



## EUROPEAN COMMISSION

*Brussels, 25.8.2017*

*C(2017) 5961 final*

*Dear President,*

*The Commission would like to thank the Camera Deputaților 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} as well as for its separate opinion on that proposal and on the Commission Communication on Clean Energy For All Europeans {COM (2016) 860 final}.*

*The proposal for a Regulation and the Communication are part of the "Clean Energy for All Europeans" package, adopted by the Commission in order to establish a stable and forward-looking regulatory framework for the 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 Camera Deputaților in its reasoned opinion. It however considers that the proposed changes to the Regulation are necessary to achieve the purpose of an integrated European electricity market which cannot be achieved – 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 proposed amendments are intended to improve the existing framework for cross-border cooperation. National policy interventions in the electricity sector have a direct impact on neighbouring Member States. This is valid even more now than in the past as the increasing cross-border trade, the spread of decentralised generation and more enhanced consumer participation increases spill-over effects. No Member State can effectively act alone and the impact (often negative) of unilateral action by one Member State on other Member States has become more important. This naturally calls for some adaptations to the existing electricity market legislation. On that basis the Commission finds that the proposal duly respects the subsidiarity principle.*

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President of the Camera Deputaților  
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*In response to the comments in the reasoned opinion relating to the substance of the proposal, as well as to its separate opinion on that proposal and the Communication, the Commission would like to refer the Camera Deputaților to the attached annex.*

*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 hopes that the clarifications provided in this reply address the issues raised by the Camera Deputaților and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Christos Stylianides  
Member of the Commission*

## ANNEX

*The Commission has carefully considered the substantive issues raised by the Camera Deputaților in its reasoned opinion and opinion and is pleased to offer the following clarifications.*

### **On the reasoned opinion on the proposed Directive on the internal market for electricity**

*On point 3 and 4 of the reasoned opinion: The Commission recalls that 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 alone. 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 regional cooperation is therefore a crucial element when building the market design of the future.*

*To ensure better security of supply and to avoid that inefficient solutions are applied at regional level because of a lack of appropriate coordination or agreement between transmission system operators, it is necessary to have a regional entity that can act in the interest of the whole region. This is particularly necessary regarding congestion management at borders.*

*The Commission wishes to emphasise that regional operational centres would only have decision-making powers on very limited issues. None of these decisions would interfere with the transmission system operators' core activity related to system security as all decisions concern the coordination of matters which can be agreed weeks or months ahead of actual operations.*

*On point 5, 6 and 8 of the reasoned opinion: The Commission notes that the points raised by the Camera Deputaților do not relate to the proposal on the internal market for electricity, but rather to 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].*

*As regards the proposal to extend the competences of the Agency for the Cooperation of Energy Regulators, the reference to regulatory issues of “cross-border relevance” in Article 6 of the proposal was not intended to give the Agency an unlimited competence. It rather reflects the role played by the Agency already today in arbitrating cases where national regulatory authorities cannot agree on a matter, in particular pursuant to existing network codes. The current role of the Agency frequently goes beyond infrastructure matters.*

*With regard to the concerns raised on the Agency's competences in regional matters, the Commission wishes to stress that the procedure laid down in Article 7 of the proposal would only apply to decisions on terms, conditions or methodologies laid down in network codes and guidelines to be adopted pursuant to Article 5(2) of the proposal. Currently, these network codes and guidelines provide for individual decisions to be taken by each national regulatory authority and a subsequent decision to be taken by the Agency when the national authorities cannot agree. The proposal simplifies the procedure, conferring the power to*

*decide directly to the Board of Regulators where the national regulators are represented. When matters are considered to be of regional relevance, a regional subgroup would be able to submit a recommendation on the matter to the Board of Regulators.*

*As regards the wording added under Article 14 of the proposal, this is a simple clarification which follows the case-law of the Court of Justice of the European Union (the so-called post Meroni jurisprudence). The case-law of the Court has set many limitations to the powers that may be granted to European Union Agencies which have been taken into account in the Commission's proposal.*

*On point 10 of the reasoned opinion, as regards market-based price formation, as set out in the proposal for a recast of Directive on common rules for the internal market in electricity<sup>1</sup>, the Commission considers that the proposed changes do not undermine the Member States competence to define and protect vulnerable and energy poor customers, as well as to ensure the competitiveness of economic entities. Several tools for the protection of vulnerable and energy poor 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. In particular, the Commission considers that energy efficiency measures are better suited to effectively and sustainably tackle energy poverty. Retail price regulation represents an important market barrier by limiting competition and preventing new entries into the market as shown in the Impact assessment accompanying the recast proposals.*

*Building on the existing acquis, the proposed measures on market-based price formation 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 on ensuring the functioning of the energy market.*

**On the opinion on the proposal Directive on the internal market for electricity and on the Communication on Clean Energy For All Europeans:**

*On point 2 of the opinion: the Commission wishes to underline that the proposal for a Regulation on the internal market for electricity does not restrict the decision-making on Member States national energy mix. The Commission underlines that Member States remain free to choose their energy sources as guaranteed by Article 194 of the Treaty on the Functioning of the European Union.*

*On point 4 of the opinion: the proposal does not forbid Member States to also carry out national or regional resource adequacy assessments. However, it is the European resource adequacy assessment which will be used to identify a resource adequacy concern and determine whether or not a Member State can apply a capacity mechanism.*

*On point 5 of the opinion: currently more than a third of the congestion income is being used to lower transmission tariffs, instead of going towards investments that can address the congestion problem. We need to ensure that the proceeds from congestion management are*

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<sup>1</sup> COM(2016) 864 final.

*being used to solve the very problem that generates the income. The Commission now proposes to strengthen the rules on what can actually be done with proceeds from congestion management, while also enforcing more transparency in accounting for the congestion management proceeds. The Agency for the cooperation of energy regulators would help setting up these new rules.*

*On point 9 of the opinion: the Commission welcomes the Camera Deputaților's support regarding consumer empowerment. In that regard the Commission recalls that the proposal for a Directive of the European Parliament and of the Council concerning common rules for the internal market in electricity {COM (2016) 864 final} includes measures, such as provisions enabling active consumers and local energy communities, aimed at improving the consumer engagement and increase retail competition. In addition to the legislative changes, consumers would also benefit from more focused European Union action on research and innovation and more focused European Union funding so that the objective of putting consumer at the centre of the European Union energy market is reflected across all policy areas. The ultimate goal is to support jobs, growth and investment in Europe and the energy market reform is an important component of our strategy.*

*On point 10 of the opinion: the Commission agrees that the development of smart technologies, including smart metering systems, must be accompanied by a framework of protection of personal data and privacy. This framework is provided at European Union level by the General Data Protection Regulation<sup>2</sup>. Furthermore, in the context of the smart metering rollout the Commission has already provided guidance to Member States through two Recommendations, on the specific issues of data protection, privacy and security and it continues the work in this area.*

*According to the proposed Directive, Member States would have to put in place transparent rules under which data can be accessed in a non-discriminatory way and ensure the highest level of data protection and security as well as the impartiality of the market actors which handle data, independently of the data management model in place.*

*On point 11 of the opinion: the Commission recalls that the proposed Directive contains measures to improve retail competition to the benefit of all consumers by measures such as removing price regulation, ensuring that all consumers get free-of-charge access to at least one certified energy comparison tool and prohibiting switching related charges.*

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<sup>2</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 4.5.2016, p. 1–88.