

**22<sup>nd</sup> ACER Board of Regulators meeting**  
**Monday, 1 October 2012, from 14.00 to 19.00**  
**CNE, Calle Alcalá 47, Madrid**

**Minutes**

**Participants**

<b>Member States</b>	<b>Name<sup>1</sup></b>	<b>Member States</b>	<b>Name</b>
<b>Austria (E-Control)</b>	M: Walter Boltz A: Dietmar Preinstorfer	<b>Latvia (PUC)</b>	O: Lija Makare excused
<b>Belgium (CREG)</b>	A: Koen Locquet	<b>Lithuania (NCC)</b>	M: Diana Korsakaite O: Dalius Kontrimavicius
<b>Bulgaria (SEWRC)</b>	M: A. Semerdjiev Excused	<b>Luxemburg (ILR)</b>	M: Camille Hierzig Excused
<b>Cyprus (CERA)</b>	M: Georgios Shammas	<b>Malta (MRA)</b>	A: Anthony Rizzo
<b>Czech Republic (ERO)</b>	O: Miroslav Belica	<b>Netherlands (NMa)</b>	O: Robert Spencer
<b>Denmark (DERA)</b>	M: Finn Dehlbæk	<b>Poland (URE)</b>	M: Marek Woszczyk
<b>Estonia (ECA)</b>	A: Külli Haab	<b>Portugal (ERSE)</b>	A: José Braz
<b>Finland (EMV)</b>	M: Riku Huttunen	<b>Romania (ANRE)</b>	M: Niculae Havrilet O: Elena Frumusanu
<b>France (CRE)</b>	A: Philippe Raillon O: Michel Thiolliere	<b>Slovakia (RONI)</b>	M: Jozef Holjencik Excused
<b>Germany (BNetzA)</b>	A: Annegret Groebel O: Daniel Mütter	<b>Slovenia (AGEN-RS)</b>	A: Jasna Blejc Excused
<b>Greece (RAE)</b>	M: M. Thomadakis Excused	<b>Spain (CNE)</b>	A: Tomás Gómez O: Rodrigo Escobar O: Gema Rico
<b>Hungary (HEO)</b>	A: Gábor Szörényi	<b>Sweden (EI)</b>	M: Yvonne Fredriksson
<b>Ireland (CER)</b>	A: Garrett Blaney	<b>United Kingdom (Ofgem)</b>	M: John Mogg (BoR Chair) A: Martin Crouch
<b>Italy (AEEG)</b>	A: Clara Poletti O: Miranda Diana		

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

Observers	Name
ACER	Alberto Pototschnig, Fay Geitona
European Commission	Inge Bernaerts
CEER	Una Shortall, David Haldearn

<b>Main conclusions from the meeting:</b>
1. <i>The BoR agreed to the use of the electronic procedure for providing their formal opinion on the draft ACER opinion on ENTSO-E Network Code for Requirements for Grid Connection applicable to all generators with the aim to achieve the deadline of 13th October.</i>
2. <i>The preparation of a Roadmap jointly with ENTSO-E to define the next steps will be pursued without prejudice to the ACER opinion on the NC RfG (to be delivered by 13<sup>th</sup> October).</i>
3. <i>The BoR also invited the EC to further encourage greater involvement of stakeholders and the submission by them of the necessary data to ENTSO-E.</i>
4. <i>The BoR provided a favourable opinion by consensus on the ACER opinion on the ENTSO-E Summer Outlook Report 2012 and Winter Review 2011/12.</i>
5. <i>The FGs on Electricity Balancing received a favourable opinion (at the electronic procedure) by the required two-thirds majority of members voting.</i>
6. <i>The BoR gave a favourable opinion on the ACER Recommendation to the Commission on the network code on capacity allocation mechanisms for the European Gas transmission network.</i>
7. <i>The BoR agreed the next steps on the EIP and the regulators' input to feed into the initial PCI identification process.</i>
8. <i>The BoR took note of the ACER draft Recommendations on the Records for transactions and 2nd ACER Guidance.</i>
9. <i>The BoR took note on progress of the NCs on Gas Balancing and Electricity CACM.</i>
10. <i>The BoR took note on the progress of work for the joint CEER/ACER monitoring report.</i>

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

### 1. Opening

#### 1.1. Approval of the agenda

##### BoR Decision agreed: (D 1)

*The agenda was approved with the addition of one item under AOB on the procedure for the appointment of the BoR chair and vice chair to be held at the November BoR meeting.*

## 1.2. Approval of the minutes of the 21<sup>st</sup> BoR meeting

### BoR Decision agreed: (D 2)

*The 21st BoR minutes were approved.*

## 1.3. Update on ACER activities

The Director announced that a new ACER Head of Department for market monitoring, Mr Volker Zuleger, and for gas, Mr Dennis Hessling, have been appointed. Mr Hessling will officially start on 1st December 2012.

In the next few months, the first 3 ACER SNEs will go back (ahead of time) to their NRAs which is unfortunate.

## 1.4. Update from the Commission - IEM Communication

Ms Bernaerts reported on the Internal Energy Market Communication. The timing for its adoption is November. It reflects the ambitious targets set for the completion of the IEM and the many challenges and thus a need to step up efforts. She noted the following challenges: The Communication seeks to highlight whether the consumers see benefits; the consumer engagement at the retail end and what can be done to empower and engage more consumers; the lack of transposition by MS of the 3<sup>rd</sup> Package legislation; how the regulatory framework can help address the overall investment (not just the infrastructure) challenge.

The Communication is a part of a wide package including: an action plan; the (previously) IEM benchmarking report along with country reports (outlining the most urgent action points per country); a staff working paper summarising the notifications for investments; an EC decision which sets up formally the Electricity Coordination Group; and a public consultation paper on generation adequacy and electricity capacity mechanisms.

The Commission envisages that their Communication will be presented at the upcoming (Florence and Madrid) Fora and not at a separate event before the end of the year (it seems that the Commission envisages a separate event in February).

## **2. ELECTRICITY**

### 2.1. ACER opinion on NC RfG

The draft ACER opinion was initially on the agenda for formal opinion but the Director has requested that this is withdrawn and invited instead the BoR to have an orientation discussion.

Mr Crouch gave a presentation to steer the orientation discussion on the main challenges regarding the ACER opinion on NC RfG.

ENTSO-E delivered the RfG NC to ACER on 13 July. As a way of a background, the deadline for the submission of the NC was originally extended from March to June 2012 to allow time to ENTSO-E to undertake a CBA (it was known some time ago that there were issues with the

CBA and the proper justifications). The deadline for the ACER reasoned opinion is 13 October 2012.

The Director noted that the debate revealed a wide support to go ahead with the ACER Opinion along the lines proposed. He also noted that there are two parallel channels: A formal process for the formal ACER opinion and in parallel informal contacts with ENTSO-E to develop a Roadmap on the next steps. It is necessary that some pressure is exerted on stakeholders to provide the information and necessary data to ENTSO-E which would help them enhance the justifications. On this basis, and subject to the BoR's agreement on the use of the electronic procedure, he intends to circulate a proposal for a BoR formal opinion.

*BoR Decision agreed: (D 3)*

*The BoR agreed to the use the electronic procedure for providing a formal opinion on the draft ACER opinion on ENTSO-E's Network Code for Requirements for Grid Connection applicable to all generators with the aim to achieve the deadline of 13th October.*

*The preparation of a Roadmap jointly with ENTSO-E to define the next steps will be pursued without prejudice to the ACER opinion on the NC RfG (to be delivered by 13<sup>th</sup> October).*

*The BoR also invited the EC to further encourage greater involvement of stakeholders and the submission by them of the data necessary to ENTSO-E.*

## 2.2. Preparation of Florence Forum

Mr Crouch presented the draft agenda which was circulated last week following discussions between ACER and the Commission.

The main presentations for regulators will be the following:

- TYNDP
- Cross regional roadmaps
- Loop flows – follow up
- CACM NC
- Grid connection
- System operation
- Balancing FGs
- 

Presentations will be uploaded for the November BoR.

## 2.3. ENTSO-E Summer Outlook Report 2012 and Winter Review 2011/12

The Director introduced the ACER opinion on the draft ENTSO-E summer outlook and Winter Review which provides an assessment from ENTSO-E on generation adequacy across the EU.

The ACER opinion welcomes the improvements and ENTSSOE's efforts to respond to new challenges and a few proposals were also made for improvement to the developed methodologies.

With regard to the methodology for the adequacy assessment, ACER appreciates the consolidated methodology across Europe and suggests that ENTSO-E should further enrich

this deterministic approach by giving greater attention to the probability of occurrence of the supply/demand forecast conditions and of occurrence of the adequacy.

The draft ACER opinion welcomes the regional analyses introduced by ENTSO-E and recommends that these should focus on groups of neighbouring countries which may simultaneously require imports from abroad. ENTSO-E should evaluate the opportunity to perform additional regional analyses for specific groups of countries for specific periods of the year.

The Agency expects ENTSO-E to display the remaining capacity indicator in relative terms (percentage of the peak load), in order to facilitate comparability across countries.

The Agency welcomes ENTSO-E's initiative to introduce an overnight downward adequacy analysis and invites ENTSO-E further to develop this methodology.

The Agency suggests the public availability of national datasheets for the Summer Outlook Reports.

The Agency also anticipates that ENTSO-E collects and publishes quantitative information as an element of the winter review (priority should be given to the actual weekly peak load and the actual average temperature and their deviation in relation to the forecasts).

BoR Decision agreed: (D 4)

*The BoR provided a favourable opinion by consensus on the ACER opinion on the ENTSO-E Summer Outlook Report 2012 and Winter Review 2011/12.*

2.4. Update and next steps on ITC fund consultation paper

The Director presented an update on ITC fund consultation paper. An information note was circulated to the BoR. Regulation (No 838/2010) requires ACER to carry out, within two years of the date of application of the Regulation, a Union-wide assessment of the infrastructure of electricity transmission associated with facilitating cross-border flows of electricity. Based on this assessment, ACER shall make a proposal to the Commission on the ITC infrastructure sum. The Commission shall determine the sum following the proposal from ACER or, if it disagrees with ACER's proposal, ask ACER for a second opinion. The last (May 2012) Florence Forum also invited ACER to consider measures, including potential enhancement of the ITC mechanism, to deal with issues raised by loop flows.

In order to undertake this task ACER appointed the consultant firm, Consentec GmbH, to assist with a number of key tasks, including identifying and assessing methodological options for determining the sum, and producing numerical results for these options.

Consentec delivered its preliminary report in June 2012, and was due to deliver its final draft report by 10 October. In its preliminary report, Consentec tables the initial methodology options for evaluating the ITC infrastructure sum. Consentec advocates a proportionate approach, avoiding a detailed bottom-up method.

The draft final report is expected to include a proposal from Consentec on the methodological options to determine the ITC infrastructure sum, the criteria to assess these options, the

preliminary results of the assessment, and the numerical results. ACER plans to launch a public consultation in mid-October, as well as a stakeholders' workshop on 25 October on the basis of Consentec's draft final report, whilst without ACER taking any position such as preference of any options. The consultation is to be limited to 4 weeks to allow for ACER to give its advice in March 2013 as required in the legislation. If more fundamental work is needed post consultation then the deadline might need to be extended.

#### Conclusion

*The BoR took note of the progress and underlined their wish to be informed about the ACER draft report.*

### 2.5. Report on the Electronic Procedure on the FGs for electricity balancing

Lord Mogg reported on the outcome of the BoR electronic approval which was closed on Tuesday, 18 September, noon (12.00).

#### BoR Decision agreed: (D 5)

*According to the BoR RoP, the FGs on Electricity Balancing received a favourable opinion by the required two-thirds majority of members voting.*

## **3. GAS**

### 3.1. ACER opinion on the CAM NC

The Director presented the proposal for an ACER Recommendation to the Commission. The CAM network code (NC) was initially submitted by ENTSOG to ACER in March 2012. The ACER reasoned opinion in June 2012 outlined 11 areas that needed to be changed before the NC could be recommended to the Commission for adoption. ENTSOG re-submitted the NC to ACER on 17 September 2012. The revised NC addressed all but 4 of the following issues:

1. To avoid including the 'revenue equivalence principle' on reserve prices in the CAM NC to avoid pre-judging the tariffs NC.
2. To ensure the application of quotas for short-term products to new capacity.
3. Not to sell the mismatch capacity as long-term unbundled products, where capacity cannot be bundled for technical reasons.
4. To introduce a requirement to retain an additional 10% of capacity for sale as mid-term products.

In accordance with the Regulation, when the Agency is satisfied that the network code is in line with the Framework Guidelines, the Agency shall submit the network code to the Commission and may recommend that it is adopted within a reasonable time period.

The Director proposed to issue a Recommendation to the Commission for the adoption of the amended Network Code by the European Commission subject to the four points above being amended to bring it in line with the FGs.

Mr Boltz reported on the ACER workshop on CAM NC on 19 September 2012 to which the four outstanding issues were presented and stakeholder views were sought. Most of the issues raised in the ACER Recommendation received support.

Ms Bernaerts reported on the workshop with Member States. On the quota requirements, Member States are keen on a stricter quota. On the incremental capacity Member States were concerned about costs. The Commission has also run the IA process in parallel. With regard to the sunset clause, the Commission has proposed to make a modification and further discussions are being undertaken on this issue as well as on capacity calculation drawing from the work on the NC on interoperability.

BoR Decision agreed: (D 6)

*The BoR gave a favourable opinion on the Agency's Recommendation to the Commission on the network code on capacity allocation mechanisms for the European Gas transmission network.*

3.2. Preparation of the Madrid Forum – report on transit contracts

The 22<sup>nd</sup> Madrid Forum will take place on 2-3 October. The presentations were circulated to the BoR members for possible comments and were submitted to the organisers. The agenda includes the following items:

*Day 1*

- Progress with the EU internal market in gas (ACER presentation on the monitoring of gas transmission transparency requirements, undertaken in the GRIs and on their final report on transit contracts)
- CAM network Code (ACER presentation)
- Network Code on Balancing (ACER presentation)
- Framework Guidelines and Network Code on Interoperability (ACER presentation)
- Storage (CEER presentation)

*Day 2*

- Gas target model follow-up: Incremental capacity (CEER presentation)
- Tariff structures framework guideline (ACER presentation)
- Energy Infrastructure Package
- Regional Initiatives and CAM Implementation (joint presentation of the CAM Roadmap, together with ENTSOG)
- REMIT Implementation progress update

## **4. CROSS SECTORAL**

4.1. Energy Infrastructure Package

State of negotiations

Ms Bernaerts reported on latest progress on negotiations. The EP Industry Committee (ITRE) on 18 September adopted a mandate for negotiations with Council. The Council Energy Working Party is considering a document prepared by the Presidency with a view to adopting a COREPER mandate for triologue negotiations with the EP which may start on 15 October.

Ms Bernaerts reported on preparatory work on the regional groups for the identification of the PCI. The Regional groups are now being informed on the very first results of the evaluation carried out by the consultants. In the gas Regional Groups a preliminary evaluation and ranking

is being presented by the consultants and in the electricity Regional Groups the eligibility assessment has almost been completed and has been presented. In parallel, data is being double checked. At a second step a more qualitative assessment will be undertaken.

The EC has also prepared a roadmap to clarify the role of the Regulators which was circulated.

The Director reported on the meetings with the Commission on 24 September (the minutes have been circulated) and the preparatory conference call with NRAs ahead of the meeting on 24 September to define what can be done during this preparatory stage.

During the conference call the NRAs had agreed that during this interim stage which is imminent (the next 2 -3 months), the input should be provided at project level and delivered jointly by the concerned NRAs. Participants acknowledged the need for transparency and sharing of info with other NRAs. Where possible, NRAs will try to develop a regional view in the form of a common opinion of all the NRAs of the region on all the PCI candidates of a region. Under both approaches (opinion on a project by the NRAs concerned or opinion on all regional PCI candidates of all NRAs of the region) the input from the NRAs is tentative, will not be formal or binding, nor will prejudice their subsequent tasks. ACER would intervene upon the request of the relevant NRAs. Under both approaches the participants had agreed to develop common checklists/templates to ensure consistency across the regions.

During the meeting on 24 September with the EC these conclusions were presented and the Director has committed to inform all the BoR members (at this BoR meeting) to ensure that our common understanding as reached at the meeting about what is expected is endorsed by all NRAs (and not only by the meeting participants).

As a follow up to these meetings the EC prepared its Roadmap to specify the role of ACER and NRAs (circulated to the BoR) which provides the following:

By 5/10 – the Commission will transmit the questionnaires to the Heads of Task Forces, ACER and regional corridors rapporteurs who will then distribute the questionnaires to the relevant NRAs.

By 15/10 – the Regulators will inform the Commission on which projects they have more detailed information and data in view of the assessment.

#### Assessment of candidate PCIs by NRAs

NRAs are expected to provide, at the meetings of the ad hoc regional groups, their opinion on the submitted candidate PCI projects, in particular on:

- the claimed benefits from the European policy perspective, in particular the extent of cross-border benefits;
- possible interdependence of projects in terms of timing (urgency, the policy objectives) and delivery of benefits, comments on possible clustering of projects.

The NRAs shall try to develop a regional view in the form of a common opinion of all the NRAs of the region on all the PCI candidates of a region, where possible. However, given the time constraints, individual opinion(s) will also be considered. To help Regulators to carry out their tasks and to ensure that the candidate PCIs are assessed in a consistent manner, ACER is invited to develop a checklist/template by 15/10.

In terms of the format, the Regulators' opinion will be formal in the sense that it is written, but informal in the sense that it is non-binding and without prejudice to the subsequent tasks of the NRAs. These opinions will input to the Regional Groups discussions, of which the NRAs and ACER are members.

The BoR members discussed the Roadmap presented including the overall process for the initial PCI Identification.

### BoR conclusions

Despite the serious concerns remaining which have been registered with the Commission, regulators remain cooperative and constructive in this process. By mid-October NRAs shall inform the Commission on which projects NRAs have more detailed information and by November provide some input on the basis of the Commission's Roadmap. This is subject to the timely delivery of the data by the Commission's services and with the understanding that the level of the ambition of the NRAs' input will not be optimal given the time constraints and the lack of the methodological tools.

We shall quickly develop some common checklists/templates for the regulatory assessments and try, as much as possible, to have a common approach to build up consistency within and across the regions independently of whether the opinions are delivered by the NRAs concerned or by all in a regional group which seems difficult given the time constraints. The TFs, EWG and GWG chairs in coordination with ACER can work quickly on developing check lists, by the time indicated in the Commission's Roadmap.

It is important that NRAs adopt a consistent approach for each project and so some co-ordination between involved NRAs will be required to try, where possible, to develop a shared vision and where not possible at least to exchange the appropriate information.

Regulators' input in this stage is tentative and informal and by no means prejudices their tasks subsequently in the process.

Despite a genuine will to collaborate, there is still much anxiety amongst NRAs and we would like to have specific answers to questions as for example on how our comments have been taken into account in the assessment methodology.

## 4.2. ACER External Communication Guidelines

The Director introduced the proposal guidelines on external communication. The AB will discuss these Guidelines again at its December meeting. In substance these provide the following:

### External communication guidelines

The members of the Administrative Board and of the Board of Regulators participate in the external communication actions of the Agency in the areas of competence of their respective Boards. Agency's staff members and Chairs of the Agency's Working Groups are involved in the external communication actions on the basis of a general or specific mandate from the Director.

In all cases the content of the external communication activities should reflect the official position of the Agency. The official position of the Agency is defined by the acts – Decisions, Opinions and Recommendations – and other documents adopted or otherwise published by the

Agency. The delivery of the Agency's external communication shall avoid any prejudice to the image or reputation of the Agency.

It is envisaged that the Guidelines, once agreed, could be implemented in each Board through the respective Rules of Procedures.

The BoR chair noted that the revised RoP of the BoR include some provisions to address this issue. The BoR shall, therefore, examine those to see whether these are adequate or where appropriate introduce any changes. A related issue is on the conflicts of interest.

The Chair concluded that this topic will not be brought back to the BoR unless there are issues emerging from the discussion in the AB at its December meeting.

#### 4.3. Update on ECRB activities

The next ECRB meeting is on 23<sup>rd</sup> of October. An agenda is not yet available and Mr Thomadakis was not present at the BoR. The energy Community Gas Forum was held on 26, 27 September in Ljubljana. A full report on the ECRB meeting will be given to the next BoR meeting.

## 5. MARKET INTEGRITY AND TRANSPARENCY

### 5.1. Update on new workstream on impact of REMIT IT developments on NRAs

Mr Braz presented the note. He noted that effective IT systems are integral to the effective implementation and on-going application of REMIT. The amount of IT work that is required for full REMIT implementation is increasing. The proposal provides for the establishment of an IT Management and Governance TF under the AMIT WG umbrella to support the Agency's work related to IT issues in the REMIT implementation process. The current IT Subgroup of the MMG TF should be upgraded to become a Task Force in order to ensure more frequent involvement of NRA experts and a more thorough exchange between the Agency's and NRAs' IT experts.

The IT Management and Governance TF should support the IT governance of the Agency and of NRAs in the REMIT implementation process. The group should assist ACER's IT projects, especially those that ACER undertakes in conjunction with NRAs. It should be composed of senior ACER and NRA representatives who have experience, knowledge and expertise in IT project management. The TF's main objectives should be to lead the pan-European IT projects for the REMIT implementation to provide the Agency and the national competent authorities with IT systems and services that help the Agency and competent national authorities to fulfil their obligations, prepare reporting on IT issues of relevance to EU institutions for the approval by the Agency and to consult and advise the Agency on IT related issues.

#### Conclusion

*The BoR welcomed this proposal.*

On a separate issue, Lord Mogg remarked that a number of NRAs are working for carrying out their tasks under REMIT including their enforcement tasks. We need to see how much are NRAs prepared for REIMT implementation. It seems that this is not reflected in the ACER and CEER WPs but we need to be kept in the loop on the implementation of legislation and the preparedness of NRAs. He suggested looking into this issue (perhaps under the CEER WP).

The Director gave a presentation on the overall REMIT implementation process. This includes the work on 1<sup>st</sup> and 2<sup>nd</sup> edition of ACER Guidance and web-forms on ACER website.

Another key element is progress on the IT Procurement: Three framework contracts have been launched: the first tender relates to the registration, data acquisition and consultancy (and was launched in June 2012); the second tender is regarding hosting services (and was also launched in June 2012); the third tender relates to the market monitoring software (and was launched in August 2012).

## **6. IMPLEMENTATION, MONITORING AND PROCEDURES WG**

### **6.1. Update on progress**

Mr Woszczyk provided an update on the last meeting of the AIMP WG of 12<sup>th</sup> September and the work in progress.

The next meeting of the WG will take place on October 10<sup>th</sup>.

### **6.2. General and preliminary messages of the joint CEER/ACER Market Monitoring –Report-**

Mr Woszczyk gave a presentation on the draft report which is still being finalised. The project faces a tight schedule: The data was still being submitted in mid- September when the drafting had to be completed. The scope of report is quite comprehensive (200 pages) although it focuses on some specific areas (wholesale electricity, retail markets, network access for renewables).

The next steps include: Approval by the IBM WG on 10<sup>th</sup> of October; and then approval by CEER GA on 7<sup>th</sup> of November and discussion at the BoR on 6<sup>th</sup> November.

Ms Bernaerts noted that the EC does not plan a big conference to present the IEM Communication now but rather in February.

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

## **7. ELECTRICITY**

### **7.1. Update on CACM NC**

Mr Crouch reported on progress. The CACM NC was submitted by ENTSO-E to ACER at the end of September. The deadline for ACER reasoned opinion is the end of December 2012. An orientation discussion will be proposed for the November BoR meeting as the December deadline is very close.

The letter by ENTSO-E circulated is a reply to concerns raised by ACER on a near final draft of the NC.

In addition, the Commission have written to ENTSO-E to start the process for the Forward market NC and submitted to ACER by October 2013. The letter was circulated.

## **8. GAS**

### **8.1. Update on balancing NC**

Mr Boltz reported on progress. ENTSOG have published the draft gas balancing network code for a 2 week stakeholder support process which closed on 28<sup>th</sup> September. This code will be delivered on 5 November.

Regulators have expressed concerns on the code in their preliminary opinion in June, during on-going discussions. There are still a number of concerns. A number of contacts with ENTSOG have been held. A letter has been circulated to reflect the points raised. The Director has added a further reference to say that the Network Code is without prejudice to the powers granted to and any specific measure taken by the Agency for the Cooperation of Energy Regulators under Regulation (EC) No 713/2009 or Regulation (EC) No 715/2009. This is to deal with any risk that the code ends up being separate to the Gas regulation.

*BoR Decision agreed: (D 7)*

*The BoR welcomed the draft letter to be sent to ENTSOG.*

### **8.2. Workshop on SoS Regulation**

Fay Geitona reported that the agenda of a workshop of the Commission with the competent authorities for preventive and emergency plans (in the context of the SoS Regulation) is circulated for info. This will be held on 10 October 2012, in Brussels. The agenda includes a discussion on the finalisation of the Plans and Exchange of drafts Plans, the implementation of the supply standard, remaining issues in the implementation of the reverse flow obligations, transparency on security of supply measures etc.

She reminded the members that the SoS Regulation provides for risk assessments and the preparation of preventive action plans and emergency plans as well as other measures. Each MS had to appoint (by 3 December 2011) a competent authority that ensures the implementation of the Regulation. Whilst in the majority of the cases, the competent authorities are Governments rather than NRAs, the BoR have discussed in the past that there is an interest of NRAs not least because of the infrastructure dimension, the links with the TYNDP and the EIP proposals as well as the impact on costs for security standards to be taken into account when regulators decide on tariffs.

## **9. MARKET INTEGRITY AND TRANSPARENCY**

### **9.1. Records of transactions**

The Director reported that ACER has now completed the consultation period for its recommendations to the Commission regarding the records of transactions, including orders to trade, which it considers necessary for effective monitoring of wholesale markets. The purpose of these recommendations is to assist the Commission in drafting the REMIT implementing acts according to Art 8 of REMIT. The draft Recommendations take into account the comments received from the 51 respondents as well as discussions held in the MMG TF and MIT WGs.

The 12 recommendations relate to:

- definition of terms for the data collection under REMIT;
- reporting of records of transactions;
- list of contracts and derivatives to be reported;
- de minimis threshold;
- uniform rules on reporting (timing, reporting channels, avoidance of double counting).

ACER has revised the recommendations following the consultation and is now proposing a de-minimis threshold for small producers having an installed capacity of up to 10 MW, trading only this capacity outside organised markets, and acting individually in the market. ACER also proposes that the de-minimis threshold is reduced to 5 MW and to 2 MW after 2 and 4 years respectively.

### Conclusion

*The BoR welcomed the work that has already been done on the draft Recommendations for the records of transactions.*

*The BoR noted that the Commission's Consultation seems to differ from the ACER draft Recommendations (see item 9.3)*

## 9.2. Second edition of ACER Guidance

This document has now been finalised and released on 28 September, and it is submitted to the BoR for info. It has been published on the ACER website. The Director has also circulated by an email and has prepared a comparison document to outline the differences between the first and the second ACER guidance.

The ACER Guidance is provided to help NRAs carry out their tasks under REMIT in a coordinated and consistent way. The first edition focused on three areas: the definition of 'inside information', the types of practices that the Agency considers constitute market manipulation and possible signals of market abuse.

The 2nd edition of the Guidance covers:

- The scope of REMIT in relation to financial regulation;
- The application of definitions of wholesale energy market, wholesale energy products, market participant, inside information and market manipulation;
- The application of the obligation to disclose inside information;
- The application and implementation of the prohibitions against market abuse;
- On gas, the application of the definition of market participants to SSOs and LSOs;
- The application of REMIT to market participants from non-EU and non-EEA Member States;
- Examples of inside information in the gas sector, including a best-practice example of Urgent Market Message (UMM) for the disclosure of inside information in the wholesale gas market;
- The application of the Accepted Market Practices regime of REMIT as a possibility for NRAs, in coordination with the Agency, to define indicative thresholds for the relevant gas market and to nominate inside information platforms at regional or national level;
- The application of the exemption of Article 3(4)(b) of REMIT;

Work on a 3rd edition of Guidance has already begun and will focus, inter alia, on issues concerning the registration of market participants.

*The BoR welcomed the work on the second ACER Guidance.*

### 9.3. EC public consultation on implementation of a Data and Transaction reporting Framework for Wholesale Energy Markets

The Commission services have launched a stakeholder consultation on the implementation of a data and transaction reporting framework for wholesale energy markets on 14 September 2012, with the final report on Technical Advice for setting up a data reporting framework from 20 June 2012 from DG ENER's consultants PricewaterhouseCoopers and Ponton attached to the public consultation document. This was circulated to the BoR members.

The purpose of this consultation is to assist the Commission in the preparation of implementing acts to be adopted in accordance with Articles 8(2), 8(5) and 21(2) of Regulation (EU) No. 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency. Responses to this public consultation were invited by 7 December 2012.

### 9.4. MIFID letters – these are also circulated to the GA

Lord Mogg's letter on the 24 September was sent to the European Parliament, the Cyprian Presidency and to the Commission expressing concern over the impact of financial regulation on energy markets.

## **10. OTHER**

### 10.1. Next meetings 2012 and definitive dates for 2013

The dates are now definitive. With regard to April 2013 we have also agreed with the EC the dates for the Madrid Forum, and the BoR/GA will be held in Madrid (originally scheduled in Brussels). The BoR will be held on 16 April, 17 April (morning) the CEER GA and the Madrid forum 17 April (afternoon) and 18 April.

### 10.2. Latest AB decisions

The following decisions were circulated: Decision AB n° 17/2012: appointment of Ms Caroline Torqvist as the new Swedish BoR alternate. Decision AB n° 18/2012: appointment of Ms Anjela Toneva as the new Bulgarian BoR alternate and new BoR member of Malta.

### Appointments of the BoR chair and vice chair

Fay Geitona reported that the terms of the BoR chair and vice chair, Lord Mogg and Walter Boltz will come to an end in November 2012. These are renewable. The formal decision on the appointments of the BoR chair and vice chair will be taken in November. The process has already been agreed at the inaugural meeting of the BoR. A note replicating the agreed process along with the opening of nominations will be circulated by 4 October.

### ACER's assessment of performance

The Director reported that ACER is undertaking an assessment on its performance following the 2 years of its operation. This will be undertaken through specific interviews with stakeholders, the Commission, and the regulators to explore their perception on the Agency's performance. Mr Hilbrecht has been contracted to undertake this task. The Director noted that Mr Hilbrecht is open to any member who would like to provide feedback on ACER's performance and he will be undertaking a series of interviews including with BoR members. The results will be presented at the December BoR meeting.