

## **Third Quarterly Report**

**Q03/2023**

**by the Energy Community Secretariat**

**December, 2023**

## PURPOSE STATEMENT

In January 2023, the Energy Community Secretariat established the Ukraine Energy Market Observatory to streamline and consolidate its monitoring functions under the Energy Community Treaty with regard to Ukraine and its commitments. The current report is summarizing the activities under the UA EM Observatory during the third quarter (Q3) of 2023.

## TABLE OF CONTENT

Executive Summary	1
Key developments in the Ukrainian Energy Market	2
In Focus of this Report	4
Observatory activities	8

---

### Energy Community Secretariat

Am Hof 4, 1010 Vienna, Austria

Tel: + 431 535 2222

Fax: + 431 535 2222 11

Web: [www.energy-community.org](http://www.energy-community.org)

Twitter: [https://twitter.com/ener\\_community](https://twitter.com/ener_community)

LinkedIn: <https://www.linkedin.com/company/energy-community/>



# Ukraine Energy Market Observatory Report: Q3 2023

December, 2023

## 1. EXECUTIVE SUMMARY

The activities of the Market Observatory in Q3 2023 covered a number of long-awaited developments in Ukraine energy markets in areas falling under the Energy Community acquis, in particular, as regards **electricity, gas, oil, and the national regulatory authority (NEURC)** as summarized in section 2 of this Report. The most important developments in focus of the Secretariat in Q3 2023 are highlighted in more details in section 3 of the Report.

After the entry into force of the REMIT Law on 2 July 2023, Ukraine entered into the phase of its implementation, with NEURC approving the first package of secondary legal acts as required by the REMIT Law. For more information, please refer to section 3 of this Report.

After the amendments to the Electricity Market Law adopted in June 2023, a decisive move was made towards the introduction of joint cross-border capacity allocation auctions on the borders of Ukraine with Hungary, Poland, Romania and Slovakia. The involved TSOs finalized the drafting of the relevant allocation rules and agreements, and launched the process of public consultations and approval. The Secretariat continued its coordination activities facilitating the implementation of joint cross-border capacity allocation. For more information, please refer to section 3 of this Report.

On 3 September 2023, the Law “On optimization of the ownership structure of the operator of the gas transportation system of Ukraine” No 3293-IX entered into force. It creates the legal basis for the start of the corporate governance reform of the gas TSO of Ukraine (GTSOU). The Secretariat was intensively involved in the finalization of the draft law and follows its implementation to maintain compliance with the GTSOU certification conditions. For more information, please refer to section 3 of this Report.

Several steps were taken in transposing the new electricity acquis in Ukraine, but a delay in the transposition of the 2022 Electricity Integration Package is expected. Besides the general transposition deadline of 31 December 2023 likely to be missed, certain implementation deadlines expired already earlier. In particular, Ukraine (as all other Contracting Parties of the Energy Community) has not yet designated a NEMO for its bidding zone according to Commission Regulation (EU) 2015/1222, as adopted and adapted in the Energy Community (EnC CACM) within the deadline of 15 June 2023. For more information, please refer to section 3 of this Report.

Several measures taken by the Verkhovna Rada and the Government of Ukraine affecting the functional and financial independence of the national regulatory authority NEURC were communicated to the Secretariat in the reporting period, resulting in a number of concerns related to NEURC’s independence as required by the *acquis*. For more information, please refer to section 2 of this Report.

## 2. KEY DEVELOPMENTS IN THE UKRAINIAN ENERGY MARKETS SINCE THE Q2 2023 REPORT

### Electricity

NEURC transposed Regulation (EU) No 838/2010 on laying down guidelines relating to the inter-transmission system operator compensation (ITC) mechanism and a common regulatory approach to transmission charging. The ITC Regulation provides an effective system to ensure that no additional charges for hosting cross-border flows of electricity are included in charges applied by TSOs for access to networks. This is currently the case in Ukraine. By the amendment<sup>1</sup> of the transmission grid code and the methodologies for calculation of transmission and dispatch service tariffs, cross-border transactions (export/import) are exempted from the domestic transmission and dispatch tariffs as of 1 January 2024. As of 1 January 2024, the transmission system operator (Ukrenergo) is expected to join the ITC mechanism. With the new amendments in force, importers and exporters will benefit from lower transaction costs, which fosters cross-border trade and decreases prices for consumers.

In September 2023 two draft acts for public service obligations (PSO) on the electricity market were submitted by NEURC to the Secretariat for assessment,<sup>2</sup> namely

- A draft PSO Act requiring electricity importers to provide services of public interest for the balancing of the electricity market during martial law. The Secretariat<sup>3</sup> concluded that the draft PSO Act should not be adopted as proposed, because of its incompliance with the Article 3(2) of Directive 2009/72/EC as regards conditions to be observed when defining the national legislation imposing PSOs on energy undertakings (e.g. principle of proportionality, limited duration, clarity and verifiability). The Secretariat recommended to consider other short-term and long-term measures to address resource adequacy over the winter months (the heating season).
- Draft amendments to the Household PSO Act<sup>4</sup> (which sets electricity prices for households), aimed at addressing an inconsistency between the settlement of the volume and cost of services. As the proposed amendments were of a technical nature, the Secretariat has not raised concerns regarding their compliance with the Energy Community *acquis*<sup>5</sup>.

### Gas:

The Law on the optimization of the ownership structure of the operator of the gas transportation system of Ukraine, (No. 3293-IX), adopted on 28.07.2023, set the basis for the overdue corporate governance reform of the GTSOU, and allows the GTSOU to maintain its certification status. The Secretariat was tasked to issue a binding opinion on the new charter of GTSOU, now under the control of the Ministry of Energy.

In August 2023 the Cabinet of Ministers of Ukraine (CMU) prolonged until 15 April 2024 two existing<sup>6</sup> PSOs in the gas sector, namely on natural gas supply to thermal energy producers and budget institutions, and on gas supply to households at regulated prices. The gas price for

---

<sup>1</sup> NEURC Resolution No. 1763 of 29.09.2023, No. 1816 of 04.10.2023 and No. 1817 of 04.10.2023

<sup>2</sup> Under the Memorandum of Understanding between the NEURC and the Secretariat on mutual cooperation in the area of public service obligations (PSOs).

<sup>3</sup> Letter of the Secretariat of 10 October 2023.

<sup>4</sup> Resolution of the Cabinet of Ministers of Ukraine of 5 June 2019 № 483.

<sup>5</sup> Letter of the Secretariat of 13 October 2023.

<sup>6</sup> CMU Resolutions No. 812 of 19 July 2022 and No. 222 of 06 March 2022.

households was kept at the current level of 7.42 UAH/m<sup>3</sup>. The amendments also introduced a mechanism for the allocation and transfer of funds to heat supply and heat generating organizations by the Treasury for the period from 1 September to 31 December 2023. The amendments were not consulted with the Secretariat.

The CMU appointed Naftogaz as the supplier of last resort (SoLR) for the period of martial law and six months beyond. This time the appointment was done without conducting a tender as required by the Law “On Natural Gas Market”, after the term of Naftogaz as SoLR expired in late July 2023.

NEURC took several decisions as regards the natural gas market functioning. In particular, the gas transmission code was amended by introducing a neutrality fee aimed to ensure the principle of neutrality of balancing. The neutrality fee will be applied by GTSOU based on monthly, not yearly results of balancing starting from the 2024/2025 gas year.

NEURC also approved amendments to the gas transmission code and the supply rules to increase the efficiency and to simplify the procedure for changing supplier for non-household consumers. The Secretariat was consulted at the stage of draft amendments and found that the proposed amendments correctly remove the obligation of customers who want to change their supplier to pay remaining debts prior to supplier switching. This removes obstacles for market opening for the benefit of consumers.

#### **Oil:**

The Verkhovna Rada of Ukraine voted for the draft Law on Minimum Reserves of Oil and Petroleum Products (No 9024-d of 28.06.2023) in first reading. It constitutes an important step to transpose Directive 2009/119/EC (the Oil Stocks Directive).<sup>7</sup> The draft Law was positively assessed<sup>8</sup> by the Secretariat, under the proviso that the achievement of the targeted volume of minimum reserves of oil and oil products is reached only within 8 years. This is a substantial delay compared to the commitments under the Energy Community *acquis*, as the deadline for establishing emergency oil stocks expired on 1 January 2023.

#### **NRA independence:**

During the reporting period, the Secretariat observed several events affecting the independence of NEURC. In July 2023 Law No 8222 on amendments to the Law of Ukraine on Civil Service was adopted by the Verkhovna Rada of Ukraine in first reading. The amendments envisage that from 1 January 2025, the remuneration of civil servants in all state bodies is not any longer based on sector-specific laws such as the NEURC Law. This would negatively impact the financial independence of NEURC. The Secretariat provided its concerns on Law No 8222 to the committee in charge<sup>9</sup> of the Verkhovna Rada.

On 24 August 2023, the Law on law-making activity<sup>10</sup> (Law No 3354-IX) was adopted by the Verkhovna Rada. It reintroduced the practice that the entry into force of regulatory acts depends on state registration by the Ministry of Justice of Ukraine, which was previously abolished with the NEURC Law in compliance with the Third Energy Package. Although these provisions will

---

<sup>7</sup> Incorporated and adapted in the Energy Community by Decision of Ministerial Council Decision 2012/03/MC-EnC of 19 October 2012.

<sup>8</sup> For the Secretariat’s assessment and recommendations please refer to the Assessment note 16/2023 <https://www.energy-community.org/dam/jcr:a7827424-5edb-4dca-9fcf-51aa4a4a354e/Note16.pdf>

<sup>9</sup> Committee on the Organization of State Power, Local Self Government, Regional Development and Urban Planning

<sup>10</sup> <https://zakon.rada.gov.ua/laws/show/en/3354-IX?lang=uk#Text>

enter into force only within one year after the termination of martial law in Ukraine, this creates a significant risk of delays and interference with NEURC’s regulatory acts hence affects NEURC’s independence.

The Secretariat conducted an in-depth compliance assessment of the governance and independence status of NEURC with the obligations stemming from the Energy Community *acquis*, which was published<sup>11</sup> in mid-October 2023.

### 3. IN FOCUS OF THIS REPORT

#### ➤ JOINT CROSS-BORDER CAPACITY ALLOCATION

Following the amendments to the Electricity Market Law related to the harmonization of the rules for cross-border capacity allocation, Ukrenergo and NEURC focused on the development and approval of the regulatory framework required to launch joint cross-border capacity allocation on Ukraine’s interconnectors with Hungary, Poland, Romania and Slovakia. After the public consultation held by Ukrenergo, NEURC gave consent to cross-border capacity allocation rules for all borders and to the rules defining cross-border capacity splitting among different timeframes. NEURC also approved conditions on sharing revenues from cross-border capacity allocations on each of the borders between Ukrenergo and neighbouring transmission system operators, namely Hungary (MAVIR), Poland (PSE), Romania (Transelectrica) and Slovakia (SEPS).

On 30 August 2023, a joint meeting of all regulators and TSO took place under the facilitation of the Secretariat. The parties agreed on the next steps, e.g. finalization of approval process for joint daily cross-border capacity allocation rules for the UA-HU, UA-PL and UA-SK borders (via JAO platform) and upgrading of relevant IT solutions and information exchange channels.

The status of joint cross-border capacity allocation readiness as of 30 September 2023:

UA-RO	UA-SK	UA-HU	UA-PL
Joint allocation platform – Ukrenergo	Joint allocation platform (JAO)		
Cross-border capacity allocation rules (long-term and short-term) approved by both NRAs (NEURC and ANRE)	The cross-border capacity allocation rules (short-term) approved by NEURC, and are under public consultations by JAO (by 3 October 2023 <sup>12</sup> ) and national approval procedures in EU Member States (to be started after the JAO consultations and to be finalized by the end of November 2023)		
Splitting of cross-border capacity: annual auctions – 35%, monthly auctions – 35%, daily auctions – 30%.	Splitting of cross-border capacity: annual auctions – 0%, monthly auctions – 0%, daily auctions – 100%.	Splitting of cross-border capacity: annual auctions – 0%, monthly auctions – 0%, daily auctions – 100%.	Splitting of cross-border capacity: annual auctions – 0%, monthly auctions – 0%, daily auctions – 100%.

The first joint cross-border capacity allocation auction for the UA-RO border took place on 2 November 2023.

<sup>11</sup> [https://www.energy-community.org/dam/jcr:4c176023-d2cf-4dda-956d-fe65308b7503/Note17\\_Governance%20and%20Independence%20of%20NEURC.pdf](https://www.energy-community.org/dam/jcr:4c176023-d2cf-4dda-956d-fe65308b7503/Note17_Governance%20and%20Independence%20of%20NEURC.pdf)

<sup>12</sup> <https://www.jao.eu/public-consultation>

Based on the progress made on the borders between Ukraine and EU Member States, similar developments are expected to take place with regard to the introduction of joint cross-border capacity allocations between Ukraine and Moldova. The transmission system operators of Moldova (Moldelectrica) and Ukraine (Ukrenergo) are still finalizing the rules for joint cross-border capacity allocation via Ukrenergo's platform.

➤ REMIT IMPLEMENTATION

On 2 July 2023, the Law “On Amendments to some laws of Ukraine regarding the prevention of abuse in the wholesale energy markets” No 3141-IX (the REMIT Law) entered into force.



As the REMIT Law requires the NEURC to consult the Secretariat on penalties imposed for abuses in the wholesale market during the first two years of application, a Memorandum of Understanding for the cooperation on this matter was signed on 28 July 2023 by the Energy Community Secretariat and NEURC.

Subsequently NEURC, after public consultations, adopted the first three regulatory acts required for the implementation of the REMIT Law:

- **The procedure for registration of wholesale energy market participants** sets the requirements for registration of the wholesale energy market participants (WEM participants) with the ECRB code. The registration process opened in mid-October 2023. As of 1 February 2024, only participants who have registered in the NEURC registry are allowed to enter into transactions for wholesale energy products with execution inside Ukraine or from Ukraine towards other countries.

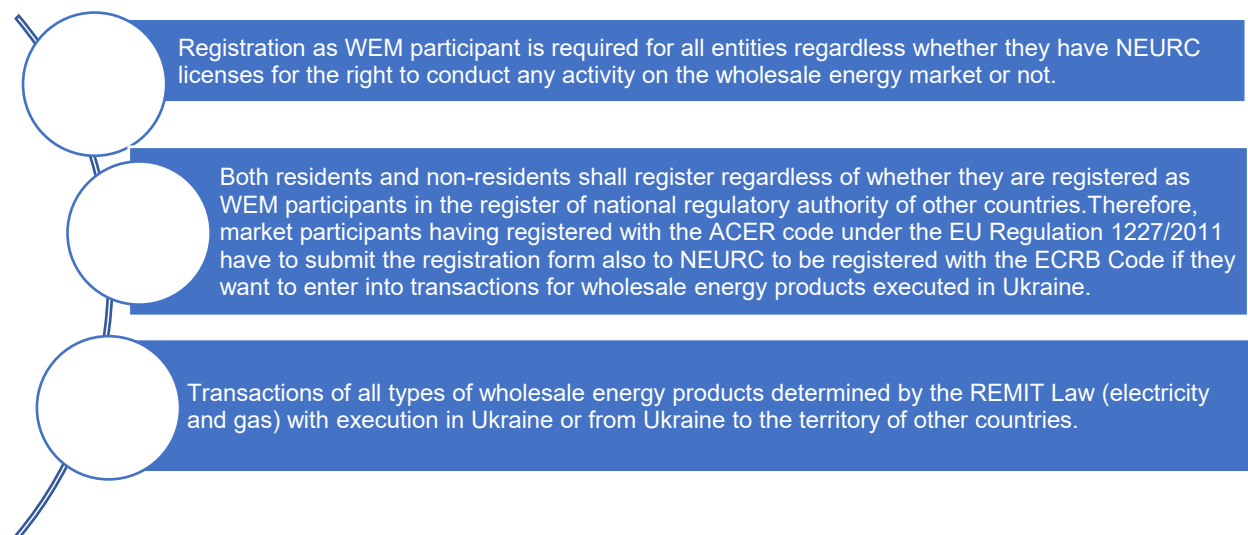


Figure 1. WEM participant registration requirements

Information from the national register is transferred to the ECRB to form a central register of market participants in the Energy Community<sup>13</sup>.

<sup>13</sup> <https://www.energy-community.org/implementation/REMIT.html>

- **The procedure for investigation of abuses in the wholesale energy market<sup>14</sup>** defines grounds for opening investigations of possible abuses, the procedure for notification of possible abuses in the wholesale energy market, NEURC’s investigation powers, as well as the rights and obligations of the investigated entities. NEURC’s cooperation with the ECRB and the Energy Community Secretariat is also regulated by the procedure.
- **The procedure for determining the amount of penalties imposed by the NEURC<sup>15</sup>** defines principles, stages, and criteria for determining penalties for abuses in the wholesale energy market, in particular related to the nature, duration and seriousness of the infringement, the amount of damage caused and the amount of potential income that could be obtained as a result of the abuse.

Upon NEURC’s request, the Secretariat reviewed the listed drafts and provided recommendations for their improvement in compliance with the Energy Community acquis and best practices. Not all recommendations were considered in the final acts. The assessment of the adopted regulations will be published by the Secretariat together with further recommendations.

## ➤ CORPORATE GOVERNANCE

### *Electricity TSO*

Upon request of ENTSO-E, the Secretariat issued a status report in September 2023 on the compliance by Ukrenergo with the unbundling requirements of Directive 2009/72/EC. The assessment concluded that Ukrenergo has been diligently implementing the requirements from unbundling and certification, although some issues pertaining to the sphere of the Ministry of Energy (which controls the TSO) requires further action from the Ministry to ensure full compliance. Most importantly, this concerns the missing appointment of a fourth independent member of the supervisory board and the revision of the Order of Ministry of Energy No.408/2022<sup>16</sup> interfering with the corporate governance of Ukrenergo.

### *Gas TSO*

On 28 July 2023, the Verkhovna Rada of Ukraine adopted the Law on optimization of the ownership structure of the operator of the gas transportation system of Ukraine, No 3293-IX<sup>17</sup>. The Secretariat was intensively involved in the drafting and in its implementation in order to secure compliance with the GTSOU certification conditions.

Under Law No 3293, the two-layered structure of corporate governance of the GTSOU is abolished. Instead of being a subsidiary of the state-owned holding company Main Gas Pipelines of Ukraine, the shares in GTSOU are now held by the Ministry of Energy directly, based on a CMU decision<sup>18</sup> of 22 September 2023. The Ministry of Economy started the selection process for three independent members to the new supervisory board of GTSOU. The Secretariat also

<sup>14</sup> NEURC Resolution No1756 of 26.09.2023, <https://www.nerc.gov.ua/acts/pro-zatverdzhennya-poryadku-rozsliduvannya-zlovzhivan-na-optovomu-energetichnomu-rinku>

<sup>15</sup> NEURC Resolution No1800 of 29.09.2023, <https://www.nerc.gov.ua/acts/pro-zatverdzhennya-poryadku-metodiki-viznachennya-rozmiru-shtrafov-yaki-nakladayutsya-nacionalnoyu-komisiyeyu-shcho-zdiysnyuye-derzhavne-regulyuvannya-u-sferah-energetiki-ta-komunalnih-poslug>

<sup>16</sup> For more information, please refer to Assessment Note 18/2023 dated 24.10.2023.

<sup>17</sup> <https://itd.rada.gov.ua/billInfo/Bills/Card/42198>

<sup>18</sup> Order No.828-p of 22.09.2023 “On the transfer of powers to manage state corporate rights”, <https://www.kmu.gov.ua/npas/pro-peredachu-povnovazhen-z-upravlinnia-korporatyvnymy-s828-220923>



approved the new charter of GTSOU with a request for certain amendments, which have been duly implemented.

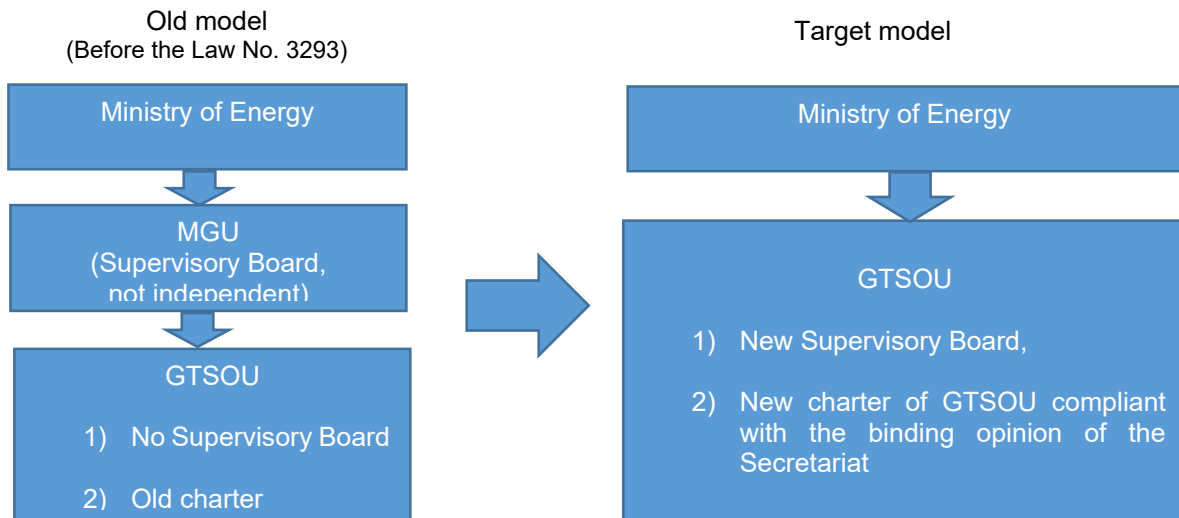


Figure 2. Corporate management of GTSOU (former and target model based on Law No 3293)

#### ➤ STATE OF ELECTRICITY INTEGRATION PACKAGE TRANSPOSITION

The deadline for transposition of the nine legal acts adopted by the Ministerial Council Decisions 2021/13/MC-EnC of 30 November 2021 and 2022/03/MC-EnC of 15 December 2022, the so-called Electricity Integration Package, is 31 December 2023<sup>19</sup>.

Several steps were taken in Ukraine to transpose the new Electricity Integration Package at the national level. Draft legislative proposals were prepared by the Ministry of Energy of Ukraine and Ukrenergo in spring 2023 and assessed by the Secretariat on their request<sup>20</sup>. The proposed drafts were not sufficient to transpose the Electricity Integration Package in a comprehensive and compliant manner. Ukrenergo revised the draft based on the Secretariat's comments and resubmitted an updated version to the Secretariat in August 2023. The Market Operator also prepared draft amendments to the Law on the Electricity Market focusing mostly on CACM transposition.

In July 2023, the CMU adopted an Order<sup>21</sup> with a plan for the transposition of the Electricity Integration Package by 31 December 2023. This plan tasked NEURC, the Ministry of Energy,

<sup>19</sup> This comprises: Directive (EU) 2019/944 on common rules for the internal market for electricity, Regulation (EU) 2019/941 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC; Regulation (EU) 2019/943 of 5 June 2019 on the internal market for electricity; Regulation (EU) 2019/942 establishing a European Union Agency for the Cooperation of Energy Regulators; Commission Regulation (EU) 2015/1222 (CACM); Commission Regulation (EU) 2017/2195 (EB GL); Commission Regulation (EU) 2016/1719, (FCA GL); Commission Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation (SO GL); Commission Regulation (EU) 2017/2196 establishing a network code on electricity emergency and restoration (ER NC) governing system operation. The new electricity acquis was complemented by Procedural Act 2022/01/MC-EnC on Regional Market Integration, establishing reciprocity between energy sector stakeholders, i.e. regulatory and other designated authorities, transmission and distribution system operators, nominated electricity market operators, and regional coordination centers.

<sup>20</sup> [Assessment Note 9/23](#)

<sup>21</sup> CMU Order No.642-p of 07.07.2023, <https://zakon.rada.gov.ua/laws/show/642-2023-%D1%80#Text>

Ukrenergo and the Market Operator to transpose the acts adopted by Ministerial Council Decisions 2021/13/ MC-EnC and 2022/03/MC-EnC. To streamline the transposition of the new package, NEURC complemented the draft amendments to the Law on the Electricity Market prepared by Ukrenergo with provisions of the Electricity Regulation and ACER Regulation and submitted it to the Secretariat for review in August 2023. The finalization of the draft Law is currently ongoing. In addition, the Committee of the Verkhovna Rada established a working group for the transposition of the Electricity Integration Package in cooperation with all relevant energy sector stakeholders.

In addition to the transposition of the Electricity Integration Package, its implementation should have already started in line with the defined deadlines, as outlined in the implementation roadmap prepared by the Secretariat<sup>22</sup>. According to the CACM, by 15 June 2023, at least one NEMO should have been designated in each of the Contracting Parties, including Ukraine. In this absence of the transposition of the CACM, this has not happened to date.



Figure 3. EE CCR as established by Annex I to the CACM Regulation

Furthermore, the transmission system operators of the EE CCR (including Ukraine, Moldova and the neighbouring EU Member States) should have concluded cooperation agreements and at the same date, should have submitted common coordinated capacity calculation methodology to the NRAs concerned for their approval. This is not yet achieved. To couple the Ukrainian market into the European internal electricity market, all preparatory steps including the approval and implementation of terms, conditions and methodologies as required by the CACM Regulation and the TSO's and NEMO's adherence to the relevant EU agreements need to be finalised.

#### 4. OBSERVATORY ACTIVITIES IN Q3

Under the Ukraine Energy Market Observatory, during Q3 2023, the Secretariat assessed compliance of a number of draft legal and regulatory acts communicated by Ukrainian authorities and stakeholders with the Energy Community *acquis*. The following assessment notes were prepared by the Secretariat and published on the Energy Community website:<sup>23</sup>

Acquis	Assessment Notes
ELECTRICITY	<a href="#">No 12/2023 - Assessment of the draft Procedure for conducting public consultations by the transmission system operator during the development of the cross-border capacity allocation rules and determination of the capacity allocation structure</a>
ELECTRICITY	<a href="#">No 13/2023 - Assessment of recent decision of National Energy and Utilities Regulatory Commission ("NEURC") No 1126 of 27 June 2023 ("Resolution No 1126"), establishing new levels of price caps on the day-ahead market ("DAM"), intraday market ("IDM") and balancing market ("BM").</a>

<sup>22</sup> <https://www.energy-community.org/dam/jcr:3e7c6f65-d2c6-44c1-873f-fe440cbf9650/Copy%20of%20Roadmap%20Electricity%20Package.xlsx>

<sup>23</sup> <https://www.energy-community.org/Ukraine/observatory.html>

ELECTRICITY/GAS (REMIT)	<a href="#">No 14/2023 - Assessment of the Law of Ukraine “On Amendments to some laws of Ukraine regarding the prevention of abuse in the wholesale energy markets” of June 10, 2023 No. 3141-IX</a>
GAS	<a href="#">No 15/2023 - Assessment of legislative and regulatory risks related to storing gas in Ukraine by non-Ukrainian operators and measures aimed at their reduction and mitigation.</a>
OIL	<a href="#">No 16/2023 - Assessment of draft Law No 9024-d of 28 June 2023 “On Minimum Reserves of Oil and Petroleum Products”</a>