

**16<sup>th</sup> ACER Board of Regulators meeting**  
**Tuesday, 13 March 2012, from 09.00 to 13.00**  
**ACER office, TR3 -Trg republike 3, 1000 Ljubljana**

**Minutes**

**Participants**

Member States	Name <sup>1</sup>	Member States	Name
Austria (E-Control)	M: Walter Boltz A: Dietmar Preinstorfer O: Katharina Tappeiner	Latvia (PUC)	O: Lija Makare
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 Shammas Excused	Malta (MRA)	O: George Cassar
Czech Republic (ERO)	O: Miroslav Belica	Netherlands (NMa)	M: Peter Plug O: Debby vander Pluijm
Denmark (DERA)	A: Jeppe Danó	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)	A: Philippe Raillon	Slovakia (RONI)	A: N. Hudcovicova excused
Germany (BNetzA)	A: Annegret Groebel O: Daniel Múther	Slovenia (AGEN-RS)	M: Irena Pracek A: Jasna Blejc
Greece (RAE)	M: Michael Thomadakis	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)	A: Clara Poletti O: Miranda Diana		

Observers	Name
ACER	Alberto Pototschnig, Fay Geitona
European Commission	Inge Bernaerts, Kristof Kovacs
CEER	Natalie McCoy, Una Shortall

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

<b>Main conclusions from the meeting:</b>
1. <i>The BoR members received an update on the preparation of the first ACER monitoring report and the first ACER annual activities report. They received an update from the two new AWGs structure and deliverables (AMIT and AIMP).</i>
2. <i>The BoR members welcomed the draft preliminary 2013 ACER budget and invited the BoR chair to inform the AB on the BoR comments notably on available resources.</i>
3. <i>The BoR received an update on the EIP proposals.</i>
4. <i>The BoR welcomed the draft Framework Guidelines on Interoperability and Data Exchange Rules for European Gas Transmission Networks which will be launched for public consultation.</i>
5. <i>On GRI, the BoR endorsed the proposal on common projects on coordinated regional auction procedures for the allocation of a common set of bundled capacity products on all interconnection points in each of the three regions and noted that they expect strong TSOs commitment which is crucial for the success of this project. Subsequently, lead regulators will need to closely monitor progress and regularly report to the Madrid Fora.</i>
6. <i>The AMIT WG will coordinate comments on the draft paper on registration format and send them to the Director by the end of the month in anticipation of the launch of the public consultation.</i>
7. <i>The development of the confidentiality clause to be reflected in the BoR RoP and any other revisions of the RoP will be developed by the AIMP WG.</i>

## 1. Opening

### 1.1. Approval of the agenda

*BoR Decision agreed: (D 1)*

The agenda was approved.

### 1.2. Approval of the minutes of the 15th BoR meeting & review of actions & table of BoR decisions, opinions for 2010, 2011

A table for information numbering the decisions and opinions of the BoR and providing the link to the relevant public BoR minutes was circulated.

*BoR Decision agreed: (D 2)*

*The 15<sup>th</sup> BoR minutes were approved.*

#### 15th BoR meeting back docs

The list of the 15<sup>th</sup> meeting background docs was circulated and approved for publication. Henceforth the BoR agenda will signal whether each accompanying document is considered as a background document and thus eligible for publication.

### 1.3. Report on ACER progress & preparation of the 1st Annual Activity Report

The Director reported on ACER activities including on recruitment of staff, BoA working arrangements and cost related to its operation, WGs and the appointment of all vice chairs.

The Director reported also on the planning for the preparation of the first ACER monitoring report. The Agency shall monitor the internal markets in electricity and natural gas, in particular the retail prices of electricity and natural gas, access to the network including access of electricity produced from renewable energy sources, and compliance with the consumer rights laid down in Directive 2009/72/EC and Directive 2009/73/EC. The Agency shall make public an annual report on the results of the monitoring. In that report, it shall identify any barriers to the completion of the internal markets in electricity and natural gas. As previously discussed, this year this will be a joint ACER/CEER report. Drafting responsibilities have been agreed. The time schedule is the following: A preliminary draft will be ready for September and the draft report will be finalised in October. It will be submitted for information to the BoR in November.

#### ACER annual activities report

The Director gave a presentation. In accordance with the ACER Regulation each year the Director shall prepare a draft annual report with an independent section on the regulatory activities of the Agency and a section on financial and administrative matters. The Administrative Board shall adopt and publish the annual report on the activities of the Agency and shall transmit this 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 shall contain an independent section, approved by the Board of Regulators, concerning the regulatory activities of the Agency during the year considered.

The Director presented on the time schedule for the preparation of the annual report suggesting that the BoR approve the annual report at its May Meeting (22 May) and the AB adopts the report by 15 June.

Lord Mogg noted that he intends to make a foreword to the independent section of the regulatory activities.

### 1.4. European Commission's update - Certification

Ms Bernaerts informed the BoR that the Commission has received 7 TSO certification files and is working with the individual NRAs on these dossiers (the Commission has already issued 8 opinions). She invited regulators to give an early indication to the EC on when they plan to formally notify certification decisions. Experience of the EC's cooperation with Regulators and ACER staff is very positive.

On the monitoring report, Ms Bernaerts reported that the country reports for each country (part of the Commission's Communication on the internal energy market) will be sent to regulators bilaterally around May and it seems that this would fit with the CEER - ACER exercise to collect data as part of the national regulators report.

## 2. ACER WGs

### 2.1. Update on the AWGs establishment and operation

#### Director's Decisions on chairs and vice chairs and Legal Advisory Team

The Director issued a decision on the Legal Advisory Team. He explained that his vision is that the legal work undertaken should be privileged and should not be shared with the home authority given that the LAT may undertake legal tasks not related to the regulatory issues of the BoR (such as public procurement).

The Director reported that Ms Stephanie Neveling will be the vice chair of the AGWG. The relevant Decision was circulated.

#### WG functioning

A note on this informal meeting was held on 25 January 2012, between the Director, HoDs and the EWG and GWG chairs was circulated. The Director had a very successful discussion on improvements with the GWG and EWG chairs and intends to convene a meeting with the new ACER WG chairs as well.

Main issues discussed included: the organisation of a "kick-off" meeting involving the relevant WG chair (co-chairs, vice-chair etc.) and work stream lead and the Director and Head of Departments at the start of each key stage of a project. Other improvements; towards the end of each stage, every effort will be made to provide documents to the Director about a week (10 days) before the deadline for uploading for the BoR. If non-trivial changes are expected, a teleconference (or other meetings) will be arranged if possible, to allow some discussion before the document is finalised.

#### Short update from AIMP

Mr Woszczyk reported on the AIMP WG and its first meeting on 2 March. The deliverables mainly reflect the ACER WP: Consultation policy for ACER (to be presented at the May BoR); supporting ACER's monitoring activities; procedures for monitoring the implementation of Network Codes. Procedures for the "peer review" of NRA's decisions.

In terms of the structure, an Unbundling and Reporting TF is proposed as well as a Procedures Workstream (PWS).

## 3. Cross-sectoral

### 3.1. ACER 2013 budget

Article 23 of ACER Regulation provides that by 15 February each year, the Director shall draw up a preliminary draft budget covering the operational expenditure and the programme of work anticipated for the following financial year, and shall forward that preliminary draft budget to the Administrative Board, together with a list of provisional posts. Each year, the Administrative Board shall, on the basis of the preliminary draft budget prepared by the Director, make an estimate of revenue and expenditure of the Agency for the following financial year. That estimate, including a draft establishment plan, shall be transmitted by the Administrative Board to the Commission by 31 March.

Lord Mogg explained that in terms of process, prior to adoption of the estimate, the draft prepared by the Director shall be transmitted to the Board of Regulators, which may deliver a reasoned opinion on the draft. In the past BoR discussed the budget and the chair reported orally to the AB or through a letter. He invited the members to have a discussion which may result in recording some comments (notably on REMIT) at the AB meeting and possibly in a letter or a formal opinion to the AB chair.

The Director presented the budget: He explained that the marked increase of the draft 2013 budget is largely due to the costs of the IT system required for the implementation of REMIT (approximately €3 million) and the expected need to pay the rent for ACER's offices once the period during which the Agency is hosted by the Slovenian Government expires on 31 January 2013 (this amounts approximately to €1 million). The estimate of revenue and expenditure of the Agency for the 2013 Financial Year amounts to €12,028,851. It reflects an increase of staff (52 now to 67 at the end of next year).

The MSPP (2013-2015) states that 41 staff members (39 temporary and 2 contract agents) were recruited in 2010 and 2011 in accordance with the Establishment Plan. This Plan was defined on the basis of the tasks and responsibilities assigned to ACER by the Third Legislative Package.

At present, 15 additional staff members are envisaged for REMIT. ACER, however, estimates that a larger staff will be required for properly implementing REMIT. In the REMIT implementation phase, ACER counts on the support of NRAs. It is however clear that those NRAs, which are themselves facing additional responsibilities under REMIT and are subject to severe resource limitations in the Member States, will not be able to provide support to the extent required for properly operating the monitoring system envisaged by REMIT. Therefore, ACER will need to be authorised to recruit additional staff, if it were to effectively monitor wholesale energy markets. In 2012, ACER will start to recruit its staff for REMIT tasks. Of the 15 additional staff members already authorised in the Fiche Financière of REMIT, who will support the development phase, 5 (3 temporary agents and 2 SNEs) will be recruited in 2012. ACER staff will therefore total 57 (43 temporary agents, 2 contract agents and 12 SNEs) in 2012 with an additional 10 posts will be filled in 2013 (6 temporary agents and 4 SNEs).

As specified and approved in the MSPP 2012-2014, these posts will be allocated to the different REMIT tasks as follows: Head of Department (1 AD11 and 1 AST3 for secretarial support). Management and maintenance of the data collection and reporting platforms (1 AD5 and 1 AST3). Validation of collected or reported data (1 AD6 and 2 SNEs). Monitoring methodologies, data analysis and initial assessment (1 AD8, 2 AD7 and 3 SNEs). Reporting (1 AD6 and 1 SNE).

With regard to the EIP and as indicated in the MSPP (2013-2015) the financial Statement covering the proposed regulations for Connecting Europe Facility (CEF) and the Energy Infrastructure Priorities guidelines (TEN- E guidelines), ACER is expected, in line with its internal market mandate, to execute tasks related to regulatory cost allocation and monitoring of the priority corridors and areas. The legislative acts proposed by the Commission are currently under inter-institutional negotiations with their entry into force expected for 1 January of 2013 (for TEN-E guidelines) and in 2014 for the CEF; hence certain elements, e.g. regarding budgets, remain to be agreed on. The estimated staffing impact is 12 FTE AD level staff and a minimum of 2 AST to assist the process. The recruitments cannot start as the Connecting Europe Facility will only enter into force in 2014. The Director noted that the Commission already convenes regional groups in 2012 and

ACER and regulators are expected to act as if the Regulation were adopted which raises a resources issue.

Ms Bernaerts remarked that the budget is subject to final adoption of the EU budgetary authority. She would like this to be recorded in the budget itself. On substance, she remarked that the IT budget is still outstanding. She stated that the Commission is willing to help but there are difficulties and there is a staff reduction of 1%.

Lord Mogg concluded the discussion with the following remarks to be included in the BoR reasoned opinion and recorded to the AB. The existing responsibilities of ACER have been supplemented and thus ACER is growing. The Commission, Council and the EP need to take account of the resources needed to deliver notably in areas such as REMIT and the EIP. NRAs cannot provide more help as conveyed by the survey undertaken by the adhoc group which reflects enormous restraints in resources. This preliminary assessment indicates that most NRAs currently have limited experiences with monitoring market abuse within the scope of REMIT and with wholesale data collection on a continuous daily basis provided under REMIT for the Agency. A number of NRAs expect that competent staff would be difficult to find. The resources currently foreseen at national level are limited. National regulatory authorities are also responsible for ensuring that REMIT is enforced in the Member States. Given that for the majority of NRAs monitoring experience is limited, and enforcement will be a completely new task to fulfil, significant input on monitoring of wholesale energy markets through ACER's monitoring activities is expected.

Furthermore, the BoR took note of the preparatory work in the context of the proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European energy infrastructure which envisages additional tasks for the Agency, including in the process for the selection of Projects of Common Interest and in the monitoring of the development of such projects.

Lord Mogg concluded that the invitation to ACER to have a further reduction is neither possible nor realistic and that ACER should have the necessary resources to fulfil its tasks.

The Director stated that if the budget is not adequate to address the new REMIT responsibilities of ACER the Director will ask the BoR for negative priorities in the 2012 WP.

BoR Decision agreed: (D 3)

*The BoR members welcomed the draft budget, invited the BoR chair to prepare the BoR reasoned opinion and to inform the AB about the abovementioned remarks notably on available ACER resources.*

### 3.2. Energy Infrastructure Package

Infrastructure draft regulation

Ms Bernaerts reported on the latest discussions. The Member States' discussions have very much focused on permit granting. The Danish Presidency gives a lot of focus on energy efficiency. The Council Energy Working Group met on 31 January and meets again on 28 February. 27 March will be the next discussion at the Council Energy Working Group. In the EP a draft report by the rapporteur is being prepared. The ITRE Rapporteur's report is planned to be drafted and sent to translation by mid-March.

Lord Mogg welcomed the continuous collaboration with the EC on the EIP. A meeting with Mr Vinois is scheduled on 19 March with the Director and the BoR chair. Lord Mogg invited the Agency WG chairs (members of the EIP SC) to join.

With regard to the negotiations and the revised text of the proposals, Lord Mogg raised some concerns: There is a strong risk that the practical steps taken by the Commission at this stage could undermine the enduring processes which will be introduced only after the Regulation enters into force (e.g. the selection of the initial PCI list not from the TYNDP). There are also serious concerns should the Commission expect that ACER is to provide an opinion on the PCI list before the Regulation (and resources) are in place.

### 3.3. Preparation of the ACER consultation practices - presentation on the CEER revision of its consultation practices

Ms Shortall reported that the CEER Secretariat is now reviewing CEER consultation guidelines, examining policy and practices elsewhere. A detailed presentation on the main issues was circulated.

The CEER Secretariat is also organising an internal workshop in Brussels (on 1 March) to share experiences. As part of this process, CEER is also soliciting stakeholder feedback (including organising a multi-lateral meeting with respondents on 19th March).

### 3.4. Report on the Planning group meeting (29 February) and 3 year plans

The planning group took place on 29 February. The revised 3 year plans were distributed. The Commission stated that work is on schedule. Mr Crouch noted that the electricity 3 year plan is not updated. As agreed at the last Planning Group meeting, the dates for Third Party Access should be removed from the current 3-year plan. On the Balancing FG/NC, ACER informed that the public consultation is expected to start in April and end in June. As explained at the previous Planning Group meeting, ACER expects a delay in the delivery of the balancing FG. It was agreed to change the 3-year plan accordingly and move the end of the FGs period to Q3/2012.

Mr Boltz commented that almost all changes have been agreed at the last planning group (including timing for Interoperability FGs and tariffs).

The Commission is consulting from 08/03/2012 to 16/04/2012 on the 2013 and beyond 2013 annual priority list. The consultation document was circulated. The priorities beyond 2013, are as follows: Electricity: third-party access rules; energy efficiency regarding electricity networks.

Gas: rules for trading; network security and reliability rules; security and reliability rules; operational procedures in an emergency.

### 3.5. Dialogue with FTS and Russia

Lord Mogg reported on the last meeting and the request by FTS to ensure better preparation in the bilateral meetings. He briefly reported on the FSR conference and on the request by the Russian Ministry to meet with the Director of ACER.

## 4. GAS

### 4.1. Update on the implementation of the Gas SoS Regulation

A note was circulated about the SoS Regulation and an informal meeting with the EC. Each Member States have 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, there is a role for NRAs in this implementation, not least because of the infrastructure dimension, the links with the TYNDP and the EIP proposals (and how the SoS considerations are taken into account therein) as well as the impact on costs for security standards taken into account where regulators decide the tariffs. At an informal meeting (held on 3 February) on the role of ACER and NRAs with regard to the SoS Regulation, the Commission said it was useful to inform the GCG debate on what is happening in the regions (on SoS and infrastructure) and equally to keep the regulators informed about the Gas Coordination Group discussions. The Commission is keen for regulators to participate in the procedures of the SoS Regulation.

Lord Mogg concluded that evidently there are differences on the specific role that NRAs have assumed after the SoS Regulation. Although NRAs are usually not the Competent Authorities under the SoS Regulation, they have an interest in some aspects of the SoS Regulation. Thus the discussion will be pursued at the BoR on a regular basis.

### 4.2. Interoperability Framework Guidelines

ACER has also received the invitation letter of the EC on 31 January 2012. The deadline to submit the FGs to the Commission is 31 July 2012. The aim is to consult upon the FGs from mid-March until May and present the draft FGs to the Madrid Forum on 23 March.

Mr Boltz stated that the draft has been agreed by the GWG and that the Director's proposal does not feature any significant changes compared to the GWG version. On the questions circulated he will submit some minor comments.

Mr Boltz stated that after the consultation, we shall need to reconsider some issues such as the capacity calculation (bids for unused capacity on the interconnection points because the TSOs do not share the data or, alternatively, provide more incentives). Mr Boltz reported that there is also an agreement to hire a consultant to undertake the impact assessment.

Ms Bernaerts welcomed the proposal and invited ACER to launch the consultation. In her view the impact assessment raised some contentious issues including the issue of providing some quantification (cost benefit analysis) which although is difficult, she believes we have to try and make some progress.

#### BoR Decision agreed: (D 4)

*The BoR welcomed the draft FG to be launched for public consultation immediately with no additional time for comments.*

#### 4.3. Madrid Forum

ACER will be presenting on transit, transparency monitoring, Regional Initiatives, NC on CAM, NC on gas balancing; and the FGs on transmission tariff structures and Interoperability.

The Director presented a note on the GRI, with some proposals on the way forward. It is now time to take a more ambitious approach and to intensify efforts.

Against this background, in the last meeting of the GRI Coordination Group, held on the 27th February 2012, ACER proposed to plan (and prepare a detailed roadmap for):

- the introduction of coordinated regional auction procedures for the allocation of a common set of bundled capacity products on all interconnection points in each of the three regions, and
- the development of a platform to support such a coordinated allocation in each of the three Regions in line with the provisions of ENTSOG's final proposal of the Network Code on CAM.

The Director reported that during the presentation of the CAM NC on 6 March 2012, ENTSOG already signalled their availability and willingness to move to the implementation phase through the GRI. Commissioner Oettinger also endorsed the kick-off of this work.

Lead regulators endorsed to kick off pilot projects but raised the importance to ensure the TSOs commitment.

Ms Bernaerts stated that this is a very important development; she considered very important that the BoR uses the momentum following the adoption of the first CAM NC and the relevant announcements by the ENTSOG President.

#### Conclusion

*Lord Mogg concluded that the BoR endorsed this proposal which may have beneficial effect and expect TSOs to commit while lead regulators will need to closely monitor progress and regularly report to the Madrid Fora.*

Mr Tomás Gómez invited all members to a dinner organized by CNE in the margins of Madrid on Thursday 22 March.

#### 4.4. Update on CAM network code and on the ACER auction design study

Mr Boltz reported on the state of progress on the CAM network code. ENTSOG have issued the final CAM network code and presented it at a reception with the Commissioner on 6th March. ACER has three months (until 6 June) to review the NC and draft its reasoned opinion.

#### 4.5. Report on Workshop on tariffs

Mr Boltz reported on the state of progress: The Consultation Document on the Scope and main policy options for Framework Guidelines on Harmonised transmission tariff structures has been published on 8 February 2012. Stakeholders are invited to submit responses by 26

March 2012 (the deadline for the consultation has been extended). An ad-hoc expert group on gas transmission tariff structures is currently being formed.

The workshop was held on 20 February. 40 stakeholders participated.

#### 4.6. Update on balancing network code

Mr Boltz reported on the state of progress The FG was issued last October and since then an ACER Impact Assessment has been published. On 4 November 2011, ENTSOG were invited to develop the network code. They have held 5 Stakeholder Joint Working Sessions in Brussels, at which ACER were represented. To support ENTSOG's work, at their request, telephone conversations are taking place between Commission, ACER, OFGEM and ENTSOG. ENTSOG will publish a draft NC for public consultation on 13 April

#### 4.7. Update on Transit contracts

The Director reported on the this exercise: the Commission asked ACER to assess where transit contracts still exist and are not in line with Third Package. In summer 2011 ACER asked NRAs to respond to a set of questions on transit contracts in each Member State. These looked at where transit contracts resulted in discrimination. Transit was defined in the letter as using the gas transmission network to deliver gas across borders of EU Member States where the gas originates or is destined for a network in an EU Member State. ACER's enquiry closed at the end of 2011, but in some cases not enough information was submitted. ACER agreed to prepare a first template of the report with the responses received, whilst also approaching the NRAs from the Member States where there are still doubts. The main findings from this exercise will be presented in Madrid.

## 5. ELECTRICITY

### 5.1. Update/planning on 2012 Work

Mr Crouch presented the note on the update of the EWG deliverables.

#### Conclusion

*The BoR took note of the progress.*

### 5.2. ACER response to EC's governance guidelines

The Director reported that comments on ACER response were sought though an online procedure and the ACER response was adopted and sent on 29 February to the Commission. The ACER response underlines the strong and firm commitment of ACER and NRAs to achieve the implementation of the target model and the market integration at wholesale level by 2014. The TSO-Power Exchange (PXs) relationship for day-ahead congestion management needs a proper structure for decision making, sound definitions of roles and responsibilities or rules on liabilities. A high level of harmonisation of local market coupling governance arrangements, including the relation between TSOs and PXs is necessary to achieve the desired quality of market coupling, an efficient change

management process and a non-discriminatory extension process and access for market participants.

## **6. MARKET INTEGRITY AND TRANSPARENCY**

### **6.1. REMIT priorities & Draft report on resources for the monitoring of wholesale energy markets under REMIT**

Lord Mogg introduced his cover note designed to provoke debate and to identify the key questions/answers in order to consider and help develop at both the Agency and NRAs' level the practical implementation of the REMIT (including on IT issues and resources).

The Director gave a detailed presentation covering developments in 2011 and for the future. In 2011 a public event in Ljubljana (28 November) was organised, the publication of Guidance and Q&A took place on 20 December; the web application for notifications was on-line from 28 December. Cooperation has been established with some NRAs during the testing of web applications. All NRAs "adopted" ACER application (except one). ACER awarded two tenders for consultancy and survey (Centralised European Registry of Market participants (CEREMP) and list of contracts to be reported and fundamental data (input for recommendations on record of transactions).

In 2012 many meetings with stakeholders (ENTSO-E, ESMA and UK Financial Authority (FSA); NordPool market surveillance unit; CRE market monitoring department; TrayPort; Europex) took place. Furthermore, a discussion paper has been circulated on REMIT registration format (and it has been sent to AMITWG). The formal document will be finalised, after a consultation, by 29 June. The Recommendation on record of transactions and other issues will also be prepared (with a timeline for its finalisation by September 2012). The open letter for REMIT stakeholder expert group and for market surveillance expert group is under preparation. Also in 2012 a second edition of ACER guidance will be issued.

The Director also presented the time schedule for engagement with stakeholders and the workshops planned for 2012.

Lord Mogg thanked the Director for this detailed presentation and questioned whether ACER would take account of NRAs' expertise in IT software. The Director in response clarified that useful experiences will be used whilst this will depend also on the specific license fees. Mr Boltz noted that this will be relevant to NRAs as in a short time they will have to make their own decisions on software and whether they will use their own or ACER's. Mr Raillon also is interested in sharing this information and stressed the importance of compatibility between the different IT systems.

Walter Boltz proposed that workshops across Europe for the public might be helpful, given the increasing number of questions and uncertainty on what REMIT will mean for them. There is a high level of interest from stakeholders and market participants for organising regional events. The Director welcomed the opportunity to organise workshops locally and ACER will make all efforts to support such local events.

### **ADHOC GROUP**

The chairs (Mr Zuleger and Ms Korr) presented the main findings of the survey. The responses to the questionnaire were due on 24 February. 25 NRAs (including Norway and

Northern Ireland) responded; only NRAs from Cyprus, Greece, Malta and Slovakia did not respond.

A summary of the responses indicate:

- Limited experiences with monitoring market abuse as foreseen by REMIT and with wholesale data collection on a continuous daily basis.
- A number of NRAs currently do not know whether they will be competent for monitoring wholesale energy markets at national level. Limited resources are foreseen at NRA level for REMIT monitoring tasks, but also for enforcement which is also a new task for NRAs.
- Significant number of NRAs rather opts for a reactive monitoring approach. With regard to the envisaged approach more NRAs will implement both (proactive and reactive in terms of market monitoring).
- Since for the majority of NRAs, monitoring experience is limited, especially in the wholesale gas market, and enforcement will be a completely new task to fulfil, the responses to the REMIT questionnaire seem to indicate that the burden for monitoring wholesale energy markets will mainly be with ACER.

Other issues highlighted were that regional cooperation between ACER and NRAs in monitoring wholesale markets should be enhanced, as well as cooperation with financial market authorities at national level. There is also a need for training on issues directly linked to REMIT tasks. The full report will be available for the 17<sup>th</sup> BoR meeting. It also seems that the majority of NRAs want to share software with ACER. Lastly on IT issues, there are limited platforms for the disclosure of information at national level.

The BoR took note and thanked the chairs for this preliminary analysis analysis.

a) AMIT Chair note on priorities for 2012

A note was circulated which sets out the main elements of REMIT-related work for 2012 and the TF structure that will carry it out. Lord Mogg underlined the ACER responsibilities on REMIT and invited this discussion to be held at the BoR.

Mr Braz presented the main priorities and the structure.

In AMIT, there will be 2 TFs:

- the Market Monitoring Governance (MMG) TF will deal with practical arrangements such as proposals for registration format and transactions records and coordinate an IT work stream
- Wholesale Markets Surveillance (WMS) TF will provide input for the continuous update of ACER Guidance Notes, ensure harmonised NRA procedures regarding REMIT issues, and propose ACER response to evolving EU financial market rules, including via coordination with ESMA.

Furthermore, a continuous Surveillance Forum (a sort of “standing TF”) will be established, where NRAs can post REMIT-related questions to give other NRAs the possibility of comparing and harmonising responses. The chair proposed that this can be put under CEER or ACER.

The Director thanked the AMIT WG for these priorities and the proposal on the structure. He clarified that by its nature, the discussions in the Surveillance Forum will also inform the process of preparation of updates of the Guidance referred to in article 16(1) of REMIT. As such, he suggested that the Surveillance Forum should be part of the AMITWG, to avoid inefficiency and duplication of effort.

Mr Braz remarked that with regard to the Surveillance Forum the decision on where to host it depends on technical and legal issues. Whilst technical IT issues do not seem to present a problem, which was confirmed by the Director, there are some legal concerns. Thus these issues would be further analysed by the WG which would report at the next BoR.

Conclusion

*The members took note of the proposed structure.*

6.2. ACER Recommendation on the supervision of FTR

The final ACER Recommendation was circulated. In order to create a basis for efficient transmission rights trading, ACER provided to the European Parliament and to the Council a Recommendation on the Miffed proposal: ACER recommended including into the exemption of Article 2(1) (n) TSOs' service providers and buyers/sellers with regard to their transmission rights related activities.

Conclusion

*The BoR by electronic approval provided a favourable opinion on the Recommendation by a majority of members (but RONI).*

6.3. REMIT registration format - for discussion

The Director presented the paper according to which NRAs will be required to transmit the information in their national registers to the Agency (the "registration format"). The discussion paper is drawing heavily on CEER work and is directed to NRAs to provide the basis for the cooperation.

The Director stated that the ACER consultation will run mid-April to mid-May, a public workshop in Ljubljana is scheduled for April; the final consultation of the BoR will be held in 19 June to allow the finalization and publication of the format by 29 June.

In procedural terms, the Director reported that he has circulated the discussion paper on the format to AMIT WG and the BoR. The Director also intended to write separately to the NRAs given the legal requirement (under the REMIT Regulation) to consult the BoR (article 1(5) of REMIT as well as NRAs (under article 9 (3)). He sought the views of the BoR members on how they would like themselves to be consulted (e.g. individually and/or through the BoR and/ or through the WG) in accordance with the above legislative requirements.

Lord Mogg suggested that comments by NRAs (given they need to be consulted individually as well as in their capacity as BoR members) may in principle be collected through the BoR (given not all NRAs are represented in the WG); with the understanding that, where necessary, a NRA may also provide an individual response. ACER should thus expect that the BoR response covers all NRAs (and addresses thus the legal requirement that they are consulted) whilst BoR members may also indicate that they wish to provide an individual response where appropriate.

With regard to this consultation on the format the comments by NRAs will be collected by the AMIT WG by 30 March given the deadline for launching the consultation pretty quickly in April.

Lord Mogg in response remarked that this is a proposal from the Director which, in parallel, is sent to the AMIT WG and to the BoR given the time constraints.

*BoR Decision agreed: (D 5)*

*The AMIT WG will coordinate comments and send them to the Director by the end of the month in anticipation of the launch of the public consultation.*

## **7. ORGANISATIONAL ISSUES**

### **7.1. Confidentiality arrangements for the BoR**

The BoR discussed the confidentiality arrangements for the BoR on the basis of a proposal by the Director. The Director presented two possible ways to deal with this:

- a) The introduction of a confidentiality clause in the Rules of Procedure of the BoR. Such modification could be adopted on a stand-alone basis or together with the other planned modifications to the RoP (e.g. of the provisions on the written procedure or on the dissenting opinions)
- b) Alternatively, the BoR members could sign an individual Commitment to Confidentiality.

Both options reflect the sequence of the timing (the BoR Rules of Procedure may take some time to develop) whilst have the same legal effect.

Some members asked to discuss further the clause proposed (either on the basis of the provision of the WG rules or, alternatively, the provision used in the AB RoP) and welcomed bilateral exchanges between ACER and NRAs legal services are welcomed.

Lord Mogg suggested that the AIMP WG picks up this task with the assistance of Fay Geitona.

*BoR Decision agreed: (D 6)*

*The development of the confidentiality clause to be reflected in the BoR RoP and any necessary revisions of the RoP will be developed by the AIMP WG.*

## **8. OTHERS**

### **8.1. ACER first annual conference, 14 March 2012**

The Director reported on the practical information. A detailed information pack along with the RI status review were handed over to members.

### **8.2. Next Meetings**

-Next BOR meeting will take place on 24 April in Ljubljana.

### 8.3. AOB

The following AB decisions were circulated:

- AB decision n° 02/2012 on the appointment of the new Czech BoR member: Alena VITASKOVA and alternate Martina KRCOVA
- AB decision n° 03/2012 on the appointment of the new Italian BoR alternate Clara Poletti