

99th ACER Board of Regulators Meeting
28 April 2021
By video/audio conference
FINAL 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 Šņuka 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 O: 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 Meray |
| Czech Republic (ERO) | A: Jana Haasová O: Tomáš Kupčička | 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) | A: Simo Nurmi | Slovakia (RONI) | A: Mária Bronišová O: Vlastimil Jurkuliak |
| France (CRE) | A: Jean-Laurent Lastelle O: Frank Heseler | Slovenia (AGEN-RS) | A: Bojan Kuzmič |
| Germany (BNetzA) | M: Annegret Groebel O: Alexander Linov | Spain (CNMC) | A: Esther Espeja O: Gema Rico |

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

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|--------------------------------|---|--------------------------------------|---|
| Greece (RAE) | - | Sweden (Ei) | M: Anne Vadasz-Nilsson A: Caroline Törnqvist O: Johan Roupe |
| Hungary (HEA) | M: Pál Ságvári A: Gergely Szabó | EEA-EFTA State Iceland | M: Gudni A. Jóhannesson A: Hanna Björg Konráðsdóttir |
| 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) | - |
| ACER | Christian Zinglensen, Christophe Gence-Creux, Dennis Hesseling, Volker Zuleger, Stefano Bracco, Csilla Bartok, Fay Geitona, Mitsuko Akiyama | | |
| European Commission | Michael Schuetz, Guido Bortoni | | |

1. Opening

1.1. Approval of the agenda

The agenda of the 99th BoR meeting was approved. The draft agenda has been sent to the European Parliament.

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

1.2. Minutes of the 98th BoR meeting

The minutes of the 98th BoR meeting were approved and sent to the European Parliament on 29 March.

Decisions/ Conclusions

1.1 The BoR approved the agenda.

2. Updates from the ACER Director, the BoR Chair and the EC

2.1. Updates from ACER

The Director drew members' attention to the written updates (circulated under Part B) on REMIT data sharing.

The Director also thanked members for their participation in the NRA survey "fostering our internal dialogue: your view matters," which closed on 21 April. The key findings (in aggregated form) will be presented at the next BoR.

2.2. Updates from the BoR Chair

The BoR Chair referred to a number of members' request to move the June BoR meeting to 1 June. Members agreed to the new date.

The BoR Chair introduced the approach to ensure early coordination of joint ACER - CEER actions in view of the upcoming EC legislative proposals on the Hydrogen and Gas Markets Decarbonisation, including the preparation of a possible joint paper.

Members welcomed the proposal and agreed to work towards a joint CEER-ACER paper in the fall 2021.

A public webinar will be co-organised by ACER and CEER in June to stimulate discussions on ACER/CEER White Papers on Hydrogen and Power to Gas.

2.3. Updates from the EC

Mr Bortoni provided an update on the public consultation on the planned Hydrogen and Gas Markets Decarbonisation package. The 12-week public consultation on the hydrogen and gas markets decarbonisation package was launched on 26 March and will end on 18 June. It addresses more than 90 questions pertinent to facilitating the uptake of low carbon gas and the development of a new hydrogen market. The consultation focuses on a number of key areas including hydrogen infrastructure and markets, access of renewables and low-carbon gases to the grid and market, consumer protection and empowerment, integrated network planning, gas quality and the alignment of institutional rules with the Clean Energy Package, which will also be discussed at the Madrid Forum on 29-30 April 2021. Following the public consultation, the EC will need to finalise their impact assessment and then work on the legislative proposal for revising

the EU gas market legislation planned for the fourth quarter (December). By the end of the year, a specific proposal from the EC is also foreseen to address methane emissions. Mr Bortoni noted that an integrated system approach is fundamental to build the energy system of the future to ensure cost efficiency in decarbonisation and real choices for consumers. He welcomed input from regulators in those areas. Two key EC opportunities for soliciting input will be the forthcoming Madrid Forum where regulators were given a slot to present their White Paper on hydrogen and a stakeholder workshop to be held on May 18th where the EC will solicit some initial reactions to their public consultation. He invited regulators to use both channels to provide their views.

Mr Bortoni also noted that the EC has to guarantee the consistency among all pieces of legislation impacting on hydrogen and gas decarbonisation, such as the proposals on methane emissions (which will be addressed through a separate act within the same time line as the Hydrogen and Gas Market Decarbonisation Package) and the amendment of the Renewables Directive to be tabled in June.

Decisions/ Conclusions

2.1 The BoR agreed by consensus of the members present or represented to move the June meeting to 1 June.

2.2 The BoR agreed the approach and next steps on the preparation of regulators' outputs and joint ACER-CEER paper in the fall in respect of the EU gas decarbonisation proposals.

3. Non-decision items

3.1 Framework Guideline on cybersecurity

The Director and Mr Bracco presented the state of play process and next steps. Article 59(2) of the Electricity Regulation empowers the EC to adopt delegated acts to establish certain network codes (NCs), notably sector-specific rules for cyber security aspects of cross-border electricity flows including rules on common minimum requirements, planning, monitoring, reporting and crisis management. In January, the EC officially invited ACER to draft the non-binding framework guideline (FG) for the cybersecurity NC in accordance with Article 59(4), as a matter of urgency given the accelerated dependency on digitalisation in the current climate and cyber security being a real risk and high priority for many businesses. The FG will describe the principles for the development of the NC and contribute to market integration, non-discrimination, effective competition and the efficient functioning of the market. The public consultation will be launched next week and, following the evaluation of responses, it will be presented to the BoR for opinion and submitted to the EC by end of July 2021. The Director highlighted ACER's efforts and work in this new area, which raises a series of complex issues despite its limited resources. The BoR took note of the preparations.

3.2 ACER Decision on the definition of System Operation Region

The Director provided the background. On 4 June 2020, ENTSO-E introduced an appeal before the Board of Appeal against ACER Decision No. 10/2020 of 6 April 2020 on the definition of system operation regions (SOR). In September 2020, the Board of Appeal decided to remit the case to the Director due to insufficient reasoning. The Agency prepared a new decision explaining the reasoning behind ACER changes regarding the proposed South West Europe (SWE) and Greece-Italy (GRIT) SORs, further detailing the application of Article 36(1)

requirements, and additional reasoning regarding the analysis of different elements of grid topology, in general and in relation to each of the proposed SORs. Additionally, an internal legal review was conducted in light of the EU-UK TCA provisions. Mr Gence-Creux informed members of the recent developments and open issues.

The Chair opened the floor for discussion and members provided feedback. The decision will be finalised and submitted to the June BoR for a favourable opinion.

3.3 Administrative arrangements with UK regulatory authorities

The Director and Ms Bartok updated members on the progress achieved in the negotiation of the administrative arrangements (AA) with the UK regulatory authorities to facilitate meeting the objectives of the EU-UK Trade and Cooperation Agreement and the key areas addressed therein.

The Chair thanked the Director and Ms Bartok for the update and opened the floor for discussion. Members 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 and commented on the need for flexibility and for a cooperative, inclusive approach with the involvement of NRAs. The draft Administrative Arrangements will be submitted to the June BoR for endorsement in time to meet the extended deadline.

3.4 Key updates from AWG Chairs

The ACER Working Group Chairs were invited to present key updates on ongoing work in their respective Working Groups.

Mr Verdelho, the AGWG Chair, updated members on the work on allowed revenues pursued in line with the conclusions of the last Madrid Forum, the Prime movers' request to discuss gas quality issues and on the TEN-E negotiations in the Council and the European Parliament (EP).

Ms Materazzi-Wagner, the AEWG Chair, updated members on discussions relating to the EC Offshore Renewable Energy Strategy and the preparations of a position paper on offshore renewable energy; the ongoing work on Demand Side Flexibility (DSF) related to the priority list of network codes and guidelines for electricity for 2020-23, including rules regarding demand side flexibility (rules on aggregation, energy storage and demand curtailment). This work will be consolidated in framework guidelines to be prepared next year upon a formal request by the EC. At this stage it is unclear whether the relevant issues will be addressed through a new network code or amendments to existing network codes.

The Chair thanked the AWG Chairs for their updates and opened the floor for discussion.

4. Items for BoR opinion/approval/agreement

4.1. ACER Opinion on ENTSOG's TYNDP 2020

The Director and Mr Hesselning presented the ACER Opinion on ENTSOG's ten-year network development plan (TYNDP) 2020.

Pursuant to Article 8(3)(b) of Regulation (EC) No 715/2009, the European Network of Transmission System Operators for Gas (ENTSOG) adopts a non-binding Community-TYNDP, including a European supply adequacy outlook, every two years. ACER is responsible *inter alia* for providing an opinion on the TYNDP to ENTSO-E, the European Parliament, Council and

Commission, whenever it considers that the draft does not contribute to the market's transparency and effective competition, and assessing the consistency between the European TYNDP and the national plans.

On 10 February 2021, ENTSOG submitted the draft TYNDP 2020 to ACER for its opinion in accordance with Article 9(2) of Regulation (EC) No 715/2009. ACER finds that the draft TYNDP 2020 assessments and the projects included in it generally contribute to the objectives of effective competition and secure functioning of the internal gas market referred to in Article 8(2) of Regulation (EC) No 715/2009. However, ACER notes that the TYNDP 2020 does not sufficiently contribute to the objectives of non-discrimination and efficient functioning of the market, mainly due to a number of shortcomings in applied CBA methodologies, the lack of analysis of the existing and forecasted use of gas infrastructure and the asymmetric treatment of candidate TYNDP projects (whereby the assessment of some TYNDP projects is incomplete since they are not subject to CBA, while other projects are subject to CBA, and consequently creating within the TYNDP classes of projects for which the level of analysis and the quality of information differ).

The Chair confirmed that no proposal for comment or amendment had been submitted. ACER noted that a factual correction by REWS will be reflected in the final text. The BoR Chair invited members to proceed with the vote: 26 members participated and the BoR favourable opinion was provided by consensus.

4.2. ACER Opinions on ENTSO-E's TYNDP 2020 (TYNDP methodological aspects and TYNDP projects)

The Director presented two ACER Opinions on ENTSO-E's TYNDP 2020 (methodological aspects and TYNDP projects).

Pursuant to Article 30(1)(b) of Regulation (EU) 2019/943, ENTSO-E shall adopt and publish a non-binding Union-wide TYNDP every two years. On 15 February 2021, ENTSO-E submitted the draft TYNDP 2020 to the Agency for its opinion. The Agency finds that the draft TYNDP 2020 assessments and the projects included in it generally contribute to the objectives of non-discrimination, effective competition, and secure functioning of the internal electricity market, but notes that the TYNDP 2020 does not sufficiently contribute to the efficient functioning of the market, mainly due to certain shortcomings including: delays in scenario development process and lack of data release; unbalanced CBA due to the missing, non-traceable Current Trends (CT) scenario; lack of CBA analysis after the study year 2030; and poor and insufficient consultations on the scenarios methodology and the needs methodology. The Agency makes a number of recommendations regarding the TYNDP 2020 including *inter alia* the provision of the storyline and full data for the missing CT scenario; the publication of the baseline capacities per border for the CBA calculations; the inclusion of a benefit / Cost ratio and NPV calculation for all projects. There are additional recommendations for future TYNDPs.

The Chair confirmed that no proposal for comment or amendment had been submitted while ACER noted that corrections by CRE and CREG will be reflected in the final text.

The BoR Chair invited members to proceed with the vote. 26 members participated and the BoR favourable opinions were provided by consensus.

4.3. ACER Decision on the definition of capacity calculation regions

The Director and Mr Gence-Creux presented the ACER Decision on the definition of capacity calculation regions (CCRs).

On 22 May 2020, ACER's Board of Appeal issued its decision A-001-2017 inviting the relevant parties to initiate the procedure to replace ACER Decision 06/2016 (first determination of the CCRs, which came into effect on 17 November 2016). Following this, all TSOs submitted their

proposal to ACER on 9 November 2020 which, once approved by ACER, will replace the 2016 CCR determination and amendments thereto.

Following extensive consultation with NRAs and TSOs, the proposal (submitted in accordance with Article 15 of the Regulation 2015/1222 establishing a Guideline on Capacity Allocation and Congestion Management (CACM Regulation)) reflects the currently established CCR determination with the addition of the SE4-DE/LU to the Hansa CCR (following the certification of Baltic Cable AB as a TSO), and proposes amendments to the GRIT CCR (to address the reconfiguration of Italian bidding zones following the Italian bidding zone review). Article 14 of the Proposal also addresses the requirement for a CCR assessment and the future reassignment of the DK1-NL and DK1-DE/LU bidding zone borders to the Core CCR stemming from ACER Decision 04/2019.

In the absence of proposals for comment/amendment, the Chair opened the vote. 26 members participated and the BoR favourable opinion was provided by the required two-thirds majority.

**Decisions/
Conclusions**

4.1 The BoR provided its favourable opinion on the ACER Opinion on ENTSOG's TYNDP 2020 by consensus of the members present and represented.

4.2 The BoR provided its favourable opinions on the ACER Opinions on ENTSO-E's TYNDP 2020 (TYNDP methodological aspects and TYNDP projects) by consensus of the members present and represented.

4.3 The BoR provided its favourable opinion on the ACER Decision on the definition of capacity calculation regions by the required two-thirds majority of the members present and represented.