

8th ACER Board of Regulators meeting
 Wednesday, 4 May 2011, from 14.00 to 17.30 (CET)
ACER office, TR3 – Trg republike 3, 1000 Ljubljana

Minutes

Participants

Member States	Name ¹	Member States	Name
Austria (E-Control)	M: Walter Boltz A: Dietmar Preinstorfer	Latvia (PUC)	M: Ainar Mengelssons
Belgium (CREG)	A: Koen Locquet	Lithuania (NCC)	M: Diana Korsakaite Excused
Bulgaria (SEWRC)	M: A. Semerdjiev Excused	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: G. Shamma Excused	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	M: Blahoslav Nemeček	Netherlands (NMa)	O: Geert Moelker O: Menno Van Liere
Denmark (DERA)	M: Finn Dehlbæk Excused	Poland (URE)	M: Marek Woszczyk. O: Kamila Kloc-Evison
Estonia (ECA)	A: Külli Haab	Portugal (ERSE)	A: José Braz
Finland (EMV)	A: Antti Paananen	Romania (ANRE)	M: Iulius Plaveti excused
France (CRE)	A: Philippe Raillon	Slovaquie (RONI)	M: Josef Holjencik Excused
Germany (BNetzA)	M: Johannes Kindler O: Daniel Müther	Slovenia (AGEN-RS)	M: Marko Senčar
Greece (RAE)	A: George Koutzoukos	Spain (CNE)	O: Rafael Gomez-Elvira
Hungary (HEO)	O: Gábor Szörényi	Sweden (EI)	A: Karin Widegren
Ireland (CER)	M: Michael Tutty	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Martin Crouch O: Clémence Marcelis
Italy (AEEG)	M: Valeria Termini A: Carlo Crea O: Miranda Diana		

Observers	Name
ACER	Alberto Pototschnig, Fay Geitona
European Commission	Aurora Rossodivita
CEER	Natalie McCoy, David Haldearn

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

Main conclusions from the meeting:

1. *The decision on the publication of background documents was agreed. It will be edited, communicated by the BoR Chair to the Administrative Board chair and published subsequently on the ACER website.*
2. *The BoR provided by consensus its favorable opinion on the Agency's Opinions on the ENTSO-E's and ENTSOG's draft statutes, list of members and draft rules of procedure. The opinion will be adopted by the Director, delivered to the Commission and published along with the comments received during the consultation, unless confidential.*

1. Approval of the agenda

BoR Decision agreed: (D 1)

The agenda of the 8th ACER Board of Regulators meeting was approved.

2. Approval of the minutes of the 7th BoR meeting

BoR Decision agreed: (D 2)

The 7th BoR meeting minutes were approved by the BoR members.

3. Report on ACER progress

Information on AB decisions

Lord Mogg reported on the information request from BnetzA about the AB decisions already adopted. He explained that the BoR chair, as observer to the AB meeting, has reported on the main outcomes of the AB meetings, particularly on issues which are of regulatory interest, at the subsequent BoR meetings (for example in March the AB meeting was held on 3 March after the BoR meeting and therefore info was provided at the April BoR meeting). The AB decisions are published on the ACER website, however, with some delay. Mr Pototschnig expressed his keen interest in exploring useful means to communicate relevant info at the BoR members in advance of the publication of the AB decisions on the ACER website particularly when this takes some time. The Director reported on the following decisions adopted by the AB in 2011:

- 1.) AB DECISION on the reimbursement of Kindergarten and school to ACER staff members (11/2/2011)
- 2.) AB DECISION on rules for secondment of ENDS (3/3/2011)
- 3.) AB DECISION on the estimate of the budget (3/3/2011)
- 4.) AB DECISION on two assessors of the probationary period of the Director (4/3/2011)
- 5.) AB DECISION on MSPP (31/3/2011)
- 6.) AB DECISION on the appointment of the new BoR member, Ms Termini (4/4/2011)
- 7.) AB DECISION on the appointment of the new BoR members - Ms Haritonova (4/4/2011)

8.) AB DECISION on internal controls standards (12/4/2011)

AESAG and FGs

Mr Pototschnig informed the BoR members on his initial thinking on issuing a recommendation to the ENTSOs on governance issues.

The public consultations on the electricity grid connection and gas capacity allocation mechanisms closed on 2 May with 35 and 37 responses respectively. ACER started to look into the responses received. The Commission has requested ACER to submit the final framework guidelines by July. Mr Pototschnig reported that 2 further FG consultations have now been launched (electricity CACM and gas balancing).

Mr Pototschnig reported on the last AESAG group on 3 May. ENTSO-E and EuroPEX were asked to prepare roadmaps for implementation of the CACM for the 2014 deadline. The intention is to come up with a roadmap which would serve as a reference for guiding the implementation process.

In parallel the Commission sent a letter to the RI lead regulators to deliver the roadmaps by the end of June. Mr Pototschnig has sent a letter to lead regulators to follow up the Commission letter to offer ACER's support to the process (according to ACER's mission to support and promote cooperation among NRAs). ACER will organise preparatory meetings, both in gas and electricity, in May and June, to support NRAs in the process of developing the European Energy Work Plan and to define the expected contribution of each region in this process. A meeting is already scheduled for 16 May for electricity. ACER is also planning to conclude this preparatory work with a Conference to be held in Ljubljana on 22 June from 12.30 to 17.00 to finalise the European Energy Work Plan and designate the different project lead regulators. The Agency will make all efforts to ensure that the different roadmaps are consistent.

The Director has invited Mr Rafael Gomez-Elvira to support the coordination within ACER of the Regional Initiatives in close cooperation with the Director and the respective HoDs, given Mr Rafael Gomez-Elvira's longstanding experience in CNE, the former RIG chair. Mr Gomez-Elvira will also undertake to report on a regular basis to the BoR on progress in the regions.

Regarding the follow-up work following the consultation on the FG on gas capacity allocation, Mr Boltz reported that the AGWG will begin an evaluation of the responses received. He also pointed out that there seem to be differing approaches between ENTSO-E and ENTSG to the scenarios for the ten-year network development plan. The ENTSO-E one assumes the growth of renewables (and therefore less gas), while the ENTSG one assumes greater need for gas (and relevant infrastructure). Mr Boltz informed the members that the GWG will run a test of live streaming for its next GWG meeting (for members only), to allow remote participation for those unable to travel.

Mr Crouch reported on behalf of the EWG Chair that a process has been agreed with the ACER electricity Head of Department for assisting with the follow up of the public consultation on the FG on grid connection. The AEWG has also discussed the timelines for ongoing and future FGs. The EWG will have some proposals for the timetables for the work. The EWG Chair will shortly send a letter to the ACER Director to summarise the distribution of the work within AEWG. On system operation, the AEWG still needs to see when the EER's input will be finalised so that ACER can launch their consultation.

Ms Rossodivita reported that the EC will adopt on 10 May the short list for the Board of Appeal. The Commission is expected to adopt on 11 May the decision on the abolition of ERGEG with effect from 1st July. On the CEER donation regarding the ACER liaison office, the Commission's inter-service consultation ended on 29 April with a positive reaction. The draft decision will be sent to translation and it is expected to be formally adopted by the Commission the second half of May.

4. Proposal for a BoR Decision on publication of background documents

According to the decision AB n° 08/2010, "Procedures and practical measures for applying Regulation (EC) No 1049/2001 on access to documents of the Agency", the following documents should be directly accessible to the public by publication on the Agency's website: the agenda of the BoR, the BoR background documents, the decisions taken by the BoR and the minutes of the BoR meetings unless the Board has determined that they should not be published pursuant to the exceptions under Article 4 of Regulation 1049/2001.

A draft BoR decision addressing the publication of background documents of the BoR including requests for access to those received by individual NRAs, as well as the publication of the minutes and the agendas of the BoR meetings, was circulated for approval. Mr Braz presented the draft decision.

BoR Decision agreed: (D 3)

The decision on the publication of background documents was agreed. It will be subject to final editing, communicated by the BoR chair to the Administrative Board chair and published subsequently on the ACER website.

5. Three year plan: Outcome of the EC's consultation

The Commission has consulted stakeholders on the priorities for the development of FG and NC for 2012 and beyond. Ms. Rossodivita reported that the Commission received 25 responses (including the Swedish government and ENTSO) to the public consultation on the priorities for the 3-year plan. Most stakeholders agree with the priorities and the Commission will soon adopt the priority list. Efforts will be made to have sensible proposals and see the appropriate timeschedule in the light of the 2014 objectives and the work progress in 2011 and some changes will feed in the EER's proposals to the 11 May planning group meeting. These changes should hopefully not affect the ultimate delivery deadlines but it is important to focus on successful completion and then implementation of a limited number of key topics.

Conclusion

The EWG and GWG chairs will have bilateral discussions with the Commission on the 3 year plan in advance of the planning group meeting on 11 May.

6. ACER opinions on ENTSOs statutes & evaluation of responses

The ENTSO for electricity and gas have submitted to the Commission and to the Agency the draft statutes, list of members and draft rules of procedure, including the rules of procedures on the consultation of other stakeholders. The Agency, after formally consulting the

organisations representing stakeholders and system users, including customers, has prepared its opinions to the Commission on the draft statutes, list of members and draft rules of procedure of ENTSO-E and ENTSG and submitted those to the BoR for its formal opinion. The two draft opinions on the ENTSGs statutes, accompanied by an explanatory note and the evaluations of the responses to the respective consultations were circulated to the BoR members.

Mr Pototschnig underlined that these are the first ACER formal opinions (acts) of the Agency.

In preparing the Opinions, the Director took as the guiding principle, shared by the BoR in its March 3rd meeting, that they should focus on verifying that the provisions in the statutes, list of members and rules or procedures are in line with the Community acquis, whilst avoiding overstepping its mandate and rewriting statutes for ENTSGs. Mr Pototschnig reported on how the BoR's comments, provided in the written orientation phase, have been reflected in the ACER opinions:

- Regarding the ENTSG's different treatment of the 'sunset clause', the situations of the two ENTSGs differ, in that ENTSG does not have 3rd country TSOs as members, and so ENTSG doesn't require the 'extra stringency' applied by ENTSG-E. Therefore the differences in the sunset clause are justified.
- Regarding the designation of TSOs and the definitions currently used by ENTSG referring only to Article 10 of the Directive, the Director agrees with BoR that it is therefore better to refer in general terms to (the designation of) TSOs as defined in the Directive, rather than mentioning specific articles.
- He also addressed the comments on network codes section, observers and voting rights. He explained that both ACER opinions now incorporate a new chapter on consultation processes and for ENTSG-E the network development process, following the comments received during the consultations.

Mr Braz welcomed the Director's note on the BoR comments. He expressed the hope that this approach sets a "best practice" example for the future BoR opinions and cooperation between the BoR and the Director on ACER formal opinions, recommendations and decisions. With regard to the only pending issue on the previous BoR suggestion for ENTSG-E to foresee a consultation of ACER before submitting the interpretation of the network code, he explained that the rationale of this proposal was to ensure consistency in the interpretation of codes considering that the network codes are translating the framework guidelines in more detail. However, he suggested that the Director communicates this issue to ENTSGE, whilst not in the formal ACER opinion. Mr Pototschnig remarked that he would rather address this issue informally and not in the ACER opinion.

Lord Mogg noted as a general remark the importance of regulators engaging in discussions with ENTSGs, particularly in the preparation of future network codes; however, these informal discussions must not fetter the regulators' discretion on the relevant issues.

Ms Rossodivita thanked ACER and the BoR and reserved the Commission's right to provide its own opinion to the statutes whilst taking utmost consideration of the ACER opinion.

BoR Decision agreed: (D 4)

The BoR provided by consensus its favorable opinion on the Agency's opinions on the ENTSG-E's and ENTSG's draft statutes, list of members and draft rules of procedure. The

opinion will be adopted by the Director, delivered to the Commission and published along with the comments received during the consultation.

7. Update on discussions on Gas Target model

Mr Boltz reported that European regulators have committed to produce, by autumn 2011, a vision paper on a conceptual model for European gas markets (the “gas target model”). European regulators have been holding a series of public workshops (Vienna in December 2010, Bonn in February 2011, London on 11 April 2011, with the next one in Brussels on 28 June). CEER gave a problem overview and presented policy options which were debated and accepted at a high level by participants. Mr Boltz presented an overview of the consultancy models that have been prepared. The main objective is to enable functioning wholesale markets where they do not exist yet. As a second step, markets need to be connected better to move forward to an integrated market. Basic conditions need to be established in all countries. No one-size fits-all solution seems possible. Different pictures all over Europe call for different approaches which are not mutually exclusive. If a country is capable of establishing a functioning market itself the establishment of one (or two,) zone within this country is important; if a country is not capable of establishing a functioning market itself (e.g. due to lack of liquidity or size), cross-border market areas (full merger) is one solution; or access to a larger, already functioning market; or trading regions – a single cross-border zone for wholesale markets with congestion-free interconnection to national end-user zones. The second step (connecting markets) means price alignment between functioning markets and thereby driving market efficiency and public welfare on a European scale. Connecting markets can happen at different timescales, e.g. short-term implicit auctions.

Mr Boltz also presented the further timeline: The GWG is discussing a first draft of the target model paper and proposes to reserve time for a GA discussion at the June GA. The draft target model could then be released by mid-June for a discussion at the Brussels workshop. After the workshop, CEER will produce the vision paper and implementation roadmap, both of which it is likely to consult on during the summer.

8. Preparation for Florence Forum

A revised agenda has been circulated. Mr Pototschnig noted that ACER will make the presentation on Capacity Allocation and Congestion Management (instead of ERGEG) and the Commission will be asked to change the agenda accordingly.

9. Infrastructure Package: Follow up discussion on the EC’s approach on cost allocation and Financial instruments

Ms. Rossodivita reported that the Commission is planning a workshop on cost allocation in Budapest on 16-17 May. It will also organise a workshop on selection criteria for projects of European interest and permit granting on 30 May.

Mr Braz reported that both CEER ad hoc task forces’ papers on financing mechanisms and cost allocation were approved at the last GA, aimed at informing the debate with the EC but not used publicly. After the GA, a letter was sent to the Commission using input from the two task force documents. On the basis of the papers, Mr Braz will present at the workshop of 30

May some input from regulators on the criteria. The Commission was invited to send their proposals in advance of the workshop. Ms Termini suggested that ACER may start considering the role of incentive regulation, beside public funds, when market tools and tariffs are not sufficient to cover the cost of externalities for new investments projects, especially at the European level. The Italian experience in this field, as well as others, could be fruitfully assessed by ACER. The Commission could entrust ACER with the definition of instruments and mechanisms in order to favour the implementation of the EU infrastructure package.

With regard to the additional input on 6 issues sought by the EC on the impact of investments on prices (affordability); adequate remuneration for various types of investors; concrete experience and feasibility of people's shares for infrastructure etc, Mr Braz and Mr Kindler should be able to share with the Commission what the ad-hoc TFs have gathered.

10. Regional Initiatives: Update on Regulators' discussion

With regard to the RI priorities, the focus is moving towards implementation and the RI can be instrumental in this area and sought the BoR views. Mr Boltz noted that although this role is important, we would need to consider how the RI can successfully play their role in the implementation of the third package particularly if there are infringements and lack of commitment. There is no legal means to "enforce" implementation at regional level and enforcement powers lie with individual NRAs.

Regarding a revised governance structure, Mr Gomez-Elvira proposed that there should be a degree of flexibility for the governance, depending at least partly on the needs of each region (e.g. involvement of Member States). Mr Haldearn enquired what role the BoR should have in order to ensure adequate oversight of the regional work. Mr Pototschnig noted that he would like the opportunity to reflect further on this point, after consultation with colleagues. With regard to how would the Agency undertake itself the regional monitoring he referred to his proposal that Mr Gomez-Elvira supported ACER's coordination of the RI in close collaboration with the Director and HoU and regular reporting at the BoR meetings.

Lord Mogg welcomed the Director's intention to provide some ideas for the next BoR meeting.

Mr Moelker suggested that the governance arrangements of the regional initiatives should be practical as far as possible: keep those arrangements that are good and change what has proven not to be practical.

Regarding the role of the BoR in the RI, Mr Gomez-Elvira remarked that there is a clear need to have efficient exchanges between regulators, especially as some projects are regulator-led while others are politically-led. It is therefore important to have an overview on what's happening across the regions (and also on inter-regional projects). Mr Haldearn explained that the Commission's letter indicates that the RIs will have a central role in the achievement of the IEM by 2014 and that regulators will be accountable for developing and delivering the 2014 Roadmap. The involvement of the BoR must be seen in this context.

Conclusion

In view of the preliminary discussion, Lord Mogg proposed to discuss this issue further with Mr Pototschnig and Mr Gomez-Elvira. The functioning of the RI could be discussed again at a future BoR meeting.

11. Information + Next Meetings

The 9th BoR meeting will take place on 7 June from 11.00 – 17.30 in Brussels.

The Slovenian authorities have expressed their concerns about hosting the BoR meetings in Brussels. The CEER Secretary General and the NRA Coordinator will liaise on 2012 meeting dates to maximise travel efficiency, and taking into account the Slovenian authorities' concerns.

Lord Mogg noted that there are travel difficulties with reaching Ljubljana which should be communicated to the Slovenian authorities for them to take into account.

Mr Pototschnig reported that ACER is in discussions with Adria Airways to try to secure preferential fares for ACER (in line with the fares granted to local government officials).

12. AOB

FSR annual conference

Mr Pototschnig invited regulators at the FSR annual conference which takes place at the European University Institute on May 25, 2011 in Florence. Its theme is "Future Trends in Energy Market Design".