

ACER consultation on the TSOs' methodology proposal on the implementation framework for the mFRR exchange platform**EFET response – 18 November 2019**

We thank ACER for the opportunity to provide comments on the TSOs' methodology proposal on the implementation framework for the mFRR exchange platform.

Q1: *Do you agree with the high-level principles and conditions proposed by the Agency for elastic demand?*

We strongly disagree with the proposal to allow TSOs to price their demands to the MARI platform. By pricing their bids and offers, and putting them on the CMOL together with bids and offers from market parties, TSOs are directly active on the market and go beyond their role of neutral market facilitator. Indeed, rather than expressing a clear and straight need for a specific volume of the standard mFRR product, they will tie this need to a price limit. Acting this way, TSOs may also set the settlement price and impose de-facto price caps on the market. TSOs should not be marketing the energy from their imbalances, but simply procuring balancing energy to deal with their imbalances.

Market participants have in this regard never received a clear answer on the following questions, despite the fact that these questions have been explicitly raised in stakeholder forum and in consultations:

- Why TSOs cannot express the inherent uncertainty for acquiring balancing services for forecasted imbalances in volumes, while they can do so in prices?
- How TSOs will in the future optimise their elastic balancing needs when the cost of competing balancing products – i.e. aFRR through the PICASSO project – will depend both on the availability and needs in other countries that will only be clear after the MARI platform has closed?

At the workshop organised by ACER on 13 November, the Agency mentioned its fear that not allowing elastic demand would deter some TSOs to use standard products. While we share the intention of ACER to ensure that TSOs activate balancing energy as much as possible via standard products, we believe that the text of the EB GL itself is sufficient to avoid that TSOs make use of specific products similar to standard products only because they would be able to price their demand with such specific products. Indeed, article 26.2 EB GL states that specific products can only be approved by NRAs if TSOs demonstrate “*that standard products are not sufficient to ensure operational security*”. Specific products that would only differ from standard products as to the capacity for TSOs to price their demand would have nothing to do with ensuring operational security, and hence not be approved by NRAs.

Should elastic demand be maintained in the approved IF, we agree with ACER’s concerns that this would impose a de facto price cap on balancing energy prices. While the intention of ACER to avoid such an effect by introducing a provision in the IF is welcome (proposed article 3.4(a)), we don’t believe it will be effective: either the demand is priced well above balancing energy prices, and then it does not act as a price cap – but it also does not help TSOs fulfil the objective for which they wish to price their demand; or the demand is priced at a lower level to meet the TSOs objectives – and it automatically acts as a price cap. The proposed article 3.4(d) may be more effective, though one wonders why TSOs would set the price cap for the mFRR demand below that of the cheapest aFRR bids, as they would otherwise run the risk of not having their demand fulfilled at all.

In summary, we don’t believe that the high-level principles presented by ACER will bring much in terms of avoiding the detrimental effects of elastic demand in mFRR. Rather, we invite ACER to remove the concept of elastic demand from the IF altogether. Should the measure be allowed, we request yearly public reporting by the TSOs.

Q2: *Do you agree to allow scheduled counter-activations in the mFRR platform in order to maximise the economic surplus subject to reporting and monitoring of possible negative effects?*

Even though the mFRR IF makes no explicit reference to counter activations between BSPs, art. 13.3(e) implicitly refers to it with the concept of “*simultaneous activation*”. We believe counter activations have no place in the mFRR IF. Performing counter activations implies that the TSOs, through the platform, clear trades between market participants. This is not a core objective of balancing markets, and should not be a function performed by a balancing energy procurement platform. Instead, the core objective of balancing markets is to source balancing energy to solve imbalances.

Instead, market liquidity that allows BRPs to self-balance their perimeter should concentrate in the intraday market. Capacity offered on the mFRR platform in expectation to be counter-activated (across borders) against other market participants is lost to the intraday market, irrespective of whether BSPs expect to be activated by TSOs or be cleared against other (cross-border) market participants. Market participants should have a clear choice where to offer their capacity: on the balancing

market or the intraday market. If the mFRR platform would offer potentially both, it will syphon liquidity away from the (local) intraday markets towards a hybrid balancing and market-clearing platform. This will be detrimental to intraday market liquidity, and to the ability of BRPs to balance their own perimeter. Therefore, it will eventually lead to an increased need for the activation of balancing energy. TSO arguments that these volumes will in any case be very limited should be an argument against such counter activations as the implied social welfare loss will therefore also be limited while making the market design more transparent.

In any case, if the possibility to perform counter activations is maintained in the IF, detailed public reporting by the TSOs and careful monitoring by ACER would be essential, on a yearly basis. In addition to the elements mentioned above and also by ACER in the consultation document, utmost care must be given to their interaction with imbalance settlement. Bids that are counter-activated by the TSOs for economic reasons must not influence the imbalance price. Also, and considering the fact that the use of counter-activations is likely to have its most detrimental effects in the intraday market, we request that the assessment and cost-benefit analysis of the measure not only focus on the economic surplus of the mFRR platform, but also on its effects on the liquidity of intraday markets.

In summary, we invite ACER to remove the concept of counter-activations from the IF altogether. Should the measure be allowed, we request yearly public reporting including an assessment of the effects of using elastic demand on the liquidity of intraday markets.

Q3: Do you agree with the proposed framework for changing of bids by TSOs? What additional elements would you consider necessary for enhancing the transparency?

As a matter of principle, ACER should seek to ensure that the mFRR IF and the IFs of other balancing processes are designed to avoid the flagging of bids as unavailable – i.e. work on the root cause – rather than limit and monitor such flagging. Most notably, congestions ought to be dealt with through non-costly or costly remedial actions (including redispatch) rather than by interfering with balancing processes. Should individual bids be labelled as unavailable by the TSOs for congestion management reasons, then this action by the TSOs should not affect the balancing energy price or the imbalance price, and BSPs should be compensated in order to make them financially indifferent compared to the normal situation where their bid would have been selected. If the IF foresees the possibility for marking bids as unavailable, it should also foresee the rules applicable to the financial treatment of such situations.

The linking of bids between different balancing platforms is essentially a duplicate marketing of the same volume. Declaring those bids unavailable after activation in a preceding platform is neither a case of internal congestion nor an operational security constraint within the connecting TSO scheduling area, which are the reasons permitted in Article 29.14 EB GL for declaring bids unavailable. Therefore, in our view this procedure is generally not compliant with the EB GL. For practical reasons, with severely restricted preconditions, this might be tolerable.

Q4: *Do you agree with the above principles for unforeseeably rejected bids?*

We would go further than ACER and state that the mFRR IF does not tackle the issue of unforeseeable rejected bids at all.

In the absence of an impact assessment of any of the solutions (or combination thereof) proposed in the consultation, we favour a simple approach, purely based on the merit-order list and coherent with the solution applied in day-ahead clearing, i.e. option (a) only. Besides the objectives of simplicity and coherence, this approach would incentivise BSPs to bid either divisible bids or indivisible bids in small amount in order to decrease the chance of seeing their bids rejected. The TSOs should publicly report on the implementation of the measure on a yearly basis, in order to assess whether the design feature should be maintained or amended.

Q5: Please comment on other topics indicating clearly the related Article, paragraph and sub-paragraph of the mFRR IF proposal.

Art. 2.2(e) / art. 7.1: Direct activation (DA) bids: in order to improve the functioning of the mFRR joint activation process and avoid costly complexity, we strongly recommend that the system be built around the Scheduled Activation (SA) product only. An accurate dimensioning of automatic and manual reserves, especially as the two process would be running concomitantly, would in our view make Direct Activation (DA) of the mFRR product unnecessary. Restricting the standard mFRR product to SA would benefit the system by significantly reducing complexity, lowering cost, and improving transparency.

Art. 5.3(a): Efforts to harmonise terms and conditions and prevalence of EB GL over national legislation: Art. 5.3(a) introduces confusing language that could result in diluted efforts from the TSOs to harmonise terms and conditions related to balancing. It could also lead to national legislation prevailing over the EB GL in the implementation of harmonised and mFRR IF-compatible terms and conditions by the national TSOs. This would be in stark contradiction with Art. 18 EB GL and art. 16 of the mFRR IF. To avoid any confusion and in order to fully comply with the EB GL, Art. 5.3(a) should be amended as follows: **“The TSOs shall harmonise the terms and conditions related to balancing proposed in accordance with Article 18 of the EBGL.”**

Art. 8.2: BE GCT: EFET would like to remind that during the last hour, local intraday markets remain open in many countries, allowing market participants to re-adjust or rebalance their portfolios. Recital 12 of the EB GL explicitly requires the balancing energy market to facilitate self-balancing of market participants up to real-time. Consequences of the inevitable overlap between the cross-border balancing processes and local intraday and self-balancing actions should be minimised by the TSOs. Any excess procurement of balancing resources by the TSO should be avoided. Therefore only the original TSO demand should be taken into account by the TSO and in the corresponding common merit order list.

To maximise the potential alternative use of the returned bids (intraday market or self-balancing) and therefore the social welfare the BEGCT should be set to 15 minutes before real-time. This objective is explicitly stated in the EBGL through the requirement that the BE GCT is ‘as close as possible to real-time’ (Article 24(2)). EFET questions whether the proposed BE GCT time of 25 minutes is indeed as close as possible to real-time. EFET requests that at least the ambition of the TSOs be to move to a BE GCT of 15 minutes before real-time.

Art. 13.1: Unjustified economic advantages: we see a serious danger in the first sentence of art. 13.1, “The rules concerning the governance and operation of the mFRR-Platform shall ensure that no participating TSO benefits from unjustified economic advantage through the participation in the mFRR- Platform”:

- First, art. 13.1 should not lose sight of the objectives of the EB GL, and more generally of the integration of European markets. Questions of cost sharing between TSOs should not come in the way of market integration.
- Second the notion of “unjustified economic advantage” is not defined: neither in scope (assessment of the economic advantage limited to mFRR process only?), nor in magnitude (what is unjustified?), or in time (over which period would such an unjustified economic advantage be assessed?) If the objective is to avoid free riding of TSOs on the available bids on the European platform, this should be tackled directly. The vague formulation currently included in the IF is an open door for any limitation on TSO participation to the platform.
- Third, the provision does not specify any consequences to the occurrence of such a situation.

Given the importance of changes to the mFRR IF and any impact on the European platform, stakeholders should be involved sufficiently early in any change process and be formally consulted upon. Such participation and consultation should be included in the governance and decision-making processes.

Art. 13.3: Reporting: given the sensitivity for the implementation of the PICASSO platform, we request the publication of evaluation reports every six months, rather than every year.