

91st ACER Board of Regulators Meeting

17 June 2020

By video/audio conference

Final minutes

Country/Institution	Name ^[1]	Country/Institution	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)	M: Inga Žilienė 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)	A: Remko Bos O: Wieger Wiersema
Czech Republic (ERO)	M: Martin Šik O: Jana Haasová	Poland (URE)	A: Małgorzata Kozak O: Sierocińska Danuta
Denmark (DUR)	M: Carsten Smidt	Portugal (ERSE)	M: Pedro Verdelho O: Natalie McCoy
Estonia (ECA)	A: Marilyn Tilkson O: Karin Maria Lehtmets	Romania (ANRE)	O: Florin Tobescu
Finland (EV)	M: Simo Nurmi	Slovakia (RONI)	A: Denisa Lanikova O: Vlastimil Jurkuliak
France (CRE)	A: Jean-Laurent Lastelle O: Miyuki Tsuchiya	Slovenia (AGEN-RS)	A: Bojan Kuzmič
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov	Spain (CNMC)	A: Esther Espeja
Greece (RAE)	O: Apostolis Gotsias	Sweden (Ei)	M: Anne Vadasz-Nilsson O: Kristina Welin
Hungary (HEA)	A: Attila Nyikos O: Ádám Krinszki	EEA-EFTA State Iceland	M: Guðni A. Jóhannesson A: Hanna Bjorg Konradsdóttir
Ireland (CRU)	M: Jim Gannon	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, Dennis Hesseling, Martin Godfried, Volker Zuleger, François Beaude, Martin Povh, Fay Geitona, Mitsuko Akiyama		
European Commission	Michael Schuetz, Florian Ermacora		
CEER	Charles Esser		

1. Opening

1.1. Approval of the agenda

The agenda of the 91st 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 90th BoR meeting

The minutes of the 90th BoR meeting were approved and sent to the European Parliament on 27 May.

Decisions/ Conclusions

1.1 The BoR approved the agenda.

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

2.1. Updates from ACER

The Director presented one of the broader issues being tackled by ACER, namely a comprehensive review of its digital identity, which will translate into a revamped, forward-looking website with new technical functionalities and with increased interconnectivity. ACER is also looking into updating its visual identity.

The Director informed about the increasing number of legal appeals against ACER decisions. He is grateful to the number of four NRAs responding to the call for assistance. The call for interest was issued yesterday and applications should be submitted before 19th July.

The Director thanked the BoR members for their input to the Agency Working Groups' Rules of Procedure (AWG RoP), which the BoR Chair has also communicated to the Administrative Board (AB). Following discussions with the AB, the formal process will kick off for the adoption of the AWGs RoP.

The Director displayed his keen interest to allow for a possibility for early discussions with the regulatory community in areas of work that are proving complex.

The BoR took note of the latest publications of the Agency since the last BoR meeting (13 May), as well as the outcomes of the following BoR electronic procedures:

The first of the three-round electronic procedure for the BoR favourable opinion on the ACER Decision on the methodology for a co-optimised allocation process of cross-zonal capacity led to a proposal for amendment, which was not adopted during the second round. The third round for final agreement ended on 5 June: 27 members participated and the BoR favourable opinion was deemed to have been provided by the required two-thirds majority.

The two-round electronic procedure for the BoR favourable opinion on the ACER Decision on the standard products for balancing capacity ended on 26 May. 23 members participated and all were in favour of giving the BoR favourable opinion, which was deemed to have been provided by the required two-thirds majority.

The two-round electronic procedure for the BoR favourable opinion on the ACER Decision on the Implementation Framework for a European platform for the imbalance netting concluded on 28 May: 25 members participated and the BoR favourable opinion was deemed to have been provided by the required two-thirds majority.

The single round electronic procedure on the endorsement of the CCR letter the BoR Chair to all TSOs to support the process initiated by a letter from the ACER Director to the TSOs and next steps ended 5 June 26 members participated and all endorsed the letter.

The two-round electronic procedure for the endorsement of the BoR input to the AWG RoP ended on 4 June. All members participated and unanimously endorsed the proposed changes to the AWG RoP.

2.2. Updates from the European Commission

Mr Ermacora presented the European Commission's approach to its upcoming decision on REMIT fees. As outlined in the letter from the EC to the BoR and the AB, there is an ongoing European Commission (EC) public consultation on REMIT fees that will be due to ACER under Article 32 of the ACER Regulation 2019/942 for collecting, handling, processing and analysing information reported by market participants or by entities reporting on their behalf. The public consultation (8 June – 31 August) will be complemented by a stakeholders' workshop on 15 July, and the BoR and AB will also be further consulted in the coming months, prior to issuing the EC decision in the autumn. Mr Ermacora presented the EC consultation strategy, also circulated to members, which will ensure that all stakeholders are adequately consulted.

Mr Ermacora also updated members on preparations relating to the EC proposal for the 2021 EU budget: inter-DG discussions have resumed following the publication of the EC proposals for a recovery plan and the 2021-2027 Multiannual Financial Framework (MFF) on 27 May. The new recovery instrument, Next Generation EU, of €750 billion includes the proposal to strengthen the Just Transition Fund to up to €40 billion and €94,4 billion for Horizon Europe embedded within a long-term EU budget. European Green Deal initiatives and digital agenda as well as research projects related to decarbonisation will be supported. The EC budget proposal for 2021 is expected to be adopted on 24th June. The REMIT fees are a very important element in the current discussions.

The Director recognised the strong support by DG ENER in formulating a sustainable budget proposal for ACER against competing priorities in the unprecedented corona pandemic. The ACER draft 2021 budget as adopted by the AB was realistic in comparison with previous years. Should there be a budget cut, he is keen on having the full support of NRAs in order to engage actively during the budgetary negotiations with the EP and the Council and convey the ACER's overall value and the need for resources.

The Chair reiterated the BoR's strong support on ACER's 2021 draft budget and its readiness to actively support the need for ACER resources during the discussions including the implementation of an "upgraded" strategy vis a vis the Council.

A brief update on Brexit negotiations in the energy sector followed. The 4th round of negotiations for a new partnership between the EU and the UK ended without substantial progress, including as regards energy. The ambitious target is that the EU and the UK reach an agreement which can be ratified and enter into force before the end of this year, hence before the end of the transition period, when the UK will cease to be part of the internal market. The EU's proposals on energy are aiming at close EU-UK cooperation on network developments and use, sustainability and SoS but not at an integration into the internal energy market, since the UK decided to leave the internal market. The negotiations will continue over summer.

The BoR Chair thanked the European Commission for their updates.

2.3. Updates from the BoR Chair

The Chair presented the Review Panel assessment of Declarations of Interests and CVs submitted for the year 2020 by all BoR Members and Alternates, ACER Working Group Chairs, Vice-Chairs, and Task Force Convenors in accordance with the Agency's policy on the prevention and management of conflicts of interest. The Review Panel did not identify any conflicts of interest; therefore, no ACER/BoR action is needed.

The Chair suggested that the BoR has an away day in the margins of the November BoR meeting.

2.4. Updates from members – Ei's approach on digital technology and flexible work methods

Ei presented its approach to digital technology and flexible work methods, which aims to allow easy access to and sharing of data, and virtual participation to meetings to promote flexibility whilst ensuring data security. These practices are part of Ei's core values and have been particularly valuable in the context of the pandemic.

The Chair thanked Ei for their presentation noting that the BoR shall come back on some of these issues and practices during the away day.

3. Keeping sight of the wider Energy Union context

3.1. Update on the EU Green Deal & Roadmap

Mr Ermacora presented updates relating to the European Green Deal which remains high on the EC's agenda. Carbon neutrality for 2050 was enshrined in a legislative proposal and the EC is now working on impact assessment for 2030. The timelines for key initiatives in the field of energy remain broadly unchanged in light of the adjusted 2020 EC Work Programme, including the publication of the Hydrogen Strategy and the Energy System Integration Strategy, which are expected by 8 July to feed into discussions under the German presidency; key aspects of both were presented at the last BoR. This will be followed up until the end of this year by a strategy on offshore renewable energy and a proposal for the revision of the Trans-European Energy Networks Regulation.

The Chair thanked the European Commission for their updates.

3.2. ACER-CEER position paper on TEN-E revision

The Chair invited Ms Materazzi-Wagner (AEWG Chair) to present the jointly (electricity and gas) developed, position paper on the TEN-E revision. This proposes 18 improvements relating to three core areas namely infrastructure governance, principles for PCI scope, and TEN-E processes which address the EC consultation themes and the need to align TEN-E Regulation with the EU Green Deal objectives.

The ACER Director and Mr Hesselning, Head of the Gas Department at ACER, noted that the recommendations included therein point to the increasing role of infrastructure and the intention is to publish the paper and submit it to the European Commission as a joint response to the targeted consultation. The paper also reflects several recommendations resulting from the Bridge to 2025 gas paper. ACER welcomed the opportunity to further discuss these recommendations with the EC.

The Chair welcomed the very good paper and noted the need for the regulatory community to take action and make best use of it.

Ms Groebel also reported on some minor changes regarding sustainability and adding a reference to the proposed Taxonomy Regulation by the CEER GA which were shared with the BoR.

The Chair proposed to move to the vote for the endorsement of the paper.

The Secretariat announced the result of the vote: The BoR endorsed the position paper with the required two-thirds majority.

Decisions/ Conclusions

3.2 The BoR endorsed the joint ACER-CEER position paper on TEN-E revision by two-thirds majority of the members present or represented. The paper will be released and provided as input to the EC consultation.

4. Items for discussion and agreement on the use of an EP

4.1. ACER Decision on the methodology for classifying the activation purposes of balancing energy bids

The Director introduced the draft Decision. Pursuant to Article 29(3) of the Guideline on Electricity Balancing, all TSOs must develop a proposal for a methodology for classifying the activation purposes of balancing energy bids, which describes all possible purposes for the activation of balancing energy bids and define classification criteria for each possible activation purpose. Following a referral from all regulatory authorities, ACER is competent to adopt a decision in accordance with Article 6(2) of the Guideline on Electricity Balancing and Article 6(10) of the ACER Regulation.

The Director and Mr Povh summarised the state of play and main issues following the hearing phase from 20 April until 15 May relating to the Decision, including the scope of the methodology and activations for system constraint purposes. The methodology applies equally to all products not just standard specific. The AEWG has broadly supported the draft Decision. The deadline for the Decision is 14 July.

The draft Decision will be submitted for a BoR favourable opinion. The BoR agreed to the use of (two- or three- round) electronic procedure to provide its favourable opinion on the above decision by consensus of the members present or represented.

4.2. ACER Decision on the common settlement rules for all intended exchanges

The Director introduced the draft Decision. Pursuant to Article 50(1) of the Guideline on Electricity Balancing, all TSOs must develop a proposal for common settlement rules applicable to all intended exchanges of energy as a result of the reserve replacement process, frequency restoration process with manual and automatic activation and the imbalance netting process. Following a referral from all regulatory authorities, ACER is competent to adopt a decision in accordance with Article 6(2) of the same and Article 6(10) of the ACER Regulation. The deadline for the Decision is 14 July.

The Director and Mr Povh summarised the state of play and main issues relating to the draft Decision following the hearing phase, in particular its alignment with the implementation frameworks and the pricing methodology (ACER Decisions 01/2020, 02/2020 and 03/2020) and the provisions on negative congestion income. Having discussed these points, the AEWG has broadly supported the draft Decision.

The BoR discussed the key outstanding issues.

The draft Decision will be submitted for a BoR favourable opinion. The BoR agreed to the use of (two- or three- round) electronic procedure to provide its favourable opinion on the above decision by consensus of the members present or represented.

4.3. ACER Decision on the harmonisation of the main features of imbalance settlement

The Director introduced the draft Decision. Pursuant to Article 52(2) of the Guideline on Electricity Balancing, all TSOs must develop a proposal for further specifying and harmonising the main features of imbalance settlement. Following a referral from all regulatory authorities, ACER is competent to adopt a decision in accordance with Article 6(2) of the Guideline on Electricity Balancing and Article 6(10) of the ACER Regulation. The deadline for the Decision is 14 July.

The Director and Mr Povh summarised the state of play and main issues relating to this Decision following the hearing phase, including the calculation of the imbalance, the specification and harmonisation of the main components of imbalance price, the definition of the value of avoided activation, the use of single imbalance pricing and the conditions, justification and the methodology for applying dual pricing. The draft Decision has been clarified in terms of the methodology for single imbalance pricing (harmonisation of the main components for the imbalance price) and the methodology for dual pricing in light of the AEWG advice which broadly supports the draft Decision.

The BoR agreed to the use of a (two- or three- round) electronic procedure to provide its favourable opinion on the above decision by consensus of the members present or represented.

4.4. BoR RoP modification

The Chair explained the background to the proposed modifications to Article 6.8 of the BoR Rules of Procedure (RoP) concerning electronic procedures which needed to be aligned for consistency reasons. The BoR RoP Group has been consulted on the proposed modifications.

The BoR approved the proposed modifications pursuant to Article 22(2) of the ACER Regulation 2019/942 by consensus of the members present or represented.

Decisions/ Conclusions

4.1 The BoR agreed to the use of (two- or three- round) electronic procedure to give its favourable opinion on the ACER Decision on the methodology for classifying the activation purposes of balancing energy by consensus of the members present or represented.

4.2 The BoR agreed to the use of (two- or three- round) electronic procedure to give its favourable opinion on the ACER Decision on the common settlement rules for all intended exchanges by consensus of the members present or represented.

4.3 The BoR agreed to the use of (two- or three- round) electronic procedure to give its favourable opinion on the ACER Decision on harmonisation of the main features of imbalance settlement by consensus of the members present or represented.

4.4 The BoR approved the proposed amendments to Article 6.8 of the BoR RoP by consensus of the members present or represented.

5. Cross-sectoral

5.1. Annual Consolidated Report on progress of Projects of Common Interest

The Director presented the draft Annual Consolidated Report on Projects of Common Interest (PCIs), which the Agency must publish by 30 June in accordance with Article 5 of Regulation (EU) No 347/2013. The draft report monitors progress achieved in implementing PCIs, and evidences that there are still major barriers to the development of key cross border infrastructure projects, which continue to be delayed notably due to permitting issues.

The Chair clarified the process and explained that the report is presented for discussion inviting members to agree to the use of an accelerated electronic procedure given the statutory deadline of 30 June for the adoption of the report. To this end, the AWGs have delivered their speedy advice by 16 June given the extreme urgency which supports the report and compiles NRAs' comments.

The BoR discussed the report and provided feedback.

The BoR agreed to the use of an accelerated (two- or three-round) electronic procedure, to be launched shortly after this meeting, by consensus of the members present or represented.

Decisions/ Conclusions

5.1 The BoR discussed the report. The report will be finalised and submitted for a favourable opinion through an accelerated two- to three-round electronic procedure by consensus of the members present or represented. Subject to the BoR opinion it is envisaged that the report is adopted by 30 June.

6. Gas

6.1. Important AGWG updates

Mr Verdelho as the AGWG Chair provided an update on the ongoing work in the ACER Gas Working Group and its Task Forces (TF) including on the tariff consultation; work on allowed target revenue discussed at the Madrid Forum; the Func Case; and the new expert group on Energy Transition, which will focus on adaptation of gas infrastructure.

The EC welcomed the work which will feed into potential EC future legislative proposals; the EC's hydrogen strategy will be released on 8 July and the EC is also looking into biomethane in the context of decarbonised gases as well as more conventional gas issues. The EC informed the BoR that two studies have been released on the regulatory framework for LNG terminals and the regulatory and administrative requirements to entry and trade on gas wholesale market.

7. Electricity

7.1. Important AEWG updates

Ms Materazzi-Wagner as the AEWG Chair provided an update on ongoing work in the ACER Electricity Working Group and the work done by the CACM, FCA and SOGC Task Forces.

7.2. Transit shipping solutions

Ms Materazzi-Wagner referred back to previous BoR discussions on transit shipping solutions: the rotational mechanism (in place until 19 November 2020) will need to be prolonged to avoid decoupling pending an all NRA decision laying down an enduring solution. A letter has been sent regarding the all NRA decision on the prolongation of the interim solution and the request to develop an enduring solution soon. The all NRA decision on transit shipping is scheduled for approval in September. The BoR was asked to provide guidance on the general way forward. The members provided input.

Mr Ermacora noted the importance to find a solution on transit shipping arrangements and an agreement amongst NRAs to avoid the deadlock.

7.3. Update on the Nordic balancing referrals

Mr Povh provided an update on the ACER Decisions on the four methodologies relating to the Nordic aFRR balancing capacity market, which were referred to ACER on 28 February several discussions with TSOs and NRAs on open issues. The draft decisions are just sent to the AEWG for advice.

Members discussed the open points and pointed to the need to address those before the finalisation of the proposal.

The Director stated that the draft ACER Decisions will be presented for BoR favourable opinion at the July meeting. The BoR took note of the planning.

7.4. Update on redispatching-related methodologies

The Director and Mr Povh updated members on the preparation and next steps of ACER Decisions relating to redispatching-related methodologies stressing the importance for an early discussion within the regulatory community on the best way and the approach to address the key issues as well as and the next steps before the detailed discussions on the methodologies themselves. Two CORE methodologies and one SEE methodology related to coordination of redispatching and countertrading and related cost sharing were referred to the Agency at the end of March and beginning of April, and the deadline for issuing these three decisions is end of September. However, the CORE methodology for coordination of redispatching and

countertrading (under Article 35 of CACM Regulation) needs to be fully consistent with the CORE methodology for regional operational security coordination (pursuant to Article 76 of the System Operation Regulation), which is expected to be referred to the Agency still in June. To ensure full consistency with these two methodologies, the BoR discussed the next steps and the possibility for an extension of the decision deadline for the CACM Article 35 methodology so that it would be consulted and revised in parallel and within the same timeline as the SO Article 76 methodology. The members discussed the key issues raised by the proposals on the CORE and SEE methodologies for redispatching and countertrading cost sharing and provided feedback.

The EC noted the merit of constructive cooperation between NRAs and discussions to reconcile issues noting that legal challenges should be used as a last resort.

The BoR took note of the above updates and planning.

7.5. Update on the Adequacy-related methodologies

The Director and Mr Beaudé presented the Adequacy-related methodologies for discussion.

The following methodologies were submitted by ENTSO-E to ACER on 4 May for approval by 5 August 2020 in accordance with Article 9(1)(a) of the ACER Regulation and Article 23(7) of the Electricity Regulation: (i) methodology for the European resource adequacy assessment (ERAA) and (ii) methodology for calculating the value of lost load, the cost of new entry and the reliability standard (VoLL, CoNE, RS) to provide Member States with a common approach for determining their desired levels of security of electricity supply. ACER underlined the key principles in terms of legal compliance with the high-level objectives of the Regulation and the detailed legal requirements; the overall consistency; the need for a clear and effective basis for decision-making based on transparency and the need for a pragmatic approach to ensure timely implementation.

Mr Beaudé presented the key issues and members provided feedback noting the need to take account of the national specificities and for realistic assessments and further dialogue on these methodologies which pertain to market design issues and have an important impact on EU energy system.

The BoR took note of the above updates and planning.

7.6 Board of Appeal decision on the CCR and next steps

The Chair referred to the BoA decision of 22 May concerning the application for annulment of Decision 6/2016 on the determination of capacity calculation regions (CCR), which was relaunched following General Court judgments annulling the previous BoA decisions. The matter has been remitted to ACER and the BoR is informed in accordance with the RoP.

To ensure legal certainty, the Director sent the circulated letter to TSOs dated 5 June initiating the formal procedure, followed by a supporting letter by the BoR Chair to the TSOs on the same day, urging them to follow the process outlined in the letter from the Director. The Director and the Chair thanked members for their support.

Decisions/ Conclusions	<p><i>7.2 The BoR discussed and provided input relating to transit shipping arrangements.</i></p> <p><i>7.3 The BoR took note of the state of play and timeline for the ACER Decisions on four methodologies relating to the Nordic aFRR balancing capacity market, and provided input.</i></p> <p><i>7.4 The BoR took note of the state of play and timeline for the adoption of ACER Decisions on CORE methodologies and SEE methodology relating to the coordination of redispatching and countertrading and related cost sharing, and provided input.</i></p> <p><i>7.5 The BoR took note of the state of play and timeline for the adoption of ACER Decisions on the methodology for the European resource adequacy assessment and the methodology for calculating the value of lost load, the cost of new entry and the reliability standard, and provided input.</i></p>
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8. Market Integrity and Transparency & Surveillance and Conduct	
8.1. <u>REMIT CG and AMIT WG updates</u>	<p>Ms Groebel, the AMIT WG Chair, provided an update on the ongoing work in the ACER Market Integrity & Transparency Working Group.</p> <p>Mr Godfried, Head of the Surveillance and Conduct department at ACER, also referred to the update to the Governance Section of the Market Surveillance Strategy. The Agency envisages maintaining the approach applied since 2018 for the Agency's and NRAs' surveillance work.</p>