

## 111<sup>th</sup> ACER Board of Regulators Meeting

24 October 2022

by video/audio conference

### FINAL MINUTES

| Country/Institution  | Name <sup>[1]</sup>  | Country/Institution | Name  |
|----------------------|--|---------------------|---|
| Austria (E-Control)  | M: Wolfgang Urbantschitsch<br>A: Dietmar Preinstorfer<br>O: Christine Materazzi-Wagner | Latvia (PUC)        | M: Rota Šņuka<br>O: Lija Makare<br>O: Dace Bite             |
| Belgium (CREG)       | M: Koen Locquet<br>A: Geert Van Hauwermeiren   | Lithuania (NERC)    | A: Irma Zdanienė  |
| Bulgaria (EWRC)      | A: Blagoy Golubatev  | Luxembourg (ILR)    | M: Camille Hierzig  |
| Croatia (HERA)       | M: Željko Vrban  | Malta (REWS)        | A: Phyllis Micallef<br>O: Manuel Manuzzi                    |
| Cyprus (CERA)        | O: Marilena Delenta (with proxy)<br>O: Christina Zouvani (with proxy)                  | Netherlands (ACM)   | A: Remko Bos<br>O: Nora Meray                               |
| Czech Republic (ERO) | A: Jana Haasová<br>O: Tomáš Kupčiha  | Poland (URE)        | M: Rafal Gawin<br>A: Malgorzata Kozak                       |
| Denmark (DUR)        | M: Carsten Smidt   | Portugal (ERSE)     | M: Pedro Verdelho<br>A: Natalie McCoy<br>O: Catarina Santos |
| Estonia (ECA)        | A: Marilyn Tilkson   | Romania (ANRE)      | O: Florin Tobescu (with proxy)                              |
| Finland (EV)         | M: Simo Nurmi  | Slovakia (URSO)     | A: Mária Bronišová  |
| France (CRE)         | M : Emmanuelle Wargon<br>O: Claire Hellich-Praquin                                     | Slovenia (AGEN-RS)  | A: Bojan Kuzmič   |
| Germany (BNetzA)     | M: Annegret Groebel<br>O: Alexander Linov  | Spain (CNMC)        | M: Josep María Salas<br>A: Esther Espeja<br>O: Gema Rico    |

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

|                                |  |                                      |                                 |
|--------------------------------|--|--------------------------------------|---------------------------------|
| Greece (RAE)                   | O:Konstantinos Prosmirellis  | Sweden (Ei)                          | M: Ulrika Hesslow               |
| Hungary (MEKH)                 | M: Pál SÁgvári<br>O: Tamás Gyarmati  | EEA-EFTA State<br>Iceland            | A: Hanna Björg<br>Konráðsdóttir |
| Ireland (CRU)                  | M: Jim Gannon<br>O: Barry Hussey   | Norway (NVE-RME)                     | A: Anne Dønnem                  |
| Italy (ARERA)                  | M: Clara Poletti<br>A: Cariello Francesco<br>O: Ilaria Galimberti  | EFTA Surveillance<br>Authority (ESA) | O: Anne De Geeter               |
| <b>ACER</b>                    | Christian Zinglersen, Dennis Hesseling, Volker Zuleger, Christophe Gence-Creux, Olga Borissova, Martin Povh, Jan Kostevc, Bart Vereecke, Fay Geitona, Mitsuko Akiyama, Athina Tellidou, Valter Ilic, Mathieu Fransen |                                      |                                 |
| <b>European<br/>Commission</b> | Christof Lessenich, Michael Schütz, Anna Maria Marchi  |                                      |                                 |

## 1. Opening

### 1.1. Approval of the agenda

The agenda of the 111<sup>th</sup> BoR meeting was approved.

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 110<sup>th</sup> BoR meeting

The minutes of the 110<sup>th</sup> BoR meeting were approved and sent to the European Parliament on 4 October.

### **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 informed members that the European Court of Auditors is soon to publish a special report on the Internal Electricity Market.

### 2.2. Updates from the BoR Chair

- Agenda of the ACER Leadership Away Day

The Chair informed members that the agenda of the ACER Leadership Away Day had been circulated.

## 3. Strategic discussion on the energy crisis

### 3.1. Report on energy market developments and winter preparedness and cross-border flows of electricity and gas (outlook & lessons for the future)

ACER presented recent energy market developments. The Director, Mr Hesseling and Mr Gence-Creux reported on the discussions at the informal meeting of energy ministers in Prague, including on challenges with regard to cross-zonal capacity in gas and electricity this winter and the risks of supply disruptions well beyond the 24 months, and the repercussions of potential restrictions of cross-border trade for the future of the Internal Energy Market. The gas supply picture has changed dramatically following the reduction in Gazprom exports (Russian supply represents less than 10% of EU needs) and increases in LNG supplies in the same period, revealing diverging vulnerabilities across Member States, and supply bottlenecks in the EU gas system reflecting changes to gas pipeline flows.

With regard to electricity, cross-zonal capacity remains a crucial element of market integration in normal times, even more so in an energy crisis and being able to import electricity is critical for most or all Member states, not only for structural importers. Thus cross-border capacity for electricity trade should be increased rather than reduced during an energy crisis. NRAs may contribute to this by reaching out to TSOs to ensure that capacity restrictions are avoided as much as possible, increasing monitoring, enforcing rules related to cross-border trade where relevant, and discussing with decision makers, including governments.

The BoR Chair thanked ACER for the presentation and opened the floor for discussion with the aim of drawing some key messages on the need to maximize cross border flows.

The Chair observed that there was broad NRA support to ensure market integration by maximising available cross-border capacity. She noted the complexity surrounding the need for new infrastructure and remarked that statements urging investment in new infrastructure should simultaneously note the need for demand reduction.

### 3.2. Tackling the high energy prices

- Emergency intervention in EU energy markets – implementation aspects

The AEWG Chair reported on EWG feedback on the Council Regulation on an emergency intervention to address high energy prices, particularly as regards implementation aspects.

The Director referred to key messages agreed at the previous BoR in respect of implementation difficulties, further noting the need to act swiftly as a regulatory community and engage with decision-makers.

- EC proposal for a Regulation on enhancing solidarity through coordination in gas purchases, exchanges of gas across borders & reliable price benchmarks

Mr Lessenich presented the EC proposal for a Regulation issued on 18 October. The proposal addresses various areas: aggregation of EU demand and joint gas purchasing to negotiate better prices through the platform as well as its operation, targeted intervention in gas market prices and demand and default solidarity rules between Member States in case of supply shortages. On the first point, the process entails two steps: first an expression of interest for triggering demand aggregation and the second step allows companies to enter into purchasing contracts. Broader scale participation in the platform is voluntary except for the mandatory participation of Member State undertakings in the EU demand aggregation to meet at least 15% of their respective storage filling targets. In terms of the intervention in gas market prices, a number of measures are proposed: with regard to the LNG benchmark, the proposal mandates ACER to create an objective daily price assessment tool and subsequently (by no later than 31 March 2023) a benchmark that could be used by energy market operators to index the price for their gas contracts. ACER will collect the necessary real time information on LNG transactions to feed into a specific LNG benchmark. The aim is to develop a more reliable and objective benchmark to be used by contracting parties. Another important aspect is a market correction mechanism in the form of a dynamic price limit for transactions on the TTF gas exchange. Member States are pushing for different solutions but the Regulation mandates the EC to put in place a price corridor in the TTF exchange, while details are to be determined subsequently. The third aspect is a mechanism to smooth out volatility on futures markets by way of an intra-day price volatility management mechanism that limits extreme changes within a short time period, to be developed by ESMA on the basis of financial market rules. Last, the Regulation provides for solidarity in the context of security of supply. Given that not all Member States have put in place the necessary bilateral solidarity agreements, the Commission proposes having default rules and established the conditions for solidarity in the absence of concrete agreements as well as for triggering an EU alert mechanism. The proposal also includes new tools to provide information on available capacity, and new mechanisms to ensure that capacity is not booked and left unused by market operators. The process in the Council has started and the Commission expects this to be adopted through an accelerated procedure.

The AGWG Chair and Mr Hesseling provided some initial considerations on the EC proposal for intervention in the gas markets, following input from ACER and NRAs.

The BoR Chair thanked the speakers for the presentations and also invited Mr Verdelho and Ms Espeja to present their observations on the so-called Iberian model.

- Long-term electricity market design adjustments

Mr Lessenich reported on the Commission's ongoing work on the structural reform of the electricity market design. It is envisaged that by the end of the year, the EC will present their ideas to the Council and Parliament for a reform that makes our electricity market fit for a more decarbonised future. According to the EC Work Programme, the impact assessment and the EC proposal are expected in March 2023 and thus the EC will consult on the basis of an option paper before Christmas. The EC is keen on a continuous dialogue on this issue including at the BoR.

The ACER Director presented his initial reflection on the reform of the electricity market, highlighting the important distinction between short and longer term reforms, the latter warranting a proper evaluation of the pros and cons of different proposals, and proper consultation (akin to the UK comprehensive market review (REMA)) despite the accelerated timeline that the EC has brought forward, so as to avoid inadvertent consequences.

Ms Materazzi-Wagner noted the common recognition from AEWG discussions that the market works even in extreme situations. She highlighted that longer-term market reforms should seek to address the effects of extreme situations only, to be resilient in the face of any crisis. This would be enabled by introducing structural measures for hedging against extreme price situations, and to cope with the transition towards an electricity system dominated by (volatile) renewables in the generation mix, with the remaining part being flexible, a more active distribution system (distributed generation, demand response etc.) which will remain centralised to some extent, and a higher level of electrification and digitalisation. Criteria to identify good market design pertain to affordability, sustainability in terms of compatibility with energy transition, promoting energy efficiency, and resilience in terms of security of supply.

Mr Povh presented the ongoing work and the wide spectrum of reform options to consider for the longer-term market reforms.

The Chair concluded the discussion by noting members' broad support for the work presented, the approach followed and the way forward, noting the spectrum of solutions for the short, medium and longer term. An extraordinary BoR meeting will be convened in November to pursue this discussion.

#### 4. Items for BoR opinion/approval/agreement

##### 4.1. 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.

ACER has concluded that the request does not meet all the relevant conditions specified in Article 16(9) of Regulation (EU) 2019/943 and therefore, derogation should not be granted. The AEWG advice was circulated along with the draft decision.

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

**Decisions/  
Conclusions**

**4.1 The BoR provided its favourable opinion on the ACER Decision on SvK's application for a derogation from the 70% rule by consensus of the members present and represented.**

**5. AWG key issues****5.1. AWG/ARC key issues**

Members took note of the written updates of the AWG Chairs.

**5.2. Framework Guidelines on Demand Response**

On 1st June 2022, ACER was asked by the European Commission to submit non-binding framework guidelines (FG) setting out clear and objective principles for the development of a network code on demand response.

Ms Thellidou presented the state of play of the ongoing work on the Demand Response FG for an orientation discussion, starting with the outcome of the public consultation that lasted until the end of August. The BoR thanked Ms Thellidou for the presentation and opened the floor for discussion. A discussion on critical issues followed, including the way forward on the scope and the path towards enabling demand response and the planning for finalising the work.

**5.3. Electricity forward market policy paper**

Mr Povh presented the state of play on the joint ACER-CEER paper on the electricity forward market. The paper underwent consultation in June and revisits the functioning of the electricity forward market in the EU.

**5.4. Framework guidelines on scenarios**

Mr Kostevc presented the ongoing work on the Framework Guidelines for joint scenarios ("Scenario Guidelines") which are due by January 2023. Pursuant to Article 12.1 of the TEN-E Regulation, ACER will put forward guidance for the development of scenarios, including criteria for a transparent, non-discriminatory and robust development of scenarios in the context of energy network development, aiming to ensure that the ENTSOs' TYNDP scenarios are fully in line with the energy efficiency first principle and with the Union's 2030 targets for energy and climate and its 2050 climate neutrality objectives.

**5.5. 11th Market Monitoring Report (MMR) – Gas Decarbonisation volume**

The MMR consists of several volumes that cover different EU energy market segments and the first one published in July 2022 provided an overview of the status of the European gas wholesale markets in 2021 and the first half of 2022. The upcoming Gas Decarbonisation volume describes the current state of EU decarbonised gases and hydrogen, and examines the regulatory provisions and market context that may drive their evolution in the mid-term. Mr Hesseling remarked that the findings evidence a gap between the objectives pursued and their realisation.

**5.6. Draft outline of the Programming Document 2024**

As per the ACER Regulation, each year, the Director prepares a draft programming document (PD) containing annual and multi-annual programming, and submits the draft PD to the Administrative Board and to the Board of Regulators. The Administrative Board adopts the draft PD after receipt of a favourable opinion of the Board of Regulators, and submits the draft PD to the European Parliament, to the Council and to the Commission no later than 31 January.

The Director presented the preliminary draft outline of the PD 2024 (serving as the backbone for the Work Programme 2024), which focuses on tasks and outputs in 2024, including some notable

additions as regards decarbonised gases and hydrogen (Activity 2 - Internal Gas Market) and LNG price assessments and real-time data collection for the purpose of assessment to Activity 4 (Market Information and Transparency).