

116th ACER Board of Regulators Meeting
25 May 2023
Stockholm (and by video/audio conference)

MINUTES

Country/Institution	Name ^[1]	Country/Institution	Name
Austria (E-Control)	A: Dietmar Preinstorfer O: Christine Materazzi-Wagner	Latvia (PUC)	M: Rota Šņuka O: Lija Makare O: Alda Ozola (Chair)
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren	Lithuania (NERC)	M: Renatas Pocius A: Irma Zdanienė O: Jelena Dilienė
Bulgaria (EWRC)	A. Blagoy Golubarev O: Iva Georgieva	Luxembourg (ILR)	A: Claude Hornick
Croatia (HERA)	-	Malta (REWS)	A: Phyllis Micallef O: Manuel Manuzzi
Cyprus (CERA)	A: Akis Philippou	Netherlands (ACM)	A: Remko Bos O: Nora Meray
Czech Republic (ERO)	A: Jana Haasová O: Tomáš Kupčíha	Poland (URE)	M: Rafał Gawin A: Malgorzata Kozak
Denmark (DUR)	A: Birgitta Bundgaard	Portugal (ERSE)	A: Natalie McCoy O: Catarina Santos
Estonia (ECA)	M: Evelin Parn-Lee A: Marilyn Tilkson	Romania (ANRE)	A: Florin Tobescu
Finland (EV)	M: Simo Nurmi	Slovakia (URSO)	A: Mária Bronišová
France (CRE)	M: Emmanuelle Wargon A: Ivan Faucheux O: Claire Hellich-Praquin	Slovenia (AGEN-RS)	A: Bojan Kuzmič
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov O: Nadia Horstmann	Spain (CNMC)	M: Josep María Salas O: Gema Rico
Greece (RAE)	M: Athanasios Dagoumas	Sweden (Ei)	M: Ulrika Hesslow A: Caroline Tornqvist O: Johan Roupe
Hungary (MEKH)	M: Pál Ságvári O: Gyarmati Tamás	EEA-EFTA State Iceland	
Ireland (CRU)	M: Jim Gannon	Norway (NVE-RME)	A: Anne Dønne

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

Italy (ARERA)	M: Clara Poletti A: Cariello Francesco O: Ilaria Galimberti	EFTA Surveillance Authority (ESA)	O: Anne de Geeter
ACER	Christian Zinglensen, Dennis Hesseling, Csilla Bartok, Volker Zuleger, Christophe Gence-Creux, Martin Godfried, Martin Povh, Iztok Zlatar, Fay Geitona, Mitsuko Akiyama		
European Commission	Michael Schuetz		

1. Opening

1.1. Approval of the agenda

The agenda of the 116th 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 115th BoR meeting

The minutes of the 115th BoR meeting were approved and sent to the European Parliament on 12 April 2023.

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 informed members that Mr Hesseling will take up a new position at the IEA and will leave ACER. His successor, as the ACER representative at the ECRB, will be Fay Geitona.

2.2. Updates from the BoR Chair

The BoR Chair referred to the findings of the BoR Review Panel. As reported at the last BoR meeting, the Review Panel did not identify any conflict of interest on the basis of the CVs and declarations of conflicts of interest submitted by BoR members and alternates as well as AWG/TF Chairs, and concluded that no action was needed on the part of the Agency and the BoR.

3. Wider Energy Union

3.1. EC Updates

- Negotiations relating to the legislative proposals for long-term electricity market design adjustments & REMIT revision

Mr Schuetz updated members on the state of play of the ongoing interinstitutional negotiations on the Electricity Market Design (EMD) rules and the Wholesale Energy Market Integrity and Transparency (REMIT) Regulation. The European Parliament (EP) draft reports for these files were issued on 12 May. The EP ITRE Committee will vote on 19 July on the EMD and on 7th

September on the REMIT Regulation, to be followed by the EP Plenary votes on 11 September. The trilogues are expected to start in September. The Swedish Presidency aims to adopt the general approach on both legislative initiatives on 19 June. The debate on the EMD rules is difficult and key points pertain to: the provisions on the crisis situation and emergency measures (e.g. the cap of revenues of the inframarginal producers, the criteria which trigger the crisis); the implementation of virtual hubs; the platform for primary and secondary long-term markets. In the Council, ongoing discussions address inter alia the Contracts for Difference (CfDs) and whether these should be mandatory or voluntary (e.g. some Member States already have them), on which there are diverging views; on whether CfDs should only be for renewables or for existing generation and other sources as well (e.g. nuclear); on how the income from CfDs will be distributed to the consumers on a pro rata basis pursuant to the EC proposal, whereas some Member States would like more flexibility; lastly, some Member States want to simplify rules on capacity mechanisms and introduce more flexibility.

On REMIT, the main discussion concerns ACER's investigation powers as proposed by the European Commission. The EP rapporteur's draft report proposes to give ACER more investigatory powers and enlarge the scope of cross border cases by modifying the criteria for ACER's competence (e.g. acts carried out in wholesale market products for delivery in at least 2 Member States as opposed to 3 Member States as per the EC proposal etc).

On the Gas and Hydrogen Package, the first trilogue is scheduled for 1st of June. There are still some sticking points such as the unbundling issue (and whether gas companies can enter the H2 business e.g. transport and production). At this stage the EC is liaising closely with the co-legislators whilst it has no formal role. The first trilogue on the Gas Package will be under the Swedish Presidency but next November and December will be decisive months for agreement and the negotiations are expected to close before the end of the year.

Mr Povh presented some slides on new issues emerging from the draft report on the EMD and the latest Council discussions for the BoR's consideration and steer, with the view to confirming or adapting the regulators' previous positions.

The Chair invited members to provide feedback on the new issues presented and the BoR discussed them.

- Madrid Forum

Mr Schuetz informed members that the EC will start the process for the revision of the Capacity Allocation Mechanisms Network Code and Congestion Management Procedures Guidelines despite the ongoing discussions on the gas and H2 package, which is not yet adopted. The EC will closely cooperate with ACER on this. The Madrid Forum took place on 11-12 May and discussed inter alia the gas network codes, their implementation and future challenges; scaling up the EU hydrogen market; decarbonising the natural gas system; gas quality in the energy transition; and developments relating to the EU LNG market.

- Preparations for the Florence Forum (8-9 June) & Copenhagen Forum (12-13 June)

Mr Schuetz informed the members on the upcoming Florence Forum of 8 and 9 June to be chaired by Ms Sikow-Magny. The discussions will focus on the electricity market design reform (such as the forward markets, CfDs, PPAs and peak shaving), as well as the implementation of the Clean Energy Package (70% monitoring, Bidding Zone Review, ERAA & Capacity Mechanisms, RCCs); and the assessment of emergency interventions. The Commission aimed for a limited number of sessions leaving more room for discussion.

The Energy Infrastructure Forum of 12-13 June will discuss inter alia how to accelerate energy infrastructure to meet REPowerEU and decarbonisation goals and energy infrastructure priorities, hydrogen infrastructure, offshore networks and grid planning as well as enhancing cooperation for TSOs and DSOs to enhance efficiency.

Ms Materazzi-Wagner reiterated the EC's plea for NRA case studies on offshore networks and H2 on the second day.

4. Items for BoR opinion/approval/agreement

4.1. ACER report on investment evaluation, risk evaluation and incentives

Pursuant to Article 17(5) of the TEN-E Regulation 2022/869 by 24 June 2023, taking due account of the information received from NRAs regarding their methodology and the criteria used to evaluate investments in energy infrastructure projects and the higher risks incurred by those projects, ACER shall facilitate the sharing of good practices and make recommendations in accordance with Article 6(2) of Regulation (EU) 2019/942 regarding both of the following: a) project specific risk based incentives on the basis of a benchmarking of best practice by national regulatory authorities and b) a common methodology to evaluate the incurred higher risks of investments.

Article 17 of the TEN-E Regulation aims at avoiding that European priority projects are not planned or implemented by TSOs due to high risk. The Regulation foresees the possibility of granting project-specific incentives for high-risk projects of common interest (PCIs) under the infrastructure categories of electricity transmission, electricity storage, smart electricity grids, smart gas grids and hydrogen infrastructure. Since only electricity transmission projects are widely regulated, ACER's report on investment evaluation, risk evaluation and incentives focuses on electricity transmission projects at this stage.

The HoIGR reported that the draft report had been discussed at a joint AEWG- AGWG meeting and that the AWG advices had been issued. He sought the BoR's agreement to use the electronic procedure for the issuance of the BoR favourable opinion (FO). Members unanimously agreed.

4.2. Annual Consolidated Report on progress of projects of common interest – PCI Monitoring Report

The TEN-E Regulation tasks ACER with issuing a report on the progress of projects of common interest (PCI), evaluating the progress achieved and expected changes in project costs.

The BoR was asked to agree to the use of the electronic procedure to grant the BoR FO having regard to the need for a streamlined process noted in the conclusions of the 108th BoR meeting. Members unanimously agreed.

4.3. ACER Recommendation on CBCA

Regulation 347/2013 introduced the cross-border cost allocation (CBCA) as a regulatory tool aimed at facilitating the implementation of projects of common interest (PCI). ACER issued its first CBCA recommendation in 2013 (updated in 2015) and started monitoring CBCA decisions.

The revised TEN-E Regulation 2022/869 provides at Article 16(11) that by 24 June 2023, "the Agency shall adopt a recommendation for identifying good practices for the treatment of investment requests for projects of common interest. That recommendation shall be regularly updated as necessary, in particular to ensure consistency with the principles on the offshore grids for renewable energy cross-border cost sharing as referred to in Article 15(1)..." A first set of guidance will be issued by 24 June 2023 focusing on: general process guidelines and specific guidelines for electricity and gas; use of scenarios; compensation mechanism; and the use of CBA Methodologies. Since other project categories (including H2, hybrid) are still premature, these are to be addressed in the "full" update of CBCA expected by 24 June 2025,

Members agreed to use the electronic procedure to issue the BoR FO to meet the deadline.

4.4. ACER decision on day-ahead scheduled exchanges methodology

Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (the 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. Pursuant to Article 43(1) of the CACM Regulation, all TSOs that intend to calculate scheduled exchanges resulting from single day-ahead coupling shall develop a proposal for a common methodology for this calculation, namely the methodology for calculating scheduled exchanges resulting from single day-ahead coupling (the DA SEC Methodology).

On the basis of experience gained from the multi-NEMO arrangements (MNA), TSOs identified potential improvements to the DA SEC Methodology approved in 2019, particularly for the calculation of scheduled exchanges between nominated electricity market operator (NEMO) trading hubs, and in December 2022, submitted an amendment proposal to be approved by all NRAs. On 25 January 2023, all NRAs jointly referred this amendment proposal to ACER for a decision pursuant to the second subparagraph of Article 5(3) and point (b) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942, as well as with Articles 9(7)(d) and 9(11) of the CACM Regulation.

The EHoD stated that the draft decision, which proposes a number of substantive changes in Annex I, and introduces editorial amendments to improve the wording and clarity of the methodology, was non-controversial. The AEWG advice was also circulated.

As no proposal for amendment/comment was received by the deadline, the BoR Chair checked (verbally) whether there was consensus to grant the BoR FO. The BoR unanimously voted in favour.

Decisions/ Conclusions

4.1. The BoR unanimously agreed to the use of the electronic procedure to grant its favourable opinion on the ACER report on investment evaluation, risk evaluation and incentives.

4.2. The BoR unanimously agreed to the use of the electronic procedure to grant its favourable opinion on the Annual Consolidated Report on progress of projects of common interest – PCI Monitoring Report.

4.3. The BoR unanimously agreed to the use of the electronic procedure to grant its favourable opinion on the ACER CBCA Recommendation.

4.4. The BoR provided its favourable opinion on the ACER decision on day-ahead scheduled exchanges methodology by consensus of the members present and represented.

5. AWG key issues

5.1. AWG/ARC key issues

Members took note of the written and oral updates given by the AWG Chairs.

5.2. European Court of Auditors' report on Internal Electricity Market integration

The ECA Special Report on Internal Electricity Market integration published on 31 January 2023. As reported at previous BoR meetings, ACER has issued its reply.

The BoR Chair and the Director invited members to a broader discussion on the substance of report and a number of operational issues relating inter alia to transparency.

5.3. ACER Report on congestion in the EU gas markets and update on additional congestion report

In response to changing gas supplies in 2022, in particular increased liquefied natural gas (LNG) supplies due to reduced supplies from Russia, gas transmission systems are now being used differently than originally planned. The changed flows have led to congestion in important parts of the European transmission system causing inefficiencies in the market functioning. Given these important developments, the Director and Mr Hesseling explained that ACER is preparing two reports on gas market congestion, the annual Congestion Report (to be published this month) and a special report focusing on congestion in the North-West European Gas Transmission Systems (to be published in June/early July).

5.4. Update on LNG benchmark

On 30 December 2022, Council Regulation (EU) 2022/2576 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders entered into force and tasked ACER with producing and publishing a new daily Liquefied Natural Gas (LNG) price assessment starting no later than 13 January 2023, and a daily LNG benchmark from 31 March. The LNG benchmark is the spread between the daily ACER LNG price and the ICE Endex Front month settlement, disseminated on a daily basis. Mr Zlatar presented what ACER has delivered to date: the creation of a dedicated ACER page; guidance on reporting LNG market data and updates thereto; IT tool for data collection and publication of the results on the TERMINAL platform; price assessment and benchmark methodology (driven by IOSCO principles, the most important EU LNG price assessment being the spot Delivery Ex Ship market), updated following consultation with industry; establishment of an Expert Group on LNG price assessment/benchmarks; and Mr Zuleger referred to the ongoing establishment of an LNG Price Assessment and Benchmark Oversight Committee. Mr Zuleger also explained the next steps, including further improvements to the methodology and guidance, optimisation of the assessment process, onboarding of newly recruited staff and reprioritisation of REMIT data quality work. The Director added that since the EC proposal for the revision of the REMIT Regulation 1227/2011 incorporates ACER tasks relating to the LNG benchmark, the expectation is that these will become continuous tasks.