

96th ACER Board of Regulators Meeting

16 December 2020

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: Rolands Irklis A: Lija Makare
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren	Lithuania (NERC)	M: Inga Žilienė A: Irma Vasarytė
Bulgaria (EWRC)	A: Evgenia Haritonova	Luxembourg (ILR)	M: Camille Hierzig
Croatia (HERA)	A: Sonja Tomašić Škevin	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: Wieger Wiersema
Czech Republic (ERO)	O: Tomáš Kupčíha (with proxy)	Poland (URE)	A: Małgorzata Kozak O: Sierocińska Danuta
Denmark (DUR)	M: Carsten Smidt	Portugal (ERSE)	A: Pedro Verdelho O: Natalie McCoy
Estonia (ECA)	A: Marilyn Tilkson	Romania (ANRE)	O: Florin Tobescu (with proxy)
Finland (EV)	A: Antti Paananen	Slovakia (RONI)	A: Mária Bronišová
France (CRE)	O: Claire Hellich-Praquin (with proxy) O: Frank Heseler	Slovenia (AGEN-RS)	A: Bojan Kuzmič
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov	Spain (CNMC)	A: Esther Espeja O: Diego Roldán

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

Greece (RAE)	M: Apostolos Gotsias A: George Paidakakis	Sweden (Ei)	M: Anne Vadasz- Nilsson A: Caroline Törnqvist
Hungary (HEA)	M: Pál Ságvári A: Gergely Szabó	EEA-EFTA State Iceland	A: Hanna Björg Konráðsdóttir
Ireland (CRU)	M: Jim Gannon	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, Volker Zuleger, Mathieu Fransen, Rafael Muruais Garcia, Fay Geitona, Mitsuko Akiyama		
European Commission	Florian Ermacora, Guido Bortoni, Michael Schuetz, Oliver Koch		
CEER	Charles Esser		

1. Opening

1.1. Approval of the agenda

The agenda of the 96th BoR meeting was approved subject to the following changes: item 2.2 is for discussion and items 8.2 and 8.3 will be presented at the January BoR.

The draft agenda has been sent to the European Parliament.

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

The Chair informed that the January BoR meeting will be virtual.

1.2. Minutes of the 95th BoR meeting

The minutes of the 95th BoR meeting were approved and sent to the European Parliament on 1 December.

Decisions/ Conclusions

1.1 The BoR approved the agenda with the above modifications.

2. Updates from the ACER Director and the BoR Chair

2.1. Updates from ACER

The BoR took note of the latest publications of the Agency since the last BoR meeting, as well as the outcomes of the following BoR electronic procedures (EPs).

The EP for the ACER Decisions on Core and SEE methodologies on regional operational security coordination (ROSC) and Core methodology on coordination of redispatching and countertrading was held in three rounds ending on 4 December. None of the proposals for comments and amendments submitted in the first round was adopted in the second round. 25 members participated in the third round for the BoR favourable opinion. The BoR favourable opinion was provided by the required two-thirds majority of members participating in the procedure.

The single round EP for the approval of the joint ACER Director – BoR proposal for the establishment of the ACER Retail Working Group ended on 26 November. 27 members participated and unanimously approved the proposal.

2.2. Updates from the BoR Chair

The Chair outlined the key conclusions of Part 1 of the BoR Away Day and the BoR provided feedback. These will be compiled along with the conclusions of the Part 2 of the BoR Away Day for submission at the January BoR meeting.

The BoR Chair also updated members on the state of play as regards the ACER Working Group Rules of Procedure (AWG RoP), the outstanding issues and outlined the next steps. The draft Administrative Board (AB) decision will be finalised and submitted for the BoR favourable opinion.

3. Keeping sight of the wider Energy Union context

3.1 Update on the EU Green Deal and other updates

Mr Bortoni reported on the 35th EU Electricity Regulatory Forum, which addressed cross-border trade of electricity, in particular the management of scarce interconnection capacity and how to

organise electricity markets to meet decarbonisation objectives and facilitate the integration of renewable electricity. The discussions and conclusions are relevant from the regulatory point of view (both in terms of the Green Deal forward looking aspects as well as in terms of the monitoring and implementation issues of the internal energy market such as the report on the cross border available capacity; recognition for an efficient use of flexibility and preference on market based mechanisms etc.).

Mr Ermacora reported on the recent changes to the DG ENER organigram. There will be a new Unit for Legal affairs. Sustainability of hydrogen and other gases will be under C2; the Energy System Integration will be under C1; there will be consolidation of wholesale and retail electricity and gas internal market issues under C3 (previously B2) which will be a key pillar in the context of the Green Deal actions. He also announced that he will leave the B2 Unit after 6 years of office and that he will be heading another Unit to deal with international issues. His successor is not yet appointed, Mr Koch will be the acting HoU of C3. Mr Koch and Mr Bortoni will represent the EC at the BoR with Mr Schuetz. Mr Ermacora is extremely happy and grateful for the fruitful cooperation with ACER and with the regulatory community noting the importance of their work on energy regulation including in the Green Deal context to ensure security of supply and cost efficient decarbonisation.

The Director, the BoR Chair and the BoR members thanked Mr Ermacora for the constructive cooperation over the last years and his important contribution to the strengthening of market integration including through the Clean Energy package and his support to the establishment of ACER in 2009.

Mr Bortoni presented the EC proposal on the revision of TEN-E Regulation (EU) 347/2013 which was adopted on 15 December. The EC proposal aims to modernise Europe's cross border energy infrastructure and to ensure consistency with the climate neutrality objective of the European Green Deal. He noted that it does not simply reflect a recast of the TEN-E Regulation but rather an ambitious forward looking framework for infrastructure in line with the Green Deal objectives and the future energy system needs. The significant changes to the energy system through new trends for more clean energy and decarbonisation of gas are shaping future infrastructure needs. The Green Deal pillars underpin all aspects of the EC proposal on the revision of TEN-E Regulation. The EC introduces a mandatory sustainability criterion for all Projects of Common Interest (PCI) candidates; the proposal reviews and modernises the infrastructure support to updated infrastructure categories; places the focus on facilitating electricity infrastructure, offshore electricity grids and upgraded rules for smart electricity grids; in terms of natural gas, this has been one of the most debated issues; today gas covers $\frac{1}{4}$ of our energy supply but the sector needs to start decarbonising thus the focus on hydrogen infrastructure. A new PCI category for electrolyser facilities which have a cross border relevance is introduced. Last the EC proposal introduces changes in the infrastructure planning and governance. The EC proposes a different, more merged planning to take account of the electricity and gas needs and scenarios; increased stakeholder participation is foreseen and a reinforced role of ACER to reflect the agreed policy objectives with a more robust EC oversight. Mr Bortoni suggested having a fuller discussion at the next BoR on the EC proposal.

The Director welcomed the EC proposal on the revision of TEN-E Regulation and, in particular, the new focus on sustainability and offshore renewables including extending the scope of the PCIs to include hydrogen and electrolysers delivering on the objectives of the Green Deal. He welcomed the improvements on infrastructure scenario planning to be developed jointly for electricity and gas in a neutral way but noted that there is room to further improve the TEN-E process and regulatory oversight by ACER, in particular, in respect of the Cost-Benefit Analysis

(CBA) methodologies. The Director also underlined his concerns about the resource allocation (1 FTE) accompanying the EC proposal which does not address the foreseen ACER resource needs.

The presentation also raised some concerns among the BoR members who are looking forward to further discussions in January on this topic.

The BoR Chair thanked the EC for their updates.

4. Items for BoR opinion/approval/agreement

4.1. ACER Decision on cross-border participation in Capacity Mechanisms

The Electricity Regulation requires Member States to open their capacity mechanisms (CMs) to direct cross-border participation of capacity providers located in other Member States.

The Director presented the draft ACER decision on cross-border participation in CMs which will better address Security of Supply concerns through access to resources in other jurisdictions. He explained that a number of discussions were held in preparation of this important file and explained the key elements. The AEWG advice has also been circulated.

Before opening the vote, the Chair referred to the proposal for amendment submitted. The Chair opened the vote on the first amendment proposed. 27 members participated. The proposal for amendment did not reach the required two-thirds majority for adoption.

Members were subsequently invited to vote on the decision as proposed by the Director for BoR favourable opinion. 27 members participated. The BoR favourable opinion was provided by the required two-thirds majority of the members present or represented.

4.2. ACER Decision on DA products

The Director presented the draft ACER Decision on DA products. On 24 June 2020, all nominated electricity market operators (NEMOs) submitted a proposal to amend the products that can be taken into account in single day-ahead coupling (SDAC) in accordance with Article 9(13) of Commission Regulation 2015/1222 on capacity allocation and congestion management (CACM). The AEWG advice has also been circulated. The deadline for the decision is 24 December 2020.

The Chair invited members to proceed to the vote for BoR favourable opinion. 27 members participated and the BoR favourable opinion on the ACER decision was provided by consensus of the members present or represented.

4.3. ACER Opinion on ENTSOG's Work Programme 2021

The Director presented the draft ACER Opinion on the 2021 Work Programme of European Network of Transmission System Operators for Gas (ENTSOG). Pursuant to Article 4(3)(b) of Regulation (EU) 2019/942 and Article 9(2) of Regulation (EC) 715/2009, the draft Annual Work Programme must be evaluated by ACER taking into account the objectives of non-discrimination, effective competition and the efficient functioning of the market. The AGWG advice has been circulated.

The Chair invited members to proceed to the vote for BoR favourable opinion. 27 members participated. The BoR favourable opinion was provided by consensus of the members present or represented.

4.4. ACER Decision on the methodology for the use of congestion income

The Director presented the draft ACER Decision on the methodology for the use of congestion income. Article 19 of the Electricity Regulation (EU) 2019/943 establishes rules for the use of congestion income generated by congestion management procedures.

Article 19(2) of the same identifies priority objectives for the use of congestion income and where the priority objectives have been adequately fulfilled, the congestion income may be used for calculating network tariffs. In accordance with Article 19(4) of the Electricity Regulation, TSOs proposed a methodology for the use of income in line with the objectives laid down in Article 19(2) (the UCI Methodology). ACER must issue its decision by 3 January 2021. The AEWG advice has also been circulated.

The Chair invited members to proceed to the vote for BoR favourable opinion. 27 members participated. The BoR favourable opinion was provided by consensus of the members present or represented.

4.5. ACER Recommendation on NRAs' activities and reporting on the use of congestion income

The Director presented the draft ACER Recommendation on NRAs' activities and reporting on the use of congestion income pursuant to Article 19(5) of the Electricity Regulation. For congestion income to be collected in 2022, the draft recommendation provides guidance to NRAs to harmonise and streamline their reporting obligations. The AEWG advice has also been circulated.

The Chair invited members to proceed to the vote for BoR favourable opinion. 27 members participated. The BoR favourable opinion was provided by consensus of the members present or represented.

4.6. Draft Programming Document 2022 (for SPD)

Article 20(1) of the ACER Regulation provides that each year, the Director shall prepare a draft programming document containing annual and multi-annual programming, and submit it to the AB and to the BoR. The AB adopts the draft programming document following receipt of a BoR favourable opinion, and submits it to the European Parliament, to the Council and to the Commission no later than 31 January.

Pursuant to Article 22(5)(d) of the ACER Regulation, the BoR shall approve the programming document in accordance with Article 20(1). The Director invited members to agree to the use of the electronic procedure to approve the programming document. The BoR agreed to the use of the electronic procedure for the approval of the Draft Programming Document 2022.

4.7. Revised ACER Programming Document 2021

The Director presented the revised ACER Programming Document (PD) 2021 to the BoR for favourable opinion/approval prior to its adoption by the AB. Pending the adoption of the definitive EU budget for 2021, the PD 2021 – 2023 has been adjusted in terms of the budget and human resources in line with the Commission's proposal. The members provided feedback.

The BoR favourable opinion was provided by the required two-thirds majority of the members present or represented.

Decisions/ Conclusions

4.1 The BoR provided its favourable opinion on the ACER Decision on cross-border participation in capacity mechanisms by the required two-thirds majority of the members present and represented.

4.2 The BoR provided its favourable opinion on the ACER Decision on DA products by consensus of the members present and represented.

4.3 The BoR provided its favourable opinion on the ACER Opinion on ENTSOG's Work Programme 2021 by consensus of the members present and represented.

4.4 The BoR provided its favourable opinion on the ACER Decision on the methodology for the use of congestion income by consensus of the members present and represented.

4.5 The BoR provided its favourable opinion on the ACER Recommendation on NRAs' activities and reporting on the use of congestion income by consensus of the members present and represented.

4.6 The BoR agreed to the use of the electronic procedure to approve the Draft Programming Document 2022 by consensus of the members present and represented.

4.7 The BoR provided its favourable opinion for approving the revised ACER Programming Document 2021 by the required two-thirds majority of the members present and represented.

5. Cross-sectoral

5.1. Update on the white paper on the regulatory treatment of power-to-X facilities

Mr Verdelho as the ACER Gas Working Group (AGWG) Chair updated members on ongoing discussions in the AWGs regarding the ACER-CEER White Papers on regulating hydrogen networks and on the regulatory treatment of power-to-gas. The finalised versions will be presented at the January BoR for endorsement. The members discussed and provided feedback on the key issues. The Chair thanked Mr Verdelho for the update.

6. Electricity

6.1 Important AEWG updates

Ms Materazzi-Wagner as the ACER Electricity Working Group (AEWG) Chair provided an update on ongoing work in the AEWG and the work by the CACM, INF, FCA and SOGC Task Forces. The updates referred *inter alia* to the TYNDP 2020 package, updates on the ACER distribution tariffs report preparation, the ACER study on efficient price formation and easy market entry and participation for electricity markets, the 2019 Cost Report, Regional Coordination Centres and other upcoming ACER decisions and reports.

The Director and Mr Fransen further updated members on the CACM amendment process and the next steps. The EC announced a request for an ACER recommendation on CACM amendments at the Florence Forum. The formal process will kick off in early 2021 with the drafting phase to be followed by a public consultation in early Q2 2021.

6.3 2nd Implementation Monitoring Report of the Network Code on Demand Connection and of the Network Code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules (DCC/HVDC IMR)

Article 32(1) of Regulation (EU) 943/2019 requires the Agency to monitor and analyse the implementation of the Network Codes and Guidelines adopted by the European Commission. Furthermore, the Agency shall monitor their effect on the harmonisation of applicable rules aimed at facilitating market integration, as well as on non-discrimination, effective competition and the effective functioning of the market, and report to the EC. Mr Gence-Creux introduced the 2nd DCC/HVDC IMR noting its importance. It presents progress towards the implementation of two network codes: the network codes on demand connection and on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules. The IMR also sets out recommendations for concrete actions and best practices to promote efficient implementation.

The BoR took note of the report.

6.3 ACER report on 70% target monitoring and derogations

The Director introduced the first MACZT report (monitoring of the margin available for cross-zonal trade) which relates to the first semester of 2020 and focuses on (i) monitoring the MACZT in line with ACER's Recommendation on how to estimate the MACZT and (ii) presenting an overview and some considerations regarding action plans and derogations, with a view to assisting NRAs in having a coordinated approach when assessing compliance. Mr Muruais Garcia also presented the key findings. The BoR members provided detailed and critical feedback on the report including on the approach, data provided and its scope.

6.4 Letter on the ENTSO-E 2021 Work Programme

On 21 October 2020, ENTSO-E submitted its Annual Work Programme 2021 to the Agency for opinion pursuant to Article 32(2) of Regulation (EU) No 2019/943. The Annual Work Programme 2021 presents the activities which ENTSO-E plans for 2021. The Director informed members that a letter, rather than an opinion, was issued to ENTSO-E, as the Agency considers that the ENTSO-E Annual Work Programme for 2021 is in line with the requirements of Article 30(4) of Regulation (EU) 2019/943 and complies with the relevant provisions of Regulation (EU) 2019/943, and the Agency did not identify elements that would suggest negative effects on non-discrimination, effective competition, efficient and secure functioning of the market, or the sufficient level of cross-border interconnection open to third party access.

7. Gas

7.1. Important AGWG updates

Mr Verdelho as the AGWG Chair provided detailed updates on the ongoing work in the AGWG in his presentation slides and commented on the state of play of the ACER/ENTSO paper on misconduct at EU Balancing Zones.

7.2. ACER Opinion on consistency of NDPs and the TYNDP

The Director and Mr Hesseling presented the ACER Opinion on the consistency of gas national development plans (NDPs) and the EU ten-year network development plan (TYNDP). In accordance with Article 8(11) of Regulation 715/2009, the opinion reviews the most recent gas NDPs across Europe to assess: their consistency with the draft EU TYNDP 2020, covering individual projects as well as methodological aspects, and analysing their evolution since 2018 when the previous survey was carried out; and the integration of Energy Transition goals into the gas network development processes.

The opinion welcomes improvements to the transparency of the EU TYNDP, but notes a falling level of project consistency between NDPs and the present draft EU TYNDP 2020 due to the inclusion in the EU TYNDP 2020 of energy transition projects, which are not part of most recent NDPs. The opinion also sets out recommendations to improve the consistency of NDPs with the EU TYNDP, and recommendations addressed to ENTSG and project promoters to improve the consistency of future EY TYNDPs with NDPs.

The BoR took note.

8. Market Integrity and Transparency & Surveillance and Conduct

8.1 REMIT CG and AMIT WG updates

Ms Groebel as the ACER REMIT Committee (ARC) Co-Chair reported on the first meeting of the ARC held on 26 November which was very constructive. The next ARC meeting is planned for 4 March 2021.

Mr Schuetz informed the BoR that the EC decision on REMIT fees is scheduled for adoption tomorrow and will be publicly available on Friday.

Members took note of the updates.

8.2 Update on Market Surveillance and Cases

8.3 Update on data collection and sharing

Both updates were removed from the agenda and will be made at the 97th BoR.