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UFE's reply to ENTSOE and DSO ENTITY consultation on the draft proposal for network code on demand response

1. WHEREAS

UFE welcomes the significant work done so far and is pleased to see that a consultation is taking place at this stage in the drafting of the network code on demand response. Flexibility will be a key element of tomorrow's electricity system, and its development is required to achieve a successful low-carbon energy transition. Thus, this network code must aim to accelerate its development and offer the possibility to Service Provider to participate in all markets.

However, before going into the details of the network code, UFE would like to make a few general comments :

1) **Scope and consistency with existing legislation and network codes :**

In line with the Electricity Directive, the network code shall consider all types of flexibilities to improve the cost-effectiveness of network design and operation :

- **UFE thus recalls that the network code on demand response must respect the principle of technology neutrality**. In order to select the least-cost flexibility for the system and for the collectivity, it is necessary to not distort competition between technologies included in the NC and technologies not included in the NC. Likewise, the development of flexibility must not take place to the detriment of other market actors by transferring undue risks and costs onto them. **Therefore, the NC should not jeopardize the financial compensation in the countries that require it.**
- **In the same way, the network code must not exclude any resource provider** as the main aim of the new rules shall be to ensure access to all electricity markets for all resource providers (FG paragraph 1.1(2) and (4)). The current draft code must include

load, storage, and distributed generation (aggregated or not).However, generation in particular is missing from the definitions and key articles throughout the code.

The scope of the network code as well as its articulation with other network codes, directive and regulation should be clarified :

- **The scope of the network code needs to be clarified: indeed, the current version of the network code proposal seems to be a mix of rules** regarding (i) flexibility provision as a service to SOs (in that case, the scope may be restricted to the balancing timeframe, but all technologies should be covered) and (ii) independent demand-side response aggregation, which require to define roles and responsibilities of different market players acting on a same consumption unit (in that case, the scope may be restricted to DSR, but all market timeframes should be covered).
  Besides, UFE considers that all references to multi-energy suppliers per site should be removed.

- **The Network Code on Demand Response must not encroach on existing legislation, other network codes and guidelines. Regulatory certain and simplicity are key for market participants** : on certain issues, the network code seems at best redundant (and therefore useless and risky if the provisions are not updated simultaneously in the various texts in the future) and at worst in contradiction with existing texts (for example, on BSP/BRP relations or payment issues).
  Therefore, UFE recommends to review the document in order to :
  - **Remove articles whose content is already covered in other network codes or in the directive.** For example, references to "gaming, market distortion and deception" are already present in other legislation aimed at combating market abuse, and should therefore be removed.
  - **Simplify the wording** (and therefore interpretation) as much as possible **to avoid disputes during implementation.**

2) **Timelines :**

UFE recommends adopting a step-by-step approach instead of aiming at a too fast implementation of the target model. **The initial set of rules must be reduced to the strict essentials**, leaving room for evolution based on national specificities and different voltage levels afterwards.

3) **Harmonisation at European level :**

The development of flexibility tools, in particular demand response, is not at the same level of maturity across Europe. Demand side participation in different markets is already mature in some countries, while in others it is poorly developed. Therefore, **it is essential that this**

network code removes the identified barriers to entry in the latter and encourages actors to provide more flexibility.

However, the retail market is mainly designed at national level and each retail market is characterised by national specificities. **It is thus essential to ensure that the scope of choices allows for the retention of existing national provisions that work and to take advantage of new opportunities, with an overall cost-benefit rationality that needs to be ensured.**

UFE therefore considers that :

- **The network code should remain flexible to ensure local specificities can be taken into account at national level,** whether in terms of different maturity of the SOs in terms of demand response, voltage level of the constraints or specific regulatory contexts.

- **If the choice was finally made to harmonize further at European level with no proper consideration of the necessary level of subsidiarity, UFE considers that the network code should necessarily fits with the rules of the most advanced countries in particular on aggregation models and financial compensation** not to jeopardize the rules implemented in the most advanced countries at the risk of slowing down the expected development of flexibility**.** For example, in France, the rules implemented are the result of discussions that have lasted for more than ten years, in particular concerning the aggregation models and baselining. These rules are now robust and made it possible for flexibility to develop.

4) **Market-based procurement :**

UFE welcomes article 47.1 according to which "the procurement of services for congestion management and voltage control within a bidding zone shall be in accordance with transparent, non-discriminatory and market-based procedure". UFE underlines that Market-based procurement must be prioritized as far as possible when this enhances overall economic efficiency. However, we recognise that there are situations which may arise where a system operator may need to rely on rules-based procurement when market-based procurement is not economically efficient pursuant to Article 32(1) and Article 40(5) of Directive (EU) 2019/944.

5) **Use of dedicated measurement devices (DMD)**

UFE underlines that the use of Dedicated Measurement Devices (DMD), if any come forward through the market design proposals, must be regulated in order to avoid

undesired effects (arbitrage, compensation effects etc...). Those measurement devices shall comply with norms in place such as the Measuring Instrument Directive to provide the same measurement quality and accuracy than boundary meters. Besides, **interoperability of those measurement devices shall be ensured to avoid any lock-in effect of end customers** (it should be easy to change aggregator).

2. DRAFT PROPOSAL

Article 5 to 8

The topic of 'Common national terms and conditions' (Articles 5 to 8) deserves clarification: it is not explicitly stated whether the defined model should be uniform or whether it can offer various options for the System Operator to choose from based on its own characteristics, including its size and its maturity on the subject. Indeed, it is important to allow different modalities adapted to the varying maturities, capabilities and needs of different System Operators. In particular, depending on these characteristics, System Operators must have appropriate lead times, while maintaining the same objectives, particularly in terms of using flexibilities for congestion management. That is why the term « *all* » should be deleted from Articles 5 to 8, and add « *, System Operators must have appropriate lead times in consistence with their characteristics (including its size), while maintaining the same objectives, particularly in terms of using flexibilities for congestion management.* ».

Title II (article 19 to 27)

UFE points out that in France the BRP is assigned to a physical site and not to a market party, and asks that the network code on demand response maintain this design possibility. For BTC, BRP is the supplier' BRP but for BTB, the final customer (site) must designate its BRP.

Article 19

A particular point of attention concerns the two aggregation models as described in Article 19:

- Model A is the 'basic' model: the contribution to the flexibility service is measured by the meter (C) located at the point of connection.
- Model B is different in that the controllable unit (in this case, the electric vehicle) is equipped with a dedicated metering device (or sub-metering) (CD/SC) that allows for the measurement of the contribution to the flexibility service.

In this Model B, it appears that there may be a risk of the user being compensated for a service they have not provided. If the installation is equipped with an energy management system that optimizes the subscribed power at the point of connection (whether it is a domestic or

industrial customer), a decrease in demand on the controllable unit will free up capacity for other uses, which can then negate the effect of flexibility. **In order to make sure that the energy reduction (or injection) eligible to a compensation and calculated by the dedicated meter device has an negative (or positive) effect on the distribution system, it seems therefore necessary to make the use of DMD conditional on verification of the consistency between the sub-measurement and the general meter reading.** Detailed provisions on this verification process should be developed to clarify what needs to happen if an inconsistency is identified during those checks.
In addition, the proposed "aggregation models" are misnamed, in that they describe only the way in which service activation is controlled (with or without sub-measures), and not the relationships and flows between the various players – notably the independent aggregator of demand response – who may be active on the same consumption site.)

In this context :

- **UFE proposes to delete the detailed provisions on aggregation models in the network code on demand response to maintain consistency with existing regulations.**
- **UFE underlines that the network code should state that the activation of flexibility must be financially neutral for the balance responsible party (BPR) and the supplier of the withdrawal site, in a consistent way between the different mechanisms (balancing, congestion management)**

Nevertheless, if aggregation models were to be detailed in the network code as provided for in the framework guidelines, UFE stresses that :

- **all aggregation models should be included**
- **the network code should not be too rigid, and should remain open to other aggregation models to reflect national specificities or future developments**

UFE would therefore suggest that the article be rewritten as follows:

Aggregation models for explicit demand response

1. The aggregation models that are described below aim at defining how the participation of service providers are allowed by limiting the impact on other parties, based on different ways to do imbalance settlement and on contractual relationships, while ensuring each market participant is responsible for the imbalances it cause.

2. Member States shall allow the aggregation models defined in the articles 19.4 for each flexibility services in the scope of this regulation, either one or the other or the combination of both.

3. Every aggregation model presumes the following base assumptions:

a. Aggregators (including independent) do not require consent from other market parties to participate in electricity markets;
b. Aggregators (including independent) are financially responsible for the imbalances they cause (which they may delegate under contractual agreement), apart from possible derogations foreseen in article 5 of the Regulation (EU) 2019/943;
c. Compensations to suppliers may apply if a Member State decides so according to article 17(4) of Directive (EU) 2019/944, regarding costs proven to be incurred as a result of demand response activation;

4. Besides the situation where the aggregator and the supplier are the same market participant, which can be considered as an integrated model and is also called Implicit Demand Response, there can be three base models:
a. Model A – Corrected model
b. Model B – Central settlement model
c. Model C – Contractual model

5. Model A – Corrected model – assumes the following:
a. The load curve paid by the consumer is corrected from the activation realized, thus it neutralise the imbalance volumes as well as the supplier;
b. Additional costs may apply referring to rebound effects

6. Model B – Central settlement model – assumes the following:
a. There is no correction of load curve paid by the consumer but a correction of the imbalances to neutralize the imbalance effect caused by the activation, under a methodology to be approved by the NRA;
b. The financial compensation is compliant with article 22 paragraphs 4 and 5

7. Model C – Contractual model – assumes the following:
a. There is no correction of load curve paid by the consumer but a correction of the imbalances;
b. the financial compensation is established contractually between the two parties;

8. All these different models can exist or co-exist in each Member State or as a combined version. However, model C can only be proposed as an alternative and voluntary option to another model.

9. The aggregation models described in articles 4 to 7 may be supplemented by other aggregation models to reflect national specificities or future developments.

Article 22

Article 22 on financial compensation appears to be redundant with the 2019 directive (article 17.4) and may even risk being in contradiction with it. In this context :

- **UFE proposes to delete the detailed provisions on financial compensation in the network code on demand response to maintain consistency with existing regulations.**
- UFE recalls that the activation of flexibility must be financially neutral for the balance responsible parties (BRPs) and the supplier of the withdrawal site, **in a consistent way between the different mechanisms (balancing, congestion management)**

Nevertheless, if financial compensation was to be detailed in the network code, UFE recommends to :

- Remove paragraphs 1, 2, 3, and 5.
- Clarify paragraph 4 as follow : « If a Member State decides to apply financial compensation according to article 17(4) of Directive (EU) 2019/944, it may foresee either a regulated price, a fixed price or a specific formula. Involved market parties may also be allowed to negotiate a bilateral agreement to settle the compensation. The national rules that foresee the financial compensation shall be subject to approval of the national NRA."

Article 23

Article 23 on financial compensation appears to be redundant with the 2019 directive (article 17.4) and may even risk being in contradiction with it. In this context :

- UFE proposes to delete the detailed provisions on financial compensation in the network code on demand response to maintain consistency with existing regulations.

Nevertheless, if financial compensation was to be detailed in the network code, UFE considers that Article 23 on the costs and benefits deserves some adjustments:

- In paragraph 2, replace "compensation" with «supply costs including both energy and when applicable capacity costs » since it is the corresponding cost item;
- The reference to liquidity in paragraph 3 does not seem relevant to us: it is already taken into account in the assumptions of a) and b) of the same paragraph, and it would also have an impact on costs.

Neither the Electric Directive, nor the Framework Guidelines requires that the financial compensation includes the net benefits. UFE considers that financial compensation must not take into account the potential net benefits brought by the flexibility Service Provider. The suppliers whose consumers have activated DR do not have to bear the costs. The financial compensation must be paid to suppliers affected by balancing actions as the compensation a) neutralizes the financial impact of a third-party intervention at the supply point and b) is a key aspect of demand response acceptability to all market participants. The question should be "who pays?" if the net benefits are demonstrated. A minima, Member States should have the possibility to mutualize the potential net benefits.

Article 33, 41 and 45

Regarding the flexibility register, UFE stresses the need to :

- Keep "a maximum of 3 weeks" (instead of 1 business day mentioned in article 33.4) for the ' the technical switch of Controllable Units' deadline, as per Directive 944 (in France, the target will be the weekly time step).

- Remove the direct interaction of the end customer with the flexibility register operator which would be costly, complex, and would not ensure data quality : the relationship should remain between System Operators and Service Providers

Article 51

UFE welcomes the fact that Article 51, allows existing French provisions on non-firm connection agreements (Reflex, optimal sizing) to be included in a European framework.

Regarding non-firm connection agreements, UFE nevertheless recalls that it is crucial to specify that activation of flexibility pursuant to non-firm connection agreements should only be an alternative to market-based mechanisms when the latter are less efficient. As stated in article 47-2 of the network code proposal, each systems operators shall choose the most effective and economically efficient option or combination of options to maintain active energy flows or voltage within operational limits.

Individual connection agreements are not in the scope of the code. **UFE recalls as a warning that this alternative connection proposal must remain on a voluntary basis for end users who may be willing to support full cost of a firm connection agreement and/or accept a longer connection time unless for areas where the regulatory authority, or other competent authority where Member States has so provided, deems network development not to be the most efficient solution, and enables where relevant flexible connection agreements as a permanent solution**.

Article 84

The harmonization process described in Article 84 should remain proportionate to the expected benefits of harmonization and not hinder innovation.