



UNIVERSITETET
I OSLO



ACER 

European Union Agency for the Cooperation
of Energy Regulators

Energijuridisk klubb

**EU energibyrå ACER og EØS-energisamarbeid:
innvirkning og tilpasningsmuligheter for Norge**

Universitetet i Oslo, Det juridiske fakultet, 10. oktober 2023

UiO : **Nordisk institutt for sjørett**
Det juridiske fakultet

**EURNOR - Senter for forskning på norsk retts
europæiske dimensjon**

Upcoming energy law events at UiO

ENERGY LAW CLUB mailing list: register [here](#).

WEBINARSERIE: the law of energy market design

<https://www.jus.uio.no/nifs/english/research/events/seminar-series-on-energy-market-design/>

ELAWNET project: register to the mailing list [here](#).

NSELP Advanced LLM programme in Energy Law

<https://nselp.eu/>

- Online seminar on hydrogen regulation:

Friday 13th of October, 14:00-16:30



NORTH SEA ENERGY LAW
PARTNERSHIP

ADVANCED LLM
IN ENERGY LAW

Seminar series on the Law of
Energy Market Design



ELAWNET

Research network for Energy Law in the light of
the green transition towards net zero emissions



Icons energy sources

Legal Aspects of Carbon Capture Utilisation
and Storage (CCUS) and Carbon Dioxide
Removal (CDR)

Time and place: Nov. 23, 2023 10:00 AM – Nov. 24, 2023 5:00 PM, Domus Media,
13
[Add to calendar](#)



The Department of Energy and Resources Law of the University of Oslo (UiO), Norway, is excited to announce its upcoming conference on **Legal Aspects of Carbon Capture Utilisation and Storage (CCUS) and Carbon Dioxide Removal (CDR)**. We hereby invite you to **submit your proposal for presentation**.
The conference will take place on the **23rd and 24th November 2023** at the UiO Faculty of Law. At the University of Oslo, we research on several aspects of CCUS.



COMPARATIVE SESSION

Energy Law - Developing a Hydrogen Economy
13 October 2023 - 14:00pm - 16:30pm (CEST)

ACER's role and competences

From Third Energy Package to the Clean Energy Package

Torbjørn Jevnaker (Fridtjof Nansen Institute & Cicero)

Seminar “ACER and EEA energy cooperation: impacts and adjustment possibilities for Norway” at the University of Oslo, 10 October 2023

Photo: Sissel Ribe, NVE



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Third energy market package

Network access

- Regulated third-party access

Market opening

- Cont'd full opening of markets to competition

Network unbundling

- Ownership unbundling for TSOs with alt. models possible

National regulator

- Authority, tasks and independence

European cooperation

- ACER
- ENTSO-E
- ENTSO-G
- Network code procedure

= also referred to as “ACER” in Norwegian public debate

Clean energy package

Make renewables fit for the market, and the market fit for renewables

Combines energy transition policies with electricity market policy



What role for ACER?

Tasks and authority of ACER

Tasks linked to	Authority of ACER
Market monitoring	Advisory role
Use of existing interconnectors	Advisory role and conditional decision-making role for specific rules: <ul style="list-style-type: none">• Advisory input to creation of network codes and guidelines• Adoption of regional and European TCMs (<i>if national regulators don't agree on time</i>)
Derogations and support to new infrastructure	Conditional decision-making role (<i>if national regulators don't agree on time</i>): <ul style="list-style-type: none">• Granting derogations to new infrastructure• Approving cross-border cost allocation

Tasks and authority of ACER

Tasks linked to	Authority of ACER
Market monitoring (revised)	Advisory role and decision-making role for information requests
Use of existing interconnectors (revised)	Advisory role and conditional/default decision-making role for specific rules: <ul style="list-style-type: none">• Advisory input to creation of network codes and guidelines• Adoption of regional TCMs (<i>if national regulators don't agree on time</i>)• Adoption of European TCMs
Derogations and support to new infrastructure	Conditional decision-making role (<i>if national regulators don't agree on time</i>): <ul style="list-style-type: none">• Granting derogations to new infrastructure• Approving cross-border cost allocation
Adequacy assessments and capacity mechanisms (new)	Approve methodology/specifications for: <ul style="list-style-type: none">• Adequacy assessments• Cross-border participation in capacity mechanisms
Crisis preparedness (new)	Approve methodology for: <ul style="list-style-type: none">• Identifying regional electricity crisis scenarios• Short-term and seasonal adequacy assessment

Role of ACER

Illustrated by network codes, guidelines and 'TCMs'

Electricity Regulation

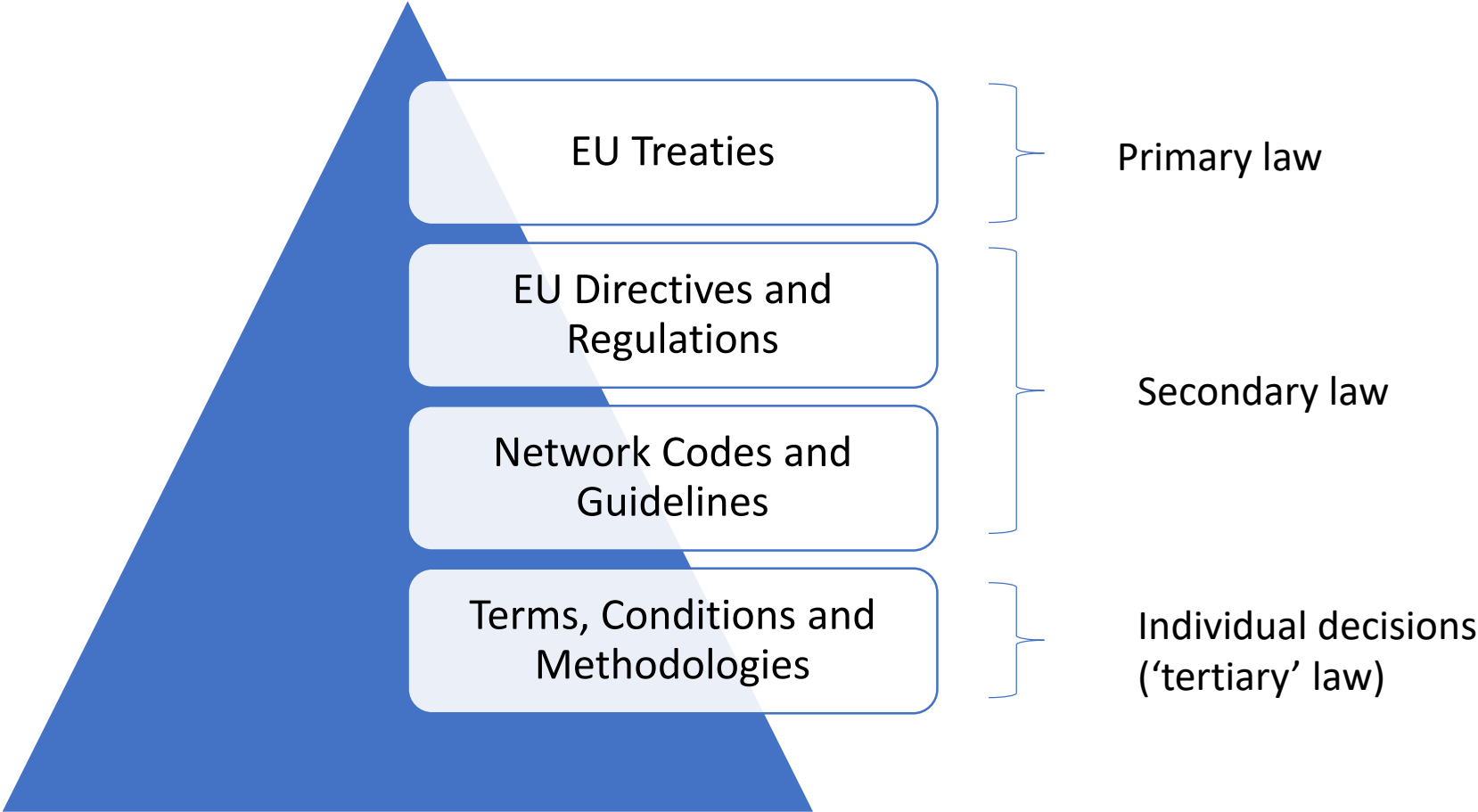
- *Adopted via EU legislative procedure*
- Introduced the network code procedure

Network codes and guidelines

- *Adopted via comitology*
- Introduced the TCM procedure

Terms, conditions, methodologies (TCMs)

- *Adopted as individual decisions*
- Required under market and system operation guidelines (CACM, FCA, EB, SO)



Network codes and guidelines

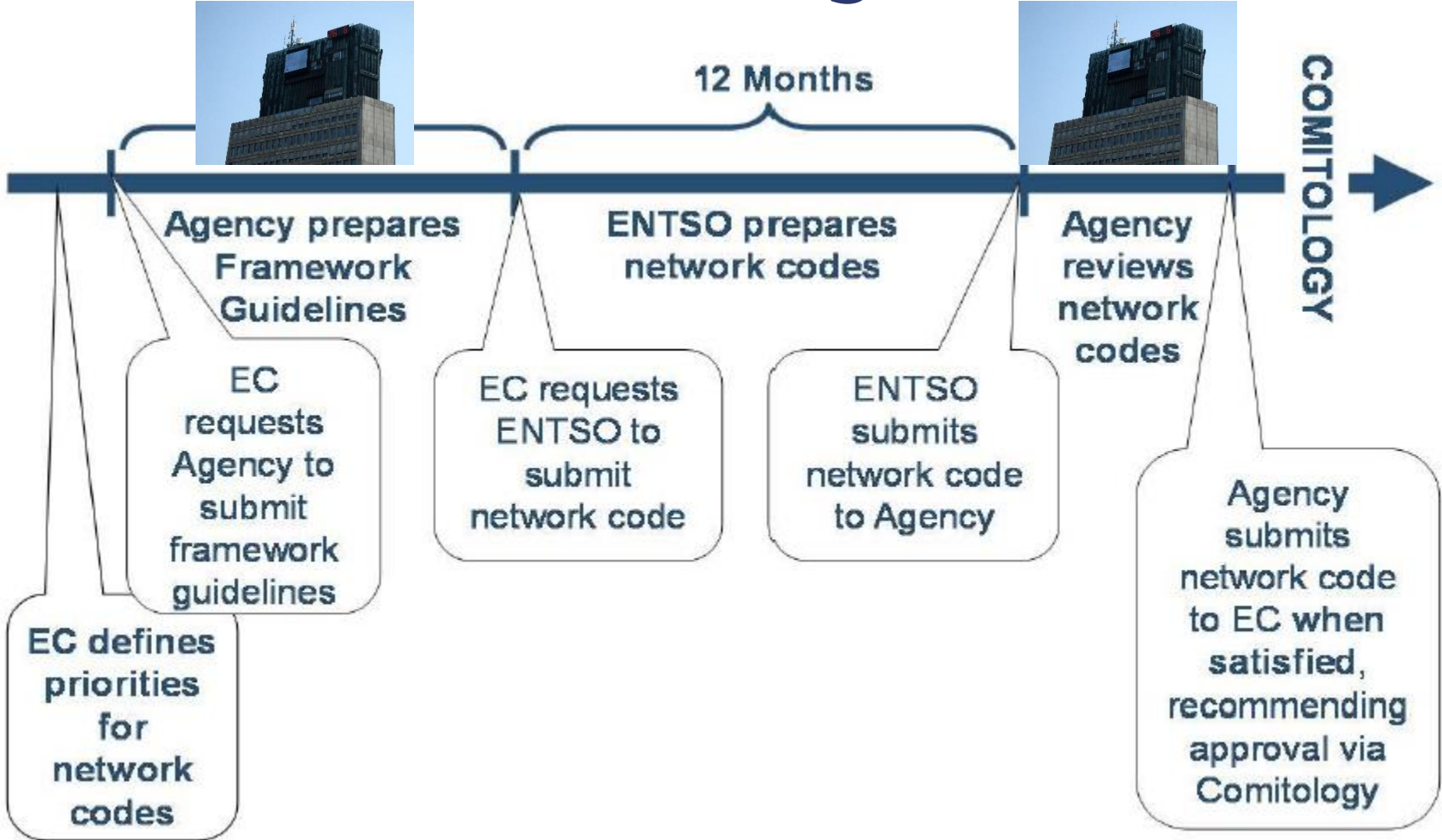
- To facilitate the harmonisation, integration and efficiency of the European electricity market
- **Connection codes**
 - Demand Connection Code
 - High Voltage Direct Current Connections
 - Requirements for Generators
- **Operations codes**
 - Emergency and Restoration
 - System Operation
- **Market codes**
 - Capacity Allocation & Congestion Management
 - Electricity Balancing
 - Forward Capacity Allocation
- **+ ongoing work on codes on cybersecurity and demand response**

Terms, conditions and methodologies (TCMs)

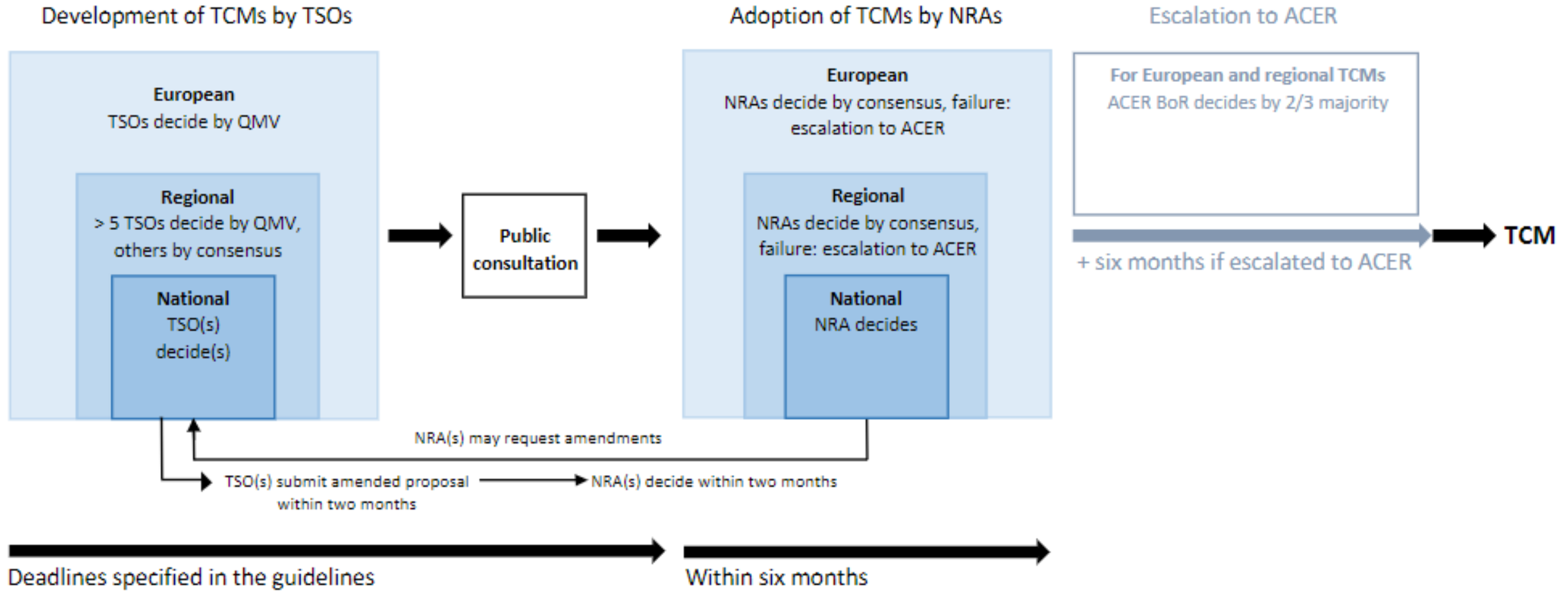
- Required by market and system operation codes guidelines
- **Regulates the nuts and bolts of markets and running the electricity network**
 - European platforms for exchanging balancing energy (used to keep the system stable), or long-term transmission rights (used for hedging)
 - How TSOs are to calculate various aspects related to running the electricity network (security analysis, capacity calculation)



Network codes and guidelines



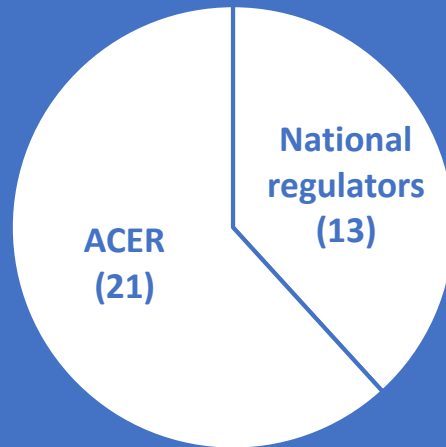
Terms, conditions and methodologies



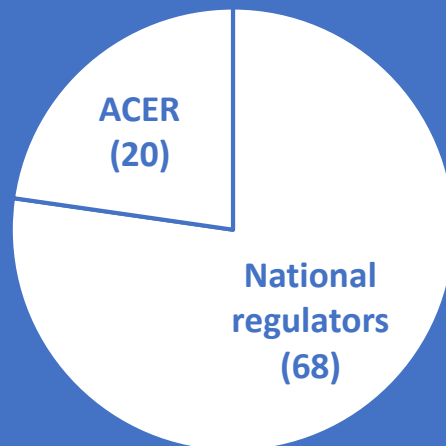
How many TCMs? Who decided?

Escalation to ACER

EUROPEAN TCM



REGIONAL TCM



1. disagreement on the proposal
2. disagreement on requesting amendments
3. disagreement on how to respond to a re-submitted proposal
4. referral due to a belief that an amendment request would be futile and an interest in avoiding delays
5. referral to ensure consistency with other, escalated TCMs

Conclusions

- Part of broader EU policy on electricity
- Can adopt specified decisions at level of policy *implementation*
- Tool used by Commission vs. ability for influence



INC Research Brief # 1
September 2022

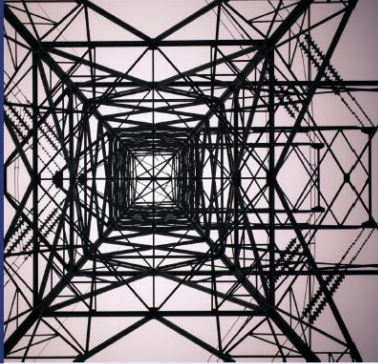
TORBJØRG JEVNAKER, LEIGH HANCHER AND
KARIANNE KROHN TARANGER


The evolving role of ACER

Emergence, practice and review of terms, conditions and methodologies (TCMs)

Key points

- Level of hierarchy involved in TCM processes is dynamic
- ACER's role shaped by actor interaction within TCM process and feedback from legal review
- This research brief is based on the INC project and will be presented at the INC workshop in Florence in October 2022



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INC Research Brief # 2
September 2022


EVA RUFFING, SELMA SCHWENSEN LINDGREN AND TORBJØRG
JEVNAKER


Electricity in perspective

Comparing the TCM procedure with other sectors

Key points

- EU agencies have generally gained increasing influence on decision-making processes in the EU.
- The decision-making process in the electricity sector stands out in EU decision-making.
- This research brief is based on the INC project and will be presented at the INC workshop in Florence in October 2022.



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INC Research Brief # 3
September 2022


TORBJØRG JEVNAKER, SIMON FINK, KARIANNE KROHN TARANGER,
HERMANN LÜKEN GENANNT KLAßEN AND PER OVE EIKELAND


Stocktaking of the adopted TCMs

Towards harmonization or diversity?

Key points

- Decision-making level for TCMs matter for harmonization; more diverse rules adopted at lower levels
- Processes and outcomes affected by the interests of the involved actors and links across TCMs
- This research brief is based on the INC project and will be presented at the INC workshop in Florence in October 2022.



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INC Research Brief # 4
September 2022

TORBJØRG JEVNAKER, MARIE BYSKOV LINDBERG AND
CATHERINE BANET

Implementation and adjustment ahead

Enforcing, applying and revising the TCMs during transition and crisis

Key points

- Significant efforts and observed challenges in implementing TCMs after adoption, yet revision already in action
- Opportunities and constraints with these rules and the rulemaking approach amid energy transition and energy crisis
- This research brief is based on the INC project and will be presented at the INC workshop in Florence in October 2022.



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Available at fni.no/INC





Thank you!
tjevnaker@fni.no

ESA

EFTA
Surveillance
Authority

ESA's cooperation with ACER under the EEA Agreement

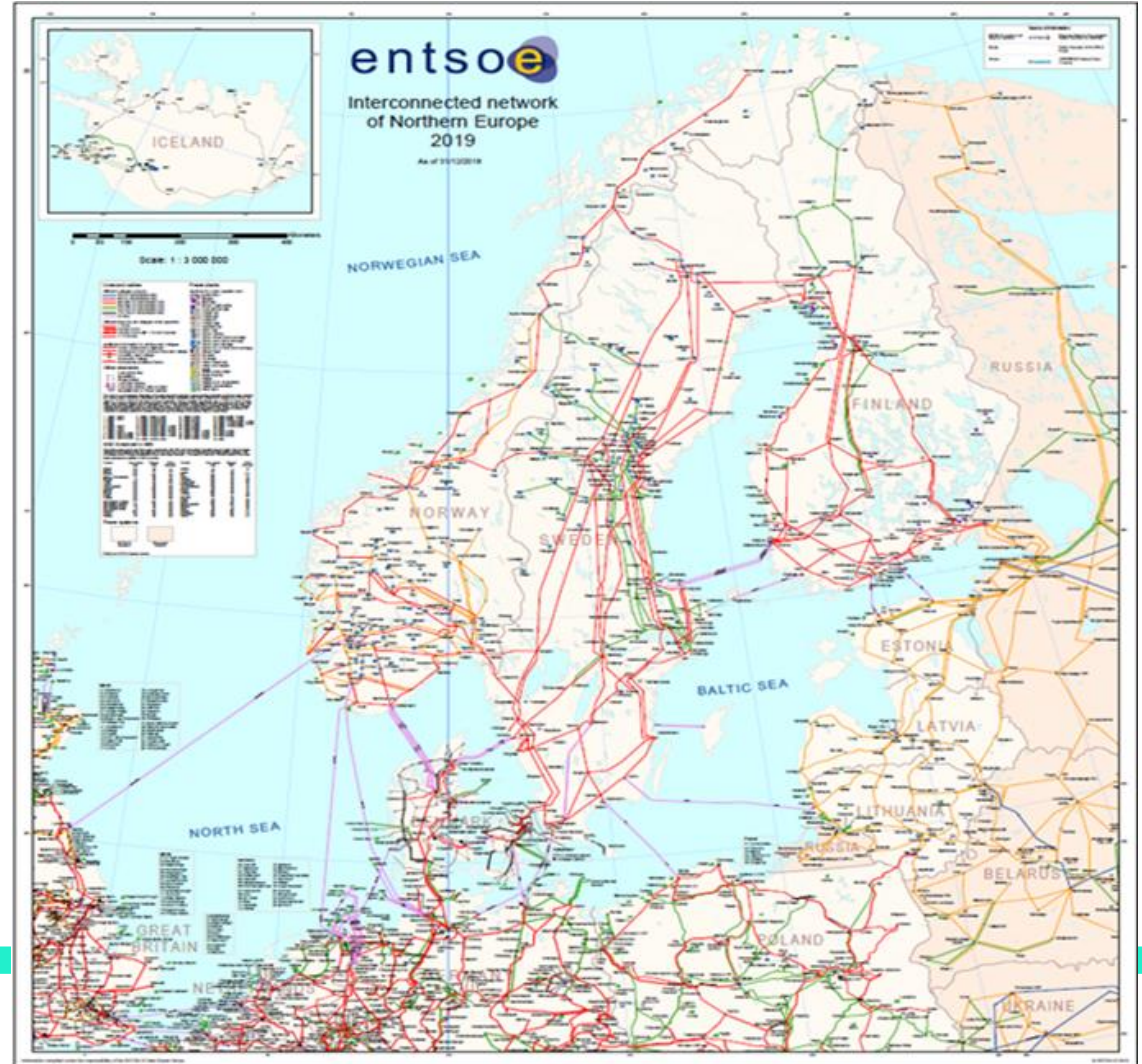
Nordisk institutt for sjørett

ACER and EEA energy cooperation: impacts and
adjustment possibilities for Norway

10 October 2023

Background: legal basis (1)

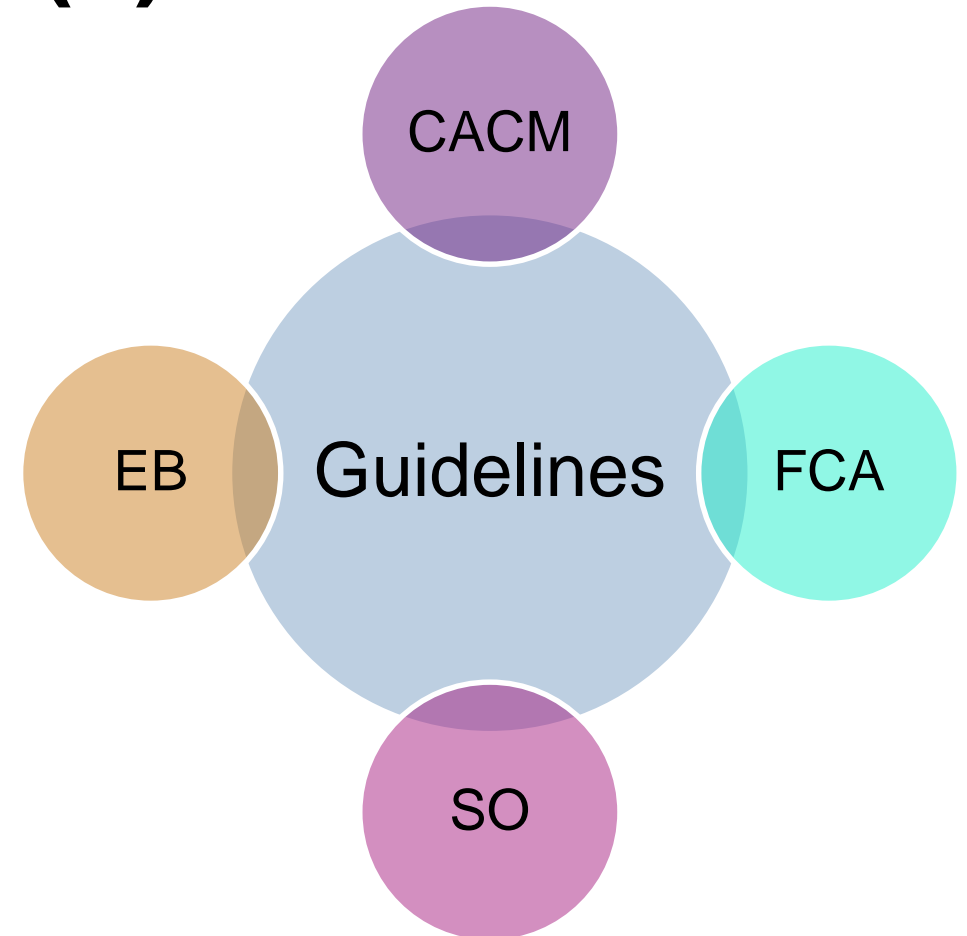
- JCD incorporating the 3rd Energy Package (No 93/2017)
 - In force since October 2019
 - Most relevant act for ESA: ACER Regulation
 - Establishes the mechanism for ESA's collaboration with ACER



Source: *ENTSO-E*

Background: legal basis (2)

- JCDs incorporating Commission Regulations establishing guidelines (No 204/2020, 205/2020, 206/2020 and 207/2020)
 - In force since July 2021
 - Basis for decisions on terms and conditions or methodologies
 - Reference to mechanism in JCD No 93/2017



ACER – ESA cooperation in general (1)

- Cooperation mechanism based on two-pillars
- Aligned on financial services
- Participation to respective bodies



Competence for decisions in place of ACER when one or more EEA EFTA States are involved



Competence for non-binding actions (e.g. opinions, recommendations)

ACER – ESA cooperation in general (2)



Memorandum of Understanding on cooperation, information exchange and consultation

This Memorandum of Understanding ("MoU") has been reached

BETWEEN

the EFTA Surveillance Authority ("the Authority"), with its seat in Brussels, Belgium

AND

the European Union Agency for the Cooperation of Energy Regulators ("ACER"), with its seat in Ljubljana, Slovenia

WHEREAS:

- MoU between ACER and ESA
 - September 2020
 - Not legally binding
 - Objective of close and continuous cooperation, information exchange and consultation for the fulfilment of respective tasks
 - Reiterates cooperation mechanism established by JCD No 93/2017

ACER – ESA cooperation for binding decisions

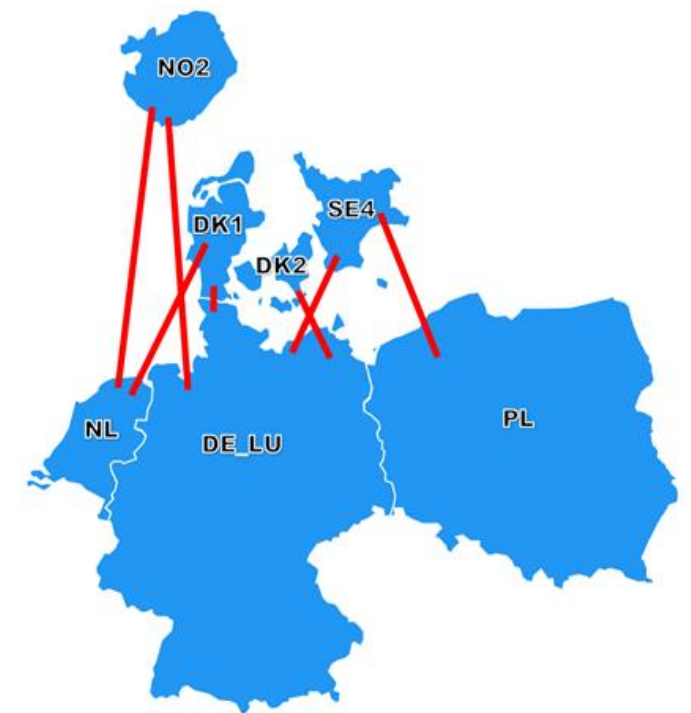
- ESA takes decisions in place of ACER when one or more EEA EFTA States are involved
- ESA's decisions based on drafts from ACER
 - Attention put on ensuring homogeneity across the EEA
 - ESA adaptations to EEA Agreement and EFTA context
- ESA's decisions addressed to national regulatory authority (NVE-RME)

ACER – ESA cooperation in practice: ESA decision on the Capacity Calculation Regions methodology (1)

- ESA [decision of 24 April 2023](#)
- NVE-RME decision of 18 August 2023
- Inclusion of Norwegian Bidding zone borders to Nordic and Hansa capacity calculation regions (CCRs)

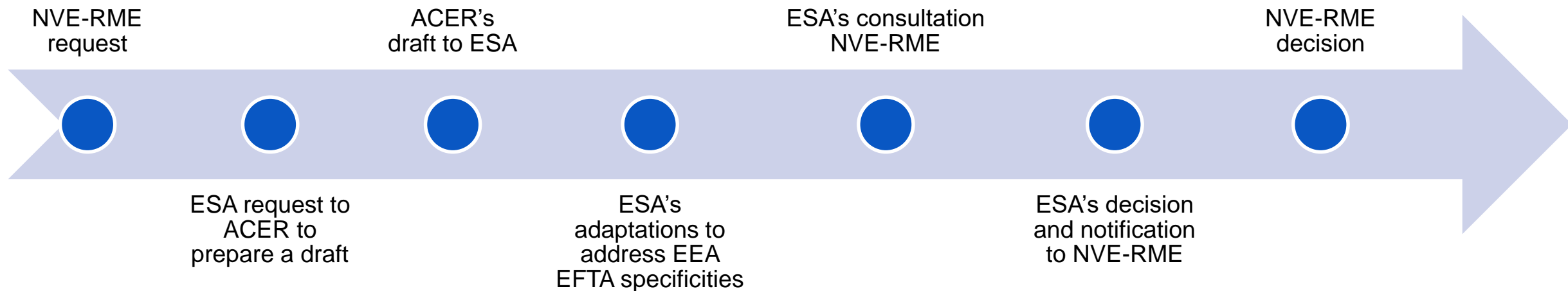


Nordic CCR



Hansa CCR

ACER – ESA cooperation in practice: ESA decision on the Capacity Calculation Regions methodology (2)



ACER – ESA cooperation in practice: ESA decision on the Capacity Calculation Regions methodology (3)

- Regular interactions ACER – ESA throughout the process
 - Dedicated meetings
 - Participation ESA to ACER working and decision-making bodies (no voting rights)
- Consultation ACER on ESA's preliminary decisions (EEA EFTA specificities)

ESA

EFTA
Surveillance
Authority

Contact details:

Anne De Geeter

adg@eftasurv.int

Tel.: +32 (0) 22861841

 eftasurv

 @eftasurv

 EFTA Surveillance Authority

www.eftasurv.int



Experiences with the decision-making process on terms, conditions and methodologies

(TCMs) - CCR

Energijuridisk klubb 10.10.2023

Anne Elisabeth B. Wedum

Statnett

Article 15(1) of the CACM Regulation requires all transmission system operators ('TSOs') to jointly develop a common proposal regarding the determination of CCRs.

1

Third energy package
2009 (2019)

2

Guidelines (CACM, FCA, EB GL, SO GL)
CACM 2015 (2021)

3

Terms, conditions and methodologies
(TCMs) (pan-European/regional/national)

Credit: ENTSO-E



ENTSO-E hosts "the All TSO process"

Parallell submissions of CCR configurations to ACER in the EU pillar
and to NVE-RME in the EFTA pillar

Godkjenning av metode om fastsettelse av kapasitetsberegningsregioner etter CACM artikkel 15



NVE

The Norwegian Energy
Regulatory Authority – RME

"RME har vurdert om innholdet i godkjenningen er bestemmende for rettigheter eller plikter til private rettssubjekter, i dette tilfellet Statnett, eller om godkjenningen snarere har karakter av potensielt prosessledende avgjørelse som skal legges til grunn ved eventuelle senere vedtak om kapasitetsberegning innenfor de kapasitetsberegningsregioner som nå fastsettes. Selve inndelingen har i seg selv karakter av kun å være potensielt prosessledende. Samtidig konkretiserer RMEs godkjenning en forpliktelse for Statnett til å fremlegge metodeforslag som skal forberedes i samarbeid med andre TSOer i de aktuelle kapasitetsberegningsregioner. Særlig dette gir godkjenningen karakter av enkeltvedtak, og rettssikkerhetshensyn taler for at RME godkjenner Statnetts forslag i slik form. Etter dette faller vi ned på at metoden bør godkjennes ved et enkeltvedtak rettet mot Statnett."

ACER decision No 08/2023 of 31 March
on the amendment to the determination of capacity calculation regions

Annex 1

TITLE 2 - FINAL PROVISIONS

Article 3 - Implementation date of the amendments

The amendments provided for in Article 1 shall be applied by all TSOs as soon as this amendment has been approved in accordance with Article 9 of the CACM Regulation and provided that and as soon as the CCR methodology has become applicable in Norway following the relevant decisions by the EFTA Surveillance Authority and the national regulatory authority in Norway in accordance with the Agreement on the European Economic Area.



THANK YOU

Credit: ENTSO-E