CONSULTATION RESPONSE

EFET
European Federation of Energy Traders

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

Brussels, 10 November 2023. The European Federation of Energy Traders (EFET) takes the opportunity of this consultation on the draft network code (NC) on demand response to insist on the necessity of a clear and robust regulatory framework to integrate demand response into the internal energy market.

Executive summary

We fully support the involvement of new market participants such as active consumers and independent aggregators in the wholesale electricity market. In our view, the EU internal energy market legislation, particularly since the approval of the Clean Energy Package, provides a comprehensive framework already. It lays down the key principles for their successful development and effective market engagement. Ensuring that the rules of the new NC fit into the internal energy market framework will be key.

The draft network code text contains several positive elements:

- We welcome that the draft NC is built on the principles of technological neutrality and non-discrimination for all market participants in all market segments.
- We applaud the overall emphasis of the draft on the development of effective price signals via well-designed market mechanisms, which is essential to build a robust business case and develop new business models and services.

However, we see also some worrying aspects in the proposed guidelines:

- We still contest the ownership and management of storage assets by SOs and have concerns with the draft NC provisions weakening the rules laid out in the Electricity Directive
- We reiterate our request to align this draft NC on existing energy market legislation. Guaranteeing non-discrimination will require many of the new market rules proposed in the draft NC to be implemented as amendments of the existing guidelines (GLs) and network codes (NCs), so as to apply to all market participants.
- The concept of market manipulation is dealt with in existing EU Regulation (REMIT, EMIR, MAR/MAD, MiFID II) and has no place in this NC.

The concept of bid transfer needs to better substantiated in order to maintain transparency, market integrity and liability/responsibility.

You will find below our proposed amendments to specific paragraphs of the draft NC.

Whereas

Whereas (d) – on the bid granularity we need to ensure consistency and refer to relevant legislation. See also our amendment to Art. 29.

Whereas (w), should read potentially limited by ‘’technical price limits’’. There are technical price limits in electricity market EU legislation. We also suggest to add “competitive” and “transparent” before the word “mechanism”. We also suggest checking whether “market-based” is defined in existing legislation.

Whereas (v), (w), (x), (z), (ee), art.12.1 (‘on the internet’), art.19.8, art.30.1 (‘simplified qualification process’), art.45.1, art.47.2, art.61(a) (‘reasonable cost and timely manner’), art.61.1(d) (‘necessary’) are vaguely formulated. We suggest rephrasing.

General provisions

Art. 1.1: we suggest to substitute “storage” with “other resources” and adapt accordingly with the ACER FG that states: *the new rules shall be applicable to all resource providers mentioned or covered in the articles referred to in Article 59(1)(e) of the Electricity Regulation. The new rules shall thus be applicable to load, storage (in particular when combined with load), and distributed generation, aggregated or not (hereafter referred to as “demand response and other relevant resources” or in general “resources”). No resource provider shall be excluded, and the main aim of the new rules shall be to ensure access to all electricity markets for all resource providers.*

Art. 1.2: we suggest specifying to whom the “obligations” are applicable.

Art. 2.17: instead of “an information system consisting of...”, it should be “an **interoperable** information system consisting of...” . It is of utmost importance that, no matter how many platforms will eventually be used, they are interoperable at least at Member State level to ensure sufficient liquidity (e.g., no lock-in) and coordination.

Moreover, proper transparency requirements for these registers must be set at European level. Functions of interoperable components include data access, data transmission and cross-organizational collaboration regardless of its source. Interoperability helps different parties involved to achieve higher efficiency, lowering costs of processing, improve data quality, increase data security and a more holistic view of information.

Art. 9.2: instead of “may”, there should be a “shall”. Eventually, the vision is to have further harmonization in place.

Art. 13.1 and 14.1: the consultation shall last for a period of not less than 1 month **and a public workshop should be held in the meantime.** This would further improve stakeholder involvement, especially at national level.

General requirement for market access

As general comments to this section, we insist that any new market rule suggested in the draft NC be implemented as an amendment to the existing market NCs and GLs, so as to

apply to all market participants. Guaranteeing non-discrimination in the market will require that any new market rule applies to all, and hence should not be confined in a NC applying solely to demand response.

Art. 21.8: grid limitations communicated by system operators are a matter for the zonal electricity market and congestion management mechanisms. In this context, it ruled by the EB GL and SO GL. As far as local markets are concerned, the market-based procurement of services by SOs should take account ex-ante of such grid limitations.

Art. 21.9: we have strong concerns about the fact that the supplier/BRP shall not receive specific data related to the activation. This is required for accurate imbalance settlement (as required by Art. 21.10 and 28 of the draft NC), particularly since service providers can act on BRP/suppliers' assets without consent. While confidential treatment of information should be safeguarded, not all metering data from generation/consumption/storage assets can be considered as sensitive. Withholding non-sensitive data related to activation unfairly hinders BRPs in their proper imbalance settlement.

If the Network code fails to ensure transparent real-time data exchange between service providers and BRPs/suppliers, mitigation measures are required. In the absence of activation data access, Member States should define limits on the size of assets and/or portfolios that service providers can aggregate. Beyond these limits, sharing activation data should become mandatory.

Where the supplier optimizes the customers' portfolio intraday (in the case of large industrial customers), this data transfer from the service provider to the supplier (or its BRP) has to occur in real-time. This is necessary to prevent that the BRP counteracts the activated demand response in intraday markets due to the changed offtake.

We propose: ''The BRP of the service provider shall receive the relevant data values corresponding to those periods where the controllable units under its portfolio were providing a service**. In case of intraday portfolio optimization by the supplier, the data transfer from the service provider to the supplier or the BRP must take place in real time to avoid counteraction by the supplier or the BRP.** Depending on the common national terms and conditions, the supplier or the BRP associated to the supplier shall be responsible for the reception of the relevant data values of the metering point for all timeseries with the exception of the specific data related to the activation.''

Art.22.1: Replace "may" with "shall". A financial compensation shall apply in such case. Even if the load curve has been corrected, the supplier may incur costs, e.g., the rebound effect. The text should read: ''In order to limit the impact that balancing or congestion management and voltage control services activation might generate on market parties, a financial compensation **shall** apply.~~, only when the measurements that determine the load curve of the customer is not corrected.''~~

Art. 22.4: ''and may foresee either a regulated price, a fixed price, a specific formula, or a bilateral agreement between involved market parties'' should be deleted. It is sufficient to have the method for calculating the financial compensation, which shall be subject to the approval of the national regulatory authority.

Art. 23.3: we do not see the added value of this article and we propose to delete it. The calculation is not passible/contrafactual.

If Art. 23.3 is retained, benefits shall not be netted with compensation costs for the suppliers. This leads to severe distortions. Market prices are the result of the benefits and the whole system would see the positive effect. Coherently, if a Member State wishes to externally quantify benefits, these shall be borne by the whole system.

Art. 24.4: we advocate for a balanced approach to aggregation roles and responsibilities, in line with Art. 17 of the Electricity Directive. This includes fair and open data exchange among aggregation participants. We support notifications of activations to the supplier's BRP, as outlined in the draft proposal. We suggest to further clarify that an independent party (TSO, MDA) shall notify the BRP.

Art. 25: baseline and measurement rules applying to demand response to check the delivery of the service and assess imbalance settlement for energy should apply in the same manner to imbalance settlement in other energy markets (day-ahead, intraday) and SO services as defined in paragraph 12.u of the ACER FG.

The network code does not attempt to define how the baseline in the presence of demand response is set. Instead, it simply tasks TSOs / DSOs with calculating the baseline. We see no reason why this task should be completed in a supplementary process rather than now in the network code itself. We expect the TSOs/DSOs to formulate a concrete proposal on this.

Art. 25.4 (c): remove "gaming". See our general remarks on this point.

Art. 25.5: "Based on this report further steps shall be taken into account on national level if needed. **This shall be done by including stakeholders according to Articles 10, 13 and 14**.'' We suggest adding the underlined sentence to include stakeholder feedback also at national level. Stakeholder involvement should be strengthened, also in the TCM, according to Art. 10, 13 and 14.

NEW 26.3 (c): to include all market forms, "proper activation should be rephrased "proper activation or delivery" because in intraday markets or local markets, products are not only activated but also just delivered by a counterparty, but the same baseline rules apply.

Art 29: we propose to delete it. The minimum bid granularity could be reduced to 0.1 kW/kWh according to art. 8 of Regulation (EU) 2019/943. However, this would need to apply to all market participants, and hence be tackled in the existing market guidelines (and its accompanying methodologies). Regulating this in a specific NC dealing with demand response would lead to different market participants using different product granularity. To ensure non-discrimination, article 18 of the Electricity Balancing Guideline (EB GL) and articles 40 and 53 of the Capacity Allocation and Congestion Management Guideline (CACM GL) – or the methodologies approved according to these articles – would need to be amended. This will guarantee harmonised minimum day ahead, intraday, balancing energy and balancing capacity bid size for all market participants, not just demand response operators. Along the lines of our reflections on the review of the CACM GL, such amendments should, at the very least, include the possibility to offer

those bids as blocks. The possibility for NRAs to grant derogations indefinitely further reduces the harmonisation of bid granularity around Europe.

This bid granularity should therefore be tackled via the upcoming revision on the EBGL and has no place in this Network Code.

Prequalification requirement and processes

Art. 31.4.a.i: we propose to delete it. This is an unclear formulation for a legal text and the point does not come across. Responsibility for system balance cannot lie by the service provider because of a lack of system information.

Art. 32.1.a: add "more than", ''if the prequalified or verified capacity of the SPU or the SPG changes by more than 10% or **more than** 3 MW compared to the previously prequalified or verified SPU or the SPG due to additions or removal of controllable units. If the PPR requires a repetition of the product prequalification or product verification, the service provider shall be entitled to participate in the market with the previous qualified set-up of the SPU or SPG.''

Art. 33: controllable units might not be limited to those (generation or consumption) of final customers, but includes all kind of resources, including non-distributed generation. Article 33 of the draft NC does not cover this reality. Hence, the term "final customer" must be replaced by "owners of controllable units".

We also suggest deleting or clarifying further the concept of "technical aggregator". The legal scope of this role is not clear in the current wording. It could constrain the needs of market participants and pose a technical barrier instead. To avoid lock-ins of specific actors or technologies, there may be a case to replace the concept of "technical aggregators" by that of "technical aggregation".

Art. 34: the prequalification rules should be better harmonised in this draft network code. We expect the TSOs/DSOs to formulate concrete proposals on this.

Art. 36.1: we suggest amending this article and lower time of confirmation to two weeks: ''When the criteria of Article 31 (4) (b) (Pre-Conditions and Applicability of the product prequalification and product verification processes) are met and as a result product requires prequalification, the potential service provider shall submit a formal application to the PPR together with the required information of potential SPU or SPG. Within no more than **2** weeks from receipt of the application, the PPR shall confirm whether the application is complete. Where the PPR considers that the application is incomplete, the potential service provider shall submit the additional required information within at most 2 weeks from receipt of the request for additional information. Where the potential service provider does not supply the requested information within that deadline, the application shall be deemed withdrawn.''

Article 36.2: we suggest amending this article and lower time of confirmation to one month: ''Within no more than **1** month from confirmation that the application is complete, the PPR shall evaluate the information provided and decide whether the potential SPU or

SPG meet the criteria for a given congestion management and voltage control services. The PPR shall notify its decision to the potential service provider.''

With the proposed timings in the draft, the prequalification process might be longer than 4 months. We request to have the time lowered to better reflect market conditions.

Art. 37: the product verification rules should be better harmonised in this draft network code. We expect the TSOs/DSOs to formulate concrete proposals on this.

Art. 39-41: we welcome the interoperability of national sets of procedures for prequalification laid out in the new version.

NEW Art. 39.0: we suggest adding a new article: "System Operators in each Member States shall establish a flexibility register by 2 years after entry into force of this regulation. They can delegate this task to a third party.''

From the NC DR, there is no clear responsibility to actually implement it. Legal responsibility should be strengthened.

Art. 39.3: the text should be reformulated: ''to avoid vendor and operator lock-ins, and to facilitate competition and innovation, data stored by flexibility register platforms ~~that are not operated by systems operators~~ shall be portable''. Interoperability shall be ensured without exceptions.

Art. 39.4: should be deleted. Interoperability shall be ensured without exceptions.

NEW Art 41.5: we suggest adding a new article: ''**Operators of the flexibility register shall publish aggregated anonymized market information like prequalified volumes**.''

The flexibility register gathers lots of information, that can help market transparency. This potential should be unleashed. The markets, but foremost SOs would profit from this.

NEW Art.46.0: we suggest adding a new article: ''**6 months prior a new product, a Table of Equivalence (ToE) shall be established. The ToE shall be consulted with Market participants prior to that according to art. 13-14. ToE shall be approved by the national Regulator within 3 months prior to entry into force**.''

It is important for the usage of a flexibility register, that the information is there before introducing a new product, so the market can adapt.

Market design for congestion management and voltage control services

Art. 47.2: according to Article 13 of EU Regulation 2019/943 redispatch is to procured market-based. If a derogation from that is granted, each systems operators shall choose the most effective and economically efficient option or combination of options of the different tools at its disposal, which can include grid investments, non-firm connection

agreements, grid-technical measures, including non-costly remedial actions, and market-based procurement and activation of local systems operators services or other tools to maintain active energy flows or voltage within operational limits3 . The principles to choose should be transparent and coordinated. An assessment according to Article 13(4) of EU-regulation 2019/943 has to be executed and the outcome considered accordingly.

The original text is too vaguely formulated. It should be clarified that preference is given market-based options, if occurrence is long-term to grid investments and that non-market based options such as non-firm connection agreements are exceptional and under approval by NRAs.

There should be a clear national methodology addressing this: public consultation, then decisions should be made with NRA-approval.

Art. 48.2: we suggest to add the sentence: ‘’By latest 6 months after the entry into force of this Regulation systems operators shall submit the common assessment referred to in §1 for approval to their respective national regulatory authority. **This assessment shall include proposals for updates according to Article 48.1. The national regulatory authority shall take into consideration market participants feedback during the consultation run by System Operators.’’**

The assessment and the proposals should be linked. See also 48.34.

Art. 48.4: we suggest to amend this article: ‘**’Based on the outcome of the assessment according to Article 48.2 and the respective approval 48.3**, systems operators shall commonly propose national terms and conditions for the development of ~~intrazonal~~ congestion management and voltage control services through active power **within TSO and DSO observability areas**, 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).

The process is unclear. SOs assess and submits an assessment. Then the NRA proposes changes and SOs propose TCMs. The processes seem not aligned.

DSO observability areas are identified according to article 71 of the draft NC (and TSOs’ according to SO GL). The “intrazonal” concept is confusing. The proposed rewording of article 48(4) is fully compatible with 48(6) and articles 72 and 73 of the draft NC, so no need to use the term “intrazonal” in this draft NC. Moreover, we suggest again the conversion of these proposals in amendments of the SO GL for the sake of simplicity and legal certainty, instead of giving them autonomous relevance.

Art. 48.6.a: the text ‘’whether long-term markets, day-ahead, intraday or balancing markets apply unit or portfolio bidding” should be replaced with “local specificities and locational information as defined in Article 2.31.” It is counterproductive to refer to unit/portfolio bidding.

Art. 48.6.k: should be deleted. The text ‘the potential impact on other wholesale market prices from anticipation of pricing in subsequent, parallel or coordinated, linked or labelled local markets for congestion management and voltage control services’’ is legally not

clear. There is no indication on how the impact is calculated and how the underlying process is designed.

Art. 49.7: should be deleted. There is no additional information, and it is too vaguely formulated.

Art. 50.1.b.iii: the text ''The connection agreement of such new assets shall ensure that they neither aggravate nor create congestion or voltage issues, during and outside of its provision of services'' should be deleted.

It is important that responsibility cannot be on the asset or provider side. The connection agreement needs to be known in advance of the tender. If the asset is not exclusively used by the tender provider, it must be clear, how the asset is allowed to be used in advance. This agreement is not the right place for this requirement.

Art. 52.2: the text should be rephrased ''~~When it is necessary for the market and does not lead to market distortion~~ the systems operators shall publish...''. It is uncertain, who is in charge of evaluating the market distortion and necessity.

Art. 52.4: we suggest to add the sentence: ''In order to operate a transparent market the systems operators shall publish **on the transparency platform (ENTSO-E or a new EU-DSO-Entity platform)**,

> (a) the characteristics of products for congestion management and voltage control services; (b) bid selection criteria and pricing mechanisms for local markets; and
>
> (c) economic conditions to provide the needed services if applicable.

A publication should be centralized, to avoid confusion of publication sides.''

Art. 52.6: the text should add prices: ''Local market operator shall publish clear information on the market sessions, including the number and structure of market sessions, gate closure times and bid selection criteria, as well as information on the traded products **and prices** under the platform(s) they operate''. Price information is essential for markets functioning.

Art. 52.7: the text should read ''Systems operators or, if applicable pursuant to requirements in national terms and conditions pursuant to article 48 [National terms and conditions for market design for congestion management and voltage control services through active power], local market operator(s), shall publish, no later than ~~three months~~ **thirty minutes**, at least next market results of congestion management and voltage control services promoting transparency while respecting commercial secrecy and confidentiality of information and preventing market distortion and in compliance with national rules and applicable national regulatory authority decision(s)''

The market is helped by information closer to real time, than the proposed three months. We advocate for at least 30 minutes.

Art 53.4.c: the article should be deleted. Market manipulation and market abuse is dealt with through other, specific legislation (REMIT, MAR/MAD, EMIR, MiFID II). The article should be deleted from this NC and from the general principles for baseline methods,

baseline methodology, publication of information, methodology for voltage/congestion procedures and any other article.

Art. 53.4.f: we suggest to add ‘’Avoid that the same bid is selected twice, in particular where the same SPU/SPG is active in different markets, and the responsibilities for guaranteeing that, **unless technical feasible (reference 15.5.d of Directive 944/2019)’’.**

Art. 53.5: the article should be deleted. The market will determine itself if there are too many different market places. Also, evaluation of what is too much is not clear.

NEW Art. 53.6: we suggest adding a new article with these criteria:

1. **Maintain consent on a bid-by-bid basis**

Whether a bid is submitted to a market platform automatically or manually, the consent information must be attached to that bid – it must not be valid for all bids of a market participant because those bids could serve different portfolios or customers. This requires market platforms to implement the proper infrastructure to transfer/receive those bids.

2. **Maintain transparency**

Given that a market participant has provided the locational information and its consent for a specific bid to transfer it to another parallel running market (e.g. local market) with its own merit order, it is of utmost importance that the market participant is informed about the transferred bid but to inform the whole market as well. Markets react to changes in the order book and for evaluating scarcity, so it does make a difference, whether a bid is executed, withdrawn, or transferred.
If the transfer arrangement is built in a way that bids are offered in parallel and can be executed in more than one market, the market will be duly informed of this situation.

3. **Maintain market integrity**

Market integrity and transparency is paramount to the efficient and clean operation of energy markets - and regulated in REMIT. The roles and responsibilities of each actor in that regard should be clear, but also limited to their knowledge and actions. Market participants placing a bid into a market have a responsibility. But so do the third party entities (including SOs and/or market platforms) transferring a bid. Further work is needed the clarify the chain of responsibility (and limits thereof) in the operation of bid transfers as well as to clarify with stakeholders how bid transfers can be submitted the best within the existing REMIT reporting rules and practices."

4. **Maintain control of the bid**

Control of the transferred bid (pricing/volume/possibility to withdraw) must stay in place also after the transferral in order to reflect scarcity and relations of both markets.

5. **Liability/responsibility**

The system operators and market platforms in charge of the transfer tasks, if applicable, should be accountable for any mistake made in the technical process of transfer. Mistakes can happen, when a bid is transferred to a market, where it is not prequalified for an hence maybe cannot fulfil the requirements of that market.

Art. 54 to 57: we contest the principle of "nomination" of specific actors as exclusive operators of local markets (be they SOs or individual platforms). The operation of local markets should remain in the competitive domain to guarantee innovation and adaptability, while respecting adequate interoperability requirements and use of commons standards.

To ensure that local market operators fulfil the right needs, SOs identifying specific necessities/opportunities in their control areas can launch competitive tenders. Thanks to this, we hope and expect the development of operators whose activities can span multiple local markets.

Art. 60: should be deleted. Anything regarding congestion management between bidding zones and the respective processes should be addressed in the CACM revision.

System operators-owned storage facilities

Art .61-63: we reiterate of general point that SO-owned storage is a breach of unbundling except for the very particular, specific and exceptional cases as defined in the Clean Energy Package as derogations. System Operators seem arbiters of what is deemed 'reasonable and timely' (Art.61.1(a) and Art.61.3), what is necessary (Art.61.1(d)), assess what is efficient (Art.61.4), and decide what are acceptable offers for divestment (Art.63.3).

Art. 61.1: this proposal does not clarify how storage facilities will buy or sell their energy if they are not allowed to so in the electricity markets as Articles 61(1) d and 62(1)b are stating.

The entire chapter is a clear indication of the danger of allowing SO owned/operated storage. It should be removed, with any exceptions dealt with directly through the Clean Energy Package derogations.

If a SO needs to procure services in a specific location of the grid and if there is no flexibility in that location, then this should not lead to a conclusion that the SO should then be allowed to own and operate storage. Instead, the procurement should then be organised over longer periods, so that market participants have a basis to invest in such assets. In this respect, we would like to refer to the advice of the ENTSO-E Advisory Committee.

Art. 61.1: instead of "In Member States where it is decided that NRA can grant derogations for systems operators to develop, own, operate or maintain storages..." use: "In Member States, where derogations according to Article36 (2) or 54 (2) of Directive (EU) 2019/944 is granted...",

A clear reference to Articles 36 and 54 of the Directive (EU) 2019/944 avoid uncertainty about the derogation process and ensure, that processes are not ruled by different regulations.

The "market test" (i.e., the establishment of the fact that the market is not able to deliver the necessary batteries) should be transparently consulted upon. This is intended by Article39 of FG: "The specifications of the tender shall be submitted to public consultation and to NRA approval prior to the tendering process." TSOs and DSOs should draft a new section on the "market test", in line with the request from the FG.

Art. 61.1a: market-based procurement of services to solve congestion or voltage issue of the systems operators according to Articles 47-50 (Solutions for congestion and voltage issues through active power; National terms and conditions for market design for congestion management and voltage control services through active power; Principles for procurement and pricing for market-based congestion management and voltage control services; Principles for procuring by tender procedure) and 81 (Voltage control services with use of reactive power) do not result in the delivering by service provider of the needed services to solve the congestion or voltage issue at a reasonable cost and in a timely manner as assessed by the NRA, including offers with not yet registered or prequalified assets as per Article 50.1.a (Principles for procuring by tender procedure) or not yet connected assets (including storages) as per Article 43.1,b if allowed by the tendering procedure; link to 67(1) as prerequisite?

Art. 61.f: an NRA assessment following a DNDP according to Article 67 concludes the need for the service. We think that the derogation process should be assessed by NRA.

Art. 61.2: should be deleted. Fully integrated network components also fall under derogation of Art.36 and 54 CEP. To avoid legal uncertainty by ruling the same fact twice, we see no need to reiterate it.

Art. 61.3: instead “In addition, where it is allowed by Members States, systems operators may consider sharing ownership and operation of such storage facilities”, the text should be rephrased ‘’In addition, where system operators have been granted a derogation in line with paragraph 1...’’

Alignment between existing regulations and this NC is needed.

Art. 61.4: should be deleted as the possibility of shared ownership is no obligatory in paragraph 2, this is superfluous.

61.5: instead “This information shall include the minimum and maximum part..” “This information shall include the operational agreement, minimum and maximum part..”

When taking part in a tender, it is key to have the operational agreement according to Article 62 at hand to assess technical options but also from a risk/chance perspective.

Art. 61.6: the text should be rephrased ‘’Systems operators shall publish information on (economic) specifications” The sentence “ The transparency on the economic conditions shall be balanced against the potential impact on the pricing of the offers.” Should be deleted.

It is not certain, what is meant with “economic conditions”. At time of submitting this consultation answer, we assume, that specifications are meant. They need to be transparent – a balancing against potential impact is too vague.

Art. 61.8: we suggest to rephrase from “Based on the applications for the tender, **systems operators** shall assess” to “Based on the applications for the tender, **an independent third party** shall assess...”

This assessment needs to be assessed by a neutral party. In the end, the decision should be taken by the NRA.

Art. 61.9: the text should add that the NRA shall ‘’approve or discard the proposed outcome. If the NRA discards the outcome, the system operator shall restart the derogation process’’ The NRA has the right to propose amendments to the assessment.

Art. 61.10: add “**DSO**”. We believe that all derogations should be reported.

Art. 62.2: we suggest to rephrase article: “In case of shared ownership or operation of the storage facility, the third party shall own and operate its part of the storage without further constraint according to the operational agreement.” We suggest to delete: ‘’than neither aggravating nor creating congestion or voltage’’. Responsibility for creation of congestion or voltage cannot be on operators’ side.

The article seems very unbalanced as it treats the TSO/DSO preferentially, but not the other way around. These issues should be addressed in the operational agreement and should not be limited upfront.

Art. 63.1: should be rephrased: ‘’ the regulatory authorities shall perform a public consultation on the existing energy storage facilities in order to assess the potential ~~availability and~~ interest in ~~investing~~ **purchasing** such facilities. Such consultation shall take place at least every five years as prescribed in article 36.3 or 54.4 of Directive (EU) 2019/944 and shall be aligned ~~as much as possible~~ with applicable grid planning processes such as NDP. Systems operators shall define the criteria ~~needed in §7~~, to select the best offer from third party. Those criteria shall be published **before the tendering**.’’

These changes deliver a higher precision for the article and clarify timelines.

Art. 63.2.d: should be deleted. It is unclear, what the original provisions are. There should be no future provision on the usage. Responsibility for congestion creation cannot be on operators’ side.

Art. 63.3: should be rephrased: ‘’ The NRA **after consulting the System Operator** shall decide whether such offers are acceptable.’’ We believe that the tender should be run by the NRA to enhance neutrality.

Art. 63.4: should be rephrased: ‘’the public consultation referred in paragraph 1 of this article shows at least one acceptable’’.

Art. 63.8.a: should be amended: ‘’NRA decides on the start date of the **12** months phase out period;’’. Shortening the timing to reduce risk and speed up processes.

Art. 63.8.b: instead “the system operators shall...”rephrase: “The NRA after consulting the Systems Operators shall decide on the best acceptable offer according to the criteria set

forth in §1 and assessment in §3." The NRA runs the tender, hence this article needs to be aligned.

Art. 63.9: should be amended: ''Within **12** months from the date of the NRA set forth in §7 of this Article:'' Shortening the timing from 18 to 12 months to reduce risk and speed up processes.

Distribution network development plans

Art. 65.2: should be amended: "consider alternative solutions such as non-firm connection agreement where applicable..." to "consider alternative solutions such as non-firm connection agreement and **flexibility procurement and others**, where applicable..."

Voltage control

Art. 81: we welcome that the activation of procured resources for voltage control shall follow the same rule as for the activation of mandatory capabilities, i.e., rules-based activation with a common merit order together with a common compensation scheme.

Derogations and monitoring

Art. 82.2: this is an empty article regarding what articles and length of derogations are allowed. We should still be consulted afterwards when concrete provisions are inserted.

Art. 82.4: it is vague and open-ended. Should have a clear end-date of when the ability to derogate ends. I.e., max one or two years.

NEW Art. 84.1.f: ''A general assessment of all national TCMs''. In this regulation, many details are implemented by Member States, hence harmonization needs to start there.

While being a step in the right direction, the Network Code often places responsibility for implementation to Member States. Granting discretion to system operators and regulators at national level is important. However, greater harmonization at regional, or preferably European level, should be to aim of the Network Code. This shall include specific market rules such as eligibility criteria, backup requirements, availability monitoring, activation control, settlement procedures, penalty frameworks, IT requirements or metering specifications. Deviation from such standardized rules should be subject to regulatory approval and require a prior assessment by system operators, demonstrating that the common EU framework is not economically efficient or would result in market distortions.

Without such harmonization, regulatory fragmentation between/within Member States will prevail. Facing different national/local requirements undermines the level playing field in pan-European markets, requires market participants to develop bespoke solutions for each market, prevents economies of scale, and imposes significant costs on grid users and taxpayers.

NEW Art. 84.1.g: ‘’A general assessment on Article 61 to 63 on SOs storage’’.

Transitional and final provisions

Art.85.1 + Art.87.2: these are empty articles regarding what transitional provisions apply to which countries. We should still be consulted afterward when concrete provisions are inserted.

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