

98th ACER Board of Regulators Meeting
17 March 2021
By video/audio conference
MINUTES

Country/Institution	Name ^[1]	Country/Institution	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch A: Dietmar Preinstorfer O: Christine Materazzi-Wagner	Latvia (PUC)	M: Rota Snuka A: Liga Kurevska O: Lija Makare
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren	Lithuania (NERC)	M: Renatas Pocius A: Irma Vasarytė
Bulgaria (EWRC)	A: Evgenia Haritonova	Luxembourg (ILR)	M: Camille Hierzig
Croatia (HERA)	M: Tomislav Jureković A: Sonja Tomašić Škevin	Malta (REWS)	A: Phyllis Mycallef O: Manuel Manuzzi
Cyprus (CERA)	O: Marilena Delenta (with proxy)	Netherlands (ACM)	A: Remko Bos O: Nora Méray
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
Finland (EV)	A: Antti Paananen	Slovakia (RONI)	A: Mária Bronišová O: Vlastimil Jurkuliak
France (CRE)	M: Jean-Laurent Lastelle O: Frank Heseler	Slovenia (AGEN-RS)	A: Bojan Kuzmič
Germany (BNetzA)	M: Annegret Groebel	Spain (CNMC)	A: Esther Espeja

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

	O: Alexander Linov		O: Gema Rico
Greece (RAE)	A: George Paidakakis	Sweden (Ei)	M: Anne Vadasz-Nilsson A: Caroline Törnqvist O: Johan Roupe
Hungary (HEA)	A: Gergely Szabó O: Tamás Vörös	EEA-EFTA State Iceland	
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)	M: Hogni Kristjansson A: Jonina Larusdottir O: Ada Jaroy
ACER	Christian Zinglensen, Christophe Gence-Creux, Martin Godfried, Volker Zuleger, Csilla Bartok, Fay Geitona, Mitsuko Akiyama		
European Commission	Oliver Koch, Michael Schuetz, Bartek Gurba		

1. Election of the BoR Vice Chair

The Chair and Ms Geitona presented the agreed process and arrangements for the elections in accordance with Article 22 of Regulation 2019/942 and Article 3.1 of the BoR Rules of Procedure.

The following nominations have been submitted for the BoR Vice-Chair position by the closing day of nominations on 26 February:

- Mr Rafal Gawin, President of URE.
- Mr Wolfgang Urbantschitsch, Executive Director of E-Control.

The candidates were invited to present themselves. Members of the BoR were offered the opportunity to put questions to each candidate following their presentation. For the oral presentations by the candidates and the voting procedure, the BoR meeting took place in 'huis clos'. In accordance with the election process the BoR proceeded to a vote. 27 BoR members were present or represented.

During the first two rounds none of the candidates received the required two-third majority. Mr Urbantschitsch withdrew his candidature and the BoR was, subsequently, invited to indicate whether there was consensus on Mr Gawin's appointment. Members present or represented agreed to Mr Gawin's appointment as the next ACER BoR Vice Chair.

Decisions/ Conclusions	1.1 The BoR elected Mr Gawin as the new Vice Chair for a term of two and a half years commencing 17 March 2021.
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2. Opening

2.1. Approval of the agenda

The draft agenda has been sent to the European Parliament.

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

2.2. Minutes of the 97th BoR meeting

The minutes of the 97th BoR meeting were approved and sent to the European Parliament on 9 February.

Decisions/ Conclusions	2.1 The BoR approved the agenda.
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3. Updates from the ACER Director and the BoR Chair

3.1. Updates from ACER

State of play of the negotiation of administrative arrangements with UK regulatory authorities

The Director and Ms Bartok presented the state of play of the negotiation of the administrative arrangements with UK regulatory authorities to implement the EU-UK Trade and Cooperation Agreement in the form of a Memorandum of Understanding which is under development and the key areas to be addressed therein. At a later stage ACER will also issue opinions on draft technical procedures to be developed by TSOs in accordance with Article ENER.19(1)-(2) to implement the provisions of Articles ENER.13-17 (Article ENER.19 (3)).

The BoR Chair thanked the Director and Ms Bartok for the update and opened the floor for comments. The BoR discussed the overall approach, the planning, and the next steps including

the BoR involvement for finalisation of the administrative arrangements with the UK regulatory authorities which is expected around the end of April.

The Director referred to a survey launched on 8 March and addressed to BoR members who are invited to collect and provide comprehensive input on behalf of their National Regulatory Authorities (NRAs) by 26 March 2021 on further improving working arrangements.

The Director also reported on the 70% target (interconnectors) and the provision of data by the TSOs and the next steps.

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 extension request relating to the approval of the proposal for the establishment of the Nordic Regional Coordination Centre completed on 4 February. 26 members participated in the first round and agreed to the use of the EP. 26 members participated in the second round and the BoR Favourable Opinion (FO) was provided by consensus of the members who participated in the EP.

The EP for the opinion on ENTSO-E's Winter Outlook 2020/21 was held in two rounds ending on 25 February. 26 members participated and all were in favour of the BoR FO, which was provided by consensus of the members who participated in the EP.

The single round EP on the ACER/CEER White Papers on Hydrogen (When and how to regulate hydrogen networks) and on the regulatory treatment of Power-to-Gas ended on 4 February and the 26 participants endorsed the latter by consensus and the former by the required majority of the members who participated in the EP.

The EP for the ACER/CEER position paper on improving the Regulation on Guidelines for Trans-European Energy Networks (TEN-E Regulation) was conducted in a single round ending on 4 March. 27 members participated. The paper was endorsed by the required majority of the members who participated in the EP.

3.2. Updates from the BoR Chair

The Chair informed the members that in application of the Conflict of Interest (Col) Policy, the AWG Chairs, Vice Chairs, Task Force convenors as well as BoR members and alternates were invited to submit their Declarations of Interests (Dols) and CVs by 23 February. The Chair urged all members to submit their Dol as a matter of urgency. To proceed with the review, the Chair asked members to agree to the composition of the BoR Review Panel: Members agreed to the composition of the BoR Review Panel.

Decisions/ Conclusions

3.2 The BoR endorsed the proposals on horizontal cooperation on cross sectoral issues and division of labour between the BoR and AWGs including the suggestions by the Chair.

3.2 The BoR agreed to the proposed composition of the BoR Review Panel.

4. Keeping sight of the wider Energy Union context

4.1 Update on the EU Green Deal and other updates

Mr Bartek Gurba on behalf of the EC presented the latest developments on the Hydrogen and Gas Market Decarbonisation Package. The EC has released the combined evaluation

roadmap/Inception Impact Assessment (IIA) for the Hydrogen and Gas Market Decarbonisation Package with a view to revising the Gas Regulation (EC) No 715/2009 and Directive 2009/73/EC concerning common rules for the internal market in natural gas. The IIA covers four key areas, hydrogen infrastructure and markets, access of renewables and low-carbon gases to the grid and market, consumer rights and integrated network planning. Around 128 replies have been submitted most from business associations and companies (including TSOs, and production companies), energy (including electricity) associations but also NGOs and consumer associations. The feedback to the Inception Impact Assessment will be used for finalising the document submitted for open public consultation. The key issues pertain to the relevance of blending and/or pure hydrogen networks; the role of gas TSOs and DSOs in the hydrogen market; technology neutrality versus renewable hydrogen only; the importance of the well-functioning market (common gas and hydrogen markets with same principles – unbundling, TPA, tariffs); the ambition and breadth of pure hydrogen network regulation (e.g. dynamic regulation); the role of consumers (rights and protection); the integrated infrastructure planning and TSO-DSO cooperation; the gas quality standards and management; the binding renewable decarbonised gases targets and certification and Gas Operators. Respondents commented particularly on quality standards and gas quality as well as binding targets for green gas. The EC plans to address the latter issues under the revision of the Renewables Directive which is expected in June. These issues will be also discussed in detail at the upcoming Madrid Forum. The EC plans to launch its open public consultation next week for three months which will address more detailed questions on rules in the four areas and focus on gas policy.

The Chair thanked Mr Gurba for the update.

Update on CH participation in EB platforms and related issues

Mr Koch provided an update on recent developments in the cooperation with Switzerland, where some decisions, notably relating to the participation of Swissgrid in EU bodies, need to be taken absent any progress with an agreement on electricity. The Commission noted that the EU has developed its regulatory system from voluntary cooperation to binding electricity market coupling and system operation rules which are enforceable. Switzerland has not agreed to the Horizontal Framework Agreement with the EU so far, which is a condition for an agreement on electricity issues, so there is no legal framework in place to ensure reciprocity and enforceability. Thus it is not possible to fully integrate a third country not subject to the same EU rules, as this would compromise reciprocity and a level playing field. Especially after BREXIT, the European Union must ensure that there is no discrepancy between the treatment of third countries (UK and Switzerland). The same principles must apply in terms of Swissgrid's participation to Regional Coordination Centres (RCCs). The EC is concerned about the recent decision to admit Swissgrid as shareholder to Regional Coordination Centres which is not in line with the rules on third country TSO participation in EU bodies, as clearly spelled out in the recent EU/UK stakeholder notice concerning rules in the internal energy market.

The Chair thanked Mr Koch for the update.

Appointment of the new members and alternates of the Board of Appeal (BoA)

Mr Koch informed the BoR that the terms of the current members and alternates of the BoA will end on 18 October 2021. According to the ACER Regulation (Article 25(2)), the members of the BoA shall be formally appointed by the AB on a proposal by the EC, following a public call for expression of interest and after consulting the BoR. The EC has published the call for expression of interest for the new members and alternates of ACER's Board of Appeal. The deadline for applications is 30th April. The EC encouraged BoR members to disseminate this information.

4.2 Updates on cases C-767/19 and C-718/18 on the independence of energy regulatory authorities

Mr Locquet presented the judgment of the Court of Justice of the EU in the infringement case C-767/19 European Commission v. Belgium handed down in December 2020. This case follows a complaint made by CREG in 2012 and addresses failures to comply with unbundling requirements and to ensure full respect of CREG's powers and independence. With regard to the first issue, the Court ruled that Article 9(1) of Directives 2009/72 and 2009/73, whereby each undertaking which owns a transmission system acts as a transmission system operator, implies that the TSO must be the owner of the entire transmission system (whereas the Belgian legislation provided that the grid operator can, alone or jointly, own a part of the transmission grid). The reasoning is that the TSOs must own the assets that are necessary for electricity transmission activities to ensure the complete and effective independence of those operators from activities of generation and supply. On the second issue, the same Directives provide that the regulatory authority shall have at least the powers to issue binding decisions to promote transparency and effective competition (to carry out investigations, and to decide upon and impose any necessary and proportionate measures on the relevant undertakings). The Court ruled that power to adopt measures to promote effective competition in the electricity and natural gas markets should not just rest with the national competition authorities noting that the competences of CREG are limited: CREG can only adopt "urgent measures" and formulate opinions and recommendations for alleged infringements and submit the file to the Belgian competition authority but has no power to adopt binding measures. The European Court stated that this was a breach of the NRA's independence. The same conclusion was reached with regard to the transposition of provisions setting out that regulatory authorities should have the competence and power to determine technical regulation and codes of conduct (Articles 37(10) of Directive 2009/72 and Article 41(10) of Directive 2009/73). Given that in Belgium broad powers of intervention regarding to technical regulation (related directly to network codes) are attributed to the King (Government) and, therefore, CREG can't determine these rules, the Court ruled that CREG is subject to external instructions and this also is a breach of NRA's independence.

Ms Nilsson informed the BoR on the relevant Swedish Court proceedings and Ms Vasarytė on relevant matters of independence which pertain to NERC's recruitment of staff.

Mr Koch invited NRAs to get in touch with the EC when clarifications are sought on issues which pertain to the full transposition of the relevant provisions on independence and powers of regulatory authorities in line with the Clean Energy Package. He also referred to the EC report to the European Parliament and the Council on the independence of regulatory authorities pursuant to Article 57(7) of Directive (EU) 2019/944 under Article 6(3) of the ACER Regulation which is due by 5 July 2022.

The Chair thanked Mr Locquet for his presentation and concluded the discussion on this case which raises important matters of independence of the energy regulatory authority and the delimitation of responsibilities between regulatory authorities and national governments. She encouraged members to present such matters, relevant rulings and their national experience at the BoR noting the usefulness of such exchanges.

5. Items for BoR opinion/approval/agreement

5.1 ACER Decision Core fallback procedures

The Director presented the draft ACER Decision on Core fallback procedures. Commission Regulation 2015/1222 (CACM Regulation) laid down a range of requirements for cross-zonal

capacity allocation and congestion management in the day-ahead and intraday markets in electricity. These requirements include specific provisions for the establishment of fallback procedures in accordance with Article 44 of the CACM Regulation. Fallback procedures ensure efficient, transparent, and non-discriminatory capacity allocation in case the single day-ahead algorithm is unable to produce results on the day-ahead auction. This ACER Decision will increase procedural harmonization across various market parties and change the operational timing for the publication of the shadow auction results, therefore reducing the risk of decoupling.

The NRAs of the Core region referred the matter to ACER in December 2020. The deadline for ACER to reach a decision is 4 June 2021.

The draft Decision and accompanying Annexes I (revised fallback procedures) and II (Shadow Allocation Rules) were submitted for AEWG opinion, which was issued on 24 February and endorsed the Director's proposal. No proposals for comments or amendments were tabled by the deadline of 10 March.

The Chair opened the vote. 27 members participated and the BoR favourable opinion was provided by the required majority of the members present or represented.

5.2 ACER Opinion on ENTSO-E's Articles of Association

The Director reported on the latest developments on the submission by ENTSO-E of their Articles of Association, on which ACER will issue an opinion in accordance with Articles 4(1) and 29 of Regulations 2019/942 and 2019/943 respectively. The latter provides that within two months of receiving the draft amendments to the statutes and related documents, ACER, after consulting the organisations representing all stakeholders, in particular the system users, including customers, shall provide an opinion to the Commission on these draft amendments to the statutes, list of members or rules of procedure. The Director explained that given the tight timeline, an electronic procedure should be launched and asked members to agree to the use of the electronic procedure. Members agreed.

Decisions/ Conclusions

5.1 The BoR provided its favourable opinion on the ACER Decision on Core fallback procedures by the required majority of the members present and represented.

5.2 The BoR agreed, by consensus of the members present and represented, to the use of the electronic procedure for the adoption of the ACER Opinion on ENTSO-E's Articles of Association.

6 AWG updates and key issues

6.1 AEWG, AGWG and ARWG key issues

Mr Verdelho updated members on the key issues discussed at the AGWG meeting of 24 February including on progress on the preparation of the report on allowed revenues following a request from the last Madrid Forum; the request by the EC to provide information on the NRAs' role in the context of the gas quality; the EC consultation on aspects of methane emissions in the energy sector which runs until 1st May and the next steps to finalise regulators' feedback and a report.

Ms Materazzi-Wagner presented two key issues under consideration by the AEWG, including the investigation (based on EU methodology) into the system separation incident in the Continental Europe Synchronous Area, the interim report by ENTSO-E and the final report

expected by the end of June which should also address the necessary proposals and recommendations to prevent such incidents. Ms Materazzi-Wagner also addressed how best to streamline approaches and cooperation in respect of data collection issues relevant for monitoring reports to make best use of scarce resources.

Ms McCoy and Ms Haasová updated members on the establishment and work of the new ACER Retail Working Group (ARWG) to pursue the work relevant to ACER's mandate with respect to the monitoring of retail markets in electricity and gas, including the retail prices and compliance with consumer rights (Article 15(1) and (2) of the ACER Regulation). NRAs (including from EEA EFTA states) have nominated experts to participate in ARWG meetings along with EC and EFTA representatives. The MMR TF was established and the planning for the preparations of the next issue of the Market Monitoring Report was presented.

The Chair thanked the Chairs for their updates.

6.2 Paper on compliance

Mr Roupe, Chair of the ad hoc Group on Compliance and Enforcement (AGCE), presented a paper exploring compliance issues.

The BoR Chair thanked Mr Roupe for the presentation and opened the floor for discussion. The BoR provided feedback on the key issues involved and the cooperative arrangements under consideration.

7 Market Integrity and Transparency & Surveillance and Conduct

7.1 REMIT key issues

Ms Groebel as the ACER REMIT Committee (ARC) Co-Chair reported on the second meeting of the ARC held on 4 March to discuss *inter alia*: TSOs' request to recover the costs incurred in connection with REMIT fees through network tariffs; the terms of reference for the Market Data Standing Committee and for the Market Monitoring Standing Committee; updates on market surveillance and cases; and the implementation of measures put in place at the end of the Brexit transition period (to allow and oblige UK market participants trading in EU energy wholesale markets to re-register with EU NRAs) to ensure effective supervision and non-discriminatory treatment of all market participants. She also pointed to the REMIT related questions of the NRAs survey.

Mr Luickx also informed members that the ARC had approved the additional clarifying text for ACER REMIT Guidance (Section 6.4.1.i), in line with discussions at the EMIT Forum and Roundtable meetings.