



Brussels, 25 September 2017
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11957/17

ENER 350

'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)/Council
No. Cion doc.:	11198/17 ENER 329
Subject:	COMMISSION REGULATION (EU) .../... of XXX establishing a guideline on electricity balancing - Decision not to oppose adoption

1. The measure envisaged being in accordance with the opinion of the relevant committee, the Commission has submitted the above draft measure¹ to the Council for scrutiny in accordance with the procedure in Article 5a(3)(a) of Council Decision 1999/468/EC². The Commission having presented the draft measure on 11 July 2017, the Council has until 11 October 2017 to decide to oppose the adoption.
2. Delegations were asked to submit comments on this file by 18 August 2017, indicating whether there is a reason to oppose the draft measure in question on the grounds described in Decision 1999/468, namely that it:
 - exceeds the implementing powers provided for in the basic instrument;

¹ 11198/17 ENER 329

² Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23), as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

- is incompatible with the aim or content of the basic instrument; or
 - does not respect the principles of subsidiarity or proportionality.
3. Within the deadline, Spain submitted its objection to the proposed measure on the grounds that it exceeds the implementing powers conferred in Regulation (EC) No 714/2009 regarding the impact on balancing services and markets at national level, and the competences of national regulatory authorities. Furthermore, Spain considers that by not providing clear advantages at national level, the proposed measure does not respect the principles of subsidiarity and proportionality. No other Member State raised objections.³
4. It is therefore suggested that Coreper recommend that the Council confirm the above positions and conclude that there is no qualified majority to oppose the draft measure. This implies that, unless the European Parliament opposes it, the Commission may adopt the proposed measure in accordance with Article 5a(3)(d) of Council Decision 1999/468/EC.
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³ See also WK 8741/17.