

120th ACER Board of Regulators Meeting
13 December 2023
ACER premises (and by video/audio conference)

MINUTES

Country/Institution	Name[1]	Country/Institution	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch O: Christine Materazzi-Wagner O: Katharina Ledermann-Tappeiner	Latvia (PUC)	M: Rota Šņuka O: Alda Ozola (Chair) O: Lija Makare
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren	Lithuania (NERC)	M: Renatas Pocius A: Irma Zdanienė O: Jelena Dilienė O: Benas Skublickas
Bulgaria (EWRC)	A: Blagoy Golubarev O: Borislava Petrakieva	Luxembourg (ILR)	A: Claude Hornick
Croatia (HERA)	M: Željko Vrbanić	Malta (REWS)	A: Phyllis Micallef
Cyprus (CERA)	A: Alkis Philippou O: Christina Zouvani	Netherlands (ACM)	A: Michiel Denkers O: Nora Meray
Czech Republic (ERO)	A: Jana Haasová O: Tomáš Kupčíha	Poland (URE)	M: Rafał Gawin A: Małgorzata Kozak
Denmark (DUR)	A: Birgitta Bundgaard	Portugal (ERSE)	M: Pedro Verdelho A: Natalie McCoy
Estonia (ECA)	A: Marilyn Tilkson	Romania (ANRE)	A: Tatiana Iosiper
Finland (EV)	A: Simo Nurmi	Slovakia (URSO)	A: Maria Bronisova
France (CRE)	A: Ivan Faucheux O: Claire Hellich-Praquin O: Natalia Baudry	Slovenia (AGEN-RS)	A: Bojan Kuzmič
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov	Spain (CNMC)	M: Josep María Salas A: Esther Espeja O: Gema Rico
Greece (RAEWW)	M: Athanasios Dagoumas O: George Loizos	Sweden (Ei)	M: Ulrika Hesslow O: Johan Roupe

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

	O: Yuriy Bilen		
Hungary (MEKH)	O: Tamás Gyarmati O: Szabolcs Koppányi	EEA-EFTA State Iceland	A: Hanna Björg Konráðsdóttir
Ireland (CRU)	M: Jim Gannon O: Barry Hussey O: Clodagh Hunt- Sheridan	Norway (NVE-RME)	A: Anne Dønnem
Italy (ARERA)	M: Clara Poletti A: Francesco Cariello O: Ilaria Galimberti	EFTA Surveillance Authority (ESA)	O: Anne De Geeter
ACER	Christian Zinglensen, Volker Zuleger, Martin Godfried, Rafael Muruais Garcia, Zoran Vujasinovic, Mathieu Fransen, Uros Gabrijel, Martin Povh, Seamus Cathal Byrne, Savvas Savvides, Fay Geitona, Mitsuko Akiyama		
European Commission	Michael Schuetz, Catharina Sikow-Magny, Mikolaj Jasiak		

1. BoR Elections

1.1. Election of the BoR Vice-Chair

According to the BoR Rules of Procedure (RoP), the term of office of the Chair/Vice-Chair is renewable. In accordance with Article 3.2 of the BoR RoP, members whose remaining term of office at the national level would not cover the Chair/Vice Chair mandate should inform the BoR when putting forward their candidature.

By the deadline of 27 November, one member, the current BoR Vice-Chair, expressed interest in the position of BoR Vice-Chair. Mr Gawin has informed members of his remaining term of office in URE.

The BoR unanimously agreed to reappoint Mr Gawin as BoR Vice-Chair as from 13 December 2023.

1.2. Election of BoR Chair

By the deadline of 27 November, one member, the current BoR Chair, expressed interest in the position of BoR Chair. Ms Poletti has informed members of her remaining term of office in ARERA. Ms Poletti takes pride in what the BoR has achieved over the last years particularly against a turbulent context due to Covid and the energy crisis. The machinery remained flexible to accommodate these unprecedented challenges. Going forward, she suggests discussing more strategic items, which could practically entail meeting in person where necessary.

The BoR unanimously agreed to reappoint Ms Clara Poletti as BoR Chair as from 14 January 2024.

Decisions/ Conclusions

1.1 The BoR agreed to reappoint Mr Gawin as BoR Vice-Chair.

1.2. The BoR agreed to reappoint Ms Poletti as BoR Chair.

2. Opening

2.1. Approval of the agenda

The agenda of the 120th 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.

2.2. Minutes of the 119th BoR meeting

The minutes of the 119th BoR meeting were approved and sent to the European Parliament on 8 November 2023.

Decisions/ Conclusions

2.2. The BoR approved the agenda.

3. Updates from the ACER Director and the BoR Chair

3.1. ACER IT security breach experienced; updating the BoR

The Director and the ACER Acting IT Security Officer updated the BoR on the IT security breach experienced, about which a notice was published on the ACER website on 27 November and ACER Boards were informed on the same day. The Computer Emergency Response Team for the EU institutions, bodies and agencies (CERT-EU) informed ACER that the external firewalls may have been compromised, which was subsequently confirmed. An external communication will be issued in the next days and the final report is expected in January.

3.2. Updates from ACER Director

The Director informed the members of the context and broader contours of the ACER reorganisation envisaged for 1 February 2024. He explained the rationale behind the structural changes needed to adapt to the shifting context and ACER's growth, the new teams and a more integrated approach to data and planning efforts.

3.3. Other Updates

Ms Geitona announced a change to the March BoR meeting date following the invitation by CREG to kindly host the meetings in Brussels in view of the Belgian Presidency. The meeting will be held in Brussels on 7 March 2024. She also informed the BoR that the 2023 NRAs survey which is carried out every two years following the previous 2021 exercise is soon to be launched. This will address NRAs' perception of external communication, decision-making and working arrangements of the BoR and the AWGs as well as seek information on NRA resources devoted to ACER work (cf. the 2021 survey) and feedback on NRA experience of secondments. The members were kindly invited to provide coordinated feedback from each organisation.

Decisions/ Conclusions

3.3. The March BoR meeting will take place in Brussels (hosted by CREG) on 7 March 2024.

4. Wider Energy Union

4.1. EC Updates

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

Director Sikow-Magny presented the state of play of the interinstitutional negotiations on the reform of the electricity market design (EMD). Trilogues are progressing very rapidly, and many topics have already been agreed, whilst others remain open and are to be addressed on the trilogue of 13 December, which is expected to close open issues.

Mr Mikolaj Jasiak, Policy Officer in DG ENER.TF.1, provided an update on the Joint European Gas Purchase Platform, which supports a more coordinated purchase of natural gas at European level and implements demand aggregation to contribute to sufficient and diversified gas supplies.

The EP and the Council reached an agreement on Gas and Hydrogen Regulation, which sets out the demand aggregation and joint purchasing mechanism for natural gas as a permanent feature of the new framework. The mechanism will remain voluntary with no mandatory obligation of submission of demand and will start in 2025. The notification obligation under the solidarity obligation will no longer apply under the permanent mechanism. A new service provider will be selected for the permanent mechanism.

- The provisional political agreement on the REMIT reform and the Directive to establish common rules for the internal markets in renewable and natural gases and in hydrogen

Mr Schuetz presented the outcome of the REMIT reform: on 16 November, the Council and the Parliament reached a provisional political agreement on this reform. The Council and the Parliament notably agreed on the scope of ACER's decision-making powers to do on-site inspections, requests for information and authorisations or withdrawal of authorisations of Inside Information Platforms (IIPs) and Registered Reporting Mechanisms (RRMs). The provisional agreement provided for ACER's right to investigate cases with a cross-border dimension i.e. where the conduct affects at least two member states. NRAs will be able to object to the exercise of the agency's investigatory powers when the NRAs have formally opened or have conducted an investigation on the same facts. The NRAs will have a maximum of 3 months to object. ACER has the power to impose periodic penalty payments in order to ensure compliance with on-site inspection decisions and requests for information. The power to impose fines for infringements or breaches of the prohibitions or substantive obligations included in the regulation will remain in the hands of Member State regulatory authorities.

Mr Schuetz informed the BoR that on 28 November, the Council and the Parliament had also reached a provisional political agreement on the Directive to establish common rules for the internal markets in renewable and natural gases and in hydrogen. The Directive seeks to facilitate the penetration of renewable and low-carbon gases into the energy system, enabling a shift from natural gas, with a view to reaching the EU's goal of climate neutrality in 2050. The agreed elements include the split between Transmission System Operators (TSOs) and Distribution System Operators (DSOs) for hydrogen. On 8 December, a provisional political agreement was also reached on the regulation to establish common rules for the internal markets in renewable and natural gases and in hydrogen: a separate new entity in the hydrogen sector, an EU entity for Hydrogen Network Operators (ENNOH), will be independent of the existing ENTSG and ENTSOE, while taking advantage of synergies and cooperation between the three sectors.

- EU Action Plan for Grids

The EC launched the Grids Action Plan with the 4th PCI Energy Days, which was shared with members.

The BoR Chair thanked the EC for the updates.

4.2. Recent erroneous order incident in the day ahead market at the Finnish bidding zone

Mr Nurmi referred to the incident that took place on 24 November 2023: a market actor submitted an erroneous order to NordPool on 23 November, as a result of which calculated day-ahead (DA) prices, volumes and flows were impacted, the DA price in Finland fell to -500 EUR/MWh and

prices in the Baltics and Sweden were also affected, raising concerns of possible imbalance between supply and demand. A market-based solution was found. The BoR Chair thanked Mr Nurmi for the presentation and invited the BoR to discuss the lessons learned from this incident.

5. Items for BoR opinion/approval/agreement

5.1. Appointment of the AEWG Chair

As announced at the last BoR, the AEWG Chair's term ends on 15 December, nominations were opened on 16 November. According to the AEWG Rules of Procedure (Article 2.2), the Director and the BoR jointly appoint one or more Chairpersons for each WG. The appointment is typically for a period of two years. The Director and the BoR may jointly decide to extend the term of appointment if they consider this to be in the best interest of the Agency. Ms Materazzi-Wagner being the sole candidate for the position, the Director and the BoR agreed to reappoint her as AEWG Chair. Ms Materazzi-Wagner thanked the members, the AEWG Vice-Chairs and AEWG members for their continued trust and support, and expressed her eagerness to tackle upcoming challenges, including the revisions of the electricity market design and network codes among others.

5.2. Revised ACER Work Programme 2024

The draft 2024-2026 ACER Programming Document (PD) was approved in January of this year. The PD becomes definitive following adoption of the general budget and consequent adjustments. The BoR is now invited to approve the revised PD, and the Administrative Board will subsequently adopt the PD having regard to the opinion of the Commission, after receipt of a favourable opinion from the Board of Regulators, and submit it to the European Parliament, the Council and the Commission by 31 December. Following receipt of the EC opinion, amendments were introduced based on available resources having regard to lower fees and increased costs and some projects were considered for de-prioritisation. The Director reiterated that 2024 remains a potentially challenging year.

The revised ACER Work Programme 2024 was approved.

5.3. ACER decision on the alternative bidding zone configurations to be considered in the bidding zone review process for the Baltic region

In the decision on the alternative Bidding Zone (BZ) configurations adopted in August 2022, ACER only proposed alternative configurations for Continental Europe and the Nordics, leaving out the Baltics as at that time, ACER did not have any information for this region due to the uncertainties linked to synchronization with Continental Europe. In early December 2022, the Baltic NRAs informed ACER that the results of the locational marginal pricing (LMP) analysis for the Baltic region will be provided to ACER by the Baltic TSOs between the end of December 2022 and the end of January 2023 and the decision-making process was initiated on 26 September. The deadline is 26 December 2023. The AEWG advice was circulated.

In the absence of proposals for amendments and comments, the BoR Chair asked members whether there was consensus to grant the BoR favourable opinion (FO). Members unanimously agreed.

5.4. ACER decision on the amendment of the Harmonised Allocation Rules

Long-term flow-based allocation in the Core capacity calculation region is expected to go live in November 2024. On 1 March 2023, TSOs submitted the first proposal on the amendments of the Harmonised Allocation Rules (HAR) (Article 51 of the FCA Regulation). The first submission

did not contain any amendment regarding collaterals. ACER received the second proposal from all TSOs on 1 August. The AEWG advice was circulated.

In the absence of BoR proposals for amendments and comments, the BoR Chair asked members whether there was consensus to grant the BoR favourable opinion (FO). Members unanimously agreed.

5.5. ACER decision on the amendment of the Congestion Income Distribution (CID) Methodology

Pursuant to the methodology for a co-optimised allocation process in accordance with Article 40(1) of EB Commission Regulation (EU) 2017/2195 (ACER Decision 12/2020), several regional methodologies for a market-based allocation process in accordance with Article 41(1) of the EB Regulation and the methodology for harmonising processes for the allocation of cross-zonal capacity for the exchange of balancing capacity or sharing of reserves in accordance with Article 38(3) of the EB Regulation (HCZCAM) (ACER Decision 11/2023), congestion income from the allocation of cross-zonal capacity for the exchange of balancing capacity or sharing of reserves will be considered as day-ahead congestion income and as such shall be shared in accordance with the CID methodology. Pursuant to Article 8(3) of Annex 1 of the 2021 Decision, all TSOs were required to submit an amendment to the CID methodology 18 months after the 2021 Decision to address the treatment of unintuitive flows in accordance with the objective of fair and non-discriminatory treatment pursuant to Article 3(e) of the CACM Regulation. ACER received the proposal on 5 July 2023. The AEWG advice was circulated.

In the absence of proposals for amendments and comments, the BoR Chair asked members whether there was consensus to grant the BoR favourable opinion (FO). Members unanimously agreed.

5.6. ACER decision on the request of the regulatory authorities of the Core Capacity Calculation Region to extend the period for reaching agreement on the proposal for amending the Day-Ahead Capacity Calculation Methodology in the Core region

On 24 October 2023, the NRAs of the Core CCR requested a three-month extension to agree on the proposal developed by the TSOs of the Core CCR for the second amendment of the Core DA CCM on the implementation of the Advanced Hybrid Coupling. The Core NRA agreement was due on 6 November 2023.

ACER is to decide on the request in an expedited manner (decision by mid-December) as no comment was submitted on this request. ACER considers three months (until 6 February 2024) reasonable and sufficient for Core NRAs to reach agreement. The AEWG advice was circulated.

In the absence of proposals for amendments and comments, the BoR Chair asked members whether there was consensus to grant the BoR favourable opinion (FO). Members unanimously agreed.

5.7. ACER recommendation on reasoned proposals for amendments to the Network Codes on Requirements for Generators and Demand Connection

In September 2022, within the framework of the Grid Connection Stakeholders Committee, the European Commission asked ACER to initiate the process to prepare reasoned proposals for amendments to the grid connection network codes, namely the Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators (RfG Regulation) and the Commission Regulation (EU) 2016/1388 of 17 August 2016 establishing a network code on Demand Connection (DC Regulation).

ACER proposes amendments as set out in Annexes 1 and 2 to the Recommendation for the reasons detailed in Annexes 4 and 5 explaining how such proposals are consistent with the

objectives under Article 59(4) of the Electricity Regulation (contribution to market integration, non-discrimination, effective competition, and the efficient functioning of the market). The AEWG advice was circulated.

The BoR Chair invited authors of the proposals for amendment and comment to explain their positions before members were invited to vote on them.

The comment was adopted by consensus of the members present and represented.

On the amendment proposed, 19 members voted in favour, 2 against and 6 abstained. The amendment was adopted by the requisite two-thirds majority of members present and represented.

The BoR Chair invited members to vote on the BoR favourable opinion on the final proposal by ACER with Article 30(3) revised as follows: "If required by national rules, the relevant system operator, on acceptance of a complete and adequate installation document, shall issue a final operational notification as soon as possible." The proposal was adopted by the requisite two-thirds majority of members present and represented, 1 member having voted against.

5.8. ACER opinion on ENTSOG Winter Supply Outlook 23/24

On 17 October 2023, ENTSOG published the Winter Supply Outlook 2023/2024 ('WSO 2023/24') pursuant to Article 8(3)(f) of Regulation (EC) No 715/2009, which also includes a preliminary outlook for the summer 2024. The aim of the outlook is to assess the level of preparedness of the gas infrastructure in ensuring supply and demand adequacy under different demand and supply conditions.

Pursuant to Article 4(3)(b) of Regulation (EU) 2019/942, ACER may issue an opinion and the draft opinion considers that the WSO contributes to the objectives of Regulation (EU) 2019/942 and Regulation (EC) No 715/2009 in terms of contributing to non-discrimination, effective competition, and the efficient and secure functioning of the internal natural gas market, but recommends improving the WSO assumptions and methodology, consulting stakeholders sufficiently in advance. The AGWG advice was circulated

In the absence of proposals for amendments and comments, the BoR Chair asked members whether there was consensus to grant the BoR favourable opinion (FO). Members unanimously agreed.

Decisions/ Conclusions

5.1. The BoR and the Director jointly reappointed Ms Materazzi-Wagner as the AEWG Chair for a period of two years.

5.2. The BoR unanimously approved the revised ACER Work Programme 2024.

5.3. The BoR unanimously granted its favourable opinion on the ACER decision on the alternative bidding zone configurations to be considered in the bidding zone review process for the Baltic region.

5.4. The BoR unanimously granted its favourable opinion on the ACER decision on the amendment of the Harmonised Allocation Rules.

5.5. The BoR unanimously granted its favourable opinion on the ACER decision on the amendment of the Congestion Income Distribution Methodology.

5.6. The BoR unanimously granted its favourable opinion on the ACER decision on the request of the regulatory authorities of the Core Capacity Calculation Region to extend the period for reaching agreement on the proposal for amending the Day-Ahead Capacity Calculation Methodology in the Core region.

5.7. The BoR adopted the proposals for comment and amendment to the ACER recommendation on reasoned proposals for amendments to the Network Codes on Requirements for Generators and Demand Connection. The BoR adopted the Director's final proposal by the requisite two-thirds majority of members present and represented.

5.8. The BoR unanimously granted its favourable opinion on the ACER opinion on ENTSOG Winter Supply Outlook 23/24.

6. AWG key issues

6.1. ACER decision on the amended Core Intraday (ID) Capacity Calculation Methodology

As announced at the last BoR meeting, ACER organised a workshop on the ACER decision on the amended Core Intraday (ID) Capacity Calculation Methodology (CCM) on 10 November, where ACER highlighted that the inclusion of the 70% requirement is considered to be legally necessary, technically feasible and strategically important to achieve the Internal Energy Market and enable decarbonisation and avoid relying on virtual capacity provided by TSOs. The EC also underlined its legal applicability and the importance of non-discrimination between internal and cross-border flows while acknowledging difficulties with implementation.

Following the workshop, ACER concluded that the decision on Core ID CCM amendments merits further exploring options for a possible compromise to maximise the support. Therefore the proposal was not submitted for adoption at this meeting, and the difficulties in finding a suitable compromise may warrant taking additional time. Nevertheless, the second revised preliminary position was shared for the hearing of the Core NRAs and TSOs on Friday 1 December and a second hearing meeting of Core NRAs and TSOs took place on 8 December. Members discussed the key elements of the proposal. Following the feedback by the BoR, the Director will communicate the next steps.

6.2. AWG/ARC key issues

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

The AEWG Chair reported on: the Winter Outlook (no unexpected results or concerns identified by ENTSO-E regarding seasonal adequacy; the 2023 European Resource Adequacy Assessment (ERAA) (submission expected before the end of the year but likely to be published next year; the 2024 ERAA; ENTSO-E resources; and balancing platforms. The AEWG Chair also mentioned the ongoing call to replace Mr Kawam as CACM/FCA TF Co-Convenor.

- Consolidated REMIT MMoU (announcement)

Mr Zuleger referred back to the Consolidated REMIT Multilateral Memorandum of Understanding (MMoU), which was shared with the BoR in April of last year. The MMoU will be updated in light of the revised REMIT Regulation, building on the current version.

- German gas storage neutrality charge and cross-border impacts

The AGWG Chair referred back to 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 at previous BoR meetings and will be further discussed at the next AGWG meeting. The EU Gas Storage Regulation (EU) 2022/1032, which provides for storage filling obligation and targets per Member State, does not contain general rules on the allocation of storage costs; the AGWG Chair commented on the need to agree principles so that deviations from the past do not affect market functioning.

ACER and the EC reiterated that a consistent approach should be followed to avoid distorting trade and threatening market integration and avoid incentivising other Member States to adopt similar measures. The EC confirmed the ongoing scrutiny but did not disclose the timetable.

6.3. REMIT: Market Surveillance and Conduct State of play & 2024 outlook

Mr Godfried presented the 2024 outlook and challenges including: a volatile wholesale energy markets due to increased exposure to global LNG competition; expanding market surveillance coverage; the Cross-Border Investigatory Group; the likely prolongation of the Market Correction Mechanism; changing and increasing market design complexity and its interactions with the REMIT framework; ongoing cooperation with ESMA; and implementation of REMIT II, on which ACER will work closely with NRAs and coordinate messages.

6.4. ACER/CEER Retail Market Monitoring Report – approach in the future

ACER proposes to adopt a more strategic approach to the retail Market Monitoring Report (MMR): the aim is to make the preparations less burdensome and the report itself more impactful, serving as a key vehicle for advancing insights and best practices, capturing the consumer protection aspects crucial for the energy transition (e.g. for unleashing the potential for electrification, demand side flexibility etc.). Taking inspiration from the wholesale MMR, there would be separate, dynamic volumes that inform the audiences better. Members discussed the proposed approach and discussions will be pursued at technical level on the detailed implementation elements.