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**BDEW Bundesverband
der Energie- und
Wasserwirtschaft e.V.
(German Association of Energy and
Water Industries)
BDEW Representation at the EU**

Avenue de Cortenbergh 52
1000 Brussels
Belgium

www.bdeu.de

Position Paper

Evaluation of the European Union Agency for the Coop- eration of Energy Regulators (ACER)

The German Association of Energy and Water Industries (BDEW), Berlin, represents over 2,000 companies. The range of members stretches from local and communal through regional and up to national and international businesses. It represents around 90 percent of the electricity production, over 60 percent of local and district heating supply, 90 percent of natural gas, over 90 percent of energy grid as well as 80 percent of drinking water extraction as well as around a third of wastewater disposal in Germany.

BDEW is registered in the German lobby register for the representation of interests vis-à-vis the German Bundestag and the Federal Government, as well as in the EU transparency register for the representation of interests vis-à-vis the EU institutions. When representing interests, it follows the recognised Code of Conduct pursuant to the first sentence of Section 5(3), of the German Lobby Register Act, the Code of Conduct attached to the Register of Interest Representatives (europa.eu) as well as the internal BDEW Compliance Guidelines to ensure its activities are professional and transparent at all times.

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1 Executive Summary

Pursuant to Article 45(1) of Regulation (EU) 2019/942 („ACER regulation“), the European Commission assesses the performance of the European Union Agency for the Cooperation of Energy Regulators (ACER) in relation to its objectives, mandate and tasks.

BDEW represents the German Energy and Water Industries with over 2,000 companies. Our feedback addresses the benefits of the European Internal Energy Market, ACER’s role in general as well as its mandate and recommendations for ACER’s future work.

We highlight the following points in particular:

› **Integrated Energy Markets generate significant welfare gains for Europe**

Well-functioning, integrated energy markets—especially through market coupling—create substantial welfare benefits and strengthen security of supply across the EU.

› **ACER’s coordinating role is essential, and its existing mandate is sufficient**

ACER’s current legal mandate is adequate and its role should remain primarily coordinative, ensuring effective cooperation among national regulators without shifting decision-making to the EU level.

› **Technical and political responsibilities should remain separate**

ACER should focus on technical regulatory tasks in all energy sectors, while political agenda-setting and strategic decisions should remain within the responsibility of the European Commission as well as other European and national authorities.

› **Greater transparency and structured stakeholder engagement strengthen ACER’s work**

Clearer processes, realistic consultation timelines, and more targeted communication formats can enhance transparency and ensure meaningful stakeholder involvement.

› **The way forward: improve processes within the existing framework rather than expanding ACER’s powers**

Maintaining the current governance structure, improving cooperation among ACER, ENTSO-E, ENTSO-G, ENNOH, the EU DSO Entity and NEMOs, and strengthening stakeholder-driven solutions is key.

2 Introduction: increased welfare through integrated energy markets

According to [ACER's final assessment of the EU Wholesale Electricity Market Design](#) (2022), the European internal electricity market generated welfare gains of EUR 34 billion in 2021. They are due to coupled electricity markets, which, through an efficient price formation (merit order), ensure that electricity is produced at lowest cost and delivered efficiently to consumers, thus effectively enabling an efficient allocation of resources.

The assessment also states that European market coupling plays a decisive role, as it “ensures that electricity generally flows from areas with low prices to areas with high prices”. Therefore, “market coupling enables Member States to benefit from their neighbours’ flexibility and adequacy”, ensuring overall security of supply across Member States while simultaneously driving the energy transition forward. In addition, according to the Market European Stakeholder Committee (MESCC) organised by ACER, European balancing platforms have generated an economic surplus of more than EUR 1.1 billion in 2025 ([source](#)).

A similar picture emerges in the gas sector. In particular, ACER’s continuous market-monitoring framework points to the role of reliable and transparent visibility of the development of wholesale gas markets. The regular monitoring reports demonstrate how close cooperation between ACER and market participants has significantly improved the ability to track market developments and assess security of supply in a timely manner. This proved especially valuable during the energy crisis in 2022, where joint monitoring enabled a well-informed and coordinated response. ACER has also started to extend its monitoring activities to emerging hydrogen markets, as reflected in the [European Hydrogen Market Monitoring Report](#), which is a welcome development. However, the effectiveness of ACER’s role in the gas sector still depends on the quality, timeliness and comparability of the underlying data provided by the companies.

The above achievements highlight that a sound regulatory framework, but even more importantly **free, competitive and liquid markets drive further market integration.**

3 ACER’s role is central and its current mandate sufficient

ACER plays a central role in supporting the development, safeguarding and integration of European energy markets. Its competences are defined in various European legislations, first and foremost in the ACER regulation (Ch. 1, Art. 1 – 15) as well as in the recent review of the REMIT II regulation conferring stronger supervisory and enforcement powers, explicit authorisation and oversight of reporting entities, expanded monitoring responsibilities and oversight of new reporting regimes to ACER.

In its role as an operationally independent EU agency, ACER should continue to support the cooperation between national regulatory authorities (NRAs), market monitoring, and the development and implementation of network codes. **BDEW emphasises the importance of maintaining ACER's primarily coordinating role, rather than equipping it with a broader mandate.** The current, legally defined tasks of ACER are sufficient to ensure the effective interaction between national regulators, EU institutions, and the energy sector. We emphasise in this context that ACER's primary mandate is to help ensure the smooth functioning of the EU's internal market for electricity, natural gas, and (in the future) hydrogen.

The effectiveness of the European regulatory framework depends crucially on all institutions performing their tasks independently in accordance with their mandate and the assigned competences as well as procedural boundaries. This is particularly important for decisions with far-reaching implications for national market structures.

BDEW therefore cautions against European coordination mechanisms resulting in *de facto* centralisation of operational or methodological decision-making. The role of independent national regulatory authorities must therefore continue to be respected.

4 Technical and political responsibilities should remain separate

In our view, a **clear distinction between technical and political responsibilities is required.**

BDEW values and supports ACER's contribution to technical work such as opinions, recommendations and decisions on energy regulation as well as the approval of market methodologies and the development of network codes. Per its mandate, ACER advises the European Commission and other national authorities (i.e. national regulatory authorities, NRAs) or European institutions (i.e. the European Parliament) on energy policy issues (related to both electricity and gas). This advisory role is valuable but political responsibilities should nevertheless remain with the European Commission. The European Commission should remain responsible for setting the political agenda, carrying out its work programme, and pursuing its strategic objectives. Per its mandate, ACER advises the European Commission and other institutions on energy policy issues (related to both electricity and gas).

BDEW considers ACER's political independence to be a key asset that must be preserved.

The further development of the market design for electricity, natural gas, and hydrogen should be a collaborative process as harmonisation is key. However, as there continue to be considerable national and regional differences, NRAs need—in accordance with the subsidiarity principle—a certain freedom for decision-making. The principles of harmonisation are to be set by the legislator. Technical responsibility should prioritise efficiency and coherence over broadened powers of enforcement.

ACER's role in market oversight as well as its coordination role in cross-border cases is important, but in our view technical responsibility under REMIT II should focus on ensuring a more efficient and coherent implementation of existing rules, rather than expanding the scope. In this regard, the "REMIT Roundtable" is a valuable format for early stakeholder engagement. We recommend widening participation and predictability in this exchange, as participation is currently limited and documentation often shared at short notice. In addition, short public webinars could complement the exchange process and help improve transparency.

At the same time, we invite ACER to more strongly apply the European Commission's endeavour to simplify and reduce bureaucracy in its implementation practices, particularly in the application of Art. 5 of regulation 2026/256 (REMIT II Implementing Regulation) and of Art. 19 (2) of regulation 2024/1789 (EU Gas Regulation). This should include closer coordination with national regulatory authorities to avoid redundant or inconsistent data requests. In this context, the effort required to fulfil data requests should be proportionate to the expected analytical and regulatory benefit. Moreover, timelines for analytical exercises should be communicated sufficiently in advance, allowing for improved time management and the provision of realistic timeframes for data collection. Direct communication channels with the affected entities, as well as secure data transfer mechanisms, should be established at an early stage.

Finally, cooperation between ACER and the European Securities and Markets Authority (ESMA) needs to be strengthened, particularly regarding data sharing and the harmonisation of data formats across REMIT, EMIR and NRAs. It would lead to a more consistent and efficient regulatory framework while reducing administrative burdens for market participants.

5 Enhancing transparency and stakeholder engagement in ACER's work

ACER should continue to ensure a high level of transparency in its decision-making processes.

Therefore, ACER should contribute to better understanding among stakeholders, help minimise unnecessary disputes, and ensure that consultation and feedback deadlines are realistic and appropriate for stakeholders. Besides the current large-scale webinars and other information rounds to provide transparency, we recommend having additional targeted workshops on specific topics with directly affected stakeholders. Earlier and more structured stakeholder engagement in the development of market monitoring methodologies, guidance, and non-binding opinions could help ensure that regulatory assessments are firmly grounded in operational realities and evolving market practices. Experience from recent technical debates—such as on balancing market co-optimisation, fallback arrangements—demonstrates that market participant feedback on matters like operational constraints and practical

limitations is valuable and would benefit from being more explicitly reflected in regulatory reasoning and communication.

6 Way forward: Targeted improvements of the fulfilment of ACER's mandate instead of centralisation or leveraged governance

In view of promoting the integration of energy markets in the EU, governance structures, rules and competences are already clearly defined and sufficient. The current allocation of roles and responsibilities among authorities, institutions and stakeholders is the result of a deliberate and well-balanced governance framework, designed to ensure both effectiveness and legitimacy. BDEW therefore cautions against fundamentally altering this framework and does not support changes to ACER's mandate or structure that is accompanied by the Board of Regulators.

ACER's monitoring activities (e.g. in the achievement of the 70% target) might help stakeholders but also national decision-makers to look into best practices in Europe and foster harmonisation among national implementation of EU legislation. However, while preserving ACER's monitoring role, the implementation of the 70% target and its assessment should remain solely with EU member states.

At the same time, there is room for improvement in existing processes and stakeholder dialogues. In particular, cooperation between ACER, ENTSO-E, ENTSOG, ENNOH, the EU DSO Entity and NEMOs should be strengthened. Any move towards overarching ACER governance over these parties and their regulatory tasks should be avoided, as double structures with national oversight would create redundant structures with possible inconsistent decisions.

Rather than regulators, stakeholders themselves possess the best knowledge of where the European internal energy market can be further improved. Shifting more duties and competences to public authorities would not automatically improve outcomes. Regulators should therefore act as enablers and facilitators for an efficient implementation of stakeholder-driven solutions, including the removal of regulatory barriers as well as the provision of a stable and reliable framework.

In this context, **BDEW suggests strengthening ACER's procedural commitments** towards stakeholder exchange formats such as the Market European Stakeholder Committee (MESOC) or similar platforms, for instance by systemically involving the MESOC at an earlier stage and by providing transparent feedback on how stakeholder input is reflected in final outcomes. Such an approach would enhance transparency and effectiveness of stakeholder engagement, while preserving the existing governance framework and ACER's role as a coordinative authority.

Contact

Carmen Descamps

Manager EU Energy and Digital Policy

+49 162 4063044

carmen.descamps@bdew.de

Krassimir Stantchev

Unit Manager Electricity Trading

+49 173 9619817

krassimir.stantchev@bdew.de