



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

Ref: A10-BoR-01-03

04 May 2010

As amended on 10 July 2012<sup>1</sup>,

19 February 2014<sup>2</sup>,

25 March 2015<sup>3</sup>,

13 July 2016<sup>4</sup>

2 July 2019<sup>5</sup>

20 December 2019<sup>6</sup>

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<sup>1</sup> Ref: A12-BoR-20-03

<sup>2</sup> Ref: A14-BoR-35-35

<sup>3</sup> Ref: A15-BoR-46-03

<sup>4</sup> Ref: A16-BoR-58-03.1a

<sup>5</sup> Ref: A19-BoR-83-04.1

<sup>6</sup> Ref: A20-BoR-88-09.2

## **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'.

#### **Having regard to:**

- (1) Regulation (EC) 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents
- (2) 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)
- (3) Directive 2009/73/EC on common rules for the internal market in gas and repealing Directive 2003/55/EC (hereafter Gas Directive)
- (4) Directive (EU) 2019/944 on common rules for the internal market in electricity (hereafter Electricity Directive)
- (5) Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005
- (6) Regulation (EU) No 2019/943 on the internal market for electricity
- (7) Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency
- (8) Regulation (EU) No 347/2013 on Guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006
- (9) 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 Articles 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 of 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.

**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 has laid down in Decision AB No. 02/2015<sup>7</sup> 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 of 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:**

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<sup>7</sup> 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 level<sup>8</sup> 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.

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<sup>8</sup> Hereafter referred to as “regulatory authority”.

- 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 (see Annex 1), which should be sent in advance of the meeting to the Secretariat of the BoR. 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.
- 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 level<sup>9</sup> and regulatory authorities for small systems<sup>10</sup> 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.

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<sup>9</sup> 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.

<sup>10</sup> 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 as a national regulator 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 (hereafter “AB”) 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 her/his 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 a 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.

## **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 approval<sup>11</sup>. 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.

- 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 five working days<sup>12</sup> 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.

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<sup>11</sup> 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 not of a formal nature. Article 6 on the voting rules of the BoR shall apply *mutatis mutandis*.

<sup>12</sup> 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.

- 5.3 The Secretariat shall prepare and maintain the minutes of the meetings, 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 The BoR may suggest amendments<sup>13</sup> to the Director on his/her draft 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 according to the following process:

A proposal for amendment shall be tabled in writing by a member one week before the BoR meeting and may be accompanied by a short justification.

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

Amendments shall have priority over the text to which they relate and shall be put to the vote before that text. The order of the vote of the amendments shall follow the sequence of the original part of text to which they relate. If two or more mutually exclusive amendments have been tabled to the same part of a text, the amendment that departs furthest from the original text shall have priority and shall be put to the vote first. If it is adopted, the other amendment(s) shall be deemed to have been rejected. If it is rejected, the amendment next in priority shall be put to the vote, and this procedure shall be repeated for each of the remaining amendments. Where there is a doubt as to priority, the Chair shall decide.

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:

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<sup>13</sup> An amendment may seek to change any part of a text. It may be directed to deleting, adding or replacing words or figures. A proposal for amendment which only seeks to ensure the linguistic correctness, or address the terminological consistency, of the text is not considered an amendment and in this case, the Chair and the Director shall seek a suitable linguistic remedy.

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.

The BoR shall adopt an amendment by a two-thirds majority of the members present or represented pursuant to Article 6.5.

The amendments which are adopted are 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 a 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.

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. 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, 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 either at the upcoming BoR meeting or, where appropriate, through a third round electronic procedure of at least three days subject to the BoR agreement on the use of an electronic procedure.

- 6.5 Members should strive to reach consensus in taking decisions. The decision shall be put to a vote and the BoR shall act by a two-thirds majority of members present or represented. Where 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 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 having pa 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. 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 the ACER's records. If access to a dissenting opinion is requested, the relevant provisions of Regulation 1049/2001 will be applicable.

- 6.8 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 according to the following procedure:

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.

Notwithstanding the above provision, with regard to the opinions, recommendations and decisions considered for adoption under Article 22(5)(a) of the ACER Regulation the first round of the electronic procedure will be launched by the Chair indicating the deadline for replying of at least five working days for: (a) the agreement to use the electronic procedure (unless it has already been agreed), (b) any comments on the proposal and/or (c) any proposal for amendment.

The BoR shall decide on the use of the electronic procedure by a two-thirds majority of the members who have responded to the electronic procedure. Should the two-thirds majority not be obtained, the second round shall not be launched. The necessary quorum for a valid BoR decision is met if the majority of its members have responded in the electronic procedure.

If agreement is reached on the use of an electronic procedure and at least one proposal for 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 amendment submitted during the first round. The Chair shall order the proposals for amendments in a voting list in accordance with the provisions of Article 6.4 (the provisions of Article 6.4 shall apply *mutatis mutandis*, without the possibility to submit compromise amendments). A proposal for amendment is adopted if it obtains a two-thirds majority of members who have responded in the electronic procedure and it is then submitted to the Director. The necessary quorum for a valid BoR decision is met if the majority of its members have responded in the electronic procedure.

The Director shall explain to which extent the amendment(s) have been taken into account and pursuant to Article 24(2) of the ACER Regulation, may submit the revised act to the BoR for a favourable opinion. The BoR Chair shall circulate the revised version 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. This is accepted if it obtains 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.

If agreement is reached on the use of the electronic procedure and no proposal for amendment is tabled or adopted (regarding the acts under Article 22(5)(a) of the ACER Regulation), the Director shall explain to which extent the comments received have, as far as possible, been taken into account and submit a new consolidated version. The BoR Chair will circulate the consolidated version for final agreement within a deadline of at least three working days without the possibility to submit further comments or amendments. This is accepted if it obtains 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.

## **Article 7 - Guidance to the Director and to the AWGs**

- 7.1 Article 22(5) of the ACER Regulation provides that the BoR shall give Guidance to the Director and to the AWGs established under Article 30 of the ACER Regulation.
- 7.2 The BoR shall provide Guidance to the Director within the competence of the BoR, avoiding duplicating any issues within the scope of the ACER acts (under Article 2 of the ACER Regulation) formally requiring a favourable opinion of the BoR and a consultation of the AWGs.
- The BoR shall provide Guidance to the AWGs regarding the efficient and smooth execution of the activities assigned to them.

- 7.3 A request for Guidance sponsored by a minimum of four members of the BoR shall be submitted in writing, at least one week before the BoR meeting.
- 7.4 The request shall be sent to the Chair and Vice-Chair of the BoR and to the Director.
- 7.5 The request for Guidance shall include the rationale, the proposed scope and the objective of the Guidance sought under the ACER Regulation. It shall also include the rapporteur for the preparation of the Guidance.
- 7.6 The request for Guidance shall contain the proposed timeframe within which it is anticipated that the draft proposal will be prepared and submitted to the BoR for discussion.
- 7.7 The BoR shall, by a simple majority of its members present or represented, approve or refuse the request to initiate the Guidance; if approved, the BoR may provide additional comments regarding the proposed content of the Guidance.
- 7.8 The proposed Guidance will be submitted to the BoR for approval. The rules of Article 6 will apply *mutatis mutandis*. The proposed Guidance shall be adopted if it obtains a two-thirds majority of members present or represented.
- 7.9 Pursuant to Article 22(5) of the ACER Regulation, after its adoption, the Guidance will be submitted by the BoR Chair to the Director and to the AWGs respectively with an invitation to explain how and in what timeframe each will act in accordance with that Guidance.

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

<b>Part Four</b> <b>Amendments of the Rules of Procedure</b>
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#### **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 of 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 the ACER’s website. The BoR members, non-voting members and alternates shall also explicitly declare at each BoR meeting any potential conflict of interests 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.

### **Article 13 – Final provision**

- 13.1 These Rules of Procedure shall take effect from the entry into force of the ACER Regulation and will be reviewed by 30 April 2020.

## 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 following Powers

The attorney-in-fact may, on behalf of the Member:

1. Attend the meeting of the Board of Regulators
2. Participate to the discussion on the Agenda items with the following power:

- Participate to the vote (Vote for or against) on all the items of the Agenda
- Vote against on the following item(s): \_\_\_\_\_
- Vote for on the following item(s): \_\_\_\_\_

Further comments: \_\_\_\_\_

Signed in \_\_\_\_\_ on \_\_\_\_\_

Signature and name of the Signatory: