

109th ACER Board of Regulators Meeting
13 July 2022
(by video/audio conference)
MINUTES (FINAL)

Country/Institution	Name ^[1]	Country/Institution	Name
Austria (E-Control)	A: Dietmar Preinstorfer O: Christine Materazzi-Wagner	Latvia (PUC)	M: Rota Šņuka O: Lija Makare
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren O: Tom Maes	Lithuania (NERC)	M: Renatas Pocius O: Justina Alsytė-Gogelienė
Bulgaria (EWRC)	M: Stanislav Todorov A: Blagoy Golubarev O: Borislava Petrakieva	Luxembourg (ILR)	M: Camille Hierzig
Croatia (HERA)	M: Željko Vrban	Malta (REWS)	A: Phyllis Mycallef O: Manuel Manuzzi
Cyprus (CERA)	O: Marilena Delenta (with proxy)	Netherlands (ACM)	A: Remko Bos O: Nora Meray O: Maarten Klijn
Czech Republic (ERO)	A: Jana Haasová O: Tomáš Kupčíha	Poland (URE)	M: Rafał Gawin A: Małgorzata Kozak
Denmark (DUR)	O: Thomas Vom Braucke (with proxy)	Portugal (ERSE)	A: Natalie McCoy O: Catarina Santos
Estonia (ECA)	A: Marilyn Tilkson	Romania (ANRE)	O: Florin Tobescu (with proxy)
Finland (EV)	A: Antti Paananen	Slovakia (URSO)	A: Mária Bronišová O: Vlastimil Jurkuliak
France (CRE)	A: Jean-Laurent Lastelle O: Anna Fongeaux	Slovenia (AGEN-RS)	A: Bojan Kuzmič
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov	Spain (CNMC)	M: Mariano Bacigalupo A: Esther Espeja

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

			O: Gema Rico
Greece (RAE)	O: Polikseni Lountou (with proxy) O: Konstantinos Posmitrellis	Sweden (Ei)	M: Ulrika Hesslow A: Caroline Törnqvist O: Johan Roupe
Hungary (MEKH)	O: Tamás Gyarmati (with proxy) O: Tamás Vörös	EEA-EFTA State Iceland	
Ireland (CRU)	M: Jim Gannon O: Barry Hussey	Norway (NVE-RME)	A: Anne Dønnem
Italy (ARERA)	M: Clara Poletti A: Cariello Francesco O: Ilaria Galimberti	EFTA Surveillance Authority (ESA)	
ACER	Christian Zinglensen, Christophe Gence-Creux, Dennis Hesselning, Martin Godfried, Lisa-Marie Mohr, Martin Viehhauser, Fay Geitona, Mitsuko Akiyama, Csilla Bartok, Joaquin Garcia, Rafael Muruais Garcia, Mathieu Fransen		
European Commission	Christof Lessenich, Annamaria Marchi, Michael Schütz		
CEER	Charles Esser		

1. Opening

1.1. Approval of the agenda

The agenda of the 109th BoR meeting was approved. The draft agenda was sent to the European Parliament.

The BoR Chair asked for declarations of conflict of interest. None was declared.

1.2. Minutes of the 108th BoR meeting

The minutes of the 108th BoR meeting were approved and sent to the European Parliament on 20 June.

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 Director informed the BoR of the European Commission's 2023 budget proposal for ACER, which provides an improved resources and financial outlook for ACER (improved also by the REMIT fees) in view of the resources that would be needed in respect of the Gas Decarbonisation Package. The proposal aims to reinforce ACER by nine establishment plan posts, including four posts linked to the Commission proposal on the internal markets for renewable and natural gases and for hydrogen, and one linked to the Commission proposal on methane emissions reduction in the energy sector. The Director thanked the NRAs that have seconded experts to ACER and invited others to consider candidates for other open positions.

2.2. Updates from the BoR Chair

The BoR Chair informed members of the outcome of the annual review of Declarations of Interest and CVs. The Review Panel assessed the submitted DoIs and CVs. Based on the provided information, the Panel did not identify any conflicts of interest and concluded that no action by the Agency or the BoR is required.

The Chair updated members on the ACER Leadership Away Day and on her response to ENTSO-E's letter on the issue of cost recovery in respect of the 2023 budget and beyond, following the suggestion at the last BoR to set up a team to pursue this matter further with ENTSO-E. The Chair also presented a table to facilitate information sharing among NRAs on measures to address high energy prices and invited NRAs to submit country-specific forms with information on national measures taken to date.

3. Delivering on the wider Energy Union from a regulatory perspective

3.1. EC updates

Mr Lessenich reported on actions following on from the REPowerEU Plan, including the next steps relating to the electricity market design, the Coordinated Demand Reduction Plan and discussions surrounding the price cap on gas imports. Work is progressing on the EC inception impact assessment for the electricity market design, which is scheduled for October and which will propose a list of issues and possible options to address them.

The Commission is working on the Coordinated Demand Reduction Plan in view of the likely gas supply problems in the coming winter. At this stage not all details of the plan have fully crystallised yet and discussions within the Commission are ongoing.

The Commission is also working on their report on the independence of NRAs expected to be adopted in October along with the State of the Energy Union report.

The Director noted in respect of the Demand Reduction Plan that there is a broader perspective which is also relevant to the type of messages regulators may want to convey. He considers the joined-up coordinated approach between countries as imperative. Increased mutual reliance and interdependence in the next couple of months could have significant implications for the next decade of EU energy policy and the overall trust amongst Members States and Europe.

4. Items for BoR opinion/approval/agreement

4.1. ACER Opinion on ENTSOG's Summer Supply Outlook

The Director presented the ACER Opinion on the ENTSOG summer supply outlook. The opinion notes that its scope and methodology have been expanded to consider the Russian invasion of Ukraine and the possible repercussions for risk preparedness of supply pipeline route disruptions during 6 months (including an analysis of a full disruption of pipeline gas import routes from Russia), thereby enhancing its operational significance, but also points to further improvements. Input from NRAs was very much appreciated.

In the absence of proposals for amendments and comments, the BoR Chair asked whether there was consensus to grant the BoR favourable opinion. The BoR favourable opinion was given by consensus of members present and represented.

4.2. ACER Opinion on Network Development Scenarios for electricity and gas TYNDPs

The Director presented the ACER Opinion on Network Development Scenarios for electricity and gas TYNDPs, which assesses the draft Scenario Report taking into account the contribution of the TYNDPs to non-discrimination, effective competition, the efficient and secure functioning of the electricity and gas markets and a sufficient level of cross-border interconnection open to third-party access. The ACER Opinion on the draft Scenario Report, which reflects the existing framework (which will be reformed under the recast TEN-E Regulation), expresses appreciation of the work done in this important area, but notes shortcomings in terms of its timing and availability of information to decision makers. The Scenario Guidelines envisaged under the revised TEN-E Regulation will improve this process.

In the absence of proposals for amendments and comments, the BoR Chair asked whether there was consensus to grant the BoR favourable opinion. The BoR favourable opinion was given by consensus of members present and represented.

4.3. ACER Recommendation for a Revised NC on Cybersecurity (NCCS)

The Chair summarised the outcome of the BoR electronic procedure for the submission of proposals for comments and amendments on the draft ACER Recommendation: amendments were adopted and incorporated in the final proposal submitted for BoR favourable opinion. The Director noted his appreciation for the NRAs' and the EC's valuable inputs, in particular on governance and the alignment with the Directive (EU) 2016/1148 (NISD), which is currently under revision.

Mr Gence-Creux highlighted that this work is the result of a collective effort and constructive cooperation with NRAs, ENISA, ENTSO-E, the EU DSO Entity, the Commission and stakeholders over the last three years. The work reflects: a risk-based approach to cybersecurity

in the energy sector that is flexible enough to adapt over time in terms of the definition of cybersecurity standards for the electricity sector; the exchange of information in reasonable time in respect of possible cybersecurity crises; the setting out of emergency plans and yearly exercises and the rules to monitor implementation and ensure enforcement of the relevant provisions. A big challenge will be the final alignment with the Directive (EU) 2016/1148 (NISD) concerning measures for a high common level of security of network and information systems across the Union, which will be adopted after the NCCS; attention should also be paid to governance issues (e.g. new obligations for DSOs and TSOs given that most of the tasks will fall under their responsibility), and the role of ACER. One of the key elements of the NCCS is the designation of a Cybersecurity Authority within each Member State (which will rely on expertise that does not currently exist). The adoption of the Terms, Conditions and Methodologies (TCMs) envisaged in Article 8 of the NCCS have to be unanimously agreed by the relevant national authorities, which represents a challenge in the implementation of the NCCS; ACER will convey this to the EC when submitting the NCCS. The NCCS provides for a few tasks for NRAs in terms of recovery of costs incurred by TSOs and DSOs, but only a limited monitoring and advisory role for ACER; hence it is necessary to further align some provisions once the NISD2 is finalised. The preliminary result of the NCCS should be visible within a year and others in 3 years' time, but the hope is that DSOs and TSOs will work on early implementation of the NCCS.

The BoR granted its favourable opinion by consensus of members present and represented.

4.4. ACER Decision on the request of the regulatory authorities of the Continental Europe synchronous area to extend the period for reaching an agreement on the proposal for the minimum activation period to be ensured by frequency containment reserves providers

The Director presented the Decision, which grants a six-month extension to all regulatory authorities of the concerned region to decide on the proposal submitted by all TSOs of the Continental Europe synchronous area (CE SA) and Nordic synchronous area and which relates to the minimum activation period to be ensured by frequency containment reserves providers. This will allow more time to assess all the implications associated with the possible values under consideration in light of further investigations being carried out by the TSOs, which results are expected later this year.

The BoR granted its favourable opinion on the decision granting the extension request (until 3 December 2022) by consensus of members present and represented.

4.5. ACER Decision on the SAP, SAP costs and CIDM amendments

The Director noted the support for these Decisions proposing to make the FCA methodologies apply to all TSOs and to facilitate their application to Fingrid (which has until now been granted an exemption from most FCA guideline provision), as submitted by ENTSO-E, explaining that the two proposals for amendments have been withdrawn.

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

Decisions/ Conclusions

4.1 The BoR provided its favourable opinion on the ACER Opinion on ENTSOG's Summer Supply Outlook by consensus of the members present and represented.

4.2 The BoR provided its favourable opinion on the ACER Opinion on Network Development Scenarios for electricity and gas TYNDPs by consensus of the members present and represented.

4.3 The BoR provided its favourable opinion on the ACER Recommendation for a Revised Network Code on Cybersecurity by consensus of the members present and represented.

4.4 The BoR provided its favourable opinion on the ACER Decision on the request of the regulatory authorities of the Continental Europe synchronous area to extend the period for reaching an agreement on the proposal for the minimum activation period to be ensured by frequency containment reserves providers by consensus of the members present and represented.

4.5 The BoR provided a favourable opinion on the ACER Decision on the SAP, SAP costs and CIDM amendments by consensus of the members present and represented.

5. AWG key issues

5.1. AWG/ARC key issues

The AEWG Chair informed members that a call for volunteers had been issued to join the expert group on the ENTSO-E budget, which will meet in mid-September.

The AGWG Vice-Chair briefly updated members on the ongoing negotiation of the Gas Package and regulators' feedback.

The ARWG co-Chairs reminded members of the deadline for submitting contributions to this year's Retail and Consumer Protection volume of the Market Monitoring Report.

5.2. Implementation Monitoring Report for the Gas Balancing Network Code

Mr Hesseling presented the flash update report on the implementation of the gas balancing network code, which focuses on a sub-set of the balancing zones already analysed in the 2020 report, namely: those which had not terminated the interim measures by the legal deadline of April 2019 or had kept transitory measures after the legal deadline of 2016; and those that showed partial implementation of the network code. The report recommends on the one hand increasing information provision, completing the minimum information requirements of the Code but also going beyond those meaningfully to enable market parties to be informed and take on proactive balancing responsibility; on the other hand exploring ways to allow markets to function more efficiently in all cases where Network Code implementation is complete on paper but not fully realised in practice and where interim measures are still in place. The report will be published in July.

5.3. 11th Market Monitoring Report – Gas Wholesale Markets volume

Mr Hesseling presented the Gas Wholesale Market volume of the 11th Market Monitoring Report (MMR), which looks in depth at the present state of the EU gas markets and their trajectory towards an Internal Gas Market. The executive summary discusses the impact of the high energy prices, and outlines the ongoing debate on policy responses and some considerations for policy makers.

The Chair thanked Mr Hesseling for the presentation and briefly referred to a report issued by ARERA on import contracts, which shows a shift towards TTF hub indexation prices being linked to short-term products, and even where they are not so linked, contracts contain review clauses to align with hub prices, reducing price differences over time. To identify the total cost, hedging costs (which usually entail alignment with wholesale prices) should also be monitored.

5.4. ACER Decision on FI-SE hedging opportunities

An assessment performed by EV indicated insufficient hedging opportunities in the Finnish bidding zone. The matter was referred to ACER in March 2022, and ACER will decide whether to (a) ask TSOs to issue long-term transmission rights, or (b) ensure the availability of other long-term cross-zonal hedging products that can support the functioning of the wholesale electricity markets (Article 30(5)(a) and (b) of the FCA Regulation), solutions which will have different implications in terms of the implementation process and timeline. The BoR had an orientation discussion.

The BoR Chair thanked ACER for the presentation and noted members' unanimous agreement to decide on this matter by way of an electronic procedure to be launched at the end of August.

5.5. ACER Decision on the amendment of the implementation frameworks for the European balancing platforms for the automatic and manual frequency restoration reserve and the imbalance netting

On 31 March 2022, ACER received all TSO proposals for amending the implementation frameworks (IFs) for the European balancing platforms for the automatic and manual frequency restoration reserve (aFRR, mFRR) and imbalance netting (IN). The deadline for the decision is 30 September. Ms Mohr presented the key issues for an orientation discussion. The decision will be submitted at the next BoR for a favourable opinion.

5.6. Implementation Monitoring Report on the System Operation Guideline

Mr Gence-Creux presented the first Implementation Monitoring Report on the progress towards the implementation of Commission Regulation (EU) 2017/1485 establishing a Guideline on electricity transmission system operation (SO GL). The key findings are that a satisfactory level of implementation has been achieved (although there could be improvements e.g. in relation to Article 40(5) on the applicability and scope of data exchange), and that the NRA survey showed a wide range of parameters for defining the responsibility of significant grid users to exchange data, raising the question whether there is a level playing field in the EU.

5.7. ACER Decision on the TSOs' proposal for alternative bidding zone configurations

Members were invited to discuss the draft ACER Decision on TSOs' proposal for alternative bidding zone configurations. Members unanimously agreed to the use of the electronic procedure.



**Decisions/
Conclusions**

5.4 The BoR agreed by consensus of those present and represented to use the electronic procedure for its favourable opinion on the ACER Decision on FI-SE hedging opportunities.

5.7 The BoR agreed by consensus of those present and represented to use the electronic procedure for its favourable opinion on the ACER Decision on the TSOs' proposal for alternative bidding zone configurations.