

ACER

 Agency for the Cooperation
of Energy Regulators

The Rules of Procedure of the Board of Regulators of the European Union Agency for the Cooperation for Energy Regulators

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⁵ Ref: A19-BoR-83-04.1

⁶ Ref: A20-BoR-88-09.2

⁷ Ref: A20-BoR-89-04.2

⁸ Ref: A20-BoR-91-04.4

Board of Regulators of the European Union Agency for the Cooperation for Energy Regulators

- Rules of Procedure -

The Board of Regulators of the European Union Agency for the Cooperation of Energy Regulators (ACER), hereafter referred to as 'BoR' or 'Board of Regulators'.

Having regard to:

- (1) Regulation (EU) No 2019/942 of the European Parliament and of the Council establishing a European Union Agency for the Cooperation of Energy Regulators (hereafter ACER Regulation)
- (2) Directive 2009/73/EC on common rules for the internal market in gas and repealing Directive 2003/55/EC (hereafter Gas Directive)
- (3) Directive (EU) 2019/944 on common rules for the internal market in electricity (hereafter Electricity Directive)
- (4) Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005
- (5) Regulation (EU) No 2019/943 on the internal market for electricity
- (6) Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency
- (7) Regulation (EU) No 347/2013 on Guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006
- (8) Decision of the EEA Joint Committee No 93/2017 of 5 May 2017 amending Annex IV (Energy) to the EEA Agreement (2019/205)

Considering that the purpose of ACER shall be to assist the regulatory authorities referred to in Article 57 of Directive (EU) 2019/944 and Article 39 of Directive 2009/73/EC in exercising, at Union level, the regulatory tasks performed in the Member States and, where necessary, to coordinate their action and to mediate and settle disagreements between them in accordance with Article 6(10) of the ACER Regulation. ACER shall also contribute to the establishment of high-quality common regulatory and supervisory practices, thus contributing to the consistent, efficient and effective application of Union law in order to achieve the Union's climate and energy goals.

Considering that the independence of regulatory authorities is not only a key principle of good governance but also a fundamental condition to ensure market confidence.

Considering that, reflecting the situation on a national level, the BoR shall according to Article 22(3) of the ACER Regulation act independently of market interests and shall not seek or take instructions from any government of a Member State or another public or private entity or from the Commission.

Considering the functions of the BoR according to Article 22 of the ACER Regulation and, in particular, paragraph 5 thereof.

Considering that, pursuant to Article 24(2) of the ACER Regulation, opinions, recommendations and decisions referred to in Article 3(1), Articles 4 to 8, Article 9(1) and (3), Article 10, Article 11(c), Article 13, Article 15(4), and Articles 30 and 43 shall only be adopted after having obtained the favourable opinion of the BoR, which shall provide, where appropriate, comments on and amendments to the texts of the Director's proposals.

Considering that pursuant to Article 30(1) of the ACER Regulation, ACER Working Groups (hereafter AWGs) provide support to the work of the Director and that of the BoR on regulatory issues and for the purpose of preparing the opinions, recommendations and decisions referred to in Articles 3(1), 4 to 8, 9(1) and (3), 10, 11(c), 13, 15(4), 30 and 43 of the same Regulation, which require the BoR's favourable opinion pursuant to Article 24(2). To this end, the AWGs' advice shall be made available to the BoR together with any information needed or requested from the BoR in order to perform its duties.

Considering that the decisions of the BoR should, at the same time, comply with Union law concerning energy and in particular the internal energy market, the environment and competition.

Considering that the BoR may have to report its opinions, recommendations and decisions to the Union institutions, where appropriate.

Considering that the European Parliament shall be informed of the draft agenda of the upcoming meetings of the BoR at least two weeks in advance pursuant to Article 22(6) of the ACER Regulation and that the European Parliament may invite, while fully respecting his/her independence, the Chair of the BoR or the Vice-Chair to make a statement before its competent committee and answer questions put by the members of that committee.

Considering the importance of guaranteeing the independence of ACER, its technical and regulatory capacities and its transparency and efficiency, regulatory authorities within ACER must act independently in fulfilling their role.

Considering that the structure of ACER should be adapted to meet the specific needs of energy regulation and that the specific role of the regulatory authorities needs to be taken fully into account within the BoR established through the ACER Regulation.

Considering the Better Regulation Strategy endorsed by the European Commission, together with its three action lines, including; promoting the design and application of better regulation tools at the EU level (notably simplification, reduction of administrative burdens and impact assessment); working more closely with Member States to ensure that better regulation principles are applied consistently throughout the EU by all regulators; and reinforcing the constructive dialogue between stakeholders and all sectoral regulators at EU and national level.

Considering that, according to Article 22(5)(b) of the ACER Regulation, the BoR shall, within its field of competence, provide guidance to the Director in the execution of his or her tasks, with the exception of ACER's tasks under Regulation (EU) No 1227/2011, and provide guidance to AWGs established pursuant to Article 30 of the ACER Regulation and that, according to Article 23(1) of the ACER Regulation, the Director shall act in accordance with such guidance.

Whereas ACER should have legal guarantees that participants in the BoR will not disclose commercially sensitive information which they obtained in their capacity as members, alternates, observers or participants to the BoR.

Whereas, in light of the initiatives taken by the European Parliament, the Council of the EU and the European Commission, the Administrative Board of ACER (hereafter "AB" or "Administrative Board") has laid down in Decision AB No. 02/2015⁹ a comprehensive and coherent policy for the prevention and management of conflicts of interest which, in the interest of internal consistency, has been reflected in the Rules of Procedure of the BoR.

Whereas these Rules of Procedure are complementary to the ACER rules of procedure and the rules of procedure of the AWGs pursuant to Articles 14(5) and 30(3) of the ACER Regulation.

Whereas pursuant to the Decision of the EEA Joint Committee No 93/2017 of 5 May 2017, the national regulatory authorities of the EFTA States shall participate fully in the Board of Regulators and all preparatory bodies of the Agency. They shall not have the right to vote in the Board of Regulators. The internal rules of procedure of the Board of Regulators shall give full effect to the participation of the national regulatory authorities of the EFTA States.

Adopts the following Rules of Procedure:

⁹ Decision AB n° 02/2015 of the Administrative Board of 31 January 2015, laying down a policy for the prevention and management of conflicts of interest.

Part 1

Scope and objective

Article 1 - Scope and objective

- 1.1 Pursuant to Article 22(2) of the ACER Regulation, the BoR must set out in greater detail its working arrangements in its Rules of Procedure together with the arrangements governing voting, especially the rules applicable to one member acting on behalf of another and also, where appropriate, the rules governing quorums.

The Rules of Procedure may also provide for specific working methods to consider issues arising in the context of regional cooperation initiatives. The BoR shall encourage cooperation between the regulatory authorities at regional and Union level.

- 1.2 These Rules of Procedure will govern primarily how regulators cooperate and work together through the BoR but also how they work with the other Bodies of ACER. In that respect, the Rules of Procedure shall reflect the specificities and tasks of the BoR within ACER. Those tasks are set out in Article 22 of the ACER Regulation.

Part 2

Structure and Organisation of the BoR

Section One

Internal organisation of the BoR

Article 2 – Composition of the BoR

2.1 Pursuant to Article 21(1)(a) of the ACER Regulation, the BoR will comprise (a) one senior representative of each regulatory authority at national level¹⁰ per Member State (“member”) and EEA EFTA State (Iceland, Liechtenstein and Norway) who shall be non-voting (“non-voting member”), in accordance with Article 57(1) of the Electricity Directive and Article 39(1) of the Gas Directive, and one alternate per Member State and EEA EFTA State (Iceland, Liechtenstein and Norway) from the current staff of these regulatory authorities; (b) one non-voting representative of the Commission (“non-voting member”) and (c) one non-voting representative of the EFTA Surveillance Authority (“non-voting member”).

Under the provisions of the Rules of Procedure, “Observers” are the attendees of the BoR meeting who are neither members nor non-voting members pursuant to Article 2.1 and they do not have a right to vote.

2.2 Each regulatory authority shall be responsible for nominating its member and an alternate from its current senior staff.

2.3 A regulatory authority may be represented at the meetings of the BoR by its member, its alternate or a duly mandated proxy. The proxy should provide a power of attorney covering all agenda items (see Annex 1), which should be received by the Secretariat at the latest at the start of the meeting. The proxy shall be to a senior staff of the regulatory authority or another member of the BoR. A member shall not have more than one proxy vote in addition to his/her own vote.

2.4 The Commission may participate in the meetings of the BoR but without the right to vote. The regulatory authorities at national level from each EEA-EFTA State (Iceland, Liechtenstein and Norway) and the EFTA Surveillance Authority shall participate fully in the Board of Regulators, without the right to vote. The Director may attend the meetings of the BoR as an observer pursuant to Article 23(1) of the ACER Regulation.

¹⁰ Hereafter referred to as “regulatory authority”.

- 2.5 Each regulatory authority will appoint a senior staff representative who will act as a Liaison Officer. His/her task will facilitate the relevant information exchange between his/her organisation, ACER and other members.
- 2.6 The modalities of the participation, as observer to the BoR, of a representative of a third country which has concluded agreements with the Union (whereby it has adopted and is applying Union law in the field of energy as well as the relevant rules in the fields of environment and competition) are subject to the relevant provisions of these agreements in accordance with Article 43 of the ACER Regulation.
- 2.7 Members shall keep regulatory authorities at regional level¹¹ and regulatory authorities for small systems¹² of their Member State informed about the BoR discussions and decisions, where necessary. Each member shall make all appropriate arrangements to ensure that he/she may speak for the national competent energy regulators as a whole in the event that regulatory authorities at regional level and/or regulatory authorities for small systems have an interest in the matter discussed.

Article 3 - Election and competences of the Chair and Vice-Chair of the BoR

- 3.1 Pursuant to Article 21(2) of the ACER Regulation, the BoR shall elect a Chair and a Vice-Chair from among its members. The election should take place by secret ballot.
- 3.2 The term of office of the Chair and the Vice-Chair shall be two-and-a-half years and renewable. The term of office of the Chair and that of the Vice-Chair shall expire when they cease to be members of the BoR. Members of the BoR whose remaining term of office on the national level will not cover the Chair/Vice-Chair mandate should inform the BoR when applying for the position of Chair/Vice-Chair.
- 3.3 The BoR may elect a Chair and a Vice-Chair only if at least two-thirds of the members are present or represented. If two-thirds of the members are not present or represented at the first meeting, a second meeting shall be convened, at least 15 days after the first meeting, which may validly deliberate irrespective of the number of members present or represented.

¹¹ A regulatory authority at regional level within a Member State as foreseen in Article 57.2 of the Electricity Directive and in Article 39.2 of the Gas Directive.

¹² A regulatory authority for a small system as foreseen in Articles 57.3 of the Electricity Directive and in Article 39.3 of the Gas Directive means a regulatory authority for a small system on a geographically separate region whose consumption, in 2008, accounted for less than 3% of the total consumption of the Member State of which it is part, where such a body has been designated by a Member State, by way of derogation from paragraph 1 of Articles 57 and 39.

- 3.4 If the office of Chair or Vice-Chair falls vacant before the end of the term of office, the Vice-Chair or Chair, as appropriate, shall arrange within three months for the election of a successor pursuant to Article 3.3. The member then elected shall serve as Chair or Vice-Chair for a full term of office or until the end of his/her membership of the BoR, whichever is earlier.
- 3.5 In case both the Chair and the Vice-Chair are absent or impeded, the member of the BoR who has been serving in the BoR for the longest time should chair the BoR for as long as the Chair and the Vice-Chair are absent or impeded and arrange within three months for the election of a new Chair and a Vice-Chair pursuant to Article 3.3.
- 3.6 The Chair will convene and chair the meetings of the BoR.
- 3.7 According to Article 18(4) of the ACER Regulation the Chair may attend the meetings of the Administrative Board without the right to vote. In case of absence, the Chair may appoint a nominee (normally the Vice-Chair) to attend such meetings.
- 3.8 The Chair is responsible for representing the views and the policies of the BoR externally and may make a statement before the competent committees of the European Parliament and/or answer questions put by members of such committees if so invited. When presenting the policies of the BoR externally, the Chair and/or the Vice-Chair will reflect ACER's formal positions.
- 3.9. The Vice-Chair shall automatically take the place of the Chair if he/she is prevented from performing his/her duties and as such convene the BoR meetings.

Article 4 - Meetings of the Board of Regulators

- 4.1 Meetings of the BoR will be convened as often as needed but in principle once per month, at the invitation of the Chair or the Vice-Chair in the case foreseen in Article 3.9.
- 4.2 The secretarial services of the BoR shall be provided by the ACER staff as appointed ("Secretariat").
- 4.3 The Chair may, on his/her own initiative or following the proposal of a member on a case-by-case basis, invite external experts to attend a meeting, or part of it, as observers. The invitation shall be issued subject to the agreement of the BoR.
- 4.4 Members of the BoR may be accompanied at the BoR meeting by some of their regulatory authority staff.

- 4.5 Subject to a proposal by the relevant national member and agreement by the BoR, members of the BoR may also be accompanied by staff from regulatory authorities at regional level and/or regulatory authorities for small systems for topics of particular interest, without the right to vote.
- 4.6 Following a proposal by the Chair or a member and subject to the agreement of the BoR, the BoR may deliberate without the presence of observers for certain items clearly indicated in the agenda, in duly justified circumstances.
- 4.7 The Chair may in exceptional circumstances¹³ allow a virtual BoR meeting, or the virtual participation of member(s) at a BoR meeting.

Article 5 - Agenda, minutes, documentation of the Board of Regulators

- 5.1 The Chair shall propose the agenda for the meeting and ensure that it contains all items to be discussed and/or approved and take into account proposals submitted by the members. Each agenda item should indicate whether it is accompanied by a document, including whether that document is for information, for an orientation discussion, for informal endorsement, for an opinion, or for approval¹⁴. The draft agenda for approval at the meeting shall be circulated to the BoR at least three weeks before the meeting. If the Board of Appeal remits a case to the Director pursuant to Article 28(5) of the ACER Regulation and the case concerns a decision which requires the BoR opinion, the Chair shall inform the BoR in a timely manner and include this in the BoR agenda for discussion.

The European Parliament shall be informed of the draft agenda of upcoming meetings of the BoR two weeks before the meeting.

¹³ Exceptional circumstances include events of “force majeure,” namely unforeseeable circumstances beyond the control of ACER and participants to the BoR, for example an act of God (such as fires, explosions and earthquakes), war hostilities, acts or threats of terrorism, and any form of civil disturbance.

¹⁴ A BoR opinion or approval will be required where set out in the ACER Regulation or another legal act providing that the relevant provisions of the ACER Regulation are applicable.

Where there is no formal requirement for an opinion or approval of the BoR under the ACER Regulation, a document may be submitted for informal endorsement where the BoR agreement is deemed necessary even though not of a formal nature. Article 6 on the voting rules of the BoR shall apply *mutatis mutandis*.

- 5.2 The meeting documents shall be circulated to the BoR at least one week before the meeting. Notwithstanding this provision, the proposals for draft opinions, recommendations and decisions submitted for a BoR opinion pursuant to Article 24(2) of the ACER Regulation will be circulated one week¹⁵ before the one-week deadline for the circulation of documents. The Chair may decide that items be removed from the agenda if the relevant documents have not been circulated within the above deadlines before the meeting. The AWGs' advice and report shall be submitted to the BoR as soon as it is made available to the Director. In addition, the BoR may request input from the AWG at any stage of the process. Exceptionally, it may be necessary to submit documents closer to the meeting date. Such late submission will be subject to justification and prior approval of the Chair.
- 5.3 The Secretariat shall prepare and maintain the minutes of the meetings, which shall include the adopted decisions and conclusions, assist the BoR in their functions and execute other secretarial functions assigned to it by the BoR.
- 5.4 Having received the approval of the Chair, the Secretariat shall submit a first draft of the minutes to members within four working days after the meeting for comments within three working days. The final draft minutes shall be forwarded to members for approval within two working days after the deadline for comments. Pursuant to Article 22(6) of the ACER Regulation, the Secretariat shall send the final minutes to the European Parliament within two weeks of the BoR meeting along with the final agenda as approved by the BoR.

Article 6 - Voting rules within the Board of Regulators

- 6.1 Each member of the BoR or his/her alternate or proxy has one vote. The Chair may decide that the vote for him or her or his/her regulatory authority shall be exercised by the alternate or by the proxy.
- 6.2 Where ACER considers adopting a specific individual decision or an opinion on a decision taken by a regulatory authority in accordance with Articles 6 and 10 of the ACER Regulation for which the BoR shall provide a reasoned opinion (under Article 22(5)(a) of the ACER Regulation), the BoR member concerned by ACER's decision and/or opinion considered for adoption shall retain his/her right to vote.
- 6.3 Members may have an orientation discussion ahead of taking a decision on the draft proposals from the Director on the ACER's acts considered for adoption.
- 6.4 (i) The BoR may suggest comments and amendments to the Director on his/her draft

¹⁵ Under these Rules of Procedure a working day is any day other than Saturday, Sunday and public holidays of ACER as defined on a yearly basis.

proposals for opinions, recommendations and decisions considered for adoption under Articles 3(1), 4 to 8, 9(1) and (3), 10, 11 point (c), 13, 15(4), 30 and 43 of the ACER Regulation in accordance with this Article 6.4.

(ii) For the purposes of these Rules the following definitions shall apply:

“Amendments” seek to change any part of a text. They may be directed to deleting, adding or replacing words or figures.

“Comments” are remarks that cannot be addressed through a concrete text change (by deleting, adding or replacing it). They may consist of different types of insights into the issue at hand.

“Corrections” seek to ensure the linguistic correctness, address the terminological consistency or remedy factual mistakes relating to a regulatory authority or its country, and are not considered as amendments or as comments.

(iii) A member may submit corrections to the Director at any time, either in writing or orally, until the document is finalised. For linguistic corrections, the Chair and the Director shall seek a suitable linguistic remedy.

(iv) A proposal for comment or amendment shall be tabled in writing by a member one week before the BoR meeting and may be accompanied by a short justification. Where relevant, the authors of the amendments shall indicate which of their proposals for amendments (to different parts of the text) are related. Members should strive to submit coordinated and, where possible, joint proposals for amendments.

(v) Ahead of the meeting, the Chair shall order the proposals for comments and amendments in a voting list, to be sent out at least one day before the BoR meeting, as follows:

Amendments and comments shall have priority over the act to which they relate and shall be put to vote before that act. The order of the vote on the amendments shall follow the sequence of the original text of the act to which they relate. If two or more amendments that have been tabled relate to the same part of a text, both amendments shall be put to vote. The voting list shall indicate conflicting and related amendments.

(vi) Following a proposal by the authors of the amendments or on his/her own initiative, the Chair may group proposals for amendments which are related and put them to a single vote subject to the agreement of the BoR.

- (vii) Compromise amendments may be tabled after the deadline for amendments has passed, two working days before the BoR meeting. The Chair shall decide on the admissibility of such amendments before putting them to a vote on the basis of the following criteria:

Compromise amendments relate to parts of the text which have been the subject of amendments prior to the one week deadline for tabling amendments. The compromise amendments shall be proposed jointly by the members who proposed the initial amendments where there are two or more amendments to the same part of the text. The compromise amendments which are adopted entail that the initial amendments to the same part of the text by the same members who proposed the compromise amendment are withdrawn and not put to a vote. In case a compromise amendment is not adopted, the initial amendments to the same part of the text shall be put to a vote.

- (viii) The BoR shall adopt comments and amendments by a two-thirds majority of the members present or represented pursuant to Article 6.5.

- (ix) Only those comments and amendments that have been adopted shall be submitted to the Director. Pursuant to Article 24(2) of the ACER Regulation the Director:

(a) shall take the comments and amendments of the BoR into account and shall resubmit the revised draft opinion, recommendation or decision to the BoR for a favourable opinion;

(b) may withdraw submitted draft opinions, recommendations or decisions with a duly justified written explanation where the Director disagrees with the amendments submitted by the BoR.

In case of withdrawal of a draft opinion, recommendation or decision, the Director may issue a new draft opinion, recommendation or decision following the procedure set out in point (a) of Article 22(5) of the ACER Regulation and in the second subparagraph of Article 24(2) of the same Regulation.

- (x) Where the Director deviates from or rejects the comments and amendments received from the BoR, the Director shall also provide a duly justified written explanation to the BoR citing the relevant legal provisions. In case the Director presents a revised proposal at the same meeting, the written explanation may also be incorporated in the BoR minutes. If the BoR does not give a favourable opinion on the resubmitted text of the draft opinion, recommendation or decision because its comments and amendments were not adequately reflected in the resubmitted text, the Director may revise the text of the draft opinion, recommendation or decision further in accordance with the amendments and comments

proposed by the BoR in order to obtain its favourable opinion either at the same or future BoR meeting or through a single round electronic procedure, without having to consult the relevant AWGs again or having to provide additional written reasons. The Chair will circulate the revised draft opinion, recommendation or decision to the BoR for a vote, where appropriate, either at the same or upcoming BoR meeting, or through a single round electronic procedure of at least three days subject to the BoR agreement on the use of an electronic procedure. The BoR may agree to have a shorter (than 3 working days) round of electronic procedure in extremely urgent cases.

(xi) Where no comments or amendments are adopted, the Chair shall put the draft opinion, recommendation or decision to the BoR to vote for a favourable opinion. Where the required majority is not reached, the provision of Article 6.5 shall apply and the Chair will use his/her best offices to seek to facilitate agreement. The Director may revise the text of the draft opinion, recommendation or decision further in order to obtain the favourable opinion of the BoR, without having to consult the relevant AWGs again or having to provide additional written reasons. To this end, the Chair will circulate the revised draft opinion, recommendation or decision to the BoR for a vote, where appropriate, either at the same or upcoming BoR meeting, or through a single-round electronic procedure of at least three days subject to the BoR agreement to use the electronic procedure. The BoR may agree to have a shorter (than 3 working days) round of electronic procedure in extremely urgent cases.

6.5 Members should strive to reach consensus in taking decisions under these rules. The decisions shall be put to a vote and the BoR shall act by a two-thirds majority of members present or represented. Voting shall be expressed by “Yes”, “No”, or “I abstain”. Where in taking decisions under these rules the required majority is not reached, the Chair will use his/her best offices to seek to facilitate agreement.

The BoR may decide to hold preparatory discussions with the BoR members only.

6.6 The quorum should be established at the beginning of the meeting and revised as appropriate at each agenda item for decision on the basis of the participant list. The necessary quorum for a valid BoR decision generally is met if the majority of its members are present or represented. If the majority of the members are not present or represented at the first meeting, a second meeting shall be convened, at least 15 days after the first meeting, which may validly deliberate irrespective of the number of members present or represented.

6.7 The BoR decisions shall be recorded in the minutes of its meeting. Where a decision is taken by vote, the minutes recording the decision concerned shall indicate whether it is taken by consensus or majority vote and, where requested, with a dissenting opinion by a BoR member without specifying the individual members' vote or dissenting opinion. In the interest of transparency, any dissenting opinion will be attached to the BoR decision to be forwarded to the Director. A dissenting opinion shall be submitted in a standard summary format of no more than 300 words. This summary shall not be published but retained by the Director in ACER's records.

6.8 (i) The Chair may decide that a matter is urgent and may use the electronic procedure if the BoR agrees to the use of a two- (or potentially three-) round electronic procedure in order to seek agreement to a proposal. The BoR shall decide by a two-thirds majority of members who have responded in the electronic procedure. The necessary quorum for a valid BoR decision is met if the majority of its members have responded in the electronic procedure. Where the BoR decides on the use of the electronic procedure, should the two-thirds majority not be obtained, the second round shall not be launched.

(ii) The following procedure applies when proceeding by way of electronic procedure:

(a) On a decision of the Chair, the first round of the electronic procedure will be launched indicating the deadline for replying of at least three working days and the consequences of failure to respond within that deadline for: (a) the agreement to use the electronic procedure (unless the BoR has already agreed to the use of the electronic procedure), and/or (b) any comments on the proposal.

(b) If agreement is reached on the use of the electronic procedure, the Director shall explain where relevant to which extent any comments received have, as far as possible, been taken into account, and submit a proposal.

(c) The BoR Chair will circulate the proposal for final agreement through a second round of electronic procedure lasting at least three working days without the possibility to submit further comments.

(iii) Notwithstanding paragraph (ii) of this Article 6.8, with regard to the opinions, recommendations and decisions considered for adoption under Article 6(4)(i) of these Rules of Procedure, the following procedure applies. The provisions of Article 6.4 shall apply *mutatis mutandis*, without the possibility to submit compromise amendments.

(a) The first round of the electronic procedure will be launched by the Chair indicating the deadline for replying of at least one week for: (a) the agreement to use the electronic procedure (unless it has already been agreed), and/or (b) any proposal for comment or amendment.

(b) If agreement is reached on the use of an electronic procedure and at least one proposal for comment or amendment is tabled, the second round of the electronic procedure (of at least three working days) will be used for final agreement on the proposal(s) for comment and/or amendment submitted during the first round. The Chair shall order the proposals for comments and/or amendments in a voting list in accordance with the provisions of Article 6.4 paragraph (v). Alternatively, the BoR Chair may circulate the proposal(s) for comment and/or amendment, where appropriate, at the upcoming BoR meeting for final agreement pursuant to Article 6.4(viii).

(c) The Director shall explain to which extent the comments and amendment(s) have been taken into account and pursuant to Article 24(2) of the ACER Regulation, may submit the revised proposal to the BoR for a favourable opinion. The BoR Chair shall circulate the revised proposal for final agreement, where appropriate, at the upcoming BoR meeting or through a third round of the electronic procedure of at least three working days without the possibility to submit further comments or amendments.

(d) If agreement is reached on the use of the electronic procedure and no proposal for amendment or comment is tabled or adopted the BoR Chair will circulate the proposal for final agreement, where appropriate, at the upcoming BoR meeting, or put to a second round of the electronic procedure lasting at least three working days without the possibility to submit further comments or amendments.

(iv) At any stage of the process the Chair may decide to withdraw the electronic procedure and schedule the decision (of the second or third round) at the upcoming BoR meeting.

Article 7 - Guidance to the Director and to the AWGs

7.1 For the purposes of Article 22(5)(b), 23(1), and 24(1)(d) of the ACER Regulation, and within its field of competence, the BoR shall provide guidance to the Director or the AWG in the execution of their tasks. This may include Guidance to the Director to act, proceed or refrain from acting in a certain way in the discharge of his or her statutory tasks, without pre-empting the Director's discretion with respect to his/her action taken as a follow-up to such Guidance.

7.2 A proposal for Guidance shall specify in writing: a) the issue(s) to be addressed by it; b) whether the BoR has already discussed the same subject matter, the applicable process and the state of play; c) the specific content of the Guidance towards the Director or the AWG including the timelines; and d) the reference to the specific field of BoR's competence under which Guidance is sought. The proposal may be accompanied by a short justification.

7.3 Guidance may be provided in the following circumstances:

- (a) following discussion at a BoR meeting, in which case Article 7.2 will apply *mutatis mutandis* to allow the formulation of a written proposal during that meeting, which the members may agree to adopt at the same meeting; or
- (b) following a written proposal tabled by one or more members circulated at least one week before the BoR meeting in accordance with Article 7.2.

The BoR shall adopt the proposal for Guidance pursuant to Article 6.5 and its decision shall be recorded in the minutes.

7.4 Subject to its adoption, the Guidance shall be forwarded to the Director or to the respective AWG Chairs. The Director or the AWG Chairs, as appropriate, shall report to the BoR on the implementation of the Guidance in line with the Guidance and its timeline. The Secretariat shall keep track of the timeline for the report and shall inform the BoR in case a report is overdue.

<p style="text-align: center;">Part Three Opinion on the Director candidate(s) Programming Document and Budget of ACER</p>

Article 8 - Opinion of the BoR on the Director candidate(s)

- 8.1 The BoR shall deliver its opinion to the Administrative Board on the candidate(s) to be appointed as Director from a list of at least three candidates proposed by the Commission. According to Article 22(1) of the ACER Regulation, the BoR shall reach that decision on the basis of a two-thirds majority of the members present or represented.

Article 9 - Adoption of the Annual and Multi annual Programming Document

- 9.1 ACER shall adopt an annual programming document (containing annual and multiannual programming) and publish it after its adoption by the Administrative Board.
- 9.2 According to Article 20(1) of the ACER Regulation the Director shall prepare and submit a draft programming document (containing annual and multiannual programming) to the Administrative Board and to the BoR. The BoR may provide early input to the Director ahead of his/her submission of the draft programming document to the BoR on the regulatory activities and tasks of ACER.
- 9.3 The BoR shall provide its opinion and approve the programming document pursuant to Articles 20(1) and 22(5)(d) of the ACER Regulation. The general voting rules/quorums of the BoR as set out in Articles 6.5 and 6.6 shall also apply for the approval/opinion of the programming document.

Part Four Amendments of the Rules of Procedure

Article 10 - Amendments of the Rules of Procedure

- 10.1 Amendments to these Rules of Procedure can be proposed by the Chair or a member of the BoR. In the latter case, the proposed amendment must be forwarded to the Chair, who is responsible to submit it to all the members of the BoR. An amendment of the Rules of Procedure must be approved following the rules set out in Article 6.5 of these Rules of Procedure.
- 10.2 Amendments to the Rules of Procedure may be approved only if at least two-thirds of the members are present or represented.

Article 11 - Confidentiality arrangements

- 11.1 Members, non-voting members, alternates and observers of the BoR, together with any other participant to the BoR meetings, shall be required not to disclose information covered by professional secrecy. The members, non-voting members, alternates, observers and any other participant to the BoR meeting shall continue to be bound by this obligation also when they no longer take part in the BoR.
- 11.2 The BoR members and the non-voting members are permitted to exchange commercially sensitive information either within the regulatory authority which they represent or with other regulatory authorities, to the extent that all persons receiving such information are bound by these Rules of Procedure or by rules having equivalent effect on confidentiality of information. The information exchange and the appreciation of the level of protection of the confidential information by the regulatory authority concerned shall fall under the responsibility of the member, the alternate, where relevant, the duly mandated proxy, the observer as well as any other participant to BoR meetings.

Article 12 - Conflict of interest

- 12.1 The rules for the prevention and management of conflicts of interest as laid down in chapter 4.2 of the Annex to Decision AB No. 02/2015 of the Administrative Board of 31 January 2015 laying down a policy for the prevention and management of conflicts of interest (hereinafter "Decision AB No. 02/2015") shall be applicable to the members, the non-voting members and alternates of the BoR. In order to verify the compliance of the independence obligations of the BoR members, non-voting members and alternates, a Declaration of Interests and a curriculum vitae shall be submitted on an annual basis and, where appropriate, be updated and published on ACER's website. The BoR members, non-voting members and alternates shall also explicitly

declare at each BoR meeting any potential conflicts of interest with respect to any point on the agenda of the meeting.

- 12.2 Any deliberations of the BoR under chapter 4.2 of the Annex to Decision AB No. 02/2015 shall be subject to the regular voting rules as laid down in Article 6. If a member is subject to a Breach of Trust procedure pursuant to chapter 4.2.5 of the Annex to Decision AB No. 02/2015, he/she shall not participate in the deliberations of the BoR on the breach of trust, but be replaced by his/her alternate or an authorised proxy (and vice versa).
- 12.3 The BoR review panel as referred to in chapters 4.2.3.2 and 4.3.3.2 of the Annex to Decision AB No. 02/2015 shall consist of the Chair, the Vice-Chair and a member of the BoR appointed by the BoR, with the Director of ACER as observer and a legal expert of ACER as secretary. For the Chair, the panel shall consist of the Vice-Chair and two appointed BoR members, with the Director of ACER as observer and a legal expert of ACER as secretary. For the Vice-Chair, the panel shall consist of the Chair and two appointed BoR members, with the Director of ACER as observer and a legal expert of ACER as secretary.
- 12.4 Any deliberations of the BoR review panel under chapters 4.2.3.2 and 4.3.3.2 of the Annex to Decision AB No. 02/2015 shall take place by simple majority of its members.

Annex 1

Power of Attorney

The Member: [name]

Hereby appoints as his/her attorney-in-fact: [name]

To represent him/her at the meeting of the Board of Regulators of the European Union Agency for the Cooperation of Energy Regulators, to be held on XX XXX in XXX with the powers to attend the meeting, participate in the discussion and to vote on all the items of the Agenda.

Signed in on

Signature and name of the Signatory: