

**35<sup>th</sup> ACER Board of Regulators meetings**  
**Wednesday, 19 February 2014, 09.00-16.00**  
**CEER, Cours Saint-Michel 30a, 1040 Brussels**

**Minutes final**

**Participants**

Member States	Name <sup>1</sup>	Member States	Name
Austria (E-Control)	M: Walter Boltz A: Dietmar Preinstorfer	Italy (AEEG)	M: Valeria Termini O: Ilaria Galimberti
Belgium (CREG)	A: Koen Locquet O: Geert Van Hauwermeiren	Latvia (PUC)	O: Lija Makare
Bulgaria (SEWRC)	A: Elenko Bozhkov	Lithuania (NCC)	A: Vygantas Vaitkus
Croatia (HERA)	M: Tomislav Jureković O: Sonja Tomašić Škevin	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	excused	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	O: Miroslav Belica	Netherlands (ACM)	A: Remko Bos O: Elozona Ochu
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	A: Halina Bownik-Trymucha
Estonia (ECA)	O: Tiina Maldre	Portugal (ERSE)	A: Alexandre Silva Santos O: Jorge Esteves
Finland (EV)	A: Antti Paananen	Romania (ANRE)	M: Niculae Havrilet A: Lusine Carcasian
France (CRE)	A: Philippe Raillon O: Sabine Hinz	Slovakia (RONI)	excused
Germany (BNetzA)	A: Annegret Groebel O: Daniel Müther	Slovenia (AGEN-RS)	A: Jasna Blejc
Greece (RAE)	excused	Spain (CNMC)	O: Gema Rico
Hungary (HEA)	A: Attila Nyikos	Sweden (EI)	A: Caroline Tornqvist
Ireland (CER)	A: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Martin Crouch O: Feodora von Franz

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

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

<b>Main conclusions from the meeting:</b>
1. <i>The BoR had an orientation debate on the ACER 2014 WP revision.</i>
2. <i>The ACER BoR Recommendations on the Commission's first evaluation of the ACER activities were adopted and will be published with a press release.</i>
3. <i>The BoR had an orientation debate on the Green Paper inputs from the AEWG and AGWG and took note of the timeline and next steps.</i>
4. <i>The BoR had an update on the Commission's report on energy prices and costs.</i>
5. <i>The BoR had an update on the Commission's tentative annual priority list.</i>
6. <i>The BoR discussed the proposed approach on information sharing between ACER and NRAs under REMIT on the basis of 2 papers.</i>
7. <i>The BoR received an update on the preparation of the Commission's Implementing Acts and the preparation for the consultation on the transaction reporting user manual.</i>
8. <i>The BoR had an update on the GTM review preparation and discussed the problem justification paper.</i>
9. <i>The BoR provided by consensus (of the members present or represented) its favourable opinion on the ACER opinion on the Statutes and Rules of Procedure on the basis of the proposed amendments to the Articles of Association of ENTSOG.</i>
10. <i>The BoR provided by consensus (of the members present or represented) its favorable opinion on the ENTSO-E winter outlook report 2013/14 - summer review 2013.</i>
11. <i>The BoR discussed the report on the influence of existing bidding zones on electricity markets. The report will be further discussed at the AEWG taking into account the outcome of the orientation discussion at the BoR meeting and then be finalised.</i>
12. <i>The BoR received an update on ERI and GRI and work on the infrastructure package.</i>
13. <i>The BoR received an update on the launch for the preparations of the 3rd edition of the MMR.</i>

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

### **1. Opening**

#### 1.1. Approval of the agenda

BoR Decision agreed: (D 1)

*The agenda was approved.*

1.2. Approval of the minutes of the 34<sup>th</sup> BoR meeting

BoR Decision agreed: (D 2)

*The 34<sup>th</sup> BoR minutes were approved.*

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

2.1. Update on recent developments

- EC

The Commission's tentative annual priority list for the development of network codes and guidelines for 2015 and beyond was circulated. Mr Borchardt reported that the Commission will launch next week their public consultation on the annual priority list until 23 April.

Mr Borchardt reported briefly on the discussion on the last Planning Group devoted to electricity. The CACM network code will be discussed in Comitology on 10, 11 April. There are still some pending issues and the Commission hopes to be able to have the vote before the summer break.

Regarding the RFG code a trilateral meeting was already held; following another trilateral, the Commission shall launch the Comitology process.

Regarding the Demand Connection network code, the Commission has shared a draft text with ACER and ENTSO-E and feedback is sought by ACER and ENTSO-E by 20 February.

The Operational security code discussions between ACER, ENTSO-E and the EC will start soon.

Regarding the network code on Operational Training, the approach and next steps are not yet defined but the Commission is keen on ENTSO-E doing some more work on this issue (the Operational Security code does not adequately cover the operational training aspects).

On the Forward Capacity Allocation code, there is still a discussion and disagreement on the issue of firmness. The Commission is keen on using the formulation of the third package with regard to cost efficiency. It is expected that ENTSO-E will resubmit the code by end of March.

Regarding the HDVC code, a meeting was held in February; the feedback from stakeholders is a bit negative (stakeholders feel they have not been consulted).

Mr Borchardt also reported on the EC's request to ACER on a fuller Impact Assessment in the context of the FGs on transmission tariff structures.

Mr Hesseling clarified that ACER is not reluctant to work on Rules for Trading, and has in fact already started working on its scoping. The first input received from the expert group indicates that a full framework guideline on this topic may not be needed. ACER is also evaluating how to take account of input from the gas target model exercise.

- ACER

Ms Geitona reported on the latest ACER documents, notably, the ACER opinion on ENTSOs Guidelines for CBA of Grid Development Projects on 30/01 and 13/02 and the ACER

Opinion on ENTSOG's winter supply outlook on 30/01, the publication of the RI status review on 4 February, and the go-live of the day-ahead market coupling in the North-West Europe region.

Ms Geitona informed members that the ACER conference is now set for 10 June 2014 and will have as its main theme REMIT. As a result, the calendar for the meetings of the CEER GA and BoR has been altered. They will both take place on 11 June.

Mr Hesseling also reported on a new date which is not been explored for the away day with AWGs chairs, 12 June (we hope to start with an evening event on 11 June after the BoR).

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

#### **3.1. Revision of the 2014 ACER Work Programme**

Fay Geitona introduced this issue on the basis of a note from the Director submitted for an orientation discussion ahead of the formal approval of the 2014 Work Programme Review on the basis of the Director's proposal (which is envisaged for March). The note circulated presents the activities/deliverables which are considered for de-prioritisation/postponement.

The Agency's allocated budget amounts to €10,188,000 which, together with the assigned revenues from the 2012 surplus, results in a total budget of €10,880,000. This is approximately €4.6 million lower than the draft Agency Budget adopted by the Administrative Board on 20 March 2013. The WP already identified the risks and uncertainties with regard the ability of the Agency to deliver its WP. ACER is now in the process of assessing which activities can be undertaken with the staff available and which activities must be postponed. This also takes account that REMIT will not be fully in operation in 2014 as initially envisaged (given the Implementing Acts are expected to be adopted by mid-June only and, registration will start 3 months and data reporting and monitoring 6 months after the IA's adoption) - ACER needs to be ready for 2015 and the note proposed to reprioritise some of the activities related to TEN-E and REMIT.

Preparations have also started for the 2015 WP. The Director has invited the AWG Chairs to a meeting on 4 March to discuss a broad outline for the 2015 WP.

The BoR Chair also informed the members that he received from the Director the draft ACER budget for 2015 which needs to be adopted by 31 March by the AB. He informed the members that the BoR may ahead of its adoption provide an opinion. He suggested that the BoR opinion will be discussed at the March BoR meeting.

BoR Members and the Commission had an orientation debate.

#### **Conclusion**

*The BoR Chair invited the Director to take note of the debate and concluded as follows.*

*ACER should prioritise its work to fulfil its legal obligations, and also identify any activities in the WP which are not legally driven.*

*We should also explore what types of individual contributions from NRAs might be possible to help support ACER.*

*Future work programmes should indeed be developed with a more critical prioritisation and review of the resources required for each deliverable particularly as we are operating under an austerity context.*

### 3.2. BoR Recommendations on the EC's report on the evaluation of ACER activities

The BoR Chair introduced this issue. In January the BoR members mandated the BoR Chair to finalise the Recommendations in consultation with the rapporteur without the need for a BoR electronic procedure. The revised Recommendations were circulated to members for a final round of comments and following only one comment received by E-Control have been finalised and circulated to members. A copy of the accompanying press release was also distributed to members.

Mr Borchardt welcomed that the Recommendations reflect the same spirit as the Commission's report (as noted in the press release). He also updated members on the forthcoming Commission's assessment to be issued under Article 16 of the ACER Regulation. The Commission has employed a consultant, PwC, to help on this work and it anticipates this report to go a bit further and explore the need for changes in the ACER Regulation.

Ms Groebel enquired whether the consultant will contact regulators as part of their work, as this proved a very useful contribution for the similar evaluation of the telecoms regulators (BEREC), also managed by PwC. Mr Borchardt welcomed this proposal.

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

*The ACER BoR Recommendations on the Commission first evaluation of the ACER activities as adopted will be published today with a press release.*

### 3.3. BoR roadmap

Fay Geitona reported on progress: Actions before Q4/2013 have been transferred in the Annex. The 3rd BoR public debrief will take place after the BoR. The ERI and GRI quarterly reports were circulated for info. The Roadmap reflects the actions related to the preparation of the Green (consultation) paper on the basis of the revised note on the timeline circulated as well as the latest progress on the EP ITRE delegation visit to the ACER premises in LJU which is now fixed for 19, 20 March and other work.

### 3.4. ITRE delegation visit to ACER

Fay Geitona provided an update. The ITRE Committee has confirmed the 2nd visit of its delegation to ACER on 19, 20 March. The BoR and AB meetings had already been rescheduled (18 March BoR, 19 March AB morning). There will be a lunch time session to which AB/BoR members are invited (on 19 March). The Director had asked the members to indicate their availability in order to start shaping the programme. A draft agenda is now agreed with ITRE and focuses on REMIT, infrastructure, ACER evaluation, IEM completion, 2030 and the Bridge to 2015. Furthermore, we shall organise a visit to the GTM workshop (which takes place on 19 March in LJU) and there will be session with the ACER staff.

### 3.5. Revised BoR RoP

Fay Geitona reported that the BoR Rules of Procedure have been amended to reflect the approach agreed (at the last BoR meeting) on abstentions. The revised RoP were circulated for info and will be published on the website. Furthermore, the AIMP WG has been asked to consider more holistically whether there is a need for modifying any other provisions of the Rules and will present a proposal to the BoR later on.

### 3.6. Report on energy prices and costs

Mr Borchardt presented the key findings. He explained that the report has been well received. The Commission will prepare an update of this report on 2016. The Commission is also preparing a report on subsidies, looking at historical trends. This review is supported by a consultant.

On the figures it seems that electricity wholesale prices decreased by 30% (comparable to US); gas wholesale process remained stable. Retail increases have been noticed by 3-4% in both the electricity and gas sectors and these have been a major concern. The Commission analyses the main drivers for the prices, how does the recent evolution of prices impact on house expenditure and industry competitiveness; and any actions to mitigate price increases.

The report emphasises that in the centre of actions to mitigate prices' increases is the IEM completion. It is clear from the report that the Commission cannot act on its own and where needs to be a common effort. It seems that some of the main drivers are taxes, levies and in some MS network costs. Huge investments in generation and infrastructure are needed. The report pretty much confirms the conclusions of the IEA scenarios.

Mr Borchardt took note of the debate and welcomed the offer to discuss together; he suggested a joint workshop with NRAs, ACER and the Commission's experts to discuss network charges and how to develop a robust understanding of network costs. This will help for the follow-up report in 2016. He added that common approaches on network tariffs would be needed – an "Europeanisation" of how regulators deal with this (not necessarily in terms of new legislation) but in terms of achieving more convergence in approaches perhaps also through the exchange of best practices. He agreed that we may not need as much investment as has been initially forecasted by the Commission and that perhaps flexibility and smartness tools can help to reduce the levels of investment needed. He indeed sees a need for a common approach on incentives given that approaches vary significantly.

## 4. **Post 2014 Strategy**

### 4.1. "Energy Regulation: A Bridge to 2025"- Green paper:

Lord Mogg introduced the timeline and the next steps on the basis of a revised table circulated. The revised timeline now suggests that the electronic procedure on the Green Paper will be held on 1-10 April and we then launch the paper on 29 April with a "launch event" in the afternoon 14.30-17.30 for the formal public consultation of 6 weeks. A senior level lunch is now set on 29 April 12.00-14.00. The final adoption of the paper "Bridge to 2025" is planned for September 2014 ahead of which it is envisaged to have a restricted informal roundtable with stakeholders as well as a workshop on 23 September to launch its publication.

The AEWG, AGWG, CRM and DSO groups have provided their input on the themes and key messages to be included in the draft Green paper.

Mr Crouch presented the EWG input focused on two sections of the Green Paper template: The discussion on the expected impacts of changes resulting from greater market integration, changes to generation, and changes to demand and the discussion on the regulatory priorities/ responses. The paper provided for February BoR orientation is based on discussions at AEWG but is not yet agreed. The following key elements are included: market integration with greater opportunities for cross-border trade, enhanced competition, effective price signals, greater levels of physical interconnection; changes to generation with the rapid growth of non-programmable RES generation, connected to both transmission and distribution networks, will drive flexibility requirements; changes to demand with the expected development of a more active, smarter demand side (including smart grids, smart meters, smart load controls).

The paper identified five categories for regulatory action: The immediate priorities for wholesale markets which is the successful and widespread implementation of the electricity target model; the continued development of national & X-B markets and additional areas for greater inter- and intra-national consistency, competition and liquidity and defining a balancing target model – building on NC and pilots' learning; interventions in market, infrastructure development and improved coordination will be necessary between NRAs, TSO-TSO, TSO-DSO, and Gas-Electricity.

Mr Crouch thanked the members for their input which shall be taken into account in the next discussions at the next AEWG.

Mr Borchardt remarked that the Commission fully supports that the starting point is the implementation of the existing target model. The Commission also welcomes the idea of the new balancing target model. This is a good basis for discussion but the real work starts now. The Commission encouraged ACER to be more ambitious and forthcoming in our proposals. He also agreed that capacity mechanisms result from the scepticism on how the IEM would function and deliver the Security of Supply. The Commission is also reconsidering the need to set out some parameters for the capacity markets mechanisms.

Mr Boltz presented the gas input which focuses on the sections of the Green Paper on the sector developments and the implications for regulatory framework. A draft paper was circulated which will be further updated and finalised. The public consultation questions are under development. The key elements are that there are important changes in natural gas demand and supply (declining demand vs. areas where demand could increase and declining indigenous production in the EU). Some of the factors causing gas demand decline are policy related and as such outside regulators' domain (e.g. EU ETS). Furthermore, declining indigenous gas production, increasing imports, regional differences in gas prices have an effect on competition and EU competitiveness. The significant uncertainties require a flexible regulatory framework; he then presented the implications for the regulatory framework under three main axes competition, infrastructure and sustainability.

The BoR had an exchange of views on the gas input.

### Conclusion

*Lord Mogg concluded that the discussions at the WGs on the specific input and issues will continue and will take account of the orientation debate. Those will feed into the Green paper which will reflect the key inputs from the WGs and will be compiled and prepared under the authority of the Chair.*

## **Market Monitoring**

### **5. Market Integrity and Transparency**

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

Ms Geitona introduced this issue. There are two papers uploaded for the BoR: The conclusion paper which captures the discussions at AMIT WG level and the discussion paper for consultation which is based on the conclusion paper, but also addresses remaining open questions like the question whether the data sharing concept should be based in an ACER decision or an agreement. The Agency has an obligation to consult NRAs on the data sharing mechanism under Article 10(1) of REMIT. As already agreed on the Agency's consultation on the registration format comments by NRAs (given they need to be consulted individually as well as in their capacity as BoR members) may be collected through the BoR. NRAs will have around one month (until the March BoR meeting) to express their views on the proposed approach before the document is submitted to the BoR for an orientation discussion.

Ms Groebel presented the conclusions paper and explained the background: In several instances the Agency must share the information collected under REMIT with NRAs as well as with other relevant authorities and Article 10(1) of the Regulation lays down an obligation for the Agency to establish mechanisms to share the information it receives. The REMIT provisions do, however, not define the scope of the information to be shared with NRAs. Therefore, an appropriate and feasible approach has to be found considering the sensitivity of the information collected but also the operation of an effective market monitoring on the basis of certainty on the data exchange issue. She also noted the importance of clear rules for data safety. In considering how to access the data and the type of data to be shared there are 2 options (a Director's decision or an agreement between ACER and NRAs). The latter would not imply that we have 28 individual agreements but a standardised agreement for all NRAs. The conclusion and discussion papers need to be fully aligned as there are some minor inconsistencies at this stage.

Members had an orientation debate on the approach for info sharing.

Ms Groebel took note of the comments are will take these back to the group for further elaboration at their meeting next week.

#### **5.2. EC Implementing Acts**

Mr Borhardt reported on the progress. The first meeting with Member States was held on 22 December. There was a broad agreement on the Commission's proposals. Regarding the open issues, Member States sought more coherence on definitions. Member States requested that ACER provides timely guidance on the information to report so that there is clarity on the data to be reported. Member States are still discussing the scope for non-reportable contracts and have considered whether these should be extended to small CHP etc. The adoption by the Committee is foreseen for May – June.

#### **5.3. Note on Benchmarks Regulation**

A note was circulated and presented by Ms Groebel. In January 2014, the BoR approved a position paper to be sent on behalf of CEER and ACER in response to the Commission's



proposed Regulation on indices used as benchmarks in financial instruments and financial contracts. The ECON Committee of the EP vote on proposed amendments on 17<sup>th</sup> February 2014 was postponed. The next steps are being considered and we will monitor the outcome of the ECON Committee vote on the compromise amendments and continue to update the BoR on developments.

#### 5.4. Note on Transaction Reporting User Manual

Ms Groebel reported that the Agency is currently developing the Trade Reporting User Manual (TRUM) to help market participants and third parties reporting on their behalf to understand their transaction reporting obligations, including the reporting of orders to trade, according to REMIT. ACER needs to consult on the details of the transaction reporting around March. The timing for the public consultation in parallel with the comitology procedure on the draft Implementing Acts would enable the Agency to finalise the TRUM in parallel with the adoption of the Commission's Implementing Acts by June 2014.

#### 5.5. Note on Appointment of new RITMG and MMG co-chairs

This item has been removed from the agenda until a new AMIT WG co-chair is appointed following the departure of Mr Villaplana.

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

## **6. Gas**

### 6.1. Update on FGs and NCs & other work

Mr Boltz gave an update. Regarding the interoperability code, the Comitology meetings are foreseen for 28 April and 10-11 July. The main issue is the gas quality and there are also a couple of minor issues on implementation which he presented.

On tariffs, the EC invited ENTSOG to deliver the Network Code by 31 December 2014 in coordination with the process on CAM amendment on incremental and new capacity with a detailed Impact Assessment.

With regard to the ACER IIA, this is intended to be sent to EC and published before the end of February. ENTSOG held a kick-off workshop for the NC development process on 15 January 2014. Mr Boltz noted that there is concern about ENTSOG openly diverging from the FGs already in some areas (payable price, backhaul capacity pricing) at this early stage in the process.

Mr Hesseling clarified that ACER finalised an Initial Impact Assessment, however, the Commission has invited ACER to elaborate more on certain areas. Probably we will not be able to meet the end of February deadline but ACER is in contact with the EC, a meeting has been organised with Mr Borchardt to discuss this issue further.

On the ACER Guidance for CAM NC amendment – incremental and new capacity - Mr Boltz updated the BoR that ENTSOG is requested to deliver NC amendment text with consultation within 12 months (ENTSOG continues work on IC and TAR in a twin-track approach).

On trading, the EC tentative annual priority list includes FG rules for trading (FG RfT). However, Mr Boltz noted that ACER still needs to identify whether binding EU rules are needed for the further harmonization of the design of capacity products and contracts as regards firmness, restrictions to allocation, or secondary market. This will be considered taking into account existing network codes and those under development (IO/DE, TAR). The main question is whether there is a need for an FG Rules for Trading but several issues are present and additional ones may become apparent while implementing other NCs (BAL, TAR), e.g. Licenses, Capacity products, access to hub/virtual point, secondary markets. Regarding the way forward ACER should continue scoping before reaching a final decision.

Regarding balancing, Mr Boltz noted that the publication in the OJ is expected in March/April 2014 and the code will apply as of 1 October 2015 with a possible transitional period until October 2016. The Madrid Forum encouraged NRAs and TSOs to consider early implementation. With regard to the work organization, there is a 'light touch' implementation plan; an implementation roadmap is not needed. The GRI will focus on monitoring pilot projects and promoting harmonised implementation across the three regions.

On Congestion Management Monitoring report, Mr Boltz reported that ACER launched the online survey to TSOs (and in the second round to NRAs) mid-December 2013. The on-line survey open to TSOs for completing their answers on CMP implementation was until 10 February 2014. On 12 February 2014 an ACER/ENTSOG meeting on NC implementation monitoring problems / coordination issues was held. During the period from 11-28 February 2014, NRAs can access the online survey using their individual accounts (to check/comment on their TSOs' answers and respond to additional NRA questions); a deadline extension might be required. The Report on CMP implementation is envisaged by May/June.

Mr Hesselting reported that draft Congestion report was circulated yesterday to the BoR, AGWG and TF CAM members. As announced before, the Congestion report had to be finalised within the very limited time between data delivery (end of January) and the deadline for submission (1<sup>st</sup> March). Therefore, ACER did not have time to go through the TF, AGWG and BoR in the regular order, and ACER has circulated electronically instead to all simultaneously for comments by Tuesday, February 25. Data are incomplete and sometimes even inconsistent. In terms of the substance, the results show a quite large number of congested interconnection points. NRAs need to check on whether the data are correct. The date for the report is the 1st March but if CAM auctions are to be taken into account, the date for the next report should be put off to June.

## 6.2. GTM justification paper & draft structure

Mr Boltz presented the state of play on preparations.

Regarding the justification and problem identification document, this was -by majority vote- agreed by the last AGWG (3 February) for use for further discussions and basis for the development of the updated GTM document. The main chapters include the strategic context – in line with the gas specific Bridge 2025 document; the competitive and integrated wholesale markets (Remaining competitive concerns and lack of liquidity in wholesale markets; diversification of supply and improved access to markets and integration of market zones); the contribution to sustainability and the retail competition (dealing with the gas specific retail issues which will feed in to the Bridge consumer paper in view of how this develops). Regarding the detailed analysis of specific areas to underpin this work this includes the barriers to entry, the hub functioning, the congestion situation post CMP, sustainability and retail market competition.

8 chapters are envisaged in the GTM paper itself including the global context, the wholesale market functioning; the contribution to sustainability; the retail market functioning; the new usage of natural gas (objectives, status quo, recommendations); power-to-gas, LNG in mobility; and summary of recommendations and way forward.

Regarding the next steps, the 2nd informal advisory panel meeting is envisaged on 26 February 2014, the FSR GTM workshop on 13 March 2014 and the 2nd ACER stakeholder workshop on 19 March 2014 in Ljubljana which will be also inviting written comments; the 3rd informal advisory panel meeting will be held on 30 April 2014 and the 3rd ACER stakeholder workshop on 15 May 2014 in Brussels. By September 2014, the finalisation and publication of the updated GTM is envisaged based also on the responses to the Green Paper public consultation.

Members had an orientation discussion on the draft justification paper and the overall GTM review initiative including its timeline and consistency with the Bridge to 2025 Initiative. The outcome of previous BoR discussions on the scope of the GTM, as to letting the consumer group deal with consumer issues was reiterated.

### 6.3. ACER Opinion on the ENTSOG amendments to the Statutes of the Association

Mr Hesseling introduced the draft ACER opinion on which the BoR formal opinion was sought. ACER has held a limited consultation by way of a letter addressed to the relevant associations of system users and consumers which apparently provided no feedback. In substance, the draft opinion ACER makes some recommendations such as that the AoA would benefit from a general principle of cooperation between the members and the Association. In addition, it would be useful to have a provision obliging the members to make available all information required by ENTSOG in order to enable the latter to meet its obligations imposed explicitly by or derived from EU legislation. ACER also notes that ENTSOG must be committed to act in conformity with its Statutes, if the association has to meet legal obligations which may admittedly not have been laid down explicitly, but which can still be derived from EU legislation and which can be assigned to ENTSOG in light of the spirit, aim, and objectives of EU legislation. The Agency considers that the duty to seek a prior opinion from the Agency and the Commission also applies to any subsequent substantial modification to the AoA or its Rules of Procedure.

#### 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 statutes and Rules of Procedure on the basis of the proposed amendments to the Articles of Association of the ENTSOG.*

## **7. Electricity**

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

Mr Crouch provided an update. On CACM, the ACER comments on the latest version of the NC have been sent to the EC. An inter-service consultation (ISC) and translation was due to start soon and the next informal Comitology meeting with Member States is set on 7 March with voting foreseen for 10/11 April.

Regarding the FCA code, the major outstanding issues are around the long-term transmission rights and firmness. ACER expects ENTSO-E to resubmit the code later in March. The ACER opinion on the revised code will probably come to the May BoR.

On Requirements for Generators (RfG), the intention is to discuss the code with Member States at the Cross Border Committee on 7 March. It may also be submitted to the EC's internal translation services at the same time.

On HVDC, the BoR discussed the ACER Preliminary Opinion at the January BoR. The ACER project team are engaging with ENTSO-E to improve the code.

Regarding the 3 System operation codes (Operational Security, Operational Scheduling & Planning, Load Frequency Reserves & Control) these are currently with the EC. They will likely follow RfG and DCC in the comitology process.

### 7.2. ACER opinion on Balancing NC

Mr Crouch presented the state of the preparation and the key elements of the ACER's Opinion on the balancing network code, under preparation. The Balancing Network Code was submitted to ACER on December 23<sup>rd</sup> and ACER must produce a Reasoned Opinion by 23 March. The structure of the code fits well with the FGs but in specific areas this is not in line with the FG and the objectives stated therein. The proposal needs several adaptations to become a solid legal framework with relevant requirements on TSOs and other parties to create pan European balancing markets; relevant market design elements that allow to satisfy the 3 key objectives of integrating balancing markets; an adequate level of harmonisation of the balancing market arrangements in order to the achieve market integration in the most efficient manner. The concerns do not require extensive efforts and changes in the structure, but require indeed improvements before the Agency can recommend the code to the Commission for adoption. Those could be addressed within a period of a few months. In the medium term, the balancing pilot projects are key to boost early implementation. Mr Crouch suggested addressing the following issues in the ACER reasoned opinion: The role of each party involved in creating pan-EU balancing markets; enhancing economic efficiency considering security of supply constraints; principles for well-functioning balancing markets: an ambitious European regulatory framework which requires a higher level of harmonisation of existing balancing market arrangements.

Ms Bernaerts supported the balancing code's modifications as suggested.

### 7.3. ACER opinion on ENTSO-E winter outlook

Mr Gence-Creux introduced the draft ACER opinion. ACER received ENTSO-E winter outlook end of November last year. The ACER Opinion on ENTSO-E Winter Outlook Report 2013/14 and Summer Review 2013 makes concrete suggestions for improvements and is not controversial. Recommendations to ENTSO-E include *inter alia* that the Agency expects ENTSO-E to clarify the treatment of maintenance in the schematic description and to improve the transparency and availability of data.

BoR Decision agreed: (D 5)

*The BoR provided by consensus (of the members present or represented) its favorable opinion on the ENTSO-E winter outlook report 2013/14 - summer review 2013. The Chair noted that this reflects a pragmatic solution without prejudice to the future practice.*

7.4. Report on the influence of existing bidding zones on electricity markets

Mr Gence-Creux presented the report: The loop flows phenomenon is hampering the implementation of the Target Model in some regions. This is partly due to the existing bidding zones (BZ) configuration. It is important to assess the efficiency and practical implementation of the Target Model against different bidding zones configurations. This is a joint initiative of ACER and ENTSO-E for the early implementation of the Network Code on Capacity Allocation and Congestion Management. It is a new process experimented for the first time at a supra-national level with a large number of parties involved with diverging views and interests. The review process is based on the provisions of the draft CACM NC and consists of 4 core activities: the technical report by ENTSO-E, the market report by ACER, the decision to launch the review of the process and the assessment and review by ENTSO-E of the existing bidding zones configurations.

This report covers 2 regions (CEE, CWE), plus Denmark-West, Switzerland and Italy. The idea of the report is to analyse (qualitatively) the main market-related effects of BZ configuration and to make some recommendations to ENTSO-E with respect to Activity IV.

The main conclusions include *inter alia*: the stability of the BZ configuration is an essential component of a stable regulatory framework and, therefore, the BZ configuration should not be changed frequently. The existing BZ configuration is currently affecting the efficient dispatch of generation and social welfare; the distribution of social welfare due to the potential discrimination of market participants located at different geographical points in the network; the liquidity in particular in forward markets; the incentives to invest in both transmission and generation. All these aspects need to be further investigated in the context of the 4<sup>th</sup> activity. The main recommendations to ENTSO-E include *inter alia*: to assess the potential 'undue' discrimination between internal and cross-zonal exchanges and the extent to which different BZ configurations could mitigate this discrimination; to take into account the (one-off) transitional costs and the likely impact of each BZ configuration scenario on the future investments decisions, both in the transmission and generation sector and to provide full transparency throughout the review process.

Regarding the next steps, the finalisation and publication of the report following the orientation discussion is envisaged. There will be a joint Workshop with ENTSO-E on 21 March in Brussels. The launch of activity IV by ENTSO-E will last approximately one 1 year.

Mr Gence-Creux raised three key issues for discussion: Should we invite ENTSO-E to further develop the concept of 'undue' discrimination? Should a BZ reconfiguration be considered with the same time horizon than investments in the transmission network? If so there is no point in launching this review process. We should see it as a short or medium term measure. May a 'well'-designed bidding zone configuration contribute to providing more efficient price signals and a more favourable investment climate both at transmission and generation level?

The members discussed the report.

## Conclusion

*The report will be further discussed at the next AEWG taking into account the outcome of the orientation discussion at the BoR meeting, and then will be finalised and released. The Chair noted that this reflects a pragmatic solution without prejudice to the future practice*

## **8. Regional Integration**

### 8.1. Progress on ERI cross regional roadmaps

The ERI Quarterly report was distributed for info. Mr Gence-Creux reported on the latest developments.

On 4th February the day-ahead market coupling in the North-West Europe region went live. Mr Gence-Creux hopes to have soon the synchronised operation of the South-West European day-ahead market.

Regarding intraday, a High-Level Meeting (HLM) was convened on Monday 17 January which was positive in overall terms. PXs have asked again for a delay in the first step of the Early Start Agreement (ESA) which began on 17 January and was planned to be completed on 7 March. Instead there will be a delay of few additional weeks. Mr Gence-Creux noted that the Commission needs to be firm with the new deadline end of March. There will be a 2<sup>nd</sup> high level meeting on 2<sup>nd</sup> April. We hope to have a better visibility of the next steps around mid-May. For the time being PXs do not want to commit to a specific deadline. There are different layers in the process; the first is to develop the platform; the 2<sup>nd</sup> is to develop the common framework for pre- and post-coupling arrangements and it will be as challenging as the first layer. The 3<sup>rd</sup> layer corresponds to the local implementation plans.

Lord Mogg supported that the Commission is firm with the new deadline. He also saw merit in having a plan B. ENTSO-E seems now to be more engaged in this process but his own impression is that this project will take more than a couple of months. At the high level meeting no PX raised an objection on the comfort letter (which was sent). Mr Borchardt was firm and announced that EC would be firm at the next Florence Forum if progress is not achieved.

Ms Bernaerts noted that the EC shares the concerns as well as the importance of this process. She reiterated the Commission's willingness to keep the pressure for progress.

### 8.2. GRI Quarterly Report

Mr Hesseling reported that the draft GRI Quarterly Report for Oct-Dec 2013 is released. The report is under the new format. With regard to the lead regulator for the North-West region there is still no volunteer NRA to lead. He invited members to display interest within the next month. If no regulator steps forward, the NW region has to be dissolved.

## **9. Investment Challenge**

*European Network Planning and infrastructure challenge*

### 9.1. Update on work in progress

Mr Gence-Creux reported briefly on the work in a number of different areas.

The work on TYNDP monitoring is ongoing. NRAs have been providing input and feedback for the pilot online monitoring tool designed by ACER.

ACER is now preparing its opinion on the consistency of national with European TYNDP. ACER is using an online tool and he thanked all NRAs for contributing to this exercise. This ACER opinion should be discussed at the next BoR meeting in March.

The Commission held a meeting with NRA's and ACER on the CBCA on 28 January.

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

The ACER opinion on the electricity CBA was adopted on 30 January after the orientation discussion at the last BoR. The final draft of the gas opinion after the BoR orientation discussion and further discussion at the last AGWG was adopted on 13 February. Mr Hesseling reported that in the ACER opinion on the gas CBA methodology the tone has been adapted in light of the comments of the EC and of the AGWG and that the Opinion makes recommendations on a number of issues to ENTSOG.

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

### 10.1. Oral update on progress

Mr Locquet reported that procedure on the preparation new joint MMR report has started. The AMIP WG has received a skeleton for the 3<sup>rd</sup> edition of the MMR from ACER. Two meetings with ACER in July and August are scheduled and the intention is to deliver the report by the end of October –one month earlier (compared to last year).

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

## **11. Others**

### 11.1. Next Meetings

A calendar of the meetings is circulated. The date for the ACER conference on 10 June is now fixed. As a result the CEER GA/ACER BoR meetings will be both held on 11 June. The revised calendar reflects the above changes in the June meetings.

Lord Mogg noted that the next ad-hoc group will be held on 14.00 (before the CEER GA) on 17 March given that after the GA there will be a cocktail.

### 11.2. AOB

The Decision of the Administrative Board on the appointment of Mr Boyan Boev as the new Bulgarian member of the BoR was circulated.

Mr Nyikos reported on the crisis in Ukraine and on measures he has taken to provide support.