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Directorate C - Green Transition and Energy System Integration
The Director

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ACER
Christian Zinglensen
Director
Trg republike 3
1000 Ljubljana
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Subject: Invitation to submit framework guidelines for the development of a network code based on Art. 59(1)(e) of the Electricity Market Regulation

Dear Mr Zinglensen,

The 2019 Electricity Regulation¹ (hereinafter called “Regulation”) lays down provisions for establishing a network code on demand response, including rules on aggregation, energy storage and demand curtailment.

Article 59(1) of the Regulation empowers the Commission to adopt implementing acts in order to ensure uniform conditions for the implementation of the Regulation by establishing network codes in several areas. More specifically, Article 59(1), point (e) of the Regulation empowers the Commission to establish a network code with rules implementing Article 57 of the Regulation and Articles 17, 31, 32, 36, 40 and 54 of the 2019 Electricity Directive² (hereinafter called “Directive”) in relation to demand response, including rules on aggregation, energy storage and demand curtailment.

The Commission Implementing Decision (EU) 2020/1479³ establishes a priority list for the development of network codes and guidelines for electricity for the period from 2020 to 2023. Article 1 of this Decision includes the development of harmonised electricity rules regarding demand side flexibility, including rules on aggregation, energy storage and demand curtailment rules in the priority list.

In its recent Communication “Short-Term Energy Market Interventions and Long Term Improvements to the Electricity Market Design – a course for action” adopted on 18 May 2022

¹ Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity, OJ L 158, 14.6.2019, p. 54.

² Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity, OJ L 158, 14.6.2019, p. 125.

³ Commission Implementing Decision (EU) 2020/1479 of 14 October 2020 establishing priority lists for the development of network codes and guidelines for electricity for the period from 2020 to 2023 and for gas in 2020.

the Commission reiterated its intentions to accelerate the development and adoption of a new network code dedicated to demand response.⁴

According to the procedure laid down in Article 59 of the Regulation and, in particular, Article 59(4), the Commission shall request ACER to submit non-binding framework guidelines setting out clear and objective principles for the development of a network code.

I hereby invite ACER to submit non-binding framework guidelines setting out clear and objective principles for the development of a network code on demand response, including rules on aggregation, energy storage and demand curtailment within six months from the date of receipt of this letter.

In accordance with the Regulation, the framework guidelines should set out principles which (i) are clear and objective for the development of the network code and which (ii) contribute to market integration, non-discrimination, effective competition, and the efficient functioning of the market.

Between September 2021 and January 2022, at the request of the Commission, ACER also carried out a scoping exercise, including a stakeholder workshop. You submitted the results to the Commission by letter of 1 February 2022. I very much appreciate the work done by ACER during this exercise. I believe that the framework guidelines should be built on the results of the exercise as detailed in your letter of 1 February 2022, without excluding that further issues may come up during this process.

In particular, the framework guidelines should take into account the principles set out in the Annex to this letter.

To ensure coherence with the regulatory framework set out in the existing network codes and guidelines, the framework guidelines should clearly stipulate if issues identified concern provisions of existing network codes and guidelines and if yes, specify the respective provisions.

For the sake of an efficient and transparent process, I invite you to share this letter with all relevant stakeholders together with your letter of 1 February 2022 summarizing the results of the scoping exercise.

Yours sincerely,

Catharina Sikow-Magny

⁴ Section 4(b) of the *Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions - Short-Term Energy Market Interventions and Long Term Improvements to the Electricity Market Design – a course for action*; available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0236&from=EN>

ANNEX – Guiding principles and elements that the framework guideline shall reflect

1. Guiding principles

- A future European framework for demand response, including rules on aggregation, energy storage and demand curtailment should ensure that no undue regulatory barriers hamper their participation in any of the existing electricity markets.
- Also, it should enable their participation in market-based procurement of services needed by the system operators, where applicable.

2. Elements to be covered

A European framework based on Art. 59(1), point (e) of the Regulation should be technology neutral and non-discriminatory. Article 59(1), point (e) of the Regulation explicitly mentions demand response and storage but does not mention (distributed) generation. Nevertheless, Article 32(1) of the Electricity Directive, to which Article 59(1), point (e) refers, includes distributed generation and provides that “[...] *the regulatory framework shall ensure that distribution system operators are able to procure such services from providers of distributed generation, demand response or energy storage [...]*”. I consider that the European framework should thus cover load, storage (in particular when combined with load), and distributed generation, aggregated or not.

In general, products and services to system operators shall be defined taking into account their specific needs.

Moreover, based on the results of ACER’s scoping exercise, I consider that the framework guidelines should, in particular, address regulatory barriers related to the following products, services and markets:

- Electricity balancing markets, including frequency containment reserves.
- Congestion management by DSOs and TSOs.
- Voltage control.

In addition, the framework guidelines should encompass, but not be limited to, the issues listed hereunder. This would also facilitate access to other wholesale electricity markets:

- Cooperation of TSOs and DSOs.
- Data exchange, including data exchange between system operators as well as data exchange between system operators and providers.

On this particular matter, Article 24 of the Directive empowers the Commission to adopt, by means of implementing acts, interoperability requirements and non-discriminatory and transparent procedures for access to data referred to in Article 23(1) of the Directive, including data required for demand response and other services. Expert Group 1 of the Commission’s Smart Grids Task Force (SGTF) is supporting the Commission in preparing the ground for developing these implementing acts on the basis of Article 24. A new work stream has recently been launched in this expert group for framing an advice to the

Commission regarding the development of an implementing act on data required for demand response. When developing the framework guidelines, ACER should consider the interlinkages with this work.

- Value stacking and interaction between the markets.
- Prequalification processes.
- Baseline methodology, measurement and validation.
- Aggregation.
- TSO/DSO-owned storage.