

85th ACER Board of Regulators Meeting
24 September 2019
Ljubljana, Slovenia

Minutes (final)

Member States	Name ^[1]	Member States	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch O: Christine Materazzi-Wagner	Italy (ARERA)	M: Clara Poletti A: Francesco Cariello O: Ilaria Galimberti
Belgium (CREG)	-	Latvia (PUC)	-
Bulgaria (EWRC)	A: Evgenia Haritonova	Lithuania (NERC)	M: Inga Žilienė
Croatia (HERA)	M: Tomislav Jureković A: Sonja Tomašić Škevin	Luxembourg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Andreas Poullikkas	Malta (REWS)	A: Phyllis Micallef
Czech Republic (ERO)	M: Martin Šik O: Gabriela Moravčíková	Netherlands (ACM)	M: Henk Don
Denmark (DUR)	M: Carsten Smidt	Poland (URE)	M: Rafał Gawin A: Małgorzata Kozak
Estonia (ECA)	-	Portugal (ERSE)	M: Pedro Verdelho O: Natalie McCoy
Finland (EV)	-	Romania (ANRE)	-
France (CRE)	A: Jean-Laurent Lastelle O: Rébecca Radereau O: Michaël Mastier O: Romain Charvet	Slovakia (RONI)	A: Denisa Lanikova
Germany (BNetzA)	M: Annegret Groebel (by webex)	Slovenia (AGEN-RS)	M: Duška Godina A: Bojan Kuzmič
Greece (RAE)	A: Nektaria Karakatsani (by webex)	Spain (CNMC)	O: Gema Rico
Hungary (HEA)	M: Attila Nyikos O: Adam Krinszki	Sweden (Ei)	M: Anne Vadasz-Nilsson (by webex) A: Caroline Törnqvist
Ireland (CRU)	O: Andrew Ebrill	United Kingdom (Ofgem)	M: Andrew Burgess

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

ACER	Alberto Pototschnig, Christophe Gence-Creux, Dennis Hesseling, Volker Zuleger, Martin Godfried, Fay Geitona, Sander Ramp
European Commission	Guido Bortoni

1. Opening

1.1. Approval of the agenda

The agenda of the 85th BoR meeting was approved. The draft agenda was sent to the European Parliament. The Chair asked for declarations of conflict of interest: No conflict of interest was declared.

1.2. Minutes of the 84th BoR meeting

Pursuant to the new ACER Regulation (2019/942), Article 22(6), the minutes of the 84th BoR were approved and sent to the European Parliament on 26 July.

Decisions/ conclusions

1.1 The agenda was approved.

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

2.1. Updates from the ACER Director

The BoR was informed about the conclusions of the 3rd Energy Market Integrity and Transparency Forum, which took place on 5 and 6 September in Ljubljana which has a very good turnout. The BoR was informed on the Decision of the ACER Board of Appeal (BoA) of 6 August 2019 on the application for annulment of ACER Decision No. 05/2019. The BoA dismissed the appeals against the Contested Decision. The BoR took note of the latest publications of the Agency since the last BoR meeting took place (17 July) as well as on the outcomes of the BoR electronic procedures as follows:

- The electronic procedure for the BoR favourable opinion on the ACER Decision on the selection of a web-based booking platform to be used by TSOs for the offering of bundled gas transmission capacity at the “Mallnow” physical interconnection point and “GCP” virtual interconnection point ended on 1 August. The BoR favourable opinion was provided by the majority of the members who have participated in the electronic procedure.
- The electronic procedure on the draft Recommendation on the implementation of the minimum margin available for cross-zonal trade pursuant to Article 16(8) of Regulation (EU) 2019/943 ended on 7 August. The BoR adopted by the required majority an amendment on the Director’s proposal and submitted to the Director. The favourable opinion on the Director’s proposal has been provided by the majority of the members who have participated in the electronic procedure. BNETZA voted against.
- The electronic procedure on the revised ACER Programming Document 2019-2021 ended on 3 September. The BoR favourable opinion/approval was provided by consensus of the members who have participated in the electronic procedure.

The Director informed the BoR about the 2020 budget foreseen for ACER, where the proposal from the Commission falls € 4 million short of ACER’s request. He also informed of the amendments voted in the European Parliament’s ITRE Committee to provide ACER with the required resources and of the next steps envisaged to address the resource situation of ACER in order to raise awareness among the EU institutions and stakeholders.

2.2. Updates from the European Commission

The European Commission informed the BoR about the upcoming Madrid Forum and highlighted the topics on the agenda. The EP hearing of the new Commissioner-designate Ms Kadri Simson will take place on 3 October.

2.3. Updates from the BoR Chair

The BoR Chair informed the BoR about the state of play of the preparations for the BoR's input to the ACER Rules of Procedure and the second revision of the BoR Rules of Procedure (RoP).

The BoR and the Director exchanged views about the scope of the ACER RoP under preparation. A discussion will be held at the October BoR meeting.

The BoR Chair pointed the BoR to the preliminary BoR meeting dates for 2020. Ten BoR meetings are foreseen.

**Decisions/
conclusions**

2.3 The BoR took note of the BoR meeting dates for 2020

3. Gas Bridge Beyond 2025

3.1. Presentation of evaluation of input from stakeholders through the public consultation

The consultation on the paper "Gas Bridge Beyond 2025" was extended to 9 September. The BoR was informed about stakeholders' key input in the areas of access and market monitoring; governance of infrastructure and oversight of existing and new entities; dynamic regulation for new activities and technologies; transmission tariffs; and others.

The BoR took note of the evaluation of responses to date and discussed the next steps. The detailed plan and target date for the adoption of the paper is still under discussion. It is intended that the paper will be issued as an ACER recommendation submitted to the EU Institutions with a separate joint ACER-CEER paper/report.

**Decisions/
conclusions**

3.1 The BoR took note of the evaluation of responses to date and agreed the next steps to issue the paper as an ACER Recommendation to the EU Institutions with a separate joint ACER-CEER paper/report.

4. Items for opinion/approval/endorsement/agreement

The BoR agreed to apply the same timeline of one week before the BoR meetings for the submission of comments and amendments on the Director's proposals for the acts considered for adoption under Article 24(2) of the ACER Regulation.

4.1. ACER Decision on the Balansys compliance programme

The Director presented the draft Agency's Decision on the Balansys compliance programme. The AGWG advice was given on 4 September. No amendment was submitted by the deadline of 17 September. A comment by a member was submitted which was taken into account in the revised proposal by the Director.

The BoR provided its favourable opinion on the Agency's draft Decision on the Balansys compliance programme by consensus of the members present or represented.

4.2. ACER Opinion on ENTSOG's Annual Report 2018

The Director presented the draft Agency's Opinion on ENTSOG's Annual Report 2018. The AGWG's advice, was provided on 5 September 2019. No amendment was submitted by the deadline of 17 September.

The BoR provided its favourable opinion on the Agency's draft Opinion on ENTSOG's Annual Report 2018 by consensus of the members present or represented.

4.3. ACER Opinions on the draft PCI lists 2019 (gas and electricity)

Agency draft Opinion on the draft gas PCI list 2019

The Director presented the draft Agency's Opinion on the draft PCI list for gas. The AGWG gave its advice on the draft Opinion on the draft gas PCI list 2019 on 5 September. By 17 September, one amendment has been submitted and, subsequently, a comment by one member. The BoR adopted the amendment by majority of the members present or represented.

The Director explained that, according to his analysis, the amendment adopted by the BoR would not be consistent with the rest of the text of the Opinion and, therefore, justified his rejection of the amendment, and submitted the original proposal for the BoR opinion. The BoR did not provide its favorable opinion on this text.

After further discussion, the Director presented a revised proposal that, addressed partly aspects of the amendment, whilst waiving the above-mentioned concerns. The BoR provided its favourable opinion on the revised Agency's draft Opinion on the draft PCI list for gas by consensus of the members present or represented.

Agency draft Opinion on the draft electricity PCI list 2019

The Director presented the Agency's draft Opinion on the draft PCI list for electricity. The AEWG gave its advice on the draft Opinion on the draft electricity PCI list 2019 on 9 September. By 17 September deadline no amendment was submitted. Comments were submitted subsequently by five members, some of which were incorporated by the Director in a revised draft.

The BoR provided its favourable opinion on the Agency's draft Opinion on the draft PCI list for electricity by majority of the members present or represented. RAE and CERA voted against and provided a dissenting opinion.

4.4. ACER Decision on Core NRAs' request for deadline extension for a decision on the Core RD&CT proposal

The Director presented the draft Agency's Decision on the Core NRAs' request for deadline extension for a decision on the Core coordinated redispatching and countertrading proposal. The AEWG gave its advice on 9 September. No amendment or comment was submitted by the 17 September deadline.

The BoR provided its favourable opinion on the Agency's draft Decision on the Core NRAs' request for deadline extension for a decision on the Core RD&CT proposal by consensus of the members present or represented.

Decisions/ conclusions	<p>4.1 The BoR provided its favourable opinion on the Agency’s draft Decision on the Balansys compliance programme by consensus of the members present or represented.</p> <p>4.2 The BoR provided its favourable opinion on the Agency’s draft Opinion on ENTSOG’s Annual Report 2018 by consensus of the members present or represented.</p> <p>4.3 The BoR provided its favourable opinion on the Agency’s draft Opinion on the draft PCI list for gas by consensus of the members present or represented. The BoR provided its favourable opinion on the Agency’s draft Opinion on the draft PCI list for electricity by majority of the members present or represented. RAE and CERA voted against and provided a dissenting opinion.</p> <p>4.4 The BoR provided its favourable opinion on the Agency’s draft ACER Decision on Core NRAs’ request for deadline extension for a decision on the Core RD&CT proposal by consensus of the members present or represented.</p>
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5. Market Monitoring Report

5.1. 8th Market Monitoring Report (MMR) – Gas Wholesale Market Volume

The draft Gas Wholesale Market Volume of the 8th edition of the MMR was circulated. It presents the results of the monitoring of the European gas wholesale markets in 2018 and their trajectory towards an Internal Gas Market.

The BoR was invited to take note of the final version of the draft MMR’s Gas Wholesale Volume.

5.2. 8th Market Monitoring Report (MMR) – Retail Market Volume

The draft Electricity and Gas Retail Market Volume of the 8th edition of the MMR was circulated. The main objective of the Retail Market Volume is to report on the results of the monitoring of retail markets, in particular, the electricity and gas prices for household and industrial consumers throughout Europe. The BoR was invited to take note and to submit any comments as soon as possible.

Decisions/ conclusions	<p>5.1 The Gas Wholesale Market Volume of the 8th edition of the MMR was shared with the BoR.</p> <p>5.2 The draft Retail Volume of the 8th edition of the MMR was shared with the BoR. Any comments must be submitted as soon as possible, and by the end of September at the latest.</p>
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6. Gas

6.1. Important AGWG updates

The presentation by the AGWG Chair on the update on the ongoing work in the ACER Gas Working Group including the work of the Tariffs and Interoperability Task Forces was shared with the BoR for information.

6.2. ACER Decision on incremental capacity project DE-PL

The Director presented the draft Agency’s Decision on the application for the approval of an incremental capacity project for the market border of Poland (E-Gas Transmission System) and GASPOOL.

The AGWG advice was given on 11 September and was shared with the BoR. The deadline for adoption of the Decision is 23 October. The BoR agreed to the use of an electronic procedure for the provision of the BoR’s favourable opinion.

Decisions/ conclusions	6.2 The BoR agreed to the use of an electronic procedure (two/three round) for the provision of its favourable opinion on the Agency's draft Decision on the incremental capacity project between DE and PL.
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7. Electricity

<p>7.1. <u>Important AEWG updates</u></p> <p>The AEWG Vice-Chair provided an update on the ongoing work in the ACER Electricity Working Group. Specifically, regarding the 70% target, the AEWG works on a paper which aims to provide a common understanding and address the key issues regarding the compliance with the relevant provision and possible derogations. Members were invited to submit their feedback ahead of the electricity Cross-Border Committee meeting on 30 September.</p> <p>7.2. <u>Update on the ACER Decision on the Nordic Long-Term Capacity Calculation Methodology</u></p> <p>The BoR was informed about on the planning of the draft Decision on the Nordic LT capacity calculation methodology and on the key issues.</p> <p>The BoR took note of the preparation of the draft ACER Decision and the key issues.</p> <p>7.3. <u>Update on the ACER Decision on the amendment of the Harmonised Allocation Rules</u></p> <p>The BoR was informed about the preparation and the key issues regarding the draft Decision of the Agency on the amendment of the Harmonised Allocation Rules which is expected for the October BoR.</p> <p>The BoR took note of the update on the preparation and key issues around the draft ACER Decision.</p> <p>7.4. <u>Update on the ACER Decision on the amendment of the Core Regional Design of LTTRs</u></p> <p>The Agency's Head of the Electricity Department provided an update on the draft Decision of the Agency on the amendment of the Core Regional Design of Long Term Transmission Rights which is expected to be submitted for the October BoR as well as the key issues. On 3 July 2019, regulatory authorities of the Core capacity calculation region informed ACER that they could not approve the second amendment proposal of TSOs of the Core capacity calculation region on the regional design of long-term transmission rights.</p> <p>The BoR had a discussion on the key issues and two members raised concerns about the suggested approach.</p> <p>The BoR took note of the preparation of the draft ACER Decision on the amendment of the Core Regional Design of LTTRs.</p>

Decisions/ conclusions	<p>7.2 The BoR took note of the latest developments in the drafting of the ACER Decision on Nordic LT Capacity Calculation Methodology.</p> <p>7.3 The BoR took note of the latest developments in the drafting of the ACER Decision on the amendment of Harmonised Allocation Rules.</p> <p>7.4 The BoR took note of the latest developments in the drafting of the ACER Decision on the amendment of the Core Regional Design of LTTRs and members provided feedback.</p>
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8. Market Integrity and Transparency & Surveillance and Conduct

8.1. Updated Section 6.4.1 of the ACER Guidance on capacity withholding

The Director and the ACER HoD presented this issue. The Agency is proposing an update Section 6.4.1.i) of the ACER (non-binding) Guidance concerning withholding of generation capacity in wholesale electricity markets, pursuant to Article 16(1) of REMIT, in order to ensure that National Regulatory Authorities (NRAs) carry out their tasks under this Regulation in a coordinated and consistent way.

The BoR had a discussion about the updated Section 6.4.1. of the ACER Guidance on capacity withholding. In particular the Director stressed the urgency for the publication of this revised text to provide clarity on this aspect of the implementation of REMIT also in connection with a number of cases pending before national courts. In this context, the text will be streamlined with the elimination of a footnote presenting an example of bidding above marginal and opportunity costs which should not be considered as market abuse. At the same time, the Director signaled his intention that the Agency resumes its work on a Guidance note on capacity withholding, to explore the topic more widely.

Decisions

8.2. *The BoR discussed and took note of the updated section 6.4.1 of the ACER Guidance on capacity withholding.*

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Austria (E-Control)	M: Wolfgang Urbantschitsch	Italy (ARERA)	M: Clara Poletti A: Francesco Cariello
Belgium (CREG)	M: Koen Locquet	Latvia (PUC)	M: Rolands Irklis
Bulgaria (EWRC)	A: Evgenia Haritonova	Lithuania (NERC)	M: Inga Žilienė
Croatia (HERA)	M: Tomislav Jureković	Luxembourg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Andreas Poullikkas	Malta (REWS)	A: Phyllis Micallef
Czech Republic (ERO)	M: Martin Šik	Netherlands (ACM)	M: Henk Don
Denmark (DUR)	M: Carsten Smidt	Poland (URE)	M: Rafał Gawin
Estonia (ECA)	A: Marilyn Tilkson	Portugal (ERSE)	M: Pedro Verdelho
Finland (EV)	Represented by proxy	Romania (ANRE)	O: Roxana Elena Gheorghe
France (CRE)	A: Jean-Laurent Lastelle	Slovakia (RONI)	A: Denisa Lanikova
Germany (BNetzA)	Represented by proxy	Slovenia (AGEN-RS)	M: Duška Godina
Greece (RAE)	-	Spain (CNMC)	O: Gema Rico
Hungary (HEA)	M: Attila Nyikos	Sweden (Ei)	M: Caroline Tornqvist
Ireland (CRU)	O: Andrew Ebrill	United Kingdom (Ofgem)	M: Andrew Burgess
ACER	Fay Geitona, Sander Ramp		

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

The BoR members were invited by the Chair to declare any interest that could have impaired the impartiality of the process. No member declared a relevant interest.

The Administrative Board has selected Mr Christian Zinglensen as the candidate to be appointed as ACER Director and invited the BoR to provide its favourable opinion in accordance with Articles 19(1)(a) and 23(2) of the ACER Regulation (2019/942).

The BoR convened on 25 September in a restricted section (one member per delegation) in order to discuss and provide its opinion on the basis of a secret vote on the candidate selected by the Administrative Board for the position of the ACER Director.

The BoR Chair presented the legal framework and the agreed process which aimed to ensure strict confidentiality arrangements and the impartiality of the process.

The BoR provided its favourable opinion on the candidate to be appointed as ACER Director by the required two-thirds majority of the members present or represented.