

102nd ACER Board of Regulators Meeting

22 September 2021

By video/audio conference

MINUTES FINAL

Country/Institution	Name ^[1]	Country/Institution	Name
Austria (E-Control)	A: Dietmar Preinstorfer O: Christine Materazzi-Wagner O: Katharina Ledermann-Tappeiner	Latvia (PUC)	M: Rota Šņuka O: Lija Makare Alda Ozola, PUC Chair
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren	Lithuania (NERC)	A: Irma Zdanienė
Bulgaria (EWRC)	A: Evgenia Haritonova	Luxembourg (ILR)	M: Camille Hierzig
Croatia (HERA)	A: Sonja Tomašić Škevin	Malta (REWS)	A: Phyllis Mycallef
Cyprus (CERA)	O: Marilena Delenta (with proxy)	Netherlands (ACM)	M: Manon Leijten
Czech Republic (ERO)	A: Jana Haasová O: Tomáš Kupčiha	Poland (URE)	M: Rafał Gawin A: Małgorzata Kozak O: Danusta Sierocinska
Denmark (DUR)	M: Carsten Smidt A: Mads Lyndrup	Portugal (ERSE)	A: Pedro Verdelho O: Catarina Santos
Estonia (ECA)	A: Marilyn Tilkson	Romania (ANRE)	O: Florin Tobescu (with proxy)
Finland (EV)	A: Antti Paananen	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)	A: Esther Espeja O: Gema Rico
Greece (RAE)	M: Athanasios Dagoumas	Sweden (Ei)	M: Anne Vadasz-Nilsson

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

	O: Konstantinos Prosmittrellis		A: Caroline Törnqvist
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)	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, Fay Geitona, Mitsuko Akiyama		
European Commission	Christof Lessenich, Oliver Koch, Michael Schuetz		

1. Opening

1.1. Approval of the agenda

The agenda of the 102nd BoR meeting was approved. The draft agenda has been sent to the European Parliament.

The meeting was chaired by the BoR Vice-Chair, Mr Gawin. The Vice-Chair asked for declarations of conflict of interest. None was declared.

Mr Gawin welcomed the new PUC Chair Ms Alda Ozola. Ms Ozola, the new PUC Chair as of July 2021, expressed her keen interest in a fruitful collaboration while informing the BoR that Mr Šņuka will remain the PUC BoR member.

1.2. Minutes of the 101st BoR meeting

The minutes of the 101st BoR meeting were approved and sent to the European Parliament on 23 July.

Decisions/ Conclusions

1.1 The BoR approved the agenda.

2. Updates from the ACER Director and the BoR Vice-Chair

2.1. Updates from ACER

The Director updated members on the state of play of the 2022 EU budget negotiations and outreach efforts. On 14 July, the Council agreed its position on the 2022 draft EU budget. On 28 September, the European Parliament (EP) Budget Committee will vote on the budgetary amendments before agreeing its mandate for the budget negotiations around 18-21 October. If the two institutions' positions diverge, the 21-day conciliation period is expected to start on 26 October. The EC updated on the preparation of the EC opinion on the ACER programming document and the Legislative Financial Statement (LFS). Their formal adoption is expected at the end of September.

The Director would welcome further support in reaching out to other ministries, particularly after the EC opinion on the Programming Document addressing the ACER resources and the LFS have been issued, as well as vis a vis the EP Budget Committee ahead of their vote next week.

The Director updated members on the October BoR as well as the reception in Ljubljana planned for 26 October and co-hosted by ACER and the Slovenian NRA on the occasion of the Slovenian EU Presidency and the ten year anniversary of ACER's establishment.

The BoR noted the outcomes of the following electronic procedures (EPs).

The BoR EP for the favourable opinion on the ACER Framework Guideline on sector-specific rules for cybersecurity aspects of cross-border electricity flows ending 22 July was conducted in two rounds. During the first round, no proposal for amendments or comments was received. During the second round, 26 members participated and the BoR favourable opinion was provided by consensus of members participating in the EP.

The BoR EP for the ACER decision on the market-based allocation process of cross-zonal capacity for the exchange of balancing capacity for the Core CCR was held in 3 rounds ending 12 August 2021. During the first round, members agreed to the use of the electronic procedure, and 1 proposal for amendment and 1 comment were received, neither of which was adopted in the second round. 24 members participated in the third round and the BoR FO was granted by the required majority.

2.2. Updates from the BoR Vice-Chair

The Vice-Chair presented the proposed agenda for the ACER leadership away day to be held in Ljubljana on 29, 30 November. The agenda will be finalised in light of any feedback received by the end of this week, and an invitation will shortly be sent to the participants.

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

3.1 Updates on the EU Green Deal and other EC updates

Mr Lessenich reported on recent developments with respect to EC key initiatives in the context of the Green Deal. He highlighted two key dossiers that the EC is currently working on, the Hydrogen and Gas Decarbonisation Package (the revision of the gas market rules) as well as the EC legislative proposal on methane emissions. Both are expected to be issued by the end of the year. This key initiative pertains notably to the role of renewable gas and to the regulatory framework dedicated to hydrogen infrastructure. ACER's work will remain important during this phase of decarbonisation.

Mr Lessenich reported on the EC decision on the appointment of the ACER Board of Appeal (BoA) members and alternates (adopted on 6 September), who are formally appointed by the AB. Their term will start on 18 October. The BoR Vice-Chair thanked Mr Lessenich for the updates.

4. Items for BoR opinion/approval/agreement

4.1. Appointment of the AGWG Vice Chairs

The term of the current AGWG Vice-Chair expires on 22 September. According to Article 2.3 of the rules of procedure of ACER Working Groups, the Director and the BoR jointly appoint one or more Vice-Chairpersons of an ACER Working Group after consulting the Chairperson.

Mr Maes and Mr Esnault expressed an interest in the position of AGWG Vice-Chair and the AGWG Chair was consulted. The BoR and the Director agreed on the appointment of Mr Maes and Mr Esnault as AGWG Vice-Chairs as from 22 September 2021. The draft decision will be finalised accordingly. The Director congratulated both Vice-Chairs and looks forward to continuing ACER's collaboration with them.

4.2. ACER Decision on sharing costs incurred to ensure firmness and remuneration of long term transmission rights

The Director introduced the above Decision. Pursuant to Article 4(1) and (6)(g) and Article 61(3) of Commission Regulation (EU) 2016/1719 establishing a guideline on forward capacity allocation (the FCA Regulation), all transmission system operators were required to jointly develop a methodology for sharing costs incurred to ensure firmness and remuneration of long-term transmission rights (FRC methodology). By Decision No 25/2020 of 23 October 2020 on sharing costs incurred to ensure firmness and remuneration of long-term transmission rights, ACER approved the FRC methodology proposed by all TSOs pursuant to Article 5(2) of Regulation (EU) 2019/942, with some amendments. Decision No 25/2020 was, subsequently, appealed to the ACER Board of Appeal (BoA), and the latter remitted the case to the ACER Director by Decision A-009-2020 of 19 April 2021.

The present Decision replaces Decision 25/2020. Annex I to the new Decision sets out the FRC methodology as decided by ACER and endorsed by the AEWG (whose advice has been circulated).

As no proposal for amendment/comment was received by the deadline of 15 September, the BoR Vice-Chair asked whether there was consensus to issue a BoR favourable opinion. The BoR favourable opinion was provided by consensus of the members present and represented.

4.3. Withdrawal of ACER Decision on the definition of System Operation Regions

The ACER Director introduced the above Decision. 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. Decision 08/2021 of 29 June 2021 replaced Decision 10/2020, explaining the reasoning behind ACER changes. However, Decision 08/2021 was also appealed (case A-012-2021). Thus for procedural reasons, ACER is minded to withdraw Decision 08/2021.

The process for adopting the withdrawal Decision has started. Following this the AEWG advice on the withdrawal Decision will be sought and, subsequently, the BoR favourable opinion. Members discussed the next steps and noted the importance of acting swiftly in respect of issuing the withdrawal decision and the new SOR Decision to replace it.

The BoR agreed to the use of the electronic procedure to issue its opinion on the ACER Decision to withdraw Decision 08/2021 by consensus of the members present and represented.

Decisions/ Conclusions

4.1 The BoR and the Director agreed by consensus on the appointment of Mr Maes and Mr Esnault as AGWG Vice-Chairs with effect from 22 September 2021.

4.2 The BoR provided its favourable opinion on the ACER Decision on sharing costs incurred to ensure firmness and remuneration of long term transmission rights by consensus of the members present and represented.

4.3 The BoR agreed to the use of the electronic procedure to issue its opinion on the ACER Decision to withdraw its Decision on the definition of System Operation Regions by consensus of the members present and represented.

5. AWG key issues

5.1 AWG/ARC key issues

The AEWG Chair pointed to the written update shared with members. She informed the BoR about the state of play of Elcom's participation in the AEWG (henceforth on an *ad hoc* basis) and on the work on proposals for amending the CACM guidelines (to be submitted to the EC to start a formal process for CACM 2.0).

The AGWG Chair updated on the TEN-E negotiations and the upcoming vote at the EP ITRE committee, which is due at the end of September. Following the ACER-CEER White Paper, an ACER-CEER webinar on methane emissions was held on 14 September with a very good turnout; a follow-up meeting with the EC will be held on 26 October.

The BoR Vice-Chair thanked the AWG Chairs for their updates.

5.2 ERAA 2021

Mr Gence-Creux referred back to the discussion at the July BoR, where the AEWG Chair presented the concerns surrounding the quality of the European Resource Adequacy Assessment (ERAA) 2021.

Mr Gence-Creux stated that there are also concerns around long-term ERAA implementation, notably the process (which lacks transparency and the opportunity for stakeholders to influence it) and how to ensure oversight of national resource adequacy assessments in line with Article 24(3) of the Electricity Regulation.

The BoR Vice-Chair invited members to discuss the next steps for ERAA 2021 and long-term implementation.

Mr Lessenich shared the aforementioned concerns and noted that the ERAA was a key innovation of the Clean Energy Package which aims to capture a European perspective on adequacy assessment. We are now faced with the prospect that ERAA 2021 will not be compliant with the legal requirements as per the Electricity Regulation. The EC suggested that NRAs may consider following this up with the national TSOs, underlining the need to bring ERAA in line with existing rules.

5.3 Report on Case C-718/18 Commission v Germany

The European Court judgment handed down on 2 September 2021 in Case C-718/18 Commission v Germany addresses aspects relating specifically to the key issue of NRA independence under EU law (Articles 37 and 41(1) and (6) of Directives 2009/72 and 2009/73 (Electricity and Natural Gas Directives) the ruling also applies to the recast Electricity Directive 2019/944).

Ms Groebel and the EC reported on this ruling. BNETZA issued a press release on 2nd September in response to the European Court of Justice judgment¹.

Mr Lessenich noted the importance of this ruling and stated that the EC is looking into the implications of this ruling to other Member States in terms of NRAs' independence.

The BoR Vice-Chair thanked Ms Groebel for her oral update and the BoR discussed the implications of the above ruling.

5.4 Recent surge in power prices

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https://www.bundesnetzagentur.de/SharedDocs/Pressemitteilungen/EN/2021/20210902_RegEnergieEUGH.html?nn=404530.

Mr Hesseling presented the factors likely to have contributed to the recent rise in power prices, drawing on insights gained from the ACER Market Monitoring Report. The rise in power prices across Europe could be explained by a number of factors.

The BoR Vice-Chair thanked Mr Hesseling for his presentation and remarked that this discussion presents an opportunity to transparently exchange information and views, including on the monitoring done by regulators regarding the trends. The BoR discussed the emerging challenges for consumers including the social implications and the importance of ensuring close monitoring of the markets to avoid distortions to the internal energy market.

AOB

Mr Dagoumas, made a presentation on "*Managing a possible electricity crisis in Greece – August 2021*" in the light of the requirements of Regulation (EU) No 2019/941. He presented the security of supply situation that Greece faced during early August including circumstances justifying the issuance of the early warning (wildfires, the long-lasting heatwave and the high electricity demand), the impact on the wholesale electricity market, as well as the measures planned and/or taken to prevent an electricity crisis.

Mr Locquet wanted to clarify whether the ACER press clippings on prices increases can be shared with NRAs. He also sought some clarifications from the EC (regarding Brexit) regarding the possibility of UK based suppliers that had a supply licence before Brexit, to continue their activities, taking into account one particular aspect in Belgian law. To hold a supply licence in Belgium, electricity and natural gas suppliers are obliged to have a seat in a member state of the European Economic Area (EEA). However, several suppliers are domiciled in the UK which, since Brexit, is no longer in the EEA.