

105th ACER Board of Regulators Meeting

26 January 2022

By video/audio conference

MINUTES FINAL

Country/Institution	Name ^[1]	Country/Institution	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch A: Dietmar Preinstorfer O: Christine Materazzi-Wagner	Latvia (PUC)	M: Rota Šņuka O: Lija Makare
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren	Lithuania (NERC)	M: Renatas Pocius O: Justina Alsytė-Gogelienė
Bulgaria (EWRC)	A: Evgenia Haritonova	Luxembourg (ILR)	M: Camille Hierzig
Croatia (HERA)	M: Željko Vrban A: Dunja Trakoštanec Jokić	Malta (REWS)	A: Phyllis Mycallef O: Manuel Manuzzi
Cyprus (CERA)	O: Marilena Delenta (with proxy) O: Christina Zouvani (with proxy)	Netherlands (ACM)	A: Remko Bos O: Nora Meray
Czech Republic (ERO)	A: Jana Haasová O: Tomáš Kupčiha	Poland (URE)	M: Rafał Gawin A: Małgorzata Kozak
Denmark (DUR)	M: Carsten Smidt A: Mads Lyndrup	Portugal (ERSE)	A: Pedro Verdelho O: Natalie McCoy O: Catarina Santos
Estonia (ECA)	A: Marilyn Tilkson	Romania (ANRE)	O: Florin Tobescu (with proxy)
Finland (EV)	M: Simo Nurmi	Slovakia (URSO)	A: Mária Bronišová
France (CRE)	A: Jean-Laurent Lastelle O: Claire Hellich	Slovenia (AGEN-RS)	A: Bojan Kuzmič
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov	Spain (CNMC)	M: Mariano Bacigalupo A: Esther Espeja O: Gema Rico

[1] M: Member – A: Alternate – O: Observer

Greece (RAE)	M: A Dagoumas O: Yuriy Bilen	Sweden (Ei)	M: Anne Vadasz- Nilsson A: Caroline Törnqvist O: Johan Roupe
Hungary (MEKH)	M: Pál Ságvári O: Tamás Gyarmati	EEA-EFTA State Iceland	
Ireland (CRU)	M: Jim Gannon O: Barry Hussey	Norway (NVE-RME)	A: Anne Dønnem
Italy (ARERA)	M: Clara Poletti A: Francesco Cariello O: Ilaria Galimberti	EFTA Surveillance Authority (ESA)	O: Anne De Geeter
ACER	Christian Zinglensen, Christophe Gence-Creux, Dennis Hesseling, Martin Godfried, Francois Beaude, Andrej Beloglavec, Silvia Manessi, Peter Meze, Fay Geitona, Mitsuko Akiyama		
European Commission	Annamaria Marchi, Michael Schuetz, Feodora Petit, Augustijn van Haasteren, Massimo Serpieri		
CEER	Charles Esser		

1. Opening

1.1. Approval of the agenda

The agenda of the 105th BoR meeting was approved. The draft agenda has been sent to the European Parliament.

The BoR Chair asked for declarations of conflict of interest. None was declared.

1.2. Minutes of the 104th BoR meeting

The minutes of the 104th BoR meeting were approved and sent to the European Parliament on 10 January.

Decisions/ Conclusions

1.1 The BoR approved the agenda.

2. Updates from the ACER Director and the BoR Chair

2.1. Updates from ACER

The Director and Ms Manessi informed members about ACER's open call for up to 10 Seconded National Experts (SNEs) in line with the 2022 budget to join the following teams: REMIT policy, transaction and fundamental data reporting; data analysis; gas network codes; electricity; wholesale energy market surveillance and conduct; legal services; energy infrastructure; electricity adequacy; and cybersecurity. This provides a unique opportunity for SNE participation in ACER from a broader range of NRAs. Ms Manessi explained the practicalities of being an SNE at ACER as well as the mutual benefits.

The Chair welcomed the update which may be repeated as necessary, while members were advised to contact Ms Manessi for any further questions.

Ms Geitona referred to the launch of the e-platform (with e-declaration and e-voting modules), which aims to modernise our working arrangements, simplify our procedures and facilitate members' participation in BoR deliberations. Mr Meze introduced the tools with the aid of user guides.

Members welcomed this project.

The BoR Chair thanked ACER for the updates.

2.2. Updates from the BoR Chair

The BoR Chair informed members that soon a day will be set for the ACER leadership away day, which has been postponed due to the pandemic, and raised the need to discuss arrangements for hybrid meetings during an upcoming BoR meeting.

3. Delivering on the wider Energy Union from a regulatory perspective

3.1 Updates on the EU Green Deal and other EC updates

The EC and members exchanged on the EC legislative proposals on the hydrogen and gas markets decarbonisation package and on reducing methane emissions from gas, oil and coal in Europe, which were issued on 15 December 2021. Mr van Haasteren noted that with the EC proposals, the interinstitutional process has started and the Commission plans to use this period to engage with stakeholders and pursue the dialogue with ACER. Mr van Haasteren and Ms Petit

addressed specific questions by the BoR. Mr Serpieri explained the EC approach vis a vis the consumers.

Mr Verdelho presented the state of play of regulators' work on the gas package and the next steps.

The BoR Chair thanked the EC for the updates.

The BoR agreed the next steps on the Gas Package as proposed by the AGWG Chair.

4. Items for BoR opinion/approval/agreement

4.1. ACER Programming Document 2023-2025

Mr Beloglavec presented the ACER Programming Document outlining the status of the adoption process and the next steps. According to the ACER Regulation, the Administrative Board (AB) shall adopt the Programming Document (PD) taking into account the opinion of the Commission, after receipt of a favourable opinion from the BoR, and after the Director has presented it to the European Parliament (EP), the Council and the Commission by 31 December; thus the BoR will consider again the PD in December. Mr Beloglavec presented the backdrop of ACER's work in the context of massive changes in the energy system due to decarbonisation, unprecedented high energy prices, changes in the regulatory landscape and resource considerations. Key activities as outlined in the PD pertain to the monitoring the implementation and effects of Electricity and Gas Network Codes and Guidelines, promoting integrity of wholesale energy markets under REMIT (noting that at a time of high prices, transparency is crucial), contributing to the EU's energy infrastructure challenge (TEN-E), contributing to efficient cross-border integration and additional tasks that may be allocated to ACER in the coming years (per e.g. the Gas Package).

Compared to the PD 2022 – 2024, the number of operational activities has been reduced (e.g. electricity and gas market monitoring is no longer a self-standing activity). In addition, the prioritisation system has been modified as 1A – Critical, 1B – Reactive or 2 - Less important, to ensure that reactive tasks are not perceived to be of lesser importance. In terms of the budget outlook, budgetary forecasts for 2023 include 5 posts to be allocated to the Agency in the framework of the Gas Package as proposed by the EC on 15 December 2021. ACER's approach consists of a multi-year perspective based on priorities, with a balance between REMIT-fee and non-REMIT-fee positions, a flexible approach to SNE positions, as well as continuous efforts to increase efficiency and to streamline.

The BoR approved the Programming Document 2023-2025 by consensus of the 27 members present and represented. The BoR also supported the draft estimate of revenues and expenditure for 2023 amounting to EUR 27,497,670.

4.2. ACER Decision on the amendment of the methodology for pricing balancing energy and cross-border capacity used for the exchange of balancing energy or operating the imbalance netting process

The Director presented the background and key elements of the draft Decision. TSOs submitted their proposal for amending the Pricing Methodology, raising fundamental and transitory risks with regard to the technical price limits for balancing energy (from +/- 99,999 €/MWh to +/- 15,000 €/MWh); the adjustment mechanism and the report on limits; the annual reporting (by all TSOs, with an analysis of the impact of these technical price limits market functioning). The draft ACER Decision provides for a transitory limit of 15,000 €/MWh as a temporary measure for mitigating

the risks in this initial phase to allow time for TSOs to gather experience on the functioning of European platforms and to perform an analysis of the balancing markets lasting 48 months from the implementation deadline of the European platforms with a requirement for TSOs to perform an assessment 36 months after the implementation of the platforms, as a trigger for any potential amendment of the Pricing Methodology along with quarterly reporting requirements.

The AEWG advice has been shared with members.

The Chair invited members of the respective NRAs to explain their proposal for amendment.

The BoR Chair opened the vote on the proposal for amendment: 27 members participated and the proposal did not secure the requisite two-thirds majority.

The BoR Chair opened the vote on the BoR favourable opinion: 27 members participated and the BoR favourable opinion was provided by the requisite two-thirds majority.

4.3. ACER Decision for the new System Operation Region & ACER Opinion on TCMs for LTTR implementation on FI-EE

The ACER Decision to withdraw Decision No 08/2021 on the definition of System Operation Region (SOR) was issued on 13 October 2021 and a new Decision is under preparation to replace it.

Following an assessment pursuant to Article 30 of the Forward Capacity Allocation (FCA) Regulation, the Finish and Estonian NRAs decided to introduce long-term transmission rights (LTTRs) on the FI-EE bidding zone border (BZB) of the Baltic CCR in June to address the insufficient hedging opportunities for market participants in the Baltics. On 11 November, ACER received a request for an opinion on the required terms and conditions and methodologies and related processes for their approval, which must be issued by 11 February 2022.

Given there is no BoR meeting in February, the BoR agreed by the requisite majority and by consensus (respectively) to provide its opinions on the ACER Decision on the definition of SOR and the ACER Opinion on TCMs for LTTR implementation on FI-EE via electronic procedure.

4.4. Appointment of the BoR Review Panel

In accordance with the Agency's Policy for the prevention and management of conflicts of interest, members and alternates of the Board of Regulators, Agency Working Group Chairs and Vice-Chairs, and Task Force Convenors were invited to submit their Declarations of Interests and an updated CV by 31 January. In line with this Policy, the DoIs and CVs will be published on the Agency's website and assessed by a Review Panel. The BoR Chair sought agreement on the composition of the new Review Panel (the BoR Chair and Vice-Chair and Mr Hierzig, with the Director of the Agency acting as observer and Mr Bos acting as an alternate to the Chair and Vice Chair where their declaration is considered). The BoR agreed to appoint the BoR Review Panel by consensus.

**Decisions/
Conclusions**

4.1 The BoR approved the ACER Programming Document 2023-2025 by consensus of the members present and represented and supported the draft estimate of revenues and expenditure for 2023 amounting to EUR 27,497,670.

4.2 The BoR provided its favourable opinion on the ACER Decision on the amendment of the methodology for pricing balancing energy and cross-border capacity used for the exchange of balancing energy or operating the imbalance netting process by the requisite two-thirds majority of members present and represented.

4.3 The BoR agreed to the use of the electronic procedure to issue its opinions on the ACER Decision for the new System Operation Region (by the requisite majority) and on the ACER Opinion on TCMs for LTTR implementation on FI-EE (by consensus).

4.4 The BoR unanimously agreed to appoint the BoR Review Panel.

5. AWG key issues

5.1. AWG/ARC key issues

The AGWG Chair presented key updates with respect to ongoing work in the GWG, namely: the selection of a new CAM TF Chair; work on allowed revenue update on the TEN-E revision; and ongoing work on gas storage regulation.

Ms McCoy, the ARWG co-Chair, reported that the ARWG had discussed measures taken at national level to tackle the high energy prices as well as how to support ACER on consumer and retail issues relevant to the April assessment.

Ms Materazzi-Wagner pointed to the written updates.

The BoR Chair thanked the AWG Chairs for their updates.

5.2. Update on the April assessment of high energy prices

The EC Communication “tackling rising energy prices: a toolbox for action & support” dated 13 October 2021 tasked ACER inter alia with studying the benefits and drawbacks of the existing electricity market design by April 2022. The Director and Mr Beaude updated members on developments relating to this assessment, including the technical cross-Working Group discussions held on 19 January, with sessions on: (i) driving sufficient investment in low-carbon generation, which are often CAPEX-heavy and retaining the benefits of EU market integration; (ii) price volatility as a driver for flexibility needed due to the increasing amount of intermittent generation; (iii) the dilemma of introducing supplier obligations to protect end consumers from the effects of price volatility impacting affordability against retaining price signals to drive desired behaviour (e.g. greater efficiency) and/or incentivise new investment; and (iv) a discussion on blind posts and no-regret options. The workshop was well attended with over 100 participants. A stakeholder workshop is also scheduled for 10 February, after which inputs will be reviewed to define the preliminary scope of the assessment and lines to take on specific topics, which will be discussed at the March BoR meeting. The aim is to circulate the paper for BoR endorsement in April.

The Director also attended an informal meeting of the energy ministers in Amiens on 22 January, where he gave an update on Europe’s high energy prices and the upcoming April assessment

of the EU electricity market design, which will put forward some considerations for political decision-makers.

5.3. ACER Decision on ERAA 2021

The European Resource Adequacy Assessment was submitted to ACER on 16 November. ACER must issue a decision by 17 February 2022.

Mr Kolokathis presented ACER's draft Decision in light of the high-level principle such that ERAA must be robust and form an objective basis for assessing resource adequacy concerns, whilst recognising that ERAA may be implemented gradually, progressing each year to achieve full compliance with ERAA 2024. Mr Kolokathis also outlined the next steps.

The BoR Chair thanked Mr Kolokathis for the presentation.

The Director also reported on the related topic of ENTSO-E's Winter Outlook 2021-2022: ACER broadly concurs with the conclusions and will issue a comprehensive letter given the added importance and political sensitivities surrounding the analysis in the current climate.

5.4. Update on the ACER Decision on SIDC data collection under REMIT

The Director and Ms Geitona referred back to the presentation given at the last BoR regarding the draft ACER decision to request additional Single Intraday Coupling (SIDC) data from SIDC Nominated Electricity Market Operators (NEMOs) pursuant to Article 3(2) of the ACER Regulation, and reported that the decision will be finalised by the end of the month. ACER should receive the requested data in Q4/22.

5.5. Update on the Framework Guidelines on Demand Response Framework

In October 2021, the EC invited ACER to launch a scoping exercise for the development of a network code based on Article 59(1)(e) of the Electricity Regulation. Mr Gence-Creux outlined the reply to the EC, which summarises the result of the scoping exercise on the need for a European framework for demand response, and addresses additional questions from the EC on: the identification of market participants and service providers that should be considered; the products, services and markets that should be included; and related areas and topics that should be addressed within a European framework. The outcome of the scoping exercise will be shared with the EC in the next days. In terms of next steps, the EC is expected to formally request ACER to submit the Framework Guidelines in September 2022.

5.6. Report on the use of congestion income

Pursuant to Article 19(5) of Regulation (EU) 2019/943, NRAs inform ACER and publish a report on the use of congestion income. In line with ACER's duties to monitor the internal electricity market and the implementation of projects of common interest, the Union-wide network development plan and other projects creating new interconnector capacity, and to contribute to the goal set out in recital (41) (avoid lack of prioritisation of necessary interconnection projects at national level), ACER prepared an internal monitoring report on the use of congestion income in the EU in 2020. The report includes an analysis of 23 NRA submissions and evaluates data on the fulfilment of the Priority Objectives set out in Article 19(2) of the Regulation. Mr Gence-Creux presented the informal recommendations contained in the report, and members took note.

5.7. ACER Opinions on reverse flows (SI-AT, HU-AT)

On 2 and 5 November 2021, ACER received from E-Control and AGEN-RS their decisions taken in the context of the proceedings to review the exemption from the obligation to enable bi-directional capacity at the Murfeld/Ceršak cross-border interconnection point between Austria and Slovenia in accordance with Article 5(4) and point 2 of Annex III to Regulation (EU) 2017/1938 concerning measures to safeguard the security of gas supply (the SoS Regulation).

On 2 and 3 November 2021, ACER received from E-Control and MEKH their decisions accepting the proposal by FGSZ Zrt. and Gas Connect Austria GmbH to deem that the obligation to enable bi-directional capacity at the Mosonmagyaróvár interconnection was already fulfilled.

ACER must issue opinions on certain elements of the above decisions in light of Article 5 and Annex III to the SoS Regulation. Mr Hesseling presented the opinions, which will be submitted to the Commission along with the competent authorities and the national regulatory authorities referred to in points 3 and 6 of Annex III to the SoS Regulation.

5.8. ACER-CEER position paper on the offshore renewable energy strategy

In November 2020, the European Commission published a communication on an EU Strategy to harness the potential of offshore renewable energy for a climate neutral future, alongside a staff working document providing guidance on electricity market arrangements to support the integration of offshore renewable energy into the internal energy market. The AEWG Chair sought the BoR steer on the elements to be covered in a draft paper foreseen as a joint ACER-CEER response to the EC documents. Following discussion, members and the Director agreed that a joint ACER-CEER paper will be issued, outlining their preliminary position.