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Nordic implementation guide for articles 10, 12, 14 and 18

NordREG Retail Market Working Group

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Executive summary

Since 2005, NordREG has worked towards a harmonized electricity retail market. Many important steps have been taken. However, the common objective has not yet been achieved. The Nordic countries¹ still have separate retail markets with many similarities and some differences.

When assessing how to implement the Clean Energy Package (CEP), NordREG has selected article 10, 12, 14 and 18 in the new electricity directive² as articles important to implement in a similar way.

Article 10 regulates customers' basic contractual rights. NordREG has approved the following recommendations for the implementation of article 10:

- NordREG recommends Nordic National Regulatory Authorities (NRAs) to ensure that administrative procedures in each respective country do not discriminate suppliers from other EU member states, in order to make it easy for consumers to choose foreign suppliers and for foreign suppliers to operate in the Nordic retail markets **(10.1)**.
- NordREG recommends that a 'summary of key contractual conditions' for final customers should include: contract name, binding time, the means by which up-to-date information on all applicable tariffs may be obtained, notice period and how a termination fee is calculated. If the contract is a fixed term contract, a sentence that describes what happens after the contract has expired shall be included in the summary. The information should be given in a concise and simple language **(10.3)**.
- NordREG recommends that suppliers should display 'key contractual conditions' on the first page of their contract **(10.3)**.
- NordREG recommends suppliers and DSOs to let the customers choose which direct channel they want to be contacted through regarding modifications of their contract. Notifications by email and 'on or attached to the bill' shall be among the options the customers can choose from **(10.4)**.
- NordREG recommends that the bill can only be used as a channel for information about modifications in the contract, if the customer actively has chosen that channel **(10.4)**.
- NordREG recommends that if the customer has not chosen which direct channel s/he wants to be contacted through, the information shall be sent in a separate letter **(10.4)**.
- NordREG recommends Nordic NRAs to ensure that consumers have the right to be informed about all the price components of the contract and the price for these components. If the price for individual components varies over time, consumers must be informed so. When the total costs cannot be reasonably calculated in advance, the calculation method must be provided. This includes information about the consumption profile which is used if the customer does not have a smart meter. **(10.5)**.
- Suppliers shall provide final customers with a final closure account after any switch of supplier no later than six weeks after the switch has taken place. The six weeks starts the day the incoming supplier is registered at the metering point, whereby subsequent consumption at that point is attributed to that supplier **(10.12)**.

¹ Denmark, Finland, Norway and Sweden.

² Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU

Article 12 regulates switching related fees. NordREG has approved the following recommendation for the implementation of article 12:

- NordREG recommends that Denmark, Finland, Norway and Sweden use the exemption described in article **12 (3)** allowing termination fees for fixed term, fixed price contracts. The most important reason being that we do not want to limit the contract types that suppliers are willing to offer too forcefully without proper analysis of markets and the benefits of doing so

A prerequisite for the exemption in provision 12(3) is that the termination fees are proportionate and do not exceed the supplier's direct economic loss resulting from the customer's termination of the contract. According to NordREG, that means that a termination fee cannot exceed the direct economic loss that the supplier can prove it had. Direct economic loss is defined as compensation for hedging or other costs directly connected to the customer's terminated electricity contract.

The proportionality of the termination fee and that it does not exceed the supplier's direct economic loss, has to be monitored by the NRAs. NordREG does not recommend any specific calculation method to determine correct termination fees. Instead, one or a combination of methods listed in chapter 3 can be used.

- NordREG recommends the following guiding principles for termination fees:
 1. The termination fee exemption is a derogation and, therefore, the paragraph should be interpreted strictly.
 2. A supplier (or market participant engaged in aggregation) has the right to be compensated if a customer terminates its contract before maturity, if such a fee is part of the contract terms that the customer willingly has entered into. This compensation cannot exceed the supplier's (or aggregator's) direct economic loss resulting from the customer terminating the contract.
 3. A termination fee must be proportional and take into account, for example, the remaining binding time, the calculated remaining volume and market price for electricity or expected gain for the supplier or aggregator.
 4. A termination fee cannot be used to benefit the supplier or the aggregator economically, it can only be used to cut losses. If there is no economic loss, there should be no termination fee.
 5. Suppliers or aggregators are obliged to inform customers about the calculation method used to determine the termination fee upfront and in the contract. Further, suppliers must be able to inform customers how the termination fee has been calculated upon request. This helps customers, customer advisories and monitoring authorities assess if the fee is in line with the contract and ultimately with the directive.

Article 14 regulates comparison tools. NordREG has approved the following recommendation for the implementation of article 14:

- NordREG recommends the NRAs in Denmark, Finland, Norway and Sweden to fulfill the criteria listed in provision **14 (1)** and use the exemption in provision **14 (6)** for member states with public CTs.

NordREG will also undertake as a separate task in 2020 to exchange experience regarding how to:

- include offers for microenterprises with an expected yearly consumption below 100 000 kWh
- include dynamic contracts
- interpret the criteria listed in provision 14 (1)

Article 18 (together with Annex I) contains minimum requirements for billing and billing information.

NordREG has approved the following recommendations for the implementation of article 18:

- NordREG recommends Nordic NRAs to ensure alignment between key information in the bill and the Comparison tool (CT), enabling customers to more easily compare offers based on their own consumption and payments for consumed electricity. In this context, key information is for example the billing period, consumption, price information and total cost **(18.1)**.
- Nordic NRAs shall ensure that final customers receive all their bills and billing information free of charge. However, it shall be allowed to give a discount when the customer is opting for electronic billing **(18.2)**.
- In order to secure customer's right to flexible arrangements for the actual payment of bills, the customer should be able to benefit from paying at different intervals **(18.3)**.
- Nordic NRAs must ensure that suppliers inform customers in the bill about the availability and benefits of switching supplier **(Annex I, 1.2e)**.
- NordREG recommends that the required information in the bill about where comparison tools can be found **(Annex I, 1.2i)** is combined with the required information about availability and benefits of switching supplier **(Annex I, 1.2e)**.
- Contact details and links regarding the single point of contact and comparison tools **(Annex I, 1.2h and i)** shall be displayed together with a short explanation that describes where they lead and what service the customer can get there.

NordREG's ambition is that the recommendations and guiding principles mentioned above are used by relevant public bodies during national implementation of CEP.

1. Introduction

NordREG recognizes articles 10, 12, 14 and 18 in the recast electricity directive as articles where harmonized implementation will have an important and positive impact on the Nordic retail markets. The objectives of these articles are, for example, to provide smaller consumers with strengthened contractual and informational rights, and to help consumers understand complex contractual conditions.

With NordREG's long-term ambition to work towards a harmonized Nordic retail market in mind, NordREG has assessed the selected articles in order to recommend how to implement them in an as similar way as possible. NordREG believes that if this is done successfully, it will contribute to further harmonization of the Nordic retail markets.

Timeframe for harmonized Nordic implementation of the Clean Energy Package

CEP should be implemented through national legislation in each country by the end of 2020. Thus, it is important that NordREG as early as possible provides recommendations so that national legislators are able to take these into account while preparing amendments to the national legislation.

The timeframe for a harmonized implementation of CEP within the NordREG cooperation is very tight. The deadline for a Nordic position is early 2020 when The Swedish Energy Markets Inspectorate (Ei), will deliver a final suggestion³ on how to implement CEP to the Swedish government.

Scope and outline of this paper

This paper covers the legal requirements of the four selected articles, assesses the different options available and, where feasible, suggests common NordREG recommendations. All provisions in the articles have been assessed, but in this paper, we only present the provisions where common recommendations have been approved.

Stakeholder involvement

In June 2019, a first draft of the recommendations for article 12 and 14 was sent for consultation to the Nordic Industry association, Nordenergi. NordREG received an answer in August. A first draft of the recommendations for article 10 and 18 was sent for consultation to Nordenergi on 6 September 2019. Due to the project timeframe, Nordenergi was given a very short deadline for input. NordREG received an answer on 9 September.

2. Article 10

Below follows the text in article 10 together with relevant definitions and recitals. Where possible, a recommended harmonized Nordic implementation is suggested.

10.1

'Member States shall ensure that all final customers are entitled to have their electricity provided by a supplier, subject to the supplier's agreement, regardless of the Member State in which the supplier is registered, provided that the supplier follows the applicable trading and balancing rules. In that regard, Member States shall take all measures necessary to ensure that administrative procedures do not discriminate against suppliers already registered in another Member State.'

³ Ei has been assigned by the Swedish government to suggest how CEP should be implemented in Swedish law. The suggestion shall be hand over to government by the end of February 2020, at the latest.

This is a provision in two parts:

- 1) Customers have the right to be supplied by a supplier, regardless of which Member State (MS) the supplier is registered in. However, the supplier must follow trading and balancing rules in the MS in which it wants to operate.
- 2) The MS shall ensure that administrative procedures do not discriminate suppliers from other MSs.

NordREG's recommendation

- NordREG recommends Nordic NRAs to ensure that administrative procedures in each respective country do not discriminate suppliers from other MSs, in order to make it easy for consumers to choose foreign suppliers and for foreign suppliers to operate in the Nordic retail markets.

10.3

'Final customers shall have the right to a contract with their supplier that specifies:

(a) the identity and address of the supplier,

(b) the services provided, the service quality levels offered, as well as the time for the initial connection,

(c) the types of maintenance service offered,

(d) the means by which up-to-date information on all applicable tariffs, maintenance charges and bundled products or services may be obtained;

(e) the duration of the contract, the conditions for renewal and termination of the contract and services, including products or services that are bundled with those services, and whether terminating the contract without charge is permitted;

(f) any compensation and the refund arrangements which apply if contracted service quality levels are not met, including inaccurate or delayed billing;

(g) the method of initiating an out-of-court dispute settlement procedure in accordance with Article 26;

(h) information relating to consumer rights, including information on complaint handling and all of the information referred to in this paragraph, that is clearly communicated on the bill or the electricity undertaking's web site.

Conditions shall be fair and well known in advance. In any case, this information shall be provided prior to the conclusion or confirmation of the contract. Where contracts are concluded through intermediaries, the information relating to the matters set out in this paragraph shall also be provided prior to the conclusion of the contract.

Final customers shall be provided with a summary of the key contractual conditions in a prominent manner and in concise and simple language. '

Implementation

This provision lists the requirements of electricity supply contracts. Here, it could be beneficial to have a common standard for what constitutes 'key contractual conditions'.

The NordREG Customer Survey from 2018 asked a number of questions related to knowledge about the terms of an electricity contract. Results showed that 72% of consumers are aware of the binding period, 65% believe they know how the price is set and 64% responded that they know whether or not the price can change during the contract period. Further, 61% responded that they are aware of the period of notice. 50% of consumers knew whether or not they had a green contract and 47% knew the consequences of terminating the contract before the binding period expired.

Complaint statistics from the Swedish regulator showed that, in 2018, most complaints about contract terms concerned automatic prolongation of the contract (19%), termination fees (15%) and notice period (14%).

NordREG's recommendations

- NordREG recommends that a 'summary of key contractual conditions' for final customers should include: contract name, binding time, the means by which up-to-date information on all applicable tariffs may be obtained, notice period and how a termination is calculated. If the contract is a fixed time contract, a sentence that describes what happens after the contract has expired shall be included in the summary. The information should be given in a concise and simple language.
- NordREG recommends that suppliers should display 'key contractual conditions' on the first page of a contract.

10.4

'Final customers shall be given adequate notice of any intention to modify contractual conditions and shall be informed about their right to terminate the contract when the notice is given. Suppliers shall notify their final customers, in a transparent and comprehensible manner, directly of any adjustment in the supply price and of the reasons and preconditions for the adjustment and its scope, at an appropriate time no later than two weeks, or no later than one month in the case of household customers, before the adjustment comes into effect. Member States shall ensure that final customers are free to terminate contracts if they do not accept the new contractual conditions or adjustments in the supply price notified to them by their supplier.'

Implementation

The provision regulates how customers must be informed when there are changes to their contracts.

In the NordREG Customer Survey from 2018, the respondents were asked how they preferred to receive information from their electricity supplier. There are mainly two information channels that stand out. 58% say they want information by email, and 40% say they want information on or attached to the electricity bill. Furthermore, 28% say that they want this information on 'My pages' on the electricity supplier's website, and 17% want a separate letter with information. 12% prefer to receive information from the electricity supplier in an app, while 11% prefer SMS. Only 4% want information at a separate display in their house.

NordREG believes that it is important that customers are given the option to choose which channel they are contacted through regarding information about modifications to their contract.

It is natural that today's most preferred channels (email and 'on or attached to the bill') are among the options that customers can choose from. At the same time, both NordREG and CEER⁴ believe that too much information on the bill can be confusing and risk leading to information overload for the customer.

⁴ CEER White Paper series (paper # III) on the European Commission's Clean Energy Proposals, 30 May 2017, 2.3: "Information overload for consumers should be avoided (Annex II). Consumers should be provided with only essential information on bills, and other required detailed information should be segmented through various communication channels where possible (Article 18(5))."

The bill is an important channel for information to the customer. However, today many customers receive their bills directly to their internet bank, where they sometimes are paid without being scrutinized. Therefore, NordREG recommends that bills can only be used as a channel for information about modifications to the contract, if the customer actively has chosen that channel.

If the customer has not chosen which direct channel s/he wants to be contacted through, the information shall be sent in a separate letter.

NordREG's recommendations

- NordREG recommends suppliers and DSOs to let customers choose which direct channel they want to be contacted through regarding modifications of their contract. Email notifications and 'on or attached to the bill' shall be among the options the customers can choose from.
- NordREG recommends that bills can only be used as a channel for information about modifications in the contract, if the customer actively has chosen that channel.
- NordREG recommends that if the customer has not chosen which direct channel they want to be contacted through, the information shall be sent in a separate letter.

10.5

'Suppliers shall provide final customers with transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of electricity services.'

Implementation

The following questions have been discussed in NordREG:

1. What constitutes a transparent price on dynamic price contracts? Customers need to be given enough information to be able to estimate what they will pay based on product information from the supplier, day-ahead prices and their consumption data.
2. How should we differentiate between price elements from the spot market and price elements that are related to the business of the supplier and therefore subject to competition?

NordREG believes that some of the detailed information referred to above could be made available on request. However, it is crucial that the consumer can understand and predict how the price will be set, and afterwards control how it was calculated.

NordREG's recommendation

- NordREG recommends Nordic NRAs to ensure that consumers have the right to be informed about all the price components of the contract and the price for these components. If the price for individual components varies over time, consumers must be informed so. When the total costs cannot be reasonably calculated in advance, the calculation method must be provided. This includes information about the consumption profile which is used if the customer does not have a smart meter.

10.12

'Suppliers shall provide final customers with a final closure account after any switch of supplier no later than six weeks after such a switch has taken place.'

Implementation

A common interpretation of which date the six weeks start on could be beneficial in order to harmonize, so suppliers can use their same billing procedures in different markets.

- Six weeks after the customer notifies the supplier that he wants to terminate the contract?
- Six weeks after the new supplier notifies the old supplier that the customer has switched?
- Six weeks after the termination is registered in the datahub?

NordREG's recommendation:

- Suppliers shall provide final customers with a final closure account after any switch of supplier no later than six weeks after the switch has taken place. The six weeks starts on the day the incoming supplier is registered at a metering point, whereby the subsequent consumption at that point is attributed to that supplier.

3. Article 12

Below follows the text in provisions 12(2-3), together with relevant definitions and recitals.

12.2

'Member States shall ensure that at least household customers, microenterprises and small enterprises are not charged any switching related fees⁵.'

Implementation

The Nordic countries have different rules regarding breakability of contracts and if termination fees apply or not. In Denmark, contracts are breakable, but suppliers can offer contracts that are unbreakable for a maximum period of six months. If a consumer terminates an unbreakable contract, the supplier can charge a termination fee if stated in the contract. Sweden has no limit for contract length, breakability of contracts or when a termination fee is allowed.

Table 1, Contract length, breakability of contracts or when a termination fee is allowed

	Maximum Contract period	Are Contracts breakable	Consequence of broken contract
Denmark	No limit.	Yes. The supplier can offer contracts that are unbreakable for a maximum period of six months	None after six months. Penalty fee if the contract is broken within the binding period (maximum six month binding period)
Finland	No limit, but contracts longer than two years are not binding for the consumer after that period, only for the supplier	Yes	Penalty payment, if agreed so. Depending on the contract terms, moving may be a valid reason for ending a contract earlier at no cost.

⁵ Electricity directive, recital 17: Switching-related fee' means a charge or penalty for changing suppliers or market participants engaged in aggregation, including contract termination fees, that is directly or indirectly imposed on customers by suppliers, market participants engaged in aggregation or system operators.

	Maximum Contract period	Are Contracts breakable	Consequence of broken contract
Norway	There are no time limits, most contracts are continuous. Fixed price contracts are normally offered on one and three-year terms (mostly one year).	Yes	Fixed price contracts normally have a termination fee. Other contracts are breakable without penalty. Not heavily regulated due to contractual freedom.
Sweden	No limit	Yes	Fixed-term contracts mainly come with a penalty (except when moving – unless some other agreement has been made. For example, suppliers may agree with the customer that the contract may continue on the same terms at the new address).

The different rules for maximum length, breakability and termination fees affects what contracts are offered in each national market. In Denmark no contract has a longer binding period than six months. This is a consequence of the fact that termination fees are not allowed for contracts longer than six months. In Finland fixed term, fixed price contracts are common (44,6%) but binding periods longer than two years do not exist. In Sweden one to three years binding periods are common with 29,2 % of consumers⁶.

Table 2, Most common contracts on each national market

Denmark	Finland ⁷	Norway ⁸	Sweden ⁹
Products with fixed price for three months (49%)	Default price (46,5%)	Spot price contract (72,2%)	Variable (49,4%)
Variable products (43%)	Fixed price (44,6%)	Variable (25,4%)	Three year fixed (13,4%)
Products with fixed price for more than three months (8%)	Spot price (8,9%)	Fixed price (2,5%)	One year fixed (12,6%)
			Default price (11,2%)
			Two year fixed (3,2%)
			Other (10,2%)

If 12.2 is fully implemented, it will have the following effects on the Nordic retail markets:

Positive effects. If 12.2 is fully implemented and the exemption described in 12.3 not used, it is possible that the share of fixed term, fixed price contracts would decrease, whilst the share of variable price contracts would increase. This is based on the presumption that suppliers would not be able to do proper long-term hedging for

⁶ Statistiska Centralbyrån, December 2018

⁷ Customers, 2017

⁸ Volume 2018

⁹ Customers 2018

the whole contract period as customers are not truly bound to the contract and the price for the contract period. Suppliers might end up with expensive hedge portfolios without customers, due to decreased market prices. Price signals from the wholesale market would reach a bigger share of the Nordic customers, which is in line with both the new Directive and the principles in NordREG's long term strategy.

A full implementation of 12.2 would also lead to simpler rules for customers, suppliers, customer advisories, monitoring authorities, courts, and any others as there are less regulatory rules to apply. Additionally, the directives' text is unclear and ambiguous in certain terms e.g. direct economic loss and proportionate. These challenging definitions and additional rules increase the risk of wrong interpretation. Furthermore, it would be noticeably easier to educate the public and market participants about the rules for contract termination in the electricity sector, as the fixed priced fixed terms would differ from terms of other contract types: termination fees will not be allowed for any contract types.

Finally, due to having less rules to apply and less ambiguous legal terms, monitoring authorities would have to spend less resources on monitoring compliance as it would be easier to recognize illegal activities since all termination fees would be illegal. Additionally, with simpler rules, individuals would have better possibilities to monitor that they are followed, and no termination fees charged.

Negative effects. A full implementation of 12.2 could limit the contract types that suppliers are willing to offer. Without a termination fee, suppliers are in practice themselves bound to the contract for fixed price, but consumers are not, as they can leave without ramifications. This would allow for consumers staying on contracts when it is beneficial for them, but changing to cheaper contracts when it is not. Suppliers would not have the same luxury, and would be bound to the contract terms no matter what. Combined with the increased difficulty to hedge properly, the unbalance might make fixed term, fixed priced contracts unattractive for many suppliers. There is also the risk of a price increase.

Another negative effect is that if these contracts become less common, consumers would have less variety to choose from. Risk averse customers who want fixed price contracts to get rid of the price volatility will not have any option but to choose a variable contract. This might reduce the customer satisfaction level significantly especially during winter months when prices can increase.

12.3

'By way of derogating from paragraph 2, Member States may permit suppliers or market participants engaged in aggregation to charge customers contract termination fees¹⁰ where they voluntarily terminate fixed-term, fixed-price supply contracts before their maturity, provided that such fees are part of a contract that the customer has voluntarily entered into and that such fees are clearly communicated to the customer before the contract is entered into. Such fees shall be proportionate and shall not exceed the direct economic loss to the supplier or the market participant engaged in aggregation resulting from the customer's termination of the contract, including the costs of any bundled investments or services that have already been provided to the customer as part of the contract. The burden of proving the direct economic loss shall be on the supplier or market participant engaged in aggregation, and the permissibility of contract termination fees shall be monitored by the regulatory authority, or by another competent national authority.'

Implementation

If 12.3 is fully implemented, it will have the following positive and negative effects on the Nordic retail markets:

Positive effects. Using the exemption described in 12.3 to some extent means status quo, especially in Sweden and Finland where fixed price, fixed term contracts are preferred by many customers. Given the tight

¹⁰ Electricity directive, recital 16: contract termination fee' means a charge or penalty imposed on customers by suppliers or market participants engaged in aggregation, for terminating an electricity supply or service contract.

timeframe for reaching a Nordic standpoint on Article 12 (3), status quo is easier to motivate than the kind of change to the market that not using the exemption would mean. To a different extent (see table 1 above), fixed price, fixed term contracts are currently allowed in the Nordic retail markets. By using the exemption, they will continue to be allowed.

A strong argument for using the exemption is the fact that fixed price, fixed term contracts are a popular contract type in two of the Nordic markets: Finland and Sweden. An Ei-report¹¹ from 2014 show that 45% of customers that had signed a fixed price, fixed term contract did so because they believed that they got a good price, and 40% did so to avoid price variations. Many customers seem to prefer fixed priced contract to avoid the risk of price peaks and price volatility.

It is also clear that, for some customers, the cost of energy can be a substantial part of the disposable income. According to a study¹² published by the Swedish Energy Agency 2012, 7% of households spend more than 10% of their disposable income on electricity. A predictable price would be more attractive to ensure better budget control for such customers.

Using the exemption means that we probably avoid some of the negative effects presented under 'Consequences of not using the exemption'.

Negative effects. Using the exemption would mean that less price signals would reach customers. As already mentioned above, using the exemption would also mean more complicated contract terms for customers, suppliers, customer advisories, monitoring authorities, courts and any others.

Using the exemption means that we probably do not get some of the positive effects presented under 'Consequences of not using the exemption'.

NordREG's recommendation

- NordREG recommends that Denmark, Finland, Norway and Sweden use the exemption described in article 12 (3) allowing termination fees for fixed term, fixed price contracts. The most important reason being that we do not want to limit the contract types that suppliers are willing to offer too forcefully without proper analysis of markets and the benefits of doing so.

Monitoring termination fees

Article 12 (3) states that termination fees have to be proportionate and not exceed direct economic loss resulting from a customer's termination of contract. NordREG has identified the following possible methods for monitoring termination fees:

- A termination fee cannot exceed the direct economic loss that a supplier can prove that it had. Direct economic loss is defined as compensation for hedging or other costs directly connected to the terminated electricity contract.
- A termination fee cannot exceed the difference between the fixed price in the contract and an average of the price on the relevant electricity futures market (currently operated by Nasdaq) for the remaining period of the contract. The supplier can charge the consumer this price multiplied with the expected consumption (kWh) of the remaining period based on historical consumption data.

¹¹ En elmarknad i förändring, Ei, 2014

- A termination fee cannot exceed the supplier's net profit, calculated according to prices on the termination date, comparing them to prices of similar/comparable contracts on the market. The idea is that if the supplier made a new, completely similar contract on the same day to replace a customer, this would be the basis for calculating the price offered to the new customer.

NordREG does not recommend any of the above-mentioned methods to determine the correct termination fees. Instead, one or a combination of these methods could be used. Which method is used can be decided nationally on a case-by-case basis.

According to article 12 (3), the permissibility of contract termination fees shall be monitored by the regulatory authority, or by another competent national authority. If an exemption is used and termination fees continue to be allowed for fixed price, fixed term contracts, NordREG suggests that the guiding principles below be followed:

NordREG's recommendation

- NordREG recommends the following guiding principles for termination fees:
 1. The termination fee exemption is a derogation and, therefore, the paragraph should be interpreted strictly.
 2. A supplier (or market participant engaged in aggregation) has the right to be compensated, if a customer terminates its contract before maturity, if such fee is part of the contract terms that the customer willingly has entered into. This compensation cannot exceed the suppliers' (or aggregators') direct economic loss resulting from the customer terminating the contract.
 3. A termination fee must be proportional and take into account, for example, the remaining binding time, the calculated remaining volume and market price for electricity or expected gain for the supplier or the aggregator.
 4. A termination fee cannot be used to benefit the supplier or the aggregator economically, it can only be used to cut losses. If there is no economic loss, there should be no termination fee
 5. Suppliers or aggregators are obliged to inform customers about the calculation method used to determine the termination fee upfront and in the contract. Further, suppliers should be able to inform customers how the termination fee has been calculated upon request. This helps customers, customer advisories, and monitoring authorities assess if the fee is in line with the contract and ultimately with the directive.

4. Article 14

Below follows the provisions, relevant definitions and recitals in article 14. Where possible, a recommended harmonized Nordic implementation is suggested.

14 (1)

'Member States shall ensure that at least household customers, and microenterprises with an expected yearly consumption of below 100 000 kWh, have access, free of charge, to at least one tool comparing the offers of suppliers, including offers for dynamic electricity price contracts. Customers shall be informed of the availability of such tools in or together with their bills or by other means. The tools shall meet at least the following requirements:

(a) they shall be independent from market participants and ensure that electricity undertakings are given equal treatment in search results;

(b) they shall clearly disclose their owners and the natural or legal person operating and controlling the tools, as well as information on how the tools are financed;

(c) they shall set out clear and objective criteria on which the comparison is to be based, including services, and disclose them;

(d) they shall use plain and unambiguous language;

(e) they shall provide accurate and up-to-date information and state the time of the last update;

(f) they shall be accessible to persons with disabilities, by being perceivable, operable, understandable and robust;

(g) they shall provide an effective procedure for reporting incorrect information on published offers; and

(h) they shall perform comparisons, while limiting the personal data requested to that strictly necessary for the comparison.

Member States shall ensure that at least one tool covers the entire market. Where multiple tools cover the market, those tools shall include, as complete as practicable, a range of electricity offers covering a significant part of the market and, where those tools do not completely cover the market, a clear statement to that effect, before displaying results. ‘

Implementation

NordREG will share its experience in 2020 on the work to implement offers for microenterprises (currently carried out at the Danish CT), dynamic price contracts, requirements a-h and how the entire market is covered.

14.2

‘The tools referred to in paragraph 1 may be operated by any entity, including private companies and public authorities or bodies. ‘

NordREG’s recommendation

- NordREG recommends that the criteria in 14 (1) is fulfilled by the public authority responsible for the national CT.

14.3

‘Member States shall appoint a competent authority to be responsible for issuing trust marks for comparison tools that meet the requirements set out in paragraph 1, and for ensuring that comparison tools bearing a trust mark continue to meet the requirements set out in paragraph 1. That authority shall be independent of any market participants and comparison tool operators. ‘

Implementation

See 14.6.

14.5

'Any tool comparing the offers of market participants shall be eligible to apply for a trust mark in accordance with this Article on a voluntary and non-discriminatory basis. '

Implementation

See 14.6.

14.6

'By way of derogation from paragraphs 3 and 5, Member States may choose not to provide for the issuance of trust marks to comparison tools if a public authority or body provides a comparison tool that meets the requirements set out in paragraph 1. '

NordREG's recommendation

- NordREG recommends that the National Regulatory Authorities (NRAs) in Denmark, Finland, Norway and Sweden fulfill the criteria listed in provision 14 (1) and use the exemption in provision 14 (6) for member states with public CTs.

Current national situation regarding comparison tools

Denmark

Elpris.dk compares contracts for consumers and enterprises with an annual consumption up to 100 000 kWh. The CT is run by the NRA and the suppliers are required to report all contracts with up-to-date prices.

Finland

Suppliers are free to offer their own comparison tools. EV (the Finnish Energy Authority, Energiavirasto), however, maintains its own CT in which every supplier offering products to consumers are responsible for inserting their products and prices. Thus, every supplier is on the CT along with their products. Customized products, which are only offered to some individuals, are not on the CT. Contracts are not signed in the service. EV's CT is the most widely used one on the market.

Norway

The Norwegian Consumer Council, which is a public body, offer a comparison tool (strømpris.no). All offered contracts to household customers are published at the CT. The CT does not show contracts to microenterprises. Secondary legislation has to be changed accordingly. Strømpris.no includes dynamic price contracts.

Sweden

There is one NRA comparison tool (Elpriskollen) and several commercial comparison tools. Suppliers that sell to consumers are obliged to update terms and prices to the NRA's tool on the same day, by midnight at the latest.

Today, Elpriskollen only shows contracts for consumers, not microenterprises. The National Electricity act (8 kap 11 b §) and secondary legislation must be changed accordingly. Elpriskollen must include dynamic price contracts, which will be introduced in the beginning of 2020.

Today, Elpriskollen includes the most common contract types and covers approximately >90% of the market¹³. Difficult how to compare contract types that only individual suppliers market.

5. Article 18

The main objective for article 18 (and Annex I) is to ensure that every customer has access to important information in their bills in order to increase customer engagement in the market and raise awareness of the customer's own consumption. Every bill will have to prominently display several key points. However, every member state has some flexibility on how the information can be presented in the bills. The directive contains a comprehensive and detailed list of minimum requirements for billing and billing information.

NordREG has identified that the below presented provisions in article 18 and Annex I risk not being implemented in a uniform/harmonized way. Where possible, a recommended harmonized Nordic implementation is suggested.

¹³ More than 90% of customers have contracts on Elpriskollen.

18.1

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

Implementation

According to article 18 (1), member States shall ensure that bills and billing information are presented in a manner that facilitates comparison by final customers.

It also follows from recital 48 in the directive that it is “necessary to make bills clearer and easier to understand, as well as to ensure that bills and billing information prominently display a limited number of important items of information that are necessary to enable consumers to regulate their energy consumption, compare offers and switch suppliers”.

The most obvious place to compare offers will be on the comparison tool (CT) referred to in article 14. Independent comparison tools are an effective means for smaller customers to assess the merits of the different energy offers that are available on the market.

NordREG, therefore, recommends an alignment between key information in the bill and the CT that will make it possible for customers to easily compare offers based on their own data.

For example, if the price is presented similarly in both the bill and the CT, customers would have a relatively easy way to compare products.

Furthermore, by enabling customers to enter billing period, consumption and total cost from the bill into the CT, it will be possible to compare, and rank offers based on historic price data in the CT. This will give the consumer an indication of whether they are paying too much for electricity.

NordREG's recommendation

- NordREG recommends Nordic NRAs to ensure alignment between key information in the bill and the Comparison tool (CT) that will enable customers to more easily compare offers based on their own consumption and payments for consumed electricity. In this regard, key information refers to the billing period, consumption, price information and total cost.

18.2

'Member States shall ensure that final customers receive all their bills and billing information free of charge.'

Implementation

This is a continuation of already existing laws. However, NordREG has disclosed that the current provision in article 11 in directive 2012/72/EF has been interpreted differently in the Nordic countries. In Denmark, suppliers have so far been able to charge the actual costs associated with issuing a paper invoice. Therefore, it is particularly important that article 18 (2) is interpreted in the same way.

A report from the European Commission states that energy suppliers must themselves bear the costs of producing and delivering bills and billing information to the final customers¹⁴. Furthermore, it states that

¹⁴ https://ec.europa.eu/energy/sites/ener/files/documents/20131219-e-billing_energy_data.pdf

suppliers are allowed to give final customers a discount or bonus for opting for electronic bills and billing information.

NordREG's recommendation

- Nordic NRAs shall ensure that final customers receive all their bills and billing information free of charge. However, it shall be allowed to give a discount when the customer is opting for electronic billing.

18.3

'Member States shall ensure that final customers are offered the option of electronic bills and billing information and are offered flexible arrangements for the actual payment of the bills.'

Implementation

According to an internal document from a CEER workshop with the European Commission, this provision refers to the payment term not payment methods.

For example, the customer should be able to benefit from paying monthly, every three months or once a year.

NordREG's recommendation

- In order to secure the customers' right to flexible arrangements for the actual payment of the bills, customers should be able to benefit from paying at different intervals.

Annex I (1.2e)

According to Annex I (1.2e), *'bills and billing information shall prominently display: availability and benefits of switching.'*

Implementation

It is especially the part about benefits of switching that gives rise to interpretation, because the provision contains a lot of flexibility in terms of how it is implemented.

It is somehow unclear to what extent a supplier actively should encourage a customer to change electricity supplier. Annex (1.2) (I) already requires the supplier to make a link or reference to where a comparison tool can be found.

NordREG recommends that Annex I (1.2e) and (1.2i) are combined in relation to external switching.

Overall, NordREG wants to stress that switching means switching of supplier. Consumers must be made aware of the advantages of switching. It can also potentially help to solve problems with passive consumers and increase competition between suppliers.

NordREG's recommendation

- NordREG recommends that the required information in the bill about where comparison tools can be found (Annex I, 1.2i) is combined with the required information about the availability and benefits of switching supplier (Annex I, 1.2e).
- NordREG recommends Nordic NRAs to ensure that suppliers inform customers in the bill about the availability and benefits of switching supplier.

Annex I (1.2h)

According to Annex I (1.2h), *'information about the single point of contact (referred to in Article 25¹⁵), shall be prominently displayed to final customers in their bills and billing information, distinctly separate from other parts of the bill and billing information. '*

Annex I (1.2i)

According to Annex I (1.2i), *'a link or reference to where comparison tool(s) referred to in Article 14 can be found, shall be prominently displayed to final customers in their bills and billing information, distinctly separate from other parts of the bill and billing information. '*

NordREG's recommendation

- NordREG's recommends that contact details and links regarding Annex I (1.2h and i) shall be displayed together with a short explanation that describes where they lead and what service are available to the customer there.

¹⁵ Article 25 states that Member States shall ensure the provision of single points of contact to provide customers with all necessary information concerning their rights, the applicable law and dispute settlement mechanisms available to them in the event of a dispute. Such single points of contact may be part of general consumer information points.