

31st ACER Board of Regulators meetings
Wednesday, 25 September 2013, 09.00-15.45
ACER, Trg republike 3, 1000 Ljubljana

Minutes final

Participants

Member States	Name ¹	Member States	Name
Austria (E-Control)	O: Dietmar Preinstorfer	Italy (AEEG)	A: Clara Poletti O: Ilaria Galimberti
Belgium (CREG)	M: Marie-Pierre Fauconnier A: Koen Locquet	Latvia (PUC)	O: Lija Makare
Bulgaria (SEWRC)	M: A. Toneva Excused	Lithuania (NCC)	A: Vygantas Vaitkus
Croatia (HERA)	M: Tomislav Jurekovic	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: G. Shammas Excused	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	O: Miroslav Belica	Netherlands (ACM)	M: Henk Don O: Elozona Ochu
Denmark (DERA)	O: Lemmi Tui	Poland (URE)	M: M. Woszczyk Excused
Estonia (ECA)	O: Marilin Tilkson	Portugal (ERSE)	M: Alexandre Santos O: Jorge Esteves
Finland (EMV)	M: Riku Huttunen	Romania (ANRE)	M: N. Havrilet Excused
France (CRE)	O: Michel Thiollière O: Aude Le Tellier	Slovakia (RONI)	M: J. Holjenčik Excused
Germany (BNetzA)	A: Annegret Groebel O: Daniel Mütter	Slovenia (AGEN-RS)	A: Jasna Blejc
Greece (RAE)	M: M. Thomadakis Excused	Spain (CNE)	A: Tomás Gómez O: Pablo Villaplana O: Gema Rico
Hungary (HEA)	A: Attila Nyikos	Sweden (EI)	A: Caroline Tornqvist
Ireland (CER)	A: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Martin Crouch O: Joseph Gildea

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

Observers	Name
ACER	Alberto Pototschnig, Volker Zuleger, Christophe Gence-Creux, Dennis Hesseling, Fay Geitona
European Commission	Klaus-Dieter Borchardt, Kamila Kloc
CEER	Natalie Mccoy, David Haldearn

Main conclusions from the meeting:
1. <i>The BoR approved the 2014 ACER WP.</i>
2. <i>BoR had an update on the preparation of the first ACER evaluation report.</i>
3. <i>The BoR received an update on the progress on Electricity NCs.</i>
4. <i>The BoR provided by consensus (of the members present or represented) its favourable opinion on the draft ACER opinion on ENTSO-E's Network Code on Load Frequency Control and Reserves.</i>
5. <i>The BoR took note of the ACER Report to the European Commission on the implementation of the ITC mechanism in 2012.</i>
6. <i>The BoR provided by consensus of the members (present or represented) its favourable opinion on the draft ACER Recommendation on cross-border cost allocation of electricity and gas projects of common interest.</i>
7. <i>The BoR had an update on the overall progress on Gas FGs and NCs and took note of the ACER opinion on harmonised format for data publication by ENTSOE and TSO.</i>
8. <i>The BoR received an update on progress and latest developments on the electricity cross regional Roadmaps and Gas CAM Roadmap.</i>
9. <i>The BoR members reiterated the importance of the intraday project for the IEM and the need to avoid further delays. Further actions will be pursued in coordination with the ACER Director and the EC.</i>
10. <i>The BoR members received an update on:</i> <i>-REMIT Implementation;</i> <i>-the preparation of the first annual report on REMIT;</i> <i>-the results of the adhoc questionnaire on REMIT implementation by NRAs;</i> <i>-the third edition of ACER guidance on application of REMIT;</i> <i>-the Evaluation of responses on Technical formats and standards and RRM and RIS guidelines.</i>
11. <i>The BoR members received an update on the preparation of the EC's REMIT Implementing Acts.</i>
12. <i>The BoR members discussed the draft 2nd Market Monitoring Report.</i>

13. The BoR members had a debate on the post 2014 challenges and the draft paper "Building a bridge to 2025". For the next BoR meeting the overarching paper will be developed further in the light of the debate and the separate papers will continue to be developed.

14. The BoR members provided through electronic procedure and by consensus of the members participating in the electronic procedure their favourable opinion to the ACER opinion on ENTSOG TYNDP ENTSOG.

Part A: Items for discussion and/or decision

1. Opening

Lord Mogg welcomed Mr Attila Nyikos (HEA) and Marie-Pierre Fauconnier (CREG).

Lord Mogg informed the BoR that Mr Gómez will be stepping down from CNE. Lord Mogg thanked him for this huge contribution.

1.1. Approval of the agenda

BoR Decision agreed: (D 1)

The agenda was approved.

1.2. Approval of the minutes of the 28th BoR meeting

BoR Decision agreed: (D 2)

The 30th BoR minutes were approved.

2. Update from the Commission and the Director

2.1. Update on recent developments

ACER developments

The Director's detailed presentation has been circulated. The Director reported briefly on recent developments including on staff. At the moment there is 69 staff in office. Regarding SNEs there are 15 out of the 16 positions available. The Director expressed his gratitude for the seconding institutions regarding the SNEs. ACER is expecting next month one more SNE from Portugal. He also informed on the current vacancies, including for replacing SNEs whose term of secondment is coming to an end. Regarding the ACER premises, as a result of a year-long selection procedure, the new contract was signed on 26.07.2013 for the same location: Trg republike 3, Ljubljana. The duration of the contract is for 5 years (from 1.2.2014 until 31.1.2019) with the possibility of extension for up to 5 years. The Director presented the

premises layout. All fit-out work will be finalised by 20/12/13, and the final handover is envisaged by 31/1/14.

The Director reported that the ACER Guidance on NC amendments has been finalised by the Director and will be published today. The Guidance envisages a regular review of the NC every 5 years (instead of 3 years initially envisaged) and an ad-hoc urgent procedure.

The ACER Guidance on Consultation practices has also been published.

Lord Mogg reported on the CEER plans to move to the new premises at the end of October. Meeting rooms will be available for use by ACER subject to a charge.

Autumn Package

Mr Borchardt gave an update on the preparations of this Package consisting of a:

- Chapeau Communication on Framework for state interventions on the energy market.
- Guidelines on capacity mechanisms where the EC aims to set out the criteria for the compliance with the IEM.
- Guidance on best practices in terms of cost efficiency on support schemes for renewable: The EC is keen on holding an assessment of all the existing schemes and the impact on the IEM. The Commission is looking into the cost effectiveness of the RES and their compatibility with IEM.
- Communication on demand side measures.
- Guidance on use of cooperation mechanisms under the RES Directive.
- Document on electricity storage.
- New initiatives regarding EU generation.

Annual Priority list

Mr Borchardt reported that the EC adopted and published on 21 August the annual priority list following the Public Consultation (2 April – 13 May). This focuses mainly on completion of the IEM in view of the target date 2014.

Planning Group

The Planning Group took place on 18 September in Brussels and Mr Borchardt reported on the main outcomes: The timelines of the 3 year plans remain broadly the same. The minutes will be circulated soon. It seems that there is a need for further trilateral meetings for the electricity codes. Regarding the CACM NC, the EC is in the process of firming the text. Regarding Grid Connections, the EC hired KEMA to take into account the remarks from stakeholders.

On Gas Balancing, the scrutiny period for Council and EP has ended. On 1st and 2nd October the first Comitology meeting will be held. So far the Commission has not yet received substantial comments from MSs.

On Electricity Balancing, ENTSO-E informed the EC that they received over 2000 comments during the NC consultation.

Regarding Interoperability, ENTSOG submitted the NC on 11 September. The EC has already started the legal scrutiny of the text.

Regarding tariffs and incremental capacity, the EC has considered the alignment of the timelines.

3. ACER cross sectoral activities

3.1. 2014 ACER Work Programme

The Director presented the revised ACER 2014 WP and thanked the EC for submitting its opinion earlier this year. He has carefully considered the EC's Opinion and recommendations, reflecting them, whenever possible, in the revised WP. Regarding the terms and conditions and operational security of cross-border interconnectors and cross-border cost allocation decisions as well as decisions on exemptions, the Director noted that the Agency will strive to build expertise in these fields. However, given the significant amount of additional tasks that it has been given in the Infrastructure package, the Agency will focus on its legal obligations. He noted that the sharing of good practices and recommendations on incentives is now included in the 2014 ACER WP having been postponed from 2013.

The Agency will start to monitor the implementation of the adopted CMP and also facilitate the work on capacity platforms, following the suggestion by the EC.

As recommended, further efforts will be made to improve the ACER website and its accessibility for non-energy experts.

Mr Borchardt congratulated the Director for the excellent work in preparation of the ACER WP' 2014. As it was stated in the EC opinion, the WP is rightly focused on the tasks related to the completion of the Internal Energy Market by 2014 in line with the European Council conclusions. Therefore, the main focus is on the implementation of the Third Energy Package through the development of relevant Framework guidelines and Network codes and monitoring activities. Due focus is also given to new tasks such as the implementation REMIT and TEN-E, both crucial for correct integration of the markets. On the 3rd package tasks, the ACER WP is in line with the Commission's priority list. The Commission's other comments related to the Agency's other tasks were addressed by the Director in the current version.

Budgetary matters

The Director noted that aligning the 2014 WP to the levels of human and financial resources proposed by the Commission in the draft budget 2014 (54 establishment posts and EUR 10.880.000 including assigned revenues) at this stage, i.e. prior to the adoption of the budget by the Budgetary Authority, would send the wrong

message to markets, since the Agency would be obliged to revise the level and extent of its activities related to the implementation of REMIT.

The Director reported that last week the ITRE Committee approved an oral question to the Commission concerning the implementation of REMIT and the ACER 2014 budget.

Mr Borchardt clarified that according to the EC opinion *“the ACER is invited to align its WP to the draft budget (...) subject to its adoption by the budgetary authority”*. Therefore, in his view, the Commission’s opinion raised the need to do so following the formal adoption of the budget by the Budgetary Authority.

BoR Decision agreed: (D 3)

The BoR approved the 2014 ACER WP.

- Budget developments and adjustment of 2013 ACER Work Programme

The Director reported that the EU Budget for 2013 as adopted is approximately € 3 million lower than the draft Agency Budget adopted by the Administrative Board on 5 March 2012. The €3 million shortfall corresponds to the investment planned in 2013 to allow the Agency to substantially complete the REMIT implementation stage with the deployment of the REMIT-related IT infrastructure by the first quarter of 2014, to ensure the timely launching of the monitoring operation. Since the beginning of this year, DG ENER has been working towards transferring funds in the order of €3 million (more specifically, approximately €2.8 million) to the Agency in order to fill the gap in the Agency’s 2013 budget. However, despite DG ENER’s continuous efforts, the transfer has not yet been approved by the Budgetary Authorities. The Director also informed that the Commission’s audit services invited ACER to already amend the 2013 WP.

The next trilogue is envisaged for 16 October. The Director raised his concerns that if the transfer is not agreed or is delayed, ACER will not be able to finalise the IT deployment. The Director has been in contact with the Lithuanian Presidency to reiterate the importance of reaching an agreement at the next trilogue. Despite the advice by the audit service of the EC to align the ACER budget to the final budget as adopted by the Budgetary Authority, the Director will await the outcome of the next trilogue.

Adjusting priorities

The Director’s note was circulated explaining the implication of the budget developments on the REMIT operations. The activities of the Agency with respect to REMIT can be divided into the implementation and operation stages. Regarding the former stage, the Agency puts in place the IT tools and the procedures for effectively monitoring wholesale energy markets.

Since mid-2012, the Agency has worked on the development and deployment of the IT system but these activities have been slowed down due to the lack of the necessary financial resources.

The development activities will have to be completed by mid-2014.

The operational stage, during which ACER will be actively monitoring trading in wholesale energy markets involves *inter alia* the collection of trade and fundamental data, the screening of such data, and the notification to the national competent authorities who are responsible for investigation and enforcement.

If the internal transfer for the additional (2.8 million€) regarding the 2013 budget is not successful or if the funds arrive too late in the year, the Agency will be unable to make any further progress this year and early next year in the implementation of REMIT.

ACER has very limited opportunities to identify surplus funds in other areas of activity, as these mostly involve staff and not financial resources for investment, which, with an appropriate re-prioritisation, could have been made available for the implementation of REMIT. For example, transfers due to savings from other budget lines would only amount to approximately 300.000€ compared to the total amount needed of 2.800.000€.

Moreover, the delay in the REMIT IT system is jeopardizing the completion of the implementation stage and the ability to start the operational stage by mid-2014 with negative implications for the Agency's 2014 Work Programme. For 2014, most of the budget increase relates to the need for the Agency to recruit expert staff to reinforce its market monitoring capability to support the launch of the operational stage of REMIT.

However, the draft 2014 EU budget adopted by the EC on 26 June 2013, does not envisage the possibility for the Agency to reinforce its market monitoring capabilities. This coincides with the limited resources available for market monitoring at national level (following the results of the questionnaire). Strong cross-border market monitoring is essential. Despite the need for continuous cooperation between ACER and the NRAs, the monitoring tasks of the Agency at EU level (as well as its accountability) cannot be substituted by the monitoring at national level by NRAs themselves.

Mr Nyikos underlined that the result of the correct implementation of REMIT should be the "cheapest way" for the efficient supervision of the wholesale energy market. Thus REMIT is indeed the right way to safeguard market integrity and to protect consumers' interest and thus he strongly recommended trying to address the budget issue for both years (2013 and 2014).

Conclusion

The BoR took note of the update.

3.2. Review of progress on Roadmap

Fay Geitona presented the progress on the Roadmap. Regarding the development of a shared vision for 2020, a brainstorming discussion was held in London on 12 September and a draft paper has been circulated for an orientation discussion. The meeting with DG ENER senior staff will be held on 7 October devoted to post - 2014 strategy. The first Roundtable with stakeholders will be held in Brussels, November 6, 2013.

Regarding relations with the EP, the next ACER Contact Group meeting will be on 1 October and the presentation to the ITRE of the 2nd MMR (on 27 November). As regards increasing transparency and accountability a template for the citizens' summary has been now agreed and ACER envisages its first implementation on REMIT (in October). On the actions related to the review of the Regional arrangements, a revised note from the Director taking account the discussion at the last BoR was circulated and will be discussed under 7.1.

3.3. ACER evaluation

Mr Borchardt presented the state of play: The EC's public consultation closed on 18 September. The Commission has received 16 responses mainly from industry. These will be made public. Mr Borchardt reported that some of the respondents comment on the ACER's independence, methodology and working methods. The Commission will use the results of the public consultation and its own assessment of the ACER's Work Programs and their implementation, the Agency's communication, transparency and working methods and on that basis will prepare its report still this year. The EC will also take account of the initiatives that have been initiated to increase transparency and other improvements made in the Agency's operation as a follow-up of the Hilbrecht report.

Regarding the timing for the EC's report, the process has been delayed than previously planned due to the need to have a 3 month long public consultation. A first draft of the report is expected in October. The adoption of the report is envisaged by the end of November and its presentation to the BoR will be scheduled for December.

Ms Groebel also noted that the BoR understanding is that this is a light evaluation exercise. She also noted that the forthcoming BoR Recommendations will focus on ACER's achievements in its first 3 years of activity. In particular, the efforts made to deliver the IEM could serve as the benchmark against which ACER is assessed. The BoR Recommendations will not suggest any change to the Regulation but will cover all the areas identified in the EC's questions and identify areas for possible improvements. The BoR feels that ACER has done well and accomplished much in its first 3 years. Other issues to be addressed will be related to ACER's working methods. ACER/NRAs resources and independence will also be addressed as well as the relationship with CEER to address some confusion identified in the responses report.

3.4. ACER Letter to EC on monitoring ENTSOs tasks

The Director reported that under Article 9(1) of both Electricity and Gas Regulations, the Agency should monitor the execution of the tasks assigned to ENTSO-E and ENTSG in Article 8(1), (2) and (3) of the same Regulations and to report to the Commission. The Agency's report covers the period from 3 March 2011 until 31 December 2012. Given the Agency has already provided opinions and, where appropriate, recommendations on most of the deliverables prepared by ENTSO-E and ENTSG which are already sent to the Commission, and in order to avoid double reporting, the ACER report is structured as tables, listing the documents prepared by ENTSO-E and ENTSG on the basis of Articles 8(1), (2) and (3) and the opinions/recommendations issued by the Agency.

Conclusion

The BoR took note of the letter to the EC on monitoring of the ENTSOs tasks.

4. Post 2014 Challenges Orientation Discussion: 09.30- 10.30

4.1. Post 2014 vision

Lord Mogg presented the background: Following on from a first discussion at the July BoR and a post-2014 brainstorming session in London on 12 September a general overarching paper "*Initial Thinking on a strategic vision – Building a bridge to 2025*", has been circulated to members for an orientation discussion. The purpose of this paper was to frame a full debate and be used to prepare meetings. This will be supported by separate and more detailed papers from gas and electricity Working Groups. Lord Mogg noted that we must also attempt to ensure consistency with the Commission's thinking. There are a series of actions which will be brought forward through different streams including by CEER in a complementary way.

The paper outlines:

- the context for this work (IEM, uncertainty, need for bridge between short term and long term priorities);
- the foundations for the 2025 vision;
- some elements of the vision around three themes: Flexibility, demand side, and competition.

Regarding the next steps, the Gas and Electricity groups were asked to reflect on the discussion in London and continue their work on the detailed papers. On 7 October a discussion will be held with the EC, and on 6 November a stakeholders' workshop. The plan is to formally "kick off" our work on developing a strategic vision with a revised overall paper expressed more in an interrogatory mode and more generalised descriptions of our thinking to stimulate debate as a basis for the workshop on 6 November.

It is envisaged to finalise the overarching paper to be further discussed at the November and December BoR.

Conclusion

Lord Mogg thanked all members, the Director and the Commission for the fruitful debate. There seems to be a clear support for a general paper that convenes the broader vision and for separate streams on gas and electricity to develop more the detailed issues whilst consistent with the overall approach. In terms of the next steps and organisation, we need to see how we will deal with the different streams (including work to be pursued by CEER) and he will put forward his specific proposal on the specific actions.

For the next BoR meeting we will continue to develop further the overarching paper in the light of the debate as well the separate gas and electricity papers and in a more interrogative form to be used as the basis for the stakeholders' workshop on 6 November.

One key message is that whilst we need to focus on our short term priorities and the implementation of the third package and the NCs there is a clear objective to develop a more holistic vision in a longer timeframe and the need to turn our eyes from the immediate to a bit further ahead.

Completion of the Internal Energy Market - Update on FGs and Network Codes

5. Electricity

5.1. Update on FGs and NCs

Mr Crouch presented an update on each of the NCs. On CACM there has been a lot of work over summer and technical issues are being resolved. Still a lot of work needs to be done as there are numerous revisions etc.

On Forwards NC a submission from ENTSO-E is imminent. The biggest issue has been the firmness, the AEWG will discuss it in October and a trilateral meeting will be organised thereafter. On RfG, DCC, SO codes, trilateral meetings are expected in October.

The next cross-Border Committee meetings dates are (indicatively) 26.9, 29.10, 28.11, 16.12.

5.2. ACER Opinion & Recommendation on LFC&R NC

The Director presented the ACER Opinion and Recommendation. ENTSO-E's Network Code on Load Frequency Control and Reserves (NC LFCR) was submitted on 28 June 2013 to the Agency and ACER has 3 months to deliver its Opinion.

ENTSO-E have waived their right to amend the code and support a consistent alignment on national scrutiny during the Comitology preparatory phase so that the relevant provisions of the NC LFCR read as outlined in the annex to a letter sent to

ACER. By this letter ENTSO-E asks the Agency to consider the submitted NC LFCR as being amended as per the annex to this letter. The ACER Opinion and Recommendation note that the Agency acknowledges that the Network Code, as modified by the amendments indicated in ENTSO-E's letter of 10 September 2013, is in line with the Framework Guidelines and the objectives stated therein and recommends the adoption by the European Commission of the Network Code, as amended by ENTSO-E's letter of 10 September 2013. It invites the European Commission to pay attention to specific points. The ACER Opinion and Recommendation were submitted for a formal BoR opinion.

Mr Crouch informed the BoR that CRE has submitted some changes on the proposed ACER opinion (regarding Article 45, stating that ACER recommends the Commission to only require a period of full activation down to 15 minutes).

BoR Decision agreed: (D 4)

The BoR provided by consensus (of the members present or represented) its favourable opinion on the draft ACER opinion on ENTSO-E's Network Code on Load Frequency Control and Reserves.

5.3. ACER Preliminary opinion on Balancing NC

Mr Crouch presented the preliminary Opinion. ENTSO-E is due to submit the Balancing NC to ACER by January 2014. ENTSO-E's Public Consultation closed at the end of August. The FGs on balancing provided for phased decisions envisaging that the NC would be a bit more specific on a number of issues. Some of the key issues include the lack of details on the methodologies/terms and conditions to be implemented in the future, room for divergence between TSOs; the lack of enforceability and legal robustness of the majority of the text; the need for intermediate steps with common proposals to provide implementation framework (lessons from CACM). Recent discussions with ENTSO-E are constructive and ACER is hopeful for improvements. The EC has raised concerns about the level of detail in the draft code with too many methodologies to be defined at a later date. The next steps include a trilateral meeting with ENTSO-E, ACER, and the EC in early October, and on 23 October an ENTSO-E workshop. The deadline for ENTSO-E to submit the NC to ACER is 1 January.

5.4. ACER Monitoring report on ITC

The Director presented the ACER report to the European Commission on the implementation of the ITC mechanism and the management of the ITC fund in 2012. This report is submitted for discussion. The ITC fund amounted in 2012 to a total compensation of €279 million. Of these, €261 million was recovered through contributions from ITC Parties and the remaining €18 million through the Perimeter countries' fees. A 24% increase of the ITC fund in 2012 against 2011 can be observed. The Agency notes that no major amendments to the ITC Agreement were registered in 2012 and that the general arrangement is still in line with the guidelines

set out in the Regulation. The Agency notes that ENTSO-E took the right steps which were set up in line with the definition in the Regulation related to transit reduction. The Agency's assessment is that all EU NRAs adopted losses values in the ITC mechanism on a market-basis. The Agency notes that the compensation amounts relating to the provision of cross-border infrastructure were derived according to the requirements of the Regulation. The implementation of the ITC mechanism and the management of the ITC fund in 2012 continue to be generally in line with the requirements set out in the Regulation.

Conclusion

The BoR took note of the ACER Report to the European Commission on the implementation of the ITC mechanism in 2012.

5.5. Preparation of Florence Forum

The Florence Forum will take place in Milan on 12-13 November. Ms Kloc informed the BoR that the agenda will be soon available.

6. Gas

6.1. Update on FGs and NCs

Mr Preinstorfer presented an update on the Gas work. Regarding incremental Capacity, amendments of the CAM NC (under Article 7 of the Gas Reg.) and NC Tariffs (Article 6 of the Gas Regulation) are foreseen. ACER will deliver its Guidance on the NC amendments. Along the process, there have been bilateral contacts with ENTSOG and stakeholders. ENTSOG will deliver a NC amendment text with consultation (ENTSOG continues work on IC and TAR in a twin-track approach). ACER has 3 months to submit a formal proposal to EC to amend CAM NC. A new timing is proposed by the EC: It is suggested to split the delivery dates of the IC guidance to 30 November 2013 as the deadline for the first part, i.e. incremental capacity at existing IPs, and 28 February 2014 as the deadline for the 2nd part, i.e. new capacity. ENTSOG must start work on first part as of January 2014. The overall ENTSOG deadline is on 31 December 2014.

Regarding rules for trading, ACER must identify whether binding EU rules for the further harmonization of the design of capacity products and contracts are needed, as regards: firmness; restrictions to allocation, or secondary market. The informal scoping will start in September and a first orientation discussion on preliminary scoping will be held at the next Madrid Forum (15-16 October 2013).

On the gas target model review, the 1st workshop of the gas target model is scheduled for 8 October. 2 phases are envisaged: justification by November 2013 and the second phase on the development of updated GTM (by July 2014).

6.2. Tariffs FGs and Incremental Capacity

Mr Preinstorfer reported that the consultation on the FGs ended on September 18th. A stakeholder meeting was held on the 3 September. Now the work focuses on taking stock of feedback from PC and integrating the new chapter 3 in the endorsed FGs as well as adding the provisions regarding incremental capacity and assessing the impact of proposed measures. On 21 October a specific Tariff AGWG will be held and subsequently the proposal will be finalised for a BoR favourable opinion.

6.3. ACER Opinion on harmonised format for data publication by ENTSOG and TSO

The Director presented this ACER Opinion. The Gas Regulation (EC) lays down a number of general transparency requirements in relation to the information published by transmission system operators. The Regulation establishes that gas transmission system operators shall provide all information in a downloadable format that has been agreed between transmission system operators and the national regulatory authorities — on the basis of an opinion on a harmonised format that shall be provided by the Agency — and that allows for quantitative analyses. A draft ACER opinion was circulated for orientation discussion (its adoption does not need a formal BoR opinion).

Conclusion

The BoR took note of the ACER opinion on harmonised format for data publication by ENTSOG and TSO.

6.4. Preparation of the ACER Opinion on NC on Interoperability

Mr Preinstorfer explained that regarding the NC on interoperability, ACER has to deliver its opinion by 10 December. There are issues on compliance with the FGs but the AGWG considers that the NC shows a high degree of compliance with the FGs whilst some issues (not substantial) remain. It seems that the AGWG proposal will be to submit a positive RO with a qualified recommendation to EC for the remaining areas of concern. Regarding the next steps, there will be a presentation at the Madrid Forum and discussion of the RO at the next AGWG. The BoR meeting in November will have a discussion, and, subsequently, the BoR opinion will be given either through electronic procedure, or at its meeting on 11 December (which is one day beyond the deadline).

The Director indicated that he aims at submitting the draft ACER Opinion in time for a written BoR procedure which will allow its adoption by the deadline (10 December).

6.5. Madrid Forum

The Madrid Forum will take place on 15-16 October 2013. The draft agenda was uploaded. The deadline for presentations is on 7 October.

7. Regional Integration

7.1. Report from the Director on Regional arrangements

The Director presented his revised note, the latest version of which also took account of some last minute changes proposed by the AGWG Chair.

As the cross-regional dimension in the ERI and GRI becomes more prominent, it is important to avoid any duplication of effort or superimposition of roles with the AWGs, and their Task Forces TFs. The ERI/GRI should be primarily responsible for promoting, coordinating and reporting on the implementation of the provisions contained in Network Codes, especially for early implementation.

Conclusion

Lord Mogg concluded that it now time to settle and finalise these arrangements. He invited the Director to engage in further discussions and present a revised note at the December BoR meeting.

7.2. RI Update

7.3. Report on the ERI

The Director invited the Mr Gence-Creux, Head of the Electricity Department, to report on ERI developments.

Long-Term

ACER invitation to launch a Pilot Project to Harmonise Long-Term Auction Rules, 5 September 2013

Mr Gence-Creux indicated that a MoU was signed between CASC and CAO to start the merging process: this is an important milestone (75% of the EU borders with LT TR are currently managed by CASC and CAO). According to the amended cross-regional roadmap for Long-Term Transmission Rights agreed in February 2013 a common set of harmonised auction rules is to be defined and implemented by the end of 2014 and a single platform for allocation is envisaged to be established by 2015. ACER believes that the cross-regional roadmap now requires new impetus and an ambitious pilot project may serve this purpose and to this end he wrote proposing a joint initiative involving both the Central Auction Office (CAO) and the Capacity Allocation Service Company (CASC) to start working, through ENTSO-E, on a fully harmonised set of auction rules which must be compliant with the CACM FGs to be implemented across all borders.

Day Ahead

Mr Gence-Creux reported on the latest developments regarding the NWE Day - ahead project: the go-live date is still expected for November (this year). He conveyed that the NWE NRAs must make sure that the national NRAs' approval process is effective and coordinated (any delay/lack of coordination in the approval process will be perceived as a failure) and includes all the relevant points, in particular the local constraints (ramping constraints, losses factor, etc.) that will be implemented on each NWE border. He noted that these local constraints are still unknown two months before the go-live and this creates a lot of frustration.

Intraday

Regarding the ID project, a briefing note was circulated. PXs and TSOs now need to deliver a number of critical documents to get the project moving to the next phase which is the signature of the Early Start Agreement (ESA) between PXs and DBAG by 1 November 2013. Only based on this will participating NRAs be able to approve a letter of comfort for the PXs/TSOs before the ESA signature. Ofgem have called an Implementation Group (IG) meeting on 30 September for the PXs and TSOs to report on their progress. However, there are persisting disagreements among PXs (Early Start Agreement budget, length and Quality Plan) and between PXs and TSOs (cost recovery) which will probably lead to further delays. These were apparent at the AESAG meeting on 12 September and in on-going discussions regulators have with PXs and TSOs.

Mr Gence-Creux hopes that the information requested on budget and cost arrangements (common costs sharing + cost recovery) will be provided for the next IG.

Mr Borchardt reiterated the Commission's interest and firm commitment to achieving the intraday market coupling. The EC is determined that this project will end positively. It is a key project for the internal energy market, because it is a key for the integration of renewables. The EC was alerted from stakeholders' concerns about possible delays. Lord Mogg has also sent a letter to Commissioner Oettinger. Mr Borchardt intends to convene a high level meeting on 1st October with PXs and he hopes to have the support of the Board. The EC is decided to take action.

Mr Gence-Creux reported that regarding CEE region, there is limited progress with the FBMC. The only positive development is the confirmation that the trilateral market coupling project (between Czech Rep., Hungary and Slovakia) will adopt the PCR material and will be extended to Romania in the course of 2014. The gate closure will remain at 11:00 until FBMC is implemented.

Mr Ochu informed a delay on the flow based market coupling in CWE to July.

CAM Update

The CAM Roadmap update (of October 2013) was circulated for info.

Conclusion

Lord Mogg reiterated on behalf of the members the importance of the intraday project for the IEM and the need to avoid further delays. He has written to Commissioner Oettinger and further actions will be pursued in coordination with the Director and the EC.

8. Investment challenge

8.1. PCI selection

Ms Kloc reported on the process for the adoption of the PCI list. She thanked ACER and regulators for their efforts and collaboration during the work undertaken for the adoption of the final list. There are currently 240 PCI on the draft union wide list. Only one project has been taken out. The High Level Group meeting of MS (and EC) on 24 July in Brussels agreed on the final regional lists. The final Union wide list is due to be adopted in the second week of October. It will then be sent to the EP and Council and for a period of 2 months during which they can provide objections and subsequently published.

8.2. Report on PCI incentives - NRAs submissions

The Director reported on the work in this area. Under the TEN-E Regulation, by 31 July 2013, each NRA shall submit to the Agency its methodology and the criteria used to evaluate investments in electricity and gas infrastructure projects and the higher risks incurred by them, where available. Regarding electricity, as of today, we received 25 submissions by 25 EU NRAs. The missing NRAs are Bulgaria and Greece. The Croatian answer is also missing. In gas, twenty-one responses were received by the Agency.

The Director invited the non-responding NRAs to submit their methodology and the criteria used to evaluate investments in electricity and gas infrastructure projects and the higher risks incurred by them, where available, and where not available to clarify this.

With regard to the second stage on the preparation of the ACER Recommendations, now envisaged in the 2014 WP, Ms Kloc confirmed that a slight delay in the preparation of the ACER guidance would not be dramatic.

8.3. ACER Recommendation on cross-border cost allocation of electricity and gas projects of common interest

The Director presented the background for this Recommendation and its main objective. The TEN-E Reg. specifies the features of the investment request to be submitted by project promoters including a request for cross-border cost allocation (CBCA) and indicates that, for projects included in the first Union list, CBCA requests

shall be submitted by 31 October 2013. The Regulation does not specify the level of detail of the information to be submitted by the project promoters under Article 12(3). Thus a clarification of the details to be submitted is essential to facilitate a consistent approach by NRAs. The objective is thus to ensure consistency, in the treatment of such CBCA requests by both the NRAs and the ACER when it intervenes (as a last resort). The formal way for ACER to intervene is a Recommendation to NRAs. This Recommendation is structured in 2 parts: The information that is necessary to be submitted with a CBCA request (Section 1); and the high-level principles that NRAs shall follow when handling a CBCA request (Section 2).

The Director clarified that this Recommendation is a first attempt and could be reviewed on the basis of the experience gained. It is not binding and this is clearly stipulated in the Recommendation, but both ACER and NRAs should be committed to use it and the information to the project promoters (be it from ACER or NRAs) should be the same. It does not, however, deal with the dates and how these are counted. He then clarified that he intends to adopt it as soon as the BoR provide its formal positive opinion, and publish it.

The Director informed the members on the organisation of a workshop by ACER on 3rd October, to present the Recommendation to the Project Promoters.

BoR Decision agreed: (D 5)

The BoR provided by consensus of the members present or represented its favourable opinion on the draft ACER Recommendation on cross-border cost allocation of electricity and gas projects of common interest

Market Monitoring

9. Market Integrity and Transparency

9.1. REMIT implementation – status report

Mr Volker Zuleger presented the status report on REMIT implementation covering ACER's progress to date with regards to policy implementation, IT implementation and market monitoring activities. The key issues for the IT development are the continued positive progress on the registration system (CEREMP), the development of market monitoring software, and the development and expansion of the 'pilot project' on data collection. He then presented the IT implementation timeline. Regarding the pilot on the data collection, this will be presented at the December BoR meeting. The upgrade of the operational prototype to become the real system is expected in Q2 2014.

9.2. Preparation of the annual report on REMIT

The Director and Mr Zuleger presented the first annual report on REMIT which the Agency must under Art. 7(3) of REMIT submit to the Commission and make publicly

available. According to Article 7(3) of REMIT, ACER need to, at least on an annual basis, submit a report to the Commission on its activities under REMIT and make this report publicly available. There are two main parts one on implementation phase and the 2nd part on MM activities.

ACER's first annual report on its REMIT activities is structured as follows: Introduction (including an introduction to REMIT and ACER's expanded mandate under REMIT); ACER's REMIT implementation activities during 2012 - the activities will be sorted under the following core categories; registration of market participants, data collection and data sharing, implementation of the market monitoring, and coordination and cooperation framework. A summary of the status of REMIT implementation at national level is also included in this chapter); ACER market monitoring and coordination activities under REMIT (including Guidance to NRAs on market abuse definitions, ACER's market monitoring strategy, an overview of the cases dealt with by ACER in 2012, and an assessment of the operation and transparency of different categories of market places and ways of trading); conclusions and recommendations. The annual report will then be published in early November 2013.

Mr Zuleger noted that this has been presented to the AMIT WG. Any comments are welcome including on the results of the questionnaire.

9.3. Implications of the results of the REMIT questionnaire and possible alleviating measures

Mr Zuleger presented the result of the questionnaire and its implications.

There are limited human resources currently foreseen in most NRAs for monitoring wholesale energy markets and for enforcement. The majority of NRAs are relying on the development of ACER's CEREMP system for successful registration of market participants at a national level.

The Director presented the implications of the ACER budget developments over 2013 and 2014 which are added to the situation in the NRAs.

The (additional 3 million) of the 2013 budget are required to finalise the IT software. If the availability of these funds were delayed, ACER would not be in a position to collect data and the development of REMIT data collection and screening would be suspended. In practical terms ACER would need to ask the EC to delay the implementing acts.

If ACER received the total 2013 budget, the deployment of REMIT Data collection and screening platform will be finalised. If ACER further is allocated the resources for 2014 according to the 2014 budget (as adopted by the AB) ACER will be able to undertake the Market Monitoring at Union level.

Conversely, if the 2014 WP corresponds to the draft budget of the Commission's proposal to the budgetary authority, ACER would not be able to have the human resources for market monitoring and therefore NRAs should monitor markets at national level themselves on the basis of the data collected by ACER. Under this scenario, ACER will simply coordinate the cross border investigations.

Lord Mogg noted that the experience in the UK, shows the serious implications at national level if data collection (by ACER) were suspended and no data were made available to NRAs. The responsibility and blame would fall on NRAs. He noted that this issue will also be discussed at the next ACER Contact Group on 1st October.

Mr Borchardt underlined DG ENER's efforts to find a solution.

9.4. Benchmark Regulation

Ms Groebel reported that the draft proposal for a Regulation was adopted and published on Wednesday 18 September. It seems that a number of aspects of the Regulation have significantly been softened but a proper assessment still needs to be made.

9.5. 3rd edition of ACER guidance on application of REMIT

The Director presented the third edition of the ACER Guidance. The Guidance is updated to reflect changing market conditions and the experiences gained by the Agency and NRAs in the implementation of REMIT, including through the feedback of market participants and other stakeholders. The 1st edition of the Guidance was published on 21 December 2011. It focused on providing guidance to NRAs on what the Agency considered to be priority areas following the entry into force of REMIT. The 2nd edition of was published in October 2012 and included updated guidance on the application of the market abuse definitions, but also extended it to the scope of REMIT in relation to EU financial market legislation, the application of definitions of wholesale energy market, wholesale energy products and market participant, the application of the obligation to disclose inside information and the application and implementation of the prohibitions against market abuse. This 3rd edition further extends the scope of the Guidance to include registration of market participants pursuant to Article 9 of REMIT. Guidance is provided with regard to the registration process and the role of NRAs during this process, e.g. as regards the checking of the submitted registration information, the transmission of the information in the national registers to the Agency, and the issuance of the unique identifier (the "ACER code") to market participants.

In addition, further elaborations have been introduced in Chapter 3 concerning the definition of wholesale energy products and in particular regarding the contracts to final customers, in Chapter 5 concerning the definition of inside information versus the definition of transparency information, in Chapter 7 concerning the obligation to effectively publish inside information, and in Chapter 8 concerning the exemptions to the prohibition of insider trading.

Regarding the next steps, following the BoR meeting, the Guidance will be adopted and published.

9.6. Technical formats and standards

Mr Zuleger reported that on 22 March 2013, the Agency launched a public consultation on the technical standards for trade reporting under REMIT. The public consultation document consisted of 12 questions, an annex with a list of proposed standards for reporting under Article 8 of REMIT and an annex II with a proposal for a taxonomy. The public consultation lasted until 13 May 2013. A public workshop was held on 25 April 2013 to discuss with stakeholders about the public consultation document. The publication of the final document depends on the adoption of the EC's implementing acts.

The public consultation launched solicited feedback from various stakeholders. The consultation resulted in a total of 22 responses, 5 of which by European associations. In general, the majority of respondents commented that established formats should be used for reporting under each of the categories provided. Generally, it was argued the most widespread format should be chosen.

Several respondents commented that if possible, the format should be flexible to incorporate more than one standard. However, the standards should be consistent across the different formats.

A number of respondents emphasised the need for very robust data security and data protection given the commercially sensitive nature of the required information.

9.7. RRM and RIS guidelines

ACER provided recommendations to the Commission (in October 2012 and secondly in March 2013) covering the details of how trades should be reported (contracts, formats etc.). Subsequently ACER launched a consultation on guidelines for RRM and RIS. The evaluation of responses was circulated. The consultation resulted in a total of 28 responses, 7 of which by European associations. In general, the respondents are positive to the proposed guidelines but many called for more detailed information regarding e.g. technical specifications. However, this cannot be specified until the implementing acts are adopted. Mr Zuleger noted that the majority of the next steps on RRM and RIS will depend on the details of the REMIT implementing acts as the implementing acts will define how data are reported.

9.8. REMIT Implementing acts

Mr Borchardt presented the timeline for the preparation of the Implementing Acts. The Commission has now prepared a draft and will seek comments. The EC plans

their approval ahead of the end of the year and the formal entry into force of the Implementing Acts on 2nd quarter 2014.

10. Implementation, Monitoring and Procedures

10.1. Second MMR

Mr Locquet reported on the preparation of the report. The final draft MMR chapters were circulated to the AEWG and AGWG to provide comments ahead of a 2 day AIMP WG meeting in Vienna on 11/12 September to review the final drafts of the Gas and Electricity chapters. The CEER in parallel has discussed and approved the Consumer Chapter. The Director thanked all involved in the preparation of the report. He invited all members to check the information and accuracy of data. The last opportunity to provide comments will be within one week, after which the report will be proofed read and published. The report will be presented at the ITRE on 27 November and on 28 perhaps as a joint event with the Presidency.

10.2. Fallback scenarios in network codes

Mr Locquet presented this note. This document has been prepared by the Procedures Work Stream of the AIMP WG in response to a request from the AEWG to look at drafting changes made by the EC in the CACM NC. The document states that the common rules, terms, conditions and methodologies should be set out in NCs themselves as far as possible. However for aspects of a NC where TSOs cannot reach an agreement and consequently no rules are further developed the NCs may allow the ENTSOs/TSOs to elaborate the general rules, terms and conditions as laid down in the NC through one or more agreements which ENTSOs/TSOs could conclude between themselves, either on a regional or pan-European level. The note outlines some further conditions these 'fall-back scenarios' should follow to be most legally sound.

Part B: Items for Information only and not for an oral update / discussion

These items will not require an oral report at the BoR. Members are invited to take note of the relevant explanatory notes circulated under the BoR meeting folder. All relevant documents can be found at the BoR meeting folder for the information of the members.

11. Internal Energy Market: Electricity and gas

11.1. Outcome of the Electronic approval on the ACER opinion on the TYNDP ENTSOG

24 NRAs participated in the electronic procedure which ended on 6 September and all agreed to provide their favourable opinion the ACER opinion on ENTSOG TYNDP.

11.2. Announcement of the new INF TF Co-Chair

At the EWG on July 19, Kick Bruin (from ACM) was elected co-chair of the Infrastructure TF after Geert Moelker stepped down.

12. Others

12.1. Presentation on latest ACER developments

The presentation from the Director was circulated.

12.2. Next Meetings

A calendar was circulated.

12.3. AOB- AB decision

On 15 July 2013 the AB appointed Mr Tomislav Jurekovic and Ms Sonja Tomscic-Skevin as the Croatian Member and Alternate Member of the BoR respectively.

On 3 September 2013 the AB appointed Mr Attila Nyikos as the Hungarian Alternate Member of the BoR.