ACER

Agency for the Cooperation of Energy Regulators

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CEDEC contribution to the

ACER Public Consultation Bridge to 2025

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Key messages

CEDEC appreciates the opportunity to comment on the regulatory trends and challenges identified by ACER as well as the debate initiated through the launch of this public consultation.

In our view, the trends in the energy markets have been largely analysed correctly and completely in the consultation paper. However, with regard to the policy responses CEDEC does not share all conclusions by ACER. The key points from CEDEC are:

- The prominent role of DSOs in the future energy system and energy retail markets and the interactions as a neutral market facilitator with market players needs to be recognized and strengthened.
- CEDEC sees no evidence for a need for stricter rules, let alone ownership unbundling for DSOs. The focus should clearly be on the correct and full implementation of the Third Energy Package provisions across all Member States.
- CEDEC considers ensuring adequate infrastructure investments at DSO level and respective measures (appropriate cost acknowledgement, reasonable return and timely adaption of revenue caps) as utmost priority for the coming years.
- Flexibility services from generators and consumers will play an important role in the future energy market to ensure short-term security of supply. Notwithstanding, secure and reliable network functioning remains the overall priority.
- The coordination between DSOs and TSOs and involvement of DSOs in the discussion and implementation process of network codes is a necessity for a integration and smooth functioning of energy markets.

- The splitting of bidding zones must be avoided. Instead, investments in cross-border transmission infrastructure must be accelerated for the completion of the internal energy market.

- CEDEC questions whether the relevant benefits of reducing the switching period to 24 hours across all Member States will outweigh the ultimate costs for consumers.

Q: Have we identified correctly the issues and trends within each area of the energy sector?

2.4. – 2.6. RES driving changes in generation

CEDEC shares the analysis of changing wholesale electricity markets due to ever-increasing shares of decentralized and often variable RES. The greater variations in electricity supply will indeed lead to a greater need for flexibility in the energy markets and systems. As the large majority of RES installations is connected to the distribution networks, the role of DSOs is going to evolve significantly. DSOs will become ever-more active managers of distribution systems, with a range of tools to react swiftly and effective to variations in supply but also demand. Flexibility services, such as demand-side management and storage but also services from decentralized generation plants will become essential tools for both market actors, such as suppliers and aggregators, and DSOs to ensure a match of supply and demand as well as grid stability.

2.7. – 2.9. Policy interventions to ensure generation adequacy

As expressed in its position paper on public interventions, CEDEC acknowledged the concern about generation adequacy voiced by some Member States. CEDEC however believes that assessments of generation adequacy should not be made on a purely national level, without taking into account the interconnection capacity and generation capacity in neighbouring countries. As cross-border energy networks are economically favourable towards ensuring security of supply on a national basis, the existing capacity in other Member States needs to be considered. This cross-border approach is important as regards severe challenges for generation adequacy and, accordingly, security of supply, in certain demand centres throughout Europe, such as the South of Germany.

CEDEC also agrees that a new market design for electricity needs to be developed urgently and should encompass all needs in the future energy system. Flexibility in both generation (from all sources) and the demand-side must have a value and be rewarded, as another (short-term) tool to ensure security of supply at all times. Flexibility has become essential for the balancing of the system

in this view, we consider as inevitable that the most efficient and least distortive tools are found to ensure a correct price signal for flexibility, which should also aim to guarantee the presence of an adequate number of back-up plants in the next years.

Notwithstanding, flexibility services offered by commercial players, such as generators, suppliers and aggregators can have impacts on the networks that create congestions problems and therefore endanger security of supply. As stability of the network remains the utmost priority, networks operators must have sufficient tools to ensure this in advance and in real-time. The concept of the traffic-light system for network conditions is an important tool here to define the respective roles, responsibilities and protocols of all market players.

Moreover, in the context of smart grids, also DSOs might be themselves interested in acquiring flexibility to manage their network efficiently. In order to do this, DSOs must have the right to invest in their own system services and acquire flexibility form commercial players.

2.10. – 2.11. Integrating gas wholesale markets

The role of gas in the future European energy mix indeed seems uncertain and dependent on several external factors (i.e. carbon price, RES penetration). As Gas DSOs, CEDEC members need to ensure sufficient investments in the gas infrastructure, with considerable uncertainties about the use of the grid capacity and the necessary financing through amortisation. The ultimate costs for infrastructure are paid by consumers who might use less and less gas for energy efficiency reasons. Therefore, a purely volume-based regulated tariff structure will create a problem for the financing of historical investments and uncertainty for future investments.

Although the demand for conventional gas might be declining, CEDEC sees potential in innovative technologies, such as biomethane and power-to-gas. Indigenous biogas production has been increasing and due to its stable feed-in, it is a promising complementary source to variable RES.

Also from the demand side, new gas applications can lead to a more stable usage of the gas distribution network, for example CNG as a fuel for transport, where CNG storage tanks at petrol stations can “charge” at the most appropriate time. Not only will this allow for demand response in the gas market, it would result in a more stable gas consumption during the year and not only during winter periods. Thus it allows a more durable use of the gas network, for which in some member states large investments have already been done.

Moreover, power-to-gas, as soon as economically feasible, offers possibilities to use the synergies between gas and electricity infrastructure and become a storage facility for excess electricity during times of high variable RES supply.

The exploration of shale gas reserves is seen very critically by CEDEC due to uncertain environmental consequences, especially its effect on drinking water supplies. Member States should remain free to ban the exploitation of certain forms of unconventional sources, especially in environmentally sensitive areas.

2.19 – 2.22. Infrastructure investment

With regard to infrastructure investments, ACER outlines the need for a more pan-European approach and mainly focuses on the transmission level. While CEDEC agrees on the need for a more integrated European energy infrastructure on transmission level, due to the decentralised character of new generation technologies, it misses a greater attention for the distribution level. The deployment of smart distribution grids has been named a priority by the European Heads of States repeatedly. Due to the large fluctuations of supply in some regions of Europe with high RES penetration, a flexibilisation of demand-side is both necessary and urgent. Smart distribution grids are the most important tools to enable this flexibilisation and should therefore be prioritised.

Estimations show that the need for investments will shift from the transmission to the distribution level in the coming years from 2/3 of all infrastructure investments in 2020 to 4/5 in 2050. Hence, the focus on transmission infrastructure in EU policy-making seems inadequate and should be complemented by measures to trigger the development of distribution infrastructure.

CEDEC welcomes in this regard that ACER mentions the regulatory framework to incentivise investments. Independently of the used regulatory technique (output-based regulation or other), visibility of the legal and regulatory framework and financial attractiveness for investors should be guaranteed.

In order to secure necessary infrastructure investments and appropriate returns on investments at DSO level, appropriate cost acknowledgement and timely adaption of revenue caps should be implemented as a priority measure. Today, DSOs sometimes face returns on investments that are lower than their weighted average cost of capital (WACC). Often, the revenue caps of DSOs are only adapted with considerable time-delays (of several years) and hence lead to very late return on investments made and consequently financial difficulties for DSOs.

2.23 – 2.25. Consumer concerns

Affordability issues are a major concern for many energy consumers and taken very seriously by local energy companies. With increases of taxes and levies on energy bills (of which RES support often only is one component) have taken their toll on consumer budgets and CEDEC agrees that Energy Efficiency measures and demand-response programmes can be part of the solution. Many different products

and services are already offered by local energy companies, which know their local situations very well and therefore are able to customise their offers. Sufficient information and incentives to make use of existing offers are key to achieve greater engagement and trust of consumers in the energy sector.

Many consumers have concerns about data privacy and security when it comes to these services, due to a higher automation and new technologies. These concerns have to be taken very seriously and addressed in order to create a basis of trust on which active consumer engagement will take place.

2.26 – 2.30. Technological advances

New technologies such as smart grids, home automation and innovative services are enabling consumers to play a more active role in the energy market- if they wish. However, there are differences in the technologies and their maturity and deployment. Most smart grids technologies are already available and partially deployed today. The deployment now mainly depends on recognition and incentives in the regulatory frameworks for DSOs.

2.33 – 2.34. The future role of DSOs

The role of DSOs will undoubtedly evolve from today operating, maintaining and developing the network. Additionally, they will be facilitating effective, affordable and customer-friendly retail market, i.e. through effective data management and non-discriminatory data provision to market parties. CEDEC therefore does **not** agree with the sentence: "[DSO's] influence on the operation of competitive retail markets will be appropriately minimised, leaving other actors […] to supply the new services including load control, usage monitoring and the provision of vehicle charging/refuelling, as well as non-energy services such as home security." In fact, the positive influence of DSOs on retail market functioning should not be minimised but rather maximised due to their neutral market facilitation, ensuring a neutral provision of data and effective switching of (service) suppliers. The creation of any new actor to fulfil this role in the energy market in our view would not be cost-efficient and could undermine the stability of the system; indeed it is not justified by the need of the neutrality from the market which could be addressed by the DSO itself. This crucial role of DSOs should therefore be considered accordingly by involving DSOs in a stronger way in implementing network codes for electricity and gas.

It is outlined correctly that DSOs will need to intervene more often in the energy system, due to fluctuating supply and demand. Therefore, it is logical that they need prioritised access to consumption/injection data to ensure grid stability. As neutral and regulated entities, they are actually best placed to ensure this data is provided to all relevant parties in a non-discriminatory manner.

Q: Have we identified an appropriate regulatory response?

3. A. Wholesale electricity markets

CEDEC shares the ACER opinion that market development and market integration are key for the integration of (variable) renewable energy. Especially liquid intraday and balancing markets need to be developed with a variety of flexibility instruments (supply and demand-side) to allow for security of supply at all times.

An integrated electricity market across the continent

In order to complete the European internal energy market in the most efficient way, CEDEC believes that appropriate investments in transmission infrastructure are necessary to fundamentally overcome or relieve congestion and/or loop flows.

In the meantime, bearing the cost for curative short term measures, such as re-dispatch or countertrading in case of danger for the operational security is less invasive and less costly than creating smaller bidding zones, especially if zones are split several times. We consider it necessary to not only take into account the costs for TSOs but also the additional effort and expenses for all market participants, which may hinder market development and competition. The arising costs for remedial measures of the TSOs should in turn set proper incentives for appropriate investment in transmission infrastructure.

Intensified cooperation of TSOs might be more appropriate in tackling challenges by loop flows and temporary congestion than a division of bidding zones.

3.6. – 3.8. Intervention in electricity markets

CEDEC believes that political interventions should generally be implemented through market-based measures, where possible and appropriate. Political interventions and public financial support for social and environmental measures that address market failures are embedded in the energy sector, given its public service character. Mentioning only the market distorting effects of RES subsidies does not reflect the complete situation. While CEDEC agrees that support for RES should become more market-based and gradually be phased out when technologies have become competitive, competitiveness is hard to judge in a market that is influenced by (indirect) subsidies for even very mature technologies, such as fossil fuels or nuclear, with support to conventional generation being more than twice the RES support according to the European Commission's figures in the draft of communication on public intervention.

Any measures that Member States take toward ensuring generation adequacy should be compliant with the ultimate goal to complete the European Internal Energy market. Therefore, CEDEC agrees that the implementation of capacity remuneration mechanisms – after careful evaluation of all

other options and including a cross-border assessment of its generation adequacy, should allow for the participation of capacity (demand and supply) from neighbouring countries. All set-ups should be carefully monitored by regulators and be as market-based as possible to avoid further distortions; at the same time, extraordinary interventions could be temporarily implemented by Member States in case of provable adequacy/flexibility needs for the system.

3. C. Infrastructure Development

Another issue is the design of network tariffs. In many European countries, network tariffs are 100% volume-based, meaning network tariffs are charged for each kWh used. With an increasing share of prosumers and through successful energy efficiency measures, less electricity, gas and heat are transported through the networks. While this is contributing to the EU energy and climate objectives, it dramatically decreases the revenue for DSOs and diminishes their ability to invest. At the same time, the network needs to be maintained, reinforced and extended and even consumers with (micro)generation facilities will continue to be dependent on the grid during certain times of the day. Moreover, for DSOs the cost driver of the network is supply of (peak) capacity and not volume. Therefore, a mixed tariff structure based on the capacity of the connection and the volume used, may constitute an interesting alternative, allowing network operators to recover their costs in a more balanced and consistent way. For an in-depth analysis of several tariffs design opinions, please refer to the recent CEDEC position paper: Distribution Grid Tariff Structures for Smart Grids and Smart Markets.

In order to incentivize the necessary investments for the deployment of smart grids in Europe, CEDEC advocates for cost-reflective regulatory frameworks that recognize investments in innovative technologies, adapt to changing CAPEX/OPEX structures and minimize the time-delay between investments and adaptation of revenue caps.

3.25 – 3.26. An appropriate framework for energy customers

CEDEC is an active supporter of the **CEER-BEUC 2020 vision** for energy customers. CEDEC member companies are continuously developing new energy products and services with the aim to empower customers and actively integrate them in the energy markets (citizen solar parks, self-generation and consumption programmes, energy efficiency services). Their proximity to the consumers, local business and their knowledge about the specific situation in their city/region is a very valuable asset in this regard.

With regard to the target to reduce the **switching period** from 3 weeks today to 24 hours by 2025, CEDEC would like to point out that supplier switches entail a number of nationally specific processes and protocols which have to be followed. In those countries with current switching periods exceeding 24 hours, drastic changes in IT systems and protocols will be necessary that would entail considerable investments and operational costs. It can be questioned if the relevant benefits

ultimately will outweigh the costs for consumers. Therefore, CEDEC does not see an advantage for the consumer in reducing this switching period across all European Member States.

The issue of **data privacy and security** plays a critical role here. With new services and technologies, personal consumer data will be needed and exchanged for grid management and commercial purposes. Only if consumers have trust in their data privacy being ensured, will they engage in such new services. Therefore, CEDEC is calling for clear data privacy provisions and strict monitoring through the NRAs. At the same time, a non-discriminatory access to consumer data (under the condition of consumer consent) is needed for several parties to ensure a level-playing field in energy retail markets. In CEDEC's view this should be ensured through DSOs as neutral market facilitators managing these data. The possible tension between data accessibility and privacy needs to be addressed with clear rules and protocols.

CEDEC agrees that vulnerable consumers need special protection in the energy markets, which should be ensured through energy policy and/or social policies, depending on the provisions on national level.

3.29 – 3.30. Enabling the market in demand-response is a priority for CEDEC. We actively contribute to the discussion currently ongoing in the Taskforce Smart Grids, developing possible market models for flexibility services. While we believe that there will be no one-size-fits all solution for Europe due to the large difference across European markets, some general principles, such as the non-discrimination of actors and the equal footing of demand and supply to set on European level might be very helpful.

CEDEC also appreciates the fact that the increase of energy efficiency measures is considered as an important component for the future development of energy markets. However, it should be associated not only with demand response. It should be rather seen as a separate central instrument. Apart from energy savings, demand response is highly focused on load shift, peak shaving and valley filling. In connection with that, it is often disregarded that the market-based and competitive implementation of energy services can be a viable tool for increasing energy efficiency across all customer groups and reduces network investments.

CEDEC sees certain synergies between the energy and telecom sectors with regard to communication in a smart grid environment. As DSOs will increasingly depend on data for the smooth functioning of their networks, the telecom sector can supply some interesting ICT solutions. However, it needs to be clear that data communication and management needs to be in the hands of the DSOs. They cannot rely on third parties for the delivery of necessary information. With more renewables, smart meters and appliances in the grid, this requires a communication platform with an uptime that cannot be guaranteed by the telecom sector and Common standards for content, format and exchange of customer metering data are a prerequisite for a functioning retail market. Only with the possibility to access and process the relevant data, service providers (which have the consumers authorization) are able to develop individual products and services. These standards however, should

only be set on national level, as they are rather different across Member States. A European-wide harmonization would entail unnecessary major costs, especially for DSOs, which would then be passed on to consumers.

3.31 – 3.35. Role of DSOs

CEDEC very much appreciates the approach to define some general principles for DSOs and to respect the national specific situations. The distribution landscape in Europe differs very much among Member States regarding the number of DSOs, their average size, tasks and ownership. Therefore, a one-size-fits all model for Europe is neither desirable nor feasible.

DSOs should have the role of a neutral market facilitator. However, regarding the tasks, CEDEC disagrees with the statement that DSOs should not be allowed to execute tasks, such as load control, energy usage monitoring and electric vehicle charging points. As a matter of fact, excluding DSOs from taking over these tasks, or even taking tasks away from them, would hinder one major actor from developing smart grids. Restricting DSOs to natural monopoly activities, would forgo an important actor, who has long experience in managing, operating and developing energy networks.

For example, as outlined in our recent publication, "Smart Grids for Smart Markets" in CEDEC's view, several arguments speak in favour of a model in which DSOs can be in charge of the deployment of electric charging infrastructure because there is not yet a tangible market for electric vehicles and related infrastructure and the roll-out of public charging stations is not yet profitable. Hence, DSOs can step in by deploying the electric charging infrastructure as part of their regulated asset base. The costs would therefore be included in the network tariffs and socialised among all consumers.
On energy usage monitoring: in France for example, with the introduction of smart meters, the DSOs have been appointed to visualize consumer's energy monitoring on a website. As neutral entities, DSOs might indeed be well placed to do so.

With regard to data management, DSOs should indeed give non-discriminatory access to this data to all parties that have been entitled by the consumer to receive them. CEDEC has been actively promoting the DSO as market facilitator model, in which DSOs make the data available on (de-)centralized data hubs. As highly-regulated parties, DSOs are actually best placed to ensure the non-discriminatory access to data.

CEDEC strongly disagrees that the most-effective model to ensure competitive markets is ownership unbundling for DSOs. In fact, with ownership unbundling retail markets might be less competitive due to a large number of especially smaller integrated companies, currently falling under the *de minimis rule,* having to sell their supply branches, which would then be bought by the large incumbent players, considerably decreasing the variety of market actors and the level of competition in retail markets.

As a matter of fact, the de-minimis rule, proved to be an appropriate instrument to allow DSOs with less than 100.000 customers to operate their network efficiently while maintaining a balance between benefits of further competition and costs.

All DSOs are, irrespectively its size, obliged to meet with strict unbundling rules according to 2nd and 3rd Energy Package, such as informational unbundling, unbundling of accounts and branding unbundling. Considering the existing and implemented rules, DSOs cannot use access to data to gain commercial advantage. The size of a DSO company or a network area has no indication regarding its efficiency or the possibilities for consumers participating in the energy market.

CEDEC believes that before considering further measures on unbundling, the current provisions from the Third Energy Package need to be fully implemented and monitored. The current rules – if properly applied – already prescribe a clear separation of commercial and con-commercial activities with integrated companies and lead to a high level of competition in many countries. With the allocation of new roles and responsibilities, other rules, such as strict regulatory oversight and protocols, could be applied before considering further unbundling.

3.36. Improved coordination

CEDEC agrees that changes for DSO networks in the energy sector are probably to be considered as most fundamental. Coordination between TSOs and DSOs, but also between DSOs mutually plays already today, but more so in the future, an important role to address this challenge. Network codes (see also further) in development already describe in different domains the roles of DSOs and cooperation between DSOs and TSOs, but mostly from a TSO perspective.

CEDEC wants to stress that TSOs need to recognize DSOs as 'full' system operators and that distribution networks differ fundamentally from transmission networks. Technical measures and procedures on transmission level are not necessarily fit to be also applied on the distribution level.
A lot of the cooperation between TSOs and DSOs will be on the level of information exchange (between them and between the operator and the grid user). It is important that DSOs are and stay master of what is happening on their grids. No interventions from other operators should be allowed without the DSO's knowledge. Therefore DSOs want to avoid direct communications channels of TSOs to grid users connected to the distribution grid.

3.37. Encouraging efficiency through dynamic pricing

Dynamic network tariffs, such as time-of-use and peak tariffs already exist in several Member States. With increasing numbers of tariffs, the problem of conflicting tariff signals from DSOs and pricing signals from suppliers might occur. At times of low energy prices due to abundant supply, a peak

might be created on the network due to many consumers increasing their consumption simultaneously, consequently the network tariff should be high. These dynamics have to be taken into account when considering the introduction of dynamic network tariffs and how the price effects are to be weighed against one another. In any case, the customer should receive only one signal in order to facilitate a reaction.

4.4. – 4.8. Fit-for purpose processes for the implementation and enforcement of market rules

CEDEC agrees that implementation of network codes is important and should be monitored appropriately, but would like to warn about the use of the wordings 'quickly' and 'speedy' as it comes to implementation.

CEDEC asks for adequate transition periods in each of the codes, needed to facilitate the implementation for the DSOs and for all other stakeholders by providing them with the necessary time to adapt existing procedures, settings, contracts, arrangements,… and to put in place the new requirements as smoothly as possible.

Some of the electricity draft network codes include non-binding guidance and monitoring on implementation and a stakeholder committee. The creation of this stakeholder committee – in which CEDEC DSOS wish to take part - should also be envisaged in all the other network codes for electricity and for gas. It seems also useful to setup these committees as soon as possible, because early implementation will certainly shorten the learning curve for the involved stakeholders once the regulation enters into force.

Transparency throughout the whole development process, from the start with the ACER framework guidelines to the voting of the regulation in the Comitology committees at the end, will allow all stakeholders to follow up on the evolution of the legal text and permit them to help improve the quality of the network codes and to prepare implementation adequately, based on 'latest' available drafts.

Regarding future modifications to the network codes, we would like to refer to the process ACER describes in its 'Guidance on the evaluation procedure for network code amendment proposals under art. 7 of the Electricity and Gas regulations', which already provides in a rather detailed description on how the network codes can be amended.

While amendments will be needed, it should be taken into account that none of the network codes are implemented at this stage. It is very important to learn from implementation experiences before changing the rules (again). As a result CEDEC does not see the amendment of network codes as a priority to focus on.

Q: Which regulatory actions are most important and should be prioritised?

Infrastructure development at transmission and distribution level remains the most pressing priority for the coming years in order to enable a cost-effective energy transition with high-level of security of supply. Therefore, all levels of transmission and distribution networks should be approached holistically, as an integrated system. The development and implementation of network codes is one of the most urgent issues in this regard.

In this context, CEDEC considers adaptations in incentive regulation for DSOs most important priority. As ACER has correctly identified, the most changes in the upcoming years are taking place at distribution level. The incentive regulation should therefore be adopted from a sole "cost reduction scheme" towards an investment incentivizing regulation, which allows to operate and develop smart grids.

In order to enable new services for consumers while ensuring efficient market and system functioning, the development of market models for flexibility services appear as a priority as they have an effect on both retail and wholesale markets.

CEDEC Background information

CEDEC represents the interests of local and regional energy companies.

CEDEC represents 1500 companies with a total turnover of 120 billion Euros, serving 85 million electricity and gas customers & connections, with more than 350.000 employees. These predominantly medium-sized local and regional energy companies have developed activities as electricity and heat generators, electricity and gas distribution grid & metering operators and energy (services) suppliers.

The wide range of services provided by local utility companies is reliable, environmentally compatible and affordable for the consumer. Through their high investments, they make a significant contribution to local and regional economic development.

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