Amendments suggested by Swedenergy

EUROPEAN
COMMISSION

Brussels, 30.11.2016
COM(2016) 861 final

2016/0379 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the internal market for electricity

(recast)

(Text with EEA
relevance)

{SWD(2016) 410 final}
{SWD(2016) 411 final}
{SWD(2016) 412 final}
{SWD(2016) 413 final}

Text proposed by Commission	*Amendment proposal by Swedenegy*
Amendment 1	
Article 2 – paragraph 2(v)	
'strategic reserve' means a capacity mechanism in which resources are only dispatched in case day-ahead and intraday markets have failed to clear, transmission system operators have exhausted their balancing resources to establish an equilibrium between demand and supply, and imbalances in the market during periods where the reserves were dispatched are settled at the value of lost load.	'strategic reserve' means a capacity mechanism in which resources, **generation or load**, are only dispatched in case day-ahead and intraday markets have failed to clear, transmission system operators have exhausted their balancing resources to establish an equilibrium between demand and supply, and imbalances in the market during periods where the reserves were dispatched are settled at the value of lost load.

Justification

Strategic reserves can be a solution to address short-term adequacy issues provided their recourse remains exceptional, their size is limited and their impact on the energy market is minimised. We believe the definition should recognise that strategic reserves could include both generation and demand. Cost-efficiency is fundamental, and therefore no restriction should be made a priori either between generation and demand or between old and new resources.

Text proposed by Commission	*Amendment proposal by Swedenegy*
Amendment 2	
Article 4 – paragraph 1	
All market participants shall aim for system balance and shall be financially responsible for imbalances they cause in the system. They shall either be balance responsible parties or delegate their responsibility to a balance responsible party of their choice.	All market participants shall aim for system balance and shall be financially responsible for imbalances they cause in the system. They shall either be balance responsible parties or delegate their responsibility to a balance responsible party of their choice. Current derogations from balance responsibility should be removed no later than 1 January 2020.

Justification

Existing exemptions should be phased out, and new exemption from balancing responsibility should only apply to demonstration projects for a limited period.

Text proposed by Commission	*Amendment proposal by Swedenegy*
Amendment 3	
Article 4 – paragraph 2	
Member States may provide for derogation from balance responsibility in respect of: (a) demonstration projects; **(b) generating installations using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 500 kW;** **(c) installations benefitting from support approved by the Commission under Union State aid rules pursuant to Articles 107 to 109 TFEU, and commissioned prior to [OP: entry into force]. Member States may, subject to Union state aid rules, incentivize market participants which are fully or partly exempted from balancing responsibility to accept full balancing responsibility against appropriate compensation.**	Member States may provide for derogation from balance responsibility in respect of demonstration projects.
Justification	
Existing exemptions should be phased out, and new exemption from balancing responsibility should only apply to demonstration projects for a limited period.	

Text proposed by Commission	*Amendment proposal by Swedenergy*

Amendment 4

Article 4 – paragraph 3

From 1 January 2026, point (b) of paragraph 2 shall apply only to generating installations using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 250 kW.	***Deleted***

Justification

Existing exemptions should be phased out, and new exemption from balancing responsibility should only apply to demonstration projects for a limited period.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 5	
Article 5 – paragraph 10	
Transmission system operators shall publish **close to** real-time information on the current balancing state of their control areas, the imbalance price and the balancing energy price.	Transmission system operators shall publish ~~close to~~ real-time information on the current balancing state of their control areas, the imbalance price and the balancing energy price.

Justification

The formulation "close to real-time" leaves to much room for interpretation. Real-time information is a pre-requisite for bringing cost-efficient flexibility to the system, not the least from the demand side. Hence a definition of "close to real-time" is necessary.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 6	
Article 9 - paragraph 1	
There shall be no maximum limit of the wholesale electricity price unless it is set at the value of lost load as determined in accordance with Article 10. There shall be no minimum limit of the wholesale electricity price ***unless it is set at a value of minus 2000 € or less and, in the event that it is or anticipated to be reached, set at a lower value for the following day***	There shall be no maximum limit of the wholesale electricity price unless it is set at ***or above*** the value of lost load as determined in accordance with Article 10. ***In strongly interconnected markets, the level of technical price limits should be the same among all bidding zones and markets*****.** There shall be no minimum limit of the wholesale electricity price. This provision shall apply, inter alia, to bidding and clearing in all timeframes and include balancing energy and imbalance price signal
This provision shall apply, inter alia, to bidding and clearing in all timeframes and include balancing energy and imbalance price signal	

Justification

Energy prices should reflect market fundamentals, including scarcity in terms of time and location. Barriers to free price formation, including price caps and floors, should be removed.

It should also be underlined that when energy markets are coupled (e.g. day-ahead, intraday and balancing markets), the technical price limit, if any, should be the same among all bidding zones and markets. A different technical price limit in coupled and strongly interconnected markets may generate unintended-effects, such as electricity flowing in the opposite direction of the electricity system requirement thus not being able to meet consumers' demand.

Text proposed by Commission	*Amendment proposal by Swedenergy*

Amendment 7

Article 10 - paragraph 1

Member States shall establish a single estimate of the Value of Lost Load (VoLL) for their territory, expressed in €/MWh. That estimate shall be reported to the Commission and made publically available. **Member States may establish different VoLL per bidding zone if they have several bidding zones in their territory.** In establishing VoLL, Member States shall apply the methodology developed pursuant to Article 19(5).	Member States shall establish a single estimate of the Value of Lost Load (VoLL) for their territory, expressed in €/MWh. That estimate shall be reported to the Commission and made publically available. ~~Member States may establish different VoLL per bidding zone if they have several bidding zones in their territory.~~ In establishing VoLL, Member States shall apply the methodology developed pursuant to Article 19(5).

Justification

VoLL is not only used for the purpose of calculating price caps, but also for example to determine reliability standards: the effects of a full harmonisation of VoLL across Europe would therefore extend beyond the simple harmonisation of price caps.

It should also be underlined that when energy markets are coupled (e.g. day-ahead, intraday and balancing markets), the price cap, if any, should be the same among all bidding zones and markets. A different price cap in coupled and strongly interconnected markets may generate unintended-effects, such as electricity flowing in the opposite direction of the electricity system requirement thus not being able to meet consumers' demand.

Text proposed by Commission	*Amendment proposal by Swedenergy*

Amendment 8

Article 11 – paragraph 2

When dispatching electricity generating installations, transmission system operators shall give priority to generating installations using renewable energy sources or high-efficiency cogeneration from small generating installations or generating installations using emerging technologies to the following extent:	***Deleted***
(a) generating installations using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 500 kW; or	
(b) demonstration projects for innovative technologies.	

Justification

Market-based dispatching of all generation and demand response shall be the rule.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 9	
Article 11 – paragraph 3	
Where the total capacity of generating installations subject to priority dispatch under paragraph 2 is higher than 15 % of the total installed generating capacity in a Member State, point (a) of paragraph 2 shall apply only to additional generating installations using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 250 kW.	***Deleted***
From 1 January 2026, point (a) of paragraph 2 shall apply only to generating installations using renewable energy sources or high-efficiency cogeneration with an installed electricity capacity of less than 250 kW or, if the threshold under the first sentence of this paragraph has been reached, of less than 125 kW.	

Justification

The "Clean Energy Package" should be amended in order not to incentivise the development of new priority of dispatch provisions, specifically in markets or regions where it currently does not apply. Furthermore, there should be no new or additional exemptions, namely specific provisions based on the size of the projects or the type of technologies.

Text proposed by Commission	*Amendment proposal by Swedenergy*

Amendment 10

Article 11 – paragraph 4

Generating installations using renewable energy sources or high-efficiency cogeneration which have been commissioned prior to [OP: entry into force] and have, when commissioned, been subject to priority dispatch under Article 15 (5) of Directive 2012/27/EU of the European Parliament and of the Council or Article 16 (2) Directive 2009/28/EC of the European Parliament and of the Council shall remain subject to priority dispatch. Priority dispatch shall no longer be applicable from the date where the generating installation is subject to significant modifications, which shall be the case at least where a new connection agreement is required or the generation capacity is increased.	**Deleted**

Justification

The "Clean Energy Package" should be amended in order not to incentivise the development of new priority of dispatch provisions, specifically in markets or regions where it currently does not apply. Furthermore, there should be no new or additional exemptions, namely specific provisions based on the size of the projects or the type of technologies.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 11	
Article 12 – paragraph 2	
The resources curtailed or redispatched shall be selected amongst generation or demand facilities submitting offers for curtailment or redispatching using market-based mechanisms and be financially ***compensated***. Non-market-based curtailment or redispatching of generation or redispatching of demand response shall only be used where no market-based alternative is available, where all available market-based resources have been used, or where the number of generation or demand facilities available in the area where suitable generation or demand facilities for the provision of the service are located is too low to ensure effective competition. The provision of market-based resources shall be open to all generation technologies, storage and demand response, including operators located in other Member States unless technically not feasible.	The resources curtailed or redispatched shall be selected amongst generation***, storage*** or demand facilities submitting offers for curtailment or redispatching using market-based mechanisms and be ***paid, while making sure the payment framework avoids counterproductive incentives***. Non-market-based curtailment or redispatching of generation or redispatching of demand response shall only be used where no market-based alternative is available, where all available market-based resources have been used, or where the number of generation or demand facilities available in the area where suitable generation or demand facilities for the provision of the service are located is too low to ensure effective competition. The provision of market-based resources shall be open to all generation technologies, storage and demand response, including operators located in other Member States unless technically not feasible.

Justification

Redispatch and curtailment management shall be technology neutral and based only on market mechanisms. Then, there is no need to introduce positive discrimination for RES and CHP.

A market-based mechanism would provide the relevant price signals to trigger flexibility solutions, including storage and demand response, thus potentially increasing market competition and system efficiency. Based on a bidding process, all market players shall be activated and paid accordingly (including any lost support). In addition, redispatch and curtailment management are not purely national concerns and should hence encompass a cross border dimension.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 12	
Article 12 – paragraph 4	
Subject to requirements relating to the maintenance of the reliability and safety of the grid, based on transparent and non-discriminatory criteria defined by the competent national authorities, transmission system operators and distribution system operators shall:	Subject to requirements relating to the maintenance of the reliability and safety of the grid, based on transparent and non-discriminatory ***market based*** criteria defined by the competent national authorities, transmission system operators and distribution system operators shall:
(a) guarantee the capability of transmission and distribution networks to transmit electricity produced ***from renewable energy sources or high-efficiency cogeneration with minimum possible*** curtailment or redispatching. ***That shall not prevent network planning from taking into account limited curtailment or redispatching where this is shown to be more economically efficient and does not exceed 5 % of installed capacities using renewable energy sources or high-efficiency cogeneration in their area***;	(a) guarantee the capability of transmission and distribution networks to transmit electricity produced ***using the most cost-effective remedial actions***, including curtailment or redispatching.
(b) take appropriate grid and market-related operational measures in order to ***minimise*** the curtailment or ***downward*** redispatching ***of electricity produced from renewable energy sources or high-efficiency cogeneration***.	(b) take appropriate grid and market-related operational measures in order to ***optimise*** the curtailment or redispatching ***according to cost benefit analysis***.

Justification

Redispatch and curtailment management shall be technological neutral and only based on market mechanisms, except when curtailment has been deal through connection agreements. Then, there is no need to introduce positive discrimination for RES and CHP.

A market-based mechanism would provide the relevant price signals to trigger flexibility solutions, including storage and demand response, thus potentially increasing market competition and system efficiency. Based on a bidding process, all market players shall be activated and paid accordingly (including any lost support). In addition, redispatch and curtailment management are not purely national concerns and should hence encompass a cross border dimension.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 13	
Article 12 – paragraph 5	
Where non-market-based downward redispatching or curtailment is used, the following principles shall apply:	***Deleted***.
(a) generating installations using renewable energy sources shall only be subject to downward redispatching or curtailment if no other alternative exists or if other solutions would result in disproportionate costs or risks to network security;	
(b) generating installations using high-efficiency cogeneration shall only be subject to downward redispatching or curtailment if, other than curtailment or downward redispatching of generating installations using renewable energy sources, no other alternative exists or if other solutions would result in disproportionate costs or risks to network security;	
(c) self-generated electricity from generating installations using renewable energies or high-efficiency cogeneration which is not fed into the transmission or distribution network shall not be curtailed unless no other solution would resolve network security issues;	
(d) downward redispatching or curtailment under letters a to c shall be duly and transparently justified. The justification shall be included in the report under paragraph 3.	

Justification

Non-market based curtailment should be an exception where market-based mechanisms are not functioning. In the meantime it is opportune to reinforce the network structure in order to avoid non-market based curtailment. Market-based mechanisms must ensure that all commercial offers are exhausted before any form of non-market based measures is used. A lack of competition could in theory justify the use of non-market-based measures as a last resort. Particular attention should be paid on how to carefully and transparently define how to measure the correct level of competition and suitable generation and demand facilities to provide such services.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 14	
Article 12 – paragraph 6	
Where non-market based curtailment or redispatching is used, it shall be subject to ***financial compensation*** by the system operator requesting the curtailment or redispatching to the owner of the curtailed or redispatched generation or demand facility. Financial ***compensation*** shall ***at least be equal to the highest of*** the following elements:	Where non-market based curtailment or redispatching is used, it shall be subject to ***payment*** by the system operator requesting the curtailment or redispatching to the owner of the curtailed or redispatched generation or demand facility. Financial ***settlement*** shall ***encompass*** the following elements:
(a) additional operating cost caused by the curtailment or redispatching, such as additional fuel costs in case of upward redispatching, or backup heat provision in case of downward redispatching or curtailment of generating installations using high-efficiency cogeneration;	(a) additional operating cost caused by the curtailment or redispatching, such as additional fuel costs in case of upward redispatching, or backup heat provision in case of downward redispatching or curtailment of generating installations using high-efficiency cogeneration;
(b) ***90 % of*** the ***net*** revenues from the sale of electricity on the day-ahead market that the generating or demand facility would have ***generated*** without the curtailment or redispatching request. Where financial support is granted to generating or demand facilities based on the electricity volume generated or consumed, lost financial support shall be deemed part of the net revenues.	(b) the ***difference between*** revenues from the sale of electricity on the day-ahead market ***and the operating costs of the energy*** that the generating or demand facility would have ***injected*** without the curtailment or redispatching request. Where financial support is granted to generating or demand facilities based on the electricity volume generated or consumed, lost financial support shall be deemed part of the net revenues.

Justification

Redispatch and curtailment management shall only be based on market mechanisms Non-market curtailment should be an exception. In non-market decision making processes, generation or demand shall be fully financial compensated for the lost revenues opportunity (incl. energy component and incentives) and for any additional costs. Such compensation mechanism should however avoid the risk of manipulation or counter-productive incentives.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 15	
Article 13 - paragraph 1	
Bidding zone borders shall be based on long-term, structural congestions in the transmission network and bidding zones shall not contain such congestions. The configuration of bidding zones in the Union shall be designed in such a way as to maximise economic efficiency and cross-border trading opportunities while maintaining security of supply.	Bidding zone borders shall be based on long-term, structural congestions in the transmission network and bidding zones shall not contain such congestions. The configuration of bidding zones in the Union shall be designed in such a way as to maximise economic efficiency and cross-border trading opportunities **at Union level**, while maintaining security of supply.

Justification

It must be cleared that economic efficiency cannot be based upon national consideration. At least the efficiency must be seen from the perspective of Capacity Calculation Region.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 16	
Article 13 - paragraph 4	
The transmission system operators participating in the bidding zone review shall submit a proposal to the Commission regarding whether to amend or maintain the bidding zone configuration. Based on that proposal, the Commission shall adopt a decision whether to amend or maintain the bidding zone configuration, [no later than 6 months after entry into force of this Regulation, specific date to be inserted by OP] or by six months after the conclusion of the bidding zone configuration launched in accordance with points (a), (b) or (c) of Article 32(1) of Regulation (EU) 2015/1222, whichever comes later.	The transmission system operators participating in the bidding zone review shall submit a proposal to the Commission ***and Member States of the Capacity Calculation Region*** regarding whether to amend or maintain the bidding zone configuration. Based on that proposal, ***where there is no agreement between Member States and/or Member State neighbours in the Capacity Calculation Region***, the Commission shall adopt a decision whether to amend or maintain the bidding zone configuration ***by clearly showing the issues at stake together with an assessment of all available solutions on an equal basis***, [no later than 6 months after entry into force of this Regulation, specific date to be inserted by OP] or by six months after the conclusion of the bidding zone configuration launched in accordance with points (a), (b) or (c) of Article 32(1) of Regulation (EU) 2015/1222, whichever comes later.

Justification

BZ configuration is just one of the available tools and its impact on market efficiency and liquidity as well as on the long-term value of existing assets whose revenues are price-based should therefore be considered with due care not to create undue uncertainty. The proposal to introduce a *supranational decision-making process should take place only if there is no agreement between the MS (and/or other relevant neighbours) on the capacity calculation region especially where there is an impact on cross-border trade. Furthermore, this intervention shall be based on 1) a clear identification of the issue at stake and 2) an assessment of all available solutions on an equal footing. Measures other than BZ delineation - such as increased counter-trading, cross-border redispatch and investments - should be included in the conclusions as options to be considered alongside the BZ review.*

Text proposed by Commission	*Amendment proposal by Swedenergy*

Amendment 17

Article 14 (new subparagraph)

	The costs of remedial actions should be shared among TSOs based on the 'polluter-pays principle', where the "polluter" should be defined as the transmission system operators of areas generating unscheduled flows and the transmission system operator of the congested asset in proportion to the contribution of unscheduled and scheduled flows, respectively, to the overload

Justification

The principles included in Art. 14 of the Electricity Regulation on capacity calculation are welcome. They reflect the recent ACER Recommendation on the common capacity calculation. By forcing TSOs to explore the most efficient congestion management options from a system perspective, those principles should allow for a more efficient use of the existing electricity infrastructure.

However, to allow an effective implementation of such principles, it is crucial to complement this paragraph with a provision on sharing of re-dispatching and countertrading costs. This will ensure that TSOs get the right financial incentives and economic signals to maximise cross-border capacities and to ensure non-discrimination between internal and cross-border trade. We suggest this provision to use the "polluter pay principle" as mentioned by ACER in its Recommendation No 02/2016, and recognise additional work is required anyway to define which TSO should be considered as "polluter".

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 18	
Article 16 - paragraph 1	
Charges applied by network operators for access to networks, including charges for connection to the networks, charges for use of networks, and, where applicable, charges for related network reinforcements, shall be transparent, take into account the need for network security and flexibility and reflect actual costs incurred insofar as they correspond to those of an efficient and structurally comparable network operator and are applied in a non-discriminatory manner. In particular, they shall be applied in a way which does not discriminate between production connected at the distribution level and production connected at the transmission level, either positively or negatively. They shall not discriminate against energy storage and shall not create disincentives for participation in demand response. Without prejudice to paragraph 3, those charges shall not be distance-related.	Charges applied by network operators for access to networks, including charges for connection to the networks, charges for use of networks, and, where applicable, charges for related network reinforcements, shall be transparent, take into account the need for network security and flexibility and reflect actual costs incurred insofar as they correspond to those of an efficient and structurally comparable network operator and are applied in a non-discriminatory manner. ***Grid tariffs should also not include unrelated costs supporting other policy objectives, such as taxes and levies, as this would distort production, consumption and investment decisions.*** In particular, they shall be applied in a way which does not discriminate between production connected at the distribution level and production connected at the transmission level, either positively or negatively. They shall not discriminate against energy storage and shall not create disincentives for participation in demand response. Without prejudice to paragraph 3, those charges shall not be distance-related.

Justification

Those principles should be complemented by the following key missing element: grid tariffs should also not include unrelated costs supporting other policy objectives, such as taxes and levies, as this would distort production, consumption and investment decisions. Should this happen, such taxes and levies should not be scattered across the tariff components and be charged/collected via clearly defined and separate mechanisms in order to provide transparency to both markets and consumers.

Text proposed by Commission	*Amendment proposal by Swedenergy*

Amendment 19

Article 16 - paragraph 3

Where appropriate, the level of the tariffs applied to producers and/or consumers shall provide locational signals at Union level, and take into account the amount of network losses and congestion caused, and investment costs for infrastructure.	***Grid tariffs shall not be distance-related and shall not provide locational signal. Only connection charges may be distance related in order to be cost-reflective and give locational signals***

Justification

To provide a level-playing field within each bidding zone, grid tariffs shall not be distance related and provide locational signals since the distance of a consumer from the network is not a cost driver for the operation of the network. Only connection charges, in order to be cost-reflective and give locational signals, may be distance related

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 20	
Article 16 - paragraph 8	
Regulatory authorities shall provide incentives to distribution system operators to procure services for the operation and development of their networks and integrate innovative solutions in the distribution systems. For that purpose regulatory authorities shall recognise as eligible and include all relevant costs in distribution tariffs ***and*** introduce performance targets in order to incentivise distribution system operators to raise efficiencies, including energy efficiency, in their networks.	Regulatory authorities shall provide incentives to distribution system operators to procure ***and develop*** services for the operation and development of their networks and integrate innovative solutions in the distribution systems. For that purpose regulatory authorities shall recognise as eligible and include all relevant costs in distribution tariffs. ***These include, among others, Research and Development, pilot project implementation and the launch of new technologies, as well as service contracts with market operators that network operators award for the operation and development of their networks. The Regulatory authorities may*** introduce performance targets in order to incentivise distribution system operators to raise efficiencies, including energy efficiency, in their networks. ***The fundamental goal of innovative solutions is to improve efficiencies and quality of service. In the development phase of innovation, on the other hand, no cost efficiency requirements should apply.***

Justification

Swedenergy appreciates that the Commission recognises the need for innovation in the distribution networks in art. 16 (8), but believes that in order to ensure that DSOs are able to cover the costs for innovation, such proposal should be complemented by an explanation of what it is meant by "relevant costs" incurred by DSOs to achieve those principles.

NRAs should incentivise DSOs to raise efficiencies. Yet, NRAs should be flexible in choosing their regulatory tools as performance targets are only one possibility of many. In fact, most European NRAs already apply regulatory tools with the aim to raise efficiencies. The introduction of the last caption is based on the ground that regulators should acknowledge that innovative grids will necessarily invest in OPEX and CAPEX and that new technologies may not always be successful and fail. A regulation that burdens the risk of failure only on DSOs causes DSOs to avoid the risk of innovation. Therefore it is justified to share the risk of innovation, because in the end DSOs will also share the benefits of innovation with the customers.

Text proposed by Commission	*Amendment proposal by Swedenergy*

Amendment 21

Article 16 - paragraph 9

[OP: please add specific date – ***three*** months after entry into force] the Agency shall provide a recommendation addressed to regulatory authorities on the progressive convergence of transmission and distribution tariff methodologies. That recommendation shall address at least: (a) the ratio of tariffs applied to producers and to consumers; (b) the costs to be recovered by tariffs; (c) time differentiated network tariffs; (d) locational signals; (e) the relationship between transmission and distribution tariffs, including principles relating to non-discrimination; (f) methods to ensure transparency in the setting and structure of tariffs; (g) groups of network users subject to tariffs, including tariff exemptions.	[OP: please add specific date – ***twelve*** months after entry into force] ***and following stakeholder consultation,*** the Agency shall provide a ***non-binding*** recommendation addressed to regulatory authorities on the progressive convergence of transmission and distribution tariff methodologies. That recommendation shall address at least: (a) the ratio of tariffs applied to producers and to consumers; (b) the costs to be recovered by tariffs; (c) time differentiated network tariffs; (d) locational signals; (e) the relationship between transmission and distribution tariffs, including principles relating to non-discrimination; (f) methods to ensure transparency in the setting and structure of tariffs; (g) groups of network users subject to tariffs, including tariff exemptions.

Justification

ACER should provide, respecting the principle of subsidiarity, a non-binding recommendation assessing the need for progressive convergence of transmission and distribution tariff structures. Such recommendation should provide guidance to NRAs to implement high-level principles listed under Art. 16. However, it seems unrealistic to foresee only 3 months for ACER to issue such recommendation based on sufficient stakeholders' involvement.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 22	
Article 17 - paragraph 2	
Any revenues resulting from the allocation of interconnection capacity shall be used for the following purposes: (a) guaranteeing the actual availability of the allocated capacity; (b) ***and/or*** (b) maintaining or increasing interconnection capacities through network investments, in particular in new interconnectors. If the revenues cannot be efficiently used for the purposes set out in points (a) and/or (b) of the first subparagraph, they shall be ***placed on a separate internal account line for future use on these purposes.***	Any revenues resulting from the allocation of interconnection capacity shall be used for the following purposes: (a) guaranteeing the actual availability of the allocated capacity ***in all time frames***; ***(b)*** maintaining or increasing interconnection capacities through network investments, in particular in new interconnectors, ***(c) and/or performing remedial actions such as cross-border or internal redispatching and countertrading.*** If the revenues cannot be efficiently used for the purposes set out in points (a) and/or (b) of the first subparagraph ***in the foreseeable future,*** they ***may be used for the reduction of tariffs.***
Justification	
Any revenues resulting from the allocation of interconnections shall be used for guaranteeing the actual availability of the allocated capacity and/or maintaining or increasing interconnection capacities through network investments. It should however be recognised that maintaining interconnection capacities can also be ensured through redispatching and countertrading. Furthermore, if the revenues cannot be efficiently used for the purposes set out above and there is no foreseeable prospect to do so in the future, congestion income may still be used for the reduction of tariffs. We support that TSOs shall report on the actual use of the congestion income.	

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 23	
Article 18 - paragraph 1	
Member States shall monitor resource adequacy within their territory based on ***the European resource adequacy assessment pursuant to Article 19.***	Member States shall monitor resource adequacy within their territory based on ***a combination of resource adequacy assessments with different geographical scopes: European pursuant to Article 19, regional and national following the same methodology and assumptions.***

Justification

A move towards a European/regional approach to security of supply is welcome as it will allow developing a common forecast of reliable and firm capacity provided by all assets (generation, demand response and storage) as well as potential cross-border contribution. The European mid-term adequacy assessment performed by ENTSO-E shall be factored in but shall however not be considered as the only binding factor for MS to introduce security of supply measures (e.g. capacity mechanisms). On the contrary, several adequacy assessments with different geographical scope (European, regional, national) and granularity in the underlying assumptions should be taken into account by MS.

There is indeed a trade-off between the geographical scope covered by the system adequacy assessment and the granularity of the risk factors and scenarios considered in this probabilistic assessment. Both aspects are complementary and important to ensure (i) consistency of the results between Member States (wide geographical scope, implying less granularity) and (ii) improved relevance of the assessments (restricted geographical scope, allowing more detailed granularity and finer analysis of risk factors). This explains why resource adequacy assessments with different geographic scopes should be considered when monitoring security of supply.

Should the outcome of a national adequacy assessment substantially differ from the regional one, MS shall be asked to explain these differences. This allows a more informed decision making process to ensure system adequacy. Consistency in terms of methodology and assumptions between the different levels of assessments should be ensured.

Text proposed by Commission	*Amendment proposal by Swedenergy*

Amendment 24

Article 20 - paragraph 1

When applying capacity mechanisms Member States shall have a reliability standard in place indicating their desired level of security of supply in a transparent manner.	Member States shall have a reliability standard in place indicating their desired level of security of supply in a transparent manner.

Justification

All Member States should define and publicly disclose their desired level of SoS target based on harmonised metrics - and not only the Member States that apply capacity mechanisms. While the choice of adequacy metrics should be harmonised, each country should be free to set its desired level of adequacy.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 25	
Article 21 - paragraph 1	
Mechanisms ***other than strategic reserves*** shall be open to direct participation of capacity providers located in another Member State provided there is a network connection between that Member State and the bidding zone applying the mechanism.	***Capacity*** mechanisms shall be open to direct participation of capacity providers located in another Member State provided there is a network connection between that Member State and the bidding zone applying the mechanism.

Justification

Cross-border participation should apply to all types of mechanisms aimed at ensuring security of supply, including strategic reserves.

Text proposed by Commission	*Amendment proposal by Swedenergy*

Amendment 26

Article 21 - paragraph 5

Capacity providers shall be able to participate in more than one mechanism ***for the same delivery period.*** They shall be subject to non-availability payments in case of non-availability, and subject to two or more non-availability payments where there is concurrent scarcity in two or more bidding zones where the capacity provider is contracted.	Capacity providers shall be able to participate in more than one mechanism ***when:*** a) ***entry capacity is determined ex-ante according to Art. 21.6*** b) ***or, for the same capacity, those mechanisms do not target overlapping time frames for scarcity or overlapping periods of obligation.*** They shall be subject to non-availability payments in case of non-availability, and subject to two or more non-availability payments where there is concurrent scarcity in two or more bidding zones where the capacity provider is contracted

Justification

Swedenergy generally advocates for a principle of exclusivity (no double commitments or earnings) in capacity mechanisms targeting overlapping time frames for scarcity or overlapping periods of obligation. When capacity derating is not determined ex-ante, enabling multiple commitments could require developing a complex set of arrangements between national authorities to establish what capacity is committed where and the likelihood of contributing to security of supply in each. Penalties would need to be sufficient to avoid capacity providers "overcommitting" themselves and receiving overcompensation relative to their (lack of) actual contribution to security of supply in case of common scarcity in committed markets.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 27	
Article 23 - paragraph 4	
Generation capacity for which a final investment decision has been made after [OP: entry into force] shall only be eligible to participate in a capacity mechanism if its emissions are below 550 gr CO_2/kWh. Generation capacity emitting 550 gr CO_2/kWh or more shall not be committed in capacity mechanisms 5 years after the entry into force of this Regulation.	***Delete***

Justification

Market-based mechanisms such as carbon markets are the most cost-effective and efficient tool for mitigating greenhouse gas emissions and stimulating investments in low carbon technologies and energy efficiency. Only the combination of an effectively reformed EU ETS and improved EU electricity market design can lead to sustainable and credible carbon price signals to drive investments to mature low carbon technologies.

The CO_2 EPS in capacity mechanisms should be removed as it weakens the EU ETS and could have unintended consequences on competitiveness, decarbonisation and security of supply. Such market interventions also undermine investors' confidence. The impact of an EPS will not be limited to baseload coal and lignite. In some countries, the CO_2 EPS will impact peaking plants, including flexible gas-fired power plant. Those plants, while playing a crucial role to ensure SoS and backing up renewables, run few hours per year, thus having a limited contribution to CO_2 emissions.

The CO_2 EPS for capacity mechanisms should therefore be removed from the Electricity Regulation.

Text proposed by Commission	*Amendment proposal by Swedenergy*

Amendment 28

Article 23 - paragraph 5

Where the European resource adequacy assessment has not identified a resource adequacy concern, Member States shall ***not apply*** capacity mechanisms.	***Should the outcome of a national resource adequacy assessment substantially differ from the European one,*** Member States shall **explain these differences before *applying*** capacity mechanisms.

Justification

The European mid-term adequacy assessment performed by ENTSO-E shall be factored in but shall however not be considered as a binding factor for MS to introduce security of supply measures (e.g. capacity mechanisms). Should the outcome of a national adequacy assessment substantially differ from the European one, Member States shall explain these differences.

Text proposed by Commission	*Amendment proposal by Swedenergy*

Amendment 29

Article 23 paragraph 6 (new)

	Where implemented, capacity mechanisms shall be well designed: market-based, technology-neutral, open to existing and new assets, open to cross-border participation

Justification

The Regulation should rather establish principles for the implementation and design of capacity mechanisms as part of the electricity market design. This would facilitate a European coordinated approach on capacity mechanism as demonstrated in the DG COMP final report on the sector enquiry.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 30	
Article 24	
Member States applying capacity mechanisms on [OP: entry into force of this Regulation] shall adapt their mechanisms to comply with Articles 18, 21 and 23 of this Regulation.	Member States applying capacity mechanisms on [OP: entry into force of this Regulation] shall ***publish a timeline for adopting*** measures to adapt their mechanisms to comply with Articles 18, 21 and 23 of this Regulation.

Justification

Whereas existing capacity mechanisms implemented before or under the Energy and Environmental State Aid Guidelines (EEAG) must be respected to avoid negative impact on investment decisions, Swedenergy would welcome transitional measures by MS to adapt in a reasonable timeframe those mechanisms towards a design compatible with the EEAG.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 31	
Article 34 - paragraph 1 (new)	
	(r) provide advice on grid projects to include in the regional investment plan

Justification

By formally establishing the proposed task the ROC will be incentivized to develop and form a regional perspective on grid development. The ROC thereby will add a unique regional perspective to the national views of TSOs allowing for a well-informed decision on the regional investment plan.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 32	
Article 38 - paragraph 2	
Regional operational centres shall adopt binding decisions addressed to the transmission system operators in respect of the functions referred to in points (a), (b), (g) and (q) of Article 34(1). Transmission system operators shall implement the binding decisions issued by the regional operational centres except in cases when the safety of the system will be negatively affected.	Regional operational centres shall adopt binding decisions addressed to the transmission system operators in respect of the functions referred to in points (a), (b), (g) and (q) of Article 34(1). Transmission system operators shall implement the binding decisions issued by the regional operational centres except in cases when the safety of the system will be negatively affected. ***Should this be the case, the involved TSO(s) shall systematically report on the motivations for this decision and the alternative measure. This report shall be publicly disclosed no later than one week after declining the recommendation. Every 6 months, TSOs shall publish a comprehensive report presenting all cases where recommendations of the ROC where not applied, and detailing proposals for improving the procedures of the ROC.***
Justification	
While we support the fact that TSOs may derogate from ROC recommendation/binding decision in cases when the safety of the system will be negatively affected, full transparency and reporting on this choice shall be ensured. Such justification is already foreseen under Art. 39.4 in the case of the revision of a recommendation that is not followed by a TSO.	

Text proposed by Commission	*Amendment proposal by Swedenergy*

Amendment 33

Article 43 - paragraph 2

Regional operational centres shall submit to the Agency and to the regulatory authorities of the system operation region the data resulting from their continuous monitoring at least annually.	Regional operational centres shall submit to the Agency and to the regulatory authorities of the system operation region the data resulting from their continuous monitoring at least annually. ***Upon request of the Agency or any of the regulatory authorities of the system operation region, the regional operational centres shall submit a report of the outcomes of binding decisions. Regional operational centres shall submit a report to the Agency and the regulatory authorities of the system operation region whenever a binding decision negatively affected system security.***

Justification

While we support the fact that TSOs may derogate from ROC recommendation/binding decision in cases when the safety of the system will be negatively affected, full transparency and reporting on this choice shall be ensured towards the market and the NRAs.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 34	
Article 49	
Distribution system operators ***which are not part of a vertically integrated undertaking or which are unbundled according to the provisions of Article 35 [recast of Directive 2009/72/EC as proposed by COM(2016) 864/2],*** shall cooperate at Union level through a European Entity for Distribution system operators ("EU DSO entity"), in order to promote the completion and functioning of the internal market in electricity, and to promote optimal management and a coordinated operation of distribution and transmission systems. Distribution system operators who wish to participate in the EU DSO entity shall become registered members of the entity.	Distribution system operators shall cooperate at Union level through a European Entity for Distribution system operators ("EU DSO entity"), in order to promote the completion and functioning of the internal market in electricity, and to promote optimal management and a coordinated operation of distribution and transmission systems. Distribution system operators who wish to participate in the EU DSO entity shall become registered members of the entity ***or choose a proxy of EU or other Associations of their choosing***. ***The EU DSO entity shall deal only with issues which require Union regulations; all others will be handled on national level.***

Justification

Since the decisions of the DSO entity apply to all DSOs (also smaller ones), Swedenergy suggests to ensure inclusivity of all DSOs in Europe, therefore recommending that the membership criteria is widened to include all type of DSOs in Europe.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 33	
Article 51 – paragraph 1	
The tasks of the EU DSO entity shall be the following:	The tasks of the EU DSO entity shall be ***selected appropriately and can include*** the following:
(a) coordinated operation and planning of transmission and distribution networks;	(a) coordinated operation and planning of transmission and distribution networks;
(b) integration of renewable energy resources, distributed generation and other resources embedded in the distribution network such as energy storage;	(b) integration of renewable energy resources, distributed generation and other resources embedded in the distribution network such as energy storage;
(c) development of demand response;	(c) development of demand response;
(d) digitalisation of distribution networks including deployment of smart grids and intelligent metering systems;	(d) digitalisation of distribution networks including deployment of smart grids and intelligent metering systems;
(e) data management, cyber security and data protection;	(e) data management, cyber security and data protection;
(f) participation in the elaboration of network codes pursuant to Article 56.	(f) participation in the elaboration of network codes pursuant to Article 56.
In addition the EU DSO entity shall:	
(a) cooperate with ENTSO for electricity on the monitoring of implementation of the network codes and guidelines which are relevant to the operation and planning of distribution grids and the coordinated operation of the transmission and distribution networks and which are adopted pursuant to this Regulation;	***(g)*** cooperate with ENTSO for electricity on the monitoring of implementation of the network codes and guidelines which are relevant to the operation and planning of distribution grids and the coordinated operation of the transmission and distribution networks and which are adopted pursuant to this Regulation;
(b) cooperate with ENTSO for electricity and adopt best practices on the coordinated operation and planning of transmission and distribution systems including issues such as exchange of data between operators and coordination of distributed energy resources;	***(h)*** cooperate with ENTSO for electricity and adopt best practices on the coordinated operation and planning of transmission and distribution systems including issues such as exchange of data between operators and coordination of distributed energy resources;
(c) work on identifying best practices on the areas identified in paragraph 1 and for the introduction of energy efficiency improvements in the distribution network;	***(i)*** adopt an annual work programme and an annual report;
	(***j***) operate in full compliance with competition rules.

(***d***) adopt an annual work programme and an annual report;

(***e***) operate in full compliance with competition rules.

Justification

The DSO entity should be comprised of national DSO technical experts focused purely on technical legislative drafting and providing advice to the European institutions. Its main objective would be to ensure harmonisation of national rules at EU level where there are verifiable efficiency gains for the operation of the distribution networks and benefit for consumers. EU DSO entity should not engage in lobbying activities, therefore modify the tasks accordingly. The interlinkages between a) Art. 51 listing the tasks of the EU DSO entity and b) Art. 55 listing new areas for network codes should be carefully assessed and looked at together in order to ensure consistency. As far as the new proposed areas for network codes are concerned, Swedenergy questions whether addressing the new areas actually requires a brand new set of NCs and guidelines, or if an expansion of the current NCs and guidelines would be sufficient.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 34	
Article 55 – paragraph 1	
The Commission is empowered to adopt delegated acts in accordance with Article 63 concerning the establishment of network codes in the following areas:	The Commission is empowered to adopt delegated acts in accordance with Article 63 concerning the establishment of network codes in the following areas:
(a) network security and reliability rules including rules for technical transmission reserve capacity for operational network security;	(a) network security and reliability rules including rules for technical transmission reserve capacity for operational network security;
(b) network connection rules;	(b) network connection rules;
(c) third-party access rules;	(c) third-party access rules;
(d) data exchange and settlement rules;	(d) data exchange and settlement rules;
(e) interoperability rules;	(e) interoperability rules;
(f) operational procedures in an emergency;	(f) operational procedures in an emergency;
(g) capacity-allocation and congestion-management rules including curtailment of generation and redispatch of generation and demand;	*(g) capacity-allocation and congestion-management rules including curtailment of generation and redispatch of generation and demand;*
(h) rules for trading related to technical and operational provision of network access services and system balancing;	(h) rules for trading related to technical and operational provision of network access services and system balancing;
(i) transparency rules;	(i) transparency rules;
(j) balancing rules including network-related reserve power rules;	*(j) balancing rules including network-related reserve power rules;*
*(k) rules regarding harmonised transmission **and distribution** tariff structures and connection charges including locational signals and inter-transmission system operator compensation rules; and*	*(k) rules regarding harmonised transmission tariff structures and connection charges including locational signals and inter-transmission system operator compensation rules; and*
(l) energy efficiency regarding electricity networks;.	(l) energy efficiency regarding electricity networks;.
(m) rules for non-discriminatory, transparent provision of non-frequency ancillary services, including steady state voltage control, inertia, fast reactive current injection, black-start capability;	(m) cyber security rules.

(n) demand response, including aggregation, energy storage, and demand curtailment rules;

(o) cyber security rules**; and**

(p) rules concerning regional operational centres.

Justification

Swedenergy questions whether addressing the new areas actually requires a brand new set of NCs and guidelines, or if an expansion of the current NCs and guidelines would be sufficient as some of the proposed NCs go very much into MS's competencies. For example distribution tariffs are a matter of national regulation and as such they should not be subject to a network code. Swedenergy opposes development of technology specific NCs such as non-frequency ancillary services and demand response.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 35	
Article 55 – paragraph 2	
2. The Commission shall, after consulting the Agency, the ENTSO for Electricity and the other relevant stakeholders, establish a priority list every three years, identifying the areas set out in paragraph 1 to be included in the development of network codes. If the subject-matter of the network code is directly related to the operation of the distribution system and less relevant for the transmission system, the Commission may require the EU DSO entity for electricity instead of the ENTSO for Electricity to convene a drafting committee and submit a proposal for a network code to the agency.	2. The Commission shall, after consulting the Agency, the ENTSO for Electricity***, the EU DSO entity*** and the other relevant stakeholders, establish a priority list every three years, identifying the areas set out in paragraph 1 to be included in the development of network codes. If the subject-matter of the network code is directly related to the operation of the distribution system and less relevant for the transmission system, the Commission may require the EU DSO entity for electricity instead of the ENTSO for Electricity to convene a drafting committee and submit a proposal for a network code to the agency.
Justification	
The EU DSO entity should be in an equal position with ENTSO-E in the establishing of a priority list for Network Codes together with ACER, considering that the listed Network Codes might have a strong DSO impact, and the EU DSO entity is heavily involved in the development of the decided Network Codes.	

Regional Operational Centres tasks (Annex 1)

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 36	
Annex 1 7.1.b	
Regional operational centres shall determine the reserve capacity requirements for the system operation region. The determination of reserve capacity requirements shall:	Regional operational centres shall determine the reserve capacity requirements for the system operation region. The determination of reserve capacity requirements shall:
a) pursue the general objective to maintain operational security in the most cost effective manner;	***a)*** pursue the general objective to maintain operational security in the most cost effective manner;
b) be performed at the day-ahead and/or intraday timeframe;	***b)*** determine the overall amount of required reserve capacity for the system operation region;
c) determine the overall amount of required reserve capacity for the system operation region;	***c)*** define minimum reserve capacity requirements for each type of reserve capacity;
d) define minimum reserve capacity requirements for each type of reserve capacity;	***d)*** take into account possible substitutions between different types of reserve capacity with the aim to minimise the costs of procurement;
e) take into account possible substitutions between different types of reserve capacity with the aim to minimise the costs of procurement;	***e)*** set out the necessary requirements for the geographical distribution of required reserve capacity, if any.
f) set out the necessary requirements for the geographical distribution of required reserve capacity, if any.	

Justification

Performing sizing of balancing capacity reserves only at the day-ahead and intra-day time frame is too ambitious given current practices and should rather be performed on various lead times.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 37	
Annex 1 8.1.	
Regional operational centres shall support the transmission system operators of the system operation region in determining the amount of balancing capacity that needs to be procured. The determination of the amount of balancing capacity shall: ***a) be performed at the day-ahead and/or intraday timeframe;*** b) take into account possible substitutions between different types of reserve capacity with the aim to minimise the costs of procurement; c) take into account the volumes of required reserve capacity that are expected to be provided by balancing energy bids, which are not submitted based on a contract for balancing capacity.	Regional operational centres shall support the transmission system operators of the system operation region in determining the amount of balancing capacity that needs to be procured. The determination of the amount of balancing capacity shall: a) be performed ***according to the rules as referred in Art. 32, 33 and 34 of the Electricity Balancing Guideline*** b) take into account possible substitutions between different types of reserve capacity with the aim to minimise the costs of procurement; c) take into account the volumes of required reserve capacity that are expected to be provided by balancing energy bids, which are not submitted based on a contract for balancing capacity. ***d) Be performed in a way ensuring that cross-border capacity allocation is always the result of a market based process.***

Justification

Where economically efficient, a move towards regional balancing capacity procurement is welcome to allow the system to grasp the potential economic benefits of exchanging balancing reserves. Performing regional balancing capacity procurement only at the day-ahead and intra-day time frame is too ambitious given current practices. Those tasks should be performed according to the rules already defined in Electricity Balancing guideline. In addition, where regional balancing capacity procurement is in place, cross border capacity allocation must be the outcome of the markets and should not involve reservation of cross-border transmission capacity by TSOs.

Text proposed by Commission	*Amendment proposal by Swedenergy*
Amendment 38	
Annex 1 8.2.	
Regional operational centres shall support the transmission system operators of the system operation region in procuring the required amount of balancing capacity determined in accordance with point 8.1. The procurement of balancing capacity shall:	Regional operational centres shall support the transmission system operators of the system operation region in procuring the required amount of balancing capacity determined in accordance with point 8.1. The procurement of balancing capacity shall:
a) be performed ***at the day-ahead and/or intraday timeframe;***	~~*a)*~~ be performed ***according to the rules as referred in Art. 32, 33, 34 of the Electricity Balancing Guideline***
b) take into account possible substitutions between different types of reserve capacity with the aim to minimise the costs of procurement.	**b)** take into account possible substitutions between different types of reserve capacity with the aim to minimise the costs of procurement.
	c) ***Be performed in a way ensuring that cross-border capacity allocation is always the result of a market based process****.*

Justification

Where economically efficient, a move towards regional balancing capacity procurement is welcome to allow the system to grasp the potential economic benefits of exchanging balancing reserves. Performing regional balancing capacity procurement only at the day-ahead and intra-day time frame is too ambitious given current practices. Those tasks should be performed according to the rules already defined in Electricity Balancing guideline. In addition, where regional balancing capacity procurement is in place, cross border capacity allocation must be the outcome of the markets and should not involve reservation of cross-border transmission capacity by TSOs.