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Energy Authority's position on Svenska kraftnät's request for a derogation from the minimum level of capacity to be made available for cross-zonal trade for 2022

Affärsverket svenska kraftnät (later Svenska kraftnät) has submitted a request for derogation according to Article 16(9) of Regulation (EU) 2019/943 (later Electricity Regulation) covering the period from 1 January 2022 – 31 December 2022, for approval to the Swedish Energy Markets Inspectorate (Energimarknadsinspektionen).

This document provides the Finnish Energy Authority's (Energiavirasto) position on the Svenska kraftnät's derogation request.

Relevant regulation

Regulation (EU) 2019/943 of the European Parliament and of the Council on the internal market for electricity article 16(1) states that network congestion problems shall be addressed with non-discriminatory market-based solutions which give efficient economic signals to the market participants and transmission system operators involved. Network congestion problems shall be solved by means of non-transaction-based methods, namely methods that do not involve a selection between the contracts of individual market participants. When taking operational measures to ensure that its transmission system remains in the normal state, the transmission system operator shall take into account the effect of those measures on neighbouring control areas and coordinate such measures with other affected transmission system operators as provided for in Regulation (EU) 2015/1222.

Article 16(2) states that transaction curtailment procedures shall be used only in emergency situations, namely where the transmission system operator must act in an expeditious manner and redispatching or countertrading is not possible. Any such procedure shall be applied in a non-discriminatory manner. Except in cases of force majeure, market participants that have been allocated capacity shall be compensated for any such curtailment

Article 16(4) states that the maximum level of capacity of the interconnections and the transmission networks affected by cross-border capacity shall be made available to market participants complying with the safety standards of secure network operation. Counter-trading and redispatch, including cross-border redispatch, shall be used to maximise available capacities to reach the minimum capacity provided for in paragraph 8. A coordinated and non-discriminatory process for cross-border remedial actions shall be applied to enable such maximisation, following the implementation of a redispatching and counter-trading cost-sharing methodology.

Article 16(8) stipulates that the transmission system operators shall not limit the volume of interconnection capacity to be made available to market participants as a means of solving congestion inside their own bidding zone or as a means of managing flows resulting from transactions internal to bidding zones. Without prejudice to the application of the derogations under paragraphs 3 and 9 of this Article and to the application of Article 15(2), this paragraph shall be considered to be complied with where the following minimum levels of available capacity for cross-zonal trade are reached:

(a) for borders using a coordinated net transmission capacity approach, the minimum capacity shall be 70 % of the transmission capacity respecting operational security limits after deduction of contingencies, as determined in accordance with the capacity allocation and congestion management guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009;

(b) for borders using a flow-based approach, the minimum capacity shall be a margin set in the capacity calculation process as available for flows induced by cross-zonal exchange. The margin shall be 70 % of the capacity respecting operational security limits of internal and cross-zonal critical network elements, taking into account contingencies, as determined in accordance with the capacity allocation and congestion management guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009.

The total amount of 30 % can be used for the reliability margins, loop flows and internal flows on each critical network element.

Article 16(9) states that at the request of the transmission system operators in a capacity calculation region, the relevant regulatory authorities may grant a derogation from paragraph 8 on foreseeable grounds where necessary for maintaining operational security. Such derogations, which shall not relate to the curtailment of capacities already allocated pursuant to paragraph 2, shall be granted for no more than one-year at a time, or, provided that the extent of the derogation decreases significantly after the first year, up to a maximum of two years. The extent of such derogations shall be strictly limited to what is necessary to maintain operational security and they shall avoid discrimination between internal and cross-zonal exchanges.

Before granting a derogation, the relevant regulatory authority shall consult the regulatory authorities of other Member States forming part of the affected capacity calculation regions. Where a regulatory authority disagrees with the proposed derogation, ACER shall decide whether it should be granted pursuant to point (a) of Article 6(10) of Regulation (EU) 2019/942. The justification and reasons for the derogation shall be published. Where a derogation is granted, the relevant transmission system operators shall develop and publish a methodology and projects that shall provide a long-term solution to the issue that the derogation seeks to address. The derogation shall expire when the time limit for the derogation is reached or when the solution is applied, whichever is earlier.

Svenska kraftnät's request for derogation

Svenska Kraftnät states in its application that its request is based on foreseeable reasons and the lack of remedial actions makes Svenska kraftnät unable to meet the CEP 70% requirement in 2022 without endangering operational security in a N-1 situation in following situations:

- Congestion in the West Coast Corridor inside bidding zone SE3, in combination with the lack of available downregulation implies a need to reduce capacity on six different interconnectors: SE3-NO1, DK1-SE3, DK2- SE4, DE-SE4, PL -SE4 and LT-SE4.

According to Svenska kraftnät the congestion problem at the West Coast Corridor occurs in hours with a northbound flow in the Swedish transmission system when the northbound flow through West Coast Corridor exceeds its general maximum capacity of about 2,300 MW.

Svenska kraftnät states that it has analysed the available tools; remedial actions and capacity allocation, to manage the overloads and maintain operations inside security limits. When there are insufficient remedial actions available for Svenska kraftnät to operate the grid within operational security limits Svenska kraftnät has no other alternative than to allocate capacities that do not make 70% or more of one or several of these CNECs operational secure capacity available to the market.

- The historic dynamics of the Nordic AC grid has changed which have induced a higher flow of energy from east to west. This new flow increases the loading of network elements that historically were not affecting the market outcome space and has thus created congestion in new sections of the Swedish grid. This affects the capacities that can be allocated respecting operational security on the following borders: SE3-NO1, SE3-DK1, SE2- SE3, SE3-SE4 and SE3-FI.

According to the Svenska kraftnät the Nordic power system is undergoing a rapid change. In 2020 and 2021 two of the reactors at Ringhals nuclear power plant were taken out of operation and at the end of 2020 the interconnector between NO2 and DE/LU (Norway and Germany) was taken into operation. These two events have had significant impact on the historic dynamics of the Nordic AC grid.

Minimum content for derogation request

In 2020, all European regulatory authorities agreed principles with respect to the criteria to grant a derogation and the content of the derogation requests according to Article 16(9) of the Electricity Regulation. These principles were meant to be taken into account when TSOs would develop any derogation requests from 2021 onward. Energy Authority notes that regardless of this, Svenska kraftnät's request for derogation is not in line with these principles nor the Electricity Regulation itself which shall be further elaborated.

Energy Authority, along with all European regulatory authorities, notes that the derogation requests shall deal with issues that clearly relate to operational security, as prescribed by Article 16(9) of the Electricity Regulation. In particular, a derogation request should consider the following points:

- A derogation may be granted on **foreseeable grounds where necessary for maintaining operational security**, but it shall not cope with situations originating from structural congestions.
- A derogation can be applied to reduce the capacity **only to the extent that is required to maintain operational security** and shall avoid discrimination between internal and cross-zonal exchanges.

On both points, the request by Svenska kraftnät fails to meet the requirements.

Foreseeable grounds where necessary for maintaining operational security

The derogation request is based on a general statement that the lack of remedial actions makes Svenska kraftnät unable to meet the minimum capacity requirement in 2022 without endangering operational security in an N-1 situation. This general statement is followed by a description:

*"The situations where Svenska kraftnät faces challenges to meet the CEP 70% requirement occur **due to the structural congestion** [emphasis added] described in Article 3 and Article 4."*

The derogation request continues to explain that:

*"Svenska kraftnät during 2022 **cannot exclude situations** [emphasis added] where capacity allocation not meeting the 70% requirement will be necessary to ensure that the operational security is maintained."*

Energy Authority notes that based on the Svenska kraftnät's own explanation the derogation is requested to cope with situations originating from structural congestions inside of one of the Swedish bidding zones, for which purpose a derogation should not, according to the Electricity Regulation, be granted for.

In effort to further elaborate the lack of remedial actions, the derogation request claims that Svenska kraftnät has made an assessment that there is lack of countertrading resources and that the so-called regulation power market has insufficient volumes to relieve the CNECs. Energy Authority has serious concerns and doubts on the assessment and the conclusions.

The obligation to use countertrading and redispatch, including cross-border redispatch, shall be used to maximise available capacities to reach the minimum capacity according to Article 16(4) of the Electricity Regulation. Pursuant to the same Article a coordinated and non-discriminatory process for cross-border remedial actions shall be applied to enable such maximisation, following the implementation of a redispatching and counter-trading cost-sharing methodology. Svenska kraftnät interprets that the application of cross-zonal measures is subject to the implementation of a redispatching and countertrading cost sharing methodology. Energy Authority finds it clear the requirement to use countertrading and redispatch, including cross-border redispatch, applies regardless of whether the cost sharing methodology is implemented or not. Once the cost sharing methodology is implemented it shall be applied to enable the maximization of available capacities via a coordinated and non-discriminatory process, but non-implementation does not lift the requirement to reach the minimum capacity with countertrading and redispatching.

Also, Energy Authority emphasizes that the requirement to use countertrading and redispatching is not limited to utilizing the existing regulation power market as Svenska kraftnät's request seems to suggest by only analysing the historical bid levels of such market. This is clearly envisaged in the content of the article 16 where the obligation to fulfill the 70 % requirement is general by nature.

Furthermore, Energy Authority has serious concerns on the level of quality and even the relevance of the assessment presented in Annex A of Svenska kraftnät's

request. These concerns can only be presented in high-level as the Annex itself is very ambiguous:

1. The relevant CNECs for each border are not identified in the assessment.
2. The secure capacity per CNECs is not provided.
3. Annex A explains that "*As the zone-to-zone PTDF values as well as the limiting CNECs varies over time a firm constant value of regulation volume that needs to be available for each hour and area cannot be defined.*" However, in the presented Figures the "*required regulation volume*" is determined (and it even seems to be a constant value most the time).

Energy Authority notes that Svenska kraftnät is simultaneously claiming that the required volume cannot be defined, while at the same time they are making statements such as "*the historical data in the figures show that it often is the case that less than the required amount of regulation resources are available*".

Based on Svenska kraftnät's request for derogation, Energy Authority considers that the document does not only fail to identify an operational security concern, but specifically declares an unaddressed structural congestion as the reason for applying a derogation. Also, the argument that Svenska kraftnät cannot exclude a particular situation as the request explains is hardly the foreseeable justification, based on which a derogation could be granted.

Derogation only to the extent that is required to maintain operational security and avoiding undue discrimination

Svenska kraftnät's application requests a general derogation of the minimum capacity requirement for numerous interconnectors and states that further applications may be submitted as the request is based on reoccurring events.

Energy Authority considers in line with the article 16 and principles agreed by all regulatory authorities that a general request to be exempted from the minimum capacity requirement is not acceptable, but instead a minimum level of capacities should be provided and a proper monitoring of it should be offered. The request should clearly indicate which reductions below the 70% threshold relate to which specific underlying reason for the derogation request and how a derogation on a specific CNE(C) is reflected in the capacity calculation.

The derogation request makes a vague statement that the derogation avoids undue discrimination between internal and cross-zonal exchanges as Svenska kraftnät will maintain the available capacity above the CEP 70% requirement for as much of the time as possible.

Energy Authority considers that the level of allocated capacity for internal and cross-zonal exchanges should be monitored to avoid undue discrimination. This is particularly important in the case of Svenska kraftnät as there seems to be a clear lack of commitment to follow the relevant rules and legal obligations as shall be further highlighted.

Methodology and projects that shall provide a long-term solution to the issue that the derogation seeks to address

For 2021, Svenska kraftnät requested and was granted a derogation for several borders. Following the approval, on March 31 2021, Svenska kraftnät published a methodology for reducing the need for derogations pursuant to Article 16 (9) of the Electricity Regulation. The derogation request for 2022 describes the Svenska kraftnät's view of its methodology as:

"The methodology is first and foremost aimed at mitigating the issue of the West Coast Corridor, for which Svenska kraftnät was granted derogations for 2020 and 2021. However, most measures described are of general nature and applicable to facilitate making at least 70% of operational secure capacity available to the market for other limiting CNECs than those relevant for the West Coast Corridor."

Energy Authority notes that by Svenska kraftnät's own admission, Svenska kraftnät has not followed the requirement of Article 16 (9) of the Electricity Regulation to provide a long-term solution to the West Coast Corridor which was the underlying cause for the previous derogations according to Svenska kraftnät. That is to say that Svenska kraftnät is, notably casually, admitting to not have followed its legal obligations. Energy Authority considers that this merely underlines the lack of respect that Svenska kraftnät seems to have to the applicable European legislation.

Energy Authority considers that there is no reason to expect Svenska kraftnät to follow its obligations neither in the future if a derogation is granted.

Case FI-SE3 border

For the 2022 request, Svenska kraftnät added the FI-SE3 border to the list of borders that a derogation is requested. For this border no derogation has been granted and yet, since March 2021, Svenska kraftnät has been unilaterally limiting the exchange from FI to SE3 to zero or close to it. The explanation provided by Svenska kraftnät is that, in 2020 and 2021, two nuclear power plants were taken out of operation and, in 2020, a new interconnector between Norway and Germany was taken into operation, which both have changed the flows in the Nordic grid.

Energy Authority finds it clear that decommissioning of power plants and new interconnectors will change flows in the system but finds it more difficult to understand that this link between well-ahead known events and impacts to its system was seemingly not noticed by a transmission system operator as no derogation was requested for 2021.

In any case, Energy Authority considers Svenska kraftnät clearly as non-compliant due to these limitations. Energy Authority does not consider it appropriate to grant a derogation for the FI-SE3 border on the mere basis that Svenska kraftnät has de facto provided capacities well below the minimum capacity requirement during 2021. The infringement alone does not provide any justification to continue violating the key aspects of the Electricity Regulation, and Svenska kraftnät's request provides no foreseeable grounds necessary for maintaining operational security either.

Conclusion

Energy Authority does not consider it appropriate to grant the requested derogation to Svenska kraftnät:

1. No foreseeable grounds necessary for maintaining operational security.
2. A derogation is not for structural congestions.
3. The derogation request is not limited only to what is necessary and is discriminatory in nature.
4. No expectation of Svenska kraftnät to develop and publish a methodology and projects that shall provide a long-term solution in case a derogation is granted.

Energy Authority considers that the evident non-compliance and continuing effort by Svenska kraftnät to misuse a regulatory derogation to bypass the key aspects of the Electricity Regulation calls for action by European institutions, ACER and the Commission.

Energy Authority hereby formally disagrees with the proposed derogation.