



EUROPEAN COMMISSION

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Dear Chair,

The Commission would like to thank the Országgyűlés for its Reasoned Opinions 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} and on the proposal for a Directive of the European Parliament and of the Council on common rules for the internal market in electricity {COM(2016) 864 final}.

These proposals are 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 Commission takes seriously the concerns expressed by the Országgyűlés in its Reasoned Opinions. Together with the other proposals in the package these proposals aim at creating a new harmonized framework for cross-border cooperation, which can legally and practically only be achieved at European level. National policy interventions in the electricity sector have a direct impact on neighbouring Member States. This is valid even more so now than in the past as the increasing cross-border trade, the spread of decentralized generation and more enhanced consumer participation increases spill-over effects. 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 proposals duly respect the subsidiarity principle.

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In response to the comments in the Reasoned Opinions relating to the substance of the proposals, the Commission would like to refer the Országgyűlés to the attached annex.

The points made in this reply are based on the initial proposals presented by the Commission which are 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 the clarifications provided in this reply address the issues raised by the Országgyűlés 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 issues raised by the Országgyűlés in its Reasoned Opinions and is pleased to offer the following clarifications:

EUROPEAN UNION COMPETENCE

The Commission places particular importance on the full respect of the Treaties, including the division of competences. Articles 4(2) and 194 of the Treaty on the Functioning of the European Union 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.

In that regard Article 194(2) provides that, without prejudice to the promotion of energy efficiency and energy saving and the development of new and renewable forms of energy, European Union 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 for the individual proposals below.

DECISIONS ON CAPACITY MECHANISMS

Articles 18 and 24 of the proposal for a Regulation on the internal market for electricity provide that the introduction of capacity mechanisms shall be based on the results of a European resource adequacy assessment, and that existing mechanisms shall be adapted to the new rules. Already now, the European Network of Transmission System Operators for Electricity provides regular generation adequacy assessments on a European level. In addition, national assessments are established, which are often used to justify the introduction of capacity mechanisms. The proposal does not exclude that capacity mechanisms may be necessary under certain circumstances. However, the introduction of such mechanisms, which result in a market intervention, has a considerable impact on the functioning of cross-border electricity markets. To limit market distortions and ensure the market can still send investment signals, it is necessary to base any capacity mechanism on an objective analysis, which takes full account of the available resources in neighbouring Member States. The proposed Regulation provides for significant improvements to both the process and content of the assessment of the European Network of Transmission System Operators for Electricity, and the Commission is convinced that such an assessment based on a common methodology and which would take full account of cross-border resources is the best tool to ensure security of supply at the lowest cost and with optimal functioning of the internal energy market.

Finally, Member States remain free to choose their energy sources as guaranteed by Article 194 of the Treaty on the Functioning of the European Union. All types of generation technologies may participate in the energy market, and, with the exception of the most polluting power plants, all types of power plants may be included in capacity mechanisms, where such mechanisms are found to be required on the basis of an objective analysis.

The proposed legislation would not prohibit the construction and operation of coal-fired power plants within the regular electricity market (i.e. outside capacity mechanisms), but it aims to avoid subsidies to plants with emissions higher than 550g CO₂/kWh in the context of capacity mechanisms. The European Investment Bank applies the same emission cap in their Energy Lending Criteria, published in July 2013: indeed 550g CO₂/kWh is the Bank's current Emission Performance Standard for fossil fuel generation projects.

In line with the spirit of the Paris Agreement, the objective of the Clean Energy for All Europeans package is to help the progressive decarbonisation of the European power sector. The package therefore proposes not to incentivise through subsidies new fossil-fuel generation plants that emit more than 550g CO₂/kWh and which risk locking Member States into technologies that are not in line with the decarbonisation objectives. It also proposes a transition period of five years for existing plants, and even after this the limit applies only in as far as public subsidies are involved. The objective of this transition period is to allow Member States to adapt to the new rules while ensuring security of supply and moving towards more climate-friendly generation capacity, better interconnections and demand-response.

REGIONAL OPERATIONAL CENTRES

The challenges that the European 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. As a consequence the current legal framework is no longer 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.

For almost all the 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 would decide. These few decisions are necessary in order to have a regional entity that can act independently of the interest of an individual transmission system operator, on behalf of 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 coordination of issues which can be agreed weeks or months ahead of actual operations. The Commission fully understands the need for a clear delineation of responsibilities, including on liability and aims at ensuring this in its proposal.

MARKET-BASED PRICE FORMATION

As regards market-based price formation, the Commission considers that several tools for the protection of energy-poor or vulnerable customers remain available to Member States, including direct payments or other types of financial and non-financial measures, provided that they do not result in interventions in the setting of the supply price. Such interventions represent an important market barrier by limiting competition and preventing new entries into the market as shown in the impact assessment accompanying the package. Building on the existing acquis, the provisions on market-based prices aim at removing this barrier in line with the subsidiarity principle and based on the competence established under Article 194 of the Treaty on the Functioning of the European Union, ensuring the functioning of the energy market.