



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR ENERGY

Directorate C - Green Transition and Energy System Integration  
The Director

Brüssel, 21/10/2021  
ENER/C3/SC/CL

ACER  
Christian Zinglensen  
Director  
Trg republike 3  
1000 Ljubljana  
Slovenia

**Subject: Invitation to launch a scoping exercise for the development of a network code based on Art. 59(1)(e) of the Electricity Market Regulation**

Dear Mr Zinglensen,

The Electricity Market Regulation<sup>1</sup> (hereinafter called “Regulation”) lays down provisions for establishing a network code on demand response, including rules on aggregation, energy storage and demand curtailment.

Article 59(1) of the Regulation empowers the Commission to adopt implementing acts in order to ensure uniform conditions for the implementation of the Regulation by establishing network codes in several areas. More specifically, Article 59(1), point (e) of the Regulation empowers the Commission to establish a network code on rules implementing Article 57 of the Regulation and Articles 17, 31, 32, 36, 40 and 54 of the Electricity Market Directive<sup>2</sup> in relation to demand response, including rules on aggregation, energy storage and demand curtailment.

Furthermore, Commission Implementing Decision (EU) 2020/1479<sup>3</sup> establishes a priority list for the development of network codes and guidelines for electricity for the period from 2020 to 2023. Article 1 of this Decision provides for the development of harmonised rules regarding demand side flexibility, including rules on aggregation, energy storage and demand curtailment rules.

According to the procedure laid down in Article 59 of the Regulation and in particular Article 59(4), the Commission shall request ACER to submit to it non-binding framework guidelines setting out clear and objective principles for the development of the network code.

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<sup>1</sup> Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity, OJ L 158, 14.6.2019, p. 54.

<sup>2</sup> Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity, OJ L 158, 14.6.2019, p. 125.

<sup>3</sup> Commission Implementing Decision (EU) 2020/1479 of 14 October 2020 establishing priority lists for the development of network codes and guidelines for electricity for the period from 2020 to 2023 and for gas in 2020.

In the past, it has proven useful in the context of the development of other texts, such as the guideline on electricity balancing, to have an informal scoping phase before the launch of the Commission request for framework guidelines.

I therefore invite ACER to carry out a scoping exercise, including a broad consultation of relevant stakeholders. This exercise shall serve:

1. To identify the market participants and service providers (such as loads, generation, storage; distribution connected only vs. distribution connected and transmission connected) that should be considered for the purpose of the development of a European framework based on Article 59(1), point (e) of the Regulation;

Article 59(1), point (e) of the Regulation explicitly mentions demand response and storage but does not mention (distributed) generation. Nevertheless, Article 32(1) of the Electricity Market Directive, to which Article 59(1), point (e) refers, includes distributed generation and provides that “[...] the regulatory framework shall ensure that distribution system operators are able to procure such services from providers of distributed generation, demand response or energy storage [...]”. This could support a conclusion that distributed generation should also fall within the scope of a European framework based on Article 59(1), point (e) of the Regulation. In addition, such a conclusion would be in line with an approach to be technology agnostic and non-discriminatory;

2. To determine the products, services and markets that should be included in a European framework; I consider that in particular products and services to solve physical congestion will be an important element here; and
3. To identify the related areas and topics that should be addressed in a European framework. These could include, but are not necessarily limited to:
  - a. market and operational processes;
  - b. coordination between system operators and between different market timeframes;
  - c. market access and rules for aggregation;
  - d. product design and procurement, in particular as concerns new products and services to system operators;
  - e. information and data exchange, including measurement, validation and settlement.

During the scoping exercise I kindly ask you to pay particular attention to the following issues, alongside with potential other issues you may identify:

1. Shall forward, day-ahead market, intraday markets be included within the scope of a European framework based on Article 59(1), point (e) of the Regulation?
2. Which balancing markets (including frequency containment reserves) should be included within the scope of a European framework based on Article 59(1), point (e) of the Regulation?
3. Which, if any, non-frequency ancillary reserves, shall be included within the scope of a European framework based on Article 59(1), point (e) of the Regulation?

4. Shall implicit demand response be included within the scope of a European framework based on Article 59(1), point (e) of the Regulation?

Article 58(2) of the Electricity Regulation provides, among others, that network codes and guidelines shall ensure that they provide the minimum degree of harmonisation required to achieve the aims of the Electricity Regulation. Article 1 of the Electricity Regulation lays out these aims. It is therefore crucial when determining the scope of a European framework based on Article 59(1), point (e) of the Regulation to ensure that the points identified to be within the scope are relevant to support these aims, and in particular in line with the article 1 point (b) (i.e. to “set fundamental principles for well-functioning, integrated electricity markets, which allow all resource providers and electricity customers non-discriminatory market access, empower consumers, ensure competitiveness on the global market as well as demand response, energy storage and energy efficiency, and facilitate aggregation of distributed demand and supply”).

Finally, in order to ensure coherence with the regulatory framework set out in the existing network codes and guidelines I invite you to identify related areas in the existing network codes and guidelines that would be impacted by the work above.

At this stage, I do not consider it necessary to determine whether a European framework for the development of demand response, including storage (and distributed generation) should consist in the development of a new network code, in amendments of existing network codes and guidelines, or both.

The scoping exercise shall take into account the considerable work done by ENTSO-E and the European associations representing electricity DSOs (CEDEC, E.DSO, Eurelectric, and GEODE) and their joint assessment of the regulatory gaps hampering the development of demand side flexibility and their participation in the electricity markets as included in the roadmap of the JTF<sup>4</sup>. While this work provides an important input it shall not be seen as limiting or predetermining the outcome of the scoping exercise. In particular, other market participants’ views and proposals will have to be considered.

I would be grateful to receive your report with your analysis of the results of the scoping exercise by January 2022.

For the sake of an efficient and transparent process, I invite you to share this letter with all relevant stakeholders.

Yours sincerely,

Catharina Sikow-Magny

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<sup>4</sup> Available here: [210722\\_TSO-DSO-Task-Force-on-Distributed-Flexibility\\_proofread-FINAL-2.pdf \(edsoforsmartgrids.eu\)](https://edsoforsmartgrids.eu/210722_TSO-DSO-Task-Force-on-Distributed-Flexibility_proofread-FINAL-2.pdf)