

84th ACER Board of Regulators Meeting

17 July 2019

Brussels, Belgium

Minutes (final)

Member States	Name ^[1]	Member States	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch O: Christine Materazzi-Wagner	Italy (ARERA)	M: Clara Poletti A: Francesco Cariello O: Ilaria Galimberti
Belgium (CREG)	M: Koen Locquet A: Geert van Hauwermeiren O: Tom Maes	Latvia (PUC)	M: Rolands Irklis
Bulgaria (EWRC)	O: Svetla Todorova	Lithuania (NERC)	M: Inga Žilienė O: Zivile Golubeve
Croatia (HERA)	A: Sonja Tomašić Škevin	Luxembourg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Andreas Poullikkas	Malta (REWS)	A: Phyllis Micallef
Czech Republic (ERO)	M: Martin Sik O: Jana Haasová	Netherlands (ACM)	M: Remko Bos O: Wieger Wiersema
Denmark (DUR)	O: Camilla Brovang	Poland (URE)	A: Małgorzata Kozak O: Danuta Sierocinska
Estonia (ECA)	A: Marilyn Tilkson	Portugal (ERSE)	O: Natalie McCoy O: Catarina Santos
Finland (EV)	A: Antti Paananen	Romania (ANRE)	O: Florin Tobescu
France (CRE)	A: Jean-Laurent Lastelle O: Anne-Lise Teani O: Louise Roehrich O: Michaël Mastier	Slovakia (RONI)	
Germany (BNetzA)	M: Annegret Groebel	Slovenia (AGEN-RS)	A: Bojan Kuzmič
Greece (RAE)	A: Nektaria Karakatsani	Spain (CNMC)	M: Fernando Hernández
Hungary (HEA)	A: Atilla Nyikos O: Adam Krinszki	Sweden (Ei)	M: Anne Vadasz Nilsson A: Caroline Törnqvist
Ireland (CRU)	M: Paul McGowan	United Kingdom (Ofgem)	M: Andrew Burgess O: Francesca Barrick
ACER	Alberto Pototschnig, Christophe Gence-Creux, Dennis Hesseling, Volker Zuleger, Fay Geitona, Sander Ramp		
European Commission	Guido Bortoni, Oliver Koch, Michael Schuetz		

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

1. Opening

Main conclusions	
1.1.	<u>Approval of the agenda</u> The agenda of the 84 th BoR meeting was approved. The Chair asked for declarations of conflict of interest: No conflict of interest was declared.
1.2.	<u>Approval of the minutes of the 83rd BoR meeting</u> The minutes of the 83 rd BoR meeting were approved. A new template for the minutes of the meetings was approved.
Decisions	1.1 The agenda was approved. 1.2 The minutes were approved. 1.2 A new template for the minutes was approved.

2. Updates from the ACER Director, EC and BoR Chair

Main conclusions	
2.1.	<u>Joint update by the ACER Director and the BoR Chair on the transitional period after the entry into force of the ACER Regulation</u> <p>The ACER Director and the BoR Chair informed the BoR about the transitional period after the entry into force of the CEP on 4 July and specifically on how the new procedural arrangements are applied (within the time available) regarding the ACER acts submitted to the July meeting for a BoR opinion and those to be submitted for BoR electronic procedure subsequently.</p> <p>The BoR took note of the revised BoR Rules of Procedure (RoP) of 2 July 2019; the AB Decision No 9/2019 on the Agency's Electricity and Gas Working Groups establishment of 4 July 2019; and the AB Decision No 10/2019 on the establishment of the internal Rules of Procedure for the functioning of the Working Groups of the Agency of 4 July 2019 following the favourable opinion of the BoR. The BoR discussed briefly the building blocks of the BoR voting system on the basis of a presentation by the HEA. The Director explained the approach pursued regarding the revision of the AWGs RoP to allow the implementation of quick adaptations in line with Regulation 2019/942. It is envisaged to further revise the BoR/AWG RoP in April 2020.</p> <p>The BoR will discuss its input to the ACER RoP pursuant to Article 14(5) of Regulation 2019/942, which are under preparation, at the September BoR meeting.</p>
2.2.	<u>Updates from the ACER Director</u> <p>The BoR was informed of the latest publications and outcomes of the electronic procedures after the previous BoR meeting:</p> <ul style="list-style-type: none"> • The BoR RoP were approved through electronic procedure, which ended on 2 July: 26 members participated, 23 of which approved the BoR RoP. HEA and RONI voted against the BoR RoP and ERO abstained. • The BoR favourable opinion on the AB Decision on the establishment of the ACER Working Groups for Electricity and for Gas pursuant to Article 30(1) of the ACER Regulation 2019/942 was provided through BoR electronic procedure which ended on 27 June. All members voted in favour.

- The BoR favourable opinion on the AB decision on the Rules for the Functioning of the Working Groups (AWGs) of the Agency pursuant to Article 30(3) of Regulation 2019/942 was provided through BoR electronic procedure which ended on 4 July. 27 members participated, 22 were in favour of a favourable opinion on the draft AB decision; E-Control, CRE, HEA and URE voted against. CREG abstained.

The Director provided an update on the status of the 2019 ACER Market Monitoring Report and the foreseen publication of its Volumes. It is expected that the gas wholesale volume will be finalised for September while the electricity wholesale market, retail markets and consumer protection volumes will be finalised for October.

The Director informed the BoR on the EC's request for the ACER opinion on the PCI lists to be delivered earlier, by 25 September. The BoR discussed the next steps including the use of an electronic procedure particularly for possible comments/amendments ahead of the next BoR meeting on 24 September. The next steps will be agreed once the planning for the preparation of the ACER opinion is crystallised.

The Director also reported that beyond 2020, the draft MFF 2021-2027 envisages an annual subsidy for the Agency of €13 million (notwithstanding possible additional income from new fees levied for services provided in the context of REMIT). Such a subsidy would not be sufficient to ensure the continuation of the Agency's operations at the current levels, let alone any expansion of the Agency's staffing. In fact, by the end of the 2021-2027 period, a €13 million annual subsidy may not even cover Title I costs (salaries).

2.3. Updates from the European Commission

The European Commission reported on the Florence Forum which took place on 17 and 18 June and the market oriented messages from stakeholders as reflected in the conclusions.

A focus of the EC is now on the strict management of the complex conversion of the capacity calculation methods.

The European Commission reported on the NC IMG meeting which took place on 12 July which discussed the Clean Energy Package (CEP) implementation as well as an update on the implementation of codes, transparency platforms and monitoring tasks and NC/GL amendments. The next NC IMG is foreseen to take place on 20 September. The Director reported on the language regime discussion on the basis of the other Agencies' practices which indicate the need also for ACER to translate more of its decisions. However, the Director pointed out that such an approach is currently impossible to pursue, given the severe budgetary limitations under which the Agency is forced to operate. Therefore, the Agency will write to DG ENER with an estimate of the relevant budgetary implications.

Decisions

2.1 A small operational team will be formed (composed by the BoR Chair, Vice Chair, BoR Secretary and volunteers from NRAs) to consider the second revision of the RoP. The work will kick-off in October. Volunteers should inform the Secretariat within one week (by 24 July).

3. Gas and sector coupling paper

Main conclusions	
3.1.	<p><u>Draft gas and sector coupling consultation paper</u></p> <p>The Chair informed the BoR on the work that was undertaken since the last BoR to finalise the consultation paper. The draft consultation paper was shared with the BoR and AGWG for comments until 2 July. The BoR provided feedback and the paper was modified accordingly. For the next stage of the preparation of the final paper following the public consultation, members reiterated the need for a more stringent process despite the time constraints. Given the final paper may take the form of a formal ACER Recommendation, its adoption will be pursuant to the process under Article 24(2) of Regulation 2019/942.</p>
Decisions	<p>3.1 The gas consultation paper “the Bridge beyond 2025” was approved subject to the comments provided at the meeting with a dissenting opinion from URE and HEA. ERO abstained. The consultation shall run until 1 September.</p>

4. Items for opinion/approval/endorsement/agreement

Main conclusions	
4.1.	<p><u>Confirmation of the continuation of the current AEWG and AGWG Chairs</u></p> <p>The Agency’s Electricity and Gas Working Groups were formally established on 4 July 2019 by AB Decision No 9/2019. Following the AWGs formal establishment, the BoR provided its recommendation on the appointment of Mr Hernández and Mr Verdelho as Chairs of the AEWG and AGWG respectively in order to provide for a smooth continuation of the functioning of these AWGs.</p>
4.2.	<p><u>Procedural arrangements for BoR deliberations regarding the Director selection – timeline and next steps</u></p> <p>The EC’s short list of candidates for the position of ACER Director was adopted on 11 June. Preparations are being made for the hearings to take place on 25 September and, therefore, the September meeting dates have changed. The BoR meeting will take place on 24 September to be followed by sessions on 25 and 26 September. The final procedural arrangements were submitted for agreement. Members provided feedback. The BoR agreed to have a maximum of three rounds of voting for the provision of the BoR opinion on the candidate selected by the AB.</p>
4.3.	<p><u>Revised ACER Programming Document 2019-2021(PD)</u></p> <p>The revised ACER PD 2019 was shared with the BoR for its favourable opinion/approval pursuant to Article 20 of Regulation 2019/942. The aim of the revision is primarily to include the new tasks of the CEP to be implemented already in 2019 and to update the relevant legal bases for deliverables and mandate of the Bodies of the Agency as appropriate. This has rendered necessary a partial redistribution of the limited human resources available to the Agency. Electricity tasks that would need to be performed in 2019 include: the Best Practice Report on transmission and distribution tariff methodologies; amending or approving the proposal for a methodology for identifying the most relevant electricity crisis scenarios in a regional context; the opinion on technical guidance for the calculation of CO2 emission limits; the approval of the geographical scope of RCCs; the methodology for the EU resource adequacy assessment; the decision on the methodology for the calculation of Value of Lost Load and cost of new entry. With regard to the additional resources given to the Agency, there is still some final refining to be done in the administrative part.</p>

Some clarifications were sought regarding the process for the amendment of the PD in line with Article 20 of Regulation 2019/942 given the changes due to the CEP, and the assignment of the specific deliverables of the PD to the AWGs in line with the Regulation. Further comments will be submitted in writing.

The Director clarified that the amendment of the PD is being carried out within the times available given the urgency to incorporate the tasks provided for in the CEP. He further clarified that the role of the AWGs is currently described in those parts that cover the roles of the AWGs rather than under each deliverable.

4.4. ACER Opinion on ENTSG's Summer Supply Outlook

The Director presented the Agency's draft Opinion. The Agency is of the view that ENTSG's Summer Supply Outlook 2019 meets the objectives of Regulations 2019/942 and 715/2009 in terms of contributing to non-discrimination, effective competition and the efficient and secure functioning of the internal natural gas market. The AGWG Vice-Chair confirmed that the AGWG was consulted on the Opinion and the document was endorsed. No amendment was submitted by the deadline of 12 July. The BoR provided by consensus of the members present/represented its favourable opinion.

4.5. ACER Decision on the SEE methodology for coordinated redispatching and countertrading

The Director presented the Agency's draft Decision. The Agency's decision approves the Amended Proposal subject to the necessary amendments and to the necessary editorial amendments as provided in the Annex I to the Decision. The AEWG Chair confirmed that the AEWG was consulted and no comments were submitted. No amendment was submitted by the deadline of 12 July. The BoR provided by consensus of the members present/represented its favourable opinion.

4.6. ACER Opinion on ENTSO-E's Summer Outlook (SOR) 2019 and Winter Review (WR) 2018/2019

The Director presented the Agency's draft Opinion. The Agency did not identify elements in the SOR 2019 and the WR 2018/2019 that would suggest that they have negative effects on non-discrimination, effective competition and the efficient and secure functioning of the electricity markets. However, the Agency notes that a list of issues has mostly already been identified in its previous opinions on the seasonal outlooks have not yet been implemented. The AEWG Chair confirmed that the AEWG was consulted and no comments were submitted. No amendment was submitted by the deadline of 12 July. The BoR provided by consensus of the members present/represented its favourable opinion.

4.7. ACER Opinion on ENTSO-E's Annual Report

The Director presented the Agency's draft Opinion. The Agency considers that the Annual Report is sufficiently in line with the requirements of Article 4(3)(b) of Regulation 2019/942. The AEWG Chair confirmed that the AEWG was consulted and no comments were submitted. No amendment was submitted by the deadline of 12 July. The BoR provided by consensus of the members present/represented its favourable opinion.

<p>Decisions</p>	<p>4.1 The BoR recommended to the Director the appointment of Mr Hernández and Mr Verdelho as Chairs of the Agency's Electricity and Gas Working Groups, respectively for a term of two years.</p> <p>4.2 The BoR agreed the final procedural arrangements for the BoR deliberations regarding the provision of the BoR opinion on the candidate for the position of ACER Director subject to the modifications proposed at the meeting regarding the consolidation of the BoR assessment and its agreement ahead of its communication to the AB by the BoR Chair accompanied by the Vice Chair.</p> <p>4.3 The BoR provided some comments and agreed to the use of an electronic procedure for its opinion/approval of the revised ACER Programming Document 2019-2021.</p> <p>4.4 The BoR provided its favourable opinion on the Agency's Opinion on ENTSOG's Summer Supply Outlook by consensus of the members present or represented.</p> <p>4.5 The BoR provided its favourable opinion on the Agency's Decision on the SEE methodology for coordinated redispatching and countertrading by consensus of the members present or represented.</p> <p>4.6 The BoR provided its favourable opinion on the Agency's Opinion on ENTSO-E's Summer Outlook 2019 and Winter Review 2018/2019 by consensus of the members present or represented.</p> <p>4.7 The BoR provided its favourable opinion on the Agency's Opinion on ENTSO-E's Annual Report by consensus of the members present or represented.</p>
-------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

5. Gas

Main conclusions	
<p>5.1. <u>Important AGWG updates</u></p>	<p>The AGWG Vice-Chair provided an update on the ongoing work in the ACER Gas Working Group including the Functionality Platform, the work of the Gas Infrastructure Task Force, and the Tariffs Network Code which applies since May 2019 as well as about some delays in some countries regarding the national consultations.</p>
<p>5.2. <u>Update on the ACER Decision on the choice of a Booking Platform for IPs where the involved TSOs/NRAs fail to reach an agreement (Art. 37 CAM NC)</u></p>	<p>The Director and ACER Gas HoD provided an update on the draft Decision on the choice of a Booking Platform for interconnection points where the involved TSOs/NRAs fail to reach an agreement. They explained the evaluation method for offers which has been improved, based on the experience gained in preparing the previous decision, and set out the selection methodology on the basis of minimum requirements. The BoR was informed about the strict confidentiality arrangements concerning this decision which will be circulated to the members and alternates only. A discussion was held on the content including the next steps. The deadline to issue the Decision is 14 August. The AGWG consultation on the draft Decision runs from 10 to 17 July. The provision of the BoR favourable opinion will be organised through a two or three round electronic procedure, depending on the submission of amendments, which is to be launched on 18 July.</p>
<p>5.3. <u>Update on the ACER Decision on the Balansys compliance programme</u></p>	<p>The Director and the ACER Gas HoD provided an update on the state of the preparation of a Decision on the Balansys compliance programme. The legal basis for the Agency's Decision is Art. 7(4) of the Gas Directive (approval of compliance programme by the Agency). A public consultation ended on 1 July and there have been three submissions. A detailed legal reasoning has been presented at the last AGWG, particularly on the scope of Article 7(4) regarding the transfer of TSO competences. It is expected that the draft Decision will be submitted to the September BoR for a BoR opinion. The AGWG's advice will be sought</p>

electronically from 28 August until 4 September. The BoR took note of the next steps and noted the need to ensure certainty in the market by providing the decision in a short timeframe.

Decisions

5.2 The BoR agreed to the use of an (two/three round) electronic procedure for the provision of its favourable opinion on the Agency's Decision on the choice of a Booking Platform to be launched on 18 July.

6. Electricity

Main conclusions

6.1. Important AEWG updates

The AEWG Chair provided an update on the ongoing work in the ACER Electricity Working Group including on the establishment of the three expert groups; the discussion on the criteria for ACER/BoR to assess whether TCMs of a region may have a wider impact on the internal market according to Article 5.3 of the Regulation 2019/942 (strong cross-regional impact on SoS, market, cost; significant impact on load flows beyond the region; potential to contribute to a "best-practice" standard in the EU; significant impact on processes of a multi-regional RCC).

6.2. Update on Recommendation on the implementation and fulfilment monitoring of Article 16(8) of the recast Electricity Regulation (70% transmission capacity availability for cross-zonal trade)

The Director and ACER Electricity HoD provided an update on the draft Recommendation on the implementation of the minimum margin available for cross-zonal trade pursuant to Article 16(8) of Regulation 2019/943 which follows the request of the electricity cross border committee. ACER, in coordination with regulatory authorities, represented in the BoR, agreed on providing a harmonised interpretation on how to implement and monitor the achievement of the minimum level of available cross-zonal capacity. This Recommendation may later be complemented with further guidance on how the results of the monitoring should be used to assess and, where necessary, address the overall compliance with Article 16(8). The AEWG comments were provided by 15 July and 15 NRAs commented. These comments mainly related to the following issues: the roles and responsibilities in monitoring versus fulfilment, how to take into account contingencies; the treatment of NTC borders; the treatment of flows induced by non-EU countries; and the use of forecasts for the calculation of MNCCs.

Mr Gence-Creux explained how the Agency is looking into these comments. The Recommendation will clarify that its scope will exclusively be on the methodology to calculate and monitor the minimum margin available for cross-zonal trade, while the assessment of compliance will be dealt with separately by the Regulatory Authorities and the EC. Regarding contingency, Annex 4 presents the two options possible in the case of NTC approach. For consistency purpose with the Flow-Based approach, ACER proposes to stick to its methodology, in line with the CEP as well as with the Capacity calculation methodologies adopted under the CACM Guideline. On the treatment of NTC borders, in order to provide transparency and consistency with the Flow-Based approach, the draft Recommendation proposes to monitor all CNECs included in the capacity calculation methodologies as a long term target. The draft Recommendation acknowledges the need for TSOs for a transitory period to meet this target, during which they will be allowed to provide data on the limiting CNECs only. Regarding the treatment of flows induced by non-EU countries, the draft Recommendation proposes to leave the two options open.

In that respect, the EC explained their approach on the treatment of flows induced by non-EU countries, which has been reflected in a letter sent to ACER. The EC proposes a pragmatic, reasonable solution which consists of taking into account non-EU countries' flows subject to the conclusion of an agreement between

the TSOs of a CCR and of the third country covering at least the consideration of internal constraints and a transitional solution for sharing of remedial actions costs. ACER proposes to calculate one option with a value not considering third country flows and one option with a value fully considering such flows until the agreements with third countries are concluded. Regarding the treatment of flows outside the coordination area, TSOs themselves acknowledge the need to take into account the potentially relieving flows outside the coordinating area (CA) but emphasise the flows challenges associated to this until the coordinated capacity calculation methodologies are fully implemented at regional level. The Recommendation invites NRAs to consider the possibility to grant temporary derogations to address this specific issue.

BNETZA further submitted a written contribution including concerns that the treatment of flows outside the coordination area is not compliant with the CEP. E-Control also raised some doubts about the interpretation of how contingencies should be taken into account and emphasised that the recommendation describes a long-lasting solution which cannot be applied right now. Thus, it is also important to have a common understanding on a less detailed interim approach to be followed for a first assessment. ACER considers on its side that its proposal is in line with the CEP as well as with the Capacity calculation methodologies adopted under the CACM Guideline.

Members acknowledged the work undertaken and emphasised the good practice set with regard to inclusiveness of the NRAs in the deliberations. The BoR agreed to the use of an electronic procedure for the provision of the favourable opinion on the Agency's Recommendation on the implementation and fulfilment monitoring of Article 16(8) of the recast Electricity Regulation (70% transmission capacity availability for cross-zonal trade).

6.3. ACER Decision on Core NRAs' request for extension of the deadline for a decision on the Core TSO's RD&CT proposal

The Director and ACER Electricity HoD informed the BoR of the upcoming ACER Decision on the Core NRAs' request for an extension of the deadline. According to Articles 35(1) and 74(1) of the CACM Regulation, Core TSOs were expected to submit RDCT proposals within 16 months after the regulatory approval on capacity calculation regions under Article 15 of the CACM Regulation. Core TSOs informed Core NRAs by letter on 22 February that it was not feasible to meet this deadline and a new deadline was established of March 2019. The last Core NRA received the proposals on 27 March. The legal deadline to reach an agreement is, therefore, 27 September. The draft proposals are currently not sufficiently developed to be implemented and cannot as such be approved by Core NRAs. Therefore, Core NRAs unanimously requested the Agency to extend the initial period to assess the proposal with six months (postponing the deadline to reach an agreement to 27 March), to accommodate the time necessary for TSOs to start experimentation and submit an updated version of their proposals. A Decision on this request is being prepared. The BoR agreed the next steps to consider the decision at the September BoR meeting, given the deadline of 27 September.

Decisions

6.2 The BoR agreed to the use of a (two/three round) electronic procedure for the provision of the favourable opinion on the Agency's Recommendation on the implementation and fulfilment monitoring of Article 16(8) of the recast Electricity Regulation (70% transmission capacity availability for cross-zonal trade).

7. Market Integrity and Transparency & Surveillance and Conduct

Main conclusions

7.1. Important AMIT WG and REMIT CG updates

The ACER MIT HoD provided several updates on the ongoing work within the ACER Market Integrity and Transparency Working Group. The BoR was informed regarding the proposal for an understanding of the MoU on data sharing in the light of market coupling. In the light of market design developments such as those promoted by CACM with the implementation of single day ahead coupling and single intraday coupling XBID, it needs to be reconsidered which data are considered to be 'relevant information', to which the Agency shall grant access to according to Article 7(2) of REMIT.

The Director informed the BoR on the progress to update the existing Section 6.4.1 of the ACER Guidance which regards capacity withholding. The next version is envisaged to be shared with the REMIT Coordination Group and the BoR meetings in September for consultation, in order to then be published. Two members raised concerns about possible differences stemming from the market designs and REMIT implementation which are not reflected currently and questioned the timing for the publication of the ACER Guidance. Two other members urged the Agency to proceed with the publication of the ACER Guidance with the view of providing consistency and certainty to the market.

The Director noted the need to avoid a proliferation of national positions which would be detrimental to the functioning of the market. While there is a need to recognise different market structures the Guidance should provide a consistent approach.

The ACER MIT HoD informed the BoR of the data quality activities on the basis of the data quality matrix.

Decisions -

Documents approved / agreed / FO provided / endorsed

1.1 Approval of agenda: A19-BoR-83-01.1_Agenda-v4

1.2 Approval of Minutes: A19-BoR-83-01.2_Minutes of the 82nd BoR_v2

1.3 Approval of new minutes template

3.1 Approval subject to modifications of gas consultation paper "the Bridge beyond 2025"

4.2 Agreement subject to modifications on the practical arrangements for the BoR deliberations on the selection of the new ACER Director.

4.3 Favourable opinion on the Agency's Opinion on ENTSOG's SSO.

4.4 Favourable opinion on the Agency's Decision on the SEE methodology for coordinated redispatching and countertrading.

4.5 Favourable opinion on the Agency's Opinion on ENTSO-E's Summer Outlook 2019 and Winter Review 2018/2019.

4.6 Favourable opinion on the Agency's Opinion on ENTSO-E's Annual Report.