

41st ACER Board of Regulators Meeting
Tuesday, 14 October 2014, 14.00-19.00
CNMC, Madrid

Minutes final

Member States	Name ¹	Member States	Name
Austria (E-Control)	M: Walter Boltz O: Katharina Tappeneir O: Zsuzsanna Szeles	Italy (AEEGSI)	M: Valeria Termini O: Miranda Diana
Belgium (CREG)	M: Marie-Pierre Fauconnier A : Koen Locquet O: Geert Van Hauwermeiren	Latvia (PUC)	O: Lija Makare
Bulgaria (SEWRC)	Excused	Lithuania (NCC)	A: Vygantas Vaitkus
Croatia (HERA)	O: Sonja Tomašić Škevin	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	Excused	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	O: Miroslav Belica	Netherlands (ACM)	O: Jan De Maa
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	A: Halina Bownik-Trymucha
Estonia (ECA)	O: Marek Piiraja	Portugal (ERSE)	O: Jorge Esteves
Finland (EV)	A: Riku Huttunen O: Elina Hautakangas	Romania (ANRE)	Excused
France (CRE)	A : Philippe Raillon, O: Michel Thioliere O: Patricia de-Suzzoni	Slovakia (RONI)	Excused
Germany (BNetzA)	A: Annegret Groebel O: Daniel Müether	Slovenia (AGEN-RS)	Excused
Greece (RAE)	O: Ionna Mercinia	Spain (CNMC)	M: Fernando Hernández
Hungary (HEA)	A: Attila Nyikos	Sweden (Ei)	A: Caroline Tornqvist O: Petra Lindmark
Ireland (CER)	M: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) O: Rob Mills
Observers	Name		
ACER	Alberto Pototschnig, Dennis Hesselting, Fay Geitona		
European Commission	Klaus-Dieter Borchardt		
CEER	Natalie McCoy, David Haldearn		

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

Main conclusions from the meeting:
1. <i>The BoR received an update on the EC IEM Communication, the upcoming EC report on stress tests, the annual priority list and the DG ENER note on the differences between Network Codes and Guidelines.</i>
2. <i>The BoR received an update from the ACER Director on the final Action Plan on the AWGs leadership away day and the BoR CVs and DoI.</i>
3. <i>The BoR reiterated its agreement on the next steps for the approval of the 2015 ACER WP: the BoR agreed to the launch of an electronic procedure in a short, single round for approving the final 2015 ACER WP following the submission of the EC's formal opinion.</i>
4. <i>The BoR discussed and endorsed the broad range of actions emerging from the "Bridge to 2025" as specified in the note, subject to some revisions. The note will be revised and used as a guide for the Bridge work going forward.</i>
5. <i>The BoR received an update on the feedback from the public consultations on TRUM, RRM and Fundamental data manual and the adoption of the Implementing Acts.</i>
6. <i>The BoR received an update on progress on electricity FGs and Codes.</i>
7. <i>The BoR received an update on progress on gas FGs and Codes, discussed the EoR on RfT, and the early implementation of pilot projects on Balancing.</i>
8. <i>The BoR received an update on the first lessons drawn on the CBCA cases in the context of the first PCI list. The discussion will be pursued on the basis of further input from the ongoing discussion between ACER and the EC.</i>
9. <i>The BoR took note of the ACER Report on monitoring the implementation of the ITC 2013.</i>
10. <i>The BoR received an update on the next steps of the 2nd round of the PCI selection.</i>
11. <i>The BoR received an update on progress on the Gas Regional Initiatives (GRI).</i>
12. <i>The BoR received an update on work by the AIMP WG.</i>

Part A: Items for discussion and/or decision

1. Opening

1.1. Approval of the agenda

BoR Decision agreed: (D 1)

The agenda was approved.

1.2. Approval of the minutes of the 40th BoR meeting

BoR Decision agreed: (D 2)

The 40th BoR minutes were approved.

2. Update from the Commission and the Director

2.1. Update on recent developments

- European Commission

Mr Borchardt presented the European Commission (EC) Communication on progress towards completing the Internal Energy Market (IEM) released on 13 October. The EC Communication is accompanied by seven staff working documents (trends and developments in EU energy markets 2014; country profiles on the status of implementation in the respective Member States; unbundling - report on the functioning of the ITO-model; investments in the EU; investments and implementation of TEN and PCI; and enforcement). The assessment on the IEM is rather positive, but there are still bottlenecks. Cross-border trade in electricity has increased, however, more trade requires strengthening the physical connection of our markets and removing the remaining obstacles. For gas, a competitive and integrated internal market is a key insurance for a high level of Security of Supply (SoS). The energy markets can only function if they are well interconnected. The first Projects of Common Interest (PCI) list was adopted and it includes 248 projects which need to be urgently realised. The EC has identified where investments in gas should first and foremost focus (e.g. ending the isolation of Baltic States; the diversification of supply of many Central-Eastern and South-Eastern Member States (MSs)). The Communication also identifies critical areas where electricity transmission capacity is scarce (for example in a market area such as Germany and intra-Baltic connections and linking the electricity grids of Iberia peninsula, Baltic region, IRL and UK, as well as the construction of an integrated offshore grid in the Northern Seas etc.).

Regarding progress in the IEM, in gas many of the Network Codes (NCs) are in place. In electricity the situation is less glorious not least as there are a few complex issues and legal complications stemming from the appropriate legal instrument to be used (Codes or Guidelines) which emerged in the context of the Capacity Allocation and Congestion Management (CACM). Mr Borchardt reported that the Comitology meeting on CACM on 9 September was positive and constructive in terms of seeking progress and concrete results. There are two major challenges in the electricity sector: the need to get the intraday market coupling by the end of next year and the integration of Renewable Energy Sources (RES) into the market.

The EC Communication puts emphasis on a regional approach regarding infrastructure as well as regarding the early implementation of NCs which would provide a solid basis for delivering the IEM.

Mr Borchardt also reported on the stress tests exercise carried out at the request of the European Council and the upcoming report. It provides analysis of the results provided by the EU MSs and the Energy Community contracting parties, as well as Georgia, Turkey, Norway and Switzerland. The package also includes three focus groups analyses (South-East Europe, Baltics and Finland and the Energy Community) and a report on cooperation with G7 and other partner countries. The EC noted that this has been a very challenging exercise during a short period of time over the summer and it was delivered in time. Although the quality differed, overall the exercise was good. A key element is that government intervention should be carefully prepared on a regional basis and only if needed; a market-based approach should be the guiding principle. The report includes concrete short-term recommendations for the most vulnerable EU MSs and neighbouring countries.

The EC expects to adopt the report on Thursday, 16 October and release it. The report will highlight the need for a cooperative approach which addresses better the threats of

disruptions. It demands a lot of solidarity between MSs. The report will also include recommendations for each MSs to be followed up.

On the Codes which are in the pipeline, the EC is in contact with the European Networks of Transmission System Operators for Electricity (ENTSO-E) to make an assessment on whether “critical provisions” which can raise legal concerns for qualification as a NC can now be changed. ENTSO-E has been asked to look into this. The EC will pursue how we process the draft Codes on the table.

- Report on the Planning Group

Mr Borhardt updated on the issues discussed at the last Planning Group; mainly progress on electricity Codes, and the legal note from the EC on Codes and Guidelines. Ms Sikow-Magny provided an update on the Cost-Benefit Analysis (CBA) and Cross-Border Cost Allocation (CBCA) lessons learnt from the Connecting Europe Facility (CEF) evaluation.

- Annual Priority list of the EC

Mr Borhardt updated on the annual priority list of the EC which was adopted on 13 October and will be released in the coming days.

- ACER

The ACER Director gave an update.

Action plan

He reported that the Action Plan (of the away day for AWGs, TFs leadership) has been finalised and distributed to all the away day participants and to the BoR for info. The Director has had two rounds of comments, one with the Chairs and, subsequently, with all the participants. He thanked all those who provided feedback and had tried to accommodate the comments received. The Director explained that the comments on the main issues have been considered and many have been reflected. The revised version confirms the possibility of senior Agency staff – at Head of Department (HoD) level – performing the role of chairing an AWG in the future which in any case is allowed under the Agency Working Group Rules of Procedure (AWGs RoP).

Given the perceived undue influence that a few NRAs have in the functioning of the Agency, the choice of AWG Chairs and Conveners of TFs/sub-groups should be organised in a transparent way after a call for interest among AWG/TF members.

The Director considers now the action plan as final and its practical implications will be reflected in the revision of the AWGs RoP towards the end of the year, as well as, where necessary, in other practical arrangements.

The arrangements for REMIT going forward might be different. The role of the Agency under the Third Package and REMIT is somewhat different, including the cooperation between ACER and NRAs. After the voting of the REMIT Implementing Acts (IAs) by the Committee on 3rd October, we need to move into operation mode in REMIT as their adoption and entry into force is foreseen for December. The Director stated that he is exploring ways of supporting the cooperation between ACER and NRAs in the most effective way. He is developing ideas on this and intends to propose some arrangements which would serve the purpose of enhanced coordination as we move into the operational stage of REMIT where coordination needs to be enhanced and the relevant tasks need to be performed in a speedy

way. These could, as an example, include NRAs Fora, as the fora put in place for the information sharing. The Director undertook to provide some proposals shortly.

Lord Mogg informed that CEER recently published an anonymised report on NRA implementation of REMIT provisions to date. This exercise will be repeated in 2015. He highlighted the importance of not losing sight of the national side of REMIT implementation (looking beyond the centralised tasks and efforts within ACER), particularly as enforcement is purely the responsibility of NRAs.

CV and Declaration of Interests

The Director reported that in the course of 2014, members have been requested to submit a declaration of interest (DoI) form and their curriculum vitae (CV) to comply with the obligations of the Agency as regards independence of its Boards and transparency of its decision-making bodies. This follows the European Parliament Decision of 3 April 2014 on discharge in respect of the implementation of the budget of ACER for the financial year 2012 which observed that the CVs of the BoR members were not publicly available, and called on the Agency to remedy the situation as a matter of urgency.

For this purpose, the Dols and CVs have been collected and reviewed to ensure full compliance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Those will be published on the Agency's website by 15 October 2014.

3. ACER cross-sectoral activities

3.1. 2015 ACER Work Programme (WP)

The Director updated the BoR on the status of the ACER 2015 WP. The deadline for the adoption of the WP by 30 September 2014 has already been missed. The letters by the Administrative Board (AB) Chair to the Council, European Parliament (EP) and the EC informing the Institutions about the delay were circulated and the EC's opinion has not yet been received.

Mr Borchardt informed the members that the EC opinion regrettably was not adopted in time and apologised for the delay. The EC has finalised their inter-service consultation and Mr Borchardt is confident that the EC opinion will be submitted by the end of this month to ACER.

The Director informed the members that, in the meantime, the WP is being amended according to the Internal Audit Service (IAS) recommendations and some informal input from the EC draft opinion presented at the last BoR, taking into account also the BoR comments at the September meeting and incorporating some actions from the Bridge. However, the Director noted that the WP's basis will be the draft budget as adopted by the AB and, as in previous years, it will not be aligned at this stage to the EC Draft EU Budget, as the definitive budget is not yet adopted by the budgetary authority.

The Director presented that in relation to the Bridge, in 2015 the Agency may decide to issue:

- Recommendation following the review of the Gas Target Model depending on the results emerging from the review.

- Recommendation on the facilitation of the development of flexible response and its implication for the design of the electricity market and the operation of the electricity system.
- Recommendation on a more coordinated and consistent approach to assessing system adequacy and on the design of interventions, in particular on Capacity Remuneration Mechanisms.
- Recommendation on the enhancement of the regulatory oversight of the ENTSOs.
- Recommendation(s) on specific mechanisms to further enhance the cooperation between NRAs and the effectiveness of the regulatory action at EU level.
- Opinions and Recommendations in other areas, including on the regulatory oversight of mandatory and voluntary EU TSO bodies, to be initiated if necessary or appropriate.”

BoR Decision agreed: (D 3)

The BoR reiterated its agreement on the next steps for the approval of the 2015 ACER WP: the BoR agreed to the launch of an electronic procedure in a short, single round for approving the final 2015 ACER WP following the submission of the EC's formal opinion.

3.2. Launch of the Third Market Monitoring Report

The Director updated the BoR on the launch of the Third Market Monitoring Report (MMR) to be held on 22 October from 13.30 to 17.00 at the Albert Borschette Conference Centre. There are over 120 participants registered for the launch of our Report. The agenda is now released and circulated for information Mr Ristori and the Italian Presidency will participate. The report draws some comparisons from this year's and last year's report. Lord Mogg will present the CEER contribution to the report.

3.3. BoR Roadmap

Ms Geitona gave an overview of the Roadmap which has been updated to reflect the latest developments. On early implementation, a GRI update will be given today. In terms of post-2014 strategy, the Bridge conclusions paper, in the form of an ACER recommendation to the EU institutions, was released with an event on 23rd September. A note on follow-up actions and next steps has been circulated for discussion.

Regarding relations with the EP, on 5th November we will present the MMR to the (Industry, Research and Energy (ITRE) committee and the Director will also meet the ITRE Chair.

4. Post-2014 Strategy

4.1. Report on the launch of the 'Bridge to 2025' and reflection on next steps and follow-up actions

The Chair updated the BoR on the launch of the 'Bridge to 2025' Conclusions paper. The event was extremely successful: there were 183 participants and it was also web-streamed. The EC remarks were supportive and the paper was very well received. A press release was issued on the date and all documents, presentations and pictures are available on the website.

The Director noted that he presented the Bridge at the Energy Community (EnC) Gas Forum in Ljubljana last week and it was very well received.

The Chair introduced a note outlining next steps and follow-up actions for discussion which was circulated.

- **Actions related to Consumer and Stakeholder Issues:** action will be taken to discuss with the EC how information and awareness between the different fora and the electricity and gas sectors themselves could be enhanced. **Actions related to the electricity/gas/consumers/DSOs chapters:** specific actions to be incorporated in the ACER/CEER WPs and longer term actions to be explored by the WG chairs in coordination with the Director. We need also to clarify roles and responsibilities on Demand Side Response (DSR).
- **Actions related to Governance:** detailed advice on oversight of ENTSOs will be issued for next year. The Director to make proposals on this, possibly as well as on the regulatory oversight of mandatory and voluntary EU TSO bodies. NRAs cooperation is on-going but the Director will also make proposals. Actions are also included relating to third countries' participation in ACER.

The Director noted that with regard to third countries there are two levels of participation to be considered: the ACER BoR and the AWGs. He is already looking into the possibility of allowing NRAs from third countries to participate in AWGs. It is crucial that we follow a consistent approach and the third countries undertake the same commitments as the AWGs members. At this stage, the AWG RoP do not envisage the participation of third countries (in terms of obligations and rights) and will, therefore, need to be revised. The Director will present some proposals to modify the rules as any third country would need to adhere to the AWG Rules, including the confidentiality commitments, in the same way as EU NRAs. Also in terms of practical arrangements, we need to see how many are invited, the logistical support necessary etc. The Director intends to write to the AWGs chairs to set out the practical arrangements to be then followed by the AWG chairs.

Lord Mogg informed the BoR of CEER interest in offering training to the NRAs from the EnC. CEER will await the Director's proposal to the BoR on the next steps for third countries participation to the AWGs in order to establish their own arrangements for their participation to the CEER WGs.

Mr Borchardt conveyed the EC's appreciation for the 'Bridge to 2025'. Most of the actions identified therein are in the centre of new EC priorities and thus the EC remains committed to join its efforts for their implementation.

BoR Decision agreed: (D 4)

The BoR members discussed and endorsed the broad range of actions emerging from the "Bridge to 2025" as specified in the note subject to the revisions (mentioned above). The note will be revised and used as a guide for the Bridge work going forward.

Market Monitoring

5. Market Integrity and Transparency

The Director provided an update on REMIT Developments.

Regarding security standards for the implementation of REMIT, he wrote to all BoR members on 7 October regarding the Agency preparing a comprehensive Information Security Framework for REMIT. As NRAs play a crucial role in REMIT implementation and

will be involved in the exchange of information with the Agency, any such Framework should also take into account the specific situations in which NRAs operate. To collect information on the relevant aspects at NRA level, the Agency has developed a Questionnaire for NRAs on Information Security which needs to be completed and returned by 24 October 2014 to Fay Geitona.

Ms Groebel informed about the CEER response to an European Securities and Markets Authority (ESMA) market consultation and the work in CEER on VAT fraud joint communication to be more attentive.

The Director also presented two slides on the new REMIT reporting timeline according to the Commission's draft IAs (which is a major step) and the Policy Documents under preparation. Reporting will begin nine months after entry into force of the IAs. ACER has been preparing a set of documents to be ready once the IAs are in place.

The Director still has concerns regarding whether the Agency would be allocated the necessary resources for REMIT.

5.1. Update (on TRUM, RRM, Fundamental data manual)

The Director updated on Trade Reporting User Manual (TRUM), Registered Reporting Mechanism (RRM) and Fundamental data manual. The second public consultation on the draft TRUM and the RRM requirements was launched 21 July until 2 September 2014. ACER/AMIT provided a note for information. They are foreseen for adoption by mid-December 2014 upon the entry into force of the Commission's IAs.

Regarding TRUM, on 22 July 2014, ACER launched a second public consultation on the TRUM which was open until 2 September and resulted in 32 responses. The respondents highlighted that the quality of the document had improved significantly. In general, the respondents considered the information provided in the draft TRUM sufficient to facilitate the first phase of the reporting, however, requested additional clarification on the reporting of lifecycle events and on the back-loading requirement.

Regarding RRM Requirements for transaction reporting under REMIT, the Agency received 27 responses to the public consultation. The main issues related to the question of whether the same requirements shall apply to all entities with reporting responsibilities; of whether the requirements are sufficient to ensure the secure transmission and handling of data; and the registration process.

Regarding the Manual of Procedures on Fundamental Data Reporting, ACER received 12 answers. Respondents suggested Electricity Market Fundamental Information Platform (EMFIP)/ENTSOG Transparency Platforms should be the main sources of fundamental data reporting which was also the Agency's intention for fundamental data collection. Respondents stressed that the Manual should not go beyond the scope of REMIT and IAs.

Regarding the next steps, the Market Monitoring Department will (i) analyse the feedback received via public consultations in more detail, (ii) align the TRUM, the RRM Requirements and the Manual of Procedure (MoP) for fundamental data reporting with the final version of the Commission's draft IAs as agreed on 3 October 2014 and (iii) discuss the open issues with relevant stakeholders. The updated documents will be further discussed and will most likely be presented to the BoR meeting on 17 December 2014 for information, subject to timing of the adoption, publication and entry into force of the Commission's IAs.

5.2. Implementing Acts

Mr Borchardt updated the BoR on IAs. The REMIT Committee meeting on 3 October agreed the REMIT implementing rules. The latest version was uploaded. At the moment the EC translation services is translating the changes made into the official EU languages. The final text is expected to be published in the Official Journal around December 2014.

6. Electricity

6.1. Oral update on Framework Guidelines and Network Codes

Mr Mills updated the BoR on progress on electricity NCs. On CACM a list of critical issues was identified to bring to Comitology. The first Comitology meeting of 9 September was very constructive. Key issues included *inter alia* the joint decision making processes of TSOs and Nominated Electricity Market Operators (NEMOs); a discussion about the regional decision making, the bidding zone review; NEMOs and competition between power exchanges. On 17 November the next Comitology meeting will be held with a new version of the Guidelines from the EC.

6.2. Update on implementation of Transparency Guidelines

Mr Mills updated the BoR on the implementation of Transparency Guidelines for which a note was circulated. Regulation 543/2013 sets out requirements for the submission and publication of data in electricity markets. It was adopted on 14 June 2013, and allows ENTSO-E 18 months to establish a Transparency Platform. At the Planning Group on 22 September ENTSO-E gave an update on the development of the Transparency Platform. They raised concerns with regard to potential issues with the completeness and quality of data submitted by the primary data owners (generators) and expect there to be inaccurate, incomplete and untimely submissions. ENTSO-E stressed the need for support from ACER, NRAs and the European Commission to encourage the primary data owners to cooperate fully on the project.

6.3. Preparation of the Florence Forum

Mr Borchardt updated the BoR on plans for the Florence Forum. The event is to be held on 27-28 November. A draft agenda is not yet available but the Forum will discuss progress on the IEM including key priorities for the achievement of the IEM and the changes to the institutional framework needed as well as the role of ACER and ENTSO-E going forward. Other issues to be discussed will include coordination of TSOs; the offshore grid initiative; the TEN-E Regulation and lessons learnt from the CBCA cases - an update on the first CEF call and 2nd PCI list. The Forum will also discuss demand side response issues; the capacity allocation and congestion management guidelines and the state of play on intraday and day ahead. It will last a day and half, starting on 27 November at 13.00.

Lord Mogg invited the EC to include in the agenda the "Bridge to 2025".

7. Gas

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

Mr Boltz gave an update on progress on gas Codes to the BoR. On tariffs, after 31 December 2014, ACER must provide: a reasoned opinion to ENTSOG within 3 months and after that a recommendation for adoption to EC once the Agency is satisfied that the NC is in line with the FG. At this stage, ACER provided preliminary views to facilitate the process. The ENTSOG stakeholder refinement process is ongoing. The next steps are to present at the Madrid Forum the outstanding open issues, to undertake trilateral discussions (with ACER, ENTSOG and EC) and for ACER to prepare and publish a Reasoned Opinion at the beginning of 2015.

On Capacity Allocation Mechanisms (CAM), Mr Boltz updated on the joint submission of Oil & Gas UK and Gas Forum applying for an amendment to NC CAM to permit the UK to keep the exiting gas day. The ACER's Guidance on the Evaluation Procedure for NC Amendment Proposals foresees periodic and *ad-hoc* reviews in case of changing of market circumstances and/or due to occurrence of situations that have not been foreseen during the NC development. In order to assess the formal and legal admissibility of the request, ACER sent a letter requesting further details.

He also provided an update on the ACER Guidance for CAM NC amendment for incremental and new capacity.

On NC Interoperability and data exchange the current process is that 1st Comitology meeting took place on 10 July 2014 in Brussels and the 2nd Comitology meeting will take place on 3-4 November 2014 with a vote.

On other topics, Mr Boltz explained that the ACER report on CMP implementation is to be finalised.

7.2. Gas Target Model Paper

Mr Boltz explained that a great deal of the work is done. The structure of the document includes an introduction, the overall context, SoS and upstream competition, wholesale market functioning, role of gas in complementing RES electricity generation, and new uses of gas. He presented the Gas Target Model (GTM) Recommendations on SoS and upstream competition. The emphasis and priority should be placed on market-based measures with interventions only in specific cases (limited in scope and in time). The updated GTM recommends considering measures for existing sources to replace any existing source that is lost; make the most appropriate use of gas storage/LNG; increase the diversity of upstream supply sources; as well as proposals to ensure that MSs cooperate fully and do not restrict cross-border trade etc.

Mr Boltz also presented some challenges on SoS. Currently there are many proposals for SoS measures which are raised and discussed in EU. He proposed to analyse those and provide assessments.

On the next steps, the next GTM TF meeting will be held on 17 October. On 21 October the AGWG meeting will agree on final document which will be submitted at the 17th November BoR for endorsement. A GTM workshop is planned to launch the final document (in Brussels).

7.3. Madrid Forum

Mr Boltz updated the BoR on the upcoming Madrid Forum. It will take place on 15 and 16 October 2014. The presentations were circulated in AGWG and sent also to BoR members. Final presentations were sent to the EC. ACER will give nine presentations.

7.4. Evaluation of Responses on public consultation on Rules for Trading

Mr Boltz updated the BoR on the Evaluation of Responses on public consultation on Rules for Trading. On 14 April 2014, ACER launched a public consultation on the scope of potential Framework Guidelines on Rules for Trading (FG RfT). The purpose of the consultation was to collect the views of the stakeholders on the need and potential scope for such FGs and in case of support start the preparation of new FGs. The consultation closed on 19 May 2014. 28 stakeholders answered. In this process, a list of topics for further analysis was identified (capacity products and contracts, licensing, design and procedures of VTPs, secondary capacity markets and ways to facilitate secondary capacity trading). The preparation of the potential gas FG RfT has been initially foreseen by the annual priority list adopted by the EC but ACER has advised the EC that there is no need for FGs/a Code in this area, which the Commission has followed.

7.5. Note on early implementation of the Balancing Network Code

Mr Boltz updated the BoR on the early implementation of the Balancing Network Code (BAL NC). The Madrid Forum of 6-7 May 2014 requested ENTSOG and ACER to follow up the implementation status of the Balancing Network Code and present that to the next Forum, with a particular focus on the interim measures planned. Parties contributing to the report – ENTSOG, ACER, TSOs and NRAs – have cooperated and gathered the necessary information. ACER and ENTSOG developed a joint questionnaire and asked NRAs and TSOs to work together to provide a single answer per country. Joint responses were received from the NRAs and TSOs of all 22 Member States surveyed. The Joint ENTSOG-ACER Report on the early implementation of the BAL NC will soon be available on ENTSOG and ACER websites. The report shows ongoing implementation in the Member States, despite the fact that not all of them move at the same pace. Examples of cross-border cooperation remain limited. The report shares implementation practices and methods as well as indicative implementation dates. Cross-border cooperation primarily takes place between adjacent TSOs in the areas of nominations and within-day obligations. Low market liquidity and significant new investments in IT systems are the main challenges towards full implementation of the provisions of the BAL NC. Many challenges still lie ahead, but there is extensive discussion between NRAs, TSOs and other stakeholders. The majority of the provisions require only national implementation and cross-border cooperation takes place in accordance with the BAL NC on some areas. ACER/ENTSOG will also continue to closely monitor the implementation of the BAL NC.

8. **Investment challenge**

European Network Planning and infrastructure challenge

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

Mr Hesseling gave an overview of the state of play on investment requests, the CBA and CBCA Decisions (including the ACER decision) highlighting the major findings, concerns and

the next steps. 12 CBCA decisions were taken by NRAs (one has been appealed); one decision was taken by ACER; there are two ongoing procedures by NRAs; one investment request is still incomplete and six were withdrawn. Major findings were: the vast majority of decisions were projects located in one country in which the relevant TSO will bear 100% of the costs; some shortcomings were noticed in the investment requests; the main assumptions of the CBAs and the treatment of uncertainties have been deemed reasonable in 11 cases by the concerned NRAs; in half of the cases the NRAs accepted the CBCA proposed by the PPs; the right of NRAs to revise CBCA decisions in case of lack of EU grants in all electricity and one gas case is considered to be a challenge for implementation; in the cases where a significant part of CAPEX were proposed to be allocated to non-hosting beneficiary countries, the concerned NRAs failed to reach an agreement.

Mr Hesseling noted the need to ensure proper alignment between CBA results and CBCA decisions and interaction between CBCA decisions and CEF funding, the use of ENTSOs CBAs methodologies, whether CBCA compensations only when there is negative net benefit in at least one MS, or other options can be explored, plus procedural issues and the use of significance threshold of 10%. Next steps include an evaluation discussion planned between ACER and Commission this Friday and a CBCA Monitoring Report by December 2014. Possibly ACER may have to revisit ACER's CBCA Recommendation and Internal Guidance.

Mr Vaitkus presented the National Commission for Energy Control and Prices (NCC) experience in Gas Interconnection Poland-Lithuania (GIPL). He gave an overview of the chronology of the process starting from where NRAs decision was not reached on 30th April and ACER took it on 1st May, the updated business plans produced on 19th May, then two GIPL case meetings in Ljubljana in May and again in June, and the ACER's adopted decision on 11th August which he welcomed. He then presented suggestions including establishing rules on projects' impacts on tariffs calculations; he proposed publishing an evaluation of stakeholder comments received; and adjusting ACER recommendations by providing clearer understanding of "significance threshold of 10%" as Mr Hesseling also noted in his presentation.

The Director noted that when the TEN-E Regulation was adopted, ACER developed a document (internal guidance) with procedural steps for the development of the ACER Decision. This was not made public. ACER will reconsider this document and the procedural steps defined therein now that we have gone through the first case. However, there is a very tight timeline for taking an ACER Decision and, therefore, we cannot have a "formalised procedure in place" although we need to ensure transparency vis-a-vis the stakeholders.

BoR Decision agreed: (D 5)

The BoR took note of the first lessons drawn on the CBCA cases. The discussion will be pursued on the basis of further input from the ongoing discussion between ACER and EC.

8.2. Draft ACER Report on monitoring the implementation of the ITC 2013

The Director introduced this report on the implementation of the Inter-Transmission System Operator Compensation (ITC) mechanism and the management of the ITC fund. This was circulated for discussion as it does not need a formal opinion of the BoR. Under Regulation (EU) No 838/2010, the ITC scheme was implemented on 3 March 2011. The ITC fund was established by ENTSO-E for the purpose of compensating TSOs for the costs incurred on national transmission systems due to hosting cross-border flows of electricity. This 2013 report is the third annual report from the Agency to the EC on the implementation of the ITC mechanism and the management of the ITC fund. It has been prepared on the basis of data

submitted by ENTSO-E and on information received from 26 NRAs regarding criteria for the valuation of transmission losses. The report contains: a summary of the review process; the Agency's findings on general alignment with the Regulation and specific aspects of the 2013 ITC implementation; concluding remarks; and contains an Annex with tables of relevant data and information about the criteria and documents regarding valuating the losses.

Highlights of the 2013 report include: the ITC fund amounted to €245 million, consisting of €100 million relating to infrastructure and €145 million relating to losses. Of these, the vast majority was recovered through contributions from ITC Parties and the remaining through the Perimeter countries' fees; 2013 saw 12% decrease of the fund against 2012 (€279 million) due to a decrease in the losses component of the ITC Fund. The Agency concludes that implementation of the ITC mechanism and the management of the fund continue to be in line with the requirements set out in the Regulation. A small number of discrepancies with regard to the specific requirements of Annex Part A of the Regulation were found.

The BoR took note of the ITC report 2013.

8.3. Draft ACER preliminary opinion on ENTSO-E SOAF & Draft ACER response to ENTSO-E consultation on adequacy methodology (non-public)

Mr Mills introduced this preliminary opinion which serves for ENTSO-E to make amendments to their Scenario Outlook & Adequacy forecast (SOAF) original draft (by end October), in order for ACER to prepare a draft final opinion for the AEWG in December. This was endorsed at the last AEWG meeting and was intended to give preliminary feedback to ENTSO-E. The draft SO&AF 2014-2030 was published on June 3, 2014 and put for consultation as part of the ENTSO-E draft Ten Year Network Development Plan (TYNDP) package on July 10, 2014. The preliminary opinion outlines the Agency's areas of concern regarding the draft SO&AF 2014-2030 and provides suggestions for improvement to prompt appropriate amendments from ENTSO-E for the current draft and for incorporation in future editions. It does not represent a binding opinion on the second draft to be submitted to the Agency.

He then introduced the Comments on the ENTSO-E Adequacy Methodology document which contains several general and some specific remarks on the document.

8.4. Preliminary feedback on ENTSO-E TYNDP 2014

Mr Mills introduced the ACER's preliminary feedback on ENTSO-E TYNDP 2014. The key messages were endorsed at the last AEWG meeting and are intended to give preliminary feedback to ENTSO-E. It will be submitted for a formal opinion at the BoR when the formal ACER opinion will be finalised.

8.5. PCI 2nd selection

Mr Borchardt gave an update on the selection of PCIs for the 2nd list. The slides from the EC at the last September Regional Group meeting were circulated for information as they include the next steps and timetable for the 2nd PCI selection. Projects will be evaluated based on a common CBA methodology developed by the ENTOSOs, updated following ACER and COM opinions and which needs to be formally approved by COM. ACER will check the consistent application of CBA across regions. On the timeline, NRAs will check application of

criteria between March-April (2015). The ACER Opinion on cross-regional consistency is expected in July (2015). The 2nd PCI list will be ready for 2016.

The first regional group meeting was held in September and the second one will be held on 21/11 for the electricity regional groups in the morning, and for the gas regional groups in the afternoon. The meeting will discuss the methodology for assessment.

9. Regional Integration

9.1. Gas Regional Initiatives update

Mr Hesseling delivered an update on Gas regional Initiatives (GRI). At the Madrid Forum an ACER presentation will be made on GRI.

Mr Hesseling provided an overview of the main principles of ACER's vision for the Regional Initiatives including a similar structure in Electricity and Gas, a focus on early implementation of NCs and GTM, a project-oriented approach and the possible adaption of the geographical configuration of groups to the scope of pilot projects. GRI priorities and concrete actions include facilitating the early implementation of NCs by: identifying potential pilot projects at regional level and setting up a process for facilitating their implementation; keeping focus on market integration and on projects that can contribute the most to the creation of the IEM; implementation of GTM; and preserving the value of GRI as a regional forum for exchange of experience, information sharing and discussion of topics of regional interest.

The way forward suggests continuing promoting the early implementation of CAM NC with a target of 2014 in order to monitor and facilitate early implementation in other areas for NCs, support ongoing projects for market integration and follow up development of regional issues. The Work Plans for beyond 2015 will be completed and also the possible extension of the GRI to new countries.

He also provided an update on timelines on coordinated capacity allocation in the South Region.

On certain open questions on booking platforms (in line with the CAM code), Mr Hesseling noted that to date it has not happened yet that two adjacent TSOs sharing an Internet Protocol (IP) were using different platforms and had to agree on a single platform where allocating capacity at that IP. However, the situation may arise in view of the full implementation of the CAM NC by 1 November 2015. This matter has been raised and will be further discussed in order to find a suitable solution for possible cases in the future. It looks like we might have three booking platforms.

The 9th Energy Community Gas Forum (Ljubljana, October 7-8) welcomed ACER's proposal for potential extension of GRI SSE to Contracting Parties, in particular from more advanced gas markets. In order to promote integration of EU and EnC gas markets, Energy Community Regulatory Board (ECRB) and GRI SSE were invited to present pilots to the next EnC Gas Forum.

On other issues Mr Hesseling noted that the North West region has lacked a lead regulator for almost one year. The two other regions (South and South East) are indeed very active. However, we need to consider possible new (sub) groupings and the question will be raised at the Madrid Forum tomorrow.

Mrs Termini reminded that the proposal of changing the geographical scope of the SSE Region has been recently investigated at Regional Coordination Committee (RCC) level and that no clear majority has been reached in favour or against the above proposal.

Mr Borchardt noted that the EC are keen on regional approach and would like to take a fresh look on what the criteria would be for creating new subgroups (contribution to the IEM)?

Mr Hesselning supported this and emphasised that given RI is a voluntary process it can only work if the NRAs and TSOs consider that there is merit in participating and providing resources.

The Director also noted that the promotion of specific projects (a project-orientated approach) could attract more attention.

10. Implementation Monitoring and Procedures

10.1. Progress on work

Mr Locquet provided an update on current work by the IMP. He is contact with ACER to see how to organise the joint CEER-ACER monitoring report preparation for next year, including the detailed timeline.