

19th ACER Board of Regulators meeting
Tuesday, 19 June 2012, from 09.00 to 16.00
ACER office, Trg Republike 3, 1000 Ljubljana

Minutes

Participants

Member States	Name¹	Member States	Name
Austria (E-Control)	M: Walter Boltz O: Dietmar Preinstorfer	Latvia (PUC)	O: Lija Makare
Belgium (CREG)	A: Koen Locquet	Lithuania (NCC)	A: Vygantas Vaitkus Excused
Bulgaria (SEWRC)	A: Angel Semerdjiev Excused	Luxemburg (ILR)	M: Camille Hierzig Excused
Cyprus (CERA)	O: Andreas Theophanous	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	O: Miroslav Belica	Netherlands (NMa)	A: Peter Plug O: Debby van der Pluijm
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	M: Marek Woszczyk O: Danuta Sierocińska
Estonia (ECA)	M: Märt Ots Excused	Portugal (ERSE)	A: José Braz O: Jorge Esteves
Finland (EMV)	M: Riku Huttunen	Romania (ANRE)	A: Lusine Caracasian
France (CRE)	O: Michel Thiollière O: Sabine Hinz	Slovakia (RONI)	M: Jozef Holjencik Excused
Germany (BNetzA)	A: Annegret Groebel O: Daniel Mütter	Slovenia (AGEN-RS)	A: Jasna Blejc
Greece (RAE)	M: Michael Thomadakis O: Katerina Sardi	Spain (CNE)	A: Tomás Gómez O: Rodrigo Escobar
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)	A: Clara Poletti O: Miranda Diana		

Observers	Name
ACER	Alberto Pototschnig, Fay Geitona
European Commission	Kristof Kovacs
CEER	Natalie McCoy, David Haldearn

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

Main conclusions from the meeting:
1. <i>The BoR discussed the preliminary opinion on the Gas Balancing NC. This will be finalised and then shared with ENTSOG.</i>
2. <i>The BoR received an update on the work on the Gas FGs on Tariffs and Interoperability and Data Exchange Rules.</i>
3. <i>The BoR received an update on the NC grid connection (requirements for generators) including on the procedural aspects, the need for a further consultation and options on how to proceed.</i>
4. <i>The BoR welcomed the ACER preliminary opinion on the Electricity CACM NC.</i>
5. <i>The BoR welcomed the ACER Decision on the Registration Format and proposed some modifications.</i>
6. <i>The BoR welcomed the Draft ACER recommendations on Records of transactions and implementing acts which will be submitted for public consultation.</i>
7. <i>The BoR approved the mid-term review of the ACER 2012 WP. The revised WP will be submitted for adoption to the AB.</i>
8. <i>The BoR discussed the BoR RoP and a draft note on ACER consultation practices.</i>

Part A: Items for discussion and/or decision

1. Opening

1.1. Approval of the agenda

BoR Decision agreed: (D 1)

The agenda was approved with an additional item 6.4 on an update on the work by the ACER Legal Advisory Team.

1.2. Approval of the minutes of the 18th BoR meeting

BoR Decision agreed: (D 2)

The minutes of the 18th BoR meeting were approved.

1.3. Report on the Director's appearance at the ITRE committee

The Director reported on his appearance at the ITRE committee on 31 May, where he presented the main activities and the staffing and financial resource challenges which ACER faces particularly with respect to REMIT and the EIP preparatory work. The session was attended by 9 MEPs. There was a lot of support, including from the ITRE chair, on the ACER

concerns regarding the budget constraints and the feedback was very positive. The Director continues several contacts with MEPs regarding improvements on the 2013 ACER budget.

2. Gas

2.1. ACER preliminary opinion on network code on gas balancing

Mr Boltz presented the ACER preliminary opinion and sought the views of the BoR members. The ACER GWG is in regular discussions with ENTSOG and has prepared a preliminary opinion. ACER's formal reasoned opinion on the gas balancing network code is expected in February.

BoR Decision agreed: (D 3)

The AGWG, in agreement with the Director, will finalise the preliminary opinion in the light of the comments received and share it with ENTSOG.

2.2. Framework guidelines on tariffs

Mr Boltz gave a presentation on progress of work and the main issues. Following ACER's scoping consultation earlier this year, the AGWG is now drafting the FGs and the Impact Assessment (IA) for public consultation this summer. The Commission confirmed that they will send the official invitation letter for the FGs to ACER in late June.

The main issues addressed by the FGs include the general provisions (definitions, implementation); reference price and crucial elements of cost allocation; reserve price (firm, interruptible & non-physical backhaul); payable price; difference between reserve price and clearing price shall be considered as a premium to be paid on top of reserve price at the time of use.

There are issues for an EU wide harmonisation such as the split of auction revenues. However, other issues are not covered, such as ITC, incremental capacities, locational charges, LNG and storage points etc. This is because the FGs mainly focus on cross border elements unless the upcoming ACER public consultation shows that the above areas need to be included.

The problem Identification (part of IIA) will be submitted to the AGWG and regarding the "Country analysis" (part of IIA) the update is on-going.

It is intended that the draft FGs will be ready for discussion at the next Board ahead of launching the ACER public consultation.

Mr Boltz remarked that the FGs do not provide for a total harmonisation but rather focus mostly on what is needed particularly for bundled products and cross border trade. However, following the consultation we shall need to see the stakeholders' views regarding including more contentious issues such as ITC etc.

2.3. Framework guidelines on interoperability and data exchange rules

Mr Boltz gave a presentation. ACER was formally invited on 31 January to develop this Framework Guidelines by 31 July (this time schedule is also reflected in the planning group discussions). The launch of the consultant study was on 2 April 2012. A workshop was held on 23 April 2012. The public consultation ended on 16 May 2012 and resulted in 34 responses. The deadline for the final consultant report is 15 June 2012. The ad hoc expert Group met on 11 June to assist ACER in preparing an impact assessment for the Framework Guidelines on Interoperability Rules.

On the specific issues Mr Boltz presented the main responses on the scope and application of the FGs.

Regarding the Interconnection agreements, the focus is on TSOs cooperation, to avoid that cross border trade is hampered by operational and/or technical mismatches between TSOs; the list of minimum requirements (the input from ENTSOG is provided) and default agreement (to the extent possible). There is general support but also doubts about the feasibility of default agreements on all issues. In conclusion there is no need to adapt the FGs, which provide enough flexibility for adoption to specific situations.

Regarding the units: The focus is to exclude possible errors in transactions due to mistakes in the handling of units / reduce transaction cost. The overwhelming majority is in favour of harmonisation of main units in all transactions. A considerable number of stakeholders even want to include further units than energy, pressure, volume and gross calorific value. Thus based on problem identification and stakeholder consultation, the current policy option is maintained.

Regarding gas quality, no harmonisation of specifications are foreseen as differences have not been identified as a European barrier for cross border trade. The FGs foresee a case-by-case approach. The content will be maintained however, the wording of FG will be more clarified.

Regarding odourisation, this is identified as a barrier on the North-South axis. The identification of problem is largely supported by respondents in the consultation but the role of the Member States still needs to be clarified. It should be avoided that the odourised gas remains/becomes a barrier for trade. The wording needs to be refined involving countries currently using odourisation for transmission. The problems are rather regional but can have European implications.

Regarding the data exchange, the large majority of respondents is in favour of the policy option chosen. There is a limited need to revise the FGs on wording.

Regarding capacity calculation, ENTSOG's position is that this should have been dealt with in CAM and ACER opinion accepted this. However, no detailed process for cooperation is outlined in NC CAM.

On the next steps, the AGWG is finalising the Evaluation of Comments paper, the Impact Assessment and the Final Framework Guidelines at its meeting on 29/06. The Director will, subsequently, need at least 48 hours (4th July) to table his proposal to the July BoR for a formal reasoned opinion. The deadline to finalise the Framework Guidelines is by the end of July.

Mr Boltz confirmed that the IIA will be available with the FGs.

Conclusion

The BoR anticipates making a decision on a reasoned opinion on the FGs on Interoperability and Data Exchange Rules at its July meeting. If this is not possible, the BoR will hold an orientation debate in July and, subsequently, launch an electronic approval.

3. Electricity

Mr Crouch reported on Mr Plug's departure and expressed the AEWG's appreciation and complements for Mr Plug's work. Mr Crouch will continue to chair the AEWG. He welcomed any interest from the members for the position vice - chair by the end of month.

3.1. Network code grid connection – requirements for generators: process and consultation

Mr Crouch reported on the completion of the NC. A note was circulated to the BoR summarising the information on the question of further consultation and options on how to proceed. Discussions between ACER, ENTSO-E and the Commission are on-going, so the BoR will receive an oral update on the latest position and their views are sought. The deadline for ACER opinion on RfG code is end of September.

ENTSO-E consultation on the draft RfG code closed on 20th March.

An ENTSO-E users group meeting will be held on 28 June to which the NC will be presented.

The formal ACER opinion is expected to be submitted to the September BoR.

3.2. ACER preliminary opinion on CACM network code

Mr Crouch presented the preliminary opinion on the CACM NC. The ENTSO-E consultation on the CACM code closed on 23 May. Initial stakeholder feedback focussed on improving the transparency and stakeholder participation in the various regulatory approval processes envisaged in the CACM code and whether the process to consider the definitions of price zones is robust. The deadline for ENTSO-E to submit the CACM network code to ACER is 30 September 2012 and ACER's opinion will then be due by the end of 2012.

ACER's preliminary opinion identifies the areas where the Network Code fails to address the requirements of Framework Guidelines in a proper way.

Conclusion

The BoR welcomed the ACER preliminary opinion on the CACM NC.

4. Market Integrity and Transparency

4.1. REMIT registration format following ACER consultation

The Director presented the draft ACER Decision including the main results of the consultation. The legal basis is Art. 9(3) of REMIT Regulation. The Format should be defined by 29 June 2012.

REMIT envisages a two-layer registration process: national registers (NRAs) and the European register (ACER) – interlinked by the format. The importance of registration for trading was noted as market participants need to register (or at least submit their registration application) prior to entering into a transaction.

The Director clarified that this is the 3rd time that this paper comes to the BoR. During the public consultation 41 responses were submitted. The main outcome of the PC is the following:

Regarding the basic information section, ACER proposal was considered sufficient (not only legal entities but also natural persons - art. 2(8)).

Regarding the country-relevant information section, there were wide concerns for different treatments by different NRAs. ACER reduced this section to a single field for interoperability with national system.

Regarding the corporate structure information section, because this information could be too burdensome to update, ACER introduces a step-wise process: related undertakings to be recorded after the first publication of list of registered market participants.

Regarding the contact persons section: Only one single contact person is recorded instead of many and only at significant management level. ACER is keen on avoiding registering personal identification data for contact persons.

Regarding the third parties delegated for reporting section, only a few comments were received. This section is mandatory only for market participants willing to delegate reporting. On the ultimate beneficiary and controller, there are still many doubts on the operational meaning of this concept. ACER will probably issue non-binding guidance for NRAs to harmonise as much as possible the checks on the UCB.

Regarding the unique identifier: Three options have been considered: exploit one single existing code; federate multiple existing codes; use a new ACER-generated code. Selecting a single existing code appears unwise, because no single code has full coverage. Thus there is a need for an ACER code that can be issued during the registration process at virtually no cost and to be used for registration purposes by NRAs (e.g. updates).

The ACER conclusions are as follows: Either using ACER code or other existing (EIC, BIC, GS1) or forthcoming (LEI) codes.

The EC welcomed the draft ACER decision and Mr Braz presented the main changes proposed by the AMIT WG on the format and the timeliness.

BoR Decision agreed: (D 4)

The BoR welcomed the draft ACER decision and proposed the above mentioned modifications.

4.2. Draft ACER recommendations on records of transactions and implementing acts

The Director made a presentation of the consultation paper. An initial consultation of the BoR was held on 24 April. The public consultation will be held between 20 June - 31 July. A workshop will be held in mid-July. The final consultation of the BoR will be held on 4 September. The Recommendation will be adopted and sent to the EC by the end of September.

The Agency may make recommendations to the Commission as to the records of transactions, including orders to trade (Article 7(3)). The scope of the records of transactions depends on other specificities of the implementing acts to be adopted.

Definitions need to be provided/clarified to remove uncertainty on data collection and reporting obligations. The proposals on Records of Transactions include 40 fields for standardised contracts and 30 fields for non-standardised contracts (Annex II of the draft recommendations paper) taking into account experiences and developments in EU financial market legislation (MiFID, EMIR, review).

The content of the records of transactions is organised as follows: a. parties of the contract, b. contract type, and c. details on the transaction.

The reporting of life-cycle information includes the orders to trade (for standardized contracts), the execution, confirmations, amendments, cancellations and clearing or scheduling/nomination information; Interoperability of unique identifier for reporting, i.e. either "ACER code", EIC, BIC, GS1/GLN or LEI code.

Regarding the proposal on the list of contracts: There is a broad definition of contracts and derivatives to be reported in the implementing act, but also the possibility for ACER to establish a list of standardised contracts on its website (MiFID model).

The balancing markets are excluded from data collection through ACER in an initial phase of data collection (but collection would be possible through NRAs). A phased approach to data collection depending on listing of contract on ACER website is proposed.

There are three options for the "de minimis" rule: (a) No *de minimis*, but definitions and list of contracts; (b) threshold for small producers with an overall capacity of up to 2 MW; (c) *de minimis* for contracts for the sale of renewable energy and renewable-based energy sources at regulated tariffs.

Other issues: The paper contains a proposal on uniform rules for reporting. It also contains a proposal for timing and format for reporting.

Reporting through RRM and requirements for RRM: adequate policies and arrangements should be in place.

Regarding the reporting of inside information, this will be done through Regulated Information Services (RIS) (FSA model), i.e. platforms for the disclosure of inside information from organised market places and TSOs.

The transparency information will be reported through existing reporting channels (TSOs). No direct reporting of market participants to ACER, but through RIS or existing platforms. Similar technical requirements for RIS than for RRM (FSA model).

The suggested AMIT WG changes were introduced by Mr Braz.

BoR Decision agreed: (D 5)

The BoR welcomed the paper to be launched for ACER public consultation.

4.3. Appointment of new AMIT WG vice chair

Mr Braz reported on Mr Fadhel Lakhoua (CRE) taking over as the AMIT WG vice Chair (to replace Ms Andrea Korr).

5. Cross-Sectoral

5.1. Energy Infrastructure Package

Mr Halldearn provided a brief summary of the state of the legislative process. 850 amendments have been tabled and the joint CEER-ACER steering committee has prepared an analysis in relation to our agreed views.

▪ Regional Groups state of play

Fay Geitona presented the latest developments at the Regional groups including the finalisation of the questionnaires which will be shortly launched to be completed by mid-July. In mid-June the EC will launch the public consultations on the list compiled. The groups have agreed on the weighting of criteria and the next stage will be for NRAs, and, if necessary ACER, to check consistent application of criteria/CBA, and evaluate their European value and for the Regional Groups to examine and rank submitted projects to facilitate screening. Each group will take into account the urgency, number MS affected, its complementarity with other projects. The EC is also planning an info day in July and the launch of the public consultation in June.

▪ Internal arrangements for EIP work

The BoR discussed and welcomed the proposed internal arrangements.

5.2. 2013 ACER Work Programme and report on workshops

The Director reported that the process on the 2013 ACER WP already agreed at the last BoR will be shared with the AB. The draft ACER 2013 WP will be published in July and a joint CEER-ACER workshop (lunch time debate) will be organised on 11 July in Brussels. ACER will seek comments by the end of month (July). The EC will provide its opinion and

the definitive proposal by the Director will be submitted to the September BoR (4 September) for approval.

He reported on the ACER workshop on the work programme which took place on 6 June in Ljubljana, which attracted a low attendance by stakeholders.

Lord Mogg reported that this year CEER will also be looking to streamlining the calendar for the CEER 2013 WP with the ACER WP.

Mr Kovacs made some remarks, drawing from the EIP draft provisions on the cross-border cost allocation decisions and monitoring of progress achieved in implementing the PCIs.

5.3. Mid-term revision of the 2012 ACER work programme

The Director presented the 2012 WP mid-term revision. This process for a mid-term revision is not foreseen in the ACER Regulation and it is now being implemented for the first time. It is important though not only as the WP is compiled very early but also given that often changes are dictated by external factors such as the EC, the common discussions held in the planning groups and progress of work and it is preferable that these are captured not least for enhancing the Agency's accountability.

In terms of the process, this follows the same process for the adoption of the WP (BoR approval and AB adoption).

Based on latest developments since (including the changes agreed at the planning group meetings), the activities to be performed by the Agency in 2012 in the areas of Framework Guidelines and Network Codes are going to be modified.

BoR Decision agreed: (D 06)

The BoR approved the mid-term review of the 2012 ACER WP which will be submitted for adoption to the AB.

6. Implementation, Monitoring and Procedures

6.1. BoR rules of procedures revision

Mr Woszczyk presented the draft BoR RoP modifications on the basis of the areas discussed at the last AIMP WG meeting.

The draft modifications proposed were submitted to the BoR for a first orientation discussion following which a revised version will be submitted to the July BoR for approval.

Changes introduced include the dissenting opinions treatment, individual decisions, and simplification of electronic procedures. Finally provisions on confidentiality arrangements are introduced in 2 options reflecting the WGs RoP relevant provisions and/or the AB provision.

BoR Decision agreed: (D 07)

The BoR feedback will be taken into account along with the subsequent discussion at the AIMP WG on 20 June in a revised proposal to be submitted for approval at the July BoR.

6.2. Process for the modification of network codes

Mr Woszczyk reported on the progress for the preparation of this paper. A revised version which takes account of the comments by the planning group members ENTSOs and the EC on simplification of the procedure and shortening of the process has been prepared and will be discussed by the AIMP WG on 20 June. The revised paper prepared by ACER was also sent to the GWG and EWG chairs for any comments.

The Director thanked the AIMP WG group for their work and clarified that time wise, we need to have the draft of ACER revised Guidance for discussion at the BoR meeting of 10 July, ahead of its presentation at the next Planning Group meeting on 28 August.

6.3. ACER consultation policy

The Director presented the ACER's guidance note on consultation which is based on the consultation practices established by CEER (as expressed in CEER's revised guidelines on public consultation practices) and ACER's experience over the past year.

The main differences (from the CEER consultation practices) relate to the duration of the consultations where the note takes a more flexible approach apart of the consultations on the draft Framework Guidelines which need to last 2 months; the treatment of anonymous responses and the formats of the consultations (web based or not).

The Director will have a short (4 weeks consultation) on the discussion note which may be prolonged because of the summer break.

Mr Preinstorfer noted that the web based consultations are helpful particularly for the persons engaged in the assessment of responses. If ACER relies on NRAs for the evaluation of responses the web based consultations should be used.

Mr Woszczyk and Mr Locquet suggested differentiating between the treatment of anonymous responses and confidential responses.

The Director clarified that the draft consultation paper distinguishes this but the Agency would look again to better clarify this.

6.4. Transparency on the operation of the LAT

The members discussed the work undertaken by the ACER Legal Advisory Team and its operational arrangements.

Part B: Items for Information only

7. Gas

7.1. ACER opinion on CAM network code: report of the BoR electronic approval

Lord Mogg informed on the outcome of the electronic approval process. The BoR electronic approval (second round) on the ACER opinion on the CAM NC ended on 5 June. 23 BoR members participated and all voted in favour. One additional positive reply (DERA) has been submitted after the deadline on 5 June. The ACER opinion was subsequently adopted on 5 June and published along with the reasoning paper and the study.

With regard to the next steps the Director highlighted that we are still discussing with ENTSOs. At the July meeting he will be able to give a fuller report.

8. Electricity

8.1. General update on FGs and NCs

Mr Crouch gave an update. The System Operation and Demand connection code are progressing within the schedule. The Public consultation on the FGs on balancing closes next week and these will be submitted at the September BoR for a formal opinion.

8.2. Report on the Florence Forum

The EC reported that the next Forum will be held on 20, 21 November in Florence.

The Commission will finance the next one and is looking on other possible locations including hosting it in Brussels. Ms Poletti clarified that although AEEG is unable to host this next Forum for budgetary reasons, AEEG hopes to continue to host future fora.

8.3. Report on the Electricity Cross Border Committee meeting of 6 June 2012

Mr Crouch reported on this meeting. During the meeting a presentation on the Winter Review and Summer Outlook for 2011-2012 was made. ACER will be preparing soon their reasoned opinion. There was a presentation on the Transparency Comitology Guideline on which there was some discussion. ACER advocated TSOs publishing more information on capacity calculation. Comitology meetings are to be scheduled for September and December. Finally there was a presentation of the draft Network Code "Requirements for Generators" and a presentation on the input for a Governance Comitology Guideline: It was confirmed that the latter will be delayed to come to comitology.

8.4. Electricity Coordination meeting

The draft agenda was circulated including RES, capacity mechanisms and loop flows (on which an internal ACER workshop will be held on 28 June so action will be taken forward).

8.5. ERI update

The Director reported that regarding the DA project, ENTSO-E and PXs accepted at the last AESAG meeting to produce a detailed check list of the tasks to be done to couple. This document should help to monitor the progress of the NWE project and in the other regions. It would be good to recommend that a joint TSO-PX project manager is hired in each region to make sure that this check list is implemented.

Regarding the letter of comfort, Mr Dehlbæk reported that the letter should be signed by the relevant NRAs soon.

Regarding the ID, a NWE workshop will be organised by PXs and TSOs with stakeholders on the 27 June to further detail the phased timetable approach (based on the ELBAS-like platform) and its implications in terms of feasibility, timing, costs and efficiency.

This workshop will be important for NRAs to sound out whether PXs, TSOs and market participants are confident enough that this approach can deliver.

He also noted that, given Elbas needs significant enhancements (initially not foreseen by PXs and TSOs) which imply costs (2M€), PXs and TSOs will ask at some point of time an endorsement from NRAs before committing resources.

ACER intends to organise a HLM with ENTSO-E, EuroPEX, EC and Ofgem as lead NRA of this project, by mid-July to make sure that we all have the same expectations, understanding and commitment.

Regarding the LT, he informed the BoR that, as announced in the dedicated cross-regional roadmap, ACER will launch during the summer a public consultation on a wish-list for harmonization and improvement of the allocation rules for LT transmission rights at European level.

Mr Boltz suggested having a fuller - frank update on what is expected by the end of 2012 and the status of various activities, reporting delays, completion, etc. vis-à-vis results forecasted for summer 2012.

The BoR agreed to schedule this for September. Lord Mogg also suggested that the EC should contribute to this discussion.

Mr Crouch noted that regular updates are given by the ERI quarterly reports.

9. **Others**

9.1. Next Meetings

Lord Mogg reported that the next BoR meeting will be in Brussels given the lunch debate on the 2013 CEER-ACER WP.

20th BoR 10th July, 09.00-16.00, Brussels.

10. **AOB**

The Director reported that the AAR was adopted and sent to the European Institutions. It will be available in July in a printed version.

The Director thanked for all their work Peter Plug and Andrea Korr who stepped down from the ACER EWG and MIT WG respectively.

The Director reported on the vacancy of the Gas HoD (on the ACER website). The Director will be the acting HoD for gas until the new appointment.