

100th ACER Board of Regulators Meeting
1 June 2021
By video/audio conference
MINUTES (FINAL)

Country/Institution	Name ^[1]	Country/Institution	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch A: Dietmar Preinstorfer O: Christine Materazzi-Wagner	Latvia (PUC)	M: Rota Šņuka O: Lija Makare
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren	Lithuania (NERC)	A: Irma Vasarytė
Bulgaria (EWRC)	A: Evgenia Haritonova	Luxembourg (ILR)	A: Claude Hornick
Croatia (HERA)	M: Tomislav Jureković A: Sonja Tomašić Škevin	Malta (REWS)	A: Phyllis Mycallef O: Manuel Manuzzi
Cyprus (CERA)	O: Marilena Delenta (with proxy)	Netherlands (ACM)	A: Remko Bos O: Nora Meray
Czech Republic (ERO)	A: Jana Haasová O: Tomáš Kupčiha	Poland (URE)	A: Małgorzata Kozak O: Danusta Sierocińska
Denmark (DUR)	M: Carsten Smidt A: Mads Lyndrup	Portugal (ERSE)	A: Pedro Verdelho O: Natalie McCoy O: Catarina Santos
Estonia (ECA)	A: Marilyn Tilkson	Romania (ANRE)	O: Florin Tobescu (with proxy)
Finland (EV)	A: Simo Nurmi	Slovakia (RONI)	A: Mária Bronišová
France (CRE)	A: Jean-Laurent Lastelle O: Claire Hellich	Slovenia (AGEN-RS)	A: Bojan Kuzmič
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov	Spain (CNMC)	M: Josep María Salas

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

			O: Gema Rico
Greece (RAE)	A: Dimitrios Psychoyios O: Yuriy Bilen	Sweden (Ei)	M: Anne Vadasz- Nilsson A: Caroline Törnqvist O: Johan Roupe
Hungary (HEA)	M: Pál Ságvári A: Gergely Szabó	EEA-EFTA State Iceland	A: Hanna Björg Konráðsdóttir
Ireland (CRU)	M: Jim Gannon O: Barry Hussey	Norway (NVE-RME)	A: Anne Dønnem
Italy (ARERA)	M: Clara Poletti A: Francesco Cariello O: Ilaria Galimberti	EFTA Surveillance Authority (ESA)	O: Ada Gimnes Jarøy
ACER	Christian Zinglensen, Christophe Gence-Creux, Dennis Hesseling, Martin Godfried, Volker Zuleger, Olga Borissova, Csilla Bartok, Rafael Muruais Garcia, Mathieu Fransen, Fay Geitona, Mitsuko Akiyama		
European Commission	Michael Schuetz, Oliver Koch		

1. Opening

1.1. Approval of the agenda

The Chair marked the occasion of this 100th BoR meeting by noting the major contribution of the BoR in ACER's statutory tasks and broader work and the key achievements. She noted the significant progress achieved over the last years in strengthening the NRAs' cooperation through the BoR and the remarkable commitment by members. She emphasised the collaborative ethos and trust which has grown.

The agenda of the 100th 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 99th BoR meeting

The minutes of the 99th BoR meeting were approved and sent to the European Parliament on 7 May.

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 on the work and next steps in respect of the finalisation of the Framework Guidelines on Cybersecurity. ACER's work to finalise the Framework Guidelines is intense; the public consultation is ongoing until 29 June 2021 and ACER is also considering the input from stakeholders including from the seminar on 27 May. The Chair noted that there was no objection to an accelerated electronic procedure and invited the Director to crystallise a concrete proposal on the timeline and next steps once preparations have progressed.

Ms Geitona presented the outcome and key findings of the NRA survey "fostering our internal dialogue: your view matters", which closed on 21 April and in which 24 NRAs participated.

The BoR Chair thanked Ms Geitona noting that the results of the survey complement and echo the discussions and actions from the away day. She proposed also organising an away day of the BoR and AWGs leadership which was welcomed.

Ms Borissova presented the progress achieved with regard to the standardisation of energy specific terminology. This is a project aiming to align the translation and use of technical terms in EU energy policy/regulation (acts of EU institutions and Agencies) by building an energy terminology database in all official EU languages that would enable the uniform use of energy terms, in a multi-lingual context, in legal and other texts of the EU Institutions and Agencies and bring cost-effectiveness, accuracy and consistency of the translation of energy terminology in EU legislation. This project reflects a new area of collaboration between ACER and NRAs. Such energy terminology could be used by experts, translators, drafters and the general public and hence will be beneficial for communication with citizens in their own language as well as with and between experts, increasing thereby the impact of ACER decisions. At this stage, a number of NRAs have expressed an interest in participating and more NRAs were encouraged to join the project so that the standardised energy terminology applies broadly and in as many languages

as possible. The energy terminology database in all 23 official EU languages, once finalised, will be available also in IATE and promoted on the ACER website.

The BoR Chair thanked Ms Borissova for her presentation.

2.2. Updates from the BoR Chair

The BoR Chair informed members that the July BoR has been changed to a virtual meeting and members took note.

She also reported on the findings of the Review Panel, which met on 28 April. As stated in the circulated note, the Review Panel did not identify any conflict of interest and no action is needed from ACER.

The BoR Chair also announced that her term is coming to an end and that elections are planned for the July BoR.

Decisions/ Conclusions

2.1 The BoR agreed by consensus on the use of an accelerated electronic procedure to provide the BoR opinion on the Framework Guidelines on cybersecurity.

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

3.1 Updates on the EU Green Deal and other EC updates

Mr Koch reported on the Madrid Forum (29-30 April) and the meeting between Member States' Director Generals and the DG of DG ENER on the Hydrogen and Gas Market Decarbonisation Package (17 May 2021). The Madrid Forum explored *inter alia* the access of renewable and low carbon gases to the gas infrastructure and the possible elimination of tariffs at the EU internal interconnection points. The Forum concluded that integrated infrastructure planning processes should be reviewed to ensure that scenarios used are in line with the EU climate and energy efficiency targets, are integrated at national and EU levels and foster sector integration. Other topics discussed included the need for further links between gas and electricity in the national infrastructure planning. Providing a definition of low carbon gases is a very important point for the industry. The development of the regulatory framework to support the establishment of hydrogen markets and infrastructure was another key issue discussed. Different opinions were expressed at the Forum on whether gas tariffs should be used to finance hydrogen networks (e.g. should there be a separate or joint regulatory asset base (RAB)?). The EC explained that there are concerns if such approach was legally possible under current rules on tariff setting and invited regulators to provide their perspective on the problems of a system change and why there should be good reasons for departing from the principle of cost-reflective tariffs. Other issues explored include the extent of hydrogen regulation needed until 2030, and unbundling.

In terms of the gas quality debate which now takes place in the context of the transition, many emphasised the complexity of having different blending levels which is considered a relevant point for further discussion.

Mr Koch informed the BoR that the new Head of Unit of DG Energy's Internal Energy Market Unit C3 is Mr Christof Lessenich.

He then updated the BoR on the Commission's ambitious plan to table a "Fit for 55 package" to reduce emissions by at least 55% by 2030 expected on 14 July 2021. This will cover wide-ranging policy areas and a number of initiatives relevant for energy, including the revision of the

renewables and energy efficiency Directives, strengthening and extension of the ETS, the revision of the Energy Taxation Directive and the carbon border adjustment mechanism. The gas decarbonisation package will follow towards end of the year. Key elements under discussion concern gas/electricity issues which are laid down in acts in different policy areas (e.g. taxonomy and the definition of low carbon fuels). The EC is keen on receiving regulatory views also on these issues. The public consultation ends on 18 June 2021; there are ongoing discussions with regulators and it would be useful to have joint regulatory arguments, where possible.

Mr Koch informed the BoR on the state of play with regard to Switzerland.

Mr Koch also informed members of the preparations for the upcoming Florence Forum (14-15 June). The agenda features inter alia: the revision of the Renewable Energy Directive, Decarbonisation of Gas Markets Package, Offshore Strategy, resource adequacy and minimum requirements, update on bidding zone review and ACER's report on cross-border capacity allocation (70% rule), cybersecurity and market design for demand side flexibility. There will also be a session on network codes implementation and on enforcement which will also allow to highlight the need to comply with legally binding obligations. The Forum will also address the implementation of the TCA with UK and the relationship with Switzerland.

The BoR Chair thanked Mr Koch for the updates.

4. Items for BoR opinion/approval/agreement

4.1. Administrative Arrangement (AA) with the UK regulatory authorities

The Director and Ms Bartok presented the state of play, reminding members of the timeline for finalising the AA. Following the previous discussions on the AA and the comments received the AA is submitted for BoR endorsement in order to submit it for approval by DG ENER/ BEIS in June and, subsequently, publish them. Ms Bartok presented the state of play of the AA, the substantive issues and the cooperation approaches. She then updated the BoR on the ENTSOs and UK SOs/TSOs working arrangements which follow a similar approach and the work in progress on the day-ahead timeframe of multi-region loose volume market coupling.

The Chair thanked Ms Bartok and opened the floor for discussion. The BoR discussed and endorsed the AA by consensus of the members present or represented.

4.2. ACER Decision on the definition of System Operation Region

The Director and Mr Gence-Creux introduced the above decision following the discussion at the last BoR. On 4 June 2020, ENTSO-E introduced an appeal before the Board of Appeal against ACER Decision 10/2020 of 6 April 2020 on the definition of system operation regions (SOR). In September 2020, the Board of Appeal decided to remit the case to the Director due to insufficient reasoning. The decision will replace Decision 10/2020. It explains the reasoning behind the changes regarding the proposed South West Europe (SWE) and Greece-Italy (GRIT) SORs, further detailing the application of Article 36(1) requirements, and sets out additional reasoning regarding the analysis of different elements of grid topology and changes resulting from the EU-UK Trade Cooperation Agreement. ENTSO-E assessed the timing for the various arrangements under the SOR Decision and asked for a 10 month extension of the deadline (after the decision becomes final), which ACER has accepted.

In the absence of proposals for comment/amendment, the BoR Chair opened the vote. 27 members participated and the BoR favourable opinion was provided by the required two-thirds majority of the members present or represented.

4.3. ACER Decision on the amendment to the Coordinated Security Assessment Methodology

The Director and Mr Gence-Creux presented the above decision noting that there has been extensive consultation and discussion with NRAs and TSOs. On 19 June 2019, ACER issued its decision No 07/2019 on the all TSO's proposal for a methodology for coordinating operational security analysis. In accordance with this decision, on 18 December 2020, all TSOs submitted to ACER a proposal for amendment to the CSAM. The decision proposes to approve, subject to some changes, the all-TSO proposal to amend the methodology for coordinating operational security analysis (CSAM) in line with the SO Regulation 2017/1485.

In the absence of proposals for comment/amendment, the Chair opened the vote. 27 members participated and the BoR favourable opinion was provided by the required two-thirds majority of the members present or represented.

4.4. Paper on compliance by TSOs and EU-wide entities

Mr Roupe, Chair of the ad hoc group on Compliance and Enforcement (AGCE), presented a paper exploring the legal framework, the roles and possibilities and challenges of coordinated enforcement actions where transmission system operators (TSOs), Nominated Electricity Market Operators (NEMOs), Regional Coordination Centres (RCCs), European Network Transmission System Operators for Electricity (ENTSO-E) and the European Union Distribution System Operator Entity (EU DSO Entity) fail to comply with their obligations under EU energy law or decisions made by NRAs and/or ACER. He also presented the next steps. Mr Roupe explained that there is a clear need to develop a collaborative ethos with regard to enforcement cases as well as a pragmatic approach without prejudice to the respective roles and responsibilities of ACER and NRAs.

The BoR unanimously endorsed the paper as an internal paper.

4.5. ACER Annual Activity Report 2020: independent section on regulatory activities

The Director presented the section of the Consolidated Annual Activity Report (CAAR) covering the regulatory activities of the Agency which span across formal acts and forward looking items including key achievements: in regard to electricity decisions on balancing, European Resource Adequacy, redispatching-related methodologies, Bidding Zone Review process; in gas the White Papers; regarding REMIT collection of 6.8 million records of transactions and market surveillance activities on cross-border trading. Following BoR approval, the regulatory section of the CAAR will be submitted to the Administrative Board for adoption and transmitted to the EU institutions by 1 July.

The BoR approved the independent section on regulatory activities by consensus of the members present or represented.

4.6. Annual Consolidated Report on progress of projects of common interest – PCI Monitoring Report

The Director and Mr Hesseling presented the report which is issued against a wider context and discussions on key challenges with regard to accelerating infrastructure development and the TEN-E Regulation revision. The report analyses the progress achieved with regard to the 106 electricity and 32 gas PCIs between 1 February 2020 - 31 January 2021. The report notes that about 1/3 of the PCIs are planned, but not yet in permitting or still under consideration. Overall, ACER notes a positive trend in the advancement of electricity and gas PCIs (the latter in particular) compared to the last reporting period, but approximately every fourth PCI suffers delays (in gas the main reason being financing) and the report reiterates the conclusions set out in the previous period. ACER considers that the absence of a clear indication of both the costs and the benefits of PCIs makes it more difficult to handle in permitting and less likely to be

supported by the public, the financial community, and the regulator. ACER recalls its previous recommendations that the scope of the National Network Development Plans (NDPs) should allow the inclusion of third party projects. Mr Hesseling explained how the advice from AEWG and AGWG and NRAs' comments have been taken into account. The Agency also welcomes that confidentiality claims for fundamental project information has been significantly reduced.

The BoR Chair thanked Mr Hesseling for the presentation and invited members to vote. 27 members participated and the BoR issued a favourable opinion by consensus.

Decisions/ Conclusions

4.1 The BoR endorsed the Administrative Arrangement with the UK regulatory authorities by consensus of members present and represented.

4.2 The BoR provided its favourable opinion on the ACER Decision on the definition of System Operation Region by the required two-thirds majority of the members present and represented.

4.3 The BoR provided its favourable opinion on the ACER Decision on the amendment to the Coordinated Security Assessment Methodology by the required two-thirds majority of the members present and represented.

4.4 The BoR endorsed the paper on compliance by TSOs and EU-wide entities by consensus of members present and represented.

4.5 The BoR approved the independent section on regulatory activities within the ACER's Annual Activity Report 2020 by consensus of the members present and represented.

4.6 The BoR provided its favourable opinion on the Annual Consolidated Report on progress of projects of common interest by consensus of the members present and represented.

5. AWG key issues

5.1 AWG key issues

The ACER Gas Working Group (AWG) Chair provided some key updates on the negotiations of the TEN-E Regulation revision by the EP and Council with trilogues envisaged for autumn. He also reported on the planned ACER/CEER webinars, including the ACER/CEER webinar on Gas MMR on 6 July and on Methane Emissions on 27 July.

The AWGs Chairs provided further written updates under part B on ongoing work in their respective groups.

The BoR Chair thanked the AWG Chairs for their updates.

5.2 Key messages on the Gas Decarbonisation Package

Mr Verdelho presented the key issues discussed to date with regard to the Gas Decarbonisation Package in the context also of the CEER response to the EC public consultation under preparation and possible next steps in terms of the preparation of the joint ACER-CEER position paper in Autumn 2021. The paper will address core regulatory elements of a market design for a decarbonised European gas market and it is envisaged to kick off the scoping work at working level soon with the target date for finalisation and publication of the paper in November 2021.

Mr Verdelho also informed the BoR on the related strands of work on the Gas Decarbonisation Package (e.g. methane emissions, joint ACER/CEER White Paper on methane emissions, the current role of NRAs in gas quality and biomethane).

The BoR Chair thanked Mr Verdelho for his presentation and opened the floor for discussion. The BoR discussed the key messages and core elements presented and took note of the next steps.

5.3 Findings on allowed revenue

Mr Hesseling presented the state of play of the input to the gas decarbonisation legislative package to be provided to the EC as regards allowed revenue topics. Mr Hesseling also presented the next steps to finalise this work through a BoR electronic procedure.

Mr Hesseling stated that there is agreement on some, but not all, inputs relating to future network utilisation, allowed revenue and hydrogen. He detailed the issues on which agreement may still be reached:

The BoR discussed key issues raised including how to achieve a meaningful comparison of the costs between all TSOs, the accessibility of data (e.g. requirement to provide the relevant cost data) to ensure transparency, the model for allowed revenue, the use of scenarios and the next steps.

The BoR Chair asked members to agree to the use of the electronic procedure. Members agreed to the use of the EP by consensus to start one week after the presented timeline.

5.4 Update on regional cross-zonal capacity allocation proposals

The Director and Mr Fransen presented an update on the state of play, open issues and timeline with regard to these proposals which are scheduled for submission at the July BoR. In January – March 2021, the NRAs of the Hansa, Core and Baltic regions requested that ACER decide on three market-based and one economic efficiency cross-border capacity allocation processes (Article 41 and 42 of Regulation 2017/2195) for the exchange of balancing capacity in their regions. However, TSOs withdrew some of the proposals (which are submitted on a voluntary basis, as also a harmonised methodology for all three processes is expected in December 2022) last month, namely the market based proposal for the Hansa region and the Core methodology for cross-border capacity allocation process based on economic efficiency analysis (Article 42 of Regulation 2017/2195).

The BoR discussed the open issues.

5.5 Second MACZT report

The Director and Mr Muruais Garcia presented the ACER report on the result of monitoring the margin available for cross-zonal electricity trade in the EU in the second semester of 2020. The report presents a similar picture as compared with the first semester of 2020 with regard to Direct Current and Alternating Current borders, and derogations/action plans, and significant room for improvement to meet the minimum 70% target, especially on some borders and/or coordination areas. The report highlights the importance of NRA coordination to progressively increase the capacity available, and reiterates the importance of TSOs providing robust and extensive data (on which there has been some improvement). This report contains a new annex transparently disclosing NRAs' intentions in terms of compliance monitoring approach at national level. The report will be published shortly after the June BoR and presented at the Florence Forum (15 June) and the MESC (16 June 2020). The BoR discussed the report.

5.6 Data for the 10th Market Monitoring Report - barriers to entry to the electricity market

The Director stated that to fulfil its new monitoring responsibilities under the Clean Energy Package, ACER has been carrying out a study aimed at identifying and measuring barriers to efficient price formation and easy market entry and participation for new market entrants and smaller actors in the EU electricity wholesale markets. The study has defined some indicators to be progressively included in future editions of ACER's Market Monitoring Report (MMR), starting with this year's MMR. Consequently, ACER has sought additional data from NRAs to inform its monitoring efforts.

**Decisions/
Conclusions**

5.3 The BoR agreed to use the electronic procedure to endorse the input to be provided to the EC with regard to allowed revenue topics by consensus of members present and represented, to be launched one week after the envisaged time.