

87th ACER Board of Regulators Meeting

11 December 2019

Ljubljana, Slovenia

Minutes (final)

Member States	Name ^[1]	Member States	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch A: Dietmar Preinstorfer O: Christine Materazzi-Wagner	Latvia (PUC)	M: Rolands Irklis O: Liga Kurevska
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren	Lithuania (NERC)	M: Inga Žilienė A: Irma Vasarytė
Bulgaria (EWRC)	A: Evgenia Haritonova	Luxembourg (ILR)	M: Camille Hierzig
Croatia (HERA)	M: Tomislav Jureković A: Sonja Tomašić Škevin	Malta (REWS)	
Cyprus (CERA)	O: Christina Zouvani	Netherlands (ACM)	A: Remko Bos O: Wieger Wiersema
Czech Republic (ERO)	M: Martin Šik O: Jana Haasova	Norway (NVE)	M: Ove Flataker A: Anne Dønnem
Denmark (DUR)	M: Carsten Smidt	Poland (URE)	M: Rafał Gawin A: Małgorzata Kozak
Estonia (ECA)	O: Karin Maria Lehtmet	Portugal (ERSE)	M: Pedro Verdelho O: Natalie McCoy
Finland (EV)	M: Simo Nurmi	Romania (ANRE)	O: Florin Tobescu
France (CRE)	A: Jean-Laurent Lastelle O: Claire Hellich-Praquin O: Frank Heseler O: Agnès Josselin	Slovakia (RONI)	A: Denisa Lanikova
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov	Slovenia (AGEN-RS)	A: Bojan Kuzmič
Greece (RAE)	Represented by CRE	Spain (CNMC)	A: Esther Espeja
Hungary (HEA)	O: Gergely Szabó O: Ádám Krinszki	Sweden (Ei)	M: Anne Vadasz-Nilsson O: Kristina Welin
Ireland (CRU)	M: Paul McGowan O: Jim Gannon	United Kingdom (Ofgem)	A: Cathryn Scott O: Kristian Marr
Italy (ARERA)	M: Clara Poletti A: Francesco Cariello		

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

ACER	Alberto Pototschnig, Christophe Gence-Creux, Volker Zuleger, Martin Godfried, Fay Geitona, Sander Ramp
European Commission	Florian Ermacora

1. Opening

1.1. Approval of the agenda

The agenda of the 87th BoR meeting was approved subject to the addition of an update on the launch of the second wave of the XBID and the withdrawal of item 5.2 on which the BoR invited the Director to have an additional round of comments with the concerned Regulatory Authorities. The draft agenda had been 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 86th BoR meeting

Pursuant to the new ACER Regulation (2019/942), Article 22(6), the minutes of the 86th BoR were approved and sent to the European Parliament on 5 November.

Decisions/ conclusions

1.1 The agenda was approved subject to the abovementioned changes.

2. Updates from the ACER Director, EC and BoR Chair

2.1. Updates from the ACER Director

The Director reported to the BoR about the public launch event of the Bridge Beyond 2025, where the Agency's Recommendation and the joint ACER-CEER Conclusions Paper were presented. The 2019 Market Monitoring Report was also presented on the same day.

The Director informed the BoR on the implications for ACER of the General Court ruling of 24 October 2019 annulling the Board of Appeal (BoA) decision on the appeal lodged against ACER's Decision on Capacity Calculation Regions.

The Director informed the BoR on the Decision of the EEA Joint Committee No 93/2017 which has entered into force and addresses the issue of participation in ACER bodies of EEA-EFTA countries and of the EFTA Surveillance Authority (ESA).

The Director and the BoR Chair warmly welcomed the NVE member, Mr Ove Flataker, and the NVE alternate, Ms Anne Dønnem, to the BoR following their recent appointment by the Administrative Board.

Mr Flataker expressed his appreciation and gratitude for the NVE's participation to the ACER Board of Regulators.

The Director informed the BoR that BoR members and alternates, AWG Chairs and TF Conveners are required to submit their Declarations of Interest and CVs by 31 January 2020, in line with the Agency's Conflict of Interest policy. The Dols and CVs can be submitted to the BoR Secretariat.

The BoR took note of the latest publications of the Agency since the last BoR meeting took place (22 October), as well as on the outcome of the BoR electronic procedures as follows:

- The electronic procedure on the ACER Recommendation "Bridge Beyond 2025" ended on 18 November. The first round of the electronic procedure ran until 7 November 17.00 CET. Amendments were submitted by three members. The second round on the vote on the amendments ended on 13 November at 09.00. All amendment proposals, except for amendment proposals 6 and 9, were adopted. The third round of the electronic procedure was launched on 13 November and ended on 18 November. All members voted in favour and thus the BoR favourable opinion was deemed to be provided.
- Furthermore, the informal endorsement of the Conclusions Paper "Bridge Beyond 2025" was sought in two rounds in parallel to the electronic procedure on the Recommendation. The first round ran until 7 November 17.00 CET. The second round for informal endorsement ran until 18 November 15.00 CET.

All members voted in favour. As a result the Conclusions Paper was deemed to be endorsed by the BoR.

2.2. Updates from the European Commission

The European Commission reported on the new Commission taking office last week as well as its broad objectives in the context also of the new Green Deal presented by the EC. The new Energy Commissioner, Ms Kadri Simson, has picked up her duties as did the Vice-President for the European Green Deal, Mr Frans Timmermans.

Mr Ermacora reported on the Madrid Forum which took place on 22 and 23 October. The European Commission reported to the BoR on the last Network Code Implementation Monitoring Group meeting which took place on 19 November.

2.3. Updates from the BoR Chair

The BoR Chair informed the BoR on the outcome of the 2019 mid-term Conflict of Interest review. She also reported on the outcome to the AB Chair as per usual practice.

3. Items for opinion/approval/endorsement/agreement

3.1. ACER transmission tariffs practices report

The Director presented the draft Agency's transmission tariffs practices report. In accordance with Article 18(9) of Regulation (EU) 2019/943, the Agency shall provide and update, at least every two years, a best practice Report on transmission tariff methodologies, while taking account of national specificities. This Report is considered as a first step towards delivering a report pursuant to Article 18(9) of Regulation (EU) 2019/943, as well as towards pursuing the objectives indicated in recital (40) of that Regulation to increase transparency and comparability in tariff-setting, but does not include the identification of best practices which will be developed at a second stage. It provides a status review of transmission tariff structure across European countries, including 28 EU Member States and Norway. In addition, it presents the findings of ACER's regular monitoring of the appropriateness of the ranges of allowable transmission charges paid by producers ("G-charge"), pursuant to Commission Regulation (EU) No 838/2010.

Comments were received from three members. One member withdrew their amendment proposal and asked to be considered as a comment. The BoR agreed to the use of a final round through electronic procedure for the provision of the BoR opinion on the revised proposal by the Director.

3.2. ACER Opinion on ENTSOG's Annual Work Programme 2020

The Director presented the draft Agency's Opinion. Pursuant to Article 4(3)(b) of Regulation (EU) 2019/942, the Agency may provide an opinion to ENTSOG in accordance with the first subparagraph of Article 9(2) of Regulation (EC) No 715/2009 on the draft annual work programme, taking into account the objectives of non-discrimination, effective competition and the efficient functioning of the internal gas market.

No comments or amendments were submitted by the BoR members on the Agency's draft Opinion.

The BoR provided its favourable opinion on the ACER Opinion on ENTSOG's Annual Work Programme 2020 by consensus of the members present or represented.

3.3. ACER Rules of Procedure (RoP)- Director's proposal

The Director informed the BoR that, following a first round of comments by the BoR and the Administrative Board (AB) members on the draft ACER RoP, the AB endorsed, through an electronic procedure, the revised ACER RoP on 3 December, and the RoP are submitted to the BoR for its favourable opinion. Subject to the BoR favourable opinion, these will be deemed to be adopted by the AB.

The Director explained that the Agency has followed a stepwise approach. The objective of the first set of the RoP is to implement Article 14(5) of Regulation (EU) 2019/942 and to include those provisions which ensure a transparent and reasonable decision-making process guaranteeing fundamental procedural rights based on the rule of law, including the right to be heard, rules on access to files and the standards as specified therein. Therefore, the first set of rules set out mainly the procedural rights and obligations of the parties and the Agency for the adoption of ACER acts. There will be a second step for their revision in coordination with the new ACER Director who is to take office in January 2020.

The BoR discussed the draft ACER RoP and provided comments with regard to their scope relevant to their second revision next year. The BoR provided, by majority of the members present and represented, its favourable opinion subject to a minor correction submitted by one member. E-Control and HEA voted against. The BoR Chair will write to the AB Chair to inform about the BoR's favourable opinion and to convey that the BoR anticipates a fuller revision of the ACER RoP to take account of the discussion at the BoR and its input.

3.4. ACER Programming Document (PD) 2020-2022

The Director presented the PD for the period 2020–2022, which contains a multiannual outlook, covering the 2020-2022 period, as well as the annual Work Programme for 2020. The new tasks assigned to the Agency by the Clean Energy Package (CEP) are reflected in the 2020 Work Programme. The Director and the EC informed the BoR that the EC opinion is expected next week, but this is without prejudice to the BoR having the possibility to provide its favourable opinion/approval. The PD priorities have been set with due respect of the Agency's mandate, whilst against significant resources constraints. However, the EC is due to assess next year, in line with Article 33(10) of Regulation (EU) 2019/942, whether the financial and human resources available to the Agency allow it to fulfil its role, under the same Regulation, in working towards an internal energy market and in contributing to the energy security to the benefits of consumers in the Union.

The BoR provided its favourable opinion on the PD 2020-2022 by consensus of the members present or represented subject to small modifications provided by two members.

3.5. BoR recommendations to the Director on the AEWG and AMITWG Chairs

By the deadline of 15 November, expressions of interest were received for the positions of Chairs of the AEWG and the AMIT WG from Ms Christine Materazzi-Wagner and Ms Annegret Groebel, respectively. The BoR recommended the nominated persons to the Director as AWG Chairs. According to the AWG RoP, the Director - after taking utmost consideration of the BoR recommendation - will make his final decision on the appointment of the AWG Chairs.

Decisions/ conclusions	<p>3.1 The BoR agreed the use of an electronic procedure (for a final round) for the provision of its favourable opinion on the Agency's draft transmission tariffs practices report by consensus of the members present or represented.</p> <p>3.2 BoR provided its favourable opinion on the Agency's draft opinion on ENTSOG Work Programme 2020 by consensus of the members present or represented.</p> <p>3.3 The BoR provided, by majority of the members present and represented, its favourable opinion to the ACER RoP subject to a minor editing correction. E-Control and HEA voted against. The BoR Chair will also write to the AB Chair to inform about the BoR opinion and to outline the BoR's anticipation of a fuller revision of the ACER RoP to take account of the comments made by the BoR.</p> <p>3.4 The BoR provided its favourable opinion/approval on the draft PD 2020-2022 by consensus of the members present or represented subject to some changes provided.</p> <p>3.5 The BoR recommended to the Director Ms Materazzi-Wagner and Ms Groebel as AEWG and AMITWG Chairs, respectively.</p>
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4. Cross-sectoral	
<p>4.1. <u>Areas for second revision of the AWG and BoR Rules of Procedure (RoP)</u></p> <p>The Chair presented the list of areas that the RoP Group should focus on during the second revision of the AWGs and BoR RoP for discussion and endorsement. A member provided three additional suggestions to the list and volunteered to pursue the work under the areas of Guidance and the process for amendments.</p> <p>The BoR endorsed the list of areas as set out in the note with the additional suggestions by a member. The BoR Chair presented the planning and next steps for the finalisation of the work which is due to finish by April pursuant to the revision clauses in the current BoR RoP and AWG RoP.</p> <p>A separate proposal was presented on the adaptation of the BoR RoP to implement the joint EEA decision which provides for the participation of Norway, Iceland and Lichtenstein as well as of the EFTA Surveillance Authority (ESA) in ACER and the ACER BoR.</p> <p>The BoR endorsed the BoR RoP revisions. The BoR agreed to use of a standard (i.e. two-round) electronic procedure for the final approval of the BoR RoP.</p>	
Decisions/ conclusions	<p>4.1 The BoR endorsed by unanimity of the members the indicative list of issues for the second revision of the BoR and AWG RoPs with some additional suggestions and agreed the detailed planning of work.</p> <p>4.2 The BoR endorsed by unanimity of the members present or represented the BoR RoP revisions to implement the joint EEA decision and agreed the use of a of a standard (two-round) electronic procedure for the final approval of the RoP.</p>

5. Gas	
<p>5.1. <u>Important AGWG updates</u></p> <p>The AGWG Chair provided an update on the ongoing work in the ACER Gas Working Group and its Task Forces: the gas infrastructure Task Force, the tariffs Task Force and the balancing Task Force.</p>	
<p>5.2. <u>ACER Analysis on derogations from the Tariffs Network Code for Interconnectors</u></p>	

This item was withdrawn from the agenda.

6. Electricity

6.1. Important AEWG updates

The AEWG Vice-Chair provided an update on the ongoing work in the AEWG, including, *inter alia*, the establishment of a new Adequacy and CRMs Task Force; the Bidding Zone Review methodology; and the XBID 2nd wave go-live which was achieved successfully on 19 November. The EC noted that the implementation of the 70% provision on the use of the interconnection capacity enters into force on 1 January 2020. BoR members provided an update on the status with regard to the compliance with this provision. Regarding the XBID project the BoR took note of the provisional nature of the existing transit shipping arrangements which, if not addressed, could jeopardise the long-term sustainability of the project.

The Director informed the BoR that the Agency has prepared a plan for the ACER decisions in electricity foreseen for 2020 with all the timelines for each deliverable and the process to be followed on the basis of the deadlines for the relevant decisions. The Director sought the agreement of the BoR for the use of electronic procedure for those decisions for which the Agency's deadline is shorter than 5 months. The BoR agreed to the approach.

6.2. ACER list of information required for monitoring the implementation of the System Operation Guideline (SO) Guidelines (GL)

On 8 January 2018, the Agency and ENTSO-E concluded the Agreement for ACER-ENTSO-E Data provision for Network Codes and Guidelines monitoring, which had subsequently been amended on 10 April 2019. The BoR was informed that the purpose of the currently foreseen second amendment is to add a new Annex 2 to the Agreement defining the list of indicators and data regarding the exchange of information for System Operation Regulation monitoring. The Agency and ENTSO-E agree that this information will be provided regularly whereas any *ad-hoc* data requests related to the SO Regulation should be dealt with beyond the scope of this Agreement, in coordination between the Agency and ENTSO-E. The Agreement foresees the possibility of updating it as frequently as necessary, based on an agreement between ACER and ENTSO-E. Thus Annex 2 of the Agreement- list of information and specific provisions - is added to the list of Annexes to the Agreement, which is shared for information.

The BoR took note of the list of information required for monitoring the implementation of the SO GL.

6.3. Update on the ACER Decisions on the proposals under EB: Pricing Proposal, mFRR and aFRR

ACER presented the next steps and key aspects of the ACER decisions under preparation regarding the proposals which were referred to the Agency on 24 July. A public consultation took place between 28 October and 18 November. A workshop was organised on 13 November in Brussels. The BoR was informed of the key issues under each draft ACER Decision and provided feedback on the approach and the options presented, including on the pricing proposal for balancing energy, the entity for the operation of balancing platform and the relevant legal implications, and the real-time activation. A number of BoR members raised concerns about several elements of the draft decisions on European balancing platform and, in particular, the designation of the entity for the operation of balancing platforms. Several other NRAs supported the approach proposed by ACER.

The BoR took note of the update on the preparation and discussed the key issues around the ACER Decisions which are expected to be submitted at the BoR meeting in January 2020 for the BoR's favourable opinion.

6.4. Update on the ACER Decision on the Amendment of the Algorithm methodology

ACER presented the next steps and key aspects of the ACER Decision under preparation, including the proposed amendments related to intraday auctions. The all TSOs proposal was submitted to the Agency on 1 August. The BoR's favourable opinion will be sought at the BoR meeting on 22 January. The deadline to take a decision is 1 February 2020. The public consultation took place between 21 October and 17 November. The BoR took note of the update on the preparation of the Agency's Decision on the amendment of the algorithm methodology expected to be submitted at the BoR meeting in January 2020 for the BoR's favourable opinion. The BoR discussed the key issues noting the priority on the performance of the algorithm. One member raised a concern around prioritisation of other products over complex products and requested evidence based assessment of the impact of all order types on the performance of the algorithm, to be considered as part of the decision.

6.5. ACER annual monitoring report on the implementation and management of the inter-TSO compensation (ITC) fund

ACER presented this report pursuant to point 1.4 of Annex Part A of Commission Regulation (EU) No 838/2010 which sets out that ACER is responsible, since 2012, for preparing a yearly monitoring report on the implementation of the Inter-Transmission System Operator Compensation (ITC) mechanism and the management of the ITC Fund. ACER's report concludes that the implementation of the ITC mechanism and the management of the ITC Fund in 2018 continues to be in line with the requirements set out in the Regulation. The BoR took note of the draft Agency's report and key findings.

6.6. ACER Opinion on the calculation of the values of CO2 emission limits referred to in the first subparagraph of Article 22(4) of Regulation (EU) 2019/943

ACER presented the draft ACER Opinion on the calculation of the values of CO2 emission limits. According to Article 22 of Regulation (EU) 2019/943, Member States shall set out the technical conditions for the participation of capacity providers in a capacity mechanism in advance of the selection process. Capacity mechanisms shall incorporate limits regarding CO2 emission in the requirements for participation. The Agency shall publish an Opinion providing technical guidance related to the calculation of the values of CO2 emission defined in this Article.

The Agency launched a public consultation on a preliminary draft of the Opinion on 24 September 2019. Contributions were received from 51 respondents from 12 Member States, representing capacity providers, industry associations of power plants producers, national regulatory authorities, researchers/academia and transmission system operators. On 11 October 2019, the Agency held a technical workshop on this topic. The Agency closely cooperated with NRAs throughout the process.

The BoR took note of the draft Agency's Opinion.

Decisions/ Conclusions	<p>6.1 The BoR agreed that decisions that need to be taken in 6 months will follow the usual procedure, whereas decisions that need to be taken in less than 5 months will go through an electronic procedure according to the timelines provided in the RoP.</p> <p>6.2 The BoR took note of the ACER list of information required for monitoring the implementation of the SO GL.</p> <p>6.3 The BoR took note and provided feedback to the update on the preparation and key issues around the draft ACER Decisions proposals under EB: Pricing Proposal, mFRR and aFRR.</p> <p>6.4 The BoR took note and provided feedback to the update on the Agency's draft Decision on the amendment of the algorithm methodology.</p> <p>6.5 The BoR took note of the draft Agency's draft annual monitoring report on the implementation and management of the inter-TSO compensation (ITC) fund.</p> <p>6.6 The BoR took note of the Agency's draft Opinion on the calculation of the values of CO2 emission limits.</p>
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7. Market Integrity and Transparency & Surveillance and Conduct

7.1. <u>REMIT CG and AMIT WG updates</u>	<p>The AMIT WG Chair and ACER MIT HoD provided an update on the last REMIT CG and AMIT WG meetings in particular on ongoing policy work to support the Agency's REMIT mandate; suspension of RRM registration; operation of REMIT Information Systems and REMIT information management; cooperation with ESMA and NCAs and REMIT implementation activities.</p> <p>The AMIT WG Chair provided an update on the recent public consultation by ESMA on position limits and position management in commodity derivatives under the review of MiFID II – and the carve-out for wholesale energy products traded at OTFs and the BoR discussed potential relevant actions.</p>
7.2. <u>Update on Alert Dashboard and Cases</u>	<p>The ACER MSC HoD provided an update on the state of play of the Agency's Market surveillance activities, and case coordination activities (Article 16 of REMIT). He provided an update on the key developments over the course of 2019 and the outlook for 2020.</p>
Decisions	7.2. The BoR took note of the REMIT and Alert Dashboard and cases update.

8. Part B (AOB)

	<p>The BoR Chair, on behalf of the BoR, paid tribute to the remarkable contribution of Mr Alberto Pototschnig, whose term ends at the end of the year, to the establishment and leadership of the Agency as its first Director and to the delivery of its growing mandate. Thanks to his significant work and constructive cooperation with the BoR, the Agency has created a solid basis for cooperation with NRAs and a growing trust amongst the Institutions and stakeholders.</p>
Decisions	8 The BoR agreed the revised 2020 meeting calendar as presented.