



EUROPEAN COMMISSION

Brussels, 12.7.2017
C(2017) 4909 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 on the internal market for electricity (recast) {COM(2016) 861 final} and for its Opinion on the proposal for a Directive of the European Parliament and of the Council on common rules for the internal market in electricity (recast) {COM(2016) 864 final}.

The proposals 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 to meet 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 would like to thank the Senat for its support concerning the provisions of the proposed Directive while taking due note of the views and observations expressed in the Opinion.

The Commission takes seriously the concerns expressed by the Senat in its Reasoned Opinion on the proposal for a Regulation on the internal market for electricity. Together with the other proposals in the package, that 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, 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.

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In response to the comments in the Reasoned Opinion and in the Opinion relating to the substance 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 presented by the Commission which are currently in the legislative process involving both the European Parliament and the Council.

The Commission hopes that these clarifications 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 and is pleased to offer the following clarifications:

REGIONALIZATION

The Commission agrees that isolated regional approaches cannot replace the creation of a truly integrated internal market at European level. The Commission also shares the view of the Senat that the costs of the energy transition have to be taken into account, ensuring that they do not endanger the competitiveness of the European economy.

This being said, regional approaches can be an appropriate and cost-effective solution to many of the challenges in the European electricity system. It is important to note that on a technical side, the European electricity system consists of interrelated local, national, regional and pan-European elements. Where regional approaches are chosen, it is thus important that each region takes fully into account the impact it has on neighbouring areas, and that the joint objective at all levels remains the creation of a well-functioning internal market. The Commission considers that this principle has been respected in the proposal for a Regulation on the internal market for electricity.

EMISSIONS LIMITS IN CAPACITY MECHANISMS AND EUROPEAN ADEQUACY ASSESSMENT

The Commission is well aware of the role of coal in the Romanian economy and its social dimension. The proposed Regulation 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 of the Clean Energy for All Europeans package is to help the progressive decarbonisation of the EU 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 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.

Developing capacity mechanisms and creating revenues besides the energy market has a significant impact on cross-border trade. The proposal for a Regulation 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 cross-border electricity markets. To limit market distortions and ensure that 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 the content of the assessment by the European Network of Transmission System Operators for Electricity, and the Commission is convinced that such an assessment - which would be based on a common methodology taking full account of cross-border resources and demand response - is the best tool to ensure security of supply at the lowest cost and ensure optimal functioning of the internal energy market. This does not exclude the possibility for Member States to conduct additional national assessments of generation adequacy. Therefore, in order to assess the impact of a capacity mechanism on the European internal market, and to assess whether such a market intervention can be justified under European rules, the joint European adequacy assessment which fully takes account of cross-border effects is in the Commission's view the appropriate basis.

In that regard the proposal for a Regulation of the European Parliament and of the Council on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC {COM (2016) 862 final}, which is another element of the Clean Energy for All Europeans package, also aims to ensure that Member States work together to prevent and manage electricity crisis situations and provide the required assistance to each other.

REGULATED PRICES

The Commission considers that the provisions of the proposal for a Directive on common rules for the internal electricity markets maintain the possibility for Member States 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.

The regulation of retail prices represents 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 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 the Article 194 of the Treaty on the Functioning of the European Union on ensuring the functioning of the energy market.

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 ensure better security of supply and to avoid that inefficient solutions are applied because of a 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.

The Commission is confident that the regional operational centres laid down in the proposal for a Regulation will not endanger the national energy security of supply, but rather enhance it. 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 proposal for a 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 for a Regulation includes only very limited issues on which regional operational centres decide. These few decisions are necessary to have a regional entity that can act independently in 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 the 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.