

5th ACER Board of Regulators meeting
Wednesday, 2 February 2011, from 15.30 to 17.30 (CET)
Centre Borschette, rue Froissart 36, 1000 Brussels (Room 2C)

Minutes

Participants

Member States	Name	Member States	Name
Austria (E-Control)	Walter Boltz (BoR Vice Chair) Dietmar Preinstorfer Sarin Abado	Latvia (PUC)	Lija Makare
Belgium (CREG)	Koen Locquet	Lithuania (NCC)	Diana Korsakaite Excused
Bulgaria	Angel Semerdjev Excused	Luxemburg (ILR)	Camille Hierzig Excused
Cyprus (CERA)	Georgios Shamma Excused	Malta (MRA)	Reuben Balzan Excused
Czech Republic (ERO)	Blahoslav Nemeček	Netherlands (NMa)	Jaap De Keijzer Excused Peter Plug Excused
Denmark (DERA)	Finn Dehlbæk	Poland (URE)	Marek Woszczyk Kamila Kloc-Evison
Estonia (ECA)	Tiina Maldre	Portugal (ERSE)	José Braz
Finland (EMV)	Asta Sihvonon-Punkka	Romania (ANRE)	Ioan Roman
France (CRE)	Philippe Raillon Patricia de Suzzoni	Slovaquie (RONI)	Nataša Hudcovičova
Germany (BNetzA)	Johannes Kindler Nadia Horstmann Daniel Müther	Slovenia (AGEN-RS)	Marko Senčar Tomaz Lah
Greece (RAE)	Michael Thomadakis	Spain (CNE)	José Sierra Rafael Gomez-Elvira
Hungary (HEO)	Csaba Kovacs	Sweden (EI)	Yvonne Fredriksson Karin Widegren
Ireland (CER)	Dermot Nolan	United Kingdom (Ofgem)	John Mogg (BoR Chair) Martin Crouch Clémence Marcelis
Italy (AEEG)	Carlo Crea Miranda Diana		

Observers	Name
ACER	Alberto Pototschnig
EC representatives	Marie-Christine Jalabert Aurora Rossodivita
CEER	Fay Geitona/Una Shortall

Main conclusions from the meeting:

1. There will be continuous involvement of the BoR throughout the different stages of the process of developing and adopting Framework Guidelines such as through “orientation discussions” or seeking formal “guidance” from the BoR
2. The Framework Guideline Electricity Grid Connection and the Framework Guideline on Gas Capacity Allocation were discussed and will be submitted to the next (March) BoR meeting for info before the launch of the public consultation.
3. There will be an orientation discussion at the March BoR meeting on ENTSO-E’s statutes and Rules of Procedures.

1. Approval of the agenda

BoR Decision agreed: (D 1)

The agenda of the 5th ACER Board of Regulators meeting was approved.

2. Approval of the minutes of the 4th BoR meeting

BoR Decision agreed: (D 2)

The minutes were approved by the BoR members.

3. Update on the Agency activities

The ACER Director informed the BoR that ACER has closed its temporary office in Brussels and officially opened in Ljubljana on 1 February 2011. There are 27/41 staff under recruitment and 12 already in place. With regard to DNEs, ACER asked initially for 10 years experience. DNE posts will be republished (with lower work experience requirements to attract more applicants).

The ACER opening ceremony will be on 3rd March, the day after the next BoR meeting (2nd March) which will be in Ljubljana. ACER will issue some consultation documents as soon as possible in March 2011 including on two Framework Guidelines (on electricity grid connection and gas capacity allocation).

4. Involvement of the BoR in ACER procedures

The Director presented his views on the way in which the BoR should be involved in the process of development and adoption of the ACER draft Framework Guidelines particularly at the early stages before the launch of a public consultation by the ACER. Whilst the Agency Regulation does not oblige the BoR to provide a favourable opinion before consultations are issued on Framework Guidelines, the Director recognises the value of involving the BoR. He sees the continuous involvement of the BoR as necessary throughout the different stages of the process such as through “orientation discussions” or seeking formal “guidance” from the BoR depending on the area under consideration.

The Director is keen on involving the BoR particularly where significant choices need to be made e.g. at the beginning, before consultation, after the stakeholder feedback or at all of these stages. He further argued for flexible arrangements for the involvement of the BoR rather than strict rules of procedures.

BoR members noted the importance of NRAs well represented at WG level and of in-depth discussions at the WG level, with documents properly circulated to facilitate discussions at the BoR meetings. Members noted that documents which are issued for consultation should have as broad as possible support from the BoR. The BoR will also have a right to request an orientation debate on its own initiative. It was also proposed to undertake a linguistic check to consultation documents by an Anglophone and vetted by a legal person. Members underlined that the BoR provides guidance to the Director in the execution of his tasks and this relates to the tasks outlined in Articles 5, 6, 7, 8 and 9 but other issues as well such as the Work Programme, Annual Report, RI etc.

Coordination meetings between the Director and the BoR chair and vice chair will be held 3 weeks before each BoR meetings to prepare and coordinate on the agenda, so that documents can be issued 10 working days ahead of the meeting in accordance with the BoR RoP.

5. Draft Framework Guidelines on Electricity Grid Connection

The ACER Director introduced the draft FG on electricity grid connection. ERGEG had approved it in December. He has made some editorial and formulation changes but the substance is unchanged. The Director clarified that the chapter on governance is removed as it applies generally to all FGs and a separate paper should address this issue later on. On derogations, BoR members sought some clarifications on whether ACER or NRAs would be responsible for granting derogations.

A BoR member suggested that the draft framework guideline be discussed at the EWG meeting with the participation of ACER so that the WG discussion can have taken place before the next BoR meeting in March where the final Framework Guideline will be submitted for info before the launch of the ACER public consultation.

6. Draft Framework Guideline on Gas Capacity Allocation

The ACER Director introduced the draft FG on gas capacity allocation. ERGEG had approved it in December. He has made editing and formulation changes. The only substantial change was to introduce the objective of a single price trading platform in gas. The Director intends to submit the framework guideline for information to the BoR in March and then launch the consultation on the framework guideline. The European Commission has sent a letter to ACER Director asking for the Gas Capacity Allocation FG to be completed by July.

The Director proposed a workshop, in Ljubljana, to present the revised Gas Capacity Allocation FG. The timing is after 3 March and before the next Madrid Forum, on 7th March in Ljubljana. This will be the first ACER workshop.

The Director intends to issue the framework guideline as a general (i.e. without specific questions) consultation document (given that a public consultation has been undertaken in ERGEG).

Mr Dermot Nolan, reiterated CER concerns on the revised framework guideline for gas CA when approved by ERGEG, related to the “single nomination” and its practical implications in Ireland seeking an exemption for isolated markets. The CER would support a “single nomination process” rather than a “single nomination.

Mr Boltz reported on the CEER Terms of Reference to analyse further the impact of the “sunset clause” on existing contracts; a consultant will be pre-selected by March.

7. The role of the Agency in regional cooperation

The 3rd Package provides for enhanced regional cooperation, evaluation and monitoring of regional cooperation by the Agency but does not specify the organisational arrangements within the Agency to undertake this. The BoR discussed the role of the Agency in regional cooperation and the role of the BoR including the possibility of regional working arrangements in the RoP of the BoR; binding Guidelines on regional cooperation; other provisions regarding the interaction between the BoR, the Agency WGs, the Agency staff and the Director. The discussion will be pursued with the Director on how the regional cooperation and monitoring can be held in practical terms with the involvement of the lead regulators to this work to ensure a coherent regulatory approach. The BoR members were of the view that these arrangements should be considered further and be flexible and tested in practice before introducing firm rules.

8. Draft rules for the functioning of the Agency’s Working Groups (WGs)

The BoR discussed a proposal by the Director on the arrangements/rules for the functioning of the Agency’s WG including the legal form of these arrangements. BoR members saw a huge benefit in the participation of the European Commission representatives at the ACER WG. All NRAs will be invited to nominate a representative to receive the agenda, the minutes and WG meeting documents even if they are not able to attend the WGs meetings. Comments will be submitted within a week by the BoR members.

9. Recommendation of the BoR for the Agency Working Groups chairs

Lord Mogg informed the ACER Director that Walter Boltz was nominated (1 February 2010) as chair of the CEER Gas Working Group, Peter Plug as chair of the CEER Electricity WG with Martin Crouch as vice chair. The Director said that he is keen on starting the ACER WGs in March; he will announce at the next BoR meeting the names of the chairs of the ACER electricity and gas working groups. He confirmed that the ACER WGs will be held in Brussels in the CEER premises and that CEER staff will provide administrative support for the ACER WGs.

10. Comments on ENTSO-E statutes and RoP

The BoR had a first discussion on the ENTSO-E revised statutes. The new statutes establish a clear link between the certification procedure and membership in ENTSO-E. ENTSO-E have also introduced a sunset clause to address the situation of TSOs in Member States where implementation is delayed and of third country TSOs not bound by the Third Package. The Director was of the view that the current statutes do not reflect the fact that cooperation between TSOs in ENTSOs is mandatory at least for the EU certified TSOs. Therefore, admission to the ENTSOs should be automatic and not subject to conditions. ACER has to give a formal opinion within 2 months of 3 March. The Director proposed to have an orientation discussion at the BoR on this in March.

11. VAT fraud

There are concerns about the possible impact on prices of VAT fraud. On a meeting with Europex and Europol, ACER Director asked them to come up with evidence in the carbon market that VAT fraud has had an impact on prices on the market.

The CEER Financial Services (FIS) working group chair presented a note on how VAT fraud schemes work and the specific risks for a spill over into the electricity and gas sector. ERGEG and ENTSO-E will present interim measures to address VAT fraud in the near future. The need to redress the regulatory gap in transparency will be discussed in the CEER's forthcoming policy advice to the European Commission on a harmonised licensing regime within the EU till mid of 2011. Even though ultimately the responsibility for tackling VAT fraud lies with the tax authorities, the cooperation between tax authorities and energy regulators (including at European level) is highly supportive to minimize the threat of a spill over of VAT fraud into electricity and gas trading in an interim phase. The FIS WG will elaborate a common regulatory response to the DG TAXUD consultation (deadline is the end of May) on the revision of the VAT regime to raise awareness about the detrimental effects that VAT fraud could have not only in financial terms but also for the competition in the energy markets.

12. Next Meetings

March

2 March in Ljubljana: BoR and dinner invitation has been sent out by the mayor of Ljubljana to BoR members

3 March: official launch of ACER

-12.00pm: opening ceremony

-2.30pm – 5pm: conference “the new governance for the internal energy market and ACER”

June and December dates for the Administrative Board meeting have been changed and thus the dates for the June and December GA and BoR meetings (GA/BoRs) organised around the AB meeting are likely to change. The June BoR will be held on 7th June in Brussels.