

REASONED OPINION 1/2017 OF THE JOINT COMMITTEE FOR EU AFFAIRS, DATED APRIL 26, 2017, ON THE NON COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY BY 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 attached to the Lisbon Treaty of 2007, in force since December 1st, 2009, establishes a procedure allowing national parliaments to verify European legislative initiatives' compliance with the subsidiarity principle. The said Protocol has been developed in Spain by Act 24/2009, of December 22, amending Act 8/1994, of May 19. In particular, new articles 3 j), 5 and 6 of Act 8/1994 are 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 adopted by the European Commission and conveyed to national parliaments, which have a deadline of eight weeks to verify the subsidiarity check of the initiative, being the deadline May 9, 2017 for the first and May 17, 2017, for the other two.

C. The Bureau and the Spokespersons of the Joint Committee for EU Affairs, agreed on March 30, 2017, to examine the said European legislative initiatives, appointing to that end as Rapporteur MP Ms. Pilar Rojo Noguera, and requesting the Government the report envisaged in article 3 j) of Act 8/1994.

D. The Government has conveyed its reports, indicating that both Proposals for a Directive comply with the principle of subsidiarity. The Government has likewise conveyed a report indicating the non-compliance of the said principle as regards certain paragraphs of the Proposal for a Regulation. Likewise, the regional Assemblies of Catalonia, La Rioja, Cantabria and the Basque Country have sent reports communicating the consideration, the filing or the non-issuing of the reasoned opinion.

E. The Joint Committee for EU Affairs, in its meeting held on April 26, 2017, adopted the following:

REASONED OPINION

1.- Article 5 (1) of the Treaty on the European Union indicates that “*the use of Union competences is governed by the principles of subsidiarity and proportionality*”, and adds in Article 5 (3) of the same Treaty that “*under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall only act 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 examined legislative proposals are based on article 194 (2) of the Treaty on the Functioning of the European Union, which lays down that:

“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. Proposal for a Directive of the European Parliament and of the Council on common rules for the internal market in electricity (recast).

The goal of the Proposal for a Directive, together with the Regulation, on common rules for the internal market in electricity, is to adapt the EU legal framework to changes in European electricity markets, particularly the increase of generation from renewable energy sources, a greater participation of consumers in the energy system and strengthening regional cooperation.

The Proposal builds upon a comprehensive set of legislative acts adopted during the last two decades. With the objective of creating an internal energy market, the EU has adopted three legislative packages between 1996 and 2009, with the overarching aim of integrating markets and liberalising markets, being the said Proposal part of the

Commission package “Clean Energy for All”, whose key priorities are energy efficiency first, the EU's global leadership in renewables, and reinforcing the participation of consumers.

It is desirable, for reasons of clarity and rationalization, that the provisions in question should be recast by bringing them all together in a single text in a new Regulation.

The Directive lays down the general principle that Member States have to ensure that the EU electricity market is competitive, consumer-centred, flexible and non-discriminatory. It also provides for updated rules on possible public service obligations which may be imposed by Member States under certain circumstances. The Directive reinforces pre-existing consumer rights and introduces new rights.

In turn, the design of the new electricity market, of which the Proposal for a Regulation on the internal market for electricity is part, is aimed at regulating a European electricity market already physically integrated and with an increasing percentage of renewables. Thus, the current rules on the functioning of wholesale markets are reviewed and a harmonized behavior in the whole of the EU is proposed, reinforcing regional cooperation measures and establishing mechanisms for decision making at supra national level.

It is considered that the Proposal for a Directive complies with the principle of subsidiarity since its objectives 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.

However, it is also considered that certain parts of the Regulation do not comply with the principle of subsidiarity. Moreover, the implementation of these measures as regards Spain, a country which does not have sufficient interconnection, and is far from reaching the goal of 10% of interconnection for 2020, is deemed as disproportionate, bearing in mind that these measures are justified by a high level of interconnection and the absence of physical barriers. Until Spain does not have a sufficient level of interconnection, the implementation of these measures in our market is not sufficiently justified, and it may lead to remarkable distortions in detriment of Spanish consumers.

The measures which do not comply with the principle of subsidiarity are the following:

- Settlement periods for deviations and negotiation of energy (article 7.4). Going from the current time period to the 15 minutes period will involve a great cost for consumers given the need to replace the measurement systems which are being

currently implemented, as well as given the distortions in the price signals currently in place, not being the need and the positive impact of such measure sufficiently justified.

- Delegated acts, which shall be fully justified and limited as to their scope and preparation procedure, since according to the Proposal, their use would not be limited to specific technical non-essential matters, but would be indiscriminately applied to fundamental decisions of energy policy (articles 31.3, 46.4, 55, 56.1, 57.1 y 59.11), for example, the adoption of network codes.

- Configuration of bidding zones: article 13 implies granting the Commission exclusive competence to decide, without being fully justified that such configuration may not be satisfactorily conducted by Member States, in line with the current procedure in force (adopted in 2015 and in implementation stage) that envisages the participation of Member States.

- Progressive convergence of transmission and distribution tariff methodologies according to the recommendation of the Agency for the Cooperation of Energy Regulators (ACER) (article 16.9).

- Establishment of Regional Operational Centres (ROC) (article 32), which are new structures with independent decision powers which shall replace the transmission network managers in some matters related to security of supply.

- Design of capacity mechanisms (article 23). The aim of the Proposal is to restrict the use of such mechanisms, and this measure, together with the suppression of limitations of maximum and minimum prices, could cause serious damage to consumers of countries which do not have sufficient interconnection.

- Capacity mechanisms may only be used if the European resource adequacy assessment has identified a security concern, not being therefore valid national assessments, despite the fact that such assessments are still essential for those countries with scarce interconnection. On the other hand, the design of the mechanisms shall only admit technologies whose CO₂ emissions are below 550 gr CO₂/kWh, not being justified how the establishment of this threshold may be compatible with the right of Member States to determine their energy mix, and without an analysis of the impact of this threshold on security of supply. Finally, according to the Proposal these mechanisms must be open to other Member States, although such measure would only be justified for countries with sufficient exchange capacity.

In general, it is considered that the Commission has not justified why the matters included in the said articles must be regulated at EU level and it is understood that they must be regulated at national level, since they are related to local specific conditions.

To date, the German Parliament has also expressed a view in this sense, issuing a reasoned opinion in the same line, considering that there is non compliance of the principle of subsidiarity as regards 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 of the European Parliament and of the Council on the on the promotion of the use of energy from renewable sources, adapts the framework of renewable energies to the targets of 2030 as regards climate and energy, agreed by the European Council on October 2014, namely at least 27% for the share of renewable energy consumed in the EU in 2030. The Commission recognizes that it aspires to global leadership in renewables. Six action areas are established:

1. Setting up of a framework that will make it possible to deploy renewables in the electricity sector, with the target that in 2030 half of the electricity in Europe will come from renewable sources.
2. Reinforcement of renewables in the heating and cooling sectors, which represent 50% of the total energy demand in Europe.
3. Sustainable decarbonisation of the transport sector (94% of transport still depends on oil).
4. Reinforcement of consumers' rights and information.
5. Reinforcement of sustainability criteria; based on the Commission's commitment in the sense that biomass used to generate energy is to be sustainable.
6. Establishment of measures to guarantee the collective and timely attainment of the binding EU target, in the absence of national mandatory objectives.

Concerning the compliance of this Proposal with the principle of subsidiarity, it is indicated that 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.

However, it would be advisable that the final Proposal to be adopted allows for a better consideration of the specific features of Member States, particularly bearing in mind the actual level of interconnections of each Member State.

CONCLUSION

For the aforementioned reasons, the Joint Committee for EU Affairs considers that the Proposal for a Regulation of the European Parliament and of the Council on the internal market for electricity (recast), as regards the paragraphs mentioned in section 3, does not comply with the principle of subsidiarity enshrined in the Treaty on the European Union in force.