

## **Joint response of the NEMO Committee and Europex to the European Commission´s Call for evidence**

### **Evaluation of the European Union Agency for the Cooperation of Energy Regulators**

#### **INTRODUCTION**

NEMOs and Europex welcome the opportunity to contribute to this Call for Evidence.

The NEMOs are the entities mandated to run the day-ahead and intraday integrated electricity markets in the European Union, pursuant to Commission Regulation (EU) 2015/1222 of 24 July 2015 (CACM Regulation). NEMOs are, among other tasks, jointly responsible for carrying out the implementation of the MCO (Market Coupling Operator) function, which represents a cornerstone of the internal energy market, as well as for developing and implementing TCMs for SDAC and SIDC.

In this context, NEMOs have established extensive and continuous interaction with ACER, particularly with respect to the implementation, operation and ongoing development of the MCO function playing a decisive role in ensuring its efficiency, transparency and security of the European electricity system.

Europex represents European energy exchanges, market operators and delegated operators that are responsible for operating wholesale electricity, gas and emissions markets across both long-term and short-term timeframes, among other activities. Following all respective regulatory dossiers, Europex therefore has privileged standpoint to consider ACER's performance.

Based on the experience gained by NEMOs and Europex we are pleased to share our suggestions. These aim to support an effective division of responsibilities between ACER and NRAs and to ensure appropriate stakeholder involvement in the development of European electricity markets.

Competitive and well-functioning European energy markets require a regulatory framework that is efficient, proportionate and focused on clear added value. ACER should therefore remain focused on its core tasks and carry them out in a way that supports simplification, burden reduction and operational efficiency. In a context of growing regulatory complexity and overlap, unnecessary costs and duplication for market infrastructures and market participants should be avoided. A more focused and efficient approach would support both effective market oversight and the Union's broader competitiveness objectives.

## 1. GENERAL COMMENTS

NEMOs and Europex are fully supportive of ACER's core tasks established by EU Regulation 2019/942: the promotion of convergence and coordination between National Regulatory Authorities/NRAs and the monitoring of the consistent application of EU rules in the power sector. However, the practical implementation of these tasks by ACER raises some concerns, as NEMOs and Europex observe an approach that appears to move towards a regulatory model inspired by “command and control” principles, where detailed obligations are set for regulated entities, their compliance is closely monitored, and sanctions are proposed in cases of non-compliance.

The “*command and control approach*”, while effective in certain contexts, may present several limitations in complex and evolving market environments showing several disadvantages:

- The implementation of CACM and the corresponding TCMs should not necessarily lead to the harmonisation of every detail across Member States and regions, NEMOs or TSOs. Although harmonisation in specific areas would be beneficial, it should respect the subsidiarity and proportionality principles enshrined in the EU Treaties. As such, harmonisation should lead to more efficient outcomes for the whole market coupling, market participants and consumers. National and regional specificities should remain in place where they meet higher standards or essential needs. We sometime see ACER disregarding the substantial specificities of the regulated entities which have been established by national laws in order to safeguard the strategic set up identified by Member States;
- On some topics, ACER micromanages the market by identifying a particular solution as the “target model”, without any legal basis, to be implemented by NEMOs/TSOs. In addition, this may create a conflict of interest as ACER will have to monitor later the impact of the solution imposed through its own decision;
- On some occasions (as the process to reform the Capacity Allocation and Congestion Management and the Forward Capacity Allocation (FCA) Guidelines), ACER provided an impact assessment of questionable procedural integrity, in which the methodology and analysis seemed to be preconditioned by a desired outcome. Key factors appeared to have been neglected, even when specifically noted by stakeholders. In this sense, ACER appeared wedded to substantive conclusions that were strongly advised against by several stakeholders, including TSOs, PXs, and market parties.
- With regards to TCMs, it imposes, without any prior effective assessment, higher costs compared to more flexible or market-based solutions (low efficiency, economy);
- It incentivizes regulated entities to behave in compliance with the minimum requirements only, strongly limiting their incentives for any improvements and innovation;
- ACER invests a lot of resources in monitoring and control activities (high enforcement costs) in addition to those already financed by European citizens at national level. According to the ECA special report on Internal electricity market integration “The Commission’s regulatory approach

considerably and unnecessarily increased the administrative burden, resource needs and costs for ACER, national regulatory authorities, and system and market operators.”

- ACER assumed the role of a market designer and heavily promoted their preferred market design options like interoperability in Network Code on Demand Response, Co-optimisation, the integration of Regional Virtual Trading Hubs in the recast FCA Guideline and 70% rule. This was done regardless of a clear opposition from market participants, NEMOs, and TSOs, and despite technical reports and studies illustrating the undesired and disruptive effects of ACER’s choices. In those cases, ACER initiatives have been perceived as arbitrary and as being disconnected from operational reality. Overall, ACER seems to fulfil an effective role as an arbitrator but should not assume the role of steward of market design. We note that it is not within ACER’s remit to impose operational solutions following a command-and-control approach to Regulation.

At the international level, all the above-mentioned shortcomings are well known, and international institutions try to avoid them to the maximum extent.

Therefore, regulation tends nowadays to improve the relationship between regulator and regulated entities. There are several approaches that are being applied to achieve this goal. A first approach follows the “the adjustment by objectives model”: the regulator leaves the regulated person free to choose the most suitable means to achieve the objectives. A second approach is inspired by the “incentive model”, the regulator stimulates good conduct of the regulated entities through reward and penalty mechanisms. A third possible approach follows the “negotiated settlement model”: certain regulatory decisions are agreed between the regulator and the regulated entities through a constructive negotiation. A fourth approach is inspired by the “co-regulation model”: regulated entities are directly involved in setting the rules.

From NEMOs and Europex’s perspective, ACER is promoting, instead, a regulatory approach that aims at the reinforcement of the “old-fashioned” command and control model which represents undoubtedly a deceleration, with respect to the evolutionary process of regulation. This approach may result in a further shift of decision-making competences from national authorities to the European level, affecting the legitimate rights of subsidiarity and proportionality. While recognising the role of ACER in fostering coordination, NEMOs and Europex consider that such developments should remain fully aligned with the mandate set out in Regulation (EU) 2019/942, which is centred on coordination rather than substitution of NRAs. In this respect, NEMOs would like to highlight that ACER is an agency of the European Union established by EU legislative act (Regulation (EC) No. 2019/942, with its own legal personality (it can conclude contracts, hire staff, participate in judicial proceedings), autonomous but not independent from EU institutions: it acts in administrative and technical autonomy, but under the control of the European institutions, in particular the Commission.

In order to overcome such concerns, NEMOs and Europex consider it essential that ACER tasks are accomplished according to the following principles:

- Alignment with EU Legal Framework Principles: the objective of enhancing the EU electricity market through proper implementation of relevant rules should be pursued by European, regional and national entities, ensuring task allocation is grounded in subsidiarity and proportionality. Enforcement should remain with NRAs, in line with their legal competencies and proximity to national markets, while ACER should continue promoting convergence, coordination and consistent application of EU rules. Greater efficiency in market coupling should be achieved through clearer procedures and stronger consistency across Member States, rather than by shifting responsibilities or creating overlaps between EU and national frameworks. We would strongly encourage NRAs to actively engage in ACER´s discussion and decision-making processes.
- Follow formal processes: The regulatory tasks of ACER should be executed following transparent and formal processes involving NRAs. However, most of the ACER requests received by NEMOs are informal (sometimes only raised orally during meetings) and addressed by ACER staff to some NEMOs representatives (e.g. TF leaders). Such requests should be coordinated and submitted at a proper level of representation to the NEMO Committee for the sake of good order and transparency.
- Need for early involvement of NEMOs and TSOs in ACER timeline setting process definition: in this regard, NEMOs consider it is appropriate for ACER to formally define a process aimed at involving NEMOs and TSOs, in order to secure effective coordination and interdependencies among the timelines to be set for pan-European, regional and local projects;
- Strengthening accountability of regulated entities: NEMOs and Europex suggest achieving this important objective through a broader use of practical coordination tools, including project management approaches based on the ex-ante identification of responsible parties, a clear definition of milestones and transparent governance arrangements for each specific task. Such mechanisms should strengthen accountability of each party while preserving the institutional balance of competences and would allow for distinguishing when Pan-European, regional or local enforcement applies.

## **2. SPECIFIC OBSERVATIONS ON CACM**

Please find hereby a special focus on the activities carried out by ACER with respect to the implementation of EU Regulation 2015/1222 (establishing a guideline on capacity allocation and congestion management/CACM) that show, in NEMOs' and Europex's view, the main shortcomings and areas of possible improvements.

### **2.1 Coordination between EU, regional and local levels**

- a) While the Pan-European implementations fall under the responsibility of all NEMOs and TSOs, who organize themselves accordingly (for operational aspects mainly through the Market Coupling Steering Committee), a significant part of CACM deliverables stems from the level of regional Implementations managed by regional projects, completely beyond the control of

MCSC. In this ground, a key role to secure effective coordination between the projects should come from the regulatory level<sup>1</sup>.

- b) In the past (even recent) years, timelines set in the Pan-European TCMs often failed to take into account parallel timelines for implementation of key local or regional projects. Several NRAs launched the approval of key reforms in national balancing and dispatch regulation on the eve of the transition to 15 minutes MTU. While this was needed in order to pave the way for higher consistency between national regulatory design and the EU market design, the outcome has been a frequent congestion of implementing pipelines and cascade effects between local delays and wider EU implementation.
- c) Similarly, mismatches emerged between the Pan European timelines for implementation set in the TCMs and the local derogations allowed by the TCMs themselves and decided at local level by NRAs. While such flexibility is a cornerstone of the EU integration process - as it allows combining the EU convergence with the need to respect local specificities in line with the principle of subsidiarity - the lack of coordination between local or regional decisions of the NRAs maximized the chances for differences in those local decisions, even beyond the actual need of the individual Member States. A recent example of this is the introduction of the 15 minutes MTU.

These three aspects represent the main source of delays in the implementation of key EU projects, with related complexities and costs. None of them can be solved by applying more centralization or standardization, as this would make transitions lengthy and more unreliable. They rather originate from a lack of proper and higher degree of NRAs coordination between the EU, Regional and local level, which is the role assigned by Regulation to ACER, in line with its nature of Agency for the Cooperation of Energy Regulators. Therefore, ACER should focus on its core tasks rather than explore new paths without legal basis.

## **2.2 NRAs coordination, not replacement**

Any enhancement of the implementation of the internal electricity market rules must be achieved by European, regional and national institutions/entities assuring that the relevant allocation of tasks is firmly grounded on the existing principles of the EU legal framework, starting from the fundamental principles of subsidiarity and proportionality. In this respect, enforcement activities should remain within the scope of NRAs, in accordance with their regulatory competencies set by law and their proximity to national market arrangements, respecting the substantial specificities established by national laws in order to safeguard the strategic set up identified by Member States. ACER's role may continue to promote and enhance regulatory convergence, coordination among NRAs and consistent application of EU rules, in line with the current distribution of competences.

Moreover, the objective of higher efficiency in the implementation of market coupling deliverables should be primarily achieved through higher procedural clarity and stronger consistency of

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<sup>1</sup> According to the ECA special report on Internal electricity market integration "ACER also lacked an appropriate governance structure and the necessary competences to effectively coordinate national authorities' actions in completing ambitious integration projects".

implementation procedures across Member States, rather than by transferring responsibilities or creating overlaps between established European and national legal and regulatory regimes.

### **2.3 Stakeholders' involvement**

An area for improvement is the level of stakeholders' involvement in the processes assessing the requirements to be implemented and the related timelines for implementation. NEMOs and TSOs repeatedly reported to ACER that feasibility, complexity and implementation timelines for new requirements have been widely underestimated in Primary Regulation and in the TCMs, due to a lack of information or understanding of their implications. A relatively recent example of that has been the process of setting the timeline for implementation of 15 minutes MTU, following the approval of the finer MTU concept into the Clean Energy Package, and the related decision to promote the coexistence of several MTUs (15, 30, 60 minutes), which is now under reconsideration from ACER in favor of the transition to the single 15 minutes MTU.

Overcoming this issue calls for the establishment of a structured stakeholder engagement process, ensuring early involvement of relevant parties (NEMOs, TSOs, NRAs, MPs) in the scoping, design and planning phases of new requirements. This process should complement formal consultations by enabling iterative exchanges before requirements are formalised in TCMs. This is one of the most urgent needs in order to improve the timeliness of planning and the effectiveness of the projects. This also calls for a visible change in the processes for stakeholders' involvement set up by ACER, currently purely focused on reporting and compliance and not on the preliminary scoping for solutions and planning for solutions before they are carved into TCMs.

In particular, NEMOs and Europex consider it is appropriate for ACER to formally define a process aimed at involving NEMOs and TSOs, in order to secure effective coordination and interdependencies among the timelines to be set for pan-European, regional and local projects.

### **2.4 Consultation Processes**

NEMOs and Europex consider the consultation processes launched by ACER unfit to gather relevant information from stakeholders, despite formally compliant with legal requirements. In terms of process, consultations from ACER are very often launched for the minimum duration allowed by the regulation, at short notice before expiration and across or nearby holiday periods. In terms of content, stakeholders' answers are collected but rarely taken into consideration. Together, these aspects reduce to a bare minimum the benefit expected from such consultations.

### **2.5 Monitoring & Reporting**

Regulation (EU) 2019/943 Article 8, related to ACER's tasks as for NEMOs, states amongst others that ACER monitors the NEMOs' progress in establishing their CACM functions and requests information from nominated electricity market operators where appropriate.

Such monitoring function has been delivered by ACER – amongst other things - by establishing dedicated fora (the Pentalateral Coordination Group with its Joint Expert Teams on Algorithm and on

Energy Community), organizing ad hoc periodic workshops (on co-optimization, on fallback measures, etc.) and requesting both ad hoc and recurrent information.

While always supporting these initiatives, NEMOs consider that they fall beyond the scope of mandate of ACER in many ways. On the one side, being NEMOs appointed by NRAs, their compliance with CACM requirements should be assessed and monitored by NRAs. On the other side, NEMOs consider that the role of ACER and NRAs is to set requirements with related KPIs and monitor compliance against such KPIs, not to discuss with the NEMOs how they comply with such requirements. Especially it is not part of ACER's tasks to impose to regulated Parties operational solutions, which has become in the last years a prevailing subject in ACER's action. The consequence is that the frequency and level of detail<sup>2</sup> of these interactions<sup>3</sup> may blur the distinction between regulatory oversight and operational involvement. NEMOs consider that ACER's role should focus on setting objectives and monitoring outcomes, while leaving the choice of implementation solutions to the regulated entities.

### **3. SPECIFIC OBSERVATIONS ON REMIT**

ACER plays a key role under REMIT in supporting the integrity and transparency of European wholesale energy markets. The REMIT framework ensures the fairness, transparency, and integrity of the European increasingly interconnected wholesale energy markets, and ACER has a central role in helping to promote a more consistent approach across Member States.

The Special Report of the European Court of Auditors from 03/2023 had highlighted a number of points for consideration and action aiming at enhancing ACER's surveillance of wholesale markets integrity. A number of those points related to factors outside of ACER's control, such as structural budget shortages the lack of the powers and governance needed to enhance independence from NRAs and national interests, enforcements power and convergence tools. Budget issues were addressed with the implementation of the REMIT Fees decision and the collection of the fees by ACER in 2021 and even more so with the new REMIT Fee decision ((EU) 2025/1771), which expanded the scope, allowed for transition surcharges and increased flat registration fees among other things. Governance and power issues were addressed with Regulation (EU) 2024/1106 (REMIT II), which gave extended supervisory and investigative powers for ACER, increased reporting requirements and harmonised sanctions.

With the new regulatory framework in place, the effectiveness of ACER's work under REMIT depends on the quality of implementation. In practice, this means clear legal and technical guidance, stable reporting specifications, and implementation timelines that properly reflect the scale of the system, process and contractual changes required from market infrastructures and market participants. This remains particularly important for OMPs, RRM and IIPs operating in a highly technical reporting environment. It also means that ACER should leverage its new powers and optimize the use of the data available to them.

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<sup>2</sup> Local trading systems design, IT architecture design etc.

<sup>3</sup> During 2026 meeting are being organized on average once every 7 days (5 JET-A, 3 JET-EnC, 2 PCG2, 1 MESC).

We also see clear value in ACER's ongoing engagement with stakeholders on REMIT, which has been continuous during the update of the REMIT framework and is still ongoing. Consultations, roundtables and webinars are useful channels for discussing operational questions, identifying issues early and supporting more consistent application of the rules. In this context, Europex considers it important that the practical operational constraints and challenges highlighted by OMPs, RRM and IIPs in these exchanges and through public consultations are carefully considered by ACER, as this would contribute to a more effective and workable implementation of the REMIT regulation. In a framework as detailed and specialised as REMIT, this kind of exchange is not a side issue but a practical part of making the regime work well.

Looking ahead, NEMOs and Europex would encourage ACER to continue its REMIT work with a strong focus on legal certainty, proportionality and operational feasibility. In particular, new obligations should avoid unnecessary duplication or unintended overlap with other regulatory regimes, especially where products or activities are already subject to MiFID II/MiFIR and other EU financial market rules. A more streamlined approach to reporting and oversight would help support high-quality data, effective market monitoring and well-functioning, liquid and transparent European energy markets.

#### **4. SPECIFIC OBSERVATIONS ON OTHER ASPECTS**

##### **4.1 ACER fees**

On ACER fees, NEMOs and Europex would encourage a transparent, predictable and proportionate approach. While ACER should have the resources necessary to perform its REMIT tasks effectively, the Agency should take due account of the economic impact of its activities and fee-related decisions on market agents. In particular, the fee framework should avoid creating unnecessary financial or administrative burdens, including through duplicative or overlapping reporting obligations, and should not negatively affect market participation or liquidity. Any extension of ACER's tasks or related cost recovery should therefore be accompanied by a careful assessment of the scope of the new functions and tasks and their implementation costs and broader market impact.

##### **4.2. Coordination between EU, regional and local levels**

In the coordination of balancing markets, ACER is perceived as having played a decisive role in advancing EU-wide platforms such as TERRE, MARI, and PICASSO, which have in turn brought significant economic savings. Moreover, ACER has applied clear pressure on the parties involved to deliver real cross-border balancing volumes, which has led to substantial economic benefits.

##### **4.3 Coordination**

Regarding the recast of the Forward Capacity Allocation Guideline (FCA), Europex would like to note that ACER contributed to unblock the FCA implementation process where NRAs and TSOs could not reach agreement, as for example, in the case of the Harmonised Auction Rules and the CORE Long Term Capacity Calculation Methodology. In this respect, ACER has provided a positive input, especially in terms of coordination and procedures. Furthermore, ACER has correctly recognised the link between

liquid forward markets and day-ahead price formation, correctly acknowledging the role of power exchanges (PXs).

#### **4.4 Stakeholders' involvement**

In general, we observe that cooperation with stakeholders in the different fora is procedurally correct, but it does not permit sufficient participation and does not foster the collaborative environment that would allow for beneficial exchanges.

Notwithstanding the above concerns, there are also positive aspects to highlight. Regarding the Network Code on Demand Response, ACER has demonstrated a willingness to include stakeholders in the general drafting process, especially through an inclusive approach when establishing the Demand Response European Stakeholder Group. ACER has successfully adopted a technology-neutral position, allowing technologies to be deployed according to their cost-efficiency. This more neutral position also leads to better integration of demand-side flexibility, aligned with price signals. ACER has also supported market-based mechanisms as a target model, permitting efficient and neutral deployment of demand-side response.

#### **4.5 Regulatory Considerations over Market Perspective**

Regarding access to the DR NC drafting process, stakeholders' involvement was sometimes impaired by a burdensome and overly bureaucratic procedure. Moreover, regulatory considerations seem to have been prioritised to an extent that actual market functioning was neglected. In this respect, we would like to highlight that ACER must pursue the objectives of harmonisation and standardisation, within the limits of the fundamental EU principles of proportionality and subsidiarity, without neglecting a practical approach that takes in due consideration the actual state of affairs as well as local requirements; differently, the outcome of ACER's work would result in delaying the development of these markets and jeopardising their liquidity. From a market perspective, the treatment of interoperability of the Network Code, in terms of its interaction with short-term markets (e.g., intraday and day-ahead), was perceived as remaining one-sided, and ACER placed too much weight on specific ideas such as bid forwarding. These ideas are perceived as being upheld by ACER despite a lack of consensus around them and in disregard of fact-based studies that considered such proposals as suboptimal solutions. It was also difficult for us to understand why ACER did not show any willingness to reassess the relevance of neutral third parties as local market operators.

Overall, ACER is perceived as unwilling to re-evaluate and reconsider preliminary decided concepts even in the light of fact-based discussions. ACER's strong prescriptive tendency seems to be disconnected from the factual situation and, hence, disregards essential practical aspects of the topic it addresses. Indeed, such level of detail in a European Network Code does not leave the choice of implementation solutions to relevant actors.

Moreover, in the topic of balancing, some decisions appeared unjustified and were not sufficiently explained. For instance, market-based procurement has not been prioritised as legally required leading to economic inefficiencies. Another example of this is the fact that Value of Lost Load was perceived as

a crucial benchmark when determining Harmonised Maximum and Minimum Clearing Prices for Nominated Electricity Market Operators (NEMOs), whereas for balancing markets ACER supported lower technical price caps. ACER neither explained nor justified this shift of position on such important topic.

## **5. RECOMMENDATIONS AND CONCLUSIONS**

Considering the arguments presented above, in NEMOs and Europex perspective it is of utmost importance to continue to guarantee the proper division of responsibilities between ACER and local NRAs to ensure the correct functioning of the European electricity markets, as pursued by the EU regulatory framework. Indeed, ACER should continue to promote the application of EU rules and coordination among the NRAs to overcome those barriers that hinder the complete integration of the electricity market. On the other hand, the NRAs should continue to be entrusted with those enforcement activities that ensure the completion of the projects envisaged by the Regulation. Through this proper division of responsibilities, the timelines of the pan European, regional and local projects would be better organized, and the competencies between the different entities would be adequately distributed, without the risk of being in breach of fundamental principles such as those of subsidiarity and proportionality.

Furthermore, as far as the implementation of pan-European, regional and local projects is concerned, NEMOs strongly ask for an adequate involvement of the stakeholders (TSOs, NEMOs, NRAs, MPs) directly impacted by these projects to ensure the consistency of timelines and objectives. Concretely, all the relevant stakeholders shall be timely included in the planning of the projects to contribute to the definition of the related timelines and deliverables. The purpose is to find, on one hand, joint solutions and to secure, on the other hand, coordination between projects set at different levels. Additionally, this involvement should not be limited to “formal” consultations but should instead rely on structured and dedicated processes that allow for continuous exchanges between ACER, NEMOs and the other relevant stakeholders.

Regarding ACER monitoring and reporting activities on CACM requirements of NEMOs, we ask that ACER comply with its respective tasks, which are limited to the establishment of KPIs and monitoring of compliance against them, rather than proposing operational solutions to the regulated parties. Indeed, this approach risks reducing NEMOs operational flexibility and the incentive to provide innovative solutions to be compliant with CACM requirements.

Moreover, ACER should move toward a more open, evidence-based and market-centred method of working by genuinely incorporating stakeholder input and reassessing predefined concepts when facts or market experience challenge them. For instance, harmonisation should allow flexibility for local realities, interoperability with short term markets must be addressed holistically, and solutions indicated- from a market perspective should not be automatically discarded in favour of prescriptive and theoretical mechanisms. We would prefer to see ACER in the role of a facilitator of discussions and decision-making in the field of market design, rather than encompassing and micro-managing all



aspects of market functioning and operation. In general, a clearer and more consistent justification of key design and pricing choices should be ensured.

In the end, NEMOs and Europex appreciate the opportunity to contribute to this call for evidence and remain available to provide further evidence or participate in follow-up- discussions.