involving both the European Parliament and the Council. The Commission remains hopeful that an agreement amongst co-legislators will be reached in the near future.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Julian King
Member of the Commission*

ANNEX

The Commission has carefully considered each of the more substantial issues raised by the Bundesrat in its reasoned opinion and is pleased to offer the following clarifications:

1. European Union Competence

The Commission places particular importance on the full respect of the Treaties including the allocation of competences. Furthermore, Articles 4 (2) and 194 of the Treaty on the Functioning of the European Union (TFEU) provide that the field of energy is a shared competence between the Union and the Member States, allowing the Union to adopt binding legislation and providing national competence to the extent that the Union has not made use of its competence.

The Commission recalls that under Article 194 (2) of the Treaty on the Functioning of the European Union, without prejudice to the promotion of energy efficiency and energy savings and the development of new and renewable forms of energy, EU measures shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply. These limitations are fully respected by the proposed legislation, as explained in more detail below.

2. Priority dispatch and access

The Commission would like to emphasise that Article 16 (2) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources provides for mandatory priority dispatch and priority access of renewable energies. Similar provisions apply to high-efficiency combined heat and power generation in Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency. The provisions on priority dispatch, redispatch and curtailment in Articles 11 and 12 of the proposed Regulation thus modify existing obligations under European Union law. They thus concern an area where the Union has already made use of its shared competence in the past.

On substance, the proposed limitation of priority dispatch does not threaten the success of the energy transition in Germany and the Union. To the contrary, the aim of the proposal is to ensure efficiently and at least-cost the achievement of ambitious goals for an increased share of renewable energies. The Commission is convinced that the success of the internal market, which allows for the aggregation of electricity from variable resources, the joint use of reserve generation and demand response in periods of low generation from renewable energies, and the reduction of system costs as a whole, is essential for achieving these aims. The Commission estimates that in order to achieve the objective of at least 27 % of renewable energies in final energy consumption, the share of renewable energies in electricity generation will be close to 50 % on average by 2030. With such a share in the generation mix, renewable energies will no longer be a small emerging technology but will form the backbone of the European electricity system. Under these circumstances, provisions which

allow far-reaching derogations from fundamental market principles endanger the proper functioning of the internal market. Therefore, the Commission proposes to reduce priority dispatch to small size and demonstration projects, where it can provide clear benefits, as well as maintaining full protection for existing installations. Other installations should be dispatched on the basis of market signals, as is for example already the case in the German "Direktvermarktung"-model.

For further clarity, it should be noted that the German term "Einspeisevorrang" is often understood to include priority for renewable energies in situations of network congestion. This priority, based on existing provisions for "priority access" under EU law, is maintained in the proposal. Article 12 of the proposed Regulation provides that renewable energies are to be curtailed (or subject to redispatch) only after available conventional and combined heat and power generation has been exhausted. By expressly clarifying the order of curtailment, and providing minimum compensation requirements, the protection for renewable energies in this respect is rather strengthened than reduced.

3. Configuration of bidding zones

The Commission is well aware that the question of bidding zones is highly sensitive in Germany.

As regards competence, it is important to underline that the current EU legislation provides for substantive requirements on bidding zone configuration. In its decision in case 39351 – Swedish Interconnectors¹, the Commission found already in 2010 that the single Swedish bidding zone had discriminatory effects on cross-border trade and required modification pursuant to Article 102 of the Treaty on the Functioning of the European Union. Sweden has since introduced a system with four different bidding zones. In addition to requirements under competition law, Annex 1.7 to Regulation (EC) No 714/2009 sets out substantive requirements for the definition of bidding zones.² These include the express provision that negative impacts on the internal market need to be minimized and interconnection capacity shall not be limited in order to solve internal congestion. Finally, Article 32 of Commission Regulation (EU) 2015/1222³ sets out a coherent process for review of the existing bidding zones. Thus, the definition of bidding zones is already subject to extensive substantive and procedural requirements under EU law.

These requirements are based on the importance of well-designed bidding zones for the effective functioning of the internal market for electricity. Structural congestions, which are neither resolved by infrastructure developments nor addressed in a non-discriminatory

¹ Commission Decision of 14 April 2010 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the Agreement on the European Economic Area, in Case 39351 – Swedish Interconnectors.

² Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, OJ L 211, 14.8.2009, p. 15–35.

³ Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management, OJ L 197, 25.7.2015, p. 24-72.

manner by allocating capacities at a bidding zone border, pose a serious threat to market functioning. This includes serious impacts on other Member States, such as congestion inside their grid, reduced cross-border capacities and risks for network stability. As regards market functioning, bidding zones with significant internal structural congestion distort investment signals, and result in dispatch decisions which do not address actual supply and demand. The Commission maintains that network development is the optimal solution to structural congestion and supports Germany in its considerable efforts undertaken in this regard. However, should network development not address the issues in the long run, there is a need for alternative solutions. Given the significant cross-border impact of bidding zones, their optimal definition cannot be resolved by any one Member State alone.

4. Regional operational centres

The challenges that the EU electricity system will be facing in the medium to long term are pan-European and cannot be addressed and optimally managed by individual transmission system operators, rendering the current legal framework ill-suited to the reality of the dynamic and variable nature of the future electricity system. Enhancing the regional set up is therefore a crucial element when building the market design of the future.

To avoid that inefficient solutions are applied at regional level because of lack of agreement between transmission system operators, it is necessary to have a regional entity that can act in the interest of the whole region. This is particularly necessary regarding congestion management.

The regional operational centres will not result in parallel structures to the European network of transmission system operators for electricity. Whereas the European network of transmission system operators for electricity fulfils important governance tasks on a European level, in particular as regards the process for the creation of network codes and guidelines, the proposal on regional operational centres aims at ensuring effective cooperation between transmission system operators on a regional level on technical tasks.

For almost all tasks of regional operational centres, existing legislation already requires coordination in decision-making between transmission system operators. The proposal includes only very limited issues on which regional operational centres decide. These few decisions are necessary to have a regional entity that can act in the interest of the whole region. None of the decisions interferes with the transmission system operators' core activity related to system security. All decisions are about the coordination of issues which can be agreed weeks or months ahead of actual operations. The Commission fully agrees on the need for a clear delineation of responsibilities, including on liability, and believes this is ensured in the proposal.

5. Distribution tariffs

In meeting the 2020 targets and 2030 climate and energy objectives, Member States will have to integrate a high amount of renewable energy sources in their energy systems. A large share of those resources is variable renewable energy sources (for example wind and solar) connected to distribution grids (low and medium voltage). According to available data this number is estimated to be even higher than 90% in Member States like Germany and over 50% in other Member States such as Belgium, the United Kingdom, France, Ireland, Portugal and Spain.

As noted in the Impact Assessment⁴ accompanying the proposals in the "Clean Energy for All Europeans" package, distributed energy resources such as distributed renewable energy sources generation and storage have the potential to participate in national and cross-border energy markets and provide ancillary services.

The access conditions to transmission and distribution systems, including distribution tariffs, should be transparent and ensure a level playing field amongst the different market participants and energy resources. As the number of active consumers and the amount of distributed energy resources will continue to increase, the conditions under which these resources can access the network and participate in the national and consequently cross-border energy markets is expected to become much more relevant. Therefore, uncoordinated and fragmented policies on distribution tariffs and grid connection may create unequal access conditions for energy resources connected to distribution grids of neighbouring Member States and in this way affect the integration of renewable energy sources and the functioning of the internal energy market.

Providing guidance at European Union level on distribution tariff and grid connection issues will facilitate the integration of distributed generation, support the achievement of EU renewable energy sources targets and ensure a competitive internal energy market. These objectives are in line with the aspirations of Article 194 of the Treaty on the Functioning of the European Union. Member States and particularly national regulatory authorities will continue to be responsible for the detailed setting of distribution network tariffs.

Regarding the Agency's recommendation as referred to in Article 16(9) of the proposal for a revised Electricity Regulation, it should be noted that it aims to provide guidance to regulatory authorities and would not be legally binding, and the Commission is not seeking the harmonization of distribution tariff methodologies.

⁴ SWD(2016) 410 final.