

92nd ACER Board of Regulators Meeting

16 July 2020

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: Rolands Irklis A: Lija Makare
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren	Lithuania (NERC)	M: Inga Žilienė A: Irma Vasarytė
Bulgaria (EWRC)	A: Evgenia Haritonova O: Iva Georgieva	Luxembourg (ILR)	M: Camille Hierzig
Croatia (HERA)	M: Tomislav Jureković A: Sonja Tomašić Škevin	Malta (REWS)	A: Phyllis Mycallef O: Manuel Manuzzi
Cyprus (CERA)	O: Marilena Delenta	Netherlands (ACM)	A: Remko Bos (S) O: Wieger Wiersema
Czech Republic (ERO)	A: Jana Haasová O: Tomáš Kupčička	Poland (URE)	A: Małgorzata Kozak O: Danuta Sierocińska
Denmark (DUR)	O: Thomas vom Braucke	Portugal (ERSE)	M: Pedro Verdelho O: Natalie McCoy
Estonia (ECA)	A: Marilyn Tilkson O: Karin Maria Lehtmets	Romania (ANRE)	O: Florin Tobescu
Finland (EV)	A: Antti Paananen	Slovakia (RONI)	A: Denisa Lanikova
France (CRE)	A: Jean-Laurent Lastelle O: Romain Charvet	Slovenia (AGEN-RS)	A: Bojan Kuzmič
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov	Spain (CNMC)	A: Esther Espeja O: María Jesús Martín
Greece (RAE)	M: Apostolis Gotsias A: Georgios Paidakakis	Sweden (Ei)	M: Anne Vadasz-Nilsson O: Kristina Welin
Hungary (HEA)	O: Ádám Krinszki	EEA-EFTA State Iceland	M: Guðni A. Jóhannesson A: Hanna Bjorg Konradsdóttir
Ireland (CRU)	M: Jim Gannon	Norway (NVE-RME)	A: Anne Dønnem

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

Italy (ARERA)	M: Clara Poletti A: Francesco Cariello O: Ilaria Galimberti	EFTA Surveillance Authority (ESA)	-
ACER	Christian Zinglensen, Christophe Gence-Creux, Dennis Hesseling, Martin Godfried, Volker Zuleger, Fay Geitona, Mitsuko Akiyama		
European Commission	Guido Bortoni, Michael Schuetz		
CEER	Charles Esser		

1. Opening

1.1. Approval of the agenda

The agenda of the 92nd 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.

Minutes of the 91st BoR meeting

The minutes of the 91st BoR meeting were approved and sent to the European Parliament on 30 June 2020.

Decisions/ Conclusions

1.1 The BoR approved the agenda.

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

2.1. Updates from ACER

Mr Bortoni reported on the Network Code Implementation and Monitoring Group meeting that took place on 8 July. This is a high-level trilateral discussion between the European Commission, ACER and the ENTSOs to discuss key issues relating to Network Codes and Guidelines. Among the key issues discussed was the network codes and CEP implementation status and the importance of timely delivery, the planning for the proposals for amendments to Network Codes and Guidelines, the planning for the Cyber Security Network Code and delays in implementing a number of critical methodologies.

The Director also reported on the meeting of the ACER Contact Group in the European Parliament's ITRE Committee, which took place on 2 July. There was a broader discussion on ACER resources in the context of upcoming budget negotiations as well as about ACER role and value added in in the Green Deal and Next Generation EU, and its contributions to wider EU priorities, in particular: decarbonisation and Green Deal policy objectives; protecting security of supply across Europe; reinforcing European competitiveness in a global economy; and securing the affordability of energy for European consumers.

The BoR took note of the latest publications of the Agency as well as the outcomes of the following BoR electronic procedures since the last BoR meeting:

The electronic procedure for the ACER Decision on the methodology for classifying the activation purposes of balancing energy bids concluded on 2 July. No comments or amendments were submitted during the first round. 25 members participated in the second round. The BoR favourable opinion was provided by the required two-thirds majority.

The electronic procedure for the ACER Decision on common settlement rules for all intended exchanges ended on 2 July. 27 members participated and the BoR favourable opinion was provided by consensus.

The electronic procedure for the ACER Decision on the harmonisation of the main features of imbalance settlement ended on 2 July. 26 members participated. The BoR favourable opinion was provided by the required two-thirds majority.

The electronic procedure for the two ACER decisions on the request of NRAs of the HANSA Capacity Calculation Region (CCR) to extend the period for decision ended on 1 July. 23 members participated. The BoR favourable opinion was provided by the required two-thirds majority.

The electronic procedure for the BoR favourable opinion on the Annual Consolidated Report on progress of Projects of Common Interest was conducted in three rounds. During the first round, two proposals for amendments were submitted which were adopted in the second round by the required two-third majority.

During the third round 27 members participated and the BoR favourable opinion was provided by the required two-thirds majority.

2.2. Updates from the European Commission

Mr Schuetz informed members about the 2021 ACER budget proposed by the Commission, which is lower than the ACER request but more than the 2020 budget. The EU subsidy was reduced to take account of the fees to be collected in 2021. (€14,434,363 in EU budget subsidy, €4,730,075 to be collected as REMIT fees and the EFTA contribution of €384,372). The EC proposes three more contract agent posts (Function Group IV) for 2021. The European Commission has submitted its proposal to the European Parliament and the Council. However, he reported that the timing for the discussions by the Budgetary Authority on the 2021 budget may depend on the progress of the ongoing discussions on the Multiannual Financial Framework for the years 2021-2027.

The Chair invited the Director to present ACER's reflections on the proposed budget. He noted that the total budget proposed is less than the ACER request in January (€21,434,793). This does not take into account the political compromise reached under the Clean Energy Package to put REMIT on a sound financial footing nor it addresses the significantly underfunded REMIT IT expenditure; the normal year of salaries for the new Clean Energy Package positions; and the unexpected increase in the number of legal appeals. An adequate ACER budget is crucial for promoting greater competition and security of energy supply for the benefit of all EU citizens and in line with the broader EU objectives. The Director noted the importance that the new REMIT fee model allows for a flexible ceiling. An increase in the EU budget subsidy is also needed to address the shortages of staff and key expenditure, without having to rely heavily on uncertain fees to cover additional expenditure, especially in the first year of the fee model implementation. An increase in the establishment plan posts envisaged by the EC by five additional temporary positions is also fundamental.

The Chair reiterated the BoR's strong support on ACER's 2021 draft budget and its readiness to actively support the need for ACER resources during the upcoming discussions by the Council and the European Parliament.

Mr Bortoni also gave an update on the EC public consultation on TEN-E revision, which ended on 13 July. This initiative aims to accelerate project implementation, to better serve changed EU policy objectives and to address post-covid recovery. The EC needs to assess the feedback to the public consultation over the summer and intends to present the legislative proposal by the end of the year. The EC welcomes the ACER-CEER position paper on the TEN-E revision recognising that ACER has a key role in the TYNDP and PCI processes and sees the need for streamlining the process.

The Chair informed the BoR on the meeting between the Director, the CEER President and herself with Mr Grassi, the Head of Cabinet of the energy Commissioner Ms Simson.

The BoR Chair thanked the European Commission for their updates.

2.3. Updates from the BoR Chair

In terms of the planning of the meetings for the second half, the Chair noted the need to gradually transition to physical meetings possibly for October and November, while having a virtual meeting in September. Members noted the current uncertainty for travel restrictions; if confirmed, the possibility for allowing virtual access for the envisaged physical meeting needs to be considered.

The developments in the fall regarding travel restrictions will be reconsidered before a definitive decision on the 2nd half planning.

The Chair referred to the need for early high-level coordination among BoR members and supported having dedicated meetings for very critical issues for which an in-depth discussion is needed.

The Chair also referred to the circulated note on the BoR Away Day scheduled for 17th November. Members discussed and provided feedback on the proposed scope and timeline and agreed the next steps. An agenda will be presented at the September meeting and the Chair called for volunteers to work with the persons in charge of preparing proposals on the specific topics to be communicated shortly to the BoR Secretariat.

Members took note of the preparations needed and the timeline.

2.4. Updates from members – North Seas Energy Cooperation

Ms Groebel presented the work of the North Seas Energy Cooperation (NSEC) including the main objectives, structure, and the work by the relevant subgroups. Members and the Director noted the importance of these types of multi-jurisdictional models and the benefit of the involvement of the regulatory community to such discussions on issues which are extremely important from a regulatory perspective. The EC welcomed the engagement of the regulatory community to draw from regulatory experience and to provide useful input on the issues under consideration.

The Chair thanked Ms Groebel for the presentation on the topical subject of offshore renewable energy.

Decisions/ Conclusions

2.3 The BoR agreed the scope of the Away Day (subject to the feedback provided) to take place on 17 November 2020.

3. Keeping sight of the wider Energy Union context

3.1. Update on the EU Green Deal & Roadmap

Mr Bortoni presented the key elements of the EU strategies on hydrogen and Energy System Integration (ESI), which were published on 8 July, with emphasis on regulatory issues which are well-“integrated” in both Strategies. A dedicated public event by the EC is envisaged by the end of 2020 and the EC would welcome the input of the regulatory Community. He noted that ESI entails that the system is planned and operated as a whole, linking different energy carriers, infrastructures, and consumption sectors. Demand is the big actor to be integrated. The three pillars for ESI are: a more circular and energy efficient energy system; a deep electrification of consumption, based on renewable electricity; the use of renewable and low carbon fuels (including hydrogen) in hard-to-abate sectors. It means retooling the system in terms of making energy markets fit for decarbonisation and distributed resources; more integrated energy infrastructures; digitalising the energy system and a supportive innovation framework.

The hydrogen strategy is integral to the decarbonisation of industry, transport, power generation and buildings where electrification is not possible or very costly, and provides storage and buffering function to balance variable renewable energy flows. The priority is to develop renewable hydrogen, produced using mainly wind and solar energy; in the short and medium term, other forms of low-carbon hydrogen are needed to rapidly reduce emissions and support the development of a viable market. There are key issues of regulatory interest including boosting demand and scaling up production; developing hydrogen infrastructure; markets, research and innovation. The EC welcomes the regulatory input in this debate.

The Director welcomed the presentation and noted the need for a proper implementation of the CEP in order to build on the current framework and tools in order to serve these broader objectives of the EC.

The Chair thanked the European Commission for the updates and opened the floor for discussion.

4. Items for discussion and agreement

4.1. ACER Decision on common market rules for procurement and exchange of balancing capacity for the Nordic CCR

The Director presented the four proposals for Decisions under this session. These have been fully discussed at the level of the AEWG and BoR. The AEWG advice is broadly supportive of the decisions. The deadline for the decisions is 17 August.

The Chair reported that no comments or amendments have been submitted by the deadline, and invited members to vote on the proposal. The BoR provided its favourable opinion by consensus of the members present or represented.

4.2. ACER Decision on the exemption to the obligation to allow transfer of balancing capacity for the Nordic CCR

The Chair reported that no comments or amendments have been submitted by the deadline, and invited members to vote on the proposal.

The BoR provided its favourable opinion by consensus of the members present or represented.

4.3. ACER Decision on the application of a market-based allocation process for the Nordic LFC Block

The Chair reported that no comments or amendments have been submitted by the deadline, and invited members to vote on the proposal.

The BoR provided its favourable opinion by consensus of the members present or represented.

4.4. ACER Decision on a market-based allocation process of cross-zonal capacity for the exchange of balancing capacity for the Nordic CCR

The Chair reported that no comments or amendments have been submitted by the deadline, and invited members to vote on the proposal.

The BoR provided its favourable opinion by consensus of the members present or represented.

Decisions/ Conclusions

4.1 The BoR provided its favourable opinion on the ACER Decision on common market rules for procurement and exchange of balancing capacity for the Nordic CCR by consensus of the members present or represented.

4.2 The BoR provided its favourable opinion on the ACER Decision on the exemption to the obligation to allow transfer of balancing capacity for the Nordic CCR by consensus of the members present or represented.

4.3 The BoR provided its favourable opinion on the ACER Decision on the application of a market-based allocation process for the Nordic LFC Block by consensus of the members present or represented.

4.4 The BoR provided its favourable opinion on the ACER Decision on a market-based allocation process of cross-zonal capacity for the exchange of balancing capacity for the Nordic CCR by consensus of the members present or represented.

5. Cross-sectoral

5.1. Energy Community Regulatory Board (ECRB) update

Mr Hesseling as the ACER representative to the ECRB updated members on matters discussed at the 43rd (October 2019), 44th (December 2019) and 45th (June 2020) meetings of the ECRB, focusing on the latest developments in the Contracting Parties, and institutional cooperation between the Agency and the Energy Community.

The BoR took note of the above developments.

5.2. Update on the AWG Rules of Procedure (RoP)

The Chair updated members on the state of play regarding the adoption of the AWG RoP. On completion of the AB deliberation procedure the proposal for the AWG RoP will be submitted to the BoR for favourable opinion. The Chair sought members' agreement to the use of the electronic procedure for securing their favourable opinion.

Decisions/ Conclusions

5.2 The BoR agreed to the use of the electronic procedure to provide its favourable opinion on the AWG RoP.

6. Gas

6.1. Important AGWG updates

Mr Verdelho as the AGWG Chair provided an update on the ongoing work in the ACER Gas Working Group and the Tariffs, Balancing, Gas Infrastructure, Interoperability and Capacity Allocation Mechanisms, Task Forces.

6.2. ACER Implementation Monitoring Report on the Capacity Allocation

Mr Hesseling presented the Implementation Monitoring Report on the Capacity Allocation. Article 9(1) of the Gas Regulation requires the Agency to monitor and analyse the implementation of the Network Codes and Guidelines adopted by the Commission and their effect on the harmonisation of applicable rules aimed at facilitating market integration, as well as on non-discrimination, effective competition and the effective functioning of the market, and report to the Commission.

The report contains updates on two topics, virtual connection points (VIPs) and the incremental process, which were implemented after the publication of the first Implementation Monitoring Report in 2016, and takes stock of experiences. Mr Hesseling highlighted that both incremental capacity and VIPs are elements of the Network Code on Capacity Allocation Mechanisms that contribute to more efficient and better integrated gas markets in Europe. The incremental capacity process facilitates the efficient development of the cross-border gas network in response to robust market demand, whereas VIPs make it easier for market players to move gas between markets by optimising the commercial capacity offer at a single virtual border point instead of allocating cross-border capacity per physical IP on that border. Since the monitoring exercise indicates that experiences are still limited, the report aims to be facts-oriented.

7. Electricity

7.1. Important AEWG updates

Ms Materazzi-Wagner as the AEWG Chair provided an update on ongoing work in the ACER Electricity Working Group and the work done by the Capacity Allocation and Congestion Management, Forward Capacity Allocation and System Operation and Grid Connection Task Forces.

7.2. Report on the preparatory discussion on the regulatory enforcement framework

The Chair invited Ms Materazzi-Wagner to report on the discussion regarding the effective implementation of the Capacity Allocation and Congestion Management (CACM) and Forward Capacity Allocation (FCA) Regulations in particular.

The BoR discussed the future arrangements to pursue this work efficiently by establishing an *ad hoc* group. The BoR Chair in coordination with the AEWG Chair will shortly provide a more detailed proposal on the efficient way forward and timeline to carry out this work.

7.3. Update on Adequacy-related methodologies

The Director and Mr Gence-Creux presented the state of play of the following adequacy-related methodologies, which were received on 4 May in accordance with Article 9(1)(a) of the ACER Regulation and Article 23(7) of the Electricity Regulation: the methodology for the European resource adequacy assessment (ERAA) to be conducted every year by ENTSO-E based on data provided by national transmission system operators and market participants; and the methodology for calculating the value of lost load, the cost of new entry and the reliability standard (VoLL, CoNE, RS) to provide Member States with a common approach for determining their desired levels of security of electricity supply. The methodologies have been extensively discussed at the ACER Electricity Working Group, and a dedicated BoR discussion took place on 8 July. A final hearing with ENTSO-E will be scheduled for next week. These methodologies provide the basis for assessing whether the EU, as a whole, has sufficient electricity resources to meet its future electricity needs, and seek to ensure and improve the reliability of Europe's electricity supply. They will evolve over time, their approval being the first step and a transition period will take place until full implementation. The deadline for adopting these methodologies is 5 August.

The BoR discussed the next steps and agreed to the use of an electronic procedure for the provision of its favourable opinion.

7.4. Update on the EU DSO entity

The Director reported that on 24 June, the draft statutes of the 'EU DSO entity,' its code of conduct, list of potential members and the draft rules of procedure, including on consultations, were received in accordance with Article 53 of the Electricity Regulation. These documents have been circulated for discussion. Within two months of receiving the draft statutes and related documents, ACER must provide the Commission with its opinion after consulting the organisations representing all stakeholders, in particular distribution system users (Article 53(3)). The deadline for issuing the opinion being 24 August, the BoR favourable opinion will be sought by way of an electronic procedure.

The creation of the EU DSO Entity is welcomed by the DSOs, who will play a key role in the context of an energy transition that couples decentralization and digitalisation with decarbonisation, and the creation of the EU DSO Entity will also facilitate coordinated planning and operation of distribution and transmission systems in the electricity sector. Its statutes should be in place by January.

Mr Gence-Creux referred to the key points and timeline for the adoption of this decision following the finalisation of the public consultation which ends on 27 July and in view of the tight deadline for the adoption of the decision.

Members provided feedback on the key issues including on the next steps. They noted the need for early involvement of the AEWG and the BoR perhaps through an additional dedicated telco given the tight deadline for the adoption of the decision and the need for an electronic procedure during the summer break. Members were invited to submit their feedback as soon as possible to Mr Martinet. The BoR agreed to the use of an electronic procedure whilst the exact timings will be reconsidered in the light of the importance of the issues raised following the first round for proposals for comments and amendments.

8. Market Integrity and Transparency & Surveillance and Conduct

8.1. REMIT CG and AMIT WG updates

Ms Groebel, the AMIT WG Chair, provided an update on the ongoing work in the ACER Market Integrity & Transparency Working Group.

8.2. EC Decision on REMIT fees

Mr Schuetz and Mr Zuleger presented the key elements of the envisaged REMIT fee model on the basis of Article 32 of the ACER Regulation. The presentation addressed the identification of eligible costs to be funded by fees, key principles for the design of the fee model (notably, simplicity, transparency, feasibility, proportionality to costs, and non-discrimination) and modelling considerations in order to comply with those key principles.

In terms of the preparation of the EC decision, the public consultation on REMIT fees (8 June – 31 August) was complemented by a stakeholders' workshop which took place on 15 July. Ms Schuetz reported on the successful workshop which received a good turnout of around 150 participants which allowed a constructive discussion displaying the interest in contributing to the proper implementation of REMIT whilst recognising that it will be difficult to find a fee scheme which is welcomed by everybody. Further consultation of the Administrative Board and of the Board of Regulators is envisaged in September. The adoption of the EC decision is envisaged for early November.

Members provided feedback on the REMIT fee model.

AOB

ARERA informed the members on a current exemption request assessed by ARERA and E-Control on a PCI project.