

## **Annex 5 – Reasons for revising the proposed Demand Response Network Code**

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## 1. INTRODUCTION

- (1) The clean energy transition is bringing profound changes to the way energy is produced, transported and consumed. This has major implications for transmission system operators ('TSOs') and distribution system operators ('DSOs') who have to take appropriate measures in order to make their network more resilient and flexible to accommodate the growing share of variable renewable energy. The Electricity Directive has established specific rules that incentivise system operators to become neutral market facilitators and procure flexibility services through market-based procedures in order to optimise the operation of their grids as alternatives to new infrastructure or grid reinforcements.
- (2) By the Framework Guideline on Demand Response ('DR FG')<sup>1</sup>, ACER set out clear and objective principles for the development of harmonised rules regarding demand response, including rules on aggregation, energy storage and demand curtailment, pursuant to Article 59(1)(e) of Regulation (EU) 2019/943 of the European Parliament and of the Council on the internal market for electricity ('Electricity Regulation'), and to contribute to market integration, non-discrimination, effective competition and the efficient functioning of the market pursuant to Article 59(4) of the Electricity Regulation.
- (3) In May 2024, on the basis of the DR FG, ENTSO-E and EU DSO entity submitted to ACER their proposal for the establishment of the Demand Response Network Code ('proposed DR NC').
- (4) ACER, following extensive consultations with national regulatory authorities ('NRAs'), system operators and relevant stakeholders, proposes the establishment of the DR NC ('revised DR NC'), in order to complement the existing EU regulatory framework. The revised network code's main purpose is to address the remaining regulatory barriers to facilitate market participation of demand response including load, energy storage and distributed generation, individually or aggregated, and facilitate market-based procurement of services by DSOs and TSOs, while supporting the achievement of the Union's targets for the development of renewable generation.
- (5) In this regard, the revised DR NC mainly aims to:
  - complement the existing EU regulatory framework on demand response, especially with respect to the provisions related to measurements and baselines;
  - create a framework for simplified qualification enabling new resources to provide services to the system operators;
  - facilitate the market-based procurement of services by DSOs and TSOs, and their interaction with other wholesale markets, while supporting the achievement of the Union's targets for penetration of renewable generation;
  - reinforce the system operators' cooperation and coordination when using resources in their grids for the provision of services, including from renewable energy producers, new energy service providers, energy storage, and demand response.
- (6) The proposed DR NC is assessed against the principles and rules set in the DR FG and the objectives set out in Article 1 of the Electricity Regulation, in particular with respect to 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

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<sup>1</sup> [https://acer.europa.eu/sites/default/files/documents/Official\\_documents/Acts\\_of\\_the\\_Agency/Framework\\_Guidelines/Framework%20Guidelines/FG\\_DemandResponse.pdf](https://acer.europa.eu/sites/default/files/documents/Official_documents/Acts_of_the_Agency/Framework_Guidelines/Framework%20Guidelines/FG_DemandResponse.pdf)

aggregation of distributed demand and supply, and enable market and sectoral integration and market-based remuneration of electricity generated from renewable sources.

- (7) One of the main overarching points of consultation with the stakeholders and of discussion with the NRAs, as reflected also in the AEWG advice, is the timelines for the submission, approval and implementation of the terms and conditions or methodologies described in the DR NC, as well as the order between national implementation and European harmonisation. According to paragraph (24) of the DR FG, the rules to be developed should define a process for further harmonisation on a European level when Member States gain more knowledge and experience on the different areas of the DR NC, and following a monitoring report for assessing the need for harmonisation. Following the discussion in the context of the DR NC, the national implementation timelines are set for later in the future, recognising the need for additional time for Member States to establish processes for enabling system operators to jointly draft common proposals (by 12 months after entry into force of the DR NC, as reflected in Article 4 of the revised DR NC), and time for system operators to develop such proposals (12 months after the development of the abovementioned rules of procedure). However, this leads to significant delays in the implementation of the DR NC, a concern that was raised also by stakeholders during the consultation process. Additionally, ACER considers that in the last years, there were developments in Member States with respect to the implementation of certain areas of the DR NC, namely on the service providers qualification and on the implementation of aggregation models (which are included in the EB Regulation as explained in Annex 6), which provides a solid ground for monitoring the implementation and proposing a European framework for these areas. ACER notes that it is important to provide sufficient time for the establishment of national processes, but also highlights that this additional time should not risk the overall implementation of the DR NC. Therefore, ACER proposes to alter the order for the already implemented nationally topics, and start with the submission of the proposals for European methodologies instead of the proposals for the national terms and conditions.

## **2. TITLE I – GENERAL PROVISIONS**

### **2.1 Scope and subject-matter, definitions, objectives and regulatory aspects**

- (8) The recommended network code establishes requirements in relation to demand response, including rules on aggregation, energy storage, distributed generation, and demand curtailment. It ensures that those resources and service providers have access to the electricity markets, in accordance with the principles for the operation of electricity markets pursuant to EU legislation, by introducing rules for the non-discriminatory access of all service providers to the market-based procurement of local services by the system operators facilitating this process. ACER proposes that Article 1(2) of the proposed DR NC should be revised to explicitly clarify the applicability of specific articles, only where market-based procurement of local services is implemented.
- (9) Additionally, ACER proposes to add a paragraph 3 to Article 1 of the proposed DR NC, to explicitly list the parties, which should apply the requirements included in the DR NC, which was included in Article 3(1) of the proposed DR NC. Moreover, following comments received in the public consultation and with the relevant stakeholders, ACER proposes to add a specific provision to exclude the operators of closed distribution system from the applicability from certain provisions, if they have been exempted from one or more requirements pursuant to Article 38(2) of Directive (EU) 2019/944.

- (10) ACER proposes to add two more paragraphs to Article 1 of the proposed DR NC, to cover the cases of Member states with more than one TSO or with more than one DSO, providing also the possibility for assigning the obligations to one or more specific TSOs or DSOs.
- (11) Apart from the application of the definitions in Article 2 of Directive (EU) 2019/944 of the European Parliament and of the Council, Article 2 of Regulation (EU) 2019/943, Article 2 of Commission Regulation (EU) 2015/1222, Article 2 of Commission Regulation (EU) 2016/631, Article 2 of Commission Regulation (EU) 2016/1388, Article 3 of Commission Regulation (EU) 2017/1485, Article 2 of Commission Regulation (EU) 2017/2195, and Article 2 of Commission Implementing Regulation (EU) 2023/1162 and the definitions stemming from the implementing acts pursuant to Article 24 of Directive (EU) 2019/944, new definitions are recommended in Article 2 of the proposed DR NC regarding metering point, baseline and baselining method, voltage issue, local market, local service, market-based procurement, local product, DSO observability area, system operator, connecting system operator, requesting system operator, procuring system operator, impacted system operator, flexibility information system, CU module, SP module, controllable unit, small controllable unit, service provider, service provider prequalification, service providing unit, service providing group, grid prequalification, product prequalification, product verification, product requirements, activation test, communication test, rebound effect, compensation, effect, temporary qualification, and near real-time.
- (12) ACER proposes to revise Article 3 of the proposed DR NC to include the objectives of this proposed Regulation and the principles that should be followed when implementing it, which were included in Article 5 of the proposed DR NC. Additionally, during the public consultation and following the consultation with relevant stakeholders, several comments were submitted by the stakeholders on the lack of data exchange standardisation provision, as explained in paragraph (39). Although ACER considers that the development of a European standard is out of the scope of the DR NC, the involvement of the system operators in this process is considered to be beneficial. Therefore, ACER proposes to add a paragraph at the end of Article 3 of the DR NC on the close cooperation of ENTSO-E and EU DSO entity with the European Standards Defining Organisations.

## **2.2 Terms and conditions or methodologies**

- (13) Two different proposals were submitted as regards Articles 5 to 8 of the proposed DR NC, as there was disagreement between the ENTSO-E and the EU DSO entity on the approach for the processes described in these articles, namely:
- (i) the establishment for a national process for the development of common proposals for national terms and conditions (Article 5 of the proposed DR NC);
  - (ii) the national process for the update of existing local markets (Article 5A of the proposed DR NC, proposed only by ENTSO-E);
  - (iii) the national process for the national terms and conditions (Article 6 of the proposed DR NC);
  - (iv) the national process for the approval of national terms and conditions (Article 7 of the proposed DR NC, proposed only by ENTSO-E);
  - (v) the stakeholders involvement (Article 7b of the proposed DR NC, proposed only by ENTSO-E); and

- (vi) the national process for the amendments to national terms and conditions (Article 8 of the proposed DR NC).
- (14) ACER understands that the introduction of common proposals for terms and conditions or methodologies, which should be developed jointly by the system operators – TSOs and DSOs at national level, and ENTSO-E and EU DSO entity at European level – implies some serious challenges that could endanger the timely implementation of the DR NC. The challenges at European level are already evident in the previous paragraph (12), and in the process for the drafting of the proposed DR NC by ENTSO-E and EU DSO entity, given that the proposal for a number of articles was not a common for the two entities. The same happened as regards their proposals to the amendment to existing Regulations. ACER considers that the establishment of a national process according to which the system operators should be able to jointly develop common proposals is crucial, for the timely implementation of the DR NC. During the discussion with the NRAs, concerns were raised on the fact that the same process cannot be applicable to every Member State, due to the significant difference in the number and the set-up of the DSOs. Moreover, NRAs highlighted that due to the national specificities, a representative system may be opted by some Member States, and that in any case it is essential to ensure that the representation of the DSOs is sufficient. Finally, the NRAs highlighted that although some Member States have already established such processes, in some other this may take longer, given the different maturity of system operators' coordination on their participation in the legislative process. ACER took into consideration all the comments raised during the relevant discussions.
- (15) Therefore, ACER proposes the inclusion in the DR NC of the requirement for the establishment at national level of rules of procedure for the joint development of common proposals for the national terms and conditions or methodologies. ACER proposes that Article 4 of the revised DR NC, which includes this requirement, to also indicate the minimum aspects of such rules that should further be specified in the national rules of procedure. Moreover, following the concerns on the timing, ACER proposes the deadline for the establishment of such rules to be twelve months after the entry into force of the DR NC.
- (16) Articles 6 to 8 of the proposed DR NC describe the requirements for the national processes for the development of a proposal for the national terms and conditions, their approval, and the process for further amending them. Moreover, Articles 9 to 12 of the proposed DR NC describe the requirements for the European processes for the development of a proposal for the Union-wide terms and conditions or methodologies, their approval, and the process for further amending them. Articles 13 (on which two separate proposals from ENTSO-E and EU DSO entity were submitted) and 14 of the DR NC describe the public consultation process for the national and Union-wide terms and conditions or methodologies, respectively. ACER considers that it is important to maintain an alignment between the DR NC and the existing Regulations, in terms of similar processes, such the processes related to the development, approval and amendment of the terms and conditions or methodologies. Therefore, ACER proposes to follow the same approach as of Article 9 of CACM Regulation, and to merge the abovementioned articles across two different dimensions, i.e. to include: (a) in a single article the development of the proposals, their approval, amendments and publication, and (b) in a single article both the national and the European process. In this single article (Article 5 of the revised DR NC) there is a list of all the terms and conditions or methodologies included in the DR NC, with a clear separation between the national and the Union-wide ones.

### **2.3 Stakeholders' involvement, delegation and assignment of tasks, recovery of costs and confidentiality obligations**

- (17) As regards stakeholders' involvement, it is recommended, according to Article 7 of the proposed DR NC, that ACER in close cooperation with EU DSO Entity and ENTSO-E organises stakeholder involvement, including regular meetings with stakeholders to identify implementation problems and areas for improvements notably related to the areas covered by the proposed DR NC, not excluding Union-wide methodologies. ACER considers that the standardisation of data exchange is an important aspect for enabling the participation of demand response in the wholesale markets, therefore, proposes to amend Article 15 to explicitly refer to this. Moreover, ACER acknowledges that there are other European groups working on different aspects of standardisation of data exchange related to the electricity markets, and, following the public consultation and the comments of the relevant stakeholders, ACER considers important the cooperation between these groups and the groups for the involvement of the stakeholders in the implementation of the DR NC. Therefore, ACER proposes to further amend Article 7 of the proposed DR NC to include this cooperation.
- (18) As regards delegation and assignment of tasks, ACER agrees with the provisions of Article 16 of the proposed DR NC. However, during the discussions with the NRAs, it became evident that for some of the tasks included in the DR NC, there are national provisions restricting their delegation. Therefore, ACER recommends that Article 16(1) is amended to explicitly mention that the delegation is possible, only where it is not restricted by national legislation. Additionally, following the discussion with the systems operators and with the NRAs, it was suggested that some of the tasks assigned to a system operator should not be assigned to a third party, in particular the ones related to system operation, as this could endanger the system security. Therefore, ACER recommends amending Article 16(4) of the proposed DR NC, to explicitly refer the list of articles that should be exempted from the general possibility of assignment of tasks.
- (19) As regards recovery costs, ACER agrees with the provisions of Article 17 of the proposed DR NC. However, during the discussion with the NRAs, it was highlighted that the three months deadline included in Article 17(2) of the proposed DR NC for the provision of information from the system operator to the NRA, may not fit into the tight timelines of their costs assessment process. Therefore, ACER proposes to amend Article 17(2) of the proposed DR NC, to provide the NRAs with the possibility to set this deadline. Moreover, some concerns were raised on the clarity regarding the market participants costs; therefore, ACER recommends adding a paragraph 3 in Article 17 of the proposed DR NC, to explicitly state that market participants' costs are born by them.
- (20) As regards confidentiality obligations, ACER agrees with the provisions of Article 18 of the proposed DR NC. ACER proposes only minor amendments to align it with the respective confidentiality obligations in Article 13 of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management.

### **3. TITLE II – GENERAL REQUIREMENTS FOR MARKET ACCESS**

- (21) As explained in Annex 6 on reasons for the proposed amendments to the EB Regulation, and, in particular, in Section 2 thereof, all the provisions related to the aggregation models and the imbalance settlement of Title II in the proposed DR NC are moved to the EB Regulation. Title V (Settlement), and in particular Chapter 4 (Imbalance settlement), of the EB Regulation already covers imbalance settlement. ACER considers that it is not beneficial the same topic to be covered,

under two different Regulations as this may lead to inconsistencies during the implementation of the respective provisions.

- (22) Additionally, as explained in Annex 6 on reasons for the proposed amendments to the EB Regulation, and, in particular, in Section 4 of it, Article 29 of the proposed DR NC related to the minimum bid granularity for standard balancing products is moved to the EB Regulation. Title II (Electricity balancing market), and in particular Chapter 2 (Europeans platforms for the exchange of balancing energy) of the EB Regulation already includes requirements for the standard balancing product bids.
- (23) Therefore, ACER recommends the removal of these provisions and their integration to the respective Regulations. Consequently, this Annex includes only the amendments to articles that they remain with the DR NC, as the justification of the amendments to the removed articles is included in Annex 6.

### **3.1 National terms and conditions for service providers**

- (24) Throughout the proposed DR NC, there are several provisions for service providers, related to qualification requirements included in Title III of the proposed DR NC, to requirements on the market-based procurement of local services included in Title IV of the proposed DR NC, and to requirements on data exchange included in Title VIII of the proposed DR NC. Article 45 of the proposed DR NC includes the requirements on the national terms and conditions for service providers, including some of the abovementioned provisions. ACER recommends introducing an article in the beginning of Title II of the proposed DR NC, which is related to general requirements for market access, to cover all the service providers' related provisions in the context of the national terms and conditions for service providers, including the ones covered by Article 45 of the proposed DR NC.
- (25) Moreover, ACER considers that the term “terms and conditions for service providers” should be understood as covering both the “terms and conditions for balancing service providers” pursuant to Article 18(1)(a) of the EB Regulation and the “terms and conditions for local service providers”, the latter being the terms and conditions for service providers of local services procured in accordance with a market-based mechanism. ACER considers that this approach may create some inefficiencies, since the provisions for balancing service providers are now split between the EB Regulation and the DR NC. ACER acknowledges that some of the provisions of the DR NC are applicable to both balancing service providers and local service providers, and cannot be duplicated in the two Regulations, since the aim of the DR NC is to increase the coordination between the system operators, with respect to the procurement of system service. Therefore, ACER recommends a certain level of separation of the provisions related to the balancing service providers between the EB Regulation and the DR NC, but notes that further amendments to the EB Regulation could lead to a more efficient separation.

### **3.2 Settlement volumes determination and framework for dedicated measurement devices**

- (26) Article 19 of the proposed DR NC includes provisions related to the quantification of the delivered service provided by aggregators. ACER considers that the scope of the article is broader, since it is covering the calculation of injections and withdrawals, hence affecting also the calculation of the activated volume – if the metered approach is selected – and imbalance adjustment in the context of the EB Regulation, apart from the provision and settlement of the volume for local services. ACER recommends amending the article to reflect this (Article 12 in the revised DR NC)

and to add the appropriate references to the EB Regulation, as explained in Annex 6 on reasons for the proposed amendments to the EB Regulation, and, in particular, in Section 2 of it.

- (27) ACER agrees with the national framework for the validation and quality of data from dedicated measurement devices included in Article 33A of the proposed DR NC. However, Article 33A of the proposed DR NC includes also provisions for a European framework for the development of a proposal by ENTSO-E and the EU DSO entity to specify technical requirements for dedicated measurement devices, including the communication requirements or suitable existing standards to ensure the appropriate dedicated measurement device data quality. Article 33A of the proposed DR NC does not include requirements for the approval of such a proposal. Moreover, ACER considers that the European communication requirements for data quality of the dedicated measurement devices are outside the scope of the DR NC. Therefore, ACER deleted the provisions related to the proposed European framework.
- (28) However, ACER considers that the standardisation and the European harmonisation of characteristics of the dedicated measurement devices related to the data exchange required, for the processes included in the DR NC, is important for enabling demand response participation in the wholesale markets. To this extent, ACER considers that the standardisation and the European harmonisation that is required to fulfil the aims of the DR NC will be achieved through the European processes for simplifying the prequalification process, pursuant to Article 21 of the revised DR NC, and for the market-based procurement of local services, pursuant to Article 32(6) of the revised DR NC.

### **3.3 National terms and conditions for baseline methods and validation of baseline**

- (29) Articles 13 and 14 of the proposed DR NC include the requirements for the baselining methods. ACER recommends the introduction of a national proposal regarding the processes for the definition, calculation and validation of the baselining methods, amendments to the structure of the articles, and the deletion of provisions that are covered by other processes. Additionally, ACER recommends the proposed publication of the European registry for the baselining methods to be published within two years after the entry into force of the DR NC.

## **4. TITLE III – QUALIFICATION REQUIREMENTS AND PROCESSES**

### **4.1 Requirements for service provider qualification, product verification and product prequalification**

- (30) Article 30x of the proposed DR NC includes an outline of the qualification processes that a service provider is required to go through, to access balancing and local service markets. ACER proposes to remove the article, as its content is repeated in the articles that follow.
- (31) Article 30 of the proposed DR NC includes the requirements for qualification of system providers to provide balancing or local services products. These requirements provide for a simplified qualification process, to be specified in national terms and conditions, when a service provider that is already qualified for a balancing or local services product, applies for qualification with respect to a different product. In the revised DR NC (Article 17 of the revised DR NC), ACER introduces an additional simplification, whereby service providers need to be qualified only once, to provide the same product to more than one procuring system operators.

- (32) Article 30A of the proposed DR NC includes requirements for controllable unit operators, platform operators and service providers. Regarding the requirement for these actors to have all infrastructure needed for their operations and to process all related data within the territory of the European Economic Area. ACER considers that this is a topic that goes beyond the DR NC and it should be addressed at a broader level and consistently in the EU legislative framework and therefore proposes to remove the requirements from the revised DR NC. Regarding the development by ENTSO-E and EU DSO Entity of an assessment tool to evaluate the risk profile of market actors referred to in this article, in relation to cybersecurity and the role envisaged for ACER in accordance with the proposed provisions, ACER considers that the proposed provisions are out of the scope of the DR NC and they go beyond ACER's tasks set in Regulation (EU) 2019/942. For these reasons, ACER proposes to remove this article from the revised DR NC.
- (33) Article 31 of the proposed DR NC includes criteria for applying the product prequalification and product verification processes. It sets product prequalification as the default process for standard balancing products and for balancing products activated automatically based on frequency and product verification as the default process for specific balancing products, congestion management and voltage control products. In addition, it sets out criteria under which a procuring system operator may choose to request a product prequalification instead of product verification. The revised DR NC foresees, in Article 18, a European harmonised product verification or product prequalification process for standard balancing energy products and a harmonised product prequalification process for standard balancing capacity products, pursuant to Articles 19, 20, 21 and 33 for Commission Regulation (EU) 2017/2195. Following discussions with NRAs, ACER recommends that the right to deviate from the default product verification process should be decided in the national terms and conditions. Regarding deviation criteria, ACER proposes to remove the criteria that introduce unnecessary barriers for new entrants, such as in the case of a service provider delivering a particular product for the first time. ACER further recommends that the duration of the product verification and product prequalification processes should be such to allow the switching of market participant engaged in aggregation to take place within the maximum time referred to for this process in Article 12(1) of Directive (EU) 2019/944.
- (34) Article 32 of the proposed DR NC proposes a list of criteria subject to which system operators may request a repetition of the product prequalification or product verification. These criteria include changes to the nominal or prequalified capacity, replacement, modernisation or significant updates of controllable units, changes in the type of resources used, changes in the control system, changes in product requirements, and repeated errors or low quality of the service provision. ACER does not agree with the proposed approach, as it may lead to an increased administrative burden, both for service providers and system operators, while having questionable benefits, especially in the case of repeated product verifications. ACER considers that service providers should be incentivised to achieve and maintain compliance with product requirements and a high quality of service provision, through effective monitoring and enforcement measures. For this reason, ACER recommends limiting the list of repetition criteria (Article 22 of the revised DR NC) to only include changes to the prequalified capacity and changes to the communication or control system. Following NRA comments and discussions, ACER proposes also changes to the capacity thresholds that trigger repetition of the product qualification, resulting in more reasonable requirements both for small and larger service providing units. Following discussions with NRAs, ACER also proposes that the right to request a repetition of the product qualification should be specified in the national terms and conditions.
- (35) Article 33 of the proposed DR NC includes processes, timelines and requirements for switching of controllable units between service providers. ACER proposes (Article 23 of the revised DR NC) that the whole process is completed within the shortest possible time specified at national level,

which shall not exceed the maximum time referred to in Article 12(1) of Directive (EU) 2019/944 for the switching of market participant engaged in aggregation.

- (36) Article 33.1 of the proposed DR NC describes a process and timelines for switching controllable units within the same service provider. ACER proposes to remove this article, as ACER considers that the provisions extend to unnecessary detail and that switching of controllable units between SPUs or SPGs under the control of the same service provider is already accommodated through the provisions that apply to product qualification, grid prequalification and their repetition.
- (37) Articles 34 to 38 of the proposed DR NC describe processes and requirements regarding the product prequalification and product verification of balancing and local service products. As a general remark, ACER considers that these articles specify processes to a level of detail not necessary for the DR NC and therefore proposes to condense and simplify the provisions significantly. Regarding the product verification process, ACER does not consider necessary that the DR NC specifies the product verification criteria, conditions and possible consequences in case of failure to fulfil these, to avoid unnecessary restriction of national processes (Article 19 of the revised DR NC). Regarding product prequalification (Article 20 of the revised DR NC), ACER proposes that simplified processes are specified at national level to ease the prequalification of SPUs and SPG that consist exclusively of small controllable units or controllable units identical to others that have been prequalified for the same product under any service provider. Following discussions with NRAs, ACER also proposes that the right of system operators to require an activation test in case of failure to meet verification criteria or during the product prequalification, should be specified in the national terms and conditions. Article 21 of the revised DR NC requires further simplification of the product prequalification processes, through a European process.
- (38) Article 46 of the proposed DR NC includes requirements on the table of equivalences. ACER's proposed revisions (Article 16 of the revised DR NC) aim at aligning these provisions with the aims of the Framework Guideline and in particular paragraph (54).

#### **4.2 Requirements for standardised data exchange**

- (39) Article 33B of the proposed DR NC includes requirements and a process for standardising data exchanges for interactions between parties having a role in balancing and local services markets, excluding operational real-time data exchange. ACER considers that, while the proposed process for ENTSO-E and EU DSO Entity, in cooperation with European Standards Defining Organisation, to define and maintain a list of European standards for data exchanges goes in the right direction, the minimum requirements included in the proposed DR NC for parties that need to apply these standards, do not achieve the desired results at national or European level. During its public consultation, ACER deleted these provisions. In the comments submitted by ENTSO-E, the TSOs proposed to have a clear requirement for the implementation of a single standard across Europe for the relevant data exchange for the interactions between TSOs and balancing service providers with regard to standard balancing products. ACER agrees with the proposal made by ENTSO-E, and, therefore, proposes the amendment of Article 25 of the EB Regulation, as explained in Annex 6 on the reasons for the proposed amendments to the EB Regulation. For local services, the DR NC requires the use of a single standard at national level for data exchanges related to settlement (Article 36 of the revised DR NC) and European harmonisation through the EU-wide methodology for market-based procurement of local services (Article 32 of the revised DR NC), allowing for European standardisation if there are standardised products. Finally, processes managed through the flexibility information system and other, non-settlement related, data exchanges for local services (excluding operational real-time data exchanges) should

implement standardised data exchange procedures at national level by 4 years entry into force of the DR NC (Articles 11 and 24 of the revised DR NC).

#### **4.3 Requirements for flexibility data management for qualification**

- (40) Articles 39 and 40 of the proposed DR NC include requirements for establishing a flexibility register system at national level, to ensure a single point of reference for data exchanges between system operators and service providers. ACER considers that establishing a single and common access point and standardised interfaces at national level, to standardise and streamline all processes related to service provider and product qualification, grid prequalification and switching and the related data exchanges, is of paramount importance for achieving the aims of the DR NC. ACER agrees with the proposal to not limit the architecture of the system, acknowledging also the need to accommodate for different systems already in place, and proposes a stepwise implementation process to be defined at national level, until achieving full interoperability (Article 24 of the revised DR NC). ACER proposes to assign responsibilities to operate and maintain modules of the flexibility information system to system operators, as default condition. In the AEWG advice, some NRAs raised concerns on the assignment of such responsibility to connecting system operators for modules of the flexibility information system managing controllable units. One NRA suggested that this requirement may be too burdensome for small system operators, while another NRA questioned whether this assignment is consistent with responsibilities assigned to transmission system operators to qualify reserve providing units, pursuant to the SO Regulation. Following these concerns, ACER proposes to amend the provisions to assign the responsibility for operating and maintaining all modules of the flexibility information system exclusively to procuring system operators, as default condition. In case of one centralised flexibility information system, the national terms and conditions shall specify the operator. Finally, ACER considers that portability requirements should apply to all modules of the flexibility information systems, regardless of the party that operates them (Article 25 of the revised DR NC).
- (41) Article 41 of the proposed DR NC sets out principles and requirements for operators of flexibility register platforms. ACER's revisions in this article (Article 26 of the revised DR NC) concern mainly structural improvements. ACER also proposes a requirement to make publicly available a non-confidential version of the flexibility information system, including data on service providers and qualified capacities per technology and product.
- (42) Article 45a of the proposed DR NC includes requirements for the national terms and conditions for the flexibility register. ACER updated the content of this article to reflect the revised DR NC provisions relating to the flexibility information system, removed optional requirements to specify procedures referring to the contractual relation between service provider and customer and integrated the revised content in Article 24.

### **5. TITLE IV – MARKET BASED PROCUREMENT FOR LOCAL SERVICES**

- (43) Article 47 of the proposed DR NC describes general principles for solving congestion and voltage issues through active power, including the procurement of the respective services. ACER considers that some of these provisions are repetition of the respective provisions of Article 13(3) of Regulation (EU) 2019/943 and Article 32 of Directive (EU) 2019/944, therefore recommends their deletion. Additionally, ACER considers that in order to fulfil the requirements of the DR FG and in particular paragraph (89), the principles for the regulatory assessment, on whether non market-based procurement of local services is possible, should be included in the DR NC. Therefore, ACER proposes to amend the abovementioned article, to describe the respective process, starting with the system operators' assessment, and setting the requirements for the NRA's decision.

Moreover, ACER proposes to introduce a new article (Article 30 in the revised DR NC) to further describe specific requirements for the NRA's process. Some NRAs raised concerns on the practicability of the assessment and derogation processes, noting that they can be burdensome, especially in cases for Member States with multiple DSOs, and ask for simplifying the processes and ensuring that the NRA drives the process. ACER understands that it may not be efficient to have a separate process for each system operator and proposes to clarify in the DR NC that the NRA may request that the assessment – and the subsequent derogation process – is performed by multiple system operators together covering several areas, even the whole Member State geographical area. Moreover, ACER proposes to explicitly mention in the DR NC that for cases where a DSO has been exempted from the respective obligation pursuant to Article 32(5) of the Electricity Directive – applicable only for DSOs serving less than 100 000 connected customers or small isolated systems – this DSO is also exempted from the obligation set in Article 29(1) of the revised DR NC. Moreover, ACER notes that pursuant to Article 8(4) of the revised DR NC, the Member State or the NRA has the right to assign tasks or obligations entrusted to system operators to one or more assigned parties, including a TSO or a DSO.

- (44) Article 51 of the proposed DR NC describes principles for the use of flexible connection agreements, to fulfil the requirements of paragraph (87) of the DR FG. ACER proposes (Article 31 of the revised DR NC) that the establishment of flexible connection agreements should not interfere with the assessment of the need and the cost-effectiveness of procuring local services, except in cases where these flexible connection agreements are established as a permanent solution, in accordance with Article 6a of Directive (EU) 2019/944. This allows for flexible connection agreements and procurement of local services to co-exist, so that system operators have access to both resources for efficiently addressing constraints in their system, until an efficient solution based on network expansion is in place. In this respect, the provisions require that flexible connection agreements that are dynamically activated by system operators based on changing forecasted system conditions, are coordinated efficiently with available relevant products for local services. They also ensure that balance responsible parties with flexible connection agreements are not subject to imbalances when the agreement is activated following an agreed latest activation time, similar to service provider BRPs not being subject to imbalances for activation of their bids by system operators to provide services. They include principles for calculating the imbalance adjustment and mitigating potential abuse by BRPs. In the AEWG advice, some NRAs raised concerns on these rules for calculating an imbalance adjustment for activation of a flexible connection agreement. The NRAs suggested that the decision and the conditions for calculating such imbalance adjustment should be established at national level. ACER elaborated further the relevant provisions to ensure clarity about the fact that Member States are free to apply flexible connection agreements that do not specify an agreed latest activation time or specify an agreed latest activation time that is not after the day-ahead gate closure time, in which cases the rules included in the DR NC regarding the calculation of an imbalance adjustment shall not apply. The revised provisions also ensure that system operators that activate flexible connection agreements are responsible for reconciling any open trade positions arising and that they also bear the associated costs, which are kept separate from balancing costs. Finally, transparent and non-discriminatory rules are established for system users with flexible connection agreements to access electricity and system operator services' markets.
- (45) Articles 48 to 57 of the proposed DR NC describe the requirements for the market-based procurement of local services through active power. In particular:
- (i) Article 48 describes the national terms and conditions for market design for local services through active power,

- (ii) Article 49 specifies the criteria for the procurement and pricing for market-based local services,
  - (iii) Article 50 includes the criteria for procuring by tender procedure,
  - (iv) Article 52 describes the provisions on the publication of information,
  - (v) Article 53 specifies the criteria for the coordination and interoperability between local and day-ahead, intraday, and balancing markets,
  - (vi) Article 54 includes the requirements for the procuring system operators,
  - (vii) Article 55 specifies the requirements for local market operators,
  - (viii) Article 56 describes the process for the appointment and oversight of local market operators, and
  - (ix) Article 57 includes the tasks of local market operators.
- (46) ACER considers that the structure of these articles is not helpful to the reader. Therefore, ACER proposes to restructure the articles, to start with the general requirements on the rules for the market-based procurement of local services, and then specify the respective requirement for each topic in the respective article. In particular, ACER proposes the following structure for the revised DR NC, taking also into consideration the amendments proposed by ACER in the next paragraphs:
- (i) Article 41 including the rules for the market-based procurement of local services,
  - (ii) Article 42 describing the requirements for the procuring system operators,
  - (iii) Article 43 specifying the provisions for the coordination and interoperability between local and day-ahead, intraday, and balancing markets,
  - (iv) Article 44 including the rules for the market-based procurement, pricing and settlement of local services,
  - (v) Article 45 specifying the data exchange related to settlement of local services, and
  - (vi) Article 46 describing the provisions on the publication of information.
- (47) Paragraph (98) of the DR FG requires the development of a European methodology for further harmonising certain aspects of the market-based procurement of congestion management services. The proposed DR NC does not include such a process. ACER proposes to include in Article 32 of the revised DR NC a paragraph describing the process for the development of this methodology and the elements it should further specify and harmonise.
- (48) The “local market operator” is not a term defined in the proposed DR NC. In Article 57(1) of the proposed DR NC, ENTSO-E and EU DSO entity propose that the system operators describe in the national terms and conditions for market design for local services the functional requirements of operators of local markets. Following also the discussion with the relevant stakeholders, ACER understands that there are no specific tasks for an operator of the market-based procurement of local services, but depending on the case – the type of the service, the set-up of the process and the needs of the respective procuring system operator – different tasks may be delegated to this

third-party operator. ACER also notes that pursuant to Articles 31(7), 32(1) and 40(1) of the Electricity Directive, the system operators are responsible for procuring the ancillary services they need. ACER acknowledges the necessity for providing the system operators with the possibility of delegating part of their tasks related to the market-based procurement of local services to a third-party if this is more efficient, as well as with providing the regulatory authority or the Member State with the possibility of assigning the responsibility for performing such tasks to a third-party. ACER considers that this necessity is covered by Article 8 of the revised DR NC, which includes the provisions for the delegation and assignment of tasks. Consequently, ACER concludes that it is sufficient to describe all the tasks related to the market-based procurement of local services as tasks of the procuring system operators (included in Article 33 of the revised DR NC). Moreover, in Article 56 of the proposed DR NC, ENTSO-E and the EU DSO entity describe two different options – one from each entity – for the process of the appointment and oversight of local market operators. Following the abovementioned reasoning, ACER considers that Article 8 of the revised DR NC provides full flexibility for the implementation of any set-up with respect to assigning responsibilities or delegating tasks to a third-party, describing the necessary process, ensuring the regulatory oversight, and providing the required transparency of the process. Therefore, ACER proposes to delete Article 56 of the proposed DR NC. Following the discussion with the NRAs, and concerns raised by stakeholders on safeguarding the neutrality of any party operating a market-based procurement process, ACER proposes to add a paragraph ensuring this in Article 33 of the revised DR NC on the requirements for procuring system operators.

- (49) Articles 27.a and 27.b of the proposed DR NC describe the general principles for the settlement of local services, and the settlement related data exchange, respectively. ACER considers that the content of these articles (amended and restructured) is better placed in the title related to the market-based procurement of local services, and, in particular, in the article related to the rules for the market-based procurement, pricing and settlement of local services (Article 35 of the revised DR NC), and in the article describing the data exchange related to settlement of local services (Article 36 of the revised DR NC). Therefore, ACER proposes to move these provisions to Articles 35 and 36 of the revised DR NC.
- (50) Article 58 of the proposed DR NC includes a process for ENTSO-E and EU DSO entity to define a common list of attributes standardised congestion management products or voltage control products based on active power. According to paragraphs (82) and (101) of the DR FG, the DR NC should include a common list of attributes for the congestion management and voltage control products, respectively. ACER understands that in order for the DR NC to comply with the DR FG, the process described in the proposed DR NC is not sufficient. Therefore, ACER recommends deleting the proposed by ENTSO-E and EU DSO entity process, and adding the required by the DR FG lists of attributes. ACER used as a basis for the lists the work done in the past by ENTSO-E and the European Associations representing DSOs in the context of the “Roadmap on the Evolution of the Regulatory Framework for Distributed Flexibility”.
- (51) Regarding the market-based procurement of voltage control services through reactive power, there is a separate title in the proposed DR NC, i.e. Title IX Voltage control. Article 81 of the proposed DR NC includes provisions related to identifying the need of reactive power, the relevant procurement of such services, the respective technical attributes, the related data exchange, and the monitoring of the implementation. In the AEWG advice, one NRA suggested that non-frequency ancillary services are not in the scope of the DR NC, and the provisions related to voltage control should be removed from the DR NC. ACER considers that the scope of the DR NC is defined in Article 59(1)(e) of the Electricity Regulation, which explicitly refers to Articles 31 and 40 of the Electricity Directive, with the tasks of both DSOs and TSOs including the market-based procurement of non-frequency ancillary services. Therefore, ACER considers that these

provisions should be included in the DR NC, in line with the requirements of the DR FG, as also proposed by the system operators. ACER considers that the general principles for the procurement of such services should not be different than the ones for the market-based procurement of congestion management and voltage control through active power as described in Title IV of the revised DR NC. Therefore, ACER recommends covering in Title IV of the revised DR NC the market-based procurement of voltage control through reactive power. ACER understands that although the general principles should not be differentiated, there are specificities that require different provisions. Therefore, ACER proposes to add specific requirements throughout the revised DR NC as follows:

- (i) in Article 30(3)(d) of the revised DR NC, the duration of the derogation period for the procurement of voltage control services with reactive power is not restricted by the two years, which is the maximum duration for the other services;
- (ii) Article 32(1) of the revised DR NC requires that the national rules for the market-based procurement of services specify which requirements in Articles 14(2), 18(6), 20(2) and 32(3), are applicable for the reactive power, based on the characteristics of these services;
- (iii) in Article 38(2) of the revised DR NC, additional attributes are listed for the product requirements for the voltage control products through reactive power; and
- (iv) Article 54(7) of the revised DR NC lists the data exchange, associated with the provision of voltage control services with use of reactive power.

## **6. TITLE V – OWNERSHIP OF ENERGY STORAGE FACILITIES BY SYSTEM OPERATORS**

- (52) Article 61 to 63 of the proposed DR NC describe the requirements for the system operators' owned storage facilities. Articles 36 and 54 of the Electricity Directive require, as a general rule, that system operators not own, develop, manage or operate energy storage facilities. However, they also foresee a process by way of derogation from this general rule. The proposed DR NC further specifies the different steps of a potential derogation process, including also provisions for a market-test process for identifying interest of third parties to provide the needed services, while foreseeing the possibility for shared ownership and operation between the system operator and a third party. In the AEWG advice, one NRA expressed concerns on the scope of the DR NC and in particular on whether the principles for regulating the ownership, development, management or operation of an energy storage facility by system operators should be part of the DR NC. ACER considers that the scope of the DR NC is defined in Article 59(1)(e) of the Electricity Regulation, which explicitly refers to Articles 36 and 54 of the Electricity Directive, including provisions on the ownership, development, management or operation of an energy storage facility by system operators. Therefore, ACER considers that these provisions should be included in the DR NC, in line with the requirements of the DR FG, as also proposed by the system operators.
- (53) ACER agrees in general with the approach described in the proposed DR NC, however it considers that parts of the process do not entirely belong in the storage ownership topic, but are broader than that. ACER considers that the storage ownership is linked to the market-based procurement of system operation services. Once a system operator identifies the need for certain system services, there are many options to choose from for satisfying this need. ACER considers that as a general rule, the market-based procurement of such services should be evaluated first – in line with the aims of the Electricity Regulation – hence the market-test for the provision of such services is not necessarily part of the system operators' owned storage derogation, but a more general step that

comes before the decision that a storage facility is needed. If, indeed, the market-based approach is not efficient, then the system operator should seek other solutions, and if the storage is a potential solution for the provision of the needed services, then the system operator should again investigate whether there are parties willing to build the storage facility and operate it, for providing the needed services to the system operator. Only if this approach also fails, the question on the derogation pursuant to Articles 36(2)(a) and 54(2)(a) of the Electricity Directive is raised.

- (54) ACER proposes to re-structure Article 61 to 63 of the proposed DR NC (Article 40 to 42 of the revised DR NC), to remove parts of the process that are broader than the storage derogation process, to avoid repetition of the Electricity Directive provisions, and amending in line with the following reasoning.
- (55) ACER considers that the energy storage services should be market-based and competitive. However, Member States may allow system operators to own and operate a storage facility following the NRA's approval. In this framework, ACER considers that it is important to include provisions as regards the tendering procedure of Articles 36(2)(a) and 54(2)(a) of the Electricity Directive to ensure that the process will be open and transparent in compliance also with section 2.5. of the DR FG. Such provisions include the requirement for the system operator to publicly consult on the tendering documents and to provide all the relevant information to the NRA in case of an unsuccessful tender, and for the NRA to publish its decision, when a derogation is granted or rejected. Additionally, ACER proposes to allow for the tender for sharing ownership, management and operation of a storage facility between the system operator and a third party.
- (56) In case of a shared ownership or operation case, ACER considers important to include the minimum elements to be included in the agreement that would govern this shared ownership or operation of the storage facility, such as the share of the costs, charges including the network ones, provisions related to the change of ownership control, avoid subsidies and preferential treatment clauses. Moreover, ACER also proposes to include the requirements for the third party with respect to the ownership and operation, in relation to the respective system operator and the other market participants.
- (57) Further, pursuant to Articles 36(3) and 54(4) of the Electricity Directive, the NRA should conduct a regular public consultation on the existing energy storage facilities to identify the availability or interest of any third party to undertake the energy storage facility operated by the system operator, in case a derogation has been granted. In Article 42 of the revised DR NC, ACER includes provisions on this public consultation process, including the costs that the system operator should provide to the NRA, and on the assessment of costs and benefits of phasing out system operators' ownership and operation of energy storage facilities, and on the timeline and process for this phasing out in case it is decided.

## **7. TITLE VI – DISTRIBUTION NETWORK DEVELOPMENT PLANS**

- (58) Articles 64 and 65 of the proposed DR NC include the provisions for the process and the content of the distribution network development plans (DNDPs), and for the local services in the DNDP, respectively. ACER broadly agrees with the proposal by ENTSO-E and EU DSO entity, but proposes some amendments as explained below.
- (59) ACER proposes to delete provisions that are merely repetition of the respective provisions of the Electricity Directive. Additionally, ACER following comments received from the NRAs proposes not to refer to a “distribution network planning methodology”, but, instead, to use the term

“distribution system planning framework” to ensure consistency with the current legal framework and to avoid misunderstandings. Regarding the scenario(s) used to identify network development needs, ACER considers that the wording in the proposed DR NC is vague. Therefore, ACER proposes to clarify the required coordination with the TSOs, by explicitly requiring the scenario(s) to be coordinated with the planning methodology and scenario building process for the national transmission system development plan, in line also with the requirements included in section 5.4 of the DR FG. Moreover, given some strong concerns raised by the NRAs on the 4-week deadline – which may be extended to 6 for the first submission – for requesting amendments on the consulted DNDP, especially for the NRAs with too many DSOs, ACER proposes to delete this deadline. Finally, in line with the requirement of paragraph (96) of the DR FG regarding the publication of information, ACER proposes to add a paragraph with the requirement for DSOs to publish the information on a central publication and communication platform at national level, if required.

- (60) Regarding the local services in the DNDP, ACER, generally, agrees with the elements included in Article 65(1) of the proposed DR NC. However, ACER considers that the assessment described in the context of the DNDP should be linked to the assessment foreseen for the market-based procurement of services pursuant to Article 29 of the revised DR NC. Therefore, ACER proposes to amend accordingly Article 65 of the proposed DR NC to include this link. Moreover, ACER proposes to remove additional optional elements that could be taken into account in the assessment, since this possibility is anyway provided to the system operators.
- (61) In the AEWG advice, one NRA expressed concerns on the scope of the DR NC and in particular on whether the principles for regulating aspects related to the distribution development network plans should be part of the DR NC. ACER considers that the scope of the DR NC is defined in Article 59(1)(e) of the Electricity Regulation, which explicitly refers to Article 32 of the Electricity Directive. This article includes provisions on the procurement of flexibility services, including congestion management, from providers of distributed generation, demand response or energy storage, to improve efficiencies in the operation and development of the distribution system and on the use of such resources in planning the development of the distribution system, as an alternative to system expansion. The article also sets out requirements for transparency of the distribution network development plan, in particular with regard to the medium and long-term flexibility services needed., and on the process for the DNDP. Therefore, ACER considers that the provisions included in Articles 43 and 44 of the revised DR NC should be included, in line with the requirements of the DR FG, as also proposed by the system operators.

## **8. TITLE VII – TSO-DSO COORDINATION AND DSO-DSO COORDINATION**

### **8.1 DSO observability area**

- (62) Article 71 of the proposed DR NC includes the requirements for the DSO observability area.
- (63) The concept of the DSO observability area deviates from the system operators’ coordination approach described in the DR FG. More specifically, section 4.3 of the DR FG requires the DR NC to provide principles for the establishment of a system operation coordination area for forecasting, detecting and solving congestion or voltage issues, on the basis of the forecasted issues, and not on the basis of the system operator. According to the DR FG, the concept of the system operation coordination area may be aligned with the observability area, but the focus is on the coordination between system operators for a given area which includes parts of the grid of all involved system operators.

- (64) ACER understands that the proper implementation of a system operation coordination area, in line with the requirements of the DR FG, would require extensive amendments both to the scope and to specific requirements of the SO Regulation. Hence, ACER understands that the approach of the proposed DR NC is one of minimum required amendments to the SO Regulation, which, however, does not ensure the level of the system operators' coordination, required for integrating efficiently the new resources and addressing the network issues anticipated due to the high penetration of renewables and the electrification of heating and mobility sectors.
- (65) Therefore, ACER proposes amendments to Article 71 of the proposed DR NC (Article 46 of the revised DR NC) to strengthen DSOs' responsibility with respect to the definition of the observability area, to structure the process for this definition, and enhance the cooperation with the impacted system operators in an inclusive and transparent manner.

## **8.2 Forecasting, detecting and solving physical congestion and voltage issues**

- (66) Article 72 of the proposed DR NC describes a framework for DSOs to develop their processes to analyse system operation and forecast and detect congestion and voltage issues in their systems. ACER, in general, agrees with the process and requirements included in this article, but considers that more clarity should be provided with respect to the analyses' timeframes. Therefore, ACER proposes to include a minimum set of timeframes to be established in national terms and conditions, and to allow for additional timeframes to be defined, following the assessment at the DSO observability area level. ACER considers important to require consistency with the operational security analysis timeframes applied by TSOs and coordination with the market timeframes. Regarding the time granularity, ACER proposes to set requirements for the analysis to be performed with a granularity of one hour or less, for the day-ahead, intraday and close to real-time timeframes.
- (67) Article 73 of the proposed DR NC describes the process each system operator needs to follow to solve congestion and voltage issues, once identified. ACER considers that, as explained in section 8.1 above, one of the objectives of this DR NC, in order to fulfil the aims of the Electricity Regulation for facilitating higher share of renewable resources, ensuring security of supply, and enabling market signals to be delivered, is the enhanced coordination and cooperation between system operators. Therefore, ACER proposes amendments to this article (Article 48 of the revised DR NC) requiring coordination with connecting and impacting system operators, and exchange of necessary information, when taking actions and to facilitate and enable the delivery of local services.

## **8.3 Grid prequalification and temporary limits**

- (68) Articles 74 to 76 of the proposed DR NC include provisions related to the grid prequalification and the DSO temporary limits. ACER broadly agrees with the process and requirements included in these articles but proposes specific amendments to further specify some aspects of the described processes.
- (69) In particular, Article 74 of the proposed DR NC includes the requirements for the short-term procedures to account for DSO temporary limits. For the communication of the temporary limits for balancing services, Article 74(3)(c) foresees that the deadline for this is at the latest before the times the bids are processed by the balancing processes. ACER considers that this is vague, both because the balancing processes are different for balancing energy and balancing capacity, but also because the "processing" of bids is not a defined term, nor it indicates a specific point in time. Following the discussion with the relevant stakeholders, ACER proposes (i) to separate between

balancing energy and balancing capacity, and (ii) to link the deadline for the procurement of balancing energy with the balancing energy gate closure time, and the one for balancing capacity to leave it for definition in the national framework, but to ensure that it is announced as part of the procurement process. Therefore, ACER proposes to amend the respective article (Article 50 of the revised DR NC) to specify further the deadline for the communication of the temporary limits in the balancing processes.

- (70) Article 75 of the proposed DR NC includes the requirements for the grid prequalification. ACER acknowledges that grid prequalification is crucial for the provision of the service, however, considers that it should not delay the product prequalification or verification process. Therefore, ACER proposes to include this requirement as a separate paragraph in Article 75 of the proposed DR NC (Article 49 of the revised DR NC). Moreover, ACER considers that the process for describing the grid prequalification process is not properly described, hence, in order to ensure compliance with the requirement of the DR FG and in particular its paragraph (42)(a), ACER proposes some amendments to the process and the analysis that is required. Additionally, ACER notes the strong coordination required between the grid prequalification process and the process for setting temporary limits. Therefore, ACER proposes to amend the respective article to reflect this.
- (71) Article 76 of the proposed DR NC includes reporting requirements for the grid prequalification and the temporary limits. Paragraph 2 describes a comparative analysis between the non-approved and conditionally approved grid prequalification requests, on one side, and the volumes not activated due to temporary limits, on the other, to be conducted every four years. Some NRAs raised concerns on the excessive reporting requirements set by the proposed DR NC. ACER considers that with the annual reporting requirements set separately for non-approved or conditionally approved grid prequalification requests (pursuant to Article 49(8) of the revised DR NC), and for volumes from applied temporary limits (pursuant to Article 37(6) of the revised DR NC), all the relevant information is available, hence the NRA has the possibility to ask on an ad hoc basis for an analysis, if it is deemed necessary. Therefore, ACER proposes the deletion of the foreseen analysis from Article 76 of the proposed DR NC.

#### **8.4 Ensuring consistency of trade positions**

- (72) Article 77 of the proposed DR NC includes requirements for a process to be defined at national level to ensure system balance in the presence of the activation of local services.
- (73) When the system operator activates a bid for the provision of a local service, depending on the timing of this activation and the respective national rules, an inconsistency may be created in the trade positions of the relevant balance responsible parties (one being the balance responsible party of the service providers who has been activated). The same inconsistency may be caused by the activation of flexible connection agreement, or any other action affecting market schedules. In this case, if this inconsistency is not addressed, it may lead to a power imbalance, which can only be solved through the activation of balancing energy.
- (74) In the requirements of Article 77 of the proposed DR NC, there is a clear requirement for addressing the inconsistency – in the proposed DR NC the inconsistency is wrongly named imbalance – as soon as possible, but there is also the alternative of defining a national method for doing so.
- (75) ACER considers that this is an important topic, since it may affect the balancing energy price (cross-border marginal price), as calculated from the European balancing platforms. In case this inconsistency is transferred to the balancing timeframe as a power imbalance, then the balancing

energy demand in the European balancing platforms may be increased, resulting also to higher cross-border marginal price, and affecting also the dimensioning of reserves, since it will be counted as balancing energy need.

- (76) Following the discussion with NRAs and system operators, ACER understands that currently there are different approaches among Member States for addressing this issue, and acknowledges that, to the extent that this is addressed in a “closed” national context – which was the case before the European platform for the exchange of balancing energy – the impact on the European level was minimal. However, after all TSOs join the European balancing platforms the implications of such an approach at European level is not predictable, and depending on them, a cost allocation issue may arise.
- (77) Therefore, ACER proposes to amend the respective article (Article 51 of the revised DR NC) to include a clear requirement for the system operator to ensure the consistency of the trade positions, either by performing an immediate activation on the opposite direction for every activation, or by netting several activations and performing an overall activation in the opposite direction before the TSO energy bid submission gate closure time. However, ACER agrees to provide the possibility for deviating from this rule at national level, if this is justified on cost-efficiency grounds; in this case, though additional transparency requirements are needed, and ACER considers that an analysis should be regularly performed at European level by ENTSO-E and EU DSO entity to assess the impact of the different approaches on the cross-border marginal price and the dimensioning of reserves. Therefore, ACER proposes to include the abovementioned provisions in Article 51 of the revised DR NC.

## **9. TITLE VIII - DATA EXCHANGE REQUIREMENTS FROM SERVICE PROVIDERS AND SYSTEM USERS**

- (78) Article 80, as reflected in the ENTSO-E and EU DSO Entity proposal for the DR NC, included requirements for data exchange between system users and system operators. Article 80(1) included requirements for demand facilities in the scope of the SO Regulation as significant grid users, to provide data to system operators in addition to existing requirements pursuant to Article 53 of the SO Regulation. As explained in Annex 7 on reasons for the proposed amendments to the SO Regulation, ACER considers beneficial, for systematic and structural purposes, that these additional requirements are moved to the SO Regulation and integrated into Article 53. Articles 80(2) and 80(3) included the right of DSOs and TSOs, subject to being allowed in the national terms and conditions, to require also data exchange from other system users in their DSO observability area and from system users that are not service providing units or service providing groups or resources providing services. As explained in the supporting document, the extended data exchange requirements would include system users below the significance level in scope of the SO Regulation and would enable more accurate forecasts in congested areas, as well as better forecasting of balancing needs. ACER considers that the proposed requirements are not in the scope of the DR NC and the DR FG and that provisions for enabling such data exchanges can be established at national level, if necessary, and therefore proposes to remove the relevant articles from the revised the DR NC.

## **10. DEROGATIONS**

- (79) Article 82 of the proposed DR NC includes the provisions for derogations and includes the requirements for which a derogation may be requested: the implementation of harmonised

aggregation models, pursuant to Article 19.0 of the proposed DR NC, and the validation of one baselining method in the register, pursuant to Article 25 of the proposed DR NC. ACER proposes to delete the first one, as all the content related to the aggregation models is moved in the EB Regulation, as explained in Annex 6 on reasons for the proposed amendments to the EB Regulation (although the possibility for this derogation is not provided there), as well as the second one, because this requirement is no longer included in the DR NC.

## **11. TITLE IX-REPORTING AND MONITORING**

- (80) Title X of the proposed DR NC includes provisions related both to Derogations and to Monitoring. ACER considers that these two topics are very different. Therefore, ACER recommends creating a separate title (Title IX in the revised DR NC) to only include the reporting and monitoring requirements.
- (81) Article 83 of the proposed DR NC includes the provision on the ACER monitoring report on specific areas of the DR NC, namely on aggregation models, on prequalification and verification processes, on the market-based procurement of congestion management services and of voltage control services. ACER agrees with the monitoring of these topics, but recommends a different process for that. ACER introduces in Article 55 of the revised DR NC a report on demand response to be performed by ENTSO-E and EU DSO entity every two years. Regarding the topics of this report, ACER proposes to include the market-based procurement of local services and the implementation of baselining methods. ACER proposes to move the reporting on the implementation of the aggregation models in the EB Regulation, and in particular in its Article 59(3)(i), where the assessment of the harmonisation of the main features of imbalance settlement is included, in line with the justification provided in Annex 6 on reasons for the proposed amendments to the EB Regulation, and, in particular, in Section 2 of it, regarding the move of all the provisions related to the aggregation models and the imbalance settlement to the EB Regulation.
- (82) ACER proposes that ENTSO-E and the EU DSO entity prepare a draft report before the final one, where ACER may request submissions, in line with the respective process described in Article 59 of the EB Regulation regarding the European report on the integration of balancing markets. Finally, ACER proposes that ENTSO-E and the EU DSO entity have access to the relevant data they need to perform the reporting tasks included in Article 55 of the revised DR NC.
- (83) In Article 56 of the revised DR NC, ACER proposes a process for monitoring the implementation of the DR NC in accordance with Article 32(1) of Regulation (EU) 2019/943, and proposes provisions related to the information ACER may need when performing these monitoring tasks.

## **12. TITLE X- TRANSITIONAL AND FINAL PROVISIONS**

- (84) Article 86 of the proposed DR NC includes provisions for the amendment of contracts and general terms and conditions, following the entry into force of the DR NC. ACER understands that there might be the need to amend clauses in contracts and in general terms and conditions, in order to comply with the requirements of the DR NC once it becomes effective. However, ACER considers that this is a general process applicable to other regulations as well, following their entry into force, and does not identify any specificity in the DR NC that would require a different treatment with respect to this issue. Therefore, ACER proposes to delete this article.