CONSULTATION RESPONSE

Energy Traders Europe response to ACER's consultation on prioritising the removal of barriers to electricity demand response

Brussels, 2 February 2024

General remarks

Energy Traders Europe, formerly known as EFET, welcomes ACER's analysis of priorities for the removal of barriers to electricity demand response.

It is essential that Member States, TSOs, and DSOs ensure that all eligible parties can access the wholesale electricity markets and System Operators (SOs) services, individually or aggregated, in line with the Electricity Regulation and Directive.

Enforcement of this legal principle should be one of the priorities for the coming months while new additional rules (i.e. future Network Code on Demand Response) are being developed for distributed energy sources (DERs).

A major obstacle faced by DERs today in the EU is their limited access to different market segments and TSO services procurement simultaneously, particularly to ancillary services. To create a stable business case, and engage with different types of consumers, DERs need full access to wholesale markets, ancillary services and local flexibility markets, through a market design that makes products compatible and non-exclusive.

Value stacking not only fosters the economic viability for the flexibility business model, it also ensures that the available assets are used where they are most needed in the network, ensuring grid stability without the need for further costly grid reinforcements.

Standardisation should be fostered as much as possible. Pan-European APIs could be defined to manage DSO/TSO data exchanges with DER operator/aggregator communication systems and facilitate reaction to local price signals.

Specific answers

1. Based on your own experience and considering the information contained in ACER's report, please rank the following barriers included in the report by order of relevance and required effort to overcome, on a scale between 1 and 7.

1.1. Ranking of overall barriers included in Chapters 3 to 9 of ACER's report by order of relevance.
A score of 7 corresponds to the highest relevance. Each score may be assigned only once.

	1	2	3	4	5	6	7
Lack of a proper legal framework to allow market access				x			
Unavailability or lack of incentives to provide flexibility				x			

	1	2	3	4	5	6	7
Restrictive requirements to providing balancing services						x	
Restrictive requirements to providing congestion management services						x	
Restrictive requirements to participating in capacity mechanisms and interruptibility schemes				x			
Limited competitive pressure in the retail market							
Retail price interventions							

1.1.1. Please explain your answers with reference to the underlying indicators included in the report and/or to other factors you consider relevant for each overall barrier.

We ranked our answers based on where DERs and aggregators face several barriers by the number of Member States where these are present.

1.2. Ranking of overall barriers included in Chapters 3 to 9 of ACER's report by order of required effort to overcome.

A score of 7 corresponds to the highest required effort. Each score may be assigned only once.

	1	2	3	4	5	6	7
Lack of a proper legal framework to allow market access					x		
Unavailability or lack of incentives to provide flexibility					x		
Restrictive requirements to providing balancing services						x	
Restrictive requirements to providing congestion management services						x	
Restrictive requirements to participating in capacity mechanisms and interruptibility schemes				x			
Limited competitive pressure in the retail market							

	1	2	3	4	5	6	7
Retail price interventions							

1.2.1. Please explain your answers with reference to the underlying indicators included in the report and/or to other factors you consider relevant for each overall barrier.

Lack of a proper legal framework to allow market access: enforcement of the legal principle of equal access to markets and SO services procurement should be one of the priorities while new additional rules (i.e. future Network Code on Demand Response) are being developed. The nine Member States where legal definitions and responsibilities are still lacking today should be the focus of increased supervision and monitoring from EU authorities in the months to come.

Balancing and congestion management services show lower levels of accessibility for DERs and aggregators compared to spot and forward wholesale electricity markets as shown in page 24-28. We elaborate on these two points below:

Restrictive requirements to providing balancing services: Adapting the rules for balancing services in ways to become more accessible for DERs and aggregators through market-based mechanisms should be one of the main barriers to overcome while TSOs join the EU balancing platforms by July 2024:

- In certain Member States there are still obligations that certain assets provide FCR (Frequency Containment Reserves) without market-based procurement. This must be corrected and monitored closely in the coming years.
- Balancing energy gate closure time should also be shortened to facilitate the access of distributed energy sources and aggregators, along with smaller bid granularity.
- Metering requirements and data communication standards should be relaxed and harmonised to unlock flexibility, support renewables, and cut costs.

Restrictive requirements to providing congestion management services: this barrier could be addressed by joint DSO/TSO flexibility procurement. An example of positive collaboration can be observed in The Netherlands, where the TSO TenneT and six DSOs created a common platform (GOPACS). The initiative was driven by the interest of system operators to decrease costs for congestion management and attract more flexibility providers to the market. This is an intermediary platform, connected with an already established market platform (e.g., a platform for intraday trading).

We reiterate our 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 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.

Connection scarcity constitutes a barrier for demand-side flexibility. Projects increasingly have to target locations based on available grid connections, not economic optimisation. While system operators should procure flexibility in a market-based manner (cf. above), non-market-based solutions such as non-firm connection agreements should remain a last resort option. Where still applicable, consumers should benefit from explicit end dates, should not be restricted or penalised for providing flexibility services through markets, or be treated differently between the transmission and distribution levels.

Another significant barrier is that national legislation setting specific requirements around aggregation models exist at the moment and differ significantly. The future network code will kick

start a process of revision and streamlining and it will be important to monitor this barrier in the future.

1.3. Ranking of other relevant barriers included in Chapter 10 of ACER's report by order of relevance.

A score of 7 corresponds to the highest relevance. Each score may be assigned only once.

	1	2	3	4	5	6	7
Insufficient cross-zonal transmission capacity							
Bidding zones not reflecting structural congestions							
Limited competitive pressure and/or liquidity in wholesale electricity markets							
Complex, lengthy, and discriminatory administrative and financial requirements							
Lack of incentives to TSOs and DSOs to consider non-wire alternatives							
Scope for improving transparency, cost-reflectivity, and non-discrimination in network tariffs							

1.3.1. Please explain your answers with reference to any factors you consider relevant for each barrier.

The one objective that should be pursued when seeking to increase cross-zonal capacities – and how far – is the improvement of social welfare. However, this is applicable to all market participants, and is not a specific barrier to demand response or aggregators.

We observe that progress on the availability of cross-zonal capacity at a European scale has been slow, despite gradual network reinforcements. While TSOs in Member States applying action plans appear broadly on track, the situation seems quite different in the large number of Member States where derogations to the minimum 70% requirement have been granted by NRAs. In the case of derogations, there is indeed no legal requirement for progress towards the minimum 70% requirement, and an uncertainty about how far in time TSOs can request such derogations.

Currently, the CAPEX approach incentivizes system operators to perform grid investments rather than procuring flexibility from grid users. A TOTEX approach, including both CAPEX and OPEX, encourages system operators to consider non-wire alternatives, such as demand-side flexibility.

1.4. Ranking of other relevant barriers included in Chapter 10 of ACER's report by order of required effort to overcome.

A score of 7 corresponds to the highest required effort. Each score may be assigned only once.

	1	2	3	4	5	6	7
Insufficient cross-zonal transmission capacity							
Bidding zones not reflecting structural congestions							
Limited competitive pressure and/or liquidity in wholesale electricity markets							
Complex, lengthy, and discriminatory administrative and financial requirements							
Lack of incentives to TSOs and DSOs to consider non-wire alternatives							
Scope for improving transparency, cost-reflectivity, and non-discrimination in network tariffs							

1.4.1. Please explain your answers with reference to any factors you consider relevant for each barrier.

The diverging reports and monitoring of ACER and ENTSO-E create confusion. They prevent a thorough assessment of the measures undertaken to reach the objectives of the Regulation, just as well as a common reflection on the appropriateness of the minimum 70% requirement in the long term.

MESC participants produced guidance in December 20211 which summarises market participants' expectations in terms of transparency and coherence of reporting on this matter. We wish to see this guidance followed, as informally agreed between ENTSO-E and ACER in early 2022. The report should show compliance with the Electricity Regulation as well as progress towards the minimum 70% requirement. If necessary, this common document should describe where ACER and ENTSO-E come to different conclusions and what the reasons are for this.

We welcome ACER's reminder that maximising cross-zonal capacity availability is socioeconomically beneficial, facilitates the energy transition and is key to European resilience to supply shocks. It is important that SOs address difficulties in making cross-zonal capacity available to the market by

putting all possible solutions on the table – and assess the efficiency of these solutions with regard to social welfare, security of supply and decarbonisation.

2.1. To what extent do you agree with the following findings and recommendations illustrated in Chapter 12.1 "Lack of a proper legal framework to allow market access" of ACER's report?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
ACER urges Member States to define a proper national legal framework for all new entrants in line with the Electricity Directive	x				
National rules should legally allow all energy resources to become eligible parties in all electricity markets, balancing and congestion management services	x				
To ensure participation of distributed energy resources through aggregation in all electricity markets, balancing and congestion services, the national rules should define at least one aggregation model applicable to all types of distributed energy resources for each market and SO service in line with the requirements of the Electricity Directive	x				
To ensure new actors can offer innovative services and promote demand response, the national rules should recognise them as eligible parties to access final customer data					
ACER considers that new actors should get access to data of non-customers in a level playing field compared to suppliers while the Member States ensure data protection and security. To ensure they all have access to data in a non-discriminatory manner and simultaneously, all Member States should give access to the same type and amount of data and through the same data platform or tool.					

2.2. To what extent do you agree with the following findings and recommendations illustrated in Chapter 12.2 "Unavailability or lack of incentives to provide flexibility" of ACER's report?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
ACER recommends accelerating the penetration of smart meters in the Member States with legal plans to reach the 80% target in place but still far from this target and in the Member States that have not set the 80% target in their national rules yet, despite a positive roll-out decision					
ACER also invites Member States with low penetration levels of smart meters but no legal plans nor target to accelerate the development of these devices					
Where time-differentiated network tariffs are introduced, the NRA should regularly evaluate their impacts and their appropriateness. NRAs should obtain sufficiently granular temporal data on network conditions, on individual network users subject to the rollout of fit-for-time-of-use meters, and on the network use by individual network users					
Where time-differentiated network tariffs are introduced, the network tariff structures and the signals should be mandatory for all network users, without a possibility to opt-out from them. Optionality may be temporarily reasonable when transitioning to a new time-of-use schedule to limit tariff impacts on network users					
Where no time-of-use signals apply in transmission and/or distribution network tariffs, NRAs should investigate the need to introduce such signals from a cost-efficiency and/or network congestion point of view. Such studies should aim to identify which elements affect the effectiveness and efficiency of time-of-use signals to justify a decision to apply such signals or not in each context					

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
Where fit-for-time-of-use meters are largely missing, as a temporary solution, NRAs may design network tariffs by determining for different user profiles their contribution to the system peak					
All NRAs should track and monitor the level of penetration of all types of retail electricity contracts					
National authorities need to do even more to inform consumers on the benefits and potential risks of providing demand response. ACER recommends all Member States to strengthen national measures to raise consumer awareness and mobilise flexibility and to share good practices that can be followed					

2.3. To what extent do you agree with the following findings and recommendations illustrated in Chapter 12.3 "Restrictive requirements to providing balancing services" of ACER's report?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
To be in line with the Electricity Balancing Regulation, ACER urges TSOs not doing so yet, to procure Frequency Restoration Reserves and Replacement Reserve services using a market-based mechanism	x				
ACER encourages Member States where a mandatory provision for Frequency Containment Reserve applies to some generation to abolish this requirement and to open this balancing service to all resources by applying a market-based procurement method	x				
When a prequalification process is technically justified, ACER recommends that TSOs define a formal process to prequalify reserve providing groups and to allow aggregating all types of technologies under the same group so that BSPs can combine their portfolios to optimise their service provision	x				
ACER urges TSOs to regulate the duration of the prequalification process including the	x				

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
intermediate steps in line with the System Operation Regulation. When passing a re-prequalification after changes in the reserve providing group is justified, ACER also invites TSOs to regulate and shorten the duration of this process as much as possible. In a context where changes in units and groups will happen with increasing frequency, a short re-prequalification process, if such a process is justified, can help distributed energy resources effectively enter balancing markets					
ACER recommends Member States to implement the requirements of the Electricity Regulation and the Electricity Balancing Regulation for balancing services provision and not to delay accession to the EU balancing platforms	x				

2.4. To what extent do you agree with the following findings and recommendations illustrated in Chapter 12.4 "Restrictive requirements to providing congestion management services" of ACER's report?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
ACER urges Member States to ensure that the reasons for not using market-based re-dispatching at transmission or distribution level do not contravene the exceptions allowed in the Clean Energy Package	x				
ACER reminds all Member States to urgently define a regulatory framework to allow and provide incentives to DSOs to procure congestion management in their areas and to ensure they can procure such services from distributed energy resources pursuant to Article 32(1) of the Electricity Directive	x				
Most Member States should define an iterative national reassessment process with a transparent decision-making procedure as soon as possible. ACER reminds Member States that in a context with increasing network congestions and more and more distributed energy resources and new actors willing to provide flexibility, some market conditions such as predictability of network congestions or lack of	x				

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
competition may become inapplicable. As a result, the lack of market-based re-dispatching may not be sufficiently justified					

2.5. To what extent do you agree with the following findings and recommendations illustrated in Chapter 12.5 "Restrictive requirements to participating in capacity mechanisms and interruptibility schemes" of ACER's report?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
Less restrictive requirements allow for more competition which may potentially reduce the costs of capacity mechanisms for consumers. To ensure these mechanisms are effectively available to all resources with non-discriminatory design features and processes, ACER recommends removing the requirements that directly exclude some distributed energy resources, such as restrictions to aggregation or to units connected to lower voltage levels. ACER also invites all Member States with capacity mechanisms to relax those requirements that can facilitate participation of distributed energy resources capable of fulfilling the required technical performance without jeopardizing the quality of the service delivery	x				
Interruptibility schemes or new ancillary service-related schemes targeted to demand response may weaken the competitive and direct participation of demand response units into capacity mechanisms, balancing markets, or network reserves by establishing a separate specific demand response product for the provision of these services. To ensure a level-playing field among all technologies and actors, and to maximise competition and avoid market fragmentation, ACER recommends the services related to interruptibility or demand response schemes to preferably be integrated within the existing wholesale electricity markets and SO services. Dedicated mechanisms for demand response should only be left to cases where no parallel procurement channels exist, or when there is a need to kick-start the development of demand			x		

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
response					
When the introduction of an interruptibility or a new ancillary service-related scheme targeted to demand response is justified, ACER recommends all Member States to carefully review the requirements and design features of these schemes to ensure they do not restrict participation of smaller interruptible loads or new actors capable of fulfilling the required technical performance. ACER also reminds the Member States to follow the approval procedures envisaged by the EU legislation	x				

2.6. To what extent do you agree with the following findings and recommendations illustrated in Chapter 12.6 "Limited competitive pressure in the retail market" of ACER's report?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
ACER invites all Member States to remove the barriers and restrictions assessed in this study to facilitate entry of new actors (aggregators, active customers, energy communities, etc.) and new business models (local markets, peer-to-peer trading, etc.). To prevent suppliers and other new actors from exiting the market due to undue barriers, ACER also invites all Member States to take measures such as increasing opportunities for innovative models, facilitate switching, among others					

2.7. To what extent do you agree with the following findings and recommendations illustrated in Chapter 12.7 "Retail price interventions" of ACER's report?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
Retail price interventions, including regulated prices, are not a barrier when targeted and aimed at those most in need. However, in some markets, price intervention essentially kills the business case for new actors aiming at unlocking flexibility from distributed energy resources. ACER therefore recommends Member States to ensure these interventions are targeted and aimed at those most in need. Member States should adopt detailed definitions and criteria for vulnerable consumers in line with the Electricity Directive	x				

2.8. To what extent do you agree with the following findings and recommendations illustrated in Chapter 12.8 "Focal topic: Network tariffs as both potential 'facilitators' and 'barriers' to active customers and providing demand response" of ACER's report?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
Member States should conduct a study, pilot project and/or impact assessment to determine whether the network charges for active customers must have some differentiation compared to non-active customers to ensure they are cost-reflective and non-discriminatory					
Member States should apply differentiated network tariffs for active customers providing explicit demand response as long as they reflect the different network costs triggered by their network use and they are not discriminatory vis-à-vis other network users					
Member States should apply exemptions, discounts, or other differentiations in network tariffs for specific consumers only when duly justified. In a context of increasing network congestions and flexibility needs, NRAs should periodically assess the need and adequacy of any network tariff differentiation, taking into account the overall network impacts, not to provide disincentives for efficient network use					

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
As described in ACER´s 2023 Report on Electricity Transmission and Distribution Tariff Methodologies in Europe, ACER considers appropriate a gradual move to increasingly power-based network tariffs to recover those costs which show correlation with contracted or peak capacity. In particular, ACER recommends against using flat-rate energy-based charges (EUR/MWh), i.e., which are not including any time element which corresponds to the peak network usage, to recover infrastructure costs from network users					
ACER recommends avoiding net-metering where volumetric/energy network charges apply. Moreover, to be in line with Article 15(2) of the Electricity Directive, ACER reminds Member States that net metering (with an exception) shall not apply to active customers after 31 December 2023					

2.9. Please use the box below if you wish to explain your answers to questions 2.1 to 2.8.

3. Please specify below any important result contained in the report that you believe does not represent the reality of a barrier or a Member State.

No comments.

4. With respect to overall barriers and/or underlying indicators that hinder the participation of distributed energy resources, including demand response, energy storage and distributed generation, to wholesale electricity markets and the provision of balancing and congestion management services, in accordance with the provisions of the Electricity Directive, the Electricity Regulation and the relevant Network Codes and Guidelines:

4.1. Do you consider any of the underlying indicators included in ACER's report to be comparatively more important to focus on in future editions of the report?

We suggest to focus more on the following indicators in the future:

- Market access
- Incentives to providing flexibility
- Balancing services
- Market-based congestion management services

4.2. Do you consider any of the underlying indicators included in ACER's report to be comparatively less important to focus on in future editions of the report?

No comments.

4.3. Would you suggest any additional overall barriers?

- Data transparency
- IT solutions to access local markets

4.4. Would you suggest any additional underlying indicators? Please be as much specific as possible. For example, if you propose a composite indicator based on multiple questions, please indicate what specific aspects would be assessed.
No comments.

5. What kind of additional information and/or analyses do you think that future editions of the report could benefit from?

Case studies
Analysis on more focal points

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