

## Flexibility and Power Markets – The next stage of flexibility integration and enhanced security of supply

### EPEX SPOT considerations for further improving the new European Network Code on Demand Response

EPEX SPOT amendment proposals and comments of 12 September 2025 regarding the ACER proposal for a Network Code on Demand Response of 7 March 2025

#### Whereas 6:

##### **EPEX SPOT comment:**

We support a clear and strong promotion of market-based flexibility procurement of congestion management services by system operators over cost-based or regulated price setting approaches. We generally agree with the ACER proposal of 07 March 2025 that the local flexibility market operation becomes a system operator responsibility by default and that this responsibility can be delegated by the system operator or a member state to a third party. However, it is of utmost importance to introduce a certain set of European-wide harmonized minimum requirements for the local market operation to ensure a neutral, secure and robust functioning of local flexibility markets, and a smooth European wide participation of multinational flexibility providers.

##### **EPEX SPOT amendment proposal:**

The market-based procurement of local services 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 congestion management and voltage control / SO services to DSOs and TSOs that need to efficiently manage congestion in the system and ensure security of supply. A market-based approach ~~matches~~ **could efficiently match** supply and demand for SO services **in the most efficient way**. Clear principles, relevant for the design of local markets for SO services 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 these SO services, 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. **Products should be harmonized at a European level at least on their definition criteria to allow a smooth participation of multinational flexibility Service Providers.**

#### Whereas 22:

##### **EPEX SPOT comment:**

Flexible connection agreements should not have a lock-in effect for flexibilities that are then not available anymore to be commercialized on local flexibility markets.

##### **EPEX SPOT amendment proposal:**

[...] In areas where network development is deemed not to be the most efficient solution and, as a result, flexible connection agreements are enabled as a permanent solution, system operators shall ~~not~~ be required to assess the procurement of local services for addressing the associated network constraints indefinitely **because it can be more cost effective**. [...]"

### **Whereas 23**

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 24**

EPEX SPOT comment:

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

### **EPEX SPOT amendment proposal:**

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 of those markets with the local markets.

#### **Article 5.5 (a)**

##### **EPEX SPOT comment:**

What shall be approved by the competent authority is the baselining method, whatever the marketing of the product on a local market or a wholesale market.

##### **EPEX SPOT amendment proposal:**

5.5 (a) for establishing the processes for the definition, calculation and validation of baselining methods for ~~local services and other wholesale~~ energy products pursuant to Article 14;

#### **Article 8**

##### **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 fulfill 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. 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:**

##### **Add new Art. 8.6:**

~~System operators, 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 operator requirements of Art. 16.2 and through a transparent and non-discriminatory selection process. 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

### **Article 11.1 and Art. 11.3**

#### **EPEX SPOT comment:**

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

#### **EPEX SPOT amendment proposal:**

Article 11.1: The national terms and conditions for service providers in this Regulation refer to ~~the national terms and conditions for balancing service providers, pursuant to Article 18(1)(a) of the Commission Regulation (EU) 2017/2195, 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 11.3: 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 14.2 (a)**

#### **EPEX SPOT comment:**

The market participants providing balancing, local services and participating in other wholesale markets should be renamed referring to the need to have baselining methods to check their energy provision rather with a reference to the market to which they participate. The current wholesale and balancing markets already contain provisions regarding the verification of availability of BRPs. The NC DR should focus on flexibility providers who are out of scope of current regulation and clearly define them to avoid a blurry situation where several conflicting regulations apply.

#### **EPEX SPOT amendment proposal:**

Article 14.2: The terms and conditions pursuant to paragraph 1 shall include at least the following:  
(a): the roles and responsibilities of the ~~flexibility service providers -market participants providing balancing, local services and participating in other wholesale markets~~, regarding the development and implementation of baselining methods, including the process through which stakeholders having a role or justified interest in ~~providing flexibility services -in market-based balancing or local services or other wholesale markets~~ may propose baselining methods;

### **Article 30.5**

#### **EPEX SPOT comment:**

Existing derogations from market-based flexibility procurement: According to Article 59(1)(b) of the Electricity Regulation, the Network Code Demand Response shall ensure uniform conditions for the implementation of Article 13 of the Regulation and therefore provide legal clarity on what happens to existing derogations that were approved before the entry into force of this regulation. To ensure that already existing derogations are compliant with the provisions of Art. 29 and Art. 30 of the Network Code Demand Response, the regulatory

authority shall have the right to revoke a decision granting a derogation if the circumstances and underlying reasons no longer apply. We suggest that the NRA reviews existing derogations at least 6 months after entry into force of the Network Code and revokes them in case the circumstances and underlying reasons according to Art. 29 and Art. 30 of the Network Code no longer apply. Those conditions should be reassessed every two years.

**EPEX SPOT amendment proposal:**

Add a new Art. 30.5: *Within 6 months after the entry into force of this regulation, the regulatory authority shall assess whether existing derogations, granted before the entry into force of this Regulation, still fulfill the criteria laid out in Article 29 and 30 of this Regulation, as well as in Art. 13(3) of Regulation (EU) 2019/943 and Articles 31(7), 32(1), and 40(5) of Directive (EU) 2019/944, and revoke them if the said criteria and underlying reasons no longer apply. The conformity of the said derogations with those criteria should be reassessed every two years thereafter.*

**Article 31.2 (d)**

**EPEX SPOT comment:**

Add a new paragraph 31.2 (d)

**EPEX SPOT amendment proposal:**

*Art. 31.2 (d): system operators can activate the flexibility of flexible connection agreements on local flexibility markets to value it.*

**Article 32.2 (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 rules governing the interrelation—whether sequential, parallel, simultaneous or other—of the market-based procurement of local services with the day-ahead, intraday, and balancing markets pursuant to Article 34, where applicable;*~~

**Article 32.6**

**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:**

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 to further specify and harmonise at least the following elements of the market-based procurement of congestion management service:

- (a) the coordination ~~between system operators with other markets pursuant to Article 34;~~
- (b) the procurement methods and the calculation of the activated volume, including requirements for data from dedicated measurement devices, pursuant to Article 35;
- (c) stakeholders information and transparency pursuant to Article 37; and
- (d) the list of product attributes, including the relevant data exchange standards, pursuant to Article 38.

#### **Article 33.6**

##### **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 commercialize 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:**

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 32. ~~Subject to the service provider's consent, the procuring system operator, on behalf of the relevant service provider, Service providers may forward bids for local services for active power shall be free to participate to other markets, or otherwise make these bids available to other markets,~~ as specified in the rules for the market-based procurement of local services pursuant to Article 32, while ensuring the necessary transparency and following the pricing mechanism and settlement principles pursuant to Article 35.

#### **Article 34.1**

##### **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 physical congestion or voltage issues, the rules for the market-based procurement of local services pursuant to Article 32 shall consistently describe the coordination between the involved parties, ensuring that they do not over-ride, nor compromise the rules to participate in and applicable to other wholesale markets.

### **Article 34.2**

#### **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.

Regarding the responsibility to ensure that the "bids" are not selected twice: It would be clearer to write that System Operators in a bidding zone shall design balancing and local flexibility rules such that service providers are incentivized to fulfill their balancing and flexibility offers.

#### **EPEX SPOT amendment proposal:**

Each service provider shall be allowed to submit the same bid in several markets **for the same controllable unit, provided those markets are unit-based**, but this bid shall not be selected twice for the same market time unit **for the same service**. 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 to another market. Each service provider shall be allowed to register a controllable unit in different SPGs for different services, following the requirements to ensure that there is no double activation of the same volume from the same controllable unit for the same ~~imbalance settlement period market time unit~~.

### **Article 34.3**

#### **EPEX SPOT comment:**

It is not sufficient that only the service provider gives his consent for a bid to be forwarded. Consent is also needed from the market operator.

#### **EPEX SPOT amendment proposal:**

Each service provider may offer its services in another market either itself or through an intermediary or a procuring system operator that forwards the bids, on behalf of this service provider, provided that the concerned service provider **and the market operators have given their consent**. ~~has given its~~ **If applicable, aAs** concerns forwarding of bids, or otherwise sharing of bids with other wholesale markets, the rules for the market-based procurement of local services pursuant to Article 32 shall include at least: [...]

### **Article 35.3 (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 39.1****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 the list of all congestion management and voltage control products to be used by the system operators. ~~The system operators shall strive to use existing products from day-ahead or intraday markets or balancing products for congestion management or voltage control. These products shall also be included in the list of products.~~