

**45<sup>th</sup> ACER Board of Regulators Meeting**  
**Wednesday, 25 February 2015, 09.00-16.00**  
**CEER, cours Saint-Michel 30a, 1040 Brussels**

**Minutes final**

Member States	Name <sup>1</sup>	Member States	Name
Austria (E-Control)	M: Walter Boltz A: Dietmar Preinstorfer	Italy (AEEGSI)	M: Clara Poletti O: Ilaria Galimberti
Belgium (CREG)	M: Marie-Pierre Fauconnier A: Koen Locquet O: Geert Van Hauwermeiren	Latvia (PUC)	O: Lija Makare
Bulgaria (SEWRC)	Excused	Lithuania (NCC)	A: Vyngantas Vaitkus
Croatia (HERA)	A: Sonja Tomašić Škevin	Luxemburg (ILR)	Excused
Cyprus (CERA)	Excused	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	A: Martina Krcova O: Martin Sik	Netherlands (ACM)	A: Remko Bos O: Elozona Ochu
Denmark (DERA)	O: Christian Dybro	Poland (URE)	A: Malgorzata Kozak
Estonia (ECA)	O: Tiina Maldre	Portugal (ERSE)	O: Jorge Esteves
Finland (EV)	O: Timo Partanen	Romania (ANRE)	A: Lusine Caracasian
France (CRE)	O: Hélène Gassin O: Aude Le Tellier	Slovakia (RONI)	Excused
Germany (BNetzA)	A: Annegret Groebel O: Daniel Müether	Slovenia (AGEN-RS)	A: Jasna Blejc
Greece (RAE)	M: Michael Thomadakis O: Katerina Sardi	Spain (CNMC)	M: Fernando Hernández O: Gema Rico
Hungary (HEA)	A: Attila Nyikos	Sweden (Ei)	M: Anne Vadasz Nilsson
Ireland (CER)	M: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Martin Crouch O: Feodora Von Franz

ACER	Alberto Pototschnig, Volker Zuleger, Fay Geitona, Sarah Bradbury
European Commission	Florian Ermacora, Zsuzsanna Széles, Sebastian Gras, Katrien Prins, Matti Supponen, Bartłomiej Gurba
CEER	Natalie McCoy, David Haldearn

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

**Main conclusions from the meeting:**

1. *The BoR received an update from the EC on the recently adopted Energy Union Strategy and 10% Electricity Interconnection Target Communications and from ACER on recent developments and current activities.*
2. *The BoR discussed the draft ACER response to the Energy Community (EnC) Analytical Paper regarding proposed reforms within the EnC. The text will be revised to put less emphasis on the legal instruments and be submitted with a joint cover note alongside a CEER response.*
3. *The BoR agreed on the process for the BoR Chair and Vice Chair elections to take place in March.*
4. *The BoR received a status update on the implementation of REMIT, the new REMIT Coordination Group and further discussed Plan B options to address resources constraints for the REMIT Surveillance Strategy.*
5. *The BoR also discussed a discussion paper on the concept of “persons professionally arranging transactions” (PPAT) and the next steps regarding the ACER Recommendation on Technical Advice of ESMA.*
6. *The BoR agreed the use of the electronic procedure for the BoR opinion on the Director’s proposal for an ACER Recommendation on Technical Advice of ESMA to allow its adoption before mid-March.*
7. *The BoR received an update on the work of the electricity Network Codes and discussed a note regarding early implementation of the firmness regime on CACM. The BoR broadly welcomed the harmonised auction rules (HAR) developed by ENTSO-E. The BoR agreed on the following common position proposed by the Director: “There is a consensus among a large number of NRAs to support, for the early implementation phase, the firmness regime specified in the BoR’s note: 1) the Harmonised Allocation Rules should contain all elements of the Forward Capacity Allocation NC as submitted by ENTSO-E which represent an improvement compared to the firmness provisions currently in place; and 2) any step back compared to the current firmness regime will not be approved by NRAs. Such a consensus covers all borders already coupled, or soon to be coupled, with the exception of the Italian borders. For the latter, the implementation of the firmness regime specified in the firmness note is subject to the approval of AEEGSI, once the national public consultation process is completed. It is hoped that this can be achieved by June so that the same principle could also be applied to the Italian borders”.*
8. *The BoR also agreed that the BoR may serve as the ultimate forum for discussing these types of issues.*
9. *The BoR received an update on progress on gas Network Codes.*
10. *The BoR received an update on the work of the AIMP WG, including proposed changes to the BoR Rules of Procedure to reflect the newly adopted ACER Conflict of Interest Policy.*

## 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 44<sup>th</sup> BoR meeting

BoR Decision agreed: (D 2)

*The 44<sup>th</sup> BoR minutes were approved.*

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

#### 2.1. Update on recent developments

##### - European Commission

The BoR Chair opened the meeting and introduced the topic on the Energy Union Communication. Regulators will be welcoming the Communication.

Mr Ermacora updated that the European Commission (EC) adopted the Communication on the Energy Union Strategy Framework today, the 25 February 2015, alongside the Communication on "The Road to Paris" and Communication on Progress towards the 10% electricity interconnectivity target.

He gave a brief outline of the Communication and its implications. The text has been prepared under the Vice President Šefčovič but DG ENER will be carrying forward a number of its actions, particularly through an electricity market design initiative for which a consultative Communication will be released in June this year. For this, the EC intends to involve regulators and discuss the issues at stake, which include *inter alia*: capacity mechanisms and their impact on the internal energy market (IEM); the question of flexibility and integrating renewables; demand-response, linking wholesale and retail markets as regards data management; and regional integration.

Lord Mogg noted that regulators are keen on working together with the Commission on the follow up to the Communication, as there are many links to regulators' work. We will come out welcoming the Communication broadly, especially on the collaborative approach suggested, as indeed there are many good elements in it. The indication that regulators will be involved in the preparation of the electricity market design initiative and consultation was welcomed.

Mr Ermacora noted that regarding next steps, the Communication will go through Energy Council discussions on 5 March 2015 and to the European Council on 19-20 March 2015 who will then draft their conclusions. With regard to the Consultation on the electricity market design, it is expected to go for inter-service consultation by mid-May; there will be a transparent process, including draft text for discussion at stakeholder meetings to gather views and input. There is a no draft text yet but an internal task force has started discussing this.

Lord Mogg concluded that the important point to convey is that we are keen to be actively involved in this work. Our areas of work are related on many aspects and strong collaboration would be very beneficial.

A draft press release was circulated to members welcoming the Communication. It states that the Agency is ready to take on responsibilities, subject to being appropriately resourced. It will be released shortly following the adoption and release of the Communication.

Ms Prins gave a presentation the Communication on achieving the 10% electricity interconnection target, also adopted on 25 February 2015.

The target is a long standing goal in the European Union (EU) and already due to be achieved in 2014. The EU, supported by Member States, should take urgent measures to achieve the target at least by 2020; the EC was invited to provide a response on progress toward it. Electricity interconnections are important for the creation of a competitive internal energy market, energy security (better reliability of the grid) and decarbonisation of the energy mix (better use of generation capacity and better accommodation of increasing of levels of renewable energy sources (RES)).

At the start of 2014, 12 Member States were still below the 10% interconnection target and some regions were fairly isolated. There is also some correlation between those countries whose interconnection is below 10% and higher energy prices. The first EU instrument which made a difference was the European Energy Program for Recovery, covering some 10 electricity interconnection projects. The real change came in 2013 with the adoption of the TEN-E Regulation and the Connecting Europe Facility. We now have a stable framework with the projects of common interest (PCI) process to achieve cross-border projects, providing funding for projects that have positive externalities for the EU: of the 137 Electricity PCIs, 52 are interconnection projects.

However, after PCI implementation in 2020, Electricity Interconnection Levels will be better but not every country will have reached the target. The role of the Commission now is to rigorously enforce the TEN-E legislation, make use of all funding options (including the Juncker Plan, CEF, ESIF, EFSI) and intensify the work of regional groups, noting four key areas for focus: Baltic Energy Market Interconnection Plan (BEMIP); Iberian Peninsula; Northern Seas; and Central and South Eastern Europe.

Lord Mogg noted that it is difficult to link prices to interconnection levels. It was also clarified that the situation at start of 2015 showed only a significant change for the Baltic States.

The Director noted that 10% target and 15% in 2030 seems safe as a political target. However, he raised concerns about setting targets that do not look at the resource endowment of each region and choosing the right projects on the basis of a proper cost benefit analysis (CBA). Bearing in mind that the TEN-E Regulation places particular emphasis on a proper CBA methodology to be used to assess the projects, if we continue to set the targets, we overlook the importance of the appropriate CBA.

Ms Prins echoed that the 10% target is safe, but that the EC has made the 15% target conditional to this making economic sense on a case-by-case basis. The Infrastructure Forum is planned for this year though they are yet to define its scope, composition and agenda.

Mr Ermacora noted the European Security of Supply question and that capacity markets will be part of the market design work.

It was noted that for the strategic investment fund, Member States (MSs) have already put forward those projects that they think could qualify, with a focus on mature projects that can

deliver through being funded. Regional groups can play an important role and we should point out the funding possibilities to project promoters.

## - ACER

### **Conflict of Interest Policy**

The Director reported that the ACER conflict of interest (Col) policy was adopted by the Administrative Board (AB) on 31 January 2015 and entered into force on 1 February. The Director noted that the Col Policy was adopted as part of an integrity package including rules for whistle-blowers and prevention of fraud. ACER will also issue common rules for staff and Boards regarding gifts and hospitality.

For 2015, the Declarations of Interests (DoI) of the Director, of the Heads of Department, of the Agency's Boards members and alternates and of the Agency's Working Group (AWG) Chairs, Vice-Chairs and Task Force (TF) Conveners must be submitted within three months and are, therefore, due by the end of April. The BoR meeting of 28 January 2015 decided to amend the BoR Rules of Procedure (RoP) to reflect the Col policy once adopted. The Chair mandated the Agency Implementation Monitoring and Procedures Working Group (AIMP WG) to prepare the necessary changes for consideration of the BoR, for which a note was uploaded under agenda item eight.

Ms Geitona has written to the AWGs chairs and TFs conveners to alert them on the adoption of the policy by ACER and the submissions of DoI and CVs expected by the end of April. Closer to the date, the next steps regarding the submission of the documents and the review process will be communicated, including to BoR members/alternates. The Col policy as adopted was uploaded.

### **ACER Work Programme 2015**

In its January meeting, the BoR approved the Revised Agency's 2015 Work Programme. The Director informed the BoR that the same text was submitted to the AB and adopted by written procedure on 21 February 2015. As previously discussed, the revision was required due to the EU budget not foreseeing the same allocation of resources as in the draft budget. As a result, a number of tasks have been deprioritised. It was noted that other Agencies have also seen their budget not increased or reduced and have gone on record with their reaction to such cuts, while the Agency has maintained a lower profile in highlighting inadequate resources in the context of REMIT. We have, however, started the process for the 2016 Budget.

### **2016 Budget**

The Director updated the BoR on the process for the 2016 Budget almost twice as high as the level of resources allocated to the Agency for 2015 (€20m for the next year, compared to the €11m budget for this year).

In terms of the process, in line with the ACER Regulation, by 15 February each year, the Director must draw up a preliminary draft budget covering the operational expenditure and the programme of work anticipated for the following financial year, and forward that preliminary draft budget to the AB, together with a list of provisional posts. The AB, on the basis of the preliminary draft budget prepared by the Director, then makes an estimate of revenue and expenditure of the Agency for the following financial year. That estimate, including a draft establishment plan, must be transmitted by the AB to the Commission by 31 March. Prior to adoption of the estimate, the draft prepared by the Director shall be transmitted to the BoR, which may deliver a reasoned opinion on the draft.

Accordingly, the Director has submitted to the AB and to the BoR Chair the preliminary draft budget covering the operational expenditure for 2016 and the outline of the programme of work anticipated for 2016 and the draft establishment plan (MSPP 2016-2018). The increased budget is due to the need for additional staff, as previously requested, but also to the large costs related to the IT infrastructure and hosting services needed for REMIT.

The BoR Chair noted that the BoR will issue its opinion at the March meeting. The documents will be circulated by email for comments in preparation of the draft BoR Opinion which will be submitted for agreement at the BoR in March and be delivered upon its adoption to the AB the next day.

### **Meeting with Vice-President Šefčovič**

The Director updated on a meeting held with Vice-President (VP) Šefčovič on 3 February. Input was given on the additional roles and powers which the Agency could be assigned to improve the governance of the IEM and in the context of the Commission's Energy Union Strategy which was provided on the basis of the Bridge proposals. The discussion then ranged on other issues and there was the opportunity to highlight the resource challenge the Agency is facing for implementing REMIT and the TEN-E Regulation, the benefit of effective market monitoring and the reputational risk for the EU institutions in case a market abuse case were reported which had gone undetected by the market monitoring due to resource limitations. The external dimension of our action, e.g. vis-à-vis the Energy Community, was also briefly discussed.

The Director reflected that he was very positively impressed by the attention of VP Šefčovič to the activities of the Agency. VP Šefčovič confirmed his interest in participating in our Annual Conference this year "An Energy Union for Consumers".

### **Other updates**

The Director updated the BoR on other recent activities by the Agency. On 2 February, ACER invited stakeholders to participate in a Cambridge Economic Policy Associates (CEPA) survey and a workshop on electricity transmission tariff harmonisation scoping. The deadline to respond to the CEPA survey is 27 February and the stakeholder workshop will take place in Ljubljana on 24 March. On 3 February, ACER launched a call to interested third parties to express their views on the new tariff methodology for the entry-exit system in Lithuania following the request by the NRA of Lithuania to provide an opinion. On 4 February, ACER launched a public consultation on the revised ENTSOG proposal for Incremental Capacity to amend the Network Code on Capacity Allocation Mechanisms (NC CAM) which closes on 4 March. On 6 February, ACER published a Memorandum of Understanding (MoU) signed with the US Federal Energy Regulatory Commission (FERC) to enhance consultation, cooperation and the exchange of information relating to the monitoring of cross-border wholesale energy markets. On 10 February, ACER published a review of 2014 regional initiatives. On 11 February, the Third edition of REMIT Q&A was published.

The 6th ACER BoR public debriefing will be held today directly after the BoR.

The Decision on appointment of the Agency Electricity Working Group (AEWG), Agency Gas Working Group (AGWG) and AIMP WG Chairs was uploaded. The Director is also consulting the Chairs on the appointment of the Vice Chairs.

### **Translation of citizens' summaries**

As part of the Agency's efforts to make our work more accessible, we are taking steps to widen the multilingual footprint of our website, especially in relation to the material of interest

to the widest range of stakeholders and in particular our citizen summaries. The Director thanked the members for assisting with the translations of the summaries which have been sent to the NRAs Communication Officers with a deadline of the end of March, and so far had 7 of the 23 other EU languages confirmed for translation. These will then be made available on the Agency's website in time for the Annual Conference, as well as those of the NRAs. In parallel, the key pages on the website are also being looked at for translation.

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

#### **3.1. Preparation of ACER response to Energy Community Analytical Paper**

The BoR Chair introduced the topic. At the last BoR, the EC informed members that the Energy Community (EnC) is going through important reforms of the organisation's legal, procedural and institutional set-up for which an analytical paper "Options for the Implementation of Proposals on the Future of the Energy Community" was issued on 3 February for public consultation until 6 March 2015. It had been agreed that there would be two separate responses from ACER and CEER with a joint cover note.

The paper provides various options on how the Energy Community Regulatory Board (ECRB) might cooperate with ACER, and how to give ACER competences to take decision having legal effect in the EnC region, some of which have consequences for ACER's work. The Director presented the ACER response and invited the BoR to endorse it. He outlined that the Agency would take a very institutional approach in its response and only comment on issues which have direct relevance to the Agency itself, namely on sections H.I, H.II and I.V of the Analytical Paper. In particular, the Agency is clearly impacted by the proposals in section H.I on the relationship between the ECRB and the Agency. The response also reiterates the position taken between the involved institutions regarding participation of Third Countries in the Agency, as outlined in the recent letter to the EC.

Regarding the role of the ECRB, there is a question over whether the ECRB should have a role like the Agency. The Agency takes a neutral stance in its response, however highlighting that in some cases the Agency's role would not apply directly for the ECRB, for example in relation to Framework Guidelines and Networks Codes as well as European network Planning. Therefore, we need to examine this on a case by case basis.

Regarding the need to have a robust dispute-resolution mechanism for cross-border issues, the Director noted that ACER has a role in resolving disagreements between EU NRAs; however, it needs to be considered what happens when there is disagreement between NRAs in the EU and Contracting Parties (CPs).

In this respect, the Agency considers that any robust dispute-resolution process cannot be based on two separate entities (e.g. the Agency and the ECRB) having to agree, since disagreement may emerge between these entities as well. Therefore, such a robust process should be based on a single entity being responsible for the final decision, with appropriate safeguards to ensure that all relevant interests are taken into consideration and that the decisions can be subjected to judicial review.

He noted that there is a tendency for ECRB and NRAs from CPs to be involved in ACER and to be brought closer to the ACER structure along with a clear trend also confirmed by the Energy Union Communication to reinforce the ACER's responsibilities. Therefore, the responsibility for resolving disputes between NRAs in the EU and CPs should be assigned to ACER.

In relation to the involvement of Energy Community TSOs in ENTSO-E and ENTSOG (Paragraph H.II) the Agency supports the proposal of the Analytical Paper about enhanced cooperation between the TSOs of CPs for gas and ENTSOG.

The Director welcomed the feedback of the Board on the draft response.

Mr Ermacora supported that the solution with European Free Trade Association (EFTA) might allow us to draw some lessons for the ENC as well, though with some clear differences.

Mr Gurba noted that the draft ACER response clarifies well the legal situation. The opinion of the EC legal service is that whatever is proposed to be implemented under the EnC acquis, it has to be implemented in the EU acquis as well. Therefore, there are limitations on how laws are implemented in the EnC Treaty. If ACER would be responsible for the cross-border disputes (in cases involving EU NRAs and those of EnC CPs) we would need to adjust the ACER Regulation accordingly (independently of the Title used under the EnC Treaty). For a Title IV measure, the same logic applies, which limits it to (under the Council Decision) to security of supply (SoS) issues or disruption of supply of energy. Therefore, given that ACER competencies to resolve trans-border disputes go beyond SoS, Title IV may also not be the appropriate legal instrument. Title III would concern decisions on a case-by-case basis, but there is still a limit on how far it can be used.

The Director thanked Mr Thomadakis and his team, noting that the ACER response was heavily based on their initial draft. He noted that the legal framework and instruments to be used for each of the proposals in a way falls outside the analytical paper which only sought to raise some legal implications. The focus on the response will be on the optimal approach notwithstanding the legal instrument and considerations. Whatever solution is chosen, this would require a change in the ACER legislation and should not prejudice the ACER competences. A way to modify the text would be to avoid dealing with the legal issues in such detail.

Lord Mogg was also reluctant to include a detailed legal argument but suggested to produce a revised version simply indicating the consequences of the choice of using Title III or Title IV, and any impact on the EU Treaty.

#### Conclusion

*The BoR endorsed the paper subject to a revision of the paragraph outlining legal considerations in order to draw some considerations in a way which does not dictate any legal solution.*

### 3.2. Process for BoR Chair election

Ms Geitona updated on the process for the BoR Chair election. The present BoR Chair and the Vice Chair were appointed on 6 November 2012 with a term of office (renewable) of two and a half years. Their terms come to an end in May 2015 and the election for the appointment of the BoR Chair and Vice Chair is scheduled at the 46th BoR meeting on 25 March. The new terms will take effect as of 6 May 2015 (immediately after the end of the current terms). Elections are to be held on 25 March in Ljubljana for the BoR Chair and Vice Chair. It will mostly replicate the process agreed at the two previous elections in November 2012 and the BoR inaugural meeting. The period for nominations will run from 26 February until 11 March and nominations will be received by BoR Secretary. Following the closing date of nominations, the BoR members will be informed of the nominations received and any further relevant information.

The BoR may elect a Chair and a Vice-Chair only if at least two-third of the members are present or represented. Each member of the BoR (or his/her alternate) has one vote. An NRA member may decide that the vote for his or her NRA shall be exercised by the alternate or by proxy. Article 6.3 of the RoP provides that members should strive to reach consensus in taking their decisions. Where consensus is not achieved, the decision shall be put to a vote. A successful candidate must secure two-third majority of the members present or represented.

*The members agreed the process for the election of the BoR Chair and Vice-Chair.*

## **Market Monitoring**

### **4. Market Integrity and Transparency**

#### **4.1. Status update on REMIT implementation**

The Director provided an update. As of last month, all NRAs have now signed the CEREMP (Centralised European Register of Wholesale Energy Market Participants) agreement. A service desk is available and he invited NRAs to take advantage of this facility as much as possible. As time is short (less than one month) he invited the members to go through the service desk to sort out any IT issues. NRAs must have their national registration systems open for registration of Market Participants at the latest by 17 March 2015.

Mr Zuleger also provided a detailed state of play from a REMIT policy and IT perspective: regarding the List of Organised Market Places, this will be updated on a regular basis and organised market places for transportation contracts will be added by 7 July 2015. Regarding the list of Standard Contracts, the current plan is to have the first release of the list of standard contracts published three months following adoption of the IAs on 17 March 2015.

Regarding the transaction Reporting User Manual, an update is being prepared on Unique Trade Identification (UTI) and additional trading scenarios including for OTC and transportation contracts.

Regarding the Manual of Procedures on Transaction and Fundamental Data Reporting, we are finalising the discussions on the XML schemes for ENTSOG fundamental data and XML schemas for LSO and SSO data provided by industry associations. The Manual foresees dynamic references to these industry schemes and, therefore, it will not have to be reviewed.

Regarding the requirements for the registration of registered reporting mechanisms (RRMs), the application process has been ongoing since 8 January 2015.

A new REMIT Quarterly Newsletter is foreseen to give periodical updates on the market conduct and transaction reporting issues that ACER is looking into. It will provide guidance on definitions, present new common understandings of the transaction reporting user manual (TRUM) and cover other transaction reporting issues. It will be also used for updates of the ACER Guidance on the application of REMIT and the transactions reporting user manual (TRUM), Manual of Procedure (MoP) on data reporting and RRM requirements documents.

On the CEREMP (establishment of the EU register of market participants), 17 NRAs out of 25 have access to CEREMP from NRAs (type A). "Type A" NRAs without VPN access are

currently Slovakia, Bulgaria, Cyprus, Estonia, Luxembourg, Northern Ireland, Malta and Belgium. Regarding NRAs (type B), 2 NRAs (AU, SL) out of 4 have VPN access to CEREMP. The registration process at national level has run smoothly and 118 Market Participants are already registered.

With regard to the ARIS development the 3rd development cycle, ARIS production, covers the period from 12/2014-10/2015. The first ARIS Production Release went live on 8 January 2015 and the second ARIS Production Release is foreseen for the beginning of March 2015. The Case Management Tool is a new tool to exchange case material in a secure way and its development activities started in 2015. The ACER Security Policy was adopted for the Agency and is now being implemented. The ARIS Central Service Desk is now operational since August 2014 and as a way of example, 276 tickets have been handled between 1 January and 24 February 2015 (including NRAs requests).

Regarding SMARTS delivery, the first beta drop was deployed on 10 October 2014. It enables the Market Surveillance and Analytics team to gain increased familiarity with the SMARTS Integrity application. The first-phase release (to be launched on 1 June 2015) includes the data gateways (to bring data from the ARIS Tier 2 data warehouse into SMARTS); customised SMARTS user interface for the energy sector; ACER's initial selection of alerts and reports; additional data validation tools; and, a new auction analyser module. The second-phase release (envisaged for December 2015) includes: data gateways for transportation contracts and fundamental data (2<sup>nd</sup> phase reporting under the Implementing Acts); new fundamental data viewer module; enhanced alerts and reports, including further bespoke reporting; and, training on Alice development language.

Regarding the cases, there are currently 30 under review from 2014 which shows the increased number and workload ACER is facing.

#### 4.2. Update on governance arrangements for the operational phase of REMIT & first meeting of the REMIT Coordination Group

The Director reported on the first meeting of the REMIT Coordination Group (CG) on 18 February 2015, which was extremely constructive and useful. 30 representatives from NRAs at a senior level participated. A draft Director Decision on the establishment of the REMIT CG was presented. The draft was provided in advance to meeting participants for discussion during the meeting and the Agency invited additional written comments after the meeting which are currently still pending. The draft will be reviewed in the light of the comments received during the meeting, any additional written comments currently still pending as well as any input from 45th BoR meeting.

During the meeting, there were also questions about handing over topics and the practical arrangements. Some NRAs also suggested that the CG has a co-chair. The Director noted that one of the objectives of the CG was to have a very lean structure which ensured streamlined processes and, therefore, he is inclined to experiment without a co-chair and to see whether this simplified governance structure creates problems.

Mr Zuleger reported that the discussion was also focused on the clarification of the tasks of the CG and the Agency Market Integrity and Transparency (AMIT) WG.

The Director thanked the members for their comments on the draft Decision. He noted that at the first meeting the NRAs were represented at senior level. The Director also clarified that he has always been keen on engaging the BoR in such discussions. In line with the Regulation, the BoR has to be consulted on all issues of the implementation of the

Regulation whilst not necessarily for its operation. The CG should of course operate without prejudice to the independence of NRAs. However, stronger coordination indeed sets some limits. He clarified that the RoP will be adopted as a Director's Decision. He remained of the view that at this stage he would rather not have a co-chair, but he is open to review arrangements after an initial period. The spirit of the CG is to foster cooperation and not the opposite.

Lord Mogg gave emphasis to the positive attitude towards the group and the constructive tone of cooperation; this is much broader than the issue of a NRA co-chair. What we should capture instead is the very positive engagement from both sides of those who attended meetings although there are still issues to be resolved such as the synergies between the CG and AMIT WG. He wanted to ensure that the BoR would be kept abreast of any information about the CG. We must convey this message that the Agency and NRAs/enforcement authorities work together. He also agreed that the draft Decision should not specify who represents the NRA in the Group; this should be left at the NRAs' discretion.

4.3. ACER note on next steps regarding the ACER Recommendation regarding Technical Advice of ESMA and planned Level-II rules regarding "physically delivered"

The Director informed the BoR that ACER is drafting a formal Recommendation to the Commission on this issue, in order to highlight the potential negative impact on the delegated acts on the energy market. This follows ESMA's technical advice on the MiFID II Regulation to the Commission which relates to the interpretation of the definition of 'must be physically settled' contracts, in C6 of MiFID II. There are concerns that the current wording goes against the 'carve out' that was agreed for REMIT in the Level 1 text. This was agreed to ensure that energy market liquidity is not negatively impacted. ESMA's technical advice seeks to narrow this carve out so that only companies that have physical assets to generate/consume energy will benefit from it. The position ESMA is taking, despite the advice energy regulators provided, may negatively impact the liquidity and well-functioning of energy markets. The Director has been in contact with ESMA and the Agency must bring to the attention of the EC the significant and negative implications of what ESMA is doing.

Regarding the next steps, the Director will soon propose a Recommendation to the EC to the BoR for its formal opinion. The BoR Chair sought the agreement of the Board on the use of the electronic procedure for the BoR opinion, as the Recommendation need to be ready by mid-March.

Mr Ermacora suggested raising awareness with DG FISMA.

Conclusion

*The BoR agreed the use of the electronic procedure for the BoR opinion on the Director's proposal for a ACER Recommendation regarding Technical Advice of ESMA and planned Level-II rules regarding "physically delivered" to allow its adoption before mid-March.*

4.4. Discussion paper on the concept of "persons professionally arranging transactions" (PPAT)

The Director and Ms Groebel provided the background: several entities, including capacity auctioning platforms, have questioned whether they fall under the provision of Article 15 of REMIT on 'persons professionally arranging transactions' (PPATs). One NRA requested ACER Guidance on the interpretation of the concept of PPATs. The discussion paper which

was circulated intends to develop a legally sound perspective for a first perimeter delimitation of the concept of PPATs under REMIT and to provide a non-binding customary interpretation of the concept itself. This document will remain internal and is intended to help NRAs to classify whether an organisation is a PPAT or not. There is also another Communication document for publication intended for market players to know what follows in this category.

Ms Groebel also informed the Board that the day before the co-chairs received an email from the Luxemburg Regulator. On an Ofgem comment, the Director and Ms Groebel mentioned that this could be taken into account and that a wording could be agreed at technical level.

#### 4.5. Assessment of Plan B options for REMIT Market Surveillance Strategy

Ms Groebel presented a table which assessed the pros and cons of the different Plan B options and some further options as additional staff necessary to implement REMIT monitoring (plan A) have currently not materialised, and therefore a Plan B is needed. This was presented for the consideration of members to help the discussion.

Ms Groebel proposed the Target Model as the best way to deal with the resource constraints in a transitory period without the additional organizational/governance problems of Option C and also allows Europe-wide monitoring. It has less “implementation costs” than Option C as no organizational issues need to be solved; instead the rules for the work division need to be agreed. The Target Model has the greatest potential for all NRAs to act in a coordinated way, which would better support ACER’s coordination role. For example, part of the strategic priorities could be to ensure more suspicious transaction reports are submitted. A more consistent message cascaded across NRAs to market participants would have a greater effect than a single NRA trying to achieve this. Option B creates in the starting phase more work, but with the envisaged learning curve, this could be a transitory issue, at least for NRAs with an adequate resource endowment (however this may not be a short term issue). However for NRAs with lesser resources, the risk of undetected misbehaviour remains high (close to Option A). There is also a risk that too many alerts would very quickly create a very large backlog of work even for those NRAs with adequate resources, which could impact on their effectiveness in meeting their enforcement obligations. She also noted that there has been a lot of hesitation amongst NRAs regarding the feasibility of providing seconded national experts (SNEs), following a survey underrated by the AMIT WG, on the availability of cost-free SNEs. Ms Groebel also noted that following the discussion at the BoR, the implementation of the various options would be further discussed at the Coordination Group.

The ACER Director noted that Option A should be excluded and should not emerge again amongst the options as already agreed. He clarified that the Target Model allows indeed exploiting synergies but, in any case, this is the model under the REMIT framework which provides for close cooperation between ACER and NRAs. He alerted that whilst these synergies are needed, we should avoid giving the impression that as a result of this cooperation, ACER does not need more resources. There also seems to be some possibilities for secondments and three offers for regional assessment centre (RAC) hosting (by ERSE, the Czech Republic and RAE). He, therefore, underlined that we need to develop a strategy which is likely to be based on a combination of implementable solutions/options and which can be implemented by 7 October when the market monitoring will start.

Lord Mogg also noted that the way the Target Model is reflected in the note as an option which would need no additional resources, may mislead that ACER does not need resources.

The Director noted it would still be significant to have three additional colleagues in the Market Monitoring department.

Lord Mogg concluded that the deadline of October is quite imminent and it seems that members welcome the Target Model option whilst without excluding other options which should be pursued in the CG.

## **Completion of the Internal Energy Market - Update on Framework Guidelines and Network Codes**

### **5. Electricity**

#### 5.1. Oral update on the FGs and NCs

Mr Hernández, the new AEWG Chair, provided an update. The last AEWG meeting was on 10 February and the key points of discussion included *inter alia*: the Cross-Border Intraday project; members were informed about a high-level meeting of the project parties to resolve remaining issues ahead of NRAs receiving the request for comfort. The AEWG will discuss possible next steps. On PCIs, members received an update on the on-going preparation for the 2nd PCI list with several concerns raised about the assessment methodology proposed. On peer reviews, the AEWG provided two electricity experts from CER and CNMC for the ad hoc group on the electricity peer review request.

On the progress on codes, the Capacity Allocation and Congestion Management (CACM) Guideline will be published in the second quarter and the Forward Capacity Allocation (FCA NC) is now under EC review. On the NCs Requirements for Generators (RfG), High Voltage Direct Current Connections (HVDC) and DC, a cross-border committee is foreseen for March and Comitology is planned to start in the second quarter of 2015. The operation planning and scheduling (OPS) will be merged with load frequency control and reserves by summer 2015; ENTSO-E will submit the Emergency & Restoration Code by 31 March. On the Balancing Code, the ACER Recommendation will be submitted for an orientation discussion at the March BoR and for the formal opinion in May.

Mr Ermacora noted that the DC and HVDC codes will be ready for submission to Comitology before the summer. The Operational codes are also expected for this year. However, the Balancing Code is strongly linked to the electricity market design initiative of the EC (announced in the context of the Energy Union Communication) and therefore it may be postponed; in similar terms the Emergency and Restoration code is also linked to SoS related to the electricity market design so may be postponed until after 2015.

#### - Oral update on intraday

The EC provided an oral update of the High Level Meeting (HLM). The meetings held on 12 and 13 February were successful in achieving an agreement with Deutsche Börse (DBAG), so the project can continue. Each party, including DBAG, agreed that they will ask their respective Boards for a mandate to sign the Contract no later than the second week of March.

Mr Supponen reported that on the power exchanges (PXs) proposed solution, PXs wanted to expand the multiparty agreement for the main Cross-border Intraday Market Project (XBID) solution to include the Local View calculation, whether centrally or decentralised, with the agreement that all PXs would be free to have a bilateral contract with the Local Trading

Solution (LTS) partner of their choice. PXs would be free to choose a multilateral enhanced OTS and DBAG has to offer it. Parties agreed to set a limitation on the order-book depth, as an interim measure if required to achieve the performance.

Regarding the outcomes of the discussion, it was agreed with DBAG to start with a decentralised calculation of the local order book view for Go-live, which will not impact either cost or timeline. It is recognised by all parties that in the future it is acceptable to move to a centralised calculation of the local order book view if needed. This will follow the agreed change request procedure (with transparency of investment provided by DBAG). Whether centralised or decentralised the calculation of the local order book view will only be performed as part of the XBID solution, under the MSA. DBAG agreed to provide an “OTS plus” offer on an equal and non-discriminatory basis to all interested PXs, involved in XBID cooperation. The first such offer will be provided in three weeks. A LTS based on bilateral contract remains a full possibility.

Regarding the next steps, the project will provide an updated budget and timeline to NRAs as well requesting cost comfort including for the operational phase before the end February. Contracts are expected to be signed with DBAG at the end of March, subject to receiving confirmation on cost comfort from the NRAs. XBID solution development is expected to commence at the beginning of April.

#### - Note on implementation of firmness regime on CACM

The Director presented the note. He highlighted that ENTSO-E is soon to publish the European harmonised auction rules (HAR) as part of the early implementation of the Forward Capacity Allocation Network Code (FCA NC). The firmness regime is probably the most contentious issue in the HAR and the approach proposed therein is less ambitious than the one required by the FGs and therefore eventually provided in the NC. Nonetheless, a large majority of NRAs, under the coordination of ACER, agreed to implement the compromise solution on the firmness regime described in the firmness note in the context of the early implementation of the FCA NC.

According to the current timeline, after the ENTSO-E public consultation, the HAR will be submitted to the relevant NRAs for approval in June, ahead of the first auctions taking place in the autumn. However, one NRA is currently unable to commit to implement this agreed approach on the HAR, specifically on the firmness regime.

The urgency of defining a common position is dictated by the fact that, once ENTSO-E launches the public consultation, NRAs and ACER will be asked to comment on those auction rules and it would be good to come to a shared view amongst NRAs and present a common position.

On a more general level, the Director is seeking guidance from the BoR on how to deal with situations in which a large majority of NRAs under the coordination of ACER has taken a position but, for whatever reasons, a minority of NRAs are unwilling or unable to implement that position. Would the BoR be the right place to deal with those issues where we have such issues for agreement, and issues to be resolved in future?

Mr Hernández noted that a compromise has been accepted in the past by the large majority of NRAs and he noted the need to achieve consensus on the early implementation of the Code. This is a reputational issue.

Ms Poletti explained that AEEGSI does not oppose the early implementation of the FCA NC. Nevertheless, AEEGSI will launch a national consultation addressing at the same time the issue of pricing and volumes.

The Director noted that the regime does not pre-empt the formal code in scope nor quality and it is intended only to be implemented in the market coupled frontiers.

The BoR Chair asked the Director to formulate, on the basis of the discussion held, a proposed position which could be agreed by the BoR and which reflects the current state of play. The Director formulated the proposal in the following terms:

“There is a consensus among a large number of NRAs to support, for the early implementation phase, the firmness regime specified in the BoR’s note. Such a consensus covers all borders already coupled, or soon to be coupled, with the exception of the Italian borders. For the latter, the implementation of the HAR, and the firmness regime specified in the firmness note, is subject to the approval of AEEGSI, once the national public consultation process is completed. It is hoped that this can be achieved by June so that the same principle could also be applied to the Italian borders”.

#### Conclusion

*The BoR agreed on a common position as proposed by the Director. The BoR also agreed that the BoR may serve as the ultimate forum for discussing these types of issues.*

## **6. Gas**

### **6.1. Oral update on FGs and NCs & other work**

Mr Boltz provided an update. On tariffs, there is a dialogue with ENTSOG and a high level meeting between EC/ENTSOG/ACER took place on 3 February. ENTSOG and ACER drafting teams further work on wording of the identified solutions. The next high level meeting will take place on 2 March. The Draft ACER opinion will be submitted on 25 March, to the BoR and on 1 April an ACER “open-house” workshop will be organised. If the revised draft Code complies with the ACER Opinion, it is envisaged that the Recommendation by ACER will be submitted to the BoR for a favourable opinion on 6 May.

On the ENTSOG Capacity Allocation Mechanism (CAM) NC amendment proposal the draft was published for consultation. There is an ongoing discussion between ACER and ENTSOG on those issues. TF members are commenting on the draft Reasoned Opinion by 23 February and on the questionnaire sent by EC by 27 February. Mr Boltz provided also an update on the content overview of the CAM amendment.

On Interoperability, on 4 November 2014 a favourable Gas Committee vote on the Commission Regulation establishing a Network Code on Interoperability and Data Exchange Rules was provided. After translation, a 3-month scrutiny period of Council of EU and European Parliament is foreseen, and, subsequently, the formal Commission Decision and its publication in the Official Journal. The Code will enter into force as of May 2016.

On the gas target model (GTM) (revision) next steps, on 28 January a meeting with EC was held to discuss implementation. We are now at the stage of defining pilot projects and to present those at the Madrid Forum. On 19 March, ACER will present the GTM and outlook to implementation at informal MS Meeting. On 20 -21 April, ACER will present implementation plan and pilot projects at the next Madrid Forum.

On Balancing (NC BAL), ACER is looking at the status of implementation, any problems and how to exchange good practices; we shall be able to provide a good overview at the Madrid Forum.

ACER conducted a public consultation for 3 weeks (until 9 February) with 26 answers received on the joint submission of Oil & Gas UK and Gas Forum for an amendment to NC CAM and NC BAL with the aim to permit the UK to keep the exiting gas day.

Mr Blaney noted that on the gas day, whatever the solution for Ireland it must match with the UK solution.

Mr Locquet reported on the volunteers for the peer review (RAE, E Control and ACM).

Mr Ermacora noted that the EC is keen on going to the Comitology procedure for the tariffs NC with problems been solved. EC are working on getting together data and evidence to avoid difficult discussions and they are undertaking an impact assessment with the assistance of a consultant. The EC has launched an information request with a deadline which was the end of January. The missing responses are from the NRAs from Bulgaria, Romania and Slovakia.

## **7. Investment challenge: European Network Planning and infrastructure challenge**

### **7.1. Update on 2nd PCI list**

A presentation on the 10% electricity interconnection target was provided under the Energy Union update.

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

### **8.1. Oral update on IMP WG**

The WG last met on 03 February.

#### **- BoR Rules of Procedure Revision to reflect new ACER Col Policy**

Mr Locquet updated on the note circulated on the RoP, in line with the adopted ACER Policy on the prevention and management of conflict of interest. The approach followed is minimalistic in the sense that the WG aimed to make as few changes as possible and mainly refer to the ACER policy as adopted. He then explained the main modifications proposed and invited the BoR to discuss the proposed revisions and to provide a steer on the finalisation of the revision of the RoP ahead of their submission to the March AIMP meeting and then the March BoR for approval.

The main revisions include:

- The deliberation procedure, whereby it is proposed that the BoR RoP specify that any deliberations of the BoR shall be subject to the regular voting rules as laid down in Article 6. If a member is subject to a Breach of Trust procedure pursuant to chapter 4.2.5 of the Annex to Decision AB No. 02/2015, he/she shall not participate in the deliberations of the BoR on the breach of trust, but be replaced by his/her alternate or an authorised proxy (and vice versa) (in line with the ACER adopted policy). The proposal aims to ensure consistency with the Policy as adopted which provides that:

any deliberations of the Board of Regulators' review panel shall take place by simple majority of its members.

- A new recital and article will be introduced outlining the main policy which is applicable to the members and alternates of the BoR and their annual submission of DoI on an annual basis and, where appropriate, be updated and published on the Agency's website; BoR members and alternates shall also explicitly declare at each Board meeting any interests which could be considered prejudicial to their independence with respect to any point on the agenda of the meeting.

Mr Locquet mentioned that the comments made will be further discussed at the next AMIT WG and a proposal will be finalised for the March BoR for agreement.

#### **- Skeleton for 2015 Joint ACER-CEER Market Monitoring Report**

Mr Locquet referred to the content of 2015 skeleton explaining the new and additional issues to be covered taking into account actual situation of energy market in Europe and making a difference between short and long terms issues. Discussion is ongoing and the work is on track.

#### **Legal Request on PWS**

It was agreed during last BoR that in case of a legal request addressed to the PWS, the legal response should be provided alongside the document being submitted to the BoR. Mr Locquet explained that the PWS advice given in relation to the concept of "persons professionally arranging transactions" (PPAT) was uploaded for information.

#### **AOB**

The ACER Director informed the Board that ACER considered having an anniversary event of the "Bridge to 2025" on 23 September 2015. This shall provide the opportunity to review the progress made and look ahead given that this commitment was undertaken under the Bridge. The format of such an event still needs to be shaped.