

NEMO Committee's feedback to Annex 3 of ACER's recommendation n. 02/2021

Contents

Introduction	3
1 Comments to “Problems experienced when implementing EU market coupling” according to ACER’s IIA	5
2 Annex 2 - Comments on “Assessment of the identified policy options”	18
2.1 Effectiveness to enhance market integration.....	18
2.2 Effectiveness to ensure non-discrimination.....	21
2.3 Effectiveness to increase competition.....	22
2.4 Effectiveness to enhance efficient functioning of the market	24
2.5 Efficiency	26
2.6 Coherency	28
3 Annex 3 - Comments on “Conclusion and recommendations”	30

Introduction

"All TSOs and all NEMOs have worked on common position on MCO Governance to answer ACER's consultation on CACM 2. The position to strengthen current governance and not establish a legal single entity has been firm by all TSOs and all NEMOs since the start of the consultation. The reason for this position is clearly explained in the joint advocacy paper published in December 2022.

The further analysis of the IIA have been done by all NEMOs. However, all TSOs find the content of this analysis of the IIA fully in line with the positions provided in the mentioned advocacy paper. All TSOs therefore fully support the content all NEMOs provide in their analysis of the IIA."

This paper complements the Joint TSO - NEMOs CACM 2.0 Amendment Advocacy Report and provides the review of NEMOs of the Initial Impact Assessment (hereinafter IIA) published by ACER as part of its Recommendation to the European Commission on the revision of the CACM regulation. With this review, the NEMOs aim to illustrate what they consider the foundation of their disagreement with some key aspects of ACER's Recommendation, namely, to assign the MCO function to a dedicated Legal Single Entity. As it will be shown, ACER's gap analysis as well as the IIA suffer from several shortcomings.

In particular, the review of ACER's IIA shows that:

- a) ACER's proposal is based on a misrepresentation of the issues related to the market coupling developments (see for example the debate on the inherent complexities of the project management activities involved in market coupling extensions and improvements), the market coupling standard operations (see for example the solutions describing the rotational mechanisms and the co-ownership schemes) and the market coupling operational incidents (see for example the descriptions of the causes of the three decoupling events);
- b) ACER's proposal lacks any real cost-benefit analysis of the changes proposed, ending up in proposing solutions whose implementing and operating costs are widely disproportionate with respect to the additional benefits expected from their proposal, once compared with the one proposed by NEMOs and TSOs;
- c) ACER's view is not able to capture the absolute uniqueness of the results achieved in the last 10 years in Europe thanks to the effort of NEMOs and TSOs, which delivered an integrated market coupling extended to all EU and to both DA and ID timeframes: a result still far from achievement even in the US, which initiated the liberalization of power markets years before many EU Countries, and which should have benefited from an internal standardized market design
- d) ACER does not differentiate between the issues that the involved parties faced early after CACM entered into force and today. Many problems described are rather historical and were due to unclear wording of the regulation, the fact that many GT&C were missing, and problems simply had to be worked out.

In the paper which follows, we provide our detailed comments to the section 2 of the IIA, titled "Problems experienced when implementing EU market coupling". In our view, the problem identification is wrong in many aspects and this leads to ill-advised proposals.

Furthermore, we outline additional comments on sections 3 and 4 of the IIA in the following annexes:

- in Annex 2, comments on “Assessment of the identified policy options”;
- in Annex 3, comments “Conclusions and recommendations”.

1 Comments to “Problems experienced when implementing EU market coupling” according to ACER’s IIA

Ref	ACER’s text	Agree	Comment
2.1.6	ACER’s remark on delays in implementing the market coupling	No	Starting from 2015, NEMOs and TSOs have ensured a high level of progression in CACM compliance, with a significant track record of relevant and challenging go lives, including amongst others, the geographical extension to almost all of the EU in both the DA and ID timeframes, but also MNA implementation and FB implementation in the DA timeframe. Delays have obviously occurred, but very often as a consequence of the challenging nature of the requirements (see, for example, FB or 15 minutes MTU) or difficulty in defining the underlying project requirements, due to their complexity and lack of clarity and detail in the concerned CACM articles (see MNA example). Furthermore, it is true that one specific border is still not coupled in the SDAC, but this is not due to the development and operation of the MCO function. Most of the borders were coupled years ago. The numbers of borders coupled at a later stage are very few and the reasons behind the later go-live have nothing to do with deficiencies in the MCO functions but rather with regulatory or national reasons.
2.1.6.	“[...] the first version of the [MCO] plan was of extremely poor quality, all regulatory authorities had to request improvements of the plan twice before its approval [...]”	No	The delays and problems observed need to be understood in the context that this was the first time that a complex matter was covered by regulation. Hence, it was the first time the MCO Plan was elaborated. NEMOs, who did not have much experience in this type of work, had to learn that the requirements of a contractual setup are different from the regulatory ones. In this situation the lack of guidance of NRAs during the drafting process added extra burdens. This exchange and guidance were finally given by the NRAs’ requests for improvements. In retrospect, NEMOs believe that the imposed deadlines were simply too optimistic. NEMOs would also like to remind the EC that the initial idea of CACM was a more technical document that would not have required extensive further GT&C or methodologies. In the drafting process, the sheer complexity of several topic became apparent, which finally resulted in a regulation, which was definitely more high-level as

			initially intended. As this complexity was simply shifted to NEMOs, this background shall not be completely forgotten. However, the plan was finally approved, and it has proven fit for purpose as a basis for implementation of SDAC and SIDC. Taking into account the mentioned background and the number of entities involved in the process, we conclude that the outcome needs to be considered a success in the end.
2.1.7.a	“First, all NEMOs involved in any implementation project decide with consensus. Therefore, in case of disagreement on concrete implementation problems, the implementation process is effectively stopped and hinges on intervention of NRAs, ACER and EC, without any guarantee if and when a solution and/or an agreement will be found.”	Partial	<p>Many implementation delays were due to legal and/or regulatory lack of clarity, and not related to NEMOs. It must be considered that many escalations were not due to lack of consensus, but to lack of clear legal basis in CACM, leaving ground for opposite interpretations of the text: examples are the application of cross clearing fees among NEMOs, the ability to retain coupling of NEMO Trading Hubs withing the same BZ in case of decoupling, etc.</p> <p>It must be also considered that many of such ambiguities have been solved in the draft revision of CACM.</p> <p>Consensus was the key enabler of cooperation in the early stages of market coupling, even before the regulation aimed for a European single electricity market. CACM was interpreted to build upon these experiences and to introduce QMV votes in explicitly mentioned cases only. The principle of unambiguity was explicitly referred to in the MCO plan, which was endorsed by the competent authorities. Also, the possibility to escalate blocking issues to authorities was stipulated and accepted. Against this background, the setup was commonly accepted and shared; and NEMOs cannot be solely blamed for the shortcomings of it. However, building on more recent experiences under CACM, NEMOs agree that decision by consensus must be complemented by an unblocking decision-making rule based on majority voting. We are already implementing this both in joint decision making with TSOs, as part of our evolutionary Governance proposal, and in the NEMO only agreements.</p>
2.1.7.b	“[...] This requires each NEMO and each TSO to establish bilaterally or regionally agreed arrangements with each NEMO and each TSO on the other side of each border (‘NEMO2NEMO approach’) which is also hindering third party access for new NEMOs	Partial	NEMOs agree that complex negotiations for entering of NEMOs in new BZs can be solved by a NRAs/ACER approval of some general standard conditions for clearing and settlement among NEMOs. With this respect NEMOs support the proposal to establish a Methodology for cross clearing and settlement. Although in the contract with the central entity or during the elaboration of the general standards the national specialties need to be taken into account. The first draft of this contract

	<p>entering the market coupling Where it is necessary need to respect the specific national rules applicable in each Member State or specific requirements adopted by each NEMO/TSO. This leads to extensive coordination, negotiation and a complex contractual framework. It also requires lots of efforts and resources from NRAs and ACER to intervene and solve implementation problems and disputes at informal level, often without any guarantee that an agreement will eventually be found.”</p>		<p>will pose a significant challenge regardless whether this is to be elaborated with the central entity or among the NEMOs (shipping agents). NEMOs do not agree that establishing a Cross Clearing & Settlement Central Entity adds significant further benefits, while it should induce extra costs related to the establishment of a dedicated entity. Also the decommissioning of the current infrastructure would mean extra costs, plus the risks of concentrating all activities in a single point of failure. Beyond that, the proposal of a central settlement entity does not address the issue of the collaterals to be posted towards the CSCE. In many cases, however, NEMOs and TSOs have already managed to agree on standard contracts or templates. This was, for instance, one of the major side-effects of the implementation of several Multi-NEMO arrangements. In fact, it will be easier for new NEMOs to enter the competitive markets now as the MNAs are in place, because standards terms, contract templates and common methods exist and can be adhered to in a non-discriminatory manner more easily. In such cases, ACER simply extrapolated past difficulties, although many of them have been mastered in the meantime. ACER’s conclusions clearly lack any form of a diligent examination in this regard, and NEMOs challenge them as inconsistent and wrong. It is also not acceptable that ACER seems to blame NEMOs and TSOs for different national rules, that are allowed in art. 4.7 of CACM.</p> <p>The problem regarding cost recovery for clearing and settlement is not solved in ACER’s recommendation and a decentralised approach seems to be more suitable as it is already in place and running with no incidents.</p> <p>Clear inefficiency is also derived from the fact that some MNAs are drafted and approved locally by national NRA, without respecting cross-border positions/interests/other local specificities. In case MNA would be at least regional, many open issues would be solved before entering into local projects.</p>
2.1.7.d	<p>“[...] the organisation should (i) seek to minimise the need for parallel projects (e.g. by integrating several projects into one) and (ii) where this is not possible</p>	No	<p>ACER seems to overlook the technical complexities and the paramount importance of ensuring the well-functioning of the market coupling at all times in parallel with new implementations and developments. Organizing projects in parallel is a tool to ensure that only the relevant parties need to be involved. Integrating or merging several local and/or original projects in bigger packages would simply multiply costs since it would require involving all</p>

	<p>testing of projects should be done in parallel instead on in sequence.”</p>		<p>SDAC/SIDC parties. Sequential implementation of go-lives rather than in parallel is usually preferred to avoid bottlenecks in human resources at local testing level, not to delay early go-lives whenever possible and to retain full control of the potential source of issues in the testing before go-live and to manage potential unexpected issues during the go-live. Integration would increase complexity, interdependencies and the involved risks.</p> <p>More generally speaking, issues related to conflicting go-lives, as in the example of ICP and Core FB, result from two main reasons: at the regulatory level, the lack of a prioritization rule among go-lives; this simply leaves the responsibility with the project parties, who then negotiate to decide on the order of go-lives. In doing so, they need to tackle the issue of potential lack of resources at the local development at NEMOs and TSOs side for such parties that are involved in multiple parallel projects. However, coupling partners have shown their dedication, willingness and ability to implement and master a wide range of project – irrespective the challenges, problems and inconsistencies they face. However, it needs to be noted that none of these issues would be addressed by establishing a LSE in charge for the MCO function.</p> <p>Finally, NEMOs already introduced go-live windows in the algorithm methodology to save testing resources. ACER does not address this development in its assessment.</p> <p>NEMOs and TSOs also proposed merged go-live of 15 min MTU for SDAC (so called Big Bang) in order to mitigate all the challenges with further development of algorithm (R&D) and optimisation of technical and human resources, but the proposal was rejected by Acer/NRAs.</p>
<p>2.1.8</p>	<p>“The most notable and recent example of the slow and complex implementation is the priority line for the implementation of the Interim Coupling project connecting 4M MC with MRC and the flowbased projects in the Core and in the Nordic region. [...]”</p>	<p>No</p>	<p>The initiative to couple 4MMC and MRC was delayed in 2016 based on issues not related to MCO function but issues outside of MCO function e.g. capacity calculation etc. which caused a conflict of projects with the same implementation deadline later. With the introduction of the LSE, such kind of issues outside of the MCO function would still remain unsolved, and similar issues or delays could still occur. Furthermore, it needs to be noted that the Interim Coupling project lacked a clear legal basis. In fact, it did not fall under CACM, which created a quite special situation of a CACM project (Core FBMC) and a non-CACM one competing for the same resources. This challenge may occur again if there is a push for extension outside EU/EEA countries. Finally, the involved NRAs issued a decision in 2018 asking the project parties that the implementation the Interim Coupling project should not</p>

			<p>delay the Core project. This decision was finally overturned by the EC in September 2020.</p> <p>Against this background, we do not consider this example relevant.</p>
2.1.10	<p>“However, the described complexity of implementation is not inherent. It is largely resulting from the organisational set-up of the market coupling, and its operation and from the ambiguity of roles and responsibilities attributed to the involved NEMOs and TSOs.”</p>	No	<p>Complexity is inherent to the projects and cannot be reduced to the organisational set-up. The regulatory background is a major driver of these complexities mainly stemming from:</p> <ul style="list-style-type: none"> a) complexities caused or added by regulatory requirements and b) unclear regulatory definition and overlapping of requirements from different regulations (e.g., the implementation of 15 mins products got different and contradicting input from the original Algorithm Methodology approved by ACER and following approval of CEP); <p>These overlapping requirements cause complexity in the implementation projects, which might appear to be related to the organisational setup, like:</p> <ul style="list-style-type: none"> a) complex definition of functional implementation of such overlapping requirements at IT and procedure/TCM/contractual level; b) complex project management related to such overlapping requirements including complexity related to different projects. <p>However, we stress the fact that we would have faced the same complexity with any other organisational set-up as well. Against this background, it is worth to mention that other systems within EU with a centralised approach (namely REMIT) showed a far worse performance and suffered from multiple defaults.</p>
2.1.12 (a;b;c)	<p>“In recent years, the market coupling experienced three partial decouplings leading to major market disruptions and causing huge financial losses: [...]”</p>	Partial	<p>We agree that any decoupling has a considerable negative impact and should be avoided to the extent possible. Market coupling has become too important for the European market for electricity and whole economies of the EU member states to risk major outages.</p>

			<p>However, since the beginning of market coupling in 2014, thanks to the current design and the robustness of the procedures into place, 99.9% of sessions were fully coupled and only three partial decoupling situations occurred due to incidents in the local systems. Hence, we need to put the reported losses in the right dimension. Central systems, take ACER's ARIS system for REMIT reporting as an example, fail to reach such a level of availability.</p> <p>Moreover, it should be noted that the mentioned incidents were not caused by any default in the MCO function, hence would not be addressed by any change in the MCO organization.</p> <p>They were rather caused by incidents in the local systems, which would have happened equally in a more centralized approach and which can be addressed only via continuous improvements in local testing and procedures, as it is currently done. ACER did not provide any explanation or reasoning, how the few cases of decoupling could have been avoided with their recommendations being in place.</p> <p>On the contrary, we need to stress the fact that the risk of failure in the centralised approach proposed in the recommendations is much higher and leaves no room to a plan B.</p> <p>While ACER underlines the potential negative effects of a decoupling, it is willing to decrease the robustness of the existing organization by implementing considerable changes and creating a single point of failure. This is a good example, where the ACER recommendation lacks a clear and reasonable impact assessment.</p>
2.1.13.b	<p>"[...] This process takes a lot of time (one hour from the time when the gate for bidding closes till the time when results are published¹⁰), partly due to the coupling calculation and its complexity via the Euphemia algorithm and partly due to many confirmations required by each TSO and NEMO. It could be simplified and sped up: the core calculation - being the algorithm execution - is becoming more and more</p>	Partial	<p>This section is a perfect example to show the insufficient level of insight of ACER.</p> <p>ACER claims that the complexity is particularly growing due to the (increasing) range of products.</p> <p>However, complexity is derived from the variety of products supported by Euphemia, the variety of network requirements and the lack of coordination at the EU level between local regulatory requirements. More in detail:</p> <p>a) variety of products is requested from market participants, supports local liquidity and hence improves market efficiency in price setting. Since the approval of the first list of SDAC products by NRAs in 2018, only one (!) additional product type was included in the list in December 2020 following the approval of ACER.</p>

	<p>complex. This is due to the increasing number of constraints and requirements on the algorithm but specifically because NEMOs are unable to agree to restrict the use of products which introduce high complexity to the algorithm.”</p>		<p>This product (the Scalable Complex Orders) was introduced in order to replace the Complex Orders for the benefit of the algorithm performance. The algorithm of SDAC never failed computing a solution and rules to address products causing issues are already embedded in the algorithm methodology.</p> <p>b) network requirements sometimes represent alternative solutions to manage the same local problem and may render the problems to be solved more complex than necessary.</p> <p>This was the case in the past and still seems the case today in relation to the number of FB parameters submitted from TSOs to the algorithm.</p> <p>c) the lack of coordination between NRAs in approving local derogation to the deadline for implementation of the 15 mins MTU introduces the need for a further complex requirement (i.e. “cross matching functionality”) with a very limited temporary life but a high cost and complexity of delivery.</p> <p>We conclude that the identified complexity exists. However, we believe that ACER fails to correctly address the sources of this complexity. In particular, ACER seems to neglect the interdependencies with the regulatory background. Moreover, the recommended introduction of the LSE would not solve the complexity problem of the algorithm as this is derived by the methodology drafted by all NEMOs and TSOs (based on the requirements above) independently from the LSE.</p> <p>Even in the case of implementing the Independent Board, mentioned but not proposed by ACER, it should be explained to whom the Independent Board would be accountable.</p> <p>In total, the assessment remains incomplete and defective.</p> <p>Finally, TSOs delegate to local NEMOs the approval of the results in some countries already today, so reducing the number of interfaces and related operational risks. That could be extended EU wide.</p>
2.1.13.c	<p>“Clearing and settlement between NEMO trading hubs and scheduling: Individual TSOs and NEMOs perform the necessary arrangements in the current</p>	<p>Partial</p>	<p>See comment to ref 2.1.7.b</p> <p>Once again, we consider the assessment of ACER incomplete. For instance, the facts that the contents of the bilateral contracts have been defined and industry standards have been established are not recognized. If a new contractual</p>

	decentralised set-up (cf. Figure 1). This requires each NEMO and TSO to set-up bilateral contracts for such activities including respective national requirements (cf. section 2), which could be simplified by applying a centralised approach minimising risks of failure but also applying a robust backup. Furthermore, this set-up is a barrier to third party access for new NEMOs entering the market as it requires not only necessary contractual relations to one but all involved parties.”		<p>relationship needs to be established, the parties can build upon these standards which reduces time and efforts considerably. The alleged entry barrier simply does not exist. In fact, the added benefit from replacing a harmonized standard by a new centralized approach is highly questionable.</p> <p>Moreover, we lack a sound reasoning or explanation for ACER’s assumptions that the centralized approach would increase robustness. On the contrary, a centralized clearing and settlement setup rather creates new problems of its own kind. In particular, a point of single failure is created, which needs to be addressed by additional contracts, collaterals and risk management techniques.</p> <p>In fact, the only real problem in the current setting is the cost recovery issue that could be easily solved by the NRAs. A centralised approach for clearing and settlement will not reduce costs, the only difference is the process to recover that cost.</p>
2.1.13.d	“In general, the currently used decentralised approach including all individual NEMOs in daily operations of joint responsibilities implies a high risk of interoperability and data flow problems for the whole market coupling operation/process.”	No	<p>The very general statement of ACER furthermore suffers from several shortcomings. It is simply not true that all individual NEMOs are included in the daily MCO operations. It is wrong that they are jointly responsible. Responsibilities are clearly attributed to the coordinator or the back-up, for instance.</p> <p>No single case of issues in interoperability/data flow among the parties have ever been registered, different from the unavoidable risks of sharing of data (order/network data) from local to central level. The opposite is true, i.e. that decentralization of the MCO function prevented in some cases a case of decoupling thanks to redundancy of operations.</p> <p>In all, a centralised approach will multiply costs and risks.</p>
2.3.14.b	“Absence of a NEMO in a bidding zone: The obligation of a Member State (bidding zone) to have at least one operating NEMO can be fulfilled by either NEMO designation or the establishment of a legal monopoly. However, a designation may expire, or be revoked and a replacement may not be found	No	<p>The issue of expiry or withdrawal of a NEMO from one BZ can be managed by foreseeing, as currently accepted by ACER in its draft CACM amendment, an obligation of early notification of willingness to retire on NEMOs, both designated and passported.</p> <p>The problem of revoking designations/passports in case of breaches could be managed extending the designation/passport until a replacement is found and would apply to the LSE as to NEMOs.</p>

	quickly. On the other hand, the danger of being left without a NEMO may also prevent authorities from revoking NEMO designations/passports in case of breaches.”		<p>The further measure proposed by ACER once more lack a clear cost benefit analysis and are expected to induce disproportionate costs with respect to the risks. Moreover, ACER fails to show how their proposal would solve their purported problem, The LSE will in no case resolve the full problem of the absence of a NEMO. It can eventually replace the MCO part; however, this is not sufficient to provide access to the market.</p> <p>ACER could further offer NEMOs a financial incentive to stand-by and operate, if needed, as a last resort NEMO in certain bidding zones. This will almost certainly be cheaper than equipping the LSE with a full NEMO (PX) operation, which it would require to act as a last resort NEMO.</p>
2.4.16	“[...] Serviced NEMOs do not have the same rights as the co-owners - e.g. only restricted access to the Incident Committee – which is causing lengthy discussions and disagreement since different interests are involved. [...]”	NO	<p>All these arrangements come from the MCO plan and any serviced NEMO can become a co-owner. This particular issue is already solved: Serviced NEMO participate actively in the Incident Committee when the incident directly concerns them. In all other situations, Serviced NEMOs are entitled to participate as observer. The rationale for the silent participation derives from the fact that serviced NEMOs do not participate in the computation phase and therefore they cannot provide any possible contribution for the solution of the incident.</p> <p>Furthermore, it needs to be noted that any serviced NEMOs has always the option to change its status. Nobody is forced into this position and the NEMO community is willing to further develop the various options to participate.</p>
2.4.17	“[...] Second, the asset co-owners have the power to influence the priorities of change requests, possibly in a way that the interests of NEMOs which are not co-owners are under-represented. Third, even though all NEMOs pay for maintenance and upgrading of the assets (thus increasing the asset value), the ownership of the assets does not reflect these payments.”	No	<p>In the past years, different NEMOs had different views about the correct implementation of the MCO Plan in this regard. Notwithstanding further advancement have been agreed in the last years, by allowing even non co-owners for example to directly access the so-called Incident Committee and to receive extra data.</p> <p>It is not true that co-owners of the assets can prioritize change requests, as these requests are managed and decided upon at the joint (SDAC) or all NEMO (ANDOA) level, depending on the case. PCR co-owner simply cannot set priorities, any respective statement made by ACER is wrong.</p> <p>Any NEMO (co-owning or not) and any TSO is entitled to submit a request for change (RfC) of the SDAC and SIDC algorithms’ functionalities and their usage– the</p>

			RfC is evaluated in accordance with the transparent, and strictly non-discriminatory principles outlined in Title IV of the CACM Algorithm Methodology, which has been approved by ACER. NEMOs also observe that lack of coordination between the EU level and the national level obstacles the joint process of CACM implementation, with a set of local requirements which are beyond the control of NEMOs and TSOs as they are locally determined by MSs or NRAs, but poorly fit or obstacle the timely completion of CACM (ex. 15 mins go live derogations, PUN...
2.4.18	<p>“Furthermore, the co-owners of SDAC assets have created an ownership framework by which the ownership of assets is conditional on payments of historical costs. This violates Article 80(5) of the CACM Regulation which clearly specifies that the costs of establishing, amending and operating single day-ahead and intraday coupling shall not cover the costs before the entry into force of the CACM Regulation. More specifically, a compromise has been introduced: As new NEMOs have to accept existing assets and configurations without having any say about them, they should not be exposed to historical costs which are by that deemed to be fully recovered by the related historic benefits of the market coupling. Therefore, the exclusion of some NEMOs from asset ownership is not foreseen by the CACM Regulation. On the contrary, it violates Article 3(i) of the CACM Regulation, as it creates a non-level-playing field for NEMOs.”</p>	No	NEMOs are confident that the MCO plan in its current form is fully compliant with the CACM provisions, because NRAs have approved the MCO Plan and no action in the respect of violation of the CACM has ever been taken. However, over the past few years, different NEMOs had different views about the correct implementation of the MCO Plan in this regard and NEMOs are working to resolve their differences.

2.5.21	<p>“Additionally, to fulfil obligations of REMIT or support investigations under REMIT, the algorithm has to be able to exactly replicate results using historical input data and then simulate market outcome using different input data to estimate the impact of different inputs. This algorithm repeatability as required by the CACM Regulation is until now only implemented partially: the same results are only obtained in very strict conditions, namely using the same software and hardware and the same number of algorithmic iterations. Therefore, this can only be achieved by a specific NEMO using its hardware and software that was actually used for calculating the market outcome on a given historic day. However, even under these conditions, due to the algorithm design, the possible change in the market outcome with different algorithm inputs may not necessarily reflect only the impact of different inputs because it could also reflect the degree of randomness in the algorithm results. This significantly restricts the value of any possible counterfactual analysis looking into the impact of possible market abuse cases.”</p>	Partial	<p>NEMO already explained that the full repeatability – when compared to the high level of repeatability currently provided by Euphemia and illustrated in the CACM yearly report - could come at a cost in terms of algorithm performance which could not be justified against the Remit need to run “what if” simulations.</p> <p>Furthermore, it is not clear which benefit would bring a Single Legal Entity on this ground.</p>
2.5.22	<p>“NEMOs operate the market coupling on a rotating basis. (...) Such parallel and backup construction has so far proven to</p>	No	<p>From a technical perspective, the needed level of redundancy does not require two points (operator and back up), but a higher number of operators, as this arrangement prevents decoupling (since the beginning in 2014, 99.9% of the</p>

	<p>be robust and reliable and should in one way or the other be retained also in future. However, this objective is currently achieved in a disproportionate and inefficient manner, since a rotating system with most or all NEMOs involved means that most or all NEMOs need to invest and maintain human, financial and technical resources for market coupling operation, whereas alternatively such resources are needed only at two locations (one main and one backup). This leads to increased and high market coupling operation costs. [...]"</p>		<p>sessions where fully coupled) as happened in the past due either to the ability of local instances of finding different solutions or of operating alternative versions of the algorithm. Hence, in stress situations, the current set-up enables NEMOs to make use of more than two instances. Furthermore, the current set-up provides more than just several locations. We refer to independent structures and organizations that are more robust than the same organization/system/structure being located at different places. We also miss an explanation how ACER arrives at the assessment that is presented; where does the conclusion come from that two locations are sufficient?</p> <p>From a cost perspective, the costs to locally operate the algorithm are local costs, subject to local NRA approval. In many cases, no cost recovery is granted for just maintaining the resources, i.e., not being involved as coordinator or backup at a given point in time. Becoming co-owners is currently an option, which some NEMOs did not activate to avoid the above-mentioned costs and promote an alternative business model.</p> <p>It should be noted that becoming co-owners does not oblige NEMOs to enter the rotational operation, as it was the case with TGE. This means that it is possible to have all NEMOs sharing the co-ownership, while retaining a restrict numbers of operators</p>
2.5.23	<p>"While co-owners may also opt-out from being coordinators, an essential problem is that those NEMOs which co-own and act as coordinators have essential advantage over those NEMOs which are not because they have much impact on the market coupling development and they develop expertise and knowledge which in the long run will likely hamper the level playing field among NEMOs. Thus, to keep the level playing field among NEMOs, either all NEMOs should have exactly the same rights and</p>	No	<p>Co-owners have no way to influence the algorithm evolution different from non-co-owners, as the request for change process driven in the joint bodies with TSOs (SDAC) and NEMOs (ANDOA). This is perfectly reflecting the provisions on Change Control included in the Algorithm methodology approved by ACER. In fact, co-owners are only "executing" decisions from all-NEMOs' and all-TSOs' Steering Committees.</p> <p>NEMOs already today are on an equal footing, as the adherence to the co-ownership Agreement Any NEMO can become co-owner. In fact, several NEMOs entered in the co-ownership since 2015. The costs to become co-owner are transparently defined and based on objective measures and their amount is so limited (about 800K € in case of simultaneous signature by all remaining NEMOs) not to represent any barrier to entry. Furthermore, PCR and Serviced NEMOs</p>

	obligations in the market coupling operation or none of them should have such rights and obligations.”		established the process to agree how to eliminate two tier functioning (PCR NEMOs vs. All NEMOs) and implemented the process of negotiations for all NEMOs becoming part of PCR.
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2 Annex 2 – Comments on “Assessment of the identified policy options”

Chapter 3.3 of the IIA discusses the following options for the three main topics:

Topic	Options
Decision making on rules and requirements regarding MCO tasks	<ul style="list-style-type: none"> • Baseline scenario (D1) • Joint Decision-Making Body and QMV (D2) • Independent board (D3)
Entity(ies) responsible for performing MCO tasks	<ul style="list-style-type: none"> • Baseline scenario (E1) • Limited number of legally unbundled entities performing MCO operational tasks (E2) • Unbundled single legal entity (E3)
Clearing and settlement	<ul style="list-style-type: none"> • Baseline (C1) • Definition as MCO task (C2)

In the following lines we outline our comments on the assessment of the described policy options against a number of criteria:

2.1 Effectiveness to enhance market integration

Ref	ACER’s text	Agree	Comment
99 (D1)	"[...] A voluntary approach by NEMOs to apply a 75% simple majority voting scheme would naturally decrease the deadlock situations but would still lack the necessary legal framework and the	No	The joint NEMO/TSO proposal does not aim to keep the voluntary approach. Instead, we propose to include the respective provisions in the so-called “post-CACM 2.0 MCO Plan”. This should provide a sound and reliable legal basis, which is not taken into account in ACER’s Recommendations. As the second sentence is concerned, we stress the fact that TSO will be fully involved in all decisions according to the Joint Governance scheme currently

	obligation as such as contracts can always be terminated and renegotiated when new entrants step in. Furthermore, the current set-up excludes TSOs and by that opinions and input of practically involved parties in the market coupling which are also tasked with the management of SDAC and SIDC according to Regulation (EU) 2019/943.”		implemented (in fact TSOs fully support and agree on the implementing Joint Governance scheme).
99 (D2)	“The extension of the scope of joint decision making between NEMOs and TSOs and the establishment of the JDMB will secure an effective planning and implementation developments needed in the future. Introducing the QMV for all NEMOs’ and joint TSO-NEMO decisions would improve the decision-making process and reduce deadlock situations which currently delay or even stop necessary implementation projects.”	Yes	Indeed, QMV and JDMB are some of the cornerstones of the evolutionary proposal supported by NEMOs and TSOs. On the other hand, it has to be pointed out that the delays are caused by regulatory deadlines, that do not take into consideration the complexity of the development and testing, as well as possible local delays. In order to implement the central solution, more than 30 parties need to implement the agreed solution locally. This will also be necessary with one MCO.
99 (D3)	“An independent board - as by definition - is made of members who have no material interest in a company including that the board members have not been involved with the company or its customers in the last years. This would ultimately lead to decision making related to the further development and implementation of SDAC and SIDC in the best interest of the EU market coupling without	No	The set-up of an independent body is not only inconsistent with art. 7 of Regulation 2019/943 but would also not avoid deadlocks. In fact, such body could consider certain decisions out of its competence, or no majority could be reached due to contrasting votes and abstentions. In such cases escalation to ACER/NRAs would surely occur. Moreover, further escalation could emerge from processes related to local implementations.

	conflicts of interest, elimination of deadlock situation (simple majority) and would therefore even more positively contribute to the long-term evolution of the EU market coupling as the introduction of a JDMB based on QMV.”		
99 (E1)	“The status quo defines the MCO as a function jointly put on all NEMOs. This leads to a situation in which EU wide tasks and responsibilities are not assigned to clearly specified entities but rather to all NEMOs jointly which have full discretion how to organise themselves to perform this function. Any monitoring (e.g. costs) and enforcement measures related to this very important activities are therefore hard to apply.	No	NEMO have no discretion on how to implement MCO function since they follow the MCO Plan terms and conditions. See previous comments on decentralized management (2.5.22) and parallel testing (2.1.7 d).
99 (E2)	“By the assignment structure – still to one or more NEMOs on a rotational basis - it could be ensured that in any point in time a legal body can be held responsible for the performing of operational tasks which enhances the further market integration.”	Yes	The assignment of tasks to “each NEMO/TSO” is supported. This solves past enforcement uncertainties and avoids new uncertainties/risks related to the SLE.
99 (E3)	“The introduction of this new entity may cause severe damages in the collaboration of all parties hampering future developments.”	Yes	See previous comments on risk/limits of SLE (3.2.3.2). NEMO fully share ACER’s consideration that LSE’s establishment and lead-time for operation would hamper future developments. At the same time, NEMO disagree with ACER that the establishment of the LSE will simplify the landscape of existing systems and interactions. As an additional player is created, more interfaces, more links and more sources of potential misalignment will be created.

99 (C2)	“Instead of all NEMOs being involved and acting towards each other as central counterparty, this option defines the MCO as the central counter party for all internal trades.”	No	Also with the Central Settlement Entity many agreements should be stipulated. Each and all NEMOs, in fact, should enter into an agreement with CSE. See previous comments (2.1.7 b).

2.2 Effectiveness to ensure non-discrimination

Ref	ACER's text	Agree	Comment
99 (D3)	“An independent board in charge for decision making with respect to the management of the SDAC and SIDC would prevent NEMOs and TSOs to exercise their power to gain advantage and thereby implicitly ensures non-discrimination between all parties.”	No	See previous comment D3 (Effectiveness to enhance market integration) with respect to inconsistency with art. 7 of Regulation 2019/943. Such inconsistency should block any possible evaluation of this solution.
99 (E1)	“The current set-up of CACM led to a situation in which some NEMOs provide services of MCO tasks to others which gives inherent advantage and by that more power over common goods and access to knowledge such as the algorithms paid by consumers. Therefore, the current situation does not ensure non-discrimination of all involved parties.”	No	The adoption of the Service scheme is an autonomous business decision of the Serviced NEMO. Each NEMO is fully free to decide either the delegation of computational activities to another NEMO or perform such activities on its own. In this perspective, no discrimination can be identified.

99 (E3)	One single legal entity functionally unbundled from or owned by all NEMOs and all TSOs would ensure equal access to knowledge and non-discrimination towards all parties involved in the market coupling. Furthermore, this option is able to implicitly tackle the underlying problem of ownership (being based on servicing and serviced NEMOs).	No	It is understood that with the SLE scheme, unless a process of public compulsory purchase/ eminent domain of PCR Assets is established by CACM or EU Commission, the ownership would still stay with the entities willing to share historical costs.
99 (C1)	The baseline scenario puts the task of clearing and settlement between NEMOs on each NEMO (NEMO2NEMO model) which could lead to discriminatory treatment of different parties as it is dependent on bilateral or regional contracts between NEMOs (and partly TSOs if they are providing this service in specific Member States).	No	This issue is easily solved - with no cost and risk - by establishing common term and conditions (via TCM) to which all CCPs/SAs would comply.

The level of improvement from D2/E2 to D3/E3 remains very unclear; does it justify the additional risk/costs?

2.3 Effectiveness to increase competition

Ref	ACER's text	Agree	Comment
99 (D3)	"If decisions are taken by an independent board and thereby preventing NEMOs and TSOs to exercise any power in the process, the competition between and the level-playing field for NEMOs is	No	See previous comment D3 (Effectiveness to enhance market integration) with respect to inconsistency with art. 7 of Regulation 2019/943. Such inconsistency should block any possible evaluation of this solution.

	strengthened as any cooperation can be strictly limited to the extent necessary.”		
99 (E1)	“The current set-up of CACM led to a situation in which some NEMOs provide services of MCO tasks to others and which gives inherent advantage and more power over common goods as the algorithms paid by end consumers.” ... “With regards to third party access, this option entails barriers for new entrants as they are required to invest into market coupling operations and set-up contractual relations with all other involved parties”	No	The rotation of coordinator activities among all NEMOs interested to perform such role (currently 50% of NEMOs) is not a “costly solution” (DA costs in 2021 amounted to about € 451.000 – daily cost of market coupling session was about € 1.235). The set-up of contractual relations by third parties is needed in all possible options.
99 (C2)	“Instead of all NEMOs being involved and acting towards each other as central counterparty, this option defined the MCO as the central counter party for all internal trades. By putting this task to the MCO, same rules apply for all NEMOs involved and thereby the level-playing field for NEMOs is strengthened.	No	Level playing field is equally assured - with no cost and risk - by establishing common terms and conditions (via TCM) to which all CCPs/SAs would comply.

2.4 Effectiveness to enhance efficient functioning of the market

Ref	ACER's text	Agree	Comment
99 (D1)	“A voluntary approach by NEMOs to apply a 75% simple majority voting scheme might of course decrease the deadlock situations but would still lack the necessary legal framework and the obligation as such.”	No	See first comment D.1 (Effectiveness to enhance market integration).
99 (D3)	“An independent board - as by definition - is made of members who have no material interest in a company including that the board members have not been involved with the company or its customers in the last years.”	No	See first comment D.1 (Effectiveness to enhance market integration). Besides, the LSE will be quite distant from the market and its needs (with potential negative effects on its functioning).
99 (E1)	“As such this unnecessary multiplication of resources - even though it is as such providing implicitly necessary back-up - is not contributing to efficient market operation or functioning. Furthermore, the decentralised approach has led to a slow, cumbersome and tight SDAC procedure which does not enable further optimisation to gain time for additional processes to make the market coupling operations safer.	No	See comment 2.5.22. Besides NEMOs consider that the current procedure has proven safe and robust, therefore no additional processes are required.
99 (E3)	“One single legal entity functionally unbundled from or owned by all NEMOs and all TSOs would ensure efficient operations without	No	No single back-up entity can assure the same level of security provided by the current “redundant scheme”.

	<p>multiplying resources and bundles all interactions towards NEMOs. In any case, as with the centralisation also one point of failure is created, a solid back-up has to be established.”</p>		
99 (C1)	<p>“The baseline scenario assigns the task of clearing and settlement between NEMOs on each NEMO (NEMO2NEMO model) which leads to unnecessary duplication of processes and collaterals. Furthermore, it thereby involves all parties in cross-interactions and increases the risk of data flow problems or failure as such.</p>	No	<p>Same risk of data flow problems would occur with CSE/LSE. With respect to risk of failure, a single entity would create higher risks due to impacts on all NEMOs. See also previous comments (2.1.7 b).</p>
99 (C2)	<p>“Instead of all NEMOs being involved and acting towards each other as central counterparty, this option defined the MCO as the central counter party for all internal trades. This reduces the need for interaction of NEMOs (usage of synergies) and thereby reduces the risk of failure. On the other hand, it also requires stable and robust back-up solutions if the task is centralised.”</p>	No	<p>See comment E.3 above in respect of back up security of single entity.</p>

2.5 Efficiency

This is the criteria where the lack of a cost-benefit analysis is most striking. ACER does not provide an assessment of the (additional) transition and implementation costs for D.3/E.3, they neglect the fact that we very likely face additional operation costs caused by the new systems of the LSE and the interfaces to NEMOs/CCPs/TSOs.

Ref	ACER's text	Agree	Comment
99 (D1)	"This option preserves the status quo of the CACM Regulation without any changes. Consequently, there are neither further benefits nor disruptions of the ongoing implementation projects implied."	No	In NEMOs' understanding changes would be in any case introduced with respect to QMV and TCM on Clearing and Settlement. Therefore, efficiency would surely be gained without disruptions.
99 (D2)	"The proposals on QMV and JDMB for both NEMOs and TSOs are building on practices and principles which are already embedded in the Joint Operational Agreements and on the NEMOs/TSOs proposal for a Joint Governance of both DA and ID timeframe, expected to go live in the beginning of next year. The benefits of more efficient decision making and decreasing the risk of disputes and escalations to NRAs are agreed on by all parties and already tackle a lot of the problems related to the MCO governance."		Benefits would be gained also in the long term since the implementation of QMV is a structural change not a temporary one. It should be highlighted that the JDMB is already in place under the name of Market Coupling Steering Committee (MCSC) and the first meeting took place in February 2022.
99 (E1)	"This option preserves the status quo of the CACM Regulation without any	No	See comment D.1 above.

	changes. Consequently, there are neither further benefits nor disruptions of the ongoing implementation projects implied.”		
99 (E3)	“The set-up of one single legal entity performing the MCO tasks would imply a disruptive change to the current framework leading to a high amount of necessary resources and high oneoff costs. This could risk on-going projects if changes are required too early in the future.”	Yes	NEMOs fully share that the single MCO would cause a disruptive change, leading to “high amount of necessary resources and high one-off costs”. NEMO-TSO counter proposal (Evolutionary proposal) would address all issues without risks, uncertainties, delays and at no extra cost.
99 (C1)	“This option preserves the status quo of the CACM Regulation without any changes. Consequently, there are neither further benefits nor disruptions of the ongoing implementation projects implied.”		NEMOs support the solution based on a new ad hoc methodology setting common terms and conditions (TCM). This would introduce a significant change with high benefit.
99 (C2)	“Nevertheless, this initial impact assessment is not able to produce a complete cost benefit analysis to assess all related implications”	Yes	If the “impact assessment is not able to produce a complete cost benefit analysis to assess all related implications”, this option shouldn’t be taken in consideration. Furthermore, it should be noted that the impact assessment provided by ACER does not include any concrete cross benefit analysis.

2.6 Coherency

Ref	ACER's text	Agree	Comment
99 (D1)	“As this option preserves the status quo of the CACM Regulation hindering efficient decision making, excluding TSOs from the decision making and delaying necessary implementation projects for further market integration and the development of the SDAC and SIDC it is no longer coherent with these objectives.”	No	In NEMOs’ understanding changes would be in any case introduced with respect to TSOs involvement, QMV and TCM on Clearing and Settlement. Therefore, coherence would be assured in the future, as assured in the past notwithstanding the difficulties related to the first implementation of CACM faced by all stakeholders.
99 (D3)	“An independent decision making body could even further improve the governance as it would ensure decision in the best interest of the EU overall welfare. This option is mainly related to the selection of E4 where an independent executive board would be even more valid.”	No	This solution is not coherent with the UE policy since it’s inconsistent with art. 7 of Regulation 2019/943.
99 (E1)	“As this option preserves the status quo of the CACM Regulation providing for unclear tasks and responsibilities and keeping the MCO function as being a task performed jointly by all NEMOs (instead of NEMOs and TSOs jointly responsible) it is no longer coherent with these objectives and especially with Regulation (EU) 2019/943.”	No	See comment D.1 above (on efficiency).

99 (E3)	<p>“This option is the best fit to address the objectives as assessed against in the previous part of this section and thereby qualifies for being able to tackle future challenges. The bundling of resources and the simplification of processes would in the long run ensure necessary market development (such as algorithm development, IDAs, integration of e.g. EnC) as required by the EU legal framework.”</p>	No	<p>This option creates a new entity not considered in Regulation 2019/943. In fact, the definition of NEMO set forth by Regulation 2019/943 clearly assigns market coupling tasks to NEMOs, not to any central entity: <i>‘nominated electricity market operator’ or ‘NEMO’ means a market operator designated by the competent authority to carry out tasks related to single day-ahead or single intraday coupling;</i> Furthermore, it is currently not possible to provide concretely any evidence on how “The bundling of resources and the simplification of processes” under E3 ensures necessary market developments.</p>
99 (C1)	<p>“This option preserves the status quo of the CACM Regulation without any changes. The set-up as such is coherent with EU legal framework even though a centralised set-up might be fitter for future challenges ahead.”</p>	No	<p>See comment C.1 above (on efficiency).</p>
99 (C2)	<p>“This option is the best fit to address the objectives as discussed previously and thereby qualifies for being able to tackle future challenges and ensure necessary market development as required by the EU legal framework.”</p>	No	<p>Since a Central Settlement Entity would cause higher risks (risk of failure would have impacts on all NEMOs) and delays deriving from complexities, such solution is not coherent with the UE policy.</p>

3 Annex 3 - Comments on “Conclusion and recommendations”

- 4 (100-101): It is reported that only “some NRAs support more independent decision-making body and ownership of MCO entity”. At the same time, other NRAs, who consider that “clearing and settlement should be centralized and performed by a dedicated entity”, state that the development and operation of the MCO tasks “should remain at all or some NEMOs as currently applicable”. A third group of NRAs support instead that “all operations including clearing and settlement are performed by all or some NEMOs as today”. It is evident that the option of setting up a LSE, especially for operations of MCO tasks it is endorsed only by the minority of NRAs, whilst the majority of them has raised concerns and do consider the current set up safer and more efficient with few limited changes indicated by NEMOs and TSOs (Evolutionary proposal).

- 4.2 (103 – 105): Regarding the Option D2 (JDMB and QMV), it is already recognized by ACER that this is “already being implemented [by NEMOs and TSOs] on voluntary basis”. NEMOs, as stated in the comment to par. 3.2.2.2, support the proposal, but clarified the reasons why – for NEMO only decisions – a QMV based on 70% of NEMOs would be more adequate. Regarding the option D3 (independent board), please refer to comment to par 3.2.2.3: NEMOs highlight that such proposal contradicts provisions under art. 7 of Regulation 2019/943, which explicitly assigns the operation of Market Coupling to NEMOs and TSOs.

- 4.3 (106): In our opinion, the problems identified by ACER in the development and implementation of the market coupling do not stem from the current decentralised organisation of the MCO tasks, but rather from the features of the coupling design. As highlighted in the comment to par 2.1.10, the complexity of market coupling implementation and its future development is inherent to the SDAC and SIDC projects, and stemming

primarily from:

- a) unclear regulatory definition and overlapping of requirements from different regulations (typical example the change in timeline for implementation of 15 mins products coming from original Algorithm Methodology approved by ACER and following approval of CEP);
- b) complex definition of functional implementation of such overlapping requirements at IT and procedure/TCM/contractual level;
- c) complex project management related to such overlapping requirements including complexity related to different projects.

- 4.3 (107 – 110): The establishment of a LSE (option E3), would not reduce the inherent complexity of SDAC and SIDC, whilst on the other hand would raise additional challenges and costs which have been highlighted by several NRAs which have already expressed their serious concerns related to such an Option. In addition to that, we underline that NEMOs and TSOs have so far developed key and specific competences on market coupling issues (related to development, implementation and operation) which are unlikely to be present in a new entity.

Finally, the current co-ownership structure, under which, at least for SDAC, only some NEMOs are owners of the coupling asset, is transparently open to other NEMOs (the so-called “serviced NEMOs”). Moreover, current SDAC asset owners (PCR parties) are already offering to serviced NEMOs the option to use the asset by signing a licence agreement which is currently under discussion and which would foresee that the Licensee would automatically become co-owner at the end of the licence period (see comment to par 2.5.22). With regard to operations, the decentralised organisation in the SDAC do ensure a much higher level of operational security without a significant impact on costs, considering that cost of NEMOs not acting as coordinator (but ready to step in in case of operational issues of the coordinator) are not considered as costs for market coupling operations. The structure above here is enshrined in the MCO Plan, which the NEMOs deem is in compliance with the CACM, given that it was approved by the NRAs.

- 4.4 (114 – 116): We do support the set-up of an ad hoc TCM aimed to standardize the clearing and settlement activities among all NEMOs. On the other side, the proposal to designate a single entity for clearing and settlement do raise serious concerns, mostly related to the fact that such single entity would centralize all the financial risks, thus resulting as a potential “single point of failure” for the SDAC and SIDC. Also in this case, there is no unanimous consensus from NRAs and several NRAs still support the current set up. In addition, the development and operational costs of this new entity were not evaluated there were no cost benefit analysis prepared for this disruptive change.

With regard to the ACER document ANNEX 6 “Public consultation” the link provided (see it below) shows statistics on the outcome of the consultation. In particular it’s important to underline that on the MCO “issue” most of the contributions are against the modification proposed by ACER: 76% of contributions are negative, strongly negative or indifferent. This outcome indicates that the centralized/single entity approach, which is the key structural proposal of the ACER’s CACM 2.0 draft, it was rejected by stakeholders.

<https://app.powerbi.com/view?r=eyJrIjojNDYNGY4M2MtYzVmMS00ZDM2LWI2NTctOGE1YTlINzJiODlmIiwidCI6ImU2MjZkOTBjLTcwYWUtNGRmYy05NmJhLTAyZjE4Y2MwMDA3ZSIsImMiOjI9&pageName=ReportSection>