

86th ACER Board of Regulators Meeting

22 October 2019

Madrid, Spain

Minutes (final)

Member States	Name ^[1]	Member States	Name
Austria (E-Control)	A: Dietmar Preinstorfer O: Christine Materazzi-Wagner	Italy (ARERA)	M: Clara Poletti A: Francesco Cariello O: Ilaria Galimberti
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren	Latvia (PUC)	M: Rolands Irklis A: Lija Makare
Bulgaria (EWRC)	A: Svetla Todorova	Lithuania (NERC)	M: Irma Vasaryte
Croatia (HERA)	A: Sonja Tomašić Škevin	Luxembourg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Alkis Philippou	Malta (REWS)	A: Phyllis Micallef
Czech Republic (ERO)	M: Martin Šik	Netherlands (ACM)	M: Remko Bos O: Wieger Wiersema
Denmark (DUR)	O: Hewrin Dewsén	Poland (URE)	M: Rafał Gawin A: Małgorzata Kozak
Estonia (ECA)	Marilyn Tikson	Portugal (ERSE)	M: Pedro Verdelho O: Catarina Santos
Finland (EV)	A: Antti Paananen	Romania (ANRE)	M: Dumitru Chirita O: Florin Tobescu O: Radu Cosmin Badita
France (CRE)	A: Jean-Laurent Lastelle O: Michaël Mastier O: Miyuki Tsuchiya O: Anne-Lise Teani	Slovakia (RONI)	A: Denisa Lanikova
Germany (BNetzA)	M: Annegret Groebel	Slovenia (AGEN-RS)	M: Mojca Spanring
Greece (RAE)	O: George Paidakakis	Spain (CNMC)	A: Esther Espeja
Hungary (HEA)	O: Krisztian Toth O: Adam Krinszki	Sweden (Ei)	M: Anne Vadasz-Nilsson
Ireland (CRU)	O: Andrew Ebrill	United Kingdom (Ofgem)	M: Andrew Burgess
ACER	Alberto Pototschnig, Dennis Hesselning, Fay Geitona, Sander Ramp		
European Commission			

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

1. Opening

1.1. Approval of the agenda

The agenda of the 86th 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 85th BoR meeting

Pursuant to the new ACER Regulation (2019/942), Article 22(6), the minutes of the 85th BoR were approved and sent to the European Parliament on 8 October.

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 Director informed the BoR about the most recent publications of the Agency. The Director further informed the BoR about the outcome of the most recent BoR electronic procedures:

The electronic procedure for the BoR favourable opinion on the ACER Decision on the incremental capacity project DE-PL ended on 16 October. The BoR favourable opinion was provided by the consensus of the members who participated in the electronic procedure.

2.2. Updates from the European Commission

The European Commission, which was not represented at the meeting, provided a written report to the BoR about the hearing of Commissioner-designate for Energy, Ms Kadri Simson, at the European Parliament ITRE Committee on 3 October. The European Parliament vote on the Commission college is now planned for the November plenary, hence the new Commission can take up office at the earliest on 1 December.

2.3. Updates from the BoR Chair

The BoR Chair informed the BoR with regard to the ACER Director-designate, Mr Zinglensen. His term of office is five years (renewable once for up to five years) as of 1 January 2020. Mr Zinglensen is invited to make a statement before the ITRE Committee of the European Parliament on 12 November. This is back-to-back with the ACER presentation of the results of the annual Market Monitoring Report to the ITRE Committee.

The BoR Chair further informed the BoR that the AEWG (ACER Electricity Working Group) Chair stepped down. The BoR discussed the next steps in order to have the Director's appointment of a new AEWG Chair in December. Thus the BoR Recommendation will be made at the December BoR meeting and nominations will be launched in advance. This would avoid any further delays in the appointment of the AEWG Chair given the heavy workload of the AEWG as a result of the Clean Energy Package implementation.

Decisions/ Conclusions

2.3 The BoR took note of the stepping down of the AEWG Chair and of the next steps to have a new AEWG Chair in place before the end of the year.

3. Items for opinion, agreement, or approval

3.1. ACER Decision on the Nordic LT Capacity Calculation Methodology

The Director presented the draft Agency's Decision on the Nordic Long-Term Capacity Calculation Methodology. The AEWG advice was given on 9 October. No comments or amendments were submitted by the deadline (15 October).

The BoR provided its favourable opinion on the draft Agency's Decision on the Nordic Long-Term Capacity Calculation Methodology by the required majority of the members present or represented. BNETZA voted against.

3.2. ACER Decision on the Amendment of the Harmonised Allocation Rules

The Director presented the draft Agency's Decision on the Amendment of the Harmonised Allocation Rules. The AEWG advice was given on 1 October. No comments or amendments were submitted by the deadline (15 October).

The BoR provided its favourable opinion on the draft Agency's Decision on the Amendment of the Harmonised Allocation Rules by consensus of the members present or represented.

3.3. ACER Decision on the Amendment of Core regional design of LTTRs

The Director presented the draft Agency's Decision on the Amendment of Core regional design of Long Term Transmission Rights (LTTRs). The AEWG advice was given on 1 October. No comments or amendments were submitted by the deadline (15 October).

The BoR provided its favourable opinion on the draft Agency's Decision on the Amendment of the Core regional design of LTTRs by the required majority of the members present or represented. CRE voted against.

3.4. Input to the Director on the ACER Rules of Procedure

The BoR discussed and agreed its input on the ACER Rules of Procedure (RoP) to be provided to the ACER Director and to the Administrative Board (AB). The BoR's input regarding the ACER RoP sets out the scope, basic principles and some missing links regarding the interaction between the ACER bodies.

The Director informed the BoR of his intention to table a proposal at the December AB meeting; to this end he shall seek in the next couple of weeks the BoR's early feedback on his initial draft proposal. It was agreed to proceed in two steps: the first set of the ACER RoP will focus on the parties' fundamental rights under Article 14(5) of the ACER Regulation. This is envisaged to be finalised and adopted by the end of the year as a matter of priority. The first set will envisage that a second set of RoP will be developed around April on the basis of a proposal by the next ACER Director in order to ensure consistency with the second revision of the RoP of the BoR and AWGs to be finalised within the same timeframe. The second set will address the additional issues raised in the BoR's input including any missing links on the interaction between ACER bodies. The BoR suggested having a full discussion, if possible, at the December meeting. The next steps regarding the exact timing and process for the BoR's favourable opinion (including either the use of a BoR electronic procedure or a decision at the December meeting) for the initial set of the ACER RoP will be agreed once the BoR's feedback on the Director's initial draft proposal is received.

Decisions/ Conclusions	<p>3.1 The BoR provided its favourable opinion on the Agency's draft Decision on the Nordic Long Term Capacity Calculation Methodology by the required majority of the members present or represented. BNETZA voted against.</p> <p>3.2 The BoR provided its favourable opinion on the Agency's draft Decision on the Amendment of Harmonised Allocation Rules by consensus of the members present or represented.</p> <p>3.3 The BoR provided its favourable opinion on the Agency's draft Decision on the Amendment of the Core Regional Design of Long Term Transmission Rights by the required majority of the members present or represented. CRE voted against.</p> <p>3.4 The BoR agreed its input to the Director on the ACER Rules of Procedure which will be prepared in two stages. The first set will focus on the fundamental rights of parties under Article 14(5) of the ACER Regulation. The next steps for the BoR favourable opinion will be decided subsequently. The second set will address the additional issues identified regarding the interaction between ACER bodies and will be developed at a second stage within the same timeline as the second revision of the BoR and AWGs RoP in order to ensure consistency.</p>
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4. Gas Bridge Beyond 2025	
Decisions/ conclusions	<p>4.1. <u>Draft ACER Recommendation, draft Conclusions Paper and Evaluation of Responses</u></p> <p>The BoR discussed the draft ACER Recommendation, the separate joint ACER-CEER Conclusions Paper, as well as the Evaluation of Responses (EoR) of the ACER consultation.</p> <p>The Director thanked the AGWG Chair and the AGWG for the extraordinary work in the preparation of the EoR within a fierce timeframe.</p> <p>The BoR had a debate on the draft Conclusions Paper and provided feedback particularly on the chapter on transmission tariffs, including the challenges set out therein and the actions proposed to address them. Any further comments should be provided through the AGWG (ACER Gas Working Group) which meets on 29 October ahead of the launch of the BoR electronic procedure.</p> <p>The BoR agreed the next steps for their adoption of the documents, including the use of the BoR electronic procedure to be launched on 30 October following the advice of the AGWG within a coordinated timeline for the adoption of the ACER Recommendation and the ACER-CEER Conclusions Paper by ACER and CEER according to their respective procedures.</p> <p>The ACER Recommendation and joint ACER-CEER Conclusions Paper are foreseen to be adopted ahead of the public event scheduled for 20 November where the ACER Recommendation, as well as the joint ACER-CEER Conclusions Paper will be presented to the EU Institutions and stakeholders. The same timeline will be pursued for the adoption of the ACER Evaluation of Responses.</p> <p>4.1 The BoR discussed the ACER Recommendation, joint ACER-CEER Conclusions Paper and the Evaluation of Responses. The BoR agreed the next steps and the planning for the finalisation of the documents ahead of the public event on 20 November, including the use of the electronic procedure. Comments by members should be channelled through the AGWG.</p>

5. Cross-sectoral

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

The Electricity Wholesale Market Volume of the 8th edition of the MMR was shared with the BoR. It presents the results of the monitoring of the European electricity wholesale markets in 2018. The BoR discussed the final version of the draft MMR's Electricity Wholesale Volume and, in particular, section 3.1.2 regarding the share of physical capacity of network elements offered for cross-zonal trade on which certain clarifications were sought on the data quality regarding specific borders and calculations considered insufficient by a number of NRAs. The BoR members were invited to submit comments within one week.

The intended publication date of the Electricity Wholesale Market Volume is by mid-November.

A public event for the presentation of all the Market Monitoring Report Volumes is foreseen for 20 November in the morning (10.00-12.30). Ahead of this, key aspects of the MMR will be presented to the European Parliament ITRE Committee on 12 November.

5.2. 8th Market Monitoring Report – Gas and Electricity Retail Markets Volume

The draft Electricity and Gas Retail Market Volume of the 8th edition of the MMR was shared with the BoR. The Director noted that the Retail Market Volume reports on the results of the monitoring of retail markets, in particular, the electricity and gas prices for household and industrial consumers throughout Europe and he then presented the key elements.

The BoR took note of the final version of the draft MMR's Electricity and Retail Markets Volume. A member noted that they will provide written comments.

The Gas and Electricity Retail Markets Volume is expected to be published in the week of 28 October.

5.3. 8th Market Monitoring Report – Consumer Protection and Empowerment Volume

The draft Consumer Protection and Empowerment Volume of the 8th edition of the MMR was shared with the BoR. The Director noted that this Volume focuses on the application of consumer protection measures in the European electricity and gas markets from the perspective of the final household consumer and presented the key issues.

The BoR took note of the final version of the draft MMR's Consumer Protection and Empowerment Volume. A member noted that they provide written comments.

The Consumer Protection and Empowerment Volume is expected to be published in the week of 28 October.

5.4. Draft outline of the Programming Document (PD) 2021

The draft outline of the Programming Document 2021 was presented to the BoR. The AWG Chairs provided their input to the draft outline ahead of the BoR meeting. This document presents an outline of the tasks that ACER plans to perform in 2021. The draft Programming Document must be submitted to the European Parliament, to the Council and the Commission by 31 January 2020, according to the process stipulated in Regulation (EC) No 942/2019. Two members made suggestions particularly on the prioritisation of the Market Monitoring Report.

5.5. Note on non-mandatory Opinions

The ACER Director presented a Note on non-mandatory Opinions, given that, under Article 4 (3) and (5) of the ACER Regulation, ACER will no longer be under an obligation to issue opinions on certain documents by ENTSOs and the EU-DSO entity for electricity.

The purpose of the Note is to determine the principles, the criteria and the specific process that the Agency will follow to determine whether or not to issue a non-mandatory Opinion in the instances listed above. The

principles include the establishment of a standard process for the assessment of those cases where ACER will issue an Opinion. The default is to not issue an Opinion. The BoR discussed the Note and, in particular, the role of the BoR and proposed that the approach would be reconsidered in the context of the ACER RoP.

**Decisions/
Conclusions**

- 5.1 The BoR took note of the final version of the Electricity Wholesale Market Volume of the 8th edition of the MMR. Comments were invited within one week.**
- 5.2 The BoR took note of the final version of the Electricity and Retail Markets Volume of the 8th edition of the MMR.**
- 5.3 The BoR took note of the final version of the Consumer Protection and Empowerment Volume of the 8th edition of the MMR.**
- 5.4 The BoR discussed and took note of the draft outline of the Programming Document 2021.**
- 5.5 The BoR discussed the Note and, in particular, the role of the BoR and proposed that the approach would be reconsidered in the context of the ACER RoP.**

6. Electricity

6.1. Important AEWG updates

The AEWG Vice-Chair provided an update on the ongoing work in the ACER Electricity Working Group, including on the work of Task Force on Adequacy and CRMs; the work of the Tariffs Task Force and the TSO proposal for the Bidding Zone Review methodology to be considered at the next Electricity Working Group meeting.

6.2. ACER 2nd implementation monitoring report of the NC RfG

The BoR took note of the second Report presenting the progress towards the implementation of Commission Regulation (EU) 2016/631 of 14 April 2016, establishing a network code on requirements for grid connection of generators (NC RfG). The Report further aims at identifying potential challenges in implementing the NC RfG and recommending concrete actions and best practices that can lead to a more efficient implementation.

In light of the analysis performed for this Report, the Agency has come to the conclusion that the NC RfG implementation is well on track, but full implementation is still outstanding.

6.3. Internal Regulatory Authorities' position paper on compliance of 70% rule and derogation requests (pursuant to articles 15(2), 16(8) and 16(9) of Regulation 2019/943)

The BoR was informed on the internal Regulatory Authorities' position paper on compliance with the 70% rule and derogation requests. Article 16(8) of Regulation (EU) 2019/943, prescribes that on each bidding zone border a minimum capacity shall be offered for cross-zonal trade, namely 70% of the capacity respecting operational security limits and after deducting contingencies. This target could not be reached if there is a structural congestion or if a coordinated reduction of cross-zonal capacity is recommended by the RCC in order to preserve the overall system security. In these cases several actions can be triggered. The draft position paper elaborates on some general criteria with the aim to help regulatory authorities assess the compliance of the TSOs with respect to the provisions for deviations. It is considered as a preliminary advice and not as binding. It also describes the process regulatory authorities will follow to examine derogation requests submitted by TSOs. The BoR took note of the paper.

6.4 Discussion on the next steps regarding TSOs' resubmission of the EB GL methodologies (APP, SP, ISH, INIF)

The BoR had an orientation discussion for the next steps regarding the TSOs' resubmission of the pending methodologies under the electricity Balancing Guidelines, regarding the Imbalance Netting Implementation Framework; the Imbalance Settlement Harmonisation; the Common Settlement Rules; and the Activation

Purposes.	
Decisions/ Conclusions	<p>6.2 The BoR took note of the 2nd implementation monitoring report of the NC RfG.</p> <p>6.3 The BoR took note of the internal NRA position paper on compliance of 70% rule.</p> <p>6.4 The BoR discussed the next steps on the resubmission of the pending methodologies in the context of the Electricity Balancing Guidelines.</p>

7. Market Integrity and Transparency & Surveillance and Conduct

7.1.	<p><u>REMIT CG and AMIT WG updates</u></p> <p>The AMIT WG Chair informed the BoR of any updates coming from the AMIT WG.</p>
7.2.	<p><u>Common understanding of the MoU on data sharing between ACER and NRAs in light of market coupling – approach for endorsement.</u></p> <p>Following the July BoR discussion, the Director and the AMIT WG Chair presented for BoR endorsement the proposal for a common understanding of Article 3(2)(b) of the MoU on data sharing in a way that it allows for the sharing of records of transactions, including orders to trade, of coupled markets with NRAs as relevant information according to Article 7(2) of REMIT. This approach is supported by the MoU itself, which highlights that data sharing mechanisms should be able to evolve over time, taking also into account changing market circumstances, legislative changes or experiences in market monitoring.</p> <p>The BoR endorsed the common understanding.</p>
Decisions/ Conclusions	<p>7.2 The BoR endorsed the approach for a common understanding of the MoU on data sharing between ACER and NRAs in light of market coupling.</p>

8. Gas

8.1.	<p><u>AGWG updates</u></p> <p>The AGWG Chair provided an update on the ongoing work in the ACER Gas Working Group, including on the work of Tariffs, Gas Infrastructure and Interoperability Task Forces as well as the reasoned Recommendation of the Agency Derogations of IUK and BBL.</p>
8.2.	<p><u>Madrid Forum</u></p> <p>The Madrid Forum will take place after the BoR on 23 and 24 October. The Agency will present on the EU internal gas market update; the indicators to measure market performance; and the update on Network Code implementation.</p>
Decisions	<p>8.2. The BoR took note of the presentations prepared for the Madrid Forum.</p>
	<p>9. The BoR took note of the revised calendar of meetings and agreed the location of the December meeting in Ljubljana.</p>