

**33<sup>rd</sup> ACER Board of Regulators meetings**  
**Wednesday, 11 December 2013, 09.00-16.00**  
**ACER, Trg Republike 3, 1000 Ljubljana**

**Minutes**

**Participants**

Member States	Name <sup>1</sup>	Member States	Name
Austria (E-Control)	M: Walter Boltz O: Katharina Tappeiner	Italy (AEEG)	A: Clara Poletti
Belgium (CREG)	M: Marie-Pierre Fauconnier A: Koen Locquet	Latvia (PUC)	O: Lija Makare
Bulgaria (SEWRC)	Excused	Lithuania (NCC)	O: Dalius Kontrimavičius
Croatia (HERA)	M: Tomislav Jureković O: Sonja Tomašić Škevin	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: G. Shammass    Excused	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	O: Miroslav Belica	Netherlands (ACM)	O: Elozona Ochu
Denmark (DERA)	O: Mads Lyndrup	Poland (URE)	M: M. Woszczyk A: Halina Bownik-Trymucha
Estonia (ECA)	M: M. Ots            Excused	Portugal (ERSE)	A: Alexandre Silva Santos O: Jorge Esteves
Finland (EMV)	M: Riku Huttunen	Romania (ANRE)	
France (CRE)	A: Philippe Raillon O: Sabine Hinz O: Patricia de Suzzoni	Slovakia (RONI)	
Germany (BNetzA)	A: Annegret Groebel O: Daniel Mütter	Slovenia (AGEN-RS)	A: Jasna Blejc
Greece (RAE)	O: Katerina Sardi	Spain (CNMC)	O: Pablo Villaplana Conde O: Gema Rico
Hungary (HEA)	A: Attila Nyikos	Sweden (EI)	A: Caroline Tornqvist
Ireland (CER)	A: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Martin Crouch O: Feodora von Franz

Observers	Name
ACER	Alberto Pototschnig, Dennis Hesselning, Fay Geitona
European Commission	Klaus-Dieter Borchardt, Aurora Rossodivita
CEER	Natalie Mccoy, David Haldearn

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

<b>Main conclusions from the meeting:</b>
1. <i>The BoR approved the revision of the ACER 2013 WP.</i>
2. <i>The BoR provided through electronic procedure (on 29 November 2013) by majority of the members voting its favourable opinion on the ACER Framework Guidelines on rules regarding harmonised transmission tariffs structure for gas.</i>
3. <i>The BoR agreed the use of the electronic procedure for the BoR Opinion on the draft ACER Recommendation on the NC on Interoperability.</i>
4. <i>The BoR provided by consensus (of the members present or represented) its favourable opinion on the draft ACER opinion on ENTSO-E network code on Forward Capacity Allocation.</i>
5. <i>The BoR provided by consensus (of the members present or represented) its favourable opinion on the ACER draft Opinion on the ENTSO-E WP: Autumn 2013 through December 2014.</i>
6. <i>The members discussed the draft ACER opinion on ENTSO-E manual of procedures (transparency platform).</i>
7. <i>The BoR had an orientation debate on the draft ACER Opinion on range(s) of charges paid by producers for period after 1 Jan 2015. The Director shall clarify with the Commission the possibility of postponement of the relevant ACER Opinion and consider the next steps.</i>
8. <i>The BoR had an update on the preparation of the Commission's first evaluation report on ACER.</i>
9. <i>The members discussed and agreed the next steps for the preparation of the Green paper "Energy Regulation-A Bridge to 2025".</i>
10. <i>The BoR discussed the arrangements for information sharing between ACER and NRAs under REMIT.</i>
11. <i>The BoR received an update on the implications and interaction between the new Market Abuse Regulation and REMIT, on the draft MOU between ACER and FERC and on the Implementing Acts.</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 32<sup>nd</sup> BoR meeting

### BoR Decision agreed: (D 2)

*The 32<sup>nd</sup> BoR minutes were approved.*

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

### 2.1. Update on recent developments

#### *- ACER developments*

The Director provided an update.

Staff: At this stage there are 69 staff in office (including 16 SNEs) (1 TA + 1 SNE have already been appointed and the selection for 2 posts is under way). Despite the ACER establishment plan, the subsidy to the Agency envisaged in the recently-adopted EU Budget allows for only 5 additional staff: ACER will next year have in total 77 staff. Some of the SNE positions can be turned to contract agents' positions, but this is still being considered. The Director reported that there is still an open SNE position regarding Market Monitoring in the Gas Department. The staff composition reflects in ACER currently 24 nationalities. The Director also reported on current vacancies including for 3 trainees.

#### ACER annual conference

Regarding the next ACER conference, we try to set a date (between March and June) and launch the organisation of the event (possibly back to back to the meetings of the Administrative Board and Board of Regulators in Ljubljana). The Director has approached the Commissioner for a suitable date and he hopes to be able to shortly confirm.

Since the last BoR, the Agency presented its first Annual Report on REMIT during a public workshop on REMIT implementation held in Ljubljana on 7 November.

ACER has also published a recommendation for adopting the Network Code on Operational Security and the Network Code on Operational Planning and Scheduling. ACER has adopted its Reasoned Opinion on the Network Code on Interoperability and Data Exchange Rules. The 2nd MMR was presented on 28 November in Brussels.

The Director informed the members that ACER intends to organise an "Away-Day ACER WG leadership": An invitation has been sent to the AWG chairs. The date is still to be determined but we are currently considering 6-7 February or 11-12 February. The location will be in Slovenia, possibly Bled.

Mr Borchardt reported some changes in the internal organisation of DG ENER to take effect as of 1 January 2014. Mr Ristori will succeed Director General P. Lowe. The Commission has also decided to create a new unit A4 in DG ENER to deal with the infrastructure financial instruments and relations with Financial Institutions.

#### *- ITRE visit to Ljubljana*

The Director reported that the last ACER Contact Group (1st October) was cancelled at very short notice and the EP suggested to combine the next one with a second ITRE visit to the Agency. They proposed 19, 20 March. As a consequence the BoR and AB meetings have been moved one day forward: 18 March BoR, 19 March AB morning to be followed by meeting between the ITRE delegation and AB/BoR members. The working session with the

ITRE delegation will start in the afternoon and continue on 20 March. The revised dates are indicated in the revised calendar. However, the ITRE Secretariat has just informed that those dates might not be possible. We are seeking to confirm with ITRE the definitive dates and we might need to shift the meetings back to the initial schedule. Dates will be confirmed asap.

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

#### **3.1. ACER Evaluation**

##### **The Commission's draft report**

Mr Borchardt presented the progress with regard to the finalisation of the report. The report is being a bit delayed as it is now at the stage of the Commission's inter-service consultation. There are 2 days remaining and for the time being the report has received no comments. On Monday it will be sent for translation and the written procedure will, subsequently, be launched in mid-January. The Commission hopes to have the report adopted ahead of the January BoR.

Mr Borchardt then presented the key elements of the report:

The overall conclusion is that ACER has become a credible and respected Institution playing a prominent role in energy matters.

Regarding ACER activities: The EC finds that 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.

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 including by chairing the AWGs.

Regarding independence, a strong statement for the independence of ACER comes from stakeholders. Some respondents have raised the issue of independence of NRAs. Mr Borchardt underlined that where independence is not respected, the Commission will take action vis-à-vis MSs.

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; Mr Borchardt also noted that the report to the ITRE committee was excellent. However, the ACER website needs improvements to be more user friendly.

Mr Borchardt placed particular emphasis on the key performance indicators. The internal audit service report was overall positive but recommended that ACER includes policy-orientated key performance indicators in its annual reports and Work Programs. This would allow the proper monitoring on ACER deliverables. The Commission plans to pursue how this issue will be addressed by ACER.

Mr Borchardt noted that the Commission shall look in more depth at the 2<sup>nd</sup> evaluation report. However, this first report is a landmark and sets the scene on the overall ACER performance and the development of work and the key messages are very positive.

The Director thanked the Commission for their verbal and positive messages and their appreciation to ACER. He noted that the Agency comprises the Director, its staff, the ACER Boards as well as the Working Groups and, therefore, the appreciation in the report shall be shared by all those involved. ACER is a European Union Agency and its role vis-à-vis the Commission is clear. Regarding the website, ACER has been working in merging the websites and will put extra effort in pursuing improvements. Regarding the key performance indicators, ACER has been including those since its 2012 WP and has also monitored them internally and presented the results in the annual reports. The problem is that in the 2013 and 2014 WPs there were around 80 key indicators. ACER now tries to identify a few key performance indicators that will also remain consistent over time. ACER has also been in contact with the internal audit service. The new approach with fewer key indicators will be implemented in the 2015 WP, preparations of which are already underway. Regarding the involvement of NRAs, the Director has now collected some statistics regarding the participation of the NRAs at the BoR and AWGs meetings and has written to the most inactive NRAs to offer support and discuss ways to reinforce their engagement. The new premises with videoconferencing facilities in Ljubljana and Brussels will facilitate remote participation in the AWGs. Regarding resources, this has been an issue raised on several occasions, not least as ACER colleagues have worked under enormous pressure. The Director is thus considering re-prioritisation.

Lord Mogg thanked the Commission for the update. With regard to the planning for the BoR Recommendations, Ms Groebel, the rapporteur will prepare a response for the January BoR. He appreciated the positive messages by the Commission and reiterated that establishing an Agency in a short time is in itself a key achievement with full credit to the Director.

Lord Mogg noted the unique structure of the Agency in bringing the NRAs in its BoR. This structure is appropriate to combine the expertise at both national and European level in a coordinated way. NRAs' contribution to this respect is significant. With regard to the more active involvement of NRAs, he noted the resources constraints which several NRAs face.

However, even if at the level of the AWGs some NRAs are not active, the novelty of the ACER structure and the BoR is that each NRA has one vote resulting in an “equal weight” in the decision making process. With regard to the possibility of chairing of the ACER WGs by the ACER staff, he noted that there is no unique approach which should be applied uniformly; in his view, we should review and adjust the current arrangements where these do not work effectively. This is not the case and we should retain a flexible approach. He remarked that he strongly values the EC emphasis on the need for independence of NRAs. This is a fundamental issue. The BoR Recommendations will also be in the same positive spirit, perhaps address some further issues which have not been addressed in the Commission’s report and also reflect the significant contribution by NRAs.

Ms Groebel thanked Mr Borchardt for the update. She considers the main findings of the draft report presented very promising and quite similar to the BoR reading of the responses. In her view, a key message is that ACER has been gradually assigned new tasks and is delivering. The governance structure is working well. ACER has managed to increase links and relations with NRAs and to increase convergence in the decision-making. Regarding the Commission’s suggestion on ACER taking a more proactive role vis-à-vis NRAs on cross border issue, as an “arbitrate” she noted that there has been no case up to now. The cooperation with NRAs is functioning well. She also fully agrees with the need to ensure proper regulatory scrutiny of ENTSOs. Regarding the website, she noted that we need to take account that some processes are very complex and thus not easily understood. She also noted that we should not lose sight of the overall role to implement the IEM.

#### Conclusion

*The BoR took note of the update. The Commission’s report and the BoR Recommendations will be finalised and submitted to the January BoR.*

### 3.2. Revision of ACER 2013 WP

The Director presented the proposal for the revision of the 2013 ACER WP which simply reflects the formal obligation to close the 2013 WP process (in compliance with the suggestion of the internal audit service) in order to reflect the adjustment of an additional €2.989 million in the 2013 contribution to the Agency from the EU budget decided at the trilogue on 17 October). This will, subsequently, be submitted to the AB for adoption, as was announced at the last BoR meeting. In reality there has been some reprioritisation taking effect from the mid-term review of the 2013 WP (such as the best practices on incentives which will not be completed this year and some activities which have been put off for next year). In addition, the Agency internally reallocated some of the resources originally allocated to activities which the Agency is required to perform on demand and for which requests have so far not been received. Furthermore, the proposal includes a table illustrating the Agency’s human resources as planned in its Work Programme 2013 and how they were actually used in 2013.

With the additional resources made available, the Agency can complete the development of the REMIT-related IT infrastructure. The Director also informed the Board that by the end of next week ACER will be able to commit all the funds for REMIT.

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

*The BoR approved the revision of the ACER 2013 WP.*

### 3.3. Report on the Planning group meeting of 5 December

The last planning group meeting took place on 5 December and it tracked progress on electricity and gas NCs as per usual practice. Mr Borchardt presented the major outcomes: The priority lists for 2015 were discussed. For electricity no “new tasks” will be taken on. For gas further discussion will be held but rules for trading will be included and 3 areas are being considered for potential scoping in 2015: settlement rules, operational procedures in emergency and transparency. However, Mr Borchardt said that in order to include these 3 areas further discussion is necessary. The PG took note that work on NCs is in principle on track. The Commission reported on the next steps on the NC on Interoperability. Tentative dates for the formal Comitology meeting are 28 April and 11 July. For electricity there has been a discussion on how to organise the NC submission to Comitology by grouping them. Perhaps a 2-step procedure will be followed to submit at the first stage the CACM, Grid Connection codes and then the operational codes but this would be decided at a later stage. It was also agreed to integrate to the PG discussions infrastructure related issues.

Mr Crouch noted that 2015 priorities for electricity will also include looking into tariffs and incentives.

### 3.4. Review on progress on the Roadmap

The revised Roadmap was circulated for info and Ms Geitona presented the main developments since the November BoR meeting including *inter alia*: Regarding transparency, the 2nd BoR public debrief took place on 6 November and the next one is foreseen for February 2014. ACER has started to issue a citizens summary on the first REMIT annual report, the 2nd ACER-CEER MMR and the FGs on tariffs. The launch of the 2nd ACER-CEER MMR was accompanied by a press release and a presentation at the ITRE Committee of the EP on 27/11. The Report was launched at a workshop on 28/11. Actions related to the preparation of the Green (discussion) paper for early 2014 are reflected in the Roadmap while this will be adjusted once the next steps and outline presented at the December BoR are agreed.

## 4. **Post 2014 strategy**

### 4.1. Bridge to 2025

A note was circulated which was also discussed in a pre-meeting of the *ad-hoc* group. It includes a brief description of the preferred lay-out (one rather than multiple documents), who will be involved and a timeline with next steps. Lord Mogg reported on the next steps and the timetable for the preparation of the Green paper as discussed at the pre-meeting of the *ad-hoc* group. There is no BoR meeting in April. Therefore we shall aim for an orientation discussion on the Green paper at the March BoR meeting and potentially have a BoR electronic approval. The formal consultation needs to be launched before the Easter break. Subsequently, the consultation will be held from Easter until the summer months and the final paper is scheduled for autumn. We also like to coordinate with the Commission’s main initiatives.

The paper (with the separate chapters) under the responsibility of the Chair will be based on the contributions of the AWGs. It was agreed to try and bring into the March deadline the different work streams (e.g. GTM and DSO work). As a first step a template will be circulated.

The *ad-hoc* group also considered to start exploring the governance arrangements. Perhaps not in depth for the March consultation paper but more fully in the final Green paper to be issued for September.

Mr Blaney reported on the work of the *ad-hoc* group on DSOs. This Group shall try and bring together the work of the different TFs. The challenge is to get the scope right. The Group met for the first time on 29 November and aims to have a consultation document ready by March. There will be another meeting of the Group in January and February.

BoR Decision agreed: (D 4)

*The members agreed the next steps for the preparation of the Green paper.*

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

### **5. Gas**

#### **5.1. Oral update on FGs and NCs**

Mr Boltz gave a presentation on the progress on FGs and NCs.

Regarding the CAM code this will apply as of 1 November 2015. The balancing network code was adopted in comitology on 2 October 2013 and its publication is expected in March (April) 2014; it will apply as of 1 October 2015. On interoperability, an informal MS meeting will be held on 21 January. This meeting will discuss the tariffs FGs, the ACER Guidance on incremental, the interoperability network code and the Gas Target Model update. On the rules for trading, the ACER scoping was envisaged between Q4 2013 – Q1 2014. A possible postponement until Q2/2014 is being proposed not least as over the last few months under the GTM work we have become aware of other areas which may require binding EU rules for further harmonisation (for example, the design of capacity products and contracts as regards firmness, restrictions to allocation, secondary markets). We have received some input from stakeholders and we shall also establish an Expert Group (an invitation and open letter was published on the ACER website on 26 November 2013).

On balancing, the MF 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.

Regarding the ACER Guidance on incremental, Mr Boltz informed on the next steps: The ACER Guidance was issued in November. ENTSOG should deliver the NC amendment text with consultation within 12 months. ACER has then 3 months to submit formal proposal to the Commission in early 2015. The Comitology process is expected to last until 2015 and the implementation is envisaged for 2016. The first Incremental Capacity auction is envisaged to be held in March 2017.

The Director informed about the ACER's CMP report. Last Friday ACER received data from ENTSOG though not complete. ACER will try to liaise with ENTSOG to put pressure on the TSOs not providing the data. However, ENTSOG does not have a formal power to exert pressure on this request and thus NRAs may receive a letter from ACER to ask them to request the missing data from the TSOs.



## 5.2. Outcome of the electronic procedure on ACER FGs on Tariffs

Mr Boltz presented the background: These were one of the longest FGs given the difficulty not least as it lies at the heart of the National Regulators' tasks. At the special Tariff AGWG on 21 October and the regular AGWG on 22 October (25 participants) all critical points were discussed in detail. A further special meeting to clarify the open issues took place on 13 November (with 28 participants).

The Director reported on the outcome the BoR electronic procedure. The 2nd round of the electronic procedure for the draft FGs was launched on 26 November and ended on Friday 29 November. 20 members voted in favour of the draft FGs, 4 members explicitly abstained from the vote (OFGEM, ACM, CREG, IRL), and one voted against (CNMC). The FGs were adopted on 29 November and were, subsequently, (on 3 December) released with the EoR, and a citizens' summary. The Director noted that in his note to the members at the launch of the 2<sup>nd</sup> round he fully explained how the comments were taken into account. He thanked all colleagues who have worked on the FGs. There has been a long and complex process and there has been a healthy discussion throughout the process. The contentious issues are related to the degree of harmonisation on the approach between MS. The Director has made clear his views quite early in the process. In his view, the process has been proper.

The Director noted that the Away Day discussion will be reported to the BoR but ACER aims to have a meeting mainly with the AWGs' Chairs, the TF Conveners and WS leaders and not with all the BoR members as it will be inefficient.

### BoR Decision agreed: (D 5)

*The BoR provided through electronic procedure (on 29 November 2013) by majority of the members voting its favourable opinion on the ACER Framework Guidelines on rules regarding harmonised transmission tariffs structure for gas.*

## 5.3. ACER Outline of the Gas Target Model paper

Mr Boltz presented the draft paper on the GTM on the justification and problem identification. A section on the strategic context describes the context of our evaluation based on the potential future role of gas and developments in gas markets; a section on competitive and integrated wholesale markets addresses the challenges that arise in the area of gas wholesale markets and potential barriers to competition. There is a section on the gas contribution to sustainability and a section on improving retail competition which discusses concerns in retail markets and potential need for action to guarantee benefits for consumers.

The detailed analysis of specific areas to underpin the work, include the wholesale market functioning, the residual supply index, hub analysis, congestion, situation of gas fired power plants, the retail market competition.

The next steps on the development of updated GTM include: By January 2014 first outline of draft of GTM review and update; a discussion at the 21 January 2014 informal MS meeting; the 2nd informal advisory panel meeting on 26 February 2014; the 2nd ACER stakeholder workshop on 20 March 2014 (Ljubljana); the 3rd informal advisory panel meeting will be held on 30 April 2014, (Brussels); the 3rd ACER stakeholder workshop is envisaged on 13 or 15 May 2014 (Brussels); in June-July 2014 the finalisation of the updated GTM is scheduled.

Lord Mogg noted that the ambition of the Bridge is to encompass all work-streams.

Mr Crouch, supported by ACM, noted that the retail competition aspects fall within the scope of the 2025 bridge paper and could benefit from discussion in the CEER consumers group.

Mr Borchardt underlined the Commission's support for the GTM initiative. He suggested, however, that the main focus should remain to ensure that the current Target Model is implemented. Regarding the retail competition, the Commission will issue a public consultation on retail markets (both electricity and gas) next week and the Commission's Communication on the new design of the retail markets is envisaged for May.

*The BoR took note of the GTM progress of preparations.*

#### 5.4. Oral update on new version of NC interoperability

Mr Boltz and the Director presented the state of play. The ACER's opinion has been published, following the favourable opinion of the BoR in November. On 27 November, an amended Network Code was endorsed by ENTSOG's Board, which will be sent to ENTSOG's General Assembly for approval on 18 December 2013. The resubmission of the Code to the Agency is expected for 19 December. The draft ACER Recommendation is being finalised. However two issues raised in the Reasoned Opinion are unlikely to be fully accommodated in the amended Network Code. Therefore, the Agency may have to issue a "Qualified Recommendation" with respect to the amended Network Code, proposing that the necessary revisions are implemented by the European Commission before proposing the Network Code for final adoption under the committee procedure ('comitology'). The remaining issues are mainly (i) Recital 7 of the Network Code which makes reference to the scope of data exchange solutions covering both gas transmission to and from interconnection points and virtual trading points. Article 20(1) of the Network Code does not refer to virtual trading points. This article should therefore be amended. (ii) The paragraph on cost assessment and recovery which is merely repeating the NRAs' tasks enshrined in the Third Package without providing any additional value and using a reference which has to be interpreted in conjunction with other (not mentioned) provisions.

On 21 January an informal MS meeting which will also discuss the interoperability code will be held. Given this meeting, there are 2 options: either to seek the BoR opinion on the draft ACER Recommendation at the January 23rd BoR meeting and the Recommendation to be adopted by 30 January 2014; or via electronic procedure, which can be launched on 6 January and will allow its adoption by 17 January 2014. The latter option would enable the Commission to proceed with the presentation of the amended NC IOP & DE at the next (informal) Member State Meeting on 21 January 2014 ('pre-comitology').

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

*The BoR agreed to use the electronic procedure for the BoR opinion on the draft ACER Recommendation on the NC on Interoperability and DE.*

## 6. Electricity

### 6.1. Oral update on the FG and NCs - CACM, Balancing and RfG

Mr Crouch provided an update. Regarding the CACM NC, the informal comitology meeting was held on 6 December. There has been a good discussion at the electricity cross border committee: A few of the MS were concerned on the approval processes (NRAs and ACER as a last resort).

On the Grid Connection codes, the EC is finalising the codes (DCC and RfG) the text is now promised for early January and there are still discussions.

The HDVC code is still with ENTSO-E until July 2014.

Regarding the OpSec/OPS: The EC is considering how to group the codes.

At the last Planning Group meeting we discussed to finalise the 3 SO codes and then take a decision a bit later on the exact groupings and splitting.

The balancing network code will be submitted to ACER shortly. The ACER opinion will be due in March. The BoR might be able to provide the required opinion at its March meeting. An orientation discussion is envisaged at the January or February BoR.

Mr Crouch remarked that he supports the approach towards ENTSO-E but the even more difficult issue to resolve is the PXs.

On the DCC, the EC will redraft the text and is not keen on mandatory provisions but rather for a voluntary approach.

## 6.2. ACER Opinion on the FCA NC

The Director presented the ACER opinion including the changes introduced by the Director ahead of the BoR. The FCA NC was submitted to ACER on 1 October 2013 and a draft reasoned opinion was circulated for the BoR opinion. The deadline for the ACER Opinion is 1st January.

He reported that during the development of this network code there has been a good engagement with ENTSO-E and other stakeholders throughout trilaterals, telecoms as well as a workshop in Ljubljana 28 October. The code has been improved. There are, however, two key issues: Firmness provisions and the deadlines for implementation. Other issues include *inter alia*, consistency with CACM, remuneration for resold capacity, process for decisions on not allocating long-term rights; regulatory approvals.

As a way of background, the last Milan Forum acknowledged concerns of network users regarding the firmness provisions in the FCA Network Code proposed by ENTSO-E.

Mr Borhardt also noted that the Commission has identified some “horizontal issues” which would need a common approach and uniform provisions in all network codes.

### BoR Decision agreed: (D 7)

*The BoR provided by consensus (of the members present or represented) its favourable opinion on the draft ACER opinion on ENTSO-E network code on Forward Capacity Allocation.*

## 6.3. ACER opinion on range(s) of charges paid by producers for period after 1 Jan 2015

The Director introduced the draft ACER opinion. The Regulation 838/2010 (on guidelines relating to the inter-transmission system operator compensation mechanism) requires ACER

to monitor the appropriateness of the ranges of G-charges, taking particular account of their impact on the financing of transmission capacity needed for Member States to achieve their targets for the promotion of energy from renewable sources and their impact on system users in general. Based on its G-charge monitoring activity (Annex A) and on the economic assessment of G-charges at national and transnational level (Annex B), the draft opinion incorporates the Agency's conclusions as to the appropriate range of G-charges for the period after 1 January 2015 on the basis of two overriding principles: Cost reflectivity and the impact on the IEM with the view to avoiding distortive effects. The Director welcomed the feedback from the Board.

Mr Crouch reported on the discussions at the AEWG.

Mr Borchardt clarified that the Commission may reconsider Regulation 833 (ITC), but certainly not at this stage. The Commission would rather do it at a later stage and that would be the best moment to address the G charges. He agreed that more time is needed.

The Director noted that the debate on what is the basis for G charges has been a very long debate. He will seek some clarifications on whether the EC would accept to put off the deadline for the Agency's Opinion which - according to the Regulation - is by the end of the year. He will write to this end to the Commission.

#### BoR Decision agreed: (D 8)

*The Director took note of the discussion on the draft ACER Opinion on range(s) of charges paid by producers for period after 1 January 2015. He shall clarify with the Commission the possibility of postponement of the relevant ACER Opinion and consider the next steps.*

#### 6.4. ACER opinion on ENTSO-E WP 2014

The Director presented the draft ACER Opinion. Under Article 6(3) of the ACER Regulation ACER needs to provide an opinion on the ENTSO-E Annual Work Programme, which ENTSO-E submitted to ACER on 24 October. Overall, the ENTSO-E WP is in line with the requirements of the Regulation. The draft ACER Opinion makes some suggestions including *inter alia*: In terms of a time span, the WP covers the period from autumn 2013 through December 2014 and thus overlaps with the previous WP covering the period 2012 to December 2013. ACER cannot fully assess the benefits of the overlapping periods. In some areas a higher level of detail would be useful to better identify the scope of activities. The WP should avoid statements as several references to the network codes' requirements might give the impression that those requirements have already become law, while they are still to be adopted.

Other issues raised in the draft Opinion include: On regional developments, the WP focuses on the day-ahead and intraday timeframes only, while it does not address ENTSO-E's plans regarding market developments for the long-term timeframe and regarding capacity calculation. The Opinion also raises concerns that the timeline for ENTSO-E to submit the draft TYNDP 2014 to the Agency only in December 2014 might be too tight for the TYNDP 2014 to be adopted by the end of 2014, as the Agency has a two-month deadline for issuing its opinion on a TYNDP 2014. The draft opinion also makes other suggestions such as the cross-regional coordination of TSOs.

BoR Decision agreed: (D 9)

*The BoR provided by consensus (of the members present or represented) its favourable opinion on the ACER draft Opinion on the ENTSO-E WP: Autumn 2013 through December 2014.*

6.5. ACER opinion on ENTSO-E manual of procedures (transparency platform)

Mr Crouch and the Director presented the draft ACER Opinion on the Manual of Procedures (MoP) which has been compiled under Article 5 of the Transparency Regulation. This was submitted for discussion. In principle, the draft MoP addresses the criteria of Article 5 but some improvements are suggested. The draft MoP is incomplete and accordingly, the Agency cannot fully assess the draft MoP. The comments included in the ACER Opinion are, therefore, without prejudice to a reassessment after the draft MoP has been completed.

The Central Information Transparency Platform will publish information which is also relevant for REMIT Regulation in particular on power plant outages and thus both the AEWG and AMIT WG have provided input to this document.

*The members provided no comments to the draft ACER Opinion.*

## **7. Regional Integration**

7.1. Report from the Director on Regional arrangements

The Director presented his revised note which has been finalised on the basis of previous drafts presented at the meetings of the Board of Regulators in July and September. Its content will be probably enacted by a Director Decision. The Director shared the note with those members more involved and he hopes that members would endorse it not least to ensure commitment by all in the process which is voluntary.

As the cross-regional dimension in the ERI and GRI becomes more prominent, it is important to avoid any duplication of effort or superimposition of roles with the Agency's Working Groups (AWGs). The revised note distinguishes between early implementation issues to be undertaken under the RI coordination Groups, and issues related to implementation of the codes once adopted and NC amendments which will be addressed by the relevant AWGs. The ERI and GRI and their groups will favour a more project-oriented approach. The corresponding AWG will be alerted on any issue of regulatory significance and consulted when interpretative issues arise, particularly when these have EU-wide implications. The responsibility for coordinating the ERI and GRI will fall within the remit of the Heads of the corresponding Departments within the Agency, who will act as ERI/GRI Coordinators and report to the Director. The Director, assisted by the ERI and GRI Coordinators, will regularly report regional developments to the BoR, which may be consulted on aspects of regulatory significance.

Mr Crouch welcomed the proposal particularly with regard to the early implementation of codes. However, he invited the Director to have a fuller debate on the Regional Initiatives and their role which, in his view, could be broader than the early implementation of codes.

The Director welcomed the possibility to have perhaps at a later stage a broader debate on the RI and their role. He, however, considers that this note firmly finalises the discussion in particular on the responsibilities and arrangements for the early implementation of codes.

### Conclusion

*The BoR took note of the note which concludes the discussion regarding the responsibilities and arrangements for the Agency's activities regarding the early implementation of codes under the regional initiatives.*

## 7.2. Progress on ERI cross regional roadmaps

### **A. On Intraday:**

Mr Borchardt presented the recent developments. At the last Forum in Milan, the Commission noted the repeated inability of power exchanges involved in the process to find agreements on key elements needed to implement the intraday project. The Forum asked the Commission to intervene and develop an alternative solution and take a decision on the way forward by the end of the year. Since then the Commission has been in contact with TSOs, but also directly with the preferred contractor and it seems that the discussions between the latter and PXs have followed a much more positive approach. Therefore, the Commission was urged not to take any steps as long as the process seemed to move ahead. There is an agreement to sign the ESA and then start working on the cooperation agreement. If all works according to schedule early next year (possibly in January) the Commission will call a meeting with the PXs and ENTSO-E, and ACER to discuss the Roadmap for 2014. PXs have already discussed the roadmap but this was subject to the condition of the ESA and needs to be reviewed. ENTSO-E should also play a role. This roadmap should build upon the past experience. Mr Borchardt is very confident that we are moving in the right direction.

Lord Mogg congratulated Mr Borchardt for the Commission's direct and firm approach which triggered a positive reaction. He reminded that ESA is split in 2 phases: Step 1 should see the resolution of all issues and step 2 the development of the platform blueprint. The decision to move to the second step of the ESA will be based upon the resolving of all issues which are scheduled to be discussed in the first step. Lord Mogg also reminded that NRAs could be called on sending the comfort letter before Christmas and sought some clarifications on whether all NRAs are comfortable with the comfort letter.

Mr Belica noted that as already communicated at working level to ACER and to the project leader ERO does not have sufficient legal comfort that the Czech customer will pay a proportionate share of incurred costs. This together with earlier problems of the data sharing leads up to the support OTE status in the project as an observer.

### **B. On Day Ahead:**

The Director informed that Go-live for the NWE day ahead is delayed and now planned for 4 February. This will be confirmed on 17 December. The delay was announced at the last Milan Forum. This delay will not affect the other steps (South East will join by the end of Q1 2014).

### Long term transmission rights

The Director reported on the Forum conclusions which welcomed the CASC-CAO joint initiative which should pave the way for the future single EU allocation platform. The Forum expects the concerned TSOs to harmonise the auction rules by the end of 2014 under the coordination of ENTSO-E, and to harmonise the necessary IT tools. He also reported that ACER has been in touch with NRAs with regard to the implementation of the long term Roadmap. He thanked all those providing a feedback. He also clarified that ACER's role on this issue was simply to reiterate the commitment of NRAs.

### 7.3. Progress on GRI

Ms Poletti provided an update: the GRI Quarterly Report has been sent for comments and will be finalised by the end of the year. It has a new structure and a new chapter on the way forward.

On CAM we have asked stakeholders on the basis of a questionnaire for feedback. Stakeholders were very appreciative of the process. The analysis of issues of general interest has been particularly appreciated. Technical issues have been taken over by the new work on rules for trading (e.g. firmness etc.). The possibility to discuss different NC provisions was indeed appreciated by stakeholders.

Regarding balancing, ACER received from ENTSOG the paper on the main challenges and shared it with the Balancing TF. ACER has also asked for feedback from NRAs on activities at regional level such as the promotion of market integration e.g. the Roadmap for reform of market integration in ES and PT. Regarding the geographical composition of regions, this is still under discussion (at the last South East Region stakeholder meeting it was raised given the region is too heterogeneous) and we expect that it will be raised again.

Ms Poletti also informed the members that ACM - lead regulator for NW – will step down and she invited volunteers to succeed ACM.

## **8. Investment challenge**

European Network Planning and infrastructure challenge

### 8.1. Update on work in progress

The Director reported on the current work:

Regarding the cross border cost allocations, ACER is aware of 15 investment requests 5 for electricity and 10 for gas.

Regarding work on the Cost-Benefit Analysis, both ENTSOG and ENTSO-E have now prepared (mid -November) their cost benefit methodology for 2014 on which ACER has to deliver an opinion (within 3 months).

Regarding incentives, the EC published a call for tender to support work under Article 13 of the TEN-E Regulation concerning incentives for investments in energy infrastructure. They now have selected the consulting company AF Mercados. In parallel, ACER received all NRAs' update on incentives methodologies and the ACER Recommendation which will take account of the EC study is being prepared.

We have also launched the exercise for the electricity monitoring of TYNDP projects (and PCIs) to result in the ACER opinion “opinion on consistency” scheduled for March 2014.

## **Market Monitoring**

### **9. Market Integrity and Transparency**

#### **9.1. Status update on REMIT implementation**

The Director’s presentation provided an update on REMIT. The main points include an update on Implementing Acts and the steps that will have to be taken as soon as these will be adopted; ACER policy documents that have been delivered and are under preparation; REMIT IT implementation including ongoing developments related to CEREMP (this is in good shape to go online for summer) and ARIS (the first pilot phase has been completed and now we get into the 2<sup>nd</sup> stage – prototype: we are having difficulties to get the test data). The REMIT Implementation phase should focus on development and deployment of IT systems for registration of market participants, data collection and data sharing, and for the effective monitoring of wholesale energy markets. It started with the entry into force of REMIT on 28 December 2011 and will be completed within six months of the adoption by the EC of the Implementing Acts (IAs).

The Director noted that 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, i.e. including purely national cases and cases beyond breaches of market abuse provisions.

#### **9.2. Information sharing between ACER and NRAs under REMIT**

The Director, Ms Groebel and Mr Villaplana Conde presented the draft concept paper circulated. This is the first discussion at the BoR. REMIT sets out provisions for information sharing of relevant information to enable NRAs to cooperate at regional level and with ACER in carrying out monitoring tasks at EU level and to facilitate the monitoring of markets at national and the investigation of potential breaches - but the Regulation does not define the scope of the information to be shared; ACER should also minimise sources of operational risk. ACER and the NRAs are discussing the kinds of relevant information ACER will share with NRA’s and the procedure to put this mechanism in place. A number of fruitful discussions are taking place in the AMIT WG to define a framework whereby this data can be shared. On a case by case basis requests might be a full time job for ACER. The IT requirements will be addressed separately.



In setting the scope of the relevant information, the criteria can be divided under 3 axes: Monitoring at national level: Continuous access against predefined criteria applicable to all NRAs. Regarding the scope of access (relevant data), these are now being discussed. Info sharing for the cooperation at regional level: This should be left at the discretion of the involved NRAs. There should be a NRAs' agreement to grant another NRA access to one NRA's relevant data. The Agency mainly acts as an agent of the permitting NRA and the operational reliability requirements apply. Cooperation with the Agency on a suspected breach of REMIT on a case-by-case basis.

The next steps, include in January, February a formal NRAs consultation through the BoR, in February the adoption of the act defining criteria for sharing info, and subsequently, the definition of data security requirements.

The Director noted that this was the first opportunity to discuss this issue. He clarified that info sharing is only related to NRAs not to third parties. We already have a MOU between ACER and NRAs.

The discussion will be pursued at the January BoR

### 9.3. Implications Interaction between the new Market Abuse Regulation and REMIT

Mr Villaplana Conde presented the latest progress: Whilst the review of the MiFID is still in the legislative procedure, a political agreement on MAR has been reached. Final adoption of the MAR would take place after a final political agreement on MiFID II, since aspects of the MAR (notably its scope) depend on the final text of MiFID II and these will need to be aligned. Once adopted, the Regulation would apply from 24 months after its entry into force. The note circulated provides an overview of the new MAR and an initial assessment of the potential interaction between MAR and REMIT. This has possible implications for how parts of REMIT are interpreted which the relevant AMIT WG task forces will examine further. It is also important since all trades that are defined as financial instruments will be regulated by MAR, and the scope of what is a financial instrument that is currently being proposed covers most energy non-spot trades. The AMIT WG will continue analysing the texts.

Mr Borchardt noted that DG ENER and DG MARKT reviewed the text and their first conclusion is that REMIT needs no adaptation.

### 9.4. ACER MOU with FERC

The Director presented the draft MoU. This has been developed by the Agency and FERC and aims at establishing a framework of consultation, cooperation and exchange of information in relation to the supervision of wholesale energy markets carried out by FERC and the Agency (see Section 2(1) of the MoU). The MoU is without prejudice to the respective competence of the Union and its Member States, and to the possibility for Member States and / or NRAs to conclude agreements with FERC. In the MoU, consultation is envisaged mainly with regards to (i) general supervisory issues; (ii) issues relevant to the operations, activities and regulation of wholesale energy markets. The MoU is aimed at exchanging best practices, experiences and views as regards the respective policies and activities of FERC and the Agency. Under the MoU, the Agency does not intend, nor has any obligation to share with FERC information it collects from market participants pursuant to Article 8 of REMIT, namely trade and fundamental data.

The finalisation and signing of the MoU, is currently planned for January subject to the agreement with the EC.

Mr Borchardt clarified that, in principle, the EC has no substantial problem. However, the Commission has to launch an internal approval process as DG ENER needs to consult the external service and the EWG of the Council.

The Director will write to the EC to formally request the launch of this internal procedure. The MOU is about sharing good practices and information rather than data in the context of sharing approaches and best practices on how you implement monitoring.

#### 9.5. Update on REMIT Implementing Acts

Mr Borchardt reported that the discussions have been very constructive with ACER and appropriate solutions have been found on most of the outstanding issues. Next week, on 20 December, the first Committee meeting will be held for the discussion on the implementing acts and their adoption is scheduled for the second quarter 2014.

### **10. Implementation, Monitoring and Procedures**

#### 10.1. 2<sup>nd</sup> MMR

Mr Locquet reported that the 2<sup>nd</sup> ACER and CEER's Annual Report on the results of monitoring the internal electricity and natural gas markets were presented to the European Parliament's ITRE Committee on 27 November. The report was officially presented to a wider public the day after at a workshop on 28 November. The report will now be printed.

The Director informed the Board that discussions have already started on the approach for next year report. The EC evaluation gives also some orientation on its future scope. He expressed his gratitude to Mr Locquet and Mr Mayer and all colleagues involved in the preparation of the report.

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

### **11. Internal Energy Market: Electricity and gas**

#### 11.1. Conclusions of the Florence Forum

The conclusions of the Electricity Regulatory Forum held in Milan on 12, 13 November were circulated for info.

#### 11.2. Letter on MiFID

A letter to Mr Ferber (MEP) from the ACER Director was circulated regarding the potential impact of MIFID II on wholesale markets.

11.3. Final ACER guidance for CAM NC amendment on incremental and new capacity

Following a written consultation of BoR members and the comments received the ACER Guidance on the development of amendment proposals to the NC on CAM on the matter of incremental and new capacity has been adopted and sent to the Commission.

**12. Others**

12.1. Next Meetings

A revised calendar was circulated. This will be definitive after the confirmation of the 2<sup>nd</sup> visit of the ITRE committee to the ACER premises.