

**18<sup>th</sup> ACER Board of Regulators meeting**  
**Tuesday, 22 May 2012, from 09.00 to 13.00**  
**Convitto della Calza, piazza della Calza 6, 50125 Firenze (room Pontevecchio)**

**Minutes**

**Participants**

Member States	Name <sup>1</sup>	Member States	Name
Austria (E-Control)	M: Walter Boltz O: Sarin Abado	Latvia (PUC)	M: V. Lokenbahs    Excused
Belgium (CREG)	A: Koen Locquet	Lithuania (NCC)	A: Vygantas Vaitkus
Bulgaria (SEWRC)	A: Angel Semerdjiev    Excused	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Georgios Shammias	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	O: Miroslav Belica	Netherlands (NMa)	M: Chris Fonteijn A: Peter Plug
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	M: Marek Woszczyk
Estonia (ECA)	M: Märt Ots            Excused	Portugal (ERSE)	A: José Braz O: Jorge Esteves
Finland (EMV)	M: Riku Huttunen	Romania (ANRE)	M: Dan Plaveti    Excused
France (CRE)	A: Philippe Raillon O: Michel Thiollière	Slovakia (RONI)	M: Jozef Holjencik    Excused
Germany (BNetzA)	A: Annegret Groebel O: Daniel Mütter	Slovenia (AGEN-RS)	M: Irena Pracek    Excused
Greece (RAE)	O: Evangelos Dialynas O: Katerina Sardi	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: Valeria Termini A: Clara Poletti O: Miranda Diana		

Observers	Name
ACER	Alberto Pototschnig, Fay Geitona
European Commission	Inge Bernaerts, Catharina Sikow
CEER	Natalie McCoy, David Haldearn

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

<b>Main conclusions from the meeting:</b>
1. The BoR members agreed the new agenda structure and the time arrangements for the future meetings.
2. The BoR agreed to decide on a favourable opinion through an electronic approval on the revised proposal by the Director regarding the ACER opinion on the CAM NC to be submitted shortly. The Director and the BoR will work under the understanding that ACER will respect the 6 June deadline for delivering its opinion on the CAM NC.
3. The BoR discussed the outcome of the public consultation on the tariffs scoping paper. In the light of the debate and any comments to be received subsequently on the presented options regarding the scope, the tariffs FGs will be finalised for an orientation debate at the June BoR.
4. The BoR provided a favorable opinion on the draft ACER opinion on ENTSO-E annual activity report.
5. The members discussed the internal organisational arrangements for the EIP. While there is a need for some regional arrangements corresponding to the EIP regional corridors such as a list of contacts from regulators and ACER and a common platform to exchange information, there were concerns about the establishment of a new coordination group to undertake the cross regional coordination. The latter will need to be reconsidered in the light of the debate.
6. The BoR agreed the 2013 ACER WP process and time schedules including the running of a short consultation on the ACER WP and the organisation of the workshops. The Commission also welcomed the process and agreed to provide their comments on the 2013 ACER WP by mid-August ahead of the finalisation of the Director's proposal to the BoR for approval (at its September meeting).
7. The BoR approved the Annual Activities Report, section on regulatory activities, subject to final comments to be collected within one week following which the report will be finalised for publication.

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

### 1. Opening

#### 1.1. Approval of the agenda and note on the new structure and timing of meetings

Lord Mogg presented a proposal on modifying the timing of the meetings for the GA and BoR held in Ljubljana. The CEER GA will be held in the afternoon (15.30-19.00) and the BoR (back to back) the next morning (09.00-16.00). A new calendar for the 2012 meetings reflecting these changes will be circulated.

Moreover, the BoR agenda is restructured to prioritise those items which require decision/orientation debate (under part A), and those items which are for information only (under Part B).

Lord Mogg underlined that it is understood that members will respect the new time schedule for the meetings and avoid departing earlier when possible.

Lord Mogg also informed that the CEER will hold an away day the 2<sup>nd</sup> half of 2012 perhaps in the margins of the November meeting in Cyprus. A proposal on the timetable and the agenda items will be shortly circulated.

BoR Decision agreed: (D 1)

*The agenda was approved.*

*The members agreed the new agenda structure and time arrangements for the future meetings.*

## 1.2. Approval of the minutes of the 17<sup>th</sup> BoR meeting/ Review of actions

BoR Decision agreed: (D 2)

*The minutes of the 17<sup>th</sup> BoR meeting were approved.*

## 2. **Gas**

### 2.1. ACER opinion on CAM network code

Two documents were circulated: a draft ACER opinion and a separate background (supporting) document which includes the extensive reasoning of the ACER opinion.

BoR Decision agreed: (D 3)

*The BoR agreed to decide on a formal opinion through an electronic approval on a revised proposal by the Director regarding the ACER opinion on the CAM NC to be submitted shortly. The Director and the BoR will work under the assumption that ACER will respect the 6 June deadline for delivering its opinion on the CAM NC.*

### 2.2. Update on the consultation on the tariffs FGs and consultancy issues

Two documents were circulated to the BoR. The Problem Identification document – summarises the debate so far and sets out the objectives of the FG, current tariff issues to be addressed, general stakeholder views and policy options, and the Evaluation of Comments (EoC) – summary of responses to the ACER consultation on the scope.

Mr Boltz presented the progress and next steps on the FG on tariffs. The EC announced at the last Madrid Forum that the official invitation to draft the FGs will be issued in June. The deadline for submitting the FG will therefore be December. The TF is currently updating the existing country analysis. The overall overview so far includes submissions from 13 NRAs. He invited all members to update their country analysis.

Stakeholders would like ACER to cover additional issues within the tariffs FGs which have a significant strategic impact: Incremental capacities and Inter - TSO compensation mechanism in case of market area mergers (GGPs as preferred option by respondents).

Furthermore, it is necessary to discuss whether to cover LNG and storage points in the FG. These questions have been also raised at last BoR meeting. However, feedback has been received from only 6 NRAs so there is no clear steer.

BoR Decision agreed: (D 4)

*On the basis of the discussion and the comments to be subsequently received on the presented options regarding the scope, the tariffs FG will be finalised for an orientation debate at the June BoR.*

### **3. Electricity**

#### **3.1. ACER opinion on ENTSO-E annual activity report**

The Director presented his proposal for the draft ACER's opinion. The report provides a good overview of ENTSO-E's work and activities in 2011. However, the ENTSO-E Annual Report does not address some issues including *inter alia*: cooperation between ENTSO-E and ENTSO-G; lack of attention to the process for including projects from third parties in the TYNDP; a status update on progress of studies on possible extensions of synchronous operation; a status of the migration of system planning data exchanges by December 2011.

BoR Decision agreed: (D 5)

*The BoR provided a favorable opinion on the draft ACER opinion on ENTSO-E annual activity report.*

### **4. Market Integrity and Transparency**

#### **4.1. REMIT Record of transactions**

The Director presented the discussion paper. Most of the aspects will be defined in the subsequent implementing acts. This is a public consultation paper (discussed also at the last BoR meeting) which contains the draft recommendations to the Commission as regards the collection of data records of wholesale energy market transactions, including orders to trade, and the implementing acts.

It is intended to collect views from all parties interested in the implementation of REMIT on the Agency's proposal for the Recommendations to the Commission.

The Market Monitoring Governance Task Force (MMG TF) discussed the draft version recently. The revised version circulated takes account of the discussions in the MMG TF meeting. The document is of course still work in progress and discussions with the AMIT WG members are on-going. The Director explained that there will be a proposal on the list of contracts to be reported. There is also a "de minimis" exemption for supply contracts to customers with small consumption.

The public consultation is envisaged from mid-June to end-July. A workshop in Ljubljana will be held in July (date to be defined) and the final consultation of the BoR is envisaged on 4 September.

The Director also reported that the ACER consultation on the registration format paper (now closed) which also sought some feedback on the unique identifier issue. 41 responses have been received.

Mr Braz invited comments as there is still time. The AMIT WG is meeting on 29 May.

BoR Decision agreed: (D 6)

*The BoR took note of the discussion paper. Any further comments will be collected through the AMIT WG.*

## 5. Cross-Sectoral

### 5.1. Energy Infrastructure Package

- Update on the negotiations

Ms Catharina Sikow updated on the negotiations of the EIP Regulation. The Energy Working Party is making good progress on 4 chapters (out of 5) including on the Identification of PCI. The current Presidency proposal reflects modifications on the legal instrument to adopt the PCI list through a delegated act procedure. In terms of regulatory incentives there is a broad convergence of views. Two full day meetings are scheduled under the Danish Presidency and the Cypriot Presidency is crucial to conclude the discussion and have a first reading agreement. The Commission still expects the proposal to be adopted in early 2013.

- Regional Groups state of play

Fay Geitona presented the state of play and calendar of work of the Regional Groups for the identification of PCI. The process entails that the project promoters and TSOs submit applications for PCI candidates; NRAs, and, if necessary ACER, shall check consistent application of criteria/CBA, and evaluate their European value in each region. The Regional Groups shall rank the submitted projects after NRAs' assessment and on the draft regional lists by groups ACER shall deliver an opinion (on the consistent application of the criteria, CBA across regions). The EC anticipates the Union-wide PCI list to be adopted by 30 July 2013.

Ms Catharina Sikow reported that an invitation to project promoters is expected to go online today. Regarding the info day to be held by the EC a new date is sought (as opposed to 13 June) to accommodate Commissioner Oettinger's presence.

The Commission expects the NRAs to provide their views in autumn (within each Group). NRAs' input will feed into the Regional Groups discussion. The Commission also expects that there is a lot of coordination across the regions. ACER will be called when there is a disagreement between the NRAs within the Regional Groups.

Lord Mogg underlined the amount of hard work within the Regional Groups with regard to the PCIs and the resources constraints. The thematic areas (such as the Smart Grids) should not be overlooked; NRAs and ACER's representation should be ensured.

- EIP: regional arrangements - for discussion

David Halldearn presented a paper on the use of the RI and their suitability to perform their tasks under the EIP following the recent discussions with the Commission.

- Director's proposal on ACER organisational arrangements for EIP work - for discussion

The Director presented a proposal on the ACER/NRAs internal organisational arrangements to undertake the EIP work.

In the proposal circulated the EIP tasks are classified in three categories:

- The development and/or assessment of methodological aspects (e.g. the assessment of the CBA methodology submitted by the ENTSOs);
- The coordination and/or the assurance of consistency in NRAs' action across different regions/corridors in relation to the implementation of specific provisions (e.g. the consistent application of the identification and ranking criteria and the CBA across regions);
- The support and coordination of NRA's action at bilateral or regional level (e.g. the assessment of the consistent application of the criteria/CBA methodology and the evaluation of the European added value for PCI candidates).

The first type of issues will be best dealt within the Agency's Electricity and Gas Working Groups (AEWG and AGWG), which will also ensure consistency with the Agency's approach to the evaluation of the Ten-Year Network Development Plans (TYNDPs) and the criteria against which the Agency needs to base its opinion on the TYNDPs. AEWG and AGWG Chairs will ensure the necessary consistency across the two sectors.

For the second and third types of issues, as well as for monitoring the implementation of PCIs, a regional structure should be put in place, reflecting the geographical composition of the Regional Groups.

The BoR had an orientation discussion. Lord Mogg concluded the discussion as follows.

The BoR members welcomed that all methodological aspects of the EIP work will be undertaken by the EWG and GWG to ensure close links with the TYNDPs and the relevant ACER's opinions.

The members also welcomed a regional structure corresponding to EIP corridors (such as a list of contacts from regulators and ACER and a common platform to exchange information). This structure should be light and virtual with meetings only when necessary.

With regard to the cross - regional coordination and the establishment of a single cross regional coordination group, the members were reluctant on the creation of such a new group and this will need to be reconsidered in the light of the debate and the concerns expressed.

## 5.2. 2013 ACER Work Programme

Mr Boltz presented a note on the alignment of the timing of the 2013 CEER and ACER work programmes and their planning to also include a short consultation.

In the past the timing for the preparation of the CEER and ACER WP has differed significantly. It was proposed to align the timing of the public CEER WP and the timing of the

ACER WP. The Director announced a workshop in Ljubljana on 6 June as a way to have early feedback on the ACER draft 2013 WP to be delivered before 30 June.

The deliverables of the two draft WPs shall be then presented to the MEPs and stakeholders in a joint CEER/ACER workshop in Brussels in July.

The Secretariat will try and reserve a room. At this workshop stakeholders will be invited to submit, within 2-3 weeks afterwards, comments on the ACER deliverables to the Agency and comments on the CEER deliverables to the CEER. The ACER Director will then table a revised proposal for the BoR approval at its meeting on 4 September.

Lord Mogg reported that he contacted the AB chair to inform him about the short delay in the approval of the 2013 ACER WP (given the envisaged consultation). (The Regulation envisages that the BoR approves it by 1<sup>st</sup> September).

The Director invited the EC to provide their views on the process and the planning. He noted that this year there will be 2 versions of the WP to be shared with the EC and ACER would indeed appreciate to receive the EC's comments in mid-August ahead of the Director's final proposal to be submitted to the September BoR meeting for approval.

Ms Bernaerts welcomed the process and noted that the Commission will endeavour to provide comments by 20 August in order to allow the Director to finalise his proposal to the BoR for approval.

#### Agency's Task for 2013

A note was circulated which reflects the areas of the ACER work following a breakfast meeting between Alberto and the WGs chairs. This reflects on FG and NC the Commission's proposals on priorities after their consultation (which were also presented at the last planning group meeting).

#### BoR Decision agreed: (D 7)

*The BoR agreed on the new process and time schedules for the 2013 ACER WP including the running of a short consultation and workshops. The Commission welcomed the process and agreed to provide their comments on the 2013 ACER WP by mid-August ahead of the finalisation of the Director's proposal to the BoR for approval.*

#### 5.3. 2013 ACER Budget

There is a significant difference. The Director reported that he is now working with the EC to see how this would be resolved with regard to the REMIT implementation. It seems that there is an agreement reached at Director-General level with DG Budget for some additional funding for the implementation of REMIT to be made available to the Agency in 2013. DG ENER is making all efforts to secure the necessary resources for the Agency next year.

#### 5.4. ACER Annual Activities Report

The Director presented the Annual Activities Report in accordance with article 13(12) of ACER Regulation. The Administrative Board shall adopt and publish the annual report on the activities of the Agency, on the basis of the draft annual report and shall transmit that report

to the European Parliament, the Council, the Commission, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions by 15 June of each year. The annual report on the activities of the Agency contains an independent section, approved by the Board of Regulators, concerning the regulatory activities of the Agency during the year considered.

The Director presented the draft report which is still subject to a final proof reading. In substance the report provides a description of all the regulatory activities performed by the Agency in 2011 and sets out the results achieved.

Lord Mogg remarked that he will introduce the section on regulatory activities.

Mr Raillon also suggested some changes.

*BoR Decision agreed: (D08)*

*The BoR approved the section on the regulatory activities of the report subject to final comments to be collected within one week. The report will then be finalised and submitted to the AB for adoption.*

5.5. ACER Representative to the ECRB.

Mr Thiollière reported that after a consultation within ISG WG members, the Group recommends Mr Michael Thomadakis (RAE) as the ACER representative to the ECRB and that Mr Thomadakis proposed to draft some ToR for this position. These could contain specific reporting duties such as regular written reports to ACER on current ECRB developments and vice versa.

The Director welcomed this proposal which will be taken into account in his final decision. He is pleased to receive input on the ToR, which stipulates the tasks and responsibilities of the ACER representative in the ECRB, whilst in his previous decision appointing George Koutzoukos he had already described the profile for this position.

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

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

#### 6.1. Update by the chair including on the meeting with ESMA

Mr Braz reported on the meeting between ACER and ESMA (European Securities and Markets Authority) on 7th May to discuss cooperation between the two agencies which aims to promote close cooperation in the implementation of various REMIT provisions. The discussions to date have been constructive and it is hoped that a regular approach to sharing trading monitoring issues will be established.

Mr Braz informed the BoR that Ms Andrea Korr, AMIT vice chair, has changed positions within BNetzA and will no longer be able to continue as vice chair. The AMIT Chair will begin to consider her replacement.

## 7. Gas

### 7.1. ACER opinion on ENTSOG winter outlook

Lord Mogg reported on the outcome of that the 2nd round of the Electronic approval on the ACER opinion on ENTSOG 2011-2012 Annual Winter Supply Outlook ended on Friday, 4 May. All NRAs (but CERA) participated and voted in favour.

The Director will shortly adopt and publish the ACER decision.

### 7.2. Interoperability stakeholders' workshop

An interoperability and data exchange workshop was held at the ACER offices in April. A Public consultation on the IO Framework Guidelines concluded on 16 May. ACER is aiming to finalise the FGs for BoR reasoned opinion in summer/early autumn.

### 7.3. Balancing NC

Mr Boltz reported on the ENTSOG's public consultation on the network code which is on-going. They need to finalise the network code by 4 November 2012. The ACER GWG considered that it was important to actively engage during ENTSOG's network code development process early on. Thus regular meetings with ENTSOG are taking place for this purpose.

### 7.4. GRI quarterly report

The Director reported that the first edition of the GRI Quarterly report has been circulated by ACER staff in close collaboration with the Lead Regulators of the three gas regions. The purpose of the report aims at monitoring progress in the implementation of the pilot projects and areas of work planned in the Regional Work Plans, with a focus on the priority areas as determined by the Lead Regulators, under the guidance of the European Commission and ACER. It was agreed at the Madrid Forum that CAM should be one of these priority areas for pilot work at regional level and early implementation of the NCs. There are 8 on-going projects under this area at the end of Q1 2012 in the South, SSE, NW and South regions.

The report also provides a progress review of other projects in each of the regions such as: CMP harmonisation proposal, investment in new Infrastructure, Security of supply, balancing, tariffs, interoperability; implementation of the Third Package, developing hub-to-hub trading, transparency and enabling Market Integration.

On overall progress, the GRI coordination Group has met on 14 May. The Director invited the Lead NRAs to a meeting with ENTSOG in ACER premises - the date will be confirmed - which was requested by the Director to launch the CAM pilots process as agreed in Madrid. The EC has also been invited to join this meeting.

## **8. Electricity**

### **8.1. Florence Forum preparation**

The Florence Forum will take place on 22-23 May. The agenda and presentations have been circulated.

### **8.2. Oral update on the NCs**

- **Electricity**

Mr Crouch gave a short update.

### **8.3. Oral update of the ERI process**

- **ERI**

The Director reported on progress. Regarding the DA cross-border roadmap and the NWE/PCR project, very good progress has been noticed which includes the imminent signature of Cooperation Agreements (including cost-sharing arrangements) between TSOs and PXs and between PCR PXs, the Joint declaration of European PXs to provide full support to PCR platform and the proposed governance arrangements. He also reported on the letter of the NWE TSOs to BNetzA and DERA and the latest developments in the CEE region and the implementation of the FBMC.

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

### **9.1. Update by the Chair**

Mr Woszczyk reported that the next AIMP WG will meet on 29 May. Work is progressing in line with the foreseen schedule on the revision of the BoR Rules of Procedure; ACER consultation practices; and the paper on the process for the Amendment of Network Codes.

## **10. Cross-Sectoral**

### **10.1. Update on Planning Group meeting**

The last planning group took place on 8 May.

Ms Bernaerts gave an update on the outcome of the Commission's consultation on the 2013 electricity and gas priorities. The priorities in gas were left unchanged after the consultation. In electricity, some corrections were made. It seems also that stakeholders prefer FG/NC process over comitology guidelines. The next meeting of the planning group will be held on 28 August.

On electricity the Commission proposes the following annual priority list for 2013 for the development of harmonised electricity rules:

- capacity allocation and congestion management rules including governance for day-ahead and intraday markets including capacity calculation (adoption under comitology procedure);
- rules for longer term (forward) capacity allocation (drafting of network code);
- network connection rules: network rules on generator grid connection (adoption under comitology procedure); network code on distribution system operator and industrial load connection (finalize network code and start comitology process); network code on High-voltage direct current transmission system connection;
- system operation (finalize network codes on operational security, on operational planning and scheduling and on load-frequency control and reserves and start adoption process);
- balancing rules including network-related reserve power rules (finalise network code on balancing);
- rules regarding harmonised transmission tariff structures and/or investment incentives.

The Commission proposes the following annual priority list for 2013 for the development of harmonised gas rules:

- capacity allocation (adoption under comitology procedure);
- balancing rules including network-related rules on nomination procedure, rules for imbalance charges and rules for operational balancing between transmission system operators` systems (finalize network code and start adoption process);
- interoperability and data exchange rules;
- rules regarding harmonised transmission tariff structures.

## 10.2. Next Meetings

19<sup>th</sup> BoR, 19<sup>th</sup> June, 09.00-16.00, Ljubljana.