



27.4.2017

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

**Subject:** The reasoned opinion of the Romanian Senate on the proposal for a regulation of the European Parliament and of the Council establishing an Agency for the Cooperation of Energy Regulators  
(COM(2016)0863 – C8-0494/2016 – 2016/0378(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 Romanian Senate has sent the attached reasoned opinion on the aforementioned proposal for a directive.

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

Romanian Parliament  
Senate

Bucharest, 4 April 2017

REASONED OPINION

on the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing an Agency for the Cooperation of Energy Regulators (recast) COM(2016)0863

The Romanian Senate assessed the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing an Agency for the Cooperation of Energy Regulators (recast) - COM(2016)0863, in accordance with Protocol No 2 annexed to the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon on 13 December 2007.

Having regard to the report of the Committee on European Affairs of 30.3.2017, the plenary of the Senate of 4 April 2017:

- I. Finds that the present proposal for a regulation does not comply with the principles of subsidiarity and of proportionality
- II. Considers that:

1. The initiatives in the clean energy winter package should bolster secure energy supplies in the European Union, by way of an electricity market reform, and create an integrated process of governance and monitoring, to ensure that the actions in the energy field will help to achieve the objectives of the Energy Union.

2. In the light of the above, we support the enhanced involvement of ACER in internal market development, and an accelerated transition from the monitoring and advice mission to a more participatory role in the regulatory process.

3. Implementation of the provisions of the Third Energy Package, harmonisation of the legislative framework, increasing the interconnections and pairings of energy markets, and stepping up consultations with the relevant parties involved are the basic elements intended to complete the internal energy market and to ensure efficient and transparent performance of its mechanisms.

4. Particular care should be taken to avoid ‘gold-plating’ legislation, increasing the number of administrative provisions and having ACER become a pan-European regulator, namely, granting ACER the privileges of issuing ‘own-initiative’ recommendations, too, as set out in Article 6(2). In the light of the objectives laid down with regard to establishing ACER and the difficulties and problems which this institution faced and is still facing (especially as regards supervision of wholesale energy markets), the financial authority could not comply with the officially received requests to ensure the necessary human and financial resources.

5. As regards coordination of the regional tasks within the agency and of the tasks related to the regional operational centres (Articles 7 and 8), as well as the other administrative provisions, a number of elements have been identified, which should be clarified:

- a. the need to strike a balance between national, regional and European aspects, and to comply with the principle of subsidiarity;
- b. the heterogeneity of some national energy markets, which is still evident and is also reflected in the presence of regulatory shortcomings or in a specific national approach;
- c. the regional dimension of the internal market approached as an intermediate step in achieving European integration of energy markets – which is likely to lead to regional division, to an isolated regional approach and even to establishment of regional power centres, which runs counter to the objectives of the EU internal market;
- d. the need to clarify the regional cooperation procedures and the roles and responsibilities of national authorities, of ACER and of the Board of Regulators;
- e. the development of new administrative provisions, implementation plans and monitoring, evaluation and reporting measures, in contradiction with the existing approach regarding governance of the Energy Union, the aim of which is to rationalise and plan the reporting and monitoring requirements;
- f. the difficulty with ensuring coherence and coordination of several decision-making centres with different regional interests;
- g. the creation of additional analysis and decision-making mechanisms, which are likely to increase bureaucracy and to disrupt the flow of data and information between Member States, which affects security of supply and market monitoring;
- h. The rotation period of the regulators in charge of coordinating the regional subgroups – shortening this period from two years to one year is worth considering, making it similar to the rotation period of the EU Council Presidency (to offer opportunities to all regulators and to avoid possible abuse generated by a longer coordination period);
- i. The activities regarding regulation and decisions made by the ACER director and the Board of Regulators are based on the working groups specifically established to set the direction of activities and made up of the regulators' representatives and highly professional staff. All the members of the groups should act independently of any interest in order to support correct decision-making;
- j. in the absence of a satisfactory and safe budget, the voluntary contributions of some Member States or regulators might negatively affect representation or even decision-making.

6. Creation of regional operational centres (ROCs) supra-national monitoring performed by ACER may affect the harmonisation process, thereby causing a new form of splitting at regional level, by making certain states or authorities capable of imposing measures and decisions to the detriment of those with poor decision-making or regulating powers. In addition, a regional approach will lead to a disrupted data and information flow among Member States when it comes to correcting market inefficiencies (as a result of regional organisation of the market, the issues of interest to a certain region will not be known by the members of another region, which may lead to monitoring and implementation redundancies and shortcomings). The legislative package should be put together with the aim of permanently following the issues of the electricity internal market. Regionalisation should only be a transitory stage towards the internal market, preferably as short as possible.

7. The creation of regional operational centres represents an important step and it requires a deep analysis of the issues relating to the transfer of powers from national level (TSO (Transmission System Operators)) to regional level, especially when it comes to security.

According to the proposal for the legislative package, granting binding powers to ROCs is incompatible with the Member States' responsibilities regarding secure supplies. Sharing the responsibilities between the national TSO and the regional structure induces a legality and even a political risk, affecting the efficient operation of the national electricity system. Technical decisions cannot be made by two different entities for different time horizons or by extracting a set of elements and processes. SEN (the National Energy System) operates in an integrated manner, and TSO, whose responsibility is to ensure secure and stable operation of SEN, cannot be deprived of the right to make decisions to this end. The potential transfer of the standard services and tasks to ROCs needs to be better assessed and to be carried out by TSOs – they know best the structure and weak points of their own systems and already have extensive experience when it comes to regionally coordinated operation. As regards Articles 9 ('Tasks of the Agency as regards Nominated Electricity Market Operators') and 10 ('Tasks of the Agency as regards generation adequacy and risk preparedness'), we believe that, given that the certification and appointment of NEMOs (nominated electricity market operators) is carried out by national regulators, they should have the power to regulate and issue mandatory decisions regarding NEMOs. Introduction of coordination within ACER for problems, such as assessment of generation adequacy will involve considerable efforts by the agency, which is already facing a lack of human and financial resources. The lack of resources is likely to jeopardise this process. For the settlement of cross-border problems, the European agency needs to intervene, but given the specific features of each national system, they cannot be approached at regional or pan-European level, even if they might affect the operation of the systems in neighbouring states. Restriction of the regulation coverage in favour of a coordinated action is very likely to bring benefits to the consumers if harmonisation of the policies and operation of the systems were finalised,

8. Conferring enhanced powers to ACER will not simplify the settlement of problems related to quicker integration of the intraday coupling, day-ahead coupling or balancing processes, as these issues depend on the level of integration of each Member State, on the technical and functional characteristics of the networks and operating systems, and on the maturity of the markets and of these markets' operators. As regards Article 19(5) and Article 23(1) on changing the decision-making process within the Management Board, the Board of Regulators and the regional substructures from two thirds to simple majority has raised divergent views; this change is likely to affect the decision-making balance created within ACER and there is a risk that decision-making power will be centralised and the Board of Regulators' role will be reduced. Where involvement of the Board of Regulators is required, the opinions, recommendations and decisions issued by ACER should be granted only on the basis of a two-thirds majority. Changing the decision-making process within the Board of Regulators also dilutes the objective pursued through the new legislative changes, namely that of increasing the role and suitable involvement of ACER in the regulation process (such an example would be the role conferred to the Board of Regulators under Article 5(2) on the approval of the terms, conditions and methodologies for the implementation of network codes and guidelines). In addition, the changes proposed under Article 5(2) – namely the possibility that ACER, 'Before approving the terms and conditions or methodologies, the Agency shall revise and change them [...] in order to ensure that they are in line with the purpose of the network code or guideline', may be outside the legal framework and beyond the agency's tasks, especially in the case of Boards of Regulators which adopt decisions by simple majority.

III. Points out that, in view of the method for the appointment of the Board of Regulators' members, enhancing the role of this body affects the entire decision-making process and the

existing balance between the decision-making bodies of ACER.

p. President of the Senate

Iulian-Claudiu MANDA