

110th ACER Board of Regulators Meeting
21 September 2022
Prague (and by video/audio conference)

MINUTES (FINAL)

Country/Institution	Name ^[1]	Country/Institution	Name
Austria (E-Control)	A: Dietmar Preinstorfer O: Christine Materazzi-Wagner	Latvia (PUC)	Alda Ozola (Chair) O: Lija Makare
Belgium (CREG)	M: Koen Locquet	Lithuania (NERC)	M: Renatas Pocius A: Irma Zdanienė
Bulgaria (EWRC)	O: Borislava Petrakieva (with proxy)	Luxembourg (ILR)	M: Camille Hierzig
Croatia (HERA)	M: Željko Vrban	Malta (REWS)	A: Phyllis Micallef
Cyprus (CERA)	O: Marilena Delenta (with proxy) O: Christina Zouvani (with proxy)	Netherlands (ACM)	A: Manon Leijten O: Nora Meray
Czech Republic (ERO)	A: Jana Haasová O: Tomáš Kupčička	Poland (URE)	M: Rafał Gawin O: Patrycja Zającz-Zajączkowska
Denmark (DUR)	M: Carsten Smidt	Portugal (ERSE)	M: Pedro Verdelho A: Natalie McCoy O: Catarina Santos
Estonia (ECA)	A: Marilyn Tilkson	Romania (ANRE)	M: Dumitru Chirita O: Florin Tobescu
Finland (EV)	M: Simo Nurmi A: Anti 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)	A: Esther Espeja O: Gema Rico
Greece (RAE)	M: Dagoumas Athanasios O: Tsimaras Konstantinos	Sweden (Ei)	M: Ulrika Hesslow

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

	O: Yuriy Bilen		
Hungary (MEKH)	M: Pál Ságvári	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, Dennis Hesseling, Martin Godfried, Volker Zuleger, Alexander Glapiak, Athina Tellidou, Emmanouil Santorinaios, Mathieu Fransen, Thomas Kawam, Vasilis Papandreou, Zoran Vujasinovic, Fay Geitona, Mitsuko Akiyama		
European Commission	Christof Lessenich, Michael Schütz, Annamaria Marchi, Mathilde Lallemand, Ana Xavier		

1. Opening

1.1. Approval of the agenda

The agenda of the 110th BoR meeting was approved subject to a change in the order between items (2) and (3).

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 109th BoR meeting

The minutes of the 109th BoR meeting were approved and sent to the European Parliament on 25 July.

The BoR Chair welcomed the new BoR member Ms Wargon, CRE President, and Ms Hesslow from Ei.

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 BoR took note of the electronic procedure (EP) for ACER's decision on alternative bidding zone configurations, which was conducted in two rounds ending on 5 August. 24 members participated. The BoR FO was granted by the requisite majority.

The BoR EP for ACER's decision on FI-SE hedging opportunities ended on 7 September 2022. 22 members participated and the proposal was adopted by the requisite majority.

2.2. Updates from the BoR Chair

The BoR agreed to change the location of the December BoR meeting following the Chair's suggestion.

3. Strategic discussion on the energy crisis

- Emergency measures

The BoR Chair referred to the summary of the extraordinary Council meeting of 9 September 2022 and the EC proposal for a Council Regulation on an emergency intervention to address high energy prices, inviting the EC to update members on their proposals and the ongoing discussions; Ms Groebel to update on retail market developments; Mr Hesseling to report on gas market developments; and the AEWG and AGWG Chairs to update on the ongoing WG discussions. She explained that the focus of today's BoR discussion should be on the short term emergency measures with the view to raise awareness, discuss implementation issues and come up with possible common messages.

Ms Groebel referred to the CEER structure and process for collecting data and reporting on selected (retail) topics.

Mr Hesseling reported on developments in gas wholesale markets with the view to inform the BoR and to highlight a few issues relevant for NRAs. He thus updated the BoR regarding gas hub prices, spreads and network congestion: in terms of gas prices there have been various

phases with different dynamics with extreme increases seen a month ago, while prices seem to be driven by gas and electricity supply scarcity and supply risks.

Mr Lessenich reported on the EC proposal for a Regulation on an emergency intervention to address high energy prices energy prices under Article 122(1) of the Treaty, which will be adopted through an urgent procedure. The proposal addresses mainly electricity but also includes provisions on a solidarity contribution from the fossil fuel sector. The proposal sets out

- a mandatory obligation to reduce electricity consumption by at least 5% during selected peak price hours with a margin of flexibility in defining peak load hours: the aim is to target hours where prices are particularly high, this being a price rather than a SoS instrument; it is envisaged that this obligation will be met by demand response measures (e.g. tenders) while some Member States already have interruptibility schemes in place.
- Member States must aim to reduce overall electricity demand by at least 10% (indicative target) until 31 March 2023 by reference to a historic benchmark, via soft measures (e.g. smart meters), with the objective to keep out least efficient gas fired generation during hours that impact on price.
- a temporary mandatory revenue cap of €180 EUR/MWh on 'inframarginal' electricity producers (renewables, nuclear and lignite) so as to make those revenues less dependent on high prices. Revenues above the cap will be collected by Member States and used to help energy consumers reduce their bills. Inframarginal generation which is already subject to such caps at national level would be excluded. Mr Lessenich explained that the cap was set following an analysis of the cost of inframarginal technologies and that its rationale is to maintain price-based competition between electricity producers based on different technologies, in particular for renewables.
- a temporary solidarity contribution on excess profits generated from activities in the oil, gas, coal and refinery sectors which are not covered by the inframarginal revenue cap. The revenues are to be redirected to energy consumers.

On the consumer aspects, the proposal provides for an extension of price regulation to SMEs (through regulated tariffs), reflecting the options outlined in the Commission Communication of 18 May on Short-Term Energy Market Interventions and Long-Term Improvements to the Electricity Market Design.

Members discussed the above aspects from a regulators' perspective particularly with regard to the practical implementation of the proposals. It was decided to pursue the analysis of the practical implementation issues on technical level and inform governments accordingly raising their awareness to these issues.

- Long-term electricity market design adjustments

The BoR Chair invited the EC to update members on the review of the electricity market design. Ms Marchi stated that for the time being, the EC is working within the previously announced timeline with the view to finalising the impact assessment by next summer.

4. Items for BoR opinion/approval/agreement

4.1. ACER Decisions on the amendment of the implementation frameworks for the European balancing platforms for the automatic and manual frequency restoration reserve and the imbalance netting

Ms Tellidou explained the background for the ACER Decisions: on 31 March 2022, ACER received the proposals submitted by all TSOs amending the implementation frameworks (IFs) for the European balancing platforms for the automatic and manual frequency restoration reserve (aFRR, mFRR). She presented ACER's approach including for assessing the TSOs' proposal for

the multiple entity setup against the legal requirements and objectives of the Electricity Balancing Regulation. For this, ACER has defined the high-level objectives related to the legal requirements. After analysing and asking further information from TSOs, ACER concluded that the proposals partly lack sufficient details and legal clarity, to allow ACER to assess whether the legal requirements are fulfilled. To this end, ACER amended the proposals where necessary. Regarding the Joint Steering Committee setup with high need for coordination especially for cross-platform topics, ACER considers the platforms to be linked as they serve the same technical process and there are interdependencies and synergies between decision-making on different entities/platforms; TSOs already act accordingly. On the obligation to ensure back-up for each step of the day-to-day operation and the additional back-up, TSOs are to select the back-up entity for each designated entity given that continuity of the platforms is very important for the functioning of the EU electricity markets.

The BoR was informed on the four proposals for amendments submitted on the three decisions.

The Director informed the BoR on ACER's views on the proposals and the next steps.

The members were invited to vote on the proposals for amendments. The proposal (4) was adopted by the requisite majority; the proposals (1), (2) and (3) did not reach the requisite majority and thus were not adopted.

The members were invited to vote on the BoR favourable opinion for the ACER decisions as revised to reflect the proposed amendment providing for the deletion of the provisions on the establishment of a comprehensive back-up capability for each of the designated entities in Annex I of the Decisions on the implementation frameworks for the European balancing platforms for the manual frequency restoration reserve (Article 11), for the automatic restoration reserve (Article 10) and the imbalance netting (Article 9). The BoR favourable opinions on the above revised decisions were granted by consensus of the members present and represented.

4.2. Decision on the optimisation of Inter-TSO RDCT Settlements Methodology

The Director introduced this decision: pursuant to Article 37(5) of Regulation 2019/943, ENTSO-E must develop, in accordance with the procedure set out in Article 27 of Regulation 2019/943, a proposal for the relevant tasks not covered by the applicable network codes or guidelines and submit it to ACER for approval.

In the absence of proposals for amendment/comment, the BoR Chair invited the members to vote on the BoR favourable opinion, which was issued by consensus of the members present and represented.

4.3. Grid Connection Network Codes Policy Paper

Mr Glapiak presented this Policy Paper on the revision of the network code on requirements for grid connection of generators and on demand connection crystallising key findings of the scoping phase. Decarbonisation efforts, recent technological advancements and changes in the electric power and transport sectors require amendments to the European Grid Connection Network Codes (GC NCs). The purpose of this Policy Paper is to inform stakeholders about the areas where amendments to the concerned network codes are expected. The Policy Paper will be published in September 2022, and stakeholders could use it to inform their proposals for amendments, which they will be invited to submit in the course of ACER's formal public consultation lasting 8 weeks. The whole process will take approximately one year. The members endorsed the paper by consensus.

4.4. Amendment to the PCI Monitoring Report

The Director informed the BoR that following the publication of the ACER's "Consolidated report on the progress of electricity and gas Projects of Common Interest" ("Consolidated PCI report 2022"), ACER was notified on 8 July 2022 that TransnetBW GmbH had provided erroneous information. Therefore, the Consolidated PCI report 2022 as adopted on 23 June 2022 did not

correctly represent the factual situation existing at that time. ACER proposed to publish an amendment to the report to correct this aspect and sought the BoR favourable opinion on the amendment. The BoR issued its favourable opinion by consensus.

Decisions/ Conclusions

4.1 The BoR adopted by the requisite two-third majority the proposed amendment (4). The BoR provided its favourable opinion on the revised ACER Decisions to reflect the proposal for amendment adopted providing for the deletion of the provisions on the establishment of a comprehensive back-up capability for each of the designated entities in Annex I of the Decisions on the implementation frameworks for the European balancing platforms for the manual frequency restoration reserve (Article 11), for the automatic restoration reserve (Article 10) and the imbalance netting (Article 9) by consensus of the members present and represented.

4.2 The BoR provided its favourable opinion on the ACER Decision on the optimisation of Inter-TSO RDCT Settlements Methodology by consensus of the members present and represented.

4.3 The BoR endorsed the Grid Connection Network Codes Policy Paper by consensus of the members present and represented.

4.4 The BoR issued its favourable opinion on the amendment to the PCI Monitoring Report by consensus of the members present and represented.

5. AWG key issues

5.1. AWG/ARC key issues

The AWG Chairs presented their respective updates.

The AEWG Chair referred to the policy paper on EU forward electricity markets and updated members on the ENTSO-E budget and the scenario guidelines and ENTSO-E's Winter Outlook.

The AGWG Chair updated the BoR on the state of play of the revisions of the Gas Directive, Gas Regulation and the Regulation on methane emissions reduction.

5.2. 11th Market Monitoring Report (MMR) – Energy Retail and Consumer Protection Volume

The Energy Retail and Consumer Protection Volume of the MMR looks at developments in Europe's energy retail markets and outlines the current status regarding consumer protection measures. Mr Hesseling explained that the report incorporates 2022 data where possible, in an effort to keep it up-to-date despite the rapidly evolving context. Ms Haasová also thanked the drafters for their contributions.

5.3. Electricity Congestion Income monitoring 2022

Mr Santorinaios explained that in line with ACER's duties to monitor the internal electricity markets, as well as the implementation of the projects of common interest (PCIs), the Union-wide network development plans (EU TYNDP) and other projects which create new interconnector capacity, and in order to contribute to the goal set out in recital (41) of the Regulation (avoiding lack of prioritisation of necessary interconnection projects at national level), ACER prepared the congestion income (CI) monitoring report. This report evaluates evidence provided by 23 NRAs that used CI in 2021 to demonstrate that the priority objectives set out in Article 19(2) of Regulation 2019/943 were fulfilled. Mr Santorinaios and the Director noted the importance of monitoring in the current climate to determine how congestion income is being allocated.

5.4. Monitoring report on security of electricity supply

The Clean Energy Package enhanced ACER's role in monitoring security of electricity supply and ACER will publish dedicated annual reports on the developments in this field. The present report supplements the data presented in the electricity MMR, including as regards the definition of the necessary level of security of electricity supply (the reliability standard), adequacy assessments at national and regional levels and in all time-frames, as well as measures to address relevant security of electricity supply issues, such as capacity mechanisms, interruptibility schemes and network reserves. Mr Papandreou presented the key findings.

5.5. Presentation on the process for the adoption of ESA decisions

Ms De Geeter introduced a new type of ACER deliverable, the preparation of draft decisions for the EFTA Surveillance Authority (ESA), for which there is close, ongoing cooperation between ACER and ESA. EEA countries are required to implement the energy acquis, including the network codes and guidelines. Incorporation involves Joint Committee Decisions of EU and EFTA States, and there is an obligation on EEA EFTA States to implement incorporated EU law at national level and to apply it uniformly. Ms De Geeter briefly referred to the two-pillar structure. Energy acts already incorporated into the EEA Agreement include the 3rd Energy Package and the CACM Regulation, FCA, the Electricity Balancing and System Operation Guidelines.

5.6. Automatic day-ahead maximum clearing price adjustment rule

The Director and Mr Kawam introduced the latest developments. Under the Harmonised Maximum and Minimum Clearing Price (HMMCP) methodology, if prices in any zone reach 60% of the maximum price, it triggers an increase in the maximum price limit 5 weeks later. After the price spike incidents in April (in France) and more recently in the Baltic area, each triggering an automatic increase of the harmonised maximum clearing price for Single Day-Ahead Coupling (SDAC) of 1000€/MWh, ACER sees the need to urgently re-assess the automatic day-ahead maximum clearing price adjustment rule to limit the frequency of increases of the maximum clearing price in the single day-ahead market allowing consumers and market participants to gradually and better adapt to the scarcity situation in the market.

Following exchanges with ACER and the EC, NEMOs have taken the decision to freeze the current application of the dynamic mechanism increasing the maximum price limit of the day-ahead markets. NEMOs have submitted their proposed amendments to the day-ahead and intraday methodologies on the harmonized maximum and minimum clearing price and ACER opened a public consultation on 19 September (for three weeks) and aims to reach a decision before the end of the year.

Mr Kawam referred to the legal framework: in accordance with Articles 10(1) and 10(2) of the Electricity Regulation, there shall be neither a maximum nor a minimum limit to the wholesale electricity price (i.e. these are technical limits and not caps), and NEMOs may apply harmonised limits on maximum and minimum clearing prices for day-ahead and intraday timeframes. Those limits shall be sufficiently high so as not to unnecessarily restrict trade, shall be harmonised for the internal market and shall take into account the maximum value of lost load. NEMOs shall implement a transparent mechanism to adjust automatically the technical bidding limits in due time in the event that the set limits are expected to be reached. The adjusted higher limits shall remain applicable until further increases under that mechanism are required.

Mr Kawam outlined the main design elements of the automatic increase mechanism, which depends on multiple parameters including: trigger of the automatic increase, increase step, duration of the transition period between the occurrence of the event and the implementation of the new limit and the application of a freeze of the mechanism during the transition period. NEMOs and ACER/NRAs have been exchanging over the last few weeks on different design options that would meet the above requirements while also being able to respond to market

conditions this winter. Mr Kawam stressed that the mechanism should be allowed to work as intended.

Following Mr Kawam's presentation, a number of BoR members welcomed the upcoming revision of the methodology.

5.7. SvK's 70% derogation request

ACER must issue a decision on the SvK application for a derogation from the 70% rule (Articles 16(9) and 16(8) of Regulation (EU) 2019/943), for the bidding zone borders FI-SE3 and SE3-DK1 areas for the year 2022. Following disagreement with EV and DUR, Ei referred the matter to ACER and the decision must be issued by 27 October. Mr Vujasinovic presented ACER's preliminary position.