

**23<sup>rd</sup> ACER Board of Regulators meeting**  
**Tuesday, 6 November 2012, from 09.00 to 13.00**  
 Amathus Hotel, Amathus avenue, 3606 Limassol, Cyprus

**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 A: Dietmar Preinstorfer O: Johannes Mayer	<b>Latvia (PUC)</b>	A: Ainars Mengelsons O: Lija Makare
<b>Belgium (CREG)</b>	A: Koen Locquet	<b>Lithuania (NCC)</b>	A: Vygantas Vaitkus O: Dalius Kontrimavičius
<b>Bulgaria (SEWRC)</b>	A: Anjela Raikova	<b>Luxemburg (ILR)</b>	M: Camille Hierzig – represented by Koen Loquet
<b>Cyprus (CERA)</b>	M: Georgios Shammias	<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: M. Woszczyk
<b>Estonia (ECA)</b>	O: Tiina Maldre	<b>Portugal (ERSE)</b>	A: José Braz
<b>Finland (EMV)</b>	M: Riku Huttunen	<b>Romania (ANRE)</b>	M: Niculae Havrilet A: Lusine Caracasian
<b>France (CRE)</b>	O: Michel Thiollere O: Sabine Hinz	<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 A: Caroline Tomqvist
<b>Ireland (CER)</b>	M: Dermot Nolan	<b>United Kingdom (Ofgem)</b>	M: John Mogg (BoR Chair) A: Martin Crouch O: Clemence Marcelis
<b>Italy (AEEG)</b>	A: Clara Poletti O: Miranda Diana		

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

Observers	Name
ACER	Alberto Pototschnig, Fay Geitona
European Commission	Kamila Kloc
CEER	Natalie McCoy, Una Shortall, David Haldearn

<b>Main conclusions from the meeting:</b>
1. Lord Mogg and Walter Boltz were unanimously appointed as Chair and Vice Chair respectively of the Board of Regulators (BoR) for a new term of office of two and a half years taking effect from 6 November 2012.
2. The BoR provided a favourable opinion on the revised ACER Recommendation on the network code on capacity allocation mechanisms for the European Transmission Network.
3. The BoR members had an orientation discussion on the forthcoming ACER Reasoned Opinion on electricity CACM NC and on the main issues regarding the DCC code. Regarding the latter they agreed to fill in a questionnaire to help prepare the ACER opinion.
4. The 2nd round of the BoR electronic process on the ACER opinion on RfG ended on 12 October. 24 members participated and all voted in favour. The opinion was subsequently adopted (on 13 October) and published.
5. The members received an update on the ERI and GRI and discussed the way forward.
6. The BoR took note of the REMIT budget developments and agreed the following actions: <ul style="list-style-type: none"> <li>- Work should continue at the task forces and AMIT working group (with strong involvement of NRAs) on issues related to data requirements for detecting market abuse.</li> <li>- NRAs will develop a joint questionnaire to identify monitoring and surveillance best practices. This questionnaire also could serve to identify the different situation of each NRA and the potential level of substitution in monitoring activities that could be provided by NRAs on an interim basis until full REMIT implementation by ACER.</li> </ul> <p>NRAs acknowledged that budget restrictions and the delay on IT procurement will also have an impact at national level of which the Council should be kept informed.</p>

## Part A: Items for discussion and/or *decision*

Mr Shammas welcomed all members in Cyprus and expressed CERA's pleasure to host the meeting. He noted the main challenges ahead for the Cypriot Presidency including strengthening of the SoS and the development of the appropriate infrastructure. A key development in Cyprus has been the recent discovery of gas reserves.

### 1. Opening

#### 1.1 Approval of the agenda

*BoR Decision agreed: (D 1)*

*The agenda was approved.*

#### 1.2 Approval of the minutes of the 22<sup>nd</sup> BoR meeting

*BoR Decision agreed: (D 2)*

*The 22<sup>nd</sup> BoR minutes were approved.*

#### 1.3 Update on ACER activities

The Director reported that ACER recently published 2 vacancies for SNEs, for a total of up to 5-6 positions and invited NRAs to support the Agency by submitting candidates for these positions.

#### 1.4 Update from the Commission

##### - IEM Communication

Ms Kloc reported that the adoption of the Communication is expected as planned for mid - November. After adoption, presentations will be held in some Member States. A conference is planned for next year.

### 2. Appointment of the BoR chair and vice chair

#### 2.1 Appointment of the BoR chair and vice chair

The term of the BoR chair and the vice chair, appointed on 4 May 2010 (with a term of office of two and a half years which is renewable), come to an end in November 2012.

The RoP of the BoR provide that a quorum of at least two-thirds of the members present or represented is required. 25 members were present and one member was represented through a proxy sent in advance to the Secretariat (Mr Camille Hierzig was represented by Mr Koen Locquet).

Fay Geitona reported that nominations for the positions of the Board of Regulators chair and vice chair were opened by the BoR Secretary at 3 October by closing date 16 October. At

the closing date (16 October), Lord Mogg and Walter Boltz were the only candidates for the BoR chair and vice chair positions respectively.

A note was also circulated to all members on the nominations and the process which mainly replicates the process agreed at the BoR inaugural meeting. A formal election process (based on a secret vote) was envisaged only if there was more than one candidate for either the position of the chair or vice chair, thus the BoR members were invited to indicate whether there is consensus with regard to the appointments of Lord Mogg and Walter Boltz for a new term.

The candidates were invited to inform the BoR members on the duration of their terms of office at national level (in accordance with Article 3.2 of the RoP).

The Director thanked Lord Mogg and Walter Boltz for their important contribution during the first years of the Agency. He looks forward to continuing his collaboration with both of them.

Lord Mogg briefly reported on the new CEER premises. The expectation is to move to the new CEER premises in May 2013.

BoR Decision agreed: (D 3)

*Lord Mogg and Walter Boltz were unanimously appointed as Chair and Vice Chair respectively of the ACER Board of Regulators (BoR) for a new term of office of two and a half years taking effect from 6 November 2012.*

### **3. GAS**

#### **3.1 Progress on Gas Balancing NC**

Mr Boltz presented the state of progress. The network code due on 5 November was delivered on 26 October and ACER's reasoned opinion will be due within 3 months thereafter (26 January 2013).

ACER had expressed concerns on the code in its preliminary opinion in June. Throughout the network code development phase, discussions were held with ENTSOG. A letter from ACER to Stephan Kamphues on 2 October with the areas of concern was circulated.

Mr Boltz updated the BoR on the latest developments. Although ENTSOG has made a number of improvements to address ACER's concerns, some issues remain.

#### **3.2 ACER Recommendation on the Capacity Allocation Mechanisms NC, change of legal basis**

The Director presented the revised draft ACER Recommendation and the background.

On 4th October, ACER sent its Recommendation to the Commission asking it to adopt the CAM NC on its own initiative, as there are 4 outstanding areas with respect to which the NC is not in line with the FGs. This was adopted on the basis of Article 5 ACER Regulation.

On 15th October, the Commission sent a letter suggesting that the legal basis is changed to Article 6(9) of the Agency Regulation. The Commission clarified that Article 6(9) can not only

be used where ACER is fully satisfied that the NC is in line with the FGs, but also in other cases and that it does not preclude ACER from making any suggestions or reservations.

Mr Boltz reported that at the AGWG (which met on 16 October) there were no reactions to changing the legal basis of ACER's recommendation. Mr Boltz noted that the key issue at this stage is to speed up the process and adopt the revised Recommendation.

The revised ACER Recommendation which was submitted for a BoR formal opinion is based on Article 6(9) and does not make a reference to the adoption of the network code on the Commissions' own initiative.

Ms Kloc clarified that the EC's intention was to avoid potential delay as well as to fully take into account the work done by ENTSOs and ACER.

*BoR Decision agreed: (D 4)*

*The BoR provided a favourable opinion to the draft revised ACER Recommendation on the network code regarding capacity allocation mechanisms for the European Transmission Network.*

## **4. ELECTRICITY**

### **4.1 ACER Reasoned Opinion on CACM NC**

Mr Crouch presented the main issues and the background. The CACM NC was submitted to ACER at the end of September and ACER needs until the end of December to finalise its formal opinion. The final draft of ACER's opinion will be submitted to the BoR for its formal opinion at the meeting on 4 December, however the BoR was invited to have an orientation discussion on the main issues identified and the next steps.

The European Commission is also likely to fully integrate the network code with the Governance Guidelines, but we are unclear when and how, thus further clarification is needed. For example some aspects of the CACM Network Code will be amended following the ACER's opinion before comitology. Thus this is related to the ACER legal opinion as such given the document which will eventually be submitted to the Comitology (with or without the governance elements) is unknown.

Regarding the Governance Guidelines, the relevant issues are not addressed in the CACM FG and only partly included in NC (e.g. designation and tasks for market operator). Some missing parts from governance guidelines include *inter alia*: Committees and decision making; regulatory monitoring; cost sharing; responsibilities transferred from TSOs to market operators by NC appear to be removed from regulatory approvals of TSO access rules in the Electricity Directive.

Mr Crouch then highlighted the main issues and deviations from the FGs.

### **4.2 DCC preliminary opinion**

Mr Crouch presented the state of play. The Demand Connection Code (DCC) is currently being re-drafted by ENTSO-E following the close of the public consultation on 12<sup>th</sup> September. Following the discussion regarding NRAs' continuing concerns with the Demand

Connection Code (DCC) ACER wrote to ENTSO-E on Tuesday 23 October highlighting three priority issues which it expects to be addressed before the code is submitted to ACER on 5 January 2013.

Martin Crouch gave a presentation and the BoR was invited to note the main concerns.

On 5 January 2013, the DCC NC is due to be submitted with its supporting documentation by ENTSO-E. On 5 April 2013, ACER will provide its opinion within three months. Following discussion at the next AEWG, a progress report will be provided for the December BoR.

BoR Decision agreed: (D 5)

*The members took note of the state of play and agreed to the approach proposed regarding responding via a questionnaire to help prepare the ACER opinion.*

4.3 Preparation of Florence Forum

Mr Crouch presented the main items in the agenda. The Florence Forum will take place on 20-21 November. The presentations should be sent to the Commission before Friday 9 November.

ACER presentations will cover:

- 1.0 Infrastructure package and infrastructure financing
- 1.4 TYNDP – Presentation by ACER
- 2.0 Electricity Regional Initiatives
- 2.5 Loop-flows: follow up. EC, ACER and ENTSO-E report
  - TF on cross-border redispatching
  - Progress on NWE and CEE
  - ITC
- 3.0 Internal Market: single market by 2014
- 3.3 The Framework Guidelines/Network Codes: ACER and ENTSO-E
  - - grid connection
  - - system operation
  - - balancing
- 4.0 Market Integrity and transparency

The next planning group meeting will be held on 20 November (10.30-13.00) before the FF. The BoR coordination meeting will be held at the end of the first day of the Florence Forum, on 20 November, at 18.00.

Ms Kloc confirmed that the minutes of the previous planning group meeting will be circulated shortly.

4.4 Electronic approval of RfG ACER Reasoned Opinion

Lord Mogg reported that the 2nd round of the BoR electronic process on the ACER opinion on RfG ended on 12 October. 24 members participated and all voted in favour. The opinion was subsequently adopted (on 13 October) and published.

Mr Crouch reported on the trilateral which was held on 30th October between the Commission, ACER and ENTSO-E to set out a timetable for next steps and outcomes for the RfG NC.

The members took note of the progress.

## **5. Cross-sectoral**

### **5.1 Energy Infrastructure Package**

Fay Geitona gave a presentation. She noted the important efforts by NRAs and ACER to undertake this exercise.

As expected, on 5 October (and the following week) the Commission sent us information on the candidate projects (project questionnaires) for all corridors. The EC has sent some (qualitative) information on the electricity and gas projects. The information has also been uploaded in the relevant meeting folders for each corridor of the ACER website.

The initial step (to be completed by 15 October) was for NRAs to advise on the projects for which they have additional data and to indicate for which projects they are going to provide an “opinion”, as well as the degree of project-wide regional cooperation they envisage. The NRAs which have replied were presented reflecting those appearing in the composition of the corridors; however, other countries may also reply if they are impacted.

The Director has sent checklist and a consistency note to the working groups (on 18 October), for electricity and gas respectively, in order to ensure consistency, within and across the different regions, in the regulatory assessment of project proposals. These have been available as an online tool on 26 October in the ACER net. The checklists have been finalised taking into account the comments emerged during the EWG and GWG meetings.

The Commission reported that the first trilogue was held in October and 2 more trilogues are scheduled in November. On PCI identification, the Commission confirmed the timing presented. Ms Kloc thanked regulators for the work done and noted the importance of having a consistent set of data. She also noted the importance that NRAs look into the projects which although outside of their territory, they might have an impact on it.

### **5.2 Progress on the RIs**

#### **ERI**

The Director presented the progress on ERI.

Implementation of the target model in the CEE Region (2 notes were uploaded): An information note on the situation regarding implementation of the target model in the CEE Region, which was prepared by E-control as lead regulator. 4 NRAs of the region (PL, SK, CZ, and HU) have responded in a separate note which was also circulated.

Ms Kloc reported on the high level conference held by the Commission on loop flows. She recognised that despite the deadlock in the CEE region, some options were considered at this conference to allow moving forward with the implementation of the target model, whilst with some additional safeguards (i.e. including introducing some corrective method).

The Director noted that this debate is superseded by the events as 3 countries already launched Market Coupling. He noted that we should not delay the implementation of FBMC but try - in parallel - to solve the problems of loop flows.

On progress in the implementation of the target model in the CEE region, the BoR concluded as follows:

Recognising the importance of issues relating to the successful implementation of the day ahead target model, and the efforts to resolve them taken by NRAs in the CWE and CEE regions, BoR urges progress to be maintained on market coupling without further delay and dealing with other issues such as loop flows in parallel.

#### Intraday

Regarding intraday, as indicated in the draft presentation for Florence, the Director reported that progress is on hold although the Power Exchanges are currently working on a common intraday trading platform to implement in the North West Europe region. PXs presented the details of their selection process and criteria to stakeholder associations and they expect that they will select the intraday platform service provider by Christmas.

#### **GRI**

Ms Poletti underlined that most of the activities recently carried out by the Gas Regional Initiatives concern the early implementation of the CAM NC. She reminded that 8 months ago the Madrid Forum encouraged TSOs and NRAs to work towards setting up pilot projects aimed at testing CAM provisions and asked ACER and ENTSOG to monitor progresses and ensure that a coherent approach is followed by the different projects. For this reason ACER and ENTSOG decided to jointly draft a Roadmap on the early implementation of CAM NC. The Roadmap represents a novelty in the context of GRI since it enlarges the scope of these initiatives to a cross-regional dimension which is essential to increase consistency between and across the work of the gas regions. The proposal is to have a Roadmap made up of two main parts. The first one, to be drafted by ACER, will describe the background, the general principles of the roadmap and the governance. In particular, the governance shall allow the involvement of all interested EU stakeholders in the process; the coordination between NRAs and TSOs that are implementing CAM pilot projects; the monitoring and reporting on the whole process by ACER and ENTSOG. The second part, to be drafted by ENTSOG, will be more focused on the details of CAM implementation, identifying which part of the CAM NC are being implemented by each pilot project and describing the timeline for their implementation and, where appropriate, convergence.

ACER and ENTSOG are already working to jointly draft the Roadmap and have defined a calendar. A draft will be presented at a meeting planned in Brussels on 15 November. The meeting will be opened to TSOs, NRAs, ACER, ENTSOG and the European Commission. Following this meeting it will be presented to the BoR.

The GRI quarterly report has been also circulated.

Mr Boltz welcomed the progress achieved. He hoped that this is inclusive to all TSOs and is properly organised to avoid any delays which have been noted in the electricity side.

### 5.3 Update on ECRB activities

Mr Thomadakis provided an update on developments in the Energy Community. The 21<sup>st</sup> ECRB meeting took place on 23 October and the agenda was circulated. The main issues discussed were the ACER-ECRB cooperation although the exact issues for which it is proposed to pursue this have not yet been agreed. It also discussed the PCI selection being extended to the Energy Community without clarification on how the 2 processes will converge. Finally he reported on the coordinated auction office which is up but not running smoothly.

There will be a new head of the Energy Community, Mr Janez Kopac succeeding Me Slatvcho Neykov. He is the former Director General of the Ministry of Economics of Slovenia.

## **6. Market Integrity and Transparency**

### 6.1 Organisation of the REMIT implementation process in the AMIT WG

Mr Braz gave a presentation on the organisation of the AMIT WG to coordinate the activities of the working group and the various task forces and expert group. There is significant work being undertaken on REMIT under the AMIT Working Group. The Working Group is supported by three Task Forces:

- The wholesale market surveillance Task Force and the market surveillance ad hoc expert group (responsible for ACER guidance; monitoring case practices of NRAs under REMIT; implementation of investigatory and sanctioning powers into national law; Market Surveillance Forum and the Q&A, etc.).
- The market monitoring and governance Task Force and the REMIT implementation ad hoc expert group (which deals with REMIT registration format and transparency platform for market participants; ACER recommendations on REMIT records of transactions, etc.).
- The IT management and governance Task Force (which deals with recommendations for data formats and data transmission protocols for secure and reliable exchange of data; access techniques and developing role based access right models for different groups and stakeholders; the recommendations for data sharing interface definition).

Mr Braz also noted the importance of NRAs' involvement in the Task Forces (in addition to the AMIT Working Group).

*The BoR members took note of this report.*

### 6.2 Implications of MiFID/MAD review

Following a letter by Lord Mogg to DG ENER and DG MARKT setting out concerns over changes to definition of financial instruments under MiFID II, responses were received by DG ENER and DG MARKT with an invitation for a meeting at working level to discuss these issues. DG MARKT in their letter acknowledges regulators' concerns and notes the EC policy is not to change the existing demarcation between physical and financial markets, while at the same time it does not wish to 'roll back' the scope of existing financial Regulations.

Subsequently, a meeting took place at WG level with DG ENER and DG MARKT on 30 October 2012. The presentation by the EER along with a note on the meeting was circulated.

### 6.3 REMIT budget developments and impact on NRAs

The Director reported on the latest budget developments and the prospect that there will be a reduction of €3 million in ACER's IT budget for implementing REMIT. There may be greater certainty by the end of November when the Council and Parliament reach agreement. If the additional funding is not approved, there is also a possibility DG ENER will provide additional funding through an internal transfer. The Director is preparing a revised work program for 2013 in light of the funding issue to reflect the budget constraints and remove IT related deliverables. At the EP plenary vote on 23 October the amendment on the staff (15 extra staff) has been adopted but the other amendments on the additional budget for the IT system have not been retained.

Lord Mogg reported that at the meeting with P. Lowe he indeed committed to try to resolve this issue with the possibility of an internal transfer. It is crucial that despite these developments neither ACER nor NRAs is seen as not delivering.

Ms Kloc confirmed the budget developments. The discussion on the budget has now moved at the level of the Council. We have to wait until the end of November for the finalisation of the budget discussions and then explore other options like an internal transfer.

Mr Braz then presented the main issues outlined in the note and the way forward.

#### BoR Decision agreed: (D 6)

*The BoR took note of the budget developments and agreed the actions proposed in the note by the AMIT WG chair:*

- *Work should continue at the Task Forces and AMIT working group (with strong involvement of NRAs) on issues related to data requirements for detecting market abuse.*
- *NRAs will develop a joint questionnaire to identify monitoring and surveillance best practices. This questionnaire also could serve to identify the different situation of each NRA and the potential level of substitution in monitoring activities that could be provided by NRAs on an interim basis until full REMIT implementation by ACER.*
- *In parallel, NRAs acknowledged that budget restrictions and the delay on IT procurement will also have an impact at national level of which the Council should be kept informed.*

## **7. Implementation, Monitoring and Procedures WG**

### 7.1 Update on progress

Mr Woszczyk presented the key issues from the last working group which also included a discussion on the Agency peer review paper and the market monitoring report (7.2 below).

He also reported that the EC has alluded informally that the NC once adopted will not be an annex of Electricity and Gas Regulations.

The Director confirmed that the EC' legal advice is being sought on peer reviews. In his view, this issue has a more strategic dimension and not only a legal one.

Lord Mogg concluded that PWS should explain the different legal options and consequences and finalise their paper without drawing any conclusions for now.

## 7.2 Joint CEER/ACER Market Monitoring Report

The first Joint ACER/CEER report was submitted to BoR for information. Lord Mogg thanked all contributors to the report.

He explained that a new version of the executive summary has been circulated on Tuesday (30 October) which incorporates some changes from the BoR chair and the Director. Before finalising the executive summary a table with key messages/recommendations shall also be included.

Regarding the foreword, a joint foreword (from the Director and Lord Mogg) is being prepared.

With regard to the next year's report, a separate discussion will be held to decide the appropriate approach.

The Director remarked that a quality assurance/supervision and improvements on the main report will be needed before its final publication.

A joint CEER/ACER public event to launch the report will be held on 29 November in Brussels. The agenda of the joint launch event of 29 November was circulated. So far EFET and BEUC have confirmed. Philip Lowe is not available and the Commission's representative is to be confirmed. Mr Dobbeni is not available and ENTSO-E is looking for alternative speaker.

Lord Mogg concluded that the CEER GA members will be asked for a mandate to finalise the report in a small committee from ACER and CEER which will comprise mainly Lord Mogg and the Director in coordination with the AMIP WG and Johannes Mayer as well as the CEER SG. This will take account the comments received by members.

### ***Part B: Items for Information only***

*These items will not normally require an oral report at the BoR (unless the agenda indicates a rapporteur) and are for Members to take note and/or ask questions*

## **8. Electricity**

### 8.1 ITC consultation

From 16 October 2012 to 14 November 2012 the Agency is running a Public Consultation on Assessment of the Annual Cross-Border Infrastructure Compensation Sum. The consultation document was circulated and the Consentec report.

## **9. Gas**

### 9.1 Report on Madrid

The conclusions were circulated.

## **10. Market Integrity and Transparency**

### 10.1 Surveillance forum

An information note has been prepared about the “REMIT Surveillance Forum” established last April. The general idea of the REMIT Forum is to provide an online internal tool for ensuring harmonisation of views on the application of REMIT among NRAs and ACER.

Mr Braz reported this although this is being used and the questions posted by the NRAs are very useful and most of them were elaborated in the 2nd Edition of ACER’s Guidance. However, in general NRAs have not interacted between them as initially foreseen. The scope of the Forum was for the NRAs to post their/industry questions and to discuss them on-line so to reach a common view on the topic/issue. Most of the time NRAs had limited their contribution to posting the questions on the Forum without any further discussion.

Regarding the next steps it was proposed to designate a drafting team to stimulate further discussions through the REMIT forum and to make use of it. The Director welcomed the proposal to make this more interactive.

### 10.2 Recommendations on the Records of Transactions and the Implementing Act

ACER Recommendations to the Commission regarding the records of transactions have been circulated to the BoR.

## **11. Others**

### 11.1 Next meetings 2012 and dates for 2013

20 November at 18.00: BoR coordination meeting

20-21 November: Florence Forum

29 November: ACER/CEER Annual Market Monitoring Report launch (Brussels)

4 December: BoR (Ljubljana)

### 11.2 Latest AB decisions

No AB decisions were circulated.