

EURELECTRIC's comments on ENTSO-E revised version of Network Code Electricity Balancing

On the 16th of September 2014, ENTSO-E submitted to ACER a revised version of the Network Code on Electricity Balancing, (version 3.0-Dated: 6th August 2014).

On the 3rd of December 2014, ACER launched a public call for comments on this revised version.

We welcome the opportunity to express our views on this new version of the Code, as stakeholders are key contributors to balancing markets integration.

The revised version of ENTSO-E's Network Code Electricity Balancing submitted to ACER in September 2014, based on the Agency Reasoned opinion, is taking into account worth to be noticed improvements but still holds some unsatisfying points.

1. EURELECTRIC key points on NC EB to ensure harmonisation/convergence of balancing market in Europe:

➤ **TSOs and balancing services: TSOs should not be granted a right to offer balancing & system services** as this would imply owning and operating any market assets (i.e. generation, storage, demand side response), which **conflicts with the unbundling rules** of the 3rd Energy Package (Article 22.4). **Balancing services procurement** (from FCR to RR) **should be a market based solution revealing the market value of the service. Typically this is done through call for tender or auction. Requirement for mandatory participation in balancing markets would be pointless.**

➤ **Balancing responsibility: When a BSP is independent of a BRP, operational and commercial agreements between them need to be in place to avoid unmanageable risks for the system and the BRP :**

- BRP acting against system balancing activity;
- Keeping BRP financially neutral to the BSP actions.

It must be granted that this principle has been attested following the recommendation made by ACER. Its applicability should now be made possible.

➤ **The NC should ensure that the COBAs and the pilot projects lead to a converging process towards the target. The involvement of stakeholders as key contributors to balancing markets integration should be effectively translated, all the more within the design phase.**

In this way, the creation of the Balancing Pilot Project Stakeholder Group is appreciated and should be completed by the involvement of stakeholders at local level.

2. Key considerations:

➤ **Involving stakeholders in the integration of Balancing markets:**

As far as stakeholders are key contributors to balancing markets' integration, they should be effectively involved in design phases.

The numerous methodologies and documents that still have to be defined should allow stakeholder consultation. In this regard, the extension of the minimum consultation period to

eight weeks should not be limited to the proposals highlighted in the code but only indicate them as a minimum requirement.

- (i) The code does not provide for any Stakeholder Group to receive information and be associated to further evolutions of the code. We believe that balancing subjects deserve the creation of stakeholders groups, in addition to the one dedicated to the pilot projects item. Moreover, the legal status change from network code to guideline makes all the more necessary the formalization of stakeholders' involvement.

Furthermore, as considerable details are to be developed after the Balancing code enters into force, the rules how TSOs shall make decisions on European and regional issues must be covered by the code. Regional decision process for common decision with a Co-ordinated balancing area is missing. We propose that a transparent decision process for regional decision making, corresponding to article 9 of the *Guidelines on Capacity Allocation and Congestions Management (CACM)* should be added to the draft balancing code. The principles for qualified majority on European issues should also be taken from the guideline CACM ensuring consistency among the rules being developed.

➤ **Clarification of the timeline**

On the Agency incentive, the different steps of Balancing markets European integration has been clarified, which is a positive evolution. This clarification puts forward the need for a pragmatic approach with an intermediate model that shall be given time enough to learn valuable lessons to build efficiently the target model.

We share ACER's concern that the time line for the regional implementation steps towards a common European market is still valid. The code should prescribe when the models should be implemented not only when the proposal should be presented. The current lack of implementation guidance entails a risk for very lengthy processes and a stagnation of the European balancing market development.

3. Key modifications introduced in the revised version worth mentioning:

➤ **Positive evolution : Maintaining the exemption to TSO-TSO model in the form of a TSO-BSP model for the exchange of Replacement Reserve Balancing Energy (Art. 38)**

The revised code confirms the possibility offered to derogate to the standard TSO-TSO model for the Exchange of Balancing Capacity and the Exchange of Balancing Energy, and recognize its relevance for Replacement Reserve after the implementation of the European integration model, thereby promoting a competitive procurement of Balancing Services taking advantage of Replacement Reserve Services that can't be valued in control zones that do not operate this process.

In this view EURELECTRIC welcomes the possibility to apply TSO-BSP model also after the implementation of the regional integration model and the European integration model in case a TSO-TSO Model cannot be implemented due to connecting TSOs which are not operating the Reserve Replacement Process.

The NC seems to indicate that the TSO-BSP model would apply to contracted reserve (Balancing Capacity) and to the call-off of contracted reserve (as Balancing Energy). It should be clarified that this model will also apply to the activation of balancing energy that has not been previously contracted.

➤ **Positive evolution: Assessing the necessity of BRP neutrality (Art. 27)**

The article 27 on terms and conditions related to Balancing now rightly precises that the action of a Balancing Service Provider shall not be detrimental to the corresponding Balance Responsible Party and mention the necessity of a financial settlement between the involved parties.

However, we believe that the NC Balancing should also include a requirement that services related to demand aggregation, at a minimum, are regulated in a contract between the referred Balance Service Provider and Balance Responsible Party, whether directly or indirectly, in case the Balance Service Provider is not also Balance Responsible party for the relevant demand being aggregated.

➤ **Positive evolution: Straightening of obligations related to Regional and European integration models for the exchange of balancing energy for replacement reserves and frequency restoration reserves: clearer timelines (Art. 13-18). Straightening of the objective of Sharing of Reserves within a COBA (Art.36)**

The establishment of specific intermediate steps describing prerequisites and milestones towards the European integration model for Balancing Energy contributes to rendering the whole process more reliable.

EURELECTRIC considers positively also the introduction of an obligation for TSOs to assess every two years the opportunities to perform Sharing of Reserves within a COBA.

➤ **Positive evolution: Wide spreading the netting of imbalances among all TSOs (Art. 19 and 20).**

Pursuant to ACER opinion and the previous comments made by stakeholders, the articles 19 and 20 present the netting of imbalances as a mandatory step for all TSOs, which will allow a collective optimization to reduce the demand for control power of each TSO. Moreover, the code states that such netting needs to be put in place in an economically efficient manner.

- **Positive evolution:** Definition of characteristics of Standard Products for Balancing Capacity and Standard Products for Balancing Energy by appropriate range (as an alternative to fixed values) and definition of additional characteristics by Balancing Service Providers when submitting Balancing Capacity bids or Balancing Energy bids or for Prequalification or when requested by the TSO (Art. 29)

EURELECTRIC welcomes the definition of a set of minimal characteristics for standard products as a minimum possible range and the possibility to complement the offers with additional characteristics provided by each BSP on the dynamic performance of their facilities for the relevant delivery period. This information should be duly considered in the operation of the optimization algorithm. We would like to stress ACER's attention on the way these characteristics shall be used in order to give some advantages:

- TSOs could count on detailed information on the dynamic performances of the facilities they intend to activate according to the CMO, reducing the occurrence of deviations from the required performance and thus decreasing the risk of imbalances;
- BSPs can offer products which are activated taking in due account the dynamic performances of their facilities in the specific contingent situation characterizing the relevant delivery period (e.g. climatic conditions, previous operational state etc.);

Guarantee of a wide participation in the balancing market, since the excessive standardization of products may impose a pre-selection (at least de facto) of facilities with the required dynamic performance, reducing the scope for participation in the cross-border balancing markets.

There should be no pre-fixing of any pricing method in the definition of standard products or in the Network Code itself; rather the implementation should be based on the outcome of a thorough cost benefit analysis.

We would also welcome the introduction in the NC of the following definitions:

- Article 29.5 b): Definition of Ramping Period
- Article 29.6 c): Definition of Location

- **Positive evolution:** The possibility to allow also in Central Dispatch systems aggregation of Demand Side Response, the aggregation of generation units, or the aggregation of Demand Side Response and generation units (Art. 27)

The elimination of the derogation for TSOs operating Central Dispatch systems to allow aggregation of Demand Side Response, generation units and the aggregation of Demand Side Response and generation units, is welcome

➤ **Negative evolution: limitation on time utilization of specific products**

Specific Products that could be defined if necessary by TSO according to the article 30 should not only be considered as transitory but as a legitimate alternative way to balance the system if their necessity is assessed. Article 29.8 (a) should thus be amended.

Indeed, when it is proven (subject to CBA) that some necessary balancing services can't be adapted into standard products, there should be a solution to offer them anyway.

➤ **Negative evolution: Introduction of the possibility for TSOs to update the volume and price of Balancing Energy Bid after the Balancing Energy Gate Closure Time (BEGCT) –art.11.5 (b).**

The general rule shall remain that offers are firms at BEGCT. Therefore, the circumstances under which volume and price of bids could be updated should be limited and well defined.

4. Remaining outstanding issues (already highlighted in our previous comments to ENTSO-E and ACER):

4.1. Creation of COBAs

Article 11.2 -COBAs should primarily facilitate the exchange of balancing services to complete Imbalance Netting. All Standard products and also some Specific products shall be shared at CoBA level where possible.

Concrete wording proposal:

11.2. All TSOs of a Coordinated Balancing Area shall use the Exchange of Balancing Energy from **one Standard Product or more, at the highest extent possible as well as some Specific Products, and operate** Imbalance Netting Process.

Furthermore, the concept of coordinated balancing areas (CoBA) can be compared with the capacity calculation regions in the Guideline CACM. To prepare for a coherent and more time efficient solution for regional balancing integration, we suggest that the coordinated balancing areas follow the capacity calculation regions.

4.2. Respective roles of BSP, BRP, TSO

4.2.1. Increasing information to BRP

Article 8 – Publication of information

In order to allow BRPs to balance themselves or help the system, TSOs should have to provide BRPs with appropriate and real-time metering information regarding total system imbalance, balancing price information as well as estimates of individual BRP imbalances as close to real-time as possible. The Agency underlined the importance of ensuring the “publication of all information required to

ensure an economically-efficient functioning of balancing markets and to provide symmetrical information to all interested market parties” (§2.1). The code is still unsatisfactory for this since the addition of the obligation for TSO to publish the activated volumes of Balancing Services offered by TSO themselves and the volume of unshared bids is not enough. It should be accompanied by the following concrete proposals:

Article 22 - Role of the TSOs

Concrete wording proposal:

22.5. (new) Each TSO shall be responsible to provide the Balance Responsible Parties with the adequate information in order that they could be able to deal with their imbalance and mitigate the financial impact of imbalance settlement.

Article 27 – Terms and conditions related to balancing

In the terms and conditions related to balancing, a (sub)paragraph should be introduced to oblige the provision of (near) real-time information of current balancing position of the system/individual BRPs. This allows BRPs to balance themselves or help the system, as described in the role of the BRPs under Article 25.3.

4.2.2. Checking BSP services, in order to ensure a level playing field between all the involved parties

Article 9 – Delegation of functions

Delegation of functions by TSOs to a third party can only be authorized providing that impartiality of this latter is ensured: the third party must not be an active player in Balancing Markets.

Article 52 – General settlement principles

These principles need to be reviewed thoroughly. The key principle should be that energy imbalances are settled at a price that reflects the real time value of energy. In this way, balance Responsible Parties will have the correct and proper incentive to actively manage their position and to strive to avoid imbalances. This also means that principles (b) and (c) must be deleted. (See also comments on Article 25.3.) Last but not least, the principle included in Art. 27 should be also reaffirmed in the general settlement principles:

Concrete wording proposal:

1. The settlement principles shall: [...]

(k) (new) if required by national legislation, ensure financial neutrality for each Balance Responsible Party regarding the action of Balancing Service Providers on its perimeter

Article 53 – General principles for balancing energy

As mentioned above, the principle of BRP neutrality after the activation of balancing energy services provided by a BSP active on its perimeter is assessed in Article 27 (k). To ensure its applicability, the settlement of Balancing Energy with a BSP independent from a BRP shall be based exclusively on metered activation and shall correspond to a request from the TSO. A settlement based on requested activation from TSO would not guarantee financial neutrality of BRP.

The delivery of balancing energy activations should be checked by the TSOs and there should be full coherence between the data used for this purpose and the one used by TSOs for the imbalance calculation of the BRP.

In addition, EURELECTRIC welcomes the introduction of the principle of settlement for the energy between BSP and the concerned BRPs in article 27. Indeed, as highlighted by the EURELECTRIC taskforce on Flexibility and Aggregation, any reduction of demand or increase of local production behind the meter of a customer initiated by a BSP results in a situation where energy is produced by the BRP/supplier but does not go anymore through the meter of the customer because it is delivered directly to the market. This energy has to be paid for by the BSP to the BRP/supplier (especially as the BSP is remunerated for the activated volume of Balancing Energy).

A sub-paragraph should be added to Article 53:

Concrete wording proposal:

4) (new) a Balancing Service Provider shall, whether directly or indirectly, compensate the related Balancing Responsible Partie(s) at the value of energy of the activated volume of Balancing.

Article 24 – Role of Balancing Service Providers

In the role of the BSPs it should be included that BRPs should be provided with the necessary information in case the BSP is active within the balancing perimeter of the BRP. Otherwise, if the BRP is not informed of BSP actions within its perimeter, the BRP may take justified, but counterproductive, measures to compensate for the imbalance it sees in its portfolio.

4.2.3. Preventing TSO from providing balancing services

Article 22.4 – Role of the TSOs

In the revised version, the possibility for TSOs to offer Balancing Services themselves has been circumscribed to precise conditions that should not preclude the priority of the basic principle that TSOs should not offer Balancing Services themselves, neither in limited cases (e.g. when there are insufficient bids). Otherwise, this would imply ownership or right of use of a generation asset, which is a long term measure that goes completely against the unbundling principle of the Internal Energy Market as put forward in Article 9§1(a) of the Third Energy Package (Directive 2009/72/EC).

4.2.4. Avoiding extra requirements on BRP and TSO interferences in markets:

Article 25.3 – Role of balance responsible party

The role of Balance Responsible Parties is not correctly described. Instead it must be written that Balance Responsible Parties should *strive* to be balanced.

Balance Responsible Parties have a responsibility for their own position. The current wording would suggest that individual imbalances that ex post turn out to in the opposite direction of the system imbalance will be differently settled from individual imbalances that ex post turn out to in the same direction as the system imbalance. Such different treatment would be incorrect. Instead a single imbalance price must be used to settle all imbalances.

Article 25.4 - Role of balance responsible party

BRPs should not be required to provide a balanced position in the day-ahead timeframe. Following the growing share of intermittent RES our opinion is that the requirement on BRPs to provide a balanced position is not efficiently supporting cost efficient balancing. The NC should rather focus on creating the right economic incentives for a balanced approach towards the operational phase when forecast errors gradually decrease. An economic incentive is a much more effective incentive than an obligation.

This request should not unfairly preclude parties from adjusting their positions as close to real time as possible taking into account plant and system capabilities. The market period does not stop after day ahead but continues until intraday gate closure time. BRPs should only be required to be balanced or help balance the system at the end of intraday markets.

This requirement should be explicitly subject to consultation and NRA approval. Do participants still have access to intraday markets in these situations? It is important that there is no adverse limitation placed on BRPs by virtue of this provision - re adjustment in intraday and at least right up until balancing gate closure must be permitted for BRPs.

4.3. Maintaining a working transitory model until full implementation of the target model

Article 2 – Definitions

Definition of TSO-TSO model: delete sentence “*The TSO-TSO model is the standard model for the Exchange of Balancing Services*”. This is not true since it is “TSO-TSO model with a Common Merit Order List” and anyway not useful as part of a definition.

Article 39.2 – General provisions

A detailed cost-benefit analysis and implementation study should be done independently from the pricing method used before existing arrangements are altered. In particular, the compatibility issues arising from individual pricing for different products need to be examined carefully.

Article 17: Regional integration model for FRRa

Contrarily to the integration models for RR and FRRm, the regional model for FRRa does not explicitly require to respect the principle of Common Merit Order List for optimizing the activation of Balancing Energy Bids. EURELECTRIC supports this principle should similarly apply to all integration models including FRRa to allow cost reduction for balancing activation. The code should also explicitly foresee the implementation of a “national merit order list” as an intermediate step toward further regional and European integration.

4.4. Standard products and gate closure times

Article 29.5 – Requirements for Standard and Specific Products

The list of requirements for standard products for Balancing Capacity and Balancing Energy shall ensure that, within the standard frame, the BSP will be able to indicate in its bids the value corresponding to the actual dynamic performances of its units, and not only the information listed in article 29.6, i.e. concerning the price, location and divisibility.

Moreover, this list should mention a fixed start point and a fixed stop point to allow products corresponding to schedule shifting.

Article 30.2 - Unavailability of specific products in Alert State or to avoid entering in Alert State:

Article 30.2 specifies that *“Balancing Energy bids for Specific Products could be marked as unavailable by Connecting TSO for activation by other TSOs of the Coordinated Balancing Area in Alert State or Emergency State or to avoid entering into Alert State or Emergency State”*.

We understand that specific Products could be marked as unavailable in Emergency State, but referring to Alert state, as this Code Applies to Alert State, clarification on marking Energy bids as unavailable on Alert state is needed.

Article 30.4 – Use of Specific Products

The revised code allows TSO to convert Bids for Specific Products into Standard Products to submit it to the CoBA. We do not see why connecting TSOs should be able to do convert specific products into standard products used in the concerned COBAs and submit them to the Activation Optimisation Function or the Capacity Procurement Optimisation Function. If TSOs want to buy specific products from a market participant, they should not be able to then package them up differently and then resell them.

Article 10 – General objectives of the balancing market

This article should better reflect that the balancing market is a residual market that is as restricted as possible and that maximum possibilities must be given to market participants to balance demand and supply in the other time frames. Moreover the balancing market should give the economic incentives to do so by revealing the real time price of energy.

Article 32 – Balancing Energy Gate Closure Time

As a general rule, unless unusual situations such as for system security purpose, balancing markets must only cover the residual after DA and ID markets are closed. TSOs should only balance imbalances occurring after intraday gate closure. Thus the only plan from BRP that should be binding and used in settlement of imbalances is the final plans sent to TSO after intraday gate closure. This should be explicitly stated in the network code. Intraday gate closure should be as close as possible to real time (balancing market time frame).

Article 32.5 should be rephrased in order to ensure that TSOs are never allowed to perform balancing actions while the intraday markets are open. TSO actions should not interfere with the responsibility of BRPs to balance their own position and possibility to help the system (Article 25) nor the settlement principles (Article 52).

4.5. Procurement of reserves and Balancing Energy activation

Articles 34.2 and 36.7 – General Provisions

The procurement of Balancing Capacity, both within a Responsibility Area or a CoBA **should be a market based process revealing the market value of the service applicable not only to FRR and RR, but also to FCR**. It must however be made explicitly clear in the code that a method which is based on mandatory provision of Balancing Capacity to the TSO in combination with secondary trading of such obligation, cannot be classified as a market-based method. We are opposed to the one-month limitation on contracting for capacity.

Article 40.2 – Activation of Balancing Energy Bids in Emergency State

As this code does not apply in Emergency State, references to Emergency State on this paragraph should not be introduced.

Article 42 – Activation mechanism for Balancing Energy

We welcome the introduction of the principle of TSO striving to use all balancing energy bids from FRRm and RR into the most efficient way. Nevertheless, this should, in practicable, go further, up to a co-optimization of the bids of different products into a single CMO.

In general, we believe that if the TSOs deviates from the merit order activation mechanism and activates Balancing Energy Bids for Balancing purposes not in merit order, the code must prescribe that such deviation must not affect the imbalance settlement price that should reflect the cost of balancing the system. If Balancing Energy bids are activated for other purposes than balancing those bids should **not affect** the price of imbalances. Thus we suggest a sharper distinction between grid and balancing related activations than the draft code which only requires that those bids shall **not determine** the imbalance price.

Article 36.8 and 36.12 – General Provisions

The procurement of Balancing Capacity, both within a Responsibility Area or a CoBA **should be a market based process revealing the market value of the service, that is to say a call for tender or an auction. The basic pricing methodology should be marginal pricing, unless duly justified (in line with the FG).**

Concrete wording proposal:

36.12. The initial pricing method shall be based on marginal pricing (pay-as-cleared), unless Transmission System Operators provide all National Regulatory Authorities with a detailed analysis demonstrating that a different pricing method is more efficient for EU-wide implementation in pursuing the general objectives defined in Article 10.

Article 34.5 must be aligned with Article 36.9.

4.6. Cross-zonal capacity

Articles 43 and 44 – Reservation and calculation of market value of cross zonal capacity

The method of reserving and price the TSOs pay for the reservation of cross zonal capacity for TSOs should be subject to regulatory approval in Article 6 but it is not listed there.

Article 43.1: Reservation of cross zonal capacity for TSOs:

This article states that TSOs shall have the right to reserve Cross Zonal Capacity for the Exchange of Balancing Capacity or Sharing of Reserves when socio-economic Efficiency is proved. In our view, reservation of cross-border capacity by TSOs should not be allowed. Instead it must be ensured that TSOs procure such cross-border capacity. This can be done directly (TSOs buy capacity at their “own” auction) in which strict regulatory oversight is needed, or TSOs buy back capacity that was first allocated to market participants.

Article 48 – Reservation of cross zonal capacity for balancing service provider

It is accepted that BSPs may have to reserve some capacity for balancing purposes but it is important that the risk of parties hoarding capacity is avoided. We would like to get some clarification on what kind of ‘updated information’ would reveal that reserved Cross Zonal Capacity is not any longer needed for the Exchange of Balancing Capacity. There should be some guidance or rules around what happens when it is evident that parties are not using/ will not use the capacity they reserved for balancing reasons. If released we would like to know if it would be released on time would it be utilised for e.g. in intraday or balancing by market participants such as generators and demand?

4.7. Central dispatch issue

Art. 22.1 – Role of the TSOs

The code should set a European Target Model for cross-border balancing, even though exceptions and derogations can be provided. Therefore, Central Dispatch systems should be considered as an exception and not set an additional model that TSOs and/or NRAs could follow. EURELECTRIC wishes to note that the Irish Member, Electricity Association of Ireland, holds a dissenting opinion on this point.

Article 28– Scheduling and dispatch arrangements

It should not be possible to revert to Central Dispatch System. As such, TSOs should not be able to apply to their NRA to be acknowledged as a TSO operating a Central Dispatch System. Central Dispatch Systems should be limited to the TSOs that currently operate them.

Article 31 – Modification of bids in central dispatch system

We believe that BSPs located in Central Dispatch Systems should not be discriminated compared to BSPs of Self-Dispatch Systems when offering balancing services to be shared within a CoBA. The possibility for TSOs to modify every bid (i.e. the integrated scheduling process bids) presented by BSPs in a CDS, as envisaged in the current version of the Code, does not seem to ensure enough transparency to market operators active in these markets. For this reason, when products offered by BSPs in Central Dispatch System have the same characteristics of standard products exchanged in a CoBA, they should be shared cross-border without any modification by the TSO.

Moreover, in case of conversion of an offer to a standard product, the BSP shall be considered responsible for the delivery of the product according to the original technical characteristics and should not be responsible of possible deviations from the dispatching order when required to deliver a product with different technical characteristics compared to their initial offer, as a consequence of the conversion process carried out by the TSO

Article 32.7 – Balancing Energy Gate Closure Time

Subsection (7) in particular relates to the integrated scheduling process gate closure. The whole article gives a lot of room to TSOs to determine this. We would like to see this as being one subject to NRA local regulatory approval. The reference to this article should thus be included in Article 6(6). NRA-by-NRA basis approval of gate closure times.

4.8. Terms and conditions related to balancing

Article 26.3(c) – Terms and conditions related to balancing

The assignment of a Balancing Energy bid from a BSP to a BRP should be performed with the BRP, pursuant the comment made in Article 24.

Article 27.8(a) & (c) – Terms and conditions related to balancing

TSOs in Central Dispatch systems are allowed to include within the terms and conditions related to Balancing “Integrated Scheduling Process Gate Closure Time in day ahead time frame”. This should not be possible. The possibility to activate bids prior to the Balancing gate closure should only be allowed on the basis of/ taking account of plant notice times and TSOs calculation/ optimising capabilities (and not just for any reason).

Article 27.9(b) – Terms and conditions related to balancing

There should be no possibility to require BSPs to offer their unused generation capacity and other Balancing resources after Day Ahead. Such a requirement takes capacity away from the Intraday market, where it can still be used by market parties to balance their own position.

4.9. Questions for clarification – Other

Article 1.5. - Applying States of the Code:

Article 1.5. specifies that: *“This Network Code shall apply to the Normal State and the Alert State, as defined in [Article 8 System States] of the Network Code on Operational Security”*

Instead of this, we suggest to change this wording and indicate the States in which the Code does Not apply.

“This Network Code shall not apply to the Emergency State, Blackout State and Restoration State, as defined in [Article 8 System States] of the Network Code on Operational Security”

Article 31 – Conversion of products

We do not see why connecting TSOs should be able to do convert specific products into standard products used in the concerned COBAs and submit them to the Activation Optimisation Function or the Capacity Procurement Optimisation Function. If TSOs want to buy specific products from a market participant, they should not be able to then package them up differently and then resell them.

Article 38 – General provisions

Paragraphs (6) and (7) should be deleted. It is basically a free option for TSOs not to comply with the network code and has a potentially huge impact on the market.

Article 40.8 – General provisions.

We would welcome clarification on what the paragraph 8 means.

Article 41 – Methodology for unshared bids

The possibilities for TSOs to apply unshared bids as prescribed in article 41 is problematic. It implies that the volumes and reserves rewarded a capacity payment could be withheld from the regional and

European market. Thus, it leaves to much discretionary power to the national level and thereby may counteract the purpose of integrating balancing markets. In the worst case it could mean that a TSO reward all resources a capacity payment and in the second stage reserve all resources locally leading to cost inefficient balancing.

Article 42 – Activation mechanism for balancing energy:

There should be some an additional paragraph ensuring protecting the integrity of the intraday market.

Chapter 4 and Art. 36.3(b) – Section 1 – Cross zonal capacity for balancing services

We share ACERs concern that all forms of reservation of cross border capacity for balancing purposes should be subject to strict regulatory supervision as it may distort the DA and ID markets. All cross border capacity should be allocated at all time frames. If the value of capacity increases between D-1 and the balancing time frame System Operators could rely on counter trade to free the necessary capacity, thus counter trade should be included as an alternative in the draft Network Code.

Reservation of cross-zonal capacity by TSOs should be avoided in order to maximize the use of cross-zonal capacity for forward, day-ahead and intraday energy markets. Moreover, it is not appropriate to allow TSOs to procure the cross-zonal capacity they make available in competition with market participants, due to the information asymmetries of the involved parties. No reservation should be done to perform imbalance netting.

The best solution would be for TSOs to use residual capacity or, if needed, release capacity after the intraday market gate closure. In this second case TSOs should carefully assess whether capacity release entails a net benefit in terms of increase of socio-economic welfare compared to countertrading costs.

Article 51 – Pricing of cross zonal Capacity for the exchange of balancing energy or imbalance netting process.

Losses associated to balancing transactions are very difficult to calculate and to allocate to individual network users. Allocation to individual network users could imply distortion in the market.

Article 52.4 – General settlement principles

The cost of balancing energy between BSPs and TSOs should be equal to the cost of imbalance settlement between BRPs and TSOs.

Concrete wording proposal:

*50.4. TSOs shall not be allowed to use the financial outcome as a result of the settlement pursuant to SECTION 2, SECTION 3 and SECTION 4 of this Chapter to cover the cost of any congestion. **In addition, the imbalance settlement principles shall ensure that financial flows (i) between TSOs and BSPs and***

(ii) between TSOs and BRPs are balanced, due to, respectively, Balancing Energy Settlement with BSPs and Imbalance Settlement with BRPs.

Article 61 – Imbalance Price

The principle must be added that individual imbalances, so both surpluses and shortages, must be settled at the same price (no dual pricing).

Article 67 – Algorithm amendment

Under Article 66 ‘Algorithm Development’ is subject to consultation, so too should any amendment of the algorithm be subject to consultation.

Article 69.2 –Cost-Benefit analysis

The CBA should explicitly assess the impact of new provisions on retail market, where different imbalance settlement periods can have significant operational impact (retailers’ IT systems, data communication systems etc.).

Concrete wording proposal:

*69.2 The Cost-Benefit Analysis shall at least take into account the objectives of this Network Code set forth in Article 10, and: (a) [...] **(f) the impact of imbalance settlement period on the retail market***