



22.5.2017

## **NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY**

**Subject:** Reasoned opinion of the Spanish Parliament on the proposal for a regulation of the European Parliament and of the Council on the internal market for electricity (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.

Please find attached a reasoned opinion from the Spanish Parliament on the above-mentioned 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 1/2017 OF THE JOINT COMMITTEE ON THE EUROPEAN UNION, OF 26 APRIL 2017, ON A BREACH OF THE SUBSIDIARITY PRINCIPLE IN RELATION TO THE PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE INTERNAL MARKET FOR ELECTRICITY (RECAST) (TEXT WITH EEA RELEVANCE) [COM (2016) 861 FINAL] [COM (2016) 861 FINAL ANNEX I] [COM (2016) 861 FINAL ANNEX II] [2016/0379 (COD)] {SWD (2016) 410 FINAL PARTS 1 TO 5} {SWD (2016) 411 FINAL} {SWD (2016) 412 FINAL PARTS 1 AND 2} {SWD (2016) 413 FINAL}

## BACKGROUND

A. The Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Lisbon Treaty of 2007 and in force since 1 December 2009, provides for a procedure by which national parliaments can monitor the compliance of EU legislative proposals with the principle of subsidiarity. That Protocol has been applied in Spain by means of Law 24/2009 of 22 December 1994, amending Law 8/1994 of 19 May 1994. New Article 3(j), and new Articles 5 and 6 in particular of Law 8/1994 form the legal basis for this reasoned opinion.

B. The proposal for a directive of the European Parliament and of the Council on common rules for the internal market in electricity (recast), the proposal for a regulation of the European Parliament and of the Council on the internal market for electricity (recast), and the proposal for a directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (recast) have been approved by the Commission and forwarded to the national parliaments, which have eight weeks to check the subsidiarity of the initiatives. That period ends on 9 May 2017 for the first proposal mentioned above, and on 17 May 2017 for the other two.

C. On 30 March 2017, the Bureau and the spokespersons of the Joint Committee on the European Union agreed to examine the EU legislative proposals referred to above. A member of the Spanish Parliament, Pilar Rojo Noguera, was appointed as rapporteur and the government was asked to draft the report provided for in Article 3(j) of Law 8/1994.

D. Reports have been received from the government confirming that the two proposals for directives are consistent with the principle of subsidiarity. A third report from the government, however, points to the fact that certain provisions in the proposal for a regulation breach the subsidiarity principle. Letters have also been received from the Parliament of Catalonia, the Parliament of La Rioja, the Parliament of Cantabria and the Basque Parliament, stating that they have acknowledged or filed the documents, or will not be issuing a reasoned opinion.

E. At its meeting of 26 April 2017, the Joint Committee for the European Union adopted the following

## REASONED OPINION

1. Article 5(1) of the Treaty on European Union (TEU) stipulates that *'the use of Union competences is governed by the principles of subsidiarity and proportionality'*. And Article 5(3) TEU stipulates that *'under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level'*.

2. The legislative proposals under discussion here are based on Article 194(2) of the Treaty on the Functioning of the European Union, which reads as follows:

‘2. Without prejudice to the application of other provisions of the Treaties, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures necessary to achieve the objectives in paragraph 1. Such measures shall be adopted after consultation of the Economic and Social Committee and the Committee of the Regions.

Such measures shall not affect a Member State’s right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, without prejudice to Article 192(2)(c).’

3.

A. Proposals for a directive and a regulation of the European Parliament and of the Council on common rules for the internal market in electricity (recast)

The proposals for a directive and a regulation on common rules for an internal market in electricity seek to adapt the EU’s regulatory framework in the light of changes in Europe’s electricity markets, involving, specifically, the increase in generation using renewables, more active involvement of users in the energy system and enhanced regional cooperation.

The proposals build on a number of legislative texts adopted over the past 20 years with the aim of creating an internal market for electricity in the EU: specifically, three packages of legislation adopted between 1996 and 2009 with the aim of integrating and liberalising the markets. The proposals at hand form part of the Commission’s Clean Energy for All package, the priorities of which are to promote energy efficiency, to make the EU a leading player where renewables are concerned and to enhance the role of consumers.

In order to clarify and streamline the legislation, it seemed appropriate to recast the various provisions, bringing them together into a single text as a new regulation.

The directive lays down the general principles that Member States have to uphold in order to ensure that the EU electricity market is competitive, consumer-focused, flexible and non-discriminatory. It also updates the rules on possible public service obligations that can be imposed by the Member States in certain circumstances. The directive strengthens existing rights and introduces new rights for consumers.

The proposal for a regulation on the internal market for electricity is part of the new electricity market design. The idea is to regulate a European electricity market that is already physically integrated and in which the proportion of renewables is growing. The current operating rules governing wholesale markets are therefore being revised, and it is proposed that harmonised action should be taken across the EU, stepping up regional cooperation and establishing supranational decision-making mechanisms.

The Spanish Parliament considers the proposal for a directive to be in line with the principle of subsidiarity as its objectives cannot be sufficiently achieved by the Member States (either at central level or at regional and local level), but can, by reason of the scale or effects of the proposed action, be better achieved at EU level.

It is considered that certain provisions within the regulation, however, are not consistent with the subsidiarity principle. Furthermore, the application of these measures in the case of Spain, a country that is insufficiently interconnected and a long way from attaining the 10% target for interconnection by 2020, is considered to be disproportionate, given that the measures concerned are based on high levels of interconnection and an absence of physical barriers. Whilst interconnection in Spain is insufficient, there is insufficient justification for the measures being applied to our market, as they could cause serious distortion, to the detriment of Spanish consumers.

The measures that fail to uphold the subsidiarity principle are the following:

- Imbalance settlement periods and energy negotiation (Article 7(4)). Splitting the current reference period into four will be very expensive for consumers, because it will be necessary to replace the metering systems that are currently being installed. It will also result in distortions in the price signal that is currently being established. Insufficient justification has been given as to the need for, and positive impact of, such a measure.
- Delegated acts must be fully justified, and clear limits must be set for their scope and the drafting process that is used. Under the proposal, delegated acts would not only be used to address specific, non-essential technical issues: they would apply indiscriminately to fundamental energy policy decisions (Articles 31(3) and 46(4), Article 55, Articles 56(1), 57(1) and 59(11)), for example relating to the establishment of network codes.
- Bidding zone configuration: Article 13 grants the Commission the exclusive competence to decide on this, without saying why it is not satisfactory for the Member States to settle upon a configuration among themselves, in line with the procedure currently in force (as approved in 2015 and currently at the implementation stage), which includes involvement of the Member States.
- Phased convergence of transmission and distribution tariff methodologies based on a recommendation from the Agency for the Cooperation of Energy Regulators (ACER) (Article 16(9)).
- The establishment of regional operational centres (ROCs) (Article 32): new structures with autonomous decision-making powers, which would replace transmission system operators when dealing with certain issues relating to security of supply.

- Design of capacity mechanisms (Article 23). The proposal seeks to restrict the use of such mechanisms, and this measure, alongside the removal of maximum and minimum price thresholds, could cause major problems for consumers in countries with insufficient interconnection.
- Capacity mechanisms are only permitted where the European resource adequacy assessment identifies a security problem, and national assessments are not valid despite the fact that they are still essential for countries with low levels of interconnection. On the other hand, the design of the capacity mechanisms will only allow technologies with CO<sub>2</sub> emissions of below 550gCO<sub>2</sub>/kWh, with no justification as to how the establishment of that threshold is compatible with the Member States' right to determine their own energy mix, and no assessment having been carried out with regard to the impact of the threshold on security of supply. Lastly, the proposal makes it mandatory to open up the mechanisms to other Member States, even though such a move would only be justified for countries with sufficient interchange capacity.

In general, the Spanish Parliament takes the view that the Commission has not justified why the areas referred to in the aforementioned articles should be regulated at EU level, and takes the view that they should be subject to regulation at national level, as they involve specific conditions on the ground.

The German Parliament took a similar view in its reasoned opinion on the same subject, stating that it did not think that the subsidiarity principle had been complied with in the areas of delegated acts, bidding zones and regional operational centres.

#### B. Proposal for a directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (recast)

The proposal for a directive on the promotion of the use of energy from renewable sources brings the renewable energy framework into line with the 2030 climate and energy targets agreed by the European Council in October 2014 (at least 27% of final energy consumption at EU level). The Commission's aim is to become a world leader where the renewables industry is concerned. Six areas for action are set out:

1. Creating a framework to enable the development of renewables in the electricity sector, with the aim of half of Europe's electricity being generated from renewable sources by 2030.
2. Stepping up renewables in the heating and cooling sectors, which account for 50% of total energy demand in Europe.
3. Decarbonising the transport sector in a sustainable way (94% of transport is still dependent on oil).
4. Strengthening consumers' rights and ensuring they are better informed.
5. Strengthening sustainability criteria. This is based on the Commission's commitment to ensuring that the biomass used to generate electricity is sustainable.

6. Establishing measures to ensure that, where there are no mandatory national targets, the binding EU target is met on time and across the board.

With regard to whether the proposal for a directive is consistent with the principle of subsidiarity, its objectives cannot be sufficiently achieved by the Member States (either at central level or at regional and local level), but can, by reason of the scale and/or effects of the proposed action, be better achieved at EU level.

It would be appropriate, however, for the final proposal that is approved to be better tailored to suit the specific circumstances of the Member States, taking account of the actual level of interconnection in each Member State.

## CONCLUSION

For the reasons expressed above, the Joint Committee on the European Union takes the view that, given the provisions mentioned in Section 3 of this opinion, the proposal for a regulation of the European Parliament and of the Council on the internal market for electricity (recast) does not comply with the subsidiarity principle laid down in the Treaty on European Union.