

To the kind attention of:
Kadri Simson, Commissioner for Energy, European Commission
Ditte Juul-Jørgensen, Director-General, DG ENER, European Commission
Christian Zinglensen, Director, ACER

Requirements for an impactful Network Code for Demand Response

Brussels, 18 September 2023

Dear Commissioner,
Dear Director-General,
Dear Director,

smartEn – Smart Energy Europe, the European business organisation bringing together over 90 companies offering solutions to enable all consumers to become active and flexible, welcomes efforts made in drafting the network code for demand response (DR). We appreciate the decision by ENTSO-E and the EU DSO Entity to share with the drafting committee a first draft before launching the formal public consultation, even though the timeline for comments and amendments is very tight.

The network code offers the opportunity to shape a truly technology-inclusive framework for the market-based procurement of DR by system operators. This is an important step to unlock system-wide services provided by demand-response, storage, and other distributed energy resources (DERs).

However, we are deeply concerned that the current draft is not fit for this purpose, and it is not properly aligned with the requirements set by ACER in its Framework Guideline, both for its scope and content. To ensure nothing is left out, the drafting team should provide a clear overview of how and where in the draft network code each paragraph of the Framework Guideline has been incorporated.

With regards to the scope of the network code, we urge both the European Commission and ACER to:

- **Ensure a Pan-European approach.** The current draft diverges from EU-wide harmonisation by mostly pushing for national development and implementation, including baseline methodologies, flexibility registers, certification of dedicated measurement devices, and data sharing provisions by System Operators (SO). We believe that a cohesive approach with common principles defined in the new rules are indispensable to ensure an effective, integrated and competitive market with equal consumer rights across the EU and that enables technology providers to compete on a level-playing field. The network code must define processes that delivers this, ensures interoperability and avoids vendor lock-in to drive forward the best solutions. We stress the need to minimise national variations to avoid market fragmentation, facilitate mobility of market parties between EU countries (in particular, aggregators and market platforms for local flexibility), bolster liquidity in different markets and maximise available resources to SO services and wholesale markets through harmonised Pan-European interfaces. Furthermore, EU harmonisation of data sharing requirements in this network code might make the creation of further implementing acts (like the implementing act on data interoperability) unnecessary, expediting the development and use of demand response in the EU through a single network code.

- **Guarantee independent oversight and arbitration** of the drafting of the new rules and the development of methodologies and processes by Member States. As prescribed by EU law, the network code is being written by the two main actors that are able to purchase DR, which makes them non-neutral. In addition, many SOs have little experience of market-based procurement, particularly at lower grid levels, which can make them favour non-market-based approaches. ACER's role as a neutral party should be included in all processes, such as the assessment of market-based procurement of flexibility and the use of non-market-based procurement such as flexible connection agreements. This oversight role is currently missing from the network code. As a support for this role, the European stakeholders' committee that, according to the Framework Guideline, should be established to follow the implementation of the rules, should not be left out of the network code as it was in the draft.

With regards to the content of the network code, smartEn recommends the following improvements:

- Address the need for alignment and respect of rules already settled in the Electricity Directive and Regulation, and other network codes and guidelines, as it is currently missing. In particular, this network code should:
 - Be compliant with the rule that market-based procurement of flexibility services is the norm, unless established and justified otherwise by the NRA through a process based on common principles described in the network code. In this sense, the network code should better define the role that SOs should have in creating local flexibility markets. As single and main buyers of local flexibility, they play a significant role in the emergence of such markets, and should clearly be encouraged by the regulatory framework to do so. For TSOs the network code should ensure coordination of their ancillary services, including balancing, with local flexibility markets as well as improving alignment of associated market interfaces by leveraging international standards.
 - Harmonise market prequalification and participation for aggregators for existing ancillary service processes, namely the standard balancing products and Frequency Containment Reserve, as required by ACER's Framework Guideline.
 - Ensure that all possible aggregation frameworks permitted by the Directive and Regulation (in particular as covered by recital 39 in the Electricity Directive) are explicitly contemplated and allowed, and not restricted as it is currently the case in the draft network code.
 - Lead to the revision and simplification of existing network codes and guidelines like the Demand Connection Code and the Requirements for Generators code, as many of its current provisions would be better covered by the network code for DR.
- Clarify rules regarding principles in definition in other legislation (i.e., currently being negotiated in the revision of the Electricity Market Design) while not undermining the 2019 EU framework:
 - Non-firm connection agreements can be offered as a possibility to all consumers, and shall not be considered as an alternative to market-based procurement, but rather as a solution of last resort when market-based procurement does not provide sufficient flexibility, and shall not prevent consumers with a non-firm connection agreement to provide flexibility services through markets. After a defined period of time, as assessed by the NRA, the connecting SO should make the necessary changes to be able to offer the consumer with a non-firm connection agreement or a firm connection if they so desire.

- Dedicated measurement devices (DMD) for assets behind the boundary meter are crucial pillars in a consumer-centric market design, their use should be exploited while avoiding any confusion and unnecessary distinction between DMD and sub-meters. To ensure rapid deployment and avoid confusion with boundary meters, the network code should ensure that the ownership, maintenance, data extraction of DMDs stays with market parties. To ensure a level playing field, associated data exchanges should be covered through interoperable API.
- Ensure that the network code is future-proof and covers in its scope all ancillary services – not just balancing and congestion – in order to cater for the peak shaving product introduced by the revised Electricity Market Design and other products that might be developed.

An incomplete network code could have a severe impact on the development of demand-side flexibility for the next decade, putting the achievement of the EU decarbonisation targets at risk.

We urge the Commission and ACER to ensure throughout the whole process that the provisions included in the Framework Guideline are fully respected, that a mechanism is incorporated to overcome any impasse in the drafting process and that the possibilities for affected stakeholders to provide inputs and discussions are maximised.

We are available to clarify further our remarks, as this network code is at the core of our members' activity.

We remain at your disposal to support you in the drafting of new rules that will allow active consumers of all kinds to participate in the European energy system.

Your sincerely,



Michael Villa
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Stefan Doerig
Chair of the Board
smartEn



Paul Troughton
Chair of the DSF Network Code
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ABOUT smartEn - Smart Energy Europe

smartEn is the European business association integrating the consumer-driven solutions of the clean energy transition. We create opportunities for every company, building and car to support an increasingly renewable energy system. Our membership consists of the following companies:

