

## Replies of the European Union Agency for the Cooperation of Energy Regulators (ACER) to the European Court of Auditors (ECA)' Special Report: Internal electricity market integration

### 1. ACER's reply in brief

ACER concurs with ECA's overall observation that a fully integrated internal energy market has become even more urgent because of the energy and cost of living crisis currently facing EU citizens.

ECA's audit report is being issued at a time of heightened sensitivities around the benefits and implications of power market integration in the EU. This is a serious debate which carries risks for a possible electricity market fragmentation going forward. Thus it is even more important than usual to be precise and measured.

*ACER's view as regards ECA's main observations on electricity market integration.*

- ACER would have welcomed a more balanced overview of the huge efforts and achievements made in integrating national electricity markets.
- Europe's power system is the most integrated in the world. It brings significant benefits for European citizens and companies. Based on a scenario without any cross-border trade in 2021, ACER estimates that these benefits amount to approximately 34 billion Euros a year<sup>1</sup> by enabling cross-border trade between Member States and improving Member States' resilience and security of supply<sup>2</sup>.
- Europe's success in progressing with integrating the electricity system is the result of the efforts of many<sup>3</sup> and ACER would have welcomed the recognition of this complexity and effort.
- ACER would have welcomed the recognition of a number of key achievements made during the 2015-2021 period – achievements which render the benefits of the European electricity market integration project tangible. These include the creation (in 2018) of a single allocation platform that allocates available long and short-term transmission capacity rights on all internal EU borders; the European single intraday coupling across 15 countries (2018); and the go-live of the European balancing platforms in the last two years, which development will help increase security of supply and allow new players (such as demand response and renewables) to take part in this market.

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<sup>1</sup> See executive summary and paragraph 38 of the observations of the ECA report.

<sup>2</sup> For details, see [ACER's Final Assessment of the EU Wholesale Electricity Market Design](#), April 2022.

<sup>3</sup> These include, *inter alia*, the European Commission, Member States, European Parliament, network and market operators, traders as well as ACER and the national regulatory authorities (NRAs).

*ACER accepts the recommendations, except for the target date under Recommendation 3. The Agency considers it challenging to fully implement the market surveillance recommendation by the 2025 deadline set.*

## **2. ACER General observations on integrating EU electricity markets**

ACER would have welcomed the acknowledgement of the huge efforts and the achievements made in integrating national electricity markets which boosted cross-border trade over the last decade, and delivered significant benefits to EU citizens and businesses. The actual result of these massive efforts is that Europe's power system is the most integrated in the world. Based on a scenario without any cross-border trade in 2021, ACER estimates that these benefits amount to around EUR 34 billion a year<sup>4</sup> by enabling cross-border trade between Member States and improving Member State's resilience and security of supply<sup>5</sup>.

The integration of Europe's electricity markets is still an ongoing process. ACER would have welcomed the acknowledgement of a number of key achievements from 2015-2021. The achievements which represent decisive milestones on the way to the completion of the internal electricity market and make the benefits of this European electricity market integration project tangible include:

- the progressive harmonisation of the rules for long-term transmission rights and the creation (October 2018) of a single allocation platform that allocates available long and short-term transmission capacity rights on all internal EU borders and acts as a back-up for the Single Day-Ahead Coupling project;
- the go-live (June 2018) of the European single intraday coupling across 15 countries, which, after two waves of extension, should soon be fully completed with the fourth and final wave (i.e. integration of Greece and Slovakia);
- the go-live of the European balancing platforms in the last two years, whose development will help increase security of supply and facilitates the participation of new players (such as demand response and renewables) in this market; and
- the recent (8 June 2022) go-live of the Core region's day-ahead flow-based project, which optimises the use of existing cross-zonal capacities in about half of Europe (13 countries).

In addition, ACER points out that Europe's internal electricity market:

- given its high ambition and multi-actor landscape, is the most demanding, multi-country power integration project in the world;
- that because of its success, Member States have been better able to weather the current energy market crisis (reduced price volatility and better supply security) and the challenges ahead;
- has facilitated a larger share of renewables in Europe, both faster and in a more secure and cost effective way than was initially expected; and
- will be crucial for the security of supply of several Member States who depend heavily on cross-border capacities being made available for trade.

In this complex market integration process, ACER's value lies not only in drawing together the

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<sup>4</sup> See executive summary and paragraph 38 of the observations of the ECA report.

<sup>5</sup> For details, see [ACER's Final Assessment of the EU Wholesale Electricity Market Design](#), April 2022

national regulatory authorities (NRAs), but also bringing on board all involved parties and providing views on near-term and longer-term challenges. Besides taking binding decisions and issuing recommendations to further improve the functioning of the internal electricity market, these efforts also include ACER's successful initiative to put in place an inclusive and effective monitoring strategy via the establishment of four European Stakeholder Committees to contribute to monitoring progress in the Network Codes (NCs) implementation process – as well as the operation and functioning of the processes and arrangements established according to the NCs – at local, regional and pan-European level, as per the [terms of reference](#) of those Stakeholder Committees.

### **3. Specific observations**

#### **Observation VIII (Executive summary)**

While ACER appreciates any suggestions to further improve its monitoring approach in the future, ACER believes that its monitoring approach was effective in raising awareness about the key issues at stake with the implementation (or lack thereof) of Network Codes and Framework Guidelines.

Furthermore,

- 1) Over the last seven years (i.e. since the adoption of Network Codes and Guidelines) all ACER internal (Task Forces, Working Group, Board of Regulators) and external structures - European Stakeholder Committees, Tripartite coordination groups (EC-ACER-ENTSO-E), High-level Implementation Monitoring Group (EC-ACER-ENTSO-E), European electricity regulator "Florence" Forum - have been dedicated to monitoring progress and challenges in the implementation of the EU Network Codes and Guidelines. In particular, ACER emphasises the role and contribution of the European Stakeholder Committees in maintaining a constant pressure on those parties involved and responsible for the implementation of Network Codes and Guidelines, be it Transmission System Operators (TSOs), Nominated Electricity Market Operators (NEMOs), NRAs and sometimes ACER and the European Commission.
- 2) ACER distinguishes between the monitoring of the binding EU-wide Network Codes (where a significant effort has been made by ACER to consistently, systematically and comprehensively report on their implementation status) and the monitoring of the Guidelines (where effort was mainly put on the timely adoption of the terms, conditions and methodologies).

With this wide range of internal and external structures, the European Commission, NRAs, Member States and stakeholders were well informed of the implementation status of each Network Code and Guideline.

#### **Observation 73**

Stakeholders were actively involved in monitoring implementation of the Network Codes and Guidelines in particular via the four European Stakeholders Committees (ESCs) established immediately after the adoption of the Guidelines (see the Terms of Reference of these ESCs and the agenda, minutes and material of these meetings since their establishment on the official European Stakeholder Committees website ([on www.entsoe.eu](http://www.entsoe.eu))).

ACER did follow up on the Recommendations made in its first CACM<sup>6</sup>/FCA<sup>7</sup> Guideline and in 2021 made a recommendation for a CACM 2.0 Guideline. In October 2022, ACER launched a consultation process that should lead to a proposal to amend the FCA Guideline in March 2023.

ACER did not cover the Balancing guideline in the first Implementation Monitoring Report (IMR) published in 2019 because the activities for implementing the Balancing Guideline were focused on the timely adoption of terms, conditions and methodologies (TCMs), which usually precedes the implementation of projects.

#### **Observation 84**

While ACER did not submit any official opinion to the European Commission nor to the European Parliament within the Market Monitoring Reports (MMRs), ACER provided recommendations to NRAs, TSOs and other stakeholders in different documents. Examples include the following:

- 1) one on the Common Capacity Calculation and Redispatching and Countertrading Cost Sharing Methodologies in 2016;
- 2) one on the Implementation of the Minimum Margin Available for Cross-Zonal Trade;
- 3) one on the revision of the CACM Guideline.

#### **Observation 130**

ACER considers that the result of its surveillance activity compares well with surveillance by Persons Professionally Arranging Transactions (PPATs) and also financial regulators. The current low number of enforcement decisions based on preliminary assessments from ACER relates to the small number of referrals from ACER in absolute terms. However, in relative terms, ACER referrals have been steadily increasing over the past 5 years from 2.4% to 8.8% of all cases reported to the Agency. This is mainly due to a lack of staff for surveillance activities, incomplete market surveillance coverage and the lead time of NRA investigations.

#### **4. ACER's Replies to the Recommendations of the ECA**

ACER takes note that Recommendations 1, 2, 5 and 7 are addressed to the Commission.

#### **Recommendation 3 – Enhancing ACER's surveillance of wholesale markets integrity**

ACER accepts the recommendation, except for the target implementation date. Implementing this recommendation by 2025 is not realistically possible.

The Agency has consistently expressed in its annual programming documents since 2016 that with the available resources it cannot appropriately fulfil its legal obligations under Article

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<sup>6</sup> [Commission Regulation \(EU\) 2015/1222 of 24 July 2015, establishing a guideline on capacity allocation and congestion management \(CACM\)](#)

<sup>7</sup> [Commission Regulation \(EU\) 2016/1719 of 26 September 2016, establishing a guideline on forward capacity allocation \(FCA\)](#)

7 (1) of REMIT<sup>8</sup>. The Internal Audit Service of the Commission and the ECA itself have confirmed this.

In view of the Opinion of the European Commission on ACER's Programming Document 2022-2024 and the Legislative and Financial Statement (LFS), ACER has been granted additional financial and human resources. However, the new recruits will be phased in by 2027.

With respect to Article 7(1) of REMIT, now the focus of ACER is to first expand the market surveillance coverage by developing and enhancing alerts in the next five years. For this activity, ACER lacked sufficient financial resources in the past and hence significant catching-up is needed. Second, ACER is recruiting additional market surveillance experts in order to cope with the increasing number of "triggered alerts" which need manual assessment by experts and to expand the surveillance coverage. Third, ACER market surveillance work is challenged by the evolving EU wholesale markets (e.g. SIDC, Intra-day auctions and EU balancing market platform) and possible expanding REMIT jurisdictions (e.g. the Energy Community region is preparing for introducing market coupling). Fourth, ACER has recently been tasked by the European Commission with producing an LNG Benchmark and (depending on the political discussions) could possibly be tasked with implementing a 'Gas market correction mechanism'. These additional tasks could potentially slow down the work on delivering on this recommendation by 2025.

In view of the above, ACER strives to fulfil its legal obligations under Article 7(1) of REMIT by gradually on-boarding the necessary additional resources made available through the LFS by 2027.

***Recommendation 4 – Speeding up the use of REMIT fees to address shortcomings in ACER's market surveillance***

ACER accepts the recommendation.

***Recommendation 6 – Improving ACER's transparency and accountability***

ACER accepts the recommendation.

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<sup>8</sup> [Regulation \(EU\) No 1227/2011](#) of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (REMIT)