EnBW view on the European Energy Regulation: A Bridge to 2025›

EnBW response to the ACER consultation paper

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EnBW

ACER has initiated a consultation on its paper "European Energy Regulation: A Bridge to 2025". The consultation paper outlines the European regulators views on the current energy sector challenges and possible policy and regulatory responses in the next years.

A change in European energy regulation is imminent: The challenges of energy regulation today and tomorrow are different from the issues that had to be tackled in the beginning of the liberalization process over a decade ago. As the energy market is changing, so too will European regulation need to assess current trends and issues of the European energy regulation and respond to current and future developments accordingly – possibly even with a new framework.

We believe that the future challenges in the energy market should first and foremost be tackled by market-based approaches. The main objective of European energy policy over the past decade has been to liberalize the energy market and create a single European market through legal harmonization.

European policy makers as well as regulatory authorities should bear in mind that regulatory interventions were only intended as an instruments to foster an energy market. In other words a regulatory response should only apply in substantively justified cases, for example to overcome market failure in fields relevant for security of supply. Any new instruments should only be introduced after a careful assessment of its necessity and implications.

Consumer and retail markets

The consumers play a key role in the evolving energy market. While the amount of fluctuating RES generation is increasing, a focus should be set on a framework that fosters the offering of necessary flexibilities generated from demand side (e.g. DSM) or supply side by a market-based approach to stabilize the energy system. Thus we highly appreciate the focus of ACER on the empowerment of the consumers in this context. By executing demand side management the consumers can contribute to optimize their energy supply, while at the same time maintaining network stability and preventing or postponing further grid investments.

We want to leave a maximum space for the market potential of flexibility products and see the paradigm shift towards the active consumer. In Germany, already today large consumers can offer flexibility services on the market (e.g. on balancing markets). The flexibilities of consumers that do not have the capability to directly participate on the market (e.g. small consumers) are best suited to be increased and pooled by energy suppliers or other aggregators. They have the consumer proximity and the innovative potential to offer flexibility products that motivate the consumer to assume an active role in the energy market.

To empower and engage the consumer in this respect, a new framework for the interaction of the aggregator and the DSO has to be established. Therefore we suggest the German approach of the "traffic light system" which divides the interaction in three cases: In the absence of grid constraints the aggregator should be allowed to carry out demand response services in order to bring benefits to the consumer without any restrictions. In case of network congestions the aggregator offers flexibility to the DSO. Only in state of an urgent congestion situation should DSOs be allowed to intervene. As a general rule the management of flexibilities should be in accordance with the balancing responsibility. The

aggregator, which connects or disconnects flexibilities, is always responsible for balancing. The "traffic light system" ensures clearly defined responsibilities and supports the transition of the energy market.

Reduced tariffs are a key driver to motivate the consumers to offer flexibilities. They should benefit on the savings of the reduced network investments or the optimized energy procurement. One possibility is the compensation via dynamic network tariffs. Due to the high amount of data the calculation of dynamic network tariffs is a complex and cost intensive matter. The high costs of dynamic pricing do not compensate the added value of the price signal and are not recommended by EnBW. Variable network tariffs, which are divided in a limited number of price levels, are easy and cost efficient to calculate and therefore recommended. An alternative approach, which is even less complex, is a reduced single-level network tariff.

The volumetric network tariffs do not reflect the capacity based costs of the grid anymore due to the fact that because of the rising share of auto consumption less energy volume comes through the grid. Therefore we recommend network tariffs with a higher capacity based share.

The rollout of the smart meter contributes to the empowerment of the consumers. We agree on the statement of ACER that smart meters can be a helpful infrastructure, but that the flexibility potential has to be raised via innovative products of the market, which are customized for the needs of the consumers. To enable "smart" products, which have to suit to certain conditions of the smart meter, the consumer should have the possibility to choose the metering operator.

Due to the increased amount of metering data we see the need for an adjustment of security measures. At the same time disproportional security measures can lead to high extra costs and hamper the development of new products. Proportionality and feasibility should be kept in mind while creating new security measures.

We strongly support ACER in mapping out a framework covering the required commercial, regulatory and standardization aspects necessary to facilitate the market in demand response. In order to empower and engage the consumer EnBW believes that this framework needs to contain the following: a **system that defines the interaction of the flexibility aggregator and the DSO** (e.g. traffic light system), an **adaption of network tariffs** for the requirements of the emerging energy sector as well as a **reasonable smart meter rollout that increases flexibilities with significant benefits for the consumer and the system operator via innovative and tailor-made products.**

Role of DSOs

The energy market is slowly evolving, becoming "smarter" and introducing new market players in the process. As neutral and well-regulated entities DSOs today have the pivotal role of a "market facilitator", providing a level playing field for all market participants. Yet the function as a "market facilitator" will surely gain importance as new services and technologies are introduced that enable a greater demand-side involvement in the energy market to the benefit of consumers. In this role the DSO

will have to continue to enable a fair, non-discriminatory market, without being a part of the market himself. In other words DSOs should for example not impede the development of the market in supply services such as load control or energy usage monitoring.

The current unbundling requirements for DSOs have proven to be sufficient in ensuring a non-discriminatory network operation, provided they are applied accordingly. Unfortunately this is not the case in the majority of the Member States due to the de minimis rule granted to DSOs with less than 100.000 connected customers. These "smaller" DSOs are exempted from having to implement legal and functional unbundling and therefore are only obliged to preserve confidentiality of commercially sensitive information ("informational unbundling") and to implement accounts unbundling.

While the latter ensures a necessary regulatory tool by separating accounts, "informational unbundling" provides that all market participants are given the same starting condition in terms of access to commercially sensitive information. But it is the functional unbundling combined with legal unbundling that counts: All unbundling requirements remain ineffective if DSOs are not functionally unbundled of the rest of the vertically integrated company. A DSO can only assume the neutral role of a "market facilitator" if he is independent in his decision-making rights. Any rules to preserve confidentiality of commercially sensitive information are in vain if the conflict of interest of the DSO management is not addressed through functional unbundling.

Ultimately EnBW sees **no reason to increase the degree of unbundling of DSOs**, e.g. ownership unbundling. At the same time we see the **necessity of revising the current de minimis exemption**. The de minimis exemption has become the general rule in most European Member States. The majority of DSOs are not obliged to comply with legal and functional unbundling requirements. Having smaller DSOs (<100.000 connected customers) comply with legal and functional unbundling rules would allow them to actually fulfill their tasks as a neutral "market facilitator" and substantially increase transparency (e.g. through rebranding).

Gas Wholesale Markets

The full implementation of the numerous Network Codes in gas is paramount for the well-functioning of a pan-European gas wholesale market. Only liquid markets ensure a maximum of attractiveness for market parties and hence create the level of competition which is in the end beneficial for any consumer in the European Union. It is important that current flaws in cross-border regulation must not lead to a slow-down on the implementation of these Network Codes. We call for and support a constant and transparent analysis of obstacles on the way of implementation which may also have to be overcome by other institutions than ACER. This means coherent implementation of the Third Package from our perspective: go forward, make obstacles transparent and find a solution and the right agent to overcome them.

We share ACER´s concern that an unclear view about future demand of gas may lead to questions whether to invest in (more) infrastructure today. Indeed, any final investment decision needs a due

diligence considering possible alternative fixes for today´s capacity constraints. Investment in pipelines to fulfill every possible capacity need may not always be the right way forward but new tools for the creation of incremental capacity are a possible way forward as are discussions about capacity products with limited allocability. However, we also see a possibility that decreasing gas demand may become a self-fulfilling prophecy if measures are taken that make gas less attractive compared to other energy sources. The stressed importance of gas-fired power plants in conjunction with RES and the possible future energy storage function of gas infrastructure for RES and its capacity to substitute possibly more controversial power line projects (e.g. by power-to-gas or by power-to-heat) underline the need to have a clear view on infrastructure investments today. The wholesale gas market and consequently the customers of any size need infrastructure projects in some places. At the same time ACER and the NRAs must ensure that the regulatory environment allows for investments, i.e. it must bear in mind the longer-term financial investment horizon of TSOs which is way beyond the current practice of short-term regulatory periods. ACER and NRAs must hence outrule the possibility of investments to become stranded because of regulatory practice. It is well understood that this call goes beyond the mere regulatory sphere but includes the political will by the EC and the Member States to allow gas to play an important role within the energy transition towards a less carbon-emitting Europe of 2025 and way beyond.

EnBW sees the need for the implementation of Network Codes while at the same time clearly stating possibly obstacles to overcome them either by regulatory or political action beyond the regulatory sphere. **The possible decrease of gas demand must not result in a self-fulfilling prophecy by omitting measures to build projects that keep gas attractive for the market.** Gas is a multilayer player when it comes to its positive effects it can have in the realm of the energy transition towards 2050.