

42nd ACER Board of Regulators Meeting
Tuesday, 18 November 2014, 09.00-16.00
CEER, Brussels

Minutes Final

Member States	Name ¹	Member States	Name
Austria (E-Control)	M: Walter Boltz O: Vera Gusenbauer	Italy (AEEGSI)	A: Clara Poletti O: Ilaria Galimberti
Belgium (CREG)	M: Marie-Pierre Fauconnier A: Koen Locquet O: Geert Van Hauwermeiren	Latvia (PUC)	Excused
Bulgaria (SEWRC)	Excused	Lithuania (NCC)	Excused
Croatia (HERA)	M: Tomislav Jureković O: Sonja Tomašić Škevin	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Georgios Shammas	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	A: Martina Krčová O: Martin Sik	Netherlands (ACM)	A: Remko Bos O: Elozona Ochu
Denmark (DERA)	A: Mads Lyndrup	Poland (URE)	A: Halina Bownik-Trymucha
Estonia (ECA)	A: Külli Haab	Portugal (ERSE)	O: Jorge Esteves
Finland (EV)	A: Antti Paananen	Romania (ANRE)	O: Claudiu Dumbraveanu
France (CRE)	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)	M: Fernando Hernández
Hungary (HEA)	A: Attila Nyikos	Sweden (Ei)	M: Anne Vadasz Nilsson
Ireland (CER)	O: Laura Brien	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	Klaus –Dieter Borchardt, Catharina Sikow-Magny, Oliver Koch, Blanca Andres Ordax, Zsuzsanna Szeles
CEER	Natalie McCoy, David Haldearn

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

Main conclusions from the meeting:
1. <i>The BoR approved by consensus (of the members present or represented) the 2015 ACER WP. The BoR agreed the circulated draft letter by the BoR Chair addressed to the AB Chair and vice Chair informing on the ACER 2015 WP approval and commenting on the issues raised by the EC opinion mainly on resources for REMIT.</i>
2. <i>Chapters 3 and 5 of the revision of the Gas Target Model were endorsed, subject to the final proof reading of the whole document in December to make it consistent, with a few changes noted.</i>
3. <i>The BoR provided by consensus (of the members present or represented) a favourable opinion on the Agency's Opinion on the ENTSOG WP 2015.</i>
4. <i>The BoR received an update on REMIT IA, the policy documents under preparation by ACER, the REMIT Operation and Implementation and the ACER Public Consultation on OMP.</i>
5. <i>The BoR received an update on delivering the Bridge to 2025 actions and the approach for their monitoring henceforth.</i>
6. <i>The BoR received an update on progress on electricity and gas FGs and Codes.</i>
7. <i>The BoR received an update on lessons learned on CBCA cases and the first CEF evaluation by the EC and the ACER Director.</i>
8. <i>The BoR received an update on the ACER GRI biannual report.</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 41st BoR meeting

BoR Decision agreed: (D 2)

The 41st BoR minutes were approved.

2. Update from the Commission and the Director

2.1. Update on recent developments

European Commission

Mr Borhardt updated the Board of Regulators on the European Commission's Stress Test Communication and its recommendations, released on 16 October. He reported that a comprehensive exercise was conducted over the summer which was a success and of a

high quality, allowing a good draft to be produced which has received a large endorsement by the European Council: in their conclusions, more than four pages are dedicated to energy items and mostly stemming from the stress tests. Its comprehensive nature meant that 26 Member States (MSs) (only CY and MT were left out for good reasons); the Energy Community, Georgia, Switzerland and Turkey were all included. Scenarios of a complete halt of Russian gas imports to the EU and a disruption of Russian gas imports through the Ukrainian transit route for a period of one or six months were looked at. A first result is that the exercise has itself provoked MSs and regions to look much more seriously at Security of Supply (SoS) in a coordinated way. He highlighted that we should all encourage the competent authorities to continue this regional cooperation. Recommendations of the EC communication included *inter alia* the following: once in a crisis situation, the sequencing of actions should always start with market-related measures with more radical non-market-related measures to be taken only in the case where the former would not work, as even if only applied for a limited period of time, these can have long lasting repercussions. The second important recommendation was the need for increased cooperation and coordination: he referred to the simulation diagram produced by ENTSOG which demonstrated that if a coordinated approach is taken, no single MS is totally “cut off” because of the crisis. The third important recommendation relates to the completion of crucial energy infrastructure projects, especially in the Baltic, Balkans and South European regions which are the most vulnerable and where funding should go first. It was also suggested that, picking up on the Greek initiative, a European strategy for Liquefied Natural Gas (LNG) needs to be developed to better coordinate MSs’ action in this area. The importance of energy efficiency and completion of the IEM were also highlighted. The EC now needs to follow up on this report and the European Council conclusions which called for further reports and actions. These include producing a report on the 10% interconnection target for electricity by next March and following up on strategic infrastructure projects by identifying where there are problems and facilitating those, as appropriate.

In addition, the first Work Programme of the new Commissioner for 2015 includes the revision of the SoS Regulation for gas (994) scoping exercise, into which the results of the stress tests will be integrated. There is also the intention to do the same for electricity but with a target date of 2016 due the volume of work needed. These are two concrete projects resulting from the SoS discussion so far. The 2nd PCI list will be produced in 2015. Mr Borchardt highlighted that the Commission will be counting on ACER and the ENTSOs to do their share to ensure the procedure runs as smoothly as for the first list.

Ukraine

Mr Borchardt also provided an update on developments in Ukraine, for which 30 October was an important date. A Binding Protocol for the purchase of gas by Ukraine for the winter period of November 2014 until 31st of March 2015 was signed. The ‘Winter Package’ was signed by Mr Novak, Mr Prodan and Commissioner Oettinger, who facilitated the deal.

The BoR Chair congratulated Mr Borchardt, who has been heavily involved in this process on behalf of the EC, for the remarkable achievement of the agreement.

ACER update

- Citizens’ summaries translations

The Director introduced the item. He suggested that it could be useful to translate some of the Agency’s core webpages and citizen summaries, of which four or five are produced a year, into other EU languages. The reason for this is that, although most stakeholders and sector experts may have access to English, citizens may not. The proposal for webpages is to have three or four key ones translated by the Translation Centre for the Bodies of the

European Union as a one-off and send these translations to NRAs for checking by experts. For citizen summaries, which are produced regularly, he proposed to have an agreement to send the citizen summaries to NRAs; if they are available to translate and publish on their website, the Agency will republish them on its website acknowledging the translation by the NRAs.

Members welcomed this proposal.

- Report on exchange with EP/ITRE (5/11)

The Director updated the BoR that himself and the BoR Chair gave a presentation at the ITRE Committee on 5 November. They presented the MMR, the progress on IEM completion as well as early implementation of codes, the Bridge and REMIT amongst other ACER activities and provided responses to questions from MEPs. A report summarising the questions and answers was uploaded for information. The Director also met bilaterally with the Chair of the ITRE Committee, prof. Jerzy Buzek.

On 11 November, the Director and the AB Chair, Mr Nicolescu, met the new Commissioner for Climate Action and Energy, Miguel Arias Cañete.

The Chair reflected that the ambience at the European Parliament, where almost all except Claude Turmes were new parliamentary representatives, was friendly and constructive and their presentation to the ITRE had received lots of interest.

The Director informed the BoR that on the issue of conflicts of interest policy, a draft will be produced next week to be presented at both Boards.

The Director thanked members for replying to the questionnaire on REMIT security.

On secondments for the Agency's Market Monitoring Department, as of July ACER intends to offer short-term (six month plus) SNE positions in REMIT, but given that these secondments will be mainly for raining purposes he expected that SNE will be offered free of any cost for the Agency. The usual SNE secondments will be for at least 1 year, as at present, given the final stage of REMIT preparation, we cannot afford to spread our resources too thinly and for team members to be replaced so often.

Other ACER updates from the Director included that on 14 November ACER launched a public consultation on the provisional REMIT list of organised market places and published its monitoring report 2013 on the Inter-Transmission System Operator Compensation mechanism. A report was published on 30 October regarding regulatory implications of new developments in the gas supply chain. On 17 October ACER issued an Opinion on the ENTSO-E methodology for Incidents Classification Scale in 2014. The third ACER/CEER market monitoring report was launched with an event on 22nd October in Brussels. Finally, stakeholders have been invited to a public workshop on REMIT implementation on 10 December in Ljubljana in order to address and discuss documents and matters related to the upcoming adoption of the European Commission's Implementing Acts.

3. ACER cross-sectoral activities

3.1. 2015 ACER Work Programme

The Director presented his proposal. The process for the approval and adoption of the 2015 WP was delayed pending the EC's formal opinion which was finally received on 30 October

and was uploaded for information. A revised version of the WP was presented to the BoR for approval and was uploaded in both clean and with key changes marked.

He presented the main elements of the EC Opinion on the WP including: the draft Work Programme of ACER for 2015 is rightly focused on the tasks related to the completion of the internal energy market; the EC notes that ACER has rightly shifted the focus to implementation and monitoring of the network codes; and, the EC positively notes that ACER has introduced a multiannual dimension to the work programme. The Commission also welcomed the strategic thinking undertaken by ACER under its “Bridge to 2025” initiative as regards identification of main trends and challenges characterising the energy sector over next ten years. However, the Commission notes that ACER should be cautious in recommending any potential future activities that could fall under its remit. On the issue of resources, with regard to REMIT, the EC insists that the 15 personnel already granted to ACER as sufficient to meet all obligations arising from the REMIT Regulation and requests that the Agency redeploy its staff where necessary and in addition that help can be given by NRAs. However, the Commission also invited the Agency to intensify its action in a number of areas, including on the implementation of Network Codes and Guidelines, in the context of TEN-E, on the recommendations regarding the cross-border cost allocation (as recent CBCA-decisions issued by national regulatory authorities show the need for more harmonized approach) and to foresee sufficient resources to take over more of such decisions from NRAs. The WP should be aligned to the Draft Budget and the Agency should indicate how it will reduce its staffing levels by 5% over the next 5 years.

The Director then explained the main changes to the proposal on the basis of this EC Opinion and other input, including changes on the basis of the comments provided by BoR during its July meeting. With regard to the “Bridge to 2025” initiative, this now features more prominently, particularly in the multi annual outlook. However, the Agency had to be cautious in committing itself too much in light of the comments from the Commission. Other changes were mainly to address comments from the Internal Audit Service (IAS) regarding the structure of the WP and the headings used to define activities and deliverables. Most of the substantive comments contained in the Commission’s Opinion were already addressed in focusing on monitoring and being more proactive on CBCA, TYNDP and SoS issues.

However, the invitation of the Commission to align the draft of the 2015 WP to the level of human and financial resources proposed by the Commission in the Draft Budget 2015 subject to its adoption by the Budgetary Authority, has not been followed. Resources envisaged in the revised draft of the 2015 WP are still those specified in the draft 2015 budget of the Agency adopted by the Administrative Board (AB), with a supportive opinion by the BoR in March 2014. The Agency does not think it can redeploy its staff or rely on assistance from NRAs. Once the draft budget is finalised then the Agency will have to see what resources will be available and the WP will need to be revised accordingly.

Regarding the 5% reduction, the Agency was given 8 FTE for TEN but these have been cut to 5 (3 have been taken away to align with the 5% reduction) so the Director considers that the Agency has complied with this.

Lord Mogg recalled that the BoR had agreed to approve the WP once the EC opinion was ready, and submit it to the AB for adoption. He proposed that in giving approval, the BoR could also provide some additional comments on the EC opinion. Comments to be included could be on the ability for NRAs to provide additional resource and possibility for the redeployment of resources, for instance from administration or other areas to REMIT, which is not likely. That in the absence of these resources being made available, the Agency will be unable to fulfil its responsibilities effectively with the consequent risk of undetected market abuse. The Commission’s suggested redeployment of existing staff is unrealistic and

unworkable against the background of the challenges ACER faces on the completion of the internal energy market. It also ignores the important consideration that other – usually legal requirements on the Agency – could no longer be delivered given the shift of resources to REMIT. Last the NRAs facing austerity themselves and the need to build up their own implementation, monitoring and enforcement capabilities, cannot offer to address this gap through secondments.

The BoR was asked to approve the 2015 ACER WP, as well as to agree on the draft letter from the Chair circulated.

Mr Borchardt wanted to make clear that the expression of support of Bridge did not mean that the Commission were able to secure additional resources. Although it would be a shame for the initiative's potential to go unused, it is the Agency's responsibility to see what it can achieve within its budget and resources. On the 5% reduction and on REMIT resources, the Commission's position has been taken and it will be up to the Agency to convince the budgetary authority if it has a different position. The Agency should not expect the EC to be at the forefront of fighting their cause because the EC's assessment is different from the case being made in terms of REMIT resources.

Lord Mogg noted that the key difference is that the Agency's assessment of the risks related to REMIT is different from the EC.

The Director highlighted that the Agency has never previously expressed a concern with resources for their tasks under the Third Package, and on the TEN-E regulation they have delivered. The problem arises under REMIT: the Agency is asked to redeploy staff, however of the 77 staff members, REMIT staff totals 15. In order to reach the necessary number of staff to carry out REMIT tasks (around 30 additional) it would have to redeploy more than half of the ACER staff, leaving the other activities to be performed by a few staff. In addition, in a number of areas, the Agency needs to do more, for instance DG CLIMAT asked for monitoring of ETS options and secondary trading.

If assumptions are right about the need for 30 staff on REMIT, a question remains amongst NRAs to see whether they can also offer secondments.

The BoR was invited to:

- To approve the 2015 ACER WP
- To communicate our approval to the AB with a letter outlining the issues circulated to members.

Lord Mogg noted that we need to face up to fact of no resources: unfortunately the case for 2015 looks to be lost as the budget is almost definitive and rather the debate is more for 2016. The BoR Chair invited the Director to present to the BoR the activities to be revised under REMIT and the fall back position after the adoption of the definitive budget by the budgetary authority, if possible, at the December meeting.

He also suggested striving for an earlier coordination for the 2016 budget with a view to inform better the Institutions and influence the budgetary process for securing the appropriate resources.

The ACER Director noted that the main action needs to be in the early part of 2015. He also noted that there are Agencies that have received additional staff.

BoR Decision agreed: (D 3)

The BoR approved by consensus (of the members present or represented) the 2015 ACER WP.

The BoR agreed the draft letter by the BoR Chair circulated addressed to the AB Chair and Vice-Chair informing on the ACER 2015 WP approval and commenting on the issues raised by the EC opinion mainly on resources for REMIT.

3.2. BoR Roadmap

Ms Geitona gave a brief update. It is intended to merge this Roadmap with the Action Plan for monitoring the Bridge related activities.

4. Post-2014 Strategy

4.1. Delivering the “Bridge to 2025”

The Chair introduced the note and two annexes on delivering the Bridge. Uploaded for information was a cover note with two annexes: Annex I “Building the Bridge”: this is the note from the Chair distributed in October revised to reflect the comments by members during the meeting and updates on some of the actions which were highlighted in blue (including third countries, some references and links to the recent European Council conclusions and the IEM COM and specific timelines for delivering the relevant proposals emanating from the Bridge); Annex II, a “Bridge into action” plan, provides a draft template for monitoring progress, illustrating the specific contributory actions and some horizontal initiatives by EU Institutions which are relevant to our work, who is responsible for delivery and timing, and cross references to the Work Programmes deliverables. This will be combined with the current BoR roadmap to avoid too many different initiatives; it will be populated and presented for discussion as from December. He highlighted that the Bridge initiative has been welcomed and we have to pursue it, but there are also actions for the EC. The Annex I will be further amended to accommodate some comments by BNetZA.

BoR Decision agreed: (D 4)

The BoR welcomed the actions and approach proposed subject to a few further revisions as above.

Market Monitoring

5. Market Integrity and Transparency

5.1. Status update on REMIT implementation and new arrangements for operational phase of REMIT

The Director presented on the status of REMIT implementation and new arrangements for the operational phase of REMIT. This included an overview of the timelines and the policy documents which have been consulted on. The Director referred to the IA which will be soon adopted and the relevant timeline: the IA will enter into force between December and January, nine months after which obligations for reporting comes into force. Registration instead will commence three months after the adoption of the IA. With the entry into force of the IA, we need to publish a number of documents and the Agency envisages publishing

some of these documents as “staff versions” early in December ahead of the workshop on 10 December on REMIT implementation.

On REMIT breach cases, one aspect which is underestimated is the number of notifications of suspicious events that ACER received. This year (in 2014) there were 29 reports of suspicious transactions, five of which have turned out to be breaches. However, the concerned NRAs did not always have the powers to impose penalties. At the moment, there is only three staff at ACER looking into those cases. The total number of cases received over the last three years is 51.

The Director reflected on the comments regarding a ‘plan B’ for REMIT, which was previously discussed in Rome (on the basis of three options). One of the options previously discussed was that ACER transfers all that might be anomalous events to NRAs. The Regulation states a preliminary assessment should happen; however, this could be open to interpretation. He questions, however, whether it would be wise to notify all anomalous events to NRAs, as it is not clear how many would be received. What is evident is that there is an inconsistency between the mandate and the resources of ACER. Another option was to calibrate the system to only detect the really obvious anomalies. However, this might result in some being missed which may be detected elsewhere (e.g. by whistle-blowers) with the obvious risk of losing the credibility of the whole construct. Each of the alternatives has important drawbacks. On the suggestion regarding whistle-blowers, in principle the Agency wants to be open and they have been considering a phone hotline, though this will obviously need to be manned and they may need to learn from an example of FERC where the phone line was often inundated with calls from disgruntled customers. On the website there is already a platform in place, launched the same day REMIT entered into force in December 2011 and enhanced in August this year, which is already available to whistle-blowers. The Agency may consider giving this functionality greater visibility.

Lord Mogg highlighted that we are reaching a critical stage if fundamentally we do not get additional resources yet we know there are cases out there: we could be faced with problems.

The Director noted that as we move into the operational phase of REMIT, he is thinking of setting up a Coordination Group which will take over some activities from the AMIT Working Group. He is in touch with the AMIT WG chairs to see how this would take place, which he expects this will be put into action in the next couple of months. He emphasised that though participation in the WG is encouraged but is voluntary he would consider participation in this new Coordination Group as being mandatory for NRAs. The group will not simply discuss documents to come to the BoR but will discuss how we will take coordinated actions in all MSs in implementing REMIT. The aim is to have minimal structures and virtual, quarterly meetings, but that the group needs to be taken seriously as it is to do with operating REMIT.

Lord Mogg asked whether AMIT WG would be dissolved as a result of a new coordination group. The ACER Director noted that this has not been considered but rather the need to have a forum for support of operation which is not the WG format; however, if there are still remaining issues to be dealt with then the AMIT WG can continue. He restated that he is contact with the Chairs and that this will be further discussed at the December BoR meeting.

5.2. EC update on the REMIT implementing acts

Mr Koch updated the BoR on the progress on the REMIT Implementing Acts (IAs). He mentioned briefly the change in staff that has taken place on the Commission’s side and the new team in place. On REMIT, stakeholders are invited to read the text which is now

available in order to prepare for the deadline when it will become applicable later this year. He noted that some efforts were taken to be as precise as possible in translations, with the help of NRAs.

On the REMIT resource issue, Mr Koch stated he fully supported the call for more resources for the internal energy market. Ultimately the Commission fully understands the Agency's and NRA's constraints but REMIT needs to be implemented; we need to face the reality that this will become enforceable legislation.

Lord Mogg had a couple of questions for the Commission with regard to the timetable of IAs, including what the absolute requirements are, when the full panoply will have to be dealt with and if there were any possibilities of a delay. He suggested that what is being described as 'plan B' perhaps needs to be discussed in the coming months in a restricted session when it is clear whether we are getting the required resources for 2015.

The Director agreed that there is limited room for manoeuvre as the IAs have been (positively) voted on and thus they will be adopted. He alerted that the launch of the new reporting, which would begin nine months after the IA becomes applicable, should not coincide with the Christmas period of 2015. He also noted that the Agency has already published a REMIT annual report, as the regulation requires, which is fairly transparent and gives examples of cases though they are made anonymous.

5.3. Note on TRUM, RRM and Transactions and Fundamental data manual

The Director presented the note for information on the REMIT implementation policy documents. Those - MoP, TRUM and RRM Requirements - have been discussed within the AMIT WG and the MMG TF throughout 2014. Draft versions of the documents were publicly consulted both in 2013 and 2014. A summary of the responses to the consultations was provided to the September BoR meeting. The policy documents are currently being finalised based on the feedback received from stakeholders. The final drafts of the MoP, TRUM and RRM Requirements will be discussed at the AMIT WG meeting on 25 November 2014, and then will be finalised and uploaded for the December BoR meeting. The documents will be formally issued upon entry into force of the REMIT implementing acts, i.e. with the entry into force of the legal basis of these documents. The Agency is, however, considering publishing "staff versions" of these documents in December 2014 to give stakeholders even more time to prepare for data collection.

5.4. Note on REMIT IT development - for information

The Director provided an overview of the REMIT implementation work. A note was circulated which focuses on the latest achievements as well as core on-going activities such as the concept for the Agency's REMIT Information System (ARIS) based on four tiers. The note provides an update on the status of CEREMP and of the Notification Platform and of ARIS.

On IT implementation, CEREMP will be first part to go live – four NRAs have already started registering market participants and a number of others have already linked to our system for registration. What is needed simply is to sign the SLA with the Agency (only a few haven't) and for a VPN and digital certificate to be set up. There is a help desk and a consultant to help ACER in this field. On ARIS, we are in operational prototype of the system which is divided in four tiers: tiers one and two have been tested intensively over last year and have started to test tier four (data exchange with NRAs). However, this has had to be paused while system is being further developed, as the agreement does not allow ACER to share

the data in order to test it with real data. He highlighted however that the main aim is to look at whether the communication works rather than needing actual data. Overall, progress is on track for the reporting of transactions.

5.5. Draft PC document on list of OMPs

The ACER Director reported that the PC was launched on Friday. The document was circulated for information. The public consultation paper is intended to collect views on the draft list of organised market places from all parties interested in the implementation of REMIT (market participants, energy exchanges, energy broker platforms and other persons professionally arranging transactions, etc.). The draft list of organised market places is attached as an annex to the consultation paper.

6. Electricity

6.1. Oral update on the FGs and NCs

Mr Crouch updated on recent work and developments. The AEWG took place on 6 November along with a strategic discussion session which was held on 5 November 2014. This covered system adequacy and flexible response as well as network codes processes.

Mr Crouch presented the overall planning on codes.

Regarding the CACM, he presented the key issues discussed on 7 November at the electricity cross border Committee. The next Cross border committee will be held on 4/5 December. These included, *inter alia*, the voting rules, the PXs competition, the convergence of capacity calculation regions: ACER's objective is to ensure that capacity calculation methods become aligned to avoid welfare losses; however, ENTSO-E is advocating for keeping regions legally separate and for longer deadlines; regarding the bidding zones review process, it seems that the cross border committee is split on this proposal with no clear majority. ACER strongly advocates for a defined end in the process. The issue of pilot study of Bidding Zones was unlikely to be as useful as hoped (ENTSO-E did not accept ACER's comments) but there is a clear risk of losing much from the target model if there is not a decision making process. Mr Crouch noted the need and the effort to keep a strong position on this key element of the target model.

The ACER Director shared Mr Crouch's concern that this is a serious step back.

Mr Crouch also reported on current discussions on the relevant provisions on all NRAs approvals. The CACM requires 13 pan-EU and 6 regional coordinated TSO (and NEMO) proposals and coordinated NRA approvals. All NRAs need to agree and issue a decision within 6 months, alternatively, ACER must decide. The current thinking is to try to bring each decision to the BoR to be used as a platform for building consensus as follows: Try and make use of existing working structures for the discussion on substance, including stakeholders' involvement, engagement via ENTSO-E/Europex as proposals developed, including an escalation process in case of disagreement (which could be defined in an MoU). Once a proposal is received, a paper will be submitted to the BoR within 3 months to seek consensus and "encourage" NRAs to adopt the BoR position, exploring whether NRAs could then decide to refer to ACER for decision (avoid national decisions) – or whether that decision could be earlier. Of course the commitment from BoR (for NRAs) on the process would be essential.

Lord Mogg welcomed the process being discussed and the involvement of the BoR which was an idea already explored during the governance discussion in the context of the Bridge with a view to facilitating a consensual approach.

On RfG code the next steps include trilateral engagement to discuss ACER and ENTSO-E comments. The Comitology is expected to start in Q1 2015.

On SO codes, ENTSO-E was asked on whether they could issue it as a code as opposed to a Guideline. ENTSO-E asked for a 9 month delay to make the text suitable to be qualified as a code. The AEWG preference is for a NC path under two conditions. The overall process, including the consultation of stakeholders should not result in more than 12 months delay; and the value of the code should be maintained.

Regarding the balancing code, the AEWG discussed a letter to ENTSO-E recommending the early implementation of first requirements in the code (i.e. requirements to be fulfilled within one year after entry into force). The ACER Recommendation will be delivered in March 2015.

Mr Crouch also informed the BoR members on the work on capacity mechanisms. ACER has expressed interest on this issue and, therefore, it is included in the ACER WP and has been taken out from the CEER WP. During the strategic high level discussion the EWG discussed also flexibility issues. Some of the issues related to the CEER WG and some of ACER. A joint TF to scope this work will be established to ensure that we take a holistic view and then this would lead to further work in the respective ACER and CEER WG in accordance with the respective areas of responsibility.

On intraday, Mr Crouch noted that contractual negotiations between PXs and DBAG should end on 9 December. In case of disagreement between PXs (on competition/performance) PXs will escalate issues to NRAs. The EC last year announced its intention to take leadership on this project – in practice high-level meetings were arranged on parallel track with ongoing NRAs chairing implementation/stakeholder meetings. The upcoming Florence Forum provides an opportunity to rationalise this and the next steps could include the EC giving clear steer on how to proceed at Florence.

Mr Koch also noted the need to join efforts on this issue to achieve progress as there is no evident – magic solution.

6.2. Preparation of the Florence Forum

The FF will be held on 27, 28 November. A draft agenda has been uploaded and Mr Crouch noted that all presentations need to be submitted by 20 November to the EC. Most of presentations are available and have been circulated for members to make comments.

Mr Koch confirmed that there will be a slot on the “Bridge to 2025” under the IEM item.

7. Gas

7.1. Oral update on Framework Guidelines and Network Codes & other work

Mr Boltz presented progress. Regarding the network code on tariffs, after 31 December 2014, ACER must provide its reasoned opinion to ENTSOE and a recommendation for

adoption to EC, but there are still open issues including on payable price, scope (definition of “transmission services”), single cost allocation methodology, multipliers, volume risk, etc.

On the CAM code, there was a joint submission of Oil & Gas UK and Gas Forum applying for an amendment to NC CAM and NC BAL. Mr Boltz informed the BoR that ACER is considering this request.

On other issues, Mr Boltz noted that the first incremental auction will be run in March 2017.

Regarding the Network Code on Interoperability and Data Exchange Rules, on 4 November a positive vote was provided by the Gas Committee. After translations, there will be a 3-month scrutiny period of the Council of the EU and European Parliament, and, subsequently, the formal Commission decision and publication in OJ. The code will be applicable from May 2016.

On early implementation of the balancing, the last Madrid Fora requested NRAs and TSOs to consider early implementation projects. ACER has coordinated work with ENTSOG. The joint ENTSOG-ACER report on the early implementation of the BAL NC will soon be available on ENTSOG and ACER websites.

The ACER report on CMP implementation is currently being finalised and is expected for the December BoR. EFET provided a critical position paper at the last Madrid Forum.

As ACER identified no need for a FG Rules for Trading, during this process a list of topics were identified for further analysis (capacity products and contracts, licensing, design and procedures of VTPs, secondary capacity markets and ways to facilitate secondary capacity) trading. The next step will be for the TF to analyse which of the differences constitute a barrier and where harmonisation would be beneficial

7.2. Gas Target Model

Mr Boltz provided an update and presented the chapters submitted for endorsement. The endorsement of the full document will be sought for the December BoR. The Gas Target Model review is nearly accomplished. The BoR was invited to endorse sections 3 and 5. Section 3 addresses security of supply and upstream competition. It develops recommendations to enhance producer competition, reflecting also security of supply considerations. Section 5 addresses the role of gas in providing the flexibility in the system needed to support the penetration of RES electricity generation. In this section, the role of gas in moving towards a low-carbon energy system is being addressed. Focusing on gas-fired power generation, the section examines whether the current framework of legislation and regulation is able to overcome coordination problems between the gas and the electricity sector.

Section 1 and Section 2 are basically finished and only need a final retouch at the very end to update some numbers and shorten the sections. Section 4 deals with wholesale market functioning. It will be presented to the TF and to the GWG in their November meetings. Section 6 on new uses of gas was finished very recently, after the study ACER had commissioned from Kantor in this context was presented. One more round of feedback is planned before going for GWG endorsement in November to be submitted to the BoR in December probably at the Charlemagne building.

The revised GTM will be launched in January and the launch event will be held on 16 January. On 26 November, the AGWG endorsement of the Revised GTM will be sought for submission to the BoR on 17 December for endorsement of the whole package.

The ACER Director thanked the AGWG Chair. It has been a great effort during over a year to finalise this work.

Mr Koch alerted on the overall debate on the SoS which is being held including on the potential revision of the SoS Regulation. It is indeed crucial for market integration and regulators should have an input to avoid solutions that might not be well informed.

BoR Decision agreed: (D 5)

Chapters 3 and 5 of the revision of the Gas Target Model were endorsed subject to the final proof reading of the whole document in December to make it consistent and a few changes above noted.

7.3. Draft ACER opinion on ENTSG work programme 2015

The ACER Director presented the draft ACER Opinion for a BoR Opinion. The draft ACER Opinion notes that the draft WP of ENTSG is consistent with the tasks outlined in relevant legislation and the annual priority list for development of NCs and guidelines for 2015. The key Recommendations include *inter alia*: making a clearer distinction between tasks and specifying activities in greater detail; ensuring a seamless interface between various work areas, both within ENTSG and with other stakeholders; ensuring coordination with the Agency; reporting on the effects of both implementation and non-implementation of network codes and guidelines; ensuring that timelines for CAM roadmap are agreed with the Agency; working with affected stakeholders on practical issues related to implementation of cross-border bundles capacity; to complete a transparent development and consultation process on the methodology for CBA as well as provide guidance; ensure work on supply outlooks and reviews are provided in good time and include considerations of gas supply; ensure involvement in Coordination and Regional Groups is adequate; and finally, the Agency encourages the focus on ensuring transparency and data quality.

BoR Decision agreed: (D 6)

The BoR provided by consensus (of the members present or represented) a favourable opinion on the ENTSG WP 2015.

8. Investment challenge

European Network Planning and infrastructure challenge

8.1. Lessons learned from CBCA cases (electricity and gas) from ACER and NRAs

Ms Sikow-Magny presented some lessons learned from the Commission's perspective. As a general remark she noted the importance of the user-pays-principle and that co-financing will remain exceptional and there is no guarantee of receiving grants and this message need to be conveyed. She raised importance of quality decisions which evidently need suitable input. An improved guidance needs to be applied. The Long-term investments need certainty. The purpose of the Regulation is to obtain a user-pays-principle in an efficient way for monopolies.

There are 248 projects of common interest; 12 projects applied for grants for works. The Multiannual call was for 750m but the requested grants for works amounted to 1,3 bn which indicates that the expectation from promoters was high.

Practically, in the EC's view, CBCA-decisions should allocate 100% of the efficiently incurred investment costs in the tariff and should not include costs to be paid by the European Commission. The CBCA-decision can be flexible to avoid over/under contribution, though payment obligations have to be proportionate and should not be to the detriment of the investor. The possible need for co-financing should be economically justified and only indicated. With regard to the expectation from Regulators, CBCA is a tool to jointly scrutinize the project. NRAs should only include efficiently incurred investment costs in the tariff and they should also question whether the project delivers the benefits claimed and whether it fits for purpose. In some cases it should not be a PCI (sometimes this response can also be expected). The underlying element is the benefit to society, EU as a whole and this information is assessed through the CBA and CBCA process. Regarding the experience gathered from the first call, NRAs expressed these concerns and mostly reacted by not allocating these costs/the full amount of costs. There are of course two ways to react: to lose the PCI-status or to save it by requiring co-financing. The technical evaluation during grant-application scrutinises the project again.

Practically the EC will consider the fate of the PCI by co-financing (or not). CBCA-decisions could in exceptional cases allocate less than 100% of the costs in the tariff, but this need to be well justified and would put the PCI in question. In case of partial co-financing granted, CBCA-decisions could remain flexible to close the remaining gap. It is important to avoid gambling for co-financing. She raised attention to the need for a good quality CBA methodology. We need to establish harmonised CBCA approach with an enhanced cost-benefit-methodology. The EC also proposed to revise the ACER-guidance (whilst she noted that in cases where it has been used NRAs' CBCA decisions were better). Possible revisions can address the no-negative-net-benefit-concept, the significance threshold-concept (e.g.10% has been used in ways not intended), the development of a common understanding and methodology to indicate the need for financial assistance.

Ms Sikow-Magny noted that we have started discussions on how to go from this experience gained to the next round and discussed how to provide further guidance to help promoters and help regulators.

Ms Sikow-Magny informed that on 18 December there will be a "promoters date" aiming to help promoters to understand their roles and the requirements for grants which will address studies as well as works.

The ACER Director provided an update on the status of the CBCA monitoring, the draft ACER internal report which is available and being discussed at TF level and with DG ENER. The focus is on the overview CBCA decisions (12) and the concerns and suggestions of NRAs regarding CBCA process.

Regarding the overview of the CBCA decisions, the vast majority of projects were located in one country, and the country is net beneficiary. There was no cost allocated cross border. All requests included project promoters' intention to apply for EU financial assistance. The investment requests are broadly in line with the Regulation but a major shortcoming was the project-specific CBA. Further clarity is needed regarding the maturity of projects, the completeness of submission, the TSO consultation and the time of submission. There were concerns about CBA methodologies (e.g. to capture all benefits, to address the treatment of uncertainties and the treatment of different scenarios). Better understanding was requested regarding: the purpose of CBCA versus the CEF; the 10% threshold; "no loser no

compensation'. More detailed guidance was requested on the definition 'concerned NRAs', the subjects of TSO consultation and the format and content of the coordinated decisions. Last there were suggestions on further discussion on cross-border payments; inclusion of the investment costs in tariffs; the ex post adjustments of decisions; possible appeals against CBCA decisions.

ACER has already had a meeting with the EC to discuss the "gaps". We came with 3 main aspects for further discussion: the criteria for cross-border compensation; the application of the 10% threshold and the consistent use of scenarios.

The Director clarified that the initial ACER Recommendation was clearly applying only for the first round of selection and not for any subsequent. It is indeed the Director's intention to propose a second ACER recommendation.

Lord Mogg suggested continuing this useful discussion at the next BoR meeting.

8.2. ACER Opinion on the implementation of the investments in gas network development plans

The ACER Director provided an update on the finalisation of this opinion which was not ready for circulation. This Opinion will look at progress in the development of the gas infrastructure investment projects of pan-European significance; the broad areas in which NRAs have expressed concerns about delays in the development of the projects; possible inconsistencies or lack of alignment between NDPs and the TYNDP 2013-2022; the suggested ways and means of action by TSOs, NRAs, ENTSOG or other competent bodies concerned, with a view to implementing the investments in accordance with the TYNDP 2013-2022 and aligning different development plans. The relevant (electricity) opinion was issued on 30 July 2014.

The Director noted that ACER is encountering a number of problems with data availability and sought the NRAs' help on this. The Director advised that NRAs should look into the projects under their jurisdiction and see how they are progressing. The Director will submit the Opinion for the BoR favourable Opinion at the December meeting.

9. Implementation, Monitoring and Procedure Working Group

9.1. Progress on work

Mr Locquet noted that the IMP WG met on 4 November and had also a first brainstorming meeting on areas for the future Market Monitoring Report. There was also a request by the ACER Director for the Group to react to legal questions and this was accepted by the Group.

9.2. Planning and timing of next edition of the MMR

Mr Locquet provided the timeline for the next MMR. A preliminary draft will be ready by the end of July. A more definitive draft will be ready by the end of September. The October BoR will discuss it and GA (will be invited to approve the customer section). A note was circulated with the detailed timing for the preparation of the new report. The report will be presented on 2nd/3rd week November to ITRE, and 3rd/4th week a public presentation is envisaged.

10. Regional Integration

10.1. ACER internal position on regional security coordination initiatives

The ACER Director noted that this issue is very much linked to the Bridge governance section as it deals with the role on RSCI. The regional coordination bodies can play a more important role in coordinating TSOs. The key objective is to improve TSOs coordination. He mentioned that improved coordination of TSOs would be best achieved by extending the role of Regional Security Coordination Initiatives (RSCIs).

Mr Koch noted that this issue is also included in the FF agenda linked to the network codes. The EC is considering this sensitive issue very seriously as well as input received and is keen on crystallising their thoughts for further policy in this area.

10.2. GRI progress report: Autumn 2014

The ACER Director provided an update on the basis of the GRI progress report circulated for information and describes progress in GRI projects and activities focusing on achievements between April and October 2014. The next GRI Progress report is scheduled to be released in spring 2015. The report covers: recent developments including reassessment of the geographical composition of the SSE region, drafting of regional Work Plans in the South and SSE regions beyond 2014 and cooperation with the Energy Community; early implementation of Network Codes; progress in regional projects; and conclusions.

AOB

Lord Mogg reported that the date for the January BoR is changed. It will be held on 28 January.

In the margins of the December (Ga and BoR) meetings a presentation by IEA will be held on 16 December at 13.45 at ACER premises. This is open to all BoR members.