



EUROPEAN COMMISSION

Brussels, 25.7.2017
C(2017) 5212 final

Dear President,

The Commission would like to thank the Senat 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 concerning common rules for the internal market in electricity (recast) {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 has taken note of the views expressed by the Senat in its Reasoned Opinions. It considers, however, that the proposed changes to the Directive and the Regulation are necessary to achieve the purpose of an integrated EU electricity market as these cannot be reached – legally and practically – at a national level alone in an equally efficient manner. Evidence has shown that isolated national approaches have led to delays in the implementation of the internal energy market, leading to sub-optimal and incompatible regulatory measures, unnecessary duplication of interventions and delays in correcting market inefficiencies.

Therefore, the proposals aim at improving the framework for cross-border cooperation. National policy interventions in the electricity sector have a direct impact on neighbouring Member States, 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.

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As regards, more specifically, the proposed Regulation, the Commission notes the Senat's statement in the Reasoned Opinion that the obligation to include cross-border trade in internal energy markets does not comply with the principle of subsidiarity. The Commission wishes to underline that non-discrimination and equal treatment of cross-border trade is a fundamental principle of all internal market legislation, and is directly enshrined in the Treaties and long-standing practice of the Commission and the case-law of the Court of Justice. This applies equally to the area of electricity. Without the full inclusion of cross-border trade in national energy markets, no functioning internal energy market is thinkable. The Commission is thus convinced that providing equal market access for market participants in all Member States is a fundamental requirement for the success of the Energy Union.

On that basis the Commission considers that the proposals duly respect the subsidiarity principle.

In response to the more detailed comments in the Reasoned Opinions relating to the substantial elements of the proposals, the Commission would like to refer the Senat to the attached annex.

The points made in this reply are based on the initial proposals adopted 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 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 Senat 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 each of the issues raised by the Senat in its Reasoned Opinions and is pleased to offer the following clarifications:

1. Energy mix

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 both proposals. None of their provisions require or prevent the use of certain generation technologies in the internal market. Where the proposals provide for technology-related requirements or conditions (such as priority dispatch or CO₂ 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.

2. 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 CO₂/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 CO₂/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. 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-preparedness¹ would ensure that Member States work together to prevent and manage electricity crisis situations and provide the required assistance to each other.

3. 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 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 because of the lack of agreement between transmission system operators, it is necessary to have a regional entity that can act independently in the interest of the whole region.

The Commission is confident that the regional operational centres will reinforce energy security of supply as they will ensure better coordination. First, the functions to be carried out by regional operational centres for which they will have decision-making power will take place in the day-ahead and intraday timeframes. Hence, such functions exclude real time operation of the system. Second, the proposed recast of the Electricity Regulation requires the active participation of the transmission system operators of the system operation region. Third, the "cooperative decision-making procedure" in the proposal sets out a number of safeguards, such as the possibility for regional operational centres to review the decision if the transmission system operators of the region express concerns.

Finally, it should be noted that 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 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, as already explained above. 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 believes this is ensured in the proposal.

¹ COM(2016) 862 final.