

Legislative proposal for a Regulation to improve the
Union's electricity market design

ENTSO-E assessment - trilogues

26 October 2023

ENTSO-E welcomes the work of the European Parliament (EP) and of the Council of recent months which aims to improve the European Commission's legislative proposals on Electricity Market Design reform, as well as on the revision of REMIT, presented on 14 March 2023. While the priorities and objectives of the European Commission (EC) were generally aligned with the ones of our *Vision of a Power System for a Carbon Neutral Europe*, we welcome many of the text changes introduced by either the EP, the Council or both, as they largely reflect [ENTSO-E's position](#) on the Market Design Reform.

As interinstitutional negotiations (“trilogues”) have started, we would like to share our technical expertise in assessing some of the outstanding issues, with the objective to facilitate a swift and constructive EU level agreement which will pave the way for designing electricity markets fit for the energy transition. Moreover, we would like to highlight a few critical aspects that, if left unaddressed in the text, may have detrimental effects for the functioning of the electricity market.

In this document, we focus in particular on the most relevant issues from the TSOs' perspective which would facilitate the decarbonisation of the European power system.

- While we fully support the concept of **Assessments of Flexibility Needs**, we note a number of outstanding issues that require careful attention during the trilogues. According to the shared view of the co-legislators expressed in art. 19d, the assessments of the flexibility needs will allow Member States to define indicative national objectives for flexibility resources and to reflect them in National Energy and Climate Plans. In this regard, to ensure **a timely implementation** of the Regulation and a **consistent definition of national targets**, these assessments should **align with existing and interrelated system studies and be based on the same input scenarios** while building on current expertise and appropriate governance both at European and national level. In fact, the assessment of system flexibility and adequacy are inherently linked. Assessing one without considering the other may lead to an incorrect (over)estimation of needs and requirements to the detriment of consumers. To ensure this coherence, **the responsibility for the assessments of Flexibility Needs should be aligned with the existing responsibilities for Adequacy Assessments**.

As such:

- **Assigning the responsibility for the development of national reports** on flexibility needs **should be left to the Member States**, so that the most competent bodies will be appointed, **as recognised in the Council proposal**.
- We also support the concept of a pan-EU assessment (as introduced in the EP's proposal);
- However, we believe that the **responsibility for the drafting of any pan-EU assessment should be assigned to ENTSO-E** to exploit synergies and ensure consistency with existing and interrelated Pan-EU adequacy studies (ERAA), which already take into account and incorporate policy targets and are built on a technology-neutral approach. Such pan-EU assessment should provide insights on the **effects of cross-border interactions**, to be used as non-binding reference to progressively refine the periodic national assessments.
- In addition, **the specifications on how to develop a pan-EU flexibility assessment should be addressed outside the EMDR**, in order to properly define the complex and not yet existing methodologies that such a study would entail and approaches to ensure that all national specificities and needs arising from national studies are duly taken into account. For this reason, we call for the EP to align with the Council's text on this point.

Lastly, we highlight the need for **longer and more realistic deadlines** for developing the European methodology of such a complex and novel type of assessments.

- For what concerns the **use of congestion income (Art. 19)**, we support the amendments introduced by both the EP and Council aimed at clarifying the scope of application of compensations to offshore generators in offshore bidding zones connected via hybrid projects. In fact, an unclear or unrestricted application of such compensation would result in a discriminatory and inefficient use of congestion income, ultimately affecting consumers tariffs and network investments. To ensure

clarity on the scope of application, **we welcome the inclusion of the references to current capacity calculation rules of Art. 16(8) of Regulation 2019/943; however, we call for the Council to align with the EP text by including in Art. 19(2)(c) also references to Regulation 2019/943 Art. 16(3) and 16(9)**, as they are an integral part of the whole approach. We also fully support the remaining EP text of paragraph 2(c) which clarifies how to calculate the total compensation on an annual basis and for each market time period.

- We welcome the EP and Council inclusion of very valuable design principles for **2-way Contract for Differences (CfDs)**, aiming in particular at ensuring efficient participation and dispatch incentives for generators in day-ahead, intraday and balancing markets, so to minimise costs to operate the power system. With respect to the principles for the distribution of revenues (Art. 19b(3)(a)) from CfDs, a “one size fits all” solution (e.g. proportionally to each kWh consumed) imposed by regulation would be inefficient as the structure of retail markets can be very different among the Member States. Different solutions that keep incentives for final customers to adapt their consumption according to electricity prices and to unlock their flexibility should remain possible. As such, **we call for the EP to align with the Council text on this point.**
- We welcome the important changes introduced by both the EP and the Council which acknowledge the need to review the framework of **Capacity Mechanisms (CMs)** to ensure adequacy by: a) deleting provisions considering CMs as last resort market design measure (Recital 40a and Art. 21(1)); and b) requesting the EC to quickly assess possibilities of streamlining and simplifying the process of applying a CM, to be followed by concrete proposals (Art. 69(4)). Furthermore, **we fully support the EP proposal requesting the EC to assess the implications of introducing CMs as a structural element of the electricity market (Art.69(5))**. Lastly, we call for the EP to align with the Council text in deleting the “temporary” nature of Capacity Mechanisms in Art. 21(7) and 22(1)(a).
- As per design improvements to **Forward Markets (Art. 9)**, **we fully support the approach of the EP** which replaces the mandatory introduction of Regional Virtual Hubs (RVH) with a step-wise process prior to any legislative change, to be introduced via the existing Forward Capacity Allocation (FCA) Guideline. Such approach includes both an assessment of practical solutions addressing market participants’ hedging needs, and an assessment of the implications of Regional Virtual Hubs (RVHs) complemented by an extensive consultation prior to any implementation decision. To avoid pre-empting the outcome of such key assessments and consultation, **the final text should not explicitly indicate** (as currently defined in the Council proposal) **that RVHs are the ultimate target model for forward markets**. Moreover, to avoid inconsistencies with the current legislative framework set in the FCA Guideline, the **regulation should not introduce deadlines for the allocation of longer maturities (up to at least 3 years ahead) of transmission rights**. The implementation of specific products should be defined via the FCA guideline respecting due processes and realistic timelines. **As such, we call for the Council text to align with EP proposal on this point.** Lastly, the Council text should also align with the EP in leaving the possibility of alternative hedging instruments for market parties and not exclusively Long-Term Transmission Rights issued by TSOs.
- We welcome further improvements to Article 18 on **Tariff Methodologies** for Transmission System Operators and Distribution System Operators, in particular a) the reinforced reference to anticipatory network investments and to investment incentives; and b) not strictly mandating performance targets, but leaving their introduction to national regulators, depending on specificities of national regulatory regimes and on policy priorities. However, **we consider the EP text on anticipatory investments too restrictive vis-à-vis future needs and use cases:** as such, it should be simplified **and aligned with the Council text.**
- With regards to the **Intraday Cross-Zonal Gate Closure time (Art. 8)**, we support the more proportionate requirements introduced by both the EP and the Council, namely the possibility for TSOs to apply for derogations up until 2032 (based on the Council proposal) in case an impact assessment concluded that a premature shortening to 30’ ahead of real time would have negative effects on system security or CO2 emissions. However, TSOs still would like to highlight that a

flexible derogation deadline dependant on the results of the impact assessments would be a better solution for ensuring system security is not put at risk.

- With regards to **Intraday Trading**, it should be noted that in some bidding zones trading is still possible within the bidding zone after the cross-zonal intraday gate closure. While we understand the initial EC intention to facilitate the sharing of liquidity also after cross-zonal gate closure time, **we believe the current wording proposals of the European Parliament and the Council for Art. 7(2) need to be clarified**. In fact, they may be interpreted in a way that this local trading is not allowed anymore.
- With regards to **information requirements on capacity available for new connections** Art. 50(4a), while we agree on the importance of providing up to date and accurate information to project developers, we believe the proposal from the Parliament includes disproportionate and burdensome requirements such as the 1 month frequency publication. Against this background **we call for the EP to align with the Council position on this point**.
- For what concerns the **Peak Shaving Product** (Art. 7a), the Council text raises some concerns about the potential market impacts and distortions. Contrary to the initial EC position, the Council text allows activation of the peak shaving product “before or within the Day Ahead Market (DAM) timeframe”, which would be ineffective and significantly distort the DAM. Providers of the peak shaving product would be incentivized to bid in the DAM, leading to higher demand and higher prices, to be activated afterwards. In this respect **we call on the Council to align with the EP and original EC formulation** “after the closure of the DAM and before the start of the balancing market”. Moreover, it is also proposed that not only TSOs, but also DSOs can purchase this product. Since the main purpose of the product is to lower demand and prices (especially in times of crises) it would be more appropriate to limit its procurement and activation by TSOs to ensure its alignment with overall system needs and not fragmented local specificities.
- With regards to the possibility of introducing **flexibility support schemes** (Art.19e), we support the Council's formulation which allows their introduction in parallel with CMs. A clear hierarchy, as in the EC and EP proposal, regarding the introduction of CMs and flexibility support schemes may not be suitable, considering the different primary purpose of the two tools (ensuring adequacy the former, supporting flexibility the latter). For this reason, **we call for the EP to align with the Council on this point**.
- Both the Council and EP have supported the Commission's proposal for TSOs to access data from **Dedicated Metering Devices** for observability and settlement of flexibility services. However, we welcome the EP additional improvements including links to relevant EU legislation. As **data from these devices** is complementary to data from smart meters, it **should also be accessible to final consumers and market parties**: this will help unlocking flexibility and competition for services behind the meter. We **call on the Council to align with the Parliament** on these improvements.
- While we acknowledge the proposal by the European Parliament on **Flexible Connection Agreements** (new Art. 18(8a)) as a possible tool to accelerate connection to the grid and to optimise grid investments, their proposal by grid operators should be an option (“may”) and not an obligation (“shall”). **Specifications for flexible connection agreements, including their temporary or permanent nature, should be defined by Member States** in order to account for national specificities, while ensuring compliance with the relevant network codes. The current definition of flexible connection agreements, especially provisions regarding the probability of curtailment and duration of agreement are likely to cause unintended consequences, as important modalities (concerning i.a. the risk of delays in grid development) are not covered. As such, should flexible connection agreements be mandated throughout the Union, this should be done by following the appropriate process of updating the relevant network codes.