

115th ACER Board of Regulators Meeting

29 March 2023

by video/audio conference

MINUTES FINAL

Country/Institution	Name ^[1]	Country/Institution	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch A: Dietmar Preinstorfer O: Sven Kaiser O: Christine Materazzi-Wagner	Latvia (PUC)	M: Rota Šņuka O: Lija Makare
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren	Lithuania (NERC)	M: Renatas Pocius A: Irma Zdanienė O: Jelena Dilienė O: Justina Alsytė-Gogelienė
Bulgaria (EWRC)	A. Blagoy Golubarev	Luxembourg (ILR)	A: Claude Hornick
Croatia (HERA)		Malta (REWS)	A: Phyllis Micallef O: Manuel Manuzzi
Cyprus (CERA)	O : Marilena Delenta i	Netherlands (ACM)	A: Remko Bos O: Nora Meray
Czech Republic (ERO)	A: Jana Haasová O: Tomáš Kupčíha	Poland (URE)	M: Rafal Gawin A: Malgorzata Kozak
Denmark (DUR)	M: Carsten Smidt	Portugal (ERSE)	M: Pedro Verdelho A: Natalie McCoy O: Catarina Santos
Estonia (ECA)		Romania (ANRE)	A: Florin Tobescu
Finland (EV)	M: Simo Nurmi	Slovakia (URSO)	A: Mária Bronišová
France (CRE)	A: Ivan Faucheux O: Natalia Baudry O: Claire Hellich-Praquin	Slovenia (AGENS)	A: Bojan Kuzmič
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov O: Nadia Horstmann	Spain (CNMC)	M: Josep María Salas A: Esther Espeja O: Gema Rico
Greece (RAE)	M: Athanasios Dagoumas	Sweden (Ei)	A: Caroline Tornqvist

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

	O: Angeliki Mourtzikou O: George Loizos		O: Johan Roupe
Hungary (MEKH)	M: Pál Ságvári O: Gyarmati Tamás O: Tamás Vörös	EEA-EFTA State Iceland	A: Hanna Björg Konráðsdóttir
Ireland (CRU)	M: Jim Gannon	Norway (NVE-RME)	A: Anne Dønnem
Italy (ARERA)	M: Clara Poletti A: Cariello Francesco O: Ilaria Galimberti	EFTA Surveillance Authority (ESA)	M: Árni Páll Arnason O: Ada Gimnes Jarøy
ACER	Christian Zinglensen, Dennis Hesselning, Volker Zuleger, Christophe Gence-Creux, Martin Godfried, Martin Povh, Fay Geitona, Mitsuko Akiyama		
European Commission	Christof Lessenich, Adela Tesarova, Miguel Gil Tertre, Michael Schuetz, Ewa Lijewska, Massimo Tognoni		

1. Opening

1.1. Approval of the agenda

The agenda of the 115th BoR meeting was approved.

The draft agenda has been sent to the European Parliament.

The BoR Chair asked for declarations of conflict of interest. None was declared.

1.2. Minutes of the 114th BoR meeting

The minutes of the 114th BoR meeting were approved and sent to the European Parliament on 6 March 2023.

Decisions/ Conclusions

1.1 The BoR approved the agenda.

2. Updates from the ACER Director and the BoR Chair

2.1. Updates from ACER

No update was provided by ACER.

Members took note of the outcome of the BoR electronic procedure for ACER's decisions on the Single Allocation Platform, Congestion Income Distribution methodology and FRC decisions on the methodology for sharing costs incurred to ensure firmness and remuneration of long-term transmission rights. The electronic procedure was conducted in two rounds ending 17 March. In the final round, the BoR favourable opinion was granted by consensus of the 19 members participating in the procedure.

2.2. Updates from the BoR Chair

The BoR Chair reported on the findings of the BoR Review Panel, which met on 28 March to assess the potential conflicts of interest declared by BoR members, alternates and AWG/TF Chairs as part of the process for the annual submission of Declarations of Interest.

3. Energy crisis

3.1. EC Updates

- EC proposal for long-term electricity market design adjustments & REMIT

Mr Lessenich presented the key elements of the Commission's proposals to amend the Electricity Market Design (EMD) rules and the Wholesale Energy Market Integrity and Transparency (REMIT) Regulation noting the Commission's appreciation for the input provided by regulators on key aspects of the proposals. The Commission's underlying objective was to preserve the functioning of the short term market (widely acknowledged in the responses to the public consultation) while complementing it with long term price signals via several tools e.g. by promoting Power Purchase Agreements (PPAs) and forward markets especially in parts of the EU where they are not fully developed. Regarding the Contracts for Difference (CfDs), the Commission proposes to shift in case of mature renewables from a system where Member States have a choice in the design of support schemes to the two-way CfD approach ensuring that generation capacities which benefit from a subsidy scheme cannot make excess profits in case of high spot market prices. Aspects relating to the forward markets to be addressed in the Forward Capacity Allocation Guidelines will boost liquidity in the forward markets. There are also important elements related to consumer protection and retail markets. The proposal to amend the REMIT Regulation aims to strengthen ACER's role in respect of cross-border investigations, harmonise the fines across Member States as well as enhance data collection and market monitoring by ACER and national regulators.

Both proposals will follow a common interinstitutional legislative process with similar timings. The Swedish Presidency is keen on pushing forward the discussions to reach a political agreement in the Council, if possible by the end of June. The European Council has noted the need to advance the negotiations and complete them by end of the year. The EP ITRE Committee allocated the files to the political groups and the rapporteurs will be assigned soon.

Mr Schuetz presented the proposals for amending the REMIT Regulation: after 12 years, this provides an opportunity for adapting inter alia the definitions of market manipulation and inside information (having regard to financial market legislation) as well as harmonising fines and improving data collection and ACER's monitoring and investigatory powers.

The BoR had a discussion on the proposals.

- Implementing Act on the technical details of the application of the MCM to derivatives

Pursuant to Article 9 of Council Regulation (EU) 2022/2578, the EC is tasked with issuing an implementing act to define the technical details of the application of the Market Correction Mechanism (MCM) to derivatives linked to other VTPs by 31 March. Mr Gil Tertre reported on the state of play. The circulated draft implementing regulation providing for the application of the MCM (under the same conditions) to derivatives linked to virtual trading points in the Union other than the Title Transfer Facility (TTF) Virtual Trading Point enjoys broad Member State support in the Council.

4. Items for BoR opinion/approval/agreement

4.1. ACER Decision on the amendment of the methodology to determine capacity calculation regions

Regulation 2015/1222 on capacity allocation and congestion management (CACM) entered into force in Norway on 1 August 2021, following which all terms and conditions or methodologies (TCMs) need to be adopted in Norway and amended to include Norway. The first of these decisions will add Norwegian bidding zone borders to the relevant Capacity Calculation Regions (CCRs). On 13 October 2022, ENTSO-E submitted a proposal to allocate the Norwegian bidding zone borders into CCR Nordic and CCR Hansa and ACER proposes to approve the proposal subject to the substantive and editorial amendments set out in Annex I to the decision. The AEWG advice was also circulated.

As no proposal for amendment/comment was received by the deadline, the BoR Chair asked members whether there was consensus to grant the BoR favourable opinion (FO). The BoR voted unanimously in favour.

Mr Gence-Creux informed members that ACER will send the EFTA Surveillance Authority (ESA) a draft decision which replicates the present decision in substance. The ESA stated that it will adopt its decision for Norway in April and thanked ACER for the good cooperation.

4.2. ACER Opinion on draft electricity TYNDP 2022

ACER received the draft ten-year network development plan (TYNDP) 2022 on 31 January 2023. According to Article 30(1)(b) of Regulation (EU) 2019/943, ENTSO-E shall adopt and publish a non-binding Union-wide TYNDP biennially. Article 32(2) of the same requires ENTSO-E to submit the draft TYNDP, including information regarding the consultation process, to ACER for its opinion and recommendations where ACER considers that the TYNDP does not contribute to non-discrimination, effective competition, the efficient functioning of the market or a sufficient level of cross-border interconnection open to third-party access, or that the TYNDP does not comply with the relevant provisions of Regulation (EU) 2019/943 and Directive (EU) 2019/944.

The draft opinion and AEWG advice have been circulated along with a cover note explaining the changes following the AEWG advice.

As no proposal for amendment/comment was received by the deadline, the BoR Chair asked members whether there was consensus to grant the BoR FO. The BoR unanimously voted in favour.

4.3. ACER Opinion on electricity transmission projects of the TYNDP 2022

Article 48(2) of Regulation (EU) 2019/943 tasks the Agency with assessing the consistency of the national ten-year network development plans (NDPs) with the EU TYNDP. If the Agency identifies inconsistencies, it shall recommend amending the NDP or the EU TYNDP as appropriate. Article (11) points a) and b) of the same also tasks the Agency with monitoring

progress as regards the implementation of investments to create new interconnection capacity and of the implementation of the EU TYNDP. On 25 November 2022, ACER invited EU NRAs and the Norwegian NRA to review projects and corresponding investments in the draft EU TYNDP 2022 that are located in their territory and assess their consistency with projects in NDPs. ACER identified a number of inconsistencies between NDPs and the draft EU TYNDP 2022 and has formulated a series of recommendations to ENTSO-E, NRAs, TSOs and other project promoters.

The AEWG advice and a new draft of the opinion (incorporating factual corrections submitted by two NRAs) were circulated. The BoR Chair asked the members if there was consent to grant the BoR FO. The BoR voted unanimously in favour.

4.4. ACER Opinion on ENTSO-E's revised statutes

Article 4 of the ACER Regulation and Article 29 of the Electricity Regulation provide that the Agency will issue an opinion to the Commission on draft amendments to ENTSO-E's statutes, list of members and draft rules of procedure within two months of receiving them.

On 16 December, ENTSO-E submitted draft amendments to their Articles of Association, and submitted complementary information on 1 February, pushing the deadline back to 3 April. ACER consulted the organisations representing all stakeholders, in particular the system users including customers, and the AEWG, as part of this process.

ACER has revised the draft amendments and carried out a comprehensive assessment of all statutory documents as a whole, as the EU energy acquis has considerably grown since 2011 and broadened the scope of ENTSO-E's mission. The AEWG opinion was circulated with the draft opinion.

As no proposal for amendment/comment was received by the deadline, the BoR Chair asked members if there was consensus to grant the BoR FO. The BoR unanimously voted in favour.

4.5. Nordic CCR – ACER decision on the request for extension to decide on the proposal for an amended methodology for the market-based allocation process

Pursuant to Articles 4(1) and 5(3)(h) of Commission Regulation (EU) 2017/2195 of 23 November 2017 (EB Regulation), TSOs of a capacity calculation region shall agree on a common proposal for the market-based allocation process of cross-zonal capacity for the exchange of balancing capacity or sharing of reserves in accordance with Article 41(1) of the EB Regulation and submit it to the regulatory authorities of that capacity calculation region for approval. In accordance with Articles 5(3) and 5(6) of the EB Regulation, the regulatory authorities shall reach an agreement and take a decision within six months after the receipt of the proposal by the last regulatory authority concerned. According to Article 5(7) of the EB Regulation, where the regulatory authorities fail to reach agreement, ACER adopts the decision in accordance with the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.

The present decision follows the request of the regulatory authorities of the Nordic Capacity Calculation Region (Nordic CCR) to extend the period for reaching an agreement with regard to the Nordic CCR TSOs' proposal for an amendment to the methodology for the market-based allocation process for the exchange of balancing capacity or sharing of reserves in accordance with Article 41 of the EB Regulation by six months. ACER proposes to extend the deadline until 28 June 2023.

The draft decision and AEWG advice have been circulated. As no proposal for amendment/comment was received by the deadline, the BoR Chair asked members if there was consensus to grant the BoR FO. The BoR voted unanimously in favour.

4.6. ACER Recommendation on the Treatment of Losses for the Purpose of the ITC Mechanism

ACER oversees the implementation of the ITC mechanism and report to the EC each year on its implementation and the management of the ITC fund. With regard to the valuation of losses, ACER has the responsibility under the ITC Regulation to verify the criteria for the valuation of losses at national level to ensure that losses are valued in a fair and non-discriminatory way. In its last ITC monitoring report, ACER considered that, in light of recent extreme price volatility and in line with the general tariffication principle of cost reflectivity introduced by Regulation (EU) 943/2019, there may be room for improvement.

ACER proposes to issue a recommendation pursuant to Article 6(2) of the ACER Regulation, in particular regarding the use of snapshots for calculating the volume of losses as well as the way, how, when and how often the value of losses are determined for the purpose of the ITC mechanism.

The BoR Chair invited the author of the two proposals for amendment, to present them. The BoR adopted the first amendment by the two-thirds majority of 21 members present and represented.

The BoR adopted the second amendment by the two-thirds majority of 21 members present and represented.

The BoR proceeded to the vote on the BoR FO on the ACER Recommendation incorporating the adopted BoR amendments. The BoR FO was granted by the two-thirds majority out of 21 members present and represented.

4.7. ACER Annual Activity Report 2022: independent section on regulatory activities

The Consolidated Annual Activity Report (CAAR) comprises an independent section on the regulatory activities of the Agency and a section on financial and administrative matters. The BoR approves the former pursuant to Article 22(5)(e) of Regulation 2019/942 and the Administrative Board adopts, publishes and transmits it to the EU institutions by 1 July.

The BoR approved the section on regulatory activities within the ACER Annual Activity Report 2022 by the two-thirds majority of members present and represented.

**Decisions/
Conclusions**

4.1. The BoR provided its favourable opinion on the ACER Decision on the amendment of the methodology to determine capacity calculation regions by consensus of the members present and represented.

4.2. The BoR provided its favourable opinion on the ACER opinion on draft electricity TYNDP 2022 by consensus of the members present and represented.

4.3. The BoR provided its favourable opinion on the ACER opinion on electricity transmission projects of the TYNDP 2022 by consensus of the members present and represented.

4.4. The BoR provided its favourable opinion on the ACER opinion on ENTSO-E's revised statutes by consensus of the members present and represented.

4.5. The BoR provided its favourable opinion on the ACER decision on the request for an extension to decide on the proposal for an amended methodology for the Nordic CCR market-based allocation process by consensus of the members present and represented.

4.6. The BoR adopted the two proposals for amendment to the ACER Recommendation on the Treatment of Losses for the Purpose of the ITC Mechanism by a two-thirds majority of the members present and represented, and provided its favourable opinion on the ACER Recommendation (incorporating those amendments) by the requisite majority.

4.7. The BoR approved the ACER Annual Activity Report 2022: independent section on regulatory activities by the requisite majority of members present and represented.

5. AWG key issues**5.1. AWG/ARC key issues**

Members took note of the written updates (including on the CBCA recommendation) as well as the oral update given by the AEWG Chair regarding the discussion on: ENTSO-E resources prioritisation of implementation projects, ERAA 2023, bidding zone review and Swiss participation in the balancing platforms.

5.2. European Court of Auditors' report on Internal Electricity Market integration

The BoR Chair decided to postpone the discussion on the ECA Special Report on Internal Electricity Market integration published on 31 January 2023.