

107th ACER Board of Regulators Meeting

6 April 2022

By video/audio conference

MINUTES

Country/Institution	Name ^[1]	Country/Institution	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch A: Dietmar Preinstorfer O: Christine Materazzi-Wagner O: Katharina Ledermann-Tappeiner	Latvia (PUC)	M: Rota Šņuka Alda Ozola (Chair) O: Lija Makare
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren	Lithuania (NERC)	M: Renatas Pocius
Bulgaria (EWRC)	M: Stanislav Todorov	Luxembourg (ILR)	M: Camille Hierzig
Croatia (HERA)	M: Željko Vrban	Malta (REWS)	A: Phyllis Mycallef O: Manuel Manuzzi
Cyprus (CERA)	O: Marilena Delenta (with proxy) O: Christina Zouvani (with proxy)	Netherlands (ACM)	M: Manon Leijten O: Nora Meray
Czech Republic (ERO)	A: Jana Haasová O: Tomáš Kupčíha	Poland (URE)	M: Rafał Gawin A: Małgorzata Kozak
Denmark (DUR)	M: Carsten Smidt	Portugal (ERSE)	M: Pedro Verdelho A: Natalie McCoy O: Catarina Santos
Estonia (ECA)	M: Märt Ots A: Marilyn Tilkson	Romania (ANRE)	O: Florin Tobescu (with proxy)
Finland (EV)	M: Simo Nurmi	Slovakia (URSO)	A: Mária Bronišová
France (CRE)	A: Jean-Laurent Lastelle O: Claire Hellich-Praquin	Slovenia (AGEN-RS)	M: Duška Godina A: Bojan Kuzmič
Germany (BNetzA)	M: Annegret Groebel	Spain (CNMC)	M: Mariano Bacigalupo

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

			A: Esther Espeja O: Gema Rico
Greece (RAE)	M: Athanasios Dagoumas O: Konstantinos Tsimaras O: Michalis Mathioulakis	Sweden (Ei)	M: Anne Vadasz Nilsson A: Caroline Törnqvist
Hungary (MEKH)	M: Pál Ságvári O: Tamás Gyarmati	EEA-EFTA State Iceland	A: Hanna Björg Konráðsdóttir
Ireland (CRU)	O: Barry Hussey (with proxy)	Norway (NVE-RME)	M: Tore Langset A: Anne Dønnem
Italy (ARERA)	M: Clara Poletti A: Cariello Francesco O: Ilaria Galimberti	EFTA Surveillance Authority (ESA)	
ACER	Christian Zinglensen, Christophe Gence-Creux, Dennis Hesseling, Martin Godfried, Volker Zuleger, Itzok Zlatar, Francois Beaude, Paul Martinet, Fay Geitona, Mitsuko Akiyama		
European Commission	Mechthild Wörsdörfer, Annamaria Marchi, Michael Schutz		
CEER	Charles Esser		

1. Opening

1.1. Approval of the agenda

The agenda of the 107th BoR meeting was approved, with the addition of an AOB update by BNetzA. The draft agenda has been sent to the European Parliament.

The BoR Chair asked for declarations of conflict of interest. None was declared.

On behalf of the BoR, the Chair thanked Ms Vadasz Nilsson, whose term is coming to an end, for her important contribution to ACER work. Ms Vadasz Nilsson thanked ACER for the collaboration and noted the important tasks ahead.

1.2. Minutes of the 106th BoR meeting

The minutes of the 106th BoR meeting were approved and sent to the European Parliament on 11 March.

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 and Mr Martinet informed members of the General Court judgment handed down in the HUAT case (Joined Cases T-684/19 and T-704/19, MEKH and FGSZ Földgázszállító Zrt. v ACER) and the broader implications. MEKH and the Hungarian TSO FGSZ challenged the decision of the Board of Appeal upholding ACER Decision 05/2019 concerning an incremental capacity project between Austria and Hungary, which had been issued on the basis of Article 8(1) of Regulation 713/2009 and Chapter V of the CAM Network Code. On 16 March, the General Court annulled the BoA decision on grounds that the Commission was not competent to adopt the provisions of the CAM Network Code governing a process that could lead to the imposition of an obligation on the part of the TSOs to invest in incremental capacity. Accordingly, the Court declared inapplicable those provisions of the CAM Network Code and annulled ACER's decision, which was adopted on the basis of those provisions. The Court acknowledged that the Network Code could be the legal basis for adopting individual decisions to TSOs and as such, not incompatible with the objectives of the TFEU and the Gas Regulation. However, the Commission lacked competence to adopt Chapter V of the CAM Network Code. The Court also confirmed that the annulment action against the ACER Decision was inadmissible.

The members were informed of the outcomes of the following BoR electronic procedures.

The electronic procedure for the cover note for the ACER-CEER paper on offshore renewable energy was conducted in 2 rounds ending on 23 March. During the second round, 26 NRAs participated and all approved the cover note.

The BoR electronic procedure for the ACER decision on the Regional Coordination Centre Post-Operation and Post-Disturbances Analysis and Reporting was conducted in two rounds. During the first round, 24 members participated and agreed to the use of the electronic procedure and no proposal for comment/amendment was submitted. During the second and final round for the vote on the favourable opinion which ended on 24 March, 27 NRAs participated and the BoR favourable opinion was provided by consensus.

The BoR Chair thanked the Director for the updates.

2.2. Updates from the BoR Chair

The BoR Chair informed members that the Review Panel had been convened to process the 2022 declarations of interest and CVs and the review is ongoing.

3. Strategic discussion on regulators' role in addressing the energy crisis

3.1. EC updates including latest Communications

Ms Wörsdörfer reported on the recent Communication issued by the European Commission entitled REPowerEU (8 March). REPowerEU proposes to replenish gas stock for next winter as a matter of urgency, make the EU independent of Russian fuels by diversifying gas supplies, and ensure the transition to renewable gases and accelerate the implementation of the Green Deal.

Energy was discussed at two previous European Council meetings and the EC proposal for a gas storage regulation was welcomed. On 23 March, the EU issued a further Communication on the security of supply and affordable energy prices, and a legislative proposal introducing a minimum 80% gas storage level obligation for next winter to ensure security of energy supply, rising to 90% for the following years. The proposal also introduces the mandatory certification of gas storage operators to prevent third country influence (non-certified entities must give up control of gas storage facilities). The European Parliament has voted to adopt the gas storage regulation via an urgent procedure and discussions in the Council are also progressing.

Responding to the European Council's call, the EC Communication on the security of supply and affordable energy prices also addresses how to protect consumers against the impact of price volatility (by analysing the benefits and drawbacks of concrete, exceptional short-term interventions to temper price spikes), and proposes collective European actions to address the root causes of the problem in the gas market.

The REPowerEU plan, expected in May, will present more structural solutions for the medium term. Its implementation will require changes to the EU regulatory framework and to that end, the EC will assess options to optimise the electricity market design by May, taking account of ACER's April assessment.

Ms Wörsdörfer also briefly reported on the successful synchronisation of Ukraine with Continental Europe.

The BoR Chair thanked Ms Wörsdörfer for the updates and reiterated that NRAs should also attend Gas Coordination Group meetings (even when they are not the competent authorities for security of supply) as they are required to implement storage obligations and ensure there is no disruption at national level.

3.2. Roundtable on high energy prices & security of supply situation

The Director and Mr Hesselting introduced a discussion on: (i) the high energy prices and security of supply situation in the EU, their effects on market participants and consumers, and measures to address the situation; (ii) dependence on Russian gas and its effects and (iii) energy supplies to Ukraine ensured via synchronisation with Continental Europe and reverse flows into Ukraine, and related issues. Members subsequently exchanged on the security of supply situation in their countries and measures taken by governments to cushion the effect of high energy prices.

3.3. ACER April assessment

In his introductory remarks, the Director referred to the fast-evolving context and consequently evolving expectations and ACER's mandate for the April assessment.

Mr Beaudé presented the feedback on the draft April assessment, explaining how ACER plans to address outstanding issues and outlined the next steps.

The BoR Chair thanked ACER for the presentation and opened the floor for discussion.

In his concluding remarks, the Director responded to the members' feedback outlining his proposed approach for finalising the paper.

4. Items for BoR opinion/approval/agreement

4.1. ACER Decision on System Operation Regions

In the absence of proposals for amendments and comments, the BoR Chair asked members to vote on the BoR favourable opinion on the ACER Decision on System Operation Regions (replacing Decision 10/2020 withdrawn for procedural reasons). The BoR favourable opinion was given by consensus of members present and represented.

4.2. ACER Opinion on ENTSO-E Research, Development & Innovation Implementation Report

In the absence of proposals for amendments and comments, the BoR Chair asked members to vote on the BoR favourable opinion on the ACER Opinion on ENTSO-E Research, Development & Innovation Implementation Report. The BoR favourable opinion was given by consensus of members present and represented.

Decisions/ Conclusions

4.1 The BoR provided its favourable opinion on the ACER Decision on System Operation Regions by consensus of the members present and represented.

4.2 The BoR provided its favourable opinion on the ACER Opinion on ENTSO-E Research, Development & Innovation Implementation 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, including an update by the AEWG Chair on the creation of an ad hoc group under the AEWG tackling Ukraine issues (synchronisation, adequacy etc.).

The BoR Chair thanked the AWG Chairs for their updates.

5.2. Lines to take paper on the Gas Package

Ms McCoy on behalf of the AGWG Chair provided an update with regard to the feedback on the EC proposals for a Gas Regulation and Directive (to be submitted by 13 and 12 April respectively), the state of preparations of the "lines to take" paper as well as the next steps on the feedback on the latest Commission's proposal for a Regulation amending Regulation (EU) 2017/1938 concerning measures to safeguard the security of gas supply and Regulation (EC) 715/2009 on conditions for access to the natural gas transmission networks for securing winter gas storage and introducing a minimum gas storage level obligation.

The BoR discussed key topics covered in the "lines to take" paper.

5.3. Outcome of the survey on methodological aspects of 70% monitoring and minimum set of charts)

Mr Gence-Creux referred back to previous BoR discussions whereby ACER and NRAs agreed to harmonise, to the extent possible, the monitoring of the margin available for cross-zonal electricity trade in the EU from 2021 onwards. Alignment was subsequently sought as regards: methodological principles; charts to be included in the reports; and a common period for publishing reports, and the Practical Note describes the common approach to be followed by ACER and NRAs as well as the differences. It is intended for publication so that stakeholders understand how the 70% monitoring will be performed in each Member State.

5.4. ACER Implementation Monitoring Report on Congestion at Interconnection Points (NC CMP)

According to paragraph 2.2.1(2) of the Commission Guidelines on Congestion Management Procedures, ACER must publish a yearly monitoring report on contractual congestion at interconnection points ('IPs') by 1 June of each year. Mr Hesseling pointed to the slides shared with the BoR on the key findings and informed about the next steps for finalising the report: following the AGWG's endorsement, the report is due to be published by 31 May 2022.

5.5. ACER Decision on the amendment of the Core intraday capacity calculation methodology

Mr Gence-Creux informed the BoR about the ongoing electronic procedure on the ACER Decision on the amendment of the Core intraday capacity calculation methodology. The ACER decision must be issued as a matter of urgency notably because of the strong interdependency between the go-live date of the Core day-ahead capacity calculation methodology CCM (foreseen for April) and the approval/implementation of it. The BoR discussed key issues.

5.6. Report on Gas Storage Regulation and Indicators

Mr Hesseling presented the ACER Report on Gas Storage Regulation which is a factual report (with no recommendations) setting out the current storage situation across the EU Member States based on information provided by the NRAs. Its main aim is to provide an updated snapshot of gas storage regulation and indicators in the Union to: a) get clarity and verify the UGS levels (working gas volume, booked storage volume, gas in storage) used in ENTSOG's Winter Supply Outlook (WSO) 2021/22; collect general information on the type of UGS regulation (access regime, tariff regime and capacity products); and where applicable, collect information on storage obligations. The report will be published after this BoR.