

97th ACER Board of Regulators Meeting
27 January 2021
By video/audio conference

MINUTES (FINAL)

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
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren	Lithuania (NERC)	M: Renatas Pocius A: Irma Vasarytė
Bulgaria (EWRC)	A: Evgenia Haritonova	Luxembourg (ILR)	M: Camille Hierzig
Croatia (HERA)	O: Sonja Tomašić Škevin	Malta (REWS)	A: Phyllis Mycallef O: Manuel Manuzzi
Cyprus (CERA)	O: Marilena Delenta (with proxy)	Netherlands (ACM)	A: Remko Bos O: Wieger Wiersema
Czech Republic (ERO)	A: Jana Haasová O: Tomáš Kupčíha	Poland (URE)	A: Małgorzata Kozak O: Sierocińska Danuta
Denmark (DUR)	A: Mads Lyndrup	Portugal (ERSE)	A: Pedro Verdelho O: Natalie McCoy O: Catharina Santos
Estonia (ECA)	A: Marilyn Tilkson	Romania (ANRE)	O: Florin Tobescu (with proxy)

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

Finland (EV)	A: Antti Paananen	Slovakia (RONI)	A: Mária Bronišová O: Vlastimil Jurkuliak
France (CRE)	A: Jean-Laurent Lastelle O: Dab Samuel	Slovenia (AGENS)	A: Bojan Kuzmič
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov	Spain (CNMC)	A: Esther Espeja O: Gema Rico
Greece (RAE)	M: Apostolos Gotsias A: George Paidakakis	Sweden (Ei)	M: Anne Vadasz-Nilsson A: Caroline Törnqvist O: Johan Roupe
Hungary (HEA)	M: Pál Ságvári A: Gergely Szabó	EEA-EFTA State Iceland	M: Gudni A. Jóhannesson A: Hanna Björg Konráðsdóttir
Ireland (CRU)	M: Jim Gannon O: Barry Hussey (with proxy)	Norway (NVE-RME)	A: Anne Dønnem
Italy (ARERA)	M: Clara Poletti A: Francesco Cariello O: Ilaria Galimberti	EFTA Surveillance Authority (ESA)	O: Ada Gimnes Jarøy
ACER	Christian Zinglensen, Christophe Gence-Creux, Dennis Hesseling, Martin Godfried, Volker Zuleger, Bart Vereecke, Una Shortall, Fay Geitona, Mitsuko Akiyama		
European Commission	Tadhg O'Briain, Michael Schuetz, Oliver Koch, Mathilde Carbonnelle, Irina Minciuna, Anca Cimpeanu		

1. Opening

1.1. Approval of the agenda

The agenda of the 97th 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.

The Chair welcomed the new BoR member from Lithuania, Mr Renatas Pocius, who has been recently appointed as the Chair of NERC. Mr Pocius introduced himself and explained his background and experience in energy regulatory issues in Lithuania and his keen interest to engage with the ACER BoR.

1.2. Minutes of the 96th BoR meeting

The minutes of the 96th BoR meeting were approved and sent to the European Parliament on 6 January.

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 BoR took note of the outcomes of the BoR electronic procedures for the BoR favourable opinions on the ACER Working Group Rules of Procedure (AWG RoP) and on the Administrative Board (AB) decision establishing the ACER Retail Working Group (ARWG). Those electronic procedures were conducted in a single round ending on 22 December, in which 27 members participated and agreed to decide through electronic procedures. The BoR favourable opinions on the respective decisions were provided by consensus and by the required majority of members participating in the procedures.

2.2. Updates from the BoR Chair

The BoR Chair announced that Mr Irklis will be stepping down from his position as the BoR Vice Chair. She noted the significant contribution and support of Mr Irklis to the ACER BoR work and thanked him for his firm commitment.

Mr Irklis explained that he has been selected to lead the Latvian Supreme Audit Institution and he thanked the BoR for their trust noting his very constructive experience of an excellent cooperation with the BoR and ACER colleagues.

The Chair explained the next steps for the election of his successor. She intends to open the call for nominations of candidates in February for the BoR to decide subsequently. The BoR took note of the next steps.

The BoR Chair presented the conclusions of Parts 1 and 2 of the BoR Away Day, and some of the actions underway and the BoR had a discussion.

**Decisions/
 Conclusions**

2.2a The BoR endorsed the conclusions of the BoR Away Day.

2.2b The call for nominations for the position of the BoR Vice Chair will be opened in February for a decision at the March BoR.

3. Keeping sight of the wider Energy Union context

3.1 Update on the EU Green Deal and other updates

The BoR Chair invited the EC to present their proposal for a revised Regulation on Guidelines for Trans-European Energy Infrastructure (TEN-E) of 15 December 2020.

Ms Cimpanu noted that the EC proposal aims to align the infrastructure needs with the future clean energy system which focuses on the (upgraded) 2030/2050 climate and energy targets, the climate neutrality objective and technological developments while ensuring contribution to market integration, security of supply and competitiveness. To this end, the proposal is fully aligned with the Green Deal goals: It reflects an increased focus on offshore grids covered under four new priority corridors reflecting Europe's sea basins and building on regional cooperation strengths. The proposal operationalises the ambitions in the EU Strategy for Offshore renewables by including dedicated planning (integrated offshore development plans), permitting (one-stop shop) and regulatory tools (incentives) to facilitate scale-up of offshore grids to the target 300 GW in 2050.

The proposal also supports the scale-up of smart electricity grids by: streamlining and modernising eligibility criteria to reflect technological development, digitalisation and cyber security in transmission and distribution networks; clarifying eligible project promoters in smart grids; etc. The proposal provides for exclusion of natural gas infrastructure and oil pipelines and supports new and repurposed dedicated hydrogen networks and electrolyzers above 100 MW and tap into locally produced renewable and low-carbon gases (biogas, biomethane) through IT-focused smart gas grids. The revised provisions provide an inclusion of a mandatory sustainability criterion for all infrastructure categories and create an optimal and efficient integrated infrastructure planning on the basis of scenarios that are in line with decarbonisation targets and Commission scenarios. The proposal introduces oversight from the Commission on the main inputs to the TYNDPs, strengthens the role of ACER, ensures coordination in long-term planning and development of offshore and onshore electricity grids and introduces integrated offshore network development plans in the TYNDPs.

Regarding permitting although the TEN-E framework helped to accelerate permit granting, PCIs still experience delays. The new provisions introduce one-stop shop per sea basin for offshore permitting; clarify permitting regimes; introduce accelerated court proceedings to accelerate permitting.

Last the scope is extended to projects connecting the EU with third countries (PMIs) given their expected increasing role in achieving the climate objectives.

The BoR Chair thanked the EC for their presentation and opened the floor for discussion.

The BoR discussed the proposal outlining their considerations, support or concerns regarding key issues emerging from the proposal and exchanged views with the EC.

Mr Koch referred to the ruling of the Court of Justice of the European Union on the infringement case C-767/19 of December 2020, and the opinion of the Advocate General in another pending case C-718/18. Both pertain to the independence of the energy regulatory authorities and the delimitation of responsibilities between governments and energy regulatory authorities including in respect of key elements of energy tariffs and network regulation in line with the relevant provisions of the Directives concerning common rules for the internal market in electricity and gas. The Chair suggested scheduling a discussion for the March BoR on this matter and invited Mr Locquet to present the key elements of the Court ruling and the Advocate General Opinion on cases C-767/19 and C-718/18 respectively.

4. Items for BoR opinion/approval/agreement

4.1. Report on distribution tariff methodologies in Europe

The Director and Mr Gence-Creux presented the draft report on distribution tariff methodologies in Europe. In accordance with Article 18(9) of Regulation (EU) 2019/943, ACER must provide and update, at least every two years, a best practice report on distribution tariff methodologies, while taking account of national specificities. The report submitted for BoR favourable opinion complements the ACER 2019 report on practices regarding transmission tariff methodologies and provides a status review of distribution tariff structures across the 27 EU Member States. Mr Gence-Creux noted that the Agency has accepted a number of factual corrections submitted by NRAs. The BoR discussed the report in detail.

The BoR Chair invited members to proceed with the vote on the BoR favourable opinion. 27 members participated. The BoR favourable opinion was provided by the required two-thirds majority of the members present or represented.

4.2. Policy paper on balancing misconduct in European Gas Markets

The paper was submitted to the BoR for endorsement. Mr Verdelho noted that ENTSOG Board confirmed its agreement on the joint paper.

The BoR Chair invited members to proceed with the vote. 27 members participated and the BoR unanimously endorsed the paper.

4.3. White paper on the regulatory treatment of power-to-X facilities

The BoR discussed the paper including some last minute modifications.

The BoR agreed on the next steps to endorse the paper. The paper will be finalised between ACER, the BoR Chair and the CEER president and be subject to a single round EP for its endorsement.

4.4. The White Paper on Hydrogen Networks

The BoR discussed the paper including some last minute modifications.

The BoR agreed on the next steps to endorse the paper. The paper will be finalised between ACER, the BoR Chair and the CEER president and be subject to a single round EP for its endorsement.

4.5. ACER Draft Programming Document 2022

Article 20(1) of the ACER Regulation provides that each year, the Director shall prepare a draft programming document containing annual and multi-annual programming, and submit it to the Administrative Board (AB) and to the BoR. The AB adopts the draft programming document following receipt of a BoR favourable opinion, and submits it to the European Parliament, to the Council and to the Commission no later than 31 January.

The Director presented the draft Programming Document for BoR approval/favourable opinion. The document places multiannual programming 2022-24 and 2022 Work Programme in a context of significant change (e.g. energy transition and the EU Green Deal), outlining current and future challenges starting with the completion of the Internal Energy Market, and how the Agency aims to address them. The Director's foreword provides some thoughts in this respect on ACER going forward, trying to convey the looming tasks and challenges ahead which will rely on a wider recognition of ACER's work by the Institutions and their support for adequate resources for ACER. In terms of the 2022 resources request, the Director puts forward a modest realistic proposal substantiated by the needs in particular regarding REMIT tasks and legal support (multiplying legal appeals); the 2022 budget request thus amounts to €25.134.958 (€24.450.169 from fees and EU contribution) and additional 13 FTEs (including SNE) funded by fees and the EU subsidy .

The BoR approved the Draft Programming Document 2022-24 supporting the 2022 ACER budget request by consensus of the members present and/or represented.

4.6. Next steps on the appointment of the Chair of the ARWG

The BoR Chair outlined the next steps for the appointment of the ACER Retail Working Group (ARWG) Chair. According to the draft AB decision on the establishment of the ACER Retail Working Group (ARWG) (which received the BoR favourable opinion last year and will be submitted to the AB at its January meeting), the AWG Chairs are appointed by a joint decision of the Director and the BoR. Subject to BoR agreement on this point and to the AB decisions adopting the new AWG RoP and establishing the ARWG, the joint decision appointing the ARWG Co-Chairs will take effect on 29 January. Members agreed by consensus on the appointment of Ms Jana Haasová and Ms Natalie McCoy as co-chairs of the ARWG as per the draft joint decision of the Director and the BoR.

4.7. ACER opinion on the ENTSO-E WO

The Director informed members that ENTSO-E published the Winter Outlook 2020–2021 report (WO) on November 30th, on which ACER may provide an opinion. He explained the importance to provide the ACER opinion promptly in order to allow ENTSO-E to take it into account in its upcoming seasonal assessment. The use of the electronic procedure

would enable the publication of the opinion by mid-February. Members unanimously agreed to the use of the electronic procedure.

**Decisions/
Conclusions**

4.1 The BoR provided its favourable opinion on the report on distribution tariff methodologies in Europe by the required majority of the members present and represented.

4.2 The BoR endorsed the policy paper on balancing misconduct in European Gas Markets by consensus of the members present and represented.

4.3 The BoR agreed the next steps for the endorsement of the white paper on the regulatory treatment of power-to-gas through a single round electronic procedure.

4.4 The BoR agreed the next steps for the endorsement of the white paper on Hydrogen Networks through a single round electronic procedure.

4.5 The BoR approved the ACER Draft Programming Document 2022 and supported the 2022 budget request by consensus of the members present and represented.

4.6 The BoR and the Director agreed by consensus to appoint Ms Jana Haasová and Ms Natalie McCoy as Co-Chairs of the ARWG which will take effect as of 29/01.

4.7 The BoR unanimously agreed to use the electronic procedure to secure its favourable opinion on the ACER opinion on the ENTSO-E WO.

5. Market Integrity and Transparency & Surveillance and Conduct

5.1 Update on Market Surveillance and Cases

Mr Godfried as the ACER HoD for Market Surveillance and Conduct presented the key developments and trends in 2020 and outlook for 2021 as regards market surveillance and case coordination activities, including: the establishment of the ACER REMIT Committee (ARC); the recent REMIT sanction decisions by NRAs; the strong impact of COVID-19 with respect to business continuity on REMIT surveillance and case activities which has delayed some of the work; the changing market developments impacting market surveillance; the increase in complexity of cases requiring more case coordination from NRAs; and the likelihood that REMIT fees will address the financial resources but not the human resources.

The BoR Chair thanked Mr Godfried for the update.

5.2 Update on data collection and sharing

Mr Zuleger as the ACER HoD for Market Integrity and Transparency presented the state of play on data collection and data sharing, outlining: multiple issues with data collection and sharing which occurred in October, November and most recently, the REMIT Information System (ARIS) having been unavailable for data collection during parts of December, illustrating the risks and consequences of chronic underinvestment. Mr Zuleger also updated members on the measures put in place at the end of the Brexit transition period (to allow UK market participants trading in EU energy wholesale markets to re-register with EU NRAs) as well as the fee collection process to start in 2021 (31 March 2021 is the earliest deadline ACER can set for the payment of the invoices). The BoR Chair thanked Mr Zuleger for the update.

Related to the newly introduced fees for ACER tasks under REMIT, Mr Schuetz reported that ENTSOG and several of its members raised concerns as regards their possibility to recover the costs incurred by the fees through network tariffs. Therefore, TSOs can be expected to approach the respective regulatory authorities since deciding to which extent electricity or gas transmission system operators who are registered reporting mechanisms can recover costs incurred by having to pay the fees due to the Agency from network users via network tariffs is part of the duties and powers of Member States' regulatory authorities.

6. General

6.1. ACER communication and dissemination plans

Article 41(5) of the ACER Regulation provides that ACER may engage in communication activities within its field of competence in accordance with the communication and dissemination plans adopted by the Administrative Board. Article 22(5)(g) of the same provides that the BoR shall provide an opinion to the AB on the communication and dissemination plans.

Ms Shortall presented the dissemination plan for discussion. The communication strategy was endorsed at the October AB meeting and was discussed at the November BoR. The communication and dissemination plan is a practical translation of the strategy document into actions including budgetary aspects. The plan centres around the following 6 themes, accompanied by concrete actions and timeline: (i) an enhanced visual identity so that the ACER brand is identifiable; (ii) a new and more content driven website, user-friendly, and easily accessible to show the face and voice of ACER; (iii) a higher presence of the Agency on social media; (iv) external communication to adapt a more diversified messaging to a broader audience (v) stakeholder management actions (and (vi) internal communication. This is expected to be delivered with the current set of resources.

The BoR Chair thanked Ms Shortall for the presentation and explained the next steps.

Subject to its endorsement by the AB at its January meeting, the AB will seek the BoR's opinion on the communication and dissemination plan and then adopt it. The Chair clarified that the BoR opinion will be provided in the form of a letter and, therefore, members were invited to submit their comments within a week.

7. Electricity and Gas

7.1. Important AEWG and AGWG updates

The BoR Chair referred members to item 8.3 for further updates.

Mr Verdelho referred to the AGWG planning and pointed also to an OFGEM decision on revenue recovery issues, which will impact tariffs at IPs with Member States.

7.2. ACER Decision on the definition of System Operation Regions

Mr Gence-Creux informed members of the state of play and next steps regarding the ACER Decision on the definition of System Operation Regions (SOR). On 4 June 2020, the Board of Appeal received an appeal brought by ENTSO-E against ACER Decision No. 10/2020 of 6 April 2020 on the definition of SORs. In September 2020, the Board of Appeal decided to remit the case to the Director due to insufficient reasoning and the Agency is preparing a new decision explaining the application of Article 36(1) requirements. The hearing with ENTSO-E and AEWG advice are envisaged next month, and the final decision will be presented for BoR favourable opinion at the March BoR.

7.3 CH participation in EB platforms

The AEWG Chair updated members on recent developments regarding Swissgrid's participation in the European platform for the exchange of balancing energy from Replacement Reserves (TERRE).

Mr Koch expressed the Commission's concern over the recent decision to admit Swissgrid as shareholder to Regional Coordination Centres ("RCCs"). As this decision appears to be not in line with the rules on third country TSO participation in EU bodies,

the Commission will seek a swift resolution of this issue in discussions with regulatory authorities/Member States as soon as possible.