

## 12<sup>th</sup> ACER Board of Regulators meeting

Tuesday, 11 October 2011, from 14.00 to 18.00

Auditorium Maximum, Jagiellonian University  
ul. Krupnicza 33, Krakow

### Minutes

#### Participants

Member States	Name <sup>1</sup>	Member States	Name
Austria (E-Control)	A: Dietmar Preinstorfer O: Sarin Abado	Latvia (PUC)	M: Valdis Lokenbahs A: Ainars Mengelsons O: Lija Makare
Belgium (CREG)	A: Koen Locquett	Lithuania (NCC)	A: Vygantas Vaitkus
Bulgaria (SEWRC)	A: Evgenia Hartonova	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Georgios Shammas	Malta (MRA)	O: George Cassar A: Anthony Rizzo
Czech Republic (ERO)	M: Blahoslav Nemeček	Netherlands (NMa)	A: P. Plug O: Menno Van Liere
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	M: Marek Woszczyk, A: Halina Bownik-Trymucha O: Kamila Kloc-Evison
Estonia (ECA)	A: Külli Haab	Portugal (ERSE)	A: José Braz
Finland (EMV)	M: Riku Huttunen	Romania (ANRE)	A: Lusine Caracasian
France (CRE)	A: Philippe Raillon	Slovakia (RONI)	A: Nataša Hudcovičova
Germany (BNetzA)	M: Johannes Kindler O: Daniel Müther	Slovenia (AGEN-RS)	M: Irena Pracek A: Jasna Blejc
Greece (RAE)	A: George Koutzoukos	Spain (CNE)	A: Tomás Gómez O: Rafael Gomez-Elvira
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)	M: Valeria Termini		

Observers	Name
ACER	Alberto Pototschnig, Fay Geitona
European Commission	Inge Bernaerts, K. Sikow-Wagny, Aurora Rossodivita
CEER	Natalie McCoy

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

**Main conclusions from the meeting:**

1. *The BoR members took note of the ACER preparation with regard to REMIT. They welcomed the creation of a new ad hoc group (composed of ACER staff and NRAs) to conduct an urgent analysis of a "REMIT landscape" and on the most appropriate allocation of monitoring responsibilities between NRAs and ACER and to report to the December BoR meeting.*
2. *Members welcomed the approach on publication of background papers. The BoR Chair will inform the AB Chair of the approach to be adopted in the BoR in order to ensure a consistent approach between the two Boards with regard to the implementation of the relevant provisions (applying to both the AB and the BoR). Following the AB reaction, the intention is to finalise the list of background documents in order to proceed with publication.*
3. *The BoR provided a favorable opinion on the FG on gas balancing.*
4. *Members discussed the proposal for a study for the auction design to be used by ACER when developing their formal opinion on ENTSOG's NC on CAM. Most members saw the value of having some consultancy input but noted their wish to use the expertise by NRAs.*

## Opening

### 1. Approval of the agenda

BoR Decision agreed: (D 1)

The agenda of the 12<sup>th</sup> ACER Board of Regulators meeting was approved.

### 2. Approval of the minutes of the 11<sup>th</sup> BoR meeting & review of actions

BoR Decision agreed: (D 2)

The 11<sup>th</sup> BoR meeting minutes were approved.

### 3. Report on ACER progress

#### 3.1. Report on recruitments

Mr Pototschnig provided an update on ACER progress in recruitment.

#### 3.2. Report on the 6<sup>th</sup> AB meeting

The Director reported on the main decisions adopted by the AB.

#### 3.3. Board of Appeal

The BoR chair reported that the members of the Board of Appeal have been appointed following a decision by the Administrative Board (No 20/2011) circulated to the BoR

members. The Director informed the BoR that the Agency is in the process of receiving acceptance confirmation from the appointed BoA members (5 members and 5 alternates have so far confirmed their appointments).

Lord Mogg reiterated that the members of the BoA shall not perform any other duties in the Agency, in its Administrative Board or in its Board of Regulators in accordance with the ACER Regulation.

### 3.4. REMIT

The Regulation on integrity and transparency of energy markets was adopted by the EP late September. REMIT was formally adopted by the Council on 10 October and will come into effect in December 2011.

The Director gave an update on the Agency's preparations to implement the REMIT provisions (relevant to ACER-responsibilities and tasks). In undertaking the wholesale market monitoring there will be two stages: an automatic screening of trades as well as a preliminary analysis of the events highlighted by the automatic screening, to detect those events/instances which need to be notified to NRAs for investigation (and subsequent enforcement) and a preliminary assessment of the identified events/instances to establish whether there are reasonable ground to suspect that abusive behavior has taken place. He also presented the implications in terms of staffing and massive developments of IT capacities to undertake the new duties.

The Director is already working on a detailed implementation plan. He intends to establish a small 'implementation team' with a few regulators with experience in market monitoring and ACER staff to help develop this plan and try to manage the day to day implementation on REMIT. He hopes to present an implementation plan at the December BoR.

Ms. Bernaerts supported early discussion and preparation for implementation of REMIT. Some of the provisions will not come into effect until after implementing acts are adopted. She welcomed fact-finding efforts and suggested also widening the scope of fact-finding to see what other regulators (e.g. financial) and other authorities (e.g. competition authorities) do in this area.

#### Decision agreed: (D 3)

*The BoR members took note of the ACER preparation with regard to REMIT. They welcomed the creation of a new ad hoc group (composed of ACER staff and NRAs) to conduct an urgent analysis of a "REMIT landscape" and on the most appropriate allocation of monitoring responsibilities between NRAs and ACER and to report to the December BoR meeting.*

## **4. European Commission's update**

### Certification of TSOs - staff working paper

Ms. Bernaerts provided an update on Commission activities. The Commission's published Staff Working document was circulated. It describes the information which is necessary for the Commission for its assessment of the preliminary decisions in the certification procedure. Contact points for all NRAs have now been communicated to the EC. The Commission has begun to receive notifications from NRAs. CRE has submitted 3 notifications for TSOs (ISO

model). The Commission has found the informal discussions with the regulator very useful and was grateful for the pre notification meeting held with CRE.

-Report on IEM conference on 29 September:

Ms. Bernaerts summarized the 29 September Conference on the Internal Energy Market. The Commission plans to organize this event annually. The Commission is planning to set up an Electricity Coordination Group and will be sending invitations soon. The conference participants underlined the importance of the implementation and transposition of the third package and other challenges such as the integration of large proportions of RES; investments. Lord Mogg also reiterated some of the key messages such as the need for stability (and the avoidance of frequent changes in legislative proposals); as well as the importance of a stable regulatory framework and independent regulators to make Europe investable reiterated by senior industry representatives.

## CROSS SECTORAL

### 5. Regional Initiatives

The Director reported that GRI plans were presented at the Madrid Forum and the Forum asked the GRIs to work towards deepening those plans. He also informed the BoR that the next GRI coordination meeting is scheduled for 25 October to discuss the main outcomes of Madrid.

Regarding the ERI we are at the stage of finalising the cross regional plans. The work now focuses on making the regional and cross-regional roadmaps fully consistent. The Director will soon write to the ERI lead NRAs to propose that the regions organise implementation group or stakeholder group meetings to discuss the cross regional plans with stakeholders.

### 6. Infrastructure Package: follow-up and update on recent developments

Ms. Sikow-Wagny provided a summary of the Commission's work to finalise a proposal for an Infrastructure package. The aim is to finalise and publish the proposal on 19 October after the Commission's inter-service consultation. The Commission envisages having the first PCI list in 2013.

Lord Mogg thanked the Commission for the open dialogue on the EIP proposals.

Lord Mogg announced his intention to write to the EC to communicate the views of the regulators once the Commission's proposal is adopted and released.

### 7. Update on the adoption of 2012 ACER WP

The Director reported on the adoption of the ACER 2012 WP. Following the formal Commission's opinion (circulated to members) the revised 2012 WP was approved (through electronic procedure) by the BoR and was adopted by the Administrative Board. It was subsequently published on the ACER's website.

The main changes reflecting the Commission's opinion relate to: (a) the alignment of the timing of framework guidelines and opinions on draft network codes with the 3-year plans;

(b) the inclusion in the ACER tasks of the certification of Transmission System Operators (TSOs); (c) inclusion of some specific deliverables on REMIT.

Lord Mogg reported that the first round of the BoR electronic procedure, with the accelerated deadlines for the approval of the 2012 ACER WP during which the members were invited to submit comments, ended on 19 September. At the 2nd round of the electronic approval (which ended on 21<sup>st</sup> September), 21 members participated and all voted in favour of the WP.

## **8. Approach for publication of background documents & list of docs for publication**

The Director presented a proposal suggesting a consistent approach for the BoR and the AB with regard to the relevant provisions on the publication of background documents under Article 10 of Regulation No 713/2009, Decision AB No 08/2010 and the BoR Decision No 01/2011. These state that background documents used by the Administrative Board, the Board of Regulators or the Board of Appeal shall be made public by the Agency, unless the relevant Board has determined that such background documents should not be published pursuant to Article 4 of Regulation 1049/2001.

Lord Mogg reported that there was a brief discussion on this issue at the last AB meeting. There needs to be a consistent approach although the nature of documents of the BoR and AB is different.

*BoR Decision agreed: (D 4)*

*Members welcomed the approach. The BoR Chair will inform the AB Chair of the approach to be adopted in the BoR in order to ensure a consistent approach between the two Boards with regard to the implementation of the relevant provisions (applying to both the AB and the BoR). Following the AB reaction, the intention is to finalise the list of background documents in order to proceed with publication.*

## **ELECTRICITY**

### **9. Update on Balancing FG expert group**

The Director reported that the work on the Electricity Framework Guideline for Balancing began over summer. The first meeting of the expert group was held on August 31st where they discussed the scope and the objectives of the FG. The experts raised a range of issues; these inputs will be used to shape the Initial Impact Assessment and the FG (currently under development). A second expert group meeting is planned for 11th October (the draft FG will be ready for consultation in Q1 2012). ACER has organised a workshop on Electricity Balancing on 24 October in Ljubljana.

## **GAS**

### **10. Framework Guidelines on gas balancing**

The Director presented his proposal for a Framework Guideline on gas balancing for a formal opinion of the BoR.

Mr. Crouch reported on the GWG discussions and clarified that the new proposal reflects the changes introduced by the Commission; specifying further the role of DSOs and setting a 5 year limit for interim measures; a change to reflect a proposal from ERSE allowing them to take account of gas in LNG facilities as an interim measure; and one change to reflect discussions at Madrid, making clear that market participants (shippers) must have sufficient information to meet within-day obligations.

Mr. Braz expressed his support on the proposed changes.

Mr. Bernaerts supported the Director's proposal and the changes undertaken. She reiterated the importance of the Agency undertaking an IA. The Director confirmed that the Agency is pursuing this.

*BoR Decision agreed: (D 5)*

*The BoR provided a favorable opinion on the FG on gas balancing.*

## **11. Status of NCs on CAM**

The Director reported on ENTSOG progress the CAM network code. ENTSOG consulted on its network code proposals in summer and has held several workshops. ENTSOG intends to deliver the network code in January (earlier than March) for a formal ACER opinion. One key element of the network code is the auction design to allocate capacity. This is crucial as it is expected that in the first auction there will be an allocation of a significant share of the mid-to long term capacity in most pipeline systems and thus we need to ensure that the design would not seriously impede competition for many years.

Lord Mogg summarised the discussion as follows: Most members saw the value of having some consultancy input on the auction design but noted their wish to use the expertise by NRAs. A few members felt this is not within ACER's responsibilities.

## **12. Report on workshop on Interoperability FG**

The Director presented the report on a public workshop in Ljubljana on a scoping document on gas interoperability. He reported that ACER is in the process of reviewing the feedback from the workshop; the scoping document is expected in one month. Preparing for the drafting phase an expert group has been called to support the drafting of the Framework Guidelines with technical advice. An open call for experts has been placed on ACER's website with a deadline for expert applications ending on 12 October. The terms of reference and the rules of procedure as agreed for electricity balancing will be applied. (The open call was circulated).

With regard to the time schedule, there will be a discussion in the Gas Working Group on 18 October; the first meeting of the Expert group will be held on 28 October (the date will be confirmed; it may be delayed); the orientation discussion in the Board of Regulators is expected on 9 November or 1 December, following which the public consultation on the draft Framework Guidelines will be launched. ACER is also thinking about possible consultancy work to perform the impact assessment which may start the earliest mid - November with a duration 2-3 months.

The Madrid Forum invited ACER to consider the issue of gas quality in the development of framework guideline on interoperability. Ms. Bernaerts explained that the scoping paper will draw the distinction between the gas quality aspects to be covered by interoperability and those which should not.

*The BoR took note of the preparation of the FG on interoperability.*

### **13. Madrid Forum**

The Madrid Forum took place on 26-27 September. The Director summarised the main outcomes. At the Forum it was confirmed that tariff structures would be a FG (rather than a direct a Commission comitology guideline) and ACER was invited to consult on the possible scope.

For the sake of formality and process, Lord Mogg alerted the BoR members about the choice now for a framework guideline on tariffs (given that in previous discussions the legal basis was not determined and the Commission had indicated it might prepare a comitology guideline). He informed the members that ACER is now pursuing work on this area through a framework guideline.

Ms. Bernaerts explained that although at the previous Madrid Fora the Commission has presented the idea for comitology guidelines (rather than a framework guideline), this was resisted by market participants; therefore, the EC decided to move ahead with the FG.

The Director confirmed that ACER will be able shortly to consult on the scope. He also confirmed that work in this area is already reflected in the 2012 WP of ACER despite the uncertainty on the legal basis. He clarified that the decision on the legal base lies with the EC. .

## **OTHERS**

### **14. Next Meetings**

The revised calendar included a change in the possible January BoR meeting now set on 24 January (the day before the CEER conference). The AB meeting has been moved to 13 March (on the eve of the ACER conference to be held on 14 March).

The Director reported that an ACER reception will be held on 1<sup>st</sup> December for the three Boards (BoR, AB and BoA) to celebrate the first year of ACER's operation.

### **15. AOB**

#### **15.1. Rules of reimbursement of BoR members**

Mr. Pototschnig explained some simplifying changes to the rules / procedure for travel reimbursement of BoR members. Boarding passes will no longer be needed. He underlined that only economy class travel can be reimbursed. Henceforth documents justifying reimbursement are to be submitted within 30 days of the meeting (including the missing documents for the previous meetings). The ACER staff will distribute to each BoR member a list of the missing documents with regard to the previous meetings in order to clear its

backlog of reimbursements within one month upon receipt. The relevant Decision AB 21 on the rules of reimbursement of travel expenses was circulated to BoR members.

15.2. 15b. Decision AB 29 on the appointment of new members of the BoR (already dealt with under point 3).

The AB decision to appoint Mr. Dermot Nolan as the Irish member of the Board of Regulators and Mr. Garrett Blaney to become the Irish alternate of the Board of regulators was circulated.