

**28<sup>th</sup> ACER Board of Regulators meeting**

**Tuesday, 14 May 2013, 14.00-19.00**

**ACER, Trg Republike 3, 1000 Ljubljana**

**Minutes**

**Participants**

<b>Member States</b>	<b>Name<sup>1</sup></b>	<b>Member States</b>	<b>Name</b>
<b>Austria (E-Control)</b>	M: Walter Boltz O: Katharina Tappeiner	<b>Latvia (PUC)</b>	Excused
<b>Belgium (CREG)</b>	A: Koen Locquet	<b>Lithuania (NCC)</b>	Excused
<b>Bulgaria (SEWRC)</b>	M: Evgenia Haritonova	<b>Luxemburg (ILR)</b>	M: Camille Hierzig
<b>Cyprus (CERA)</b>	A: Constantinos Eliopoulos O: Kypros Kyprianides	<b>Malta (MRA)</b>	A: Anthony Rizzo
<b>Czech Republic (ERO)</b>	O: Miroslav Belica	<b>Netherlands (NMa)</b>	A: Geert Moelker O: Elozona Ochu O: Remko Bos
<b>Denmark (DERA)</b>	M: Finn Dehlbæk	<b>Poland (URE)</b>	M: Marek Woszczyk O: Danuta Sierocińska
<b>Estonia (ECA)</b>	O: Tiina Maldre	<b>Portugal (ERSE)</b>	A: José Braz, O: Paulo Oliveira
<b>Finland (EMV)</b>	A: Antti Paananen	<b>Romania (ANRE)</b>	M: Lusine Caracasian
<b>France (CRE)</b>	A: Philippe Raillon O: Michel Thiollière	<b>Slovakia (RONI)</b>	Excused
<b>Germany (BNetzA)</b>	A: Annegret Groebel O: Daniel Müther	<b>Slovenia (AGEN- RS)</b>	A: Jasna Blejc
<b>Greece (RAE)</b>	O: Katerina Sardi	<b>Spain (CNE)</b>	A: Tomás Gómez O: Gema Rico
<b>Hungary (HEO)</b>	A: Hajnalka Kelemen	<b>Sweden (EI)</b>	M: Anne Vadasz Nilsson A: Caroline Tornqvist
<b>Ireland (CER)</b>	A: Garrett Blaney	<b>United Kingdom (Ofgem)</b>	M: John Mogg (BoR Chair) A: Martin Crouch
<b>Italy (AEEG)</b>	M: Valeria Termini A: Clara Poletti O: Ilaria Galimberti		

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

Observers	Name
ACER	Alberto Pototschnig, Fay Geitona, Christophe Gence- Creux,
European Commission	Klaus-Dieter Borchardt, Oliver Koch, Kamila Kloc, Matti Supponen

<b>Main conclusions from the meeting:</b>
1. <u>Members discussed the first draft ACER annual activities report – section on regulatory activities. No comments were submitted during the meeting. Members were invited to submit any comment to the Director within 10 days (by 24 May) in order to finalise it and submit it to the BoR for approval in June.</u>
2. <i>Future strategy on ACER/BoR: roadmap of conclusions and actions (2nd version) was endorsed. Progress in its implementation will be regularly recorded at the future BoR meetings.</i>
3. <i>The BoR provided by consensus (of the members present or represented) its favourable opinion by consensus (of the members present or represented) on the ACER Opinion on Operational Security Network Code.</i>
4. <i>The BoR provided by consensus (of the members present or represented) its favourable opinion on the ACER Opinion on the ENTSO-E Research and Development Roadmap 2013-2022 and the implementation plan 2014-2016.</i>
5. <i>The BoR took note of the Commission's update regarding the first evaluation of the Agency exercise.</i>
6. <i>All members, the Director and the Commission noted that any further delay in the NWE Day-Ahead project will affect the credibility of the whole electricity market integration process and make the 2014 deadline unachievable. Therefore, NWE Project Partners should confirm November 2013 as the "go-live" date.</i>
7. <i>All members, the Director and the Commission expressed their keen interest in avoiding delays on intraday. Members supported the Directors' efforts to clinch a settlement and agreed that we should work on the basis that PXs, TSOs and NRA will stick to the settlement achieved. The members acknowledged the difficulties in delivering satisfactory assurances at this stage by the 2 bidders and, therefore, a definitive informal opinion cannot be issued at this stage by ACER.</i>
8. <i>The majority of the members supported the approach adopted by the Director and his letter (circulated in draft form) by which the Agency invites the involved PXs to obtain from the two vendors, by entering into contract negotiations: 1) concrete and specific elements to support the commitment in their offers to meet the RfO requirements within the required timeframe and at the tendered price (provide a detailed explanation of the actions that they intend to take to ensure that their systems meet the RfO requirements; whether they would agree to introduce in the contract a dissuasive penalty scheme, with higher penalties than those envisaged in the RfO); 2) confirmation that the tendered prices cover all services required in the RfO, including full compliance with the RfO requirements. 3) sufficient guarantees, in terms of actions and procedures, to ensure a level playing field between PXs; 4) concrete and specific elements to guarantee a non-discriminatory treatment, by the IT systems, of explicit and implicit allocation requests.</i>

9. A new update and, possibly, a draft of the final ACER informal opinion will be presented to the BoR in June.
10. The members received an update on the preparation of the ACER opinion on NC Operational Planning and Scheduling.
11. The BoR welcomed the update from the Commission on the work on the preparation of the first Union wide PCI list.
12. The BoR welcomed the establishment of a joint team from the AEWG and AGWG to undertake some preparatory work on horizontal issues regarding cost allocation requests in anticipation of the receipt of such requests and to identify horizontal issues of TEN-E Regulation (to ensure coordination between electricity and gas) where common NRAs view is appropriate and set up a timetable to anticipate and better handle work load in order to develop common NRAs' view, in particular on cross-border cost allocation decision but also on any other relevant issue.
13. The members endorsed the final MoU between ACER and NRAs which will be finalised for signature.
14. Members received an update on the latest MIFID negotiations and agreed to take actions including a letter from the Chair to influence the process at the Council and EP.
15. State of implementation of REMIT at national level: The NRAs were invited to submit feedback to the questionnaire by 21 May - earlier than the originally envisaged day (24 May) - to allow some of the findings to inform the key messages regarding REMIT to be used at the appearance of the Director and the BoR Chair to the ITRE Committee on 29 May.
16. The BoR endorsed the paper on peer reviews with the addition that the BoR will be informed upon receipt of peer review requests.

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

### 1. Opening

#### 1.1 Approval of the agenda

Lord Mogg invited the members to consult the libraries of documents of common interest at the BoR meeting folders under 3 headings: IEM (documents circulated included a recent letter from Commission's President Barroso to the Heads of State, the Commission's contribution to the European Council of 22 May on energy policy as well as draft conclusions of the European Council of 22 May), a section with the latest ACER vacancies, and a section on the EIP under which the TEN-E Regulation as published was circulated.

BoR Decision agreed: (D 1)

The agenda was approved.

## 1.2 Approval of the minutes of the 27<sup>th</sup> BoR meeting

### BoR Decision agreed: (D 2)

*The 27<sup>th</sup> BoR minutes were approved.*

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

### 2.1 Update on recent developments

Mr Borchardt provided an update from the Commission. He informed that DG ENER expects positive outcome of the ISC concerning the revision of the ACER 2013 budget that would allow a transfer of €3 million to ACER to complete the development of the REMIT platform. The next trialogue is envisaged for the second half of July after which the money transfer is expected to be undertaken in July - August.

Regarding the priority list 2014, the Commission's public consultation closed on 13 May, the Commission's Decision will be submitted to inter-service consultation in June and the priority list is expected to be adopted by the end of July - August.

#### - 2<sup>nd</sup> ACER Annual Conference

The Director welcomed the good news regarding the ACER 2013 budget.

He also reported that on 29 May there will be a presentation of the ACER 2014 WP at the EP ITRE committee.

The 2<sup>nd</sup> ACER Annual Conference will take place on Friday 17 May with the theme 'Energy Markets: 2014 and beyond'. Slovenia will be represented by the Minister of Infrastructure and Spatial Planning. Approximately 220 participants have registered for the conference.

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

### 3.1 First draft ACER annual activities report – section on regulatory activities

Lord Mogg introduced this item. The ACER Regulation requires the Administrative Board to adopt and publish the annual report on the activities of the Agency. The annual report 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. The report contains an independent section which should be approved by the BoR concerning the regulatory activities of the Agency during the year considered.

The Director remarked that the draft report reflects in an accurate way the actual activities of last year. He invited comments on the report within the next ten days (*by 24 May*) ahead of finalising his proposal to be submitted to the next (June) BoR for approval.

Mr Mütter welcomed the foreword from the Chair and the emphasis placed on the role of the NRAs.

BoR Decision agreed: (D 3)

*Members were invited to submit comments on the first draft of the report within 10 days (by 24 May) to the Director.*

3.2 Future strategy on ACER/BoR: roadmap of conclusions and actions (2<sup>nd</sup> version)

Lord Mogg presented the Roadmap. The latest version of the Roadmap circulated groups the deliverables under the timeframe for their implementation (Quarter / 2013 or 2014) in order to help track progress at future BoR meetings. The priority of the proposed actions (A) or (B) is also indicated, mainly determined by the impact of the action on the external perception of the Agency and its relations with stakeholders and Institutions. Lord Mogg wishes to circulate this Roadmap at every BoR meeting with a separate table indicating the actions accomplished.

Lord Mogg explained that a core part of the Roadmap are the actions related to the development of a shared vision for 2020, with Roundtables, every six months (the first in November 2013), at senior level with the principal electricity and gas sector stakeholders as well as emphasis on tracking the early implementation of NCs. This responds to the Hilbrecht report that the BoR lacks a strategic vision and holistic view of the future development of the markets and the future wholesale market target models in electricity and gas.

2 letters have also been sent as a follow up: One to Commissioner Oettinger on 1 May (which was circulated) to announce what was agreed and to seek confirmation of the commitment of the Commission to contribute to this exercise, particularly on strategic thinking and the revision of Groups. The Chair also sent a letter to the Director, which was also sent to the Electricity and Gas WGs chairs and the ERI and GRI coordinators to clarify the planning for the strategic thinking as reflected also in the Roadmap. An internal meeting will be held shortly after the BoR to address the planning and first ideas to scope the post 2014 thinking as well as other issues with regard to the external groups and regional arrangements.

Another important part of the Roadmap is the development of a reinforced dialogue with the European Parliament (through regular meetings of the ACER Contact group and appearances at the ITRE Committee) and the Commission (it is envisaged to hold two meetings each year with senior staff of the Commission, to discuss progress in completing the internal energy market and beyond). Joint workshops and technical briefing sessions with the Parliament and Commission are also foreseen to pursue the excellent relations which have been cultivated with the EP over the last years.

Regarding the public debriefs, the Chair clarified that it was not possible to foresee those one week after the BoR meetings but rather to organise those back to back to the BoR meetings. The first is scheduled for July.

Mr Borchardt, on behalf of the Commission, warmly welcomed the Roadmap and reported that its implementation would be a major step. He particularly welcomed the citizens summary to accompany the Agency's Acts, the BoR public debriefs, the development of the strategic thinking and the reinforcement of the dialogue with the Institutions as well the suggestion to have biannual meetings at high level with the Commission.

He also acknowledged that the focus has been very much on the detailed acts and network codes whilst we are now entering to another phase during which we need to look into the broader perspective and make adjustments where necessary. The target models were set up 10 years ago. While the implementation of the existing target model (e.g. CACM) is necessary and a precondition for any further thinking for the evolution of the target model, we also need to develop those further, where appropriate. The Commission took the initiative to have this broader discussion already at the last Madrid Forum (and discussed the future role of the gas). We should replicate this approach to the Florence Forum as well.

*BoR Decision agreed: (D 4)*

*The revised Roadmap was agreed. Progress in its implementation will be regularly recorded at the future BoR meetings.*

### 3.3 ACER first evaluation – next steps

Mr Borchardt presented the Commission's plans with regard to the first evaluation of the Agency. The Commission's reply to Lord Mogg's letter is expected shortly. There are 2 evaluations foreseen in the ACER Regulation which need to be held quite close to each other.

An evaluation due for September on the basis of Article 34 of the ACER Regulation which provides that the Commission, with the assistance of an independent external expert, carries out an evaluation of the activities of the Agency (based on extensive consultation). The Commission submits the evaluation to the Agency's Board of Regulators. The Board of Regulators shall issue recommendations regarding changes to this Regulation, the Agency and its working methods to the Commission, which may forward those recommendations, together with its own opinion as well as any appropriate proposal, to the European Parliament and the Council.

Furthermore, the ACER Regulation provides that in the course of the nine months preceding the end of the five year term period for the Director, the Commission shall undertake an assessment on the performance of the Director; and the Agency's duties and requirements in the coming years. The assessment is carried out with the assistance of an independent external expert. Following this report, the Director's term may be extended by no more than three years.

*The BoR took note of the Commission's plans in anticipation of the response from the Commission to the letter by the BoR Chair.*

## **4. Completion of the Internal Energy Market: ERI**

Mr Gence-Creux presented progress on the cross regional Roadmaps.

On Day-ahead, any further delay of the NWE Day-Ahead project will affect the credibility of the whole electricity market integration process and make the 2014 deadline unachievable. Therefore, NWE Project Partners are asked to confirm November 2013 as the "go-live" date.

The Director also noted that, despite the concerns and scepticism he expressed at the last meeting, the November deadline seems now feasible given the testing has started.

Mr Gence-Creux noted that a single EU set of long-term explicit auction rules, in line with the Agency's wish-list, is expected to be submitted by March 2014 to start the approval process and be implemented as of 1 January 2015. Work on the single EU allocation platform should continue in parallel and the platform should become operational as of 1 January 2015 along with the products allocated under the EU set of rules.

Progress towards IEM is urgently needed in the CEE region. The Agency welcomes the increased coordination between 50Hertz and PSE-O with respect to loop flows at the DE-PL border by means of a vPST experimentation. This agreement goes in the right direction but the Agency calls for a more stable and enduring approach Implementation of FBMC: a no-regret solution for the CEE region. Any interim step (e.g. extension of CEE TLC) towards the final target (Coordinated FBMC with CWE) is welcome as long as it does not delay the whole process.

Regarding the intra-day, the Power exchanges wrote to ACER on 26 April to provide notice that they had been unable to achieve consensus on the selection of the vendor to provide the European cross-border intraday (XBID)solution.

Mr Crouch also presented an update on the North West Europe (NWE) regulators and their letter to ACER to provide their recommendation on vendor selection. NWE regulators were also unable to agree on a preference for the vendor. The NWE regulators' recommendation was sent to the Director on 9 May suggesting that the ACER informal opinion should provide PXs with additional time to negotiate with both vendors to achieve better terms and conditions.

The Director reiterated the background on intraday and the last Florence Forum conclusions which welcomed the new initiative by EUROPEX and PX to organise a tender procedure for the necessary IT systems. The Forum called for a timely dispute procedure to be put in place with the involvement of ACER. ACER has - reluctantly (as this is mainly an issue for the PXs) - agreed to provide an informal opinion on the condition that the PXs entered into a commitment to follow it.

The Director reported that his draft letter circulated and the preliminary position of ACER included therein has been developed on the basis of the material submitted by PXs at the time of the failure notification, the assessment provided by the NWE NRAs (submitted with the letter presented above), bilateral conference calls with the PXs last week and other info. He explained that, at this stage, ACER does not have sufficient elements to take a definitive decision despite a clear majority of PXs favour one offer. There are a number of issues which still need to be addressed. The draft preliminary ACER opinion consists of 2 parts: the first part highlighting the concerns (costs, technical requirements) also raised in the letter of CRCC of NWE NRAs and the second part with the recommendations (e.g. penalties to back up the commitments in the contract etc.).

The Director sought the BoR views (a BoR formal opinion is not required) as he intends to send his letter ahead of the Florence Forum inviting PXs to enter into contract negotiations with the two vendors to obtain concrete and specific elements to address the remaining concerns within two weeks upon receipt of the letter; within three weeks the involved PXs are invited to submit to the Agency the vendors' feedback, together with the individual involved PXs' assessments of such feedback. The Agency thus invites the involved PXs to obtain from the two vendors, by entering into contract negotiations: 1) concrete and specific elements to support the commitment in their offers to meet the RfO requirements within the required timeframe and at the tendered price (provide a detailed explanation of the actions that they intend to take to ensure that their systems meet the RfO requirements; whether

they would agree to introduce in the contract a dissuasive penalty scheme, with higher penalties than those envisaged in the RfO); 2) confirmation that the tendered prices cover all services required in the RfO, including full compliance with the RfO requirements. 3) sufficient guarantees, in terms of actions and procedures, to ensure a level playing field between PX; 4) concrete and specific elements to guarantee a non-discriminatory treatment, by the IT systems, of explicit and implicit allocation requests.

In the event that the Agency receives enough comfort regarding the performance of the offer favoured by the majority of the PXs the Director is minded to indicate this solution as the preferred one in the final Agency's opinion, in line with the majority view of the involved PXs.

The BoR Chair noted the difficulty and complexity of the judgment which also led to the Agency's involvement. He invited the BoR to encourage the Director to pursue his approach given ACER is not in a position at this stage (without additional clarifications and commitments from the vendors) to decide whether the vendors satisfy the requirements. He suggested providing the BoR's support for this interim stage which seeks mainly to clarify and introduce safeguards on the basis of which the ACER will develop a definitive position.

Mr Borchardt underlined that the signals are not encouraging and the Commission is disappointed as we are fiddling around these questions for more than 2 years without an agreement reached. The Commission is fully committed to have this intraday market coupling implemented. The Commission will try to put forward alternatives if this process does not deliver. This process is voluntary and the EC may well take it over and put forward proposals for mandatory rules. The Commission supports the proposal by ACER, to allow for more clarification and the timeframe (of 3 weeks) is acceptable (however, this cannot go ahead for months). A solution needs to be found by the end of June.

The Director thanked the Board for the discussion and their overall encouragement. He noted that this solution aims at delivering practical solutions to advance the integration of the IEM and, given that this process remains voluntary, he underlined the need to give a strong message from ACER and NRAs.

PXs have committed to follow the ACER opinion (this was a condition for the ACER involvement) and the Director expects the NRAs to remind them the rules of the game. He reminded it has been a year now since the process on intraday stalled, as the first meeting on this issue was back in July in 2012.

*BoR Decision agreed: (D 5)*

*All members, the Director and the Commission noted that any further delay of the NWE Day-Ahead project will affect the credibility of the whole electricity market integration process and make the 2014 deadline unachievable. Therefore, NWE Project Partners are asked to confirm November 2013 as the "go-live" date.*

*All members, the Director and the Commission expressed their keen interest in avoiding delays on intraday. Members supported the Directors' efforts to clinch a settlement and agreed that we should work on the basis that PXs, TSOs and NRA will stick to the settlement achieved. The members acknowledged the difficulties in delivering satisfactory assurances at this stage by the 2 bidders and, therefore, a definitive informal opinion cannot be issued at this stage by ACER.*

*The majority of the members supported the approach of the Director as expressed in his letter by which the Agency invites the involved PXs to obtain from the two vendors, by*



*entering into contract negotiations: 1) concrete and specific elements to support the commitment in their offers to meet the RfO requirements within the required timeframe and at the tendered price (provide a detailed explanation of the actions that they intend to take to ensure that their systems meet the RfO requirements; whether they would agree to introduce in the contract a dissuasive penalty scheme, with higher penalties than those envisaged in the RfO); 2) confirmation that the tendered prices cover all services required in the RfO, including full compliance with the RfO requirements. 3) sufficient guarantees, in terms of actions and procedures, to ensure a level playing field between PX; 4) concrete and specific elements to guarantee a non-discriminatory treatment, by the IT systems, of explicit and implicit allocation requests.*

*A new update and, possibly a draft of ACER's final informal opinion, will be presented at the BoR in June.*

## **5. Update on FGs and Network Codes: Gas**

### **5.1 Update on FGs and NCs**

The AGWG Chair presented an overview of the status of FGs and NCs in Gas.

In particular the presentation focused on: FG on Tariffs: Work on the cost allocation chapter is ongoing in the TF (see update under 5.2). Capacity Allocation Mechanism (CAM) NC process: the Comitology process was finalised on 15 April 2013 with the adoption of the network code. Interoperability and Data Exchange Network Code: The code is currently with ENTSOG. There will be an orientation discussion at the June BoR on the main issues and the way forward. ENTSOG is due to submit the code on 11 September 2013. Mr Boltz invited members to highlight their concerns as the individual TSOs should be alerted on NRA concerns. Balancing Network Code: ACER issued its unconditional recommendation in March. This was an exemplary process with very good cooperation with ENTSOG and should be seen as "best practice" for future NCs. A long implementation time is already foreseen in the NC. It seems that this code has not attracted much attention for volunteers for pilots. Members were invited to alert their TSOs on pilots which should start sooner rather than later. The next steps include a Member State pre-comitology meeting on 28 May and one comitology meeting with vote on 11 July 2013. ACER will provide support to the Commission in the comitology process.

Other priorities of the AGWG focus on the finalisation of the work on on-going FGs/NCs, on incremental capacity (currently under CEER, ACER to take over in 2014), and the Network Code early implementation and CMP implementation.

A first new area is Rules for Trading: The informal scoping could start in second half of 2013 and the formal scoping in 2014. It seems there is an appetite by stakeholders from the responses to the public consultation of the Commission's annual priority list. The AGWG work also involves the Gas Target Model review and update with work to start in summer.

### **5.2 ACER FGs on Tariffs**

The last BoR provided a moral commitment on the draft FGs with the exception of chapter 3 on cost allocation which needs to be further developed.

Mr Boltz provided an update on the work on the cost allocation section and the finalisation and formal adoption of the FGs. The next steps include: From April to May the preparation of the cost allocation text. On 11 June there will be an exceptional AGWG meeting on tariffs, on 16 June some questions for a first discussion to BoR will be prepared, and a BoR orientation debate is scheduled ahead of the public consultation in July. A workshop on problem cases will be held and between July and August, when the draft FGs will be issued for public consultation. Between September and until October the evaluation of responses will be undertaken and the FGs will be finalised for submission at the November BoR meeting for a formal BoR opinion before their adoption.

## **6. Update on FGs and Network Codes: Electricity**

### **6.1 Update on FGs and NCs – Update on CACM**

The AEWG Chair presented an overview of the status of FGs and NCs in Electricity.

Regarding the CACM, ACER recommended the Capacity Allocation and Congestion Management NC for adoption to the EC in March. Since then the Commission is working to merge the network code with the Governance Guidelines. A trilateral meeting between ACER, ENTSO-E and the Commission on 2 May was constructive in resolving issues (it addressed three of the four topics) but there is still a lot of work needed on drafting. Regarding the timeline Mr Crouch noted that we need to keep the implementation dates as reasonable as possible. Regarding the cross-border redispatching, we have not yet reached a common understanding and an initial discussion on regional auctions revealed that this is a very technically complex debate.

Mr Borchardt remarked that the Commission still looks into the drafting issues particularly to ensure that the text adheres to the normal legal drafting standards. The Commission confirmed that on 31 May there will be an informal comitology meeting whilst without a document as more time is needed for a text to be developed.

Mr Koch also reported on progress and on recent discussions with ENTSO-E. The Commission decided not to circulate a draft for the Florence Forum as originally planned. The Commission makes all efforts to keep the ENTSOs engaged in this discussion and committed. A key issue is how to address competition issues. There will be an informal comitology meeting on 31 May. Therefore, Member States will have an opportunity to provide the Commission with their views. The Commission anticipates that the formal Comitology process will be concluded in Q3 2013 (September).

### **6.2 ACER opinion on operational security NC**

Mr Crouch presented the background: The OS NC was submitted by ENTSO-E on 28<sup>th</sup> February. It is an 'umbrella' code for the other system operation codes: operational planning and scheduling code and load frequency, control and reserves (to be submitted end of May). The NC was discussed at the previous BoR, then at April's AEWG. There is a general agreement that significant improvements are needed in a number of areas and thus the network code cannot be recommended for adoption yet. However, it is hoped to engage constructively in discussions with ENTSO-E in the coming weeks to avoid any delays.

Mr Koch reported that the Commission are also looking into grouping/ merging all three of the system operation codes during comitology (the System Operation, the Operational

Planning and Scheduling and the Load Frequency Control) but the third network code is still pending. The Commission still considers how to proceed. Volunteers for merging the three NCs were asked at the last planning group meeting.

He also noted that there are significant concerns among many stakeholders on the costs that the implementation of this NC may cause and he would like to encourage TSOs to look into this issue.

The Director presented his proposal which reflects the addition of a paragraph to reflect the provision used for the CACM NC that “the Agency recommends that NRAs and other relevant national authorities, when approving methodologies and conditions established by TSOs of a Synchronous Area, should consult each other and cooperate closely with each other”. This was proposed to ensure consistency between the network codes. The ACER Opinion outlines the following concerns:

- Coherence and compatibility with other network codes, particularly the RfG and DCC
- National scrutiny
- Performance indicators
- Information exchange
- Scope of application
- Drafting quality

BoR Decision agreed: (D 6)

The BoR provided by consensus (of the members present or represented) its favourable opinion on the draft ACER Opinion on operational security Network Code.

6.3 ACER opinion on ENTSO-E R&D roadmap (2013-2022) and implementation plan (2014-2016)

The Director presented his proposal. ENTSO-E submitted these documents to ACER on 24 April. ACER considers that the overall R&D Plan of ENTSO-E constitutes an appropriate approach for structuring R&D-related deliverables. The ACER Opinion makes the following Recommendations:

- When R&D activities are not supported by calls for proposals, ENTSO-E and TSOs should pursue that the R&D they deem essential is directly undertaken by TSOs themselves.
- ENTSO-E is encouraged, on a yearly basis, to present in the R&D Implementation Plan results from stakeholder informal consultations which contribute to the preparation of the R&D Implementation Plan.
- The justification for the selection of priorities made in the R&D Implementation Plan 2014-2016 is not immediately identifiable. Effort should be put into providing such information in the future R&D Implementation Plans.
- The Opinion stresses the need for strong involvement of TSOs in identifying the needs and prioritisation phases of the R&D Roadmap and Implementation Plan documents.
- The Opinion suggests providing the main assumptions of the estimates to increase transparency and provide better guidance to the R&D community. Therefore, R&D expenses incurred by TSOs should be indicated separately in TSO accounts submitted to NRAs and made publicly available. ENTSO-E should provide cost estimates in future R&D Implementation Plans.

- Despite extensive Monitoring & Evaluation procedures already in place, an assessment of the quality of R&D results and the impact on transmission activities of ENTSO-E and its TSO members should begin as early as possible.
- The Opinion recommends dissemination of the results and lessons learned from the demonstration projects to all interested parties, including other network operators and market participants, in case these projects are (co-) financed by additional grid tariffs or from public funds.

BoR Decision agreed: (D 7)

*The BoR provided by consensus (of the members present or represented) its favourable opinion on the ACER Opinion on the ENTSO-E research and development Roadmap 2013-2022, and the implementation plan 2014-2016.*

#### 6.4 ACER opinion on NC operational planning and scheduling

Mr Crouch introduced the note circulated. The Operational Planning & Scheduling code was submitted by ENTSO-E on 28 March, the ACER opinion is to be adopted and published by 28 June. Whilst the code has improved since the public consultation, a number of substantive issues remain and a note was circulated outlining the main issues of concerns.

Regarding the next steps, on 22 May there will be an AEWG discussion on the final opinion, after which the draft will be submitted to the Director. The ACER Opinion will be submitted to the BoR for its formal opinion in June.

BoR Decision agreed: (D 8)

*The BoR welcomed the update and took note of the concerns expressed in the note circulated.*

## **7. Investment challenge**

### 7.1 Energy Infrastructure Package

Mr Borchardt reported on the Energy Infrastructure Regulation. It was published in the Official Journal on 25 April, and will enter into force on the 15 May. Regional lists will be submitted on 15 June to ACER and the ACER opinion is expected by 15 July. The Commission will undertake the stakeholder's consultation (for the electricity projects) on the regional lists using the Florence Forum, while it will use the Gas Coordination Group for the consultation on the gas projects. On 13 June a decision will be taken by the Member States on the regional lists and, following the ACER opinion, the tentative adoption of the list is expected on 24 July to allow for the Union list to be adopted in September-October.

The Commission circulated a revised timetable (following the adoption of the Regulation) with the different tasks and deadlines for ACER, NRAs, ENTSOs under the Energy Infrastructure Package.

### 7.2 Preparatory work update by AEWG and AGWG chairs

Mr Boltz and from Mr Moelker presented the relevant work.

The AEWG presentation displayed the preparatory work for the ACER Opinion on the PCI list. The ACER Opinion on the draft regional lists will be based on work done by AEWG, the Frontier study, NRA advice on projects and discussions in the regional groups in 2012/2013. It will take account of:

- Views on the process for establishing the draft regional lists of proposed PCIs;
- Views on the methodology of the regional groups for establishing the draft regional lists;
- If needed, comments on opinions presented by Member States;
- If needed, comments on projects included in the draft regional lists;
- Proposals for the future selection of PCIs on the process and on the methodology;
- Annex I - Methodology for the preparation of NRAs assessments and opinions and checklist template;
- Annex II - Quantitative analyses on projects included in the draft regional lists.

The timeline indicated includes that on 17 July the draft ACER opinion will be submitted for a BoR, for a formal opinion.

Mr Boltz made a presentation underlining the need for coordination on investment requests. According to the timetable for the adoption of the PCI list, NRAs may expect the submission of investment requests by 31 October 2013. Within 6 months NRAs need to take coordinated decisions on cost allocation in the absence of a CBA methodology and evidently this raised the need of coordination of the process between electricity and gas.

Alternatively, within 3 months ACER adopts a decision, if NRAs do not agree or upon a joint request. The decisions on Investment requests should be coordinated. Costs must be taken into account insofar as they correspond to those of an efficient and structurally comparable operator. The Decision must be notified to ACER, including an evaluation of the identified impacts, including concerning network tariffs, on each of the concerned MS; an evaluation of the business plan; regional or Union-wide positive externalities; the result of the consultation of the project promoters concerned.

Mr Boltz proposed to set up a team to ensure coordination between electricity and gas on the identification of horizontal issues of the TEN-E Regulation where common NRAs view is appropriate; to set up a timetable to anticipate and better handle work load; to develop a common NRA view, in particular cross-border cost allocation decision but also on any other relevant issue.

The Director remarked that this preparatory work within the AEWG and AGWG will result in a more consistent approach and an incentive for NRAs to agree and this would be beneficial.

Lord Mogg noted that this work under this team needs to come to the BoR for its endorsement.

### Conclusion

*The BoR welcomed the update on the preparatory work on the preparation of the PCI list.*

*The BoR welcomed the establishment of a joint team from the AEWG and AGWG to undertake some preparatory work on horizontal issues regarding cost allocation requests in anticipation of the receipt of such requests and to identify horizontal issues of TEN-E Regulation (to ensure coordination between electricity and gas) where common NRAs view is appropriate and set up a timetable to anticipate and better handle work load in order to*

*develop common NRAs view, in particular on cross-border cost allocation decisions and on any other relevant issues.*

## **8. Market Integrity and Transparency**

### **8.1 Final MoU between ACER and NRAs**

Mr Braz gave the latest state of play. The MoU between ACER and NRAs has been finalised. The purpose of the MoU is to define the scope and practical terms of implementing the cooperation and sharing of information as foreseen in REMIT between ACER and NRAs. The MoU sets out the practical steps that ACER intends to adopt in market monitoring and how it will inform NRAs of potential breaches, and also the expectations on NRAs in terms of cooperation with ACER and other NRAs. It is a useful basis to build greater working arrangements with other NRAs in potential cross border cases.

The Director reiterated his intention to have a single text acceptable to all and each NRA. And thus he sought a firm commitment on the content of the MoU. He feels that confidentiality is a very important issue.

Mr Braz noted that the legal ability in each NRA to sign the MOU perhaps does not exist before 29 June (the deadline for the Member State to ensure that its national regulatory authorities have the investigatory and enforcement powers necessary for the exercise of that function).

### **8.2 Letter to the Irish and Lithuanian Presidency on the financial market legislation**

Mr Braz reported that the letter was not yet finalised. The information note circulated instead explained the potential impacts of the latest draft of MiFID on energy markets and the application of REMIT. There is concern over the definition of 'financial instruments' as proposed by the latest draft of the Council's MiFID text (12 April). A key change compared to previous drafts is the exclusion from the scope of MiFID instruments traded on an Organised Trading Facilities (OTF) that "can only be physically settled and are not used for speculative purposes". However, physically settled forwards that are traded on a regulated market or Multilateral Trading Facilities (MTF) are not included in this exemption and would therefore be captured by MiFID. The potential consequence of this would be a likely shift of trading away from more transparent regulated markets and MTFs to OTFs.

The AMIT WG will continue to draft a letter ahead of the MIT WG meeting on 21 May outlining their understanding of the implications of the current MiFID proposals for energy transactions. The intention is that once finalised, this letter will be sent to the Council from the BoR chair.

Lord Mogg reported that he raised this issue also with DG MARKT. He also suggested taking actions to influence both the Council and the EP and prepare a letter to explain the impact in simple terms.

Mr Blaney also noted the efforts of the Irish Presidency to support action in this field.

*The BoR took note of the progress and welcomed the preparation of the letter and actions to be undertaken to inform the Council as well as the European Parliament debate.*

### 8.3 Status of REMIT implementation at NRA level

Mr Braz presented this initiative. The questionnaire is a follow up to the early 2012 questionnaire to NRAs to establish the progress that is being made at a national level to successfully implement REMIT. Topics include the resources foreseen for undertaking monitoring and enforcement work, the registration option that NRAs intend to take, the progress made in gaining enforcement powers and types of penalties to be implemented applicable to infringements so on. Other questions include whether NRAs intend to monitor wholesale energy products themselves or they will rather rely on notifications from the Agency, from persons professionally arranging transactions? Whether they envisage regional cooperation and cooperation with other NRAs etc. NRAs are expected to provide responses by 24 May and an analysis of responses will be presented to the BoR in June.

Lord Mogg welcomed some preliminary findings ahead of the appearance at the EP ITRE Committee of the Director and the BoR Chair for the ACER 2014 Work Programme. This would help inform the key messages on REMIT for the ITRE committee.

#### Conclusion

*The NRAs were invited to submit results earlier, if possible by 21 May, to allow some of the findings to inform the key messages regarding REMIT to be used to the appearance of the BoR chair and the Director to the ITRE Committee on 29 May.*

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

### 9.1 Paper on Peer Reviews

Mr Locquet presented the paper. A version was also circulated with the Director's changes mainly editing and the inclusion of a deadline of 5 weeks for the AMIT to work on the draft ACER opinion.

The paper specifies in detail the procedure under Article 7(4) of the ACER Regulation and Articles 39 and 43 of the Electricity and Gas Directives – 'Agency or Peer Review'. This procedure will be respected by NRAs in cases where an NRA requests an Agency review. The cover note also stresses that it is desirable that the NRAs involved act in a spirit of cooperation and try to reach a solution amongst themselves before taking this option (whilst not legally required).

The Director clarified that the concerned NRAs would be immediately notified.

Lord Mogg suggested informing the Board upon receipt of such requests whilst not reflecting this as "a condition" in the process. Nor a discussion of the BoR is expected ahead of the formal submission of the Director's opinion for the formal BoR opinion.

#### BoR Decision agreed: (D 9)

*The BoR endorsed the paper with the addition that the BoR will be informed of such requests upon receipt.*

**Part B: Items for Information only - These items were for members to take note of**

**10. Internal Energy Market: Electricity and Gas**

10.1 Madrid Forum

The Conclusions of the 23rd Madrid Forum held on 17-18 April were circulated.

10.2 GRI quarterly report

This report was circulated which monitors progress between January – March 2013 regarding the implementation of the pilot projects and areas of work planned in the Regional Work Plans.

10.3 Florence Forum

The 24<sup>th</sup> meeting of the Florence Forum agenda and ACER presentations were circulated.

**11. Others**

11.1 Next Meetings

Florence Forum	15-16 May
ACER Annual Conference	17 May
GA	11 June
BoR	12 June

11.2 AOB

The Decision of the Administrative Board with the appointment of Ms Hajnalka Kelemen as the Hungarian Member of the BoR was circulated for info

The Director Decision on the appointment of Mr Tom Maes as Vice-Chair of the Gas Working Group was circulated.