



EUROPEAN COMMISSION

*Brussels, 14.7.2017
C(2017) 4980 final*

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the proposal for a Directive of the European Parliament and of the Council on common rules for the internal market in electricity (recast) {COM (2016) 864 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 three main objectives: energy efficiency first, achievement of a global leadership in renewable energies, and a fair deal for consumers.

The Commission has taken due note of the views expressed in the Opinion and would like to thank the Bundesrat for its broad support for the proposal, in particular the provisions aimed at enabling consumers' activation.

In response to the more technical comments in the 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.

The Commission hopes that these clarifications 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*

*Ms Malu DREYER
President of the Bundesrat
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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 requirement for mandatory public disclosure of authorisation procedures as referred to in points 5 and 6 of the Bundesrat's Opinion, the Commission recalls that this requirement is not new. The proposal's Article 8, which lays down this requirement, is identical to Article 7 of the current Directive¹. No new requirements have been added in the proposal.

As regards the concept of “independent aggregator”, the Commission would like to stress that the purpose of introducing this concept is to increase competition in the retail market and to open the market to new services. In order to facilitate the emergence of new services, providers of aggregation services would not be required to also offer other services – such as supply – as is currently the case in some Member States. The concept of independent aggregators is introduced to ensure that aggregation services can emerge throughout Europe without allowing established market players to delay this development or foreclose the market.

As regards the suggested provisions on dynamic price contracts, the Commission agrees with the Bundesrat's observation that measures ensuring that consumers are fully informed of the opportunities and risks of dynamic tariffs, as well as those concerning the monitoring of such tariffs, are particularly relevant for consumers who may need extra help understanding them, such as households. The Commission takes note of the Bundesrat's suggestion that the introduction of dynamic tariffs should not lead to penalising those choosing a fixed tariff, forcing them to choose also a dynamic tariff. In this respect, the Commission notes that national regulatory authorities as well as competition authorities are best placed to ensure the monitoring of prices and the development of competition on the retail market, with the possibility to act against market abuses where appropriate.

The Commission appreciates that the German legislator, in transposing Article 3(9) of Directive 2009/72/EC into German law, has chosen to make participation in relevant out-of-court procedures mandatory for electricity providers. The German legislator would be free to uphold this choice pursuant to Article 26 of the proposal.

Concerning the provision on “local energy communities”, the Commission would like to underline that it aims at creating an enabling framework for such communities to develop, without creating any privileges for them. The market rules proposed by the Commission ensure that “local energy communities” would operate on the basis of non-discriminatory, fair, proportionate and transparent obligations. Relevant rules would therefore apply when “local energy communities” qualify as Distribution System Operators, including as regards tariffs.

¹ Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211, 14.8.2009, p. 55.

Concerning the suggested provisions on the roll out of smart meters, the Commission considers that these provisions are not incompatible with existing national smart metering arrangements. The purpose of these provisions is merely to allow a selective roll-out.

On the near real-time submission of customer data as referred to in point 21 of the Bundesrat's Opinion, the Commission wishes to clarify that the intention is to ensure that the smart metering system can enable data collection at near-real time; these data do not need to be validated data for billing. The definition of 'near-real time' in Article 2 of the proposal contains the reference to 'down to seconds' indicating that these data are not validated data. If data is collected every few minutes, as the case in Germany, this seems to be acceptable and in the spirit of the Commission's intention with this provision, namely to move away from making the data available with a delay of 24 hours or more.

As regards the mandatory parliamentary hearing before the appointment of the top management of national regulatory authorities as referred to in point 33 of the Bundesrat's opinion, the Commission considers it necessary to reinforce the rules governing the independence of regulatory authorities, especially through the appointment procedure of board members, based on situations encountered in various Member States. The Commission trusts that the introduction of parliamentary hearings would increase the transparency of such appointments and therefore contribute to the greater independence of regulatory authorities.