

REASONED OPINION

of the European Affairs Committee of the Federal Council

**pursuant to Article 23g (1) of the Austrian Constitution in conjunction with Article 6 of Protocol
No.2 on the application of the principles of subsidiarity and proportionality**

9 May 2017

COM (2016) 864 final

**Proposal for a Directive of the European Parliament and of the Council on common rules for the
internal market in electricity (recast) (Text with EEA relevance)**

A. Reasoned Opinion

The project under consideration is incompatible with the principle of subsidiarity.

B. Grounds for Reasoned Opinion

The “Energy Union Package” is the major priority of the European Commission in the field of EU energy policy. This package of legislative proposals presented by the European Commission at the end of 2016/beginning of 2017 contains measures relating to energy efficiency, the further development and integration of renewable sources of energy, eco-design, security of electricity supply, governance of the Energy Union, rules for the energy market, the active role of consumers, and energy prices. The package was also discussed at the Meeting of Ministers of Energy on 27 February 2017 in Brussels. The Federal Council felt that the proposals have to be considered in their entirety and therefore devoted several of its sessions to this topic. This reasoned opinion refers to the Proposal for a Directive of the European Parliament and of the Council on common rules for the internal market in electricity.

The objective of the proposal is to strengthen the position of consumers of electricity through the creation of a consumer-centred internal market in electricity. The technical prerequisites and the legal framework for the extension of the charging infrastructure required for electro-mobility are to be created. Moreover, it is to provide a framework for local energy communities to operate autonomous community networks. Above all, consumers are to be enabled to engage in energy generation, storage and marketing. From the Federal Council's perspective, these objectives are to be welcomed. However, such developments must be subject to a clear and non-discriminatory legal framework and have to be coordinated with the extension of an adequate network infrastructure.

Article 11 of the proposal provides for an entitlement of final consumers to dynamic electricity price contracts, which is to be welcomed in principle. The Federal Council wishes to point out that this provision must be covered by Art. 194 TFEU; a detailed clarification of the legal basis is important for all stakeholders. Article 2 point 39 of the Directive defines the term "regional operational centres" (ROC).

Articles 31-44 of the Regulation contain further detailed provisions on the ROCs. The added organizational value of the ROCs, in addition to the established service companies of the transmission network operators and to coordination through the European Network of Transmission System Operators for Electricity (ENTSO-E), has not been sufficiently explained by the European Commission. Moreover, from the Federal Council's perspective, the transfer of national decision-making powers to a supra-regional autonomous body constitutes an undue restriction of national decision-making competences. The power of the ROCs to issue legally binding instructions, as if they were a public authority, e.g. with regard to the sizing of reserve capacity, is a point to be viewed in a particularly critical light, especially given the complete absence of any protection of existing rights. The establishment of ROCs is likely to result in the creation of dual structures that will make the decision-making process more difficult and less efficient. The Federal Council therefore rejects the proposed organizational principle. In particular, the Federal Council refers to Article 40 of the proposal, which defines the tasks of transmission system operators. On account of the unbundling rules applicable between network operators in the event of delegation of tasks, the possibilities of cooperation are unnecessarily restricted. This provision is therefore considered to be disproportionate.

As regards the designation of Article 43 of the Directive, the Federal Council wishes to point out that it rejects any restriction of the unbundling models currently provided for by law. This should be underlined once again in the context of Article 52 of the proposed Directive.

As a matter of principle, the Federal Council reiterates its criticism of the practice of adoption of delegated legal acts.