

15th ACER Board of Regulators meeting
Tuesday, 24 January 2012, from 13.30 to 18.00
CREG office, 26 rue de l'industrie, 1040 Bruxelles

Minutes

Participants

Member States	Name ¹	Member States	Name
Austria (E-Control)	O: Johannes Mayer	Latvia (PUC)	O: Lija Makare
Belgium (CREG)	A: Koen Locquet O: Tom Maes	Lithuania (NCC)	A: Vygantas Vaitkus
Bulgaria (SEWRC)	A: Angel Semerdjiev Excused	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Georgios Shammas	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	O: Miroslav Belica	Netherlands (NMa)	O: G. Moelker O: Debby vander Pluijm
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	M: Marek Woszczyk O: Kamila Kloc-Evison
Estonia (ECA)	O: Tiina Maldre	Portugal (ERSE)	A: José Braz
Finland (EMV)	M: Riku Huttunen	Romania (ANRE)	A: Lusine Caracasian
France (CRE)	O: Michel Thiolliere O: Sabine Hinz	Slovakia (RONI)	A: Natasa Hudcovicova
Germany (BNetzA)	M: Johannes Kindler A: Annegret Groebel O: Daniel Müther	Slovenia (AGEN-RS)	A: Jasna Blejc
Greece (RAE)	M: Michael Thomadakis- Excused	Spain (CNE)	A: Tomás Gómez O: Rodrigo Escobar
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: Valéria Termini O: Clara Poletti O: Miranda Diana		

Observers	Name
ACER	Alberto Pototschnig, Fay Geitona
European Commission	Marie-Christine Jalabert, Inge Bernaerts, Aurora Rossodivita, Catharina Sikow-Magny, Chryssa Argyriou
CEER	Natalie McCoy

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

Main conclusions from the meeting:
1. <i>The BoR provided its recommendations for the AWGs chairs to the Director.</i>
2. <i>With regard to the GRI, the lead regulators will report to the Director on progress and the possibility to revise the work plans by the end of January.</i>
3. <i>The BoR and the Director welcomed the paper summarising energy regulators' views on the EIP.</i>
4. <i>The BoR members welcomed the gas tariffs scoping paper to be launched for a public consultation.</i>
5. <i>The BoR provided a favourable opinion to the ACER draft opinion on the ENTSOG 2012 WP.</i>
6. <i>The BoR members agreed to use the electronic procedure to approve the ACER response to the Commission's public consultation on the governance framework for the European day-ahead market coupling.</i>
7. <i>The BoR discussed the ACER Recommendation on the supervision of FTR. The Director will take into account the debate and finalise the Recommendation and inform the BoR.</i>
8. <i>The BoR discussed the draft AWG RoP and provided some comments. The Director took note of the comments on the AWGs RoP which will now be finalised for adoption.</i>

1 Opening

1.1 Approval of the agenda

BoR Decision agreed: (D 1)

The agenda of the 15th ACER Board of Regulators' meeting was approved.

1.2 Approval of the minutes of the 14th BoR meeting & review of actions

BoR Decision agreed: (D 2)

The 14th BoR meeting minutes were approved.

1.3 Report on ACER progress

The Director reported on ACER activities. The Agency adopted and published before Christmas the Framework Guidelines for Electricity System Operation. The Agency has almost completed the recruitment of its staff. 51 staff are now in office. The Director also reported that REMIT has come into force. The web platform for notifications is in place. The Agency budget for 2012 was approved.

Lord Mogg reported that Switzerland obtained observer status to CEER.

1.4 European Commission's update

EC's opinions and decisions for TSO certifications

Ms Jalabert reported that the Commission received 8 preliminary opinions from NRAs (including from DM, AU, FR, HU). The Commission is concerned that to date only 8 TSOs are formally certified. She invited the NRAs to start discussions with the Commission on the basis of pre notifications.

EC's Communication on the internal energy market

This will be published in 2012. Commissioner Oettinger proposed to postpone the Communication on the internal energy market until October and the Commission is also planning a conference. The Commission will issue in April a Communication on RES. The Communication on the internal energy market will be accompanied by a Country Report for all EU Member States and a statistical annex attached to it. The Country Report will combine the Annual Energy Market Observatory (EMOS) Report and the annual Benchmarking Report. The Commission envisages consulting national energy regulators on the factual parts of the Country Reports. The Commission will also try to coordinate with ACER given also the ACER's monitoring report in preparation. Mr Mayer reported that regulators' data will only be available in summer and thus there will be a very short period for preparing the ACER monitoring report.

Energy Roadmap 2050

The European Commission published its Energy Roadmap 2050 on 19 December. It describes the consequences of a carbon free energy system and the policy framework needed. The analysis is based on illustrative scenarios, created by combining in different ways the four main decarbonisation routes.

2 ACER WGs

2.1 Agency WGs arrangements and chairmanship

Lord Mogg reported on the selection process completed at the CEER GA; subsequently, the BoR formulated its recommendations to the Director for the chairs/co-chairs for the four back to back ACER WGs (with the understanding that the Director will give those recommendations "utmost consideration") as follows:

With regard to the Agency WGs chairs:

- AEWG, the BoR recommends two co-chairs Peter Plug and Martin Crouch;
- MIT WG, the BoR recommends Mr Braz;
- IBM WG, the BoR recommends Marek Woszczyk;
- AGWG, the mandate of Mr Boltz continues.

With regard to the Agency WGs vice chairs, the proposed AWG chairs made the following recommendations:

- AGWG, Mr Boltz proposed Stephanie Neveling as the vice chair;
- AMIT WG, Mr Braz proposed Andrea Korr as the vice chair;
- IBM WG, Mr Marek Woszczyk proposed Johannes Mayer;
- AEWG no vice chair was proposed.

The Director thanked the BoR and the proposed chairs for the recommendations and stated his intention to take the decisions for the appointment of chairs and vice chairs by the end of the month.

With regard to the ACER Legal Advisory Team (LAT), the Director explained that this team will consist of NRAs' legal experts and its expertise will be activated on specific issues emerging on an adhoc basis. It is not a WG in which members represent their NRAs but rather a smaller team which is an extension of the ACER's in-house legal capacity. Its members' status will be similar to SNEs and will be 'on call' to be consulted on legal matters as and when needed. It will serve as a reservoir for legal expertise.

The Director has invited nominations by the BoR members. He explained that the members of the LAT will need to devote some time on ACER issues. Following the invitations for nominations, the Director received 4 applications. He also invited any other nominations to be submitted shortly.

BoR Decision agreed: (D 3)

The BoR recommendations for the AWG chairs were submitted to the Director along with the proposed chairs' suggestions for vice chairs.

The AWG chairs were invited to make a proposal on their WG structure (TF)

3 Cross-sectoral

3.1 Regional Initiatives

The Director reported on the RI, status review under preparation. A draft will be ready shortly and circulated (electronically) to members for comments. The objective is to have the status review ready in time for the first ACER Conference (14 March).

On overall progress, with regard to ERI, the ERI cross regional roadmaps were approved by regulators (last BoR meeting) and endorsed by the last Florence Forum. The implementation is already underway.

The Director lastly reported that ENTSO-E has validated the market coupling single price algorithm.

The next GRI coordination meeting will be held on 26 January where progress will be discussed in detail as well as the WPs.

The members had a lengthy discussion on the state of progress of the Regional Initiatives, in particular the 3 gas regions.

3.2 Energy Infrastructure Package

Lord Mogg thanked the Commission for the constructive dialogue with the regulators during the EIP proposal's preparation. He welcomed on behalf of all regulators the EIP proposals and presented a paper reflecting some regulators' initial views (working together through CEER and ACER) on the draft Regulations on Guidelines for Trans-European Energy Infrastructure (COM(2011)658) and on Establishing the Connecting Europe Facility (COM(2011)665). Regulators welcome and support the aims of the Infrastructure Regulation and many of the amendments suggested aim at clarifying and improving the Commission's proposal.

The main issues include inter alia:

- The TYNDP should be at the core of the PCI process;
- The timescales for the process and for ACER review should be more realistic;

- NRAs and ACER should participate fully in the regional groups, but participation should not prejudice the fulfilment of their legal objectives and duties;
- There should be clear and quantifiable criteria for the cost benefit analysis methodology and for the selection of PCI projects;
- The regulatory aspects of the plans for the individual projects should be reviewed by ACER, including by its Board of Regulators (in accordance with the procedure in Article 15(1) of Regulation No 713/2009);
- Only efficiently incurred costs should be allowed for cost recovery from network tariffs in order to ensure the effective use of capital.

Lord Mogg reported that both the paper and the amendments were agreed subject to one addition on the small and isolated systems.

Lord Mogg and the Director will meet the rapporteur for the Infrastructure Regulation, Mr Correia de Campos on 25 January.

Mrs Catharina Sikow-Magny stated that many of regulators' comments are indeed in the spirit of the Regulation.

BoR Decision agreed: (D 4)

The BoR welcomed the paper and the AMs (subject to the modification proposed on the small and isolated systems). The revised paper will be sent to the Commission.

3.3 Report on the Planning group meeting

Ms Rossodivita provided a brief report of the planning group meeting which took place on 16 December. The Director underlined that 2014 will be the last train for the network codes and thus the discussion on areas of work for 2012 and 2013 is of particular importance. Any changes need to be reflected in the Agency's 2012 WP which is already approved.

The discussion is reported under 4.2 and 5.2 (e.g. priorities for gas and electricity).

3.4 Request by SEWRC and CERA on ACER advice

The Director reported that ACER has received two requests for information from SEWRC (Bulgarian NRA) and CERA (Cypriot NRA). SEWRC is keen on the legal context in each MS (as a result of the third package transposition) with regard to the suspension of the NRAs' decisions as a result of an appeal. CERA is in the process of finalising the review of methods for applying effective Unbundling of the Accounts of the Electricity Authority of Cyprus in order to satisfy all regulatory requirements. A note was circulated with a compilation of all responses for information which will be revised to include the response by CRE and some revisions in the reply submitted by DERA.

3.5 Agency guidance on the Evaluation Procedure for Network Code Amendment Proposals

The Director presented the paper which very much reflects the paper prepared by CEER. It mainly reflects ACER guidance on how the process for the network code will be undertaken and it specifies the timing for ACER assessment. The Director invited feedback from the members.

Lord Mogg reported that at the last discussion at the BoR in November, members anticipated that the BoR will be fully involved in the process. The Director underlined that whilst the BoR

involvement is outside the scope of this paper, he is keen on seeking the BoR views in preparation of the NC modifications as he indicated in November.

Mr Bernaerts suggested shortening the deadlines and perhaps envisage a faster procedure for urgent cases.

BoR Decision agreed: (D 5)

Members welcomed the paper which will be finalised and submitted for a short consultation.

4 GAS

4.1 Tariffs scoping paper for public consultation

The Director stated that ACER were invited at the last Madrid Forum to consult on and then propose a scope of a harmonised gas transmission tariff structures. The paper was approved by GWG and the proposal by the Director is now submitted to BoR for an orientation discussion.

Ms Bernaerts agreed to launch the ACER public consultation in order to have the first responses in Madrid. A proof reading of the document is necessary. Lord Mogg suggested editing questions 3 and 4.

BoR Decision agreed: (D 6)

The BoR members welcomed the paper to be launched for an ACER public consultation.

4.2 Revised gas 3-year plan and future priorities

A note from the GWG chair was circulated. The time schedule for the FG on tariffs and the FG interoperability has been extended (as both items were not discussed at the last BoR meeting and are moved to January (tariffs) and March (interoperability) BoR respectively). On future priorities, data exchange is no longer to become a standalone Framework Guideline, but to be treated under FG interoperability. Rules for trading has been shifted to "other priorities" with no deadlines attached to it.

BoR Decision agreed: (D 7)

The BoR took note of the proposals. Any changes will need to be discussed at the next GWG and the planning group meeting (on 29 February). They will then be discussed at the March BoR and eventually need to be reflected in the 2012 ACER WP.

4.3 ACER opinion on ENTSOG WP

ENTSOG has submitted its annual work programme on 22 November 2011. The Director presented the ACER draft opinion on ENTSOG WP which invites ENTSOG for a greater engagement of stakeholders. The ACER reasoned opinion was to be submitted by 22 January. The response notes that ACER considers ENTSOG's public consultation on this work programme to have been deficient and suggests that this should be improved next time.

BoR Decision agreed: (D 8)

The BoR provided a favourable opinion to the ACER draft opinion on the ENTSOG 2012 WP.

4.4 Update on ACER auction design study for the CAM Network Code

The Director reported on progress for commissioning the study by ACER to evaluate an auction design reflected in the CAM network code.

The BoR took note of the progress of work.

4.5 Updated list of ENTSOG members

An updated list of members as approved by the ENTSO-G GA in December was circulated for information. New members of ENTSO-G are as follows EWE Netz GmbH (German TSO); New Observers of ENTSO-G: Gassco AS (Norway); Swissgas A.S. (Switzerland); Plinacro Ltd (Croatia). These changes were approved by the ENTSO-G GA in December.

4.6 Madrid Forum

A draft agenda was circulated. The ACER presentations include transit contracts, transparency monitoring, RI, Network Code on Capacity Allocation Mechanisms, Network Code on Balancing, FG interoperability, work on tariffs. The GWG chair has also given some suggestions to the EC on the agenda.

The Director suggested that ACER gives a presentation under REMIT.

5 ELECTRICITY

5.1 Florence Forum

Mr Crouch reported on the conclusions of the last Florence Forum held on 5-6 December 2011. The Forum welcomed the progress made by ACER in framework guidelines (Grid Connection, CACM, SO, Balancing). ACER's EWG working level discussions have also begun with ENTSO-E on the first network codes. The Forum welcomed regulators' commitment to the Regional Initiatives and to the process for the implementation of the European long-term, day-ahead, intra-day and capacity calculation for the day-ahead market coupling and for the European intra-day market. Progress of the day-ahead project has been slower than anticipated –TSOs and PXs are expected to propose a single solution in January 2012 for discussion with NRAs, TSOs and the EC. The Forum welcomed the adoption of REMIT and noted ACER's intention to issue further guidance in the next few months in response to market participant's concerns. The next Florence forum is to take place on 22-23 May 2012. The discussions demonstrated that further work is needed to get market coupling on track. There was also a call for more engagement from the Member States to ensure real progress. A good step in this direction is the upcoming pre-comitology meeting which the Commission is now planning for 1st February.

Ms Bernaerts reported on the workshop on the electricity codes on 1st February.

5.2 Revised electricity 3-year plan and future priorities

Mr Crouch reported that at the last planning group meeting, the Commission agreed to extend the deadline for ENTSO-E developing the NC on electricity generation grid connection rules until 30 June 2012, with the understanding that ENTSO-E will use the additional time genuinely to engage with stakeholders in the consultation process and to develop an impact assessment. The

EC letter to ENTSO-E for the development of a network code on DSO and industrial load grid connection rules in electricity was circulated for information.

With regard to the balancing Framework Guidelines, although there is no formal change to the FGs (due to June) there is an understanding that the FGs should be delivered in September 2012. The letter on the scope has been sent to the Commission.

The note circulated sought members' views on future priorities. Mr Crouch reported that at the EWG members decided not to move ahead of TPA but instead commence work on tariffs. The scope of work on tariffs is unclear at this stage but the THINK study will be helpful.

Furthermore, there is a need to bring more clarity on network codes (large number of network codes) and it has been suggested that the EWG should devote time to developing a medium term target model, going beyond the market coupling envisaged for 2014.

The Director in response noted that we should focus on finalising on-going work on FG and scrutinise network codes.

BoR Decision agreed: (D 09)

The BoR members took note of the changes in the 3-year plan and the proposed future priorities. These will be further discussed at the next AEWG, and presented at the next planning group meeting. The final changes will be discussed at the March BoR meeting.

5.3 First Electricity Coordination Group meeting – 2 December

Ms Bernaerts reported that the first meeting was very constructive and there was a very good turnout of Member States represented at a senior level. P. Lowe presented the 2050 Energy Roadmap. The first reactions by MS were positive. ENTSO-E's presentation on the winter outlook was also very useful. The purpose of the group was to provide a platform for strategic exchanges between Member States, NRAs, ACER and the Commission on electricity policy.

With regard to future meetings, it was agreed that the group would be convened when necessary. A provisional timing for the next meeting is at the end of April, beginning of May. A discussion will also be held on what to include in the upcoming RES Communication.

5.4 EC's Governance Guidelines

The Commission has started a consultation on the governance framework for the European day-ahead Market coupling. The public consultation ends on 29/02/2012. The EWG is preparing ACER's response to the public consultation. An information note was circulated as the response is still being prepared and will be discussed at the next EWG around 16, 17 February. Given that the next meeting of the BoR is on March 13th (no meeting of the BoR is scheduled for February) the draft response will be electronically circulated to the ACER BoR (for an online approval) with a view to submitting the ACER response by 29 February.

Ms Bernaerts welcomed the input from regulators. The EC hopes to have the Guidelines ready for the next Florence Forum in May.

BoR Decision agreed: (D10)

The BoR members agreed to the use of an electronic procedure to approve the ACER response to the Commission's public consultation on the governance framework for the European day-ahead Market coupling.

6 MARKET INTEGRITY AND TRANSPARENCY

6.1 Final ACER guidance on Article 2 definitions

REMIT was published on 8 December and it entered into force on 28 December. The Director reported that ACER finalised the guidance and prepared a set of Questions & Answers for the ACER website. Both documents were published on ACER's website on 21st December. Market participants are invited for comments which may be taken into account in a 2nd edition of the ACER guidance, currently already foreseen for the first half of 2012.

The Director presented the guidance. The 2nd edition of guidance is being prepared to be issued in spring.

Mr Crouch reported on the OFGEM workshop and a note was circulated. OFGEM very much welcomes the guidance from ACER.

The Director informed members that as of 1st February the new AMIT WG will undertake all work on REMIT.

Mr Mayer reported that an E-Control workshop (on REMIT) will be held next week. He also suggested creating an online tool amongst NRAs and ACER to discuss any questions related to the guidance (at regional level). This could allow online informal chats and ensure quick coordination when feedback is requested.

The Director underlined that the interpretation of the Regulation falls within the responsibilities of the Commission and not ACER or NRAs. Therefore, responses can be given to factual questions but not legal interpretations and there needs to be consistency. The guidance document should be a dynamic document but any update should be undertaken in a structured, coordinated way.

Lord Mogg acknowledged the need to develop the necessary tools to allow fast coordination in addressing promptly market requests for information, explanations etc. He, therefore, welcomed a NRA/ACER blog type platform to facilitate this.

6.2 Adhoc WG next steps on REMIT implementation report and questionnaire

As a follow up to the initial findings from the ad-hoc group, the BoR requested the preparation of a questionnaire on REMIT implementation focused on the monitoring and enforcement tasks under REMIT. The next meeting of the adhoc group to discuss the questionnaire is on 25th January. There are 20 questions to address resources for monitoring, NRAs enforcement powers, coordination with ACER and other national authorities (e.g. financial).

Lord Mogg reported on the discussions at the last AB meeting. He informed the AB members that NRAs could not be expected to cover and fill in ACER resources.

The Director reported that the AB chair has written to the Commissioner and to the European Institutions with regard to the ACER resources for REMIT.

The deadline to reply to the questionnaire is 24 February 2012. The aim is to have a preliminary report for the March BoR meeting.

BoR Decision agreed: (D 11)

Members took note of the questionnaire and welcomed the work by the adhoc group.

6.3 ACER Recommendation on the supervision of FTR

The Director presented the Recommendation which is very much based on the paper prepared by FIS WG and the EWG group to explore the potential interaction between the long term transmission rights and the legislation for market integrity covering the financial sector (specifically MiFID, MAD and EMIR). ACER's Recommendation advises exclusion of FTRs and PTRs from the MiFID legislation. It proposes that TSOs issuing FTRs or PTRs should be exempt from the MiFID legislation, as should all those engaging in secondary trading of the contracts. Currently under MIFID, activities of TSOs are excluded but not the trading of these activities. Thus it is recommended to extend the exemption to TSOs and other market participants who are trading FTR.

The Recommendation will be sent to the Commission, the European Parliament and to the Council.

Mr Kindler also reported on the respective preparation for national implementation of REMIT by NRAs; many questions have to be solved including on IT, national registers etc.

Ms Groebel, asked whether the formal BoR opinion is sought. The Director in response stated that he will clarify the specificities of the BoR involvement.

BoR Decision agreed: (D 12)

The Director took note of the BoR comments. He will finalise the Recommendation in line of the debate and will also specify the details of the BoR involvement.

7 ORGANISATIONAL ISSUES

7.1 Revised ACER WG rules – confidentiality arrangements

The Director presented the main changes for the WGs rules. On 23 November 2011, a technical meeting took place between the legal advisors of the NRAs and the Agency to discuss the confidentiality clause and other new provisions of the revised ACER Working Group Rules. On the basis of the discussions and comments received from the NRAs, the ACER Working Group Rules have subsequently been modified

BoR Decision agreed: (D 13)

The Director took note of the comments on the AWGs RoP which will now be finalised for adoption.

8 OTHERS

8.1 ACER conference, 14 March

Mr Pototschnig informed the members of the planned ACER Conference on 14 March. Speakers, session chairs and panel members are still being developed. The conference will take place in the Ljubljana Castle. He very much hopes many regulators will attend. 4 topics are envisaged: gas and electricity internal markets, Market transparency and infrastructure.

Members suggested changing the title to reflect “ACER's contribution to the IEM”.

8.2 Report on the 18th ECRB meeting, 15 December

A presentation was circulated to the members for information.

8.3 Next Meetings

The calendar was circulated for information. There will be no BoR meeting in February. The next meeting will be held on 13 March in Ljubljana. A change was noted on the October dates.

8.4 AOB

The Decision of the AB n° 36/2011 on the appointment of the new member of the BoR (F. Vella, Malta) was circulated for information.

Mr Shammas informed the members that gas reserves have now been found off the island of Cyprus.

Mr Locquet informed the members that they are having a Belgian (French/Dutch) workshop on the framework guidelines/network codes.