

118th ACER Board of Regulators Meeting

20 September 2023

By video/audio conference

MINUTES (FINAL)

Country/Institution	Name[1]	Country/Institution	Name
Austria (E-Control)	A: Dietmar Preinstorfer O: Christine Materazzi-Wagner O: Katharina Ledermann-Tappeiner	Latvia (PUC)	M: Rota Šņuka O: Alda Ozola (Chair)
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren	Lithuania (NERC)	M: Renatas Pocius A: Irma Zdanienė O: Jelena Dilienė
Bulgaria (EWRC)	A: Blagoy Golubarev O: Borislava Petrakieva	Luxembourg (ILR)	A: Claude Hornick
Croatia (HERA)	Excused	Malta (REWS)	A: Phyllis Micallef
Cyprus (CERA)	O: Marilena Delenta (with proxy)	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 A: Birgitta Bundgaard	Portugal (ERSE)	M: Pedro Verdelho A: Natalie McCoy
Estonia (ECA)	A: Marilyn Tilkson	Romania (ANRE)	M: George Sergiu Niculescu A: Florin Tobescu O: Tatiana Iosiper
Finland (EV)	A: Antti Paananen	Slovakia (URSO)	A: Maria Bronisova
France (CRE)	M: Emmanuelle Wargon A: Ivan Faucheux O: Claire Hellich-Praquin	Slovenia (AGENS)	A: Bojan Kuzmič
Germany (BNetzA)	M: Annegret Groebel O: Nadia Horstmann O: Alexander Linov	Spain (CNMC)	M: Josep María Salas A: Esther Espeja O: Gema Rico O: Rocío Prieto
Greece (RAE)	M: Athanasios Dagoumas	Sweden (Ei)	M: Ulrika Hesslow

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

			A: Caroline Törnqvist O: Johan Roupe
Hungary (MEKH)	M: Pál Ságvári O: Tamás Gyarmati	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)	O: Anne de Geeter
ACER	Christian Zinglensen, Csilla Bartok, Volker Zuleger, Christophe Gence-Creux, Martin Godfried, Vasilis Papandreou, Fay Geitona, Mitsuko Akiyama		
European Commission	Michael Schuetz, Christof Lessenich		

1. Opening

1.1. Approval of the agenda

The agenda of the 118th BoR meeting was approved.

The draft agenda was sent to the European Parliament.

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

Mr Bos announced that as of 15 October, he will start a new position as the new Director of the ACM Competition Department and will be succeeded in the BoR by Mr Denkers. He thanked all members for the constructive collaboration and efforts over the years towards a sustainable and integrated energy market. The Chair and the Director thanked Mr Bos for the fruitful collaboration and his contributions to the work of ACER.

1.2. Minutes of the 117th BoR meeting

The minutes of the 117th BoR meeting were approved and sent to the European Parliament on 21 July 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

The Director updated the BoR on the 2024 budget discussion. The Council adopted its position on the 2024 Budget via a written procedure. This targets a total reduction of appropriations distributed across specific budget lines for selected decentralised agencies including ACER's 2024 budget, which is to be reduced by 500,000 Euros. This will now serve as a mandate for the Council Presidency to negotiate the 2024 EU budget with the European Parliament.

The Director reminded members to submit their answers to the questionnaires on the status of implementation of all Terms, Conditions and Methodologies (TCMs) developed in accordance with the provisions of CACM, EB, FCA and SOGL by 15 September.

Members took note of the outcome of the BoR electronic procedure for the draft letter to ENTSO-E on the extended timeline and assumptions for the ongoing pan-European bidding zone review. The procedure was conducted in two rounds ending 26 July. 22 members participated in the final round and the letter was endorsed by the requisite majority, with 1 abstention.

2.2. Updates from the BoR Chair

The Chair announced that her term ends on 12 January 2024 and thus the election of the BoR Chair will take place at the December BoR meeting.

3. **Wider Energy Union**

3.1. EC Updates

- Negotiations relating to the legislative proposals for long-term electricity market design adjustments & REMIT revision

Mr Schuetz informed, on behalf of the Commission, members about the state of play of the two legislative files. The European Parliament (EP) Plenary has adopted its position on both the REMIT revision and the reform of the Electricity Market Design (EMD) files. On the latter, the Spanish Presidency is working with Member States to find a compromise for the Council position so that it can be discussed at the Energy Council of 17 October. On REMIT revision, given that the Council has adopted its general approach, the first trilogue will shortly commence. On the Gas Package, trilogues and technical meetings are already taking place.

- Investigation of the German gas storage neutrality charge

The Chair invited the Commission to provide an update on this issue as per the previous BoR discussion. The German Energy Industry Act allocates costs to German end users and Interconnection Points (IPs) based on the idea that users in other networks can benefit from the German storage measures, which was questioned by other NRAs and ACER.

Mr Schuetz stated that the Commission is still investigating the issue and is aware of the exchanges within ACER's Tariffs Task Force. He clarified that it cannot at this stage provide further details or legal analysis beyond considering this in the context of the standard process for assessing compatibility of national law with European legislation.

Mr Verdelho confirmed that the discussion can be pursued in the AGWG, alluding to good practices on issues pertaining to the impact of tariff setting on market integration and cross border flows involving multiple jurisdictions.

3.2. Infrastructure delays and the role of regulators/regulatory frameworks

The BoR Chair referred to the discussion at the July BoR meeting on the notion of "infrastructure blockage." The Director presented the key conclusions from the recent EU High-Level Electricity Grid Forum that took place in Brussels on 7 September and gathered various actors, in particular those of session 2 on how regulation can best incentivise the efficient deployment of grid capacity. An action plan might emerge on such issues although the timing is likely to depend on the new Commission. He invited members to discuss a few key topics pertaining to the risk allocation, stakeholders emphasising the need for anticipatory investments; better use of existing grids; Cost-Benefit Analysis (CBA) when deciding on new infrastructure, longer planning horizons; financial environment given inflation; cross-border cost allocation and broader approaches to cross-border cost sharing amongst Member States for the purpose of interconnection build-out at scale; capacity mapping operationalisation; project queue reform;

flexibility needs; and infrastructure efficiency. The discussion will be pursued at experts' level on these topics.

4. Items for BoR opinion/approval/agreement

4.1. Appointment of the AGWG Chair

Mr Verdelho's term as AGWG Chair ended on 12 July and the Director and the BoR agreed to jointly reappoint him for a period of two years. Mr Verdelho thanked the members as well as the Vice Chairs for their continued support.

The BoR Chair also announced that the AGWG Vice Chairs' terms ending on 30 September, nominations will shortly be opened for a decision to be taken at the October BoR meeting.

4.2. ACER opinion on the draft list of projects of common interest – electricity

According to Article 3 of the TEN-E Regulation, a Union list of Projects of Common Interest (PCIs) and Projects of Mutual Interest (PMIs) are established every two years on the basis of the regional lists adopted by the decision-making bodies of the Regional Groups (RGs). The draft regional lists of proposed projects falling under the competence of NRAs drawn up by the RGs must be submitted to ACER before the adoption of the Union list. ACER assesses the draft regional lists and the accompanying opinions within three months of the date of receipt, in particular, on the consistent application of the criteria and the cost-benefit analysis across regions.

On 12 July 2023, the European Commission submitted to ACER the draft regional lists of proposed PCIs/PMIs agreed by the technical decision-making bodies of the RGs and requested ACER's opinion on the projects falling under the competence of national regulatory authorities. ACER is unable to confirm the consistent application of the criteria of the TEN-E Regulation and of the Cost-Benefit Analysis (CBA) to all candidate projects due to (i) lack of transparency and (ii) the inconsistency noted in the assessment methodology because of the lack of consideration of multiple planning scenarios. The BoR Chair invited the author of the proposals for amendments to present the proposal for amendment.

Members voted on the proposed amendment, which was adopted by the requisite majority: all members present and represented voted in favour, save for 3 abstentions. ACER will reflect on how to incorporate the adopted amendment, and the BoR unanimously agreed to vote on the favourable opinion by way of electronic procedure to be launched shortly after the meeting.

4.3. ACER opinion on the draft list of projects of common interest – hydrogen

This opinion on PCIs concerns hydrogen transmission pipelines, terminals and storages set out in Annex II.3 to the TEN-E Regulation. ACER is unable to assess the consistent application of the criteria of the TEN-E Regulation and of the CBA to all the candidate projects due to: (i) unavailability of the project specific CBA results for the candidate projects as part of the TYNDP 2022; (ii) lack of full transparency in terms of the results of applying the PCI/PMI selection methodology; and (iii) the infancy of the hydrogen sector and the ongoing legislative process on hydrogen regulation, which meant that the majority of NRAs lacked the ability to scrutinise candidate projects. As no proposal for amendment/comment was received by the deadline, the BoR Chair checked (verbally) whether there was consensus to grant the BoR favourable opinion. The BoR issued its favourable opinion by the requisite majority of members present and represented. 1 member abstained.

4.4. ACER opinion on the draft ENTSOG cost-benefit analysis methodology of hydrogen infrastructure projects

This opinion is issued pursuant to the TEN-E Regulation 2022/869: on 30 June 2023, ACER received the draft hydrogen cost-benefit analysis methodology along with a report on the outcome of the public consultation on the preliminary methodology, and Article 11(3) provides that within three months of receiving these documents, ACER shall provide an opinion on the draft CBA methodology. The main objective of the CBA methodology is to provide a common and uniform basis for the assessment of infrastructure projects and the draft CBA methodology concerns the hydrogen infrastructure categories set out in Annex II(3) to the TEN-E Regulation, to be drawn up in line with the principles laid down in Annex V and the Union's energy and climate neutrality objectives, as well as with the rules and indicators set out in Annex IV, based on common assumptions allowing for project comparison. The AGWG advice was circulated.

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

Decisions/ Conclusions

4.1. The BoR and the Director jointly reappointed Mr Verdelho as the AGWG Chair for a period of two years.

4.2. The proposal for amendment was adopted by the requisite majority. The BoR unanimously agreed to proceed with the vote on the favourable opinion on ACER's opinion on the draft list of projects of common interest – electricity via an electronic procedure.

4.3. The BoR granted its favourable opinion on the draft list of projects of common interest – hydrogen by the requisite two-thirds majority of the members present and represented.

4.4. The BoR provided its favourable opinion on the ACER opinion on the draft ENTSOG cost-benefit analysis methodology of hydrogen infrastructure projects by consensus of the members present and represented.

5. AWG key issues

5.1. AWG/ARC key issues

Members took note of the written and oral updates given by the AWG Chairs.

The GWG updates reference the preparations of the gas Market Monitoring Report (point 5.5 below). Mr Verdelho also updated members on the legislative process and timeline for the Hydrogen and Decarbonised Gas Market Package.

5.2. ACER report on security of supply

In the aftermath of last year's energy crisis, and in view of another challenging winter ACER publishes its second dedicated annual report in the field of security of electricity supply in Europe, focusing primarily on developments during 2022. The aim of the report is threefold. Firstly, it seeks to draw lessons from Member States' efforts to ensure security of supply during the winter 2022/2023 electricity, the key message being that targeted, more balanced and coordinated measures should already be considered to be ready to tackle similar situations in future. Secondly, it monitors the progress, at national level, of the implementation of the European regulatory framework on adequacy. Implementation of the adequacy framework varies; some Member States are lagging behind. Thirdly, the report examines measures to enhance security of supply, such as capacity mechanisms, interruptibility schemes and other mechanisms.

5.3. ACER decision on amended ID Capacity Calculation Methodology

The hearing for the second and third amendments to the Core Intraday (ID) Capacity Calculation Methodology (CCM) took place in the second half of August and was discussed at the September AEWG meeting.

Mr Gence-Creux presented ACER's revised preliminary position, noting the importance of this methodology given the key role played by cross-border capacity in improving flexibility, also a key issue for the ongoing work on the enduring electricity system. There are new elements in this methodology that improve intraday capacity calculation (CC) and increase cross-zonal capacity.

The BoR Chair thanked Mr Gence-Creux for the presentation and the BoR discussed the key elements of the proposal with several BoR members voicing concerns on the draft presented.

5.4. EEA-ACER policy paper on flexibility solutions to support a decarbonised, secure electricity system

The Director updated members on the state of play of an upcoming joint paper with the European Environment Agency, which looks at the submitted National Energy and Climate Plans and implications for rising electricity flexibility needs across the EU. It suggests a holistic way forward for policymakers that leverages all available instruments in a coordinated way, also taking account of regional mechanisms. This will shortly be published.

5.5. ACER European gas market trends and price drivers

Ms Bartok presented this year's Market Monitoring Report on European gas market trends and price drivers. The report reviews the indicators published in the Market Correction Mechanism reports and analyses in depth six drivers impacting developments in 2022, in particular the summer prices. As the Russian exports radically dropped, EU gas prices will be more exposed to global gas competition, increased volatility of gas prices, also impacting electricity prices. The EU market became more exposed to the global LNG market. Gas consumption data over 2021-22 shows that resilient demand backed up by rising storage injections and gas-fired power generation contributed to clear prices at record levels. Support measures boosted storage injections, and in some instances, added upward pressure on prices. Increasingly expensive LNG imports managed to offset Russian supply drops, while moving hub prices up. Congested access to pipelines and LNG terminals, primarily observed at the interconnection points within North-West Europe due to restructured flows after the reduction of Russian supplies, added constraints. The gas price rally coincided with growing hub traded volumes, but the trading environment was stressed.

The report examines the implications of the Russian supply shock and how EU markets are adjusting, including implications of: a higher EU dependence on LNG supply; the redistribution of collected revenue; the evolution of gas demand (demand reduction also being necessary for the energy transition); and the role of underground storages.

The report recommends that NRAs evaluate the effectiveness and impact of demand reduction measures implemented in their Member States and share findings with political decision-makers, given the important role of gas demand reduction during the crisis. ACER reiterates its four key recommendations from its Special Report on Congestion. ACER advocates for a transparent access system for LNG in consistency with the hub-to-hub model and supports efforts to enhance the diversification of the EU energy mix.