



- Consultation Response –

ACER public consultation on the draft network code on demand response

Brussels, 31 October 2024 | Europex suggests targeted amendments to the Network Code on Demand Response draft to develop market-based flexibility and ensure efficient local flexibility market operation by third parties.

Whereas 21)

Opinion: Disagree

Comment: A stronger uphold to interoperability should be included in the NC DR, especially in the case of multiple local markets.

Amendment: (21) This Regulation aims at promoting and enabling an efficient use of generation, energy storage and demand response by facilitating the creation of local markets to solve congestion issues and voltage issues, which should **seek to** be interoperable with wholesale markets **and across local markets**.

Whereas 26)

Opinion: Disagree

Comment: Despite we support the target of facilitating value stacking – which enables flexibility services providers to commercialise their flexibility assets and portfolios on all different market segments without any barriers – we suggest deletion of the last sentence as it is unclear what it will entail in practice. Furthermore, NEMOs and market participants should be involved in the definition in practice of bid forwarding.

Amendment: (26) This Regulation aims at facilitating value stacking through interoperable and coordinated solutions as well as enabling portability of products between markets, **including local markets**. Value stacking can be employed by service providers to maximize the value of flexible units in their portfolio. ~~Coordination is understood as the organisation of different markets to ensure market integrity and non-double activation for example when market participants place bids in several markets or when forwarding of bids is realised.~~

Article 1)

Opinion: Disagree

Comment: We consider this requirement too extensive. First, the obligation for all system users to be located in the EEA lacks any justification. Second, for any service providers, one should be aware of the fact that system operators remain ultimately responsible for any delegated services anyway. In the end, it should be left to national terms and conditions to decide on the exact procedure. Alternatively, the obligation in article 1.6 should be limited to system operators as the ultimately responsible entities.

Amendment: (1.6) ~~All system users, service providers, system operators responsible for operating a module of the flexibility information system and any third party pursuant to Article 16 shall be located within the territory of the European Economic Area and shall ensure that all personnel operating data and all infrastructure are employed inside the territory of the European Economic Area.~~

Article 4)

Opinion: Disagree

Comment: SDAC/SIDC market operators shall be directly involved in the national TCM drafting process to ensure interoperability is designed in a proper way.

Amendment: (4.2(c)) The rules of procedure of paragraph 1 for the development of proposals for the common national terms and conditions shall specify at least the following:

- (a) the participation of all competent system operators, their representation and their respective roles and responsibilities, specifically for the development of proposals for the common national terms and conditions in the context of this Regulation;
- (b) the voting rules (e.g. consensus, majority options etc.) for agreeing on proposals;
- (c) the process of safeguarding the involvement of the affected stakeholders, **including and SIDC market operators**, during the development of the proposals for common national terms and conditions;
- (d) transparency ensured through meeting minutes and access to the documents;
- (e) the procedure to propose amendments to the common national terms and conditions pursuant to Article 7(2).

Article 5)

Opinion: Strongly disagree

Comment: Article 5 should include a specific time period for the elaboration of the common national TCMs likewise it is specified in the related Articles 19, 22, 33 and 53. Since for the national rules of procedures (Article 4), the approval of common NTC (Article 6) and the related provisions (Article 7) the associated timeline for elaboration is indicated, it would be more precise to include a specific time period applying also for the TCMs, i.e., in Article 5. In addition, the reference to the Article regulating the national rules of procedure is incorrect. Finally, the development of national TCMs should not prevent SOs to start or continue pilot projects on demand response.

Amendment: (5.1) Within the respective period after the approval of the national rules of procedures in accordance with Articles 19,22, 33 and 42, all system operators of each Member State shall develop proposals for the common national terms and conditions required by this Regulation and jointly submit them for approval to the regulatory authority within the respective deadlines set out in this Regulation following the approval of the national rules of procedure referred to in Article 64. This is without prejudice to SOs to launch or to continue in the meantime local pilot projects.

Article 15)

Opinion: Neutral

Comment: without request explicit amendments to the text, as Europex, we would like to be involved in future drafting phases of the NC DR.

Article 16) [combine par. 1, 2 and 4]

Opinion: Strongly disagree

Comment: Any local market operator should fulfil a list of necessary requirements, in particular neutrality, operational experiences, highest market surveillance standards, etc. We believe that neutral third parties are the experts of operating markets in safe, secure and transparent way and that they ensure neutrality and technical expertise in the best way. Furthermore, the TSO/DSO choice should not be solely discretionary but be based on precise conditions for delegation and prerequisites for operating specific tasks. Finally, while we agree with the concept that delegated parties need to prove their eligibility, some harmonised requirements should apply in general and be included in the NC DR.

Amendment: (16.1, 16.2, 16.4) 1. System operators may delegate all or part of any tasks with which it is entrusted under this Regulation to one or more third parties or system operators in case they can carry out the respective function at least as effectively as the delegating system operator. The delegating system operator shall remain responsible for ensuring compliance with the obligations under this Regulation, including ensuring access to information necessary for monitoring by the relevant regulatory authorities in accordance with Article 59(1b) of Directive (EU) 2019/944. The task of local market operation shall be delegated to a third party in case a third party can carry out the local market operation task more efficiently than a system operator, pursuant to the local market operation requirements of Art. 16.2. according to an open, transparent, and non-discriminatory bidding process.

2. Prior to the delegation, the delegated party shall demonstrate to the delegating system operator its ability to meet the tasks to be delegated. The requirements for local market operation shall include at least:

(a) neutrality and transparency in case that several system operators, service providers or stakeholders are involved;

- (b) proven technical, personal, operational, and organisational expertise and resources with regard to the operation of local markets;
- (c) appropriate market surveillance arrangements in place in compliance with Article 15 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency as amended by Regulation (EU) No 2024/1106 of 11 April 2024; and
- (d) adequate level of business separation in case of potential conflicts of interest. In particular, any market operator of local services shall be fully unbundled from the market activities of production and supply.

4. Without prejudice to the tasks entrusted to system operators pursuant to Directive (EU) 2019/944, a Member State, or where applicable a relevant regulatory authority, may assign tasks or obligations entrusted to system operators under this Regulation to one or more assigned parties, including a TSO or a DSO. Prior to the assignment, the party concerned shall demonstrate to the Member State, or where applicable the relevant regulatory authority, its ability to meet the task to be assigned. **The task of local market operation shall be delegated to a third party in case they can carry out the local market operation task more efficiently than a system operator, pursuant to the local market operation requirements of Art. 16.2. according to an open, transparent, and non-discriminatory bidding process.**

Article 17)

Opinion: Disagree

Comment: In order to set strong incentives to SOs to engage in market-based flexibility procurement, costs for market-based flexibility procurement should be recognised and recovered. In addition, third parties should have a similar cost recovery structure as the system operator.

Amendment: (17.1) 1. The costs borne by the relevant system operators **or delegated/assigned parties, including the costs for the market-based procurement of flexibility for congestion management,** 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 the network tariffs of the respective system operators or other appropriate mechanisms.

Article 19) [combine par. 1 and 4]

Opinion: Strongly disagree

Comment: Any references to balancing markets should be dealt with in balancing guidelines. Moreover, it would be important to clearly define in the national TCMs the requirements for performing specific roles in the market-based mechanism. The role of local market operator (LMO) deserves greater attention and should be explicitly mentioned in the NC DR, beginning from Article 19, for example.

Amendment: (19.1, 19.4(h)) 1. The national terms and conditions for service providers in this Regulation refer to ~~the national terms and conditions for balancing service providers when the requirements of this Regulation refer to balancing services and to~~ the national terms and conditions for service providers of local services when the requirements of this Regulation refer to local services procured in accordance with a market-based mechanism.

4(h). the rules, **the responsibilities and the requirements for performing specific tasks** for the market-based procurement of local services pursuant to Article 41

Article 35)

Opinion: Disagree

Comment: We propose to introduce more comprehensive requirements for local market operators in Article 16.2. Against this background, we propose to delete the reference to third party market operators in this article, which could otherwise result in doubling requirements or introducing inconsistent obligations. In the present case, it is not clear why the third party market operators of local services shall be separated from a third party to whom system operator(s) delegate a task.

Amendment: 4. When the national terms and conditions for a flexibility information system delegate at least one task of the system operator(s) responsible for operating a module, with which it is entrusted under this Regulation to one or more third parties, such third party(ies) shall have an adequate level of business separation from parties with a commercial interest in local services, including ~~third party market operators of local services and~~ service providers, in line with the national implementation of Article 35 of Directive 2019/944 on unbundling. All parties interacting with these modules shall be treated equally and in a non-discriminatory way.

Article 38

Opinion: Disagree

Comment: We welcome that the market-based mechanism for the procurement of flexibility services is the default solution. However, in order to promote more strongly and clearly the market-based mechanism it is important to specify that the assessment to be done in case of a derogation - that can be applied for a maximum period of 2 years - should be performed annually. Moreover, when a derogation is issued, the relative SO should provide a report including a cost benefit analysis of the non-market-based procurement mechanism option.

Amendment: (38.3 and adding new subparagraph – 38.4(a)) 3. Before granting or extending a derogation, the regulatory authority shall, at its own initiative or at request of at least one system operator, request the relevant system operator(s) to make an assessment **on an annual basis** on the market-based procurement of local services for parts or the whole transmission or distribution grid [...]"

NEW subpar. 4a. In case of non-market based redispatching according to the target model defined in Art. 13 (3) of Regulation (EU) 2019/943, system operators shall establish a public annual report which outlines the effects on overall costs and welfare resulting from non-market-based procurement compared to the target model solution of market-based procurement.

Article 41

Opinion: Disagree

Comment: It is of outmost importance to distinguish the role of the procuring (or connecting) SOs from the role of local market operators.

In addition, we believe the objective for flexibility development across Europe should be to ensure interoperability between flexibility markets and wholesale markets, namely, an objective which should be addressed in the NC DR.

Amendment: (41.3(b), 41.6) (3(b)). ~~Provisions on the coordination of the operators under (a) with operators of other markets, and the rules governing the interrelation — whether sequential, parallel, simultaneous or other — of the local markets and the day-ahead, intraday, and balancing markets pursuant to Article 43;~~ interoperability of the flexibility local markets with the wholesale markets to address local specificities;

6. By 3 years after entry into force of this Regulation, ENTSO-E and EU DSO entity, involving the relevant stakeholders, shall develop a proposal for a Union-wide methodology for further specifying aspects of the market-based procurement of congestion management service in accordance with Article 10, including, but not limited to, the list of product attributes, the procurement methods, the coordination between system operators to ensure the interoperability of local flexibility markets with the wholesale markets, stakeholders information and transparency.

Article 42

Opinion: Strongly disagree

Comment: From the proposed paragraph, it remains unclear for what purpose bids should be forwarded and under which conditions. This scheme raises more questions than provides solutions, such as on roles, responsibilities, contractual relationships (e.g., membership with exchanges), cost structure (e.g., collaterals when relevant) and level playing field with other market participants. The NC DR should focus on facilitating revenue stacking rather than proposing a solution (bid forwarding) that has not been thought through. Giving “consent” is clearly not enough of a condition to be able to “forward bids”.

In addition, we fully support the unbundling requirement, but since it is also mentioned in Article 16(2) that we have previously amended, we believe that it can be deleted in this Article.

Amendment: (42.6, 42.8) 6. Each procuring system operator shall coordinate with other procuring system operators in accordance with the rules for the market-based procurement of local services pursuant to Article 41. ~~Subject to the service provider's consent, the procuring system operator shall forward bids combined or not to other markets, while ensuring the necessary transparency and following the pricing mechanism and settlement principles pursuant to Article 44.~~

~~8. Any third party which acts as market operator of local services shall be fully unbundled from the market activities of production and supply.~~

Article 43

Opinion: Disagree

Comment: For Article 43.1, in order to enable interoperability between flexibility markets and wholesale markets, it is necessary to take into consideration the market design characteristics of each Member State. Indeed, to provide an example, it would be possible to submit in day-ahead and intraday markets bids that also have been submitted in local flexibility markets based on locational tagging, and that regardless of if such tagging would also be present or not in the bid submitted to day-ahead or intraday. In any case, it is of utmost importance that the rules for the procurement of local services do not interfere with the proper functioning of the wholesale markets.

Moreover, as in previous Article), from the proposed paragraph, it remains unclear for what purpose bids should be forwarded and under which conditions. This scheme raises more questions than provides solutions, such as on roles, responsibilities, contractual relationships (e.g., membership with exchanges), cost structure (e.g., collaterals when relevant) and level playing field with other market participants. The NC DR should focus on facilitating revenue stacking rather than proposing a solution (bid forwarding) that has not been thought through.

Amendment: (43.1, 43.2) 1. If bids offered ~~primarily in day-ahead, intraday and balancing markets and, where applicable, in day-ahead and intraday~~, are used for solving congestion issues or voltage issues the rules for the market-based procurement of local services pursuant to Article 41 shall specify the process for this. ~~Rules for the market-based procurement of local services shall not over-ride, nor compromise rules to participate in and applicable to wholesale markets.~~

2. Each service provider shall be allowed to submit ~~the same bid~~ its flexibility capacity or flexibility energy ~~in several markets~~ to all markets to foster value stacking, ~~but this bid shall not be selected twice~~. When a bid has not been selected in a market, or the service for which the bid was selected is no longer needed, the service provider shall be allowed to submit ~~this bid~~ its flexibility capacity or flexibility energy to another market. Each service provider shall be allowed to register a controllable unit in different SPGs for different services. ~~Coordination and activation rules between system operators shall avoid the activation of conflicting bids on the TSO and DSO side, following the requirements to ensure that there is no double activation of this controllable unit for the same imbalance settlement period.~~ National BRP rules ensure that market participants are balanced until delivery.

Article 46

Opinion: Disagree

Comment: The first paragraph of this Article is strictly related to the operations of the market, so it is important in this case to include the reference to the local market operator. Moreover, the information on the market sessions can be published by both the local market operator, when it is performed by a third party, and the procuring SO in order to give more visibility to the sessions and attract more service providers, especially in the early stages of these new projects

Amendment: (46. 1) 1. Each procuring system operator **and the local market operator performed by a third party** shall publish clear information on the market sessions, including the number and structure of market sessions, gate closure times as well as information on the products traded on the platform they operate pursuant to the national terms and conditions.

Article 48

Opinion: Strongly disagree

Comment: It remains unclear how a product from day-ahead or intraday can be used for congestion management. The intraday and day-ahead product methodologies have been proposed by All NEMOs and approved by All NRAs. At least, an explicit reference to such products is neither required nor helpful.

Amendment: (48.1) 1. The national terms and conditions for service providers shall include a list of congestion management and voltage control products. If products from ~~day-ahead or intraday markets or~~ balancing products are used for congestion management or voltage control, they shall be included in the list of products.

Article 62

Opinion: Disagree

Comment: It is crucial to complete Article 62.2 indicating precisely for which requirements a SO may request a derogation. To this end, ACER should provide for the involvement of Europex in the drafting committee.

In addition, the preconditions for a derogation should be restrictive, objective, provable and based on recent data or observations. They should also be restricted to cases where a market-based approach is either undoubtedly expected to be inefficient or ineffective.

No amendment proposal.

About

Europex is a not-for-profit association of European energy exchanges with 35 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.

Contact

Europex – Association of European Energy Exchanges

Address: Rue Archimède 44, 1000 Brussels, Belgium

Phone: +32 2 512 34 10

Website: www.europex.org

Email: secretariat@europex.org

X: @Europex_energy