

43rd ACER Board of Regulators Meeting
Wednesday, 17 December 2014, 09.00-16.00
ACER, Trg Republike 3, 1000 Ljubljana

Minutes final

Member States	Name ¹	Member States	Name
Austria (E-Control)	M: Walter Boltz A: Dietmar Preinstorfer	Italy (AEEGSI)	O: Ilaria Galimberti
Belgium (CREG)	M: Marie-Pierre Fauconnier A: Koen Locquet O: Geert Van Hauwermeiren	Latvia (PUC)	O: Lija Makare
Bulgaria (SEWRC)	Excused	Lithuania (NCC)	A: Vygantas Vaitkus
Croatia (HERA)	O: Sonja Tomašić Škevin	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	O: Andreas Frixou	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	A: Martina Krčová O: Martin Sik	Netherlands (ACM)	A: Remko Bos O: Elozona Ochu
Denmark (DERA)	O: Lisbet Vedel Thomsen	Poland (URE)	A: Halina Bownik-Trymucha
Estonia (ECA)	Excused	Portugal (ERSE)	A: Alexandre Santos
Finland (EV)	O: Timo Partanen	Romania (ANRE)	A: Lusine Caracasian
France (CRE)	A: Philippe Raillon	Slovakia (RONI)	Excused
Germany (BNetzA)	A: Annegret Groebel O: Daniel Müether	Slovenia (AGEN-RS)	A: Jasna Blejc
Greece (RAE)	M: Michael Thomadakis	Spain (CNMC)	M: Fernando Hernández
Hungary (HEA)	A: Attila Nyikos	Sweden (Ei)	A: Caroline Tornqvist
Ireland (CER)	O: Laura Brien	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) O: Mark Copley O: Feodora Von Franz

Observers	Name
ACER	Alberto Pototschnig, Christophe Gence-Creux, Volker Zuleger, Fay Geitona, Sarah Bradbury
European Commission	Klaus-Dieter Borchardt
CEER	Natalie McCoy, David Haldearn

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

Main conclusions from the meeting:
1. <i>The BoR discussed the draft policy on Col and agreed to the next steps as defined by the Chair. The ACER Policy will be revised by the Director in light of the comments received and submitted through an electronic procedure as soon as possible in order to finalise it early in the new year.</i>
2. <i>The Members received an update from the EC on the Investment Plan for Europe.</i>
3. <i>The Members agreed to monitor the “Bridge to 2025” through the Bridge Map presented, as well as the process for updating the information.</i>
4. <i>The Members were updated on recent developments on third countries’ participation in ACER and the EC’s stance.</i>
5. <i>The Members received an update on the preparation of REMIT Implementation Policy documents, the ACER surveillance strategy, the development of the REMIT IT security policy and future Governance Arrangements.</i>
6. <i>The BoR provided by consensus of the Members (present or represented) their favourable opinion on the draft ACER Opinion on the ENTSO-E Work Programme 2014/15.</i>
7. <i>The Members received an update on the progress in Electricity and Gas Network Codes.</i>
8. <i>The BoR endorsed the review of the Gas Target Model (GTM).</i>
9. <i>The BoR provided by consensus of the Members (present or represented) a favourable opinion on the draft ACER Opinion on the ENTSO-E scenario outlook and adequacy forecast (SOAF).</i>
10. <i>The BoR provided by consensus of the Members (present or represented) a favourable opinion on the draft ACER Opinion on the implementation of the investments in gas network development plans.</i>
11. <i>The BoR provided by consensus of the Members (present or represented) a favourable opinion on the draft ACER Opinion on the ENTSG winter supply outlook (WSO) 2014/15.</i>
12. <i>The BoR received an update by the AIMP Chair and progress on Regional Initiatives.</i>

Part A: Items for discussion and/or decision

1. Opening

1.1. Approval of the agenda

BoR Decision agreed: (D 1)

The agenda was approved.

1.2. Approval of the minutes of the 42nd BoR meeting

BoR Decision agreed: (D 2)

The 42nd BoR minutes were approved.

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

2.1. Update on recent developments

European Commission

Mr Borchardt updated the Board of Regulators (BoR) on recent developments on behalf of the European Commission (EC). He gave a summary of the results of the Energy Council which took place on 9 December 2014 where progress on completion of the Internal Energy Market (IEM) was discussed. The Energy Council recalled the target completion date as the end of 2014 and considered this to be very ambitious. They would like the next progress report in 2016, leaving further work to continue in the meantime over the next year. In terms of priorities and where they see the focus on the IEM, the Council gave emphasis to: the adoption and implementation of Network Codes and Guidelines; the projects of common interest (PCIs) and a well-interconnected market; the strengthening of cross-border cooperation between National Regulatory Authorities (NRAs) through ACER and between network operators (TSOs) through ENTSOs; regional market integration, an issue coming more to the forefront; as well as, the increasing involvement of consumers. Further progress on IEM completion is to be reported back in 2016.

'An Investment Plan for Europe' Communication

The so-called 'Juncker Plan' was adopted on 26 November in a Communication addressed to the European Institutions and other stakeholders. The Investment Plan contains a package of measures to unlock investment in the European Union (EU) over the period 2015-17.

Mr Borchardt outlined the structure and mechanics of the fund. A new European fund for Strategic Investments will be set up in partnership with the European Investment Bank (EIB). It will be built on EUR 16 billion guaranteed from the EU budget and EUR 5 billion from the EIB that will generate EUR 315 billion over 2015-17, with a leverage of 1:15.

It is based on three strands which aim to mobilise additional finance for investments in the EU: first, additional investments over the next three years; second, targeted initiatives to make sure that this extra investment meets the needs of the real economy; and third, measures to provide greater regulatory predictability and to remove barriers to investment. Other public or private investments may also come into the process but these are not included in the calculations.

With regard to the second strand, the fund seeks to support strategic investment in infrastructure including: energy networks; transport; renewable energy sources (RES); energy efficiency; broadband; and, education. In September 2014, a taskforce (TF) between the Commission and the EIB was created to help set up the fund for European strategic investments.

The third strand is for an ambitious Roadmap to remove regulatory bottlenecks: in an analysis of projects which have not been implemented so far, the obstacles to why these never materialised were revealed to be regulatory bottleneck or restrictions. Therefore, a

Roadmap is being set up, firstly to screen and identify the bottlenecks, then to take measures to remove them. The first wave of actions are outlined in the Commission's 2015 Work Programme, presented on 16 December, and have been linked to the Investment Plan.

The new European fund for strategic investments will start rapidly and work over the period 2015-17, with the first investments to take place from mid-2015. In mid-2016 stock will be taken and, if necessary, appropriate measures will be taken to ensure progress is made according to the timeframe. The expected impact of the Investment Plan is that EUR 21 billion to EUR 240 billion will be made available for investments of European significance in energy, transport, broadband, education, research and innovation. Member States (MSs) can contribute on a voluntary basis to funds which would increase the potential of the fund.

Work has started and a project list is there. Important now is the implementation and management of the initiative which is the responsibility of the EIB. Discussions are ongoing regarding the governance structure, with the potential for a steering committee.

ACER

The ACER Director delivered a progress update on the Agency to the BoR.

The EU Budget for 2015 will be approved on 18 December 2014, with no expectations that the additional resources requested for ACER will be awarded. He outlined two issues to consider: firstly, how to manage the definitive budget in 2015, and secondly, what should be done for 2016. It seems premature to be considering the situation for 2016; however, ACER is having some preliminary discussions on the draft 2016 budget to be sent to DG ENER by 31st January 2015. He indicated that he is minded to propose the same structure for additional resources for 2016, as the obligations, and thus the assessment of required resources, remain the same. It had been proposed that the Innovation and Networks Executive Agency (INEA) would be able to help ACER with monitoring PCIs. However, it is now clear that this is unlikely to materialise and therefore that these tasks will return to the Agency.

The Director noted that there are three vacancies available which he welcomed Members to advertise. Additional vacancy notices will be published this week or next. He outlined that there are currently 23 different nationalities employed by the Agency and gave an overview of the secondees employed (two cost-free). There are also nine trainees, each employed for a five-month period. The traineeship programme has been successful and though it is not paid, expenses to cover accommodation and travel are provided, allowing a broader range of individuals to be involved.

Peer review requests

ACER has received two peer review requests under 7(4) of the ACER Regulation, including a self-referral from the Lithuanian regulator on gas tariffs (regarding its decision to implement an entry-exit tariff system) and another from the Polish NRA on the decisions on cross-border capacity allocation (CBCA) regarding the Central and Eastern Europe (CEE) region by the relevant NRAs and their compliance with the Regulation 714.

The Director will adopt the ACER Opinion after receiving the BoR favourable opinion.

On infrastructure, there has been another request to ACER for a CBCA decision on the Lithuanian-Polish border, although this case involves an electricity interconnector and has

additional complexity as it involves only one side of the border. The request was received on 9 December 2014 and ACER has three months to provide its decision i.e. by 9 March 2015.

ACER Contact Group

The Director updated the BoR on the first meeting with the ACER Contact Group with the new ITRE Committee, which took place on 9 December. Seven Members of the European Parliament (MEPs) out of the 20 Group members attended: this was a positive turnout and in general it was perceived to be one of the most successful meetings held with the Parliament.

During the meeting, the Director and the BoR Chair delivered a presentation on what the Agency is, to inform the MEPs who are new to the Committee, and discussed how we can assist and inform them on important issues. The Agency had also received a letter requesting information on the use of cross-border connections and where there would be the largest benefit in increasing capacity, and questions regarding the scope of the Market Monitoring report, demonstrating a high level of interest in the work of the Agency.

A positive discussion was held and key actions were agreed, namely to hold meetings on a regular basis, at least two or three times per year (and more frequently if needed). ACER may provide briefings on a more technical level, if so requested by the Group, with the first one confirmed with MEP assistants for 27 January 2015.

The Director also raised that the EC will be issuing soon an Energy Union Communication. There is still some uncertainty over what it will entail: clear components include Security of Supply (SoS) and market integration, making sure this is a priority by the end of the year taking also into consideration the results of the stress tests. The Director noted a shift in the mind-set in safeguarding SoS through markets instead of State interventions. Part of the EC's strategy is driven by the fact that stronger integration and well-functioning markets require reliable price signals: if prices do not reflect the market fundamentals then the signals will be wrong and flows will not be correctly determined. Although there is a focus on SoS, not least in the context of the Ukraine crisis, market integrity and transparency seem fundamental elements of safeguarding SoS in this sense. He suggested that it may, therefore, be relevant to bring integrity and transparency, and therefore REMIT, more to the forefront in the Energy Union Communication.

Lord Mogg also reflected on the success of the first ACER Contact Group meeting. A number of members attended but also the assistants of many others. We were able to highlight the more political aspects of our work, including potential consequences around REMIT.

Mr Borchardt supported that REMIT is in some way reflected in the European Union Communication by reflecting the importance of transparency and market integrity in providing the right market signals and thereby contributing to the SoS.

Conflict of interest policy

Lord Mogg introduced the topic and highlighted the discussions he had with the ACER Director on the issue which had been productive, with the hope that the issue would be resolved in the meeting today and satisfy the concerns raised. Lord Mogg noted that the EC Guidelines on the prevention and management of conflicts of interest (CoI) in the EU are not legally binding but rather provide an indication of the optimal approach for the Agencies. Yet what we are facing is a Parliamentary request and the scrutiny of the Court of Auditors (CoA) and thus we need to find an appropriate way forward and adopt a policy.

The Director then made a presentation outlining that the CoI policy is part of package which also includes an Anti-Fraud strategy and whistleblowing, as part of a broader integrity and transparency drive.

Both the European CoA and the EP, within the budget discharge procedure, have called upon ACER to adopt and implement the Policy. The Commission's December 2013 Guidelines on the prevention and management of conflicts of interest in EU decentralised agencies state that Boards of Regulators, even when members are not nominated in a personal capacity, should be included.

He then explained the definition of CoI (a situation where impartiality or objectivity of a decision might be perceived as comprised). This can take various shapes including financial, personal, professional or family relationships. Beyond this it is fairly difficult to define and describe in detail a situation of CoI, in particular, as perception can be as damaging as the reality. He emphasised the importance of making sure that ACER is seen as transparent and as addressing any situations that might occur and managing those properly. The Agency has been working internally since the summer, building on a first general policy developed a couple of years ago initially for the two other Boards. ACER should set an example and the best possible standard.

Concerns were raised during the first consultation with the BoR members that the policy proposed goes beyond what is strictly necessary and did not take account of the particularities of the BoR, including the different legal requirements of the ACER Regulation. However, the Director considers the aim should not be to reach the minimum requirement set in the Regulation, but rather to consider the optimal standard we want to achieve; legislation sets the least but not necessarily the threshold at which we should aim.

There is increasing public attention and greater scrutiny in all EU institutions and particularly on EU Agencies, where a couple of CoI issues have brought a spotlight on the relevant arrangements in Agencies. We have now been asked to have a policy that covers not only staff but also the Boards as well as the AWG/TFs Chairs. The policy proposed is in line with best practices, drawing on other Agencies, plus the EC guidelines on this issue. We foresee that in whichever form we agree this policy, changes will be needed to some implementing rules e.g. in order for seconded national experts (SNEs) be treated in the same way as staff, and the rules of procedure will also need to be changed to reflect the new arrangements.

The Director outlined the three key considerations in relation to the policy, namely transparency, data protection and proportionality. The proposed policy includes new provisions for staff with the requirement to submit a DoI form, similar to that submitted by BoR Members. The policy has also been extended to SNEs and criteria introduced as high level guidance as to what to declare through the structure of the form. Additional provisions for Management go beyond the Regulation. Additional provisions are also outlined for the market monitoring department, with their declaration being reviewed at the start of each new case and to avoid assigning SNEs to cases in their jurisdictions. There is also a procedure introduced for the evaluation of the declarations. Post-employment provisions are made for all staff.

Regarding the Boards, they already have a requirement to act independently and, therefore, to demonstrate this is the case. There is already a practice in place i.e. to submit a DoI form and CV to be published on website. National legislation already exists that makes sure Board members are free from any conflicting interest. However, some interests relevant for

the Agency are not necessarily covered at national level: an interest in another part of Europe that may not be significant at national level but could become relevant at the BoR.

ACER expects that, at the beginning of each meeting, Members explicitly declare any interests. DoI forms are to be submitted by 31 January 2015 and these will be posted on the website. In addition they will be reviewed by a review panel and actions can be taken after they have been considered. ACER hopes to have a similar approach for all Boards. No comments were received for the Administrative Board (AB) except from the EC. However, there were comments from both the BoR and Board of Appeal (BoA), therefore it seems the aspiration to have a similar policy across all the Boards is not possible due to some fundamental differences between them. The aim of the Director is to have a meaningful and proportionate process where if an interest is highlighted, it is appropriately managed to ensure there is both no Col and also no perception of a conflict. In terms of the AWGs, it was considered that they have variable geometry over time, and their members' ability to influence the process is fairly limited with the exception of the WG Chair, Co-chair and TF Convener. As these are the most stable positions, they are also included in the policy. For the ad-hoc expert groups, these are only in a consultative role so they are not included. He highlighted that having an interest does not necessarily mean you have a conflicting interest.

Regarding the next steps, the Chair proposed that in the light of these comments the policy be revised and submitted to the BoR through the electronic agreement process.

The Chair was mandated to transfer these points at the subsequent discussion to the AB.

BoR Decision agreed: (D 3)

The BoR discussed the draft ACER policy on Col and agreed to the next steps. The policy would be revised by the Director in the light of the comments received and will be made available through an electronic procedure in order to be finalised.

3. ACER Cross Sectoral activities

3.1. Update on adoption of the 2015 ACER WP & Budget developments

The Director informed the Board that the 2015 ACER Work Programme (WP) has been adopted; however it will not be delivered as such and it must be revised. On 28 November 2014, the EC adopted a new draft EU budget for 2015 and the ACER budget figures remain identical (EC 54 establishment posts and EUR 11.266.000). The official budgetary process is expected to be finalised on 18 December 2014 by the EP at its last plenary session in 2014. The AB will then need to align the Agency's budget and, following this, the ACER WP 2015 must be revised and resubmitted to both the BoR and the AB for approval and adoption respectively. This is expected in January 2015. The main changes would be on REMIT.

3.2. Update on the process and timing for electing AWGs Chairs for Electricity, Gas and Implementation, Monitoring and Procedures Working Groups

The Chair informed the Board that a call was put out on 8th December 2014 for nominations for the AEWG Chair as well as for the AGWG and AIMP chairs with a view to taking a decision on the BoR Recommendation to the Director for their appointment in January 2015. Any Member interested in standing for Chair of one of the ACER WGs has been requested to notify Lord Mogg by Friday 9 January 2015. Regarding the process for the ACER WG

Vice Chairs, once the Chairs are appointed the Director will appoint the Vice Chairs in coordination with the Chairs.

In addition, Lord Mogg informed the Board that the elections for the Chair and Vice Chair of the BoR will be held at the March 2015 BoR meeting.

Market Monitoring

4. Market Integrity and Transparency

4.1. TRUM, RRM and Manual of Procedures on Transaction and Fundamental data reporting & Public Consultation on organised market places

Mr Zuleger informed the BoR that the EC Implementing Acts (IAs) have been adopted today.

Uploaded for discussion were the REMIT implementation policy documents and finalised drafts of: the Trade Reporting User Manual (TRUM) and annex; requirements for the Registered Reporting Mechanism (RRM); Manual of Procedures (MoP) on transactions and fundamental data reporting; plus, the Public Consultation (PC) on Organised Market Places (OMP). Mr Zuleger noted that updates on these documents were provided at the October and November BoR. They now come to the December BoR. ACER staff working document versions of the aforementioned documents were presented at a public workshop on 10 December 2014 which was extremely successful: 100 people participated and another 100 have also followed through web stream.

The documents will be formally issued upon entry into force of the REMIT implementing acts. The first edition of the TRUM and MoP on transactions and fundamental data reporting will be made public upon the entry into force of the IAs. RRM requirements are to be published in parallel to the entry into force of the IAs. Technical Specifications are developed in parallel during the ongoing ACER Pilot Project.

In parallel, ACER has been developing IT solutions for data collection, data sharing and market monitoring.

Regarding the PC on the list of OMP, which ran until 11 December 2014, feedback will be provided at the next BoR meeting. A first release of the list of OMPs will be published in parallel to the entry into force of the IAs. In order to facilitate reporting, the Agency shall draw up and maintain a public list of standard contracts and update that list in a timely manner. The purpose of the list is to specify the contract types for which the standard reporting form is applicable.

4.2. Surveillance Strategy

Mr Zuleger provided a presentation on the market surveillance strategy including the roles of the various teams (market surveillance and analytics team and market conduct team) at ACER. He presented ACER's approach to market monitoring, involving continuous alert design and calibration. He also presented an overview of the market surveillance approach, including defining relevant market surveillance areas and report overview and the timeline for the market surveillance strategy with major milestones. The presentation also outlined ACER's product taxonomy problem and solution and what it means for NRAs, namely that in order to effectively perform market surveillance, ACER will have to group products with the same characteristics and so will create unique product IDs and use them to group products

based on pre-defined characteristics. Those NRAs using the same software – SMARTS Integrity – will have access to this taxonomy but those who do not will have sufficient information to build their own.

4.3. Information Security Framework for REMIT

Mr Grasselli presented an overview of the REMIT Information Security Policy. The REMIT information security framework is not limited to ARIS/Case management tool and ACER: it covers 28 NRAs, about 200 reporting entities (RRMs) covering more than 10.000 market participants. The main challenges relate to the scope, applicability and level of detail. It is not a smooth journey, there are challenges and persons accountable.

In terms of the policy scope, it covers REMIT information in whatever form (paper, electronic, and communicated in whichever form). There are some high level principles, requirements and more detailed rules (implementing guidance is applicable mainly to ACER).

This is not a one-time effort but rather a continuous effort. The Director and Mr Zuleger thanked the members for the support in the development of the policy and the questionnaire responded to by NRAs. The response rate was very high: up to 90%. It seems that 93% of NRAs will use ARIS in the next three years. A key question which has arisen as a result of this relates to the classification of data. ACER has used the EU standards.

The ACER Director noted the need to use the established EU standards rather than the Agency “inventing” a new standard. Mr Bracco, Security Officer at the Agency, clarified that we cannot dictate the national requirements. He offered to discuss further with the IT experts from NRAs and resolve it. Mr Zuleger clarified that the Agency is planning to use the same standard as DG COMP.

4.4. Governance arrangements for the operational phase of REMIT

The Director reported that he has been discussing arrangements for the Coordination Group (CG) with the AMIT WG Co-Chairs. It seems that there will be a co-existence of both the CG and AMIT WGs. He will soon make a proposal elaborating more on the detailed arrangements. The Director invited all NRAs to appoint a representative at the CG at senior level (HoD).

Ms Groebel considered that we shall need to consider more fully the arrangements for coordination between both groups to avoid duplications, not least as often a coordination issue might turn out to be a policy issue; in the latter case it would need to be referred to the AMIT WG and vice versa.

5. Post 2014 strategy

5.1. Road and Bridge map

Lord Mogg introduced the Bridge Map. The merged Bridge Map incorporates the existing BoR Roadmap which was used to track progress following the initial Hilbrecht report in anticipation of the EC's first evaluation report of ACER. The BoR Roadmap used three themes which resemble the themes below (with the strategic thinking being absorbed by the Bridge Map). The Bridge Map provides a definitive template for monitoring progress. It illustrates the main areas of work and actions we committed to undertake in the Bridge,

relevant horizontal initiatives by EU Institutions, the specific contributory follow-up actions and deliverables for ACER and/or CEER, who is responsible for delivery and timing, and the latest status update.

The main actions are organised under three broad themes:

1. The “Bridge into action”
2. The role of NRAs in ACER
3. Relations with stakeholders and Institutions

For theme 1 “Bridge into action”, the key actions indicated replicate the summary of actions (on electricity, gas, consumers DSOs, and governance) published along with the Bridge conclusions paper. The BoR and CEER GA Secretaries will be responsible for collecting the updates based on information provided by the Director and Chair along with the WG chairs on sectoral actions. Progress on the basis of the Bridge Map will be presented quarterly (or more frequently if appropriate) from the December BoR.

Third country participation

Mr Borchardt stated that after a constructive discussion between the EC, the ACER Director and the Energy Community (EnC) Director, an approach has been agreed on third countries’ involvement in ACER, which was captured in a letter from the ACER Director (circulated). However, DG ENER, after consulting with the EC Secretariat General, was advised that all the operational modalities and arrangements for such third countries’ participation in ACER must be laid down in formal agreements with each of the third countries, for which the EC must have a negotiating mandate from the Council. The EC intends to reply to ACER to set out a two-step approach (using as an interim solution the approach proposed by the ACER Director).

The Director clarified that the exchange of letters has never been concerned as a substitute to the agreement and the conditions laid down under Article 31 of the ACER Regulation.

Oral update on the 29th ECRB meeting

Mr Thomadakis reported on the 29th Energy Community Regulatory Board (ECRB) meeting on 3/12/14. Mr Branislav Prelevic, the Chairman of the Montenegrin NRA, was re-elected President of the ECRB for a second time, this one for two years. A lot of discussion was held around the analytical paper the EnC Secretariat is preparing on the basis of the so-called High Level Reflection Group Report on the future of the Energy Community. A coordination meeting was held with the EC and it was agreed to formulate an EU position regarding this paper on the aspects concerning the cooperation between ACER and ECRB.

There was also a proposal to have a second Vice Chairman of the ECRB coming by EU countries. The letter by the ACER Director was very well received by the ECRB.

Completion of the Internal Energy Market Update on FGs and NCs

6. Electricity

6.1. Oral update on the FGs and NCs

Mr Copley provided an update on the state of progress of the Network Codes (NCs). A key development is that the CACM Regulation has been positively voted by the last Comitology Committee. The next Code to be submitted to the Comitology committee will be the requirements for grid connection (RfG) and, subsequently, the demand connection. On the two operational codes, operational planning and scheduling (OPS) and load frequency control and reserves (LFC) there was a good meeting with ENTSO-E and the EC and the deadline for the submission of the Code by ENTSO-E is around June.

6.2. Draft ACER opinion on ENTSO-E work programme 2014/2015

Mr Copley reported that ACER received the ENTSO-E Work Programme on 27 October 2014. The ACER Opinion seeks to balance the recognition of steps forward and areas where improvements can be sought. There are two key points: the challenge of the assertion that there are regulatory barriers to infrastructure investment; and the emphasis that ENTSO-E needs to allow stakeholder comments to be submitted and fully considered. The Agency welcomes the intention of ENTSO-E and its commitment and considers it important that ENTSO-E allows enough time not only for stakeholders to submit their comments but also for itself to consider those comments before finalising the deliverable at issue.

BoR Decision agreed: (D 4)

The BoR provided by consensus of the Members (present or represented) a favourable opinion on the draft ACER opinion on ENTSO-E work programme 2014/2015.

7. Gas

7.1. Oral update on FGs and NCs and other work

Mr Boltz provided an update.

On the Tariffs NC, the ENTSSOG consultation ran from 7 to 21 November 2014. The results demonstrate that 50% of stakeholders consider that the development process was appropriate; 2/3 reject the approach to cost allocation methodologies. The main message is that stakeholders' views were expressed but not taken into account. On 26 November some easy amendment suggestions were sent to ENTSSOG, in order to better align the NC with the FGs. ENTSSOG replied on 2 December that these comments would be considered at the next stage, following the publication of the final NC. A high level meeting with ENTSSOG was held on 9 December to sort out open issues on tariffs NCs. Five of the seven pending issues were resolved. ENTSSOG will publish their final code on 31 December 2014.

On the capacity allocation (CAM) Code, there was a joint submission of Oil & Gas UK and Gas Forum applying for an amendment to NC CAM and NC BAL. Upon receipt of the last clarifications, the Agency plans to conduct a public consultation in January and the period shall be less than four weeks. The overall duration of an ad-hoc procedure should not last more than three to four months from the moment of the start of the procedure.

On other issues, Mr Boltz noted that the first incremental auction will be run in March 2017.

Regarding the NC on Interoperability and Data Exchange Rules, on 4 November a positive vote was provided by the Gas Committee. After translations, there will be a 3-month scrutiny period of the Council of the EU and EP, and, subsequently, the formal Commission decision and publication in OJ. The formal Commission decision and publication in the Official Journal (OJ) is expected in April 2015. Its applicability of the Code will start from April 2016.

On balancing pilot projects, some preparations are already underway. The BAL TF held a meeting and discussed the list of questions for industry groups ahead of their meeting with industry groups in January. The report is expected to be finalised in March.

7.2. Gas Target Model

Mr Boltz presented the updated Gas Target Model (GTM). It consists of five chapters on the overall context; on the SoS and upstream competition; on wholesale market functioning; on the role of gas in complementing RES electricity generation; and on new uses of natural gas.

Regarding SoS, the IEM is a precondition for enhanced SoS and priority should be given to market-based measures with intervention only in specific cases (limited). The criteria developed in the original GTM (2011) are maintained and 13 MSs do not meet the GTM target. These include almost all Eastern European states. The updated GTM recommends considering measures to increase the extent to which existing sources can replace any other existing source that is lost; make the most appropriate use of gas storage/LNG facilities; increase the diversity of upstream supply sources; and possible measures to ensure that MSs cooperate fully in a supply emergency and do not restrict cross-border flows to protect national interests.

Regarding wholesale market arrangements, new metrics are used to measure the pre-transactional liquidity, transactional liquidity and market health metrics. With regard to the recommendations on wholesale market functioning, there is a self-evaluation process. The process has been designed to ensure that in all MSs, a regular review of the progress made towards fully functioning gas wholesale markets is undertaken. In all cases – regardless of whether the market functioning criteria have been met – steps to improve hub functioning should be pursued. As a result of the self-evaluation, if MSs are unlikely to have a functioning wholesale gas market by 2017, structural market reform is to be evaluated.

On the role of gas in complementing RES electricity generation, GTM recommends: a review of existing arrangements with a view to minimising the extent to which – given existing infrastructure – gas consumers, most notably gas-fired power plants, are artificially disincentivised from operating when it would be efficient for them to do so; measures for full efficient use of gas storage for all shippers (esp. serving unpredictable loads); the improvement of the joint working of the gas and electricity sectors, with an obligation on gas and electricity TSO to cooperate, and better joint optimisation of both sectors; and, not to pick winners (in term of technology) but to enable removing unnecessary barriers which are not addressed through NCs.

Regarding new usages of gas, ACER undertook a study with the aim to analyse the potential of several new uses for natural gas and to identify the regulatory reforms required to support their further development.

The GTM review will be printed, presented and distributed at a workshop on 16 January which is a half day event. The registrations have been closed as we have reached 150 registrations. Mr Florian Ermacora, the new HoD of B2 in DG ENER, will speak at the workshop. The paper will be released on 7 January along with a press release and a citizens' summary.

BoR Decision agreed: (D 5)

The BoR endorsed the review of the GTM.

7.3. CMP Implementation

The Director presented the main conclusions of the congestion management procedures (CMP) report. He clarified that the version circulated was a "staff version" as the report is being proof read and finalised.

In terms of the findings, there is no full implementation and limited application of CMPs so far. While the majority of the MSs implemented the CMP GL, the Agency notes six implementations after the legal deadline. In seven MSs, implementation was still ongoing at the time of writing. Both the incomplete implementation and the absence of contractual congestion at the majority of the IPs explain why the actual application of CMPs in Europe was limited during Q4/2013 and to date. The Agency urges prompt finalisation of CMP implementation by the current non-implementers to make sure that the procedures are ready in case of contractual congestion and allow the prevention of congestion from occurring. Dynamic re-calculation of technical and additional capacity must be improved. The Agency invites concerned NRAs to further investigate specific cases to deepen the understanding on the interaction of different CMPs applied at two sides of the same IP. NRAs are encouraged to bring forward to the Agency cases of potential negative consequences of CMPs not functioning well together for further discussion. The reporting frequency of data submission necessary to effectively apply the LT UIOLI mechanism is still unknown in eight MSs. For five other MSs, reporting takes place only upon request and for three MSs only once per year. The Agency recommends that NRAs facilitate better data reporting to the Agency and of their TSOs to ENTSOG and data collection by the Agency from or via NRAs could further improve, in particular in terms of timely delivery, precision and comprehensiveness of the responses given by NRAs. The results of the ACER survey show that the harmonisation of CMP applications seems rather limited. The effectiveness of CMPs may improve in the future through further harmonisation and better coordination of the CMP applications. This requires a strengthening of the cooperation of neighbouring NRAs and TSOs, based on positive practical experiences and with the aim to reduce multiple interpretations of the CMP provisions.

Mr Boltz reported that on CMP implementation, EFET provided a critical position paper at the Madrid Forum. The CAM TF will organise a meeting with EFET.

The Director noted that we must be more assertive in calling for greater harmonisation of CMP measures on the two sides of an IP.

8. Investment challenge

European Network Planning and infrastructure challenge

8.1. Draft ACER Opinion on ENTSO-E SO & AF 2014-2030

The ACER Director and Mr Gence-Creux presented the draft ACER Opinion. The ENTSO-E scenario outlook and adequacy forecast (SOAF) aims at providing stakeholders in the European electricity market with a pan-European overview of generation, demand and system adequacy using different scenarios for the future ENTSO-E power system. In addition, the draft SOAF 2014 provides a description of the scenarios used as background assumptions for carrying out the market and network studies within the TYNDP framework.

ACER's key comments include: the improvement of stakeholder engagement; the provision of clarifications on Scenarios; the provision of more information on development of visions; and the value of specific parameters and the adequacy assessment.

BoR Decision agreed: (D 6)

The BoR provided by consensus of the Members (present or represented) a favourable opinion on the draft ACER Opinion on the ENTSO-E scenario outlook and adequacy forecast (SOAF).

8.2. Draft ACER Opinion on implementation on investments in gas network development plans

The Director presented the main findings including *inter alia*: the results from monitoring demonstrate that the development of a considerable number of investment items, especially pipelines and LNG terminals, appear not to be in line with the implementation schedule of the TYNDP 2013-2022. The Agency considers it appropriate to identify potential non-alignment instances in the current TYNDP 2013-2022 and rectify them in the TYNDP 2015-2024, rather than to amend the current TYNDP 2013-2022.

The Agency finds that data on the extent to which the projects or the investment items are coordinated, at least in terms of interdependencies, are extremely useful for investment implementation purposes. The NRAs did not assess at all a considerable part of the investment items, primarily because some NRAs did not respond by the closing date of the survey (25 June 2014) or lacked the required information, which implies that for many projects the data either do not exist at all, or that it would take considerable additional effort by NRAs to obtain it. The Agency considers that for future implementation and consistency monitoring it would be essential that information on the last completed phase of gas infrastructure investment items is collected by NRAs, irrespective of whether the project falls within or outside the scope of regulation. ACER relies on NRAs to monitor the Regulation.

The ACER Opinion also includes additional comments and guidance to be considered for the preparation of the next TYNDPs and NDPs, and in other infrastructure related activities.

BoR Decision agreed: (D 7)

The BoR provided by consensus of the Members (present or represented) a favourable opinion on the draft ACER Opinion on the implementation of the investments in gas network development plans.

8.3. Draft ACER Opinion on ENTSOG WSO 2014/15

The Director presented this ACER Opinion. The Opinion finds that the ENTSOG Winter Supply Outlook (WSO) is considered to be in line with the relevant requirements. The analysis in the outlook is highly anticipated in light of the increased concerns over the security of gas supply for the winter of 2014/2015, driven by the situation in the Ukraine. The Agency notes that the Outlook was developed while providing input to the EC's Stress Test exercise and, therefore, underlines the importance of the main conclusions of the Communication which are pointed out in the Winter Supply Outlook 2014/15.

The Opinion includes also specific comments on several infrastructure projects, which could remedy the situation in South-Eastern Europe and are facing obstacles in their implementation. ENTSOG is encouraged to fully integrate each relevant Contracting Party of the Energy Community in its future outlooks. The Opinion also contains comments on the methodology.

BoR Decision agreed: (D 8)

The BoR provided by consensus of the Members (present or represented) a favourable opinion on the draft ACER Opinion on ENTSOG WSO 2014/2015.

8.4. Update on 2nd PCI list and CBCA lessons learnt – CBCA internal monitoring report

CBCA

The Director presented the ACER internal monitoring report. It reviews twelve CBCA decisions concluded by NRAs and ACER and their respective investment requests. The investment requests follow to a broad extent the provisions of the TEN-E Regulation but some shortcomings are reported, especially as far as a project-specific cost benefit analysis (CBA) is concerned, which in a number of cases provide benefit calculation only for the hosts of the projects.

All of the investment requests include PPs intention to apply for EU financial assistance, typically referring to the high burden of the project due to the implied tariff increase. The NRAs note a number of challenges and open issues regarding many aspects of the whole

CBCA process for example:

- Further clarity concerning the maturity and the completeness of the investment requests submitted by PPs and the time of submission of those requests.
- Concerns about the CBA methodologies' capability to capture all the benefits and address the treatment of uncertainties and the various scenarios developed by ENTSOs.
- A better understanding of the purpose of the CBCA (and its relation to CEF Funding), their respective roles and the treatment of the recommended "10 % threshold" and "no loser no compensation" principles. They seek more detailed guidance on defining "concerned NRAs", subjects of "TSO consultation", as well as the format and content of the "coordinated decisions."
- Issues of cross-border payments, investment costs' inclusion in tariffs, ex-post adjustment of the decisions and appeals against CBCA decisions.

The prioritisation and in-depth discussion of the topics identified in the present report, is planned to start in January 2015, aiming to provide a 2nd ACER Recommendation on CBCA by summer 2015. ACER is ready to provide a platform for coordination and to discuss how best to coordinate more early in the process.

Mr Borchardt thanked ACER for the important role in coordination of NRAs in the overall PCIs process. He then presented some options for feed-in of the ACER monitoring of the implementation of the projects into the PCI selection process. ACER could present its preliminary results to the Regional Group (before the final monitoring report). A second possibility would be to include key findings of the final monitoring report in the ACER opinion at the end of July. Otherwise, a High Level Group discussion is scheduled for July and ACER could provide feedback there as well. Mr Borchardt clarified that a project which has PCI status remains in the PCI list.

Mr Boltz suggested starting looking on the more technical aspects of the CBCA reports regarding VAT, taxes.

Ms Geitona reported on recent developments and next steps on the second PCI process, which was launched after the summer according to the EC calendar. The second cross regional meetings for electricity and gas have been held on 21 November and the main milestones and what is expected by when was presented. The draft regional lists were presented along with the terms of reference of the RGs and the draft methodology being developed by the JRS. MS have to approve the projects within the territory by 9 January. The third cross regional meetings will be held on 22 and 26 January for electricity and gas and they will pursue the discussions on the assessment methodology as well as the eligibility of the projects. The NRAs Opinions on the consistent application of criteria/of CBA methodology and CB relevance are expected between March and April and the ACER Opinion on the consistent application of criteria and CBA across regions is expected by the end of July after which the adoption of the 2nd List is planned by October.

8.5. ACER G-Charge Internal Monitoring Report

Mr Gence-Creux presented this report which is an internal report for information and thanked the NRAs for providing the information. The EC Regulation on guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging requires the Agency to monitor the appropriateness of the ranges of transmission charges ("G-charge) paid by electricity producers. The Agency has prepared this internal monitoring report for the year 2013 based on the data submitted via questionnaire by 29 NRAs (including Norway). For this report the objective is to analyse the structure of the G-charges and explain their impact on system users in general. The document presents the monitoring process and the results from data received. These are not intended for publication in 2014 but may be included, in full or in part, in possible future Agency activities regarding G-charges.

9. **Implementation, Monitoring and Procedures**

9.1. Progress on work

Mr Locquet provided an update. Two peer reviews have been requested to ACER as the Director reported and the AIMP chair will be responsible for establishing an ad hoc Review Workstream for each case composed of PWS and other relevant EWG or GWG members.

He also reported on the market monitoring report for next year and its skeleton which has been discussed along with the next steps on its preparation. It will analyse the state of play of competition in different MS, there will be a section on forward markets, gas wholesale markets, welfare benefits, and on the economic aspects of NCs implementation.

10. Regional Integration

10.1. Draft Status Review on Regional Initiatives

The Director presented the report. This is the 4th Regional Initiatives Status Review outlining progress made towards the IEM. This annual report provide an executive summary, background and a review of both gas and electricity regional initiatives. The RIs have so far delivered valuable achievements and tangible results both in electricity and gas, mainly through the (early) implementation of NCs and other EU rules via pilot projects and through the exchange of information and good practices. They have also contributed to developing a common vision – a Target Model for the IEM – and have allowed strengthening cooperation between the Agency and the Energy Community.

Although progress has been made towards completing the IEM, there is still room for improvement and until the full implementation of the NCs, the RIs are playing their part in achieving progress towards the IEM completion. Progress in tracked in the ERI and GRI. The report is being finalised for publication, therefore, the Director asked for any final comments to be submitted now.

10.2. Latest developments on intraday

Mr Borchardt reiterated the Florence Forum (FF) conclusions on this issue and the delay in progress. The FF noted that despite all efforts the progress is disappointing. The FF insisted that all parties undertake efforts to overcome the remaining issues, including the issue of performance standards, and to proceed with the signature of the procurement contract by end of February. If not, the EC will set up a structure with alternative solutions. The EC has convened a meeting with PXs on 26 January. The EC will establish a Working Group to explore alternative options.

Lord Mogg also raised the likelihood of receiving a possible request for a comfort letter. This new comfort letter is unlikely to be granted unconditionally by regulators and will probably have links to timings, budget and governance rules. Mr Borchardt supported a comfort letter being subject to conditionality.

Mr Gence-Creux also updated the BoR on the implementation of the forward NC. ENTSO-E did excellent work on future harmonised auction rules. At this stage we need a push from all NRAs to TSOs to clarify which TSOs will be part of this project. ACER expects all TSOs allocating long-term transmission rights to be part of this project.

He also raised the firmness issue. ACER is keen on having a common position on this issue. We have discussed this issue at the AEWGs and we are lacking the support of one NRA. Perhaps a join firmness position could be escalated to the next BoR.