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## Consultation response: Acer to decide on the Swedish TSO's request for derogation from the 70% requirement

*Swedenergy collects and gives voice to around 400 companies that produce, distribute, sell and store energy. Our goal is to develop the energy industry – for the benefit of all, based on knowledge, an overall view of the energy system and in cooperation with our environment.*

ACER has asked for opinions regarding its upcoming decision on a possible derogation from the 70 % requirement of the Electricity market regulation (EU) 2019/943. Swedenergy is grateful for the opportunity to express its opinion in this matter.

### Background

The Swedish regulator Energimarknadsinspektionen (Ei) has approved a derogation request from the Swedish transmission system operator Svenska kraftnät (Svk). Since the corresponding regulators in Denmark (DUR) and Finland (EV) have objected to this derogation request the decision is, according to article 16.9 of the Electricity market regulation, transferred to ACER. In addition, the regulator of Norway (RME) has objected to the derogation request of Svk. ACER is asking for comments regarding an upcoming decision through a stakeholder consultation.

### Findings

Swedenergy recognizes that Svk has reduced cross-border capacities for several years with respect to the so-called West Coast Corridor and to a significant extent since 2021 with respect to Fi-SE3. This particular request for derogation refers to Fi-SE3. Since the Electricity market regulation entered into force in 2020, Svk has applied for, and obtained, derogation with respect to the West Coast Corridor, but not for Fi-SE3. During 2021 Svk has limited the cross-border capacity Fi-SE3 extensively without any valid derogation, thus violating the 70%-requirement. Swedenergy has expressed concerns related to the lack of pro-activity to avoid unnecessary limitations of cross-border capacities. In addition, Swedenergy recognizes that despite earlier derogations approved by Ei, the situation has not improved noticeably. Specifically, Swedenergy notice that our members have resources that could be used for redispatch and countertrade – resources that historically have been used for such purposes. However, Svk has not approached these members of Swedenergy with request to utilize their resources to ease the need to reduce cross-border capacities or cross-zone capacities. Swedenergy has also learnt that

Svk has neglected countertrade resources in other countries that could have relieved the capacity reductions.

The lack of proactiveness should not be incentivized by further derogations that would legitimize a passive approach by Svk. If actions had been undertaken in time the need of a derogation would probably not been *necessary*, as specified in the Electricity market regulation (EU) 2019/943 article 16.9. Thus, Swedenergy supports the conclusions of the regulators of Denmark, Finland and Norway to reject the derogation request.

Swedenergy regrets that Ei has not informed itself by listening to other stakeholders than SvK when assessing the statements of Svk regarding *all possible measures to establish resources for redispatch and countertrade have been undertaken*. If Ei have had been in contact with Swedenergy, market participants, other TSOs or other regulators, they might have reached another conclusion.

Moreover, Swedenergy questions the legitimacy of the regulators decision to approve the derogation request. Our concern relates to the fact that Svk has not submitted all necessary information to Ei, with reference to limitations to share classified information. Swedenergy believes it must be possible to find procedures to share classified information between authorities within the same country.

## Conclusion

Swedenergy concludes that Svk does not meet the minimum requirements to grant a derogation for the cross-border connection Fi-SE3 during 2022 according to Article 16(9) of Regulation (EU) 2019/943 and hence the derogation request should be rejected.

Swedenergy also questions the decision of Ei to approve the derogation request of Svk.

Magnus Thorstensson

Swedenergy