



EUROPEAN COMMISSION

*Brussels, 25.7.2017
C(2017) 5209 final*

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the proposal for a Regulation of the European Parliament and of the Council establishing a European Union Agency for the Cooperation of Energy Regulators (recast) {COM (2016) 863 final}.

The proposal is part of a package of ambitious measures, 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 adapting the provisions on the competences and functioning of the European Union Agency for the Cooperation of Energy Regulators (ACER).

The Commission welcomes the Bundesrat's broad support for the Agency as a valuable coordination and advisory body for national energy regulators. In response to the more specific comments in the Bundesrat's opinion, 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 will be reached in the near future.

*Ms. Malu DREYER
President of the Bundesrat
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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,

*Frans Timmermans
First Vice-President*

*Miguel Arias Cañete
Member of the Commission*

ANNEX

The Commission has carefully considered the substantive issues raised by the Bundesrat in its Opinion and is pleased to offer the following clarifications:

On the extension of the powers and responsibilities of the Agency for the Cooperation of Energy Regulators:

As regards the Bundesrat's concerns on the further extension of the powers of the European Union Agency for the Cooperation of Energy Regulators, the Commission would like to stress that the Agency remains a coordinating body of national regulators. The Board of Regulators constitutes the main decision-making body of the Agency. Limited additional powers would be granted to the Agency (Articles 7 to 10 of the proposal) but decisions would still have to be taken by the Board of Regulators in which all national regulatory authorities are represented.

The reference to regulatory issues of "cross-border relevance" in Article 6 of the proposal is not intended to give the Agency an unlimited competence but rather to reflect the role played by the Agency already today in its arbitration role in cases where national regulatory authorities cannot agree on a matter, in particular pursuant to rules set out in the network codes.

On the decision-making process:

As regards decision-making in the Board of Regulators, the current rules require a two-thirds majority with each country having one vote (no weighing of votes). By proposing a simple majority rule, the Commission seeks to facilitate decision-making and to align the Agency's voting rules with those encountered in other European Union Agencies. In addition, the high two-thirds threshold has created blockages in the past and prevented the Agency from taking important decisions in the interest of the internal energy market.

The Commission recalls that the "one member - one vote" principle is also applied in the College of Commissioners and is thus something not uncommon in the executive branch of European institutions. The Agency is part of this executive branch and not a legislative body.

On the powers of the Agency on the configuration of bidding zones:

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

However, structural congestions which are not resolved by infrastructure developments pose a serious threat to the functioning of the European internal energy market. This includes serious impacts on other Member States, such as congestion inside their grid, reduced cross-border capacities etc. The Commission maintains that network development is the optimal solution to structural congestion. However, should network developments not address the issues within an adequate timeframe, 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. In that context, the Commission is well-placed to take all relevant aspects into consideration for an appropriate decision. On this matter, the Agency would be given the power to approve or request amendments to the methodology and assumptions that will be used in the bidding zone review process.