



EUROPEAN COMMISSION

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C(2017) 4102 final

Dear President,

The Commission would like to thank the Senat for its Reasoned Opinion on 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}.

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 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 further integration of European energy markets is a central prerequisite for achieving the objectives of the package. This also requires adapting the competences and functioning of the Agency for the Cooperation of Energy Regulatory Authorities (ACER).

The Commission welcomes the Senat's broad support for an increased involvement of the Agency in the development of the internal energy market and takes seriously the concerns expressed in its reasoned opinion.

In the Commission's view, the proposal fully respects the principles of subsidiarity and proportionality. The initiative aims at amending existing European Union legislation and at creating a new framework for cross-border cooperation, which can legally and practically only be achieved at European level. Furthermore national policy interventions in the electricity sector have a direct impact on neighbouring Member States, in fact even more 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 externalities of unilateral action have become more important. This naturally calls for some adaptations to the Regulation governing the Agency for the Cooperation of Energy Regulators.

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In response to the comments in the Reasoned Opinion relating to the substance of the proposal, the Commission would like to refer to the attached annex.

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 the substantive issues raised by the Senat in its Reasoned Opinion and is pleased to offer the following clarifications.

On Point 1 of the opinion: The possibility for the Agency to make recommendations "at its own initiative" (Article 6(2) of the proposal) refers to non-binding recommendations which could be agreed between national regulatory authorities. These recommendations could be issued at an early stage, prior to when processes have to be developed by national authorities. It would allow for better streamlining of the decision-making process and prevent later discrepancies and problems.

On Point 2 of the opinion: As regards the Senat's concerns on the Agency's competences in regional matters, the Commission wishes to stress that the procedure laid down in Article 7 of the proposal only applies to decisions on terms, conditions or methodologies foreseen, 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 in case the national authorities cannot agree. The proposal simplifies the procedure, conferring the power to decide directly on 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. This procedure is described in Article 7 of the proposal and would not apply to regional operational centres (Article 8).

As regards the Senate's remarks concerning the rotating coordinating national regulatory authority referred to in Article 7(5) of the proposal, the Commission is open to examine changes to the duration of the rotation period. It also shares the Senat's views that the Administrative Board and the Board of Regulators should be subject to provisions guaranteeing their independence from national interests and would be open to consider this point. Furthermore, the Commission acknowledges the need for the Agency to have an adequate budget to carry out its tasks efficiently.

On Points 3 and 4 of the opinion: As regards the Senat's observations on the Regional Operational Centres the Commission recalls that the provisions governing these centres are laid down in the proposal for a Regulation of the European Parliament and of the Council on the internal market for electricity (recast) {COM(2016) 861 final}. The Commission wishes to emphasise that Regional Operational Centres would only have decision-making powers on very limited issues. These few decisions are necessary to have a regional entity that can act independently of the interest of an individual transfer of the national competences, on behalf of the interest of the whole region. None of the decisions interfere with the transfer's core activity related to system security. All decisions concern the coordination of matters which can be agreed weeks or months ahead of actual operations.

On Point 5 of the Opinion: As regards the decision-making process in the Board of Regulators, the current rules require a two thirds majority. The Commission suggests replacing it by a simple majority rule in order to facilitate decision-making and align the voting rules with the ones applying in other European Union Agencies. In addition, the Commission has experienced that the two-thirds majority has created blockages in the past, preventing the Agency from taking important decisions in the interest of the internal energy market.

Regarding the changes in Article 5(2) of the proposal, the Commission wishes to clarify that the current decision-making process which applies to the development of proposals for terms and conditions or methodologies for the implementation of network codes and guidelines is lengthy and cumbersome. It has proved to be inefficient, taking place in two rounds (first at the level of national regulatory authorities and then at the level of the Agency who is already involved today whenever at least one national regulatory authority does not agree to the proposal). The Commission's proposal aims at streamlining the procedure. It does not create new powers for the Agency in this field as it is already involved on the basis of the current procedure foreseen in the network codes and guidelines.