



5.7.2017

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: Reasoned opinion of the Austrian Bundesrat on the proposal for a regulation of the European Parliament and of the Council on the internal market for electricity (recast)
(COM(2016)0861 – C8-0492/2016 – 2016/0379(COD))

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, national parliaments may, within eight weeks of the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why they consider that the draft in question does not comply with the principle of subsidiarity.

The Austrian Bundesrat has sent the attached reasoned opinion on the aforementioned proposal for a regulation.

Under Parliament's Rules of Procedure the Committee on Legal Affairs is responsible for matters relating to compliance with the subsidiarity principle.

REASONED OPINION

of 9 May 2017 of the EU Committee of the Bundesrat of the Republic of Austria drawn up pursuant to Article 23(g)(1) of the Constitution in conjunction with Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality

COM(2016)0861 final

Proposal for a regulation of the European Parliament and of the Council on the internal market for electricity (recast) (text with EEA relevance)

A. Reasoned opinion

The proposal under consideration is incompatible with the subsidiarity principle.

B. Grounds

In the field of EU energy policy, there is one major priority, namely the Commission's 'Energy Union package'. The Commission submitted the package at the end of 2016/beginning of 2017. It contains a collection of measures relating to energy efficiency, the development and integration of renewables, ecodesign, security of electricity supply, management of the Energy Union (governance), rules on the energy market, the active role of consumers and energy prices. The package was also debated at the meeting of Energy Ministers in Brussels on 27 February 2017. The proposals must be seen in conjunction with each other, and, after the relevant documents were received, the Bundesrat devoted a number of meetings to their consideration. This reasoned opinion concerns the proposal for a regulation of the European Parliament and of the Council on the internal market for electricity.

Under Article 13(3) of the proposal for a regulation, a bidding zone review would have to be carried out. At present, transmission system operators involved in reviewing a bidding zone configuration develop the methodology to be used for modifying the configuration, submitting it to the participating Member States and/or national regulatory authorities for approval (cf. Article 32(4) of Regulation (EU) No 2015/1222 - CACM Regulation), whereas power to take a decision on approving methodology and alternative bidding zone configurations considered (Article 13(3) of the proposal for a regulation) and on modifying or maintaining a bidding zone configuration (Article 13(4) of the proposal for a regulation)

would be transferred by the Member States to the Agency for the Cooperation of Energy Regulators (ACER) and to the Commission respectively.

From a subsidiarity perspective, this expansion of powers - for ACER in particular, but also for the Commission - is a critical issue, especially in view of the fact that, because of greater technical familiarity and better insight into regional circumstances, configuration of bidding zones can be carried out more effectively at national or, as the case may be, regional level. Moreover, the approval of methodology and assumptions and the choice of alternative-configuration scenarios to be reviewed are matters of judgment to a considerable extent that, under settled Court of Justice case law, may not be outsourced to an agency. In accordance with the subsidiarity principle, the EU can act only if it can do so more efficiently than the Member States themselves. Because of greater familiarity with the issues concerned, and because of better insight, the powers referred to, which, under Article 13(3) and (4), would be transferred to ACER and to the Commission respectively, should preferably be exercised at national and regional level respectively.

Article 2(39) of the proposal for a directive defines the concept of 'regional operational centre' (ROC). Articles 31-44 of the proposal for a regulation lay down more detailed provisions concerning ROCs. The Commission has not sufficiently explained what organisational added value ROCs would possess over and above the established service companies of transmission system operators and coordination through the European Network of Transmission System Operators (ENTSO for Electricity). Moreover, the Bundesrat considers that the replacement of national decision-making powers with a supraregional, autonomous organisational body constitutes a clear restriction of those powers. Particularly critical in this context is the power to issue legally binding decisions to be vested in ROCs, powers similar to those normally vested in authorities, for example with regard to the scale of reserve capacity, in relation to which there is no provision whatsoever for legal remedies. It is also feared that the establishment of ROCs will create parallel structures, which will ultimately lead to difficulties in decision-making processes and hence, overall, to inefficiencies. The Bundesrat therefore has no hesitation in rejecting the proposed organisational principle. The regional sizing of balancing reserves is regulated in Article 5 of the proposal for a regulation. It is also stipulated that ROCs would have to support transmission system operators with this. Regional sizing of balancing reserves is also rejected out of hand, since that would restrict national decision-taking powers. Such exercise of powers is incompatible with the subsidiarity principle.

In addition, empowering the Commission to adopt delegated acts, as provided for in Article 63 of the proposal for a regulation, is vehemently opposed. Under the EU Treaties, that power may be conferred on the Commission only under strict conditions. Accordingly, the adoption of delegated acts must remain strictly exceptional.