

**13<sup>th</sup> ACER Board of Regulators meeting**  
**Wednesday, 9 November 2011, from 11.00 to 17.30**  
**CREG office, rue de l'Industrie 26, Brussels**

**Minutes**

**Participants**

Member States	Name <sup>1</sup>	Member States	Name
<b>Austria (E-Control)</b>	M: Walter Boltz A: Dietmar Preinstorfer	<b>Latvia (PUC)</b>	M: Valdis Lokenbahs    Excused
<b>Belgium (CREG)</b>	A: Koen Locquet	<b>Lithuania (NCC)</b>	M: Diana Korsakaite    Excused
<b>Bulgaria (SEWRC)</b>	A: A. Semerdjiev    Excused	<b>Luxemburg (ILR)</b>	M: Camille Hierzig
<b>Cyprus (CERA)</b>	M: G. Shammas    Excused	<b>Malta (MRA)</b>	A: Anthony Rizzo
<b>Czech Republic (ERO)</b>	M: Blahoslav Nemeček	<b>Netherlands (NMa)</b>	A: P. Plug O: Debby vander Pluijm
<b>Denmark (DERA)</b>	A: Jeppe Danó	<b>Poland (URE)</b>	M: Marek Woszczyk O: Kamila Kloc-Evison
<b>Estonia (ECA)</b>	O: Kaspar Endrikson	<b>Portugal (ERSE)</b>	A: José Braz
<b>Finland (EMV)</b>	M: Riku Huttunen	<b>Romania (ANRE)</b>	A: Lusine Caracasian
<b>France (CRE)</b>	A: Philippe Raillon O: Michel Thiolliere	<b>Slovakia (RONI)</b>	M: Jozef Holjenčík    Excused
<b>Germany (BNetzA)</b>	M: Johannes Kindler A: Annegret Groebel O: Daniel Müther	<b>Slovenia (AGEN-RS)</b>	A: Jasna Blejč
<b>Greece (RAE)</b>	A: George Koutzoukos	<b>Spain (CNE)</b>	A: Tomás Gómez O: Rafael Gomez-Elvira
<b>Hungary (HEO)</b>	M: P. Horvath    Excused	<b>Sweden (EI)</b>	A: Karin Widegren
<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>	A: Carlo Crea O: Miranda Diana		

Observers	Name
<b>ACER</b>	Alberto Pototschnig, Fay Geitona
<b>European Commission</b>	Philip Lowe, Inge Bernaerts, Aurora Rossodivita, Sylvia Elisabeth Beyer
<b>CEER</b>	Natalie McCoy

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

**Main conclusions from the meeting:**

1. *The Director and the Board of Regulators discussed and agreed the proposals on the WG structure and the allocation of deliverables. Likewise, the working arrangements were agreed and will be complemented, if necessary, by any new arrangements to be discussed between the Director, HoDs and WGs chairs.*
2. *The Director confirmed the continuation of the EWG and GWG chairs, Mr Plug and Mr Boltz respectively whose term continues. The Director will subsequently proceed with the appointments for the two new ACER WGs (Market Integrity and Transparency and Monitoring and implementation) after taking utmost consideration of the BoR suggestions.*
3. *Members took note of the progress with regard the Regional Initiatives and the ERI cross regional plans under finalisation.*
4. *Members supported the active involvement of Bulgaria and Romania in the RI as well as the inclusion of Malta and Cyprus in the RI.*
5. *The BoR welcomed the proposal on the draft ACER interpretative Guidelines setting out the procedure for amending network codes.*
6. *With regard to the confidentiality arrangements for the WGs and the BoR discussions will be pursued at the technical level before finalising the approach.*
7. *The BoR members discussed the draft FG on electricity System Operation.*
8. *The BoR took note of the state of preparation of the gas FGs on Interoperability and scoping paper on tariffs.*

## Opening

### 1. Approval of the agenda

BoR Decision agreed: (D 1)

*The agenda of the 13 ACER Board of Regulators meeting was approved.*

### 2. Approval of the minutes of the 12<sup>th</sup> BoR meeting & review of actions

A letter to the AB Chair from Lord Mogg was circulated. The letter aimed at informing the AB Chair of the discussion on the Director's proposal on the publication of background documents as it was agreed to seek a coordinated approach between the two Boards in this respect. The AB views were sought before finalising the list of background documents to be published.

BoR Decision agreed: (D 2)

*The 12<sup>th</sup> BoR meeting minutes were approved subject to a few changes by E-Control.*

### **3. Report on ACER progress**

The Director reported that ACER has almost completed its staff recruitments which include also 10 SNEs.

The Director also announced that he has adopted the Decision appointing George Koutzoukos as the representative of ACER in the ECRB. The Decision will be circulated to all members.

All members and alternates of the BoA appointed by the Administrative Board have confirmed their acceptance of appointment. The first meeting of the Board of Appeal will be held on 1<sup>st</sup> December (concurrently with the BoR meeting).

The members received an invitation for the ACER event on 1<sup>st</sup> December intended for the three Boards (AB, BoR and BoA).

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

Ms Bernaerts informed the members that the Commission has now received 5 certification decisions from NRAs (and all concern ITO models). They are planning to give NRAs the opportunity to review the draft decisions (for sensitive or confidential issues) before publication. Austria is expected to notify shortly a certification decision. The Commission is now finalising its comments to the questions on certification raised by Lord Mogg last year. Regarding the online tool for publishing the certification documents, CIRCA, the Commission is preparing a user manual which they will circulate to all NRAs. The Commission will send next week an invitation for the training session planned for the online tool. They also envisage a help desk function.

The Commission underlined the very good cooperation with NRAs and ACER staff.

Mr Braz reminded members of the CEER workshop on 24 November 2011 on third package implementation and thanked the Commission for providing a meeting room.

### **5. Electricity coordination meeting**

The Commission has recently issued invitations to Member States and NRAs to the 1<sup>st</sup> Electricity Coordination Group meeting on 2 December. Mr Lowe noted the interdependency of national energy decisions (particularly on energy fuel mix) which has been demonstrated post-Fukushima. This is inevitable given also market integration and market coupling arrangements. He noted that Member States (at the 20<sup>th</sup> of July meeting) highlighted the need for increased cooperation. The Roadmap 2050 includes scenarios, all of which feature renewables in the portfolio of energy sources. The Commission feels that an Electricity Coordination Group will be important and should include representatives from all sides to have an on-going dialogue on these issues including on energy mix.

## Cross Sectoral

### 6. Agency WGs arrangements

Lord Mogg introduced the debate on the members' recommendations with regard to proposed organisational structure for CEER and the Agency and the allocation of work between them as well as the practical working arrangements between the CEER and ACER at working level.

With regard to the future structure, it is proposed to establish 2 new Working Groups: Market Integrity and Transparency and Monitoring and Implementation.

The Director proposed to meet in December with the WG chairs and HoDs to take stock of the WG practical experience and any possible improvements.

Ms Bernaerts underlined the need to avoid duplication of work between CEER and ACER and recognised the complementarity of the ACER and CEER Work Programmes and the need of pragmatic solutions.

#### BoR Decision agreed: (D 3)

*The Director and the Board of Regulators agreed overall to the proposals on the WG structure and the allocation of deliverables. Likewise, the working arrangements are agreed and will be complemented, if necessary, by any new arrangements to be agreed as a result of the meeting between the Director, HoDs and WGs chairs.*

*The Director confirmed the continuation of the mandates for the Chairs of the EWG and GWG Mr Plug and Mr Boltz respectively.*

*The Director will subsequently proceed with the appointments for the two new ACER WGs (Market Integrity and Transparency and Monitoring and implementation) after taking utmost consideration of the BoR suggestions.*

### 7. Regional Initiatives

The Director reported that the 6th meeting of the ACER Coordination Group for ERI held on 7 and 8 November was very constructive. It reviewed the regional inputs in order to finalise the cross-regional roadmap accordingly and align the regional roadmaps with the cross-regional ones. After the meeting, project lead NRAs will circulate the revised regional and cross regional WPs to the AEWG and AESAG participants. Mr Gomez-Elvira, reported that Progress on the new RI process and cross regional plans will be presented in the next Florence Forum (5, 6 December). Following the Florence Forum their implementation will start. The finalised cross regional WP will be circulated at the December BoR meeting.

In parallel Lord Mogg has written to the ERI lead regulators asking them to address the specific questions of the discussion paper in advance of the Florence Forum. He has received replies from the CEE Region that the lead regulator coordinates answers amongst the NRAs of the Region; the lead regulator from the Central-South Electricity region informed the BoR chair that they are keen on fostering the achievement of a joint commitment by the regional NRAs to ensure the correct implementation of capacity calculation and intraday roadmaps. Furthermore, the response (letter) from the *Baltic* region was circulated. They

had an IG meeting on 6 October where LT transmission rights and other issues related to the road maps.

Bulgaria and Romania:

The Director highlighted that as EU members, Romania and Bulgaria will have to be compliant with the future network codes. He added that historically Romania and Bulgaria have not been involved in the Regional Initiatives, but ACER is proposing that they become engaged. In particular, they will have to get on board the process of implementing the CACM target models (by 2014). The Electricity Head of Department in ACER has arranged meetings with the respective NRAs in order to explain the on-going developments (in particular regarding the cross-regional roadmaps) and discuss with them the possibility to elaborate an appropriate way/path/roadmap for them to take part in these projects.

The Commission is also in favour to bring these countries into the RI framework and familiarise them to the network codes work. The Commission supported the same progress in gas. Ms Carcasian expressed Romania's willingness to be invited to participate in the Regional Initiatives.

Mr Rizzo noted that Malta is not yet part of the RI (South South East for gas and Central South for Electricity), nor is Cyprus.

BoR Decision agreed: (D 4)

*The members took note of the progress with regard the ERI cross regional plans.  
The members supported the active involvement of Bulgaria and Romania in the RI as well as the inclusion of Malta and Cyprus in the RI.*

## **8. Energy Infrastructure Package: update on recent developments and next steps**

Ms Beyer informed the members that the proposed Infrastructure Regulation has been adopted and published as part of a package of legislative proposals on "Connecting Europe". Part of the package includes a proposal for a financial facility to support infrastructure investments. She thanked the regulators for the past discussions and welcomed the opportunity for further cooperation on technical aspects of the proposals. The Commission would be open to discussions and bilateral meetings to cooperate on the negotiation of the legislative proposal.

Mr Lowe noted that he is grateful for the exchange of views with regulators in developing the EIP proposal. Many of the regulators' views (e.g. centrality of the TYNDP) are reflected in the proposals. The TYNDP should be the starting point but it should also include alternative projects. He noted that although measures on addressing permitting delays may be resisted because of subsidiarity, there is recognition that we need to address delays. In his view the Commission will join efforts to prepare the ground for this Regulation to be in place in 2013.

Mr Lowe noted that financial players are insisting on the importance of regulatory certainty and measures to address permitting delays.

Ms Beyer noted that the first reactions from Member States have been very supportive (including on the regional approach). Equally, the first reactions from the EP convey a lot of support. The Commission expects that the process for the adoption of the Regulation will be fast.

Ms Beyer noted that the ERI Cross regional roadmaps provide for good preparatory work which may be of benefit in the regional process for the selection of PCI; she invited the regulators to reflect the infrastructure dimension in gas as well.

The Director noted that ACER has tried to develop gas cross-regional plans but the discussion is not yet mature. Mr Crouch clarified that the infrastructure dimension is not yet reflected on the ERI cross regional plan which currently focus on market integration issues, nor in the GRI.

Lord Mogg and the ACER Director thanked the Commission's services for the constructive collaboration in preparation of the proposals.

## **9. Report on the planning group meeting**

Mr Crouch and Mr Boltz reported on the planning group meeting held on 28 October. A detailed discussion on the calendar and progress on the FG and network codes was held.

The Director highlighted that 2012/2013 will be the last chance to finalise the network codes to fulfill the 2014 objectives. The ACER WP already highlights the future areas but these need to be further discussed and confirmed at the next planning group meeting.

Ms Bernaerts informed the BoR on the THINK consultation: The EWG and GWG are coordinating a common response by 25 November. Mr Crouch reported that work on electricity tariffication is now starting in the EWG.

## **10. Proposal on a) the ACER confidentiality arrangements for the AWGs/ BoR and b) Process for modification of network codes**

### **a) Confidentiality rules**

The Director presented a proposal on the future confidentiality arrangements for the WG and the BoR (including a proposal for modification of the Agency's WG rules).

The Director explained the rationale for these proposals (after the adoption of REMIT) and the handling of confidential information going forward by NRA representatives and ACER staff. More widely ACER's legal competence to adopt individual decisions will lead to the WG having access to confidential information. The draft decision on the modification of the WG RoP seeks to ensure that the set-up of the Working Groups mirrors the legal guarantees under which the Agency (and its staff) operates. With regard to REMIT, although the monitoring activities under REMIT will not be undertaken by the WG itself, the WG will be engaged in preparatory work.

Lord Mogg concluded that the proposal should further be discussed with legal experts from NRAs to work out the details at technical level. This will subsequently help to develop the overall approach in the WGs (and at the BoR) with regard to confidentiality arrangements in a consistent way after giving appropriate consideration to different practices amongst NRAs on this issue.

BoR Decision agreed: (D 5).

*The relevant proposals will be further discussed in a meeting with legal experts.*

b) Proposal for modification of network codes

The Director presented the paper on the ACER interpretative Guidelines setting out the procedure for amending network codes which very much reflects the CEER advice. The Interpretative Guidelines set out a 2-stage review process on how the Agency intends to process requests for amendments to NCs, in line with Article 7 of the Electricity and Gas Regulations. The first stage identifies the network codes to whose amendments the procedure laid down in these Guidelines applies, who can propose an amendment and at what time. It will furthermore describe how the admissibility and prima facie appraisal will be carried out. If the Agency considers the file admissible, it will carry out a preliminary examination of the amendment proposals. The aim is to eliminate those requests where it is clear that they have little or no chance to be considered further in the process. The second stage (in depth analysis) involves a call for evidence, an in depth analysis including an Impact Assessment and a public consultation, following which a reason proposal is made to the Commission. In total, the whole review procedure should be completed within a maximum period of one year.

Lord Mogg complimented the authors of the ACER and CEER advice and noted that this has been a very good example of genuine constructive collaboration between CEER and ACER.

BoR Decision agreed: (D 6)

*The BoR took note and welcomed the proposal.*

## **11. REMIT**

### Establishment of the ad-hoc Group

Ms Andrea Korr reported on the ad-hoc group to report to the chair to conduct an urgent analysis of a “REMIT landscape” and on the most appropriate allocation of monitoring responsibilities between NRAs and ACER. Andrea Korr and Volker Zuleger are leading this ad-hoc group. NRAs have been asked to nominate representatives to participate and the first meeting will be held on 14th November in Brussels. The Director noted that this Group will have in particular to clarify the vision with regard to the distribution of responsibilities on wholesale market monitoring given that on the other areas (e.g. enforcement) responsibilities are clear.

The Director reported that within ACER an implementation team has started preparatory work on REMIT; a note was circulated on the interim phase until the time when a specific Working Group is established within the Agency. There are a number of urgent deliverables: ACER will develop a first non-binding guidance, in coordination with NRAs through the CEER FIS WG as an interim solution, on market abuse definitions. Further guidance should be developed in due course. In order to further increase the knowledge of REMIT, a dedicated seminar will be organised by ACER on 28.11.2011 with the participation of Steven Reich from FERC.

In addition, ACER started in looking at IT issues; a first meeting is scheduled with IT experts from NRAs (December or January) to start discussing IT solutions to exchange information between NRAs and ACER. This is urgent as publication of info will have to start immediately and the appropriate IT support needs to be in place. The Commission suggested that their IT department be invited in this meeting.

Ms Bernaerts also referred to the immediate priorities to be set including the guidance of definitions and the set-up of the format for the EU registry until mid-June 2012. With regard to the implementing acts timeschedule, the Commission will recruit consultants expected to deliver advice by June 2012; the Commission will then make their proposals by the end of 2012. These will need extensive consultation. The intention is to have implementing legislation adopted in Q2 2013 (meaning that the data reporting will only start in the end of 2013).

Members underlined the need for clarity on the timeschedule including on their own immediate responsibilities (such as monitoring) following the entry into force of the Regulation.

*BoR Decision agreed: (D 7)*

*A report by the ad-hoc WG will be provided for the December meeting.*

## Electricity

### 12. System operation FGs

Mr Crouch presented the draft FG on System Operation which was consulted on over the summer (nearly 40 responses were received). The draft FG is submitted to the BoR for an orientation discussion, allowing the Board time to raise any issues before the final version comes for a favourable opinion in December. The Director clarified that the FG needs to be submitted to the EC by 31 December.

Mr Crouch noted that the FG is not prescriptive and gives considerable discretion to ENTSO-E. This will also allow innovation of developments in approaches to system operation. The FG will be finalised in the next EWG meeting. He invited members to pay particular attention on this FG given its importance on SoS issues.

Ms Bernaerts noted that future new applications systems should ensure security before the novel technologies are integrated. She suggested raising attention to ENTSO-E to have a genuine interest to develop a good network code on this and allowing ENTSO-E an early sight of the FG. She also questioned the scope of application of the FG (e.g. Baltic TSO). Mr Crouch confirmed that the intention is to cover Transmission System Operators' (TSOs) actions with regard to system operation within a synchronous area or between them.

*BoR Decision agreed: (D08)*

*The members took note of the draft FG on System Operation.*

### 13. Florence Forum Preparations

The next Forum will take place on 5 and 6 December.

Ms Bernaerts presented the draft agenda which has been rich in an attempt to take account of regulators' suggestions.

Mr Plug proposed to add a point on flow-based capacity allocation to the agenda.

The Director proposed to foresee a slot for ACER under REMIT.

Lord Mogg reported on the discussion at the London Forum to try to reflect in the Florence and Madrid Fora consumer issues discussed at the London Forum, whilst without duplicating.

## Gas

### 14. Interoperability Framework Guidelines

The Director reported that the official mandate letter from the Commission will be delayed until end November.

Mr Boltz explained that there is some discussion in the WG about the level of detail and prescription that the FG should contain, for example regarding capacity calculation. The question of gas quality harmonisation should be treated separately from the rest of the FG, as it is a complex issue which could delay the overall work.

#### BoR Decision agreed: (D 09)

*The Director and the GWG chair will pursue bilateral discussions with the EC on the timeline for the launch of the public consultation on the FG.*

### 15. Scoping paper on tariffs

Mr Boltz reported that ACER were invited at the last Madrid Forum to consult on and then propose a scope for gas transmission tariff structures FG and an initial outline of the FG. The consultation document is currently being finalised in the GWG and will probably be submitted to the December BoR following which the consultation will start until February.

Ms Bernaerts noted that an impact assessment on tariffs is very important.

### 16. Update on Congestion Management Guidelines Workshop

The Commission updated the BoR on a workshop which they ran with Governments on their proposed comitology guidelines on Congestion Management Procedures (CMP) on 14 October. The Commission plans to send a revised draft to Governments including an Impact Assessment, ahead of another workshop with Governments on 17 November. They are planning to commence the Comitology procedure in January 2012.

## Others

### 17. Next Meetings

The calendar was circulated. The next BoR meeting is scheduled for 1 December 2011, 14.00 – 18.30, Ljubljana. In 1<sup>st</sup> December the ACER reception for 3 Boards will be held (BoR, AB, BoA).