

## Value flexibility through markets - EPEX SPOT considerations for further improving the new European Network Code on Demand Response

### EPEX SPOT amendment proposals and comments of 31 October 2024 regarding the ACER proposal for a Network Code on Demand Response of 05 September 2024

#### Whereas 6:

##### EPEX SPOT comment:

The selection of a local market operator (LMO) significantly impacts the efficiency of local flexibility markets, thus affecting the development and activation of flexibility resources in these and other markets (wholesale) as a complement to wired-solutions as well as the benefits for end-consumers. Third party LMOs, such as power exchanges, ensure neutrality and transparency by being fully independent from all other procuring parties (system operators, flexibility service providers, etc.). Third party LMOs can offer technical expertise for the development of local flexibility markets, the design of products which are tailored to market participants' needs and the efficient and secure operation of these platforms in line with local requirements. Third party LMOs are experts in developing and running highly sophisticated trading systems, products and markets in a safe and secure manner. They also have appropriate market surveillance arrangements in place.

##### EPEX SPOT amendment proposal:

Local markets can help to address these challenges and ensure the efficient allocation of demand response and distributed energy resources. Service providers shall be allowed to offer flexibility towards DSOs and TSOs that need to efficiently manage congestion in the grid and ensure security of supply. A market-based approach ~~matches could efficiently match~~ supply and demand for flexibility **in the most efficient way**. Clear principles, relevant for the design of flexibility markets have already been set out in the Clean Energy Package. According to Directive (EU) 2019/944 end-users should have access to all organised markets and products, either directly or indirectly. A market could provide an accessible level-playing field that allows service providers to compete fairly to deliver flexibility, triggering the development of new solutions and enabling new entrants. A third party – other than the DSO or TSO who uses this service – may operate this market, following a delegation or assignment at national level.

#### Whereas 26:

##### EPEX SPOT comment:

We fully support the target of facilitating value stacking because this enables flexibility service providers to commercialise their flexibility assets and portfolios on all different market segments without any barriers.

However, the concept of market coordination to ensure non-double activation or when bid forwarding takes place, seems to be based on a misconception of the functioning of electricity markets. A bid is a buy or sell order with a price in EUR/MWh or EUR/MW submitted by any market participant to a trading system. The same bid cannot be activated twice, it can only be matched with one other compatible bid. Also, a bid cannot be forwarded to another market that has different product characteristics, requires a different membership, different collaterals, etc.

But what is meant here are presumably not bids, but volumes (capacity or energy). This is something that should be dealt with by market participants themselves (including system operators) and incentivised by «imbalance» settlement for different services.

As a solution, the EPEX SPOT localflex trading platform offers exactly this kind of TSO-DSO coordination mechanism to avoid double or conflicting flexibility activation, e.g. by identifying conflicting flexibility bids on the TSO and DSO side, and by coordination rules in the clearing engine. This coordination between TSOs and DSOs is important in order to optimize the limited pool of flexibility sources for the different needs at the various voltage levels.

In addition, the target that market participants deliver the flexibility according to activated bids and that market participants are balanced until delivery should be best achieved with strict penalty schemes and BRP rules. This does not require a blurry concept of market coordination.

EPEX SPOT amendment proposal:

This Regulation aims at facilitating value stacking through interoperable and coordinated solutions as well as enabling portability of products between markets. Value stacking can be employed by service providers to maximize the value of flexible units in their portfolio. Coordination is understood as the organisation of different markets to ensure market integrity and non-double activation for example when market participants place bids in several markets ~~or when forwarding of bids is realised.~~

Whereas 27:

EPEX SPOT comment:

The European intraday markets are organised in two forms: continuous intraday trading and intraday auctions.

EPEX SPOT amendment proposal:

(27) Market participants can trade their volumes in long-term, day-ahead, ~~or~~ intraday ~~or continuous~~ market process, pursuant to Commission Regulation (EU) 2015/1222 and Commission Regulation (EU) 2016/1719. Additionally, market participants may become service providers in balancing markets developed pursuant to Commission Regulation (EU) 2017/2195. This Regulation states principles applicable for the use of bids and for the coordination for those markets and the local markets.

Article 6.1(a)

EPEX SPOT comment:

SDAC and SIDC products shall not be subject of a proposal for common national terms & conditions by system operators. SDAC and SIDC products are regulated in the ACER decisions on day-ahead and intraday products, based on a proposal by NEMOs. In addition, that is also why the «forwarding» of bids would be highly complex to implement in each MS with different rules.

EPEX SPOT amendment proposal:

(a) for establishing the processes for the definition, calculation and validation of baseline methods for local services ~~and other wholesale energy products~~ pursuant to Article 22;

Article 16.1

EPEX SPOT comment:

The selection of a local market operator (LMO) significantly impacts the efficiency of local flexibility markets, thus affecting the development and activation of flexibility resources in these and other markets (wholesale) as a complement to wired-solutions as well as the benefits for end-consumers. Any local market operator shall fulfil a list of necessary requirements, in particular neutrality, operational experiences, highest market surveillance standards, etc. Neutral third parties, such as power exchanges, are the experts of operating markets in a safe, secure and transparent way. Third party LMOs can offer technical expertise for the development of local flexibility markets, the design of products which are tailored to market participants' needs and the efficient and secure operation of these platforms in line with local requirements. They also have appropriate market surveillance arrangements in place.

EPEX SPOT amendment proposal:

1. System operators may delegate all or part of any tasks with which it is entrusted under this Regulation to one or more third parties or system operators in case they can carry out the respective function at least as effectively as the delegating system operator. The delegating system operator shall remain responsible for ensuring compliance with the obligations under this Regulation, including ensuring access to information necessary for monitoring by the relevant regulatory authorities in accordance with Article 59(1b) of Directive (EU) 2019/944. **System operators may delegate the task of local market operation to a third party pursuant to the local market operator requirements of Art. 16.2 and through a transparent and non-discriminatory selection process.**

#### Article 16.2

EPEX SPOT comment:

While we agree with the concept that delegated parties need to prove their eligibility, some harmonised requirements shall apply in general and shall be included in the Network Code.

EPEX SPOT amendment proposal:

2. Prior to the delegation, the delegated party shall demonstrate to the delegating system operator its ability to meet the tasks to be delegated. **The requirements for local market operation shall include at least: (a) neutrality and transparency in case that several system operators, service providers or stakeholders are involved; (b) proven technical, personal, operational and organisational expertise and resources with regard to the operation of local markets; (c) appropriate market surveillance arrangements in place in compliance with Article 15 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency as amended by Regulation (EU) No 2024/1106 of 11 April 2024; and (d) adequate level of business separation in case of potential conflicts of interest.**

#### Article 16.4

EPEX SPOT comment:

The selection of a local market operator (LMO) significantly impacts the efficiency of local flexibility markets, thus affecting the development and activation of flexibility resources in these and other markets (wholesale) as a complement to wired-solutions as well as the benefits for end-consumers. Any local market operator shall fulfil a list of necessary requirements, in particular neutrality, operational experiences, highest market surveillance standards, etc. Neutral third parties, such as power exchanges, are the experts of operating markets in a safe, secure and transparent way. Third party LMOs can offer technical expertise for the development of local flexibility markets, the design of products which are tailored to market participants' needs

and the efficient and secure operation of these platforms in line with local requirements. They also have appropriate market surveillance arrangements in place.

EPEX SPOT amendment proposal:

4. Without prejudice to the tasks entrusted to system operators pursuant to Directive (EU) 2019/944, a Member State, or where applicable a relevant regulatory authority, may assign tasks or obligations entrusted to system operators under this Regulation to one or more assigned parties, including a TSO or a DSO. Prior to the assignment, the party concerned shall demonstrate to the Member State, or where applicable the relevant regulatory authority, its ability to meet the task to be assigned. **A Member State, or where applicable a relevant regulatory authority, may delegate the task of local market operation to a third party pursuant to the local market operation requirements of Art. 16.2. and through a transparent and non-discriminatory selection process.**

#### Article 19.1

EPEX SPOT comment:

References to balancing markets shall be dealt with in balancing guideline.

EPEX SPOT amendment proposal:

1. The national terms and conditions for service providers in this Regulation refer to ~~the national terms and conditions for balancing service providers when the requirements of this Regulation refer to balancing services and to~~ the national terms and conditions for service providers of local services when the requirements of this Regulation refer to local services procured in accordance with a market-based mechanism.

#### Article 19.3

EPEX SPOT comment:

References to balancing markets shall be dealt with in balancing guideline.

EPEX SPOT amendment proposal:

3. The national terms and conditions for service providers shall aim at simplifying the access to ~~balancing and~~ local services and avoiding duplications when prequalification processes are justified.

#### Article 38.3

EPEX SPOT comment:

If market-based flexibility procurement for congestion management is proven to be more efficient than any cost-based or regulated price setting method, it allows to select the least expensive flexibility sources matching the need of the procuring TSO(s) or DSO(s). This contributes to a better usage of public money and fosters the development of new flexibility resources through local price signals. This is particularly true in the case of complex usage profiles like demand response. A market is the most efficient way to match demand and supply. It reduces market entry barriers through standardization of products and processes while at the same time leaving sufficient room for adaptation to local constraints and specificities. Therefore, we strongly welcome the introduction of an assessment prior to granting a derogation.

EPEX SPOT amendment proposal:

3. Before granting or extending a derogation, the regulatory authority shall, at its own initiative or at request of at least one system operator, request the relevant system operator(s) to make an assessment on the market-based procurement of local services for parts or the whole transmission or distribution grid in at least the following cases:

- (a) the reasons for procuring the local services in accordance with a non-market-based mechanism, as concluded by the derogation approved by the regulatory authority in accordance with Article 39, are no longer applicable to parts or the whole transmission or distribution grid or to some technologies, resources or products;
- (b) demonstrated efficiency of a market-based concept from pilot or regulatory demonstrative projects; or
- (c) the non-market-based procurement of local services is inefficient or ineffective.

#### Article 39.4

EPEX SPOT comment:

If market-based flexibility procurement for congestion management is proven to be more efficient than any cost-based or regulated price setting method, it allows to select the least expensive flexibility sources matching the need of the procuring TSO(s) or DSO(s). This contributes to a better usage of public money and fosters the development of new flexibility resources through local price signals. This is particularly true in the case of complex usage profiles like demand response. A market is the most efficient way to match demand and supply. It reduces market entry barriers through standardization of products and processes while at the same time leaving sufficient room for adaptation to local constraints and specificities. Therefore, we strongly welcome the introduction of an expiration date for derogations from market-based flexibility procurement.

EPEX SPOT amendment proposal:

The derogation may be granted for a maximum period of two years.

#### Article 40.2

EPEX SPOT comment:

Add a new paragraph 40.2 (d).

EPEX SPOT amendment proposal:

**Art. 40.2 (d): system operators can activate the flexibility of flexible connection agreements on local flexibility markets to value it.**

#### Article 41.2 (f)

EPEX SPOT comment:

to be coherent with definition of market-based procurement in Art. 2.10 and to include also auction-based processes.

EPEX SPOT amendment proposal:

(f) guarantee protection of confidential data as well as transparency of the **tendering bidding** process ensuring that no service provider has access to preferential information over other service pursuant to Article 46.

### Article 41.3 (b)

EPEX SPOT comment:

System operators shall not develop unilaterally without formal involvement of NEMOs provisions on the coordination between operators of local flexibility markets and operators of SDAC and SIDC. What is suggested here would lead to 27 different provisions for each member state that NEMOs would have to consider. This creates unnecessary complexity. The target of interoperability between local flexibility and wholesale electricity markets shall be achieved instead through standardization, such as product compatibility, process improvement, and technical standards (such as the CIM), as well as through a sound organisation of BRP rules, like it is already the case for the existing wholesale market.

EPEX SPOT amendment proposal:

~~b) provisions on the coordination of the operators under (a) with operators of other markets, and the rule governing the interrelation— whether sequential, parallel, simultaneous or other— of the local markets and the day-ahead, intraday, and balancing markets pursuant to Article 43;~~

### Article 41.6

EPEX SPOT comment:

What is needed is a clear and efficient coordination between system operators according to defined rules and an efficient imbalance settlement scheme for different services/ markets.

EPEX SPOT amendment proposal:

6. By 3 years after entry into force of this Regulation, ENTSO-E and EU DSO entity shall develop a proposal for a Union-wide methodology for further specifying aspects of the market-based procurement of congestion management service in accordance with Article 10, including, but not limited to, the list of product attributes, the procurement methods, the coordination ~~between system operators with other markets~~, stakeholders' information and transparency.

### Article 42.6

EPEX SPOT comment:

From the paragraph it remains unclear for what purpose bids shall be forwarded and under which conditions. This scheme raises more questions than provides solutions, such as on roles, responsibilities, contractual relationships (e.g. membership with exchanges), cost structure (e.g. collaterals when relevant), and level playing field with other market participants. The Network Code should focus on facilitating revenue stacking and market access, not proposing a solution (bid forwarding) that has not been thought through. Giving „consent“ is clearly not enough of a condition to be able to „forward bids“. In addition, it is the clear role and task of aggregators to push volumes of flexibility assets to the different existing market segments, be it wholesale, balancing or local flexibility markets, in order to commercialise the flexibility assets in the optimal way according to their clients' needs. Forwarding of bids is not a role or task for system operators or local market operators.

EPEX SPOT amendment proposal:

1. Each procuring system operator shall coordinate with other procuring system operators in accordance with the rules for the market-based procurement of local services pursuant to Article 41. ~~Subject to the service provider's consent, the procuring system operator~~ Service providers shall ~~forward bids—combined or not—~~ be free to participate to other markets, while ensuring the necessary transparency and following the pricing mechanism and settlement principles pursuant to Article 44.

#### Article 43.1

EPEX SPOT comment:

For day-ahead and intraday markets, this cannot work in countries with portfolio bidding and also because there are no locational tags in single intraday and single day-ahead markets (SDAC and SIDC).

EPEX SPOT amendment proposal:

1. If bids offered in ~~day-ahead, intraday and~~ balancing markets are used for solving congestion issues or voltage issues, the rules for the market-based procurement of local services pursuant to Article 41 shall specify the process for this.

#### Article 43.2

EPEX SPOT comment:

From the paragraph it remains unclear for what purpose bids shall be forwarded and under which conditions. This scheme raises more questions than provides solutions, such as on roles, responsibilities, contractual relationships (e.g. membership with exchanges), cost structure (e.g. collaterals when relevant), and level playing field with other market participants. The Network Code should focus on facilitating revenue stacking, not proposing a solution (bid forwarding) that has not been thought through. Giving „consent“ is clearly not enough of a condition to be able to „forward bids“. In addition, it is the clear role and task of aggregators to push volumes of flexibility assets to the different existing market segments, be it wholesale, balancing or local flexibility markets, in order to commercialise the flexibility assets in the optimal way according to their clients' needs. Forwarding of bids is not a role or task for system operators or local market operators.

EPEX SPOT amendment proposal:

1. Each service provider shall be allowed to submit ~~the same bid~~ its flexibility capacity or flexibility energy ~~in several markets to all markets to foster value stacking, but this bid shall not be selected twice.~~ When a bid has not been selected in a market, or the service for which the bid was selected is no longer needed, the service provider shall be allowed to submit ~~this bid~~ its flexibility capacity or flexibility energy to another market. Each service provider shall be allowed to register a controllable unit in different SPGs for different services. ~~Coordination and activation rules between system operators shall avoid the activation of conflicting bids on the TSO and DSO side., following the requirements to ensure that there is no double activation of this controllable unit for the same imbalance settlement period.~~ National BRP rules incentivise market participants to be balanced before the gate closure time.

#### Article 44.3 (d)

EPEX SPOT comment:

For day-ahead and intraday markets, this cannot work in countries with portfolio bidding and also because there are no locational tags in single intraday and single day-ahead markets (SDAC and SIDC).

EPEX SPOT amendment proposal:

(d) deviation from general price mechanisms in long-term, day-ahead, intraday or balancing markets ~~when procured in those markets~~.

#### Article 46.4

EPEX SPOT comment:

The correct term here is price, not cost.

EPEX SPOT amendment proposal:

4. Following market results of local services, system operators shall publish no later than one day after the service is procured at least the aggregated, and anonymised, if required pursuant to paragraph 5, information on offered and selected bids for local services, such as volume per direction and time period and the resulting ~~price cost~~.

#### Article 48.1

EPEX SPOT comment:

Unclear how a product from day-ahead or intraday can be used for congestion management. The intraday and day-ahead product methodologies have been proposed by All NEMOs and approved by All NRAs. At least, an explicit reference to such products is neither required nor helpful.

EPEX SPOT amendment proposal:

1. The national terms and conditions for service providers shall include a list of congestion management and voltage control products. If ~~products from day-ahead or intraday markets or~~ balancing products are used for congestion management or voltage control, they shall be included in the list of products.