

124th ACER Board of Regulators Meeting

5 June 2024 | 09:00 - 14:00

Berlin (BNetzA premises and online)

MINUTES

Represented institutions	Names ¹
E-CONTROL (Austria)	M: Wolfgang Urbantschitsch; O: Christine Materazzi-Wagner; O: Vera Gusenbauer
CREG (Belgium)	M: Koen Locquet; A: Geert Van Hauwermeiren
EWRC (Bulgaria)	A: Blagoy Golubarev
HERA (Croatia)	M: Zeljko Vrban
CERA (Cyprus)	O: Marilena Delenta
ERU (Czech Republic)	A: Jana Haasová; O: Tomáš Kupčiha
DUR (Denmark)	A: Birgitta Bundgaard
ECA (Estonia)	A: Marilyn Tilkson
EV (Finland)	O: Veli-Pekka Saajo
CRE (France)	M: Emmanuelle Wargon; A: Ivan Faucheux; O: Claire Hellich-Praquin
BNetzA (Germany)	M: Annegret Groebel; O: Alexander Linov
RAEWW (Greece)	M: Athanasios Dagoumas
MEKH (Hungary)	A: Gergely Szabó; O: Szabolcs Koppányi
CRU (Ireland)	M: Jim Gannon; O: Barry Hussey; O: Clodagh Hunt-Sheridan; Eilis McDonnell
ARERA (Italy)	M: Clara Poletti; A: Francesco Cariello; O: Ilaria Galimberti
PUC (Latvia)	M: Rota Sņuka; O: Lija Makare; Alda Ozola
NERC (Lithuania)	M: Renatas Pocius; A: Irma Zdaniene;

¹ M: Member; A: Alternate; O: Observer.

ILR (Luxembourg)	M: Claude Rischette
REWS (Malta)	O: Manuel Manuzzi
ACM (Netherlands)	A: Michiel Denkers; O: Nora Meray
URE (Poland)	M: Rafal Gawin; A: Malgorzata Kozak
ERSE (Portugal)	M: Pedro Verdelho; A: Natalie McCoy; O: Rita Laranjeira; Joao Diogo
ANRE (Romania)	M: George Niculescu; A: Tatiana Iosiper; O: Ana Maria Sita
URSO (Slovakia)	A: Maria Bronisova
AGEN-RS (Slovenia)	A: Bojan Kuzmic
CNMC (Spain)	M: Josep María Salas; O: Gema Rico
EI (Sweden)	M: Ulrika Hesslow; A: Caroline Törnqvist; O: Johan Roupe
NVE-RME (Norway)	A: Anne Dønnem
EEA-EFTA State - Iceland	-
EFTA Surveillance Authority	O: Anne De Geeter
ACER	Christian Zinglensen, Christophe Gence-Creux, Rafael Muruais Garcia, Csilla Bartok, Volker Zuleger, Martin Godfried, Ignacio Muniozguren Garcia, Gilles Bertrand, Mathieu Fransen, Ilaria Bellacci, Tina Voncina, Fay Geitona, Jan Kostevc, Georgios Antonopoulos, Mitsuko Akiyama
European Commission	Michael Schuetz, Christof Lessenich, Ewa Lijewska, Raphael Sauter, Carlos Maravall Rodriguez, Joanna Pessemier

1. OPENING

The BoR participants were welcomed by Mr Klaus Müller, President of Bundesnetzagentur (BNetzA). Mr Müller thanked the BoR, ACER and CEER for their continuous efforts in driving National Regulatory Authorities' cooperation at EU level to tackle common challenges, including in connection with their contributions to the discussions on the reform of the Electricity Market Design (EMD), paving the way for an EMD that promotes flexibility, is consumer-oriented and achieves decarbonisation at the lowest cost possible.

1.1 Approval of the agenda & declaration of conflicts of interest

The agenda of the 124th 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.

1.2 Minutes of the 123rd BoR meeting

The minutes of the 123rd BoR meeting were approved and sent to the European Parliament on 7 May 2024.

Decisions/Conclusions

1.1	The BoR approved the agenda.
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2. UPDATES FROM THE ACER DIRECTOR AND THE BOR CHAIR

2.1. Update from ACER

Members were informed of a new process for validating extranet users aimed at strengthening the security of access rights to ACER's extranet.

2.2. Update from the BoR Chair

The BoR Chair announced the outcome of the 2024 conflict of interest (Col) review. The Review Panel considered the declarations of interest (Dols) and CVs on 12 and 24 April and 8 May 2024, and did not identify any conflict of interest and concluded that no action by the Agency/BoR is required, notwithstanding the application of the BoR and Working Group (WG) Rules of Procedure, which require BoR members and alternates as well as WG/Task Force (TF) members, observers, and participants to declare any conflict of interest that could be prejudicial to their independence with respect to any point on the agenda. In accordance with the Col policy adopted by the Administrative Board, Dols and CVs are published on the

Agency's website and the Chair of the Administrative Board was informed about the outcome of the process.

3. WIDER ENERGY UNION

3.1. Updates from the European Commission

As part of the broader updates, Mr Schuetz explained the steps until the entry into force of the EMD reform and Hydrogen and Decarbonised Gas Market Package that were adopted by the Council on 21 May. The packages are expected to enter into force at the end of July.

- Conclusions of the 2024 European Gas Regulatory Forum and European Electricity Regulatory Forum

The Commission thanked ACER and NRAs for their contributions at the Madrid Forum, which inter alia invited Member States to swiftly transpose the recast Gas Directive, consider measures to remove barriers to cross-border trading of renewable and low-carbon gases and underlined the role of regulators in ensuring an orderly development of the hydrogen market. The Forum also welcomed the preparatory work for the revision of the Network Code (NC) on Capacity Allocation Mechanisms and the Guidelines for Congestion Management Procedures, on which the Commission will continue to work closely with ACER.

The Florence Forum focused on the implementation of the existing rules, NCs and Guidelines and of the recently revised EMD, and took note of the Commission's request to ACER and NRAs to make a recommendation on how to strengthen the regulatory framework to reduce implementation delays, looking into enforcement, incentives as well as governance.

- Key outcomes of the High-Level Offshore Energy Event of 15-16 May

Mr Sauter presented the conclusions of the High-Level Offshore Energy Event organised by the Belgian Presidency. This event pursued topics discussed at the April informal ministerial and represented a follow-up to the 2023 Summit. Topics in focus on the first day were: the financing of offshore projects, benefits and non-price criteria and competitiveness and supply chains, while on the second day, discussions and exchanges between the policy side and industry along the entire supply chain focused on the collaborative investment approach in offshore projects. Discussions highlighted the importance of regional cooperation in offshore energy projects, starting with planning aspects and throughout the development of the projects, mitigation of risks and distribution of benefits and costs. The Commission will present the guidance on cross-border cost sharing for offshore projects at the Copenhagen Forum. Mr Sauter also stated that the Commission had adopted a series of new and updated recommendations and guidance in May to improve and streamline permitting procedures and auctions for renewable energy. These documents should help improve the conditions for a rapid deployment of home-grown renewable energy and help to reinforce industrial competitiveness.

- Revised guidance of the Specialised Committee on Energy on the administrative arrangement between ACER and the UK regulatory authority

Mr Maravall Rodriguez was invited to present the update on the revised guidance on the administrative arrangement between ACER and the UK regulatory authority.

Pursuant to Article 318(1) of the EU-UK Trade and Cooperation Agreement (TCA), each Party is to ensure that ACER and the UK regulatory authority designated in accordance with Article 310 (the Gas and Electricity Markets Authority (GEMA) and Utility Regulator (UR)) enter into administrative arrangements (AA) as soon as possible to facilitate meeting the objectives of the TCA, and the Specialised Committee on Energy (SCE) established under the TCA is to agree on guidance on the AA.

Annex III to the SCE Decision 1/2024 of 5 April 2024 contain the said guidance and builds on the work carried out by ACER in 2021. The guidance sets out three points to bring the AA in line with the TCA: firstly, the scope of cooperation is limited to the areas listed in Article 318(1) of the TCA; secondly, GEMA and UR are to act jointly and engage with ACER as part of a unique delegation; and thirdly, the UK regulatory authority cannot participate in ACER work/meetings discussing EU-internal matters since the AA shall not involve or confer to the UK regulatory authority a status comparable to participation in ACER.

ACER further explained that the AA is currently being finalised and will subsequently be considered by the SCE. To ensure swift implementation, ACER asked the BoR to agree to endorse the revised AA via electronic procedure foreseen in the course of June. The BoR unanimously agreed.

3.2. EU network tariff principles and ACM's recent experience in electricity network tariff regulation

Mr Denkers presented ACM's views and the issues it experienced in connection with network tariff regulation, specifically in relation to its decision to discontinue volume discounts for large-scale users of electricity (in light of the 2021 EU Court ruling on the independence of the German energy regulator and EU network tariff principles whereby tariffs must be cost-reflective and non-discriminatory), which have been maintained in some EU countries. Given this divergence in practical implementation as concerns network tariff structures, he pointed to the need for uniform interpretation and coordinated approaches.

The BoR Chair thanked Mr Denkers and opened the floor for discussion, which confirmed that it is a very important, relevant and strategic topic that requires further discussion and NRA commitment to resolve the issue in a coordinated way.

Decisions/Conclusions	
3.1	The BoR unanimously agreed to endorse the revised administrative arrangement between ACER and the UK regulatory authority by way of electronic procedure.

4. ITEMS FOR BOR OPINION/APPROVAL/AGREEMENT

4.1. ACER Annual Activity Report 2023: independent section on regulatory activities

ACER submitted the independent section on regulatory activities contained in its Annual Activity Report 2023 for adoption. Mr Zuleger highlighted key achievements, including the successful implementation of the tasks conferred on the Agency during the energy crisis, which also called for deprioritisation of other tasks.

The BoR unanimously approved the regulatory section of the 2023 consolidated Annual Activity Report, which will be presented for adoption by the Administrative Board in June before being sent to the EU institutions by 1 July.

4.2. ACER-CEER guidance paper on principles for transmission and distribution indicators

Pursuant to Article 59(1)(l) of the Electricity Directive 2019/944, NRAs are tasked with monitoring and assessing the performance of transmission system operators and distribution system operators in relation to the development of a smart grid that promotes energy efficiency and the integration of energy from renewable sources, based on a limited set of indicators, and publish a national report every two years, including recommendations. The 2023 Copenhagen Forum welcomed developments by ACER, CEER, ENTSO-E and EU DSO Entity on relevant smart electricity grid key performance indicators for transmission and distribution networks and requested the development of technical discussion papers by the next Forum. Within that context, a short ACER-CEER guidance paper is being developed to address, as a starting point, Key Performance Indicators (KPIs) linked to smart grids (the smartness of the network not being the objective, but what it can deliver i.e. efficiency). Mr Kostevc highlighted the importance of pursuing this work in tackling the grid investment challenge in a cost-efficient way.

The BoR agreed to the use of the electronic procedure for the endorsement of the paper ahead of its presentation at the Copenhagen Forum on 28 June.

Decisions/Conclusions

4.1	The BoR unanimously approved the regulatory section of the 2023 Consolidated Annual Activity Report.
4.2	The BoR unanimously agreed to the use of the electronic procedure to endorse the paper on principles for transmission and distribution indicators.

5. AWG KEY ISSUES

5.1. AWG/ARC key updates

- AEWG update: monitoring/enforcement, Demand Response Network Code, ENTSO-E Annual Work Plan and ACER opinion on national adequacy assessments

Mr Roupe informed members of the ongoing work of the ad hoc Group on Compliance and Enforcement. Mr Roupe also directed members to the new implementation monitoring pages for the terms, conditions or methodologies, which are available on the ACER website. The BoR Chair stressed the importance of the work on compliance and enforcement given its implications for the credibility of the energy regulatory community.

The AEWG Chair updated members on the Demand Response NC proposal received on 8 May, parts of which are new. The amendment proposals for existing guidelines will also require intensive analysis. The consultation is now planned for the autumn and the EC anticipates delayed submission (in Q1/25).

Mr Muruais Garcia informed members that ACER is expecting to receive two national adequacy assessments in the first half of June, on which ACER will issue an opinion (within 2 months) on whether discrepancies with the European Resource Adequacy Assessment are justified. The body responsible for the national adequacy assessment must take due account of ACER's opinion; where it decides to maintain the assessment, it publishes a report detailing the reasons.

- Outcomes of the ACER REMIT Committee (ARC) meeting of 7 May

Ms Groebel informed members of the outcomes of the last ARC meeting, which discussed inter alia updates on cases as well as REMIT II implementation and related updates to the REMIT Guidance and the Market Monitoring Handbook. Mr Godfried thanked NRAs for their support for this work.

- Update on the establishment of the Hydrogen Markets and Regulation Task Force (HMR TF)

Mr Verdelho informed members about a recent meeting between DG ENER and ACER-CEER representatives and the establishment of the HMR TF. The terms of reference were agreed at the May AGWG meeting and Mr Papandreou was designated as the ACER co-convenor (the 2 remaining co-convenors to be designated at the June AGWG meeting). The first HMR TF meeting was planned for 6 June.

5.2. ACER Market Monitoring Report (MMR) Electricity Wholesale Market volume: report on cross-border capacities

This second report in the 2024 MMR series assesses the barriers to EU market integration related to the availability of cross-zonal capacity by reference to different market timeframes and EU regions, and tracks progress and bottlenecks in implementing the minimum 70% requirement. The report is structured in 3 sections covering the evolution of offered cross-

zonal capacities over the period 2020-2023, the margin available for cross-zonal electricity trade in 2023 and congestion management in the EU. Pursuant to Article 34 of the Capacity Allocation and Congestion Management Guideline, it assesses the impact of bidding zone configuration on market efficiency. Several improvements to the assessment were introduced after discussions with TSOs and NRAs.

Mr Muniozguren Garcia presented the report, and members were invited to discuss it. Mr Muniozguren Garcia stated that higher penetration of renewables will require further access to neighbouring markets across all timeframes and roll-out of cross-border electricity infrastructure, and that optimisation of cross-zonal capacity calculation can boost the EU's interconnectivity. The implementation of the minimum 70% requirement plays a key role. However, significant effort is still needed. Interim requirements, including derogation and action plans, are generally met, but this does not necessarily lead to achieving the 70% target, and ACER has observed growing needs for congestion management. Without significant progress in meeting the 70% rule, ambitious political objectives set for the energy transition may be at risk. Maximizing availability of cross-zonal capacity remains a joint TSO responsibility and requires swift process implementation of the capacity calculation and congestion management framework, targeted grid investments, and improving the bidding zone configuration (if unable to meet the 70% target after 2025). Going forward, ACER will focus its attention on margins of capacity in the intraday timeframe.

5.3. Procedural arrangements for involving the Energy Community (ENC) Regulatory Board (ECRB) in future ACER decisions affecting Contracting Parties (CPs) on congestion in the EU gas markets and how it is managed

Under the ENC Treaty and the ACER Regulation incorporated in the ENC, ACER is mandated to take decisions on certain regulatory issues (e.g. terms, conditions or methodologies, NCs & Guidelines) concerning EU Member States and ENC CPs. As per the relevant ENC ministerial decision, before adopting a decision, ACER shall consult the ECRB. Ms Geitona mapped out the procedure for involving the ECRB in such ACER decisions.

5.4. Upcoming ACER Decisions on the amendment to the implementation framework for the European platform for the exchange of balancing energy from frequency restoration reserves with automatic activation and on the amendment to the methodology for pricing balancing energy and cross-zonal capacity used for the exchange of balancing energy or operating the imbalance netting process

On 7 February, all TSOs proposed amendments to the common methodology for harmonising the pricing balancing energy and cross-border capacity and to the implementation framework for a European platform for the exchange of balancing energy from frequency restoration reserves with automatic activation. At the last BoR, ACER informed members of the plan to assess these as quickly as possible and have the Decisions adopted in June to facilitate and speed up TSO accession to the European balancing platforms for the exchange of balancing

energy (given the 24 July deadline). ACER presented the upcoming balancing decisions to be adopted by electronic procedure, and members were invited to discuss them.

5.5. Network Code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules (NC HVDC): ACER's draft amendment proposals

ACER's draft amendment proposal was shared for information. Mr Antonopoulos explained the proposed scope of NC HVDC and outlined the main proposals. ACER will consult for 12 weeks from 17 June and hold a public webinar on 24 June to gather stakeholders' views on amendment proposals. Following the assessment of stakeholders' inputs, ACER intends to submit its proposed amendments to the European Commission by the end of 2024.

5.6. Results of the 2023 NRA survey

Ms Bellacci presented the full analysis of the 2023 NRA survey results covering topics such as external communication and internal collaboration. Members were also updated on the state of play of the ongoing collection of feedback on NRA-ACER collaboration, which will seek to address the points raised in the NRA survey and deepen collaboration to face the challenges ahead, which keep growing notwithstanding resource constraints.