

121st ACER Board of Regulators Meeting
24 January 2024
(by video/audio conference)

MINUTES (FINAL)

Country/Institution	Name[1]	Country/Institution	Name
Austria (E-Control)	A: Dietmar Preinsotfer O: Christine Materazzi-Wagner O: Katharina Ledermann-Tappeiner	Latvia (PUC)	M: Rota Šņuka O: Lija Makare
Belgium (CREG)	A: Geert Van Hauwermeiren	Lithuania (NERC)	M: Renatas Pocius A: Irma Zdanienė O: Jelena Dilienė O: Benas Skublickas
Bulgaria (EWRC)	O: Borislava Petrakieva	Luxembourg (ILR)	A: Claude Ricshette
Croatia (HERA)		Malta (REWS)	O: Manuel Manuzzi
Cyprus (CERA)	O: Marilena Delenta	Netherlands (ACM)	O: Nora Meray
Czech Republic (ERO)	A: Jana Haasová O: Tomáš Kupčíha	Poland (URE)	M: Rafal Gawin
Denmark (DUR)	A: Birgitta Bundgaard	Portugal (ERSE)	M: Pedro Verdelho A: Natalie McCoy
Estonia (ECA)	A: Marilyn Tilkson	Romania (ANRE)	A: Tatiana Iosiper
Finland (EV)	A: Simo Nurmi	Slovakia (URSO)	A: Maria Bronisova
France (CRE)	A: Ivan Faucheux O: Claire Hellich-Praquin	Slovenia (AGEN-RS)	A: Bojan Kuzmič
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov	Spain (CNMC)	M: Josep María Salas A: Esther Espeja
Greece (RAEWW)	O: Yuriy Bilen	Sweden (Ei)	M: Ulrika Hesslow A: Caroline Törnqvist O: Johan Roupe

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

Hungary (MEKH)	M: Pál Ságvári O: Tamás Gyarmati O: Szabolcs Koppányi	EEA-EFTA State Iceland	A: Hanna Björg Konráðsdóttir
Ireland (CRU)	M: Jim Gannon O: Barry Hussey O: Clodagh Hunt- Sheridan	Norway (NVE-RME)	A: Anne Dønnem
Italy (ARERA)	M: Clara Poletti A: Cariello Francesco O: Ilaria Galimberti	EFTA Surveillance Authority (ESA)	O: Anne De Geeter
ACER	Christian Zinglensen, Volker Zuleger, Martin Godfried, Rafael Muruais Garcia, Christophe Gence-Creux, Csilla Bartok, Jan Kostevc, Savvas Savvides, Fay Geitona, Mitsuko Akiyama		
European Commission	Michael Schuetz, Christof Lessenich		

1. Opening

1.1. Approval of the agenda

The agenda of the 121st 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 120th BoR meeting

The minutes of the 120th BoR meeting were approved and sent to the European Parliament on 8 January 2024.

Decisions/ Conclusions

1.1. The BoR approved the agenda.

2. Updates from the ACER Director and the BoR Chair

2.1. Update from ACER

- Update on the ACER IT security breach and mitigation measures

The Director and the ACER Acting Information Security Officer referred to the IT security breach experienced last year and mitigation measures taken by the Agency. A preliminary report by CERT-EU (the Computer Security Incident Response Team of all the EU institutions, bodies and agencies) on the incident was issued in December and members were updated on further developments.

- Independence of regulatory authorities; interaction with the EC

Members discussed concerns relating to NRA independence, which is a core part of regulators' mission given Article 57 of Directive 2019/944, paragraph 5 (a) and (g), whereby NRAs are to act independently of any political body. Members discussed actions to address such concerns.

2.2. Update from the BoR Chair

The BoR Chair recalled the obligation for Board members and alternates to submit in due time their duly signed annual Declarations of Interests (Dols) and CVs via the edeclaration platform, for review by the Review Panel and publication on the ACER website. AWG Chairs and Vice-Chairs and TF Convenors must also submit their Dols and CVs. Members were asked to agree to the appointment of the Review Panel (the BoR Chair and Vice-Chair, Mr Urbantschitsch and Ms Espeja as alternate member of the Review Panel).

The BoR Chair has approved the change to the June BoR meeting venue (Berlin, as indicated in the updated calendar of upcoming BoR meetings).

D Decisions/ Conclusions

2.2. The BoR appointed the Review Panel. The June BoR meeting will take place in Berlin (hosted by BNetzA) on 5 June 2024.

3. Wider Energy Union

3.1. EC Updates

- Commission proposal for a mandate for the negotiations with Switzerland

Mr Lessenich informed the BoR that in November, the EC and Switzerland's Federal Council had agreed on a Common Understanding. On 20 December, the EC adopted a Recommendation for a Council Decision authorising the opening of negotiations with Switzerland together with a proposal for a negotiating mandate. It aims to ensure the protection of the rights of EU citizens in Switzerland as well as fair competition between EU and Swiss companies operating within the internal market and in particular the electricity market, addressing inter alia institutional elements. The Commission Recommendation will serve as a basis for the Council's work on the final mandate that will define the parameters for Commission's engagement in the negotiations with Switzerland. The negotiations between the EU and Switzerland will start once both sides have their negotiating mandates approved according to their respective procedures and will be conducted by the EC on behalf of the EU.

- Outcome of the reform of the European Union's electricity market design (EMD)

The EP and Council agreed on the EMD reform on 14 December. An overview of the new tasks for ACER in the areas relating to forward markets (regional hubs), EU flexibility needs assessment, ACER assessment on the market for PPAs based on the information from the data collection provided for in the REMIT regulation, assessment of peak shaving products etc. was presented. Mr Lessenich informed the BoR that this provisional agreement had been validated by the Coreper before Christmas as well as by the EP ITRE Committee. The next step is the formal adoption by the EP Plenary and the Council. The key features of the EC proposals are preserved. A key element that was heavily debated is the introduction of Contracts for Difference (CfDs) for existing generation plants, for which a compromise solution provides that it will not be mandatory for upgrading existing investments. The EC is pleased with the outcome of the agreement, which was achieved in good time before the EP elections.

- EU Action Plan for Grids – actions relevant to ACER & NRAs

Mr Lessenich presented key actions from the EU Action Plan for Grids issued in the context of the 4th PCI Energy Days on 28 November. This aims to unlock grid investments and to this end includes a number of challenges as well as a 14-point action plan to make Europe's electricity grids (both at transmission and distribution level) stronger, more interconnected, more digitalised and cyber-resilient, including inter alia: measures to enhance top-down planning towards 2050 by integrating the identification of offshore and onshore system needs and further considering hydrogen, pushing for integration of flexibility needs in the planning; the Commission to issue

guidance on cross-border cost sharing for offshore projects as well as on anticipatory investments; actions to promote uptake of smart grid, network efficiency and innovative technologies. It includes actions relevant for ACER and NRAs such as that ACER, in its next tariff report, will recommend best practices in relation to the promotion of smart grids and network efficiency technologies through tariff design; common technical requirements for generation and demand connection etc. The EC is keen on further engagement with ACER and NRAs on the implementation of the Action Plan for Grids.

The BoR Chair thanked the EC for the updates.

4. Items for BoR opinion/approval/agreement

4.1. Appointment of the AEWG Vice-Chairs

The call for candidature for AEWG Vice-Chairs was opened in the EWG and by the deadline of 3 January 2024, Mr Roupe and Mr Hussey expressed their interest in pursuing their current roles. The Director and the BoR agreed to their reappointment.

4.2. Draft Programming Document 2025-2027

As per the ACER Regulation, each year, the Director prepares a draft single programming document containing annual and multi-annual programming, and submits the draft programming document to the Administrative Board and to the Board of Regulators. The Administrative Board adopts the draft programming document after receipt of a favourable opinion of the Board of Regulators, and submits it to the European Parliament, the Council and the Commission no later than 31 January.

The Director presented context and content of the Work Programme (WP) 2025 contained in the Programming Document and divided into 6 operational Strategic action areas (SAAs): internal electricity market; internal gas market, decarbonised gases and hydrogen; infrastructure and security of supply; market information and transparency; market surveillance and conduct; and REMIT investigations. In collaboration with NRAs, ACER will thus work towards: implementing the Clean Energy Package and electricity and gas Network Codes and Guidelines and monitoring their effects; increasing the transparency of wholesale energy markets and promoting their integrity under REMIT and implementing the revised REMIT; contributing to addressing the EU's decarbonised energy infrastructure challenge under the TEN-E regulation; implementing the Gas Decarbonisation Package and reform of the Electricity Market Design; contributing to safeguarding security of supply; along with broader challenges. The Director also presented the upward resources trajectory in 2025.

The BoR unanimously approved the draft Programming Document and expressed support for the provisional estimates of ACER revenue and expenditure for the 2025 financial year in the amount of €42,938,131.

Decisions/ Conclusions

4.1. The BoR and the Director jointly reappointed Mr Roupe and Mr Hussey as AEWG Vice-Chairs for a period of two years.

4.2. The BoR unanimously approved the draft Programming Document 2025-2027.

5. AWG key issues

5.1. AWG/ARC key updates

- ACER-CEER joint paper on the enduring electricity system: confirmation of challenges for the technical paper and related structure/outline

The Chair and the CEER President introduced the ongoing discussion on the joint ACER-CEER analysis of long-term challenges likely to be faced by the electricity system in 2030 and beyond.

- Status of TSO accession to Balancing Platforms (Picasso and Mari)

The AEWG explained that ACER had received updated accession roadmaps for the balancing platforms, Picasso and Mari, which show delays for several TSOs via derogations, and that this may result in simultaneous accession by many TSOs, a high risk that some TSOs will not be able to meet the legal deadline (July 2024), and the issue of high prices on the platforms making TSOs reluctant to enter the platform despite the messaging that more liquidity will solve the high prices. NRAs and ACER have received a larger than expected number of price incident reports although their extent in % of time is limited. NRAs and ACER have identified potential mitigation measures and have asked TSOs to investigate their feasibility and their effectiveness. TSOs have publicly consulted on amendments to the pricing methodology and the aFRR implementation framework, including potential mitigation measures.

The AEWG Chair also briefly updated members on the delay with regard to intraday auctions.

- German gas storage levy and possible measures in other Member States

Mr Verdelho stated that the TAR TF had been tasked with presenting an assessment of the German neutrality charge and its market impacts, and that many bilateral talks had taken place and contributions from stakeholders have been considered such as EFET, which has publicly expressed its concerns about market fragmentation (with the risk of other Member States adopting similar measures) and decreased solidarity, which are contrary to the objectives pursued by the Gas Package. The Director clarified that the aim is not to discuss compliance, which is the subject of an ongoing EC investigation.

Ms Bartok presented the analysis undertaken, highlighting that measuring the effects of the levy is a complex task subject to multiple assumptions and that proving unequivocal causality is not without challenge as impacts may differ, particularly where Member States source gas differently and have different interactions with neighbouring countries. These were assessed against the Gas Storage Regulation (EU) 2022/1032, which requires that “[the storage filling measures] shall not unduly distort competition or the proper functioning of the internal market in gas or endanger the security of gas supply of other Member States or of the Union” (Article 6b(2)).

The Chair suggested coming back to this topic in future meetings.

- Infrastructure delays paper

Ms Materazzi-Wagner introduced the ongoing work, which is a follow-up to the High-level Forum on Electricity Grids and covers issues not previously addressed through ACER’s work. The BoR was invited to provide guidance on how to pursue this work.

The Chair noted that members are not in favour of issuing a public paper at this time and invite further refining the analysis. This topic will continue to be discussed at future meetings.

5.2. ACER decision on the amended Core Intraday (ID) Capacity Calculation Methodology (CCM)

Mr Gence-Creux referred back to previous discussions and several compromise proposals presented by ACER, particularly on the application of the 70% requirement in the intraday (ID) timeframe. ACER plans to finalise its decision and seek AEWG advice on 15 February and the BoR’s favourable opinion on 7 March, without endangering the IDCC and ID Auctions go-live (June 2024).

5.3. Orientation discussion on the ACER decision on the European Resource Adequacy Assessment 2023

The European Resource Adequacy Assessment (ERAA) is a pan-European monitoring assessment of power system resource adequacy up to 10 years ahead. ENTSO-E carries out ERAA on an annual basis to identify resource adequacy concerns, and to provide a robust and objective basis for policy decisions, in particular when assessing the need for capacity mechanisms. Annual ERAAs are based on the ERAA methodology, developed by ENTSO-E and approved by ACER. ERAA 2023 was submitted by ENTSO-E to ACER on 15 December 2023 and ACER has 3 months to develop its decision.

The draft ACER decision will be submitted ahead of the March BoR.

5.4. ACER/CEER Retail Market Monitoring Report – approach in the future

At the last BoR, members agreed to adopt a more strategic approach to the Retail Market Monitoring Report (MMR): the aim is to make the preparations less burdensome and the report itself more impactful, serving as a key vehicle for advancing insights and best practices, capturing the consumer protection aspects crucial for the energy transition. Ms Bartok informed the BoR of the outcome of subsequent discussions pursued at technical level on the detailed implementation elements.

5.5. Energy Community Regulatory Board (ECRB) updates

Ms Geitona updated the BoR on relevant ENC/ECRB developments, drawing from the 2023 Energy Community Annual Implementation Report by the EnC Secretariat presented at the December ENC Ministerial Council, and in particular, the state of play of implementation of the electricity integration package and relevant upcoming decisions for ACER and NRAs. The ENC framework sets out ACER tasks in the Energy Community including decision-making competence for ACER on the borders between EU Member States and the EnC Contracting Parties (CPs) whereby ACER is tasked to act in the interest of the Energy Community by a Procedural Act adopted at the end of 2022.