

7th ACER Board of Regulators meeting

Wednesday, 6 April 2011, from 11.00 to 17.30 (CET)

NRW representation to the EU, rue Montoyer 47, 1000 Brussels

Minutes

Participants

Member States	Name ¹	Member States	Name
Austria (E-Control)	M: Walter Boltz A: Dietmar Preinstorfer	Latvia (PUC)	A: A. Mengelssons Excused
Belgium (CREG)	A: Koen Locquet	Lithuania (NCC)	M: D. Korsakaite Excused
Bulgaria (SEWRC)	M: A. Semerdjiev Excused	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: G. Shammass Excused	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	O: Jarmila Grigelova	Netherlands (NMa)	A: Peter Plug O: Debby van der Pluijm
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	M: Marek Woszczyk O: Kamila Kloc-Evison
Estonia (ECA)	A: Külli Haab	Portugal (ERSE)	A: José Braz
Finland (EMV)	A: Antti Paananen	Romania (ANRE)	A: Ioan Roman
France (CRE)	A: Philippe Raillon, O: Michel Thiolliere	Slovakia (RONI)	M: J. Holjencik Excused
Germany (BNetzA)	M: Johannes Kindler O: Daniel Müther	Slovenia (AGEN)	M: Marko Senčar O: Jasna Blejc
Greece (RAE)	A: George Koutzoukos	Spain (CNE)	O: Rafael Gomez-Elvira
Hungary (HEO)	O: Gábor SZörényi	Sweden (EI)	A: Karin Widegren
Ireland (CER)	M: Michael Tutty	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Martin Crouch O: Clémence Marcelis
Italy (AEEG)	A: Carlo Crea		

Observers	Name
ACER	Alberto Pototschnig
European Commission representatives	Lukas Repa
CEER	Fay Geitona, Natalie McCoy

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

Main conclusions from the meeting:

1. *The BoR will prepare a decision on implementing the AB Decision n° 08/2010 for consideration at its next meeting*
2. *Early discussions on the main areas of the ACER 2012 programme will be held before the formal process for its adoption is kicked off*
3. *The final ACER opinions on ENTSOs statutes after consultation will be delivered to the BoR for a formal opinion. The BoR's formal opinion will be delivered on 4 May at its next meeting*
4. *The BoR recommended that the Commission takes a decision soon to allow Luxembourg to join the North West gas region; in the meantime Luxembourg will be invited to participate in the North West region*

OPENING

1. Approval of the agenda

BoR Decision agreed: (D 1)

The agenda of the 7th ACER Board of Regulators meeting was approved with the deletion of agenda item 4 on the appointment of the BoA members (the Commission's proposal on the short list is still in the process of being finalised). Lord Mogg underlined the importance of circulating along with the Commission's proposal the same information on the candidates to the BoR and the AB members given that the members of the Board of Appeal are appointed by the AB following consultation of the Board of Regulators. Mr Repa confirmed that the same info will be circulated to the BoR and to AB members on the candidates. However, the distribution of personal information on candidates will be subject to their prior agreement.

Mr Plug suggested adding under AOB the request of Luxembourg to be included in North West GRI.

2. Approval of the minutes of the 6th BoR meeting

BoR Decision agreed: (D 2)

The 6th BoR meeting minutes were approved by the BoR members.

3. Update on the Agency activities

Mr Pototschnig gave a summary of the progress in the establishment of the ACER office, staff, official opening, activities, etc. On 3rd March the ACER opening ceremony was well attended including by the Slovenian Prime Minister, and Commissioners Oettinger and Potočnik. On 3 March 2011, 12 staff members had already taken up office. By the beginning of May 2011, 19 staff members will have taken up office. Selection procedures are currently underway, related also the Gas HoD and applications for 10 positions for Seconded National Experts are to be received by 15 April 2011. In the course of the next 3 months, ACER plans to publish vacancy notices for further 12 posts for temporary agents.

The Agency started operating from its temporary premises in Ljubljana on 1 February 2011. In the course of 2012 the Agency will run a procurement procedure to establish its final premises in Ljubljana.

The AEWG and AGWG WGs were established on 1st March. The AESAG (successor of AHAG) was also established. It will focus on the Roadmap for implementation of the electricity target model in parallel with the formal process of framework guidelines and network codes. It had its first meeting on 15 March and the next meetings will be held on 3rd and 10th May.

Regional Initiatives

ACER doesn't foresee the establishment of a Regional Initiatives WG. There was a coordination meeting with the regions' lead regulators and other interested regulators on 5 April which was very constructive. In the afternoon separate sessions for electricity and gas were held. The Agency will consider the feedback received from the workshop yesterday. Mr Pototschnig sees the RI as a way to move forward with implementation of the internal market. Regions should play a role on market monitoring (e.g. implementation) and there is a keen interest in developing roadmaps and 3yr WP by each region and ensure that are consistent with each other and the overall target model. A project approach should be followed where the regions should combine projects. Another role RI can play is to feed into the process of developing the internal market, by contributing the specificities of the regions for increased understanding. Mr Pototschnig reported a concern voiced by some participants in the meeting the previous day that there may be some risks in proceeding with implementation while the formal rules in the network codes are still being defined. However, he stressed that the rules will be developed by the very same people involved in their implementation and therefore the risk of divergence is probably minimal. Moreover, there may be benefits from this parallel approach, as implementation may be able to provide input into the rulemaking process. The electricity and gas sectors face differing situations, but there is a desire to plan ahead for both as regards implementation (in particular considering shortly expected proposals for a gas target model).

Regarding governance of the regions, the meeting participants expressed an interest in stronger coordination (within ACER). ACER recognises that there is a need for having day-to-day coordination between the regions. It will reflect on how to take this forward. This includes considering the relationship with the BoR, given NRAs leading role in the RI.

Mr Repa said that the Commission is supportive of the idea to implement roadmaps. EC's Communication following the consultation is not yet finalised, but the Commission is keen on receiving Regulators' suggestions.

Lord Mogg underlined the keen interest of regulators in keeping the momentum on the RI. Lord Mogg has written to the Commission on some preliminary views on the Commission's draft proposals presented in Madrid. In order to get a more definitive view amongst regulators a discussion at the CEER May GA is scheduled. CEER discussion should be seen as a constructive contribution to the overall RI debate.

Meetings

In terms of meetings, Mr Pototschnig noted that the AB will always meet in Ljubljana. The BoR will meet in Ljubljana, unless NRAs are already gathering somewhere else (for example for the Madrid or Florence Fora) and that efficiency recommends holding meetings in the

same location. Working groups will meet in Ljubljana unless it is more convenient to meet elsewhere, which may often be the case in practice.

ACER liaison office

Lord Mogg reported that CEER has made a generous offer to provide office space for ACER at the CEER offices and for hosting ACER WGs meetings in Brussels whenever necessary. It remains for the EC and AB to accept it. Mr Repa reported that the Commission must approve any form of donation to ACER according to the Agency Regulation. The Commission's decision has gone on inter service consultation, following which consent is expected to be given. This will allow a decision by the AB.

Lord Mogg reiterated the invitation to NRAs to propose ENDS to ACER, as the deadline is fast approaching.

Lord Mogg reported that Fay Geitona was appointed as the ACER NRA coordinator. In this position she will continue to provide support to the BoR.

4. Commission's proposal on the appointment of the members of the Board of Appeal

This item was withdrawn from the agenda.

5. Proposal on publication of background documents

According to the decision AB n° 08/2010, "Procedures and practical measures for applying Regulation (EC) No 1049/2001 on access to documents of the Agency", some documents should be directly accessible to the public by publication on the Agency's website (not upon request) as follows: the agenda of the BoR, the BoR background documents, the decisions taken by the BoR and the minutes of the BoR meetings unless the Board has determined that they should not be published pursuant to the exceptions under Article 4 of Regulation 1049/2001. Under Article 4 access to a document which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process. The BoR discussed how to implement the relevant provisions.

Conclusion

The BoR will prepare a decision on implementing the AB Decision n° 08/2010 for consideration at the next meeting in May.

6. ACER budget 2012 and Multi-annual Staff Policy Plan

Mr Pototschnig presented the 2012 budget adopted by the AB, which has been submitted to the Commission, Parliament and Council. With respect to the version considered by the BoR in its March meeting, the budget now reflects an increase of €60,000 for consultancy which amounts now to €130,000 (following the BoR recommendation). The implication is to increase the ACER budget overall from €7,598,775 to €7,658,775. Mr Pototschnig reported that DG BUDG position currently involves a reduction of approx. €150k in ACER budget with respect to the version approved by the AB.

The EC informed the members that the funds of the EFTA countries are not yet available – as there has been no official Decision (agreement) to allow them to participate in ACER. DG ENER is trying to unblock this situation with DG BUDG.

Regarding the budget, Mr. Boltz suggested that early informal discussions with the BoR regarding the budget planning could be useful given some budget lines will have an important impact on the day-to-day work of the BoR and the WGs (e.g. travel budget, workshops). Mr Pototschnig was keen on finding practical and effective ways of having early informal discussions on the budget before the formal process for its adoption is kicked off.

7. State of play of 2011 WP, planning for ACER's WP 2012

Mr Pototschnig updated on the ACER state of play: In electricity, the public consultation on the draft CACM framework guidelines (FG) is intended to start shortly following the BoR orientation debate. The Grid connection public consultation is running until 2 May. A draft on the System Operation framework guideline is expected to be finalised next. In gas, the CAM FG public consultation is running until the 2nd May. The public consultation on the balancing FG will start shortly following the BoR orientation debate. On the ENTSO-E and ENTSG statutes, RoP and AoA, the ACER opinion should be delivered by 2 May 2011 (subject to the favourable opinion of the BoR) following the ACER consultation. The 2011 WP is well on track.

Mr Boltz suggested having an early discussion on the main areas of the ACER 2012 WP (also keeping in mind the formal timetable launched by the Commission). There is a need for some discussion in advance before there is a commitment to a delivery date. Early planning should start including on resources implications, before the formal process on the preparation /approval of the WP is kicked off. Mr Plug reported that at the next ACER EWG a discussion will be held on the planning and division of work. Following the next ACER EWG meeting, the WG Chair will send a note detailing the distribution of work to the Director.

Lord Mogg proposed to send short regular reports to stakeholders on ACER progress, e.g. in the form of a newsletter.

8. Three-year plan: EC's consultation

The Commission is consulting stakeholders, until 10 April, on the priorities for the development of FG and NC for 2012 and beyond. Lord Mogg reported that there will be a HLG on 3 May. A date for the next Planning group meeting is also sought (11 May Tbc). Lord Mogg underlined that the stability of the 3 year plan, priorities and timing is of fundamental importance to those engaged in the work of preparing the FG and NC.

9. ACER opinion of ENTSOs statutes: update on the consultation & decision on the process

Mr Pototschnig reported that on ENTSO-E statutes, the consultation was launched on 15 March (and ended on 1 April). The consultation was launched on the statutes and ACER's draft opinion. The Agency is due to give its opinion by 2 May. Before that, ACER need to formally consult stakeholders and then the BoR is required to formally express its formal

opinion. The ENTSOG consultation is running until 5 April. On ENTSO-E the Agency has received 8 responses and on ENTSOG 2 submissions. On the draft ENTSOG Opinion issued for consultation, the BoR members were consulted electronically and sent back comments on 18 March as time constraints have not permitted a proper orientation discussion. On 2 May ACER needs to deliver its formal opinion to the Commission. He then reported that on the content both opinions are similar. The main issue for both ENTSO-E and ENTSOG is whether their General Assemblies have the discretion to admit new members, as long as they comply with the requirements, given the obligation of TSOs to cooperate at European level. Another issue raised was the process for amending the statutes. Substantive changes would need to undergo the full review/opinion process. The draft opinions have taken on board some of the BoR preliminary comments but do not reflect the BoR comments on the differences between ENTSO-E and ENTSOG about the sunset clause. The ENTSO-E and ENSTOG statutes differ on this point as well as on the process for consultations. Mr Pototschnig stated that the two Statutes do not need to be identical. Mr Braz stated that ensuring similar procedures by ENTSO-E and ENTSOG in consultations and in the development, monitoring, interpretation and maintenance of network codes is a substantive point. Mr Repa reiterated the Commission's position at the preceding BoR meeting which is that opinions of ACER and the Commission on the statutes of the ENTSGOs aim at identifying potential problems with the Community acquis. Drafting suggestions could best be given to the ENTSGOs informally.

The BoR decided to consider the Opinions on the Statutes of ENTSO'E and ENTSOG for the formal opinion at its next meeting, on May 4th. Mr Pototschnig expressed his concern that this would imply that the Agency will deliver these opinions to the Commission a few days later than the deadline established by the ACER Regulation. However, the Director will not be able to adopt these Opinions unless they receive the favourable opinion of the BoR.

Conclusion

The final ACER opinions on ENTSGOs statutes after consultation will be delivered to the BoR for a formal opinion. The BoR's formal opinion will be delivered on 4 May at its next meeting.

GAS

10.Draft framework guideline on gas balancing

Mr Pototschnig presented his proposal for a framework guideline on gas balancing which reflects the ERGEG guideline and is intended to be launched soon for consultation. Mr Boltz expressed support for the ACER version and felt confident with it is a good basis for consultation which could proceed as soon as possible. He reported that the framework guideline was very well received at the Madrid Forum.

ELECTRICITY

11.Draft framework guideline on CA and CM in electricity

Mr Pototschnig presented the draft framework guideline on CA and CM. The 2014 roadmap was reinserted. In previous discussions, he noted his hesitation to include governance issues in the FG. He is still of the view that this should not be included in all the FGs. However, ACER has not yet found a proper vehicle to address the governance issues, so for

the time being, this part may be re-inserted in the CACM FG. The text is substantially the same as ERGEG's.

Mr Tutty stressed Ireland's difficulty to meet the obligations on a day-ahead price and on continuous implicit trading by the 2014 deadlines given its gross pool market which has a central dispatch (and which is inconsistent with continuous implicit cross border trading).

The Director thanked the BoR for a very fruitful orientation discussion and indicated that it will take it into account in preparing the final document to be issued for consultation (in particular with respect to the governance section).

CROSS SECTORAL

12. Infrastructure Package: Orientation discussion on the EC's approach on cost allocation and Financial Instruments

Lord Mogg informed the members that he is planning to send a letter to the Commission summarising regulators' findings on cost allocation and financing mechanisms. The Commission has recently requested further information. They would be grateful to receive the results of regulators' survey on financing needs to help them understand the investment gap. Some of the regulators provided confidential data and some rough estimates. If the data is used individually this could cause problems, but if it is presented in aggregate form this would be less problematic. We will look at it to see how we would respond within the time constraints. Mr Repa thanked the regulators for the work done.

13. Next Meetings

A calendar of next meetings was circulated to members. The next BoR meeting will take place in Ljubljana on 4 May from 12.00 to 17.30 hours.

14. AOB

Mr Plug reported that Luxembourg requested to be included in the North West gas region. It is a Commission decision to define the regions following consultation with ACER. This is also related to the Commission's ongoing review of the Regional Initiatives and the regions, where the EC has expressed the view that regions should not be defined in a legal instrument. Mr. Plug proposed that until a Commission decision is taken, Luxembourg be invited to attend the North West gas region.

Conclusion

The BoR recommended that the Commission takes a decision shortly to allow Luxembourg to join the North West gas region; in the meantime Luxembourg will be invited to participate in the North West region.