

NordREG approach to the 3rd Legislative Package on retail and consumer issues

Report 1/2010

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Preface

The Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (hereafter the Directive) that is part of the 3rd Legislative Package, entered into force on the 3rd of September 2009. Member States have to implement the Directive to the national legislation by the 3rd of March, 2011. The Nordic countries are all affected by the Directive.

NordREG sees that the new Directive will have an influence on the retail market. The public service obligations and the measures on consumer protection mentioned in Article 3 and Annex 1 affect the market design in many ways. This is true also for the future common Nordic retail market.

The Nordic energy ministers decided on the 27th of October to give their support on the process towards a common Nordic end-user market by 2015. This process requires that the critical parts of the regulation and business processes have to be harmonised between the Nordic countries.

NordREG has found that during the national implementation of the 3rd Legislative Package it is essential to keep in mind also the process towards a common Nordic end-user market. The implementation of the public service obligations and the measures on consumer protection should be co-ordinated between the Nordic countries. To find common Nordic solutions for these issues NordREG has prepared a NordREG approach to the implementation of parts of the 3rd Legislative Package, in particular Article 3 and Annex 1. This report is concentrating on the retail market and consumer protection issues only. Other issues mentioned in the Directive are not discussed in this paper.

NordREG believes that this approach will help the Nordic countries to find common solutions while implementing the Directive 2009/72/EC. These common solutions would support the process towards a common Nordic end-user market

The NordREG approach to the 3rd Legislative Package on retail and consumer issues has been prepared by NordREG WG Retail and Distribution. The members of the working group have been:

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1 Introduction

1.1 The scope of this report

In this report NordREG has concentrated on the requirements mentioned in the Article 3 and Annex 1 of the Directive 2009/72/EC. These requirements are related to the public service obligations and the measures on consumer protection.

Other issues mentioned at the other parts of the Directive, like issues related to unbundling of transmission and distribution system operations etc, have been left out of scope of this report.

The objective of this report is to provide harmonised Nordic solutions to the Nordic countries when implementing the Directive.

1.2 Used methods

In this report NordREG has mapped the legal provisions stemming from the Directive and analyzed if the implementation of these provisions need to be harmonised between the Nordic countries. If NordREG has found that there needs to be harmonisation during the implementation, NordREG has also prepared suggestions on harmonised Nordic solutions.

Suggestions on harmonised Nordic solutions are mainly based on suggestions mentioned in the previous NordREG reports¹.

¹ Suggestions are mainly based on reports “Harmonised supplier switching model; NordREG Report 2/2008” (2008) and “Market Design - Common Nordic end-user market; NordREG report 3/2009” (2009).

2 NordREG approach to the 3rd Legislative Package issues

The following table includes analysis of the requirements mentioned at the Article 3 and Annex 1 of the Directive 2009/72/EC. Based on this analysis NordREG has prepared suggestions on necessary harmonisation between the Nordic countries during the implementation of these requirements into national legislation.

Topic	Requirements set at the 3rd package	Suggestion to a common Nordic solution
<p>Universal service obligations (Article 3.3 and Annex 1 point 1g)</p>	<p>MS shall ensure that all household customers (and small enterprises) enjoy universal service that is the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable, transparent and non-discriminatory prices.</p> <p>To ensure the provision of universal service, MS may appoint a supplier of last resort.</p>	<p><u>NordREG suggests that this article does not need a common Nordic solution.</u></p> <p>NordREG finds that in the Nordic countries the customers are already supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable, transparent and non-discriminatory prices. Therefore there is no need for a common Nordic approach to this issue.</p> <p>NordREG sees that it is important that the supplier of last resort arrangements do not affect the competitiveness in the market in any negative way. Such negative influence could be the protection of incumbent suppliers which in turn contributes to making customers passive and cements the suppliers' market shares.</p> <p>This issue has also been discussed at the NordREG Report "Market Design – Common Nordic end-user market" 3/2009 (p. 173).</p>

<p>Licenses for suppliers (Article 3.4)</p>	<p>MS shall ensure that all customers are entitled to have their electricity provided by a supplier regardless of the MS in which the supplier is registered, as long as the supplier follows the applicable trading and balancing rules.</p>	<p><u>NordREG suggests that this article does not need a common Nordic solution.</u></p> <p>NordREG finds that it is not critical to harmonise the rules for licensing suppliers. Today licenses for suppliers are not required in Sweden or in Finland. In Denmark a license is required only when it is related to the obligation to the supply scheme. In Norway a supplier is required to have a license and a foreign supplier must be registered in the Central Coordinating Register for Legal Entities to get a license. It is however critical that any possible licensing schemes does not present any significant barrier for suppliers that want to enter Nordic markets. NordREG has found that the present licensing systems in Denmark and Norway do not create an obstacle for a common Nordic end-user market.</p> <p>This issue has also been discussed at the NordREG Report “Market Design – Common Nordic end-user market” 3/2009 (p. 75).</p>
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<p>Supplier switching (Article 3.5)</p>	<p>MS shall ensure that:</p> <p>(a) where a customer wishes to change supplier, the change is effected by the operator(s) concerned within three weeks; and</p> <p>(b) customers are entitled to receive all relevant consumption data.</p>	<p><u>a) NordREG suggests that there should be a Nordic solution</u></p> <p>NordREG sees that 14 days (calculated from the date when the new supplier sends a message to the DSO about the switch) should be the maximum time from making a contract to the switch actually taking place, and the switch should be able to take place any day of the week.</p> <p>To make the suggested timetable possible it is necessary to create harmonised rules on what kind of information new supplier should give to the DSO when initiating the switch. This information should be determined by an appropriate legally binding rule.</p> <p>This issue has also been discussed in the NordREG report “Harmonised supplier switching model” 2/2008, p. 6.</p> <p><u>b) NordREG suggests that there should be a common Nordic solution</u></p> <p>NordREG finds that “all relevant consumption data” could include both data that the customer needs to make a switch and also data that the customer needs to be able to monitor and adjust his own energy consumption (for energy efficiency purposes).</p>
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<p>Vulnerable customers (Article 3.7)</p>	<p>MS shall define the concept of vulnerable customers (which may refer to energy poverty and to the prohibition of disconnection of electricity to such customers in critical times.)</p> <p>MS shall ensure that rights and obligations linked to vulnerable customers are applied.</p> <p>MS shall take measures to protect final customers in remote areas.</p> <p>MS shall ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms.</p> <p>MS shall ensure that the eligible customer is in fact able easily to switch to a new supplier.</p> <p>As regards at least household customers, those measures shall include those set out in Annex I.</p>	<p><u>NordREG suggests that this article does not need a common Nordic solution.</u></p> <p>NordREG finds that it is a national issue to decide how the concept of a vulnerable customer is defined. Each country can define a vulnerable customer in different ways. However, NordREG finds it necessary that each national solution should be compatible with a well-functioning Nordic market. One solution could be to define the concept of a vulnerable customer within the social welfare legislation.</p>
<p>Energy poverty (Article 3.8)</p>	<p>MS shall take appropriate measures, such as formulating national energy action plans, providing benefits in social security systems to ensure the necessary electricity supply to vulnerable customers,</p> <p>or</p> <p>providing for support for energy efficiency improvements, to address energy poverty where identified, including in the broader context of poverty.</p>	<p><u>NordREG suggests that this article does not need a common Nordic solution.</u></p> <p>NordREG finds that this is an issue which should be solved nationally. However, NordREG sees that one solution could be to refer to provisions stated within the social welfare legislation.</p>

<p>Information on fuel mix, environmental impact and means of dispute settlement (Article 3.9)</p>	<p>MS shall ensure that electricity suppliers specify in or with the bills and in promotional materials made available to final customers:</p> <p>(a) the contribution of each energy source to the overall fuel mix of the supplier over the preceding year in a comprehensible and, at a national level, clearly comparable manner;</p> <p>(b) at least the reference to existing reference sources, such as web pages, where information on the environmental impact, in terms of at least CO2 emissions and the radioactive waste resulting from the electricity produced by the overall fuel mix of the supplier over the preceding year is publicly available;</p> <p>(c) information concerning their rights as regards the means of dispute settlement available to them in the event of a dispute.</p> <p>As regards points (a) and (b) of the first subparagraph with respect to electricity obtained via an electricity exchange or imported from an undertaking situated outside the Community, aggregate figures provided by the exchange or the undertaking in question over the preceding year may be used.</p> <p>The regulatory authority or another competent national authority shall take the necessary steps to ensure that the information provided by suppliers to their customers pursuant to this Article is reliable and is provided, at a national level, in a clearly comparable manner.</p>	<p><u>NordREG suggests that there should be a common Nordic solution.</u></p> <p>NordREG finds that these provisions are quite clear and could be implemented to the national legislation as they are.</p> <p>However, NordREG finds that it would also be beneficial to harmonise other types of minimum information given in the bill. The requirements regarding the content of the bill have been discussed in the NordREG Report “Market Design – Common Nordic end-user market” 3/2009 (p. 99).</p>

<p>Single point of contact (Article 3.12)</p>	<p>Member States shall ensure the provision of single points of contact to provide consumers with all necessary information concerning their rights, current legislation and the means of dispute settlement available to them in the event of a dispute. Such contact points may be part of general consumer information points.</p>	<p><u>NordREG suggests that this article does not need a common Nordic solution.</u></p>
<p>Dispute settlement (Article 3.13)</p>	<p>MS shall ensure that an independent mechanism such as an energy ombudsman or a consumer body is in place in order to ensure efficient treatment of complaints and out-of-court dispute settlements.</p>	<p><u>NordREG suggests that this article does not need a common Nordic solution.</u></p>
<p>Consumer checklist (Article 3.16)</p>	<p>MS shall ensure that electricity suppliers or distribution system operators, in cooperation with the regulatory authority, take the necessary steps to provide their consumers with a copy of the energy consumer checklist and ensure that it is made publicly available.</p>	<p><u>NordREG suggests that there should be a common Nordic solution.</u></p> <p>NordREG finds that suppliers and DSOs should publish the consumer checklist list or having a link to the list on their web-pages. The list or a link to the list should also be available at the web-pages of the national regulators and/or other relevant consumer authorities.</p> <p>Customers should be informed about the publication. This information could be given e.g. in info sheet or in customer magazine.</p> <p>DSOs and suppliers should also be obliged to send the list to the customer free of charge if the customer so wishes.</p>

<p>Information in the contract (Annex I point 1a)</p>	<p>Measures referred to in Article 3 are to ensure that customers have a right to a contract with their electricity service provider that specifies:</p> <ul style="list-style-type: none"> • the identity and address of the supplier, • the services provided, the service quality levels offered, as well as the time for the initial connection, • the types of maintenance service offered, • the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained, • the duration of the contract, the conditions for renewal and termination of services and of the contract and whether withdrawal from the contract without charge is permitted, • any compensation and the refund arrangements which apply if contracted service quality levels are not met, including inaccurate and delayed billing, • the method of initiating procedures for settlement of disputes in accordance with point (f), • information relating to consumer rights, including on the complaint handling and all of the information referred to in this point, clearly communicated through billing or the electricity undertaking's web site. <p>Conditions shall be fair and well-known in advance. In any case, this information should be provided prior to the conclusion or</p>	<p><u>NordREG suggests that there should be a common Nordic solution.</u></p> <p>NordREG finds that these provisions are quite clear and could be implemented to the national legislation as they are.</p> <p>Regarding the last bullet point, on information, NordREG suggests that the DSOs and suppliers shall have also on their bills and websites information on how the customer can launch a complaint. This information should include also information on the customer's rights.</p> <p>Minimum level of information given in the contract has been discussed also at the NordREG Report "Market Design – Common Nordic end-user market" 3/2009 (p. 92).</p>
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	<p>confirmation of the contract.</p> <p>Where contracts are concluded through intermediaries, the information relating to the matters set out in this point shall also be provided prior to the conclusion of the contract.</p>	
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<p>Adequate notice to customers (Annex I point 1b);</p>	<p>Measures referred to in Article 3 are to ensure that customers are given adequate notice of any intention to modify contractual conditions and are informed about their right of withdrawal when the notice is given.</p> <p>Service providers shall notify their subscribers directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into effect in a transparent and comprehensible manner.</p> <p>MS shall ensure that customers are free to withdraw from contracts if they do not accept the new conditions notified to them by their electricity service provider.</p>	<p><u>NordREG suggests that there should be a common Nordic solution.</u></p> <p>NordREG sees that there should be common minimum requirements for the publication of contractual terms, amending of the contractual terms and the ending of the contract in order to facilitate the supplier's action on the Nordic market. However nationally there could be additional requirements.</p> <p>NordREG recommends that notification on price changes should be sent to the customers in advance. Cost-effective methods (SMS and email) should be preferred. Additionally, announcement in relevant newspapers could be used (actual method could be agreed with a customer). To ensure that all customers will receive information directly the notification should be sent also with the next bill.</p> <p>Any amendment of other contractual terms should be notified in advance directly to the customer in a cost-effective way so that customers will have the possibility to take appropriate measures.</p> <p>This issue has also been discussed at the NordREG Report "Market Design – Common Nordic end-user market" 3/2009 (p. 92).</p>
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<p>Transparent information (Annex I point 1c)</p>	<p>Measures referred to in Article 3 are to ensure that customers receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of electricity services.</p>	<p><u>NordREG suggests that there should be a common Nordic solution.</u></p> <p>NordREG recommends that suppliers and DSOs should inform customers about the actual price/tariff, especially about the charges that tariff includes. DSOs and suppliers should also have public price lists for their services, such as fees for disconnecting/reconnecting a customer, changing a tariff etc.</p>
<p>Payment methods, clear general terms and conditions and selling methods (Annex I point 1d)</p>	<p>Measures referred to in Article 3 are to ensure that customers are offered a wide choice of payment methods, which do not unduly discriminate between customers.</p> <p>Prepayment systems shall be fair and adequately reflect likely consumption. Any difference in terms and conditions shall reflect the costs to the supplier of the different payment systems.</p> <p>General terms and conditions shall be fair and transparent. They shall be given in clear and comprehensible language and shall not include non-contractual barriers to the exercise of customers' rights, for example excessive contractual documentation. Customers shall be protected against unfair or misleading selling methods.</p>	<p><u>NordREG suggests that this point does not need a common Nordic solution.</u></p> <p>NordREG believes that customers should have different payment methods available when acting in the electricity market and that prepayment systems should be fair.</p> <p>However, these issues are not critical in the Nordic electricity markets, and certainly not exclusive to the electricity sector. These issues should therefore be dealt with at the national level by other national authorities, as these issues may be present in other markets as well. This also applies to the issue of unfair and misleading selling methods, which should be addressed by general consumer protection legislation.</p> <p>NordREG wants to point out that in addition to the requirements of the 3rd Legislative Package, prepayment systems should also reflect future market prices and consumption</p>

<p>Charges for supplier switching (Annex I point 1e)</p>	<p>Measures referred to in Article 3 are to ensure that customers are not charged for changing supplier.</p>	<p><u>NordREG suggests that there should be a common Nordic solution.</u></p> <p>NordREG strongly supports that no fees are to be allowed in relation to supplier switching. There should be no financial obstacles for customers when it comes to supplier switching and therefore also meter reading. As a result it should not be allowed to have any meter reading fees in this regard.</p> <p>This issue has also been discussed at the NordREG Report “Harmonised supplier switching model” 2/2008 (p. 10 and 23).</p>
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<p>Complaint handling procedures/systems by service providers (Annex I point 1f)</p>	<p>Measures referred to in Article 3 are to ensure that customers benefit from transparent, simple and inexpensive procedures for dealing with their complaints.</p> <p>In particular, all consumers shall have the right to a good standard of service and complaint handling by their electricity service provider. Such out-of-court dispute settlements procedures shall enable disputes to be settled fairly and promptly, preferably within three months, with provision, where warranted, for a system of reimbursement and/or compensation.</p> <p>They should, wherever possible, be in line with the principles set out in Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes.</p>	<p><u>NordREG suggests that there should be a common Nordic solution.</u></p> <p>NordREG believes that both suppliers and DSOs should have complaint handling procedures. By adopting harmonised standards for complaint handling procedures for the service providers and alternative dispute settlement boards, the customers could have the same right to a good standard of service and complaint handling if they choose a supplier from another Nordic country. This would promote customers' confidence, transparency, supplier switching across the borders and ultimately the functioning of the Nordic end user market.</p> <p>NordREG suggests that common minimum standards for complaint handling procedures should be developed. NordREG recommends the ERGEG work regarding the guidelines of good practice in complaint handling should be taken into account in this process.</p>
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<p>Consumption data (Annex I point 1h)</p>	<p>Measures referred to in Article 3 are to ensure that customers have at their disposal their consumption data, and shall be able to, by explicit agreement and free of charge, give any registered supply undertaking access to its metering data. The party responsible for data management shall be obliged to give those data to the undertaking.</p> <p>MS shall define a format for the data and a procedure for suppliers and consumers to have access to the data.</p> <p>No additional costs shall be charged to the consumer for that service.</p>	<p><u>NordREG suggests that there should be a common Nordic solution.</u></p> <p>NordREG finds that there should be common Nordic data formats, both in the supplier switching procedure and for the consumption data available to the suppliers.</p> <p>Common data formats are essential to harmonising the exchange of information between service providers, customers and/or other third party businesses.</p> <p>NordREG points out that implementation of a common Nordic end-user market requires harmonised data formats to be used in the supplier switching procedure and also common formats for consumption data available to suppliers.</p> <p>In order to enable customers to act in the electricity market, it is imperative that consumption data is easily available them.</p> <p>This issue has also been discussed at the NordREG Report “Market Design – Common Nordic end-user market” 3/2009 (p. 98, 101 and 143).</p>
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<p>Informing customers on actual consumption and costs (Annex I point 1i)</p>	<p>Measures referred to in Article 3 are to ensure that customers are properly informed of actual electricity consumption and costs frequently enough to enable them to regulate their own electricity consumption.</p> <p>That information shall be given by using a sufficient time frame, which takes account of the capability of customer's metering equipment and the electricity product in question. Due account shall be taken of the cost-efficiency of such measures.</p> <p>No additional costs shall be charged to the consumer for that service.</p>	<p><u>NordREG suggests that in this point there is no need for a common Nordic solution.</u></p> <p>NordREG supports the idea that customers should be properly informed about the actual consumption. The actual consumption can be used as a facilitator for regulating the electricity consumption. It would though require frequently given information to the customer. NordREG finds that the most pragmatic way to fulfil this obligation is to send bills based on actual consumption frequently enough.</p>
<p>Final bill after supplier switching (Annex I point 1j)</p>	<p>Measures referred to in Article 3 are to ensure that customers receive a final closure account following any change of electricity supplier no later than six weeks after the change of supplier has taken place.</p>	<p><u>NordREG suggests that there should be a common Nordic solution.</u></p> <p>NordREG finds that the final closure account should be sent to the customer no later than six weeks after the change of supplier has taken place.</p>

<p>Intelligent metering systems (Annex I point 2)</p>	<p>MS shall ensure the implementation of intelligent metering systems that shall assist the active participation of consumers in the electricity supply market. The implementation of those metering systems may be subject to an economic assessment of all the long-term costs and benefits to the market and the individual consumer or which form of intelligent metering is economically reasonable and cost-effective and which timeframe is feasible for their distribution.</p> <p>Such assessment shall take place by 3 September 2012.</p> <p>Subject to that assessment, MS or any competent authority they designate shall prepare a timetable with a target of up to 10 years for the implementation of intelligent metering systems.</p> <p>Where roll-out of smart meters is assessed positively, at least 80 % of consumers shall be equipped with intelligent metering systems by 2020.</p> <p>MS, or any competent authority they designate, shall ensure the interoperability of those metering systems to be implemented within their territories and shall have due regard to the use of appropriate standards and best practice and the importance of the development of the internal market in electricity.</p>	<p><u>NordREG suggests that there is no need for a common Nordic solution.</u></p> <p>NordREG encourages the implementation of intelligent meters. The Nordic countries are also well under way in implementing intelligent metering systems.</p>
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