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Swedish TSO's request for derogation from 70% requirement

The European Federation of Energy Traders (EFET¹) welcomes the opportunity to provide comments in the context of the recent Energimarknadsinspektionen (Ei) decision 2021-102881 regarding the application of the minimum 70% requirement for capacity allocation in Sweden and at its borders (article 16.8 of Regulation 2019/943). We welcome the open communication of Ei on that matter and the relevant ACER consultation and we wish to contribute to the overall discussion on this decision.

General thoughts on the minimum 70% requirement

All TSOs should maximise the cross-zonal capacity made available to the market.

This principle is enshrined in article 16 of the Electricity Regulation, and a minimum requirement has been established to make at least 70% of cross-zonal capacity available to the market (art. 16.8). Action plans (art. 15) and derogations (art. 16.9) may apply as temporary measures.

However, **progress towards the minimum requirement and beyond must be observed**, whichever the temporary measures in place. The objective of the Regulation 2019/943 is to see the minimum 70% requirement met by 2025 at the latest. In this sense, we welcome the attention of Ei to the progress made by Swedish TSO Svenska Kraftnät (SvK) in the allocation of capacity.

Also, in order to monitor compliance with the applicable rules and progress towards the minimum requirement, **proper data disclosure is required**. We do not understand that SvK is still anonymising critical branches and withholding data from its own regulator and ACER, let alone market participants.

Reflections and comments on the Ei decision

Part 1: Ei's decision to reject the derogation request for the SE2-SE3 and SE3-SE4 borders

We do not specifically take a position on the need or not for a derogation concerning these bidding zone borders.

¹ The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent and liquid wholesale markets, unhindered by national borders or other undue obstacles. We build trust in power and gas markets across Europe, so that they may underpin a sustainable and secure energy supply and enable the transition to a carbon neutral economy. EFET currently represents more than 100 energy trading companies, active in over 27 European countries. For more information: www.efet.org

However, **we strongly oppose the argumentation of Ei concerning the applicability of article 16.8/16.9 at these borders.** According to our view, article 16 applies as follows:

- Maximising cross-zonal capacity available for electricity trading – while respecting system security – is an obligation of all EU TSOs since the Second Energy Package.
- Since the adoption of the Clean Energy Package, this obligation is considered fulfilled if TSOs respect a minimum threshold of 70% of margin available for cross-zonal trade on constraining network elements (cNTC) or CNECs (flow-based).
- Cross-zonal trade can be affected by elements anywhere in the network, i.e. network elements internal to a bidding zone or cross-zonal (including intra-Member State cross-zonal) network elements. Hence, all the network elements identified as constraining need to be monitored and reported on by the TSOs.
- Derogations to the minimum 70% requirement submitted by TSOs and approved by regulators apply to the same network elements.
- Reporting and compliance monitoring of the minimum 70% requirement by the NRAs also apply to all the same network elements.

Hence, we do not subscribe to the Ei view that the minimum 70% requirement would not apply to bidding zone borders that are internal to a Member State. Ei bases its reasoning on the definition of “interconnector” in art. 2.1 of the Regulation (which indeed concerns only cables linking different countries) when article 16.8 uses the word “interconnection”, which is not defined in the Regulation. At no point of the drafting and approval of the Regulation was it ever proposed to exclude bidding borders internal to a Member State from the application of article 16. These “internal” bidding zone borders are included in other parts of the Regulation, especially article 14 (bidding zone review) of the same section. For reference, the Italian NRAs ARERA has included bidding zone borders internal to the Italian territory in its 2021 monitoring report of article 16².

Sweden has made the conscious choice of splitting its territory into multiple bidding zones. This choice – which we have questioned and continue to challenge – should not serve to escape obligations under European legislation.

We take this opportunity to also recommend further harmonisation of reporting and compliance monitoring by TSOs, NRAs and ACER along the lines [proposed by market participants](#) in December 2021 and as suggested in the [joint note of ACER and NRAs](#) in April 2022.

² <https://arera.it/allegati/docs/21/420-21alla.pdf>

Part 2: Ei's decision to reject the derogation request for the DK2-SE4, DE/LU-SE4, PL-SE4 and LT-SE4 borders

We understand that the rejection of SvK's request for a derogation on the DK2-SE4, DE/LU-SE4, PL-SE4 and LT-SE4 borders are based on Ei's analysis that the situation on these borders has improved, and the derogation has not been used in 2021. According to Ei, a derogation should not be granted to avoid steps back in the availability of capacity.

We support the Ei decision, based on the principle of seeking improvement in capacity availability at these borders.

Part 3: Ei's referral to ACER on the derogation for the FI-SE3 and DK1-SE3 borders

We have read the arguments of the Swedish, Finnish and Danish regulators with attention.

We acknowledge that SvK has taken action to improve the cross-zonal transmission capacity available in day-ahead through its new allocation methodology. However, data for 2021 from the recent ACER monitoring report³ shows that there is still vast room for improvement in capacity availability (especially in direction FI>SE3 and SE3>DK1). It seems reasonable to assume that SvK does little to secure the needed level of redispatch resources and takes little action to countertrade in order to handle internal congestion in the short term. If this is indeed the case, we could expect that SvK's practice of cross-border capacity restrictions will persist.

We are concerned that SvK, year after year, claims a lack of redispatch/countertrade resources, structural congestions, lack of downward regulation as a default justification not to meet the 70% minimum requirement. In particular, **we fundamentally question the assertion of a lack of countertrading potential**, which should be as high as the liquidity of the respective markets (in FI, SE3 and DK1) allows.

Finally, we are concerned that Ei itself does not have access to the relevant data from SvK. We insist that SvK revises its approach to anonymising branches and withholding data from its own regulator, ACER, and the market.

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<https://www.acer.europa.eu/sites/default/files/documents/Publications/ACER%20MACZT%20Report%202021.pdf>