

93rd ACER Board of Regulators Meeting

16 September 2020

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: Rolands Irklis A: Lija Makare
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren O: Tom Maes	Lithuania (NERC)	M: Inga Žilienė A: Irma Vasarytė
Bulgaria (EWRC)	A: Evgenia Haritonova O	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 (with proxy)	Netherlands (ACM)	M: Manon Leijten O: Wieger Wiersema
Czech Republic (ERO)	A: Jana Haasová O: Tomáš Kupčiha	Poland (URE)	A: Małgorzata Kozak O: Sierocińska Danuta
Denmark (DUR)	M: Carsten Smidt A: Mads Lyndrup	Portugal (ERSE)	O: Natalie McCoy (with prorxy)
Estonia (ECA)	A: Marilyn Tilkson O: Karin Maria Lehtmets	Romania (ANRE)	O: Florin Tobescu (with proxy)
Finland (EV)	A: Antti Paananen	Slovakia (RONI)	A: Denisa Lanikova
France (CRE)	A: Jean-Laurent Lastelle	Slovenia (AGEN-RS)	A: Bojan Kuzmič
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov	Spain (CNMC)	A: Esther Espeja O: María Jesús Martín
Greece (RAE)	M: Apostolis Gotsias A: George Paidakakis	Sweden (Ei)	M: Anne Vadasz-Nilsson A: Caroline Törnqvist
Hungary (HEA)	A: Gergely Szabó O: Ádám Krinszki	EEA-EFTA State Iceland	
Ireland (CRU)	M: Jim Gannon	Norway (NVE-RME)	A: Anne Dønnem
Italy (ARERA)	M: Clara Poletti A: Francesco Cariello O: Ilaria Galimberti	EFTA Surveillance Authority (ESA)	O: Anne De Geeter

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

ACER	Christian Zinglensen, Christophe Gence-Creux, Dennis Hesseling, Martin Godfried, Volker Zuleger, Paul Martinet, Fay Geitona, Mitsuko Akiyama
European Commission	Florian Ermacora, Michael Schuetz, Ignacio De Dios, Ana Gomez Tena
CEER	Charles Esser

1. Opening

1.1. Approval of the agenda

The agenda of the 93rd 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.

Minutes of the 92nd BoR meeting

The minutes of the 92nd BoR meeting were approved and sent to the European Parliament on 24 July.

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 updated members on the state of play of the 2021 EU budget negotiations and thanked them for their support. He explained that the total budget proposed by the EC is less than the ACER request (€21,434,793). EC proposes 19,548,810 but the EU subsidy was reduced to take account of the fees to be collected in 2021 (€14,434,363 in EU budget subsidy, €4,730,075 to be collected as REMIT fees and the EFTA contribution of €384,372). The EC proposes three more contract agent posts (Function Group IV) for 2021. This does not take into account the political compromise reached under the Clean Energy Package to put REMIT on a sound financial footing nor it address the significantly underfunded REMIT IT expenditure; the normal year of salaries for the new Clean Energy Package positions; and the unexpected increase in the number of legal appeals. Additional financial and human resources are, therefore, needed for ACER to tackle two areas in particular: ACER needs to reinforce the market surveillance team and the legal support team. To this end, an increase of the EU budget subsidy to €16,309,983 and five additional staff (TA) are necessary. ACER needs to be able to spend REMIT fees collected for the improvement of REMIT services.

The EP ITRE committee adopted an amendment to increase the EU subsidy to 16.309.983€ plus 5 additional posts and this is now submitted for a vote to the EP Budget Committee. The Director informed the BoR on the state of play of the Council discussions which has focused on an overall budget for all decentralised agencies under the respective clusters. ACER is reaching out to national administrations to convey ACER's added value in fostering efficient, competitive integrated energy markets for the benefit of consumers and to invite them to consider ACER's individual budget needs, as above.

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 upcoming discussions in the Council and the European Parliament in the next 2-4 weeks. To this end, she invited members to be proactive and step up efforts *vis a vis* their national administrations.

Mr Ermacora explained that the progress on the discussions on the 2021 budget and the calendar is linked to the ongoing discussions on the Multiannual Financial Framework for the years 2021-2027.

The Director also reported on the joint ACER-CEER TEN-E webinar which took place on 14 September with high-level representations from both organisations. The event was well attended with participation from a broad range of stakeholders. Discussions centred on the recommendations set out in the ACER-CEER joint position paper, which are pertinent given the increasing role of infrastructure while the debate is likely to intensify once the EC proposal has been published.

The BoR took note of the latest publications of the Agency since the last BoR meeting, as well as the outcome of the BoR electronic procedure on the ACER Opinion on the EU DSO statutory documents, which was held in three rounds: the proposals for amendments and comments have been adopted by the required

majority (27 members participated in the final round for the BoR favourable opinion, which ended on 25 August). The BoR favourable opinion was deemed to have been provided by the required two-thirds majority.

2.2. Updates from the European Commission

Mr Ermacora provided an update on the TEN-E revision which progresses; this a key file within the European Green Deal initiatives of high priority to the EC.

Mr Ermacora also raised the issue of TSO involvement in power-to-gas facilities and the need for a neutral system operation in compliance with the legal context and, in particular, the unbundling rules. The EC hydrogen strategy clearly reiterates this message. A letter will be sent to the BoR.

Mr Ermacora informed the BoR on the preparations for the 34th European Gas Regulatory (Madrid) Forum, which will take place on 14-15 October in virtual format. The EC envisages a full day on 14 October and a half day on 15 October. The path to climate neutrality is a key focus of the Forum, to explore policy questions relevant for the preparation for legislation on decarbonisation of gas, hydrogen etc. The agenda will be published shortly.

The BoR Chair thanked the European Commission for their updates.

2.3. Updates from the BoR Chair

The Chair updated members on the calendar for next meetings (including the indicative calendar for 2021 meetings). The BoR agreed to hold a virtual meeting in October. In respect of the remaining meetings for the rest of the year, the Vice Chair proposed the following approach to assess the possibility for physical or virtual meetings: such decision will be taken at least one month prior to the envisaged date for each BoR meeting in order to give an early notice to members. This will take account of the ability of $\frac{3}{4}$ of BoR members to travel to the meeting destination and return without facing travel or other restrictions (e.g. quarantine requirements). In parallel, a common approach is preferable if an EU approach emerges on the basis of the October General Affairs Council meeting which will also address harmonisation of travel restrictions. Members will be asked to fill in a questionnaire to report on the status of traveling restrictions ahead of the BoR.

The Chair opened the floor for discussion, in particular as regards the criteria for deciding on the location and format of the meetings and members provided feedback focusing on the need for flexibility, implementation aspects, and the safety requirements of the premises to hold the meetings.

The Chair presented the draft BoR Away Day agenda scheduled for 17th November for agreement. For the time being the draft agenda is prepared for a physical meeting format which seems preferable for such an event, however, this will be reassessed at the October meeting. In case of a virtual meeting the agenda would need to be adapted. The members welcomed the agenda. An update on preparations along with the format of the meeting will be provided at the October BoR.

The Chair also updated members on the ongoing work on e-voting including the draft specifications, implementation and cost aspects related to the different options set out in the circulated note. Members provided feedback. Work will pursue and an update will be provided at the October BoR.

Mr Locquet was nominated as the new Legal Experts Network (LEN) co-Coordinator to replace Mr Šik.

Decisions/ Conclusions

2.3 The BoR agreed the Away Day agenda. The Chair nominated Mr Locquet as the new Legal Experts Network co-Coordinator.

3. Keeping sight of the wider Energy Union context

3.1. Update on the EU Green Deal & Roadmap

Mr Ermacora informed members of the current European Green Deal Initiatives referring to the EC President Von der Leyen's "State of the Union" address which outlined that the European Commission will drive a sustainable and transformational recovery that will give Europe a global platform to lead economically, environmentally and geopolitically. The European Commission is proposing to increase the 2030 target for emissions reduction from 40% to at least 55%. Until next year the Commission will review all of the EU's climate and energy legislation to make it 'fit for 55'. There is a firm commitment by the EC to deliver on Green Deal Initiatives such as the TEN-E Regulation revision, the offshore RES strategy Communication to facilitate deployment of offshore RES and detailed guidance on market arrangements to facilitate the deployment of offshore RES. In October the EC expects to issue the 5th State of the Energy Union Report, which will include an internal market report which builds on synergies with ACER. The larger 5th State of the Energy Union Package will cover energy efficiency and RES progress reports, competitiveness of key clean energy technologies in the EU (first report on this issue), an energy prices and costs report and staff working documents assessing national energy and climate plans. It is also envisaged to issue for mid-October a strategy to deal with methane leakages and a renovation wave strategy to stimulate the renovation of the existing building stock at a faster and deeper pace as well as guidelines on energy poverty.

The Director commented on the internal market report and the possibility to coordinate the timing with the launch of the ACER Market Monitoring Report.

4. Market Integrity and Transparency & Surveillance and Conduct

4.1. Final consultation of the BoR on the EC decision on REMIT fees

The Chair introduced the discussion. Pursuant to Article 32 of the ACER Regulation, the REMIT fees and the way in which they are to be paid, shall be set by the Commission after carrying out a public consultation and after consulting the Administrative Board and the Board of Regulators. The public consultation on REMIT fees (8 June – 31 August) was complemented by a stakeholders' workshop, which took place on 15 July.

The EC had presented the planned fee scheme in previous meetings (in particular at the BoR on 16 July) and is now again consulting the BoR and the Administrative Board (AB) in advance of setting the fees by way of a Commission Decision planned to be adopted in November. The Chair proposed to streamline BoR feedback through a paper to be agreed via electronic procedure after the meeting.

The EC presented their latest thinking on the REMIT fee model's key principles (notably, simplicity, transparency, feasibility, proportionality to costs, and non-discrimination) focusing on the key elements compared to the presentations at the stakeholders' workshop on 15 July and the BoR on 16 July. Key objectives of the design of the fee scheme is to ensure that RRM's are able to estimate the amount of fees they will need to pay and that fee income will not exceed eligible costs.

Ms Groebel presented key elements of the BoR's feedback on the fee model noting the need for the amount for the fees not substituting or reducing the EU budget contribution and the importance of getting the right REMIT fee model in place to ensure adequate financing of REMIT activities performed by ACER and, therefore, an effective oversight of the integrity and transparency of wholesale energy markets in the EU. The BoR provided feedback.

Given the timing of the EC inter-service consultation, the BoR has agreed to streamline the BoR feedback via the paper once adapted in light of the BoR discussion to be endorsed via a shorter electronic procedure after the meeting.

4.2. REMIT CG and AMIT WG updates

Ms Groebel, the AMIT WG Chair, provided an update on the ongoing work in the ACER Market Integrity & Transparency Working Group. She also referred to this year's Energy Market Integrity and Transparency (EMIT) Forum will take place on 9 October 2020 via Webex.

Decisions/ Conclusions

4.1 The BoR agreed to the use of a two short rounds electronic procedure to endorse the paper reflecting the BoR's feedback to the EC on REMIT fees.

5. Cross-sectoral

5.1. Updated Summary Report on Cross-Border Cost Allocation

The Director and Mr Hesseling presented the Agency's fourth Summary Report on Cross-Border Cost Allocation (CBCA), which will be published at the end of this month and contains information on: factual elements regarding CBCA decisions made since 2013 for electricity and gas PCIs; the quality of the investment requests submitted by the promoters and their motivations for embarking on CBCA procedures; and the way NRAs handled their requests and the process leading to CBCA decisions. Mr Hesseling noted that there is a strong link between CBCA and CEF grants. In the future more electricity cross-border interconnections are expected, in particular to facilitate the integration of increased renewable power generation in view of decarbonisation objectives, which may result in a less territorialised approach to cost allocation. In gas, retrofitted interconnections could enable a pan-EU market for decarbonised gases and support the integration of more renewable energy. CBCA decisions will thus play an even more important role for implementing cross-border interconnections in the years to come.

Members took note of the contents of the Report.

5.2. Update on the AWG Rules of Procedure (RoP)

The Vice Chair updated members on the state of play regarding the adoption of the AWG RoP. Following the foreseen discussion at the October AB meeting, the BoR favourable opinion will be sought through electronic procedure after the October BoR, or at the November BoR meeting.

ERC participation

The Vice Chair also asked Mr Martinet to update members on the pending request from the North-Macedonian NRA, ERC, to participate in the AWGs as observer. ACER will proceed with this request under the criteria of the relevant provision (Article 3.2) of the AWGs RoP on the basis of the conditions set out by the ENC Secretariat. The EC welcomed this approach.

6. Electricity

6.1. 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. The updates included *inter alia* the transit shipping arrangements, the next steps on the revised Incidents Classification Scale

Methodology to ENTSO-E, the next steps and approach for the Bidding Zone Review Methodology, the preparations of the 2019 Electricity Volume of the MMR and other upcoming decisions and network codes monitoring reports.

Ms Materazzi-Wagner, provided also an update on the *ad hoc* group on Compliance and Enforcement, on the basis of its setup and kick off meeting, presenting its main objectives and ToR. The Chair is Johan Roupe, AEWG Vice Chair. Preliminary results of its work will be presented at the BoR away day.

6.2. Next steps on the ACER decisions on the resource adequacy methodologies

Mr Gence-Creux presented the state of play of the following adequacy-related methodologies which were received on 4 May in accordance with Article 9(1)(a) of the ACER Regulation and Article 23(7) of the Electricity Regulation: the methodology for the European resource adequacy assessment (ERAA) to be conducted every year by ENTSO-E based on data provided by national transmission system operators and market participants; and the 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. The Director highlighted the importance of these methodologies which provide the basis for assessing whether the EU, as a whole, has sufficient electricity resources to meet its future electricity needs, and seek to ensure and improve the reliability of Europe's electricity supply, reflect a key signature file for this year which benefited from a great number of interactions at a broader level, including with the AWG, the BoR, and consultation with Member States.

The BoR EP was launched on 10 September and the first round will complete on 17 September; should proposals for amendments or comments be received, the second round is expected to take place from 18-22 September, to be followed by a third round from 23-25 September. The BoR took note of the updates.

6.3. Update on the decision making process for the ACER decisions on a common cost sharing methodology for redispatching and countertrading electricity in Core & SEE CCR

The Director presented the state of play of the Core and South East Europe (SEE) methodologies for redispatching and countertrading cost sharing (Article 74 of Capacity Allocation and Congestion Management Regulation (CACM)) which have been enriched by extensive consultations. The Director explained the background and key elements of the proposals tabled for BoR Electronic Procedure (EP) (given their deadline) following the AEWG advice. The Vice Chair reported on the outcome of the first round during which the BoR agreed by the required majority to the use of an EP; he also informed the BoR about the proposals for comments and amendments submitted. The BoR discussed the procedural aspects, the current proposals as well as the comments and amendments submitted during the first round of the electronic procedure and provided feedback.

The EC noted the need to ensure legally sound decisions to also avoid any delays in implementation of the methodologies.

The second round for the vote on the proposals for amendments and comments will be launched after the BoR.

7. Gas

7.1. Important AGWG updates

Mr Maes as the AGWG Vice Chair provided an update on the ongoing work in the ACER Gas Working Group and the Tariffs, Balancing, Gas Infrastructure, Interoperability and Capacity Allocation Mechanisms Task Forces. As part of this update, Mr Maes presented ongoing work including in respect of a background

paper on hydrogen, an update on the tariffs consultation and the three webinars regarding the tariff implementation report; the preparations for the Madrid Forum and contributions to be provided by ACER.

7.2. 9th Market Monitoring Report (MMR) – Gas wholesale (final)

Mr Hesseling presented the Gas Wholesale Volume and the process involving the NRAs during its preparation. The report sets out the results of monitoring for 2019 of the European gas wholesale markets and their trajectory towards an Internal Gas Market and is crucial for assessing the functioning of the energy markets as well to better understand the impact of regulatory policies, such as gas Network Codes, and assists EU decision-makers to identify pending market barriers and reconsidering energy market design. The report shows that the Internal Gas Market continued to progress well in 2019, backed by the market-driven development of gas hubs. Market integration is today quite effective in areas covering three-quarters of EU gas consumption. Supply-side competition was reinforced by the surge in LNG imports and NCs are assisting market accessing. Still the differences in maturity and competitiveness across EU hubs result in a price disadvantage for consumers in those Member States where the hub model is less of a reality. Lastly Mr Hesseling noted that future decarbonisation efforts must go hand in hand with ensuring a well-functioning and competitive internal gas market. It is essential that clean transition does not lead to national market fragmentations. Since the current regulatory model is proving successful, any upgrading of gas market design in the context of the decarbonisation goals must build on this solid basis.

The publication of this volume is foreseen for the end of the month. For next year ACER is considering to accelerate the publication of the report.

Mr Ermacora pointed to the discussions on the definition of hydrogen in the context of the Energy System Integration Strategy and suggested that the MMR reflects those.

The BoR members welcomed the constructive collaboration between ACER and NRAs in the preparation of the report.

8. AOB

Members agreed to hold the October meeting in virtual format and took note of the preliminary calendar for 2021 meetings.