

32nd ACER Board of Regulators meetings
Tuesday, 5 November 2013, 09.00-16.00
CEER, cours Saint-Michel 30a, 1040 Brussels

Minutes - final

Participants

Member States	Name ¹	Member States	Name
Austria (E-Control)	M: Walter Boltz O: Dietmar Preinstorfer	Italy (AEEG)	M: Valeria Termini A: Clara Poletti
Belgium (CREG)	M: Marie-Pierre Fauconnier A: Koen Locquet	Latvia (PUC)	
Bulgaria (SEWRC)	M: A. Toneva Excused	Lithuania (NCC)	
Cyprus (CERA)	M: Georgios Shammas	Luxemburg (ILR)	M: Camille Hierzig
Czech Republic (ERO)	O: Miroslav Belica	Malta (MRA)	A: Anthony Rizzo
Denmark (DERA)	O: Lemmi Tui	Netherlands (ACM)	M: Henk Don O: Debbie vander Pluijm
Estonia (ECA)	O: Külli Haab	Poland (URE)	M: M. Woszczyk
Finland (EMV)	A: Antti Paananen	Portugal (ERSE)	M: Vitor Santos O: Jorge Esteves
France (CRE)	O: Michel Thiollière O: Marlène Doury	Romania (ANRE)	A: Lusine Caracasian
Germany (BNetzA)	A: Annegret Groebel O: Daniel Müther	Slovakia (RONI)	
Greece (RAE)	O: Katerina Sardi	Slovenia (AGEN-RS)	A: Jasna Blejc
Hungary (HEA)	A: Attila Nyikos	Spain (CNE)	O: Fernando Hernandez O: Pablo Villaplana
Ireland (CER)	A: Garrett Blaney	Sweden (EI)	A: Caroline Tornqvist
		United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Martin Crouch O: Feodora von Franz

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

Observers	Name
ACER	Christophe Gence-Creux, Dennis Hesseling, Volker Zuleger, Fay Geitona
European Commission	Klaus-Dieter Borchardt, Inge Bernaert, Kamila Kloc, Aurora Rossodivita, Olivier Koch, Kitty Nyitrai, Kristof Kovacs, Konrad van Keyserlingk
CEER	Natalie McCoy, David Haldearn

Main conclusions from the meeting:
<i>1. The BoR discussed the set of papers on ‘Energy Regulation: A bridge to 2025’</i>
<i>2. The BoR Members provided by consensus (of the members present or represented) a favourable opinion on the draft ACER Recommendation on the network code on operational planning and scheduling and on the draft ACER Recommendation on the network code on operational security.</i>
<i>3. The BoR Members provided by consensus (of the members present or represented) a favourable opinion on the ENTSO-E summer outlook report 2013 and winter review 2012/2013.</i>
<i>4. The BoR provided by consensus (of the members present or represented) a favourable opinion on the ACER Opinion on the network code on Interoperability and data exchange rules.</i>
<i>5. The BoR had an orientation discussion on the draft FGs on rules regarding harmonised transmission tariffs structures and agreed to the use of the electronic procedure for the BoR opinion, to be authorised by the Chair.</i>
<i>6. The BoR provided by consensus (of the members present or represented) its favourable opinion on the draft ACER Opinion on the ENTSG 2014 annual work programme.</i>
<i>7. The BoR received an update on ERI and GRI latest developments.</i>
<i>8. The BoR received an update on the REMIT first annual report; the REMIT implementation plan; the ACER consultation on the extracts of the European register of market participants; and the draft Implementing Acts.</i>

Part A: Items for discussion and/or decision

1. Opening

1.1. Approval of the agenda

Lord Mogg informed the BoR that the Director was excused given he had to participate at the High Level Conference on “completing the Internal Energy Market building an Integrated European Energy Framework” organised by the Lithuanian Presidency.

On 6 November the 2nd public debrief will be given by the ACER Director and the BoR Chair immediately after the workshop on “Energy Regulation: A bridge to 2025”.

Mr Borchardt congratulated Lord Mogg on the new CEER premises.

BoR Decision agreed: (D 1)

The agenda was approved.

1.2. Approval of the minutes of the 31st BoR meeting

BoR Decision agreed: (D 2)

The 31st BoR minutes were approved.

2. Update from the Commission and the Director

2.1. Update on recent developments

- Autumn Package

Mr Borchardt reported that the "public interventions package" will be issued today with a press conference with Commissioner Oettinger. This includes the "chapeau" Communication from the Commission "Delivering the internal electricity market and making the most of public intervention" and the staff Working Documents as follows: Generation Adequacy in the internal electricity market - guidance on public interventions (the EC aims to set out the criteria for the compliance with the IEM); Guidance for the design of renewables support schemes; Guidance on the use of renewable energy cooperation mechanisms; Notification forms and model agreements for cooperation mechanisms; Incorporating demand side flexibility, in particular demand response, in electricity markets. The Commission will provide a detailed presentation next week at the Florence Forum in Milan.

Regarding the EC Guidance on support schemes for renewables, the EC is keen on holding an assessment of all the existing schemes and their impact on the IEM. The staff working documents consider whether support mechanisms are cost-efficient and whether they have an impact on the Internal Energy Market. The Commission opened a tender for a study for June next year looking at the cost of subsidies for conventional and non - conventional fuels. The aim is to avoid distortions to the market and have a look on cost efficiency of support schemes (for example the combination of capacity mechanisms and support schemes are considered to be against the IEM). The Commission intends to contact and discuss with the Member States concerned on the basis of these papers.

Regarding the State Aid Guidelines, Mr Borchardt reported that an orientation debate by the College of Commissioners was held on 8 October. The Guidelines are expected to come out in a couple of weeks to launch the public debate.

- ACER developments

Fay Geitona reported on some forthcoming events including on 7 November 2013, an ACER public workshop on REMIT implementation in Ljubljana, and on 28 November 2013 the ACER-CEER workshop on the presentation of 2nd MMR, in Brussels. She also informed members on an SNE vacancy in the ACER Gas Department for Market monitoring (non-REMIT), for the consideration of interested NRA's.

3. ACER cross sectoral activities

3.1. Update on 2013 ACER WP budget developments

Fay Geitona reported that the Director has written to BoR members that the adjustment of €2.989 million in the 2013 contribution to the Agency from the EU budget was adopted by the budgetary authority following the trilogue meeting on 16 October. The Director has repeatedly expressed his gratitude to Director General, Philip Lowe and Mr Borchardt for DG ENER efforts to ensure the internal transfer. Thus additional resources have been made available to the Agency to complete the development of the REMIT-related IT infrastructure. The AB Decision on the appropriations, transfers and amending the 2013 budget, was adopted on October 31st, 2013. Given the transfer was agreed, the 2013 WP will be revised to reflect the definitive budget. A proposal on the ACER 2013 WP by the Director will be submitted to the BoR (in December) for approval and, subsequently, to the AB for adoption.

Ms Groebel expressed the willingness of the AMIT WG to support the process given the urgency to use the money by the end of the year.

Lord Mogg reported that CEER are engaged in establishing a training programme; the first pilot phase will be on REMIT and is scheduled for February 2014.

3.2. ACER Evaluation

A note from the Commission was circulated incorporating the outline, the methodology and the next steps. Mr Borchardt reported that the EC is now finalising its first evaluation report on ACER.

DG ENER considers this first evaluation to be a light exercise, looking at its activities and achievements to date rather than an in-depth analysis of the suitability of institutional arrangements and ACER competences. The Commission received 17 responses. The key message is that ACER is considered to be a credible and respectable Institution. The Commission will base its report on the results of the public consultation; the ACER WPs (and their mid-term reviews) as well as the EC's opinions, ACER Activity Report(s); and other sources such as the extensive work undertaken by the Agency's Director and the Chair of Board of Regulators in order to improve the Agency's functioning and perception as a follow-up.

The EC's assessment is in principle very positive. There are some questions regarding the institutional design and ACER's independence which relate also to a number of NRAs which are not active in the ACER's work. Regarding the institutional arrangements, the Commission intends to pursue this in its second report including whether ACER's competences should be reinforced notably on cross border issues. Thus this first report will be accompanied with some recommendations whilst not addressing any change to the ACER Regulation. One of the areas for improvements is the ACER website. Mr Borchardt noted that this is not user friendly, has many problems and needs to be improved. ACER could profit from other examples of websites' designs which are much better (such as the ENTSO-E).

At the next BoR meeting the Commission's report will be presented.

Ms Geitona reported that ACER has already kicked off its own discussion and analysis of the responses to the public consultation and intends to take action on a number of areas including on improvements of the website and strengthening the involvement of NRAs and helping them engaged more actively in the ACER work (whilst recognising that the main obstacle has been resources constraints).

Ms Groebel thanked the Commission for the update. In anticipation of the EC's report the BoR Recommendations under preparation reflect the key assumption that ACER is an Agency for the cooperation of NRAs and a key focus of the BoR Recommendations will be the improvement and the close cooperation and ways that we can enlarge the participation of all NRAs in ACER's work and improve our working methods.

Lord Mogg thanked Director Borchardt on the constructive cooperation in the preparation of this report.

3.3. Review of progress on Roadmap

Ms Geitona presented the progress on the Roadmap since the September BoR. Since then a meeting with DG ENER senior staff was held on 7 October devoted to the post - 2014 strategy. The ACER Contact Group meeting on 1 October was cancelled. The next contact with the EP will be the presentation to the ITRE of the MMR (on 27 November). The latest developments on the "Bridge to 2025" are reflected in the Roadmap including the 2 dedicated meetings on electricity and gas, the preparation of the set of papers for the consultation on the "Energy Regulation: bridge to 2025" of the overarching and sectoral papers by 17.12.2013 ahead of the Green paper envisaged for early 2013.

4. **Post 2014 Strategy**

4.1. Energy Regulation: "The bridge to 2025" Overarching paper

Lord Mogg presented the background of this exercise. Early in 2013, a year and a half after the Agency formally began its operation, the ACER Board of Regulators (BoR) in coordination with the Director confirmed its intention to devote more time to strategic thinking. The overarching paper which is entitled "Energy Regulation: A bridge to 2025", aims to identify, in a more holistic way, the key challenges and regulatory responses to 2025. The paper has been finalised electronically and has been circulated to the participants of the Workshop on 6 November. The Gas and Electricity specific sectoral papers have been uploaded for approval. The Consumer Paper was on the agenda of the GA and was approved yesterday. All of these papers form the package for the pre-consultation which will be launched at the workshop on 6 November until 17 December following which the Green paper will be prepared and will be issued for a formal consultation early next year.

Mr Borchardt welcomed this initiative. He considered important to consolidate the view of Regulators on the forward looking and he is keen on participating in the debate at tomorrow's workshop. In his view, the main focus should be the implementation of the current legislative context (including the third package) before any consideration of future legislative measures; he, therefore, welcomed that the overarching paper reflects this priority and does not anticipate, at this stage, further legislative measures. In his view, it is likely that we may see the need for additional measures later on whilst this should not be the starting point. Over the next 12 months with the new Commission and the new EP we

will have a very intensive discussion on what is needed; the EC is already developing its own thinking for 2030.

- Gas, electricity & consumers specific papers

Mr Crouch presented the electricity paper. Current actions and focus include the implementation of the Third Package (Network Codes), Infrastructure Package, REMIT, etc. and early implementation projects through cross-regional roadmaps. But the paper looks beyond this into the future context with increasing share of RES; concerns over generation adequacy; concerns over flexibility; concerns on affordability; very low carbon prices etc. The paper looks into potential responses including enhanced tools to deal with flexibility challenge – generation response, demand response, storage; fresh thinking' about role of consumers, retailers, aggregators and DNOs; and further extension of effective competition. The three main areas identified are the flexibility challenge (and possible measures to incentivise better forecasting; to ensure value of flexibility is appropriately reflected in price signals; to provide market based routes for flexibility; to encourage greater TSO cooperation; to continue to improve network infrastructure and interconnection; to consider new role for DSOs; smarter demand (and possible measures include removing barriers for distributed generation, load and distributed storage to provide reserve and balancing; encouraging development of storage on transmission and distribution networks and on consumer sites; effective regulation of smart networks through appropriate network regulation and performance indicators; enabling consumers to engage but protecting them); and lastly encouraging competition (importance of non-discrimination across all generation and demand and over different time horizons; limit subsidies to the extent needed for new technologies; solutions that facilitate efficient cross-border trade; offering meaningful choices to consumers).

Mr Gence–Creux, welcomed the paper and remarked that it provides a solid basis to engage in discussions with stakeholders.

Mr Borchardt also found the paper a solid basis for seeking stakeholders' reactions. He reiterated the Commission's support to this initiative. In his view, we should not look at the challenges in isolation but more holistically; he welcomed the emphasis on the links between electricity and gas.

Gas paper

Mr Boltz presented the background. The Gas paper has been developed only recently because of the work in parallel on the target model which is also incorporated. The 2 processes (GTM and has Gas bridge paper) have been a bit overlapping. The AGWG has started after the summer thinking about the GTM. Thus the gas paper incorporates some of the work on the gas target model but aims to draw more high level – strategic issues. The paper does not introduce new elements as there have been a number of discussions particularly on the gas target model. The consumers' issues have been taken out from this paper given the new separate paper on consumers.

Mr Boltz introduced the gas paper. The paper describes the background and goes to the major developments which can be predicted such as declining demand (industrial demand very dependent on competitive gas prices) and notably in power generation; global price effects of shale gas in US (EU); growth of LNG trade will link Europe more closely to the global market; the possible new usage of gas in transportation. Although it is crucial to implement the 3rd Package, improvements are needed (e.g. upstream competition not as effective as it could be). Conversely, although demand is declining, and conventional EU

production will decline, dependence on imported gas will grow; LNG will continue to grow but fluctuate according to prices; there is an uncertain potential for unconventional sources in Europe.

Moreover, although gas is the cleanest of the fossil fuels and should replace coal in electricity generation, industry and oil based transport fuels, gas will only achieve this role if the price is "right". Gas-fired power generation can complement growth of wind and solar energy - but again the price is key. The paper addresses a number of the challenges such as the growing interrelations between the electricity and gas sectors; higher flexibility requirements to back-up intermittent renewable electricity generation; the changing role of gas storage and LNG. The paper suggests some areas of action such as the need to encourage new sources and diversification; LNG, pipelines from new areas, European production, biogas; creating alternative infrastructure, and access arrangements to facilitate competition.

Mr Borchardt welcomed the gas paper and made the following remarks: The relation between gas and electricity and target models should indeed be strengthened. We need to work more on what is needed and look into the technical issues. The gas sector is dominated by a few suppliers and this is likely to be the reality in the future. Therefore, given this assumption we need liquid markets. Regarding merging zones, we should not proceed too fast on that as it might not be the only option. Each Member State is looking to have a hub in their territory and this is counter-productive.

Conclusion

The Chair concluded that the papers will be entitled discussion papers. The gas and electricity paper will incorporate the comments above and be finalised for circulation after the workshop of 6 November. Regarding the process, the authors and Chairs will hold a meeting and will come forward with the process for the preparation of the Green paper for the December BoR.

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

5. Electricity

5.1. Oral update on the FG and NCs

Mr Crouch gave an overview of progress on the FGs and NCs highlighting a number of key issues: All TSO" proposals/decision making - the EC is still in discussion with ENTSO-E. Regarding the "all NRAs approvals" this is retained with ACER deciding as a last resort however, ACER opinion will be sought in some cases before NRA decisions. On CACM, the treatment of power exchanges (regulate or compete) remains a key issue.

Mr Blaney noted that NRAs need to be involved.

There was a Cross Border Committee meeting on 29 October for the CACM. The EC has delayed sending the full text of the CACM NC to Member States.

Ms Bernaerts noted that the EC would like to minimise the delays. The Commission has made all efforts to finalise their proposals in coordination with ACER and ENTSO-E and invited ACER to stay on board in all discussions during the formal Comitology process.

5.2. Update on the FCA NC

The Forward Capacity Allocation NC was submitted to ACER on 1 October 2013 with ACER's Reasoned Opinion due by 1 January 2014. The first draft of the Reasoned Opinion was discussed at the AEWG on 23 October. The draft ACER opinion will be submitted at the BoR on 11 December.

There was a Stakeholder Workshop in Ljubljana on 28 October and there will be an ACER-EC-ENTSO-E trilateral discussion on 8 November. The way forward will be that the ACER Opinion will be issued to allow ENTSO-E to consider revising the NC as certain aspects are not in line with FGs despite these issues have been already communicated to ENTSO-E early in the drafting process.

The BoR took note of the process.

5.3. ACER Qualified Recommendation on OS/OPS NCs

Mr Crouch and Mr Gence-Creux presented the draft ACER Recommendations. The Operational Security and Operational Planning & Scheduling are two of the three System Operation NCs which ENTSO-E has amended after receiving ACER's opinion calling for improvements. The draft ACER Recommendations circulated recommended the adoption of both codes, subject to several amendments as follows:

For the Operational Planning & Scheduling, it is recommended to remove of the new TSO category of 'Outage Coordinating TSO'; to add that NRAs are notified about Regional Security Coordination Initiatives; and to include an obligation of transparency regarding assessment of performance indicators.

For the Operational Security, it is recommended to include explicit regulatory approval for the scope of data exchange between Significant Grid Users and TSOs and modifications of Demand Facilities capabilities; to publish the methodology and criteria for the establishment of contingency list on the ENTSO-E webpage; to explicitly mention that the ENTSO-E annual report should contain operational security performance indications with a per Member State resolution.

Ms Bernaerts welcomed the efforts which have resulted in a consensual network code.

BoR Decision agreed: (D 3)

The BoR Members provided by consensus (of the members present or represented) a favourable opinion on the draft ACER Recommendation on the network code on operational planning and scheduling and on the draft ACER Recommendation on the network code on operational security.

5.4. ACER Opinion on ENTSO-E Summer Outlook and Winter Review 2013

Mr Gence-Creux presented the draft ACER opinion. Pursuant to Article 6(3)(b) of Regulation (EC) No 713/2009, the Agency provides an opinion to ENTSO-E on relevant documents referred to in Article 8(3) of Regulation (EC) No 714/2009 (annual summer and winter generation adequacy outlooks to be adopted by ENTSO-E). This Opinion deals not

only with the Summer Outlook Report 2013, but also the Winter Review 2012/2013. It positively acknowledges the recent efforts by ENTSO-E for the enhancement of the outlook reports. The Agency expects ENTSO-E to carefully examine further possible improvements both in the outlooks and in the review reports, in the light of the stakeholders' contribution to the forthcoming public consultation. It comments positively ENTSO-E's work in a number of areas while making suggestions for clarifications (e.g. it expects ENTSO-E to clarify the treatment of maintenance) and improvement in others including *inter alia*: on the Summer Outlook, it suggests extending the downward analysis during spring period; and the publication of detailed datasheets with forecasts. Regarding the Winter Review, it suggests providing retrospect information and suggests obtaining structured information from TSOs (comparison data does not appear in the SO&WR 2012/2013, while the ENTSO-E System Adequacy Retrospect (SAR) 2012 and the ENTSO-E Statistical Yearbook (SYB) 2012 are not yet published); whichever the ENTSO-E approach for publishing information, the Agency believes that obtaining structured feedback responses further enhances the quality of the review reports and raises their value for stakeholders.

BoR Decision agreed: (D 3)

The BoR Members provided by consensus (of the members present or represented) a favourable opinion on the ENTSO-E summer outlook report 2013 and winter review 2012/2013.

5.5. Preparation of Florence Forum

The agenda for the Florence Forum on 12-13 November in Milan was circulated. ACER will make a number of presentations and the deadline for their submission is 6 November.

6. Gas

6.1. Update on FGs and NCs

Mr Boltz presented an update on work on FGs and NC (including those completed). Regarding CAM NC this was adopted in comitology on 15 April, it was published on 15 October 2013 and will apply as of 1 November 2015. The balancing network code was adopted in comitology on 2 October 2013, and the publication is expected on March (April) 2014; it will apply as of 1 October 2015. On interoperability, an informal MS meeting will be held on 21 January. The draft tariffs FGs will be discussed under point 6.2. The new area of work - rules for trading - is at this stage a scoping exercise, by next year we will have a good idea on what should be included to start the official process.

Ms Bernaerts stated that the focus now should be on the early implementation and monitoring. We need to make use of the time until the adoption and application of the network codes which may be at a later stage and continue to work intensively on early implementation.

Mr Boltz also presented the latest developments on the GTM review. The AGWG started to work on this in September. The first ACER GTM Workshop was held in Vienna on 8 October 2013. The 2nd ACER GTM Workshop will be held on 20 March 2014 in Ljubljana. A concept paper is under development to cover justifications and which problems we plan to assess. Until December, an outline should be ready and we hope to have a final proposal by May 2014. In June – July the finalisation and publication of the GTM is envisaged.

3 workshops are scheduled (8 October with written comments; 20 March 2014 with public consultation; mid-May with written comments) and discussions with stakeholders. An advisory panel has been established to provide expertise and the EC is involved in the process. Following the workshop on October, 3-4 responses have already been submitted. At the first workshop participants noted the following: the priority of completing the 3rd Package implementation, including the development and implementation of Network Codes; changes and improvements could become necessary; the need to assess and define the additional areas where possible additional (regulatory) measures are necessary; there also seems to be broad consensus that the integrated European energy market can bring benefits, however, at the same time costs should be also analysed.

6.2. FGs on Tariff and incremental capacity

Mr Boltz provided the background. On 15 March 2013, the Commission, in a letter to ACER, voiced some concerns with regard to the level of harmonisation the FG is set to achieve in particular as regards cost allocation/determination of the reference price. The deadline was extended 30 November 2013 in order to cover these additional requests. The main issues were presented at the BoR for an orientation discussion. The FGs will be submitted to a written procedure for the BoR formal opinion ahead of 30 November to comply with the deadline. Mr Boltz explained that the version circulated incorporates comments by the AGWG. He presented the main conclusions reached at October AGWG. He also informed the BoR that the Commission provided in parallel their own comments (on 31 October). The Commission in general is satisfied with the approach developed. Several good improvements have been proposed which should be taken on board; however, some issues require a more in depth discussion.

Mr Hesselting presented the comments from the ACER Director.

Lord Mogg suggested having an extraordinary meeting to finalise the FGs in light of the BoR comments, the Director's and the EC's suggestions ahead of the electronic procedure.

Conclusion

An extra adhoc meeting to discuss further the FGs including the Director's suggestions will be soon held to allow the possibility of the BoR electronic procedure ahead of the deadline 30 November. The members agreed in principle on the use of the electronic procedure to be launched for providing the BoR opinion on the Director's proposal for the FGs. The Chair will authorise its launch in the light of the discussions which will take place in order to finalise the FGs.

6.3. ACER opinion on NC on interoperability

Mr Boltz provided an update. ENTSOG submitted the code to ACER on 10 September and there are trilateral on-going discussions between ACER, EC and ENTSOG. The ACER opinion needs to be submitted by 10 December. The ACER Opinion highlights that the code shows a high degree of compliance with the FGs whilst some issues are outstanding. The Opinion also underlines the process by ENTSOG for engagement with stakeholders which has been commendable. The BoR favourable opinion was sought on the draft ACER Reasoned Opinion which includes some recommendations to ENTSOG. The next steps include the submission of the Opinion to ENTSOG; ENTSOG to prepare the revised NC by

December and continuous discussions with ENTSOG and EC to refine the text. On 21 January 2014 the Member States informal meeting will be held.

The Recommendations outlined in the ACER Opinion mainly concern the following issues:

- Single sided nominations (to ensure future common network operation tools are in line with CAM NC);
- “Owner” vs. “TSO” in default rule on flow control, matching and allocation
- Settlement of disputes arising from Interconnection Agreements (deletion of redundant provisions);
- Managing gas quality differences (to reflect better MS competences);
- Data exchange – general provisions (to cover VTPs);
- Common data exchange solutions
- Implementation – cost recovery (delete reference to cost recovery);
- lastly proposals on text refinement and legal consistency definitions, recitals, default rules, criteria, etc...

Ms Bernaerts reported that on Gas Quality there was a broad agreement that it was a MS competency and the Network Code should not stipulate harmonisation. The Commission invited ACER to prepare (with the help of Ms. Rossodivita) one page to describe which aspects of gas quality and odorization are covered in the NC.

BoR Decision agreed: (D 4)

The BoR provided by consensus (of the members present or represented) its favourable opinion on the ACER opinion on the network code on Interoperability and Data Exchange rules.

6.4. ACER guidance to ENTSOG on the development of amendment proposals to the Network Code on Capacity Allocation Mechanisms on incremental and new capacity

Mr Boltz explained the background and presented the ACER Guidance to ENTSOG to draft an amendment to extend the scope of CAM NC to incremental and new capacity. This was submitted for an orientation discussion. When the CAM network code was developed, incremental capacity was not addressed. CEER and ACER have now worked for the past two years on market-based procedures for gas transmission capacity demand identification: “Incremental and New Capacity” and consider there is a need for making CAM NC “fit” for incremental and new capacity. According to Article 7 of the Reg. 715/2009, any interested person can suggest amendments to network codes, notably ENTSOG. ENTSOG will deliver the NC amendment text with consultation within 12 months as agreed by the Madrid Forum. On receipt of ENTSOG’s proposal, ACER will review it, conduct a public consultation and provide a revised proposal to the Commission’s review by mid-2015. Before the summer break of 2015, the amendment is expected to seek Member States’ approval in comitology. The deadline for implementation of the amendment is expected to be 12 months after adoption.

The target is for TSOs to be able to offer incremental and new capacity in the second CAM yearly auction (March 2017).

The draft Guidance provides that when a capacity offer is made at least the following are envisaged:

- Co-ordination requirements between TSOs and NRAs
- Information provision requirements
- Enable CAM Network Code auction algorithm to allow offer of incremental capacity
- Where necessary (e.g. due to inherent limitations of auction algorithm), open season procedures remain admissible.

The next steps include the BoR orientation debate on 5 November and a written endorsement thereafter, in parallel with Tariff FGs, whilst a formal BoR opinion is not requested. On 7 November, ACER will host a Q&A session with representatives from European industry associations who have been involved in the process.

Mr Hesseling explained that the Guidance will probably go out in the form of a letter. The Director was also keen on having an explicit reference to Article 7.7 of the ACER Regulation (the Agency shall decide on the terms and conditions for access to and operational security of electricity and gas infrastructure connecting or that might connect at least two Member States (cross-border infrastructure), in accordance with Article 8.)

BoR Decision agreed: (D 5)

The members took note of the ACER draft Guidance which will be finalised to be submitted to members through an electronic procedure.

6.5. ACER opinion on ENTSOG 2014 WP

Mr Hesseling presented the draft ACER Opinion: On 26 September ENTSOG submitted its final draft Annual Work Programme (WP) for 2014. The ACER opinion on the ENTSOG's WP for 2014 was submitted for a BoR favourable opinion. The draft ACER opinion comments on several issues (including on ENTSOG's intention to work more closely with ENTSO-E includes some suggestions for improvements on a number of issues).

BoR Decision agreed: (D 6)

The BoR provided by consensus (of the members present or represented) its favourable Opinion on the draft ACER Opinion on the ENTSOG 2014 annual work programme.

7. Regional Integration

7.1. Update on the ERI and GRI process

Mr Gence-Creux presented an update on the cross regional roadmaps. The earlier implementation of the CACM target models is a lengthy and complex process. Many important deliverables are still within reach but will require the strong commitment and good will of key stakeholders.

Regarding day ahead cross-regional roadmap it can be a 'success-story' if CSE delivers on time. The NWE project and SWE (following a two-step approach) are still on track to meet the 26 November go-live date (to be confirmed on 6 November). It is possible to achieve before the end of 2014, CZ-HU-SK-RO to be extended to Romania in 2014 and some CSE borders. The optimal is that all the CSE and Swiss borders join.

On intraday, the best case scenario is that the Early Start Agreement (ESA) is signed in November 2013. Since the High Level Meeting on 1 October, the PXs have started the

negotiations with DBAG to agree on the Early Start Agreement. Negotiations are on-going and a meeting is set for next Wednesday 6 November. If the ESA is signed soon, the development of the EU ID Platform could start immediately and we could have it developed, tested and operational in November 2014 with the first local implementation projects to go live before end of 2014. Mr Gence-Creux alerted that any other scenario will miss the 2014 target.

Regarding the Long term cross regional Roadmap, the worst case scenario is the one currently proposed by ENTSO-E in the FCA NC and in the last AESAG meeting which clearly showed lack of ambition and leadership. ACER has asked CASC and CAO to start working on a set of common rules (also due to the slow progress of ENTSO-E) for the end of 2014. The acceptable solution is that the CAO-CASC develop a common platform which will form the basis of the EU allocation platform as set in the Forwards. If the MoU recently signed between CASC and CAO shareholders is endorsed by DG COMP, the preferred solution is that a common IT tool is operational by the end of 2014; a common set of auction rules - as harmonised and in line with the ACER 'wish-list' as possible – should be implemented on all borders operated by CAO-CASC (i.e. 70% of the EU borders with Transmission Rights); the success of this cross-regional roadmap critically depends on the good will of TSOs.

Regarding what is the best short-term remedy to deal with the loop flows problem in CEE, the most reasonable scenario is that CWE goes live at some point in 2014. Best case scenario is that 1) an 'ad hoc' compensation scheme for loop flows is agreed upon which will stay in place until the transmission network is reinforced and 2) all CEE TSOs are fully committed to implement the Flow based mechanism within the shortest possible time frame. Conversely, the worst case scenario is that there is no agreement on an 'ad hoc' compensation scheme, leading to an over deployment of physical phase shifting transformers (PST) which will be painful for the Internal Electricity Market.

Ms Bernanerts encouraged ACER to continue the efforts and pursue as realistic dates as possible on all four cross regional Roadmaps.

Mr Borchardt noted that the EC's opinion was very clearly stated particularly on the importance of the intraday for the IEM at the last Forum. The EC has been asked to intervene if a compromise is not found regarding the platform.

Mr Crouch reported that despite the day ahead slight delay this week hopefully there will not be too much slippage. On intraday we seem to be having some good developments among NRAs including on the comfort letter but there are still problems among PXs.

Lord Mogg underlined that there has been a high level meeting on 1 October which has ejected a degree of pressure and urgency following which the PXs have started the negotiations with DBAG on the Early Start Agreement (ESA). However, PX are looking to extend the timeframe and negotiations are still ongoing.

- *GRI Quarterly Report Q3 2013*

Ms Poletti presented the GRI quarterly report which has been uploaded for info. For the activities which run at regional and cross regional level, the GRI group is working on the CAM cross roadmap version of 11/10. They have identified issues and lessons learned. They had a meeting with ENTSG on the CAM Roadmap. They are working on some proposals to extend it to other network codes, such as balancing, after which the documents will be shared with other regulators.

8. Investment challenge

European Network Planning and infrastructure challenge

8.1. Internal Guidance on the process for Cross-Border Cost allocation of electricity and gas infrastructure projects of common interest

Mr Gence -Creux, gave the background of this paper which was circulated for info. On 25 September 2013, the Agency issued a Recommendation regarding cross-border cost allocation (CBCA) requests submitted in the framework of the first Union-wide list of projects of common interest (PCIs). This Recommendation was aimed at assisting National Regulatory Authorities and PCI project promoters (PPs) in adopting a consistent EU-wide approach to such requests. More specifically, the Recommendation covered:

- The information to be submitted alongside a CBCA request; and
- High-level principles for NRAs to follow when handling CBCA requests.

Furthermore, Article 12(4) of Regulation (EU) No 347/2013 requires NRAs to allocate investment costs across borders within six months of the date on which the last investment request for a PCI was received. Towards this objective, there should be coordinated decisions on the allocation of investment costs in consultation with the transmission system operators (TSOs) concerned and based on a mutual agreement (CBCA agreement). Further guidance to NRAs was thus deemed necessary and this internal guidance is a preliminary step addressing the procedural stages, timeline and ways of coordination between NRAs as to how to implement the provisions of the TEN-E Regulation and the documents to be developed within the CBCA request assessment and approval process, approach and timing for payments. This guidance is intended for NRAs when elaborating their coordinated CBCA decisions for investment requests submitted in 2013. ACER will carefully follow the procedures and aims to improve the aforementioned Recommendation and the present guidance according to the lessons learned from the implementation process. The internal guidance deals *inter alia* with other issues such as the payment issues and template for the CBCA agreement. This document which was circulated for information will hopefully help NRAs in treating investment requests.

Mr Gence-Creux noted that the guidance will not be public. We need to have a flexible approach and ACER is doing their best to help in this respect. This Guidance follows a request by NRAs and this document is not included in the ACER WP. He took note of the comments to the paper which will be further developed.

Market Monitoring

9. Market Integrity and Transparency

9.1. REMIT implementation – status report

Mr Zuleger presented the status report on REMIT implementation covering ACER's progress to date with regards to policy implementation, IT implementation and market monitoring activities. Concerning IT Implementation he explained that the development of the software solution began in June 2013 and is scheduled to complete by early 2014. ACER is also working on the development of data collection and data sharing solutions dependant on the implementing acts and the available budget. The key issues for the IT development are the

continued positive progress on the registration system (CEREMP), the development of market monitoring software, and the development and expansion of the 'pilot project' on data collection. He then presented the IT implementation timeline. Regarding the pilot on the data collection, this will be presented at the December BoR meeting. The upgrade of the operational prototype to become the real system is expected in Q2 2014.

He noted that the implementing acts are quite decisive for the whole IT system.

Mr Zuleger suggested presenting at the next BoR the results of the pilot project and registration system. He noted that with the 2013 budget secured, ACER is working hard to commit the budget by the end of the year for the completion of the IT system.

Mr Zuleger reported that there will be a public workshop on REMIT in Ljubljana on 7 November with a final REMIT Implementation pilot project and prototype project meeting again in Ljubljana on 25 November.

9.2. Launch of the preparation of the annual report on REMIT

Mr Zuleger presented the first annual report on REMIT circulated to members which the Agency must submit to the Commission and make publicly available. According to Article 7(3) of REMIT, ACER need to, at least on an annual basis, submit a report to the Commission on its activities under REMIT and make this report publicly available. There are two main parts one on implementation phase and the 2nd part on MM activities. ACER will now proceed with the publication of the report. The report is covering all of ACER's REMIT activities in 2012.

9.3. PC on EU register of the market participants

Mr Villaplana presented this paper. Pursuant to article 9(3) of REMIT the Agency may decide to make the European register of market participants, or extracts thereof, publicly available provided that commercially sensitive information on individual market participants is not disclosed. This info increases transparency. This public consultation paper is intended to collect views from all parties interested in the implementation of REMIT (market participants, organised markets and other persons professionally arranging transactions, financial regulatory authorities, etc.) on the Agency's proposal for REMIT publication of extracts of the European register of market participants. Comments are invited by 4 December 2013. The plan is to launch this during the ACER workshop this week.

9.4. Update on REMIT Implementing Acts

Oral update from EC – the draft implementing acts were uploaded on Friday

Ms Rossodivita reported that the EC shared the draft of the IA with NRAs and some comments were sent in advance of a public workshop with stakeholders in Brussels on 30 October 2013. The EC is trying to get the draft IAs to the comitology committee in December after which it would hopefully be voted and approved at comitology early in the new year. This would allow the IAs to come into force by Q2 2014 and for data to start being received by Q4 2014.

10. Implementation, Monitoring and Procedures

10.1. 2nd MMR report

Mr Locquet informed the BoR the report will be presented to the ITRE Committee on 27 November and publicly launched at an event in Brussels on 28 November at the Charlemagne Building from 10h00 to 13h15. He noted that he has asked ACER for the final version but he has not yet received it.

ACER clarified that the final version of the MMR will be available at the end of next week as it is still subject to proof reading and thus was not already circulated to the BoR. It will then enter the design phase. As soon as the final product is available, the Director intends to circulate it to BoR members asking them not to disseminate it until the official launch on 28 November.

10.2. Mock trial case: Appeal against ACER decision on East stream

Mr Locquet reported that the AIMP WG together with the legal department of ACER will stage a mock trial case for the purpose of checking the procedures for the Board of Appeal (BoA) which has thus far not received any cases.

Part A: Items for Information only and not for an oral update / discussion

These items will not require an oral report at the BoR. Members are invited to take note of the relevant explanatory notes circulated under the BoR meeting folder. All relevant documents can be found at the BoR meeting folder for the information of the members.

11. Internal Energy Market: Electricity and gas

11.1. Report on the Madrid Forum

The conclusions of the last Madrid Forum on 15, 16 October were circulated.

12. Market Integrity and Transparency

12.1. Appointment of new co-chairs of MMG and RITMG TFs

A note for information is circulated to report on the new ACER RITMG, MMG and WMS TFs Co-Chairs.

12.2. PC on technical formats and standards

The evaluation of responses was circulated for info.

12.3. PC on RRM and RIS Guidelines

The evaluation of responses was circulated for info.

13. Others

13.1. Next Meetings

The calendar was circulated.

13.2. AOB- AB decision

2 AB decisions were circulated for info.

Mr Blaney informed the BoR about the adhoc CEER WG on the future role for DSOs. He will inform all NRAs about the scope of the work of this Group inviting them to contribute to this work.

Mr Nyikos expressed his willingness to offer a gift on the occasion of the new CEER premises.