DR4EU
DEMAND RESPONSE FOR EUROPE

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Respuesta a la

CONSULTA PÚBLICA PREVIA RELATIVA A LA ELABORACIÓN DEL REAL DECRETO POR EL QUE SE REGULAN LAS CONDICIONES DE SUMINISTRO Y CONTRATACIÓN DE ENERGÍA ELÉCTRICA Y SE ESTABLECEN PRINCIPIOS REGULADORES DEL AGREGADOR INDEPENDIENTE

DR4EU is happy to provide this contribution to MITECO. DR4EU is a pan-European coalition of companies developing DR in more than twenty countries in Europe and beyond, including Spain. Members most involved were Energy Pool, Stemy Energy, Sympower and Voltalis.

The most critical aspects highlighted in this contribution are those provided under questions 5 and 6 relating to the responsibility of aggregators and the possible financial compensation mechanism (if any).

1. En relación con el marco general de contratación, ¿qué elementos necesitan abordarse para mejorar y agilizar las relaciones contractuales entre consumidores y el resto de sujetos, sin que ello resulte en una merma de los derechos del consumidor y su protección?

Participation in demand response (DR) through aggregation should be totally independent from any other engagement or third parties, both seen from the consumer and from the aggregator:

- As per article 13[1] of the directive (EU)2019/944 [hereinafter the Directive], consumers should be free to engage in aggregation contract of their choice "independently from their supply contract" and "without the consent" of his supplier or balance responsible party (BRP);
- As per article 17-3[2], the aggregators should be allowed to "enter electricity markets without the consent of other market participants".

Both provisions are critical to allow for the development of DR without restrictions, particularly from incumbents, and in fair competition among aggregators whether they are also suppliers or just

[1] Article 13 states that:

Artículo 13

Contrato de agregación

1. Los Estados miembros garantizarán que todos los clientes sean libres para comprar y vender servicios de electricidad, incluida la agregación, distintos al suministro, independientemente de su contrato de suministro de electricidad y obtenidos a través de una empresa eléctrica de su elección.

2. Los Estados miembros garantizarán que, cuando un cliente final desee celebrar un contrato de agregación, el cliente final tenga derecho a hacerlo sin el consentimiento de las empresas eléctricas del cliente final.

[2] Article 17 states that:

Artículo 17

Respuesta de demanda mediante agregación

3. Los Estados miembros garantizarán que sus marcos jurídicos pertinentes contengan al menos los siguientes elementos:

a) el derecho de cada participante en el mercado activo que preste servicios de agregación, incluidos los agregadores independientes, a entrar en los mercados de electricidad sin el consentimiento de otros participantes en el mercado;

independent aggregators. Indeed, as soon as suppliers are allowed to operate demand response with (their) customers, they are potential competitors to independent aggregators. Hence[3] suppliers should not have any right to a prior consent before consumers engage with (independent) aggregators, etc.

This is necessary to ensure the protection of consumers, together with other provisions of article 13 regarding the aggregation contract, with various information rights for the consumers.

Besides, additional safeguards need be adopted regarding the risk of conflict of interests that DSO may face particularly when DR aggregation is to be used to solve local congestion issues. For instance, should be excluded from providing such services to a DSO any aggregator depending from the same holding company; this kind of safeguard should apply to such independent aggregator and all the more to in the case of an aggregator who is also a supplier in the area where the DSO operates.

2. En materia de reclamaciones, ¿qué aspectos de mejora requieren ser abordados a través de una regulación del régimen de suministro y contratación de energía eléctrica?

Because consumers may choose to engage in an aggregation contract "*independently from their supply contract*" (as per article 13-1 of the Directive), there is no reason, when establishing the framework for demand response through aggregation, to change anything regarding supply contracts.

In particular, engaging in DR aggregation should not entail any restriction nor any charges by their supplier (as mentioned in article 13-4 of the Directive[4]).

3. ¿Qué otros aspectos regulatorios, vinculados a figuras del sector existentes (como por ejemplo el consumidor directo en mercado), deberían abordarse para dar pleno cumplimiento a la transposición de la Directiva 2019/944 de mercado interior de la electricidad?

Consumers operating directly in the electricity markets, such as large industrial consumers, should be also allowed to operate as their own aggregator, i.e. to deliver DR in the wholesale markets (as well as ancillary services for instance in the balancing market operated by the TSO). They should bear the same responsibilities to deliver as other aggregators (independent or not), including:

- the need to prove the delivery with relevant data and baseline methodologies;
- the need to bear (or have another party bear for them) the balance responsibility to deliver, i.e. the financial responsibility for differences between deliveries and sales of DR volumes.

4. ¿Qué otros elementos de ámbito minorista requieren de un desarrollo reglamentario, y en qué sentido? (cambio de suministrador, tarifa única de acceso, suministros esenciales, ...).

Aggregators should be allowed to provide evidence of their deliveries.

This includes the right to use data from submeters they would provide. It also includes the right to compute relevant data to calculate the allocated volume ("*el volumen asignado*").

[3] The general directive on services (2006/123/EC) prohibits making the activity of a private company conditional upon acceptance or agreement of another private company (particularly when they are competing).

[4] Article 13-4 states that:

> 4. Los Estados miembros garantizarán que los derechos enunciados en los apartados 2 y 3 se reconozcan a todos los consumidores finales de forma no discriminatoria en lo que atañe a costes, esfuerzo y tiempo. En particular, los Estados miembros velarán por que los clientes no estén sujetos a requisitos técnicos y administrativos, procedimientos y gastos discriminatorios por parte de su suministrador basados en si tienen un contrato con un participante en el mercado que preste servicios de agregación.

On both aspects, the aggregator needs to provide evidence that the accuracy and reliability of the data, methods and calculations operated, are relevant, given the kind of loads operated and demand response services delivered).

All these tasks need to be performed under QA (quality insurance), i.e. in a way that is clearly stated ex ante, and subject to audits (mandated by a neutral party such as CNMC) for ex post verification.

5. En relación con el agregador independiente, ¿cómo debería abordarse la regulación de esta figura para promover su desarrollo y despliegue, al tiempo que se cumple con los principios reguladores definidos en la Directiva 2019/944?

Demand response through aggregation should be allowed to participate in all electricity markets as an alternative to generation, without discrimination, and with similar responsibilities.

In particular, any demand response aggregator should bear the same responsibility to deliver the volumes sold, or to pay financial penalties for the difference, which is the imbalance they cause in the system as clearly defined in the Clean energy package[5].

The only difference is that, while generation volumes are directly metered at the injection point, demand response "allocated volumes" are determined as the difference between a reference ("baseline") and the actual load. However, the balance responsibility of the aggregator is to equate those delivered volumes ("allocated volumes") with their sales ("net position in the market"). In case there is a difference, this is the imbalance the aggregator is financially responsible for; but when DR sales and allocated volumes are equal, there is no imbalance for the aggregator to be liable of.

This aspect is important in order to make fully clear that balance responsibility of the aggregator is NOT the basis for any "financial compensation mechanism" to other parties, i.e. suppliers, as discussed under question 6. **In other words, the aggregator is responsible for his own balance (between sales and deliveries), not for the impact DR may have on other balance responsible parties.**

Another key aspect should be taken into account, to allow fair competition between independent aggregators and suppliers, as soon as suppliers would also be allowed to operate demand response. This was already mentioned under question 1, but yet another consequence need be derived: as set forth by article 17-3-c, commercially sensitive information must be protected; hence suppliers (or their BRPs) should not be given any information[6] on the activity of independent aggregators.

Finally, independent aggregators should also be allowed to operate in the Spanish islands, and participate in local markets or balancing services as they should develop to meet the needs for both the economic and technical efficiency as well as the stability of the grids of the islands.

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[5] The balance responsibility of any aggregator is defined as per art.17-3-d referring to article 5 of the Electricity Regulation (EU) 2019/943, further clarified by its recital 15, whereby: *"Todos los participantes en el mercado deben ser financieramente responsables de los desvíos que causen en el sistema, representando la diferencia entre el volumen asignado y la posición final en el mercado. En el caso de los agregadores de respuesta de la demanda, el volumen asignado se compone del volumen de energía activado físicamente por la carga de los clientes participantes, basada en una medida definida y una metodología de referencia."*

[6] In particular, even when a "corrected model" is used, it is necessary to prove that the corrected BRP needs to receive information about DR volumes, and if so, this should be only at fully aggregated level, i.e. the total correction due to DR delivered from all the consumers in the BRP's portfolio, regardless of their aggregator.

6. ¿Qué modelo de los conocidos (centralizado, descentralizado, con corrección del programa del comercializador, etc.), se considera apropiado para impulsar dicha figura, ponderando los impactos que dichos modelos ocasionan sobre los restantes agentes del sector, fundamentalmente las comercializadoras de energía eléctrica (en términos de desvíos o corrección del programa para evitar incurrir en los mismos)?

The model that is quickest and easiest to implement is one without any correction of the program of electricity suppliers (i.e. uncorrected). In the Clean Energy Package, this is referred to as "*a model where imbalances are settled*". Indeed, when consumption is reduced thanks to demand response, the balance responsible parties of suppliers of those participating consumers will be credited for a positive imbalance; hence, they will receive a financial compensation for these positive imbalances as part of the financial imbalance settlement[7].

However, the Clean Energy Oackage also allows Member States to adopt "*models where perimeter corrections are introduced*"[8]. Then the 'corrected' supplier/BRP will be deprived of the financial compensation for the positive imbalance, since the imbalance disappears due to the correction; hence he will request another financial compensation mechanism be established.

As DR4EU, we agree both are workable, and would suggest starting with the simplest approach ("uncorrected") until it would be proven necessary (especially with volumes growing[9]) to move to the other one ("corrected" with "compensation for corrected volumes").

However, while Member States are allowed to establish mechanisms to have a financial compensation paid to those suppliers (/BRPs), the Directive establishes a strict obligation not to create a barrier for demand response. To fulfill this obligation, the Directive separates two different questions:

- On the one side, who may receive a financial compensation? It should be those who bear costs "during the activation of DR", i.e. those who are "corrected" up to DR volumes;
- On the other side, who should be liable to pay for such compensation? The Directive allows to charge various "electricity undertakings", rather than just those providing DR.

Indeed, making DR liable for compensating the costs of DR would have two dreadful consequences:

- For suppliers, it would mean free riding: they would not bear any costs, and yet they would benefit from DR taking prices down in the market, hence reducing their expenses.
- But unfortunately, albeit very beneficial for all, DR would not be able to develop, because most of its market revenues would be withdrawn via the compensation charge, creating a radical barrier for DR. This was proved by the painful French experience[10], which was the reason to have this clearly forbidden in the Directive.

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[7] Symmetrically, when Demand Response means that consumption is increased rather than reduced, the suppliers of participating consumers will have a negative imbalance, and this may offset part of the impact of situations of demand reduction, thus possibly leading to a zero-sum impact.

[8] These expressions are quotes from recital 39 of the Directive which states that: « *Los Estados miembros deben tener libertad para elegir el modelo de ejecución y el enfoque de gobernanza adecuados para una agregación independiente, respetando al mismo tiempo los principios generales establecidos en la presente Directiva. Dicho modelo o enfoque podría incluir la elección de unos principios normativos o basados en el mercado que ofrezcan soluciones para cumplir lo dispuesto en la presente Directiva, entre ellos,* ***modelos en los que se hayan resuelto los desvíos o se hayan introducido correcciones de perímetro****. El modelo elegido…* ».

[9] And only if these volumes are not symmetrical (both reduction and increase of consumption), because if they are, then positive and negative imbalances could offset one another, and the effect could be zero.

[10] The Commission also noted in their opinion on the French market reform that charging compensation costs to DR seemed to have created a barrier so that DR participation in the market remained very small despite the significant capacities available (COMMISSION OPINION pursuant to Article 20(5) of Regulation (EU) No 2019/943 on the implementation plan of France, C(2021) 6182 final, 27.8.2021). This was before the current crisis, but now,

To summarize, because of such a barrier, DR would not be able to develop, and this would deprive all the suppliers of the positive impacts of having DR in the market, in particular the financial benefits DR will entail by taking market prices down. It would ultimately deprive suppliers of these benefits, and harm all consumers.

Obviously, such a deadlock needs to be avoided. And again, the solution is described in the Directive: to take into account the benefits entailed by DR. Indeed, these benefits are one of the key reasons to have DR in the market, i.e. to shave peak prices – so they should not be ignored when defining a financial compensation mechanism. To avoid free-riding by suppliers, who get financial benefits from DR, they should also share the costs, so that they all get their fair share of the net benefit – and ultimately all consumers get theirs. This is the only viable approach when a corrected model is used, with related compensation mechanism: compensation costs should be shared as benefits are.

In practice, this means using a central settlement model whereby:

- a correction is imposed on suppliers of participating consumers;
- when the TSO imposes such a correction, he pays them a financial compensation;
- the TSO spreads the costs among liable stakeholders, i.e. all suppliers pro rata.

As mentioned above, such a centralized approach also meets the requirement to protect commercially sensitive data, i.e. avoid providing suppliers with privileged information on their fellow aggregators.

To summarize on this VITAL issue, we respectfully recommend:

- either an uncorrected model, without any specific financial compensation added;
- or a corrected centralized model with mutual compensation among suppliers, to share the net benefits of DR. Then, as per article 17-4 of the Directive,

> *"se podrá requerir a los agregadores o los clientes participantes que contribuyan a dicha compensación, pero solo en la medida en que los beneficios para todos los suministradores, los clientes y sus sujetos de liquidación responsables del balance no excedan de los costes directos en que hubieran incurrido".*

For further analysis of this so-called "net benefit" approach, one may refer to various experiences:

- from the decision in the US back in 2011 by the regulator FERC[11], based on this principle, which was confirmed by the Supreme court of the USA (25 January 2016), and inspired the Directive;
- to the most recent implementation now being prepared by Luxembourg, with a law[12] to be voted this Spring to properly transpose the Directive.

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in 2023, compensation prices are higher than market prices, so that DR is basically kicked out of the French market. This is particularly striking as, meanwhile, the EU adopted Regulation (EU)2022/1854 regarding emergency interventions to foster DR ("in addition to market revenues", as stated in its article 5).

[11] FERC Order 745 on 15th March 2011 was upheld by the Supreme Court on 25th January 2016.

[12] See article 8 *sexies* in the text published by the Parliament of Luxembourg (www.chd.lu/fr/dossier/7876).