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# THE EUROPEAN ENERGY HANDBOOK 2013

**SECTOR SURVEY**  
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### **THIRD ENERGY PACKAGE**

Throughout this publication, we refer to the two Directives and three Regulations adopted by the European Council and the Parliament on 13 July 2009 as the "Third Energy Package". For ease of reference, the Directives and Regulations adopted as part of the Third Energy Package: EU Directives 2009/72/EC, 2009/73/EC and Regulations (EC) No 713/2009, No 714/2009 and No 715/2009 are referred to as the "New Electricity Directive", the "New Gas Directive", the "ACER Regulation", the "New Electricity Regulation" and the "New Gas Regulation", respectively. Where the context so requires, we refer collectively to the two Directives as the "New Electricity and Gas Directives" and to the Regulations as the "New Electricity and Gas Regulations", as appropriate.

### **CLIMATE CHANGE PACKAGE**

We refer to the four Directives, one Regulation and one Decision adopted by the European Parliament on 17 December 2008 and the European Council on 6 April 2009 as the "Climate Change Package". For ease of reference, throughout this publication, we refer to EU Directives 2009/29/EC, 2009/28/EC, 2009/31/EC and 2009/30/EC as the "New EU ETS Directive", the "Renewable Energy Directive", the "CCS Directive" and the "Biofuel Directive" respectively. Further, we refer to EU Decision No 406/2009/EC and Regulation (EC) No 443/2009 as the "GHG Reduction Decision" and the "Emissions Standards Regulation", respectively.

Where required, we have referred to the previous internal energy market directives 1996/92/EC and 1998/30/EC as the "First Electricity Directive" and the "First Gas Directive", respectively and to Directives 2003/54/EC and 2003/55/EC as the "Second Electricity Directive" and the "Second Gas Directive", respectively.

Throughout the publication, we refer to Transmission System Operators as "TSO" and to Distribution System Operators as "DSO".

### **LEGAL ADVICE**

Please note that the content of this publication does not constitute legal advice and should not be relied on as such. Specific advice should be sought about your specific circumstances.

### **COVER IMAGE**

Man-made lights highlight particularly developed or populated areas of the Earth's surface, including the seaboard of Europe.

PHOTO CREDIT: NASA/Goddard Space Flight Center. Scientific Visualisation Studio

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# INTRODUCTION

I am delighted to introduce the 2013 edition of "The European energy handbook" which is presented in an updated format. The 2013 edition gives an in-depth survey of current issues in the energy sector in 41 European jurisdictions.

The review includes a summary of each legal and regulatory energy framework and analyses issues such as industry structure, third party access, the framework applying to use of systems both at the transmission and distribution levels, market entry, nuclear power and cross-border interconnection. Authors have given special attention to the status of the transposition and implementation of the Third Energy Package and the Climate Change Package into national law.

For the first time, the national chapters include details regarding the energy trading regimes and, in those jurisdictions with significant upstream oil and gas activities, an overview of the main features of the legislative features of the upstream regime.

In addition to contributions for the European Union, France, Germany, Spain, Russia and the United Kingdom from our own offices, this year we have contributions from Schönherr (*Albania, Austria, Bulgaria, Croatia, Czech Republic, Hungary, Montenegro, Romania, Serbia, Slovakia and Slovenia*), Stibbe (*Belgium and the Netherlands*), Karanovic-Nikolic (*Bosnia and Herzegovina and the former Yugoslav Republic of Macedonia*), PwC Legal / Landwell (*Cyprus*), Kromann Reumert (*Denmark*), Raidia Leijns & Norcoux (*Estonia, Latvia and Lithuania*), Roschier (*Finland*), Kyriakides Georgopoulos & Daniolos Issaias (*Greece*), Arthur Cox (*Ireland*), Studio Legale Legance (*Italy*), Linkage and Mind (*Kazakhstan*), Arendt & Medernach (*Luxembourg*), Buttigieg, Refalo & Zammit Pace Advocates (*Malta*), Arntzen de Besche Advokatfirma AS (*Norway*), WKB Wierciński, Kwieciński, Baehr (*Poland*), Esquivel Advogados (*Portugal*), Advokatfirman Vinge (*Sweden*), Homburger (*Switzerland*), Hergüner Bilgen Özeke (*Turkey*), BBA//Legal (*Iceland*) and Sayenko Kharenko (*Ukraine*).

Although the Third Energy Package and Climate Change Package have now entered into force, not all Member States have transposed the directives into national law and the European Commission has referred a number of Member States to the European Court of Justice for either partial or complete failure to implement the same.

## EDITORS



**Mark Newbery**  
Global Head of Energy  
T +44 20 7466 2225  
mark.newbery@hsf.com



**Silke Goldberg**  
Senior associate  
T +49 69 643 500 007  
silke.goldberg@hsf.com

From a European policy perspective, the European Commission and the Council have underlined the importance of completing the internal energy market by 2014. However, given the current progress (or lack thereof) in the transposition of the Third Energy Package, the achievement of this aim seems doubtful. The European energy sector can therefore expect more enforcement actions from the European Commission in 2013. In its work programme for 2013, the European Commission has also announced a new framework for national interventions in the energy sector.

The aim of this framework will be to ensure that:

- adequate investments are effected; and
- market interventions are necessary and proportionate.

In short, 2013 is shaping up to be a busy year of debate and changes in the European energy sector.

**Silke Goldberg**  
Senior associate, Herbert Smith Freehills LLP

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# ENERGY LAW IN SWEDEN

## Recent developments in the Swedish energy market

By Fredrik Wilkens, partner, and Christian Johansson and Johan Cederblad, associates, of Advokatfirman Vinge, Stockholm

### APPLICATION SUBMITTED FOR NEW NUCLEAR POWER REACTORS

In July 2012, the state owned energy company, Vattenfall submitted a permit application for one or two new nuclear reactors in Sweden. This is the first permit application for a new build nuclear reactor since the 1970s.

In 2010 the Swedish government abolished the Nuclear Power Phase-Out Act<sup>1</sup> and made some amendments to the Nuclear Activities Act<sup>2</sup> and the Environmental Code,<sup>3</sup> which entered into force on 1 January 2011, in order to lift the ban on the construction of new nuclear power plants in Sweden. However a permit will only be granted if: (1) the new reactor will replace an existing reactor; and (2) the existing reactor will be permanently shut down by the time the new reactor becomes operational.

An additional prerequisite is that a new nuclear power reactor may only be constructed on a site where reactors were in operation on 1 January 2011, ie, at the existing nuclear power plants of "Forsmark", "Oskarshamn" and "Ringhals". As a result, potential new entrants to the Swedish nuclear market are dependent on the existing players' (ie, Vattenfall, E.ON and Fortum) willingness to co-operate in this respect.

Replacing an existing nuclear power reactor is a time-consuming process. The Swedish Radiation Safety Authority<sup>4</sup> estimates that the entire process, from the day that a permit application is submitted to commencement of commercial operation, will take between 10 and 15 years. Permits in accordance with the Nuclear Activities Act and the Environmental Code are issued by the government following consultations with the Swedish Radiation Safety Authority and the Planning and Environmental Court.<sup>5</sup> The municipality where a nuclear power reactor will be located has to approve the permit in accordance with the Environmental Code, failing which no permit may be issued. In addition, local zoning plans<sup>6</sup> must be complied with and a building permit has to be issued by the municipality.

Vattenfall is of the opinion that 20TWh of nuclear power production from existing power plants will be phased out between 2025 and 2035 and that, unless a replacement source for such power production is introduced, this may give rise to turbulence in the electricity market.

Vattenfall plans to initiate analyses and assessments regarding investments and legal processes in relation to an investment in new nuclear power reactors. However, a decision regarding an investment will not be made until a later date since a replacement will only be relevant after 2025.

Since no permit applications for new build nuclear power reactors have been handled for approximately the last 30 years, the detailed legislation governing the permit application process is outdated. As a next step, the Swedish Radiation Safety Authority will decide upon construction regulations and this process is expected to take about three years. Based on such future construction regulations, Vattenfall will probably be requested to submit detailed amendments to its permit application.

### PROPOSAL ON MEASURES FOR LESS TIME-CONSUMING PERMIT APPLICATION PROCESSES IN RELATION TO RENEWABLES

In August 2012, the Swedish Energy Agency<sup>7</sup> submitted a report to the Swedish government on how to improve the permit application process for facilities producing renewable electricity.<sup>8</sup> The report mainly focuses on actions that may reduce the time for permit application processes. Today, the average time to obtain a permit in accordance with the Environmental Code for a facility producing renewable electricity is 139 weeks and, if the permit decision is appealed, the time period for handling the matter is extended by an additional 35 weeks.

In 2009, major changes in relation to the permit application process for wind power were made in the Environmental Code, the Planning and Building Act<sup>9</sup> and the Environmentally Hazardous Operation Ordinance.<sup>10</sup> One of the aims was to reduce parallel permit application processes and as a consequence thereof the requirement to obtain a building permit was, in general, abrogated in such cases where an environmental permit was obtained for a wind power plant. Instead, however, the municipalities (which previously handled the building permit applications) were given a veto in relation to the environmental permit application. According to the Swedish Energy Agency, responses from municipalities in relation to their approval of a wind power project upon the request of a permit authority have been delayed and unclear. It is therefore doubtful whether a permit application for a wind power plant has become less time-consuming, notwithstanding that the requirement to obtain a building permit has been abrogated.

Irrespective of the changes in the legislation in 2009, the Swedish Energy Agency is of the opinion that parallel permit application processes still exist for the construction and operation of facilities for the production of renewable electricity. For instance, permits may be required in accordance with the Electricity Act,<sup>11</sup> the Culture Environmental Act<sup>12</sup> and the Habitat Protection Ordinance.<sup>13</sup> A number of different permit applications may thus have to be submitted by an operator and this provides an opportunity for opposing parties to pursue avenues of appeal.

Another obstacle for the establishment of wind power plants in Sweden is the Swedish Armed Forces' introduction of prohibited areas. Such areas cover in general 40km around each military airbase.

Based on the above, the Energy Agency proposes a number of measures to improve the efficiency of the permit application process. The proposed measures include, *inter alia*:

- a review of the legislation in order to assess the feasibility of a co-ordinated permit process which covers different issues and whether such could be effectively regulated;
- the preparation of improved guidelines for applicants, for example, including guidance on what the supervisory authorities and permit authorities require to be included in an environmental impact assessment and a permit application;
- the preparation of guidelines for the municipalities in order to facilitate their approval process; and

- improving the dialogue between the Swedish Armed Forces, the Energy Agency and wind power developers in order to find areas where the Swedish Armed Forces and wind power plants may co-exist and to obtain more detailed and comprehensive opinions from the Swedish Armed Forces.

### MEASURES TO REDUCE THE BARRIERS FOR A PRODUCER OF ELECTRICITY TO CONNECT TO THE GRID

In general, all holders of a grid concession are obliged to agree to any requests from persons to be connected to the grid on reasonable terms. Exemptions from the obligation to accede to such requests may be granted if there are special circumstances such as, for example, a capacity shortage. However, the rapid development of power plants for the production of renewable energy has revealed a commercial barrier for developers wishing to connect to the grid.

If a developer wants to connect to a grid which has insufficient capacity, all costs for the construction of additional capacity in those cases where there is not a relatively high degree of certainty that other developers will request a connection in the foreseeable future will be borne by the first developer regardless of how much capacity this developer actually requires. A developer requesting a connection after a capacity improvement has been carried out may use the surplus from the first developer's capacity improvement without incurring any specific costs.

This barrier may constitute an obstacle to a developer taking the first step in relation to a development within a certain geographical area. On the other hand, a grid company is often unwilling to take the risk for the future use of the surplus by only charging the first developer the costs for such developer's capacity requirement. According to the Energy Agency, many producers may thus be reluctant to be the first developer to connect to a grid that requires an increase in capacity.

The issue has been assessed in a number of governmental official reports and authority based assessments. In a governmental bill from 2010<sup>14</sup>, the government stated that a premature cost allocation for capacity improvements in the grid necessary for the development of larger production plants for the production of renewable electricity should be implemented. According to the government, the purpose of such legislation would be to ensure that an electricity producer's share of the total costs for capacity improvements would correspond to its share of the total capacity. According to the aforementioned governmental bill, the issue has to be further assessed, and reportedly such assessment is currently being carried out by government offices. Based on oral information from the government's office, a governmental bill may be presented during the first half of 2013, but nothing has been decided yet.

#### ENDNOTES

1. Sw. Lag (1997:1320) om kärnkraftens avveckling.
2. Sw. Lag (1984:3) om kärnteknisk verksamhet.
3. Sw. Miljöbalken (1998:808).
4. Sw. Strålsäkerhetsmyndigheten.
5. Sw. Mark- och miljödomstolen.
6. Sw. detaljplan.
7. Sw. Energimyndigheten.
8. Sw. Utveckling av tillståndsprocesser för anläggningar som producerar förnybar el och för kraftnät, Redovisning av uppdrag 10 i Regleringsbrev för Energimyndigheten 2012.
9. Sw. Plan- och bygglagen (2010:900).
10. Sw. Förordning (1998:899) om miljöfarlig verksamhet och hälsoskydd.
11. Sw. Ellag (1197:857).
12. Sw. Lag (1988:950) om kulturminnen.
13. Sw. Artskyddsförordningen (2007:845).
14. Government Bill 2009/10:128.

# OVERVIEW OF THE LEGAL AND REGULATORY FRAMEWORK IN SWEDEN

## A. ELECTRICITY

### A.1 Industry structure

The five largest Swedish electricity generators account for over 85% of Sweden's total production, of which Vattenfall, E.ON and Fortum jointly account for 80%. The Swedish state, through Vattenfall, owns 39.6% of the installed generation capacity, foreign entities own 39.8%, Swedish municipalities 12.5%, while other categories of generator account for the remaining 8.1%. In recent years, the proportion of the total generation capacity in the hands of the Swedish state and Swedish municipalities has declined, while other categories of generator have increased their ownership.<sup>1</sup>

The Swedish national grid is state owned and operated by the Swedish utility company Svenska Kraftnät. The regional grids are owned by five large power generators. The local grids are owned by 171 private, state and municipal companies or co-operative associations.

Concessions for national connections to the grid are required to be submitted to the Swedish Energy Markets Inspectorate, which also issues various regulations in respect of grid connections. The Swedish Energy Markets Inspectorate is the Swedish regulator of the electricity, natural gas and district heating markets, and is a subordinate agency to the Ministry of Enterprise, Energy and Communications. The Swedish Energy Markets Inspectorate works to improve the functionality and efficiency of these markets. It supervises network tariffs and grants licences, known as network concessions, for the construction and use of power lines and gas pipelines. The Swedish Energy Markets Inspectorate also has an overall responsibility for ensuring that the network-based energy markets function well, and it also has an operational role as expert authority with regard to electricity trading matters.

As the network authority, the Swedish Energy Markets Inspectorate is responsible for monitoring network operations. It monitors the compliance of various market players with the requirements of the Electricity Act<sup>2</sup>, with the exception of monitoring compliance with requirements regarding electrical safety and system responsibility (for further details see below).

Electricity is transmitted from power stations to consumers via power lines, consisting of three levels. The national grid consists of high voltage systems and has been built up to transmit large volumes of electricity over great distances. The regional grids transmit electricity from the national grid to local grids and sometimes to high consumption users.

Electricity transmission is a regulated activity, which means that an entity wishing to engage in grid operations is required to have a grid concession for a particular transmission line or for all transmission lines within a certain territory. However, exemption rules<sup>3</sup> apply to *inter alia* internal grids connecting two or more electrical production plants. Concessions for national connections are granted by the government or by the Swedish Energy Markets Inspectorate. International connections may only be granted by the government. Concessions have a limited duration of 40 years for particular transmission lines and 25 years for all transmission lines within a certain territory.

A concession may only be granted where an establishment is suitable from a general point of view and subject to certain conditions. Such conditions usually protect both public interests and individual rights such as security, health and environment.

The transmission of electricity (which in practice is a natural monopoly) is still regulated, whereas competition is allowed in relation to electricity generation and electricity trade.

The full ownership unbundling model has been implemented in Sweden so that any legal entity involved in the generation of electricity or electricity trade activities is prohibited from also being involved in grid operations. Furthermore, the Electricity Act prohibits a TSO from being involved in generation or natural gas trade activities. A member of the board of directors, the managing director, or an authorised signatory of a distribution system operator which is part of a vertically integrated undertaking and whose network serves more than 100,000 connected customers may not be a member of the board of directors, the managing director, or an authorised signatory in another group company producing or supplying electricity. The accounts for grid operations are to be drawn up separately and shall always be kept separate from accounts in respect of other businesses pursued by a concession holder. The holder of a concession is required to draw up an annual report, which is to be submitted to the Swedish Energy Markets Inspectorate. The report has to be available for public review.

### A.2 Third party access regime

All holders of grid concessions are obliged to connect anyone wishing to be connected to the holder's line on reasonable terms (subject to certain exemptions, mostly technical). This obligation to connect a third party is more comprehensive for a holder of a concession for all lines within a certain geographical area compared to that of a holder of a concession for a specific line. Exemptions from the obligation to connect others may be granted if there are special circumstances, such as, for example, a capacity shortage.

The Electricity Act does not impose any specific obligations on third parties wishing to obtain access to the grid. It is, however, common that the holder of the grid concession makes the issuing of a bank guarantee for the whole, or part of, the amount to be paid by the third party a condition for the grid connection.

The charges levied and other conditions imposed on the transmission of electricity and connection to a power line or to a power line grid are called grid tariffs. The grid tariff payer is entitled to access the entire transmission system and is therefore entitled to buy and sell electricity through the electricity market area. Local grid charges include regional and national grid charges.

Grid tariffs must be objectively justifiable and may not discriminate. Following recent changes to the Electricity Act, income frames are to be established by the Swedish Energy Markets Inspectorate in advance, for every four year period. Such income frames shall cover reasonable costs for carrying on the network business during the relevant period and should generate a reasonable return on the capital necessary for carrying

on the business. The skill with which the network operator runs its business will also be taken into account when the income frames are established.

For licence obligations, see A.1 above.

### A.3 Market entry (supply and generation)

A plant for generation of electricity in general requires a permit pursuant to the Swedish Environmental Code.<sup>4</sup> There is however no difference in the requirements for an environmental permit between existing and new operators. As regards specific obstacles for new entrants in a nuclear power business, see section E below.

Grid capacity is often mentioned as an obstacle to the development of new wind power plants which may delay new wind power projects. This is however not a specific problem for new entrants, but a general obstacle for all wind power developers.

For further information, see A.1 above.

### A.4 Public service obligations and smart metering

Network operators are required to transmit third parties' electrical power on reasonable terms. The transmission of electrical power has to be of good quality and the network operator is under an obligation to remedy any deficiencies in the transmission to the extent that the costs of remedying the deficiencies are reasonable when compared with the inconvenience caused to the relevant electricity consumers.

A network company has an obligation to assign a supplier to a customer who does not actively choose one itself. It is also obliged to notify the customer of which supplier it has assigned and of the possibility to change supplier. The assigned supplier shall without delay notify the customer of its terms and conditions.

Sweden has recently implemented legislation designed to promote a more open and efficient energy market and requiring all electricity meters in Sweden to be read on a monthly basis. Obstacles to the use of smart meters and intelligent networks are currently being investigated and the government has announced that it has identified a number of barriers, such as weak incentives for investments in new technology and the design of the tariff system.

### A.5 Cross-border interconnectors

The current interconnectors are Svenska Kraftnät in respect of Norway, Finland, Denmark and Poland (to the Swedish border) and Baltic Cable AB (an entity owned by Statkraft Energy Europe AS) in respect of Germany.

Svenska Kraftnät is also planning a new link to Lithuania - NordBalt. A permit application has been filed with the Swedish Energy Markets Inspectorate and the link is expected to be operational in 2015 or 2016.

Currently, no permit for the import or export of electricity is required in Sweden.

## B. GAS

### B.1 Industry structure

Sweden has around 37,000 natural gas consumers of which approximately 3,600 are business customers. In 2011, 15TWh of natural gas was consumed.<sup>5</sup>

Following Swedegas AB's acquisition in 2011 of E.ON Gas Sverige AB's part of the transportation system, the entire Swedish transportation system is now owned by Swedegas AB. The Swedish Energy Markets Inspectorate is responsible for monitoring the natural gas market in accordance with the Natural Gas Act<sup>6</sup> and for issuing various regulations.

Svenska Kraftnät is currently responsible for the system for the national supply of natural gas, which means that it is responsible for maintaining the short-term balance in the Swedish natural gas system. However, on 30 August 2012 Swedegas AB became a certified transportation system operator (pursuant to Article 10 of the New Gas Directive) and is expected to assume Svenska Kraftnät's system responsibility sometime during 2013.

The Natural Gas Act contains provisions regarding natural gas pipelines and the storage of natural gas.

Generally, natural gas pipelines (or storage facilities) may not be built or used without a concession from the government. However, a concession is not required where, for example, a pipeline is situated after a metering and control station.

Concessions are granted by the government but applications for such concessions are to be submitted to the Swedish Energy Markets Inspectorate. In connection with an application for a concession, an environmental impact assessment<sup>7</sup> and other information should be provided in accordance with the Swedish Environmental Code.

A concession has to state the principal route of the pipeline. The initial term of a concession is normally 40 years. Concessions for a pipeline will only be granted if the route is deemed suitable and in the general public interest. Concessions may be granted subject to certain conditions. Such conditions usually protect general interests and individual rights, such as security, health and environment. An applicant for a concession must be suitable to conduct operations in respect of the concession from the general public's viewpoint.

Since 2005, all companies have been able to choose their natural gas supplier. Since 2007, the natural gas market has also been open to private consumers in accordance with the Second Gas Directive.

The transmission markets are still organised as local monopolies.

The full ownership unbundling model has been implemented in Sweden so that a TSO may not be involved in generation or natural gas trade activities and shall be independent of companies carrying on such generation and trade activities. Furthermore, the Natural Gas Act prohibits any company being involved in natural gas transfer activities from also being involved in gas trading activities. A member of the board of directors, the managing director, or an authorised signatory in a TSO may not have the corresponding position in a company producing or supplying natural gas.

### B.2 Third party access regime to gas transportation networks

An owner of a natural gas pipeline is obliged to connect other natural gas pipelines on reasonable terms. However, this obligation does not apply where a pipeline does not have the requisite capacity or if there are other special grounds. In addition, an owner of a natural gas pipeline is obliged to transport natural gas on reasonable terms. None of these obligations apply where the natural gas pipeline is used solely for the owner's own account.

The Swedish Energy Markets Inspectorate's audit of the network companies' methods for establishing charges aims to ensure that these methods are objective and non-discriminatory in accordance with the Natural Gas Act. The audit of the distribution charges used to be performed retrospectively, but following legislative changes in 2012 a switch to advance regulation has been made.

### B.3 LNG and gas storage

The first Swedish LNG terminal, located in Nynäshamn south of Stockholm, commenced operations in 2011.



Pursuant to the Natural Gas Act an owner of a natural gas pipeline is obliged to connect gas storage or LNG terminals on reasonable terms.

#### B.4 Market entry

It has previously been questioned whether the Swedish natural gas market is sufficiently open to competition. As mentioned under B.1 above, the Swedish natural gas market is relatively small and has mainly only one line of supply, as there is principally only one natural gas exporter to Sweden. Also, most contracts are entered into on a long-term basis, which makes market entry more difficult.

For a description of legal barriers to entering the market (licence requirements) see B.1 above.

#### B.5 Public service obligations and smart metering

The operator of a natural gas pipeline is under an obligation to transmit natural gas on reasonable terms.

The network companies have an obligation to assign a supplier in cases where the customer does not actively choose one. It is also obliged to notify the customer of which supplier it has assigned and of the possibility of changing supplier. The assigned supplier has to notify the customer of its terms and conditions without delay.

The Swedish Energy Markets Inspectorate has announced that the implementation of smart metering in the Swedish market shall take place gradually. As a first step it has been proposed that manual reading for natural gas customers with an annual consumption exceeding 300MWh shall no longer be permitted.

#### B.6 Cross border interconnectors

Natural gas is currently only imported to Sweden from Denmark. The only current cross border interconnector is Swedegas AB.

### C. ENERGY TRADING

#### C.1 Electricity trading

Since the deregulation of the Swedish electricity market in 1996, electricity trading has taken place in a free competitive market open to any new participants. Trade takes place either through bilateral agreements or on the Nordic electricity exchange.

Generally, trading companies do not generate electricity but instead purchase it from electricity generators. Large generating companies do, however, have their own sales and supply companies.

Electricity trading is subject to legislative requirements as well as private regulations issued by, among others, NASDAQ OMX Commodities Europe (formerly Nord Pool ASA). Applicable legislation provides for consumer protection. Currently, no permit for import or export is required in Sweden.

NASDAQ OMX Commodities Europe is a commodity derivatives exchange authorised by the Norwegian Ministry of Finance and supervised by the Norwegian Financial Supervisory Authority. It has adopted its own rules and agreements for traders active on this exchange and has a vital role in facilitating electricity trade within the Nordic region. It consists of a physical spot market for power trading on an hourly basis and a financial futures market for trading in futures contracts for up to three years ahead, as well as a clearing service. Since 2010, NASDAQ OMX Commodities Europe has been a wholly owned subsidiary of NASDAQ OMX. However, Nord Pool Spot AS – the operator of the market for electrical energy – remains owned by the Nordic TSOs (as from 1 August 2012 the Estonian and Lithuanian TSOs also own 2% each).

Contracts, such as electricity derivatives, are mainly used by electricity trading companies in order to protect themselves against volatile prices in the electricity market. Standard agreements, such as ISDA Master Agreements, are commonly used by electricity trading companies.

Svenska Kraftnät – the Swedish TSO – is responsible for maintaining the balance between production and consumption of electricity in Sweden. Svenska Kraftnät collaborates with approximately 40 players, known as balance providers, who have assumed the balance responsibility for one or more electricity consumers. Balance responsibility involves assuming financial responsibility for Sweden's electricity system, hour by hour, being supplied with the same amount of power that is being used by electricity consumers. The balance provider creates a balance between supply and consumption by planning its production (if the balance provider is a generator), and by buying and selling power by trading with other balance providers on the power exchange. Deviations in frequency arising during the operating phase, due to the balance providers not being able to create a perfect balance, are corrected by Svenska Kraftnät during the hour of delivery (balance regulation).

Balance providers capable of changing their production or consumption during an hour of delivery may submit bids to Svenska Kraftnät regarding upward or downward regulation. Normally, the bids are to be submitted no later than 30 minutes before the start of the relevant hour and should state the price and quantity.

#### C.2 Gas trading

Financial trading is not very common in Sweden. The majority of gas trading is physical. For physical gas trading, long-term contracts are used for the Swedish market.

#### C.3 Introduction of EMIR and REMIT

The European market infrastructure regulation ("EMIR") was introduced to regulate the OTC derivatives market, with the aim of mitigating counterparty risk by way of requiring the clearing of trades by central counterparties and the reporting of trades to a trade repository. EMIR is – together with a new Swedish act on OTC derivatives, central counterparties ("CCPs") and reporting of trades complementing EMIR – at the time of writing expected to come into force on 1 January 2013. Although it has not yet come into force, EMIR has already had a direct effect on the NASDAQ OMX clearing setup and as of 1 March 2012, NASDAQ OMX, in line with the EMIR requirements, maintains a guarantee fund to which users contribute and consequently enforces a loss-sharing scheme among its members.

The regulation on wholesale energy market integrity and transparency ("REMIT") came into force on 28 December 2011 and was introduced to improve the integrity and transparency of the wholesale energy market by way of establishing rules to stop insider trading and require the reporting of transactions. Investigation of market abuse and prosecution of confirmed cases are left to national regulatory authorities, which for Sweden will be the Swedish Energy Markets Inspectorate. Sweden (alongside other Member States) has until 27 June 2013 to adapt its legislation in order to give its regulatory authorities the necessary powers in order to enforce REMIT. The draft Swedish law complementing REMIT was presented in September 2012.

### D. CLIMATE CHANGE AND SUSTAINABILITY

#### D.1 Climate change initiatives

A carbon dioxide tax was introduced in 1991. In 2009, taxes were also introduced for nitrous oxide and perfluorocarbon (each of carbon dioxide, nitrous oxide and perfluorocarbon "greenhouse gas"). Although certain sectors pay a lower greenhouse gas tax, and even if special rules for the reduction of the tax for energy-intensive industries remain applicable, the tax rate has still been increased from SEK0.25/kg in 1991 to SEK1.10/kg in 2011. Some sectors are exempt from the greenhouse gas tax altogether.

## D.2 Emissions trading

Trade of emission allowances<sup>8</sup> under the EU emissions trading scheme governed by the Emissions Trading Directive (2003/87/EC)<sup>9</sup> was introduced in Sweden in 2005. The regulations have been implemented by way of the Emissions Trading Act<sup>10</sup> and the Emissions Trading Ordinance.<sup>11</sup>

According to the Emissions Trading Act, all companies covered by the emissions system are required to have a specific permit to emit carbon dioxide. This permit is required in order to obtain emission allowances. Operators covered by the emissions trading scheme cannot conduct activities without a permit. To qualify for a permit, the operator must monitor and report the level of emissions. An application must be submitted to the local County Administrative Board.<sup>12</sup>

Since 1 January 2012 aviation operators have been included in the EU emissions trading scheme. In general, all flights arriving at or departing from an airport within the EU are included.

The basis for the trade of emission allowances is a cap on the maximum level of emissions per year and for each period of trade. Each operator will receive a number of tradable emission allowances. Two companies can enter into purchase contracts between themselves or through brokers. Since June 2012 a Union Registry for Emissions Trading ("URET") has been used for the registration of emission allowances and transaction of allowances.

URET itself is not a marketplace for emissions trading. URET simply notes completed transactions between two parties.<sup>13</sup> Trading takes place via an emissions trading exchange, broker or between companies. Trade is currently conducted at the Nordic energy exchange NASDAQ OMX Commodities Europe.

Following the implementation of the Markets in Financial Instruments Directive 2004/39/EC ("MiFID")<sup>14</sup> by means of the new Securities Market Act<sup>15</sup> in 2007, trading of emission allowances no longer triggers a licensing requirement under Swedish law and, as a result, the rules and regulations applicable to financial trading no longer apply to the trading of emission allowances.

## D.3 Carbon capture and storage

The legislative framework relevant to carbon capture and storage consists mainly of the Emissions Trading Act (described above) and the Energy Tax Act.<sup>16</sup> The Energy Tax Act contains provisions regarding the payment of an energy tax and a particular carbon dioxide tax. The Swedish Environmental Code should also be considered as part of the most relevant legislative framework.

The implementation of the CCS Directive will be mainly through the Swedish Environmental Code. The Swedish parliament<sup>17</sup> has approved amendments in order to implement the CCS Directive. The amendments enter into force in January 2013. Carbon capture storage will be considered as an environmentally hazardous operation and an environmental permit will be required prior to carrying out any construction work. The application has to be approved by the government. In addition, the government has also proposed an amendment to the Emissions Trading Act including a possibility for an operator to store its CO<sub>2</sub> emissions in carbon capture storage instead of handing over allowances. The amendments are proposed to enter into force in January 2013.

## D.4 Renewable energy

### Relevant legislative and regulatory regime

The government has announced that the generation target for 2020 includes 50% from renewable energy. An electricity certificate system was introduced in 2003 with the objective of increasing the use of

electricity from renewable sources by 17TWh between 2002 and 2016. The planning objective for wind power production includes a requirement that local authorities must have agreed plans for 10TWh of wind power production by 2015. The government's recently revised production targets for renewable energy imply an increase in the use of electricity from renewable sources by 25TWh between 2002 and 2020.

The electricity certificate system is a market-based support system designed to assist expansion of the production of electricity from renewable sources and from peat in Sweden. Under the system, electricity certificates are issued to operators of approved plants producing and metering electricity from renewable energy sources or peat at the rate of one certificate unit per MWh. Demand for certificates is created by the fact that all electricity suppliers, and certain electricity users, are required to buy certificates corresponding to a certain proportion of their electricity sale or use. By selling their certificates, the producers of electricity from renewable energy sources can receive additional revenue which provides further support for their production of electricity. Accordingly, the system supports the expansion of electricity production from renewable sources and the introduction of new technologies.

Electricity certificates are traded on the NASDAQ OMX Commodities Europe exchange.

If an insufficient number of certificates have been purchased in any given year, the electricity supplier (and certain electricity users) must pay a penalty to the Swedish Energy Agency for every outstanding certificate.

The electricity certificate system has proved to be an effective instrument to increase production of renewable energy, which has resulted in a recent decision to extend the system until 2035. The quota obligation will be calculated on the basis of new quotas that will apply from 2013 to 2035.

Since 1 January 2012 Norway and Sweden have a common market for an electricity certificate system based on the Swedish model.

Following the implementation of MiFID by means of the new Securities Market Act, trading of electricity certificates (like emission allowances) no longer triggers a licensing requirement under Swedish law and, as a result, the rules and regulations applicable to financial trading no longer apply to the trading of electricity certificates.

In order to facilitate the development of wind power, the threshold between the notification requirement and the permit requirement for wind turbines was changed in 2009 from measurement by installed capacity to measurement by height and quantity. Notification to the local municipality is now required for erecting up to two onshore wind turbines not being higher than 150m each or seven onshore wind turbines not being higher than 120m each. Permits are required for larger onshore wind power plants and for all offshore wind power plants. In general, a notification must be submitted to the municipality and a permit application must be submitted to the County Administrative Board. In addition, an amendment stipulating that a wind power plant must be approved by the municipality before an environmental permit may be issued was introduced. Such municipal decision is made by politicians (without any requirements to provide their legal grounds for a decision) and have, at least in some cases, created delays and uncertainties for developers of wind power plants.

Another focus area for the government is the further simplification of the rules and regulations relating to the connection of electricity from renewable sources to the grid. It has been announced that the connection of offshore wind power production to the grid is of particular interest to the government.

### Legal obligations to invest renewable capacity

There is a legal obligation for all holders of grid concessions to connect anyone who wishes to be connected to the holder's line on reasonable terms, subject to certain, mostly technical, exemptions, eg, capacity shortage. There is no obligation for holders of grid concessions to invest in further capacity to service renewable (or other) energy plants.<sup>18</sup>

### D.5 Biofuel

The act on sustainability criteria for biofuel and bioliquids<sup>19</sup> implementing the Renewable Energy Directive entered into force in 2010. The act states, *inter alia*, that in order for biofuels and bioliquids to be deemed "sustainable" their use needs to entail a 35% decrease in greenhouse gases as compared to usage of fossil fuels. From 1 January 2017, the threshold will be increased to 50%. Biofuels are only entitled to electricity certificates to the extent that they are deemed "sustainable" in accordance with the aforementioned act.

### D.6 Energy efficiency

Council Directive 2006/32/EC on energy use efficiency and energy services has been implemented by way of the Ordinance on Energy Efficient Measures for the Public Sector.<sup>20</sup>

A recent Swedish committee report concluded that the European Commission's proposed directive on energy efficiency (repealing Council Directives 2004/8/EC and 2006/32/EC), in particular the requirement therein that public authorities should be required to refurbish at least 3% of their buildings (by floor area) each year, is not compatible with the subsidiarity principle and should therefore be reconsidered by the European Commission.

## E. NUCLEAR ENERGY

There are three nuclear power plants in Sweden today - "Forsmark", "Oskarshamn" and "Ringhals" - comprising ten operative reactors. The nuclear power plant "Barsebäck" was closed in 2005. The plant originally had two reactors - one was closed by the government in 1999 and the other in 2005.

The construction, possession and operation of nuclear plants and dealings with nuclear material and nuclear waste are governed mainly by the Nuclear Activities Act<sup>21</sup> and the Environmental Code. The Nuclear Activities Act contains provisions relating to permit requirements, the final storage of nuclear waste, the decommissioning of plants and safety in general and the Environmental Code contains provisions relating to permit requirements and environmental protection. Provisions aiming to protect people, animals and the environment against the harmful effects of radiation are also contained in the Radiation Protection Act.<sup>22</sup>

The act on financing arrangements for the disposal of nuclear waste<sup>23</sup> contains provisions which oblige holders of permits to possess or operate a nuclear reactor to pay charges to finance the disposal of spent nuclear fuel and other radioactive waste from nuclear reactors and certain other expenses.

Following the abolition of the Nuclear Power Phase-Out Act and certain amendments to the Nuclear Activities Act and the Environmental Code in 2010, the ban on the construction of new nuclear power plants in Sweden was also abolished as from 1 January 2011. One precondition for obtaining permission to construct new reactors is that the new reactor replace one of the existing reactors and that the latter be permanently shut down. The new nuclear power reactors may only be constructed on sites where present reactors currently in operation are located, and as a result, potential new entrants on the Swedish nuclear market are dependent on the existing players' (Vattenfall, E.on and Fortum) willingness to co-operate in this respect. (For further information regarding

replacement of nuclear power plants, please see the "recent developments" article at the front of this chapter)

Payment of damages in the event of damage connected to nuclear activities or material will be governed by the Act on Liability and Compensation for Radiological Accidents (the "Liability Act"),<sup>24</sup> which was issued in 2010 but enters into force on a later date which is yet to be decided by the Government. Pursuant to the Liability Act, the operator of a nuclear power reactor that is in operation for the purpose of extracting nuclear energy shall be obliged to ensure, by way of effecting liability insurance or by putting some other financial security in place, that funds corresponding to approximately €1,200 million (under the current legislation this figure is approximately €300 million) are available in case of an accident so as to compensate injured parties who are entitled to damages. The terms and conditions of the insurance should be approved by the government or by the Swedish Financial Supervisory Authority.

Once the government has decided that the Liability Act will enter into force, the operators of nuclear power reactors in Sweden will do this not only under strict liability (ie, without any need to prove fault) but also under unlimited liability, and as a result the operators will be liable for damages to the extent the above mentioned insurance and/or financial security is not sufficient (under current legislation liability is limited to approximately €300 million). It should however be noted that under the new act the liability is only unlimited for the operating company and not for its owners, ie, the basic rule of freedom from liability for the owner of shares in a Swedish limited liability company laid down in the Swedish Companies Act will remain intact.

## F. UPSTREAM

There are currently limited upstream activities in Sweden.

## ENDNOTES

1. The Swedish Energy Markets Inspectorate's (Sw. *Energimarknadsinspektionens*) report EL R2012:11.
2. Sw. *Ellag* (1997:857).
3. Sw. *Förordning* (2007:215) om undantag från kravet på nätkoncession enligt ellagen (1997:857).
4. Sw. *Miljöbalk* (1998:808).
5. The Swedish Energy Markets Inspectorate's report EL R2012:11.
6. Sw. *Naturgaslagen* (2005:403).
7. Sw. *Miljökonsekvensbeskrivning*.
8. Sw. *Utsläppsrätter*.
9. As amended by Directive 2009/29/EC (the Linking Directive).
10. Sw. *Lag* (2004:1199) om handel med utsläppsrätter.
11. Sw. *Förordning* (2004:1205) om handel med utsläppsrätter.
12. Sw. *Länsstyrelsen*.
13. Like the companies covered by the Emissions Trading Directive, individuals and organisations can also open personal holding accounts with URET and trade in emissions allowances.
14. Government bill 2005/2006:143.
15. Sw. *Lag* (2007:528) om värdepappersmarknaden.
16. Sw. *Lag* (1994:1776) om skatt på energi.
17. Sw. *riksdagen*.
18. Government Bill 1993/94:162.
19. Sw. *Lag* (2010:598) om hållbarhetskriterier för biodrivmedel och flytande biobränslen.
20. Sw. *Förordning* (2009:893) om energieffektiva åtgärder för myndigheter.
21. Sw. *Lag* (1984:3) om kärnteknisk verksamhet.
22. Sw. *Strålskyddslagen* (1988:220).
23. Sw. *Lag* (2006:647) om finansiella åtgärder för finansiering av restprodukter från kärnteknisk verksamhet.
24. Sw. *Lag* (2010:950) om ansvar och ersättning vid radiologiska olyckor.

# NOTES

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# PRINCIPAL ENERGY GROUP PARTNERS

Joanna Addison	Nicholas Downing	Ann Levin	Gerard Pike
Alexander Aitken	Tony Dymond	Andrew Lidbetter	Philip Podzebenko
Toby Anderson	Belinda Fan	Justin Little	Caroline Powell
Will Arrenberg	James Farrell	Danila Logofet	Tim Power
James Baily	Jessica Fei	Malcolm Lombers	Andre Pretorius
John Balsdon	Mike Ferraro	Hamish Macpherson	Julia Pyke
Stuart Barrymore	Matthew FitzGerald	Rebecca Major	Brendan Quinn
Jennifer Bell	Jason Fox	Roddy Martin	James Quinney
Andrew Blacoe	Baden Furphy	Lewis McDonald	Joel Rennie
Nina Bowyer	Chris Gardner	Peter McDonald	Miguel Riano
Stéphane Brabant	Heather Gething	Elizabeth McKnight	Dominic Roughton
James Bremen	David Gilmor	Robert Merrick	Brian Scott
Peter Briggs	Ted Greeno	Bertrand Montebault	Jonathan Scott
Neil Brimson	Mehdi Haroun	Louise Moore	Craig Shepherd
Artjom Buligin	Alastair Henderson	Graham More	Steve Smith
Emmanuelle Cabrol	Paula Hodges	Jared Muller	May Tai
Kate Cahill	Brenda Horrigan	Greg Mulley	Betty Tam
Tom Chau	Anna Howell	Howard Murray	Eduardo Soler Tappa
Adrian Cheng	Karen Ip	Stephen Murray	Craig Tevendale
Andrew Clark	Matthew Job	Richard Nelson	Simon Tysoe
David Clinch	Martin Kavanagh	Andrew Newbery	Lode Van Den Hende
Adrian Clough	Caroline Kehoe	Mark Newbery	Michael Walter
Mal Cooke	Oleg Konnov	Robert Nicholson	Howard Watson
Alexdender Currie	Emma Kratochvilova	Hiroshi Oda	Matthew Weiniger
Justin D'Agostino	Shane Kyriakou	Alexander Oddy	Matthew White
Steven Dalton	Hilary Lau	John Ogilvie	Stephen Wilkinson
Tony Damian	David Laurence	David Opperman	Sharon Wilson
Henry Davey	Jay Leary	Chris Parker	David Wyles
David Dawborn	Christian Leathley	David Paterson	Isaac Zailer
Robert de Boer	Christophe Lefort	Ignacio Paz	Nusrat Zar



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For further information on any matters in this publication, please contact:

**ALBANIA**

Alexander Popp  
+43 1 534 37 478  
a.popp@schoenherr.eu

Krenar K. Loloci  
+355 4 225 0736  
kl@lolocilaw.com

**AUSTRIA**

Christian Schmelz  
+43 1 5343 7127  
c.schmelz@schoenherr.eu

Bernd Rajal  
+43 1 5343 7203  
b.rajal@schoenherr.eu

**BELGIUM**

Wouter Geldhof  
+32 2 533 5259  
wouter.geldhof@stibbe.com

**BOSNIA AND HERZEGOVINA**

Stevan Dimitrijevic  
+387 51 250 001  
stevan.dimitrijevic@karanovic-nikolic.com

**BULGARIA**

Stefana Tsekova  
+359 2 933 1073  
s.tsekova@schoenherr.eu

Mariya Mihaleva  
+359 2 933 0744  
m.mihaleva@schoenherr.eu

**CROATIA**

Matthias Wahl  
+385 1 4576 492  
m.wahl@schoenherr.at

Bernd Rajal  
+43 1 5343 7203  
b.rajal@schoenherr.eu

**CYPRUS**

Lambros Kilaniotis  
+357 22 559 740  
lambros.kilaniotis@cy.pwcllegal.com

Natassa Kiliari  
+357 22 559 705  
natassa.kiliari@cy.pwcllegal.com

**CZECH REPUBLIC**

Martin Nedelka  
+420 225 996 500  
m.nedelka@schoenherr.eu

Jitka Linhartová  
+420 225 996 500  
j.linhartova@schoenherr.eu

**DENMARK**

Anders Stubbe Arndal  
+45 38 77 43 05  
asa@kromannreumert.com

Lars Møller Salling  
+45 38 77 43 73  
lms@kromannreumert.com

**ESTONIA**

Jaanus Ikla  
+372 640 7170  
jaanus.ikla@rln.ee

Triin Frosch  
+372 640 7170  
triin.frosch@rln.ee

**FINLAND**

Jyrki Prusila  
+358 20 506 6234  
jyrki.prusila@roschier.com

Ilkka Puikkonen  
+358 20 506 6614  
ilkka.puikkonen@roschier.com

**FRANCE**

Mehdi Haroun  
+33 1 53 57 70 70  
mehdi.haroun@hsf.com

Ruxandra Lazar  
+33 1 53 57 70 70  
ruxandra.lazar@hsf.com

**GERMANY**

Silke Goldberg  
+49 69 643 500 007  
silke.goldberg@hsf.com

**GREECE**

Gus J. Papamichalopoulos  
+30 210 817 1500  
g.papamichalopoulos@kgdi.gr

**HUNGARY**

Sándor Habóczy  
+36 1 345 8778  
s.haboczky@schoenherr.eu

Daniel Varga  
+36 1 345 8778  
da.varga@schoenherr.eu

**ICELAND**

Baldvin Björn Haraldsson  
+354 550 0500  
baldvin@bba.is

**IRELAND**

Alex McLean  
+353 1 618 0546  
alex.mclean@arthurcox.com

Claire Madden  
+353 1 618 1118  
claire.madden@arthurcox.com

**ITALY**

Monica Colombero  
+39 02 89 63 071  
mcolombero@legance.it

Alfredo Fabbricatore  
+39 02 89 63 071  
afabbricatore@legance.it

**KAZAKHSTAN**

Yuliya Daurova  
+1 646 461 8105  
yuliya.daurova@linkagemind.com

**LATVIA**

Girts Lejins  
+371 6724 0689  
girts.lejins@rln.lv

Martins Tarlaps  
+371 6724 0689  
martins.tarlaps@rln.lv

**LITHUANIA**

Juozas Rimas  
+370 5 250 0800  
juozas.rimas@rln.lt

Ruslanas Černiauskas  
+370 5 250 0800  
ruslanas.cerniauskas@rln.lt

**LUXEMBOURG**

Christian Point  
+352 40 78 78 206  
christian.point@arendt.com

Marianne Rau  
+352 40 78 78 240  
marianne.rau@arendt.com

Gilles Dauphin  
+352 40 78 78 206  
gilles.dauphin@arendt.com

**FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

Miloš Vucković  
+389 2 322 3870  
milos.vuckovic@karanovic-nikolic.com

**MALTA**

Roderick Zammit Pace  
+356 21 22 6088/6268  
roderick.zammitpace@bar.com.mt

**MONTENEGRO**

Slaven Moravčević  
+381 11 32 02 600  
s.moravcevic@schoenherr.rs

Miloš Laković  
+381 11 32 02 600  
m.lakovic@schoenherr.rs

**THE NETHERLANDS**

Martin In de Braekt  
+31 20 5460 242  
martin.indebraekt@stibbe.com

Kirsten Berger  
+31 20 5460 479  
kirsten.berger@stibbe.com

**NORWAY**

Dag Erlend Henriksen  
+47 989 29 4533  
dag.erlend.henriksen@adeb.no

Torkjel K. Grøndalen  
+47 9 829 4599  
torkjel.grondalen@adeb.no

Karl Erik Navestad  
+47 9 829 4566  
karl.navestad@adeb.no

**POLAND**

Jerzy Baehr  
+48 61 855 32 20  
j.baehr@wkb.com.pl

**PORTUGAL**

José Luís Esquivel  
+351 21 384 5310  
geral@esquiveladvogados.com

**ROMANIA**

Monica Cojocar  
+40 21 319 67 90  
m.cojocar@schoenherr.eu

Anca Velicu  
+40 21 319 67 90  
a.velicu@schoenherr.eu

**RUSSIA**

Danila Logofet  
+7 495 363 6500  
danila.logofet@hsf.com

**SERBIA**

Slaven Moravčević  
+381 11 32 02 600  
s.moravcevic@schoenherr.rs

Miloš Laković  
+381 11 32 02 600  
m.lakovic@schoenherr.rs

**SLOVAK REPUBLIC**

Gudrin Stangl Lutz  
+421 2 571 007 01  
g.stangllutz@schoenherr.eu

Michal Lucivjansky  
+421 2 571 007 01  
m.lucivjansky@schoenherr.eu

Christina Toth  
+43 1 534 37 4040  
c.toth@schoenherr.eu

**SLOVENIA**

Christina Toth  
+43 1 534 37 4040  
c.toth@schoenherr.eu

Mark Moggi  
+386 1 200 09 83  
m.moggi@schoenherr.eu

Bernd Rajal  
+43 1 5343 7203  
b.rajal@schoenherr.eu

**SPAIN**

Miguel Riano  
+34 91 423 4000  
miguel.riano@hsf.com

Marta Sanchez-Villalta  
+34 91 423 4000  
marta.sanchezvillalta@hsf.com

**SWEDEN**

Fredrik Wilkens  
+46 8 614 3154  
fredrik.wilkens@vinge.se

Christian Johansson  
+46 8 614 3105  
christian.johansson@vinge.se

**SWITZERLAND**

Mariella Orelli  
+41 43 222 1000  
mariella.orelli@homburger.ch

**TURKEY**

Ümit Hergüner  
+90 212 310 1800  
uherguner@herguner.av.tr

Ender Özeke  
+90 212 310 1800  
eozeke@herguner.av.tr

Kemal Mamak  
+90 212 310 1800  
kmamak@herguner.av.tr

Ebru Ünäl  
+90 212 310 1800  
eunal@herguner.av.tr

Alper Koç  
+90 310 18 00  
akoc@herguner.av.tr

**UKRAINE**

Vladimir Sayenko  
+380 44 499 6000  
vsayenko@sk.ua

**UNITED KINGDOM**

Mark Newbery  
+44 20 7374 8000  
mark.newbery@hsf.com

Stephanie Lomax  
+44 20 7374 8000  
stephanie.lomax@hsf.com

John Murray  
+44 20 7374 8000  
john.murray@hsf.com

**EUROPEAN UNION**

Silke Goldberg  
+49 69 643 500 007  
silke.goldberg@hsf.com