

### 3<sup>rd</sup> ACER Board of Regulators meeting

Wednesday, 8 September 2010, from 15.30 to 17.30 (CET)

Centre Borschette, rue Froissart 36, 1000 Brussels (Room 4C)

#### Minutes

#### Participants

Member States	Name <sup>1</sup>	Member States	Name
Austria (E-Control)	M: Walter Boltz (BoR Vice Chair) A: Dietmar Preinstorfer O: Edith Hofer	Latvia (PUC)	M: Valentina Andrejeva O: Lija Makare O: Daiga Reihmane
Belgium (CREG)	O: Geert Van Hauwermeiren	Lithuania (NCC)	M: Diana Korsakaite Excused
Bulgaria (SEWRC)	M: Angel Semerdjiev Excused	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Georgios Shammass Excused	Malta (MRA)	M: Reuben Balzan Excused
Czech Republic (ERO)	M: Blahoslav Nemeček	Netherlands (Energiekamer)	A: Peter Plug O: Debby van der Pluijm
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	M: Marek Woszczyk O: Kamila Kloc-Evison
Estonia (ECA)	A: Külli Haab	Portugal (ERSE)	A: José Braz
Finland (EMV)	M: Asta Sihvonen-Punkka	Romania (ANRE)	M: Dan Plaveti O: Ioan Roman
France (CRE)	A: Philippe Raillon O: Patricia de Suzzoni	Slovaquie (RONI)	A: Nataša Hudcovičova
Germany (BNetzA)	M: Johannes Kindler Excused O: Nadia Horstmann O: Daniel Müther	Slovenia (AGEN-RS)	M: Marko Senčar A: Tomaz Lah
Greece (RAE)	M: Michael Thomadakis	Spain (CNE)	A: José Sierra O: Rafael Gomez-Elvira
Hungary (HEO)	A: Csaba Kovacs O: Erika Hobothne Toth	Sweden (EI)	A: Karin Widegren
Ireland (CER)	M: Michael Tutty	United Kingdom (Ofgem)	M: John Mogg, (BoR Chair) O: Michela Beltracchi O: Pamela Taylor
Italy (AEEG)	A: Carlo Crea O: Aurora Rossodivita		

Observers	Name
European Commission representatives	Heinz Hilbrecht Excused Lukas Repa Inge Bernaerts Marie Christine Jalabert
Secretariat	Fay Geitona/Una Shortall David Haldearn

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

**Main conclusions from the meeting:**

- 1. The BoR discussed the organisation of the future Agency Working Groups, including composition of the WGs, their deliberation process and operational arrangements. This will be further elaborated with the Director.*
- 2. The BoR discussed the Agency review process under the Directives and the Regulation. The Commission and the Director will consider further how to apply this provision.*
- 3. The BoR discussed how to treat the participation of 3<sup>rd</sup> country TSOs within the ENTSOs, in particular when interconnection and system operation safeguards are at play. The Commission will reflect further on the way forward.*

**1. Approval of the agenda**

BoR Decision agreed: (D 1)

The agenda of the 3<sup>rd</sup> ACER Board of Regulators meeting was approved with the addition of one more item on regulators' discussions with ENTSO-E and ENTSO-G on their Statutes.

**2. Approval of the minutes of the 2<sup>nd</sup> BoR meeting**

BoR Decision agreed: (D 2)

The minutes were approved by the BoR members.

**3. Agency working groups**

The BoR discussed the organization of the future Agency Working Groups (WG), including composition of the WGs, their deliberation process and operational arrangements. The BoR discussed the principle of allowing representation from all NRAs and reflecting the members' work and discussions to the Director. WGs will assist the Director in developing his proposals to the BoR and will also assist the BoR. These WGs should ensure that the regulators are effectively contributing to the functioning of the Agency as required by the ACER-Regulation. From a pragmatic perspective, the actual drafting will likely involve small groups, rather than representatives from each NRA. The principle of full representation within the WG will help to develop the substance and technical issues where NRAs' national experience/context could be important. The Commission and the Director have submitted comments. The BoR believes that the WGs can help to facilitate the subsequent decision making process at the BoR, in particular towards 'informed' deliberations.

**4. ACER reviews**

The BoR discussed the Agency review process under the Directives and the Regulation. Under the 3<sup>rd</sup> Package, the Agency has the competence to deliver an opinion 'based on matters of fact' on whether an NRA decision is in line with the 3<sup>rd</sup> Package provisions.

Among the issues discussed were: the possibility for a NRA under review to vote in its own case; the scope of the review as the Directives and Regulations do not provide enough clarity on this issue; the proper coordination between the NRAs and the Agency, etc.

Further discussions will be held with the Commission and the Director on the outstanding issues, so as to develop procedural rules in this area.

## **5. Update on ENTSOs Statutes and Rules of Procedure.**

The BoR discussed how to treat the participation of 3<sup>rd</sup> country TSOs within ENTSO-E and ENTSG. The main issue in allowing non-EU TSOs is that they may not be properly unbundled and whether this could impact on (ENTSOs' elaboration and approval of) proposals for codes and rules. The BoR was of the view that ENTSO-E and ENTSG should be advised to allow full membership only if the relevant acquis is dynamically incorporated in the 3<sup>rd</sup> countries in question and the framework for proper enforcement is in place. Regulators proposed that a "sunset clause" similar to the one already included in the ENTSG statutes should be included in the statutes of ENTSO-E to promote proper unbundling. In electricity, some form of cooperation between EU TSOs and non-EU TSOs from interconnected 3<sup>rd</sup> countries (some have already been given a founding member status in ENTSO-E) is indispensable to ensure that network codes on system operation are binding, which is necessary to avoid black outs.

Once operational, the Agency is legally required to give advice on the ENTSOs' statutes within 2 months.

The BoR stated that it would be helpful to have a view from the Commission on the treatment of TSOs exempted from ownership unbundling requirements and non-exempted TSOs.

## **6. Next Meetings**

The calendar for the BoR meetings for 2011 was circulated. The next meeting is on 7 December in Brussels. The BoR Chair stressed the possible need for 10 meetings each year for the Board of Regulators.

The Commission welcomed the suggestion to hold 2 meetings in the margins of the Florence and Madrid Fora for efficiency reasons. It will also investigate the possibility of holding meetings within Commission premises, for financial efficiency.

The Commission has noted the budgetary considerations and will reflect on the BoR's proposal for the Commission to host 4 meetings of the BoR at Commission premises.