



– Consultation response –

DSO Entity & ENTSO-E public consultation on the new Network Code for Demand Response

Brussels, 10 November 2023 | Europex and the All NEMO Committee welcome the opportunity to provide feedback to the EU DSO & ENTSO-E public consultation on the new Network Code for Demand Response (NC DR). We strongly support a swift increase of the flexibility of the electricity system, in line with the 2030 objective of “doubling flexibility” as stipulated in the [EEA/ACER Report on Flexibility solutions to support a decarbonised and secure EU electricity system](#) of September 2023.

To this end, the new Network Code should enable equal, non-discriminatory and transparent access to flexibility assets in wholesale electricity markets which provide the most reliable price signals for the activation, integration and remuneration of flexibility resources. Yet, as the new Network Code introduces an additional layer of regulatory, organisational and technical complexity, the impact of these new rules on the well-functioning, the liquidity and the integration of wholesale electricity markets should be properly assessed.

In our response to the consultation, we emphasise that the new Network Code should be more ambitious in fostering market-based flexibility procurement in comparison to the status quo and existing regulation. However, as the current draft fails to do so, it is questionable if and how the new Network Code will improve the framework provided by the Clean Energy for all Europeans package (CEP) which is not yet fully implemented across the EU, four years after its entry into force in 2019.

In addition, we believe that the present draft fails to properly recognise the role of Power Exchanges, Delegated Operators and NEMOs in organising trading across all timeframes, and within and between bidding zones, therefore allowing the procurement of flexibility resources through, e.g., local flexibility markets, including in a cross-border manner. When developing local flexibility markets, third parties remain the most efficient option to assure neutrality and transparency in Member States with multiple system operators (i.e., TSOs and DSOs).

Furthermore, we have identified several discrepancies between the ACER Framework Guidelines (FGs) and the EU DSO Entity & ENTSO-E draft of the new Network Code. For example, the market-based definition of flexibility procurement and the safeguarding of security of supply, two key concepts explicitly mentioned in the FGs, have not been taken up in the current draft text. Furthermore, the consulted text fails to ensure a pan-European approach to the development of flexibility while avoiding market fragmentation.

Finally, it remains unclear to us how exactly the new Network Code will take into account possible new flexibility rules that are currently discussed in the Electricity Market Design (EMD) review. In

particular, a proper impact assessment should be conducted on the possible introduction of peak shaving products, an unnecessary and counterproductive instrument for the development of additional flexibility. We firmly believe that peak shaving products, if implemented, are detrimental to the well-functioning of electricity markets as they would directly impede the participation of flexibility resources in the wholesale market when needed most (i.e., during peak hours). Any such assessment should naturally involve relevant stakeholders.

Please find our responses to selected questions below:

Article	Comment	Text proposal
Whereas (w)	Europex believes that regulatory price caps should be removed as they distort the market and its efficient, reliable and transparent price signals. However, this is not to be confused with technical price caps (i.e., technical bidding limits) which manage the exposure of market participants' to unnecessary costs and risks and therefore ensure the well-functioning of the optimisation algorithm.	(w): Market-based procurement is understood as a mechanism whereby a service is procured by soliciting market participants to place an offer for the service. The market participants choose the amount they are offering and the prices (potentially limited by price caps by technical maximum and minimum clearing price bidding limits). The remuneration may be determined by a market-mechanism (supply vs demand) pay as bid or pay as cleared. Examples, which may be labelled "market-based" based on assessment of national regulatory authority in Member State: Marketplace/ Exchange / an organised market for service (includes service specific market or taking offers from another market such as Energy-only-markets, balancing).
(4)	The ACER Framework Guidelines (FGs) clearly specify that the new Network Code should foster "market-based" procurement of services for system operator. Therefore, the objective of fostering "market-based" needs to be added in this article. In addition, as the FGs emphasise the preservation of the grid security, this additional objective should also be included in this Article.	3. Contributing to market integration, non-discrimination, effective competition and the efficient functioning of the market while not jeopardising grid security . 4 (a): removing all undue barriers for the participation of these resources in all wholesale electricity markets (including those for procuring systems operators services), and establishing European principles for the assessment of the need for, the market-based procurement of and the use of local systems operators services.

(5)	The development of a national process for the definition and implementation of terms and conditions, involving the NRA and multiple TSOs & DSOs, should be kept easy to manage and not be too lengthy in order to avoid that, in the meantime, the development of local pilot flexibility projects is impeded.	1. By three months following the entry into force of this Regulation, all systems operators shall jointly submit to the competent national regulatory authority a proposal for a national process to develop national terms and conditions referred to in Article 6 (Common national terms and conditions). This is without prejudice to the right of: (a) The Member State or NRAs to define the national process on how systems operators jointly develop national terms and conditions pursuant to this Regulation; b) SOs to launch in the meantime local pilot projects.
(6)	The deadline for submitting the proposals for the national terms and conditions should be clearly stipulated in this article. In case more granular deadlines are needed, they should be jointly determined by the NRAs.	1. All systems operators shall develop common proposals for the national terms and conditions required by this Regulation and jointly submit them for approval to the competent national regulatory authority within the respective deadlines set out in this Regulation [name the deadline here]. If additional more granular deadlines are deemed necessary, they should be jointly set by the NRAs.
(17)	If a task is delegated, the same cost recovery principle shall apply to the delegated entity.	1. The costs borne by the relevant transmission system operators, and distribution system operators, delegated parties and closed distribution system operators where relevant, subject to network tariff regulation and stemming from the obligations laid down in this Regulation shall be assessed by the relevant regulatory authorities. Costs assessed as reasonable, efficient and proportionate shall be recovered through network tariffs or other appropriate mechanisms.
(47)	The solutions to voltage control issues should not be restricted to "active power" only. Both active and reactive power should be utilised for voltage control.	Solutions for congestion and voltage issues through active power 3a. In case of non-market based redispatching according to the target model defined in Art. 13 (3) of Regulation

	<p>In paragraphs 3 and 4, the new Network Code should insert an additional assessment or stricter criteria for not applying market-based redispatch according to Art. 32 in order to foster the application of the European target model of market-based flexibility procurement. Such assessment should be stricter and/or stricter criteria should apply in order to limit non-market-based solutions to a strict minimum. Otherwise, it is questionable how the new Network Code will improve the regulatory status quo of the Clean Energy for all Europeans package (CEP) with the latter not yet fully implemented across the EU, four years after its entry into force in 2019.</p>	<p>(EU) 2019/943, system operators shall establish a public annual report which outlines the additional costs/welfare losses resulting from non-market-based procurement compared to the target model solution of market-based procurement.</p> <p>4. The relevant national regulatory authority may adopt non-market-based solutions pursuant to Article 32(1) and Article 40(5) of Directive (EU) 2019/944 when its proper assessment according to strict, objective and explicit criteria has concluded that the procurement of market-based services is not economically efficient or where such procurement would lead to severe market distortions or to higher congestion. The assessment shall take into account that conclusions may differ for different parts of the grid within a Member State, for different products (especially distinguishing short-term and long-term products).</p>
<p>(48)</p>	<p>The solutions to voltage control issues should not be restricted to “active power” only. Both active and reactive power should be utilised for voltage control.</p> <p>Paragraph 5 is a repetition of the articles it quotes and is therefore redundant.</p> <p>In paragraph 6, as the list is not applicable in practice, it needs to be clarified how the elements should be “considered” in the national terms and conditions for market-based procurement of flexibility. For example, to “consider” whether wholesale and balancing markets apply unit or portfolio bidding (Art. 48 (6) (a)) reads quite vague.</p> <p>When preparing the national terms and conditions, DSOs and TSOs should also assess and make public the following: cost-savings that market-based procurement will bring compared to non-</p>	<p>National terms and conditions for market design for congestion management and voltage control services through active power</p> <p>4. Additionally, systems operators shall commonly propose national terms and conditions for the development of intrazonal congestion management and voltage control services through active power, taking into account the result of the assessment in paragraph 1 where applicable, and submit this to the national regulatory authority pursuant to article 5 (National process to develop national terms and conditions).</p> <p>5. The national terms and conditions referred to in paragraph 1 shall comply with the following principles and requirements: (a) principles for procurement and pricing of congestion management and voltage control services, in line with Article 49 (Principles for procurement and pricing for market-</p>

market-based procurement (such as reduced redispatch costs, reduced or deferred grid investment costs, reduced grid operation costs, etc.). This will help foster market-based solutions instead of non-market-based solutions.

In paragraph 9, it is unclear what “or other market processes” means.

In paragraph 10, it is necessary to further clarify what it means in practice to combine and forward bids to other markets.

In paragraph 12, an incentive should be provided to system operators to engage in market-based flexibility procurement processes, complementary to an appropriate grid expansion. Therefore, the costs for market-based procurement of congestion management and voltage control need to be recognised. This needs to be clearly state in the Network Code, otherwise it will not bring improvement compared to the status quo.

In paragraphs 13 and 14, system operators should not only be entitled, but also incentivised and encouraged to present a common proposal for market-based congestion management mechanisms.

~~based congestion management and voltage control services); (b) requirements for publication of information in line with Article 52 (Publication of information); (c) principles for the coordination of and interoperability between local and day-ahead, intraday and balancing markets, in line with Article 53 (Principles for the coordination and interoperability between local and day-ahead, intraday and balancing markets); (d) requirements to procuring system operators, in line with Article 54 (Requirements for procuring system operators); and (e) requirements applicable to operators of local markets, in line with Articles 55 (General requirements to local market operators) to 57 (Tasks local market operators).~~

6 (l): assess and publish the cost-savings that market-based procurement will bring compared to non-market-based procurement.

12. The costs for market-based procurement of ~~procuring~~ congestion management and voltage control services shall be allocated and recovered. ~~in line with the applicable national legislation.~~

13. Systems operators ~~should be~~ **are** entitled, **incentivised and encouraged** to present a common proposal for market-based congestion management mechanisms to the national regulatory authority that complements the existing non-market-based mechanisms in line with paragraph 4. This proposal shall describe interactions with existing non-market-based mechanisms.

14. Systems operators ~~should be~~ **are** entitled, **incentivised and encouraged** to bring proposals to relevant national regulatory authority for handling grid issues in certain parts of the grid with non-market-based solutions in accordance with conditions specified in Directive (EU) 2019/944, when this is advised when the procurement of

		market-based services is not economically efficient or where such procurement would lead to severe market distortions or to higher congestion, or when the market options have proven not to solve the need.
(56)	Concerning paragraph 3, we believe that a third party – in the form of, e.g., a market operator, power exchange or delegated operator – is the most efficient option for assuring neutrality in Member States with multiple SOs.	/
(57)	In paragraph 4, it needs to be clarified what the interoperability between the local market operator and TSOs/DSOs entails. In addition, it is unclear what it means in practice "to coordinate" local flexibility markets with others.	/
(58)	The Framework Guidelines stipulate that the new rules "shall define a common European list of attributes for products used for congestion management" (paragraph 82). The list of a minimum level of standardised attributes and standardised products across the EU should be directly included in the new Network Code instead of referring to a future process taking additional six months to develop it by the same entities (i.e., EU DSO & ENTSO-E) which are now co-drafting the Network Code.	<p>When systems operators define nationally standardized congestion management products, they shall use attributes from the common list of attributes. The common list of attributes shall be commonly developed and published by ENTSO-E and EU DSO Entity within 6 months after entry into force of this Regulation following the process to develop EU TCMs in line with Article 9 (Union wide terms and conditions or methodologies).</p> <p>[The minimum level of standardised attributes and, as applicable, of standardised products across the EU should be listed and defined here].</p>

About Europex

Europex is a not-for-profit association of European energy exchanges with 34 members. It represents the interests of exchange-based wholesale electricity, gas and environmental markets, focuses on developments of the European regulatory framework for wholesale energy trading and provides a discussion platform at European level.

For more information: www.europex.org

About the All NEMO Committee

The All NEMO Committee facilitates the cooperation among NEMOs for all common European tasks necessary for the efficient and secure design, implementation and operation of single day-ahead and intraday coupling. The All NEMO Committee is a contractual decision making body without legal personality, formed by the appointed representatives of each NEMO.

For more information: www.nemo-committee.eu