

104th ACER Board of Regulators Meeting

15 December 2021

By video/audio conference

MINUTES (FINAL)

| Country/Institution | Name ^[1] | Country/Institution | Name |
|----------------------|--|---------------------|---|
| Austria (E-Control) | M: Wolfgang Urbantschitsch A: Dietmar Preinstorfer O: Christine Materazzi-Wagner | Latvia (PUC) | M: Rota Šņuka O: Lija Makare |
| Belgium (CREG) | M: Koen Locquet A: Geert Van Hauwermeiren | Lithuania (NERC) | Renatas Pocius: O: Justina Alsyte |
| Bulgaria (EWRC) | A: Evgenia Haritonova | Luxembourg (ILR) | M: Camille Hierzig |
| Croatia (HERA) | M: Željko Vrban A: Dunja Trakoštanec Jokić | Malta (REWS) | A: Phyllis Mycallef O: Manuel Manuzzi |
| Cyprus (CERA) | O: Marilena Delenta (with proxy) O: Christina Zouvani (with proxy) | Netherlands (ACM) | A: Remko Bos O: Nora Meray |
| Czech Republic (ERO) | A: Jana Haasová O: Tomáš Kupčiha | Poland (URE) | M: Rafał Gawin A: Małgorzata Kozak |
| Denmark (DUR) | M: Carsten Smidt A: Mads Lyndrup | Portugal (ERSE) | A: Pedro Verdelho O: Natalie McCoy O: Catarina Santos |
| Estonia (ECA) | A: Marilyn Tilkson | Romania (ANRE) | O: Florin Tobescu (with proxy) |
| Finland (EV) | A: Antti Paananen | Slovakia (URSO) | M: Andrej Juris A: Mária Bronišová |
| France (CRE) | A: Jean-Laurent Lastelle O: Claire Hellich | Slovenia (AGEN-RS) | A: Bojan Kuzmič |
| Germany (BNetzA) | M: Annegret Groebel O: Alexander Linov | Spain (CNMC) | M: Mariano Bacigalupo A: Esther Espeja |

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

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|----------------------------|---|--------------------------------------|---|
| | | | O: Gema Rico |
| Greece (RAE) | A: Dimitrios Psychoyios O: Yuriy Bilen | Sweden (Ei) | M: Anne Vadasz- Nilsson A: Caroline Törnqvist O: Johan Roupe |
| Hungary (MEKH) | M: Pál Ságvári O: Tamás Gyarmati | EEA-EFTA State Iceland | |
| Ireland (CRU) | A: Aoife MacEivilly O: Barry Hussey | Norway (NVE-RME) | A: Anne Dønnem |
| Italy (ARERA) | M: Clara Poletti A: Francesco Cariello O: Ilaria Galimberti | EFTA Surveillance Authority (ESA) | O: Ada Gimnes Jarøy |
| ACER | Christian Zinglensen, Christophe Gence-Creux, Dennis Hesseling, Martin Godfried, Mathieu Fransen, Eleonora Nagali, Fay Geitona, Mitsuko Akiyama | | |
| European Commission | Michael Schuetz, Annamaria Marchi, Bartek Gurba, Augustijn van Haasteren | | |
| CEER | Charles Esser | | |

1. Opening

1.1. Approval of the agenda

The agenda of the 104th 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 103rd BoR meeting

The minutes of the 103rd BoR meeting were approved and sent to the European Parliament on 10 November.

Decisions/ Conclusions

1.1 The BoR approved the agenda.

2. Updates from the ACER Director and the BoR Chair

2.1. Updates from ACER

The Director informed the members of the outcome of the 2022 EU budget negotiations and thanked them for their outreach efforts. The European Parliament (EP) and Council reached a preliminary agreement on 15 November which was formally approved by the Council and the EP on 23 and 24 November respectively. 12 FTEs are allocated to ACER for 2022 on the basis of the Commission's amending letter to the 2022 budget, which is a very fortunate outcome thanks to the Commission's efforts. An important part of the staff increase is an increase in SNEs (from 4 to 10) which provides a significant opportunity for broadening secondments from NRAs. Such secondments could benefit from the development over time of organic, well-functioning, collaborative relations between ACER and NRAs reaping mutual benefits and integrating them in respective human resources policies so as to facilitate wider participation by NRAs.

The Director briefly presented the latest developments following ACER's Preliminary Assessment of Europe's high energy prices and the current wholesale electricity market design, which was submitted to the EC on 15 November in response to the EC Communication of 13 October entitled "Tackling rising energy prices: a toolbox for action & support." The Preliminary Assessment covers the main factors of energy price developments and their impact across Europe, the outlook for the next few months and some policy considerations including as regards short-term relief, price volatility, market design and broader transition pathways. It was presented at the Council Energy Working Party and the TTE Council meeting of 2 December, where it was well received. The discussion focused on key considerations to mitigate the impact of rising energy prices given the price volatility and shielding consumers, particularly the most vulnerable ones, while ACER was also called to expand its analysis to address improving interconnectivity and to ensure that the right incentives exist for long-term investments.

The Director also detailed the likely process for the April assessment, which the BoR discussed and agreed to proceed with the work, likely dealing with the Assessment towards the end akin to the adoption of recent position papers though this would be decided at a later stage subject to the contours of the draft.

The BoR Chair thanked the Director for the updates.

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

The BoR EP for the ACER decision on harmonised allocation rules for long-term transmission rights was conducted in two rounds ending 19 November 2021. During the first round, no

proposal for amendments/comments was received. During the second round, 25 members participated. The BoR favourable opinion was provided by the requisite majority of members participating in the EP.

The BoR EP regarding the main messages of the position paper on Gas Market Decarbonisation was conducted in two rounds (of short duration given the urgency) ending 5 November 2021. During the first round, 4 NRAs submitted comments. During the second round, 26 members participated. The BoR endorsed the main messages.

The BoR EP for the ACER decision on the long-term capacity calculation methodology of the Core capacity calculation region, as proposed by the Director following the discussion at the October BoR meeting, was conducted in two rounds ending 3 November 2021. During the first round, no proposal for amendments/comments was received. During the second round, 27 members participated. The BoR favourable opinion was provided by the requisite majority of members participating in the EP.

2.2. Updates from the BoR Chair

The BoR Chair updated members about the ACER leadership away day, which has been postponed. At this stage it is not possible to set a new date for a physical meeting in the coming months but the Chair shall come back on possible dates early next year.

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

3.1 Updates on the EU Green Deal and other EC updates

Ms Marchi introduced the EC legislative proposals of the hydrogen and gas markets decarbonisation package and on reducing methane emissions from gas, oil and coal in Europe. These were adopted by the EC on 14 December and will be issued on 15 December.

Mr van Haasteren highlighted the role of decarbonising the gas sector in achieving a net zero economy and the “Fit for 55” initiative: currently gas fuels account for 25% of final energy consumption; however, renewable and low-carbon gas, including hydrogen, will gradually replace fossil natural gases. The EC proposals for a Regulation and the Directive on the internal markets for renewable and natural gases and for hydrogen aim to remove barriers to decarbonisation on the basis of 5 key pillars: facilitating the integration of renewable and low-carbon gases in the existing network; the development of a dedicated hydrogen network and market; fostering national infrastructure planning on the basis of joint scenarios aligned with national energy and climate plans; ensuring consumer empowerment and protection and their engagement in gas markets; improving the resilience of the gas system and strengthening the existing security of supply provisions. The EC aims at an enhanced market organised around similar pillars as the electricity market today with commodity based trading and infrastructure regulation on the basis of the existing elements; for hydrogen pipelines, a regulated access regime, access conditions for terminals and storages is envisaged but with a slightly different regime to adapt to realities relevant to hydrogen. There are key choices to be made for the final hydrogen market. Ultimately systems should be integrated in the larger system and be subject to the same rules. In the short run we need to build a system with more flexibility given the need for more investments. Work towards establishing a separate entity of network operators for hydrogen, separate from ENTSOG. A certification system for low-carbon gases is also introduced to complement the work started under the Renewable Energy Directive with the certification of renewable gases. Certification rules will be aligned with the Renewable Energy Directive to avoid differentiating between low-carbon and renewable gases so as to avoid confusion.

Mr Gurba referred to the key aim to facilitate access for renewable and low carbon gases to the network as well as the need for support (where appropriate, given these gases are more expensive than fossil gas). The proposals aim to allow more direct competition between different sources of gas. The EC proposes tariff discounts for injection to the grid and cross-border transport of renewable or low carbon gas. The EC is keen on conveying a strong signal for the phasing out of fossil gas proposing that long-term contracts for unabated fossil gas should not be extended beyond 2049. The allowed cap for hydrogen blending is set at 5% for all cross-border points, but voluntary agreements beyond that level would be possible (but no mandatory blending is stipulated). Another key element is how to use infrastructure efficiently. The EC proposes that free capacity of LNG terminals and storage be traded more transparently. In terms of network planning, this must be integrated for all gas TSOs and should be based on joint scenarios with electricity, involving heating and hydrogen networks and DSOs. The proposals also aim to ensure that planning is aligned with decarbonisation objectives. On the consumer side, the EC mirrors the Electricity Directive rules e.g. upgrading the rights and obligations of consumers connected to the natural gas grid, enabling consumers to choose renewable gases; protect energy poor and vulnerable customers. As follow-up to the EC energy prices communication, the EC introduced resilience and security of supply measures into the Gas Regulation amending the Security of Gas Supply Regulation.

Mr Schuetz introduced the Regulation on the reduction of methane emissions, which covers the oil, gas and coal sectors; requirements on EU operators to conduct surveys to measure, report and verify methane emissions, and proposes strict rules to detect and repair methane leaks and to limit venting and flaring and to do contingency monitoring of inactive oils and gas wells; ban on venting of methane from coal mines and mitigation of methane emissions from abandoned coal mines; monitoring and reporting requirements to make sure that methane emissions are monitored at EU level.

The BoR Chair thanked the EC for the updates.

4. Items for BoR opinion/approval/agreement

4.1. Revised ACER Work Programme 2022

According to the ACER Regulation, the AB shall adopt the Programming Document (PD) taking into account the opinion of the Commission, after receipt of a favourable opinion from the BoR, and after the Director has presented it to the European Parliament (EP). The AB shall submit the PD to the EP, the Council and the Commission by 31 December. The PD shall be adopted without prejudice to the annual budgetary procedure and shall be made public. The PD shall become definitive after the final adoption of the general budget and, if necessary, shall be adjusted accordingly. Thus following the adoption of the 2022 EU budget, the PD 2022 was finalised for adoption by the AB in December. ACER presented the PD (as well as the MMR) to the EP on 6 December. The Director referred to the new activities/areas of work since the adoption of the draft PD back in January: e.g. the EC mandate to ACER for the benefits and drawbacks of the current wholesale electricity market design as well as to the human resources allocated for 2022.

Mr Gence-Creux explained how the work on market monitoring will be pursued in 2022 and which will result in some adaptations, in particular in respect of the electricity wholesale markets. The BoR had a discussion and agreed how to pursue this work efficiently.

The BoR approved the revised ACER Work Programme 2022 (subject to adaptations relating to Market Monitoring) by consensus of the 27 members present and represented.

4.2. ACER Recommendation on reasoned amendments to CACM Regulation

On 20 January 2021, the Commission invited ACER to prepare, by the autumn of 2021, reasoned recommendations for amendments to the CACM Regulation in line with Article 60(3) of the Electricity Regulation, also inviting ACER to propose limited changes to the SO Regulation 2017/1485 and the Balancing Regulation where these are intrinsically linked to the changes under consideration for the CACM Regulation. In his introductory remarks, the Director commented on the importance of this work, CACM Regulation being an important pillar of the electricity sector framework and the collective efforts behind its implementation. Mr Gence-Creux and Mr Fransen presented the ACER Recommendation and the key issues addressed in the latest discussions including at the AEWG. ACER recommends amending CACM in accordance with Annex 1, and amending the SO Regulation in accordance with Annex 2. The AEWG advice has been circulated.

By the deadline of 8 December, 6 proposals for amendments were submitted. The BoR Chair invited members to present their amendment proposals and the BoR had a discussion.

The BoR Chair opened the vote on each of the proposals but none reached the required majority.

The BoR Chair invited members to vote on the BoR favourable opinion, which was provided by the requisite majority.

4.3. ACER Decision on the TSOs' proposal for the congestion income distribution methodology

The CACM Regulation laid down a range of requirements for cross-zonal capacity allocation and congestion management in the day-ahead and intraday markets in electricity. In particular, pursuant to Article 73(1), all TSOs must jointly develop a methodology for distributing among them the congestion income, i.e. revenues received from capacity allocation within the single day-ahead and intraday coupling.

The Director and Mr Gence-Creux introduced the ACER Decision. On 14 December 2017, ACER approved the congestion income distribution methodology (CIDM), but the go-live of the Core flow-based capacity calculation methodology planned for early 2022 and the advancement of intraday coupling require a number of amendments to the existing CIDM. The CIDM must also be aligned with principles under Article 57 of Commission Regulation (EU) 2016/1719 (FCA) to ensure consistency across time-frames. On 9 July 2021, all TSOs thus sent ACER a proposal for amending the CIDM. ACER proposes to approve the CIDM as amended in accordance with Annex I to the draft decision. The AEWG advice was circulated.

As no proposal for amendment/comment was received by the deadline of 8 December, the BoR 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.

4.4. ERAA 2021

The Director informed the BoR that ENTSO-E had formally submitted ERAA 2021 on 16 November. The deadline for the ACER decision is 17 February and the BoR was asked to agree to use the electronic procedure.

The BoR unanimously agreed to the use of the electronic procedure to issue its opinion on ERAA 2021.

4.5. ACER Opinion on ENTSOG Winter Supply Outlook 2021/22

On 12 October 2021, ENTSOG published the Winter Supply Outlook (WSO) 2021/2022 pursuant to Article 8(3)(f) of Regulation (EC) No 715/2009. Pursuant to Article 4(3)(b) of Regulation

2019/942, ACER proposes to issue an opinion such that the WSO 2021/2022 contributes to the objectives of Regulation 2019/942 and Regulation 715/2009 in terms of contributing to non-discrimination, effective competition and the efficient and secure functioning of the internal natural gas market. Mr Hesseling presented key highlights from ENTSOG's WSO (such as the low level of the EU storage level; the need to increase imports from pipelines and/or LNG; possibility for demand curtailment) as well as the ACER opinion, which contains a number of recommendations to ENTSOG to improve WSO assumptions and methodology to better identify potential supply risks, including price effects. The AGWG advice has been circulated.

As no proposal for amendment/comment was received by the deadline of 8 December, the BoR 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.

Mr Urbantschitsch presented the security of supply situation in Austria rejecting doubts on the current situation and highlighting the importance of fact based analysis.

4.6. ACER-CEER position on the key regulatory requirements to achieve gas decarbonisation

The AGWG Chair presented the draft position paper on Gas Market Decarbonisation for endorsement, which further develops the main messages endorsed at the October BoR and includes a number of key recommendations in respect of a gradual and flexible regulatory approach to facilitate the emergence of competitive hydrogen markets with a periodical monitoring of those to identify whether more regulation is needed; the application of cost reflectivity and beneficiary-pays principles to hydrogen networks, avoiding cross-subsidies between energy carriers; ensuring an integrated, liquid and interoperable EU internal gas market; the adoption of a more integrated approach to infrastructure development; the guarantee of consumer rights regardless of energy carrier with robust consumer protection; ensuring cost efficiency and affordability to safeguard inclusiveness and a just transition, and providing consumers with clear and reliable information and support, while ensuring effective enforcement of their rights. Mr Verdelho also presented the next steps.

The BoR Chair thanked the AGWG Chair for the presentation and opened the floor for discussion. The BoR endorsed the paper by the requisite majority of the 27 members present and represented and agreed the next steps in terms of its publication and outreach efforts.

4.7. Appointment of AEWG Chair

As the AEWG Chair's term was nearing its end, a call for nominations for the position was opened. The Director and the BoR agreed to reappoint Ms Christine Materazzi-Wagner in accordance with Article 2.2 of the AWG RoP, for a term of 2 years, as provided in the draft decision. The Director noted that ACER is privileged to have Ms Materazzi-Wagner leading the AEWG, praising her diligence and efficiency. Members congratulated Ms Materazzi-Wagner, who in turn thanked them for the good cooperation, their support and trust, also noting the challenges ahead, notably the ongoing assessment of the wholesale electricity market design.

4.8. AGCE paper on enforcement methods

The AGCE paper on enforcement methods follows up on the compliance paper endorsed by the BoR at its June meeting. The AEWG VC presented the paper. The BoR endorsed the paper by consensus of the 27 members present and represented.

Decisions/ Conclusions

4.1 The BoR approved the revised ACER Work Programme by consensus of the members present and represented subject to the relevant adaptations in respect of the electricity wholesale market monitoring work.

4.2 The BoR did not adopt any of the proposed amendments and provided its favourable opinion on the ACER Recommendation on reasoned amendments to CACM Regulation by the requisite majority of members present and represented.

4.3. The BoR provided its favourable opinion on the ACER Decision on the TSOs' proposal for the congestion income distribution methodology by consensus of the members present and represented.

4.4 The BoR unanimously agreed to the use of the electronic procedure to issue its opinion on ERAA 2021.

4.5 The BoR provided its favourable opinion on the ACER Opinion on ENTSOG Winter Supply Outlook 2021/22 by consensus of the members present and represented.

4.6 The BoR endorsed the ACER-CEER position on the key regulatory requirements to achieve gas decarbonisation by the requisite majority of member present and represented.

4.7 The Director and the BoR unanimously agreed by consensus to reappoint the AEWG Chair for a term of 2 years.

4.8 The BoR unanimously endorsed the AGCE paper on enforcement methods.

5. AWG key issues

5.1. AWG/ARC key issues

The AWG Chairs presented key updates with respect to ongoing work in their respective Working Groups. In particular, the AEWG Chair referred *inter alia* to the work on the monitoring of the 70% target, involvement of Switzerland in the balancing platforms, issues relating to TSO compliance with the requirements of the transparency Regulation.

The Director and Mr Gence-Creux reported on 70 % monitoring report on the Nordic AC borders. These two borders were not included in the two MACZR reports for 2020 due to insufficient data. Following ACER's Decision 03/2021, the 3 Nordic TSOs provided the minimum data and the results will be published as an addendum to the first two ACER reports of 2020. The BoR discussed the broader issues about coordination and harmonisation of monitoring across the EU.

The AGWG Chair reported on the work on allowed revenues; the latest agreement on the TEN-E Regulation revision and reported back on discussions at the Copenhagen Energy Infrastructure Forum of 25 November 2021.

The ARWG Chairs reported on the intensive discussions to scope the next edition of the Retail and Consumer Protection volume of the market monitoring report.

The BoR Chair thanked the AWG Chairs and Mr Gence-Creux for their updates.

5.2. Update on Alert Dashboard and Cases

Mr Godfried presented the key 2021 developments and trends in relation to surveillance work and case decisions as well as envisaged surveillance activities for 2022-2025.

5.3. Update on the ACER Decision on SIDC data collection under REMIT

In early July, ACER sent the Single Intraday Coupling (SIDC) Nominated Electricity Market Operators (NEMOs) an official letter requesting the submission of additional SIDC data and subsequently prepared a decision requesting SIDC data (within 9 months of the request) pursuant to Article 3(2) of the ACER Regulation. Ms Nagali presented the state of play of the formal decision-making process.

5.4. ACER Decision on amendment proposal for pricing

The methodology for pricing balancing energy and cross-zonal capacity used for the exchange of balancing energy or operating the imbalance netting process in accordance with Article 30(1) of the EB Regulation ('Pricing Methodology') came into effect on 24 January 2020 with ACER Decision 01/2020. TSOs submitted their proposal for amending the Pricing Methodology with regard to the technical price limits for balancing energy, the adjustment mechanism, the report on limits and annual reporting. Mr Gence-Creux presented the approach currently envisaged by ACER for an orientation discussion ahead of the submission of the decision at the January BoR for a favourable opinion.

The BoR Chair thanked Mr Gence-Creux for the presentation; the BoR discussed the suggested approach and provided feedback.

5.5. NC Emergency and Restoration Implementation Monitoring Report

Article 32(1) of Regulation (EU) 2019/943 requires ACER to monitor and analyse the implementation of the Network Codes and the Guidelines adopted by the European Commission. Furthermore, ACER shall monitor their effect on the harmonisation of applicable rules aimed at facilitating market integration, as well as on non-discrimination, effective competition and the effective functioning of the market, and report to the Commission.

Mr Gence-Creux presented the first Implementation Monitoring Report on the progress towards the implementation of Commission Regulation (EU) 2017/2196 of 24 November 2017 establishing a Network Code on Electricity Emergency and Restoration (NC ER). In addition to monitoring the above points, the report aims at identifying potential challenges in implementing the NC ER, and recommending concrete actions and best practices that can lead to a more efficient and uniform implementation.