

BNetzA Consultation on §14a EnWG

smartEn considers that a design of the § 14a mechanism that provides for a compulsory participation of so-called controllable consumers is likely to violate applicable law. The decisive reason for this is that it restricts the use of the grid for certain consumers (contradiction to the grid access to be granted without discrimination), neglects the principle of market before coercion of the Electricity Single Market Ordinance, ignores the existing duty of the BNetzA to act at 14c EnWG and thus also prevents the examination of equally effective means (doubts about the purpose-means relationship).

Until the implementation of § 14c EnWG, a mandatory § 14a EnWG mechanism is likely to be disproportionate and thus inadmissible.

1. According to the proposal of Bundesnetzagentur of 24/11/2021, §14a EnWG remains a regulatory intervention. It is not an instrument to procure flexibility in a market-based way.
 - The fact that §14a is considered as a "market-related" measure does not mean that it is a market-based instrument for flexibility procurement by SOs, such as through an auction or a local flexibility market.
 - The proposal for the implementation regulation of §14a therefore does not set incentives for the development of new demand-side flexibilities which are urgently needed to meet the target of an affordable, secure and clean energy system. Flexibility on the load side is urgently needed to make the energy transition cost-efficient and thus contribute to acceptance by the citizen through low costs for end consumers. This can only be achieved through alternative, market-based mechanisms, such as flexibility markets.
 - A market with a price building mechanism prevails over a regulated price setting, in particular for complex usage profiles to value flexibility.
 - The proposal is not in line with the European Clean Energy Package Provisions for market-based procurement of flexibility and in particular Regulation (EU) 2019/943 Art. 13 on market-based congestion management by TSOs, and Directive (EU) 2019/944 Art. 32 which foresees that DSOs need to consider alternative options to grid investment such as market-based flexibility procurement. This is all the more the case as the Bundesnetzagentur proposal suggests to regulate controllable consumption devices and controllable grid connections beyond the year 2029. A clear proposal for a transition to the European target model of market-based procurement of flexibility for congestion management is missing.
2. **For these reasons, the scope of §14a shall be as limited as possible, in terms of duration, volume, purpose and remuneration.**
 - **Keep §14a voluntary:** §14a shall remain voluntary, not become mandatory as suggested by Bundesnetzagentur. Consumers shall have the choice how to commercialize their flexibility. The flexibility of end consumers shall not be locked for many years in regulated mechanisms that are not suited to solve the challenges that come with decentralization and decarbonization. On the contrary, the integration

of end consumers into markets is possible, as also foreseen in the Clean Energy Package. The fact that only a few consumers have voluntarily participated in §14a so far should not lead to the conclusion that the instrument should now simply be made mandatory and thus force end consumers to make their flexibility available in return for a regulated reduction of the grid tariff. Rather, the provision of flexibility should be encouraged via market incentives such as auctions or flexibility markets, because flexibility has a value.

- **Transition to the European target model of market-based flexibility procurement:** The implementation regulation shall clearly indicate a transition to the European target model of market-based flexibility procurement by system operators.
- **Limit the scope of §14a to a maximum extent:** Direct compulsory and non-market-based control of assets shall be limited to a maximum extent in terms of (1) scope of use (emergency situations only for example, or prove that §14c was used first before reverting to §14a), (2) time of use and duration (strictly restricted periods and amount of periods of time during the day and during the year), (3) volume (limited total volume), (4) remuneration (limited total remuneration possible). Before resorting to compulsory non-market-based administrative control of assets, there should be voluntary, market-based instruments implemented, whereas non-market-based tools should only be used in case of emergency.

For further clarification please contact Andres.pintobello@smarten.eu

About smartEn - Smart Energy Europe

smartEn is the European business association integrating the consumer-driven solutions of the clean energy transition. We create opportunities for every company, building and car to support an increasingly renewable energy system. Our membership consists of the following companies:



The positions expressed in this document represent the views of smartEn as an association, but not necessarily the opinion of each specific smartEn member.

For further information about smartEn, please visit www.smarten.eu