Media release

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'Yes' to internationally coordinated safety net, 'no' to disproportionate and arbitrary 'rescue umbrella'

The Federal Council wants to place the electricity sector under a so-called 'rescue umbrella'. The aim is to protect against systemic risks to the security of electricity supply caused by the current situation in Europe. While the goal is sensible, Axpo rejects the legislative proposal as disproportionate, arbitrary and likely unconstitutional. Instead of this contractual obligation, Axpo advocates a streamlined solution accessible to all companies.

Axpo and other electricity companies sell the electricity from their Swiss power plants several years in advance, minimising price risks (so-called 'hedging'). Their customers, such as SMEs and transmission system operators with many end customers, secure a guaranteed energy supply at a predictable price. Such transactions are usually conducted on energy exchanges. To secure buyers and sellers, regulations require the deposit of cash collaterals. These are returned in full after delivery, at the latest, and are similar to a rental deposit made as security against default by a tenant. The amount of cash collateral depends largely on the price level. If prices rise, so do the collateral requirements. Since the significant increase in gas and electricity prices, further intensified by Russia's war of aggression against Ukraine, the necessary payments have risen to unprecedented levels.

This extraordinary situation in the energy market places enormously high demands on the short-term liquidity of companies. These regulatory exchange requirements are sensible in principle. But when they were introduced, the current situation was inconceivable. Such extreme events could lead to a systemic chain reaction, impacting energy market participants across Europe, including Switzerland, and endangering the security of supply. This could apply in particular during a natural gas embargo, or as a consequence of slowly rising energy prices against the background of a protracted war and continuing sanctions.

The Federal Council's intention to provide a protective mechanism against these systemic risks is understandable. Other European countries, such as Germany, have also created similar draft legislation. Its aim is not to rescue individual companies experiencing difficulties due to bad decision-making. Rather, it is to create a safety net against the unforeseeable consequences of regulatory requirements in international energy trading, in which Switzerland is extensively involved.

Danger to economic freedom and property rights

However, the present legislative proposal goes far beyond this justified goal and massively infringes on economic freedom, the guarantee of property rights and the principle of equal

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treatment. Proven principles of civil and private law would be undermined and federalism called into question. The draft is disproportionate and arbitrary. It must be assumed that it is unconstitutional. It appears more state-believing than comparable mechanisms in other European countries such as Germany.

Particularly objectionable is the anticipatory contractual obligation placed on a few individual companies, determined on the basis of arbitrarily selected criteria. However, it is not single Swiss electricity companies that are critical to the system. The entire electricity sector must be protected from a systemic collapse due to a possible European domino effect. It would be contrary to basic liberal principles to force companies into a far-reaching regime, especially when a simpler and more effective solution on a voluntary basis was possible.

The extensive strategic and operational influence of the federal government on the companies affected must also be flatly rejected. In its current form, the bill would lead to the creeping nationalisation of the electricity industry at federal level, distorting the market and endangering the companies concerned instead of solving the problem.

In view of the extent of the proposed measures, the question arises as to whether this draft legislation confuses necessary protective measures with general regulatory wishes. The proposal would set a precedent and it cannot be ruled out that corresponding regulations will also be introduced for other sectors.

Call for leaner, fairer, focused law

For these reasons, among others, Axpo categorically rejects the proposal in its current form. Effective regulation needs to be lean and focus on systemic risks. It must:

- be open to all electricity companies, irrespective of their legal structure or other criteria;
- not be subject to compulsory contracts or subordination by law;
- provide for financial assistance in general and not only loans;
- calculate the risk premium not on the loan amount but on the interest rate
- limit the obligation to provide information to that concerning the hedging of electricity trading transactions, and to provide such information only to the authority responsible for granting the financial assistance;
- refrain from any strategic and operational influence by the Confederation (i.e. de facto nationalisation);
- treat all shareholders, capital providers and creditors equally, with financial assistance and loans subordinated to existing financing;
- waive all further regulatory content;
- accord with the Swiss legal system and not violate constitutional, civil or company law.

Read our detailed consultation response here (only in German).

Learn more about the mechanisms of hedging transactions here.

About Axpo

Axpo is driven by a single purpose – to enable a sustainable future through innovative energy solutions. As Switzerland's largest producer of renewable energy and an international leader in energy trading and the marketing of solar and wind power, Axpo combines the experience and expertise of more than 5,000 employees who are driven by a passion for innovation, collaboration and impactful change. Using cutting-edge technologies, Axpo innovates to meet the evolving needs of its customers in over 30 countries across Europe, North America and Asia.

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