

**11<sup>th</sup> ACER Board of Regulators meeting  
Tuesday, 6 September 2011, 09.00 – 17.30,  
CREG office, 26 rue de l'Industrie, Brussels  
Minutes**

**Participants**

Member States	Name <sup>1</sup>	Member States	Name
Austria (E-Control)	M: Walter Boltz A: Dietmar Preinstorfer	Latvia (PUC)	O: Dace Bite
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: Georgios Shammas	Malta (MRA)	O: George Cassar
Czech Republic (ERO)	M: Blahoslav Nemeček	Netherlands (NMa)	A: Peter Plug
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	O: Kamila Kloc-Evison
Estonia (ECA)	O: Tiina Maldre	Portugal (ERSE)	A: José Braz O: Mariana Pereira
Finland (EMV)	M: Riku Huttunen	Romania (ANRE)	A: Lusine Caracasian
France (CRE)	A: Philippe Raillon	Slovakia (RONI)	A: Nataša Hudcovičova
Germany (BNetzA)	A: Annegret Groebel O: Daniel Mütter	Slovenia (AGEN-RS)	M: Irena Pracek A: Jasna Blejc
Greece (RAE)	A: George Koutzoukos	Spain (CNE)	A: Tomás Gómez O: Rafael Gomez-Elvira
Hungary (HEO)	A: Gábor Szörényi	Sweden (EI)	A: Karin Widegren
Ireland (CER)	A: Dermot Nolan	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	Philip Lowe, Inge Bernaerts, Aurora Rossodivita
CEER	Natalie McCoy

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

**Main conclusions from the meeting:**

1. *The members discussed the regional and cross regional RI work plans. A short note will be prepared by the Director to capture the thrust of the discussions and then circulated to the BoR.*
2. *In terms of the next steps, the gas regional work plans should be submitted by 12 September, but the Commission proposed an extension until 19 September, to allow the gas regions, which still would like to revise and strengthen their work plans to do so in advance of the Madrid Forum.*
3. *The proposal on the treatment of dissenting opinions was agreed subject to a modification ( the dissenting NRA would be identified in the formal minutes).*
4. *With regard to the CREG dissenting opinion on the FG CAM for gas, CREG will prepare their dissenting opinion in accordance with the agreed format and submit it to the BoR chair and the ACER Director.*
5. *The Director will submit a proposal for a framework guideline for Gas Balancing at the October BoR meeting for a formal BoR opinion. The adoption of the framework guideline is therefore delayed by 1 month. The Commission took note of the delay.*
6. *The BoR provided a favorable opinion on the ACER's opinion on the ENTSOG TYNDP.*
7. *The BoR took note of the Director's announcement to appoint George Koutzoukos as the ACER representative in the ECRB of the ENC.*

## Regional Initiatives

### 1. Discussion of ERI/GRI work plans

A discussion paper was prepared for the orientation debate introduced by the Director and Mr Rafael Gomez-Elvira, the R.I joint coordinator. The Director referred to the ACER work in supporting the roadmaps. In April the Commission wrote to lead regulators of the RIs to ask them to prepare Roadmaps towards the completion of the single European energy market by 2014. This work is being co-ordinated by ACER. He underlined that the RI process is very much a regulators' process. Mr Rafael Gomez-Elvira emphasised that the commitment of the BoR is central to the success of the RI.

#### Gas Regional Initiatives

The BoR members discussed the GRI questions including the 4 priorities outlined in the discussion paper, the level of ambition, the infrastructure dimension, the level of engagement of stakeholders and the challenges of implementation.

Lord Mogg summarized that most regions are committed to raising the bar of ambition, although this very much depends on the engagement of the other players (especially TSOs) in the process.

Mr Pototschnig expressed his support for this positive and in depth discussion on the Regional Initiatives and noted that the coming months are likely to be critical for the regions.

In terms of the next steps, the gas regional work plans should be submitted by 12 September, but Ms Bernaerts proposed an extension until 19 September, to allow the gas

regions, which still would like to revise and strengthen their work plans to do so in advance of Madrid.

### ***Electricity Regional Initiatives***

Mr Pototschnig introduced the debate by noting that the electricity plans are more developed than the gas and seem fairly comprehensive. Lord Mogg opened the floor for discussion and indicated that he would invite individual NRAs addressed in certain more specific questions in the note to provide their reactions in writing.

BoR members discussed the cross regional projects, the infrastructure dimension, and the progress in certain areas including market coupling in the NWE region.

The Director thanked the members for the very constructive debate. As an overall comment which is also relevant to the “oil spread” approach in the North West to all regions he noted that whilst progress starts in the region which is best suited, we need to ensure that this does not develop in a model which is incompatible with other regions. He welcomes the constructive contribution of NRAs in leading the process including the proposal of AEEG and EI to co-chair the day ahead market coupling and the long term transmission rights projects respectively.

### **General Conclusions**

*Lord Mogg concluded the discussion as follows:*

- (1) A short note (regarding the overall issue of the Regional Initiatives and the questions put forward in the note) could be prepared by the Director to capture the thrust of the discussions and then circulated to the BoR.*
- (2) Lord Mogg will invite individual NRAs addressed in certain more specific questions in the note to provide their reactions in writing.*
- (3) Frequency of BoR scrutiny: The BoR would like to review periodically (6 months as a minimum) the RI progress. BoR scrutiny RI projects would ensure a coherence of regional projects with the FG/NC projects.*
- (4) Looking ahead we need to look at the challenges of implementation: questions of powers of regulators in the RI area to ensure greater cooperation and the governance arrangements for cross regional projects.*
- (5) Governance arrangements of the RI and notably the involvement of Member States are important: a calendar should be issued, indicating the meetings where the participation of Ministries, stakeholders. This can help to focus the minds and provides a deadline to work towards.*
- (6) Members acknowledged and underlined the centrality of the TYNDP in the infrastructure process. There needs to be consistency between the activities foreseen under the EIP with the Regional Initiatives strategy. The infrastructure dimension should be reviewed after the EIP proposals are issued by the Commission.*
- (7) Lord Mogg noted the usefulness of coordination ERI and GRI coordination groups with the Gas and Electricity groups particularly to identify early implementation projects candidates notably in the gas area as the gas target model evolves.*

CERA: the correspondence with the EC was circulated. The EC accepts CERA's request to participate in SSE GRI.

## Opening

### 2. Approval of the agenda

#### BoR Decision agreed: (D 1)

The agenda of the 11<sup>th</sup> ACER Board of Regulators meeting was approved subject to the withdrawal of item 10 on the ENTSOE WP. This will be included in the agenda of the 12<sup>th</sup> BoR meeting. With regard to item 8 a presentation by the Director is envisaged.

### 3. Approval of the minutes of the 10th BoR meeting & review of actions

#### BoR Decision agreed: (D 2)

The 10th BoR meeting minutes were approved.

### 4. Report on ACER progress

The Director reported on the recent ACER decisions on the adoption of the framework guidelines on electricity grid connections, on capacity allocation and congestion management for electricity and on capacity allocation mechanisms for the European gas transmission network. The relevant ACER decisions were circulated. The ACER consultation on the system operation framework guideline was launched. The 2012 ACER WP is expected to be adopted by the Administrative Board on 22 September. A letter by the Chair of the BoR to the AB transmitting the ACER Work Programme 2012 was circulated for information. ACER is at the final stages of staff selection and recruitments. Ms Groebel invited the Director to circulate the contact details of ACER staff and SNEs.

### 5. European Commission's update

#### 5.1. Preparation of the EC's internal energy market conference , 29 September

Mr Lowe remarked on the work regulators and the Commission will embark on together in the coming years, and noted the conference on 29 September as an opportunity to look at quantifying the benefits of an internal energy market, including considering what is necessary to establish the required rules. Mr Lowe assured the members that DG Competition (and the examination of national cases) will be supportive – and present at the 29 September conference.

Mr Boltz underlined the essential importance of transposition of the 3<sup>rd</sup> Package. Lord Mogg informed the Commission that CEER is conducting an internal exercise to identify where implementation stands in the Member States.

#### 5.2. Update on EC's staff working paper on TSOs certification

The Commission introduced the Staff Working document to address the challenges of the procedure, harmonise info flow, transparency and review of the certification process.

Lord Mogg saw value in smaller meetings involving the ACER and NRAs. He noted the important time constraints in cases ACER needs to provide a formal opinion. Ms Bernaerts

explained that the first notification decisions by CRE and E-Control are expected in the coming weeks. She welcomed regular slots for further discussions with regulators.

### 5.3. REMIT

Ms Bernaerts updated the members on the status of REMIT. The linguistic/legal translation is proceeding, and the Council is planning to adopt it on 15/16 September. The Regulation will then be published in the EU's official journal. The task will then be to prepare for ACER's staff needs and implementation of its tasks.

The Director reported that ACER has started preparatory work and look into ways of implementing and assisting the EC with delegated acts.

### 5.4. Other issues

The minutes of the last planning group were circulated and the 3yr plans for electricity and gas. The Commission's opinion on ENTSOs statutes was also circulated.

Ms Bernaerts reported that the Commission believes that impact assessments are also important for network codes and they are insisting to ENTSOs that these must be undertaken.

## Cross-sectorial

### **6. Infrastructure Package: follow-up and update on recent developments**

Mr Lowe thanked regulators for their input and reported that the Commission took very seriously the joint letter from the regulators and ACER in this area.

The Commission would like to set a framework with criteria for projects, in order to avoid that individual projects are 'promoted' and 'approved' which do not comply strictly with the criteria and are pushed through for only political purposes.

Mr Lowe saw the TYNDP as the large set of projects which then needs to be examined in the context of the strategic priorities. Working on the basis of the subset contained in the TYNDP, the regional initiatives (NRAs, TSOs, and MS) can examine them together and determine which projects are in their interest at that level. The intention is not to put MS at the beginning of the process. The first step should be to start with the TYNDP subset of projects (so long as it is updated regularly). Next, regulators should agree what should be a submission for projects of common interest. Following this, the list should be checked with the Member States, to seek their endorsement of the projects selected to be submitted for the process. The wording may need further work, but this is the intention of the forthcoming proposal. Involvement of the MS is inevitable. The intention is not to have a separate forum from the Regional Initiatives. There should be complete complementarity there. Mr Lowe underlined that not all projects which are submitted for PCI will necessarily receive the label. There will be a process, including endorsement by Council and the European Parliament, for the selection of the PCI.

The Commission is hoping to adopt the proposal on 19<sup>th</sup> October, although this date could change.

Ms Groebel was very interested in the proposals on cost allocation, in particular regarding cross-border projects. New cost allocation principles must not undermine the certainty provided by regulatory multi-year periods. Cost allocation on a general basis not to intervene with national tariffs setting.

Mr Lowe explained that this exercise has revealed that it will be necessary (in time) to change national network charges to take into account cross-border cost allocation. For this the regional framework can help to discuss and resolve how to deal with these issues.

## Report on electronic approvals and next steps

### **7. Report on BoR electronic procedure on FGs electricity CACM and gas CAM**

Lord Mogg reported on the outcomes of the electronic approval on the 2 Framework guidelines adopted by ACER last August. The BoR provided a favourable opinion on the FG on Capacity Allocation for gas: 20 members of the BoR votes were received by the deadline and a further vote was cast but not received by those to whom it was addressed. Of the votes cast, 17 voted in favour of the giving of a favourable opinion and four voted against. CREG submitted their dissenting opinion on CAM.

The BoR has given a favourable opinion on the FG on Capacity Allocation and Congestion Management for Electricity. Of those voted, all voted in favour of the giving of a favourable opinion.

Lord Mogg noted the complexity of the RoP with regard to the electronic approvals, including the need to develop more detailed arrangements about “notification of votes”, missing votes etc. given the experience from the last electronic approvals. He suggested looking into this issue over time.

#### BoR Decision agreed: (D 3)

*The members took note of the results of the electronic procedures.*

### **8. Proposal for publication of background documents**

In accordance with the Agency Regulation, the background documents are published together with the agenda and minutes of the Board. The Director introduced the approach to be pursued on the definition and publication of background documents in the context of the relevant legal obligations given that the first ACER Framework Guidelines during the summer break have been adopted.

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

*The BoR took note of the approach and invited the Director to submit a proposal for the approach to be adopted at the next BoR meeting accompanied with a list of documents which are proposed for publication.*

### **9. Proposal for treatment of dissenting Opinions**

Lord Mogg introduced a proposal on how to treat dissenting opinions of members voting against a proposal, within the context of the BoR RoP.

The Commission highlighted the new institutional dynamics introduced after the formal establishment of ACER (ACER adopts one decision).

Ms Termini sought some clarifications on how the EC is alerted on the comments received at the first round of the electronic approval. Lord Mogg explained that the Commission is included in the BoR mailing list.

BoR Decision agreed: (D 5)

*The proposal was agreed subject to a modification that the dissenting NRA would be identified in the formal minutes. The short summary format of the dissenting opinion will be prepared by the dissenting authority.*

## Electricity

### 10. Update on ENTSO-E Work Programme

This item was withdrawn from the agenda.

### 11. Update on experts meeting 20 July on changes in generation capacity after Fukushima

The presentations of the meeting of DG ENER, NRAs, ACER and ENTSOE on expected changes in generation capacity after Fukushima have been uploaded. On the day, detailed presentations were given by Germany, France, UK, Belgium, Cyprus, BNetZA and ENTSOE. These documents were already circulated at the BoR members at the end of July.

### 12. Update on energy Crisis in Cyprus

On 11 July, an explosion in a nearby region caused extensive damage to Vasilikos Power Plant (VPP). With the loss of electrical energy capacity of approx. 793 MW (53% of overall energy capacity 1,646MW), the remained available maximum electricity capacity was approximately 400MW below expected peak summer demand.

Mr Shammas gave a presentation on the state of play, the first measures taken and the next steps. CERA is coordinating efforts to put the situation back on track, there will be an increase in tariff for the coming months and there is a need for revisiting the long-term energy strategy if the island. CERA welcomed the support by CEER and ACER. The members took note of the developments and expressed their sympathy and readiness to offer their support.

### 13. Guidelines of Fundamental Electricity Data Transparency

Ms Bernaerts informed the BoR members of the Commission's ongoing public consultation on fundamental electricity data transparency. This follows ERGEG's 2010 advice in this area and will lead to comitology guidelines. The consultation period closes on 16 September. The Commission is also seeking specific feedback on potential competition concerns related ex-

ante publication of information on unplanned unavailability of significant generation and consumption units and actual unit-by-unit generation updated every hour.

*The BoR members took note of the Commission's presentation.*

#### **ENM TF**

A note on the ENM TF was circulated stating that on the departure of Mr Kapetanovic, ACER ENM TF co-chair, from E-Control, the 5th ACER EWG (8 July 2011) appointed Mr Sven Kaiser (E-Control) as co-chair of the ACER ENM TF, alongside with Mr Alain Marien (CREG) as the other co-chair.

## **Gas**

### **14. Framework guideline on gas balancing**

The Director introduced the proposal on a FG on gas balancing. He informed members that the Commission had, in parallel, sent some comments and that there might be a need to withdraw his proposal and submit a new proposal after considering the Commissions' comments. Lord Mogg underlined that the Commission is bound by the 2 weeks rule on the circulation of the BoR docs.

Lord Mogg invited comments on the proposal on gas balancing. The members then discussed the detailed elements in the document.

Ms Bernaerts reminded the Commission's right to review a framework guideline after its adoption. The Commission has every intention to intervene into the process early enough and preferred to indicate their comments before the formal adoption of the ACER FG.

Further to a number of comments and suggested changes, including from the Commission, the Director withdrew his proposal and Lord Mogg suggested introducing this item at the next meeting of the Board in October. This introduces practically a delay of 1 month. A proposal by the Director will be submitted to the October BoR's meeting. The Commission took note of the delay but was of the view that all issues need to be sorted before the adoption of the framework guideline rather than after its adoption and submission to the Commission for its "formal review".

#### **BoR Decision agreed: (D 6)**

*The Director withdrew his proposal and will submit a new proposal for formal BoR opinion at the October BoR meeting. The adoption of the framework guideline is therefore delayed by 1 month.*

### **15. FG on interoperability – scoping paper**

The Director has issued a written proposal to BoR members that ACER will not run a public consultation but will organise instead a public workshop in Ljubljana on 13 September on a scoping document on interoperability ACER has to send its input to the Commission by the end of September (after the Madrid Forum). The Director explained that at this stage the Agency is trying to define the scope and therefore has foreseen a lighter process giving both the Board and stakeholders the opportunity to react. The Director has requested initial feedback from members on the proposed process and the draft scoping paper, prior to

making the paper available to stakeholders ahead of the workshop and the September BoR. In response, BnetzA and CRE have asked that the questions be reinserted into the scoping paper.

Lord Mogg sought some clarifications on how they propose to develop an ACER view on whether gas quality should be in or out of scope (of the Interoperability Framework Guideline). The Commission clarified that the gas quality not the highest on the agenda at this stage.

*The BoR took note of the process for the discussion of the scoping paper.*

## **16. ENTSOG 10YNDP**

The Director introduced the draft ACER opinion on the ENTSOG Community-wide TYNDP. According to the gas Regulation, ACER has to provide a duly reasoned opinion on the TYNDP. ENTSOG submitted the 2011 TYNDP to ACER for its formal opinion on 18 July 2011. This ACER opinion is now been submitted to the BoR for a formal opinion.

The principal aim of the TYNDP is to provide, from the perspective of the European Transmission System Operators, a pan-European view of potential gas transmission infrastructure developments during the period 2011 to 2020. More recently, the policy discussions around the development of an Energy Infrastructure Package (EIP) seem to place the TYNDP as a “reference input” for the identification of potential projects of common European interest.

In general, ACER supports the TYNDP and congratulates ENTSOG on the early work presented. ACER believes that the TYNDP indeed contributes to non-discrimination, efficient functioning of the market and (indirectly) to a sufficient level of interconnection capacity open to third parties as it is required in the 3<sup>rd</sup> Package.

However, the ACER opinion also raises some concerns on ENTSOG’s modelling methodology and stakeholder involvement. ACER suggests further improvement of the modelling and the development of sound demand projections (especially harmonising the underlying assumptions for the ENTSOG demand scenario), the incorporation of EU political goals (RES and 20/20/20 targets) and the expected effects of the nuclear phase out in Germany (and possibly other countries) on the European gas infrastructure, i.e. via inclusion of respective scenarios in the next TYNDP. With these improvements the TYNDP would meet its 3<sup>rd</sup> package requirements and to serve as basis for the EIP.

ACER also anticipates that the development of the Energy Infrastructure Package will translate into even higher expectations from the TYNDP including the inclusion of a cost benefit analysis of all projects to be included therein.

*BoR Decision agreed: (D 7)*

*The BoR provided a favourable opinion on the ACER’s opinion on the ENTSOG TYNDP.*

## **17. Madrid Forum**

The 20th Madrid Forum will take place on 26/27 September. The ACER presentations are on transit contracts, TYNDP, Regional Initiatives (GRI lead regulators will also present the work

programmes for their regions), the FR Guideline interoperability, the gas CAM and gas balancing.

The presentations should be submitted to Fay Geitona by 12 September, will be made available to all colleagues and then submitted to the European Commission by 19 September.

## Others

### **18. Energy Community, representation of ACER**

The Director informed the members of his intention to appoint George Koutzoukos (RAE) to represent ACER to the ECRB on the basis of arrangements similar to those applying for the RI coordinator to be defined in the future.

*BoR Decision agreed: (D 8)*

*The BoR members welcomed the Director's announcement to appoint George Koutzoukos to represent ACER to the ECRB.*

### **19. Next Meetings & update on Cracow Conference**

A detailed note on practical arrangements for the meetings (GA and BoR) in Cracow on 11 October 2011, as well as the conference under the auspices of the Polish Presidency was circulated to the BoR members, including for registrations, hotels etc.

### **20. AOB: AB decision on appointment of BoR members**

#### Representation at the BoR

- Hungary: The formal decision of the AB on the appointment of Mr Gábor Szörényi as the Hungarian alternate, was circulated to the members.
- CNE: The Director announced that the AB has taken a decision on the formal appointment of Mr Alberto Lafuente Felez as the BoR member and Mr Tomas Gomez San Roman as the alternate.