

112th ACER Board of Regulators Meeting

14 December 2022

Brussels (CEER premises) and by video/audio conference

MINUTES

Country/Institution	Name ^[1]	Country/Institution	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch O: Christine Materazzi-Wagner	Latvia (PUC)	M: Rota Šņuka
Belgium (CREG)	A: Geert Van Hauwermeiren O: Tom Maes	Lithuania (NERC)	M: Renatas Pocius O: Justina Alsytė-Gogelienė
Bulgaria (EWRC)	A: Blagoy Golubatev	Luxembourg (ILR)	M: Camille Hierzig
Croatia (HERA)	M: Željko Vrban	Malta (REWS)	A: Phyllis Micallef
Cyprus (CERA)	A: Philippou Alkis O: Marilena Delenta	Netherlands (ACM)	A: Remko Bos O: Nora Meray
Czech Republic (ERO)	A: Jana Haasová O: Tomáš Kupčička	Poland (URE)	A: Malgorzata Kozak
Denmark (DUR)	A: Brigitta Bundgaard	Portugal (ERSE)	M: Pedro Verdelho A: Natalie McCoy
Estonia (ECA)	A: Marilyn Tilkson	Romania (ANRE)	A: Florin Tobescu
Finland (EV)	A: Antti Paananen	Slovakia (URSO)	A: Mária Bronišová
France (CRE)	M : Emmanuelle Wargon O: Claire Hellich-Praquin	Slovenia (AGEN-RS)	A: Bojan Kuzmič
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov	Spain (CNMC)	M: Josep María Salas O: Gema Rico
Greece (RAE)	M: Athanasios Dagoumas O: Yuriy Bilen	Sweden (Ei)	M: Ulrika Hesslow O: Johan Roupe
Hungary (MEKH)	M: Pál Ságvári O: Tamás Gyarmati	EEA-EFTA State Iceland	A: Hanna Björg Konráðsdóttir
Ireland (CRU)	M: Jim Gannon O: Barry Hussey	Norway (NVE-RME)	A: Anne Dønnem
Italy (ARERA)	M: Clara Poletti A: Cariello Francesco	EFTA Surveillance Authority (ESA)	A: Jónína Sigrun Lárusdóttir

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

	O: Ilaria Galimberti		O: Anne De Geeter
ACER	Christian Zinglensen, Dennis Hesseling, Volker Zuleger, Christophe Gence-Creux, Martin Godfried, Christos Kolokathis, Cristina Vazquez Hernandez, Thomas Kawam, Athina Tellidou, Fay Geitona, Mitsuko Akiyama		
European Commission	Christof Lessenich, Michael Schütz, Anna Maria Marchi		

1. Opening

1.1. Approval of the agenda

The agenda of the 112th BoR meeting was approved with the addition of an item (4.6), agreement on the use of the electronic procedure for the favourable opinion on the ACER Decision on the long term capacity calculation methodology of the Core capacity calculation region.

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 111th BoR meeting

The minutes of the 111th BoR meeting were approved and sent to the European Parliament on 7 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 updated members on the state of play of the upcoming report of the European Court of Auditors concerning the Internal Electricity Market.

2.2. Updates from the BoR Chair

- Report on the ACER Leadership Away Day

The Chair reported on the ACER Leadership Away Day of 14-15 November 2022.

3. Tackling the energy crisis

- Updates on (short-term) emergency interventions

During the extraordinary TTE Energy Council on 24 November 2022, EU energy ministers reached political agreement on the Council regulation on enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks as well as on accelerating the permitting process and deployment of renewable energy projects.

Mr Lessenich gave an update on the latest emergency measures proposed and the discussions at the TTE Council on 13th December. The EC is working on multiple work streams including on the Market Correction Mechanism (MCM), on which the Member States failed to reach an agreement at the TTE Energy Council on 13 December. The discussion addressed various points pertaining to the functioning of the mechanism (such as the triggering events and suspension, balancing financial stability and safeguards to ensure gas security of supply). The TTE Energy Council of 19 December will pursue the discussion on the MCM to reach agreement by the end of the year following the European Council discussions on 15 and 16 December.

In terms of the implementation of short-term emergency interventions on electricity, Member States must inform the EC about measures taken to reduce peak demand. Moreover, by 1 December, the inframarginal cap must be implemented by Member States; implementation is ongoing and reporting obligations will take effect as of next year.

The EC is also advancing work on the preparation of long term Electricity Market Design (EMD) changes as announced by the EC President, aiming to launch a public consultation document before Christmas (see section below).

- MCM and the LNG price assessment developments

The Director referred to the implications for ACER of the EC proposal under discussion for a Regulation establishing the MCM, the specific features of which such as the triggering and suspension of the mechanism are yet to be crystallised, along with the implementation challenges and a phased approach foreseen for its implementation.

Mr Hesselings reported on ACER work regarding the LNG price assessment which progresses.

- Implementation of the emergency intervention to address high energy prices

The AEWG Chair reported on the AEWG feedback on the Council Regulation on an emergency intervention to address high energy prices.

- Update on the long-term electricity market design improvements

Ms Materazzi-Wagner outlined the planning of the work under two streams. Mr Lessenich clarified that the EC proposal and public consultation will address potential changes to the Electricity Regulation and Directive as well as the REMIT revision under the normal legislative process (Article 194, rather than 122(1), of the Treaty on the Functioning of the European Union) and thus will be of an enduring character (and not of a temporary application). The public consultation will address issues pertaining to price setting and affordability; it is not expected to cover all issues but rather focus on crucial areas for the resilience of the market to reduce the impact of prices arising from the specific crisis situation.

The BoR agreed the planning of the work and took note of the next steps.

4. Items for BoR opinion/approval/agreement

4.1. Revised ACER Programming Document 2023

As per the ACER Regulation, the Administrative Board shall submit the programming document to the European Parliament, the Council and the Commission by 31 December. The Agency's Programming Document (PD) 2023 - 2025 includes the Work Programme with all the planned operational activities and tasks and human resources for 2023, which have been adjusted in light of the EU budget for 2023 (with an estimate provided for ACER of €30,770,880). The Director explained other changes introduced to the draft Programming Document since the 106th BoR (e.g. the new tasks flowing from the emergency measures to tackle the high energy prices and changes introduced following the EC opinion), and presented it for approval. The BoR approved the document by consensus of the members present and represented.

4.2. Harmonised Maximum and Minimum Clearing Price Methodologies

Mr Kawam presented two ACER decisions, which follow NEMOs' proposals to amend the harmonised maximum and minimum clearing prices (HMMCP) for the single day-ahead coupling (SDAC) and single intraday coupling (SIDC) methodologies approved by Decisions 04/2017 and 05/2017, in accordance with Chapter 5 of the CACM Regulation. The AEWG advice was circulated along with the draft decisions.

The authors of the proposals for amendments (AMs) presented their respective proposals, after which the BoR was invited to vote on each of them. AMs 1, 2, 3 and 5 did not reach the required

majority and were, therefore, not adopted. AM 4 reached the two-thirds majority threshold for adoption. ACER took note of the outcome of the vote and will consider next steps for tabling its proposal for a BoR favourable opinion.

4.3. Draft Framework Guideline on Demand Response

On 1st June 2022, ACER was tasked with the elaboration of non-binding framework guidelines (FG) setting out clear and objective principles for the development of a network code on demand response covering rules on aggregation, energy storage and demand curtailment pursuant to Article 59(1)(e) of the Electricity Regulation. The AEWG advice was circulated.

The authors of the proposals for amendments presented their respective proposals, after which the BoR was invited to vote on each of them. None of the proposals reached the required majority and the BoR was invited to issue its favourable opinion. The BoR provided its favourable opinion by the requisite two-thirds majority of the members present and represented.

4.4. ACER Recommendation on the NRA activities and reporting on the use of congestion income

Under Article 19(5) and (4) of Regulation (EU) 2019/943, NRAs shall inform ACER and publish a report regarding the amounts and the use of congestion income. In light of the experience in the first two years of NRA reporting and given the changes introduced by Council Regulation (EU) 2022/1854 on an emergency intervention to address high energy price, ACER deemed it appropriate to update its recommendation No 1/2020 on NRA reporting, to assist regulatory authorities and market participants in sharing good practices pursuant to Article 6(2) of Regulation 2019/942. In the absence of proposals for amendments and comments, the BoR was invited to issue its favourable opinion. The BoR provided its favourable opinion by consensus of the members present and represented.

4.5. ACER Opinion on ENTSOG's Annual Winter Supply Outlook

Mr Hesseling presented the ACER Opinion on the ENTSOG Winter Supply Outlook 2022/2023, which welcomes the timely publication and its expanded scope and methodology taking account of the Russian invasion of Ukraine and the possible repercussions for risk preparedness in the Union. The AGWG advice was also circulated.

In the absence of proposals for amendments and comments, the BoR was invited to issue its favourable opinion. The BoR provided its favourable opinion by consensus of the members present and represented.

4.6. ACER Decision on the long-term capacity calculation methodology of the Core capacity calculation region

The BoR Chair confirmed members' agreement to the use the electronic procedure to grant the BoR favourable opinion on the long-term capacity calculation methodology for the Core capacity calculation region. Members agreed by consensus of those present and represented.

Decisions/ Conclusions

4.1 The BoR approved the revised ACER Programming Document 2023 by consensus of the 27 members present and represented.

4.2. The BoR adopted, by the requisite two-third majority, the fourth proposal for amendment to the ACER Decisions on Harmonised Maximum and Minimum Clearing Price Methodologies.

4.3. The BoR provided its favourable opinion on the draft Framework Guideline on Demand Response by requisite two-thirds of the 27 members present and represented.

4.4. The BoR provided its favourable opinion on the ACER Recommendation on the NRA activities and reporting on the use of congestion income by consensus of the 27 members present and represented.

4.5. The BoR provided its favourable opinion on the ACER Opinion on ENTSOG's Annual Winter Supply Outlook by consensus of the 27 members present and represented.

4.6. The BoR agreed to the use of the electronic procedure for the ACER Decision on the long-term capacity calculation methodology for the Core capacity calculation region by consensus of the 27 members present and represented.

5. AWG key issues

5.1. AWG/ARC key issues

Mr Maes updated members on the work of the Fast Response Team in connection with the Gas Package, in particular inputs provided to MEPs and their assistants in view of the compromise amendments. The IMCO Committee vote on amendments took place on 27 October, and the ITRE Committee vote on amendments was postponed to 24 January 2023. Similarly, the Council general approach was postponed to 2023 although technical discussions are progressing (REV2) in the Energy Working Party. As regards the Methane Emissions Regulation, over 1000 ENVI Committee amendments were tabled. On the Framework Guidelines (FG) for the joint scenarios to be developed by ENTSO for Electricity and ENTSO for Gas pursuant to Article 12(1) of the TEN-E Regulation, AGWG-AEWG endorsements are foreseen for 10 January 2023. Mr Hesseling added that the FG will be submitted for BoR favourable opinion at the January BoR meeting and then to the EC on 25 January 2023.

Mr Gence-Creux also referred to the ENTSO-E Winter Outlook 2022-2023, which points to the need for efficient market integration and pooling of resources at regional level for adequacy support, echoing statement discussed and issued after the October BoR. The AEWG Chair added that some TSOs had conducted national stress tests and that the collection of information is ongoing. She also referred to: the inventory of emergency measures in the context of 2023 ACER security of supply monitoring; the establishment of a Connection Codes 2.0 project group to assess the result of public consultations and draft ACER proposal for amendments to those network codes in 2023; the delayed TSO participation in balancing platforms, which may imply a problematic simultaneous accession to the platform at the end of the two-year period; the postponed discussion on the participation of Switzerland in the balancing market; and an update on foreseen SDAC algorithm amendment for co-optimisation, crucial for the functioning of the electricity system (co-optimisation is expected to increase welfare significantly and the letter requesting the amendment of the algorithm methodology was approved by the AEWG).

5.2. Update on the ERAA decision

ENTSO-E submitted the 2022 European Resource Adequacy Assessment (ERAA), which was undertaken during an unprecedented energy crisis and a fast-evolving context. Mr Kolokathis stated that the deadline for the ACER decision being 28 February, the intention is to submit it for BoR favourable opinion at the February meeting (subject to authorisation for late circulation) or through electronic procedure.

5.3. ACER ITC Monitoring Report 2022

Mr Gence-Creux presented the findings of the 2022 ITC Monitoring Report, which concludes that the implementation of the ITC mechanism and the management of the ITC Fund in 2021 continue to be in line with the requirements set out in Commission Regulation (EU) No 838/2010. However, ACER considers that, in light of recent extreme price volatility and in line with the general tariffication principle of cost reflectivity introduced by Regulation (EU) No 943/2019, there may be room for improvement regarding how, when and/or how often the value of losses are determined for the purpose of the ITC mechanism (typically calculated or estimated ex ante i.e. at the end of the previous year based on forecasted market prices, which may not be the same as the 'actual' value of losses typically registered ex post using actual costs/market prices).

5.4. ACER Opinion on consistency of gas & H2 NDPs with the EU TYNDP

Mr Hesseling presented the above ACER opinion, for which ACER assessed the most recent editions of the EU gas national development plans (NDPs) in view of examining their consistency with the EU Ten-Year Network Development Plan (TYNDP). ACER welcomes the transparency and engagement of NRAs observed in the process, and the collaborative attitude of ENTSOG. However, the level of project consistency between NDPs and the draft EU TYNDP 2022 continues to fall, in this case largely explained by the inclusion in the EU TYNDP 2022 of decarbonised and low carbon gases (hydrogen and biomethane) projects which, however, were often not part of the most recent gas NDPs, evidencing the need for NDPs to 'catch up' in this regard. The opinion also recommends ENTSOG and project promoters to improve the consistency of future EU TYNDPs with NDPs by considering the decarbonisation of the gas sector as the main driver for future EU TYNDPs.

5.5. Update on the Alert Dashboard and Cases

Mr Godfried presented an update on the Alert Dashboard and REMIT cases, stating that now more than ever it is important to enforce REMIT.

5.6. Report on prequalification

Ms Vazquez Hernandez presented the key findings of a report shared with the BoR providing an overview of selected design features of the prequalification processes in balancing markets across the EU. In addition, ACER identified friendly practices that may facilitate market entry to new and small participants (including consumers or demand-side response, decentralised production and energy storage), and non-friendly practices that may constitute a barrier to their market entry. These practices should be considered to remove barriers to new and small market participants, as identified in the 2020 ACER Market Monitoring Report.