

**34<sup>th</sup> ACER Board of Regulators meetings**  
**Thursday, 23 January 2014, 09.00-16.00**  
**CEER, Cours Saint-Michel 30a, 1040 Brussels**

**Minutes – final**

**Participants**

Member States	Name <sup>1</sup>	Member States	Name
Austria (E-Control)	A: Dietmar Preinstorfer O: Zsuzsanna Szeles	Italy (AEEG)	A: Clara Poletti O: Ilaria Galimberti
Belgium (CREG)	O: Tom Maes O: Geert Van Hauwermeiren	Latvia (PUC)	O: Lija Makare
Bulgaria (SEWRC)	Excused	Lithuania (NCC)	A: Vygantas Vaitkus
Croatia (HERA)	M: Tomislav Jureković O: Sonja Tomašić Škevin	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Georgios Shammias	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	O: Miroslav Belica	Netherlands (ACM)	O: Geert Moelker O: Elozona Ochu
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	A: Halina Bownik-Trymucha O: Danuta Sierocińska
Estonia (ECA)	O: Tina Maldre	Portugal (ERSE)	A: Alexandre Silva Santos O: Jorge Esteves
Finland (EV)	A: Antti Paananen	Romania (ANRE)	M: Nicolae Havrilet A: Lusine Carcasian
France (CRE)	A: Philippe Raillon O: Sabine Hinz	Slovakia (RONI)	
Germany (BNetzA)	A: Annegret Groebel O: Daniel Müther	Slovenia (AGEN-RS)	A: Jasna Blejc
Greece (RAE)	M: Michael Thomadakis A: Evangelos Dialynas	Spain (CNMC)	M: Fernando Hernandez O: Pablo Villaplana Conde O: Gema Rico
Hungary (HEA)	A: Attila Nyikos	Sweden (EI)	M: Anne Vadasz Nilsson
Ireland (CER)	A: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Martin Crouch O: Feodora von Franz

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

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

**Main conclusions from the meeting:**

1. *The BoR took note of the ACER Recommendations on the Commission's evaluation of the ACER activities which will be finalised in light of the orientation debate of the BoR. The BoR members mandated the Chair to finalise the Recommendations in consultation with the rapporteur without the need for a BoR electronic procedure. The final Recommendations will be circulated to members and, subsequently, submitted to the EC and published.*
2. *The members took note of the outline of the Green Paper, the summaries of the responses from the pre-consultation on the "Bridge to 2025", and agreed the overall timetable and next steps for the preparation of the Green paper.*
3. *The members welcomed the new approach regarding abstentions on the basis of which the revisions in the RoP will be implemented. The AIMP WG will consider more holistically whether there is a need for modifying other provisions of the Rules and present a proposal to the BoR.*
4. *The members had an orientation discussion on the information sharing between ACER and NRAs under REMIT on the basis of a discussion paper. There is a broad agreement on the overall approach and members noted the urgency to finalise this. The arrangements will be finalised in February and formalised in March.*
5. *The Members received an update on the REMIT implementation plan, the Commission's implementing acts including the timeline for their adoption and the MOU with FERC.*
6. *The Board agreed not to be consulted ahead of the launch of the limited consultation on the draft Agency's opinion on the ENTSOG modification of the statutes of Association. The BoR opinion on the ACER opinion, following the limited consultation, will be sought at its February meeting.*
7. *The BoR took note of the outcome of the electronic procedure by which it provided, on 15 January, by the 2/3 majority of its members, its favourable opinion on the ACER Recommendation on the network code on interoperability and data exchange rules. The ACER Recommendation was, subsequently, adopted by the Director.*
8. *The BoR provided by consensus (of its members present or represented) its favourable opinion on the ACER Opinion on the ENTSOG Winter supply outlook 2013-14.*
9. *The BoR took note of the ACER opinion for the operation of the ENTSO-E Central Information Transparency Platform and of the preliminary opinion on the HDVC draft code.*
10. *The BoR discussed the ACER draft opinions on the ENTSO-E, and ENTSOG CBA methodologies.*

11. *The BoR received an update on Regional Developments by the ERI and GRI coordinators.*

## **Part A: Items for discussion and/or decision**

### **1. Opening**

The BoR Chair welcomed the new Director General of CNMC, Mr F. Hernandez. He invited him to continue the strong commitment and engagement of CNMC in the ACER BoR.

#### 1.1. Approval of the agenda

BoR Decision agreed: (D 1)

*The agenda was approved.*

#### 1.2. Approval of the minutes of the 33<sup>rd</sup> BoR meeting

BoR Decision agreed: (D 2)

*The 33<sup>rd</sup> BoR minutes were approved.*

### **2. Update from the Commission and the Director**

#### 2.1. Update on recent developments

Mr Borchardt presented the set of papers published on 22 January by the European Commission.

The EC adopted their Communication on the policy framework for climate and energy in the period from 2020 to 2030 setting out energy and climate objectives (40% greenhouse emission target reduction) to be met by 2030. An EU level target of at least 27% for the share of renewable energy to be consumed in the EU by 2030 is also set (to be delivered through clear commitments decided by the Member States themselves, supported by strengthened EU level delivery mechanisms and indicators). A new governance structure to accompany the achievement of this target at the European level is set. The transposition deadline for the energy efficiency Directive is June 2014 (and not all Member States have yet implemented it) and an assessment needs to be held by mid-2014. This assessment will look into the progress made towards reaching the 2020 target (for energy efficiency which is not binding). Following the review, the Commission will consider whether it is necessary to propose amendments to the Energy Efficiency Directive.

The Communication is accompanied by an impact assessment, an economic report, and the Guidance to Member States on state intervention in electricity markets. A Communication on energy prices and costs in Europe as well as a full report (which is a comprehensive document, but only the first step) were also issued. It is based on the data received by Eurostat, IEA, OECD, but contains neither conclusions nor an analysis. It seems that the wholesale market price levels are almost equal to the United States. However, in the retail sector the picture is quite different, which much higher prices.

The European Commission also adopted a Recommendation on minimum principles for the exploration and production of hydrocarbons (shale gas) using high volume hydraulic fracturing. It invites Member States to follow minimum principles when applying or adapting their legislation applicable to hydrocarbons exploration or production using high volume hydraulic fracturing. The Recommendation is intended to complement EU existing legislation and it was accompanied by a Communication outlining the potential new opportunities and challenges stemming from shale gas extraction in Europe, as well as an Impact Assessment that examined the socio-economic and environmental impacts of various policy options.

The European Commission is also taking action to address the surplus of emission allowances that has built up in the EU emissions trading system (EU ETS).

*- EC: Annual priority list*

Mr Borchardt reported on the first discussion on the EC's 2015 annual priority list at the last Planning Group meeting on 5 December. The adoption and implementation of codes remains a key priority in the Commission's view. The annual priority list is now being prepared.

*- ACER*

ACER conference

The Director reported that the 2014 ACER Annual Conference will focus on REMIT. The Director is thinking to hold the conference on 10 June, although 9 June is a public holiday. In this case, the GA/BOR/AB needs to be rescheduled.

Main developments since the last BoR

The Director reported the main developments since the last BoR: On 15 January 2014, ACER adopted its Recommendation on the Interoperability network code. On 18 December 2013, ACER adopted its opinion on the network Code on Forward Capacity Allocation. On 18 December 2013 ACER published its Opinion on the 'Manual of Procedures for the ENTSO-E Central Information Transparency Platform'. On 18 December 2013, ACER published its Opinion on the 'Draft ENTSO-E Work Programme Autumn 2013 through December 2014'.

Regarding the Agency's Opinion on the ranges of G-charges, which was discussed at the last BoR, the EC has confirmed that they are happy to receive this Opinion by April.

Vacancies

The Director informed the BoR members that there are 5 SNE positions in ACER Market Monitoring Department for which the secondment period will end in the summer. The Director has written to the involved NRAs to extend the secondment until the end of the year.

There is also a vacant SNE position for market monitoring in the Gas Department and he invited NRAs to submit proposals for candidates.

Revision of 2014 WP

The 2014 ACER WP was approved in September based on the resources under the MSPP and the draft budget as adopted by the AB. However, ACER was assigned fewer resources by the 2014 definitive budget (as adopted). ACER is now in the process of assessing which activities can be undertaken with the staff available and which activities must be postponed; therefore the WP will need to be adapted (in accordance also with the suggestion of the

internal audit service). Although there will not be a full REMIT operation for 2014 ACER needs to be ready for 2015 (and, therefore, recruitments must be undertaken in 2014). The Director plans to complete this WP revision process by March and present his proposal to the BoR for approval and the AB for adoption.

#### Away day and ITRE

The ITRE Committee has now confirmed the 2<sup>nd</sup> visit of its delegation to ACER on 19, 20 March. The BoR and AB meetings had already been rescheduled (18 March BoR, 19 March AB morning). There will be a lunch time session to which AB/BoR members are invited (on 19 March). The Director asked the members to indicate their availability in order to start shaping the programme. There will also be a restricted session with the ITRE delegation, the Director and the ACER Boards' Chairs.

Given the ITRE visit is now confirmed, neither February nor March is possible for the away day with the WG leadership and ACER is now looking for another date in April.

### **3. ACER cross-sectoral activities**

#### 3.1. EC's report on ACER evaluation

#### 3.2. BoR Recommendations on the EC's report

Lord Mogg presented the background. The EC has adopted the report on the evaluation of the ACER activities on 22 January which was made available before the BoR. The rapporteur, Ms Groebel, had prepared a preliminary draft of the Recommendations on the basis of the earlier oral report of the EC for the BoR orientation discussion. The BoR Recommendations will be finalised by the Chair in consultation with the rapporteur on the basis of the report as well as the orientation debate of the BoR.

Mr Borchardt presented the key elements of the Commission's report adopted which will be sent to the EP and the Council.

The overall conclusion is that ACER has become a credible and respected Institution playing a prominent role in energy matters. Mr Borchardt explained that whilst the Commission has tried to follow a "lighter" process for the preparation of the report, the report as such is a full assessment of the Agency's activities and all the elements have been carefully considered. The key elements include: ACER has focused on the right priorities. The Commission notes that the activities in developing FGs have been a learning-by-doing process and ACER has gradually taken a more active role in the FGs and in steering ENTSOs during the development of network codes. The EC recommends that ACER remains vigilant regarding the consistency of the codes and in particular the electricity codes. The Commission sees a very important role for ACER to be more proactive, in particular where diverging approaches and interpretations between NRAs as regards cross-border issues prevent the smooth functioning of the internal energy market process. The EC certainly encourages ACER to continue as a strong coordinator of NRAs. On REMIT, the EC welcomes that ACER has had a proactive approach and the next challenge will be to procure and put in operation the necessary IT system in order to execute data collection and monitoring. On infrastructure, the EC notes the pre-active role of ACER in the preparatory work leading to the PCI first selection. Regarding the organisational structure, independence and resources, the Commission considers that the Agency Working Groups are an efficient instrument to carry out the extensive workload of ACER and their work has been extremely valuable. The

Commission notes that they would like to see an involvement of more NRAs in the AWGs. Furthermore, ACER staff has now gained a lot of experience and can play a more prominent role. Regarding independence from the EC raised by a few stakeholders, the Commission made reference to the ACER Regulation outlining the role of the EC. ACER is an Agency and there are inter institutional links with the Commission. Regarding resources: ACER has on several occasions noted that it does not have the appropriate resources. DG ENER notes that it is important to continue ensuring that ACER disposes of the necessary resources within the context of the EU budget. However, this is not a decision of DG ENER but of the whole budgetary Authority. Regarding communication and transparency, ACER has taken action to improve communication and transparency and the Commission was pleased to see initiatives such as citizens' summaries. However, the ACER website needs improvements to be user friendly. The Commission welcomes the strategic and forward looking approach under the ACER initiative "Bridge to 2025".

Mr Borchardt noted that the Commission is keen on a more "European Agency" going forward. The EC's next evaluation report will put more emphasis on that.

The Director thanked the Commission for this in-depth and very complimentary report which demonstrates a profound awareness and understanding of how the Agency operates as well as of its activities. The Agency is already taking action on a number of areas and the Director has written to a few NRAs to support their more active participation and he is in the process of having bilateral meeting with them. ACER is also taking action on other areas such as improvements of its website.

Ms Groebel noted her agreement with the Commission's assessment that the Agency has been a success and this is also evident from the additional tasks and increasing role attributed to ACER after the third package. She noted that the Agency is a new institutional setting for the cooperation of NRAs and the national regulators should be part of it. The Agency WGs are indeed the engine room of ACER. She welcomed the need to make all efforts to find ways to involve more NRAs and to reflect the European perspective in the acts adopted particularly for cross border projects. The knowledge of national markets is also indispensable in preparing those positions and acts. The ACER BoR and AWGs represent the place to bring together both dimensions and combine the top-down and bottom-up approaches. Resources are important for both NRAs and ACER. She also noted the need to improve the website and communication.

Lord Mogg welcomed the EC's report and its key message that ACER has delivered. He complimented the Director for the achievements of the Agency and noted also the importance of the contribution of NRAs. Collaboration of NRAs and ACER staff in the AWGs has been done in a very supportive way. He noted the novelty of the BoR, which is a new approach (compared to other Agencies). Its rationale was to combine effective national expertise and knowledge with the European dimension – subject, of course, to the Meroni constraints. This is key for the preparation of the acts considered for adoption and for their proper implementation and enforcement at national level. The role of the Board has been extremely constructive despite the Board members representing their national regulatory authorities. Therefore, we need to set the tonality right. The structure and deliberation process should not be considered as an obstacle. On the contrary, much progress has been achieved. Whilst a strong leadership of the Director and the need for a European approach are welcomed, in his view, any change in the future approach should not undermine the role of the BoR and the need to bring along the national dimension. The combination has worked well and cooperation through the AWGs and the BoR has helped creating a common understanding and approaches on the issues. The debate of making most NRAs more active

is welcomed but will continue as there are evidently resources constraints especially for the smaller NRAs.

Members discussed and welcomed the report and the draft Recommendations.

BoR Decision agreed: (D 3)

*The BoR took note of the Commission's evaluation of the Agency's performance. The BoR Recommendations on the Commission's evaluation of the ACER activities will be finalised in light of the orientation debate of the BoR. The BoR members mandated the Chair to finalise the Recommendations in consultation with the rapporteur without the need for a BoR electronic procedure. The final Recommendations will be circulated to members and, subsequently, submitted to the EC and published.*

3.3. BoR Roadmap

Fay Geitona presented the main developments reflected in the Roadmap including the actions related to the preparation of the Green (discussion) paper for early 2014. On 19 February BoR an orientation discussion on key messages is planned; a possible high level meeting with the EC is also envisaged for which the date will be sought in coordination with the Commission; on 18 March BoR, an orientation discussion on the Green paper will be held, and, subsequently, an electronic procedure for its finalisation to allow its release in April for the formal public consultation. The final adoption of the paper "Bridge to 2025" is planned for September 2014 ahead of which it is envisaged to have an informal roundtable with stakeholders (possibly in April) as well as a formal workshop in September to launch its publication.

3.4. BoR electronic procedure – handling of abstentions

Lord Mogg and Fay Geitona introduced this issue. The comments by the PS WS on the proposed revision of the rules have also been incorporated. In order to provide more clearly the possibility for abstentions in the deliberations (both at the 2<sup>nd</sup> round of the electronic procedure and at physical meetings) as well as to define their practical consequences on the quorum for the deliberations as well as the majority needed, it is proposed to revise the RoP Article 6.4 and Article 6.7 last indent. The modifications proposed would reflect the ACER Regulation which requires that the BoR acts by 2/3 majority of those present (or represented). It was, therefore, proposed to delete "voting" members from all provisions. Instead we shall use the word "members" in all articles for consistency purposes and introduce a footnote in the RoP to specify that under the RoP only members have the right to vote.

In addition to the above modifications, the Chair invited the AIMP WG, on the basis of the experience acquired during the first years of the BoR operation, to consider whether there are additional provisions of the BoR Rules that need to be updated and present a proposal to the BoR.

BoR Decision agreed: (D 4)

*The members welcomed the approach on the abstentions on the basis of which the revisions in the BoR RoP will be implemented. The AIMP WG will consider more holistically whether there is a need for modifying any other provisions of the Rules and present a proposal to the BoR.*

#### **4. Post 2014 strategy**

##### **4.1. Energy Regulation - Bridge to 2025 - Green paper: overview of responses, skeleton document**

Lord Mogg explained the timetable on the basis of the note. ACER received 35 responses in the pre-consultation; the summaries of responses by the AEWG, AGWG, and CWG chairs were circulated along with an outline of the Green paper. An adhoc group meeting will be held immediately after the BoR.

At the next BoR an orientation discussion on key messages -points is planned. The template circulated aims to give an idea of the main areas of the Green paper which will also include in each section a description on how comments have been taken into account. A separate evaluation of responses is not foreseen for the pre-consultation. The March BoR will have an orientation discussion on the Green paper. Subsequently, an electronic procedure for its finalisation to allow its release in April for the formal public consultation will be held. The final adoption of the paper "Bridge to 2025" is planned for September 2014 ahead of which it is envisaged to have an informal roundtable with stakeholders (possibly in April) as well as a formal workshop in September to launch its publication.

The Chair explained that although the paper will capture and consolidate work in other areas, such as on DSOs, it will not "absorb" the more detailed work in these areas. Thus work will also be pursued in parallel, and specific papers will be developed separately (e.g. CEER consultation on the DSOs).

We still need to consider how the governance aspects will be addressed.

Mr Moelker presented the summary of the electricity-related responses (27 electricity responses).

Mr Maes presented the summary of the responses related to the gas paper (22 gas specific responses received in the pre-consultation).

Ms de Suzzoni presented the main comments (17 responses) received in the responses to the pre-consultation questions on consumer issues.

Mr Blaney mentioned the issues dealt with by the DSO group covering a range of issues. The DSO group is working on its evaluation of responses and has designated volunteers to develop short summaries of key topics to feed into the Bridge.

##### Conclusion

*The members took note of the outline of the Green Paper, "Energy Regulation - A Bridge to 2015", the summaries of the responses and agreed the overall timetable and next steps for its preparation.*

## Market monitoring

### 5. Market Integrity and Transparency

#### 5.1. Status update on REMIT implementation

The Director presented the state of play including the activities which he considers postponing for 2014. He reminded all members of the need to report to the Agency cases which have a cross border impact. Market integrity will be the main theme of this year ACER conference to highlight its importance for final consumers.

Mr Zuleger presented the key developments on the on-going involvement and discussions of the implementing acts particularly on issues such as the scope of reportable contracts, reporting of orders to trade, and transportation contracts and specification of data sheets.

He also presented the main activities which will have to be removed from the 2014 Work Programme due to resource limitation. For 2014, ACER requested 49 additional staff, of which 30 for REMIT; in the end only 5 additional posts were granted to ACER for the implementation of the TEN-E Regulation.

Mr Zuleger then presented the documents under preparation (mechanisms for sharing info, transactions reporting user manual, RRM and RIS requirements), transparent rules for the publication of information.

Regarding the IT, the development of the registration system, the software development is finalized and it is currently tested by NRAs which are required to nominate IT experts for the testing exercise. The results of the testing exercise will be presented in the AMIT WG. This will be ready at the latest with the adoption of the implementing acts. Regarding ARIS, we are currently at the 2nd development cycle, which is the ARIS prototype (11/2013-ongoing after the pilot phase last year); at this second phase ACER will allow participation of a limited number of NRAs, but there is a need for participants to dedicate adequate IT resources; the next phase will be the 3rd development cycle: ARIS production system.

Regarding the Market Monitoring activities, according to Article 16(2) of REMIT, NRAs have to notify without delay in as specific a manner as possible all cases where they have reasonable grounds to suspect that acts in breach of REMIT are being, or have been, carried out either in their Member State or in another Member State. In 2012 ten cases were reported and are all closed. In 2013, 11 additional cases were reported which are under assessment; only one case has been closed so far. ACER tries to provide advice to NRAs on case handling.

Lord Mogg informed on the pilot CEER training course on REMIT. He also suggested that the "Bridge to 2025" Green Paper captures the importance of achieving market integrity and transparency.

Mr Nyikos informed that in Hungary there are 270 companies involved in trading and 160 registered and he has sent a reminder. The HEA would also need some guidance in practical jurisprudence of REMIT.

Mr Zuleger clarified that ACER guidance already provides the required clarifications. He is happy to see that market participants are involved in the testing phase and shall give indications on how much the system is reliable.

## 5.2. Information sharing between ACER and NRAs under REMIT

Ms Groebel presented the discussion paper. The orientation debate covered the scope of information sharing: baseline and flexibility mechanisms and the options for the establishment and implementation of data sharing mechanism. REMIT foresees in several instances that the Agency shall share the information collected under REMIT with NRAs as well as with other relevant authorities. The discussion paper focuses only on the sharing of information with NRAs. It summarises the status of discussion in the AMIT WG on which kind of information is to be shared with NRAs and the type of act to be adopted in order to establish the mechanism to share information. The paper also briefly addresses operational reliability requirements and the obligation of professional secrecy. However, the measures to be adopted to ensure the fulfilment of the obligations set forth in Articles 12 and 17 of REMIT regarding operational reliability and professional secrecy will be dealt with separately by the ACER REMIT IT Implementation and Management TF. There is a broad agreement of NRAs on the paper. Ms Groebel also noted that the ACER Procedural Workstream will also look into the legal issues.

Mr Zuleger noted that the technical level is still to be discussed; an additional criterion for sharing of neighbouring data has been added. An annual review clause is also foreseen providing the possibility to modify the scope and to introduce different access mechanisms. Regarding the type of act, it could be an Information Sharing Agreement (ISA) with NRAs or a Decision (if no agreement is reached) to set out the criteria for information sharing and the compliance with data security requirements condition for receiving information. The actual data security requirements are to be addressed by a separate act.

Regarding the next steps, it is envisaged that the adoption of the act defining criteria for sharing information (preferably through ISA, or ACER Decision) will be held in March. Subsequently, the definition of data security requirements will be finalised and, in parallel, the data sharing mechanisms with NCAs, FMAs, and other relevant authorities.

The Director welcomed that members recognised the urgency of this issue; the main issue is what kind of data are accessible and shared on a continuous basis (and not in the context of a cross border investigation). He reiterated that regarding regional cooperation it is not for ACER to decide but rather a responsibility of NRAs. During February the approach will be settled and formalised in March.

## 5.3. ACER MOU with FERC

The Director reconfirmed with the EC the ACER's interest in concluding the MOU with FERC. Mr Borchardt noted that the Commission received a reply from their legal service recognising that this agreement will only be related to purely administrative questions and, therefore, would not have a legally binding character nor would it interfere with the EU-US dialogue.

## 5.4. Commission's Implementing Acts

Mr Borchardt reported that the committee meeting was held on 20 December. There are 2 main issues: the scope of the reportable contracts as some MS are keen on broadening the scope for non-reportable contracts and extend those beyond small scale RES. EC is still considering several options. The MS should present written comments by 24 January.

The 2<sup>nd</sup> issue is the timing for the adoption of the implementing acts: REMIT provides that data reporting should start 6 months after the adoption of the IA and the registration after 3 months. However, not all data will be available. The EC considers therefore a pragmatic solution and the timeline for the adoption of the implementing acts. The Commission's timeline is to finalise those between April and June at the latest (the data reporting will start at the end of the year).

The Director noted that REMIT obligations have come into force immediately but the obligation to report – should also be seen as a part of the 2014 IEM completion. In any case we should not rush before April and June seems the ultimate deadline.

Lord Mogg welcomed the steer of the AMIT WG on this issue taking into account that the orientation from the Board is for mid-June (for the adoption of the IA) at the latest.

Ms Groebel noted the necessity that NRAs are ready. ACER preparation and IT development is vital but NRAs need also to be prepared and have the legal framework ready.

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

### **6. Gas**

The Director reported that ENTSOG has submitted a proposal for the modification of their Articles of Association (just a few days ago) and we need to issue an Agency's opinion by the end of February. The Agency will hold (as per previous practice) a limited consultation e.g. by way of a letter addressed to the relevant associations of system users and consumers. There is no time for an orientation discussion before the limited consultation at the BoR and the formal opinion of the BoR will be sought either at the February meeting or electronically.

#### Conclusion

*The Board agreed not to be consulted ahead of the launch of the limited consultation on the draft Agency's opinion on the ENTSOG modification of the Articles of Association. The BoR opinion on the ACER Opinion following the limited consultation will be sought at its February meeting.*

#### FG on tariffs:

The Director and Mr Hesseling reported that on December ACER received a letter from the EC inviting the Agency to focus on specific aspects in the IA. ACER has already worked on an initial Impact Assessment by the end of January and was surprised by this request. The request by the EC would have a huge impact on resources and we are in contact with the EC. This issue will be further discussed at the next AGWG.

Regarding the Tariffs FG, the Commission has sent 2 letters to ACER (regarding the IIA) and to ENTSOG to start working on the network code by 31 December 2014. Both letters address the issue of the IA, but the ACER and ENTSOG work should be complementary to avoid duplications. ENTSOG is invited to build on the IIA of ACER.

Ms Rossodivita noted that the Commission has repeatedly underlined (including at the PG meetings and at the dedicated session on IA) the need to have a proper IA both at the stage of the development of the FG (by ACER) as well as at the stage of the network code development (by ENTSOG).

## CM monitoring report

Mr Hesseling reported on progress and next steps on the CMP implementation monitoring. On the general questionnaire, ACER has so far received 30 responses (out of 41 relevant TSOs (countries having a derogation are excluded)). Unfortunately, for the 2 urgent questions required for the Congestion Report and that are to be answered at IP level (i.e. on the occurrence of contractual congestion and on the number of applications of CMPs resulting in a capacity offer), we have only received 24 responses. Another 6 TSOs have only answered partly (i.e. one of the two questions or answers on just some of their IPs). ACER has sent a reminder to the respective TSOs extending the deadline once more (for answering the 2 questions) until Monday, 27 January 2014. ACER has requested ENTSOG to contact those TSOs who are behind with the data provision to make an effort and fill in the missing data. NRAs should also help to do the same if we have missing answers. The implication of the late data availability is that ACER is squeezed between this and the 1<sup>st</sup> March deadline. This means that the best that can be done to inform the BoR is to send around a draft Congestion Report by the second half of February, which will have a short reaction time.

### 6.1. Oral update on FGs and NCs

A presentation was made by Mr Maes on progress. Work on codes and FGs is in accordance with the 3 year plan. Mr Maes reported on the informal MS meeting on 21 January which addressed the IOP network code and the GTM. Regarding the former, odourisation remains a very sensitive issue. The Commission is confident that after the pre-comitology meeting we can enter the final stage with the voting.

Regarding rules for trading, the scoping is being pursued (until Q2 2014) and we do not know at this stage whether this will end up in a new FG or potential amendments to existing codes.

Regarding the balancing code, the Committee meeting positive opinion was submitted on 2 October and the EP and Council have a scrutiny period of 3 months. The publication is expected March/April 2014 and its application as of 1 October 2015. A possible transitional period of 24 months (from 1 October 2014 -October 2016) is being considered. The Madrid Forum encouraged NRAs and TSOs to consider early implementation of the draft balancing code. We received ENTSOG (draft) document on implementation challenges and will analyse it.

### 6.2. ACER Recommendation on interoperability NC

The Director reported on the outcome. The 2nd round was launched on 10 - 15 January (allowing also the possibility for abstentions). 26 members participated; 25 members voted in favour and we had one abstention from BNetzA. CERA voted in favour whilst after the deadline. The ACER Recommendation was adopted on 15 January and was presented at the informal MS committee meeting on 21 January.

#### BoR Decision agreed: (D 5)

*The BoR took note that it provided by the 2/3 majority of its members its favourable opinion on the ACER Recommendation on the network code on interoperability and date exchange rules. The ACER Recommendation was, subsequently, adopted by the Director.*

### 6.3. GTM outline

Mr Maes reported on the latest developments. The next GWG meeting in Vienna will discuss further the problem identification paper on the basis of the input from the informal advisory panel members and from stakeholders as well as on the basis of the input from the Bridge 2025 gas pre-consultation. The main chapters will include the strategic context – in line with the gas specific Bridge 2025 document - the competitive and integrated wholesale markets, the contribution to sustainability, the retail competition.

Regarding the next steps: the 21 January 2014 informal MS meeting discussed briefly the GTM update; the 2nd informal advisory panel meeting is planned for 26 February 2014 (Brussels); there will be a FSR GTM workshop on 13 March 2014 (Brussels) and the 2nd ACER stakeholder workshop on 19 March 2014 (Ljubljana) which will invite comments as opposed to a public consultation to avoid duplications and confusion with the bridge; the 3rd informal advisory panel meeting will be held on 30 April 2014 (Brussels); the 3rd ACER stakeholder workshop will be held on 15 May 2014 (Brussels), inviting comments and in July - September 2014 the finalization and publication of the updated GTM is planned including the responses to the Green Paper public consultation.

#### Conclusion

*There needs to be consistency of the timelines of the Bridge and the GTM as well as other areas of work. The detailed timelines will be discussed at the ad-hoc group.*

### 6.4. ACER Opinion on the ENTSOG Winter supply outlook 2013-14

The Director presented the draft opinion submitted for a favourable opinion of the BoR. The opinion notes that the Winter Supply Outlook 2013/14 meets the objectives of Regulation and includes some recommendations including the timing for the publications, modelling, sensitivity analysis, etc.

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

*The BoR provided by consensus (of its members present or represented) its favourable opinion on the ACER Opinion on the ENTSOG Winter supply outlook 2013-14.*

## **7. Electricity**

### 7.1. Oral update on the FG an NCs

Mr Crouch presented the progress. On the demand connection code we are keen on having the EC's update on the latest developments. There is some ongoing scoping work on the emergencies code. We received on 23 December the balancing NC by ENTSO-E. Mr Crouch noted that six codes have been recommended to the EC for adoption and 2 have been submitted to the Comitology committee which reflects a good progress.

#### - BALANCING NC UPDATE

ENTSO-E submitted the final version of the code to ACER on 23 December along with the supporting documents. ACER has 3 months to provide a formal opinion. There are still outstanding issues for ACER to consider as part of the formal opinion (the presentation suggests). On the next steps, a public workshop will be held on 30 January in Ljubljana and an orientation discussion will be held at February BoR. The BoR opinion will be sought at the March meeting.

Regarding pilot projects, these were discussed at AESAG and way forward agreed; ENTSO-E will propose a detailed action plan in January 2014 and report status of pilot projects on a regular basis.

#### - FCA NC UPDATE

The FCA NC was submitted to ACER on 1 October 2013 and the reasoned opinion (RO) was adopted on 18 December 2013. ACER is currently developing suggestions for the relevant articles of the code. After the ACER opinion, we received a letter from ENTSO-E that they plan to resubmit the code, around March. A trilateral on 24 January will be held.

#### 7.2. Draft ACER preliminary opinion on HVDC NC

Mr Crouch presented the preliminary opinion. ENTSO-E's consultation on the draft HVDC NC closed on 7 January 2014. There are outstanding key issues with the current NC draft which is due to be submitted by 1 May 2014. The key issues are similar to other grid connection codes: national scrutiny: NRAs' oversight of TSO decisions; significant grid users: clarification/justification is needed; cost-benefit analysis: encourage ENTSO-E to collect and present the relevant cost implications of introducing new requirements, notably on the basis of TSOs experience in HVDC Systems projects.

Regarding the next steps, the reasoned opinion process is scheduled to be finalised by the July BoR.

#### 7.3. ACER opinion for the operation of the ENTSO-E Central Information Transparency Platform

The Director presented the ACER opinion on ENTSO-E's proposal for the operation of the Transparency Platform submitted to ACER on 5 November. The ACER opinion is due by 5 February. The draft ACER Opinion is submitted to the BoR for discussion (it does not require a formal BoR opinion). The Opinion notes that the ENTSO-E's Proposal for Operation contains a very concise description of the operation of the Central Information Transparency Platform. It addresses hours of operation and planned outages; hours of support services; service levels; user access; estimated costs. ENTSO-E's Platform seems to be available to the public free of charge and the data on the Platform can be accessed easily and downloaded. Regarding the requirement that the operation of the Central Information Transparency Platform has to be efficient and cost effective, the Agency considers that it is in general efficient, while we do not have sufficient information to assess its cost effectiveness, unless ENTSO-E provided the requested additional information.

#### Conclusion

*The BoR took note of the ACER Opinion for the operation of the ENTSO-E Central Information Transparency Platform.*

## **8. Regional Integration**

### 8.1. Progress on ERI cross regional roadmaps

Mr Gence-Creux presented the progress.

Day ahead: NWE coupling will be launched on 4 February. The next step is for the South West region to go alive around May this year but the last ASAEG meeting was concerned about the timeline. At the next ASAEG meeting Mr Gence-Creux suggested that all involved parties (TSOs and NRAs from FR and SP) attend to convey a strong commitment to deliver.

#### Intraday

Both the Early Start Agreement and the PX Cooperation Agreement contracts have now been completed by the PXs. On 16<sup>th</sup> January the comfort letter was signed by all involved NRAs but ERU. The next step will be the signing of the ESA and the confirmation of the ability of DBAG to deal with all requirements of the power exchanges. TSOs are more involved in the process and a steering group with TSOs is established.

#### Long-Term

ACER would favour a pilot project approach to increase the chance to deliver something by the end of 2014, but ENTSO-E is keen on a pan-European approach. We are discussing with ENTSO-E.

#### Flow-Based

The flow-based market coupling is postponed from June to September-October in CWE because it needs further testing. A MoU to implement flow-based market coupling is on the point to be signed in the CEE region. This MoU involves NRAs, TSOs and PXs of the region.

### 8.2. Progress on GRI

Mr Hesseling was appointed as the GRI coordinator as of 1<sup>st</sup> January. He presented the main developments. Mr Hesseling suggested reporting on a quarterly basis to the BoR (and more frequently, where appropriate). The former GRI Coordinator (Ms Clara Poletti) will continue leading the work on early implementation of the CAM NC (CAM Roadmap process: update on a quarterly basis). On current issues, we are still looking for Lead NRA(s) in the NWe region after ACM stepped down.

Another issue is the composition and geographical scope of SSE region: a Discussion was opened by SSE Lead NRAs at the request of ACER and the process will include consultation of stakeholders in the region. The final outcome is expected for the end of 2014: proposal to ACER and EC. In parallel, we are exploring extension of GRI to new countries: most advanced Contracting Parties of the Energy Community (article 31 of ACER Regulation).

He then presented the ambitions for 2014, extending the early implementation of CAM NC provisions (coordinated allocation of bundled capacity) to more TSOs and IPs in Europe; regarding balancing, this will be the next topic entering NC early implementation; a preliminary analysis was started by ENTSOG and is under review by NRAs. More specific targets will be presented at next meetings of the BoR. With regard to interoperability, this will be the upcoming topic for undertaking early implementation work (once NC gets adopted by Comitology).

### 8.3. RI status review

The RI Status Review report 2013 was circulated for info.

## 9. Investment challenge

### European Network Planning and infrastructure challenge

#### 9.1. Update on work in progress

##### Cross border cost allocations:

The Director reported that the Commission organises a meeting with NRA's and ACER on the CBCA, which will take place on 28 January 2014 in Brussels. The meeting is dedicated to discuss the general requirements and timing concerning the cross-border cost allocation decision in the context of grants for works under the Connecting Europe Facility. Furthermore, the EC intends to provide basic information on how to treat European grants in energy infrastructure projects.

On cost allocations requests, ACER was officially notified about 34 gas PCIs and 5 electricity PCIs.

The Director also reported that ACER has also launched the exercise for the monitoring of TYNDP projects (and PCIs) on electricity. By 10 December 2013 NRAs had to review and feedback with regard to EU projects (TYNDP, regional plans and third party projects, including PCIs). At the last AEWG there was a call to countries who missed to reply in December (16 NRAs replied and later 5 responded that they will do so). The Director invited all members to complete these steps and participate in the activity. By end of January 2014 NRAs will check and fill in the information on their national projects and components according to the status of the project in their national plan. NRAs are to add to the online list national projects not corresponding to any of the EU projects. By 21 February 2014, ACER and NRAs will check and report the inconsistencies of the national projects and plans with the EU-wide TYNDP. This time plan allows for the "opinion on consistency" to be submitted to the BoR of mid- March 2014.

#### 9.2. ACER opinions on CBA methodology for electricity and gas

The Director presented the draft opinions: ENTSO-G and ENTSO-E submitted Cost Benefit Analysis (CBA) methodologies to ACER on 15 November. ACER must provide an opinion within 3 months of receipt of CBA methodologies - by 15 February and these were submitted to the BoR for an orientation discussion.

The ACER opinion on ENTSO-G methodology will be further discussed at the AGWG in February and this would be further streamlined, better structured, shortened, and possibly more aligned with Electricity before the finalisation of the opinion and its release on 15 February.

##### Conclusion

*The BoR took note of the draft ACER Opinions which will now be finalised. The draft Opinion on ENTSG's CBA will be finalised on the basis of the debate and the discussions at the AGWG and will then be adopted and submitted to the EC.*

## 10. Implementation, Monitoring and Procedures

### 10.1. Oral update on progress

The Director reported that this year's Market Monitoring Report (MMR) will still be co-branded by the Agency and CEER.

Ms Bernaerts informed about the Commission's IEM communication expected in April this year.

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

## 11. Others

### 11.1. Next Meetings

A revised calendar was circulated. The BoR meeting will be held on 18 March given the 2<sup>nd</sup> EP ITRE delegation's visit to the ACER premises in LJU on 19 (afternoon) and 20 March which was confirmed.

### 11.2. AOB

#### - New name of the Finish Authority

A note on the new name and responsibilities of the Finnish national regulatory authority was circulated for info.