

89th ACER Board of Regulators Meeting

31 March 2020

By video/audio conference

Minutes (final)

| Country/Organisations | Name ^[1] | Country/Organisation | 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) | A : Irma Vasarytė |
| Bulgaria (EWRC) | A: Evgenia Haritonova O: Borislava Petrakieva | 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 O: Christina Zouvani | Netherlands (ACM) | O: Wieger Wiersema |
| Czech Republic (ERO) | M: Martin Šik O: Jana Haasová | Poland (URE) | A: Małgorzata Kozak |
| Denmark (DUR) | A: Mads Lyndrup | Portugal (ERSE) | A: Pedro Verdelho O: Natalie McCoy |
| Estonia (ECA) | A: Marilyn Tilkson O: Karin Maria Lehtmets | Romania (ANRE) | O: Florin Tobescu |
| Finland (EV) | M: Simo Nurmi A: Antti Paananen | Slovakia (RONI) | A: Denisa Lanikova O: Vlastimil Jurkuliak |
| France (CRE) | A: Jean-Laurent Lastelle O: Claire Hellich-Praquin | Slovenia (AGEN-RS) | A: Bojan Kuzmič O: Tomaž Lah |
| Germany (BNetzA) | M: Annegret Groebel O: Alexander Linov | Spain (CNMC) | A: Esther Espeja |
| Greece (RAE) | A: Nektaria Karakatsani O: George Paidakakis | Sweden (Ei) | M: Anne Vadasz-Nilsson A: Caroline Törnqvist |
| Hungary (HEA) | A: Attila Nyikos O: Ádám Krinszki | Iceland | M: Guðni A. Jóhannesson A: Hanna Björg Konradsdóttir |
| Ireland (CRU) | M: Jim Gannon O: Vicki-Lee Fairhurst | 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) | O: Anne De Geeter |
| ACER | Christian Zinglensen, Christophe Gence-Creux, Dennis Hesselning, Volker Zuleger, Fay Geitona, Mitsuko Akiyama | | |
| European Commission | Oliver Koch, Michael Schuetz | | |
| CEER | Charles Esser | | |

1. Opening

1.1. Approval of the agenda

The agenda of the 89th 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.

1.2. Minutes of the 88th BoR meeting

The minutes of the 88th BoR meeting were approved and were sent to the European Parliament on 3 February.

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 outlined the implications of the recent coronavirus outbreak, including expected delays to work undertaken by the Agency in particular with regard to the Projects of Common Interest (PCI) monitoring report; four decisions in the electricity sector concerning adequacy-related methodologies; the decision on the BZR methodologies, assumptions and alternative bidding zone configurations; and the decision on the Core common methodology for redispatching. Some members also noted anticipated delays on the submission of some TSOs proposals given the shift of the focus of their work on the security of the transmission system due to COVID 19.

The BoR took note and had a discussion on implications with regard to certain NRA decisions on outstanding methodologies.

The EC recognised the unprecedented “force majeure” posed by the Covid-19 pandemic, whilst noting that the EC cannot unilaterally waive the legal deadlines which have been decided by the co-legislators. The EC welcomed regulators’ input on priorities in terms of expected delays of outstanding methodologies. Areas such as market coupling are important to ensure intact electricity supply and to avoid national unilateral, uncoordinated limitations to trading particularly on the wholesale energy markets. The implementation of capacity allocation and congestion management (CACM) Guidelines will remain a priority cluster in the EC’s view (e.g. capacity calculation methodologies and cost sharing). ACER and regulators can provide some guidance on the priorities regarding delays on the basis of appropriate justifications.

It was agreed to write to the EC to indicate areas of anticipated delays and to indicate the different level of priorities from the perspective of the BoR.

The Director gave an update on the latest ACER organisational changes to streamline horizontal functions to ensure synergies between the ACER departments and clusters reaping efficiencies and savings, reducing fragility, increasing back-up capacity, adding to the learning environment and to address strategic issues. To this end a number of clusters (e.g. IT support, Data Excellence and Legal Services) were established to provide synergies and shift resources where necessary and an adjustment to the Director’s Office so it has a clearer, more unified purpose on strategic delivery and communication.

The BoR took note of the latest publications of the Agency since the last BoR meeting (22 January) as well as the outcomes of the following BoR electronic procedures launched since:

The single-round electronic procedure for the BoR favourable opinion on the aFRR and mFRR decisions ended on 23 January. 26 members participated: 22 were in favour of the BoR favourable opinion on the mFRR decision, and 21 were in favour of the aFRR decision and annex thereto. The BoR favourable opinion was deemed to have been provided.

The second round of the electronic procedure for the BoR favourable opinion on the Decision on ENTSO-E's draft methodology for short-term and seasonal adequacy assessment ended on 26 February. 27 members participated and all voted in favour. The BoR favourable opinion was deemed to have been provided by consensus.

The second round of the electronic procedure for the BoR favourable opinion on a methodology for identifying regional electricity crisis scenarios ended on 26 February. 27 members participated and all voted in favour. The BoR favourable opinion was deemed to have been provided by consensus.

The two-round electronic procedure for the BoR favourable opinion on the opinion on ENTSO-E's winter adequacy outlook and summer review ended on 27 March. 25 members participated and the BoR favourable was deemed to be provided by consensus.

The two-round electronic procedure for the BoR favourable opinion on the Decision on ENTSO-E's proposal for System Operation Regions ended on 27 March. 26 members participated; 24 were in favour of the draft ACER Decision. 2 members voted against. The BoR favourable opinion was deemed to be provided by the required majority.

2.2. Updates from the European Commission

Mr Schuetz on behalf of the European Commission presented the ongoing consultation (11 February – 14 April 2020) which has been extended until 14 May 2020 on the Priority List for Network Codes and Guidelines to establish (every three years in electricity and annually for gas) priority areas to be included in the development of network codes. The European Commission has identified two key areas for the electricity sector: (i) cybersecurity (work to start this year) and (ii) demand side flexibility (from 2022).

BoR members sought some clarifications on the proposed demand response code and the incentives for the use of flexibility in distribution networks under Article 32 of Directive (EU) 2019/944. No new network code is proposed for the gas sector; the European Commission proposes to focus instead on full and correct implementation of existing market rules in all Member States (MSs). The EC also clarified that the Priority List under the Gas Regulation is annual and, therefore, another public consultation will need to take place end of this year on the priorities for gas network codes for 2021.

The EC also made clear that the situation for gas and electricity supplies is under control as demonstrated by the discussions at the Electricity and Gas Coordination Groups.

2.3. Updates from the BoR Chair

The Chair suggested that the BoR meeting on 13 May (initially planned to be held in Dubrovnik) should be a virtual meeting given that travel restrictions are likely to be extended. The BoR agreed to cancel the physical meeting on 13 May and to hold instead a virtual meeting. The CEER President indicated that they would align with this decision, and will inform the CEER GA accordingly.

The BoR Chair also informed members on the state of play of the implementation of the 2019 Col Annual policy and urged those members and Task Force Chairs who have not yet submitted their DoI (which were due by 31st January) to submit them. The BoR agreed to the same composition of the BoR Review Panel as per previous years.

**Decisions/
Conclusions**

2.3 The BoR agreed to the cancellation of the May physical meeting to be replaced by a virtual meeting.

3. Keeping sight of the wider Energy Union context

3.1. European Green Deal update & European Climate Law

Mr Koch and Mr Schuetz presented some updates regarding the European Green Deal, which sets out the way for Europe to become the world's first climate-neutral continent by 2050. On 4 March the European Commission published a proposal for a Regulation establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999. The proposal includes a legally binding target of net zero greenhouse gas emissions by 2050, and measures to keep track of progress and adjust our actions accordingly. The proposal was submitted to the European Parliament and the Council for further consideration under the ordinary legislative procedure. The EC stated that the impact assessment on increasing the EU's greenhouse emission reduction targets for 2030 to at least 50/55% compared with 1990 levels is ongoing and, in parallel, the process for revising the National Energy and Climate Plans has started. The EC also presented the different areas of work and activities as a result of the Green Deal including *inter alia* on the TEN-E revision, smart sector integration and sector coupling and offshore wind.

The ACER Director and the members noted the regulatory implications of many of the EU Green Deal work streams and the close links with the ACER and NRAs' work. The relevant studies and input from regulators was also raised. The ACER Director noted the importance of keeping sight of this broader strategic context and referred also to the EC Communication which identifies barriers to the Single Market, including the barriers in the energy sector and the links with the ACER annual market monitoring report.

The EC noted the breadth and scale of ongoing Green Deal policy related activities, some of which may have relevance for the regulatory work of regulators. The EC agreed to provide the BoR with a list of the EC's priority areas of action within the evolving Green Deal framework. As regards possible post crisis approaches regulators will have an important role to avoid taking national, unilateral measures at the expense the functioning of an integrated internal energy market. ACER Director supported the importance of this strategic discussion to be held to address the role of integrated energy markets after the crisis and to provide regulators' input.

4. Items for opinion/approval/endorsement/agreement

4.1. Revision of the BoR Rules of Procedure

The Chair summarised ongoing work on the revision of the BoR Rules of Procedure (RoP) and invited members to discuss and agree the proposals included in the relevant note circulated, and to provide a steer on some of the issues included therein. The BoR discussed the proposals including, in particular, the process for comments and amendments, the way to address deadlocks and the virtual participation in BoR meetings.

The BoR agreed the proposed changes by consensus of the members present or represented. The BoR Chair announced that a short single electronic procedure will follow to confirm formal approval on the proposed modifications to the BoR RoP.

**Decisions/
Conclusions**

4.1 The BoR agreed the proposed modifications to its RoP, and agreed to the use of a single round electronic procedure to confirm formal approval on the revised RoP.

5. Cross-sectoral

5.1. Second revision of the Agency Working Groups' (AWG) RoP

Pursuant to Article 30(3) of the ACER Regulation the Administrative Board shall adopt and publish internal rules of procedure for the functioning of the working groups on the basis of a proposal by the Director, after consulting the BoR and obtaining its favourable opinion.

The Chair introduced the discussion on the proposed modifications to the AWG RoP on the basis of a note circulated intended to provide the BoR's input to the Director ahead of his formal proposal under Article 30 (3) of the ACER Regulation.

The BoR discussed the proposals for modifications on the basis of the experience gained from the first period of the implementation of the AWGs RoP. Members discussed, in particular, the AWG's advice reflection of the AWG members' views, following the feedback from the Director the proposals on the location of AWGs meetings and the provisions on the exchange of confidential information on a "need-to-know" basis, and the provisions regarding third country participation in the AWGs.

The BoR supported the proposals in the note, to be reflected as the BoR's input to the Director subject to further reflection on the following open issues: the location of the AWG meetings in relation to the number of physical or virtual meetings and the exchange of confidential information; the discussion on those will be further pursued in May. Third country involvement in the ACER AWGs will be considered more globally in the context of dedicated RoP or the work on the missing links.

5.2. Update on the preparation of the ACER RoP

The AB adopted the ACER RoP on 11 December 2019, thus implementing Article 14 of the ACER Regulation following which work has been initiated to address aspects related to the internal functioning of ACER. The BoR Chair and the ACER Director provided an update on the work by a legal team with representatives from the three Agency bodies tasked with identifying and addressing the 'missing links' between the rules in place of all ACER Bodies. Members provided views on the appropriate legal format to implement them.

In terms of next steps, the Chair stated that some flexibility was needed in respect of the finalisation of this work, which may take longer compared to the BoR and AWGs RoP.

The BoR took note of the preparations and the planning.

5.3 Note on the TYNDP Scenarios

The Director presented a note on the Ten-Year Network Development Plan (TYNDP) scenario development having regard to the upcoming revision of the TEN-E Regulation and the need to provide input to the EC ahead of the EC public consultation. The note addresses recommendations on how to develop balanced scenarios in terms of economic growth, to ensure trust in terms of estimating the need for new investments as well as improvements to the transparency of the scenario development process and better stakeholder engagement.

The Chair noted the need for an inclusive process and for the appropriate involvement of the BoR in the work which is related to input from regulators in the different activities under the EU Green Deal, including the TEN-E revision. Such work must be endorsed at a high level, by the BoR, unless it reflects previously agreed positions.

Members discussed, in particular, the respective roles and responsibilities regarding scenario development, and the incorporation of the energy transition projects into EU investment planning. The EC is expecting

their public consultation to be launched in the second half of April.

The BoR agreed to adapt the note in line with the discussion on the responsibility for the development of scenarios reflecting the Bridge Beyond 2025 Conclusions Paper and circulate it for information.

5.4 Update on the sector coupling workshop

The Gas Working Group Chair informed the members on follow-up actions arising from the internal workshop on sector coupling held in Ljubljana on 4 March. The next steps include close cooperation of the relevant Task Forces on sector coupling issues for which the EC has sought input for the October Madrid Forum; a series of short white papers will be issued in the coming months; internal training sessions on sector coupling and a possible follow-up workshop in the second half of 2020.

The BoR took note of the follow-up actions presented.

Decisions/ Conclusions

5.1 The BoR discussed and agreed proposals for modifications to the AWG RoP as BoR input to the Director subject to further consideration of the above mentioned open issues at the May BoR.

5.2 The BoR took note of ongoing work on the ACER RoP and the timeline for its adoption.

5.3 The BoR agreed to adapt the note on the TYNDP Scenarios to align the wording with the Bridge Beyond 2025 Conclusions Paper and circulate it for information.

5.4 The BoR took note of the follow-up actions arising out of the sector coupling workshop.

6. Gas

6.1. Important AGWG updates

Mr Pedro Verdelho as the AGWG Chair provided an update on the ongoing work in the ACER Gas Working Group including on the TEN-E review and its Task Forces; he provided an update on a Fraud issue and on the CAM issues (FUNC platform, and the annual contractual congestion report). The Madrid Forum (given the coronavirus outbreak) has been cancelled and the next one will take place in October.

6.2. ACER Report on the implementation of the Network Code on Harmonised Transmission Tariff Structures

The Director and Mr Hesselting presented the ACER Report on the implementation of the Network Code on Harmonised Transmission Tariff Structures (NC TAR). The report is due to be published on 6 April 2020 in accordance with Article 36(5) of NC TAR. In preparing the report, the Agency bore in mind the objectives pursued by NC TAR, namely creating a level playing field amongst domestic and cross-border tariff users, reducing cross-subsidisation between these users, increasing tariff transparency and by these beneficial impacts facilitate cross-border trade. The Agency also had regard to the need to pave the way for future transition. The Director stated that by ensuring effective and transparent tariffs now, the burden to manage such future challenges can be decreased.

The report is structured in two parts: the first part (the core report) analyses NC TAR implementation, focusing on the applied tariff methodologies across the EU. It looks at individual topics that were important for the implementation of this network code (e.g. regional networks, charges applied by TSOs that do not relate to TSO costs). The report also includes two annexes looking at the publication requirements on

allowed revenue and to the tariff changes resulting from the implementation of NC TAR. The second part contains country sheets, and assesses tariff methodologies applied in each MS.

The key aspects were presented and the members commented and made suggestions on the main report and on the country sheets (including on the allowed revenues; pipeline-to-pipeline competition as a prerequisite for tariff benchmarking; trade barriers; publication requirements on allowed/target revenues; the need for guidance on provisions which are subject to different interpretations).

The BoR took note and discussed the contents of the report.

6.3. ACER Report on the implementation of the Balancing Network Code

The Director invited the members to take note of the ACER Report on the implementation of the Balancing Network Code, which is due to be published on 8 April. The report analyses the application of interim measures (IMs) in balancing regimes in a number of MSs and gas balancing zones.

The report is structured in two volumes: the first volume provides an overview of the termination (or prolongation) of IMs and an overall implementation assessment for the interim measures' balancing zones, the formerly derogated MSs of the FINESTLAT area, and Portugal. The second volume includes detailed country assessment sheets for all balancing zones. The BoR took note of the contents and recommendations set out in the report.

7. Electricity

7.1. Important AEWG updates

Ms Christine Materazzi-Wagner as the AEWG Chair provided an update on the ongoing work in the ACER Electricity Working Group, including on an internal EWG survey on the AEWG operation, the discussions on bidding zone review (BZR) methodology, and a white paper on recommendations for the TEN-E revision.

She reported that Mr Johan Roupe from Ei and Mr Barry Hussey from CRU were appointed as the new AEWG Vice-Chairs.

Members noted the importance of discussing the next steps on the Capacity Calculation regions (CCRs) following the Court judgment.

The EC informed that they will propose a targeted amendment to the capacity allocation and congestion management (CACM) and other electricity Guidelines to adapt the wording to avoid confusion following the CCR Court judgement. ACER and NRAs will have the right to amend the TSOs' proposals on terms conditions and methodologies after the CEP.

7.2. XBID transit shipping

Ms Christine Materazzi-Wagner presented the issues for discussion: the second-wave go-live of XBID took place based on an interim solution (the rotational mechanism), which was to last until 19 May 2019. Two letters addressed to NRAs require a coordinated position on the shipping issue to ensure the continuation of SIDC. Another issue to be addressed is cost recovery as of 20 November. A position paper has been developed to depict a possible way forward for a more permanent solution to be proposed by SIDC parties by 19th November 2020 and implemented by 19th May 2021, and the prolongation of the current rotational mechanism for a further 6/12 months from 19th May 2020. No pan-European decision is provided for regarding cost recovery.

The EC is keen on a meaningful position including on cost recovery.

The BoR took note of the issues and agreed the next steps, including a reply by the BoR Chair to the SIDC NEMOs.

7.3. Updates on the preparation of ACER Decisions pursuant to the Guideline on Electricity Balancing

Mr Gence-Creux, Head of the Electricity Department at ACER, provided an update on the state of play and timings for the adoption of the decisions in line with the Guideline on Electricity Balancing: the methodology for a co-optimised allocation process of cross-zonal capacity and the standard products for balancing capacity, and the implementation framework for a European platform for imbalance netting, likely to be submitted to the May BoR for a favourable opinion; the amended proposals for the activation purposes, proposals for the TSO-TSO settlement and for the imbalance settlement harmonisation, expected to be ready for submission to the June BoR for a favourable opinion; and the Nordic aFRR capacity market proposals referred to ACER, likely to be submitted to the July BoR for a favourable opinion.

Mr Gence-Creux referred to the open issues. Members commented on the standard products for balancing capacity; the entity that will operate the EU platform; the co-optimised cross-zonal capacity allocation and elastic demand and the alignment of the imbalance netting implementation framework with aFRR IF (and mFRR IF) on entity issue subject to legal scrutiny following the decisions on appeals.

The BoR took note of the above updates and planning.

7.4. Agreement on the next steps on the ACER Decision on the Hansa NRAs' request for extension

Mr Gence-Creux informed members that on 6 March, NRAs of the Hansa Capacity Calculation Region requested an extension for adopting decisions on Hansa CCR TSOs' proposals for: a capacity calculation methodology; applying CNTC; a coordinated redispatch and countertrade methodology; and a common redispatch and countertrade cost sharing methodology.

The BoR took note of the issues faced by Hansa NRAs and agreed to the use of an electronic procedure on the draft ACER decision to be prepared to grant the request for extension pursuant to Article 6(10) of ACER Regulation 2019/942.

**Decisions/
Conclusions**

7.2 The BoR took note of the transit shipping issues and agreed the next steps and the draft letter.

7.3 The BoR took note of the state of play and timelines for the adoption of decisions under the Electricity Balancing Guideline, and provided input.

7.4 The BoR took note of the issues and agreed, by consensus of the members present or represented, to the use of the electronic procedure to be used for the ACER Decision to formally grant the request for extension sought by Hansa NRAs.

8. Market Integrity and Transparency & Surveillance and Conduct

8.1. REMIT CG and AMIT WG updates

Ms Annegret Groebel, the AMIT WG Chair, provided an update on ongoing work in the ACER Market Integrity & Transparency Working Group and ongoing work on the ACER Guidance and the chapter on the disclosure of inside information.

Mr Schuetz also provided an update on the consultation regarding REMIT fees. The public consultation will be launched after Easter; the adoption of the Commission Decision is expected for September. The EC thanked NRAs for their willingness to inform the market participants in their countries about the public consultation once it is launched. The EC envisages a cost reflective and non-discriminatory fee model, not flat fees.

The Director informed the BoR that the REMIT case coordination and market surveillance activities are impacted by the corona pandemic.

The Director also informed members of the upcoming publication (scheduled for the first week of April) of the 5th edition of the ACER Guidance on REMIT, which contains an updated chapter dealing with 'inside information' to provide clarity to the market.