

61st ACER Board of Regulators Meeting
Tuesday, 8 November 2016, 14.30-19.30
CEER, cours Saint-Michel 30a, Brussels

Minutes (final)

Member States	Name ¹	Member States	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch	Italy (AEEGSI)	A: Clara Poletti O: Ilaria Galimberti
Belgium (CREG)	M: Marie-Pierre Fauconnier A: Koen Locquet O: Geert Van Hauwermeiren	Latvia (PUC)	O: Lija Makare
Bulgaria (EWRC)	O: Svetla Todorova	Lithuania (NCC)	O: Dalius Kontrimavičius
Croatia (HERA)	A: Sonja Tomašić Škevin	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Andreas Poullikkas	Malta (REWS)	Excused
Czech Republic (ERO)	A: Martin Sik O: Kateřina Firlová	Netherlands (ACM)	O: Maarten Klijn
Denmark (DERA)	O: Kimmie Laage-Petersen	Poland (URE)	A: Małgorzata Kozak
Estonia (ECA)	O: Tiina Maldre	Portugal (ERSE)	A: Artur Trindade O: Natalie McCoy
Finland (EV)	M: Simo Nurmi	Romania (ANRE)	A: Lusine Caracasian
France (CRE)	A : Helene Gassin O : Aude Le Tellier	Slovakia (RONI)	Excused
Germany (BNetzA)	A: Annegret Groebel	Slovenia (AGEN-RS)	M: Bojan Kuzmic A: Jasna Blejc
Greece (RAE)	Excused	Spain (CNMC)	M: Fernando Hernández
Hungary (HEA)	O: Krisztian Toth	Sweden (Ei)	M: Anne Vadasz Nilsson
Ireland (CER)	A: Laura Brien	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) O: Mark Copley

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

ACER	Alberto Pototschnig, Christophe Gence-Creux, Volker, Zuleger, Fay Geitona, Sean Hennity
European Commission	Oliver Koch, Adriano Addis, Marie-Christine Jalabert
CEER	Andrew Ebrill

MEETING CONCLUSIONS SUMMARY

1. *The minutes from the 60th BoR meeting were approved. As was the agenda for the 61st meeting.*
2. *The ACER Director provided an update on the recent work of the Agency and its recent publications. He updated the BoR of the Agency's 2018 Work Programme workshop held in Ljubljana, the MMR launch event preparations, the establishment of the new ACER Market Surveillance and Conduct Department and the recent appointment of the BoA members and alternates by the AB.*
3. *Mr Oliver Koch provided an update on the ongoing work of the EC on the new energy market design proposals which are now in the process of EC inter-service consultation and are expected to be adopted on 7 December.*
4. *The Chair presented a note on the new approach regarding the budget and WP preparations going forward given the resources constraints. Regarding the next steps, it is envisaged to have a BoR orientation discussion in December on the basis of a note prepared by the Director. In January, the WP 2018, developed on the basis of the note and the orientation discussion, will be submitted for formal endorsement to the BoR (and to the AB for adoption). The EC welcomed the approach based on appropriate prioritisation of local areas of work and matching those with the resources available.*
5. *The BoR discussed the revisions to the AWGs Rules of Procedure (RoP) presented by the Director. The aim is to place more emphasis on the planning of the work of the AWGs; to enhance the cooperation between each AWG and the respective Agency's Department, to promote a wider NRA involvement in the work of the AWGs, through the requirement of video/tele-conferencing access to AWG/TF meetings and an enhanced transparent procedure for the appointment of Task Force Conveners following the Bled away-day and the BoR Summit. The members noted that although the above goals were shared, they had serious concerns about the revisions proposed in terms of the overall approach and tonality which, in their view, does not reflect the correct balance between the respective roles and responsibilities of the Director and the NRAs, nor the spirit of cooperation embedded within the Agency's structure and the support of NRAs in ACER work. They asked for more time to consider the revisions.*
6. *In terms of the next steps, the Director thanked for the comments and invited feedback by the members by 18 November 2016. He explained that the revisions and timeline are also dictated by the IAS recommendations and the need for a clear legal framework for the AWGs to work effectively. He is keen on convening a meeting with the AWG Chairs further to discuss the RoP and he invited the Chairs to seek feedback from their members in order to suggest any improvements.*

<p>7. The Chair encouraged an accessible venue for this discussion and consideration by the Director of a less complex and legalistic text to discuss this issue taking into account the comments made by members (including the need for a longer time to allow proper consideration). The Chair later asked that colleagues sent their suggestions to both the Director and the AIMP Chair.</p>
<p>8. The agenda of the joint ACER and CEER conference to discuss the key issues and regulatory challenges emerging from the new context set by the EC's proposals on the new energy market design, was circulated. This event will be held on Monday 23 and 24 January 2017 in Brussels and EC Vice President Šefčovič has confirmed his participation.</p>
<p>9. Lord Mogg updated the BoR on the 2nd Policy Committee meeting discussions and the next steps. The relevant papers will be also circulated to the BoR.</p>
<p>10. Mr Zuleger presented the latest update on the ongoing work on REMIT implementation and operation. He commented on the main achievements since data collection started in 2015; more than 11,500 market participants were registered by NRAs so far, ACER has registered 107 reporting parties; ACER will continue to register self-reporting market participants on a best-efforts basis. Data collection by ACER is working very well; SMARTS is operational; the data sharing solution was stabilised and is now working well and the Case-Management Tool is operating well. The high number of open suspected REMIT breach cases under review is the major area of concern. This is due to the lack of resources both at ACER and NRA level.</p>
<p>11. The AMIT Chair also presented the state of play for REMIT implementation and the need for appropriate enforcement of REMIT obligations at national level.</p>
<p>12. Mr Zuleger presented the key building blocks for the REMIT Market Monitoring Strategy which is now being discussed. He outlined its objectives, strategic goals and potential work division which is to be completed by the end of 2016. This will be discussed at the next REMIT Coordination Group and will be further presented at the BoR in December for endorsement. The BoR had a debate and made suggestions.</p>
<p>13. Mr Hernandez provided an update on the ongoing work of the AEWG and on the latest progress on network codes discussions and adoption in Comitology.</p>
<p>14. The ACER Recommendation on cross border capacity calculation methodologies was given the favourable opinion of the BoR (by the required 2/3 majority of the members present or represented. 20 members voted in favour, BNetzA submitted a dissenting opinion).</p>
<p>15. The ACER Decision on the all TSOs proposal on the Capacity Calculation Regions was given the favourable opinion of the BoR (by the required 2/3 majority of the members presented or represented. (all but one (24) members present voted in favour; E-Control voted against).</p>
<p>16. The BoR discussed the state of play on the Agency's data request under article 8.2 of the CACM guidelines and other guidelines and codes which provide for the relevant information to be given to ACER by ENTSO-E. A proposal was made by ACER to address this deadlock with regard to proportionality and ENTSO-E's commitment, the different interpretations of the CACM provisions and the data collection process on the basis of 2 options. The BoR had a debate. The EC shares the interpretation of ACER with regard to the compliance with the relevant legal obligations whilst being keen on addressing the ENTSO-E concern about double reporting. Some members sought clarifications on the exact scope of the information to be provided as well as in respect of the feasibility of the proposed options for data collection before making their decision on the preferable option for the</p>

provision of information. There are also questions in respect of the roles and responsibilities for the verification of the correctness of data etc. The Chair invited the AEWG to discuss this issue further and submit a proposal for the December BoR by which time we hope to have also the EC's interpretation and clarifications.

17. Ms McCoy on behalf of the AGWG Chair provided an update on the ongoing work of the AGWG. She informed the BoR of the 3 dates for the implementation of the NC TAR (1 April 2017, 1st October 2017 and 31 May 2019); the positive vote on the NC CAM given by the Gas Committee on 13 October, and provided an update on the joint ACER-ENTSOG workshop on Gas Balancing Code implementation, as well as the key highlights from the ACER GWG away day.

18. Ms Fauconnier on behalf of the AIMP WG Chair provided an update on the ongoing work of the AIMP WG and its Task Forces. In particular, she informed the BoR on the annual workshop on national indicators – to be held in Ljubljana on 14-15 November 2016. The workshop on exchange of NRAs' experiences on monitoring was held on 10 October. The legal workshop is postponed to March 2017.

19. The ACER Opinion on the Gas NDPs and on the implementation of investments in gas network (EU-TYNDP) and its consistency with NDPs was given the favourable opinion of the BoR (by consensus of the members present or represented).

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.

1.2. Approval of the minutes of the 60th BoR meeting

BoR Decision agreed: (D 2)

The 60th BoR minutes were approved.

2. Update from the Director

2.1. Update on recent developments

- **ACER**

The Director reported on the latest publications. The Agency published the REMIT Annual Report 2016. On 17 October, the Agency's 2018 Work Programme was presented to a public workshop held in Ljubljana. 20 persons attended via Adobe connect.

The MMR launch will be held on 9 November. On 9 November, ACER and ENTSOG will organise their second joint workshop on the Gas Balancing Network code implementation. The event will be held in Warsaw at the premises of URE.

The Director informed the BoR on the establishment of the second ACER Department for the implementation of REMIT “Market Surveillance and Conduct (MSC) Department”. This new Department will be responsible for the monitoring of wholesale energy trading, the assessment of anomalous instances, the notification of suspected market abuse instances to NRAs and the coordination with and of NRAs during investigations. The current Market Monitoring Department will remain responsible for the other REMIT-related activities, including all those associated with the collection of trade and fundamental data, data sharing and related policy aspects.

An Administrative Board extraordinary meeting took place on 18 October and appointed the 6 members of the Board of Appeals and their alternates.

- EC

Mr Koch reported on the progress on the preparations for the new energy market design proposals, still envisaged to be adopted by 7 December (perhaps a bit earlier). The EC proposals are now under inter-service consultation. The EC proposals are related to electricity. The EC does not, at this stage, envisage to bring forward proposals for revisions on the gas Regulation and Directive. But with the RES and energy efficiency Directives’ amendments these are complex discussions.

3. ACER cross-sectoral activities

3.1. ACER work programme and draft budget - Matching ACER resources and policies – Note from the BoR Chair

Lord Mogg referred to the discussions at the previous BoR about the budget constraints, and the need for prioritisation including the feedback received subsequently from members (Mr Bos, ACM). This initiated his thinking and a note he submitted (on a personal basis) to the AB on 18 October on ‘Matching ACER resources and policies’ which was then circulated to the BoR. The note in brief proposes to have a fresh look on the process for the preparations of the WP and Budget for the coming years (reflecting the aspirational and contingency scenarios). A High Level Group (HLG) between the Director and the AB, BoR chairs on the strategy to be pursued was proposed which is intended to consider the broad strategy and approach and provide an early coordination of the three groups in order for the Director to finalise his proposals which will be presented for an orientation discussion at the December BoR and AB. This HLG is without prejudice to the ambit of responsibilities of each of the three bodies in the WP and budget preparations and will meet on 9/11.

The Director welcomed this approach. He stressed the need to think about the priorities for the 2018 ACER work with REMIT and codes implementation being evidently key priorities. There are other areas where some flexibility exists. He is preparing a note to outline and prioritise the 2018 WP areas of work at three levels with the aim to identify the most critical priorities. Following those discussions, he will decide how formally to present the 2018 WP. There needs to be full visibility of the activities to be abandoned if the resources are not sufficient and perhaps a way to present this would be in a single WP reflecting this (contingency) scenario rather than two different budgets and WPs.

Ms Jalabert remarked that the EC is a central figure on the budget process and welcomed the approach of matching priorities and resources. The EC would thus like to be informed and, if possible, participate at the HLG discussions. She clarified that the EC must receive a single version of the WP and confirmed that they will provide their opinion on a single version. She also noted that the ACER 2017 WP must be modified when the budgetary procedure is over.

Lord Mogg noted that the HLG will be trilateral between the Director and the 2 ACER Boards' Chairs to discuss the next steps. He reiterated the need to identify the implication of the lack of resources in respect of the specific activities and noted that NRAs cannot step in to assume responsibilities being faced with resources constraints as well.

3.2. ACER Working Groups, Rules of Procedure revision a) and b) RoP revised and cover note

The Director presented the key revisions of the AWGs RoP which follow the BoR Summit and the new procedural arrangements agreed for the adoption of ACER acts, the key elements of the Bled away day and the recommendations of the Internal Audit Service 2 years before which had looked in the overall process for the development of Framework Guidelines and codes and our cooperative arrangements. The proposal for the revised RoP intends to:

- Place more emphasis on the planning of the work of the AWGs;
- Enhance the cooperation between each AWG and the respective Agency's Departments;
- Promote a wider NRA involvement in the work of the AWGs, through the requirement of video/teleconferencing access to AWG/TF meetings and an enhanced procedure for the appointment of Task Force Conveners, based on a call for interest and the rotation principle.

Following the BoR discussion, his aim would be to finalise the Rules before the end of the year taking into consideration the BoR and AWG chairs comments, so that they can apply as of 1st January 2017.

The Chair and the members noted that although the above goals were shared, they had serious concerns about the revisions proposed in terms of the overall approach and tonality which, in their view, does not reflect the correct balance between the respective roles and responsibilities of the Director and the NRAs, nor the spirit of cooperation embedded within the Agency's structure and the support of NRAs in ACER work. They noted that the proposed revisions reflect a hierarchical, formalistic and bureaucratic approach without taking into account the Summit outcomes, cooperative arrangements and trust built over the previous years. There appeared to be a lack of recognition of the main goal and mission of ACER, namely to provide a framework for NRAs cooperation. They asked for more time to consider the revisions.

In terms of the next steps, the Director thanked for the comments and invited feedback by the members by 18 November. He explained that the revisions and timeline are also dictated from the IAS recommendations and there is a need for a clear legal framework. He is keen on convening a meeting with the AWG Chairs to further discuss the RoP and he invited the chairs to seek feedback from their members in order to suggest any improvements. The Chair encouraged an accessible venue for this discussion and consideration by the Director of a less complex and legalistic text to discuss this issue taking into account the comments made by members (including the need for a longer time to allow proper consideration). The Chair later asked that colleagues sent their suggestions also to both the Director and the AIMP Chair.

3.3. Agenda of the joint ACER-CEER event on the Winter Package and oral update on the Policy Committee discussions

The agenda of the joint ACER and CEER conference to discuss the key issues and regulatory challenges emerging from the new context set by the EC's proposals on the new energy market design was circulated. This event will be held on Monday 23 and 24 January 2017 in Brussels and EC Vice President Šefčovič has confirmed his participation.

Policy Committee (PC)

The PC took place on 8 November prior to the BoR. The Chair provided an oral update on the discussions.

4. Market Integrity and Transparency

4.1. REMIT implementation and operation - oral update

Mr Zuleger and the AMIT WG Chair provided an oral update on the ongoing work on REMIT implementation and operation. They discussed the major achievements made since data collection started on 7 October 2015.

Lord Mogg commented that the case management tool was free of cost for the NRAs to be used. He also acknowledged that despite the lack of resources and many challenges faced, there had been key great achievements within REMIT. He then raised attention to the high number of open suspected REMIT breach cases under review, commenting that this is a major area of concern. This is due to the lack of resources both at the Agency and NRA level. It is important to continue the cooperation between ACER and NRAs. The NRAs must still be able to enforce the REMIT obligations.

Lord Mogg stated that NRAs 'may' monitor but 'shall' enforce. What is not acceptable is for a NRA not to enforce (while a NRA might choose not to monitor). A key element of REMIT is enforcement. The market monitoring problem principally rests with the Agency, fortunately large NRAs can afford the resources at the moment.

4.2. Presentation on the Market Monitoring Strategy

Mr Zuleger made a short presentation of the Market Monitoring Strategy. This is still under discussion, including at the next REMIT Coordination Group. The aim of this presentation was to give a snap shot of the current discussion and which direction REMIT is heading. Market monitoring is about prevention, detection and investigation. Mr Zuleger presented the state of play for the preparation of the REMIT Market Monitoring Strategy, including its objectives, potential work division which is to be completed by the end of 2016. A drafting team of NRA experts has been convened. He informed the BoR that he will no longer be responsible with the assessment of cases given the establishment of the new Department on Market Monitoring.

Mr Zuleger informed that the document will be submitted for BoR endorsement in December and the discussion on regional colleges will be expected to take place at the next Coordination Group.

5. Electricity

5.1. Update on NC implementation and other work – presentation

The AEWG Chair provided the usual update on the Working Group's ongoing activities. The previous AEWG was held on 20 October. Mr Hernandez reported that one last network code (Balancing) is yet to be adopted.

5.2. ACER Recommendation on cross border capacity calculation methodologies

The Director presented the draft ACER Recommendation, setting out three high-level principles to apply to capacity calculation and cost sharing for re-dispatch and counter-trading – areas to be proposed and approved under the CACM and FCA regulations. This has been discussed at both the September and October BoR. The Recommendation is not expected to have radical changes, but it will bring certain improvements and have an impact on how TSOs justify what they do, promote a level playing field between internal and cross-border exchanges in the internal market and create more transparency.

The Director commented that this was a unique opportunity as the TSOs will soon start working on the capacity calculation methodology and the share of dispatching costs. He sees that this Recommendation should be issued sooner rather than later to influence this work and we have had a lot of discussion on this issue.

20 members voted in favour of the BoR opinion on the ACER recommendation on capacity calculation methodologies. BNetzA's dissenting opinion was submitted.

5.3. ACER Decision on the all TSOs proposal on the Capacity Calculation Regions

The Director introduced the proposal for a decision. He informed the BoR that, on the only amendment of the CCR Proposal, the merger of the CWE and CEE CCRs into a CORE CCR, the draft decision reflects what the NRAs have already agreed. The draft decision confirms the inclusion of the Austrian-

German border in the merged CORE CCR. The EC had stated at the last BoR that the CCR process can define new bidding zones but cannot substitute the bidding zone review process or create obstacles to its implementation. For that the EC is keen on a stronger statement that the decision does not pre-empt the bidding zone review process. This is now addressed and has been reflected in the three different parts of the decision.

Mr Urbantschitsch referred to his previous statements at the BoR and in writing in several occasions. E-Control fully supports the merging of the CWE and CEE regions. In contrast to the ACER's statement that this is without prejudice to the bidding zone review process, the decision to install the DE- LUX/AT border does indeed pre-empt the bidding zone review as it simply creates facts. The letter from DG ENER clearly stated that it is not possible to pre-empt the bidding zone review process and that the CCR decision is not the right place to define new borders which can only be established after the bidding zone review.

The Director informed the BoR that he has asked the EC to confirm that ACER can propose amendments under the relevant provisions and this has been clarified in a previous letter from the EC. On the relationship with the bidding zone review, the EC is satisfied that this does not pre-empt the bidding zone review process.

The Director responded outlining that in the case of a different geography, then all TSOs will probably have to submit a revised CCRs Proposal, which will be first be submitted to all Regulatory Authorities for decision and, if they failed to reach a decision, to ACER as a last resort.

All (24) members present voted in favour with the exception of E-Control on the ACER decision on capacity calculation regions. In terms of publication, the ACER decision will need a week to be finalised and adopted (it will be communicated to all members).

5.4. Update on the Agency's data request under article 82.4 of CACM guidelines - presentation

Mr Gence-Creux presented progress with regard to the Agency's data request. Under Article 82.4 of the CACM Guidelines, the Agency, in cooperation with ENTSO-E, shall draw up by six months after the entry into force of this Regulation a list of the relevant information to be communicated by ENTSO for Electricity to the Agency in accordance with Articles 8(9) and 9(1) of Regulation (EC) No 714/2009. There are similar provisions in other Guidelines and codes. He provided an update on the state of play with regard to this request.

On 2 February, ACER sent a letter to ENTSO-E but there has been limited progress despite also the robust support from the EC. A proposal is made to address this deadlock with regard to proportionality and ENTSO-E's commitment, different interpretations of the CACM provisions and the data collection process on the basis of 2 options presented

Mr Koch clarified that there is a clear legal obligation for ENTSO-E to provide information. The EC will endorse the interpretation with respect to the compliance with the relevant provisions. Where the EC has doubts is how to address the double reporting.

The Chair concluded that the above points need to be raised at the next AEWG and a proposal should be brought back at the December BoR by which time we (hope) to have the EC letter.

6. Gas

6.1. Update on FGs, NCs and other work – presentation

Ms McCoy, in absence of the AGWG Chair, provided an update on the Working Group's ongoing activities. The AGWG was held on 25 October.

- NC TAR adoption with the main changes as result of comitology meeting. There will be 3 different application dates:
 - 1st application date: 1st April 2017.
 - 2nd application date: 1st October 2017.
 - 3rd application date: 31st May 2019.
- The new network code CAM (amended on incremental capacity) was approved by the gas committee on 13.10.2016.
- The call for evidence on congestion criteria – evaluation of responses is ongoing.
- The ACER-ENTSOG 2nd joint workshop on the Gas Balancing code implementation, which will be held in Warsaw on 9 November, and is already sold out.
- The AGWG Away Day which discussed key areas for improvement (including meeting logistics, coordination and communication and project management).

7. Implementation, Monitoring and Procedure

7.1. Update on the AIMP

a) Presentation

Ms Fauconier provided an update on the Working Group's ongoing activities in the absence of the AIMP Chair. The previous AIMP WG was held on 25 October.

- The annual workshop on national indicators will be held in Ljubljana on 14-15 November 2016. There will also be some brainstorming on reshuffling the MMR against the budget prioritising exercise.
- The workshop on exchange of NRAs' experiences with monitoring was held on 10 October.

The legal workshop is postponed to March 2017 in Ljubljana. The Director clarified that they were seeking the participation of some high level participants and thus the date was not confirmed. If this will not happen the workshop will go ahead.

b) Letter to the EC on the BoR involvement

The letter by the BoR Chair was sent to the EC on 25 October and circulated to the BoR information.

8. Infrastructure

8.1. ACER Opinion on the Gas NDPs and on the implementation of investments in gas network (EU-TYNDP) and its consistency with NDPs

The Director presented the Opinion on gas network developments, in line with Article 6 of Regulation (EC) No 713/2009 and Article 8 of Regulation (EC) 715/2009.

The Opinion suggests practical ways of improving future EU TYNDP and NDPs, in particular their consistency, and the implementation of investments in natural gas infrastructure. The monitoring performed by the Agency in 2016 offers an opportunity for the analysis of the consistency and implementation of the most recently published NDPs and the most recent EU TYNDP 2015, published by ENTSO in 2015.

This Opinion is based on information provided by NRAs via responses to a questionnaire on methodological aspects of NDPs and via access to a project-level database developed by the Agency. The annexes to this Opinion contain detailed country-specific responses which the NRAs provided to the questionnaire on NDPs, as well as information regarding implementation of investments to create new interconnector capacity and the consistency of the most recent NDPs with the TYNDP 2015.

The Director referred to the main recommendations including *inter alia* the strengthening of the regulatory oversight of the NDP plans; appropriate consultations during the entire NDPs elaboration process; consistent criteria to be applied for the purpose of assessing projects in the NDPs, such as project maturity, to help to contribute to their comparability; consistent identification of the needs for gas infrastructure capacity in the NDPs and mapping infrastructure needs against the capacity needs in the TYNDP; case-specific analyses of individual projects and economic tests; project cost data be included in the NDPs, at least at an aggregated level. The Agency recommends that ENTSOG pays due attention to the consistent identification of the needs for gas infrastructure capacity in the EU TYNDPs; applies consistent criteria in the EU TYNDPs for the purpose of assessing projects such as, project maturity; includes cross-references in the EU TYNDPs to the NDP investment item (project) codes; includes cost data in the EU TYNDPs etc.

The ACER Opinion on the Gas NDPs and on the implementation of investments in gas network (EU-TYNDP) and its consistency with NDPs was given the favourable opinion of the BoR (by consensus of the members present or represented).