

26th ACER Board of Regulators meeting
Tuesday, 19 March 2013, 18.30-19.30
Wednesday, 20 March 2013, from 08.00-13.30
ACER premises, Trg Republique 3, 1000 Ljubljana

Minutes

Participants

| Member States | Name ¹ | Member States | Name |
|----------------------|---------------------------------------|------------------------|--|
| Austria (E-Control) | M: Walter Boltz O: Vera Gusenbauer | Latvia (PUC) | O: Lija Makare |
| Belgium (CREG) | A: Koen Locquet | Lithuania (NCC) | A: Vygantas Vaitkus O: Dalius Kontrimavičius |
| Bulgaria (SEWRC) | Excused | Luxemburg (ILR) | M: Camille Hierzig |
| Cyprus (CERA) | Excused | Malta (MRA) | O: George Cassar |
| Czech Republic (ERO) | O: Miroslav Belica | Netherlands (NMa) | A: Geert Moelker O: Elozona Ochu |
| Denmark (DERA) | O: Pia Rønager | Poland (URE) | M: M. Woszczyk O: Danuta Sierocińska |
| Estonia (ECA) | O: Tiina Maldre | Portugal (ERSE) | A: José Braz O: Jorge Esteves |
| Finland (EMV) | A: Anti Paananen | Romania (ANRE) | Excused |
| France (CRE) | A: Philippe Raillon O: Sabine Hinz | Slovakia (RONI) | Excused |
| Germany (BNetzA) | O: Daniel Müther | Slovenia (AGEN-RS) | A: Jasna Blejc |
| Greece (RAE) | O: Katerina Sardi | Spain (CNE) | A: Tomás Gómez O: Gema Rico |
| Hungary (HEO) | A: Hajnalka Kelemen | Sweden (EI) | M: Anne Vadasz Nilsson A: Caroline Tornqvist |
| Ireland (CER) | A: Garrett Blaney | United Kingdom (Ofgem) | M: John Mogg (BoR Chair) A: Martin Crouch O: Clemence Marcelis |
| Italy (AEEG) | O: Ilaria Galimberti | | |

| Observers | Name |
|---------------------|---|
| ACER | Alberto Pototschnig, Fay Geitona, Christophe Gence Creux, Dennis Hesselring, Volker Zuleger |
| European Commission | Kamila Kloc, Matti Supponen, Catharina Sikow-Magny |
| CEER | Natalie McCoy |

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

| Main conclusions from the meeting: |
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| 1. <u>Draft Framework Guidelines on tariffs</u> : The BoR agreed to consider in principle as endorsed the chapters which have been agreed at the last AGWG without reopening them. The next AGWG will further discuss the changes introduced by the Director and the FGs will be considered again at the next BoR meeting in April for a definitive "informal commitment" on the chapters of the FGs (with the exception of the chapter related to cost allocation) as agreed. In parallel, the PWS will also consider the legal aspects. At the April (if possible) or May BoR there will be an orientation debate on the next steps on cost allocation following the Commission's request. |
| 2. The BoR provided by unanimity (of the members present or represented) its favourable opinion on the <u>draft ACER Recommendation on the ENTSOG Network Code on Gas Balancing of the Transmission networks</u> . |
| 3. The BoR provided by unanimity (of the members present or represented) its favourable opinion on the <u>draft ACER Recommendation on the ENTSO-E network code for Requirements for Grid Connection applicable to all Generators</u> . |
| 4. The BoR provided by unanimity (of the members present or represented) its favourable opinion on the <u>ACER opinion and ACER Recommendation on the ENTSO-E network code on Demand Connection</u> . |
| 5. The BoR welcomed the ACER opinion on suitability of Long Run Average Incremental Cost (LRAIC). |
| 6. The BoR gave by majority (of the members present or represented) its favourable opinion on the ACER Recommendation on a new Regulatory Framework in relation to ITC. 3 members voted against: E- CONTROL, BNETZA and CREG. E-Control and BNetzA submitted a dissenting opinion on the draft ACER Recommendation. |
| 7. The BoR gave by unanimity (of the members present or represented) its favourable opinion to the <u>draft ACER Opinion on ENTSO-E Winter Outlook Report 2012/2013 and the Summer Review 2012</u> . |
| 8. The BoR gave by unanimity (of the members present or represented) its favourable opinion to the draft ACER (Qualified) Recommendation on the Network Code on Capacity Allocation and Congestion Management (through a BoR electronic approval). |
| 9. The BoR gave by consensus (of the members present or represented) its favourable opinion to the <u>draft ACER Opinion on Gas Regional Investment Plans 2011(12)-2020 (21)</u> . |
| 10. The BoR agreed a series of actions to address the findings from the Hilbrecht report on ACER under the three axes identified in the January orientation paper from the BoR chair. |
| 11. The BoR welcomed the list of areas for the 2014 WP as proposed by the Director. |
| 12. The members approved by unanimity (of the members present or represented) the BoR opinion which welcomes the 2014 ACER draft budget of 15,525,320€ (euro) and endorsed the MASPP 2014-2016. The opinion of the BoR will be submitted to the AB by the BoR chair and be subsequently published. |

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| <p>13. The members welcomed the 2nd set of the Recommendations on records of transactions in balancing market and transportation contracts. The members discussed the ACER public consultation documents on the technical standards for trade reporting and the registered reporting mechanisms and the ACER regulated information services Guidelines.</p> |
| <p>14. The Chair invited comments on the draft MOU (between ACER and NRAs) within a week. Subsequently, the MOU will be finalised and a final version will be submitted to the April BoR for information.</p> |
| <p>15. The BoR invited the Commission to present its thinking and progress on the REMIT Implementing Acts at the April BoR.</p> |
| <p>16. The Chair invited the AMIT WG chair to prepare and send the questionnaire for updating the internal survey following the one from the adhoc group in 211/2012 (on national Implementation).</p> |
| <p>17. The BoR members endorsed the note by the Director on the budgetary implications of the ACER 2013 WP.</p> |

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 with the following modification: Items 11.2 and 11.3 were included under Part A for a short oral update.

1.2 Approval of the minutes of the 25th BoR meeting

BoR Decision agreed: (D 2)

The 25th BoR minutes were approved.

2. Update from the Commission and the Director

2.1 Update on recent developments

Ms Kloc reported on recent developments. Mr Klaus-Dieter Borchardt was appointed as Director B "Internal Energy Market" as of 1st April 2013. Mr Borchardt wishes to participate in the BoR meetings and hopes to attend the ACER Conference on 17 May.

The Commission's workshop on capacity mechanisms in Brussels was very successful. The Commission's Guidance on capacity mechanisms is expected in September.

The Director gave a presentation on the Agency's recent activities, including on staff, REMIT and recent contacts with the ITRE committee of the EP. There has been a presentation at

the ITRE of the ACER opinion on capacity markets on 20 February, which was very well received, and a meeting of the ACER contact Group of the EP on 6 March.

Report on ACER Contact Group

A number of issues were discussed with emphasis on the budget developments. The Director and the BoR chair reported on the discussion. The meeting was attended by MEP Ms Romana JORDAN (EPP), Ioan ENCIU (S&D), Edit HERCZOG (S&D), Claude TURMES (GREENS) and a number of MEP assistants, political Group Policy Advisors as well as staff from the ITRE Secretariat.

The discussion mainly focused on the budget and resources for ACER to undertake its duties (particularly under REMIT) as well as the overall progress on ACER's work with emphasis on NCs and completion of the IEM by 2014. MEPs displayed a keen interest in developing a "partnership with ACER" and increase the awareness of the EP on issues which relate to ACER activities and in particular on progress on the network codes which impact on the completion of the IEM. To this end a series of actions were proposed including on the budget, with early exchange of Information; regular progress on FG/NC and the IEM completion with information papers to explain their objectives and the problems identified, technical briefings and meetings to be organised as appropriate on specific issues. There was also a discussion on the Pre-comitology meetings and possible involvement of the EP. An early presentation and discussion of the MMR report ahead of its adoption at November next year was also agreed.

IEM Communication

Ms Kloc reported that the Commission will hold on 8 April the IEM Communication conference and an agenda will be sent by the end of this week.

Lord Mogg noted that the discussion on the Internal Energy Market (including the Commission's Communication) was becoming intense particularly given that the next European Summit in May would cover energy and there would be an Energy Council in June. The regulators can be amongst the main contributors to this discussion. At the last ACER Contact Group there was a keen interest in the emerging shape of the IEM and the early identification of possible barriers to achieve the 2014 deadline. The IEM Communication itself includes an action plan which related to both ACER responsibilities (e.g. prompt adoption of network codes) as well as CEER Responsibilities (e.g., consumer activities and international relations). CEER will provide some input to the draft Conclusions of the Council. There may also be follow up actions and papers involving both CEER and ACER (within their respective areas of responsibilities).

Lord Mogg highlighted that the discussion on the IEM is linked to the strategic thinking under CEER and ACER/BoR on certain areas. This follows the BoR conclusions paper (under item 6.1) which includes measures to address the Hilbrecht report on ACER. Lord Mogg envisaged a regular item in the BoR agenda on the 2020 electricity and gas target models and roundtables with the Commissioner and stakeholders.

➤ ACER annual activities report

The Director gave an update on progress on the preparation of the 2012 annual report. Pursuant to the ACER Regulation, the annual report must be adopted by the AB and then 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. This includes an independent section, approved by the Board of

Regulators, concerning the regulatory activities of the Agency during the year considered. The Director reported that preparations have started and it is expected that the report will be submitted to the May BoR meeting (at the latest in June) for approval of the section on regulatory activities.

3. Gas

3.1 ACER FG on tariffs

The Director and the AGWG chair presented the background. The deadline for this draft Framework Guidelines (FGs) for harmonisation of Tariff Structures in gas transportation had been extended to 31 March 2013. The Commission has sent a letter (circulated) asking for additional harmonisation of cost allocation rules.

Ms Kloc explained that the Commission is concerned about not addressing cost allocation methodologies in a "bottom up" approach. The Commission still thinks that even if further time is needed we must appropriately address the tariffication methodology by complementing the "top-down" test with more detailed prescriptions with respect to an allowed set of tariffication methodologies, describing the principles to be followed in their application and identifying criteria when a certain methodology should or should not be applied. Furthermore, the letter proposes a few amendments related to the sections on transparency, mitigating measures and definitions which would also be necessary.

The Director remarked that the development of the details for the cost allocation rules - given their importance and also that they fall within the responsibility of the national regulators - would need to be subject to a public consultation. Thus significant delays may occur (as these FGs have been prepared for the last 2 years with a different understanding and objectives and thus a more top-down approach). The Commission's letter indicates that the objective of rules on cost allocation is not only to reduce the possibility of cross-subsidies between domestic and cross-border network users but also between different categories of domestic users.

The Director thus sought the members' informal endorsement of the chapters of the FGs (except the cost allocation in chapter 3). Mr Boltz noted that the current text has been supported by the majority of NRAs.

BoR Decision agreed: (D 3)

The BoR agreed to consider in principle the chapters agreed at the last AGWG as endorsed and to not reopen them. The next AGWG will have a second reading on the changes introduced by the Director and the BoR will consider the FGs again at the next meeting in April for a definitive informal commitment to agree all the chapters of the FGs (with the exception of the parts related to cost allocation). In parallel the PWS will also consider the legal elements. At the April (if possible) or May BoR there will be an orientation debate on the next steps on cost allocation following the Commission's request.

3.2 ACER recommendation on the gas balancing NC

The Director presented the draft ACER Recommendation. ENTSOG officially submitted the Network Code to the Agency on 26 October 2012, in which ENTSOG addressed also most of the Agency's concerns expressed in the letter of 2 October. The ACER Reasoned Opinion

of 25 January, while acknowledging a generally high level of conformity of the Network Code with the Framework Guidelines and a commendable stakeholder engagement process, considered that some particular articles of the Network Code could be brought further in line with the provisions of the Framework Guidelines as well as with the objectives set out therein or in Regulation (EC) No 715/2009. Eight elements were identified. The Reasoned Opinion contained proposals on how to bring the Network Code further into line with the Framework Guidelines. ENTSOG officially submitted an amended Network Code on 21 February 2013, which sufficiently reflects all of the proposed amendments, except for one concern from the Reasoned Opinion, as well as revisions related to the legal drafting and further clarifications of the European Commission. In an explanatory document for the Network Code on Gas Balancing, submitted alongside the amended Network Code, ENTSOG coherently described and reasonably argued all amendments of the Network Code.

The Agency concluded that the amended Network Code sufficiently conforms to the Framework Guidelines and contributes to the respective objectives and thus recommends its adoption to the Commission.

Ms Kloc thanked for the extensive work done and reported that thanks to collective efforts of ACER and ENTSO-G, the Commission hopes to bring the NC on balancing for vote in one Comitology meeting on the 11 July 2013.

BoR Decision agreed: (D 4)

The BoR provided by unanimity (of the members present or represented) its favourable opinion on the draft ACER Recommendation on the ENTSOG Network Code on gas balancing of the Transmission networks.

4. Electricity

4.1 Update on electricity NC

A presentation by Mr Crouch was circulated on progress on the NCs on Electricity. On the network code on the operational planning and scheduling, the ACER opinion is expected by 1 July. The network code on operational security is under review as it was recently received on 28 February. The ACER opinion is due by 28 May and a first BoR discussion will be held in April.

Regarding the CACM, Mr Supponen confirmed that the ACER Recommendation is a good basis for moving forward. Definitions still need to be sorted out and a legal proof reading will be done. The 1st informal Comitology meeting will be held in early May (before the Florence Forum). The Commission's proposal for the network code will be made public so the Florence Forum will be the last opportunity to comment.

➤ ACER recommendation to EC on RfG NC & explanatory note

Mr Crouch and the Director reported on the draft Recommendation to EC on RfG NC. Both the original RfG NC and the DC NC (which were developed pursuant to the grid connection FGs) adopted a similar approach to the general provisions related to the issues of national scrutiny and cost recovery, which the Agency, in its Opinion on the RfG NC of 13 October 2012, has determined not to be in line with the Framework Guidelines and 4 main issues were identified: the significance test, significant deviations, cost recovery and national scrutiny.

On 8 March 2013, ENTSO-E resubmitted an amended RfG NC, including amendments to the provisions on national scrutiny and cost recovery. The letter (circulated) states that to address these two areas of concern against the NC RfG's provisions, the NC RfG has been amended in Recitals (4) and (5), in Articles 4(3) and 4(5), and through several references on regulatory oversight in the code concerning the national scrutiny of the implementation of non-exhaustive requirements, and with amendments in Article 5 concerning cost recovery.

The draft ACER Recommendation recommends the adoption of the amended Network Code by the European Commission, subject to amendments to the significance test to identify "significant grid users". The Agency recognises that transitional arrangements clearly improve the significance test for emerging technologies. The eligibility criterion of "commercially viable" in Article 57(2) of the Network Code, however, is somewhat unclear and thus it should be replaced by the criterion of "commercially available". Furthermore, with regard to Article 61, the text should be amended to "the Relevant Network Operator shall submit on a quarterly basis to the competent National Regulatory Authority the cumulative Maximum Capacity of Power Generating Modules classified as an emerging technology (rather than placing this obligation on the manufacturer). Regarding national scrutiny of the requirements to be implemented at the national level, the drafting proposed in Article 4(5) and the corresponding seems questionable. Finally, the first sentence of Article 9(5) of the Network Code does not add any value because it merely states the obvious, i.e. that the allocation of tasks between the Relevant Network Operators is to be in line with the Network Code.

Mr Raillon reminded the difficulties resulting from the huge costs emerging from changing the frequency ranges. He noted that even if the issue should be dealt with in another network code, it is worth mentioning it in the RfG one and, thus, asked inserting a short sentence making such a link. He also reported that some Member States are not very happy with the provisions on national scrutiny/respective roles of Member States and regulators as currently envisaged. This issue is not of importance for the regulators but, it may create difficulties when entering the comitology procedure.

Mr Muther sought some clarifications on the new Comitology procedure (delegated acts). Do we know for which codes the new process will apply? Mr Supponen confirmed that the Comitology process will be applied and the EP will have a bigger role but the details of the process still need to be determined.

Mr Crouch suggested that the Commission indicates what comes next. We need to work together but we need to rest reassured for the next steps. A letter will be sent to the Commission in this respect.

BoR Decision agreed: (D 5)

The BoR provided by unanimity (of the members present or represented) its favourable opinion on the draft ACER Recommendation on the network code for Requirements for Grid Connection applicable to all Generators.

› ACER opinion to ENTSO-E and Recommendation to EC on DCC NC

ENTSO-E submitted the finalised Demand Connection Code (DCC) to ACER on 4 January. Already at that time ENTSO-E indicated its availability to amend the NC with respect to provisions on National Scrutiny and Cost Recovery in line with any amendment in these areas agreed for the RfG NC. On 8 March ENTSO-E wrote to the Agency (letter circulated) submitting amendments with respect to provisions on National Scrutiny and Cost Recovery, in line with the re-submitted RfG, requesting ACER to consider in their opinion the DCC as

amended. In the same letter ENTSO-E also waived its option to resubmit a revised DC NC after the Agency's reasoned opinion merely to amend the parts which relate to national scrutiny and cost recovery. The letter states that for the equivalent NC DCC provisions on the national scrutiny and on cost recovery, ENTSO-E supports a consistent alignment during the comitology preparatory phase so that the relevant provisions of the NC DCC read as outlined in the annex to this letter. ENTSO-E asks the Agency therefore to consider the submitted NC DCC as being amended as per the annex to their letter.

The Director explained that the ACER Opinion and the Recommendation on the DCC NC are given on the combination of the DCC NC submitted on 4 January 2013, its accompanying letter, as well as the letter with annex of 8 March 2013. This approach, while exceptional can be justified by the fact that ENTSO-E already indicated its position at the time of the initial submission of the NC and the similarity between the RfG NC and DCC NC on the provisions on national scrutiny and cost recovery.

Mr Crouch confirmed that at this NC a new process is implemented to pursue a more pragmatic approach.

Whilst this exceptional approach can be justified by the similarity between the RfG NC and DC NC on the provisions on national scrutiny and cost recovery, the Director noted that we should not present it or consider it as a standard option.

The Agency recognises in its Opinion that the Network Code, as modified by the amendments indicated in ENTSO-E's letter of 8th March, is in line with the Framework Guidelines. The Agency considers that there are a number of areas where the Network Code should be improved. These do not affect the compliance of the Network Code with the Framework Guidelines and mainly relate to the drafting. The Agency advocates that these are addressed by the Commission, so they are set out in the Agency's recommendation to the Commission. These areas are the following: Clarity and appropriateness regarding Article 9(5) and the corresponding Recitals. Clarity regarding the competence and involvement of National Regulatory Authorities. The definition of Connection Point in Article 2 of the Network Code which does not cover all the types of significant grid users identified under Article 4 of this Network Code. Consistency in the use of the terms Distribution Network and Distribution Network Connection. Roles and responsibilities of different parties and processes with regard to Demand Side Response. Roles and responsibilities of aggregators as well as clarity on different possible approaches to demand aggregation. Clarity regarding compliance testing and monitoring for small grid users.

Consistently with the above comments the same remarks are raised in the ACER Recommendation with the expectation that the Commission address those.

Mr Supponen congratulated the Agency for its pragmatic approach which accelerates the process. In his view, further work needs to be done both on DCC and RfG. The EC has employed a consultant who will report end of April and he is working on a simplified IA on the RfG ENTSO-E had difficulty to agree on standard values and this creates uncertainties for the stakeholders.

BoR Decision agreed: (D 6)

The BoR provided by unanimity (of the members present or represented) its favourable opinion on the ACER opinion and Recommendation on the ENTSO-E network code on Demand Connection.

5. Investment challenge: European Network Planning and Infrastructure Challenge

5.1 Energy Infrastructure Package

-State of play of negotiations

Ms Sikow-Magny reported on the progress: The EP Plenary (12 March) adopted the Infrastructure Regulation. The Council adoption is foreseen for the Environment Council (on 21 March). The publication in the Official Journal will be held in 21 days following this and its entry into force is expected on the 20th day following publication in the OJ practically in June.

On the Connecting Europe Facilities Regulation the negotiations started yesterday with the first trialogue. The Heads of state have significantly reduced the overall budget (which amounted to 50 billion€ of which the energy part amounted to 9 billion over the next 7 years). The budget for energy has now been reduced to 5,1 billion €. In parallel, the EP discusses how to prioritise the money available. Mr Wozczyk asked whether there is any chance for reviewing the budget of the CEF but the Commission thinks that this is quite a remote possibility.

Regional Groups state of Play

On the PCI selection, the regional lists are now being finalised. The ranking of Projects of Common Interest (PCIs) continued at several Regional Group meetings in early March. Ms Sikow-Magny thanked the NRAs for their opinions and contributions which have provided a sound technical basis for the assessments and thereby limited the political interference in the process. In electricity the Regional Groups need one more meeting to agree, whereas in gas we need 2 or 3 meetings. Subsequently the meetings of the decision making bodies (MS) will be organised. The Commission will organize a stakeholder consultation on the regional lists. New project proposals, if any, may emerge only from promoters not already participating in the work of the regional groups. After the ACER opinion on the regional lists, the EC aims to finalise its proposals for the list for early autumn. The Agency's opinion will be expected before the summer break. Although the Agency has 3 months to provide its opinion in accordance with the Regulation, the EC wants to accelerate the deadlines and provide this earlier.

There are a number of areas to work following the entry into force of the Regulation including the preparatory work on CBA; publication of the methodology on incentives from NRAs when these exist, and the cost allocation of projects.

The Director noted the significant budget constraints on the ACER 2013 budget (3 million gap for the implementation of REMIT and the extra staff for the implementation of the infrastructure regulation) which still need to be resolved. If not this may also impact some of the tasks regarding the EIP (e.g. facilitating the sharing of good practices and make recommendations on incentives and risk assessment methodology).

Lord Mogg congratulated the Commission for the adoption of the Regulation.

5.2 ITC

- -ACER opinion on suitability of Long Run Average Incremental Cost (LRAIC)

The Director presented the background: According to Commission Regulation (EU) No 838/2010, the Agency should use its best endeavour to provide an opinion to the Commission on the size of the ITC fund. However this is a very complex exercise which needs to be judged against the significant limitations of the current ITC system. Therefore the Agency has focused its effort in coming up with recommendations on how to improve the current system and, despite its efforts, has not managed to prepare an opinion on the size of the ITC fund despite its efforts and the Director will write to the Commission to announce this.

The draft ACER proposal was circulated on the suitability of using LRAIC in the ITC mechanism. Commission Regulation (EU) No 838/2010 provides that the suitability of the LRAIC approach is reviewed by the Agency. The Agency has come to the conclusion that the LRAIC methodology is of limited suitability in the context of the current ITC mechanism. The draft Opinion recognises that although this methodology indeed promotes new entry, the latter is not itself the purpose of the ITC which is mainly to fix compensation rules between TSOs, which are local monopolies, for the efficient costs incurred as a result of hosting cross-border flows. Thus, applying the LRAIC approach might result in an undue over- or under-compensation, depending on the trend of unit costs.

The Director explained that a favourable opinion of the BoR is not required and thus he invited the BoR for an orientation debate.

➤ - ACER Recommendation on a new Regulatory Framework in relation to ITC

The Director presented the draft ACER Recommendation addressed to the EC. This recommends introducing a new regulatory framework for the compensation arrangements to be developed and implemented before the end of 2015. The new regulatory framework should better reflect all the on-going developments in terms of the forthcoming Energy Infrastructure Package and Capacity Allocation and Congestion Management (CACM) methods and provide TSOs with appropriate incentives to develop the network efficiently. The basic elements identified are as follows: The current ITC infrastructure compensation should be limited to existing infrastructures and the corresponding ITC infrastructure fund should be phased-out. Where appropriate, NRAs under the Agency's coordination, should engage into Cross-Border Cost Allocation (CBCA) agreements for new investments of EU relevance. These CBCA agreements would allow for an ex-ante, and a priori definitive, contribution of positively impacted countries in the financing of new infrastructures of EU relevance. Where relevant, and to the extent that they could not be included in the ex-ante cost-sharing agreements, an ex-post compensation mechanism should be implemented to compensate for both the costs induced by the loop flows phenomenon and the losses induced by cross-border flows. There is a need for a compensation for the loop flows phenomenon. In that respect, the on-going joint work between the Agency and ENTSO-E to define an appropriate framework for redispatching, including cost-sharing arrangements, could contribute to the finding of a proper compensation.

The proposal was submitted for the formal opinion of the BoR (on the basis of Article 5 of ACER Regulation).

The Director remarked that the opinion over the correct size would need a disproportionate effort (including for evaluating the relevant assets in all MS) with respect to the benefit delivered by a system which does not target new infrastructure specifically.

Mr Gence-Creux noted that the new proposal is compatible with the future requirements of the TEN-E Regulation and the need to move from an ex post in an ex ante approach as well as the need identified in the recent workshop on a compensation scheme for loop flows.

Mr Locquet noted that this issue already considered as a negative priority under the relevant note of the Director on the 2013 WP budget implications. He suggested avoid abolishing a system (even if it's not well functioning) without knowing what the alternative can be.

Mr Raillon supported the proposal on the table and that ACER does not devote more time to discuss the size of the fund –which would better tend to zero - but rather develops a new framework. He regretted that there is no time limit for fading out the fund but underlined that the ACER proposal is a very good compromise.

Ms Kelemen noted the distinction on the original aim of the ITC mechanism to compensate for the hosting of transit flows which is not similar to the loop flows, which should also be taken into account when shaping a new ITC mechanism.

BoR Decision agreed: (D 7)

The BoR gave my majority (of the members present or represented) a favourable opinion on the ACER Recommendation on a new Regulatory Framework in relation to ITC with the exception of 3 members which voted against: E- CONTROL, BNETZA and CREG. E-Control and BNetzA submitted a dissenting opinion on the draft ACER Recommendation.

5.3 ACER opinion on 2012/2013 ENTSO-E winter outlook

The Director presented the draft ACER opinion. The opinion welcomes the ENTSO-E winter outlook report 2012/2013 and the summer review 2012.

ENTSO-E winter outlook report: On the methodology ACER recommends that ENTSO-E in a first step assesses the probability of occurrence of severe conditions. The Agency welcomes the regional analyses. A section defining key terms used in the Outlook Reports would further increase the readability of such reports. The Opinion recommends consistency with terms used in the forthcoming Operational Planning and Scheduling Network Code should be ensured.

Acknowledging the difficulties to fully analyse the implications from natural gas supply disruptions at a regional level, the Agency suggests considering the definition of appropriate indicators as an initial step.

The Agency believes that the use of a Pan-EU Climate Database by ENTSO-E could improve forecast capability. The Agency regards the public availability of similar national datasheets for the Outlook Reports as important.

Regarding the 2012 summer review, the Agency expects ENTSO-E to collect and publish quantitative information as an element of the Review Reports. Priority should be given to the actual weekly peak load and the actual average temperature and their deviation in relation to the forecasts. Availability of weekly national temperatures and load datasets could allow ENTSO-E and its TSO members to assess further and to know better the probability of occurrence of simultaneous severe weather conditions in neighbouring countries.

The Agency suggests considering the opportunity to classify the events provided through the Review Questionnaires. Furthermore, and as the issue of high RES penetration into the grids becomes increasingly significant, the Agency welcomes ENTSO-E to provide comprehensive information in the event of curtailment of intermittent RES production. Such publication could be in the System Adequacy Retrospect (which has an annual timespan) or in Winter and Summer Reviews (which do not cover the entire year).

BoR Decision agreed: (D 8)

The BoR gave a favourable opinion by consensus of its members (present or represented) to the draft ACER ENTSO-E winter outlook report 2012/2013 and the summer review 2012.

5.4 ACER opinion on Gas GRIPs

The Director presented the draft ACER Opinion. It notes the existence of certain heterogeneity of the GRIPs' methodologies, publication timing, network models, market perspectives, and level of detail provided across the various Regions. The draft Opinion recommends an additional and more precise assessment of infrastructure projects, their integration at a national and regional level, and interconnections with other regions, should be included. The Agency notes that positive experience has already been gained in South and Central Eastern Europe GRIPs by applying a more detailed regional network modelling method which builds on and enhances ENTSOG's existing modelling tool.

The draft Opinion recognizes the necessity to clarify the role of the GRIPs in relation to the selection process of projects of common interest of the EIP Regulation involving the four Regional Groups dedicated to four regional infrastructure corridors and, if possible, link it. The Agency recommends a more streamlined and harmonized approach to infrastructure development activities in the framework of the GRIPs, the Gas Regional Initiative, the TEN-E Regulation, the TYNDP processes, as well as greater involvement of stakeholders.

The draft Opinion recommends a harmonisation of the methodologies used to develop the GRIPs, including an appropriate common regional network modelling tool utilised in all regions. GRIPs should in the future consider using project assessments based on the TEN-E methodology for CBA.

The draft Opinion also suggests establishing coordination between the development of the Gas and the Electricity Regional Investment Plans and that the GRIPs should also identify concrete bottlenecks at the regional cross-border level.

The draft Opinion suggests releasing the TYNDP and GRIPs in alternate years is useful to allow for a more frequent update of supply and demand scenarios.

BoR Decision agreed: (D 9)

The BoR gave by consensus of its members (present or represented) its favourable opinion to the draft ACER opinion on gas Regional Investment Plans 2011 (12)-2020 (21).

6. ACER cross sectoral activities

6.1 ACER performance and BoR future strategy on ACER/BoR: next steps and conclusions

Lord Mogg presented the documents available under this item and the main issues. A set of papers relating to the Board of Regulators is circulated to BoR members, the European Commission and the Director. The original orientation paper (document D) from the Chair was not discussed at the last January meeting given the lack of time, but several members have subsequently commented and their observations are now been incorporated in a conclusions note on which the discussion (document E) was based under three axes.

Axis 1: The role of NRAs within the Agency

Lord Mogg introduced the first axis. Central to our work and the perception of the Agency by the others is the important explanation that ACER comprises not only Ljubljana staff but NRAs in AWGs in addition to its three Boards, the Board of Appeals, the Administrative Board and the Board of Regulators itself. Along with the Director the Agency is the full complement of all these different elements. Those responding to the orientation paper by the Chair have underlined that ACER should be an entity which fully reflects the wording in its title: an Agency for the Cooperation of Energy Regulators. We need improvements to the working and organizational arrangements drawn from recent experience to allow a smooth and efficient deliberation process and to reinforce the cooperation of NRAs in ACER. These changes need to be communicated effectively to stakeholders, consumers and the European Institutions.

In the light with the conclusions paper, the BoR endorsed the actions and conclusions regarding making the BoR more transparent (“meet the members of the Board” sessions; a foreword from the BoR Chair in the ACER newsletter; quarterly de-briefing by the Chair and the Director).

Regarding organisational arrangements, the proposal to streamline and simplify the BoR agenda was endorsed (Part B will only be used for information and not for an oral report). Part A or B of the overall agenda will therefore include items under broad headings (related for example, to the IEM completion, infrastructure challenge, market monitoring) so that the agenda is linked to the overall objectives of the IEM.

Actions were agreed regarding enhancing cooperation between the Director and NRAs.

Communication aspects: Internal Communication

The volume and expansion of the Agency’s and NRAs’ activities require continuous information exchange between them through the BoR and the AWGs. The ACER website with the dedicated meeting folders for the circulation of meeting documents (for the BoR and the AWGs) should be expanded with “libraries” to allow the exchange of information on relevant issues of mutual interest. Similarly, discussions/workshops on such issues could be organized back to back to the meetings if time and interest of the members permit.

Also actions were agreed on the external Communication.

Axis 2: The Agency and its relations with the Institutions and stakeholders

Lord Mogg noted that the actions proposed under this axis are intended to complement each other to deliver their maximum effect and to avoid reinforcing any impression of a separation

of the NRAs/BoR. The approach will also be coordinated with the Director whose note includes useful actions, including as the continuous improvement of the website.

The BoR agreed the following conclusions and specific actions including a “Citizen’s Summary” to accompany ACER decisions, press release and public hearings should, where appropriate be organised. A Guide/fact sheet will be prepared and uploaded on the ACER website to explain how the Agency works and our processes (step by step) starting from the work streams, TFs, AWG, the Director and the BoR until the final adoption of acts and their publication.

The creation of new groups should be avoided and it was agreed to review with the Commission and the ENTSOs the existing groups and their structure.

Lastly actions were agreed to strengthen relations with EP, and the Commission (e.g. by joint workshops and technical briefing sessions with the Parliament and Commission, biannual meetings between the Commissioner, DG ENER and senior staff, regular updates on developments in the Comitology process should be made from those participating (as observers).

Axis3: Developing strategic thinking and a more forward looking view.

The BoR chair introduced the actions proposed under this axis which intend to address the findings of the Hilbrecht report that the Board regrettably has not devoted more time to strategic thinking. The members agreed that through the BoR, the Director and the AWGs, we must identify key objectives for gas and electricity target models for 2020 with the active and regular engagement of stakeholders as the models evolve. The BoR should give more time to strategic discussions. They should focus on more substantive issues and included as a regular point in the BoR agenda.

Actions agreed

The BoR will consider policy papers on more strategic issues and organise as appropriate regular meetings, roundtables, at senior level with the principal electricity and gas sector stakeholders.

BoR Decision agreed: (D 10)

The actions and conclusions included in Document E were endorsed as above. A roadmap on the specific actions will be prepared by the Chair and discussed at the next BoR.

Document G:

The Director presented his note which focused on a broad range of issues and intended to introduce improvements on the basis of the Hilbrecht report findings. These include: Staffing of the Electricity and Gas Departments to ensure proper handling of Framework Guidelines and Network Codes; risk of resource overstretching and prioritisation under the WP; increasing technical expertise of Agency’s staff and allocation of adequate resources for training; relation with stakeholders (ACER will finalise the public consultation note and the website is being improved). Streamlining administrative procedures related to the reimbursement of BoR members’ travel. Impartiality and integrity of the ACER staff; reinforcing expertise in the infrastructure area.

The Director also proposed some actions and improvements for the AWGs.

Other actions are fully complementary with those included in the paper by the chair for example regarding a short (typically 1-2 pages) summary in non-technical terms to accompany the Agency's Acts.

The Board took note of the actions presented in the Director's note.

6.2 Lessons learned – suggested best practices in the FG and NC development processes

Mr Crouch and Mr Boltz presented the main recommendations in the draft note as follows:

- Thorough scoping of the issues before the Commission requests ACER to start work on Framework Guidelines.
- An Impact Assessment should be developed in parallel with the Framework Guidelines.
- Early pro-active, maintained stakeholder engagement is essential. A preliminary reasoned opinion is useful in this context.
- ENTSOs processes currently lack time to take on board comments from Regulators. More standardised communication during the elaboration process could ease this problem. Trilateral meetings before Network Code tabling is seen as particularly useful. There needs to be a clearer timetable with escalation of issues.
- ACER's communication needs to be inclusive, transparent and efficient to enable all regulators to benefit and contribute. A dedicated team should lead during development of ACER opinion on networks and the final recommendation to the Commission.
- The Hilbrecht Report advocates regular internal meetings to exchange experience in drafting Guidelines and Codes – i.e. this document/discussion should be part of an on-going process

Mr Crouch reported on the discussion at the last AEWG. He noted that it is useful that the ideas are now translated into actions and implemented in practice. A short report will be given to the next Forum Forum.

Mr Boltz noted that certain improvements have already been implemented on the gas side (for example on the NC on Gas balancing). In his view, we seem to be in fairly good track and this has been a very useful exercise.

6.3 2014 ACER work programme – areas of work

The Director presented the draft note on the list of areas for 2014 which takes account of the meeting with the AWG chairs on 6 March. The outline WP will be presented on 29 May to the EP and stakeholders in a Workshop on 6 June. The Director placed particular importance on the budget availability. He remarked that regrettably the process and timetable for the ACER WP is totally decoupled from the budget process and timing. Although the WP is for adoption by 1st September the budget is only decided by the end of the year.

Thus his note includes a prominent notice that the implementation of the Work Programme depends crucially on the continuous support of the NRAs through the WG and on the Agency being assigned the human and financial resources on which the Work Programme is based. The performance of the activities proposed in this note is 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, whilst it is noted that it is without prejudice to the annual budgetary procedure.

The development of Network codes includes RO and Recommendations in 3 NC in electricity and 1 in gas (as well as scoping work in incremental capacity). Also it includes advice and support on Network Codes during the comitology process, as appropriate and preparation for and monitoring of the implementation of the adopted Network Codes. The list is still missing the new areas of work that the EC has put at their consultation paper on the annual priority list. The note also provides a number of opinions on TSOs cooperation (WP, annual reports, TYNDP etc.). The monitoring report as well as the RI status review report are also included.

Regarding REMIT, activities in 2014 include the development and maintenance of IT solutions for the registration of market participants and for market surveillance, data collection and data sharing of wholesale energy markets; the establishment and administration of a European register of market participants; the data collection; the establishment of appropriate mechanisms to access emission allowances data; monitoring of trading activity in wholesale energy markets to detect and prevent trading based on inside information and market manipulation in cooperation with NRAs, on the basis of data collected; further definition and implementation of a wholesale energy market monitoring strategy for the effective implementation of REMIT; sharing of data with NRAs and other authorities; ensuring operational reliability and professional secrecy; coordination of NRAs, including the update of the Agency's guidance on the application of REMIT definitions and coordination of NRAs' investigation activities on cross-border market abuse instances; cooperation with ESMA, competent national financial market authorities and other authorities; contributions to potential reviews of REMIT; and an annual report on the Agency activities under REMIT.

Regarding the EIP, the tasks include, *inter alia*, the ACER opinions on the methodology and criteria for the cost-benefit analysis (CBA) of infrastructure projects and the opinion on the consistent application of the identification and ranking criteria for PCIs and of the CBA across regions. Where appropriate, cross-border cost allocation decisions and notifications to the Commission; the sharing of good practices and recommendations regarding the incentives and regarding a common methodology to evaluate the incurred higher risks of investments in electricity and gas infrastructure.

Mr Boltz suggested clarifying the negative priority list if the budget foreseen is not allocated. Mr Muther noted a correction in Page 4 (as the EC eventually did not launch the PC on 11 March).

Ms Kloc remarked that the draft consultation paper on the draft annual priority list will be discussed for the next Planning group following which the Commission will launch the public consultation. The Director alerted that the ACER WP process may be delayed if the public consultation only starts in April and we need to reflect the definitive list in the Agency's WP.

BoR Decision agreed: (D 11)

The BoR welcomed the list of areas for the 2014 WP.

6.4 2014 ACER budget

The Director presented the main elements of the 2014 budget. The 2014 budget amounts to 15,525,320 € (euro). The increase of the budget for the 2014 Financial Year with respect to the adopted 2013 Budget corresponds to the completion of the implementation of REMIT and the starting of the monitoring of wholesale energy markets, as well as additional tasks assigned to the Agency by the TEN-E Regulation. It is estimated that 35 FTE additional staff will be required to operate market monitoring under REMIT. Also ACER tasks under TEN-E Regulation require substantial reinforcement of the Agency capability in its TSO Cooperation area with an additional 14 FTE positions in total (for both Electricity and Gas Departments).

Ms Kloc noted that, DG ENER, supports the draft 2014 budget and the relevant letter has been sent from P. Lowe to DG BUDG. DG ENER thought that 2014 was the last year to have this opportunity as ACER is still considered as a “new tasks Agency”. As from next year (2015) ACER will be considered as an Agency at cruising speed and thus subject to 1% Reduction of budget and staff.

The Director and Lord Mogg welcomed the Commission’s support.

Lord Mogg explained that the BoR may provide its opinion to the Administrative Board and the opinion circulated welcomes that the preliminary draft budget of 15,525,320 € (euro) which is in line with the requirements of the Agency for 2014 and justified notably in respect of the completion of the implementation of REMIT and the start of the monitoring of wholesale energy markets, and the additional tasks assigned to the Agency by the TEN-E Regulation. The opinion considers it essential that the Agency is provided with the necessary human resources, of adequate expertise, to undertake its monitoring activities under REMIT in the most effective manner. National Regulatory Authorities, which will themselves face additional responsibilities under REMIT, are also subject to resource limitations. The draft opinion states that the Board endorses the Director’s estimate that 35 FTE additional staff will be required to operate market monitoring under REMIT, starting in the second half of 2014. Also the draft opinion recognises that substantial reinforcement of the Agency capability in the TSO Cooperation area is needed. The Board, therefore, welcomes the increase in the amount in Title 1.

The Board of Regulators also endorses the MASPP 2014-2016 which reflects the staffing requirements for the Agency to perform its tasks and responsibilities under the Third Legislative Package, as expanded by REMIT and the new TEN-E Regulation.

Mr Boltz expressed his full support; ACER cannot assume its new responsibilities unless the budget is provided.

BoR Decision agreed: (D 12)

The members approved by unanimity the BoR opinion which welcomes the 2014 draft ACER budget of 15,525,320 € (euro) and endorsed the MASPP 2014-2016. The opinion of the BoR will be transmitted to the AB by the BoR Chair and, subsequently, be published.

6.5 Budget implications for 2013 ACER work programme

A revised note from the Director was presented for endorsement at the BoR. The EU Budget for 2013 was adopted and envisages a contribution to the Agency of € 7,369,795 which, together with the assigned revenues from the 2011 surplus, will lead to a total budget of €

8,941,220. This is approximately € 3 million lower than the draft Agency Budget adopted by the Administrative Board on 5 March 2012. The severe limitations in the financial resources available for the REMIT-related IT development in 2013 implies that the orders for IT solutions for data collection and data sharing will have to be postponed. In similar terms, unless additional human resources become available early in this year for the implementation of the new TEN-E Regulation, the Agency will not be able to deliver the Opinion on the draft regional PCI lists. The Director explained that the amount of money that can be transferred from other budget lines is limited. DG ENER is looking internally to find the money. He said that he would wait another few months if the money was available, but if this would not be the case, in June he will propose a revision of the 2013 Work programme.

The Director presented the tasks which will need to be postponed to future years and will be presented in a revised Work Programme

Mr Moelker sought some clarifications on when would the Commission definitively decide the 2013 budget. This has a huge impact on the WP and the planning of the resources devoted to the relevant deliverables.

The Director noted that May or June is the cut - off date particularly for REMIT as the money need to be spent.

The Chair asked Ms Kloc to deliver the message that there is an urgency in resolving this issue.

BoR Decision agreed: (D 13)

The BoR endorsed the proposal and approach by the Director on the budget implications of the ACER 2013 WP.

MARKET MONITORING

7. Market Integrity and Transparency

7.1 Technical standards for trade reporting

The Director presented the public consultation document which was prepared on the basis of the ACER Recommendations on the records of wholesale energy market transactions, including orders to trade, according to Article 8 of REMIT. A crucial part of the new reporting framework and the implementing acts is the reporting of trade data to the Agency. Whereas the Agency's Recommendations to the Commission indicated which items of information are necessary it did not specify a standard for those values to take. The Agency has identified a set of common standard codes and technical standard formats which it proposes being used in the new reporting framework.

2 options are available: Recognition by the Agency of a number of standard formats means that Market Participants with an obligation to report data according to Article 8 may choose to use any of such recognised formats through a designated Registered Reporting Mechanism. Otherwise the Agency's own technical reporting format and standards will apply by default.

The BoR welcomed the paper which is intended for public consultation.

7.2 Registered reporting mechanisms and regulated information services guidelines

Mr Zuleger presented the draft ACER Guidelines again related to the Recommendations on the records of wholesale energy market transactions, including orders to trade, according to Article 8 of REMIT. A crucial part of the new reporting framework and the implementing acts is the reporting of records of transactions, including orders to trade from market participants through Registered Reporting Mechanisms to the Agency. The registration of such Registered Reporting Mechanisms shall be based on ACER Guidelines for the registration of Registered Reporting Mechanisms. Another crucial part of the new reporting framework is the reporting of regulated information, including fundamental data, through Regulated Information Services to the Agency.

The purpose of the consultation paper is to seek views on whether the draft Guidelines for RRM and RIS are suitable. The Guidelines provide information on the requirements necessary to become a RRM or RIS, the registration process for RRM and RISs and the ongoing obligations on parties that act as either a RRM or RIS. We need to make sure that we have high quality of data. The model is taken from financial regulators.

None of the consultation documents pre-empts the Commission's implementing acts. The 2 documents are technical standards for reporting (country codes, dates time codes) and the taxonomy where there are several organised market places.

Mr Boltz remarked that some NRAs are keen on having the selected ACER software solution for the data collection. Following the data collection, in his view (in the worse-case scenario that ACER cannot do the monitoring due to budget constraints) the analysis can at least be sent and done to NRAs.

The Director responded that, as soon as the IT tool is available, NRAs will be able to access the data (relevant for their markets) or even use the monitoring tool for their national monitoring, subject to a nominal fee. The Director is confident that if the money is made available by June we will be able to complete the work by next year. If, however, the money is not available ACER cannot proceed to collect the data but only do the registration (which is envisaged 3 months after the implementing acts and in 6 months the market monitoring).

BoR Decision agreed: (D 14)

The Board welcomed the consultation paper and invited the Commission at the April BoR to present its thinking and progress on the REMIT Implementing Acts.

7.3 Draft MoU between ACER and NRAs concerning cooperation and coordination of market monitoring under REMIT

A draft multilateral MoU between ACER and NRAs has been developed and covers the coordination between the Agency and NRAs on the following issues:

The application of the definitions in accordance with the ACER non-binding Guidance. The NRAs may agree with each other and with the Agency on specific conditions to implement the cooperation on wholesale energy market monitoring at regional or national level. Market monitoring experts from the Agency and from NRAs shall together with market monitoring experts from organised market places, including e.g. energy exchanges and broker platforms, meet at least twice yearly with the aim of exchanging experiences and discussing

current issues and new developments of mutual interest with respect to wholesale energy market monitoring.

Notifications by NRAs to the Agency of suspected breaches of REMIT: Notifications by NRAs to the Agency where an NRA suspects that acts breach the prohibitions of market manipulation or insider trading, shall include the information specified in the MOU and shall be done through the channels included therein.

A similar procedure applies regarding the power of the Agency to request one or more NRAs to commence an investigation of a suspected breach of REMIT and to take appropriate action to remedy any breach found. Any decision as regards the appropriate action to be taken to remedy any breach found shall be the responsibility of the NRA concerned. Requests by the Agency to NRAs shall include the specific information included in the MOU.

Lastly the process is developed for the establishment and coordination of investigatory groups by the Agency.

The Agency and NRAs shall establish smooth and effective communication channels for the proper compliance with the objectives of this MoU. They shall each nominate a list of liaison officer(s).

There are also provisions on coordination on public information and professional secrecy.

The Director clarified that the intention is to have a text acceptable to all and each NRA. The modalities for its signature are still to be determined but he sought a firm commitment on the content of the MOU.

Ms Kelemen sought some minor improvements.

BoR Decision agreed: (D 15)

The Chair invited comments on the draft MOU within a week. Subsequently, the MOU will be finalised and a final version will be submitted to the April BoR for information.

7.4 2nd set of recommendations on records of transactions in balancing market and transportation contracts

The Director presented the draft ACER Recommendations, which have been developed after consulting the ENTSOs. On 23 October 2012, the Agency provided the Commission with its Recommendations on the Records of Transactions, including orders to trade, which it considers necessary to effectively monitor wholesale energy markets and as regards the REMIT implementing acts according to Article 8 of REMIT. These Recommendations complement the Agency's Recommendations as regards balancing market contracts and transportation contracts. The purpose of the Recommendations is to assist the Commission in drafting the REMIT implementing acts according to Article 8 of the Regulation.

Recommendation on records of transactions in balancing market contracts: The data collection of records of transactions in balancing market contracts should be postponed until the relevant network codes apply. Separate implementing acts for records of transactions in balancing market contracts should take into account these network codes. Balancing market contracts should therefore currently not be included in the list of contracts to be reported. The separate implementing acts for balancing market contracts should apply after the

expiration of a relevant transitory period of 12-24 months following the day of entry into force of the Network Codes on Electricity and Gas Balancing. Until then NRAs should collect information and monitor balancing markets on the basis of their competences on a regular basis and regularly inform the Agency about the balancing market developments and the outcome of their monitoring activities.

Recommendation on records of transactions in transportation capacity contracts: Mr Zugeler noted that not much input received from ENTSOs so the older proposal is retained. The implementing acts should stipulate a phased approach for transportation capacity contracts by delaying the reporting of records of transactions in transportation capacity contracts by 6 months, unless energy commodity and transportation capacity are in fact obtained in one single transaction. The Agency believes that the reporting content of market transactions of transportation capacity contracts, including market coupling contracts listed by power exchanges which make the available transmission capacity between two market areas tradable in the form of Physical Transmission Rights ("PTR"), should be made according to the Agency's recommendations from 23 October 2012.

Conclusion

The members welcomed the 2nd set of the ACER Recommendations on records of transactions in balancing market and transportation contracts.

8. Implementation, Monitoring and Procedures WG

8.1 Next steps on Market Monitoring Report

A jointly (ACER and CEER) branded report will be prepared for this year. The production of the overall Report falls under the responsibility of ACER. NRAs will be fully involved and will contribute through the dedicated AIMPWG. CEER will be responsible for the chapter on consumer protection.

At the ITRE ACER Contact Group meeting on 6 March an early presentation of the MMR to the EP ahead of its adoption and publication was agreed.

Mr Locquet reported on the timeline and next AIMP meeting which is on 23 April. A presentation will be given to see the state of play.

A questionnaire is also sent out on regulated prices to have accurate data and potential barriers.

The Director gratefully acknowledged the early commitment of a number of NRAs which have already volunteered resources for supporting the drafting of the MMR. The Director and the AIMP chair would welcome any additional volunteers for the report. The Director noted that this year we shall focus on barriers and will be more of quality and less quantity.

Lord Mogg noted that this should be a priority for the CEER consumer group.

Part B: *Items for Information only - These items will not normally require an oral report at the BoR (unless the agenda indicates a rapporteur) and are for Members to take note and/or ask questions*

9. Internal Energy Market: Electricity and Gas

9.1 Madrid Forum

The 23rd Madrid Forum will take place 17-18 April 2013. The agenda was circulated.

9.2 Incremental Capacity

An information note was circulated about the outcome and process leading up to the Final Study on Impact assessment for policy options on Incremental capacity for EU gas transmission networks by Frontier Economics.

9.3 Gas Regional Initiatives update

An information note was circulated.

9.4 ACER recommendation to EC CACM NC amendments

The 2nd Round of the BoR electronic approval on the draft ACER (Qualified) Recommendation on the Network Code on Capacity Allocation and Congestion Management ended on 13 March 2013, at 11.00 CET. 24 Members participated and all voted in favour, thus the BoR gave its favourable opinion on the draft Recommendation by the requested majority (pursuant to Article 6.7 of the RoP "the proposal submitted for approval is accepted if it obtains a two-third majority of all members"). An information note was circulated.

9.5 Electricity Regional Initiatives update

An information note was circulated on progress on the cross regional roadmaps and the new pilot on balancing.

10. Market Integrity and Transparency

10.1 Final market legislation and letter to the Irish Presidency (included in Part A)

Mr Braz reported on the latest developments and the Council's latest proposed MiFID text which aims to modify the definition of financial instrument by proposing to extend the "commercial purposes" and "can only be physically settled" exemption tests to Exchanges and Brokers and not just OTFs as in former versions of the MiFID text as proposed by the Council.

A letter is to be sent to the Irish Presidency which outlines the potentially negative impact on energy markets if NRAs concerns are not addressed was circulated.

10.2 Update on recent developments in the RITMG TF and Expert Group meetings

A presentation was distributed on the development of the ACER registration system.

10.3 On-going Work of the AMIT WG (included in Part A)

Mr Braz presented an information note to inform the BoR about the on-going work of the three Task Forces (TFs) under the AMIT WG – the Market the Monitoring Governance (MMG) TF, the Wholesale Market Surveillance (WMS) TF and the IT TF against the list of 2013 deliverables.

Work includes a follow-up of the 2nd and the preparation of the 3rd edition of ACER Guidance to NRAs on the application of REMIT.

Given the work envisaged on a definition of a wholesale market monitoring strategy, the development of a Market Monitoring Handbook is envisaged. The objective of the handbook is to share best practices and general principles.

Mr Braz noted that a lot of work in bringing NRAs up to date is undertaken. The WG regularly discusses REMIT cases and takes stock of the progress of REMIT implementation at national level, in particular the follow-up of the 2nd edition of ACER Guidance on the application of REMIT concerning the establishment of inside information platforms (see already point 3.1 above) and the implementation of investigatory and sanctioning powers into national law. The latter issues may be subject of an internal survey on the basis of another questionnaire to NRAs updating the survey undertaken by the REMIT Ad-hoc Group in 2011/12.

The implementation of IT System for registration of Market Participants – including the development of a Registration User Manual (RUM) is progressing. .

BoR decision (D16)

The BoR Chair invited the AMIT WG chair to send the questionnaire and to update the internal survey following the one from the adhoc group in 2011/2012.

11. Others

11.1 Next meetings 2013

| | | |
|----------------------|---------|-------------|
| GA | Madrid | April 16 |
| BoR | Madrid | April 16 |
| Madrid Forum | Madrid | April 17-18 |
| Coordination Meeting | Virtual | April 23 |

11.2 AOB

- AB decision on the appointment of the new Hungarian BoR alternate and the Swedish BoR member

Revision of the AB decision for reimbursement of travel expenses of the BoR members

The Director presented the draft decision. The objective of the revisions is to streamline our internal process so as to facilitate and accelerate payments. Some of the modifications are to clarify the process of combining travel arrangements. In the case of a NRA Representative combining travel to attend a BoR meeting with other travel arrangements, travel expenses can be reimbursed from/to a location different from the seat of the NRA, provided that such expenses do not exceed the cost of travel from/to the location of the seat of the NRA, according to the rules defined in this Guide.

The time of arrival at the location of the venue where the BoR meeting takes place and the time of departure from the same location should be as reasonably close as possible to the respective starting and finishing times of the BoR meeting or of any other associated event of regulatory interest and/or closely related to BoR activities.. However, earlier arrival times at the location of the venue where the BoR meeting takes place and/or later departure times from the same location are also admissible, provided that they do not result in higher reimbursement costs for the Agency. (again new to ensure that if members stay for the Forum they can be reimbursed)

The NRA Representative must inform the Agency in advance, possibly at least 10 days before the BoR meeting (new provision), via the meeting secretary, of any instances that may prevent him/her from complying with the rules defined in this Guide and request authorisation for any derogation from these rules.

Exceptionally travel expenses can be reimbursed up to the cost of a flexible economy class ticket if the NRA Representative demonstrates that she/he reasonably requires flexibility (resembles the previous provision).

➤ Decision of the Director on the appointment of the Chairperson in the AIMP WG

The Director has accepted the resignation of Marek Woszczyk as of 31 January 2013 and has appointed Koen Locquet as Chair effective 26 February 2013. Walter Boltz was also reappointed Chair of the Gas Working Group effective 26 February 2013. Both appointments are for a term of 2 years.