

54th ACER Board of Regulators Meeting
Wednesday, 27 January 2016, 09.00-16.00
CEER, cours Saint-Michel 30a, 1040 Brussels

Minutes (final)

| Member States | Name ¹ | Member States | Name |
|----------------------|---|------------------------|---|
| Austria (E-Control) | M: Walter Boltz A: Dietmar Preinstorfer | Italy (AEEGSI) | O: Ilaria Galimberti |
| Belgium (CREG) | M: Marie-Pierre Fauconnier A: Koen Locquet O: G. Van Hauwermeiren | Latvia (PUC) | O: Lija Makare |
| Bulgaria (EWRC) | Excused | Lithuania (NCC) | O: Dalius Kontrimavičius |
| Croatia (HERA) | M: Tomislav Jurekovic A: Sonja Tomašić-Skevin | Luxemburg (ILR) | M: Camille Hierzig |
| Cyprus (CERA) | M: Andreas Poulikkas A: Alkis Philippou | Malta (REWS) | A: Phyllis Micallef |
| Czech Republic (ERO) | A: Martina Krcova O: Martin Sik | Netherlands (ACM) | A: Remko Bos O: Maarten Klijn |
| Denmark (DERA) | O: Henrik Nygaard Jensen | Poland (URE) | A: Malgorzata Kozak |
| Estonia (ECA) | A: Külli Haab | Portugal (ERSE) | O: Artur Trindade O: Natalie McCoy |
| Finland (EV) | A: Antti Paananen | Romania (ANRE) | A: Lusine Caracasian |
| France (CRE) | A: Hélène Gassin O: Amélie Gravier | Slovakia (RONI) | Excused |
| Germany (BNetzA) | A: Annegret Groebel O: Martin Mueller | Slovenia (AGEN-RS) | M: Bojan Kuzmic |
| Greece (RAE) | M: Sotirios Manolkidis A: Nektaria Karakatsani | Spain (CNMC) | M: Fernando Hernández O: Gema Rico |
| Hungary (HEA) | A: Attila Nyikos O: Adam Krinszki | Sweden (Ei) | A: Caroline Törnqvist |
| Ireland (CER) | M: Garrett Blaney | United Kingdom (Ofgem) | M: John Mogg (BoR Chair) O: Sean Hennity |

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|---------------------|---|
| ACER | Alberto Pototschnig, Dennis Hesseling, Fay Geitona, Andrew White, |
| European Commission | Klaus-Dieter Borchardt, Zsuzsanna Szeles |
| CEER | Una Shortall |

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

MEETING CONCLUSIONS SUMMARY

1. *The minutes from the 53rd BoR meeting were approved. As was the agenda for the 54th meeting with the addition of some items.*
2. *DG ENER provided an update on the current main areas of Commission's work of relevance to the BoR. The members were informed that the Winter Package will be adopted on 10 February. The EC updated the BoR on the latest developments on the CAM booking platforms, and the problem that in a number of IPs there is no joint booking platform. The EC held a meeting on the day before with the Booking Platform Operators and suggested a technical solution regarding the exchange of data between the booking platforms.*
3. *The EC was informed about an amendment to the Energy Act in the Czech Republic which replaces the status of the Chairperson and vice-chairpersons in the regulatory board of ERU as of mid-2017. The EC in response provided an update on this issue.*
4. *The ACER Director provided an update on the recent work of the Agency. A letter from the Chair of the ACER Board of Appeal (BoA) was circulated regarding the renewal of the members of the BoA whose terms end on 22 September 2016. A workshop on CBCA in light of the updated Recommendation is planned for 2 February 2016. In December, the Agency launched a new feedback tool for stakeholders as well as launching an annual stakeholder satisfaction survey. The MoU with the Swiss regulator came into effect from 12 January. Swiss representatives will now attend the AEWG and associated TFs as observers. The annual review of conflicts of interest is under way. Submissions of revised DoI and (where necessary) CVs is due by 31 January. The BoR Review Panel (as established last year) is scheduled to meet in mid-March to review those.*
5. *The revised ACER Work Programme for 2016, taking into account the final budget of €15,872,582 which has been allocated to ACER for 2016, was approved by consensus of the BoR members present (or represented).*
6. *The Single Programming Document 2017-2019 was discussed and endorsed by consensus of the BoR members present (or represented) subject to a modification. The 2017 revenue and expenditure was also endorsed by consensus of the BoR members present (or represented). The SPD is expected to be adopted by the AB on 27-28 January and submitted to the Commission by 31 January. This will be without prejudice to the normal procedure for adoption of the Work Programme under the ACER Regulation.*
7. *The BoR Chair provided an update on the work taking place in the ad hoc Process Group, which met most recently on 26 January. This includes work under Strand A (internal cooperation arrangements and guidance) and under Strand B (institutional issues), including the work by a small group of legal experts looking at issues related to independence. The preliminary results of the resent survey regarding the number of NRAs' resources committed to ACER work, including SNEs, were also presented.*

8. *The ACER Director presented a proposal for the structure and drafting process for the 2016 Market Monitoring Report. The proposal is to have a shorter main document providing the key messages, accompanied by separate thematic documents on wholesale gas, wholesale electricity, retail (gas and electricity), and consumer protection and empowerment. The BoR members discussed the proposal and provided their feedback. They welcomed the new structure, but raised concerns on the process, in particular, with regard to the preparation of the consumer protection and empowerment chapter. The members were also keen on co-branding (ACER-CEER) of the main and 4 thematic documents of the report. The Board agreed on the proposed structure and process with regard to the preparation of the gas and electricity wholesale chapters, which will now be taken up in cooperation with the AEWG and AGWG. Following the feedback, the Director will finalise his proposal for the remaining topics, to be discussed at the March BoR meeting and at the CEER GA in parallel.*
9. *The draft market monitoring indicators for gas and electricity wholesale markets were endorsed by consensus of the BoR members present (or represented).*
10. *The members received an update on the AGWG work from the Working Group Chair including on progress on FG/codes including tariffs and incremental capacity; the timeline for the CAM implementation monitoring report; the timeline for the third congestion management report; and remaining issues on CAM booking platforms.*
11. *The Guidelines for the functionality platform for implementation of gas network codes were discussed and endorsed by consensus of the BoR members present (or represented). The platform will be launched on 15 February for an initial pilot phase of 3 months. After which there will be a review of the platform and the processes set out in the Guidelines. A webinar on the platform will be held on 22 February.*
12. *DG ENER updated on the progress of the legislative drafting on the Network Code for the Harmonisation of Gas Transmission Network Tariffs and some members provided some feedback on certain topics. The draft legal text is due to be discussed at a meeting of Member States' representatives on 11 March.*
13. *The Director provided an update on the implementation and operation of REMIT. It was reported that there are still some problems in the use and sharing of data which he hopes to be able to solve in the near future. The deadline for the second and final stage of reporting is on 7 April and for the time being the unexpected increased number of reporting parties (more than 700) creates some problems.*
14. *The members received an update on the AEWG work from the Working Group Chair.*
15. *Members received an update on work related to infrastructure. The Paldiski LNG Terminal investment request for a CBCA decision announced at the November BoR meeting has been withdrawn. Other updates included the preparations for the upcoming PCI monitoring report scheduled for Q2 in 2016; the Gas TYNDP and work starting on an infrastructure database (for the gas); a joint meeting of the TEN-E Regional and Thematic Groups, which will be held on 4 February 2016 in Brussels.*
16. *The BoR discussed the Recommendation for the PCI selection of 2017 aimed at improving the process on the basis of the experience gained. Given the foreseen announcement of the EC of the cooperation platform at the joint thematic TEN-E meeting on 4 February, members agreed rapidly to consolidate the Recommendation in a letter. A first draft of the letter is to be sent to the Director and the BoR Chair by 28/01. This will be then finalised and circulated electronically for a short round of comments between 1 and 2 February to allow its finalisation and submission to the EC by the latest 3 February, ahead of the meeting on the 4th. The letter will be published shortly afterwards.*

17. *The ACER Opinion on ENTSO-E's Winter Outlook Report 2015/16 and Summer Review 2015 received a favorable opinion of the BoR by consensus of the BoR members present (or represented).*

18. *The BoR noted and endorsed - by consensus of the BoR members present (or represented) – a letter to ENTSO-E specifying the information to be supplied for monitoring the implementation of the CACM guidelines. This information is requested by the Agency pursuant to Article 82 of the CACM GL.*

19. *The members received an update on the AIMP WG work from the working Group Chair, including the workshop planned about "new entities/platforms/Nemos" which is scheduled on 1st March 2016 in CREG premises; the peer review process and other work.*

20. *The BoR Secretary drew the BoR members' attention to the updated "Bridge Map" which was circulated for information.*

Part A: Items for discussion and/or decision

1. Opening

Lord Mogg noted changes to the agenda order to ensure topics requiring input from the Commission would be discussed in the morning.

He also noted that a representative of Czech regulator, ERO, would be invited to take the floor to raise an important issue regarding the NRA's independence. Lord Mogg noted that the request to include an agenda item on the topic came after the deadline, but, given the important nature of the issue, he has agreed that time would be made available for discussion.

The discussion of the item on all NRAs decision on capacity calculation regions will be undertaken in a separate session outside the BoR.

The Chair reminded the BoR members that the deadline for submitting documents for the 2016 conflict of interest review is 31 January 2016. He sought, and received, the BoR's agreement that the review of the submissions could be carried out on the same basis as in 2015 and by the BoR review Panel as established last year. Lord Mogg will convene the BoR Review Panel - consisting of the BoR Chair, vice-Chair and Mr Jurekovic – in the margins of the March BoR meeting to discuss any issues arising from the submissions. Mr Bos will act as the alternate when the submissions of each member of the Review Panel are discussed. The ACER Director will attend the review panel meetings as an observer.

1.1. Approval of the agenda

BoR Decision agreed: (D 1)

The agenda was approved subject to the above modifications. Under item 5.1, Ms Groebel proposed a short discussion on the EC consultation on the financial regulation. This was agreed.

1.2. Approval of the minutes of the 53rd BoR meeting

BoR Decision agreed: (D 2)

The 53rd BoR minutes were approved.

2. Update from the Commission and the Director

2.1. Update on recent developments

- **EC**

Mr Borchardt provided an update on the Commission's ongoing work, including on the Winter Package, which will comprise one legislative measure (a revision of Regulation 994/2011 on Gas Security of Supply), one Decision (on Intergovernmental Agreements) and two strategy papers (on LNG and storage and on heating and cooling). The package is scheduled for adoption in mid-February.

Mr Borchardt updated the BoR on the status of MiFID II legislation. The Commission's inter-service consultation closed on 17 December and discussions are now taking place.

The BoR was informed that Mr Borchardt met with the gas booking platform operators (PRISMA, GSA and RBP). Mr Borchardt noted that because there are three platforms a system of cooperation between them is required pursuant to the CAM Network Code in order to avoid artificial new borders. He also noted that discussions on how to connect these three were in a deadlock. As a result, DG ENER has decided to engage an external IT expert to look into how the interconnection could be done technically. A separate analysis would need to look into the legal and financial aspects. If the platforms among themselves do not come up with a solution on legal and financial questions, the TSOs would have to hand over the file to the respective NRAs. If still no solution is found, it would go to ACER.

- **ACER**

The Director informed the BoR that the Board of Appeal (BoA) is coming to the end of its first mandate on 22 September. He noted that the BoR will be called upon at some stage to be involved. Under Article 18 of the ACER Regulation, the members of the Board of Appeal shall be formally appointed by the Administrative Board, on a proposal from the Commission, following a public call for expression of interest, and after consultation of the Board of Regulators. The Director noted that a letter from the Chair of the ACER BoA was circulated, concerning the launch of the process for the renewal of the members of the BoA.

The Director informed the BoR that on 17 December, the ACER Administrative Board endorsed an agreement for further cooperation with the US Federal Energy Regulatory Commission (FERC). This development builds on the MoU signed between ACER and FERC earlier in 2015 to enhance consultation relating to the monitoring of cross-border wholesale energy markets, and also envisages an exchange of staff between the two organisations. The first two FERC staff arrived in Ljubljana for a year. The Director commented that this shows FERC are interested in ACER and the work it does. He also noted that the idea is to have an exchange of experts – but, at the moment, ACER is not in a position to send experts to the US.

The Director informed the BoR that on 18 December ACER launched a new feedback tool for stakeholders to provide their comments and feedback on ACER opinions, recommendations and publications (as of next year available to all documents) in relation to

the relevance and quality of the deliverables. On the occasion of the launch of its new feedback tool, the Agency also issued an invitation for participation to its annual Stakeholder Satisfaction Survey to assess ACER's regulatory activities, working methods and efficiency (for example in relation to the timely provision of deliverables), transparency, engagement with stakeholders and publications. We will publish results with the annual report.

The Director informed the BoR Members that a workshop on cross-border cost allocation will be held on 2 February 2016 in Ljubljana. The idea is to present the new recommendation on CBCA and the principles for NRAs to consider when assessing an investment request, with a focus on the practical aspects. This will be particularly relevant for project promoters as much of the Recommendation deals with what they are required to provide with the investment request.

The Director informed the BoR members that the MoU between the Swiss Federal Energy Commission (EiCom) and ACER has been agreed and signed and came into effect on Tuesday 12 January. EiCom is now invited to participate in the ACER Electricity Working Group (and substructures thereof) as an observer. It is not envisaged, at this time, that EiCom will participate in any of the other Working Groups. A similar MoU has been sent to NVE to be signed.

ACER is also working with the EnC Secretariat to develop a MoU for their participation in AWGs as observers. There are some issues to resolve as none of the EnC contracting parties currently qualify for observership – meaning that there needs to be a means of ensuring that such observer status for the Secretariat does not provide an indirect link to “unqualified” members.

As noted and agreed at the start of the meeting, Lord Mogg invited Mr Sik to take the floor to address the topic of ERO's independence.

Mr Sik explained that amendments to the Energy Act in the Czech Republic risk severely reducing the level of independence of ERO in a way that may be infringe the Third Package.

Lord Mogg referred to the recent Court of Auditors report on security of supply and the internal market. He noted that the report also gives support to the need for NRA independence to be assured and for appropriate resources to be made available for NRAs to be able to participate fully in ACER working groups. The Chair informed the BoR that the report would be discussed in the European Parliament ITRE Committee on 28 January.

Lord Mogg pointed out that the Court of Auditors report highlighted the dilution of resources as a means of weakening the independence and power of regulators. While it was not suggested this is an orchestrated effort, it is, nevertheless, an issue for the institutions to take very careful note and to act as where necessary.

3. ACER cross-sectoral activities

3.1. Revision of the 2016 ACER WP

The Director presented the final ACER Work Programme for 2016 which was circulated to the BoR for approval. The Work Programme was approved by the BoR in September 2015 on the basis of the preliminary ACER budget which amounted to €20,078,441 and envisaged 44 additional staff. A total budget of €15,872,582 has been definitively allocated to ACER for 2016. This includes the costs of 15 additional staff. The Work Programme has been revised

to take into account the final budget and resource allocation of 15 additional staff which is allocated to the Agency. This was with the help of DG ENER and was an excellent result.

As the implementation of REMIT is the area suffering from the greatest shortage of resources, most of the additional staff – eleven FTEs - has been assigned to REMIT-related activities. A second priority has been the strengthening of the energy infrastructure area, to which an additional three FTEs have been devoted. Finally, one additional FTE has been assigned to reinforce the human resources capabilities. However, as these additional resources still fall short of the envisaged requirement, a number of deliverables have been merged, re/de-scoped or removed to reflect the lower than planned resources.

In particular, the Director noted that on REMIT the resources available will enable the Agency to fulfil its mandatory tasks under REMIT but it will not enable the Agency to undertake a regional market monitoring for which the Agency would still require 14 additional staff members. Some of the REMIT tasks have been deprioritised in line with the available human resources (cancelled, postponed or in part combined with other tasks. On TEN-E infrastructure the deliverable “Report on national methodologies and criteria used to evaluate investments in electricity and gas infrastructure projects and the higher risks incurred by them” under 3.5.1 has been deleted, since this task is not foreseen in Regulation 247/2013 and it may overlap with work which the European Commission.

The Director responded that he will look into this chapter and see if there is a need for rebalancing this. Nevertheless in terms of resources, the WP envisages under GRI 1.2 FTE and under the network code implementation 4.2 FTE.

BoR Decision agreed: (D 3)

The revised 2016 ACER WP was approved by consensus of the members present (or represented).

3.2. Final ACER 2017 Single Programming Document & 2017 estimate of revenue and expenditure

The Director presented the 2017-2019 Single Programming Document (SPD) (consisting of the multiannual programming 2017-2019, the draft work programme for 2017 together with several mandatory annexes). He also presented the 2017 estimate of revenue and expenditure. The estimate of revenue and expenditure for 2017 will be subsequently sent to the AB for adoption on 27-28 January. In line with the new financial Regulations both must be submitted to the European Commission by 31 January 2016. The normal process for the approval/adoption of the 2017 WP will, subsequently, apply but this is an early indication of the Work Programme which will also allow the EC to provide its opinion earlier this year (perhaps before the finalisation of the proposal for the Work Programme by the Director). Conversely, the normal budgetary process (according to which the estimate of revenue and expenditure is transmitted by the Administrative Board to the Commission by 31 March and prior to its adoption the Board of Regulators, may deliver a reasoned opinion) is accelerated. The BoR is invited to endorse the documents and will not be given an opportunity to provide an opinion on the budget (this year) given the time constraints. However, next year it is hoped that this process will be better streamlined and those documents will be circulated well ahead of time.

With regard to the SPD the Director also explained that a revision of the paragraph 16 on the risks aims to address the BoR members’ concerns expressed during the previous meeting.

The Director presented the estimate of the expenditure and revenue for the financial year 2017 of the Agency which is €19.866.138. Given the 15 human resources allocated to the Agency through the 2016 approved budget, the Agency budget for the financial year 2017 covers the remaining difference in staffing (i.e., 33 additional staff members) required for the implementation of the foreseen tasks. The draft establishment plan for the financial year 2017 foresees a total number of staff amounting to a 102 members. 10 additional staff members are needed to support the TEN-E Regulation tasks especially the PCI monitoring and cross-border cost allocation decisions as well as the implementation of adopted Network Codes and Guidelines. 19 additional staff members are needed to support the implementation of the tasks attributed to the Agency by REMIT, especially the regional market monitoring area and publication of data and 4 additional staff members are essential to ensure horizontal activities.

The Chair explained that given the tight deadlines for the preparation and submission of the estimate to the EC (by the end of January), he has authorised its late circulation in order to give an opportunity for the BoR to consider this document and give a supportive opinion (whilst it is not possible this time to provide a BoR written opinion).

The Director reiterated that this process is without prejudice to the process of ACER founding Regulation and this seems to be DG ENER's reading as well. This SPD process will have some benefits for the planning and preparation of the Work Programme, notably that the EC will provide its opinion on the WP by the 1st July, earlier than the previous years. If this could be submitted even before the draft WP to be prepared by the Director by 30 June, this would streamline the process a lot.

Lord Mogg also referred to the complexity of the previous years where the BoR was invited to approve the Work Programme without having the EC opinion. From the WP's perspective this process will allow better planning without prejudice to the normal process of its adoption as provided in the ACER Regulation. On the draft estimate of revenue and expenditure he invited the BoR to provide its endorsement and support in order to convey a strong message of the need for resources for ACER as has been reflected in the BoR opinions over the previous years on the budget.

BoR Decision agreed: (D 4)

The 2017-2019 Single Programming Document (SPD) and the draft 2017 estimate of revenue and expenditure were endorsed by consensus of the members present (or represented).

3.3. Follow-up of the Summit – update on Process Group work

The Chair reported on the discussion at the Process Group on 26 January. Useful progress is being achieved on both strands. On Strand A and the use of guidance the group discussed the possible development of guidance on more strategic issues and the process for its initiation, development and agreement including the legal implications and checks to be undertaken. The co-leaders of Axis 1 also have developed further the generic steps of the process with a view to improving collaboration between the AWG, the Director and the BoR.

On Strand B a group of legal experts is established and has begun work on the review of the standards of independence, third package provisions and EC interpretative note on NRAs. They have presented a draft skeleton of the document they aim to produce and this was circulated to the PG members for the PG meeting on 26 January. This work is due to finish in March, April. This work will draw from existing legislation and available reports but will aim

to conclude and capture a series of high-level recommendations and conclusions on the issue of independence which could be easily provided to the European Institutions.

Mr White reported on the initial results of the survey on NRAs resources allocated to EU work which are reflected in a first preliminary summary of the 25 responses received (EWRC, E-Control and HERA are pending). The findings will need to be verified with further analysis (and in some cases following clarification from respondents).

Further work needs to be carried out to clarify some of the responses and to understand the caveats involved and conclusions will need to be reviewed and complemented once all responses have been received and any corrections/ updates from NRAs have been incorporated.

Lord Mogg underlined the high level of commitment of NRAs that the resources dedicated to ACER demonstrate – which is acknowledged by the Director – and the strong political message that regulators need to be staffed to be able to be independent and undertake their tasks.

Ms Gassin also noted the huge commitment and high number of staff devoted to this work (as it is the case for CRE), and welcomed the results of this questionnaire, putting this involvement into facts and figures. Mr Blaney remarked that it is worth reflecting that a few NRAs are faced with resources constraints and even though they would like to do more they cannot. Ms Fauconnier suggested explaining those findings to the EP.

Mr Nyikos remarked that even though the international department of the Hungarian NRA is strictly speaking made up of 12 experts, there are in fact 36 staff working regularly on international business. He noted that in some industries there are certain capital requirements on companies to ensure they can meet their obligations. He suggested it might be useful for the EC to consider proposing to MSs a minimum threshold for NRAs' resources to ensure they have a sufficient number of staff members to carry out their core work – including meeting their EU obligations.

3.4. Proposal for revised structure of the future Market Monitoring Report

Lord Mogg noted that there is a joint interest in this report both for CEER and ACER. There was a short discussion at the GA, with some concern that there may not be an opportunity to have a substantive discussion at a later stage on the basis of the proposal from the Director on the suggested changes which was only shared (at this stage) with the BoR. A further discussion is thus envisaged on the basis of a written proposal at the March meetings after the discussion at the BoR today. In substance, there were concerns about the preparation of the consumer protection and empowerment chapter. Members preferred this to continue to be undertaken by the CEER Customers and Retail Markets Working Group given that this is a core area of work of CEER.

The Director reminded that at the December BoR he indicated to the Members that ACER has been developing some ideas for how the Market Monitoring Report may be structured differently in future editions. His proposal consists of introducing some changes to the structure as well as to the preparations of next year's report. With regard to the structure he suggested a main (shorter) document providing an overview of developments in the IEM, drawing from the deeper analyses presented in the other documents. The main document will also have a short Executive Summary. There will also be four "thematic" documents on a) the wholesale electricity market, b) the wholesale gas market, c) the retail energy market and d) consumer protection and empowerment. This will reflect a more user-friendly set of

documents that is more manageable for stakeholders. Such an approach will also spread the workload and pressure.

Lord Mogg remarked that although the Board understand the urgency CEER colleagues must have sufficient time to consider this proposals and this does not prevent preparations to be launched in parallel on a contingency basis.

Lord Mogg noted that the report is highly appreciated by stakeholders and politically the report reflects a valuable document. The problems on the timing of data collections are real. He also preferred that the co-branding should continue to apply for the whole report. He recognised the usefulness to clarify the future arrangements and to take a decision as soon as possible but the decision must be put off for March. There is no reason of course that the work should be launched already.

Conclusion

The members welcomed the new structure, but raised concerns on the process in particular with regard to the preparation of the consumer protection and empowerment chapter. Members preferred this to continue to be undertaken by the CEER Customers and Retail Markets Working Group. The members were also keen on co-branding (ACER-CEER) of the main and 4 thematic documents of the report. The Board agreed on the proposed structure and process with regard to the preparation of the gas and electricity wholesale chapters, which will now be taken up in cooperation with the AEWG and AGWG. Following the feedback, the Director will finalise his proposal for the remaining topics, to be discussed at the March BoR meeting and at the CEER GA in parallel.

3.5. MMR wholesale market indicators in gas and electricity

The proposed wholesale market monitoring indicators for gas and electricity were presented to the BoR for endorsement. Mr Locquet mentioned that the retail market indicators (gas and electricity) and the customer protection and empowerment indicators were approved by the CEER GA.

BoR Decision agreed: (D 5)

The draft market monitoring indicators for gas and electricity wholesale markets were endorsed by consensus of the BoR members present (or represented).

4. Gas

4.1. Update on FGs, NCs and other work

Mr Boltz provided an update on the work taking place in the AGWG. He reminded the BoR that the CAM amendment and TAR NC are being prepared by the Commission and are due to go into comitology during the first half of 2016. He noted that work on the development of the Network Codes is now complete and that the stage of monitoring and reporting on implementation has begun. Beyond the Network Codes that are still some issues on updating the GTM to be resolved. Mr Boltz informed the BoR that preparation has begun for the first CAM implementation report. The aim is to seek BoR endorsement of the report at the September BoR. The third congestion report is planned for publication in June (with electronic approval of the BoR in May).

Mr Boltz updated the members on the status of booking platforms, noting that there are a number of Interconnection Points where there are outstanding issues. There are two IPs where no platform has been nominated and four where either side of the border has a different platform but no method of cooperation. Mr Boltz noted that this means six out of ~200 IPs are yet to fully implement the CAM rules.

Mr Boltz reported that the Interoperability network code is in the early stages of implementation. There are some ongoing discussions in the Task Force regarding gas quality which was not fully addressed in the network code. He noted that the network code process is not over; there are areas still to be looked at such as standardisation of products and harmonising definitions. Overall, Mr Boltz commented that the network codes are doing what they are supposed to do, with progress overall being good despite a few issues here and there.

4.2. Update on functionality platform for implementation of gas Network Codes

A revised version of the functionality guidelines was circulated for discussion and endorsement by the BoR. The platform itself has also been updated to reflect the comments made at the last BoR and at the AGWG.

Mr Boltz reminded that BoR that the functionality platform was discussed at the December BoR with members expressing concerns.

He recommended that the BoR provides its endorsement to the Guidelines. He noted that they are for internal ACER and ENTSOG use and will not, at this stage, be made publically available. This new process will enter a pilot phase as of 15 February 2016. After 3 months, ACER and ENTSOG will assess the outcome of the pilot phase of the Joint Functionality Process for Gas Network Codes, provide an opinion on how to continue the joint process and revise the guidelines accordingly. It was noted to the members that a workshop on how to use the platform will be held on 23 February. Mr Boltz noted that we do not know yet how many issues are likely to be raised on the platform. The ease or difficulty of following up on the issues which are raised will determine how we move forward and will shape whether this model could be used in further areas in future.

Lord Mogg noted that the legal sensitivities are understood but we should consider this an innovative and light touch approach that deals with a real need.

BoR Decision agreed: (D 6)

The Guidelines for the functionality platform for implementation of gas network codes was discussed and endorsed by consensus of the BoR members present (or represented).

4.3. Discussion on Gas Transmission Network Tariffs Network Code

Mr Boltz presented to the BoR on the latest developments EC and also that Mr Kovacs attended the latest AGWG to answer questions and concerns from the NRAs. He explained that the main issues are around asset-splitting to limit the risk of under-utilisation of capacity, interruptible supply (ex-post discount), cost allocation methodologies, storage and guidelines on TSO revenues.

Lord Mogg invited the EC to provide an update on the status and process of the NC on gas transmission tariffs. Mr Borchardt clarified the situation, noting that the EC now has the pen

and is taking decisions on open issues and clarified that only technical assistance was sought from ENTSOG and ACER. He is interested to hear what NRAs have to say, but that the actual discussion on the NC will now take place in comitology and ACER have exhausted their role. In March, there will be an (informal) Member States meeting on the English language draft. A draft is hoped to be ready for circulation in February, 2-weeks before the meeting on 10-11 March. The 1st formal comitology meeting will take place on 28-29 April and the 2nd formal comitology will take place on 29-30 June.

Members had a discussion and provided feedback. Mr Borchardt noted that the latest version of the network code takes many of these concerns into account to some degree already. Lord Mogg noted that there may be room for another opportunity for discussion.

Mr Borchardt confirmed that he would be willing to have a discussion with NRAs in the margins of the March meeting. He noted that the EC fully understands that tariffs are a genuine and core competence of NRAs.

5. Market Integrity and Transparency

5.1. REMIT implementation & operation

Ms Groebel presented on the proposed joint ACER and CEER input to the EC consultation on financial legislation. A letter was circulated to the BoR intended to be sent from Lord Mogg to Commissioner Hill.

The Director provided an update on REMIT implementation and operation including the latest on registration of market participants; an update on ARIS and open issues; applications for registered reporting mechanisms; latest data collection statistics; ACERs initial data quality assessment; SMARTS delivery status update; data sharing update; other post-go live activities; updates on the market monitoring strategy and the case management tool.

The Director noted that the deadline of 7 April for the next stage of data reporting is approaching and preparations are progressing. The main concern is that more than 700 RRM's have applied. The system was not designed to accommodate this number of applications. There are efforts to develop means of simplifying and speeding up the registration process. The back-up solution is that self-reporting parties (without a self-reporting obligation) will be required to report via already registered 3rd party RRM's. Parties have been alerted to this issue.

- REMIT training

Ms Groebel noted that there will be a REMIT training session on 15-16 February, in Brussels. There is no formal threshold for level of expertise of attendees, but there is a desire to avoid covering basic information again. The aim is to address more detailed issues of technical implementation. The workshop will be attended by a trader representative from a power exchange to explain how trading is actually done at the exchange.

6. Infrastructure Challenge

6.1. Update on Infrastructure topics

The Director announced that the investment requests for the Paldiski LNG terminal has been withdrawn by the project promoters because they eventually determined that the project is not mature enough. Therefore, the Agency no longer needs to take a decision. A formal note ending the procedure will be published.

Mr Hesseling provided an update on the PCI monitoring report 2016. It will be a single document incorporating both gas and electricity (as in 2015). Questionnaires to collect data from project promoters will be launched in early February. MoUs are being signed with competent authorities to enable data exchange with them. The deadline for these was 20 January, but so far only 10 have been signed. In March, NRAs will be consulted on the main issues that will be examined and analysed in the report. Through the TFs and WGs NRAs will be invited to check the submitted PCI data and indicate any serious inconsistencies in data compared to the NRAs own records. The report is expected to be brought to the June BoR. Mr Hesseling also informed the BoR that the gas infrastructure Task Force discussed improvements to the TYNDP with ENTSOG. NRAs are invited to participate in the preparatory discussions on setting up maturity criteria for non-FID projects for consideration in the next TYNDP. Mr Hesseling updated the BoR on plans to develop a database on infrastructure projects to facilitate the Agency's monitoring activities and to keep the files in a more structure way. A consultant has been engaged to develop the data base, initially for gas only with an expansion to electricity foreseen later. The work will take approximately 6 months. It is envisaged that NRAs will be able to access the parts of the database relevant to them.

The BoR was informed about the joint meeting of the TEN-E Regional and Thematic Groups on 4 February 2016 in Brussels (an invitation has been issued by the EC). The main focus of the meeting will be on the implementation of the Projects of Common Interest (PCIs) on the 2nd Union list in view of their timely completion.

6.2. Preparation of ACER Recommendation on improvements to the PCI selection process

Lord Mogg noted the background of the BoR's discussion on the ACER Opinion on the Union lists of PCI. In particular he noted the agreement to submit a Recommendation on wider points for improving the PCI selection process which were deemed to be beyond the scope of the Opinion. He informed the BoR, however, that the Commission has determined to take a decision on 4 February regarding improvements to the next selection process and to announce the cooperation platform, meaning that the Recommendation - already under development in the WGs and planned for agreement at the March BoR - would be too late.

The Director also noted the background reiterating that he felt it was better to use the tool of the Recommendation to express concerns rather than to do so in the PCI selection opinion. He commented that there are two strands of work, the first is regarding improvements to the selection process itself – this was the topic of the proposed Recommendation and is urgent as the next round is already in planning. The other strand relates to wider improvements to the EIP. This is less urgent as the EC will not reopen the legislation until next year and discussions are now beginning.

The Director noted that the Commission has already taken on board the cooperation platform proposal that was initially omitted from the Agency Opinion. Given the need to react

sooner rather than later, the Director, therefore, proposed sending instead a letter on the cooperation platform to the Commission. The Director would draft a letter according to the text already developed in the Infrastructure TF for the Recommendation.

Lord Mogg requested that the Task Force prepare a letter by Thursday 28 January. This would be quickly reviewed by the BoR Chair and the Director and circulated for comments to BoR with a strict deadline for comments. Lord Mogg noted that it will not be possible to go through a full procedure because there is limited time. Lord Mogg further noted that there was a strong feeling that the letter should be public. The Director noted that he believes that the letter can be published after it has been received by the EC.

BoR Decision agreed: (D 7)

Given the foreseen announcement of the EC of the cooperation platform at the joint thematic TEN-E meeting on 4 February, members agreed to rapidly consolidate in a letter the key issues which were intended to be raised in the Recommendation (on the improvements on the PCI process). A first draft of the letter is to be sent to the Director and the BoR Chair by 28/01. This will be then finalised and circulated electronically for a short round of comments between 1 and 2 February to allow its finalisation and submission to the EC ahead of the meeting on the 4th. The letter will be published shortly afterwards.

7. Electricity

7.1. Update on NC implementation and other work

Mr Hernandez provided an update on the AEWG and he presented in his slides the challenges for the “all NRAs decisions”.

7.2. ACER Opinion on ENTSO-E’s Winter Outlook Report 2016 and Summer Review 2015

The ACER Opinion on ENTSO-E’s Winter Outlook Report 2016 and Summer Review 2016 was circulated for BoR Opinion under 15(1) of the ACER Regulation.

The Director provided an overview of the content of the Opinion. According to the WOR 2015/16, there are no adequacy related issues under normal weather conditions. However, under severe weather conditions, several countries may require imports to fulfil their peak load and some of them may have to rely on their strategic reserves and demand side management to cope with the worst-case scenarios.

The Agency welcomes ENTSO-E’s consistent evolution of adequacy reports and recognises the effort to improve them. The Agency welcomes the use of a probabilistic approach and encourages ENTSO-E to further develop its use in the future adequacy outlook reports.

The Agency thus reiterates its proposal to utilise uncertainties of all inputs, i.e. probability of transmission capacity outage (influencing cross-border capacity), probability of severe weather conditions, unplanned outage of power plants, variability of demand, etc. The Agency also deems beneficial if ENTSO-E would report on the probability in relative terms, rather solely depicting the results on charts.

A critical situation occurred in Poland, where load reductions had to be implemented for industrial consumers. At the same time, high unscheduled flows on the DE-PL border required a massive multilateral re-dispatch to keep the system secure.

The Agency acknowledges the good coordination of remedial actions in the CWE region and would like to highlight the importance of preparing coordinated action plans in advance of such situations.

BoR Decision agreed: (D 8)

The ACER Opinion on ENTSO-E's Winter Outlook Report 2015/16 and Summer Review 2015 received a favorable opinion of the BoR by consensus of the BoR members present (or represented).

7.3. Implementation of Article 82 of the CACM Guidelines

Mr Hernandez presented a letter – circulated for BoR endorsement – regarding the implementation of Article 82 of the CACM Guidelines, which provides ACER with the power to specify the information to be provided by ENTSO-E for the purpose of monitoring implementation of the CACM Regulation.

The letter is formally from the Director requesting ENTSO-E to provide the information included in the list contained in an Annex, which has been developed in close cooperation with national regulatory authorities. The Annex also provides a more detailed explanation and justification for each information item contained in the list.

The Director noted that while the list has been prepared in close coordination with ENTSO-E services during a range of meetings, more time for further discussion is required on several information items before the list can be finalised and data collection preparation can commence.

The information requested falls into the following categories: Monitoring the efficiency of bidding zones; monitoring the efficiency of capacity calculation; monitoring the efficiency of DA cross-zonal capacity allocation; and monitoring the efficiency of ID cross-zonal capacity allocation.

BoR Decision agreed: (D 9)

The BoR noted and endorsed - by consensus of the BoR members present (or represented) - a letter to ENTSO-E specifying the information to be supplied for monitoring the implementation of the CACM Guidelines.

8. Implementation, Monitoring and Procedures

8.1. Update on work by the AIMP WG

Mr Locquet provided an update on the work of the AIMP WG. In his update, Mr Locquet noted that the MMR Task Force approved the electricity and gas retail market indicators and that the CRM WG approved the customer protection and empowerment indicators for the 2016 MMR. He also noted that the PWS has been working on the Peer Review lessons learnt paper – this will be finalised after the outcome of the ECJ decision is known.

Mr Locquet notified the BoR that the AIMP WG is planning an internal workshop bringing together legal and technical experts to discuss oversight regimes for the “new entities”. The date of the workshop is 1 March at CREG in Brussels. The AEWG and AGWG members have been informed about the planned workshop and have been invited to consider what questions the workshop could aim to address. An agenda will be finalised on the basis of this input.

9. Post-2014 strategy

9.1. Update on the Bridge map

Ms Geitona brought the BoR members attention to the updated Bridge Map. The Bridge Map monitors actions from the “Bridge to 2025” and the BoR Roadmap. The map was updated to reflect progress made since the last update in September 2015. It is circulated for information only. She explained that the Bridge map is updated with the input of the AWGs chairs and the HoD (Updates are also made by CEER on the actions allocated to them). Ms Geitona noted that the document has also been updated to reflect the ACER work programme. Other key highlights include:

- Progress on codes and early implementation through the ERI and GRI;
- An update on third countries’ participation and the recent entry into force of the MoU with EICoM;
- Recent developments with the EP/ITRE ACER Contact Group with the next ITRE delegation visit to Ljubljana scheduled for 10-12 February;
- Stakeholder Engagement and the latest on the European Network Codes Stakeholder Committees (for electricity);
- A stakeholder feedback tool for official documents which is now available on the ACER website (since last December) and an annual Stakeholder Satisfaction Survey launched.