

113th ACER Board of Regulators Meeting
25 January 2023
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 O: Lija Makare O: Alda Ozola
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren	Lithuania (NERC)	A: Irma Zdanienė O: Justina Alsytė-Gogelienė
Bulgaria (EWRC)	A: Blagoy Golubatev O: Iva Georgieva O: Borislava Petrakieva	Luxembourg (ILR)	M: Camille Hierzig
Croatia (HERA)		Malta (REWS)	O: Manuel Manuzzi
Cyprus (CERA)		Netherlands (ACM)	A: Remko Bos O: Nora Meray
Czech Republic (ERO)	A: Jana Haasová O: Tomáš Kupčíha	Poland (URE)	M: Rafal Gawin A: Malgorzata Kozak
Denmark (DUR)	M: Carsten Smidt A: Brigitta Bundgaard	Portugal (ERSE)	M: Pedro Verdelho A: Natalie McCoy O: Catarina Santos
Estonia (ECA)	A: Marilyn Tilkson	Romania (ANRE)	A: Florin Tobescu
Finland (EV)	A: Antti Paananen	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	Spain (CNMC)	M: Josep María Salas O: Gema Rico
Greece (RAE)	A: Dimitrios Psychoyios O: Aggeliki Mourtzikou	Sweden (Ei)	M: Ulrika Hesslow A: Caroline Törnqvist
Hungary (MEKH)	O: Tamás Vörös O: Tamás Gyarmati	EEA-EFTA State Iceland	A: Hanna Björg Konráðsdóttir

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

Ireland (CRU)	M: Jim Gannon	Norway (NVE-RME)	A: Anne Dønnem
Italy (ARERA)	M: Clara Poletti A: Cariello Francesco O: Ilaria Galimberti	EFTA Surveillance Authority (ESA)	O: Anne De Geeter
ACER	Christian Zinglensen, Dennis Hesselning, Volker Zuleger, Christophe Gence-Creux, Martin Godfried, Martin Povh, Bart Vereecke, Csilla Bartok, Iztok Zlatac, Marie-Judith Moriconi, Akos Hofstadter, Thomas Kawam, Patrick Luickx, Fay Geitona, Mitsuko Akiyama		
European Commission	Michael Schütz, Anna Maria Marchi, Massimo Tognoni, Miguel Gil Tetre		

1. Opening

1.1. Approval of the agenda

The agenda of the 113th 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 112th BoR meeting

The minutes of the 112th BoR meeting were approved and sent to the European Parliament on 4 January 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 updated members on the state of play of the upcoming report of the European Court of Auditors concerning the Internal Electricity Market.

Members took note of the outcomes of the following BoR electronic procedures (EP): the EP for the vote on the BoR favourable opinion on ACER's decision on Harmonised Maximum and Minimum Clearing Price Methodologies ended on 6 January 2023. 19 members participated and the BoR FO was granted by the requisite majority.

The BoR electronic procedure for the vote on the BoR favourable opinion on the ACER decision on the long-term capacity calculation methodology of the Core capacity calculation region ended on 13 January 2023. 24 members participated the BoR FO was granted by consensus of those participating in the electronic procedure.

2.2. Updates from the BoR Chair

Ms Geitona informed members about the launch of the annual process for declaring conflicts of interest through the platform and the BoR Chair invited members to appoint the BoR Review Panel comprising the BoR Chair along with the Vice Chair, Mr Gawin, Mr Bos and Mr Urbantschitsch, with the Director acting as observer.

**Decisions/
Conclusions**

2.2 The BoR appointed the BoR Review Panel by consensus of the 25 members present and represented.

3. Energy crisis

3.1. EC Updates

- Short-term emergency interventions

The EC updated members on the short-term emergency measures adopted last year, particularly regarding Regulation 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices which introduced (among others) a cap on market revenues of inframarginal generators, as well as measures to reduce electricity consumption. Ms Marchi stated that the EC is collecting an overview of measures to implement the above Regulation on the basis of a common template to facilitate the Member State reporting; by the end of this month, Member States will report on the demand reduction targets, the cap on inframarginal power generation and how these revenues have been redistributed, and on price setting measures at retail level. The Commission is also considering if there is a need to extend the application of certain emergency measures.

- EC consultation on the long-term electricity market design adjustments – regulators' response

Ms Marchi made introductory remarks on the EC public consultation (PC) on the longer term electricity market design (EMD), which was issued on 23 January 2023 and will run until 13 February 2023. The upcoming legislative proposal (expected in March) will be based on Article 194 of the Treaty of the Functioning of the European Union and follow the ordinary legislative procedure. Ms Marchi stated that the public consultation sets out the main goals of the reform and is structured around the following areas: a) making electricity bills more independent of the short term cost of fossil fuels: this section complements the regulatory framework governing short term markets with additional instruments that incentivise long term contracts such as power purchase agreements (PPAs), and contracts for differences (CfDs), and includes questions pertaining to possible barriers; the design principles that these contracts should follow to allow consumers access to renewable generation, trading hubs for Long Term markets etc.; b) acceleration of renewables and phase out of gas (with questions pertaining to incentivising renewables investments, how to increase investor certainty and how to develop flexibility solutions (through demand response, energy storage and any other sources); c) consumer protection and empowerment with questions addressing whether a supplier of last resort should be mandatory; questions on the type of contracts (variable versus fixed price contracts); suppliers' possibility to hedge; the possibility for Member States to fix retail prices; d) a section on stronger protection against market manipulation through an updated REMIT framework with questions pertaining to more effective investigation and enforcement of cross border cases, the alignment of powers of ACER under REMIT with those under the EU financial market regulation, the harmonisation of fines under REMIT, the increase of transparency of market surveillance. Furthermore, the consultation seeks feedback on whether certain types of emergency interventions could be a more structural feature of the electricity market design (e.g. prolonging revenue limitations for inframarginal generators beyond their current expiry date under certain conditions) besides the other instruments addressed by the consultation document.

The BoR Chair regretted the very short duration of a consultation on such an important area. She then outlined the next steps for the preparation of the joint ACER-CEER response to the public consultation.

The BoR held an exchange of views.

The Chair noted the agreement on the next steps for finalising regulators' response to the PC to be accompanied by a short note identifying any additional issues.

3.2. Update on the LNG price assessment & market correction mechanism - current status and preparatory steps

Mr Zlatar gave an overview to the BoR on the execution of ACER's new tasks under Regulation 2022/2576 to create an objective price assessment tool of the EU's LNG imports by collecting real-time information on all daily transactions and a benchmark by 31 March 2023.

The price assessment went-live on 13th January 2023 along with guidance for market participants and ACER will publish its LNG price assessment daily (weekdays only) before 18.00 CET on the Price Assessment page of the TERMINAL platform. The last version of the Price Assessment was released on 24 January. In terms of organisational arrangements for this task, ACER established small project teams to address several work packages (reporting Guidance, data reporting and publication, IT solution; the price assessment methodology, the assessment standard operating model). The tasks were undertaken without additional FTEs but the recruitment of the 5 additional staff is ongoing and is expected to be completed by the summer.

Mr Hesseling gave an overview of preparations for the execution of ACER's new tasks under Regulation 2022/2578 ("October solidarity mechanism") on the Market Correction Mechanism (MCM), its key elements and activities. This is part of a broader package to address the energy crisis. The MCM reflects a last resort mechanism to prevent and address incidents of very high prices and is to be automatically activated if the following 'market correction event' occurs: the month-ahead price on the Title Transfer Facility (TTF) derivative settlement price exceeds 180€/MWh for three working days; and the month-ahead TTF derivative settlement price is 35€ higher than a reference price for LNG on global markets over the same period. During last year, there were periods where both conditions were met. The objective of the MCM is to limit the price premium created by the risk of supply disruptions and ensure that the EU continues to attract LNG. ACER's preliminary report on the effects of the MCM was issued on 23 January. Mr Hesseling presented the legal provisions and detailed requirements in respect of the calculation, publication and monitoring of the reference price; the identification of the market correction event and its deactivation (on ACER website with information to the Council, Commission, ECB and ESMA); the suspension mechanism by the EC (with input from ACER, ESMA, ENTSOG, GCG and ECB) while the MCM is in place if things go wrong on the basis of explicit criteria pertaining to SoS; the extension of the MCM to derivatives linked to other virtual trading points by 31st March 2023; and a review clause by the EC with input from ECB, ESMA, ACER and the GCG following the first year of application.

4. Items for BoR opinion/approval/agreement

4.1. Draft Single Programming document 2024-2026

Each year, the Administrative Board adopts the draft Single Programming Document (SPD) (containing annual and multi-annual programming) on receipt of the BoR favourable opinion, and submits it to the European Parliament, to the Council and to the Commission no later than 31 January. A preliminary draft outline of the SPD 2024-2026 was presented at the November BoR. The BoR was invited to approve the draft SPD 2024-2026 and, as per previous practice, support the draft estimate of ACER's revenues and expenditures for the 2024 financial year in the amount of €33,363,454. The Director presented the new approach with a clear alignment of strategic goals with the strategic action areas, the human and financial growth trajectory in line with the

Legislative and Financial Statement, and how the SPD attempts to capture flexibility and agility, for example by applying prioritisation and risk management strategies and initiatives aimed at achieving efficiency gains, including internal mobility, cross-departmental project groups, process redesign and automation.

The BoR approved the document by consensus of the members present and represented.

4.2. ACER network tariff report (electricity)

Mr Hofstadter presented the report: ACER issues a best practice report on transmission and distribution tariff methodologies across EU Member States and Norway every two years in accordance with Articles 18(9) and (10) of Regulation (EU) 2019/943, and regulatory authorities are to take it into consideration when fixing or approving transmission tariffs and distribution tariffs or their methodologies. This third edition focuses on a limited number of tariff-related topics, including recommendations relating to the cost model, cascading/injection, connection, reactive energy and time-of-use charges, the role of NRAs in tariff setting, the segmentation of network charges, the frequency of tariff setting methodologies, stakeholder involvement and transparency in tariff setting. The recommendations aim to increase comparability of tariffs to facilitate evidence-based tariff setting.

The AEWG advice and the draft report were circulated. No proposal for amendment/comment was received by the deadline, but a number of factual corrections were subsequently received.

The BoR issued a favourable opinion on the report (with factual corrections) by consensus of the members present and represented. Mr Hofstadter explained the next steps, namely the publication of the report, followed by targeted stakeholder consultation in the second half of 2023. The fourth edition of the report is planned towards the end of 2024/early 2025, where ACER will follow up on how ACER recommendations have been taken into account.

4.3. ACER Opinion on the ENTSO-E Winter Outlook

On 1 December 2022, ENTSO-E submitted its seasonal adequacy outlook report for winter 2022-2023 (Winter Outlook). ACER considers it appropriate to issue an opinion on the Winter Outlook (pursuant to Article 4(3)(b) of Regulation (EU) 2019/942) given increased security of supply risks following the Russian invasion of Ukraine.

ACER welcomes ENTSO-E's efforts to expand the scope of analysis and take a more agile approach in response to the uncertainties posed by Russia's invasion of Ukraine, and agrees that efficient market integration and pooling of resources are key for adequacy support this winter. The opinion recommends making a clearer distinction between assumptions for the reference and the sensitivity scenarios, in particular as regards extreme situations.

The AEWG advice and draft opinion were circulated. No proposal for amendment/comment was received by the deadline. The BoR issued a favourable opinion by consensus of the members present and represented.

4.4. ACER Framework Guidelines on TEN-E Scenarios

ACER is mandated to develop Framework Guidelines for the joint scenarios to be developed by ENTSO-E and ENTSG for the Union-wide ten-year network development plans (Article 12(1) of Regulation 2022/869 on guidelines for trans-European energy infrastructure). The Framework Guidelines must establish criteria for a transparent, non-discriminatory and robust development of scenarios taking into account best practices in the field of infrastructure assessment and network development planning. The guidelines must notably aim to ensure that the underlying scenarios are fully in line with the energy efficiency first principle and with the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective.

The Framework Guidelines put forward criteria and guidance on: a timely scenario preparation process; robust, “objective-driven” scenarios; transparent, inclusive and streamlined development; a process for stakeholder scrutiny; a quick-update process (to be able to react to unforeseen circumstances, such as in times of crisis); and reporting by ENTSOs on how they have implemented the Framework Guidelines. Input from the European Scientific Advisory Board on Climate Change is also eagerly awaited.

The AEWG advice and Framework Guidelines were circulated. No proposal for amendment/comment was received by the deadline, and the BoR issued a favourable opinion by consensus of the members present and represented.

4.5. Appointment of the ARWG Chairs

On 9 January, the Secretariat opened the call for nominations for the position of Chair of the Agency’s Retail Market Working Group (ARWG), as the term of the current ARWG co-chairs, Ms McCoy and Ms Haasová, expire on 29 January 2023. According to Article 2.2 of the AWG Rules of Procedure, the Director and the BoR jointly appoint one or more Chairpersons for each AWG, usually for a period of two years. The BoR and the Director agreed to extend the terms of the ARWG co-chairs for two years, who expressed their firm commitment to ARWG work and the challenges lying ahead.

4.6. ACER opinion on ENTSO-E’s revised statutes

Article 4 of the ACER Regulation and Article 29 of the Electricity Regulation provide that the Agency will issue an opinion to the Commission on draft amendments to ENTSO-E’s statutes, list of members and draft rules of procedure within two months of receiving them. ACER must consult the organisations representing all stakeholders, in particular the system users, including customers, and the AEWG as part of this process. On 16 December, ENTSO-E submitted draft amendments to their Articles of Association, but additional documents and information were requested by ACER and the deadline to issue an opinion to the Commission has been pushed back. Nevertheless, given the very short timeline, members unanimously agreed to use the electronic procedure to deliberate towards end of February/beginning of March.

4.7. Electricity Forward Market policy paper

In June – July 2022, ACER consulted stakeholders on its draft policy paper on how to address key challenges in the EU electricity forward market. The draft policy paper was also discussed at the 111th BoR meeting.

Mr Kawam and Mr Povh presented the revised paper, which discusses the problems identified with respect to the EU forward markets that fall into two categories, general forward market problems (e.g. market fragmentation and structure, vulnerability to bidding zone reconfiguration etc.) and cross-zonal hedging problems (the issue being that long-term transmission rights (LTTRs) do not facilitate market integration), as well as a set of possible policy options and solutions in view of issuing, on request from the European Commission, a recommendation on amendments to the FCA Regulation.

The BoR endorsed the paper by a two-thirds majority of the members present and represented.

Decisions/ Conclusions

4.1 The BoR approved the Draft Single Programming document 2024-2026 by consensus of the 25 members present and represented.

4.2. The BoR adopted provided its favourable opinion on the ACER network tariff report (with corrections) by consensus of the 25 members present and represented.

4.3. The BoR adopted provided its favourable opinion on the ACER Opinion on the ENTSO-E Winter Outlook by consensus of the 25 members present and represented.

4.4. The BoR provided its favourable opinion on the ACER Framework Guidelines on TEN-E Scenarios by consensus of the 25 members present and represented.

4.5. The BoR and the Director agreed to extend the terms of the ARWG co-chairs by consensus of the 25 members present and represented.

4.6. The BoR agreed to the use of the electronic procedure for the ACER opinion on ENTSO-E's revised statues by consensus of the 25 members present and represented.

4.7. The BoR endorsed the Electricity Forward Market policy paper by a two-thirds majority of the 25 members present and represented.

5. AWG key issues

5.1. AWG/ARC key issues

Members took note of the updates given by the AWG Chairs.

The AEWG Chair gave the following updates: the decision on ERAA 2022 will be tabled at the February BoR; delayed Bidding Zone Review; Swiss participation in the balancing platforms is to be discussed further in March; ENTSO-E still has resource issues (human and financial) and will illustrate this by reference to data on TYNDP challenges; on project prioritisation, a cross-TF meeting will be organised to map all the projects and their interactions, rank them based on importance and urgency, evaluate and assess the reason for delays and define formal deadlines; and regarding the recommendation on Cross-border Cost Allocation (CBCA), adjustments to reflect the new TEN-E framework will be discussed in upcoming AWG and BoR meetings ahead of the public consultation planned in March – June 2023.

The AGWG Chair updated members notably on the work of the Fast Response Team and announced the new Interoperability TF Chair, Mr Jörn Mehlitz from BNetzA.

5.2. MMR approach for 2023

Mr Luickx informed members that in 2023, ACER will resume the electricity market monitoring work and publish eight volumes providing topical overviews of last year's market situation.

5.3. Forward looking letter on ERAA: priorities and the role of TSOs

Mr Gence-Creux referred to a letter that has been endorsed by the AEWG and which will be sent by ACER and all NRAs to TSOs and ENTSO-E concerning the European Resource Adequacy Assessment (ERAA).