



EUROPEAN COMMISSION

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Dear Presidents,

The Commission would like to thank the Cortes Generales for their 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}.

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 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 Cortes Generales in their 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 – legally and practically – cannot be achieved 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.

Moreover, 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 considers that the proposal duly respects the subsidiarity principle.

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In response to the concerns in the Reasoned Opinion relating to the substance of the proposal, the Commission would like to refer the Cortes Generales 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 remains hopeful that an agreement will be reached in the near future.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Cortes Generales 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 substantive issues raised by the Cortes Generales in their Reasoned Opinion and is pleased to offer the following clarifications:

On convergence of imbalance settlement periods

As regards the Cortes Generales' concerns on the convergence of imbalance settlement periods in Article 7(4) of the proposal, the Commission would like to underline that this provision constitutes a mere codification of the provision laid down in the Commission Regulation establishing a guideline on electricity balancing¹.

On the use of delegated acts

Regarding the Cortes Generales' concerns on the proposed delegation of powers to adopt delegated acts, the Commission's approach to the delegation of powers is based on the principle that acts adopted through a legislative procedure best ensure the democratic legitimacy envisaged by the Treaties. However, properly used, delegated or implementing powers are an integral tool of better law-making, contributing to simple and up-to-date legislation and its efficient and swift implementation. Therefore, the Commission would only propose empowerments for delegated or implementing acts where they concern non-essential elements and are justified, namely when it is not possible or less efficient or effective to include the relevant elements directly in the basic legislative act.

In order to make the Regulation on the internal market for electricity fully operational, the power to adopt detailed provisions has been deemed necessary. The proposed delegation of powers provides for clear and concise criteria, giving limited discretion to the Commission. The Commission would involve Member States in the preparation of these acts and would ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

Moreover, the Commission recalls that the adoption of detailed provisions via the comitology procedure has played a key role in the past in furthering the integration of the internal electricity market. In a field with so many technical requirements like energy markets, technical legislation is essential to achieve sufficient regulatory control, achieve agreement on cross-border issues and further market integration.

On the configuration of bidding zones

As regards the Cortes Generales' concerns about the configuration of bidding zones, the Commission would like to stress that structural congestions which are not resolved by infrastructure developments pose a serious threat to the functioning of the European internal energy market. This includes serious impacts on other Member States, such as congestion inside their grid, reduced cross-border capacities etc. The Commission considers that network development is the optimal solution to address structural congestion. However, should network development not address the issues within an adequate timeframe, there is a

¹ <http://ec.europa.eu/energy/en/topics/wholesale-market/electricity-network-codes>

need for alternative solutions. Given the significant cross-border impact of bidding zones, their optimal definition cannot be resolved by each Member State separately. In that context, the Commission is well-placed to take all relevant aspects into consideration for an appropriate decision.

On progressive convergence of transmission and distribution tariff methodologies

As regards the Cortes Generales' concerns on Article 16(9) of the proposal, the Commission wishes to underline that this provision does not pave the way for any harmonisation but rather allows the Agency for the Cooperation of Energy Regulators to address recommendations to national regulatory authorities on some key aspects of transmission and distribution tariffs. Highly different methodologies for transmission and distribution tariffs have an impact on the internal energy market and create barriers to trade between Member States.

On the establishment of regional operational centres

As regards the regional operational centres, the Commission would like to highlight that for almost all tasks attributed to these centres, existing legislation already requires coordination in decision-making between transmission system operators. The proposal includes only very limited issues on which the regional operational centres may decide. These few decisions are necessary to ensure that a regional entity can act in the interest of the whole region. None of these decisions would interfere with the transmission system operators' core activity related to system security. All decisions relate to the coordination of issues which can be agreed weeks or months ahead of the actual operations.

On capacity mechanisms

As regards the Cortes Generales' concerns on capacity mechanisms, the Commission considers that a patchwork of capacity mechanisms across the European Union risks affecting cross-border trade and distorting investment signals in favour of countries with more "generous" capacity mechanisms. Nationally determined generation adequacy that does not take into account cross-border capacity will also result in over-capacity. Capacity mechanisms may strengthen market incumbents if they, for instance, do not allow new or alternative providers to enter the market. Capacity mechanisms are also likely to lead to over-compensation of the capacity providers – often to the benefit of incumbents – if they are badly designed and non-competitive. All of these issues could undermine the functioning of the internal energy market and increase energy costs for consumers.

The Regulation proposes the development of a revamped EU-wide adequacy assessment methodology as well as annual adequacy assessments to be carried out by the European Network of Transmission System Operators for Electricity. This should help to make discussions with Member States in relation to their resource adequacy concerns objective. However, the proposal does not prevent Member States from also carrying out national resource adequacy assessments for other purposes if they so wish.

On the opening of capacity mechanisms to other Member States

Finally, as regards the opening of capacity mechanisms to other Member States, the Commission would like to underline that explicit cross-border participation in market-wide capacity mechanisms is essential to minimise distortions to cross-border competition and trade, ensure incentives for continued investment in interconnection and reduce the long-term costs of European security of supply.