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Swedenergy's position on EU's electricity market legislation

During the last 60 years, Swedish energy companies have built one of the most efficient energy systems in the world with 98 percent carbon free electricity. Hydropower is the most important source of electricity in Sweden, producing 40 percent of the electricity but also provides the necessary flexibility integrating larger shares of intermittent electricity produced by wind and the sun.

The Swedish power market is to a large extent integrated with the neighboring Nordic countries and Baltic states. An important step in this integration was the establishment of a joint Nordic electricity wholesale market through the formation of the common Nordic power exchange, Nord Pool, in 2003. Nord Pool generated the prerequisites for a competitive cross-border electricity market, delivering a wholesale price creating the fundamental transparency for non-regulated consumer prices and possibilities for hedging of price risks.

For the Nordic power market, it is important to continue the path of regional harmonisation and to continue liberalising the power market in Europe. The revisions of the electricity market directive and electricity market regulation is a golden opportunity for the European Union to create a more competitive and efficient power market.

In this working paper, you will find Swedenergy's detailed positions on the electricity market directive and regulation with the overall goal of making the European power market more efficient and competitive.

Pernilla Winnhed
CEO Swedenergy

About Swedenergy

Swedenergy is a non-profit industry association for companies involved in the supply, distribution, selling and storage of energy, mainly electricity, heating, and cooling. As the united voice of the Swedish energy sector, the association monitors and promotes the interests of its members and the energy sector in general. Swedenergy has a total of 400 members, which includes state-owned, municipal, and private companies as well as organisations within the energy sector.

Content

Electricity Directive art 2.32 – Definition of interconnector	3
Electricity Directive art 2.11 & art 11 – Definition of dynamic electricity price contract & Entitlement to a dynamic electricity price contract	4
Electricity Directive art 12 – Right to switch supplier and rules on switching-related fees	5
Electricity Directive art 16 – Local Energy Communities	6
Electricity Directive art 17 – Demand Response	7
Electricity Directive art 18 & Annex II – Billing and Billing information	8
Electricity Directive art 32 – Tasks of distribution system operators in the use of flexibility	9
Electricity Directive art 36 and 36a – Ownership of storage facilities	10
Electricity Regulation art 5 – Balancing management – real time information	11
Electricity Regulation art 14 – General principles of capacity allocation and congestion management	12
Electricity Regulation art 17 – Congestion income	13
Electricity Regulation art 49-51 – Establishment of the EU DSO entity for electricity	14
Electricity Regulation art 55 – Establishment of network codes – harmonized transmission tariff structures	15
Electricity Regulation art 55 – Establishment of network codes – non-frequency ancillary services	16

Electricity Directive art 2.32 – Definition of interconnector

“All bidding zones should be equally treated, within and between Member States.”

Comment

The term “interconnector” should include equipment crossing borders between bidding zones, including inside a Member State, or borders between Member States.



Text proposal

Art 2.32 (according to Council proposal)

'interconnector' means an equipment used to link electricity systems [] which crosses or spans a border between bidding zones or between Member States or, up to the border of [] Union territorial jurisdiction, between Member States and third countries;]

Electricity Directive art 2.11 & art 11 – Definition of dynamic electricity price contract & Entitlement to a dynamic electricity price contract

“In competitive markets demand and suppliers’ possibility to be innovative will govern what is being offered”

Comment

The definition of dynamic price becomes too restrictive when only referring to the reflection of the price at the spot market. Swedenergy believes it would be better to have a reference to the wholesale market, thus enabling dynamic price contracts to also be based on bilateral agreements (which are not purchased on the power exchange). Further, we would like to question the last part of the definition “at intervals at least equal to the market settlement frequency” – it is unclear if this is referring to the ISP mentioned in the regulation (15 min) or some other frequency? The definition should be open enough to embrace different types of dynamic price contracts – for example 15 min, hourly, daily, monthly – according to customers demand.

Regarding customers entitlement to have a dynamic price contract we believe in customer possibility to choose those contracts from suppliers offering them. We do not believe that regulation should stipulate the products to be offered by suppliers, such regulation would risk limiting innovation and creating barriers to entry for new actors.

Swedenergy supports the Council’s proposed framework which would enable suppliers to offer dynamic price contracts and customers demanding it to choose suppliers who offers them.



Text proposal

Art 2.11 (based on Commission proposal):

‘dynamic electricity price contract’ means an electricity supply contract between a supplier and a final customer that reflects the price variation at the **wholesale spot market, including at the day ahead market at intervals at least equal to the market settlement frequency;**

Art 11.1 (according to Council proposal):

MS shall ensure that the NR framework enables suppliers to offer a dynamic electricity price contract, and final customers who have a smart meter installed can request to conclude a dynamic electricity price contract from at least one supplier.

Electricity Directive art 12 – Right to switch supplier and rules on switching-related fees

“The main principle in all industries is that if a contract is broken, the counterparty should be compensated for its economic losses”

Comment

Swedenergy agrees that suppliers should not be entitled to charge switching related fees. However, we believe that suppliers should be able to charge contract termination fees to customers terminating their contracts before their maturity, if such fee is part of the contract terms that the customer willingly has entered it. Further, the termination fee should not exceed the direct economic loss of the supplier and the supplier’s terms of contract should include information on how the termination fee is calculated. Thus, it should be simple and clear for the customer when the termination fee is charged and how the fee is calculated.

The Commission and Parliament proposal that a termination fee may only be charged if the customers receive a demonstrable advantage from these contracts is confusing and complex. Who will determine that the customer gains a demonstrable advantage and who will pay for the supplier’s economic loss for that customers’ early termination of contract? Such rules risk leading to subjective decisions and that the costs incurred from these customers ends up paid by other customers. Further, all three parties state that termination fees may only be charged for fixed price supply contracts. Today we also see that some kind of variable price contracts are concluded for a longer time period – these should also be included.



Text proposal

Art 12.3 (based on Council proposal)

MS may choose to permit suppliers or market participants engaged in aggregation to charge contract termination fees to customers, willingly terminating ~~electricity fixed-term, fixed-price~~ supply contracts before their maturity, as long as such fees are part of a contract that the customer has willingly entered into and such fees are clearly communicated to the customer before the contract is entered into. Such fees shall be proportionate and not exceed the direct economic loss to the supplier or market participant engaged in aggregation of the customer terminating the contract, including the costs of any bundled investments or services already provided to the customer as part of the contract.

Electricity Directive art 16 – Local Energy Communities

“Create a level playing field for all actors and organisations without distorting markets and with respect to national differences in the grid structure”

Comment

Swedenergy encourages all forms of innovation both in products, new actors and forms of organisations. With the introduction of new technology and the facilities of digitalisation, customers are given the opportunity to take greater control of the electricity value chain by themselves or within a community. This is a laudable development; however it is important to ensure that regulation comprises the activities of new forms of organisations/actors on the market.

Thus, we believe that it is important that local energy communities (LEC) operate on the market on a level playing field with other actors. That is, LEC must comply with the same rules that other market actors and DSOs, including unbundling between operations of DSOs and electricity sales/production and sharing of costs in the system.

Further, we believe that the preconditions for LEC are different in member states, for example due to different concession systems. Thus, regulation at European level should only stipulate the main features, while the more detailed requirements should be in line with national conditions and up to member states to decide.

We caution against the regulatory and operational pitfalls of operating network infrastructure and what this could mean from an efficiency and financial point of view for system users external to LECs. If mishandled the proposal on LEC risks leading to unclear terms for market actors, risk for distortion of competition and higher costs for consumers.



Text proposal

Art 16 (according to Council proposal)

Keep Council text proposal in 16.1(a-f) and 16.2a(a-e) which are considered common EU requirements, and in 16.2(a-d) and 16.2b(a-c) that are left to member states to decide.

Electricity Directive art 17 – Demand Response

“Create a level playing field for all actors and organisations and avoid introducing inefficiency in wellfunctioning markets”

Comment

Swedenergy supports linking wholesale and retail markets more closely by the usage of demand response and aggregators. However, aggregators should be treated on equal terms to any other market actor, thus also being financially liable for any imbalances caused in the system. In our view “independent” aggregators are not independent from balancing responsibility but independent from a supplier, i.e. not having to ask suppliers for allowance to act on the market.

Further, we are sceptical regarding the necessity of other compensation models to remunerate suppliers. Suppliers will face a variety of risks, such as profile or volume risk due to amongst others the weather making customers increase or decrease their consumption. Thus, aggregator behaviour will be a factor like other factors and suppliers will have to learn to predict and adjust their forecasts accordingly. However, in markets where suppliers are not allowed to adjust their forecasts it might be necessary to implement some form of compensation models. Therefore, it should be up to national conditions to decide if, and in that case what, compensation model to implement.



Text proposal

Art 17.3 (according to Council proposal)

(a) the right for each market participant engaged in aggregation, including independent aggregators, to enter [] electricity markets without consent from other []market participants;

(da) market participants engaged in aggregation shall be financially responsible for the imbalances they cause in the electricity system. To this extent they shall be balance responsible parties or shall delegate their balance responsibility in accordance with Art 4 of the electricity Regulation;

(db) Member States **may** require undertakings, including independent aggregators to pay compensation to other market participants or their balancing responsible party if they directly induce imbalances to these market participants including situations where a perimeter correction is introduced without creating a barrier for market entry of aggregators or a barrier for flexibility. In such cases the compensation payment shall be strictly limited to cover the resulting costs. The calculation method for such compensation may take account of the benefits induced by the independent aggregators to other market participants and be subject to approval by the regulatory authority;

Electricity Directive art 18 & Annex II – Billing and Billing information

“Creating outdated detailed regulation risks hindering innovation and new digitalized solutions”

Comment

Digitalisation and technical innovation have facilitated the introduction of tools making information more accessible for customers. Customers have adapted their behaviours accordingly and demand information in a simple manner. Thus, actors are using these tools as a means of competition for creating closer customer relationships, greater customer satisfaction and in the end a higher degree of customer loyalty.

In our view, the bill should not be an information bearer for other than the most basic informing about the cost. We are concerned that detailed regulation requiring excessive information on the actual bill will lead to more complexity, confusion and ultimately dissatisfaction among customers. More detailed information on consumption and variables influencing the cost could be provided in other ways (apps, webpages etc) and at different frequencies depending on different customer needs and preferences. However, we are extremely doubtful that regulation should stipulate what suppliers should inform about on this proposed degree of details. New forms of contracts and relationships will continuously evolve the definition of what is to be considered valuable information, and successful suppliers will act on it in a competitive market.

Regarding the Parliament’s proposal about changes in the format of the bill (17.8a), we believe that in a competitive market the format of the bill should be treated as a means of competition and therefore should not be regulated and standardised. Further, the proposals referring to suppliers having to inform customers about more “suitable and advantageous” tariffs (17.8b), we think that this is highly subjective and that it should be up to customers to decide what is more suitable and advantageous to their needs.

Text proposal

Art 18 (according to Council proposal)

1. Member States shall ensure that bills [] and billing information are accurate, easy to understand, clear, concise and presented in a manner that facilitates comparison by consumers. On request, final customers shall receive a clear and understandable explanation of how their bill was derived, especially where bills are not based on actual consumption.

Annex II (based on Council proposal)

~~(ca) [] comparisons with an average normalised or benchmarked customer in the same user category [];~~

- 4 (a) the contribution of each energy source to the overall fuel mix of the supplier (at national level i. e. in the Member State where the supply contract has been concluded, ~~as well as at the level of the supply undertaking if the supplier is active in several Member States~~) over the preceding year in a comprehensible and clearly comparable manner;

Electricity Directive art 32 – Tasks of distribution system operators in the use of flexibility

“Regulation should acknowledge possibilities for DSOs to realise cost-efficient solutions. However, this should not be overcome by excessive administration.”

Comment

Facing the future challenges in the energy system, which to some extent could be managed by flexibility from consumption as well as from production, Swedenergy endorse the intention of clarifying the tasks of the DSOs in the use of flexibility.

We support that the regulation enables DSOs to procure flexibility services, including congestion management in their service area, to improve efficiency and security in operating the system as well as to facilitate market development. Further, it should be evident that DSOs are adequately remunerated for the procurement of such services to recover their corresponding costs.

However, current proposals include an indefinite amount of additional administration from each DSO. Detailed network development plans which include (or in some proposals even demonstrate) the use of demand response, energy efficiency, energy storage facilities and other resources used as an alternative to system expansion. We believe that it is crucial to balance the costs of producing additional administration with the benefits from the information. Thus, we call for consideration of what information is already being produced in each member state which might achieve some of the intentions of the network development plans.



Text proposal

Art 32 (according to Council proposal)

2. The development of a distribution system shall be based on a transparent network development plan that distribution system operators shall [] publish at least every **five two** years and submit to the regulatory authority and the transmission system operator. The regulatory authority may request amendments to the plans. The network development plan shall provide transparency on the medium and long-term flexibility services needed, contain the planned investments for the next five to ten years, with particular emphasis on the main distribution infrastructure which is required in order to connect new generation capacity and new loads including re-charging points for electric vehicles. The network development plan shall also include [] the use of demand response, energy efficiency, energy storage facilities or other resources that distribution system operator is using as an alternative to system expansion.

Electricity Directive art 36 and 36a – Ownership of storage facilities

“Regulation should allow for pragmatic solutions admitting DSOs to carry out operations in an efficient and safe manner without distorting markets”

Comment

Swedenergy believes that the basic principal should be that energy storage facilities are managed and operated by market participants. However, also DSOs may benefit from storage facilities to fulfil their obligation for the efficient, reliable and secure operation of the distribution system.

Thus, we believe that a pragmatic solution is necessary where DSOs may be allowed to operate storage facilities if DSOs are not acting in the day-ahead, intra-day or balancing markets and no other parties have expressed their interest to conduct such activities.

Further, DSO should expose their needs for grid capacity to the market at regular intervals to investigate the potential interest of market parties to operate storage facilities or offer equivalent demand response capacity. In case DSOs are asked to phase out their storage facilities due to market parties being interested in entering these activities, member states shall ensure that this is done in a secure way and with compensation to the DSO on fair and reasonable terms.

Finally, we strongly oppose the insertion of article 36 (a) proposed by the Parliament which further defines what a DSO may or may not do. The current unbundling rules ensure that the distribution system is operated independently from any generation and supply business, therefore the article only constrains and blocks innovation in the distribution network and does not add value.

Text proposal

Art 36 (based on Council proposal)

4. ~~DSOs shall expose their needs for grid capacity to the market. The distribution system operators or the regulatory authority shall perform at regular intervals or at least every five years in a public consultation for the required energy storage facilities in order to assess the potential availability and interest of market parties to invest [] in such facilities~~ **or offering equivalent demand response capacity.** ~~Where the public consultation, as assessed by the regulatory authority, indicates that third parties are able to own, develop, operate or manage such facilities in a cost-effective and secure manner, [] regulatory authorities shall ensure that distribution system operators' activities in this regard are phased-out within 24 months. As part of the conditions for this procedure, regulatory authorities shall may allow the distribution system operators to receive reasonable compensation, in particular to recover the residual value of the investment they made into energy storage facilities. Otherwise, DSOs shall not be obligated to phase out their facilities.~~

4a. Paragraph 4 shall not apply for the usual depreciation period of new battery storage facilities with a final investment decision until 2024.

Art 36 a (according to Parliament) – **delete all**

Electricity Regulation art 5 – Balancing management – real time information

“Real time information is a necessity for reaping the benefit of demand flexibility”

Comment

“As soon as” and “close to” leaves too much room for interpretation, should be “real-time” and up to regulators to decide if sufficient in case of complaints.

NB. With an ISP of 15 minutes, 30 minutes will lead to the same situation as today, i.e. the information to the market will be two ISPs after real-time.



Text proposal

Art 5.10 (according to Presidency compromise proposals)

Transmission system operators or third parties to whom these responsibilities have been assigned or delegated, shall publish, [] as soon as possible but not later than 30 minutes after real-time, the information on the current [] system balance of their [] scheduling areas, [] the estimated imbalance prices [] and the estimated [] balancing energy prices.

Electricity Regulation art 14 – General principles of capacity allocation and congestion management

“Ensure capacity on interconnectors is made available to market participants”

Comment

The watering down in Council of articles 13 and 14 in the Electricity Regulation is a very unfortunate development, which will have a detrimental effect on the internal market for electricity. It is a deviation from the principle of the free movement of goods, and certainly a development that we should not hope to see spread to other policy areas. Imagine member states refusing to import more than 75 % of other products (passenger cars, olive oil, wine). And on top of that having the possibility to limit imports to much lower levels until the end of 2025.

As the proposal of the European Commission seems to be off the table in both Council and Parliament, it is crucial to ensure maximum transparency around the proposed 75 % minimum currently on the table. The 75% of the thermal capacity after N-1 reductions should be the minimum capacity offered to the market – not the minimum capacity that is fed into the capacity calculation process for further reduction in capacity. The Parliament text referring to thermal capacity provides the best basis for that and furthermore it must be ensured that the 75% is not a default value but in fact a minimum that comes in play when there are no other feasible options.

Text proposal

Art 14.7 (based on proposal from Parliament)

(ii) for borders using a flow-based approach, if on cross-zonal and internal critical network elements considered in the flow-based calculation at least 75 % of the thermal capacity after reduction of the amount required to secure the N-1 principle pursuant to the capacity allocation and congestion management guideline is used as an input for capacity allocation ***offered to the market without further reductions neither to accommodate internal congestion or loop flows nor any other capacity calculation reductions.***

Art 14.7 (addition to original proposal by European Commission)

Upon request by a transmission system operator, the relevant regulatory authority may grant a derogation [...]

Before granting a derogation, the relevant regulatory authority shall consult the regulatory authorities of other Member States forming part of an affected capacity calculation region ***and invite affected market participants to comment on the implication of such a derogation.*** In case a regulatory authority disagrees with the proposed derogation, the Agency shall decide on the derogation pursuant to Article 6(8)(a) [recast of Regulation (EC) No 713/2009 as proposed by COM (2016) 863/21...

Electricity Regulation art 17 – Congestion income

“The regulation should not limit the development or use of products in the market”

Comment

Whereas the Guideline on Forward Capacity Allocation have been amended to include other products than Long Term Transmission Rights as a possibility for the market participants to hedge price risks on cross-border trading, the Regulation should therefore explicitly refer to the Guideline not to impose limitations in practice for the use of alternative products. of Regulation 714/2009 e.g. EPADs used in the Nordic market.



Text proposal

Art 17.2 (based on Council proposal)

- (a) guaranteeing the actual availability of the allocated including firmness compensation; *pursuant to article 30.5 (a) and 30.5 (b) of [] the Guideline on Forward Capacity Allocation adopted on the basis of Article 18 of Regulation 714/2009.*

Electricity Regulation art 49-51 – Establishment of the EU DSO entity for electricity

“A EU DSO entity should incorporate both local and national differences.”

Comment

Swedenergy supports the idea of an EU DSO entity especially considering that distribution networks are becoming more and more complex and also a central part of, not only the local, but the entire electricity system. With increasing part of intermittent production sources in the system and increasing demand (due to e.g. electrical vehicles and heat pumps) distribution networks will need to be flexible absorbing push and pulls from various parts of the electricity system.

However, it is important to keep in mind that DSOs are in their nature local market facilitators. The geographical and regulative conditions they operate under vary significantly across Europe, as well as, size and ownership structures. Thus, it is important to keep the formulation around a “country expert group” to ensure representation of DSOs from all member states in the proposed DSO entity.



Text proposal

Keep the following text in Council and Parliament proposal

Art 50a

1(j) [...]In addition, ‘one country’ expert group shall be established and consist of exactly one DSO representative from each Member State.

Electricity Regulation art 55 – Establishment of network codes – harmonized transmission tariff structures

“Discrepancies in transmission tariffs within the common market distorts competition”

Comment

Harmonized prerequisites are necessary to safeguard an effective competition in the market; both regarding operation and investments in the common electricity market. At the same time, transmission tariffs is a consequence of historical and geographical conditions, true harmonisation would not be achievable in the near future.

A first step should be to harmonise the structure of transmission tariffs, also including connection charges.



Text proposal

Keep the following text in Council proposal

Art 55.1

(k) rules regarding harmonised transmission [] tariff structures [as referred to in Article 16] [] including locational signals and inter-transmission system operator compensation rules; energy efficiency regarding electricity networks;

Electricity Regulation art 55 – Establishment of network codes – non-frequency ancillary services

“System services must be remunerated according to market value to secure future supply”

Comment

In an electricity system with higher shares of non-plannable and distributed generation in the electricity system, the importance of non-frequency ancillary services increases. Historically, most of these services has been supplied at non or low costs from the market participants. To safe guard the future supply of system services, these must be remunerated at market value. This will call for a union wide practice, not to distort cross-border competition, hence a network codes on non-frequency ancillary services is necessary.



Text proposal

Keep the following text in Council proposal

Art 55.1

(m) rules for non-discriminatory, transparent provision of non-frequency ancillary services, including steady state voltage control, **inertia, fast reactive current injection, inertia for grid stability, short circuit current**, black-start capability and island operation capability;