

**27<sup>th</sup> ACER Board of Regulators meeting**  
**Tuesday, 16 April 2013, 14.00-19.00**  
**CNE, Calle Alcalà 47, 28014 Madrid**

**Minutes**

**Participants**

Member States	Name <sup>1</sup>	Member States	Name
Austria (E-Control)	M: Walter Boltz O: Dietmar Preinstorfer O: Zsuzsanna Szeles	Latvia (PUC)	O: Lija Makare
Belgium (CREG)	A: Koen Locquet	Lithuania (NCC)	A: Vygantas Vaitkus
Bulgaria (SEWRC)	Excused	Luxemburg (ILR)	Excused
Cyprus (CERA)	M: Georgios Shammias	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	O: Miroslav Belica	Netherlands (NMa)	A: Jan de Maa O: Menno Van Liere
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	M: Marek Woszczyk
Estonia (ECA)	O: Airi Noor	Portugal (ERSE)	A: José Braz O: Jorge Esteves
Finland (EMV)	M: Riku Huttunen	Romania (ANRE)	O: Sorin Bulagea O: Alina Toche
France (CRE)	A: Philippe Raillon O: Michel Thiollière	Slovakia (RONI)	Excused
Germany (BNetzA)	A: Annegret Groebel O: Daniel Müther	Slovenia (AGEN-RS)	A: Jasna Blejc
Greece (RAE)	O: Katerina Sardi	Spain (CNE)	A: Tomás Gómez O: Gema Rico O: Rodrigo Escobar
Hungary (HEO)	A: Hajnalka Kelemen	Sweden (EI)	O: Petra Lindmark A: Caroline Tornqvist
Ireland (CER)	A: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Martin Crouch O: Clemence Marcelis
Italy (AEEG)	A: Clara Poletti		

Observers	Name
ACER	Alberto Pototschnig, Fay Geitona, Christophe Gence- Creux,
European Commission	Klaus-Dieter Borchardt, Inge Bernaerts, Kristof Kovacs
CEER	Natalie McCoy

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

**Main conclusions from the meeting:**

1. *Members had a discussion on the progress on ERI and GRI.*

*Regarding ERI, members noted the importance of achieving the roadmaps within the defined timeframe and of avoiding any further delays particularly with regard to day-ahead and intraday. To this end the members noted the need to exert pressure on all stakeholders involved to ensure their full commitment and the need to report in a transparent way at the next Florence Forum on progress as well as on the responsibility for any delays. Members noted the importance to keep the level of ambition, continue the efforts and devote resources to achieve progress, with the understanding that the Regional Initiatives is a voluntary process and, therefore, there is no process for dispute settlement or for enforcing implementation of the Roadmaps. Until the proper enforcement of the network codes we should try to resolve the remaining issues and Members encouraged the Commission to exert political pressure to this end.*

2. *Members endorsed all the initiatives on the early implementation of the CAM NC, the CAM Roadmap and the pilot projects. The members welcomed the opportunity to explore new areas proposed for early implementation (e.g. balancing and interoperability) in order to boost market integration. The BoR Chair noted that through the evaluation exercise we will also look at the Agency's performance and its working methods and the Regional Arrangements and any possible improvements in the RI process and groupings, as well its coordination with the EIP process, where appropriate, in coordination with the Commission and stakeholders.*

3. *The BoR provided a moral commitment on the draft Framework Guidelines on rules regarding harmonised transmission tariff structures for gas with the exception of chapter 3 on cost allocation which needs to be further developed and subject to 2 open issues which will need to be reconsidered and on which a definitive position is pending: the publication of RAB and the minimum notice period of at least 30 days (and at least 60 days advance notice that major changes are expected) for NRA decisions or TSO communication on changes of the reference prices. The Director will inform ENTSOG on the moral commitment on the draft FGs in order for ENTSOG to start working on the NC. The BoR committed to constructively pursue work on chapter 3 on cost allocation within the timeline proposed - November 2013 - for the definitive FGs to be adopted. The Commission agreed with the timeline proposed.*

4. *The BoR took note of the progress on the preparation of the ACER opinion on the Operational Security Network Code. The BoR invited the AEWG to further discuss the problems identified and the way forward with a view to submitting a proposal to the Director. The Director will, subsequently, submit his proposal for a formal opinion of the BoR in May.*

5. *The BoR took note of the progress of the preparation of the ACER opinion on the NC on Load frequency control and reserves.*

6. *The BoR approved the scoping paper on tariffs and incentives whilst taking note of the possible delay in the further work in this area due to reprioritisation of activities in the light of the budgetary constraints facing ACER.*

<p>7. The paper on “Future strategy on ACER/BoR: Roadmap of Conclusions and actions” was agreed by members and welcomed by the Commission and the Director. At the next meeting the Chair will present his proposal for prioritising the actions included therein and the monitoring of their implementation.</p>
<p>8. The BoR welcomed the update on the preparation of the MoU on REMIT between ACER and NRAs, the questionnaire for monitoring the national progress on the implementation of the REMIT, and the update on the Commission’s implementing acts.</p>
<p>9. Members welcomed the roadmap of the planning and work for the second joint ACER-CEER Market Monitoring Report.</p>
<p>10. The BoR received an update on the EIP Regulation and took note of the Commission’s timeline for ACER and NRAs tasks.</p>

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

### 1. Opening

Lord Mogg welcomed Mr Klaus-Dieter Borchardt, appointed as Director as of 1<sup>st</sup> April 2013 in Directorate B of DG ENER and expressed the keen interest of the BoR members to continue the excellent cooperation with the Commission.

#### 1.1 Approval of the agenda

*BoR Decision agreed: (D 1)*

*The agenda was approved.*

#### 1.2 Approval of the minutes of the 26<sup>th</sup> BoR meeting

The minutes were circulated as well as the dissenting opinion by E-Control and BNetZa on the ACER Recommendation on a new Regulatory Framework on ITC.

*BoR Decision agreed: (D 2)*

*The 26<sup>th</sup> BoR minutes were approved.*

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

#### 2.1 Update on recent developments

Mr Borchardt reported on the IEM conference on Monday 8 April 2013. Commissioner Oettinger made the opening speech and the panels discussed three main themes: the main challenges focussing on system changes related to increasing renewables’ penetration; investments in grids and storage (and the importance of a stable and fair regulatory framework conducive to investments); and empowering consumers, including demand response and smart meters potential. The discussions were very constructive and there was a common understanding on the key future challenges.

- Planning group & Annual Priority List

The Planning Group took place on Friday 12 April and Ms Bernaerts reported on the discussion which mainly focused on the overall progress on electricity and gas Framework Guidelines and Network Codes and the three year plans as well as priorities for 2014. Ms Bernaerts reported on the idea that the Commission presented at the last planning group meeting to have a background media session on Network Codes with a view to increasing the transparency and the legitimacy of the process (triggered by recent press coverage on the grid connection NC). At the next planning group in June the programme for this media session will be further discussed.

Lord Mogg welcomed this initiative which indeed enhances transparency and noted the links to the Roadmap which incorporates several suggestions to improve transparency. He underlined the need to join efforts and ensure the coherence of actions.

Regarding the Commission's draft annual priority list, she reported that the public consultation ends on 13 May. Following the public consultation the Commission will have to undertake the interservice consultation, which is envisaged to end early August and the publication of the Commission's Decision on the annual priority list is expected on September.

The ACER Director noted that his proposal for the 2014 ACER WP due by 30 June would need to be based on the Commission's consultation paper given the above timeframe. Mr Borchardt noted that this approach is acceptable subject to the clarification that the Commission's formal Decision is pending.

### **3. Completion of the Internal Energy Market: ERI**

Lord Mogg introduced the debate. This session will focus on the benchmark of progress in the implementation of the cross-regional roadmaps and the identification of barriers and delays.

Mr Christophe Gence-Creux reported on progress. Four cross-regional roadmaps were developed in 2011 following the Energy Council set the target for the completion of the internal market for gas and electricity by the end of 2014. The four cross-regional roadmaps set the key milestones and commitments to make to complete the internal market for electricity.

#### **Cross-regional roadmap on day-ahead and intraday**

The overall objective of the day-ahead Roadmap is to achieve a EU-wide market coupling by the end of 2014. The key milestone in the cross-regional roadmap was the completion of market coupling in the North West Europe (NWE) region by the end of 2012, with subsequent extension to neighbouring regions. Currently, such goal is expected to be achieved in November 2013 (11 months later than originally envisaged). A few issues still need to be resolved and it is hoped that they can be addressed in time to have NWE market coupling to go-live in November 2013. A critical point is the fall back procedures and the TSOs and PXs indicate that solving this important issue before November 2013 could be problematic. The market participants were consulted on this. The outcome of this consultation will be presented at the end of April. Mr Christophe Gence-Creux noted that no

further delay should be allowed for NWE. NRAs should push TSOs and PXs to solve any remaining issues.

Mr Gómez reported on the progress in the SWE region. Since last May there is a roadmap and TSOs and PXs are working together. During last SWE IG meeting held on March 1<sup>st</sup> some concerns were raised as regards follow-up of Spanish TSO, REE, of various CACM-related projects, namely the implementation of pre- and post-coupling processes, the adhesion to CASC EU platform and the extension of BALIT balancing exchange agreement. The declaration of the TSO on resources constraints surprised CNE which took prompt action and the issue seems to be already resolved (last week REE signed both CASC and BALIT MoUs). On the other hand, the signature by REE of the contract is expected soon with the service provider (PMO) as regards the pre- and post-coupling.

In the CEE region, discussions are on-going to extend the market coupling between the Czech Republic, Hungary and Slovakia to Poland and Romania. The extension to NWE via the SwePol cable is also discussed in the scope of this project.

Ms Groebel, as lead Regulator of the day-ahead cross regional roadmap, noted the importance to keep the date of November and retain the pressure towards all involved parties. The discussions on fall-back procedures should not delay the go-live of the project. The suggested solution – the reduction of the notification timing – appears reasonable given that such incidents will occur very rarely.

Ms Poletti reported on progress on the day-ahead in the CSE region: At the last Implementation Group meeting in mid-March in Milan, TSO and PXs presented a roadmap endorsed by the Implementation Group with an expected 'go-live' in December 2014. The design stage is being scheduled by July, then NRAs will review the plan and the implementation stage is foreseen in 2014. TSOs and PX consider the plan realistic and the target day feasible. Regarding capacity calculation no roadmap exists yet. Regarding the intraday, the lack of time and delay in the process in NWE affects their region as well. The region is now working on the introduction of new explicit auctions sessions.

#### Intraday

Mr Gence-Creux reported that the project has been subject to significant delays as power exchanges have been unable to agree on the service provider to build the intraday platform. As a result we would expect new-wide implementation of an intraday platform towards the end of 2014. Mr Gence-Creux reported that the TSOs gap analysis has been finalised. The call for tender organised by PXs has entered into the final selection phase. Following the deadline to receive offers on February 8, involved PXs and TSOs have started evaluating the two remaining proposals, but the PXs did not agree on the winning offer by Friday, April 12. It is expected that an escalation will be notified to ACER and thus the NRAs of the region have already mapped the way to produce an informal opinion. A proposal of the informal ACER Opinion is being drafted.

Other issues at stake on the intraday include the cost-sharing issue to be addressed by NRAs and which remains the most challenging issue.

Mr Dehlbæk reported on the process for selecting the platform and the remaining issues on the cost sharing solution.

Mr Crouch suggested reporting at the forthcoming Florence Forum on progress on both day-ahead and intraday. He also confirmed that PXs were unable to agree on the platform. However, there are preparatory actions taken and a meeting is being set up amongst

regulators of the NWE region to try and agree the main elements of the informal ACER opinion.

### **Cross-regional roadmap on long-term transmission rights**

Mr Gence–Creux noted that this Roadmap is mainly in line with the envisaged calendar. Regional work plans will be prepared to implement the “wish-list” and pave the way to the Single European set of rules for the 2014 Long-Term auction rules. These Regional Work plans will have to be prepared in close collaboration with the ACER LTR TF and relevant TSOs and presented at the next ERI CG meeting on 26 April. NRAs in close coordination with TSOs have to identify quick wins to be implemented this year and remaining elements to be harmonised next year.

Initiatives to implement FTRs have been launched in the CWE region and on the DE-DK border.

The Agency, with the support of EI, has started an investigation on barriers between the Nordic and Continental Markets.

### **Cross-regional roadmap on capacity calculation**

Mr Gence-Creux noted that the implementation of the flow-based (FB) allocation is still under study in the CSE and CEE regions. A roadmap for implementing FB allocation must be defined as soon as possible. Following the agreement between TSOs on the DE-PL border to tackle loop-flow problems, the European Commission and the Agency invited relevant NRAs to implement a similar agreement on the DE-CZ border.

Mr Boltz made a presentation on FB market coupling in the CEE region. A FB method is elaborated (since the end 2011), but no agreement has been reached on its actual implementation and on the bidding zone structure. The CWE can achieve welfare gains from FB with the same and similar bidding zone structures – to be used as an example and ensure compatibility. Only by retaining the existing binding zone structure a realistic implementation date can be achieved. ENTSO-E early implementation on bidding zones is starting as the relevant process for decision on that issue. Other means need to be used to remedy loop-flows situation (on the example of the PL-DE border). Amendments are needed to make it compatible with CWE. Market coupling cooperation with NWE needs to be enhanced. He suggested a realistic implementation plan to be proposed by TSOs and PXs and a commitment at the NRAs-TSOs meeting on 2 May. At this meeting the implementation plan needs to be discussed and, if no agreement is reached, the region may revert to ACER for a solution.

### **Cross-regional roadmap for balancing**

Mr Gence-Creux presented the 5<sup>th</sup> area for candidate pilot projects. A bottom-up experience is needed for implementing the different stages of the European balancing market as defined in the ACER Framework Guidelines. Once selected, clear roadmaps are expected for these pilot projects. Net benefits (cost/benefit analysis) and feasibility will need to be carefully assessed. ENTSO-E launched a call for pilots on 4 February. 1st April 2013 was the deadline for submission to ENTSO-E of pilot projects nominations. On 1st June 2013 ENTSO-E will decide the projects that finally will be proposed to Market Committee as balancing pilot projects; on 25th June 2013 the Market Committee is expected to approve the proposed initiatives.

Mr Borchardt underlined that the Commission places particular emphasis on progress on the day-ahead and intraday cross regional roadmaps which are key for the internal market completion. Regarding the day ahead, a positive signal noted was that the Polish and German TSOs managed to find a solution on the loop flow issue. Regarding the intraday, the Commission takes note that there is a process to deal with the problems in the selection of the platform. The Commission suggested intensifying efforts to achieve the roadmaps within the defined timeframe and of avoiding any further delays.

The ACER Director noted that there is still a lot of work needed and noted that the intra - day and day-ahead roadmaps are those against which we will be judged particularly given the 2014 deadlines for the IEM completion. Thus we cannot afford any more delay and we need to ensure that European interest prevails. The initial deadline for day-ahead was December 2012 and now we are witnessing a further delay to November 2013.

Lord Mogg concluded the discussion as follows:

Members noted the importance of achieving the roadmaps within the defined timeframe and of avoiding any further delays particularly with regard to day-ahead and intraday. To this end the Members noted the need to exert pressure on all stakeholders involved to ensure their full commitment and the need to report in a transparent way at the next Florence Forum on progress as well as on the responsibility for any delays. With the understanding that the Regional Initiatives is a voluntary process and thus there is no process for dispute settlement or for enforcing implementation of the Roadmaps, members noted the importance to keep the level of ambition, continue the efforts and devote resources to achieve progress. Until the proper enforcement of the network codes we should try to resolve the remaining issues and Members encouraged the Commission to exert political pressure to this end.

#### **4. Completion of the Internal Energy Market: GRI**

Ms Poletti provided an overview on the basis of a note uploaded for the BoR which outlines the latest developments in the Gas Regional Initiatives (GRI), the main messages ACER for Madrid and the perspectives for future GRI work both at regional level and in relation to the early implementation of the Network Codes in gas.

She noted that the early implementation of the CAM NC started one year ago ahead of the adoption and release of the CAM Roadmap. This year the PRISMA platform was launched and went live on 1<sup>st</sup> April with the first auctions taking place. The CAM Roadmap is a very successful initiative. It is a project which reflects a lot more than setting an IT device for auctions, and is crucial for harmonisation of the rules for access to the network.

The pilot projects included in the CAM Roadmap are on track. NRAs are taking action where and when needed. Early implementation is proving successful so far in identifying and anticipating the changes required in national regulation. Issues and challenges identified by pilot projects (such as: auction premium, interrelation with other NCs, bundling, costs, etc.) seem not to be so serious to hamper implementation at this stage. The open questions will need to be kept on the agenda for discussion in future meetings of CAM Coordination & EU Stakeholders groups, but overall the CAM Roadmap is proving useful for bringing all parties together, identifying issues, looking for appropriate solutions and promoting transparency and stakeholder participation.

Another issue she drew attention to is whether the GRIs should start exploring the potential for early implementation work in the areas of balancing and interoperability, by discussing

them with Lead Regulators and other NRAs in the framework of the GRI Coordination Group. She also asked for the BoR's views on the priorities, whether the GRIs should focus on other areas and members' suggestions to improve the work at regional level and particularly to focus on how the RI's work could help the infrastructure development process within the TEN-E and GRIPs framework.

Lord Mogg underlined that the latter has also been an issue identified in the ACER opinion on the GRIPs recently adopted following a favourable opinion at the last BoR. The Opinion recognised the necessity to clarify the role of the GRIPs in relation to the selection process of projects of common interest of the EIP Regulation involving the four Regional Groups dedicated to four regional infrastructure corridors and it recommended a more streamlined and harmonised approach to infrastructure development activities in the framework of the GRIPs, the Gas Regional Initiative, the TEN-E Regulation, the TYNDP processes, as well as greater involvement of stakeholders. We will also need to look into any improvements on regional arrangements in the context of the ACER evaluation exercise.

Mr Boltz also made a presentation noting that within GRI, projects have different geographical coverage with growing complexity and changing requirements for coordination and reporting. Based on an analysis of transmission system interconnections and operation, as well as infrastructure development needs, the ENTSOG TSOs agreed on 6 regional groupings, in some cases overlapping, to develop the first GRIPs. He noted that we need to reassess and optimise the structure of all different regional groupings and evaluate their usefulness and overlaps. This needs to be discussed and coordinated with the Commission and stakeholders.

The three lead regulators in North-West (ACM), South (CNE), and South-South East (AEEG and URE) regions presented progress in their regions.

In order to improve technical and organisational interoperability of systems in the GRI SSE region, pilot projects are planned on the following areas: interoperability (adoption of common standards); sub-regional integration / Harmonization of procedures; capacity allocation and bundled products (bundled day-ahead capacity allocation mechanism at Austrian –Italian IP, pilot Project IV – GATRAC bundled products, pilot project V - Bundled Product and Capacity Platform – HU-RO, pilot Project VI – Day-ahead bundled product at Cieszyn IP (CZ-PL)); balancing market integration (cross-border Regional Balancing Platform, structure of future regional balancing and trading zones in the SSE region and implementation of the Gas Target Model); infrastructure and SoS and transparency.

In the South region the main areas of work defined by the South GRI for the period 2011-2014 are the capacity allocation mechanisms ( the second yearly auction between Spain and Portugal is going to take place in early summer for allocating capacity in the virtual point from October 2013 –September 2014) and congestion management procedures (CMP), investment in new infrastructure, Ten-Year Network Development Plans and projects of common (European) interest, Security of supply, balancing, tariffs, interoperability, transparency, and developing hub-to-hub gas trading in the South region (regulators have already presented the plan for analysing the models for the integration of the Spanish and Portuguese gas markets in a common Iberian Natural Gas HUB).

In the North-West region the priorities include the coordination of the implementation of network codes (regional interpretation and drafting of implementation plan, approval of ACER, actual implementation, monitoring and reporting on progress) proactive work on making Gas Regional Investment Plan fit for purpose, identifying regional priorities for GRI



NW, exploring the feasibility of implicit allocation, and pre-comitology meetings at regional level.

Mr Borchardt thanked the GRI Coordinator and the lead regulators for the demonstration of the impressive progress. He welcomed, in particular, the work focusing on the early implementation of network codes including on CAM NC. The Commission is keen on supporting this work which is crucial for the completion of the Internal Energy Market.

Lord Mogg concluded that the members endorsed all the initiatives on the early implementation of the CAM NC, the CAM Roadmap and the pilot projects. The members welcomed the opportunity to explore new areas proposed for early implementation (e.g. balancing and interoperability) in order to boost market integration. The Chair noted that through the evaluation exercise we will also look at the Agency's performance and its working methods and the Regional Arrangements and any possible improvements in the RI process and groupings, as well its coordination with the EIP process where appropriate, in coordination with the Commission and stakeholders.

## **Update on FGs and Network Codes: Gas**

### **4.1 ACER FGs on Tariffs**

The Director presented the background and his proposal for the draft FGs for harmonisation of Tariff Structures in gas transportation. The deadline for these draft Framework Guidelines (FGs) for harmonisation of Tariff Structures in gas transportation had been extended to 31 March 2013. However, in March the Commission sent a letter (circulated) asking for additional harmonisation of cost allocation rules. A proposal for the draft FGs was tabled with the aim to be endorsed by the BoR (with the exception of the section on cost allocation which after the Commission's letter need to be developed) so that the debate for the next 6 months can focus on the cost allocation section.

The proposal is to send the draft FGs to ENTSOG and to give them early guidance to start working on the NC on the 'endorsed chapters' with the exception of chapter 3 which will need to be further elaborated. A note on the next steps was circulated outlining the timetable which targets at November for the adoption of the final FGs.

It is envisaged that, following the BoR meeting, the discussion should start on cost allocation and the development of a 'dummy methodology'. Following working level discussions, on 16 June the BoR will have an orientation discussion and a Workshop will be organised after which the public consultation will be launched at the beginning of July until August. The target is to submit the definitive FGs to the November BoR for a formal opinion and subsequently to adopt them.

Mr Boltz noted that despite a few issues under discussion, the FGs have reached a level of maturity. There is a majority in the AGWG members endorsing the main chapters and keen on not reopening the substantive issues in order to send the draft FGs to ENTSOG to start working on the NC. Otherwise the NC will not be prepared before 2015. A commitment was thus sought not to revisit substantive issues (although in developing chapter 3 we may still need to make some minor amendments, such as on definitions).

Lord Mogg sought from the BoR members a moral commitment to endorse the chapters (with the exception of chapter 3) with a view to send the draft to ENTSOG and start the preparation of the NC.

3 members raised concerns about the publication of RAB and the minimum notice period of at least 30 days (and at least 60 days advance notice that major changes are expected) for NRA decisions or TSO communication on changes of the reference prices.

The Director suggested that the BoR may morally endorse the FGs with the exception of chapter 3 and the subject to the two specific issues which were raised in the discussion. ENTSOG should be informed accordingly.

Mr Borchardt noted that the Tariff NC is essential for the IEM completion and acknowledged that the cost allocation methodology needs a proper assessment. In this context, the Commission can accept the November deadline as the new day for the submission of the revised FGs. He also explained that the FGs do not need to dictate only one allocation methodology. He suggested that ENTSOG is fully involved in the discussion in chapter 3 on the cost allocation.

Lord Mogg and Mr Boltz both clarified that ENTSOG should start imminently to work on the NC (the chapters on which there is moral commitment for their endorsement) and, in parallel, ENTSOG will be involved in the development of chapter 3.

BoR Decision agreed: (D 3)

*The BoR provided a moral commitment on the draft FGs with the exception of chapter 3 on cost allocation which needs to be further developed and subject to 2 open issues which will need to be reconsidered and on which a definitive position is pending: the publication of RAB and the minimum notice period of at least 30 days (and at least 60 days advance notice that major changes are expected) for NRA decisions or TSO communication on changes of the reference prices. The Director will inform ENTSOG on the moral commitment on the draft FGs in order for ENTSOG to start working on the NC. The BoR committed to constructively pursue work on chapter 3 on cost allocation within the timeline proposed - November 2013 - for the definitive FGs to be adopted. The Commission agreed with the timeline proposed.*

4.2 CAM NC – Comitology process

Mr Borchardt reported on the Comitology process which provided a favourable opinion on 15 April on the adoption of the CAM NC. The Commission's initial proposal for the application for the code was 18 months following its entry into force but this was not accepted. Instead the Member States proposed 36 months which, as noted by the EC, was unacceptable and inconsistent with the 2014 deadline for the completion of the IEM. Eventually agreement was found for the application of all the provisions of the network code within 27 months (November 2015) after its entry into force.

Ms Bernaerts also reported on the detailed discussion: Regarding the capacity set aside for the short term, the percentage of 20% of the existing capacity was retained. The amount of incremental capacity held back for short-term auctions (currently 10%) was also retained.

Regarding the mandatory bundling, the provisions were left unchanged as proposed by the Commission.

Ms Bernaerts noted the usefulness of the participation of the ACER representatives at the Comitology Committee which helped to inform better the discussion and to increase the understanding of the Member States.

## **5. Update on FGs and Network Codes: Electricity**

### **5.1 ACER Opinion on operational security NC**

Mr Crouch gave a quick update on the process for the development of the Network Codes including the CACM which will be the first Network Code to be submitted to comitology and the grid connection NC which is now with the EC for review.

He gave a presentation on the progress on Operational Security NC. The Network Code is under review by ACER (it was received on 28 February). The ACER opinion is due by 28 May and this first BoR discussion aims to facilitate the development of the ACER opinion and the BoR formal opinion scheduled for 13 May. The evaluation of the network code is still pending but some preliminary concerns (which have not yet been properly discussed at the AEWG to be held on 25 April) were highlighted in the presentation.

Mr Crouch reported that after the trilateral meeting on 22 March between ACER, EC, and ENTSO-E a workshop was held on 9 April and discussions will continue.

The BoR also discussed the next steps.

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

*The BoR took note of the progress on the preparation of the ACER opinion on the Operational Security Network Code. The BoR invited the AEWG to further discuss the problems identified and the way forward with a view to submitting a proposal to the Director. On the basis of this the Director will table his proposal for a formal opinion of the BoR at its next meeting in May.*

### **5.2 ACER Preliminary Opinion on NC load-frequency control and reserves (LFC & R)**

Mr Crouch reported that the public consultation on the LFC&R dated 17 January 2013 closed on 2 April and ENTSO-E are in the process of re-drafting the code. ACER shared a preliminary opinion (which was also circulated to members) with ENTSO-E following the March AEWG. This covered justification for significant deviations from current practices, national scrutiny, coherence with other codes and cost recovery. The purpose of tabling at the BoR was to raise awareness. Mr Crouch invited members to communicate any comments sooner rather than latter in order to assist the preparation of the ACER Opinion.

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

*The BoR took note of the progress of the preparation of the ACER opinion on the NC Load frequency control and reserves.*

### **5.3 Scoping Paper: Tariffs and incentives**

Mr Crouch presented the paper which, which following the analysis performed by the AEWG, set the priorities in 2013 regarding tariffs and incentives. It proposes that any problems with regard to tariff structures and investment incentives should be addressed with the instruments provided by the Third Package and the TEN-E regulation. The paper recommends working on tariff structures in the framework of the recommendation on the appropriate range or ranges of charges for producers in line with Article 4 and 5 of

Regulation 838/2010. Furthermore, according to Article 13 (5) of the TEN-E regulation, the Agency shall facilitate the sharing of good practices and make recommendations regarding incentives for PCIs by 31 December 2013 on the basis of a benchmarking of best practices by national regulatory authorities and regarding a common methodology to evaluate the incurred higher risks of investments in electricity infrastructure projects. The paper recommends that the Agency develops the recommendations on incentives based on article 13 (5) of the TEN-E Regulation. The annex was circulated only for information and NRAs were asked to check it for accuracy and send comments if necessary.

The BoR approval of the scoping paper was sought with the aim to send the paper to the European Commission and ENTSO-E as a basis for the scoping discussion.

The Director welcomed the analysis and recommendations but noted that in his note on the budget implications on the 2013 Work Programme (which was endorsed by the BoR in its previous meeting) the ACER work on incentives was indicated as a potential negative priority if additional resources were not assigned to deal with the new tasks envisaged for the Agency by the TEN-E Regulation. Similarly, with regard to tariffs, in his view, ACER should limit its ambition and postpone a more general approach.

BoR Decision agreed: (D 6)

*The BoR approved the paper whilst took note of the possible implications on the timing of any future activity pending a decision on the additional resources for ACER in 2013.*

## **6. Investment challenge**

### **6.1 Energy Infrastructure Package**

Mr Borchardt reported on the adoption of the new TEN-E Regulation. The Infrastructure Regulation was adopted at the Environment Council meeting on 21 March following its adoption by the EP. Its “official signing” is scheduled for 17 April and, subsequently, its publication is expected in May. It will enter into force 20 days after publication in the Official Journal, which is expected in June.

Ahead of the formal entry into force of the Regulation, the Commission has circulated a timetable regarding the tasks for ACER and NRAs. This will be updated following the entry into force of the Regulation. Mr Borchardt noted the acceleration of the timeline for ACER to prepare its opinion on the PCI list (within one month upon receipt of the list against 3 months envisaged in the Regulation) which would allow the adoption of the list by the EC in September.

The ACER Director noted that the timetable (of one month) for the provision of the ACER opinion on the PCI list is unrealistic, particularly given that the BoR needs also to provide its formal opinion on the ACER opinion (pursuant to Article 15(1) of the ACER Regulation). He noted the need to set high standards for the future and that time should not prejudice the quality of the ACER opinion. Work on incentives is also subject to budget constraints pending the adoption of the 2013 budget.

Lord Mogg also underlined the budgetary implications should the 2013 ACER budget were not adapted. The BoR at its last meeting has also endorsed the negative priorities by the Director.

Mr Borchardt underlined his full support in resolving the budgetary concerns regarding the 2013 ACER WP.

## **7. ACER cross-sector activities**

### **7.1 Future strategy on ACER/BoR: Roadmap of Conclusions and actions**

Lord Mogg presented the Roadmap which incorporates the actions in the paper from the BoR chair “ACER performance and BoR future strategy on ACER/BoR: Next steps and conclusions”. Following the agreement at the last BoR, this paper has been translated into a roadmap of actions listed under the three axes (the role of NRAs in ACER, relations with stakeholders and Institutions and strategic thinking) and presented along with the preparatory work needed, the person responsible for their delivery (including for their operational implementation) and the accompanying timetable.

The BoR was invited to discuss and endorse the related actions, following which the BoR Chair will prioritise the proposed actions in light of their importance, the envisaged timetable and the resources available. Progress on their implementation will be reported on a regular basis at future BoR meetings.

Lord Mogg underlined that there is a lot of effort required to implement the Roadmap which would also need the vigorous commitment of the ACER Director, the AWGs and the Commission, as well as the stakeholders particularly for actions such as the review of the groups, the development of the strategic thinking which involves roundtables with stakeholders and biannual meetings with the Commissioner. The actions identified under the theme regarding the role of NRAs in the Agency aim to increase transparency in the BoR operation and include, *inter alia*, the quarterly de-briefing by the BoR Chair and the Director on the BoR meetings, improvements on the organisational arrangements such as streamlining and simplifying the BoR agenda and other actions related to enhancing the communication between ACER and NRAs and improving the information exchange with setting up of “web libraries”. Regarding the relations with stakeholders and EP Institutions the proposals include, *inter alia*, actions targeted to increase the understanding and transparency of the Agency’s acts, such as Citizen’s Summary and documents to explain the overall objectives of the ACER act, a guide/fact sheet to explain how the Agency works and our processes (step by step), the consolidation of the existing Groups and their review with the Commission and ENTSOs and relations with EP and Institutions including with the ITRE Committee and the ACER Contact Group, joint workshops and technical briefing sessions with the Parliament and Commission, presentation of the MMR to the EP, biannual meetings between the Commissioner, DG ENER and senior staff to take stock of IEM Completion.

Furthermore, a series of actions are envisaged to develop a forward-looking strategic thinking to define a shared vision for 2020 and a post-2014 vision for electricity and gas with discussions at the BoR and Roundtables, every six months (the first in mid-2013), at senior level with the principal electricity and gas sector stakeholders.

The efficient tracking of the early implementation of NCs through the Regional initiatives was also reflected in the Roadmap with the inclusion of a regular and fuller agenda item at the BoR on the early implementation of NCs (through the cross regional Roadmaps) as well as the consideration of any improvements to the working arrangements in the context of the Regional Initiatives.

Ms Groebel welcomed the Roadmap and noted the usefulness of the actions included therein. She noted in particular the public debriefings which follows the practice of the BERECA as a very useful exercise. These need to take place with a frequency of every three months. She also offered her support to assist in organising the public debriefings given her experience from BERECA. Other actions such as restructuring the agenda were also welcomed to allow substantive discussions on key issues. She noted also that Regional arrangements need to be made fit for the purpose. Regional arrangements are not binding and thus we need to ensure the efficient allocation of resources which are already constrained. She also welcomed the biannual meetings with the European Institutions and Stakeholders to engage in more strategic discussions. Regulators must often implement a political agenda, but without their prior involvement and engagement in shaping it and thus she welcomed a more proactive approach in shaping this agenda.

The ACER Director supported the actions included in the Roadmap some of which have already been identified in his note informing the BoR on actions to be taken by the Agency to address the findings in the Hilbrecht report on ACER performance.

Mr Borchardt welcomed the actions proposed such as the streamlining of the agenda, the citizens' summary, which reflect best practice and address the need to appropriately communicate the Agency's work to stakeholders and consumers in an understandable way and raise awareness. He warmly welcomed a reinforced dialogue with the Commission through biannual meetings with the Commissioner and senior staff to discuss a more holistic and strategic approach post-2014. In his view, it is indeed worthwhile to develop this strategic thinking despite the resources' constraints and the discussion can also be pursued by regular agenda items in the BoR agenda. The Commission has a keen interest in contributing to this discussion.

Mr Braz supported the proposals whilst suggested undertaking some of these discussions in the margins of the Madrid Forum and Florence Forum and possibly in their context. It is important to use the existing framework and additional opportunities to save time and use efficiently the scarce resources.

Lord Mogg thanked for the comments. He also noted the importance of a full engagement and commitment by all in the actions envisaged noting also that the administrative support in undertaking this work should not be underestimated. He noted that the BoR started off a very good discussion and despite all the elements are important and complementary, it is important that the actions are properly addressed and that work is kicked off. Therefore, the Chair will also look into the need to prioritise and streamline actions ensuring efficiency and avoiding stretching resources.

Ms Groebel also suggested incorporating actions resulting from the evaluation.

BoR Decision agreed: (D 7)

*The paper on the future strategy on ACER/BoR: Roadmap of Conclusions and actions was agreed by members and welcomed by the Commission and the Director. At the next meeting the Chair will present his proposal for prioritising the actions included therein and the monitoring of their implementation.*

## **8. Market Integrity and Transparency**

### **8.1 Draft questionnaire on NRA implementation (monitoring, reporting and sanctioning)**

Mr Braz reported on the Questionnaire circulated at the BoR on the NRAs implementation. Following the survey in early 2012, the AMIT WG has developed a follow up questionnaire to provide an updated picture of how NRAs are progressing in implementing REMIT at a national level, including the level of resources foreseen for monitoring, investigations and enforcement under REMIT. Topics covered against which the national implementation will be measured include the organisation of monitoring, the national enforcement powers and resources, the option to be pursued regarding the registration of market participants and inside information platforms, as well as human resources devoted in undertaking these functions and training needs. The questionnaire will be sent after the 16 April BoR meeting and the AMIT WG Chair hopes to present the main findings at the July BoR.

Lord Mogg noted the importance of this exercise and underlined that this is an excellent initiative.

The Director reported on the FSR Training on REMIT which has been organised exclusively for regulators and the huge interest by NRAs in following this. He found this a timely initiative.

Mr Braz also noted the importance of training of the staff which undertakes this task.

*The BoR took note and welcomed this initiative.*

### **8.2 Final MoU between ACER and NRAs and between ACER and organised market places**

Mr Braz reported on progress and an information note was circulated. The MoU between ACER and NRAs and ACER and organised market places is currently being finalised. The purpose of the MoU is to define the scope and practical terms of implementing the cooperation and sharing of information as foreseen in REMIT between ACER and NRAs. The MoU sets out the practical steps of cooperation between ACER and NRAs regarding the market monitoring (exchange of info on potential breaches), working arrangements with other NRAs in potential cross border cases. Following the BoR on 20 March to which a first draft was circulated, comments on the draft MoU have been received from the NRAs from Germany, Hungary, Sweden, Latvia and Poland.

The comments received will be discussed in the AMIT WG on 24 April and then an updated version will be submitted to the May BoR meeting.

The Director noted that his intention is to have a single text acceptable to all and each NRA. And thus he sought a firm commitment on the content of the MoU. He also reported on a very good discussion between FERC and ACER (in the margins of the FSR training on REMIT) and it seems that ACER will also pursue a MoU with FERC.

### **8.3 Next steps on Implementing Acts**

Ms Bernaerts reported on progress on the implementing acts. A presentation from the last FSR workshop – training on REMIT was also circulated as background information. The

Commission held the consultation on the Implementation of a Data and Transaction reporting Framework for Wholesale Energy Markets from 14/09/2012 to 07/12/2012. The Commission also received ACER Recommendations. Regarding the fundamental data, Ms Bernaerts noted the favourable vote in the Comitology committee which will allow the Regulation to be adopted very soon.

Regarding the implementing Acts, a draft will be ready for the Florence Forum in May. The Commission intends to table it to the Comitology by the end of the summer. She also noted the importance of national measures on penalties being adopted by end of June. Pursuant to the Regulation, the Member States lay down the rules on penalties applicable to infringements of the REMIT Regulation, shall take all measures necessary to ensure that they are implemented and shall notify those provisions to the Commission by 29 June 2013. For the time being only Germany has notified the EC regarding such measures.

#### 8.4 Update on 2013 budget developments

The ACER Director reported on the background. At the last BoR a note was presented by the Director which was endorsed regarding the possible revisions of the 2013 WP due to the budget constraints. The EU Budget for 2013 was adopted and envisages a contribution to the Agency of € 7,369,795 which, together with the assigned revenues from the 2011 surplus, will lead to a total budget of € 8,941,220. This is approximately € 3 million lower than the draft Agency Budget adopted by the Administrative Board on 5 March 2012. The severe limitations in the financial resources available for the REMIT-related IT development in 2013 implies that the orders for IT solutions for data collection and data sharing will have to be postponed. In similar terms, unless additional human resources become available soon for the implementation of the new TEN-E Regulation, the Agency will not be able to deliver in some other areas and thus he would need to revise the 2013 Work Programme.

Mr Borchardt noted the efforts of DG ENER to find a solution and to submit this to the triologue in June.

The Director welcomed the efforts that DG ENER has put on this. He also sought some information on whether and why the EC has postponed the 2014 budget decision to the end of May (as opposed to end of April) and noted the link between the timing of resources becoming available and the timeline of the implementing acts (given that registration starts 3 months after the implementing acts and the full reporting of trade data 6 months after the implementing acts).

#### 8.5 Pilot on REMIT

The Director presented the pilot projects currently been launched by ACER. A comprehensive data collection scheme on transparency and inside information is a key element for effective monitoring of European energy markets under REMIT. In order to facilitate this, ACER intends to run a pilot data collection and monitoring project. A two-week workshop was also organised in March in advance of the launch of the pilot project. The pilot project will involve collecting information from relevant sources (organised market places, trade matching systems, trade reporting systems, bilateral trades etc.) and then running analyses of the data. The pilot will run for a period of 6 months.



## 9. Implementation, Monitoring and Procedures

Mr Locquet reported on the overall planning of the preparation of the 2<sup>nd</sup> Market Monitoring Report. The report is composed of a part on Electricity retail markets and Electricity wholesale markets and network access, a part on Gas retail markets and Gas network access and a part on consumer protection and empowerment (to be developed by CEER). The 2013 Market Monitoring Report will be branded jointly by CEER and ACER. Mr Locquet noted the need for the Customer working group to deliver drafters for the specific chapters.

Two workshops will be organised where NRAs will make presentations to feed into ACER's work on the report. These are on Retail issues (May, Italy) and Wholesale & Network Access (June, Brussels).

A note outlining the roadmap of the planning and work for the joint ACER-CEER MMR has been submitted to the BoR identifying also who is responsible for drafting each chapter as follows:

*BoR Decision agreed: (D 8)*

*The BoR welcomed the Roadmap for the planning and work for the 2<sup>nd</sup> joint ACER-CEER Market Monitoring Report.*

**Part B: Items for Information only - These items will not normally require an oral report at the BoR (unless the agenda indicates a rapporteur) and are for Members to take note and/or ask questions**

## 10. Internal Energy Market: Electricity and Gas

### 10.1 Madrid Forum

The 23<sup>rd</sup> Madrid Forum will take place 17-18 April 2013. ACER slides were circulated to BoR members for information and then submitted to the Commission on 9 April.

### 10.2 Florence Forum

The 24<sup>th</sup> Florence Forum will take place on 15-16 May 2013 in Ljubljana. The official agenda has not been sent yet.

### 10.3 EC's green paper on 2030 energy policy

On 27 March 2013, the Commission adopted a Green Paper on "A 2030 framework for climate and energy policies". The public consultation runs until 2 July seeking stakeholder views on the type, nature and level of potential climate and energy targets for 2030, but also on other important aspects of EU energy policy in a 2030 perspective. The contributions will feed into the Commission's on-going preparations for more concrete proposals for the 2030 framework which will be tabled by the end of 2013.

#### 10.4 Establishment of sub-group on generation adequacy assessment – follow up

An invitation was circulated for the establishment of the subgroup of generation adequacy with the mandate to report by September 2013 on how best to coordinate the generation adequacy assessment in the IEM. Candidates for representatives need to be submitted by 8 April (one representative per MS Ministry or NRA or TSO, ENTSO-E and ACER will also participate). An interim report of the subgroup is for June and the final report is expected for September.

Issues to look at: withdrawal of capacity and likely new investments; - treatment of stochastic inputs, in particular weather patterns; the evolution of demand side response and demand side participation (the need for flexibility and the likely availability of such flexibility at national and cross border scale); treatment of interconnection availability and cross-border flows at times of system stress.

### 11. Others

#### 11.1 Next Meetings

Lord Mogg noted the changes in the calendar. For September the location is pending. In October the GA/BoR meeting are cancelled and, for November, new dates are scheduled given the dates of the Florence Forum.

#### 11.2 AOB

- AB decision on the appointment of the new Bulgarian BoR member  
Doc 13.2a - for information

Ms Evgenia Haritonova was appointed as the Bulgarian Member of the BoR by the Chair of the Administrative Board effective 20 March 2013

2 letters were circulated on the legal status of the Hungarian Energy Regulatory Authority.

The Director reported on the 2<sup>nd</sup> annual ACER conference and the program will be sent to members.