

14th ACER Board of Regulators meeting
Thursday, 1st December 2011, from 14.00 to 18.00
ACER office, TR3- Trg republike 3, 1000 Ljubljana

Minutes

Participants

Member States	Name ¹	Member States	Name
Austria (E-Control)	M: Walter Boltz A: Dietmar Preinstorfer	Latvia (PUC)	M: Valdis Lokenbahs Excused
Belgium (CREG)	A: Koen Locquet O: Geert Van Hauwermeiren	Lithuania (NCC)	M: Diana Korsakaite Excused
Bulgaria (SEWRC)	A: Angel Semerdjiev Excused	Luxemburg (ILR)	M: Camille Hierzig Excused
Cyprus (CERA)	M: Georgios Shammas Excused	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	O: Miroslav Belica	Netherlands (NMa)	A: P. Plug O: Debby vander Pluijm
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	M: Marek Woszczyk O: Kamila Kloc-Evison
Estonia (ECA)	O: Tiina Maldre	Portugal (ERSE)	A: José Braz
Finland (EMV)	M: Riku Huttunen	Romania (ANRE)	A: Lusine Caracasian
France (CRE)	A: Philippe Raillon O: Michel Thiolliere	Slovakia (RONI)	M: Jozef Holjenčik Excused
Germany (BNetzA)	M: Johannes Kindler O: Daniel Mütter	Slovenia (AGEN-RS)	A: Jasna Blejc
Greece (RAE)	A: George Koutzoukos Excused	Spain (CNE)	A: Tomás Gómez O: Rafael Gomez-Elvira
Hungary (HEO)	A: Gábor Szörényi	Sweden (EI)	A: Karin Widegren
Ireland (CER)	M: Dermot Nolan	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Martin Crouch O: Clémence Marcelis
Italy (AEEG)	M: Valéria Termini O: Miranda Diana O: Clara Poletti		

Observers	Name
ACER	Alberto Pototschnig, Fay Geitona
European Commission	Marie-Christine Jalabert, Lukas Repa, Kristof Kovacs
CEER	Natalie McCoy

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

Main conclusions from the meeting:
1. <i>The BoR gave a favourable opinion on the draft ACER opinion on the ENTSO-E WP.</i>
2. <i>The BoR gave a favourable opinion on the Framework Guidelines for Electricity System Operation.</i>
3. <i>The BoR discussed the chairmanship arrangements for the AWGs and provided recommendations to the Director.</i>
4. <i>The BoR welcomed the report which reflects work in progress on supervisory implications of introducing FTRs in cross-border trading.</i>
5. <i>The BoR took note of the progress on the IA on gas balancing FG; this will be finalised by the AGWG, circulated to the BoR for info and submitted to the EC by 15 December.</i>
6. <i>BoR members discussed the draft ACER guidance on REMIT definitions. Any comments should be submitted to the Director by 9 December. Subsequently, the ACER guidance will be finalised, adopted and published.</i>
7. <i>The members discussed the interim report by the Adhoc Group on REMIT landscape and its implementation as well as the allocation of responsibilities between ACER and NRAs particularly with regard to market monitoring.</i>
8. <i>The ERI cross regional plans were approved along with the regulators' statement endorsing them and committing to their implementation for the Florence Forum.</i>
9. <i>The BoR discussed the EIP.</i>

1. Opening

1.1. Approval of the agenda

BoR Decision agreed: (D 1)

The agenda of the 14th ACER Board of Regulators' meeting was approved subject to the deletion of items 4.1 and 4.2.

1.2. Approval of the minutes of the 13th BoR meeting & review of actions

BoR Decision agreed: (D 2)

The 13th BoR meeting minutes were approved.

1.3. Report on ACER progress

The Director reported on ACER activities and latest developments.

The Board of Appeal has been constituted and had its first meeting concurrently with the BoR meeting. The Director and the BoR chair welcomed the members of the BoA.

With regard to the monitoring activities of ACER, in accordance with the ACER Regulation ACER monitoring focuses on the retail prices of electricity and natural gas, access to the network including access of electricity produced from RES and compliance with the consumer rights. An initial set of monitoring indicators have been identified. The data

collection will be undertaken through the CEER database. The intention is to have a single monitoring report (ACER/CEER). The abovementioned approach for monitoring will be presented to the AB for endorsement. With regard to the time schedule, the Director reported that the first ACER monitoring report will be issued November 2012 (covering 2011).

With regard to ACER recruitments, the Director reported that 44 staff (of which 9 SNEs) is already in office and 7 staff (including 1 SNE) have already been recruited and will soon start. Next year there will also be 5 additional staff to be recruited under the REMIT Regulation. The ACER internal audit officer is not yet recruited.

1.4. European Commission's update

Ms Jalabert reported that the Commission has received 8 requests for certification. The Commission's opinion on those is not yet published on their website (the Commission first advises NRAs on any confidential data which should not be disclosed and then proceeds with the publication of its decisions).

The Commission thanked CEER for the workshop on the third package implementation and certification issues held on 24 November 2011 in Brussels. In the Commission's view although transposition in some Member States is delayed, the certification process should start to avoid further delays. The Commission has initiated 19 infringements for electricity and 18 for gas (all concerning the lack of communication of transposition measures).

2. ACER WGs

2.1. Agency WGs arrangements and chairmanship

Lord Mogg summarised the debate with regard to the WGs arrangements on the basis of a note addressing the treatment of legal issues, energy infrastructure package and process for co-chairs and vice chairs following the November GA and BoR orientation debate.

BoR Decision agreed: (D 3)

Members agreed that there should be no mandatory arrangement for co-chairs of the AWGs. With regard to the vice chairs, there was a strong presumption and recommendation to all chairs of the AWGs that there should be vice chairs unless they chose a co chairmanship arrangement. The BoR chair will write to the members inviting nominations by 6 January.

3. ELECTRICITY

3.1. ACER opinion on ENTSO-E work programme

The Director presented the ACER opinion on the draft annual work programme of ENTSO-E which needs to be submitted to ENTSO-E by 5th December. The opinion recommends the improvement of stakeholder engagement during the network code development process. Other issues include the preparatory work by ENTSO-E for the EIP. Ms Jalabert noted that the creation of a transparency platform is not reflected in the ENTSO-E WP.

3.2. BoR Decision agreed: (D 4)

The BoR provided a favourable opinion to the ACER opinion on the ENTSO-E WP.

3.3. System Operation Framework Guidelines

The Director presented his proposal following the orientation discussion at the last BoR on the Framework Guidelines for Electricity System Operation submitted to the BoR for a formal opinion. Mr Crouch explained that the changes following the Commission's comments as well as ENTSO-E main amendments relate to:

- Interfaces with the FGs on EGC, CACM and Balancing;
- Operational Security;
- Operational Planning and Scheduling;
- Load-Frequency-Control;
- Staff Training and Certification;
- Emergency and Restoration;
- New Applications as strategic outlook

BoR Decision agreed: (D 3)

The BoR gave a favourable opinion on the FGs for Electricity System Operation.

3.4. Florence Forum

Lord Mogg raised a concern on the opening of the Forum on Monday morning (5 December) and thus the difficulties in travelling arrangements for the participants. The agenda was circulated. ACER will present on ACER activities; FG system operation and state of play for the FG on balancing; progress on cross regional roadmaps; progress report on REMIT implementation.

3.5. Revised electricity 3-year plan and future priorities

The EC presented the revised 3 year plan which reflects the discussions at the last planning group meeting (28 October). With regard to the 2013 priorities, AEWG is of the opinion that third party access for electricity should be reconsidered not least as the scope is unclear and would need to be further defined. TPA could be slightly delayed with a view to allow more discussions on the scope. Tariffs will be the key new area. The next planning group meeting on 16th December will discuss in length the 2013 priorities as well as the IA process.

BoR Conclusion

The BoR took note of the discussion on priorities.

3.6. Note on the supervisory implications of introducing FTRs in cross-border trading

Mr Crouch introduced the paper which is submitted for an orientation discussion. This paper reflects work in progress and will be further complemented following a meeting with ENTSO-E on 14 December. It has been prepared by FIS WG and the EWG group to explore the

potential interaction between the long term transmission rights and the legislation for market integrity covering the financial sector (specifically MiFID and EMIR).

BoR Decision agreed: (D 6)

The BoR welcomed the paper which reflects work in progress and will be finalised after the discussions with ENTSO-E.

Electricity Coordination Group

The agenda was circulated.

4. GAS

4.1. Interoperability Framework Guidelines

The Director explained that his proposal is still being discussed at the AGWG and thus suggested that this item is withdrawn from the agenda and submitted to the February or March BoR meeting (if a BoR meeting in February is not held) for an orientation discussion. The Commission has not yet sent the invitation letter to ACER with a view to allow more time to finalise the scoping document and to develop the FG to be published for consultation.

BoR Decision agreed: (D 7)

The proposal for the FG on gas interoperability was withdrawn from the agenda. The proposal will be submitted for an orientation discussion at the March BoR meeting.

4.2. Tariffs scoping paper

Mr Boltz reported that the scoping paper is still being discussed at the AGWG level following comments received by the Director and thus the draft circulated was not mature for an orientation discussion. He, therefore, proposed to withdraw this item from the agenda and resubmit it to the January BoR.

Ms Jalabert enquired if there was a possibility to consider the working arrangements for the ACER WGs, in order to facilitate the exchange of information and draft documents, in particular with the Commission.

Lord Mogg proposed that the WG chairs have a discussion with the Director on how to ensure effective working level cooperation.

The Director said he is seeking for possible dates for this meeting in January - February. He acknowledges that the process in ACER is more complicated given it involves the WGs, the BoR, the ACER staff and the Director. However, in his view, this is also a benefit permitting rich discussions.

Mr Kovacs reiterated the value of the spirit of cooperation between the AWGs and the Commission's services.

Lord Mogg concluded that any adjustments will be considered where appropriate. We are still at early stages and we learn from the experience. He is disinclined to have detailed rules

but rather achieve improvements through informal arrangements after discussion between the Director, the AWG chairs and the HoD.

BoR Decision agreed: (D 8)

The scoping paper on tariffs was withdrawn from the agenda and will be submitted for an orientation discussion at the January BoR meeting.

4.3. Draft Impact Assessment on gas balancing

Mr Boltz reported that the gas balancing framework guidelines were published on 18 October and the European Commission has since then invited ENTSOG formally to commence the network code development process. ACER was requested to submit an IA to the Commission by 15 December. The Commission has now asked ACER to reformulate the initial impact assessment so that it matches the format of a Commission impact assessment and to reflect the updated policy. Following the Commission's requirements on the structure and format of the IA, a new IA is prepared by the AGWG to be submitted to the EC by 15 December.

An information note explaining the process was circulated to the BoR meeting.

BoR Conclusion

The BoR took note of the progress. The IA on gas balancing will be finalised by the AWG, circulated to the BoR for info and then submitted to the EC by 15 December.

4.4. Update on studies commissioned by ACER (IAs on gas balancing & Interoperability & auction design)

The Director reported on the ACER tenders on consultancy for the IAs on gas balancing and interoperability.

BoR conclusion

The BoR took note of the ACER report on progress.

4.5. Revised gas 3-year plan and future priorities

Mr Kovacs presented the 3-year plan and the priorities for 2013. With regard to gas balancing, the formal invitation for the network code has been issued to ENTSOG, with the deadline for submission of the network code being 5 November 2012. With regard to Interoperability – the Commission's letter is awaited (point 4.1 above). The CAM network code is due from ENTSOG on 9 March. ACER's framework guideline on tariffs is the priority for 2012. At the last meeting, the Commission requested views from the planning group on 2013 priorities in order for them to consult on these proposals in December /January. The current plan reflects trading and data exchange as areas of work on FG in 2012

4.6. Update on transit

At the 19th Madrid Forum, (22-23 March 2011), ACER was invited by the European Commission to provide an additional assessment on the existence of gas transit contracts in European countries, pinpointing those Member States or TSOs for which doubts remained

about the existence of such contracts and their accordance with EU legislation. A note for information on the state of play of the gas transit contracts was circulated.

The Director reported that to date, 23 countries have responded to the inquiry (four countries out of 27 EU have not replied: Bulgaria, Estonia, Malta and Slovakia). The non-respondents have been approached by the Agency. Once collected the new information from the remaining NRAs, ACER will close down the inquiry and will produce a report outlining the findings obtained from the answers received. The report will be then submitted to the Commission.

Ms Jalabert underlined that the Commission looks forward to receiving the ACER report on gas transit contracts.

5. MARKET INTEGRITY AND TRANSPARENCY

5.1. ACER guidance on the application of the definitions under Article 2 of REMIT

The Director explained that under REMIT, ACER is tasked with producing non-binding guidance on the applications of the definitions (covering e.g. insider trading, market manipulation, insider information etc.).

The Director presented the draft ACER guidance to the members for an orientation discussion. Following the entry into force of REMIT, market participants are immediately subject to: an obligation to publish inside information (art.4); an obligation to notify ACER and competent NRAs in case of delayed publication of inside information (art. 3(4) (b) and 4(2)); a prohibition of market abuse (art. 3 and 5), trading on inside information, market manipulation (including attempted market manipulation). Persons professionally arranging transactions are immediately subject to an obligation to establish effective arrangements to identify breaches (art. 15(2)); an obligation to notify NRAs – and for them to notify ACER where needed – in case of reasonable suspicion of breach (art. 15(1)).

The Director explained that the guidance describes ACER's understanding of the market abuse definitions of Art. 2 of REMIT; however, it does not provide a legal interpretation of the relevant provisions (which falls outside ACER's competence). It is directed to NRAs and intended only to establish a common understanding between ACER and NRAs on REMIT definitions (art. 16), and It is published for ensuring transparency. The Director intends to conduct a short consultation of NRAs which is in line with best practice examples from ESMA. He then intends to publish the first edition of guidance by 28 December and to update and publish further editions of guidance in due course (on a yearly basis) according to ACER's, NRAs' and market participants' experiences.

At the meeting members provided no substantive comments on the text of the Guidance. However, the Director gave another week (until Friday, 9 December) for BoR representatives to send any comments.

The Director clarified that there will be no stakeholders' consultation on the Guidance. Given that stakeholders would like the Guidance to be published as close as possible to the entry into force of REMIT (expected on 28 December).

ACER will develop web forms for supporting in a secure and uniform way the two immediate obligations for notifications. The first will deal with notification of delayed publication of inside information. The second concerns the notification of suspected abuse. ACER and relevant

NRAs will be alerted via e-mail (automatic alert set on the ACER system) when a web form notification is uploaded by market participants.

Mr Crouch informed that on 7th December a workshop is held in London on REMIT. In his view the key issue is to release some guidance even in the form of a consultation.

BoR Decision agreed: (D 9)

BoR members will provide any comments to the draft guidance by 9 December. Subsequently, the guidance will be adopted and published with an accompanying communication note explaining its non-legally binding nature and its non-definitive character. The guidance will be kept to date on a yearly basis after taking account of the experience gained. ACER is interested in stakeholders' comments, although a public consultation will not be undertaken. ACER will also publish in its website a set of frequently asked questions and answers.

5.2. REMIT Adoc WG – draft report

At the November BoR an ad hoc working group chaired by Volker Zueleger (ACER) and Andrea Korr (BNetzA) was created to set out the REMIT “landscape” and assess the split of work between ACER and NRAs on implementation of REMIT and in particular on market monitoring as well as the resourcing requirements.

Mr Zueleger reported on the work of the group. It met on the 14th November to discuss an initial report.

Lord Mogg thanked the group for the report which will also be presented at the Administrative Board meeting the next day discussing REMIT. He underlined that given the resources constraints as well as the lack of expertise, NRAs cannot be expected to fill in the gap of ACER. Furthermore, ACER has the legal responsibility of undertaking monitoring of wholesale markets at European level (NRAs may monitor their markets at national level). Where NRA assumes this responsibility at national level, this would not address cross border breaches. Lord Mogg stated that he will consider further whether, after the Administrative Board meeting, there is a need for a follow up.

Ms Jalabert stated the usefulness of the cooperation between energy and financial regulators. The Director clarified that ACER already established cooperation with ESMA (although ESMA does not have a responsibility on monitoring).

The Director also updated the members on the overall ACER work on preparation for REMIT.

Within 6 months of REMIT entering into force, ACER shall define the registration form for market participants. This will be one of the first tasks to be considered by AMIT WG. ACER may make recommendations to the Commission as to the record of transactions, following consultation of NRAs and interested parties (art. 6(3)). ACER should try to present its input by mid-2012, also to be in time with recommendations from ESMA on EMIR delegated acts.

The Director reported on the first REMIT Workshop held in Ljubljana on 28 November. The workshop was extremely successful and was attended by a large number of participants (120) including FERC.

The Director intends to establish an IT Management and Governance contact group between NRA and ACER in order to agree IT procedural aspects to put in place the various notifications.

BoR Decision agreed: (D 10)

The Chair thanked the Adhoc group chairs for the initial report. Following the Administrative Board meeting he will reflect on any follow up measures, as appropriate and inform the group accordingly.

6. CROSS-SECTORAL

6.1. Regional Initiatives

Mr Gomez-Elvira presented the main elements of the ERI cross regional WP circulated at the meeting.

He and the Director thanked the NRAs for all their efforts for making progress in this area (cross regional roadmaps), in particular through the regional electricity coordination meetings. At the ERI coordination group consensus has been achieved. The Director noted that we are now moving to the implementation of the cross regional plans and he offered to answer any questions regarding the content of the roadmaps.

The Director reported that ACER has received a letter from Central-East Region on capacity calculation raising an issue of timing and potential delays. The Director in response invited the Central East regulators to a meeting on 5 December in Florence. At this stage the letter requesting an ACER opinion will be treated informally. If a formal ACER opinion is issued then the BOR will be asked to give an opinion.

BoR Decision agreed: (D 11)

The ERI cross regional plans were approved along with the regulators' statement intended for the Florence Forum endorsing them and committing to their implementation. The ERI cross regional plans will be circulated to all the Forum participants.

6.2. Energy Infrastructure Package: next steps

David Haldearn presented the high level policy paper to identify the headline issues. The Steering Committee had a conference call on 22 November. The paper circulated incorporates the comments received by the Steering Group on the policy proposals. The main concerns outlined in the paper are related to the crucial role of the TYNDP, that any incentive mechanisms should be for NRAs to decide, that NRAs should retain the decision making power on whether any infrastructure project (including PCI) should be recovered through tariffs, the difficulties and lack of clarity of the governance arrangements of the new infrastructure regional fora, the timescales for reviewing cost allocation proposals.

With regard to the next steps the paper reflects a robust high level position which will be developed in the light of the debate and the comments received in the course of the month to come in concrete amendments.

7. ORGANISATIONAL ISSUES

7.1. Update on confidentiality arrangements

At the last BoR, the Director presented a proposal on the future confidentiality arrangements for the WG including a proposal for modification of the Agency's WG rules. The draft Decision on the modification of the WG RoP sought to ensure that the set-up of the Working Groups mirrors the legal guarantees under which the Agency (and its staff) operates. There was an Initial discussion at the last BoR and it was decided to call a meeting with NRA experts and ACER legal adviser (took place on 23 November).

Fay Geitona reported on the meeting held with NRAs legal experts on the proposed WG ROP modifications and in particular the confidentiality arrangements. A note of the meeting has been circulated.

With regard to the next steps, the revised WG RoP will be circulated to participants and submitted to the January BoR meeting for information.

Mr Dehlbæk noted that NRAs should comply with their national rules. In case that there are any conflicts with ACER rules, the NRAs still have to abide with their rules.

The BoR took note of the ACER report on the meeting.

7.2. Director's decision on the appointment of the ACER representative in the ECRB

The BoR took note of the Director's Decision circulated to appoint George Koutzoukos as the ACER representative in the ECRB of the ENC.

8. OTHERS

8.1. Next Meetings

The next BoR meeting on 24 January, 13.30-18.00, in Brussels (CREG premises) is confirmed. Lord Mogg informed the members that after consultation with the Director and the BoR vice-chair the February meeting may be cancelled. He will inform the members definitively before the Christmas break.

8.2. AOB

- AB decisions

DECISION AB n° 30/2011 was circulated - Mr Chris Fonteijn appointed as the Dutch member of the Board of Regulators. Decision made in Ljubljana on 9 November.