

**21<sup>st</sup> ACER Board of Regulators meeting**  
**Tuesday, 4 September 2012, from 09.00 to 16.00**  
**ACER office, Trg Republike 3, 1000 Ljubljana**

**Minutes**

**Participants**

<b>Member States</b>	<b>Name<sup>1</sup></b>	<b>Member States</b>	<b>Name</b>
<b>Austria (E-Control)</b>	M: Walter Boltz O: Vera Gusenbauer	<b>Latvia (PUC)</b>	O: Lija Makare
<b>Belgium (CREG)</b>	A: Koen Locquet	<b>Lithuania (NCC)</b>	A: Vygantas Vaitkus excused
<b>Bulgaria (SEWRC)</b>	A: Angel Semerdjiev Excused	<b>Luxemburg (ILR)</b>	M: Camille Hierzig
<b>Cyprus (CERA)</b>	M: Georgios Shammas	<b>Malta (MRA)</b>	A: Anthony Rizzo
<b>Czech Republic (ERO)</b>	O: Miroslav Belica	<b>Netherlands (NMa)</b>	A: Geert Moelker O: Debby van der Pluijm
<b>Denmark (DERA)</b>	M: Finn Dehlbæk	<b>Poland (URE)</b>	M: Marek Woszczyk
<b>Estonia (ECA)</b>	O: Tiina Maldre	<b>Portugal (ERSE)</b>	A: José Braz O: Jorge Esteves
<b>Finland (EMV)</b>	M: Riku Huttunen	<b>Romania (ANRE)</b>	M: Niculae Havrilet Excused
<b>France (CRE)</b>	A: Philippe Raillon O: Michel Thiollière	<b>Slovakia (RONI)</b>	M: Jozef Holjencik Excused
<b>Germany (BNetzA)</b>	A: Annegret Groebel O: Daniel Mütter	<b>Slovenia (AGEN-RS)</b>	A: Jasna Blejc
<b>Greece (RAE)</b>	M: Michael Thomadakis	<b>Spain (CNE)</b>	A: Tomás Gómez O: Rodrigo Escobar
<b>Hungary (HEO)</b>	A: Gábor Szörényi	<b>Sweden (EI)</b>	M: Yvonne Fredriksson
<b>Ireland (CER)</b>	M: Dermot Nolan	<b>United Kingdom (Ofgem)</b>	M: John Mogg (BoR Chair) A: Martin Crouch O: Clémence Marcelis
<b>Italy (AEEG)</b>	M: Valeria Termini O: Francesco Cariello O: Miranda Diana		

<sup>1</sup> M: Member – A: Alternate – O: Observer

Observers	Name
ACER	Alberto Pototschnig, Fay Geitona
European Commission	Chrysoula Argyriou, Kamila Kloc, Matti Supponen
CEER	Natalie McCoy, David Halldearn

<b>Main conclusions from the meeting:</b>
1. The BoR unanimously approved the draft 2013 ACER WP as proposed by the Director. This was submitted to the AB for adoption.
2. The proposal on the EBFs was withdrawn by the Director and a revised proposal will be submitted for a BoR formal opinion through an electronic approval with a view to delivering the FGs within the 18/09 deadline.
3. The BoR gave a favourable opinion by consensus on the ACER opinion on the ENTSO-E TYNDP.
4. The BoR welcomed the Report on ITC implementation.
5. The FGs on rules regarding harmonised transmission tariff structures for gas will be finalised after the orientation debate and be launched for public consultation.
6. The BoR gave unanimously its favourable opinion on the draft ACER opinion on the ENTSOG Summer Supply Outlook 2012.
7. The BoR discussed the draft ACER recommendation for Records of transactions.
8. The BoR discussed the 2 <sup>nd</sup> edition of ACER Guidance on REMIT definitions.
9. The BoR discussed the EIP, the preparatory work and the progress on the selection of the PCI list and the roles of NRAs and ACER. A letter has been agreed to be sent to the EC. A meeting to further discuss and work out the details of the NRAs' and ACER's involvement in this interim stage is scheduled for September 24.
10. The BoR took note of the draft Guidelines on ACER external communication.
11. The BoR discussed and agreed the way forward on the ERI and GRI.

## 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 the addition of one item under AOB "the ACER external Communication strategy guidelines".

## 1.2. Approval of the minutes of the 20<sup>th</sup> BoR meeting

### BoR Decision agreed: (D 2)

*The minutes of the 20<sup>th</sup> BoR meeting were approved.*

## 1.3. Update on ACER activities

The Director gave an update on staff and resource developments. ACER continues to recruit and expects to reach a total of 72 staff by the end of 2013 to cover its 3<sup>rd</sup> Package and REMIT duties. By the end of 2012, ACER should employ 50 staff members. The Director informed the members that there are currently two openings for seconded national experts in the electricity department and invited them to inform their staff. A detailed presentation was uploaded on the BoR meeting folder.

The Director reported on the visit to ACER of an ITRE Committee delegation, composed of 3 MEPs, Dr Romana Jordan, Mr Claude Turmes and Mr Alyn Smith and the ITRE secretariat. The MEPs were very supportive of ACER's work and sensitive to the challenges ACER faces, particularly in terms of its budget and resource needs. Both the AB and the BoR chairs participated in the meeting as well as the 2 AB members appointed by the EP.

Regarding implementation of REMIT, Mr Pototschnig explained the latest progress in developing the necessary IT and software. ITRE has voted in favour of an AM which provides that in addition to appropriations in Commission draft budget 2013, ACER needs about 3 million euro more to implement REMIT.

## 1.4. Update from the Commission

The Commission provided a brief update of the Internal Market Communication which is due to be published on 17<sup>th</sup> October. A full item will be included in the agenda of the October BoR meeting.

## 2. **ACER WORK PROGRAMME 2013**

### 2.1. Final ACER 2013 WP following public consultation & EOR

#### Revised WP

Following the publication of the draft Work Programme by the Director in June 2012, a presentation was held on 11 July and comments from stakeholders were invited by 31 July. Comments were received by the 10 stakeholders. The revised WP along with the EoC from the public consultation has been circulated to BoR members. The Director introduced the ACER WP 2013. The revision following the consultation has resulted in some changes mainly in the Regulatory Activities part, as well as a new section in the part related to the involvement of stakeholders.

Lord Mogg also reported on the arrangements with regard to the adoption of the 2013 CEER WP. Its approval is pending but in all likelihood it will be finalised and will be released with the 2013 ACER WP.

Ms Kamila Kloc introduced the Commission's opinion. The WP is well balanced and comprehensive and in line with the Commission's priority list.

On gas, the Commission encourages the Agency to do preparatory work (i.e. scoping) for future framework guidelines/network codes, such as, for example, on rules for trading and rules on incremental capacity. Furthermore, the Commission suggests ACER gets involved in the standardisation process related to smart grids. Regarding standardisation issues and smart grids, they feel it is a supplementary (rather than additional) task which will have impact on certain FGs/NCs under preparation.

The draft Work Programme 2013 foresees 'Guidelines on exemptions for Major New Gas Infrastructure, based on article 36 of directive 2009/73/EC' as a new task under the gas sector deliverables. The Commission supports extending the scope of the Guidelines to cover also exemptions of cross border electricity interconnectors.

Ms Kloc underlined the Commission's position that the Agency work programmes should be based on the draft budget as prepared by the Commission. The budget tables contain figures not in line with the draft budget 2013 as adopted by the Commission on 25 April 2012 and need to be corrected accordingly. It should be noted that the EU contribution in the 2013 draft budget for ACER is €1 million above the financial programming; the Commission proposes that the extra €1 million is used to cover the costs for the REMIT IT systems. Regarding the resource issues, the Commission's opinion notes some differences in the number of staff foreseen by the budget and the numbers included in the WP.

The Director stated that he has opted for maintaining, in the draft 2013 ACER WP, the draft 2013 Budget approved by the AB on 31 March 2012. In any case, Article 13(5) of ACER Regulation clarifies that the work programme shall be adopted without prejudice to the annual budgetary procedure. Thus he considered safer to have a work programme consistent with the activities envisaged. If the budgetary authority eventually adopts the Commission's proposal then the work programme will have to be reviewed.

On the Commission's proposals on the additional deliverables, the Director stated that the 2013 ACER WP is comprehensive and already ambitious, given the resource prospects. He was thus reluctant to include other deliverables.

Lord Mogg supported the Director's position.

The ACER Regulation provides that the Board of Regulators - in line with the preliminary draft budget established in accordance with Article 23(1) - approves the work programme of the Agency for the coming year and presents it for adoption by the Administrative Board.

When the budgetary authority takes their final decision, if necessary, the 2013 ACER WP will be reviewed.

BoR Decision agreed: (D 3)

*The BoR unanimously approved the draft 2013 ACER WP as proposed by the Director.*

### 3. Regional Initiatives

#### 3.1. Regional Initiatives

The Director reminded the members of the agreement at a previous BoR meeting to dedicate some time to a fuller discussion on the developments in the Regional Initiatives.

Following the departure of Mr Gomez-Elvira as ACER RI Coordinator, the Director has decided to appoint Ms Clara Poletti (AEEG) to oversee the Gas Regional Initiatives (GRI). For electricity, the ACER head of department, Mr Gence-Creux, will continue to coordinate the ERI projects.

#### ERI

Mr Christophe Gence-Creux introduced the session on ERI (focusing on the benchmark of progress in the implementation of the CACM roadmaps against the expectations in December 2011). He commended the efficient and cooperative work between ACER staff and the NRAs in this area.

Contributions by lead NRAs in the different regions followed.

#### Following the discussion, the BoR reached the following conclusions:

Regarding day ahead, after the launching of the NWE Day-Ahead project, the BoR noted and committed to put as an utmost priority for 2013 the successful implementation of the Day-Ahead target model in the SWE and CEE regions. Regarding the CEE region, the BoR recognised that the implementation of the Day-Ahead target model will require NRAs urgently to agree on a fair and efficient solution to address the unplanned flows phenomenon. In that respect, the BoR fully supported the initiatives launched to find a solution and invited the lead NRA of the CEE region to regularly report on progress to the BoR.

Regarding Intraday, the BoR agreed to give PXs the chance to agree on the future ID platform and supported a tender process run by PXs under certain conditions. The Commission welcomed the NRAs engagement and commitment. The Commission further noticed that the underlying issue as regards the implementation of the platform seems to be difference of views amongst the stakeholders. The Commission invited ACER to work out a plan B in the event that the PXs do not agree in mid-September.

The BoR acknowledged the importance of a full NRAs' involvement and commitment in the next milestones of the cross-Regional roadmap on Long -Term Transmission Rights, including the finalisation of the NRAs' wish-list for further harmonisation of the Long-Term allocation rules, taking into account the comments from the public consultation. The BoR welcomed the elaboration of (at least) a regional roadmap for implementing the wish-list before the end of 2013.

Whilst recognising the importance of the four roadmaps, the BoR members underlined that particular attention and priority for the shorter term should be placed to progress on the day ahead and intraday.

#### GRI

The Director and Mr Juan de Miguel from the ACER Gas Department reported on progress. With respect to the GRI, the conclusions of the meeting of ENTSOG, ACER, the EC, Lead NRAs and TSOs on the Implementation Roadmap on CAM in the frame of the Gas Regional

Initiative, held in Ljubljana on Thursday 26<sup>th</sup> July, have been circulated along with a set of slides on the CAM Roadmap (prepared by ENTSOG), to be presented to the next Madrid Forum. These need to be completed by TSOs with additional information for some projects. The slides have also been sent in parallel to NRAs for comments through the GRI Coordination Group.

The mandatory implementation deadline is likely to fall in 2015 or 2016, subject to the timescales for comitology and any dates for the network code coming into force that are defined during comitology. The last Madrid Forum encouraged TSOs, with the full involvement of relevant NRAs and Member States, to work towards setting up a number of regional pilot projects and regional pilot platforms for the early implementation of the CAM NC. ACER and ENTSOG were asked to monitor progress and report back to the next Madrid Forum. The meeting on 26 July agreed on the following steps:

- A presentation of the structure and main contents of the Roadmap is being prepared by ENTSOG for the next Madrid Forum, taking place on 2 and 3 October 2012.
- Subsequently, all parties will aim to reach the final version of the CAM Roadmap within a reasonable period of time, possibly by November-December 2012.
- All interested parties (ACER, ENTSOG, EC, and all relevant TSOs and NRAs) will be informed during the drafting process and their early involvement will be sought. Stakeholders and Member States will be kept informed about the development of the Roadmap.

The next meeting on the CAM Roadmap has been provisionally scheduled for 15 November in Brussels.

Contributions from the regional lead NRAs followed.

### Conclusions

BoR members endorsed the conclusions of the 26<sup>th</sup> July meeting with ENTSOG on the CAM Roadmap including the benefits of converging towards a single EU-wide CAM platform. The platform which at the moment seems to be the reference for that integration (European Capacity Platform launched by NW TSOs) should be as open and inclusive as possible for other TSOs to join at an early stage and fully participate and contribute to its design and implementation.

The BoR noted that the early implementation of the pilots should be regularly assessed and scrutinised to ensure that it is fully in line with the CAM FGs and the NC.

On the ENTSOG's draft slides on the CAM Roadmap, AEEG will send some comments. The BoR welcomed that ENTSOG includes one or two more slides with a clear and precise timeline or plan for the progressive integration of the different TSO pilot projects and platforms.

## **4. ELECTRICITY**

### **4.1. FGs on Electricity Balancing (EBFG)**

The Director presented the FGs submitted for a reasoned opinion. The EC has asked consultants to help with the IA. The public consultation on the draft EBFG closed on June

25<sup>th</sup>. The stakeholder responses have been analysed and further amendments have been made to the draft EBF in light of the stakeholder comments.

The evaluation of responses and an Impact Assessment are also distributed along with the letter from the EC to extend the date for their submission to 18th September (the original was in July).

Mr Crouch presented the main issues arising from the ACER PC to which 48 contributions were submitted. An ACER workshop was organised in Ljubljana, on 29 May and an experts meeting in Paris, on 12 June.

Mr Crouch explained the content of the FGs, including on the timescales introduced, the EU-wide regulatory approvals and derogations. The requirements for automatic reserves are less onerous. The target model is implemented over the next 6 years by 2020 (one year earlier than anticipated). The main changes following the consultation have been introduced on the pricing, products, margins balancing responsibility and imbalance settlement.

The Director introduced his proposal and the changes included therein in particular the process for regulatory approval and the possibility for the Agency to review decisions taken under the NC (under Article 7(4)).

He then explained that the legal considerations will need to be scrutinised by the Commission's legal services.

The BoR discussed the proposed FGs and in particular the new text, focusing on whether these aspects were legally robust or could be better addressed in other ways.

Following the discussion in the BoR the Director withdrew his proposal for a draft opinion. Subject to the consent of the BoR Chair, he will submit it for a BoR formal opinion by written procedure.

*BoR Decision agreed: (D4)*

*The proposal was withdrawn and a revised proposal will be submitted for a BoR formal opinion through an electronic approval in September with a view to delivering the FGs within the 18/09 deadline.*

4.2. ACER opinion on the TYNDP

The ACER opinion on the 2012 TYNDP was submitted for the BoR formal opinion. The deadline for the submission of the FG to the EC is 6 September. Mr Crouch noted that the process followed for commenting within the Working Group had not gone smoothly and improvements would be sought. However, on substance he noted that the AEWG broadly welcomed the main new comments proposed by the Director as set out in an explanatory note:

- The treatment of third party projects should be non-discriminatory.
- With regard to the methodology for cross-border investments, ENTSO-E should aim at identifying in the TYNDP the "optimal" amount of cross-border capacity and at comparing it with the capacity made available from proposed investments; the propose is to be more ambitious in identifying the investment needs.
- The opinion should explicitly not endorse individual projects within the TYNDP.

The other main change introduced by the Director was to amend the structure to place separately (i) process and (ii) methodology.

BoR Decision agreed: (D 5)

*The BoR gave a favourable opinion by consensus on the ACER opinion on the ENTSO-E TYNDP.*

4.3. Report on ITC implementation

The Director presented the first annual ACER report to the European Commission on the implementation of the ITC mechanism in 2011. The Commission Regulation (EC) No 838/2010 provides that the Agency oversees the implementation of the ITC mechanism and report to the Commission each year on the implementation of the ITC mechanism and the management of the ITC fund. This report was submitted to the BoR for discussion as its formal opinion is not required for this type of ACER activity. The Director then presented the main conclusions of the report:

The implementation of the ITC mechanism and the management of the ITC fund in 2011 were generally in line with the requirements set out in the Regulation. However, there is scope for strengthening the quality assurance process and the participation by the ITC Parties.

Regarding specific requirements in relevant clauses of Annex Part A of the Regulation, the report states:

Clause 1 (Reduction of Transit due to capacity allocation not compatible with Point 2 of the congestion management guidelines set out in Annex I of Regulation 714/2009): there were four relevant borders involving four ITC Parties, whose Transits have been reduced and compensation amounts adjusted accordingly.

Clauses 2 and 3 (Equal and not more favourable treatment of third countries): the contractual arrangement treats all ITC Parties alike, thereby satisfying these requirements.

Clause 4 (Fair and non-discriminatory criteria for the valuation of transmission losses): all EU ITC Parties used market-based values for losses, except Greece who adopted a 0€/MWh value, foregoing the losses compensation it would have received from the ITC fund and instead recovering directly from importers the costs of losses caused by cross-border flows.

*The BoR took note and welcomed the report.*

4.4. Loop Flows - Oral update

At the last BoR meeting the members endorsed the follow up approach on this issue (e.g. a Questionnaire to provide data to ACER to monitor loop flows and assess impact of remedies; the modification of the electricity transparency rules; the establishment of a joint ACER/ENTSO-E TF to draft in July the principles of a cost compensation regime for optimal remedial actions; the assessment of minimal guaranteed cross border capacities for the

market; sending a letter from the Agency with the workshop conclusions to ENTSO-E, inviting them to progress the pilot project, copied to the Commission).

Mr Gence-Creux reported on the recent developments. Since July, an ACER/ENTSO-E working group was set up and a BNetzA workshop took place with neighbouring TSOs on 25 July. ACER has written to ENTSO-E to invite it to prepare a pilot project to address the definition of loop flows. The letter will be circulated to the NRAs for information.

Ms Groebel reported on a workshop on 25 July in Bonn to discuss loop flows. The workshop concluded that we need robust and transparent data, based on a common definition. There should also be a common methodology to identify the causes of unplanned flows and their impact on the market. TSOs from the CEE region will prepare a proposal for what data is needed, while data from outside the region will also need to be taken into account. Several TSOs are working on the possibility of a virtual phase shifting transformer (PST). In addition, a fair cost sharing principle must be found for both bilateral incidents and multi-lateral cross-border.

In terms of the next steps, the TSOs have been invited to form appropriate working groups for technical and economic issues. A progress report will be presented at the Commission's upcoming High Level Conference and at the CEEE Forum. These developments will feed into the CEE action plan.

Mr Szorenyi informed the BoR that the CEEE Forum will take place in Budapest on 10 October and that all interested parties are invited. He reported that HEO is working with the Ministry to develop the CEE Action Plan. The plan will focus on short, medium and long-term actions.

Mr Crouch briefly reported that this issue was discussed at the last EWG, where those not involved expressed interest in following progress. The AEWG would welcome ACER's involvement in this work, in particular to keep all NRAs informed.

## **5. GAS**

### **5.1. Update on gas balancing NC**

Mr Boltz gave an update. An ENTSOG workshop took place on 26 July in Brussels, where the highlights of the ACER preliminary opinion were presented. Stakeholders expressed support for ENTSOGs' work, but shared some of ACER's concerns, particularly regarding points b), c) and e) below.

The Commission has developed a questionnaire to collect some data for the IA.

Mr Braz noted the importance of the derogation for small markets.

With regard to the next steps, ACER gas balancing TF will analyse code excerpts and possibly provide informal feedback. ENTSOG will run a mini consultation in the second half of September and ACER/NRAs need to respond to Commission's questionnaire to inform the IA. ENTSOG will finalise the NC by 5<sup>th</sup> November.

## 5.2. Framework Guidelines on Tariffs

The Director presented the FGs on tariffs which are submitted to the BoR for an orientation discussion ahead of the ACER public consultation. Following ACER's scoping consultation earlier in 2012, the Commission has issued its invitation to develop the FGs by 31st December 2012. The Brattle Group were hired to input into the IA and an expert group set up to assess the options.

An explanatory note presenting the Director's assessment of initial ACER BoR reactions to the draft Framework Guidelines was also distributed.

Mr Boltz remarked that the FGs are now ready for consultation. A workshop will be held on 19/09.

The BoR members discussed the FGs.

The Commission noted that the FGs are significantly improved from the scoping paper; on the IA some further work should be done thus the Director wants to publish this a bit later.

### BoR Decision agreed: (D 6)

*The FGs on rules regarding harmonised transmission tariff structures for gas will be finalised after the orientation debate and be launched for public consultation.*

## 5.3. Preparation of ACER opinion on the revised CAM NC

Mr Boltz reported on the latest developments. ENTSOG is currently revising the NC, launched a short stakeholder consultation on the "engagement document" and will deliver the final amended NC by 17 September to ACER.

The CAM network code was completed in March. ACER's reasoned opinion outlined 11 areas that needed to be changed before the network code could go to the Commission. Based on the informal submission of the revised network code, ENTSOG will address all but 4 of the areas in their final network code (to be completed by 17 September). The CAM TF has prepared a note on these 4 areas which was uploaded to the BoR, including what amendments could be possibly proposed on the network code.

Following contacts with ENTSOG, a revised text for the tariff provisions (article 7.3) was developed.

There was a high level conference call with ENTSOG on this compromise and the four open issues.

EC welcomed the attempts to achieve the compromise.

The Director confirmed that ENTSOG publication of the final NC is expected on 17<sup>th</sup> September. ACER would try to issue the opinion before the Madrid Forum (3 October) with a Recommendation to the EC that the NC is adopted subject to the definitive resolution of the above issues. Subject to a solution along the revised text being agreed, the October BoR shall need to provide the formal opinion on the draft ACER opinion. An ACER public workshop will be held on 19<sup>th</sup> September.

BoR Decision agreed: (D 7)

*The BoR took note of the progress and endorsed the revised text for article 7.3 of the NC as proposed by the AWG chair.*

**5.4. Preparation of the Madrid Forum – report on transit contracts**

The 22<sup>nd</sup> Madrid Forum will take place on 2-3 October. It includes a progress report on the EU internal market in gas; the CAM network Code and implementation the Network Code on Balancing; the Framework Guidelines and Network Code on Interoperability; the Gas target model follow-up; an item on Incremental capacity; the tariff structures FGs; the Energy Infrastructure Package; the Regional Initiatives; lastly a REMIT Implementation progress update.

**5.5. ACER opinion on the ENTSOG Summer Supply Outlook 2012**

The Director introduced the draft ACER opinion on the ENTSOG Summer Supply Outlook 2012 which was submitted for a formal opinion of the BoR.

ACER's opinion is positive on ENTSOG's work, but sets out a number of suggestions for improvements: Greater attention in the Outlooks regarding short-term perspectives on supply as such, by analysing information about possible actual supply variations and disruptions, in addition to the focus on the gas network robustness. Improving ENTSOG's modelling, for example by considering separate blocks for the respective market areas in Germany, in a manner similar to the one used for France, Poland and Romania. Regarding the timing for the production and publication of the Summer Supply Outlook 2012, the Agency recommends an earlier publication of future outlooks in order to allow for a higher-level immediate perspective on supply and demand trends during a forthcoming season and potential "warning" in case of specific events.

BoR Decision agreed: (D 8)

*The BoR gave unanimously its favourable opinion on the draft ACER opinion on the ENTSOG Summer Supply Outlook 2012.*

**6. MARKET INTEGRITY AND TRANSPARENCY**

**6.1. ACER recommendation for Records of transactions following PC and 19 July workshop**

The Director reported that ACER has now completed the consultation for its recommendations to assist the Commission in drafting the REMIT implementing acts according to Art 8 of REMIT. The draft takes into account the comments received from the 51 respondents. The 12 recommendations relate to:

- Definition of terms for the data collection under REMIT
- Reporting of records of transactions
- The list of contracts and derivatives to be reported
- De minimis threshold
- Uniform rules on reporting (timing, reporting channels, avoidance of double counting)

The proposed Records of transactions distinguish between records of transactions in derivatives and in energy commodity contracts, the latter separated in standardised and non-standardised contracts. For the records of transactions in derivatives, it is proposed to refer to the data collection under the future Commission delegated Regulation with regard to regulatory technical standards on the minimum details of data to be reported to trade repositories under EMIR currently prepared by ESMA that already takes into account the Agency's contributions on energy derivatives.

The concepts on the list of contracts, the reporting of records of transactions, including orders to trade, through Registered Reporting Mechanisms (RRMs), the avoidance of double reporting and the reporting of regulated information (inside information according to Article 4(1) of REMIT and transparency information under Regulations (EC) No 714/2009 and (EC) No 715/2009, including applicable guidelines and network codes) proposed in the public consultation paper were well perceived by stakeholders.

Concerning the list of contracts, stakeholders proposed not only to establish a list of contracts to be reported, but also a list of contracts not to be reported. This proposal was taken into account in the review of the draft Recommendations and from the Agency's point of view could already supersede the need to define a de minimis threshold for the reporting of transactions in the implementing acts.

The drawing up of an appropriate de minimis threshold for the reporting of transactions was probably the most controversial topic.

It is proposed that a list of energy commodity contracts not to be reported is established in the implementing acts, to exclude contracts for the sale of renewable energy sources as defined in applicable EU renewable energy legislation at national administratively fixed prices (feed-in tariffs) from the reporting obligations under Article 8 of the Regulation. In addition, a de minimis threshold of up to 10 MW on installed capacity for small producers acting individually in the market should be recommended. The increase from the initial 2MW level was considered pro-market in terms of avoiding the administrative costs of reporting and also justified by the concern of several NRAs that a lower limit would require registration of a very large number of small producers whose output volume could not reasonably be expected to provide a threat to market integrity.

Following the BoR meeting, the Director will give due consideration to its advice and opinions. The draft Recommendations may further be discussed in the next AMIT WG meeting during September and are currently intended to be forwarded to the Commission by end of September, depending on DG ENER plans on when to consult on the REMIT implementing acts itself.

Mr Braz suggested a second discussion of this paper at the BoR in October if the discussion at the AMITWG results in significant changes.

*BoR Decision agreed: (D 9)*

*The BoR discussed the final ACER recommendation for Records of transactions which will be further discussed at the AMIT WG.*

## 6.2. Second edition of the ACER Guidance on REMIT definitions

The Director presented the ACER Guidance on REMIT definitions which is a non-binding Guidance – it provides rules of practice, not rules of law. The Guidance is provided to help NRAs carry out their tasks under REMIT in a coordinated and consistent way. The first edition focused on three areas: the definition of ‘inside information’, the types of practices that the Agency considers constitute market manipulation and possible signals of market abuse.

In addition to the issues already covered in the 1st Edition of the Guidance, the 2nd Edition of the Guidance on the application of REMIT concentrates on the following issues:

- A common understanding of the Agency and ESMA on the applicable legal framework and scope of REMIT in relation to the Market Abuse Directive.
- Guidance on the application of the definitions of “wholesale energy product”, “wholesale energy market”, “market participant” and “market manipulation”.
- Guidance on the application of the obligation to publish inside information according to Article 4 of REMIT.
- Guidance on the application of the market abuse prohibitions according to Articles 3 and 5 of REMIT.
- Guidance on the application of the implementation of prohibitions against market abuse according to Article 13 of REMIT.
- Some changes have also been made on the application of the definition of “inside information”, which was already dealt with in the 1st Edition of the Guidance. The changes primarily concern the understanding of the definition of “inside information”.

In the context of providing guidance to the NRAs on the application of the obligation to publish inside information according to Article 4(1) of REMIT, the Agency launched on 19 July 2012 a discussion paper on the disclosure of inside information through platforms. The consultation resulted in a total of 16 responses from stakeholders. In general, the respondents supported the application of central platforms for disclosure of inside information according to Article 4(1) of REMIT, particularly through the nomination of regional or national platforms by NRAs in consultation with market participants. The views of the stakeholders have been taken into account when preparing the 2nd Edition of the Guidance.

This means that NRAs should nominate national or (preferably) regional platforms for the disclosure of inside information, following consultations with market participants, either through a top-down or bottom-up approach. Besides existing transparency platforms from TSOs, operators of energy exchanges or gas hubs could be the obvious candidates for such specific platforms for the disclosure of inside information. NRAs would notify their nominations to the Agency. The Agency would publish a list of platforms allowing for a timely and effective disclosure of inside information according to Article 4(1) of REMIT.

It is anticipated that the 2<sup>nd</sup> edition of the guidance will be published in September 2012, following the BoR meeting. Lord Mogg proposed that the Guidance (2<sup>nd</sup> edition) indicates its difference with the previous version.

BoR Decision agreed: (D 10)

*The BoR discussed the 2<sup>nd</sup> edition of the ACER Guidance.*

## 7. CROSS-SECTORAL

### 7.1. Energy Infrastructure Package RGs preparatory steps

The BoR discussed the preparatory work on the EIP in the regional groups and the roles and responsibilities of NRAs and ACER during the preparatory phase.

#### BoR Decision agreed: (D 21)

*The BoR approved the letter to be sent on behalf of the BoR chair to the EC on the EIP reflecting this discussion. The Commission underlined that there is a room for improvement in the process and to this end invited a meeting on September 24<sup>th</sup> to clarify the output required by the NRAs and the role of ACER.*

### 7.2. Report on the planning group meeting

It took place on 28 August to discuss progress on the 3year plans. The Commission reported that the Communication on Internal Energy Market is expected on 17<sup>th</sup> October and a conference will be organised in this respect.

Ms Kloc reported that gas congestion management guidelines have been adopted and there will be further follow up before Christmas on their implementation. Regarding incremental capacity, the Commission is aware of CEER's on-going consultation on this issue and is very interested in the results, which may hopefully also feed into ACER's future work in particular on the market test design for exemptions.

Mr Supponen reported that the electricity governance guideline has been completed and there was a proposal at the planning group to integrate these guidelines in the CACM network code. ENTSO-E has reservations about including this in the text formally, given the late stage of their work on the network code.

The Director reported on the ACER Guidance paper on NC amendment process: the ENTSOs will send some final comments (regarding their position in the process; as well as the consultation period which maybe too short, reinforcement of the IA, increase transparency). Subsequently, the paper will be put on ACER website perhaps with a possibility to allow for comments whilst not for a formal public consultation.

The next meeting of the planning group will be held on 19 November. The EC reported that 2013 priority list has been adopted in July and that at the next planning group meeting a discussion should start on priorities for 2014.

### 7.3. Update on ECRB activities

The next ECRB meeting will be held on 23rd October. Mr Thomadakis reported on the current discussions with regard to the participation of third countries to ACER on the basis of a paper which is being developed by the ECRB. The EIP has indeed a South East dimension and the Commission is thinking of formulating an EIP regional group.

The Commission alerted on the conditions laid down in the ACER Regulation (Article 31) for the participation of third countries to the Agency. The Commission's views on participation of

third countries in ACER were further formulated in a working document. To the extent that coordination is needed in practice, both institutions should clarify how to best use synergies.

## 8. IMPLEMENTATION, MONITORING AND PROCEDURES WG

### 8.1. Update on progress

Mr Marek Woszczyk reported that the next AIMP WG meeting will take place on 12 September. The TF are working on the NC monitoring paper and the paper on the process for Agency peer reviews.

## Part B: Items for Information only

## 9. ELECTRICITY

### 9.1. ACER opinion on NC RfG

Mr Crouch reported on the progress in preparation of the ACER's opinion on the NC on the Requirements for Generators Network Code (RfG) which covers the conditions for generators to connect to the grid. This was submitted by ENTSO-E on 14 July and ACER is currently preparing its opinion to be finalised and submitted at the BoR on 1st October, following detailed discussion at the EWG on 12 September.

*The BoR took note of the progress of work in this area.*

### 9.2. Update on CACM and SO NC

A letter has been sent by to ENTSO-E regarding the Network Code on CACM.

## 10. OTHER

### 10.1. Next meetings 2012 and definitive dates for 2013

- 22<sup>nd</sup> ACER BoR, 1<sup>st</sup> October, 14.00-19.00, Madrid
- Madrid Forum, 2-3 October

### 10.2. Director decision 2012-022: Appointment of new Vice Chairs for the EWG & MIT WG

The formal appointments Decisions on the appointment of Mr Moelker as the AEWG vice chair and Mr Lakhoua as the AMIT vice chair have been circulated.

### 10.3. Latest AB decisions

#### External communication guidelines

The Director introduced the draft guidelines on external communication which have been prepared following a request by the AB. The purpose is to underline that communication provides consistent messages; reflects the official position of the Agency and does not adversely affect the image or reputation of the Agency and caution is maintained while the official position of the Agency on specific issues is formed. The draft note provides a proposal, for discussion in the Administrative Board and the Board of Regulators, for guidelines on external communication, which are aimed at achieving the objective defined above in the most effective way. These guidelines, once agreed, should be implemented in each Board through their respective Rules of Procedures.

#### BoR Decision agreed: (D 32)

*Following the discussion at the AB (the following day) a proposal will be submitted for discussion at the October BoR meeting.*