

Triologue on Electricity Market Design Reform

Explanatory Note on Single Legal Entity for Market Coupling Operator Function Art. 7.1 & 59 of the EMD Reform

Why transferring a complex, sensitive and proven activity from the national energy exchanges to an entirely new, European centralised, monopolistic, and bureaucratic entity is not contributing to stability and security of supply. However, this is exactly what the market and industrial and final end-consumers need!

By concentrating all operations in one entity, it creates a single point of operational and financial failure and thus jeopardises the EU Electricity Market.

It is contrary to the foundations of the European Union and the objectives of the EU Electricity Market in particular: competition and innovation.

It contravenes the principles of subsidiarity and proportionality, undermines oversight and control by the authorities of the Member States, and disregards the outcome of democratic consultations held in 2021 and 2022.

In the current discussion on the Electricity Market Design (EMD) review, the European Commission (EC) proposed in March 2023 to amend Articles 7.1 and 59 of Regulation (EU) 2019/943 on the internal market for electricity with a reference to a Single Legal Entity (SLE) for the Market Coupling Operator (MCO) function and to grant more oversight powers to the Agency for Cooperation of Energy Regulators (ACER).

Surprisingly, this proposal was not discussed as part of the public consultation of the EC in January / February 2023. As a result, stakeholders (most importantly NEMOs, TSOs, market participants and their associations) had no opportunity to provide feedback ahead of the proposal in the context of the EMD.

At first glance, this amendment appears to be rather limited in scope and suggests introducing a mere option to establish such an entity. Consequently, it has raised little attention in the on-going debate. However, the implementation of a pan-European Single Legal Entity would deprive Nominated Electricity Market Operators (NEMOs) of their function and put market resilience at great risk. This is clearly a first step towards a de-facto centralisation of the European Market Coupling operations and goes against the principles of proportionality and subsidiarity enshrined in the European Union's key texts.

Discussion on the SLE dates back to early 2021. On 20 January 2021, the EC requested ACER to draw up a recommendation for a revision of Commission Regulation (EU) 2015/1222 on establishing a guideline on Capacity Allocation and Congestion Management (CACM). ACER conducted a public consultation on this reform from April to June 2021. In this consultation, the idea of centralising the MCO function in a new legal entity was presented by ACER. This proposal clearly went beyond the original mandate of the EC for a targeted reform. Moreover, all transmission system operators

(TSOs), NEMOs and market participants and their associations EFET and Eurelectric jointly opposed this approach as seeing it as inefficient, untargeted, and unnecessary.

Indeed, an overwhelming majority of respondents explicitly rejected the creation of an SLE and some of its few supporters of the past have reconsidered their initial support, in the meantime. Taking all of this into account, we concluded in 2021 that the SLE is not backed by any of the relevant group of stakeholders. The results of the study can still be read at this [link](#).

In 2021, ACER provided an initial impact assessment on the SLE which was often factually incorrect. NEMOs and TSOs provided ACER with factual rebuttals, which were ignored. The rebuttals provided by the NEMOs to the main arguments put forward by ACER are available in the Appendix below. In addition, ACER did not produce a cost-benefit analysis and even though the concept was challenged by several national regulatory authorities (NRAs) in the meeting of the Board of Regulators where ACER's final recommendation for the revision of CACM in December 2021 were discussed, the concept of a Single Legal Entity based on monopolisation and centralisation was approved in the final ACER proposal.

In a subsequent consultation of ACER's recommendation held by the EC in March/April 2022, the concept of the SLE was once again overwhelmingly criticised by all stakeholders and TSOs and NEMOs provided more refined ideas for a more targeted solution to address the identified shortcomings of the CACM implementation, since its entry into force in 2015. The legislative amendment process of CACM was then interrupted by the energy price crisis. A deep analysis of either impacts or benefits/costs of the SLE is still outstanding.

Against this background, it should be obvious that:

- (i) the concept of an SLE has been challenged by all stakeholders involved in Day-Ahead and Intraday markets activities in the past three years;
- (ii) the SLE is neither a simple nor a no-regret measure;
- (iii) the SLE is not linked to the EMD reform process and its main aims; it is a potential instrument of market coupling and neither brings prices down, nor increases the trust of investors, nor facilitates the accomplishment of the EU's renewables and/or decarbonisation goals; and
- (iv) given the limited time that was dedicated to the EMD as regards impact assessment and cost-benefit analysis, the concept of the SLE does not fit the current project process-wise.

Recommendations

- 1) We therefore highly recommend descopeing the respective amendments to Articles 7.1 and 59 from the EMD package.**
- 2) As an alternative proposal to this unnecessary disruption of the Market Coupling Operation function, we suggest sticking to the current design while optimising governance through:**
 - **improved resource adequacy** – to deliver implementation projects on time and
 - **contractual simplification** – to reduce complexity.

- 3) We are ready to continue a proper discussion on the requirements for the amendment of CACM without further delay and to dedicate all necessary resources to this legislative process, as well as pro-actively contributing to a successful and timely outcome.

Paris / Oslo, 10 November 2023

APPENDIX

Rebuttal of concerns expressed by ACER in its 2021 Initial Impact Assessment

ACER's concern n. 1: Development & implementation: slow, complex, costly and delayed

- **A single legal MCO entity will not reduce the complexity of the projects being implemented.** Such projects (e.g., 15 Minutes MTU, IDAs, Flow Base) are inherently complex and require NEMOs and TSOs to carry out extensive local testing to ensure market coupling operations remain robust. **Such complexities will not disappear if a single legal entity** is established, as NEMOs and TSOs will still need to carry out extensive testing prior to go-live of any project. Similarly, much of the complexity of the SDAC and SIDC, which is due to local grid operation, balancing and market requirements, will remain in place even if a single entity is established and will only be eliminated when the underlying local requirements are harmonised.
- Since 2021, **the NEMO-TSO cooperation has been deeply reformed to make it more efficient and transparent. In 2022 NEMOs and TSOs adopted QMV**, which has sped-up decision making and have also implemented other reforms that have made the development and operation of the MCO more efficient and transparent. Specifically, we have ensured that all NEMOs and TSOs are fully involved in all the development and operational decisions related to the MCO assets, have full access to all information related to the MCO assets and have direct access to the MCO service providers.

ACER concern n. 2: Market coupling operation: too complex, costly, risky, cumbersome

- **Market Coupling Operation has proven itself to be robust and safe**, even as its geographical scope and underlying requirements have increased.
- **Operational security** is best preserved by allowing the entities with the most expertise in market coupling (i.e., the NEMOs and TSOs) to continue to develop and operate the MCO, not by allocating such tasks to a new entity which will not have the required level of expertise for a long time – if ever - and which, by its very nature, would unduly concentrate operational and financial risks.
- **Please note that the three partial decoupling events (2019, 2020, 2021)**, which ACER cites to support its view that the current MCO operations are not secure, **were due to local order**

book issues of individual NEMOs, not to the MCO operation **and would still have occurred even if a single MCO entity had been in place.**

ACER concern n. 3: Continuity: the risk of having no operating NEMO in a Member State

- The continuity of MCO services is ensured in the most cost-effective manner by providing commercial incentives for any NEMO, which is already operational in another bidding zone, to take over the role of the last resort NEMO.

ACER concern n. 4: Algorithm ownership, ownership hinders level playing field, transparency, innovation

- The source code of the algorithm is accessible to NRAs according to existing regulations. The public descriptions of [the single day ahead algorithm](#) and of the [single intraday](#) algorithms are publicly available. A publication of all the algorithms source code would infringe IPR rights and create unwarranted cyber-security and market manipulation risks. With regards to any criticism stating that NEMOs or TSOs do not have equal rights in submitting requests to modify the algorithms, we note that any NEMO and any TSO is entitled to submit a request for change (RfC) of the SDAC and SIDC algorithms' functionalities and their usage – the RfC is evaluated in accordance with the transparent, non-discriminatory principles outlined in Title IV of [the CACM Algorithm Methodology](#) approved by ACER.

ACER concern n. 5: Regulatory oversight and enforcement: difficult, unclear, impossible

- This is not an issue related to the MCO governance, but to the lack of clarity of key CACM provisions. For example, **as of today the NRAs have been unable to agree on and enforce a harmonised position where required** (cost recovery; shared liquidity; capacity allocation at gate opening, etc.).