

## 39<sup>th</sup> ACER Board of Regulators (BoR) meeting

Thursday, 17 July 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 (AEEGSI)	M: Valeria Termini O: Ilaria Galimberti
Belgium (CREG)	O: Geert Van Hauwermeiren O: Maria Isabella Detand A: Koen Locquet	Latvia (PUC)	Excused
Bulgaria (SEWRC)	Excused	Lithuania (NCC)	A: Vygantas Vaitkus
Croatia (HERA)	Excused	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Georgios Shammias	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	O: Miroslav Belica O: K. Fircova	Netherlands (ACM)	M: Henk Don O: Elozona Ochu
Denmark (DERA)	O: Mads Lyndrup	Poland (URE)	A: Halina Bownik-Trymucha
Estonia (ECA)	A: Külli Haab	Portugal (ERSE)	O: Jorge Esteves
Finland (EV)	A: Riku Huttunen	Romania (ANRE)	A: Lusine Caracasian
France (CRE)	O: Patricia de Suzzoni O: Aude Le Tellier	Slovakia (RONI)	Excused
Germany (BNetzA)	A: Annegret Groebel O: Daniel Müether	Slovenia (AGEN-RS)	A: Jasna Blejc
Greece (RAE)	O: Katerina Sardi	Spain (CNMC)	A: Esther Espeja O: Gema Rico
Hungary (HEA)	O: Kristián Toth	Sweden (EI)	A: Caroline Tornqvist
Ireland (CER)	A: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Martin Crouch O: Feodora von Franz

Observers	Name
ACER	Alberto Pototschnig, Fay Geitona, Sarah Bradbury
European Commission	Dieter-Klaus Borchardt, Aurora Rossodivita, Kamila Kloc, Kristof Kovacs, Catharina Sikow-Magny
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 provided an agreement in principle to the proposal for the ACER 2015 WP. The formal approval of the WP is scheduled for the September BoR meeting.</i>
2. <i>The BoR received an update on the preparation of the conclusions paper on the “Bridge to 2025” and the standalone Evaluation of Responses paper. The Chair thanked the members for the orientation. He recalled that we work against fierce deadlines which dictate intense work during the summer break. He invited members to provide written comments by Tuesday, 22 July. Subsequently, the Chair’s drafting team will prepare a first draft of the conclusions paper to be circulated mid-August to all members (including to the ad-hoc group) with a second informal round of comments for early September. In parallel, work will be pursued on the evaluation paper over the break by the Chair’s team on the basis of the WGs more refined evaluation (expected by 31 July). We will also crystallise our ideas for the launch event on 23 September and are preparing a draft agenda which will be shortly circulated.</i>
3. <i>The members received an update on the Implementing Acts, the TRUM and RRM requirements consultation papers.</i>
4. <i>The BoR received an update on work on the GTM, the progress on the Codes, and discussed the draft Network CCodes on gas transmission tariff structures.</i>
5. <i>The BoR provided by consensus of the members present (or represented) its favourable opinion on the ACER Opinion on ENTSO-E Summer Outlook 2014 and Winter Review 2013/14.</i>
6. <i>The BoR provided by consensus of the members present (or represented) its favourable opinion on the ACER Opinion and Recommendation on the High Voltage Direct Current Connections and DC-Connected Power Park Modules NC.</i>
7. <i>The BoR provided by consensus of the members present (or represented) its favourable opinion on the ACER Opinion on the implementation of investments in the electricity transmission networks.</i>
8. <i>The BoR received an update on the progress in the preparation of the 3<sup>rd</sup> edition of the MMR.</i>
9. <i>The BoR received an update from the EC on the timeline of the second PCI union list.</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 38<sup>th</sup> BoR meeting

BoR Decision agreed: (D 2)

*The 38<sup>th</sup> BoR minutes were approved.*

## 2. Update from the Commission and the Director

### 2.1. Update on recent developments

#### - European Commission (EC)

Mr Borchardt gave an update.

#### Stress tests

Commissioner Oettinger has sent letters on stress tests to Member States (MSs). The EC have focused on different regions: South East, Baltic, West and the Energy Community (EnC). The analysis covers possible disruptions for the coming winter and the “missing gas volumes” for households and industrial consumers, and the impact on district heating and the electricity sector. The disruption scenarios vary over a different range of periods (e.g. all supplies to EU for a one month, or 6 months etc.). The EC asks the Member States and the regions to look into possible measures to respond (e.g. alternative supply routes, possibility of substituting gas, market based measures etc.). In terms of the process, different TFs have been established including on the EnC and South East. In mid-August, a general meeting will be held to take stock of where we are. The exercise will be finalised by the end of August. The analysis of the reports will be discussed at the next Gas Coordination Group on 16 September and the EC will also convene some meetings with the different regions. The EC reassured members that full confidentiality of the data will be safeguarded. The EC’s report will be submitted to the Council in October.

Mr Borchardt reassured members that the EC will certainly put the emphasis on market based solutions to the use of interconnectors in emergency situations. The EC has indeed encouraged Member States to include National Regulatory Authorities (NRAs) and Transmission System Operators (TSOs) in the work on stress tests.

#### EC evaluation of ACER

Mr Borchardt provided an update. The PricewaterhouseCoopers (PWC) study/report is now being finalised. It will help the EC to develop their own evaluation report. The EC will not formalise this study. The BoR may invite PWC to present their results to the BoR once their report is finalised, and the EC is happy to make this study available.

#### Cooperation between ACER and INEA

The EC noted that there is a lot of scope of cooperation between the Innovation & Networks Executive Agency (INEA) and ACER and the possibilities of mutual support in terms of resources. It was suggested this could be discussed further at the September BoR meeting.

#### - **ACER**

#### EP

The Director reported that he wrote to the new European Parliament (EP)/Industry Research and Energy Committee (ITRE) Chair, Mr Buzek, in terms of pursuing the close collaboration with the EP and drew attention on the need to re-establish the ACER Contact Group. He also sought for a date in autumn for the presentation of the 3<sup>rd</sup> edition of the Market Monitoring Report (MMR) at the ITRE. He had just received a positive feedback from the ITRE chair and a meeting will be organised in autumn.

The Director reiterated that according to the rules for BoR members’ reimbursements, forms need to be submitted within 30 calendar dates from the date of the BoR meeting. In the

future ACER will have to apply firmly this provision and will be forced to reject reimbursement applications which are not submitted within this deadline.

Regarding CVs and the duly signed Declarations of Interests, most members have now provided their documents and ACER is in the process of publishing these after resolving a few legal issues on data protection.

The Director reported on recent publications. The Agency published on 20<sup>th</sup> June its Opinion on the ENTSO-E Annual Report 2013 and on ENTSOG's Summer Supply Outlook 2014. On 30<sup>th</sup> June ACER published its recommendation on risk evaluation and incentives for Projects of Common Interest (PCIs). ACER has recently launched for testing an updated platform where, in line with wholesale energy market integrity and transparency (REMIT), market participants can notify the Agency and relevant NRAs of delayed disclosure of inside information and the use of the insider trading exemption and where persons professionally arranging transactions can report suspicious transactions. The testing period will last until 31 July 2014.

The 8<sup>th</sup> Workshop on REMIT implementation was held in Ljubljana on 16<sup>th</sup> July (50 people attended) covering requirements for the registration of Registered Reporting Mechanisms (RRM) and technical specifications for data submission, User Manuals for the reporting of Trade and Fundamental data and latest developments of Centralised European Register for Market Participants (CEREMP).

The Director welcomed strengthening of cooperation with INEA.

## 2.2. Report on the planning group of 7 July

The last Planning Group took place on the 7 July where the current progress on Framework Guidelines and Codes was discussed.

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

### 3.1. 2015 ACER Work Programme (WP)

Lord Mogg noted that the proposal by the ACER Director has now been finalised, released and sent to both the BoR (for approval) and the European Institutions. He noted that he would have some suggestions for modifications. He raised attention to the timeline for the BoR approval of the WP pending the EC's opinion and given that we have not yet clarified if there will be work emerging from the "Bridge 2025". He proposed having an orientation discussion for this meeting and postponing the BoR approval for the September BoR meeting.

The Director presented his proposal. He noted that a new format for the WP has been used for 2015, reflecting the new approach and addressing the requirement for a multiannual WP. It includes in Section I strategic aims and the future challenges as well as a multiannual outlook 2015-2017 in Section II. The main areas identified are: the post-2014 completion of the Internal Energy Market (IEM); the infrastructure challenge; the monitoring of the wholesale markets; and, the longer-term regulatory challenges.

The Director underlined that his proposal also identifies the relevant risks and uncertainties related to the implementation of the WP as a result of the voluntary contribution by NRAs in the Working Groups (WGs) where the Agency may face decreasing engagement by NRAs due to resources' limitations, the related activities of other Institutions which have an impact on ACER's activities and their timing, and the ACER resources as such. The WP is

developed on the basis of the draft budget adopted by the Administrative Board (AB) and is subject to the final budget to be decided by the budgetary authority. The main uncertainty remains the REMIT resources.

Mr Borchardt noted that the EC looked at the draft WP and considers it well done. The EC takes note that this is based on the draft budget as adopted by the AB and that it is without prejudice to the definitive budget. The EC highlighted though that there will be a need to readjust the WP in accordance with the final resources allocated to the Agency, on the basis of the final decision of the budgetary authority. The EC's formal Opinion is expected for early September.

The Director explained that his foreword will be prepared at the latest stage not least to capture any late changes needed. In terms of "the Bridge", we do not at this stage know the concrete outcome but there is already a reference concerning the review of the Electricity and Gas Target Models which are likely to capture the main "actions" under electricity and gas. However, he alerted that any additional specific activities have a resource implication which needs to be examined given also the limited possibility for reprioritising activities in the Agency.

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

*The BoR provided an agreement in principle to the draft ACER 2015 WP. The formal approval of the WP is scheduled for the September BoR meeting.*

#### 3.2. Report on ACER away day

The Director reported on the ACER Working Group (AWG) Leaders Away Day which was held on 11th - 12th June in Bled. 40 attended and it was moderated by Philip Lowe. The Away Day discussions were focussed on two broad themes: (i) improving project management in ACER Working Groups (WGs), Task Forces (TFs) and Work Streams (WSs), and (ii) the respective roles and responsibilities. Presentations on project management, the legal context (as well as AWGs rules of procedure) and on the Commission's internal audit service report were given and discussed. A number of interesting ideas emerged from the meeting which provided an opportunity to exchange views within and between the ACER WGs/TFs/WSs promoting the sharing of experiences which should foster and support improvements and further deepening of cooperation. The materials (presentations and photos) have also been uploaded to the website and are available to those who have participated.

The Director is in contact with the AWGs Chairs in preparation of a detailed Action Plan which captures the main conclusions and provides some concrete proposals on how to organise the work going forward with a view to ensuring improvements and enhancing cooperation. He has received very useful input from the AWGs Chairs and he intends to circulate this to all the away day participants next week.

Lord Mogg noted that the event was very useful and needs indeed to be translated in detailed actions. He suggested that the away day be repeated.

#### 3.3. BoR Roadmap

Fay Geitona presented progress since the last BoR meeting. Regarding the new ACER website, all the documents in the meeting folders have been migrated and are hosted in the new ACER website since 1st July. Actions with the EP will be pursued in autumn.

## **4. Post 2014 Strategy**

### **4.1. “Energy Regulation: A Bridge to 2025”- Draft Conclusions paper**

Lord Mogg presented the papers for the debate and the next steps on the basis of the circulated cover note. The Chair reported that he has held separate discussions with the EC, Director General and Mr Borchardt, who found the Bridge initiative very timely to feed into the EC's overall thinking. Therefore, the Chair stressed that we work against very fierce timelines to deliver by September.

The cover note presents the timeline for the preparation of the conclusions paper and the standalone Evaluation of Responses paper.

He then invited a discussion on the specific chapters:

#### **Conclusions**

The Chair thanked the members for the orientation. He recalled that we work against fierce deadlines which dictate intense work during the summer break. He invited members to provide written comments by Tuesday, 22 July. Subsequently, the Chair's drafting team will prepare a first draft of the conclusions paper to be circulated by mid-August to all members (including to the ad-hoc group) with a second informal round of comments for early September.

In parallel, work will be pursued on the evaluation paper over the break by the Chair's team on the basis of the WGs more refined evaluation (expected by 31 July).

We will also crystallise our ideas for the launch event on 23 September and are preparing a draft agenda which will be shortly circulated.

#### **Market Monitoring**

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

### **5.1. Report on EC's Implementing Acts (IAs)**

Ms Rossodivita reported on progress. The informal Comitology meeting (without voting) is scheduled on 22 July. The formal committee meeting will be organised in September; adoption process as well as the formal entry into force of the IA will take place in autumn. Translations are not over yet but the EC's inter-service consultation has finished.

The Director thanked the EC for the progress on the IA. ACER has a concern on the current text where it requires orders to trade for derivatives contracts to be reported on an ongoing basis. This is a different approach from the one under the financial market regulation and the Agency advocates that these orders to trade are reported only on request by the Agency.

Ms Rossodivita noted the issue to bring it to the attention of her colleagues.

### **5.2. PC on TRUM and RRM requirements**

The Director reported on the development by the Agency of two documents to be adopted in parallel with the REMIT Implementing Acts:

- i. Transaction Reporting User Manual (TRUM) – aims to help market participants and third parties reporting on their behalf understand the transaction reporting obligations
- ii. Registered Report Mechanism (RRM) document – concerns the requirements to be fulfilled by entities reporting transactions and fundamental data under REMIT.

The ACER public consultation (PC) on the draft RRM requirements took place in summer 2013 and on the draft TRUM closed on 5 May 2014. The Agency has sought for stakeholder input through roundtable meetings to finalise the public consultation documents. The Agency intends to launch a second public consultation on the draft TRUM and the RRM requirements on 21 July 2014 in order to allow stakeholders to contribute to and comment on the documents before their finalisation and publication with the entry into force of the IAs. Such a public consultation in parallel with the Comitology procedure of the draft IAs will enable the Agency to finalise the TRUM and the RRM requirements document in parallel with the adoption of the Commission's IAs by autumn 2014. Market participants, and third parties on their behalf, would thus be enabled to prepare the reporting of REMIT information without any further delay within the six-months-deadline stipulated in Article 22, second subparagraph, of REMIT.

Ms Groebel also reported that these are also, in parallel, discussed in the next ACER Market Integrity and Transparency (AMIT) WG meeting on 18 July. She noted that the market is keen on releasing these in time.

Ms Rossodivita welcomed the consultation papers. With regard to the RRM requirements document, she commented that the EC would have liked a more proportionate approach regarding reporting obligations. For example, market participants who should report their own transactions data should be under a different (lighter) regime as opposed to those not having this obligation.

The Director clarified that the complexity of the system is a matter of variety not size. ACER is not keen on a large number of Market Participants reporting their own transactions. We cannot avoid large Market Participants registering for RRM; however, we would prefer discouraging small participants to do it.

### 5.3. Update on Market Monitoring Handbook

The Director and Ms Groebel reported on the state of play. The Market Monitoring Handbook (MMH) TF had hoped to finalise the MMH and submit it to the BoR. However, this will be submitted to the BoR for information and comments later this month or at the beginning of August.

The Handbook is a non-binding document and provides guidance to the interactions between the Agency, NRAs or Regional Surveillance Groups, and persons professionally arranging transactions (PPATs) in practice. If there is a suspicion of a breach of REMIT they need to apply consistent procedures for case handling all over EU.

The Director thanked all those who have worked on this handbook. Eventually after intense discussions the document has been wrapped up and he himself participated in the latest drafting sessions which indeed demonstrated a fruitful and constructive cooperation.

The Director clarified that all documents should be confidential and the rationale of the Memorandum of Understanding (MoU) was to ensure such exchange of information whilst respecting confidentiality. The way the Handbook is written reflects its format as a manual.

## **Completion of the Internal Energy Market**

### Update on Framework Guidelines (FGs) and Network Codes (NCs)

#### **6. Electricity**

##### 6.1. Oral update on the FGs and NCs

Mr Crouch gave an update. His presentation provided a recap of the process for ACER issuing reasoned Opinions and Recommendations on the relevant Codes and an overview of the overall planning and status of the different NCs. It reflected on the steer from the EC that Capacity Allocation and Congestion Management (CACM) must be a Guideline rather than a NC, but that this makes no substantive difference to the provisions or implementation. Mr Crouch noted that the EC's position is not fully understood. However, it is proposed that we continue to support legislation to give effect to the substance of the network Codes as we have recommended, as soon as possible. Issues related to the implementation, enforcement and amendment of the Guidelines matter also and we are open to find ways to accelerate the key provisions.

Mr Borchardt noted that priority has been given to the CACM and that agreement has been reached with the legal service. However they have not been able to advance translations. There will be a Comitology meeting in September (date to be confirmed) to explain and the EC expects to start the formal Comitology process later in the year. Mr Borchardt confirmed and explained again the EC's position on network Codes and Guidelines. Whether Codes or Guidelines are used, the legal value of the rule is not changed. The key point is the degree of harmonisation which means that in NCs we are not allowed to defer to later decisions taken by TSOs/NRAs, but rather define a text with fully specified provisions. The only difference is where amendments are made to the legal acts: in both cases, adoption will take place through Comitology, but the preparatory process could be different, even though he indicated that the EC intends to run this process in as similar a way as possible. Mr Borchardt confirmed that the EC non-paper describing the EC's position will be ready for September. The system operation Codes are to come after the CACM and Forward Capacity Allocation (FCA) Codes, and concrete suggestions have been given to ENTSO-E for them to analyse in order for those to be qualified as Codes and overcome the CACM legal issue on delegations.

##### Intraday

Mr Crouch also outlined the state of play and next steps on intraday.

##### 6.2. ACER Opinion and Recommendation on High Voltage Direct Current Connections (HVDC) and DC-Connected Power Park Modules NC

The Director presented the ACER Opinion and Recommendation on the HVDC NC. It was for orientation discussion at the last BoR and ACER must submit its Opinion by 30 July.

The ACER Opinion and Recommendation note that we must ensure consistency with other NCs being developed. It finds that the NC complies with FGs but some areas for improvement in drafting and consistency with other NCs are suggested. It advocates these are addressed by the EC so they are set out in the Recommendation. They include replacing the definition of 'Grid User' with that of 'System User'; the alignment of the definition of New HVDC and New DC-connected Power Park Module; the scope of application of the NC to DC-connected Power Park Modules; the replacement or addition of certain provisions with the equivalent in the forthcoming NC Requirements for Grid Connection Applicable to all Generators (RfG) and NC Demand Connection (DC); the improvement of the legal drafting

and enforceability of obligations; and, aligning supporting documents. The exemption of certain provisions for HVDC Systems owned by TSOs is justified because these provisions require TSOs to assess the compliance of HVDC System Owners with their obligations. The Agency recommends the adoption of the NC by the EC subject to the above amendments as the NC is in any case in line with the FGs.

BoR Decision agreed: (D 4)

*The BoR provided by consensus of the members present (or represented) its favorable opinion on the draft ACER Opinion and Recommendation on the High Voltage Direct Current Connections and DC-Connected Power Park Modules NC.*

6.3. Legal instrument for the Codes – next steps

This item was discussed under the electricity update. Following an invitation at the last BoR for the EC to provide a legal note outlining the differences between FGs and NCs and the process going forward including on amendments, the EC confirmed that a non-paper would be produced by September which will be discussed with ACER and the ENTSOs.

6.4. Draft ACER Opinion on ENTSO-E Summer Outlook 2014 and Winter Review 2013/14

The Director gave an overview of ACER's draft opinion on the ENTSO-E Summer Outlook & Winter Review. The Opinion commends the documents but also makes suggestions for improvements. General comments on the short-term adequacy outlook and review reports were that ACER welcomes ENTSO-E's consultation to improve on the methodology used for assessment of adequacy but believes that the consultation should also focus on the type and the structure of the information provided in the seasonal outlook and review reports to take into account the needs of interested stakeholders. The outlook reports utilise a probabilistic approach in order to take into account the in-feed from intermittent Renewable Energy Sources (RES) on a consistent basis at the EU level, however, ACER believes this should be extended to cover parameters like demand, availability of generation from conventional units and availability of interconnection capacity to further improve the quality of the results. ENTSO-E has added an extensive regional assessment to the per-country analysis of adequacy since the 2011-12 Winter Outlook Report, which the Agency believes is key as it takes into account the advantages of coordinated operation of the interconnected European power systems and using harmonised approaches.

BoR Decision agreed: (D 5)

*The BoR provided by consensus of the members present (or represented) its favorable opinion on the draft ACER Opinion on ENTSO-E Summer Outlook 2014 and Winter Review 2013/14.*

6.5. Draft ACER Opinion on implementation of investments in the electricity transmission network & Report on the BoR electronic procedure

The Director presented the background and the outcome of the electronic procedure for the BoR opinion. During the first round of the BoR electronic procedure on the draft ACER Opinion on the implementation of investments in electricity transmission networks, comments were submitted and almost all were incorporated in the Director's revised proposal.

BoR Decision agreed: (D 6)

*The BoR provided by consensus of the members present (or represented) its favorable opinion on the draft ACER Opinion on the implementation of investments in the electricity transmission networks.*

6.6. Gas Oral update on FGs and NCs and other work

Mr Boltz gave an update. He reported on the NC interoperability first Comitology meeting which took place on 10 July with an informal MS meeting on 11 July. The 2nd Comitology meeting will take place on 1-2 October 2014 with a vote. On Balancing, the code is already out and the last Madrid Forum requested NRAs and TSOs consider early implementation projects. A questionnaire has been sent to NRAs and TSOs to provide information on implementation. Answers are to be collected by the end of July to update the state of play and prepare picture of the current situation for the next Madrid Forum.

On Congestion Management Procedures (CMP) implementation, the EC has issued an interpretative note. For the ACER CMP implementation monitoring report: from February 2014 NRAs could access the online survey using their individual accounts; through April/May analysis and evaluation of TSOs/NRAs responses took place; and, today the report is for discussion. Next steps are finalisation and publication.

Capacity Allocation Mechanisms (CAM) implementation is ongoing and is leading to the identification of some open issues and considerations for internal discussion among NRAs, such as: PRISMA cost allocation where PRISMA is covering 60% of interconnection points and is charging its members according to the ENTSOG fee membership; the gas year; the ENTSOG public consultation on joint capacity booking platforms; and, the need for clarification of which products are offered on which platform per Interconnection Point (with overarching questions of the number of joint platforms in the EU).

On Rules for Trading (RfT), the EC deleted RfT FG from the draft annual priority list. The ACER Director has sent a letter to the EC stating that at this time ACER do not believe that Framework Guidelines on RfT are necessary and the discussion is pursued on whether this should be addressed through amendments of existing NCs, (harmonisation of force majeure in bundled products, what is firmness, secondary market issues). The next steps for the ACER Gas WG are to include a finalisation of Evaluation of Responses document. They will also consider the follow-up on the identified list of issues: capacity products and contractual conditions where there is ongoing discussion between ACER, EC, EFET and ENTSOG on possible harmonisation of capacity products and contractual conditions; on the secondary market (lack of attractiveness and transparency of secondary market; possible alignment of secondary product durations (day-ahead and intraday)); licensing issues (mutually acceptable licenses; simplicity and reduction of administrative burden); hub / virtual trading point (VTP) access, hub design – work by EFET and in GTM, stakeholders prefer non-binding rules; as well as transparency.

Mr Kovacs mentioned that there were a couple of topics on IOP and a general discussion on standards in EU law with diverging views as to whether this should be followed. He also mentioned that data exchange remains an important issue.

## 6.7. Congestion Management Report

The Director gave the background that at the April Planning Group meeting, the EC asked ACER to find a slot in the next BoR meeting to discuss the outcome of the report. It was included for the July meeting as the agenda for the June one was full.

The purpose of the report is to identify contractual congestion at Interconnection Points (IPs) in the EU in the fourth quarter of 2013 and it analyses at which IPs no firm capacity product with a duration of one month or longer was offered. Although it raises some interesting issues, the conclusions of the report should be taken with care as they are based on incomplete and poor quality data (it only covers the previous 3 months and data was not available for all points). The report shows that congestion is still a problem at a significant number of IPs, as at least one third of the relevant IP sides are found to be or have been congested during the analysed period. At least 45 congested IP sides, where the Firm day-ahead Use-It-Or-Lose-It measure (FDA UIOLI) is not yet applied, are potentially subject to the mandatory application of FDA UIOLI, if congestion persists in 2014 and 2015. Most congestion is identified in North-West Europe, but this could be due to the fact that this is where most data was available, but congestion was also observed in Central East and Southern Europe.

The Agency intends to improve the quality for the report for next year by recommending that ENTSOG, TSOs and TSO-led platforms increase data availability, quality and consistency and for the EC to shift the reporting period and due date of the report by one quarter. NRAs are also called upon to support the data quality check and verify the validity and completeness of their TSO data frequently.

Mr Kovacs raised that it was necessary to come to a more aligned view on how congestion stands in the EU. This is related to the transparency agenda and the need for better data from TSOs, after scrutiny over TSOs transparency platforms which showed some issues of compliance with the letter of the law. There were some interpretation issues (contractual congestion in secondary markets). ENTSOG is willing to work with ACER on improvements.

## 6.8. Update on Gas Target Model (GTM)

Mr Boltz provided an update. Drafting of the updated GTM is ongoing based on stakeholder comments and final discussions with the advisory panel / relevant stakeholders and takes into account also the relevant responses to the "Energy regulation: Bridge to 2025" public consultation. The finalisation of the GTM update paper will be ready in September/October 2014. There are no other meetings, even at TF level planned (but there will have to be some).

At the heart of the new Gas Target Model is a range of gas market metrics intended to establish whether a Member State has a properly functioning wholesale gas market. A process similar to that in the 3rd package is adopted assessing functioning of wholesale markets against identified criteria, taking into account the European energy security strategy with a need to determine what could be done at a national level, or at regional, European level. An important element of those metrics will be making clear whether a given wholesale gas market offers access to contracts with delivery dates far into the future. This is crucial to enable proper hedging of wholesale market risk from large industrial users to new entrant suppliers with a small retail portfolio.

The Gas Target Model will ask each Member State to make an assessment as to whether they will have, or likely to have by 2016, a functioning wholesale gas market, and if not

propose a suite of possible options. If a Member State does have such a wholesale market then ACER will establish 'best practice' guidance in gas hub design. The situation of gas-fired power stations was analysed: in some markets there are reasons which makes it unfeasible to run gas-fired power stations. However, there are some markets where regulatory system alignment between electricity and gas might help. It highlights coordinating balancing regimes between gas and electricity and the alignment of notification times where previously there has been little coordination between ENTSOG and ENTSO-E who have not responded to each other's developments. There is a need for them to coordinate on a routine basis, in order to develop a harmonised gas and electricity regime.

Mr Crouch mentioned that on electricity, due to the growth in renewables it is imperative to get notification close to real time rather than aligning with gas.

#### 6.9. Preliminary views on draft network code on Harmonised Tariff Structure for Gas

The ACER preliminary views were circulated for an orientation discussion. Mr Boltz presented slides which outlined the process: after 31 December 2014, ACER must provide a reasoned Opinion to ENTSOG, within 3 months and a Recommendation for adoption to EC, once the Agency is satisfied that the NC is in line with the FG (Art 6(9) of the Gas Regulation). At this stage, ACER is providing preliminary views to facilitate the process. ENTSOG's consultation of the draft Tariff NC will end on 30 July.

### **7. Investment challenge**

European Network Planning and the infrastructure challenge

#### 7.1. Oral update on Cross-Border Cost Allocation (CBCA) cases

The Director gave an update. 15 CBCA applications (predominantly gas) have been considered by NRAs across Europe with only 1 going to ACER for decision. The first request (GIPL – Gas Interconnector Poland Lithuania) was received by the Agency on 1 May. A decision is due by 31 July.

Mr Boltz mentioned that currently there is only one gas case with ACER. He conveyed that in the majority of the CBCA cases the NRAs concerned were able to reach a decision successfully within the time limits and did not resort to ACER. He invited the EC to take this successful example into account given the high priority of the PCI.

Given the experience for the treatment of the CBCA cases and the relevant decisions by NRAs and ACER, it was suggested having an internal discussion on the issues that have arisen, on the quality and consistency of those decisions and do a lesson learnt session after 31<sup>st</sup> July.

The Director noted that in preparing its decision the Agency is following its Recommendation of September 2013. The Decision has not been circulated as it may be subject (as an individual decision) to an appeal so it would be preferable to circulate and have this discussion after 31 July.

#### 7.2. Timeline for 2nd round of PCI selection

Ms Sikow updated the BoR that the process for the 2nd PCI round will be launched this autumn and presented a detailed timeline. The process in the Regional groups will be held between September and April (one cross-regional meeting in September) with 6 meetings

until the end of March/early April. Then within 3 months ACER would need to issue its opinion. The PCI list is scheduled for adoption in September-October 2015. She reported that the timeline is very ambitious, with the aim of the EC being able to have 3 months for ACER opinion and that exact dates were being fixed gradually. In parallel, there will be monitoring of existing list of PCIs to see what has happened since last spring regarding the first list. The first meetings with all groups will be around the end of September/early October.

EC confirmed that the next versions of the ten year development plans (TYNDPs) will be the basis for the exercise of the 2nd PCI list and there will be no projects outside the TYNDP.

In parallel, on the cost-benefit analysis (CBA) methodology the EC is in the process of adopting the EC's opinion.

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

### **8.1. Draft of 3<sup>rd</sup> edition of the Market Monitoring Report (MMR)**

Mr Locquet announced that the ACER MMR TF meeting took place in Ljubljana on 1 July at which the draft report was discussed and comments provided. ACER distributed an updated version of the report on 15 July. He wanted to draw the attention of NRAs to say if they have a view on the draft to ensure they comment by the deadline. The end of August will be a final meeting and final opportunity for remarks. The report will then be submitted to the September BoR meeting.

A preliminary date for a Brussels-based event has been set for its presentation on 22 October.

Furthermore, the PWS is working on two papers for the BoR in September:

- A note on similarities and differences in procedures between Codes and Guidelines.
- A note following the request of the Infrastructure (INF) TF on the deadlines under Article 12(3) and 12 (4) of the trans-European energy networks (TEN-E) Regulation.