

4th ACER Board of Regulators meeting
 Tuesday, 7 December 2010, from 15.15 to 17.30 (CET)
 Centre Borschette, rue Froissart 36, 1000 Brussels (Room 3D)

MINUTES

Participants

Member States	Name ¹	Member States	Name
Austria (E-Control)	M: Walter Boltz (BoR Vice Chair) A: Dietmar Preinstorfer O: Edith Hofer	Latvia (PUC)	O: Lija Makare
Belgium (CREG)	A: Koen Locquet	Lithuania (NCC)	A: Vygantas Vaitkus
Bulgaria (SEWRC)	M: Angel Semerdjiev	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Georgios Shammias	Malta (MRA)	M: Reuben Balzan EXCUSED
Czech Republic (ERO)	M: Blahoslav Nemeček	Netherlands (NMa)	A: Jaap de Keijzer O: Debby van der Pluijm
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	M: Marek Woszczyk O: Kamila Kloc-Evison
Estonia (ECA)	A: Kylli Haab	Portugal (ERSE)	A: José Braz
Finland (EMV)	M: Asta Sihvonen-Punkka	Romania (ANRE)	A: Ioan Roman
France (CRE)	A: Philippe Raillon	Slovaquie (RONI)	A: Nataša Hudcovičova
Germany (BNetzA)	M: Johannes Kindler O: Daniel Müther	Slovenia (AGEN-RS)	M: Marko Senčar A: Tomaz Lah
Greece (RAE)	M: Michael Thomadakis	Spain (CNE)	O: Rafael Gomez-Elvira
Hungary (HEO)	A: Csaba Kovacs	Sweden (EI)	A: Karin Widegren
Ireland (CER)	M: Michael Tutty	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Martin Crouch O: Clemence Marcelis
Italy (AEEG)	O: Miranda Diana		

Invited	Name
ACER Director	Alberto Pototschnig

Observers	Name
European Commission representatives	Aurora Rossodivita
CEER	Fay Geitona Una Shortall David Haldearn

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

Main conclusions from the meeting:

- 1. The BoR discussed the next steps on the draft framework guidelines including the first 2 draft framework guidelines prepared by ERGEG once ACER becomes operational.*
- 2. The BoR submitted to the Director their views on the ACER Working Groups as an input into the future ACER Rules of Procedure.*

1. Approval of the agenda

Decision agreed: (D 1)

The agenda of the 4th ACER Board of Regulators meeting was approved.

2. Approval of the Minutes of the 3rd BoR meeting

Decision Agreed (D2):

The Minutes of the 3rd BoR meeting was approved and will be available on the ACER website.

3. Update by the European Commission on the Energy Infrastructure Communication and follow-up

The BoR was informed of the European Commission's Communication on Energy Infrastructure which was published on 17 November.

4. Update on the Agency activities, including 2011 budget and contacts with the EP

The Director updated the BoR on the Seat Agreement which was signed by ACER and the Slovenian government on 26 November 2010 in Ljubljana. The Agreement governs the relationship between the Slovenian Government and ACER, which will establish itself in Ljubljana early in the new year, becoming formally operational on 3 March 2011. The Seat Agreement will now have to be ratified by the Slovenian Parliament.

In terms of recruitment of ACER staff, 6 members of staff have been recruited and 4 more will join by end of January. On 1st February ACER will move from its current temporary base in Brussels to Ljubljana.

ACER is progressing with the selection of candidates but is not in a position to make offers until the 2011 European Union budgetary issues are resolved. On DNEs, on 3rd November the notice was sent to the Permanent Representations. The deadline expires in a few days.

More than 20 applications have been received for membership of the ACER Board of Appeals.

ACER BoR Chair, Vice Chair and ACER Director will meet Giles Chichester MEP and other members of the ITRE's ACER group on Tuesday 7 December to update him on the establishment of the Agency.

5. Process for the public consultation by ACER on the draft framework guidelines

The Director presented the process of the involvement of the BoR under the Agency Regulation: The Director shall adopt and publish the opinions, recommendations and decisions (referred to in Articles 5, 6, 7, 8 and 9 of the Agency Regulation) that have received a favourable opinion of the BoR (i.e. with the required quorum of a 2/3 majority). In accordance with the Agency Regulation ACER must consult extensively and at an early stage with market participants, TSOs, consumers, end users and, where relevant, competition authorities.

The Director presented his views on the way in which the BoR should be involved in the process of development and adoption of the ACER draft Framework Guidelines particularly before the launch of a public consultation on a framework guideline. The Director suggested that he would seek workable solutions for involving the BoR using “orientation discussions” or seeking formal “guidance” by the BoR depending on each area under consideration.

Members underlined the importance of involving the BoR in the process of developing the framework guidelines (including all proposals for framework guidelines) before the public consultation is issued. This would allow the draft proposals issued for consultation to demonstrate clear support by regulators facilitating also a favourable opinion on the final proposals considered for adoption at a later stage.

The Chair informed the Director of the significant work which has been developed by ERGEG in close consultation with stakeholders during the interim period (i.e. September 2009 to date). ERGEG had earlier that day (7 December) approved 2 draft Framework Guidelines (on gas capacity allocation and on electricity grid connection); its advice on electricity fundamental data transparency comitology guidelines; and ERGEG’s opinion on ENTSO-E’s TYNDP (ERGEG’s advice on the ENTSOG TYNDP was given during the month of November). The FGs and transparency comitology guidelines will be formally submitted to the European Commission the week of 7th December. Work is also underway on the gas balancing Framework Guideline (for completion in early 2011) and on the electricity Capacity allocation and Congestion Management. Regulators have also started work on a ‘target model’ in gas which will help facilitate the development of framework guidelines and network codes in a more coherent way. ERGEG is also currently conducting a review of the processes used during the interim period to pass on to the Director when ACER takes over formally in March 2011.

The Director welcomed the intense work by ERGEG during the interim period. Concerning the next steps for the 2 first draft Framework Guidelines (on gas capacity allocation and electricity grid connection which have already been widely consulted upon by ERGEG), the Director envisages an orientation debate at the BoR meeting of 2nd March and issuing them for consultation as soon as possible after the 3rd March. He will consider how the RIs can be used in the consultation process to provide regional feedback to ACER, as well as subsequently in their implementation.

6. Agency working groups

The Chairman presented regulator’s thoughts on future arrangements to ensure a proper functioning of the ACER Working Groups (AWGs). The proposal addresses their composition (including their chairmanship); their operational arrangements (including e.g. the circulation of agenda and related documents) and relations with third parties. The Director will consider reflecting those arrangements in the internal rules of the Agency.

7. Access to documents

Regulation 1049/2001 on access to documents of Agencies applies to ACER in accordance with ACER Regulation 713/2009. The ACER Decision n° 9/2010 on procedures and practical measures for applying Regulation (EC) No. 1049/2001 on access to documents of the Agency was adopted by the Administrative Board (AB) on 28 November 2010 and was circulated to the BoR members. The Director presented the main provisions of the Decision and reported on the process for its adoption by the Administrative Board. The BoR will further reflect on practical elements of its implementation with regard to the BoR documents and those documents which fall under the exemptions of article 4 of Regulation 1049/2001 in accordance with the relevant provisions of the Decision and the Regulation.

8. Next Meetings and practical arrangements for meetings in Ljubljana

The calendar for the BoR meetings for 2011 is attached.

Decision agreed: (D 3):

The next BoR meeting is on 2 February in Brussels.

9. AOB

The BoR members were updated on the first joint CEER-ACER workshop which covered 3rd package implementation, held in Brussels on 18 November. Participants were the representatives of the NRAs, the ACER Director and the European Commission.