



POSITION PAPERS

on the Clean Energy for all Europeans package

On 30 November 2016, the European Commission adopted the « Clean Energy for All Europeans » legislative proposals, covering in particular the design of the electricity market.

The French energy regulatory authority (Commission de Régulation de l'Énergie – hereinafter CRE) shares the assessment that the energy sector plays a key role in delivering on reducing greenhouse gas emissions by 40% by 2030 and also considers that the development of electricity production from renewable sources is an essential condition for achieving the objectives of the Paris climate agreement. Overall, it considers positively the European Commission's proposals aiming to adapt the single energy market rules as well as the network operation to more variable and decentralized generation, which requires a greater flexibility. These proposals also contribute to the very positive vision of a European Energy Union.

Nevertheless, CRE considers it is fundamental that the European institutional and regulatory framework remains sufficiently flexible in order to adapt to the market changes and to take advantage of technological and organizational innovations.

It is equally important that the efforts made to anticipate the implementation of the European « network codes » be pursued and taken into account in the revision process of the acquis initiated by the European Commission. In this respect, it would seem premature to include or reinforce several technical provisions in the legislation as they have not yet been fully implemented within the framework of the existing network codes.

CRE therefore wishes to formulate observations and comments on a certain number of institutional and technical subjects being brought forward to promote the construction of a European Energy Union without questioning the level of ambition, which it fully shares. These observations are succinctly presented hereinafter and are further expanded upon in the enclosed position papers.

1. INSTITUTIONAL FRAMEWORK

- **Position paper N°1: How ACER operates:** CRE considers it is relevant that certain new missions, in particular those with an impact at the European level, be entrusted to the Agency for the cooperation of energy regulators (ACER). Nevertheless, it believes that these new missions must be accompanied by a greater coordination of energy regulators' actions within the Agency. To this end, CRE considers that the powers of the Board of Regulators should be strengthened by explicitly endowing it with the power to amend the proposals submitted by the Agency's director. The Board of Regulators should also continue to take its decisions on the basis of a two-thirds majority voting rule.
- **Position paper N°2: The regional operational centres (ROCs),** which are responsible for the coordination of the transmission system operators (TSOs) at the regional level: CRE expresses strong reservations concerning their establishment, that it considers premature, as well as the ability of the ROCs to address binding decisions to the TSOs, which may conflict with the principle of subsidiarity. It would be advisable beforehand to benefit from the feedback experience of the regional security coordinators whose prerogatives will be reinforced by the Commission regulation establishing a guideline on electricity transmission system operation, which is expected to enter into force in the summer of 2017.

2. NETWORK-RELATED TOPICS

- **Position paper N°3: The use of congestion incomes related to the use of interconnections:** CRE considers that an exclusive allocation of the congestion incomes to invest in new interconnection infrastructure is contrary to

the principle of economic efficiency and that new projects should only be undertaken if their costs (which are borne by the users via the tariffs) are outweighed by the benefits that they provide.

- **Position paper N°4: Harmonization of network tariffs:** CRE considers that the harmonization of withdrawal charges is inappropriate, particularly in distribution, the aim of these being to optimize the investment needs of the networks in the medium term, by transmitting, via the tariff structure, correct economic signals on the costs generated by each user. To achieve this, one cannot ignore the structure of electricity consumption, and for example, the very high thermosensitivity of consumption in France. Such a harmonization would equally be unnecessary because only the differences between injection charges on transmission networks, which are already capped by European regulations, have an impact on competition within the European market.
- **Position paper N°5: Use of storage by the electricity network operators:** CRE shares the point of view that the balance between the players of the electricity system is based on the principle of neutrality of the system operators, which, in principle, should not operate storage facilities. However, a total ban for network operators to operate storage facilities would not be comprehensible today in a sector where the economic model has not yet stabilized. CRE will thus be particularly attentive to the arrangements for the implementation of derogations foreseen by the European Commission, to ensure that they do not imply a de facto ban for network operators to own storage facilities, if this was deemed to be necessary for the development of storage technologies. In addition, special treatment should be possible for non-interconnected areas.
- **Position paper N°6: Calculation of cross-border capacities:** CRE shares the European Commission's objective to optimise the interconnection capacities offered to the markets. However, it does not support the European Commission's proposal to take loop flows into account only under exceptional conditions, according to very restrictive terms and without taking into consideration the cost of such arrangements. Furthermore, CRE considers that the provisions of the Commission regulation establishing a guideline on capacity allocation and congestion management, which have not yet been fully implemented, provide a sufficient framework for optimizing the capacities allocated to the markets.
- **Position paper N°7: Procurement of balancing capacity:** in the absence of the cost-benefit analyses concerning the implementation of prescriptive measures on the procurement of balancing reserves, CRE considers that the regional procurement of balancing capacity should remain optional. In addition, it opposes that contracting of balancing capacity be made compulsory on a daily and/or intraday basis.
- **Position paper N°8: Local energy communities:** CRE advises caution concerning the provisions governing the development of local energy communities (LEC). In the event the LECs would assume the missions of a Distribution System Operator (DSO) and if this were to become widespread, this situation would raise major issues of de-optimization of territorial planning and would question tariff equalization. In this respect, CRE considers that the conditions for eligibility for LECs to take up a DSO role should be supervised and defined at the national level.
- **Position paper N°9: 15% target for electricity interconnections in Europe:** CRE reaffirms that the decision to invest in new interconnection projects cannot be based solely on attaining a single interconnection target that has been uniformly defined for all Member States (especially as current interconnection targets are based on Member States' installed generation capacity, which does not reflect the actual use of generation capacity), but must, in contrast, be based on sound cost-benefit analyses.

3. MARKET-RELATED TOPICS

- **Position paper N°10: Bidding zones review process:** the proposal foresees that the competence for the approval and the amendment of the methodology used by the transmission system operators (TSOs) to carry out the revision of bidding zones is to be transferred from the national regulators to ACER, and that the decision to maintain or to modify the existing price zones is under the responsibility of the European Commission rather than the Member States. CRE does not support these changes as they would imply a transfer of responsibilities to the European level on a subject that should fall under the principle of subsidiarity and which carries strong political consequences.
- **Position paper N°11: Development of demand side management:** CRE is very pleased that the European Commission wishes to provide an enabling framework for independent flexibility providers to intervene on the market without requiring prior authorization from other players (in particular from the suppliers). However, it considers that the possibility of selling energy on the markets by independent flexibility providers requires a compensation payment to the supplier of the consumers, whose load is shed. This payment must be based on the volume of energy shed that the independent flexibility provider sells on the market, the supplier of the sites remaining responsible for the injection in order to guarantee the correct functioning of the electricity system.

- **Position paper N° 12: Technologically neutral invitations to tender:** CRE values the possibility to use technologically specific invitations to tender in order to reach the technology-differentiated objectives that France has set for itself. Conversely, technologically neutral tendering, in principle, favors the most competitive sectors in terms of production costs (which excludes controllable means such as biomass and hydro even if they contribute to the security of the system) and do not allow for the optimization of the integration of renewables within the electricity system (such as variability management). They may also adversely affect the industrial development of some technologies.
- **Position paper N° 13: Price caps on wholesale markets:** CRE doubts that the removal of price restrictions, or the alignment of maximum price limits with the value of lost load (VoLL), differentiated where appropriate by bidding zone would allow access to additional capacity reserves during the periods of strain between supply and demand. Similarly, CRE considers that an increase in maximum price limits cannot single-handedly promote investment in the means of electricity generation needed to keep the system in balance (particularly for extreme-peak generating capacities) nor prevent decommissioning. In addition, this proposal exposes the market participants - including the consumers benefiting from market-indexed offers - to unnecessarily high financial risks, which could have a negative impact on competition. It also raises the difficulty of estimating a single value of the VoLL, while the propensity to pay of the various categories of consumers differs considerably. In addition, this proposal (that would allow a cap to be set per bidding zone) is not consistent with the Commission regulation establishing a guideline on capacity allocation and congestion management, which is planning a harmonized cap for all markets at the European level.

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With these position papers concerning some of the European Commission's proposals, CRE would like to make a positive contribution to the current legislative debate and to encourage the emergence of a consensus together with its fellow regulators and the European institutions.

CRE's services are at the disposal of all the authorities concerned to further clarify, if necessary, its analyses and to share its technical expertise.