

117th ACER Board of Regulators Meeting

12 July 2023

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 O: Katharina Ledermann-Tappeiner	Latvia (PUC)	M: Rota Šņuka
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren	Lithuania (NERC)	A: Irma Zdanienė O: Jelena Dilienė
Bulgaria (EWRC)	Blagoy Golubarev O: Iva Georgieva O: Borislava Petrakieva	Luxembourg (ILR)	A: Claude Hornick
Croatia (HERA)		Malta (REWS)	A: Phyllis Micallef O: Manuel Manuzzi
Cyprus (CERA)	O: Marilena Delenta (with proxy)	Netherlands (ACM)	O: Maarten Klijn (with proxy)
Czech Republic (ERO)	A: Jana Haasová O: Tomáš Kupčíha	Poland (URE)	M: Rafal Gawin A: Malgorzata Kozak O: Danuta Sierocinska
Denmark (DUR)	O: Thomas Vom Braucke (with proxy)	Portugal (ERSE)	M: Pedro Verdelho A: Natalie McCoy
Estonia (ECA)		Romania (ANRE)	A: Florin Tobescu
Finland (EV)	A: Antti Paananen	Slovakia (URSO)	O: Vlastimil Jurkuliak (with proxy)
France (CRE)	A: Ivan Faucheux O: Claire Hellich-Praquin	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

Greece (RAE)	A: Dimitrios Fournalis O: Yuriy Bilen	Sweden (Ei)	A: Caroline Tornqvist O: Johan Roupe
Hungary (MEKH)	A: Gergely Szabó O: Szabolcs Koppányi	EEA-EFTA State Iceland	
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, Csilla Bartok, Volker Zuleger, Christophe Gence-Creux, Martin Godfried, Iztok Zlatar, Marco Pavesi, Thomas Querrioux, Fay Geitona, Mitsuko Akiyama, Jan Kostevc, Martin Viehhauser		
European Commission	Michael Schuetz		

1. Opening

1.1. Approval of the agenda

The agenda of the 117th BoR meeting was approved with some changes in the order.

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 116th BoR meeting

The minutes of the 116th BoR meeting were approved and sent to the European Parliament on 6 June 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 the BoR that a letter is to be sent to all TSOs requesting that, by 30 November, they submit to ACER an amended proposal for the determination of Capacity Calculation Regions (CCRs) to merge Core and Italy North CCRs for DA capacity calculation methodology, building on the extensive talks at technical level with NRAs and TSOs.

Members took note of the outcome of the following BoR electronic procedures: for the PCI Monitoring Report which was conducted in a single round which ended on 13 June: 18 members participated and unanimously voted in favour of granting the BoR favourable opinion; for the CBCA recommendation update which was conducted in two rounds ending 16 June: there was no proposal for comment/amendment in the first round ending 13 June; 19 members participated in the second round and unanimously voted in favour of granting the BoR favourable opinion; for the ACER report on investment evaluation, risk evaluation and incentives which was conducted in two rounds ending 16 June: there was no proposal for comment/amendment in the first round ending 13 June; 18 members participated in the second round and unanimously voted in favour of granting the BoR favourable opinion.

2.2. Updates from the BoR Chair

The Chair welcomed to the BoR the new alternate member of RAE, Mr Fourlaris. The BoR Chair informed members that the AGWG Chair's term ends on 12 July 2023. Nominations will be opened after the summer and a decision will be tabled for the September BoR meeting.

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 revision of the Wholesale Energy Market Integrity and Transparency (REMIT) Regulation. The Council of 19 June reached its general approach on REMIT (while the vote of the Committee on Industry, Research and Energy (ITRE) is scheduled for 6 September) and on the Electricity Directive amendments but not on the part of the EMD proposal amending the Electricity Regulation. In terms of the European Parliament (EP) discussions, the ITRE vote is scheduled for 19 July and 7 September on the EMD and REMIT files respectively. The adoption of the EP Plenary position is expected by the end of September to kick off the trilogues, should the Council by then have reached a General Approach on the Electricity Regulation.

- Report on the Florence Forum and Copenhagen Forum

Mr Schuetz pointed to the published conclusions of the Florence Forum, which was held in Rome on 8-9 June and emphasise the importance of implementing existing legislation. He also referred to the published conclusions of the last Copenhagen Forum held on 12 - 13 June 2023.

- Update on the Network Code on sector-specific rules for cybersecurity aspects of cross-border flows

In July 2022, ACER submitted to the European Commission its revision of the Network Code for cybersecurity aspects of cross-border electricity flows (NCCS), which aims to further contribute to maintaining the security and resilience of the electricity system across Europe. Mr Schuetz informed the members of the state of play of the adoption of this Network Code. The Network Code is undergoing consultation with the expert group until 20 July; interservice consultation is in progress. As per the procedure for adopting delegated acts, the Commission previously informed the Council and the EP on 23 May. Some additional steps are needed after or in parallel with the interservice consultation, before the Commission can adopt the network code: the consultation of the European Data Protection Supervisor and the publication on the Commission's website for a 4-week mandatory public consultation on the draft text. The estimated timing for the adoption is end of 2023. DG ENER works closely with DG Connect and the NIS Cooperation Group - Workstream for Energy (including Cybersecurity Authorities in the Member States) to ensure that the Network Code is well aligned with NIS2 and procedures defined in the NCCS will fit with those defined in NIS2 and other cybersecurity legislative texts. Mr Schuetz thanked ACER for its valuable contribution and comments in the expert group.

Mr Szabó gave a short presentation on MEKH's questions regarding the Cybersecurity Network Code (NCCS) and the NIS2 and Critical Entities Resilience (CER) Directives. MEKH identified some concerns as regards the possible implications of the implementation of these EU acts on MEKH's (and possibly on other NRAs') cybersecurity tasks and powers. He presented the specific questions and suggested that the discussion could be continued on Working Group level.

The BoR Chair thanked the European Commission for their updates.

3.2. Infrastructure delays and the role of regulators/regulatory frameworks

Ms Bartok referred to ongoing debates around the notion of “infrastructure blockage” allegedly stemming from regulatory as well as permitting issues particularly in electricity, inviting a reflection on the role of regulators in massively accelerating grid investment. She outlined the main insights gained from ACER’s infrastructure deliverables including as regards: infrastructure efficiency (benefit sharing, KPIs); anticipatory investments; DSO engagement (as sources of flexibility); and engaging and informing the public, and posed a series of questions to trigger the debate pertaining to these issues.

The BoR Chair thanked Ms Bartok and opened the floor for discussion.

The BoR Chair suggested pursuing this discussion in September.

3.3. REMIT updates

- Market surveillance strategy: Governance Section

Mr Godfried presented the updated Governance Section of the ACER-NRAs joint Market Surveillance Strategy. It aims to ensure the best possible surveillance coverage of the EU wholesale energy markets while making the most efficient use of the available resources and reports annually on market surveillance coverage by NRAs who pursuant to Article 7(2) of REMIT may also monitor trading activity in wholesale energy products at national level.

- REMIT data quality

Mr Zuleger and Mr Zlatar presented updates relating to REMIT data quality activities given interest shown by BoR members. The likely positive impacts of the REMIT revision as regards data issues were mentioned, as well as recent REMIT data quality projects, in which NRAs were encouraged to participate. The coverage of market surveillance heavily relies on data quality. Today we have 16.707 market participants registered, 9.168 actively reporting, 67 OMPs, 104 RRM, two commodities and several market segments which is growing; we have over 3 million of total orders. Moreover as of this year, ACER collects SIDC data and LNG market data (with more than 80 registered LNG market participants).

4. Items for BoR opinion/approval/agreement

4.1. ACER Decision on the proposal for the Regional Coordination Centres’ task of regional sizing of reserve capacity pursuant to Article 37(1)(i) of Regulation (EU) 2019/943

The Electricity Regulation has tasked regional coordination centres (RCCs) with tasks of regional relevance, including performing the regional sizing of reserve capacity in accordance with Article 37(1)(j) of Regulation (EU) 2019/943. On 17 March 2023, ENTSO-E submitted its proposal to ACER for approval. ACER considers the proposal in line with the requirements of Regulation (EU) 2019/943, provided that the amendments described in the annex to the decision are integrated. The AEWG advice was 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 favourable opinion. The BoR unanimously voted in favour.

4.2. ACER Decision on the proposal for the Regional Coordination Centres’ task of facilitating the regional procurement of balancing capacity pursuant to Article 37(1)(k) of Regulation (EU) 2019/943

The Electricity Regulation has tasked RCCs with facilitating the regional procurement of balancing capacity pursuant to Article 37(1)(k). On 17 March 2023, ENTSO-E submitted a proposal for approval by ACER. The AEWG advice was 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 favourable opinion. The BoR unanimously voted in favour.

4.3. ACER decision on the harmonised cross-zonal capacity allocation methodology

Article 5(2)(g) and Article 38(3) of the Electricity Balancing Regulation 2017/2195 (EB Regulation) require all TSOs to develop a proposal to harmonise the methodology for the allocation process of cross-zonal capacity for the exchange of balancing capacity or sharing of reserves per timeframe pursuant to Article 40 of the EB Regulation and, where relevant, pursuant to Articles 41 and 42 of the EB Regulation (the HCZCA methodology) and submit it for revision and approval by ACER. On 16 December 2022, ENTSO-E submitted the methodology to ACER for approval. The AEWG advice was circulated.

The BoR Chair invited the authors of the proposals for amendments to present amendments 1-2 and 3-5 respectively.

24 members voted on amendment 1. The proposal failed to reach the requisite two-thirds majority of the members presented and represented.

23 members voted on amendment 2. The proposal failed to reach the requisite two-thirds majority.

23 members voted on amendment 3. The proposal failed to reach the requisite two-thirds majority.

23 members voted on amendment 4. The proposal failed to reach the requisite two-thirds majority.

23 members voted on amendment 5. The proposal failed to reach the requisite two-thirds majority.

Members were subsequently invited to vote on the BoR favourable opinion on the Director's proposal. 21 members participated. The BoR issued its favourable opinion by a two-thirds majority of the members present and represented.

4.4. ACER Opinion on the draft ENTSO-E methodology for cost benefit analysis for grid development projects

Article 11(1) of Regulation (EU) 2022/869 (the TEN-Regulation) requires ENTSO-E to publish and submit to the Member States, Commission and ACER its draft methodology, including the network and market model, for a harmonised energy system-wide cost-benefit analysis (CBA) at Union level for projects on the Union list falling under the energy infrastructure categories set out in point (1)(a), (b), (d) and (f) of Annex II of the same Regulation, to be applied for the preparation of each subsequent ten-year network development plan (TYNDP) to be developed by ENTSO-E. ACER received the document on 24 April and has 3 months to issue an opinion thereon. Overall, the draft 4th CBA Guideline provides substantial improvements compared to the previous draft CBA, although it omits some important elements. The AEWG advice was 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 favourable opinion. The BoR unanimously voted in favour.

4.5. ACER Opinion on ENTOSG's 2022 Ten Year Network Development Plans

On 26 May 2023, ENTSOG submitted the draft TYNDP 2022 to ACER for its opinion. ACER welcomes the increased focus of the TYNDP on the energy transition, as well as the consideration of the REPower EU plan in some scenarios through a dual gas system modelling approach that considers hydrogen and methane networks simultaneously and by the collection of different types of hydrogen projects and network projects aimed for the injection of biomethane. ACER finds that the draft TYNDP 2022 assessments and the projects included in it generally contribute to the objectives of effective competition and secure functioning of the internal gas market whilst noting that the draft TYNDP 2022 does not sufficiently contribute to the objectives of non-discrimination and efficient functioning of the market, due to certain shortcomings. The AGWG advice was 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 favourable opinion. The BoR issued its favourable opinion by a two-thirds majority of the members present and represented.

4.6. ACER Opinion on ENTSOG's Summer Supply Outlook 2023

On 6 April 2023, ENTSOG published the Summer Supply Outlook 2023 pursuant to Article 8(3)(f) of Regulation (EC) No 715/2009, on which ACER may issue an opinion. ACER finds that ENTSOG's Summer Supply Outlook 2023 meets the objectives of Regulation (EU) 2019/942 and Regulation (EC) No 715/2009 in terms of contributing to non-discrimination, effective competition and the efficient and secure functioning of the internal natural gas market. The opinion sets out a number of recommendations. The AGWG advice was 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 favourable opinion. The BoR unanimously voted in favour.

Decisions/ Conclusions

4.1. The BoR unanimously voted in favour of granting its favourable opinion on the ACER decision on the proposal for the Regional Coordination Centres' task of regional sizing of reserve capacity pursuant to Article 37(1)(j) of Regulation (EU) 2019/943.

4.2. The BoR unanimously voted in favour of granting its favourable opinion on the ACER decision on the proposal for the Regional Coordination Centres' task of facilitating the regional procurement of balancing capacity pursuant to Article 37(1)(k) of Regulation (EU) 2019/943.

4.3. The five proposals for amendments to the ACER decision on the harmonised cross-zonal capacity allocation methodology having failed to meet the requisite two-thirds majority, the BoR granted its favourable opinion on the said decision by two-thirds of the members present and represented.

4.4. The BoR provided its favourable opinion on the ACER opinion on the draft ENTSO-E methodology for cost benefit analysis for grid development projects by consensus of the members present and represented.

4.5. The BoR provided its favourable opinion on the ACER opinion on the ACER opinion on ENTSOG's 2022 Ten Year Network Development Plans by a two-thirds majority of the members present and represented.

4.6. The BoR provided its favourable opinion on the ACER opinion on ENTSOG's Summer Supply Outlook 2023 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.

- AGWG presentation on the financing of national security of supply measures, and storage and cross-border impacts/cost recovery

The AGWG Chair and Ms Bartok presented a number of points discussed at working level including the German gas storage neutrality charge. The German Energy Industry Act allocates costs to German end users and Interconnection Points (IPs) based on the idea that users in other networks can benefit from the German storage measures, which was questioned by other NRAs and ACER.

The BoR Chair suggested a future update by the European Commission on this matter, including on whether the Tariff Network Code plays any role.

- Update on the Bidding Zone Review

The AEWG Chair drew members' attention to the written updates and to two issues relating to the Bidding Zone Review (BZR).

Following discussion, the BoR Chair agreed that a letter from the BoR Chair and the Director should be sent to the TSOs. A draft will be submitted to the BoR for endorsement by electronic procedure lasting 3 working days.

- Draft EFTA Surveillance Authority decisions on the determination of the harmonised maximum and minimum clearing prices for the single day-ahead and intraday coupling

Mr Gence-Creux informed BoR members that ACER had prepared the decisions to be issued by the EFTA Surveillance Authority (ESA) regarding the harmonised maximum and minimum clearing prices for the single day-ahead and intraday coupling in accordance with Articles 41 and 54 of the CACM Regulation (HMMCP), and submitted them to ESA on 24 May. The draft ESA decisions on HMMCP reflect ACER's own decisions on HMMCP issued on 10 January.

5.2. Market Monitoring Reports (MMR) – lessons learned from the energy crisis and monitoring of market integration

The following MMR deliverables were presented.

- Emergency measures

As part of its monitoring obligations, ACER must identify any barriers to the completion of the internal markets for electricity and natural gas. Mr Querrioux presented a report providing an overview of trade-offs faced by European Member States when implementing emergency measures in the context of the 2022 energy crisis, focusing on the second semester of 2022. Building on the inventory of 439 emergency measures published in March, the quantitative analysis of emergency measures highlights deviations between 2022 and previous years and how these were affected by the implementation of the emergency measures, and a qualitative analysis highlights their impacts on demand and security of supply, and contributions to the achievement of long-term goals such as affordability and the energy transition. The key conclusions highlight that: emergency situations call for trade-offs and compromises; measures to shield end-consumers should be temporary, targeted and tailored, and prioritise energy savings and risk preparedness as no-regret options; and that market integration allowed for mitigation of price shocks and that coordination on emergency measures is a must in an increasingly interdependent and integrated European market and system.

The report will be published in the coming days and a webinar is planned for 6 September.

- The evolution of cross border capacity & 70%

Mr Pavesi introduced the report, which combines the formerly self-standing report on the 70% target and the MMR chapter on cross-zonal capacity into one. Its planned publication date is 21 July, following which there will be a public consultation (until mid-September) and a webinar (6 September). In monitoring the 70% target across the EU, ACER applies a common methodology for all Member States following significant harmonization efforts. The conclusions of the report, complemented by inputs from the public consultation, will form the basis of a formal opinion to the EC and the European Parliament (expected towards the end of the year).

The report notes that few Member States have reached the 70% target and that it will become increasingly difficult to do so. The extension of flow-based to the Core region led to some improvements, but derogations (due to significant loop flows) along with unilateral reductions of capacity and allocation constraints are hindering progress. Mr Pavesi referred to ENTSO-E's market report published on 30 June, which depicts an over-optimistic picture of 70% fulfilment compared to ACER's assessment due to: its focus on the performance against derogations and/or action plans instead of the legally mandated 70% target; lack of a common and harmonised methodology for all Member States; and failure to distinguish between the situation with and without third countries.

- Gas wholesale developments

Ms Bartok mentioned a series of overviews forming part of the 2023 ACER monitoring of the functioning of the internal gas market, including: Preliminary and Final Market Correction Mechanism Effects Assessment Reports (January and March); recent market developments presentation (June); European gas market trends and price drivers volume (September); Synthesis and Recommendations for 2023 (November); and analysis of LNG market developments (November-December).

Wholesale gas prices reached record-high levels in 2022 (primarily due to the Russian supply shock followed by resilient demand for gas, driven upwards by above-average storage injections); since the end of 2022, the demand-supply balance in the gas market has improved due to a combination of measures: rising liquified natural gas (LNG) imports and a decrease in demand, but further demand reduction may be needed if markets tighten. Supply bottlenecks are easing as a result of lower demand and new infrastructure investments: LNG utilisation remains high and additional capacity (as well as the lower gas flows of the summer season) alleviated congestion in North-West Europe. Storage filling levels are significantly above last years' average and have contributed to driving prices down: stocks were above 79% in mid-July, on track to meet the 90% target by November. Trading activity is recovering: the data shows gradual improvement since December 2022, with growth concentrated at the Dutch TTF.

- Annual Report on the Results of Monitoring the Internal Electricity and Natural Gas Markets in 2022: Retail and Consumer Protection Volume

Ms Bartok presented the Retail and Consumer Protection volume of the MMR to be published shortly. The report notes the challenge of addressing the issue of affordability (via targeted support to protect the most vulnerable without impeding the formation of market prices) whilst incentivising consumers to reduce demand so as to enable the energy transition. A more detailed definition of vulnerability would allow for more targeted support, although as the crisis eases, support measures are expected to decrease. It is important to track the uptake by consumers of different types of contracts (fixed, variable, full dynamic) and focus on consumer behaviour. There should be more transparency for consumers via targeted information campaigns enabling consumer demand response (successful projects include ESNB and Tibber), and ensuring compliance of public tools and market tools with the Electricity Directive.

5.3. Amendments to Grid Codes

ACER will launch a 10-week public consultation this month to gather stakeholder views on ACER's draft proposals for amendments to the Network Code on Requirements for Generators

and the Network Code on Demand Connection. Their revision is needed to ensure that Europe's interconnected power system is adapted to emerging trends, including the increasing number of electricity storage modules, electrical charging points for e-vehicles and the proliferation of distributed energy sources. The draft amendment proposals were for information; these will be finalised and submitted for BoR favourable opinion in Q4/23.

On a separate topic, Mr Gence-Creux updated members on the state of play of the framework for future electricity trading across interconnectors between the UK and the EU. Following the conclusion of the Trade and Cooperation Agreement (TCA) in 2020, EU and UK TSOs started the work on the evaluation of the Loose Volume Coupling design as an alternative solution to explicit allocation on interconnectors linking the UK to the EU and to the implicit intraday allocation on the UK and SEM (Single Electricity Market) border. The EC asked EU and UK TSOs to provide a joint answer to a set of technical questions regarding the options considered for Multi-Regional Loose Volume Coupling (MRLVC) and ACER issued an informal opinion on 10 July.

5.4. Implementation Monitoring Report - Gas Balancing Network Code

Ms Bartok presented the Implementation Monitoring Report for the Gas Balancing Network Code for the period 2021-22. The Dashboard now has additional functionalities to facilitate its use. Findings indicate that balancing prices were higher than in previous years, similarly with the trends observed on wholesale gas markets. Balancing volumes did not show significant changes, but higher net neutrality positions may warrant further analysis at national level.

5.5. ACER Unit Investment Cost report

The development of Unit Investment Cost (UIC) indicators is an obligation under Article 11(9) of Regulation (EU) No. 2022/869 replacing the requirement set out in Article 11(7) of Regulation (EU) No. 2013/347. The Agency will incorporate the 2015 UIC Report with changes introduced by the revised TEN-E Regulation i.e. the applicable infrastructure categories where the traditional gas infrastructure category has been excluded, while infrastructure that will support the energy transition, such as hydrogen-related, carbon dioxide and smart gas grid infrastructure, are added as per the detail stipulated by Annex II of the Regulation (EU) No. 2022/869. Ms Bartok explained that in preparing the Report on UIC indicators, stakeholders had been consulted and a study had been performed, including on the new infrastructure categories. The publication date is 13 July, to be followed by a workshop to collect further inputs from stakeholders on 20 July.