EUROPEAN COMMISSION

Brussels, 27.7.2017
C(2017) 5405 final

Dear Marshal,

The Commission would like to thank the Sejm 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}.

This 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 Commission takes seriously the concerns expressed by the Sejm in its Reasoned Opinion. The proposal aims 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, in fact 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 proposal duly respects the subsidiarity principle.

In response to the detailed comments in the Reasoned Opinion also relating to the substantial elements of the proposal, the Commission would like to refer the Sejm to the attached annex.

Mr Marek KUCHCIŃSKI
Marshal of the Sejm
Ul. Wiejska 4/6
PL – 00-902 WARSAW

The points made in this reply are based on the initial proposal adopted by the Commission which 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 Sejm 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 Sejm in its Reasoned Opinion and is pleased to offer the following clarifications:

Energy mix and construction of interconnections

The Commission places particular importance on fully respecting the Treaties, including its provisions on 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.

Article 194(2) of the Treaty on the Functioning of the European Union (TFEU) provides that, without prejudice to the promotion of energy efficiency and energy saving 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 requirements are met in the proposal. None of its provisions require or prevent the use of certain generation technologies in the internal market. Where the proposal provides for technology-related requirements or conditions (such as priority dispatch or CO_2 emissions), these are linked to additional market interventions, which may not contradict policy objectives agreed as legally binding at the European level and should avoid lock-in effects.

As regards the construction of interconnections, the Commission agrees with the Sejm that, while it will often be the most economically efficient solution as interconnections are paramount for the success of the Energy Union, the economic effectiveness of individual projects has to be taken fully into account. The proposal does not provide for binding European Union level decisions on the construction of individual interconnections. Instead, the Regulation provides for rules relating to the efficient allocation of capacities on existing interconnections and the use of congestion rents generated on such interconnections. The construction of new interconnections remains subject to the existing network planning provisions, which are largely unchanged under the Commission proposal.

Developing capacity mechanisms, i.e. creating revenues besides the energy market, has significant impacts on cross-border trade. The Commission in its 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 considerable impacts on the functioning of the internal electricity market. 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 for the process and content of the assessment by the European Network of Transmission System Operators for Electricity, and the Commission is convinced that such an assessment on a common methodology which takes full account of cross-border resources and demand *response is the best tool to ensure security of supply at lowest cost and with optimal functioning of the internal energy market.*

Emissions limits in capacity mechanisms

The Commission is well aware of the role of coal in the Polish economy and its social dimension. The proposed legislation would not limit or prohibit the construction and operation of coal-fired power plants. However, it aims to avoid subsidies to plants with emissions higher than 550g CO_2/kWh in the context of capacity mechanisms. The European Investment Bank applies the same principle in its Energy Lending Criteria, published in July 2013, as its current Emission Performance Standard for fossil fuel generation projects.

In line with the spirit of the Paris Agreement, the objective is to help the progressive decarbonisation of the European power sector. The Clean Energy for All Europeans package therefore proposes not to incentivise through subsidies new fossil-fuel generation plants that emit more than 550g CO_2/kWh and which risk locking Member States in 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.

The new electricity market design sets a framework for capacity mechanisms which builds on a wider European adequacy assessment and cross-border participation. The proposed Regulation on risk-preparedness[1] would ensure that Member States work together to prevent and manage electricity crisis situations and provide the required assistance to each other.

The Commission agrees with the Sejm that the costs of capacity mechanisms to society, where they are necessary at all, need to be kept as low as possible. However, this does not mean that in addressing security of supply concerns other important policy objectives should be completely forgotten. Reaching the CO_2 reduction objectives would become significantly more expensive if new, subsidized generation creates lock-in effects.

Use of congestion rents

Interconnection capacity forms the basis for the integration of the internal market for electricity. Several Member States, including Poland, still have only limited interconnection capacity available. Improving interconnection is thus of paramount importance for the Energy Union to succeed. Revenues from the use of interconnection capacity are created only when there is congestion on the interconnection. Congestion is a sign that there is more demand for cross-border capacity than can be allocated to the market. Currently, as an EU-wide average, more than a third of this revenue is being used to lower transmission tariffs, instead of going towards investments that can address the congestion problem.

[1] COM(2016) 862 final.

The Commission wishes to underline that competitive and acceptable system costs are of high importance. However, if an increase in transmission tariffs allows cheaper electricity to be imported, this can also result in a reduction of system costs as a whole, and thus save money for consumers. If revenues from congestion are not used to address the underlying scarcity of interconnection capacity, they do not contribute to solving the problem which created the revenue. This is why already under current law, such revenues should in principle be used for the improvement of interconnection capacity.

The Commission now proposes to strengthen the rules on what can actually be done with proceeds from congestion management, while also providing more transparency in accounting for them.