

9th ACER Board of Regulators meeting
Tuesday, 7 June 2011, 11.00 – 17.30,
NRW Representation to the EU, rue Montoyer 47, 1000, Brussels

Participants

Member States	Name ¹	Member States	Name
Austria (E-Control)	M: Walter Boltz A: Dietmar Preinstorfer	Latvia (PUC)	M: Ainar Mengelssons Excused
Belgium (CREG)	A: Koen Locquet	Lithuania (NCC)	M: Diana Korsakaite Excused
Bulgaria (SEWRC)	M: A. Semerdjiev Excused	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	O: Adreas Theophanous	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	M: Blahoslav Nemeček	Netherlands (NMa)	A: Peter Plug O: Menno Van Liere O: Robert Maaskant
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	M: Marek Woszczyk. O: Kamila Kloc-Evison
Estonia (ECA)	O: Kaspar Endrikson	Portugal (ERSE)	A: José Braz
Finland (EMV)	A: Antti Paananen	Romania (ANRE)	O: Lusine Caracasian
France (CRE)	A: Philippe Raillon	Slovakia (RONI)	A: Nataša Hudcovičova
Germany (BNetzA)	M: Johannes Kindler O: Daniel Mütter	Slovenia (AGEN-RS)	M: Marko Senčar
Greece (RAE)	M: Michael Thomadakis O: Katerina Sardi	Spain (CNE)	A: Tomás Gómez O: Rafael Gomez-Elvira
Hungary (HEO)	O: Gábor Szörényi	Sweden (EI)	A: Karin Widegren
Ireland (CER)	A: Dermot Nolan	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Martin Crouch
Italy (AEEG)	M: Valeria Termini A: Carlo Crea O: Miranda Diana		

Observers	Name
ACER	Alberto Pototschnig, Fay Geitona
European Commission	Marie-Christine Jalabert, Lukas Repa, Aurora Rossodivita
CEER	Natalie McCoy, David Haldearn

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

Main conclusions from the meeting:

1. *The majority of BoR members expressed their favourable opinion to the Commission's proposal for BoA members and alternates and mandated the BoR Chair to write to the AB chair reflecting the BoR opinion and the issues raised during the meeting.*
2. *BoR members should send any comments to the Work Programme to Ms. Geitona in the next week. The Director will take into consideration the orientation discussion to finalise his draft WP 2012 for submission by 30 June to the BoR. The WP will be discussed for approval at the July BoR meeting. The dates in the Work Programme and the 3-year plan must be consistent and clear so as to provide stakeholders with clarity and certainty on the next steps.*
3. *The BoR discussed the new developments in the Regional Initiatives and the new arrangements put in place for the Regional Initiatives. Progress will continue against the delivery of the RI roadmaps by the end of June. A report will be delivered at the July BoR meeting.*
4. *The Director indicated that the new arrangements will be tested in practice and reviewed in a few months' time after some experience and work has progressed.*

Opening

1. Approval of the agenda

BoR Decision agreed: (D 1)

The agenda of the 9th ACER Board of Regulators meeting was approved.

Lord Mogg expressed the BoR's sincere condolences to ANRE for the loss of Mr Ioan Roman, former ANRE Vice President.

2. Approval of the minutes of the 8th BoR meeting

BoR Decision agreed: (D 2)

The 8th BoR meeting minutes were approved by the BoR members.

3. Report on ACER progress

Recruitments

Mr Pototschnig reported that staff recruitment is well on track and today 20 staff is in office. 2 more staff have already been recruited and accepted the position. Selection is underway for 11 additional posts. Vacancy notices for 8 of the remaining 9 positions will be published in the next four months.

DNEs will begin to take up posts in the summer. By September 6 DNEs will have started (4 positions are still available).

The Director is hopeful to complete recruitment by the end of the year. In terms of geographic representation, the staff includes nationalities from several countries, which is part of the wealth of the Agency.

Opinion on the ENTSOS statutes

Following the BoR favourable opinion on ENTSOs statutes at its meeting on July 4th, these were adopted on May 5th, sent to the Commission the following day and published on the ACER website. The Director intends to send shortly to ENTSOs the letter reflecting some of the points raised during the orientation discussion of the BoR which were not incorporated in the ACER opinion and which focused on the main issues raising concerns against the Community law.

Budget

In terms of the ACER budget for 2012, the draft budget was submitted to the Commission. The Administrative Board approved the budget, increasing it by €60,000 over the Director's proposal, taking into account the reasoned opinion delivered by the BoR (on 2nd March). However, the budget is now part of the EU's budgetary process and the Commission has explained that there will likely be some cuts, (DG Budget proposes to reduce it by around €170,000). The Commission has underlined that given the horizontal reductions in EU spending, this should be considered a reasonable cut.

Mr Pototschnig is pursuing the possibility of a meeting with the EP ITRE committee where he could also raise the budget issue.

Lord Mogg noted that in terms of REMIT and the Agency's additional resources/staff needs, the budget is still open as the REMIT negotiations are ongoing. The Director explained that according to the adopted ITRE report on REMIT an estimate from ACER on its (human and financial) resource requirements to cover the REMIT tasks is expected by 15 September this year (the date will evidently be adapted depending on the timing of the adoption of the Regulation).

A list of decisions adopted by the AB was circulated to the BoR for information. The list will be updated to reflect also the decision of the AB on the acceptance of the CEER donation.

AGWG update

Mr Boltz reported that the work on finalisation of the gas balancing framework guideline is targeted towards September for submission to the BoR for a favourable opinion; an orientation discussion will be held in July but the framework guideline will not be finalised before September.

Regarding Interoperability; ENTSG and EASEE Gas will try to put a team of technical people to address the technical aspects.

Tariffs

There is still lack of clarity on the Commission's intention with regard to the tariffication guideline. The Commission has not yet decided how it wants to proceed. Many regulators have concerns about the use of old comitology process (as opposed to the framework guideline/network code process). The Congestion Management comitology guidelines have been faced with a lot of opposition by Member States. Mr Repa noted that independently of the choice of the process, all the network codes will ultimately have to undergo comitology, so the role of the Member States (and risk of rejection) is ever present. Direct comitology is aimed to gain time in this process (gains of up to 18 months can be achieved).

The TYNDP for gas is expected in July; the document has not yet been received so the GWG is working on the basis of the previous versions. Nonetheless, this is useful to gain time, since once the TYNDP is received, ACER's review will have to be undertaken within 2 months.

Mr. Boltz underlined that the informal dialogue with ENTSOs throughout the process until the finalisation of the network codes should be integrated into the planning of regulators' resources. The meeting frequency is almost on a weekly basis and impacts heavily on resources.

AEWG update

Mr. Plug informed the members that the EWG has written to the Director to provide an update of the WG's planning and deadlines. This letter will be circulated to the BoR members. Regarding the FG on capacity allocation and congestion management (CACM), the consultation will close on 10 June and the WG will do its best to review the responses and to present a draft final FG to the July BoR for an orientation discussion. Regarding the FG on grid connection, 35 responses were received to the consultation and the final framework guideline will be submitted to the Director in time for the July BoR to provide the formal opinion. The work on the balancing FG is getting underway, with an expert group meeting envisaged in July.

The Director reported that EuroPEX has developed a single pricing algorithm, which he intends to ask ENTSO-E to validate. At some stage, individual NRAs will also receive a request to endorse this algorithm, which will require further investments (e.g. software) by exchanges and TSOs. He suggested reflecting on what would be NRAs' and ACER's position on these efforts and proceeding along this path.

4. Commission's update on recent issues

CEER Donation

Mr Repa reported that the Commission and the Administrative Board approved the CEER donation in kind to provide office facilities and to host working group meetings.

Lord Mogg noted that the Commission Decision on the donation is welcome. He reported that at the last meeting of the Administrative Board they discussed whether there should be an "aid memoire" in ACER's budget to reflect the value of the CEER donation paid to the Agency. He underlined that the CEER donation indeed reflects a considerable amount.

The Director expressed his sincere thanks to CEER and regulators for hosting the ACER liaison office and for their support in the Agency's activities. He will write formally to the BoR chair following the approval of the donation.

The Commission is now reviewing the ENTSOs statutes taking also into account the ACER opinion.

REMIT

Regarding REMIT, the negotiations are continuing now between the Parliament and the Council. The Hungarian Presidency is working to reach a first reading agreement by the end of the Presidency (end-June). The Commission supports the Director's view that qualified staff (and resources) will be needed to undertake the REMIT duties.

Conference on the internal energy market

Commissioner Oettinger has launched the idea of a specific conference on the state of play of achieving the internal market to be held on 29 September. The Commission preliminary thinking is to organise it on the basis of 4 main blocks:

- Benefits of completing the IEM
- Implementation of the energy acquis (state of play on 3rd Package implementation)
- Developments in FGs and NC
- Measures after 2014

Lord Mogg praised the Commission's services for their support to the Agency including on the compliance with internal procedures.

He underlined that the level of representation of the EC at the BoR does not match their representation at the Administrative Board where the Commission is represented by the Director General.

Administration and organisation

5. Commission's proposal on the appointment of the members of the Board of Appeal - RESTRICTED to BoR members only.

The Agency Regulation requires that the members of the Board of Appeal shall be formally appointed by the Administrative Board, on a proposal by the Commission after consultation of the Board of Regulators.

The discussion was restricted to members only to preserve confidentiality. Documents related to the candidates were sent by email only and were not uploaded to the meeting folder to preserve confidentiality.

Lord Mogg reported that the Administrative Board in its 1st June meeting decided to await the opinion of the BoR before the formal appointment of the members/alternates of the BoA.

The BoR was invited to provide its opinion on the Commission's short list against the criteria set out in the vacancy notice within the legal context including the eligibility and selection criteria.

Mr Repa presented the Commission's proposal. The Commission's formal decision empowered its member with special responsibility for energy to propose as replacement, in agreement with the President, the most qualified candidate from those who have submitted their application in certain circumstances (if one of the above mentioned members or alternates withdraws his/her application; steps back or becomes unable to exert this function or if the Administrative Board decides not to appoint one of the proposed members / alternates).

The BoR discussed the Commission's proposal against the criteria in the vacancy notice, taking into account the independence requirements as set out in Regulation 713/2009 and the qualifications, experience and seniority of the 12 proposed candidates. As the BoR

received no information on the specific qualifications of the candidates who did not feature amongst the twelve, the Board could not draw any conclusion as to their potential suitability.

All BoR members placed particular emphasis on the importance of ensuring independence from any political, industry affiliation of the members/alternates of the BoA. Members were, however, concerned about the non - inclusion of appropriate qualified representatives of the newer Member States and drew particular attention to the importance of defining arrangements to replace members by alternates taking into consideration the need to ensure a proper geographical balance.

The Commission indicated that only 3 applications had been received from candidates in newer Member States, 2 of whom have been included in the list as alternates; the Commission had formulated its proposal on the basis of the criteria set out in the public call of interest and under the overriding principle that the members/alternates undertake to act independently and in the public interest, and would not be bound by any instructions nor would they represent their Member State.

The BoR noted the need to define more precisely a number of procedural issues, notably on the arrangements about the replacement of members by alternates (order of replacement); clarity on the independence requirements of those appointed in accordance with the legal provisions in the Regulation and the practical relevance for serving NRA members. The chairman would define these briefly in his letter to the AB chairman.

The Commission representative noted that the rules for replacement of members by alternates will be addressed in the Rules of Procedure of the BoA. Independence and conflicts of interests of members/alternates were already addressed in the Regulation which provides that members of the BoA should not perform any other duties in the Agency, in its Administrative Board or in its Board of Regulators.

BoR Decision agreed: (D 3)

A large majority of BoR members gave their favourable opinion to the Commission's proposal for BoA members and alternates and mandated the BoR Chair to write to the AB chair reflecting that opinion and the concerns expressed during the BoR meeting.

General ACER work

6. Planning for ACER's 2012 Work Programme

The Director presented a preliminary draft of the Agency's 2012 Work Programme. The Director's draft Work Programme will be submitted to the BoR by 30 June. The BoR needs to approve it and present it by 1st September for adoption to the AB. He invited feedback from the members before this is finalised. Comments from the preliminary discussions with both AWGs chairs will be incorporated.

A number of activities will be carried forward from 2011. This includes follow up work on network codes which are being drafted following ACER's framework guidelines – grid connection, CACM for electricity and gas, gas balancing. New work for 2012 on electricity will include the FG on third party access, for which scoping could begin already in 2012 with the FG to be completed in 2013. For gas, new FGs will be prepared on interoperability and rules for trading.

There are also a number of other activities, which form part of ACER's responsibilities in the Regulation including, inter alia, monitoring of markets. There may also be work related to infrastructure package elements as well as the new responsibilities under REMIT.

Mr. Boltz informed the BoR that CEER is also preparing its 2012 Work Programme, which will aim to cross-reference with the ACER work and to take up any support work within CEER ahead of ACER's future responsibilities in given areas. The CEER work programme will be submitted to a public consultation. He suggested that it might be useful to introduce some flexibility in the ACER Work Programme by underlining that additional topics could emerge as a response to future events/developments in the energy market (e.g. nuclear phase out) which cannot be predicted at this stage.

The Commission welcome the first draft of the Work Programme and would be pleased to discuss it further. The deliverables have been compared to the 3-year plan. The Commission noted that there are some differences between ACER's Work Programme and the 3-year plan, such as emergency procedures in gas (which is not included in ACER's work programme whilst reflected in the 3yr plan). Regarding harmonized transmission tariffs, the Commission agrees that reference to ACER's support to the Commission on this should be mentioned explicitly. There will also be an internal audit of ACER during 2012, and it might be interesting for ACER to review the court of auditors benchmarking of deliverables/work programmes, which the court uses to assess other Agencies' performance.

Regarding the timing on network codes, the Work Programme seems to suggest 4 months for ACER's review (although this should be 3 months). It might be worth including a footnote to clarify that the 4 month window does not mean ACER will go beyond its deadline.

Once the REMIT proposal is adopted, ACER will need to recruit staff, and there should be some reference to the need to assess the impact of REMIT on the work/resources.

Lord Mogg noted the need to reflect in the ACER Work Programme the complementarity with the CEER activities; the need to focus on key areas to assure delivery against the key objectives; and suggested underlining in the Agency's Work Programme the significant contribution of regulators (at the heart of the Agency) through the BoR and the Agency WGs in all Agency activities, including on regional cooperation activities which will enormously increase.

On the deliverables with regard to network codes and the overview by ACER, the Work Programme needs to reflect the amount of resources and work needed in preparation of the network codes in close collaboration with ENTSOs.

Mr Haldearn noted some minor delays in the ACER planned delivery dates between the 2012 Work Programme and the most recently agreed 3YP (most are minor).

Conclusion

Lord Mogg invited the members to send any comments to the Work Programme to Ms. Geitona by next week.

The Director thanked the members for the orientation discussion. On the basis of the discussion, he will finalise his draft for submission by 30 June to the BoR.

The Work Programme will be discussed for approval at the July BoR meeting.

7. Three year plan - Commission's priorities

The Commission reported that 25 responses were received to the consultation on the 3-year plan. The Commission is working on a staff working paper which will consolidate all the responses and offer an indication of the priorities for the coming years. While the responses were generally supportive, there were some differing views on prioritization. The paper is to be finalized as soon as possible, following an inter-service consultation (which can take 3-4 weeks).

Lord Mogg underlined that the dates in the ACER 2012 Work Programme and the 3-year plan must be consistent so as to provide stakeholders with clarity and certainty on the next steps.

8. Regional Initiatives: Update on EC's letter on roadmaps; update on ACER electricity and gas Regional Coordination meetings; organisation of work and next steps

Regional Roadmaps

The Director noted that the Regional Initiatives are being given a more important role particularly on the implementation of 2014 deadline for the completion of the internal energy market. Following a letter by the Commission to all lead regulators asking them to prepare a Roadmap for each region, ACER offered support to the process (draft templates were circulated in which each step allowing to reach 2014 could be detailed - with particular emphasis on the implementation of the target models for capacity allocation and congestion management to 2014) and has organised co-ordination meetings, both in gas and electricity, to promote the process of developing the European Energy WP and to define the expected contribution of each region in this process. Meetings have taken place so far in May and June. Yesterday the first GRI coordination meeting was held which has been positive.

Lead regulators have been identified for a number of cross-regional projects: Long-term capacity auctions – CRE to lead; Day-ahead market coupling – BNetzA to lead; Intraday trading – Ofgem to lead.

A conference of NRAs representatives will take place in Ljubljana on 22 June to coordinate the regional inputs and finalise the European Plan. All NRAs are encouraged to participate.

Cross-border balancing and interconnector investment will also be part of the European Plan.

At the next BoR meeting on 6 July the Director will report back on the key elements of the Roadmaps.

ACER recognised that the (electricity) drafts submitted on 27 May (for six regions) are work in progress. The deadline for finalising the regional inputs to the European Plan is the end of June.

The regulators "European Energy Work Plan" will complement the joint project plans submitted by ENTSO-E and Europex as part of the AESAG process which is also being chaired by ACER.

Discussion at the CEER

Mr. Haldearn reported briefly on the GA's discussion on the Regional Initiatives:

Regional Initiatives continue to have an important role of 2014. Some regulators thought that we should focus on projects and specific arrangements for these projects and were keen on allowing flexibility and projects based arrangements.

With regard to the implications for BoR and its role – the BoR should have a significant role in the oversight of the Regional Initiatives. The arrangements for involving the BoR should reflect that ambition.

There was a general concern that regulators are the main focus for the responsibility (accountability) for the delivery of the 2014 targets - although in fact there are a number of actors who should share the responsibility - delivery/success does not depend only on regulators - also keeping in mind that RI is a voluntary process without an enforcement possibility.

The Director shared the points made by Mr. Haldearn and welcomes involvement of BoR. RIs are important but we should also be looking at projects. At AESAG a number of projects are envisaged, the spotlight is on regulators but the Commission and TSOs are equally important; regulators will have to look into the progress or delays and discuss where the issues are.

The Director explained that the abovementioned considerations on the future role of the RI and challenges pointed to the need to employ additional experienced resources to follow up developments and to assist him to report regularly to the BoR. The Director had already announced that there will not be a RIG WG as such and announced that he has appointed Rafael Gómez-Elvira González to take on responsibilities for the co-ordination of the RIs jointly with the ACER heads of Department and to report to him. The new arrangements will be part of the machinery to enable the Agency to monitor developments in the RIs, ensure co-ordination, and assist with the development and implementation of the Roadmaps.

Conclusion

Progress will continue against the delivery of the RI roadmaps by the end of June. A report will be delivered at the July BoR meeting.

The Director suggested that the new organisational arrangements put in place for the Regional Initiatives will be tested in practice and reviewed in a few months' time after some experience is gained and work has progressed.

Cross-sectoral

9. Infrastructure Package

The Commission announced a staff working document on infrastructure for the 10 June Energy Council which has just been sent to national ministries. Lord Mogg reported that a letter to Philip Lowe is being finalised on the follow up actions of the infrastructure package some relevant to the Agency and its EWG and GWG (e.g. cost allocation) and some to the CEER (e.g. financing mechanisms). The letter underlined the need for infrastructure development to focus on the TYNDP, and to resist Commission's ideas to develop a separate process for the selection of priority projects.

Mr Crouch suggested to discuss further a subset of recommendations that has not yet been considered or analysed by regulators by the EWG and GWG with a view to producing a subsequent letter with suggestions to the Commission before the summer break (and for approval by the July GA) to also take account of the Commission's staff working paper.

The Commission will reply in writing to whatever points are raised in the letter to Philip Lowe.

The Commission is working on its impact assessment on the infrastructure package. The proposal will most likely be a Regulation (not a Directive).

There is a discussion within the Commission at top level regarding the 'basket' of financing that might be requested.

Mr Boltz noted that regulators feel there is justification for a couple of additional measures specific to address cases where there are problems and will further look on this.

The Director reiterated the need for clarity on the process for the selecting PCI and the TYNDP. If there are two separate processes, which process should prevail? It is important to integrate the criteria for selecting PCI within the TYNDP process. Mr Crouch sought also some clarifications on the Commission's thinking on the 2 different processes (PCI and 10YNDP).

Mr Braz underlined the need for cost benefit analysis.

Conclusion

The letter was approved subject to some modifications and will be sent to Philip Lowe. The follow up actions will be coordinated with the Commissions services.

Others

10. Process and timing for the formal BoR opinion on the Framework Guidelines on electricity CACM and gas balancing

Following the Commission's request at the last planning group meeting, the BoR will attempt to have an orientation debate at its July meeting on the FG on Capacity Allocation and Congestion Management for electricity (subject to the responses received during the ACER consultation ending on 12 June) and subsequently launch an electronic approval in July. If there are too many outstanding issues, the BoR will have to adopt its opinion on the FG at the September meeting. Regarding the gas balancing, an orientation discussion will be held in July but work will be finalised in September.

11. Next Meetings (preliminary dates for 2012)

A preliminary calendar for 2012 meetings was circulated. 11 meetings (no meeting in August) are included, although 3 of the proposed dates are marked as 'provisional'. 6 meetings would be held in Ljubljana, the rest will be in the margins of the Florence and Madrid Fora (the dates are still to be confirmed with the Commission), and the Council presidency countries (Cyprus).

12. AOB

ENC

Mr. Thomadakis introduced briefly the question of regulators' representation in the Energy Community Regulatory Board (ECRB), following the dissolution of ERGEG. ACER is the natural successor to ERGEG and it should be decided how to ensure NRAs' representation (and support to the Commission) in the discussions of the ECRB.

Mr. Thomadakis recalled the past exchange of letters between the Commission and Lord Mogg which set out the practicalities for the representation of regulators/ERGEG.

A draft note on this issue which suggests that there should be an internal process in ACER on how to ensure this representation has been withdrawn for further discussion between regulators and the ACER Director.

The Director thanked for the suggestion and indicated that he will seek views and consult relevant NRAs before deciding on how best to proceed.

Conclusion

Further discussions on the practical arrangements of ACER taking over the role of ERGEG in the ECRB will be undertaken in cooperation with the Director.

Mr. Sencar informed the members that he will join ACER as a detached national expert. Members congratulated him on his recruitment.