

**29<sup>th</sup> ACER Board of Regulators meeting**  
**Wednesday, 12 June 2013, 09.00-16.00**  
**CREG, rue de l' Industrie 26, 1000 Bruxelles**

**Minutes**

**Participants**

Member States	Name <sup>1</sup>	Member States	Name
Austria (E-Control)	M: Walter Boltz	Latvia (PUC)	O: Lija Makare
Belgium (CREG)	A: Koen Locquet	Lithuania (NCC)	O: Dalius Kontrimavičius
Bulgaria (SEWRC)	A: A. Toneva      Excused	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: G. Shammas      Excused	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	O: Miroslav Belica	Netherlands (ACM)	A: Remco Bos O: Elozona Ochu
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	M: Marek Woszczyk
Estonia (ECA)	M: M. Ots      Excused	Portugal (ERSE)	A: José Braz A: Alexandre Santos
Finland (EMV)	M: Riku Huttunen	Romania (ANRE)	A : Lusine Caracasian
France (CRE)	O : Sabine Hinz O: Michel Thiollière	Slovakia (RONI)	M: J.Holjenčik      Excused
Germany (BNetzA)	A: Annegret Groebel O: Daniel Mütter	Slovenia (AGEN-RS)	A: Jasna Blejc
Greece (RAE)	O: Katerina Sardi	Spain (CNE)	A: Tomás Gómez O: Gema Ricor
Hungary (HEO)	A: Hajnalka Kelemen	Sweden (EI)	A: Caroline Tornqvist
Ireland (CER)	A: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Martin Crouch O: Clemence Marcelis O: David Haldearn
Italy (AEEG)	A: Clara Poletti O: Ilaria Galimberti		

Observers	Name
ACER	Alberto Pototschnig, Fay Geitona, Volker Zugeler
European Commission	Oliver Koch, Kamila Kloc, Aurora Rossodivita, Kitty Nyitrai,

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

<b>Main conclusions from the meeting:</b>
1. <i>The BoR approved by consensus (of the members present or represented) the section on the regulatory activities of the 2012 ACER annual activities report.</i>
2. <i>The BoR welcomed the 2014 ACER WP outline subject to the comments made at the meeting. The BoR approval of the 2014 ACER WP will be sought at the July BoR subject to any changes – in the light of the EC’s Opinion on the WP and the annual priority list – for which a formal approval will be sought at the September BoR meeting to be held on 25 September.</i>
3. <i>The BoR approved the ACER mid-term review of the 2013 WP.</i>
4. <i>The members received an update on progress on the specific actions of the Roadmap. Progress will continue on the Roadmap and will be reported at the next BoR.</i>
5. <i>The BoR provided a favourable opinion by consensus (of the members present or represented) on the Agency’s opinions on the ENTSOG summer outlook and on the annual activities report.</i>
6. <i>The BoR welcomed the ACER preliminary opinion on the Interoperability network code.</i>
7. <i>The BoR gave by consensus (of the members present or represented) its favourable opinion on the ACER opinion on the NC on Operational Planning and Scheduling.</i>
8. <i>The BoR welcomed the ACER preliminary opinion on the NC on Forward Capacity Allocation.</i>
9. <i>The Director will finalise the report on Capacity Remuneration Mechanisms and the Internal Market for electricity in light of the comments received and circulate again the report before its publication.</i>
10. <i>All members, the Director and the Commission expressed their keen interest in avoiding delays on intraday given its importance for the internal energy market. They stressed the need to resolve the issue of the selection of the IT system to implement the intra-day market coupling although recognising the difficulties in delivering fully satisfactory assurances (by any of the vendors) despite the additional documents received.</i>
11. <i>The members recognised the Directors’ efforts to reach a settlement and issue an informal opinion with a view to breaking the deadlock. The members provided detailed feedback to the draft informal opinion proposed by the Director. The majority of members supported the adoption without further delay of the draft informal opinion. The members urged the PXs to accept this opinion. The members confirmed their readiness to accept the informal opinion. With regard to the provision of comfort on cost recovery to TSOs or to the relevant PXs, members noted that the NRAs decisions will be in accordance with their national framework and policy.</i>
12. <i>Members encouraged the Commission to include a robust decision making process in the Governance Guidelines to avoid this situation reoccurring.</i>
13. <i>The ACER informal opinion will be finalised in light of the debate and following its legal scrutiny will be adopted.</i>
14. <i>The BoR members welcomed the update on the preparation of the 3<sup>rd</sup> ACER guidance, on the REMIT forum, and the results of the questionnaire on the REMIT Implementation at national level.</i>
15. <i>The BoR welcomed the Guidance paper on the evaluation procedure for NC amendment proposal.</i>
16. <i>The BoR members welcomed the update on the preparation of the 2nd 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 28<sup>th</sup> BoR meeting

*BoR Decision agreed: (D 2)*

*The 28<sup>th</sup> BoR minutes were approved.*

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

#### 2.1 Update on recent developments

##### - PLANNING GROUP

Mr Koch reported on the Planning Group meeting which took place on 11 June. On gas, the work is on track and no major issues were identified. It was agreed to give more time for ENTSOG to work in the incremental capacity area. On Electricity, a useful discussion took place with ENTSO-E, including on the organisation of trilateral meetings to pragmatically solve open issues. A session with journalists to debrief on network codes is scheduled to be held in the margins of the next planning group meeting on 18 September.

The annual priority list of the Commission - following the public consultation - was circulated ahead of the PG meeting. Mr Koch reported that it does not reflect significant changes compared to the consultation document. The adoption of Commission's decision on the annual priority list is foreseen in the summer.

Ms Kloc reported that the Commission Communication for transferring to the Agency the funds (approx. €3 million) required to complete the implementation of REMIT and on the related amended legislative financial statement is foreseen to be adopted on 18 June 2013. The Communication together with the financial statement will be presented to the budgetary authorities. The EP's ITRE Committee is expected to provide its opinion on the proposal at its 11-12 July 2013 meeting. If everything goes well the money could be transferred to ACER in August this year.

##### - UPDATE ON EUROPEAN COUNCIL (22 MAY) & ENERGY COUNCIL IN JUNE

Ms Kloc reported on the conclusions of the European Council on 22 May and on the Energy Council on 7 June. The Commission was requested to provide guidance on capacity mechanisms and on addressing unplanned power flows while it welcomed initiatives to promote further transparency of methodologies and practices used to assess generation adequacy.

The European and the Energy Councils reaffirmed the objectives of completing the internal energy market by 2014 and developing interconnections so as to put an end to any isolation of Member States from European gas and electricity networks by 2015. The Councils called for particular priority to be given to the effective and consistent implementation of the third "energy package", as well as speeding up the adoption and implementation of remaining network codes. The commitment to the correct and urgent implementation of the internal energy market legislation was underlined. The Energy Council invited all Member States to consider the impact of existing end-user price regulation measures, it underlined the importance of finalising and implementing the Target models for electricity and for gas and supported the further strengthening of regional initiatives.

The Commission will report on progress on implementation of the internal energy market early in 2014.

Mr Boltz sought some clarifications on the European Council's conclusion on the impact of high energy prices and costs which must be addressed. The European Council called for work on the issue of the contractual linkage of gas and oil prices that needs to be looked at in this context; and requested the Commission to present an analysis of the composition and drivers of energy prices and costs in Member States before the end of 2013, with a particular focus on the impact on households, SMEs and energy intensive industries, and looking more widely at the EU's competitiveness vis-à-vis its global economic counterparts. These issues will be addressed in the context of the discussion scheduled for the February 2014 European Council on industrial competitiveness and policy.

#### - UPDATE ON ACER EVALUATION

The letter from Mr Borchardt was circulated. The ACER Regulation requires 2 reports, the first assessing ACER's results and working methods in relation with ACER's objective, mandate and tasks (Article 34) (due by 15 September 2013), and the second assessing the Director as well as ACER's duties and requirements over the coming years (due by January 2015). The letter indicates that for the first assessment the Commission intends to launch a public consultation shortly.

Lord Mogg explained that the BoR must make recommendations on the report of the EC pursuant to the ACER Regulation. He suggested appointing Ms Groebel as the BoR rapporteur to help in the preparation of the BoR Recommendations given her experience with BEREC.

Ms Groebel was invited to come back to the July BoR meeting to give an early indication of the scope of the BoR Recommendations which should be prepared for September subject to the finalisation of the Commission's report.

#### Update from the Director

The Director gave a progress report on ACER activities and staff.

The 2<sup>nd</sup> Annual Conference of the Agency on "Energy Markets: 2014 and Beyond" was held on 17 May. ACER issued a press release. The event, gathered key representatives from the EU institutions, energy sector stakeholders and market players. The Conference focused on what still needs to be achieved to meet the 2014 energy market integration goal set by the EU Council in 2011, for the benefit of European energy consumers and citizens, and the challenges awaiting the energy sector farther ahead. The discussion was very interesting

and more than 200 participants attended. The opening of the Conference by ACER Director was followed by the intervention of the Slovenian Minister responsible for Energy, Samo Omerzel. Furthermore, the Member of the European Parliament, Romana Jordan stressed the support of the European Parliament to the work of ACER. The opening was concluded by the Irish Ambassador to Slovenia, H.E. Kieran Dowling who illustrated the energy priorities of the Irish Presidency of the European Union. Commissioner Oettinger delivered a Keynote Address on EU Energy Policy Beyond 2014. The panels and roundtables were moderated by Lord Mogg, Chair of the Board of Regulators; Mr Piotr Wozniak, Chair of the Administrative Board; and Prof. Pippo Ranci, Chair of ACER Board of Appeal. P. Lowe provided the closing remarks.

### Staff report

The Agency will have 72 staff in 2013 and, according to the Establishment Plan presented by the Agency will reach 121 in 2014. The Director presented the staff composition by function and nationality including SNEs (2 in the Director's office, but most are in the operational departments of ACER).

On ACER activities The Director presented a state of play for FGs and NC, other regulatory activities and REMIT. He noted that 29 June is the deadline for Member States to assign NRAs and/or other competent authorities their enforcement powers under REMIT. He also presented the timeline for IT procurement. ACER will also hold a pilot on data collection and data sharing solutions. Regarding the development of the registration system, the first "demo" was already available; the design study for market monitoring software is scheduled from March – June 2013; the development of software solution between June 2013 and early-2014; a pilot project on data collection is envisaged and further developments on data collection will depend on REMIT implementing acts and availability of budget resources.

The Director also reported on the presentation of the ACER WP of 29 May 2013 at the ITRE Committee of the EP. The Director and the BoR Chair presented the main areas of the 2014 WP listed under Market Integration, REMIT, Infrastructure challenge and future challenges with emphasis on REMIT challenges and budget constraints reinforced by the preliminary results on the questionnaire on NRA resources regarding REMIT. It was a very successful presentation which prompted a very interesting debate on the internal energy market completion progress, financial resources for REMIT, capacity markets, RES etc.

Ms Rossodivita reported that the Commission organised separate sessions on network codes targeted to raise awareness of the EP.

The Director also reported that he joined other senior representatives from the national energy regulators of G20 countries and regulators' organisations in a meeting hosted by the FTS of Russia in Kazan on 3-4 June 2013.

Lord Mogg clarified that NRAs themselves were very much active in the preparation of the statement and were represented through ICER/CEER at the event. Lord Mogg and David Haldearn led this discussion including the technical workshop in Paris, although Lord Mogg was unable to attend the meeting in Kazan.

The EC was asked about the staff reduction of the 5%. The Director clarified that in all likelihood this will apply as from 2015, since from 2015 the Agency will be considered as a "cruising speed agency."

Mr Koch noted that this discussion is broader and related to the overall reforms of Community staff regulations and it thus affects all. It will inevitably also affect ACER.

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

#### **3.1 ACER Annual activities report – Section on Regulatory Activities**

The Director presented the 2012 Annual Activity Report (AAR). The ACER Regulation requires the Administrative Board to adopt and publish the AAR, on the basis of the draft prepared by the Director. The AAR shall contain an independent section on the regulatory activities performed by the Agency (the regulatory part), which is approved by the BoR. Therefore, the regulatory part (PART 1) is submitted to the BoR for approval. The administrative part (PART 2, 3 and 4) is submitted to the BoR for completeness; it is, however, not subject to BoR approval. The AAR shall be transmitted to the European Parliament, the Council, the Commission, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions by 15 June of each year.

A first draft of the regulatory part was discussed at the last BoR and comments have been received from CRE.

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

*The BoR approved by consensus (of the members present or represented) the section on the regulatory activities of the ACER 2012 annual activities report.*

#### **3.2 Outline of 2014 ACER Work Programme**

The Director presented the outline published on 31 May on ACER website which will serve as the basis for the preparation of the Agency's Work Programme that the Director will submit to the European Parliament, the European Commission and the Board of Regulators by 30 June. There is a caveat to note that the activities proposed in the WP (which are based on earlier discussions with the AWGs chairs and the BoR) are consistent with the preliminary draft budget for 2014 which was submitted by the Director to the Administrative Board and the Board of Regulators on 15 February 2013. However, the resources actually available to the Agency in 2014 will not be defined until the EU Budget is adopted by the Budgetary Authority towards the end of 2013, and, therefore, after the Work Programme is finally approved by the Board of Regulators (by 1 September) and adopted by the Administrative Board (by 31 September). A workshop to present the WP outline was held in Ljubljana on 6 June, which was poorly attended. 14 June is the deadline for Stakeholders to submit comments following the Workshop.

The members suggested making a reference on the work on post-2014 challenges on electricity and gas. Mr Bos suggested adding "ACER Reasoned opinion" along with Recommendation on the Network Code on forward capacity allocation.

Ms Rossodivita advised on a suggestion by the EC/B1, that it seems too early for 2014 to envisage the report on progress of projects of common interest and recommendations to facilitate the implementation and overcoming delays/difficulties in PCI implementation.

Ms Kloc stated that the Commission intends to deliver its opinion on the ACER 2014 WP by 1<sup>st</sup> September following the inter-service consultation which is expected to be launched at the end of July. The Commission will inform at the July BoR meeting about its preliminary

draft opinion. The formal decision by the EC on the annual priority list is expected by the end of August.

The BoR meeting in September is held on 25 September, followed by the Administrative Board meeting on 26 September expected to adopt the EP. Given the BoR needs to approve it by 1st September and the Director's proposal is due by 30 June, Lord Mogg suggested that he will seek the BoR agreement on the 2014 ACER WP at the July BoR. This will be subject to any changes – in the light of the EC's Opinion on the WP and the annual priority list – for which a formal approval will be sought at the September BoR meeting on 25 September.

The Director clarified that it is only once the EU Budget is adopted and the resources available to the Agency finally defined that the Agency will be in a position to assess the feasibility of its Work Programme.

*BoR Decision agreed: (D 4)*

*The BoR welcomed the 2014 ACER WP outline subject to the above mentioned comments.*

MID TERM REVIEW

The Director presented the proposal on the mid-term review of 2013 WP submitted for approval. The note is broadly based on the previous similar notes (which have been discussed and endorsed at the January and March BoR). The 2013 Agency Budget, as adopted, does not provide the Agency with the financial resources required for the implementation of all the activities currently planned for next year in the area of REMIT. Moreover, no additional human resources for the Agency are envisaged this year for the implementation of the TEN-E Regulation.

The proposal by the Director states that - unless the resources are found – the Agency will be forced to postpone to subsequent years part of the development of IT solutions for market surveillance, data collection, and data sharing between the Agency and NRAs of wholesale energy markets. The Agency will have to reprioritise its activities this year in order to be able to perform some of the tasks assigned to it by the TEN-E Regulation.

In particular, it is envisaged that the following tasks may have to be postponed to future years:

- Scoping for the Framework Guidelines on harmonisation of national tariff structures and regulatory framework for investments. The Director explained that ACER cannot be committed to finish the work by the end of 2013.
- Proposal to the European Commission on the annual Cross-Border infrastructure compensation sum, and an opinion as to suitability of using long run average incremental costs for the assessment. The Director explained that this also reflects the April decision not to provide this opinion.
- Best Practices Guidelines on Exemptions for Major New Gas Infrastructure.
- Facilitate the sharing of good practices and make recommendations on incentives and risk assessment methodology.

Regarding the good practices and recommendations on incentives, Mr Crouch noted that although he agrees with the proposal, there seems to be some progress on the work in the AEWG and we should be careful not to lose momentum.

Lord Mogg suggested that regarding the caveat on budgetary developments it may reflect the positive indications from the EC on the budget transfer, although the approval of the budgetary authority is still pending.

BoR Decision agreed: (D 5)

*The BoR approved the ACER mid-term review of the 2013 ACER WP.*

### 3.3 Review of progress on Roadmap

Lord Mogg presented the Roadmap. Following the agreement on the Roadmap at the last BoR meeting, the actions are listed under three axes - themes (1) the role of NRAs in ACER, (2) relations with stakeholders and (3) Institutions and strategic thinking and presented along with the preparatory actions needed, the person responsible for their delivery (including for their operational implementation) and the accompanying time schedule. A separate theme (4) on actions related to the Agency's evaluation by the Commission is also incorporated. The actions completed or no longer needed are presented in 2 separate tables. Amongst the actions no longer needed are the revision of the AWGs RoP and the review of the external groups.

Regarding the progress on actions Fay Geitona reported that there have been 2 working level meetings amongst the Director, BoR Chair and vice Chair, and AWG chairs and ACER HoDs as well as the ERI and GRI coordinators. These meetings confirmed the timing for the strategic thinking. A first discussion will be held in July and then at the September BoR. We are in contact with the EC for the organisation of a senior meeting with the EC (in September) and for a stakeholders workshop in November. This may complement the strategic discussion at the upcoming Florence Forum as announced by Mr Borchardt (which has a different audience).

A second working level meeting was held to discuss the Groups.

Regarding other actions, Lord Mogg reported that a guide on regulatory cooperation in the Agency explaining the process for the adoption of acts has been sent to the AWG chairs and HoDs for comments and is being finalised.

The actions resulting from the evaluation will be confirmed in accordance with the definitive EC's timeline.

Mr Crouch clarified that whilst early guidance is important he was of the view that the RoP are not the right place to address the interaction and cooperation between the Director and his staff. And, in the specific case referred to by Ms Groebel, the paper was still under discussion at AWG level.

At the level of the post 2020 challenges a discussion is kicked off both in the electricity CEER and ACER WG (on separate topics). Mr Bollz also reported that a discussion is initiated at the AGWG for the review of the target model.

Lord Mogg suggested retaining the issue of early guidance from the Director in the roadmap given its importance, whilst without providing for a prescriptive action.

Ms Kloc is looking into dates both for the September bilateral and the first Roundtable on 6 November with stakeholders possibly in the margins of the BoR.

Mr Koch noted the importance of the strategic discussion on post 2014 challenges and the 2030 framework for energy policies. The Commission places particular emphasis on this and is also considering the next steps including the appropriateness of third package to address shortcomings, the post 2014 market design questions and long term 2030 objectives and framework for energy policies.

BoR Decision agreed: (D 6)

*Progress will continue on the Roadmap and will be reported at the next BoR.*

*Regarding the ACER evaluation, Ms Groebel was appointed as the BoR “rapporteur” to assist in the preparation of the BoR Recommendations.*

**Completion of the Internal Energy Market:**

*Update on FGs and Network Codes*

**4. Gas**

**4.1 Report on progress on Framework Guidelines /Network Codes**

Mr Boltz presented progress on the work on gas. On interoperability the network code is for consultation until 26 April 2013 and today a discussion of the ACER preliminary opinion will be held. The finalisation of the code by ENTSOG is expected by 11 September.

On tariffs the letter by the EC extending the deadline for submission of the FGs until November 2013, was circulated.

On incremental capacity after the finalisation of the CEER Blueprint, ACER will pursue the work. At this stage the Commission, ACER and ENTSOG are planning the process and timing. The current plan is for ACER to develop Guidance for NC amendment (by November 2013). ENTSOG will then deliver NC amendment text to ACER within 6 months (May/June 2014). ACER will have 3 months to submit a formal proposal to EC to amend CAM NC (Aug/Sept 2014). The Comitology is foreseen for September 2015 and implementation by September 2016. The intention is to be ready by the time of the March 2017 annual capacity auction. ENTSOG continues the work on incremental capacity and Tariffs in a twin-track approach: It is foreseen a NC amendment on CAM (Article 7 of the Gas Reg.) and NC Tariffs (Article 6 of the Gas Regulation).

Mr Boltz reported that there will be a GTM Review under the ACER GWG.

Future areas of work will include Rules for trading including harmonised European rules for the design of capacity products and contracts as regards firmness, restrictions to allocation and on secondary market. The informal scoping will be held on 2nd half 2013 and the formal scoping on 2014.

Mr Koch stated that regarding an amendment process there are 2 channels to do those either on ACER initiative (or following the request by a stakeholder) or on the initiative of the Commission.

Mr Bos noted the need to consider how we deal with transparency within the FGs for tariffs.

#### 4.2 ACER preliminary opinion on the interoperability NC

Mr Boltz presented the ACER draft preliminary opinion circulated. The opinion acknowledges ENTSOG's work on the draft Network Code, in particular the wide involvement of stakeholders and the close cooperation with ACER. Overall, compliance of the draft code with the Framework Guidelines is good. However, there are a number of areas where the provisions of the Network Code are not sufficiently and adequately in line with the Framework Guidelines. These misalignments provide cause for concern regarding the overall outcome of the Network Code process.

An informal Member States meeting (on 28 May) discussed parts of IO NC: It seems that gas quality and odourisation are very crucial for some MS. After the BoR orientation discussion the preliminary opinion will be shared with ENTSOG.

##### BoR Decision agreed: (D 7)

*The BoR welcomed the ACER preliminary opinion on the network code on Interoperability.*

#### - EC FEEDBACK FROM 28 MAY PRE-COMITOLGY MEETING ON GAS BALANCING AND INTEROPERABILITY

Mr Koch reported that the pre-comitology meeting on Gas Balancing and Interoperability took place on 28 May. On Balancing, the Commission's text makes small changes to ENTSOG's draft network code. There were a few comments on the role of governments, particularly on cross-border cooperation (merging, coupling, joint balancing platforms, etc.). The formal comitology meeting is scheduled for 11 July where the Commission may seek approval on the NC.

On Interoperability and data exchange, MS who have odourised transmission systems also wish to ensure that harmonisation is not proposed with odourisation and they point out that Gas quality and odourisation are MSs' issues and, therefore, should potentially be left out of the network code.

#### 4.3 Tariffs FGs: Update on state of play

Mr Boltz presented the background and the next steps. The deadline for the draft Framework Guidelines (FG) for harmonisation of Tariff Structures was extended to November 2013. The draft cost allocation chapter is being prepared at TF level. Further fine-tuning of wording is necessary and the finalisation of draft FGs text is expected by the end of June. There are trilateral coordination meetings EC/ENTSOG/ACER. The 1<sup>st</sup> trilateral meeting took place on 7 May; the 2<sup>nd</sup> trilateral meeting took place on 5 June.

The feedback from EC and ENTSOG will feed into further work.

Mr Boltz presented the draft structure of the cost allocation chapter: (1) Input parameters and cost drivers (including revenue collection, capacity/commodity, transmission network and relating assumptions, E/E split); (2) Circumstances influencing the choice of a cost-allocation methodology; (3) Main methodologies (Postage stamp; Distance to VP; Matrix; Capacity weighted distance; Secondary adjustment). (4) Cost allocation test, as indicator; (5) Implementation.

The next steps include a Workshop early September. On 22<sup>nd</sup> October, a specific Tariff AGWG will be held and the BoR formal opinion will be sought at its November meeting.

#### 4.4 ACER Opinion on ENTSOG summer outlook & Annual activity report

##### ACER Opinion on ENTSOG summer outlook

The Director presented the draft ACER opinion: ENTSOG published its Summer Supply Outlook 2013 on 2 May 2013. ACER opinion states that the Summer Supply Outlook 2013 meets the objectives of Regulation.

The Agency welcomes the publication of the 2013 Summer Supply Outlook ahead of the season and earlier than in the case of previous outlooks, a practice which allows for a timely action by stakeholders in cases where the outlook highlights potential problems. Regarding the stated objectives of the Outlook, the Agency finds ENTSOG's demonstration of the system's robustness in terms of handling maximum gas injection into storage reassuring, especially given the fact that historically working volumes of gas in storage have never reached full capacity. The Agency finds that ENTSOG has taken into account the Agency's earlier recommendations regarding the need to give greater attention to the short-term supply and transmission trends based on historic gas flow data and comparative analysis of past outlooks.

The Agency encourages ENTSOG to continue highlighting in future outlooks the past gas supply patterns, as guidance regarding potentially problematic short-term variations in gas supply and invites ENTSOG to consider making current seasonal supply issues an even more visible part of the outlooks.

The Agency finds valuable the use of supply sensitivity analysis, as introduced in the Ten-Year Network Development Plan 2013-2022, for providing a better insight into the dependence on major supply sources and the transmission routes from such sources.

The Agency believes that an important aim of the modelling in the course of the preparation of the outlooks is the identification of shortcomings and the formulation of possible efficient solutions, and appreciates ENTSOG's effort directed to pinpointing potential gas supply issues on a country and regional scale.

The Agency welcomes the application of a TYNDP modelling approach for assessing the robustness and sensitivity of the European gas network, while inviting ENTSOG to continue its work on the enhancement of its modelling tool. The Agency welcomes the provision of historic information about the monthly cross-border flows in the EU in the summer of 2012, along with data about LNG and gas imports from third countries.

##### ENTSOG Annual report

ENTSOG's published its 2012 Annual Report on 6 May 2013. The draft ACER opinion states that ENTSOG's 2012 Annual Report meets the objectives of Regulation. It covers ENTSOG's priorities during the reporting year, generally in line with the targets for the Internal Energy Market. The Agency appreciates the timely release of the 2012 Annual Report. The Agency welcomes ENTSOG's engagement in activities regarding common network operation tools and coordination of the technical cooperation with third-country transmission system operators, respectively, two work areas which have been relatively less covered in previous Reports, and the provision of information about activities and results achieved in such areas in 2012.

The Agency acknowledges ENTSOG's effort in improving transparency, involving stakeholders and expanding ENTSOG's resource base. The Agency finds useful the

inclusion of the briefing on the Transparency Platform and its changing coverage. The Agency welcomes that the Annual Report addresses the cooperation with the ENTSO-E and reports on it in terms of creation of gas demand scenarios, assessment of the interactions between renewable energy sources and gas-based power generation, any inter-system coordination and cooperation activities that may be in place. The Agency commends the cooperative effort with ENTSO-E in view of aligning the two Networks' targets for energy security, carbon emissions and renewable energy sources in the context of tasks in the areas of markets, system development, and system operation, and recommends the continuation of the Networks' cooperation. The Agency appreciates the inclusion in the Report of information regarding work on tasks deriving from TEN –E Regulation. The Agency recommends to ENTSG the highlighting in future reports of activities related to Regulation (EU) No 347/2013 in a separate partition. The Agency appreciates the coverage in the Annual Report of activities which lie on the critical path to the completion of the Internal Energy Market by 2014, such as the release of network codes.

*BoR Decision agreed: (D 8)*

*The BoR provided a favourable opinion by consensus (of the members present or represented) on the Agency's Opinions on ENTSG summer outlook and on the Annual Activity Report.*

## **5. Electricity**

### **5.1 Report on progress on FG/NCs**

Mr Crouch presented the overall planning and status on the Framework Guidelines and Network Codes. The NC on Requirements for Generators, CACM and demand connection are with the EC. The Operational Security NC is with ENTSO-E, the ACER opinion on the Operational Planning is submitted today for a BoR formal opinion. On the NC on Frequency Control and Reserves, the consultation is closed and it is with ENTSO-E. The Forward Capacity Allocation network code is discussed separately (for a preliminary opinion). Other network codes formally under way are the balancing (due 1 January 2014) and HVDC (due 1 May 2014)

The CACM Comitology is foreseen for September/November. There was a pre-comitology meeting on 31 May. However, the Commission does not yet have a draft of the CACM code it is willing to share with Member States and so the expected day for this is now September. Mr Crouch noted that the CACM is the most important network code and it needs to be adopted in Comitology soon if we want to stick to 2014 deadlines.

Given the planning and progress presented, a discussion was held on improvements on the overall coordination and project planning of the network codes with clarity on the next steps. Mr Crouch proposed to have a discussion between ACER and the Commission on the overall timeline and coordination (perhaps at the next BoR).

Mr Koch noted that on some of the electricity codes the parties involved in the code development have underestimated the complexity of projects which have been enormous and provoked delays. In his view, the issues such as workable implementation of the proposed procedures in the codes should be resolved asap, notably with the help of trilateral meetings with ENTSO-E and ACER. The overall timing and planning was discussed at the planning group yesterday. What is key is that we focus on the main issues. The Commission has reiterated that success of the NCs depends on the ability of Member States to make compromises.

## 5.2 ACER Reasoned Opinion on NC Operational Planning and Scheduling

Mr Crouch presented the Opinion circulated for a formal BoR opinion. The Operational Planning and Scheduling code was submitted by ENTSO-E on 28 March. The ACER opinion is due by 28 June. The ACER Opinion incorporates a number of issues on which the network code is not compliant with the Framework Guidelines including:

- National scrutiny (over the requirements of the Network Code to be implemented at the national level which is addressed in the Network Code through generic statements in Recitals as well as through Article 4);
- Transparency (as several provisions of the Network Code appear to lack transparency but an adequate level of transparency is imperative for any terms and conditions or actions necessary to ensure Operational Security, or their methodologies, established by TSOs pursuant to the Network Code);
- Coherence and compatibility with other network codes developed pursuant to Articles 6 and 8(6) of Regulation (EC) No 714/2009. The Agency considers that the Network Code lacks consistency with the network code on Operational Security ('NC OS'), which is developed under the same Framework Guidelines);
- Performance indicators and forecasting obligations (as the Network Code does not clarify, as required by the Framework Guidelines, that the report shall provide a detailed assessment of the performance per country as well as the evolution of the selected performance criteria over time. Even though the supporting document provides an explanation of why the performance indicators can be applied only per synchronous area, this justification may not be considered as valid for all indicators),
- Drafting quality (the drafting of several provisions of the Network Code could, in the opinion of the Agency, be improved to ensure effective and efficient implementation of the Network Code). Some of the provisions could in particular affect legal certainty and undermine the targets of the 3rd Package (e.g. definitions, etc).

Mr Koch noted that the Commission has hoped that this network code should be recommended for adoption in the interests of avoiding further 'delays'.

The Director noted that ACER can only recommend a code which is in line with the FGs. In the draft opinion there are serious concerns raised. He noted that the Agency believes that the issues identified can be addressed within a reasonable period, through targeted amendments to the Network Code, by improving the drafting of the Network Code provisions or, where relevant, by amending the supporting document. To this end, the Agency is fully committed to support ENTSO-E in the process of addressing these issues.

### BoR Decision agreed: (D 9)

*The BoR gave by consensus (of the members present or represented) its favourable opinion on the ACER opinion on the NC Operational Planning and Scheduling NC.*

## 5.3 ACER Preliminary Opinion on Forward Capacity Allocation NC

Mr Crouch presented the ACER preliminary opinion on the Forward Capacity Allocation NC. The ENTSO-E's public consultation on the NC closed on the 28 May. ENTSO-E will now assess the consultation responses and hold a second public workshop in July before submitting the code to ACER on 1 October 2013. On Wednesday 29 May the ACER project team presented its Preliminary Opinion to ENTSO-E highlighting a number of concerns with the current text including inter alia:

- Revenue adequacy principle firmness regime.
- Clarification on the process to determine whether long-term transmission rights should be allocated.
- Consistency with CACM NC.
- Revenue adequacy (a new concept not foreseen in the Framework Guidelines).
- The process for selecting the single allocation platform for the long term, which is envisaged over 3 years in the draft code which takes us to 2018, well beyond the 2014 deadline and may have implications on the transitional arrangements set out in the code.
- On capacity calculation and splitting methodology, there are similar concerns to CACM. ACER wants more detail from ENTSO-E on its statistical approach to Long Term Capacity Calculation and the splitting of cross zonal capacities between different capacity allocation timeframes

BoR Decision agreed: (D 10)

*The BoR welcomed the ACER preliminary opinion on the NC on Forward Capacity Allocation.*

5.4 ACER report on Capacity Remuneration Mechanisms and the Internal Market for electricity

The Director presented the draft report on Capacity Remuneration Mechanisms and the Internal Market for electricity. He clarified that further work will still be done on this topic. The draft report indicates that Security of supply (SoS) is no longer only a national consideration, but now a regional and European consideration. The report observes that MS currently have national and diverging approaches to SoS with a lack of coordination among them and there is a current patchwork of Capacity Remuneration Mechanisms which indicate a lack of coordination between those designing CMs. The report shows complexities regarding the implementation of Capacity Remuneration Mechanisms with the potential risk of short and long-term distortions. The paper makes four recommendations.

- Harmonisation of generation adequacy and SoS levels;
- Common (at least regional) approach for SoS assessment;
- For national CRMs, we need to ensure participation of adequacy and system flexibility by generators and loads in other jurisdictions;
- CRMs should be compatible with the IEM and include an impact assessment framework including detailed criteria.

The Director sought the members' feedback on this report as it may need to be issued before the July BoR meeting. A formal opinion of the BoR is not needed. The report draws from a couple of examples of countries which have been volunteered to single out how careful we have to be in designing these mechanisms Ireland & Great Britain, Finland & Russia.

The Director clarified that the legal basis for the report is article 11 which is monitoring activities of ACER. The report tried to respond to some of the questions asked at the ITRE committee, when ACER delivered its opinion on capacity markets with which it is consistent.

Some members asked what is the timeline to input to the EC's consultation on generation adequacy.

Mr Koch invited any feedback very quickly. The Commission intends to issue a package for July with different elements including the EC's Guidance on best practices in renewables

support schemes, Guidance on cooperation mechanism for RES, Guidance on capacity mechanisms, a Document on electricity storage and a Document on demand side measure, a Chapeau Communication on a Framework for State interventions will also be issued as well as work on new initiatives regarding EU generation.

The Director thanked members for their comments clarifying that he still needs to polish this document. However, this document will not be the end of this discussion. It can feed into the target model review. The generation adequacy is indeed a national issue. The idea to have common adequacy standards will be almost impossible to implement but there are 2 specific points which deserve elaboration: The cross border capacity and the minimisation of distortions. In some MS the mechanisms have been introduced to pay for stranded capacity.

BoR Decision agreed: (D 11)

*The Director will finalise the report on Capacity Remuneration Mechanisms and the Internal Market for electricity in light of the comments received. The report will be circulated again before its public release.*

## **Regional Integration**

### **5.5 Progress on Electricity Regional initiatives**

#### ACER informal Opinion on PXs

The Director presented the draft informal ACER opinion and reminded the background. Power exchanges wrote to ACER on 26 April stating they could not agree on the vendor to provide the European cross-border intraday (XBID) solution. At the Florence Forum ACER agreed to provide an informal opinion on the preferred IT solution, on the condition that all involved PXs accepted to be bound by such an opinion. ACER sent a letter on 15 May asking the PXs to acquire further information from the two vendors Deutsche Börse AG (DBAG) and Nord Pool Spot (NPS) - to be fed back to the Agency within 3 weeks of the letter (5 June). It noted that if ACER is satisfied with the cost effectiveness and performance of the DBAG system, then ACER will adopt the majority view of the involved PXs (which is for DBAG). On 5 June 2013, the involved PXs provided the Agency with additional elements and feedback obtained from the prospective vendors, as well as their individual assessment of these additional elements and feedback. No significant change in the individual PXs' final assessments has emerged: Three PXs indicated a preference for DBAG, one indicated its preference for NPS and another PX did not express any preference.

The Director noted there is no appreciable benefit from engaging in further explorations of the two offers given that ACER concerns are not fully addressed. Further delays in the process would be greatly detrimental. The Florence Forum recalled the importance of an EU-wide intra-day market coupling and invited ACER to provide its opinion before the end of June.

A draft of the ACER opinion was circulated on the preferred IT system for implementing the intra-day market coupling in the NWE region. The Florence Forum reminded the involved PXs of their commitment to implement the informal opinion provided by ACER as agreed, so the Agency expects the involved PXs to finalise the negotiations with the vendor of the preferred IT system as soon as possible.

Regarding the next steps, before the contract is signed, PXs and TSOs must agree on a draft budget and the Project Implementation Document and NRAs need to provide comfort letter regarding cost recovery.

Mr Koch remarked that we need a common IT platform to go ahead with the market coupling. Intraday is of utmost importance to the IEM and the Commissioner himself is very concerned as this has been a very long process. The Commission is keen on following this up to ensure that this is implemented by power exchanges and supported by national regulators.

The Director noted that the ACER's role was indeed to break the deadlock. He is confident that procedures could be put in place for ensuring non-discrimination. The draft opinion is still subject to legal scrutiny. The discussion at the BoR is a valuable input for the Director to take account in finalising it and improving the explanations included therein.

### BoR conclusion

Lord Mogg concluded the discussion as follows:

*All members, the Director and the Commission expressed their keen interest in avoiding delays on intraday given its importance for the internal energy market. They stressed the need to resolve the issue of the selection of the IT system to implement the intra-day market coupling, although recognising the difficulties in delivering fully satisfactory assurances (by any of the vendors) despite the additional documents received.*

*The members recognised the Directors' efforts to reach a settlement and to issue an informal opinion with a view to breaking the deadlock. The members provided detailed feedback to the draft informal opinion proposed by the Director.*

*The majority of members supported the adoption without further delay of the draft informal opinion circulated. The members urged the PXs to accept this opinion. The members confirmed their readiness to accept the informal opinion. With regard to the provision of comfort on cost recovery to TSOs or to the relevant PXs, the NRAs decisions will be in accordance with their national framework and policy.*

*Members encouraged the Commission to include a robust decision making process in the Governance Guidelines to avoid this situation reoccurring.*

*The opinion will be finalised in light of the debate and following its legal scrutiny will be adopted.*

## **6. Investment challenge**

### **European Network Planning and infrastructure challenge**

#### **6.1 Preparation of the ACER opinion on PCI lists**

Ms Nyitrai reported on the latest developments and thanked NRAs and ACER for their intensive work to meet the fierce deadlines. On 13 June the meeting of the MS/regional groups took place to agree the draft regional lists in order to transmit those to ACER and wait for its opinion scheduled for soon after the BoR meeting on 17 July. Following the

ACER opinion there will be another meeting on 24 July for the MS to decide on the lists the formal adoption of which is envisaged for September

Mr Boltz noted the problem of the different cost sharing decisions in PCI. The Southern corridor (composed of 4 projects) is considered as one PCI: but we need to have more cost allocation decisions for each different pipeline.

Ms Nyitrai responded that this issue has been resolved and in the list sent to MS the problem has been sorted out. The cost allocation decisions will correspond to the investment items.

The Director presented an initial draft of the PCI opinion for gas. He sees a benefit of coherence between the electricity and gas opinions. He noted that the important part is to strike the balance between the limitations of the process - particularly inadequate data, lack of cost-benefit analysis, which provided for the PCI selection without a CBA - and the recognition that the process has been as good as possible given the necessity to achieve results under difficult conditions and within a very short timeframe. The results achieved during the last year in the working groups are the best what could have been achieved considering the availability of data and the parallel negotiations of the legal framework.

Because of these limitations the procedures, methodologies, analyses, and outcomes of the ad-hoc PCI selection process should not be regarded as precedent-setting and that work should start promptly to achieve full compliance with the TEN-E Regulation. Thus PCI projects should be fully reassessed by using the procedures, methods, and criteria of the TEN-E Regulation. In any case pursuant to Article 3.4, the Union-wide list will be established every two years.

The Commission explained that still the lack of a PCI status does not mean the project does not go ahead or cannot be implemented.

The Regulation itself provides that the new Union list should be established every two years. Pursuant to the Regulation, Projects of common interest that are completed or that no longer fulfill the relevant criteria and requirements as set out in this Regulation should not appear on the next Union list.

## **Market Monitoring**

### **7. Market Integrity and Transparency**

Lord Mogg, the Director and Mr Zuleger paid tribute to Mr Braz (who is completing his term in the Portuguese NRA and therefore leaving the BoR) for his contribution to CEER and ACER. Regarding his replacement as CEER/ACER WG Chair, a process will be opened with official coordinated call for candidates and deadline for CEER and ACER sides with a view to a decision at the July GA and BoR Recommendation in July.

Mr Braz thanked all BoR members and colleagues in the WG for their continuous support and collaboration.

### 7.1 Follow up on the questionnaire concerning the status of REMIT implementation at NRA level

Mr Zuleger made a presentation of the results of this questionnaire to follow up to the questionnaire issued to NRAs in early 2012 to establish the progress that is being made at a national level to successfully implement REMIT. The Questionnaire was circulated to NRAs on 25 April with a deadline of 21 May. A total of 26 NRAs provided a response. He then presented the key findings

*The BoR welcomed the update on the responses.*

### 7.2 Questions posted on the REMIT forum

Mr Braz presented how the Forum has been used. The REMIT Forum has been in place since April 2012, providing an information platform for the exchange of questions received from market participants and discussion among NRAs and ACER on possible answers. The purpose is to develop harmonised views among NRAs on issues that are raised. Since April 2012, a total of 54 questions have been posted by NRAs. Around half of these questions have been fully addressed but consensus has not been reached on all questions. It was agreed at the May MIT WG that any NRA that posts a question to the Forum should also post a draft answer that can be discussed at the WMS TF. Once a common answer is developed, it is approved at an AMIT WG meeting. These answers can then be used as an input to documents including ACER non-binding guidance on REMIT. The intention is for the AMIT WG to regularly (e.g. quarterly) inform the BoR about the REMIT forum status quo and the main new issues.

The Director explained that the usefulness of the Forum will increase in the future. However, the Guidance cannot be updated every time a question comes in.

Mr Bos noted that information sharing is very important and we need to see the appropriate format to ensure this (possibly through the WG, the MOU, the Forum).

Mr Zuleger noted that there is a problem that a secure gateway does not exist to share information. This is a significant issue and ACER is looking into this.

*The BoR welcomed the update on the REMIT Forum.*

### 7.3 Update on the preparation of the 3rd edition of ACER guidance

The Director presented the main issues to be covered for the 3<sup>rd</sup> edition of ACER guidance:

- Registration of market participants according to Article 9 of REMIT, including the role of NRAs in the registration process (new chapter);
- Application of the definition of inside information versus the definition of transparency information (review of current guidance);
- Application of the exemptions to the prohibition of insider trading according to Article 3(4) of REMIT (review of current guidance);
- Application of the obligation to effectively disclose inside information according to Article 4 of REMIT, in particular the use of inside information platforms (review of current guidance).

The 3rd edition of the ACER Guidance will be submitted to the BoR for information in September.

*The BoR welcomed the update on the preparation of the 3<sup>rd</sup> ACER guidance.*

#### 7.4 Open letter to members of pan-European organisations on registration of market participants

A letter was circulated addressed to ENTSO-E, ENTSOG, LEBA, EFET, EUROPEX, EURELECTRIC, EUROGAS and EACH. The letter addresses the registration of market participants, pursuant to Article 9 of REMIT to maximise awareness across Europe of the need for market participants to register under REMIT.

Mr Braz reiterated that the implementing acts should be issued sooner rather than later. The definition of market participants needs certainty.

#### 7.5 Update on the financial market legislation

MiFID is an important piece of financial legislation that could impact on energy markets and the application of REMIT. In particular, the current Council text includes physically settled forwards under the ambit of MiFID II with potentially damaging impacts to European energy markets. 2 letters were sent to both the Irish and Lithuanian Presidency outlining ACER and CEER's position on 28 May. These letters offered the preferred approach to exclude physically-settled wholesale gas and electricity forward contracts from MiFID so that they are captured by REMIT and a request for working level meetings to discuss the potential impact of the Council's current MiFID text on energy markets.

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

#### 8.1 CIMP WG Strategy paper

Mr Locquet presented the paper which was circulated for information. The IBM WG Strategy Paper discusses the CEER WG's 2014 deliverables and proposes some changes to the structure of the TFs and WS under the WG. The document also deals with the CEER WG activities and the same note will be discussed at the GA and is submitted to the BoR for info. The proposals include mainly CIMP WG and relate to:

- Making the Legal Work Stream a full Task Force;
- changing the name of the Unbundling and Reporting TF to Market Monitoring and Reporting TF and move unbundling issues to the Legal TF;
- Supporting the EPU, new group under CEER to follow European legislation;
- Several trainings under each of the 3 CEER TFs.

The Director also had had a discussion with Mr Locquet. For the Agency's purposes the main focus of the WG should be market monitoring and he is grateful to the NRAs for volunteering resources. Regarding the legal support, the legal advisory team has not worked as expected. At this stage ACER has doubled its legal capacity. A pool of experts which can be called upon in a short term basis would be useful to complement ACER's legal capacity. This is a team which would be called upon when necessary and not a more structural

approach on legal support. Mr Locquet noted that the Group depends on the questions coming from ACER. If there are no questions, the Group cannot respond.

*The BoR welcomed the update on the strategy paper regarding the CIMP WG.*

## 8.2 Guidance paper on the evaluation procedure for NC amendment proposal

This paper sets out the procedure to deal with proposals for amendments to Network Codes as foreseen under Article 6 of the Electricity and Gas Regulations. The Director clarified that this paper has been discussed in several occasions and thus he hopes that the paper can now be considered as final.

There is a general periodic review of proposals for NC amendments to take place every 3 years. Under this procedure there will be an admissibility assessment by ACER followed by an impact analysis, a public consultation and a final assessment and reasoned proposal to the Commission. The work will be done in the relevant E/GWG and should be completed within 6 months. The ENTSOs will be fully consulted at each stage of the procedure. There is also an urgent/Ad-hoc review to take place in exceptional cases. This follows the same procedure as above but will have a shorter timeframe (3-4 months) for completion and does not need to wait for the periodic review.

### BoR Decision agreed: (D 12)

*The BoR welcomed the Guidance paper on the evaluation procedure for NC amendment proposal.*

## 8.3 Preparation of the 2<sup>nd</sup> MMR

Mr Locquet made a presentation to report on the planning. The drafting of the report has begun. NRAs contributing to the report are due to submit their first drafts by mid to late June. The Chair of the Consumer WG in CEER is also coordinating a team to draft the consumer chapter for the MMR. Two workshops (30-31 May in Milan and 10 June in Brussels) were organised to feed into ACER's work on the report. Mr Locquet and the Director urged the NRAs, even those which are not engaged in the drafting of the report, to make sure that information regarding their countries is accurate.

There will be a UR TF discussion on the updated/extended version of the skeleton document on 4 July. The AIMP WG on 29 July will do a final check to review the draft MMR before the summer in order for NRAs to have the text as early as possible for comments and reasons of transparency. An UR TF meeting will be held on 5 September and an AIMP meeting on 11 September in Vienna. On September 25<sup>th</sup>, the MMR will be sent to external proof-reader. A presentation at the ITRE committee is foreseen on 27 November.

*The BoR welcomed the update on the preparation of the 2<sup>ND</sup> MMR.*

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

*On the items below there was no oral report at the BoR. Members were invited to take note of the relevant explanatory notes circulated under the BoR meeting folder. All relevant documents can be found at the BoR meeting folder for the information of the members.*

## **9. Internal Energy Market: Electricity and gas**

### 9.1 Florence Forum

## **10. Others**

### 10.1 Next Meetings

### 10.2 AOB