

**57<sup>th</sup> ACER Board of Regulators Meeting**  
**Wednesday, 8 June 2016, 09.00-16.00**  
**ACER, Trg Republike 3, Ljubljana**

**Minutes (public)**

| Member States        | Name <sup>1</sup>   | Member States          | Name   |
|----------------------|---|------------------------|--|
| Austria (E-Control)  | M: Wolfgang Urbantschitsch<br>A: Dietmar Preinstorfer     | Italy (AEEGSI)         | O: Ilaria Galimberti<br>O: Clara Poletti   |
| Belgium (CREG)       | A: Koen Locquet<br>O: Geert Van Hauwermeiren              | Latvia (PUC)           | O: Lija Makare   |
| Bulgaria (EWRC)      | O: Iva Georgieva  | Lithuania (NCC)        | M: Inga Žilienė  |
| Croatia (HERA)       | A: Sonja Tomašić Škevin                                   | Luxembourg (ILR)       | M: Camille Hierzig   |
| Cyprus (CERA)        | M: Andreas Poullikkas                                     | Malta ( REWS)          |  |
| Czech Republic (ERO) | O: Martin Šik   | Netherlands (ACM)      | O: Maarten Klijn   |
| Denmark (DERA)       | O: Henrik Gommesen  | Poland (URE)           | A: Małgorzata Kozak  |
| Estonia (ECA)        | O: Tiina Maldre   | Portugal (ERSE)        | A: Artur Trindade  |
| Finland (EV)         | M: Simo Nurmi   | Romania (ANRE)         | A: Lusine Caracasian   |
| France (CRE)         | A: Hélène Gassin<br>O: Amélie Gravier                     | Slovakia (RONI)        | A: Natasa Hudcovicova  |
| Germany (BNetzA)     | A: Annegret Groebel<br>O: Martin Mueller                  | Slovenia (AGEN-RS)     | M: Bojan Kuzmic  |
| Greece (RAE)         | A: Nektaria Karakatsani                                   | Spain (CNMC)           | M: Fernando Hernández  |
| Hungary (HEA)        | A: Attila Nyikos<br>O: Adam Krinszki<br>O: Tamás Gyarmati | Sweden (Ei)            | M: Anne Vadasz Nilsson   |
| Ireland (CER)        | M: Garrett Blaney   | United Kingdom (Ofgem) | M: John Mogg (BoR Chair)<br>O: Mark Copley,<br>O: Sean Hennity<br>O: Cecile Garcia |

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

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| ACER                | Alberto Pototschnig, Dennis Hesselning, Christophe Gence Creux, Volker Zuleger, Fay Geitona, Andrew White |
| European Commission | Matti Supponen  |
| CEER                | Andrew Ebrill   |

### **MEETING CONCLUSIONS SUMMARY**

1. *The minutes from the 56<sup>th</sup> BoR meeting were approved. As was the agenda for the 56<sup>th</sup> meeting.*
2. *Mr Supponen provided an update on the current main areas of Commission's work including: The discussions at the Comitology Committee on the gas tariffs network code; the senior official meeting on CESEC group to prepare the Ministerial on 8 and 9 September in Budapest. He also updated on the market design initiative: the EC hopes to submit the impact assessment after the summer and launch the inter-service consultation in October with a view to have the EC's proposals adopted in December. There are five main clusters on the new energy market design (flexibility cluster, retail cluster, SoS, governance structure (powers and governance of ACER); 5<sup>th</sup> cluster with regard to the ENTSOs and the idea of a new entity for the DSOs).*
3. *The ACER Director provided an update on the recent work of the Agency and recent publications.*
4. *The Director reminded the BoR that the next ACER Annual Conference will be held on 16 June 2016.*
5. *The Director followed up on the concern, previously raised at the April BoR, that only a small part of the existing cross-border thermal capacity is made available to the market for trade. He informed the BoR that a draft Agency Recommendation has been shared with the AEWG for comments and will be further discussed at the July BoR.*
6. *The Director informed the BoR that the MoU with the Norwegian regulator was signed on 2 June. Experts from NVE will be allowed formally to participate in all of the Agency's Working Groups, the REMIT Coordination Group and the substructures of these groups according to the terms specified in the MoU. The Director also provided an update on the progress of the MoU with Energy Community countries on which there are still some pending legal issues to address.*
7. *The BoR Chair provided an update on the implementation of the outcome of the post- summit work and the main papers which were finalised and released on 2 June including the ACER Recommendation on NRAs and ACER independence, along with a public executive summary, the resources inventory and the press release. Accompanying letters have been sent to Vice President Maroš Šefčovic, Commissioner Miguel Arias Cañete, the ITRE Chair, the Court of Auditors, and Mr Ristori which will be circulated to the BoR.*
8. *Draft amendments to the BoR rules of procedure were discussed, to implement the new procedural steps for the preparation of ACER acts and to introduce a procedure for issuing*

guidance. On the basis of the feedback received by members, those will be finalised and submitted to the July BoR for approval.

9. The Director updated on timelines and process for introducing changes to the AWG rules of procedure to implement the agreed procedural steps for the preparation of ACER acts. Some members suggested considering the revisions to the RoP of both the BoR and the AWGs as a whole (and thus consider them together) but there will be a different timing. The Director reported that the AWGs Rules will be revised only after some experience has been gained on the implementation of the process - and not before that. As a result it was suggested to raise awareness about the procedural steps (and diagram) and the new deadlines provided therein. The Director will consult AWG Chairs about the AWG RoP revisions in autumn.
10. The ACER Recommendation to the EU Institutions on ACER and NRAs independence was circulated for information following its adoption on 30 May after the favourable opinion of the BoR was given via electronic approval.
11. Also circulated to the BoR for information was the final, published results of the resources survey. This version of the paper aggregated the resources data for NRAs following comments made at the April BoR. The excel file with the full breakdown of data was also circulated to the BoR members for internal use only.

12. The draft ACER Annual Activity Report was circulated to the BoR members for information. The independent section on regulatory activities was approved by the BoR through BoR electronic procedure on 25 June and submitted to the Administrative Board (AB). The AB written procedure is ongoing so that the Annual Activity Report is adopted and published by 15 June.

13. The position paper on regional oversight of new entities was discussed. An initial concept paper was circulated to the BoR in April and an internal workshop of NRA experts from the gas and electricity WGs was held on 18 May. Some BoR members welcomed the revised paper subject to some clarifications and concerns with regard to the application of a common methodology on regional cooperation whilst respecting the need to adhere to EU principles as well as other suggestions. Other members raised a number of more fundamental concerns including the need for a more thorough analysis before a regime is proposed regarding the oversight of EU and regional entities as well as the need to avoid prejudicing the NRAs responsibilities for enforcement. There was, however, a general agreement that a paper is needed to input into the EC discussions and it was also acknowledged that the preferred solution would be to have the paper endorsed by the BoR. To this end it was proposed that a senior level meeting to take place in the coming days to attempt to find suitable solution for the Director to finalise the paper that could be endorsed by the BoR via a single-stage electronic procedure (without the possibility to provide comments) before the next meeting.

14. The Chair updated the BoR on the appointment of the new Board of Appeal members (to replace the existing board whose mandate ends in September). The Commission has submitted its proposal for 6 members and 6 alternates to the BoR and the Administrative Board. This will be circulated (in confidence) along with CVs and statements of motivation to the BoR members

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| <p><i>(or their representatives) only. There will be a closed discussion among BoR members (or their representatives) only, the Director, and the EC at the July BoR meeting. Following this discussion, the BoR Chair will write to the AB to highlight the key elements of the discussion. This is the same procedure that was followed upon the appointment of the last Board of Appeal.</i></p>   |
| <p><i>15. Mr Trindade provided an update on the ongoing work of the AGWG and its Task Forces. Notably on the status of the TAR NC and the incremental capacity amendment to the CAM NC. He also highlighted the main milestones for the monitoring reports on implementation of the NCs.</i></p>  |
| <p><i>16. The ACER Opinion on ENTSOG's annual Summer Supply Outlook was given the favourable opinion of the BoR by consensus of the members present or represented.</i></p>   |
| <p><i>17. The BoR took note of the 3rd report on monitoring of congestion at interconnection points. The report was circulated to the BoR for information. It was previously discussed at the April BoR and circulated for comments subsequently. The Report was published on 31st May. The Director is considering issuing a call for evidence from stakeholders for identifying possible improvements to the current definition of contractual congestion in the CMP and to the four conditions included therein.</i></p> |
| <p><i>18. The Director provided an oral update on the appointment of a new AGWG Chair following the recommendation of the BoR in April. Mr Jurekovic, recommended by the BoR as a Co-Chair with Mr Trindade, has indicated to the Director his temporary unavailability to act as Co-Chair. As a result, Mr Trindade was appointed as Chair of the AGWG and the Director Decision was circulated for information.</i></p>   |
| <p><i>19. Mr Locquet provided an update on the ongoing work of the AIMP WG and its Task Forces.</i></p> <p><i>20. In particular, he informed the BoR that progress is being made in the MMR TF on the development of the 2016 MMR and the workshop on exchanging of experience on market monitoring.</i></p>  |
| <p><i>21. Mr Hernandez provided an update on the ongoing work of the AEWG and its Task Forces. In particular he updated on a paper under development, to be brought to the July BoR, building on the earlier "scoping flexible response paper" and general and specific principles for flexibility.</i></p>   |
| <p><i>22. The ACER Opinion on ENTSO-E's Annual Report 2015 was given the favourable opinion of the BoR by consensus of the members present or represented.</i></p>  |
| <p><i>23. The BoR took note of the ACER Opinion on ENTSO-E's Monitoring Plan to CACM Guideline. The report was circulated to the BoR for information. The Chair invited the Director to provide some explanations on the cases where there is a formal legal requirement of the BoR Opinion following the legal interpretation of some members that this is also required on ACER opinions raised under the codes and Guidelines.</i></p>   |
| <p><i>24. The Director and AEWG Chair presented the Agency's contribution to DG COMP Sector inquiry</i></p>   |

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| <p>on CRMs. The paper was endorsed subject to a modification and will be submitted to the EC by the deadline of 6 July. The status of the paper will be a joint ACER-CEER response following the EMD response model. This will be submitted to DG COMP.</p>   |
| <p>25. The BoR took note of the agenda for the Florence Forum on 13-14 June and of the draft presentation circulated.</p>   |
| <p>26. The Director updated the BoR on the preparation of an ACER Decision on all-TSOs proposal on Capacity Calculation Regions. The Director has informally confirmed with the EC that this issue is now formally referred to ACER as the all-NRA “Energy Regulators’ Forum” was unable to reach a unanimous position on the all-TSOs’ proposal on Capacity Calculation Regions. He then presented the main findings of the ACER preliminary assessment following which a proposal for amendment will be subject to a public consultation as soon as the EC’s legal position will be confirmed on the ACER’s responsibility.</p> |
| <p>27. Mr Zuleger provided an update on the implementation of REMIT, in particular reporting on the activities since the launch of phase-two reporting on 7 April 2016. The reporting requirement for non-standard contracts started on 7 April. He reiterated a further call for IT experts to assist the REMIT peer-review process. This was supported by the AMIT WG Chair. Some REMIT implementation activities had to be de-scoped and postponed until 2017.</p>   |
| <p>28. Mr Zuleger presented on the preparation of the REMIT Market Monitoring Strategy, including its objectives, potential work division which is to be completed by the end of 2016. A drafting team of NRA experts is being convened. The Chair invited the continuation of the debate in autumn to consider the state of play given the resource constraints at both ACER and NRAs.</p> <p>29. Mr Zuleger reminded the call for a SNE on market data reporting in the ACER Market Monitoring Department.</p>  |
| <p>30. The BoR took note of the consultation responses on the European Register of Market Participants, as summary of which was circulated to the BoR for information.</p>  |
| <p>31. The BoR took note of the agenda for the 2nd Infrastructure (Copenhagen) Forum, scheduled to take place on 23 and 24 June.</p> <p>32. ACER will be presenting on CBCAs and on the key findings and Recommendations of the report (under 8.2.) on the PCI monitoring.</p>  |
| <p>33. The BoR received an update on the development of the annual consolidated report on the progress of PCIs. The project promoters are submitting data to ACER. The final report is to be published by 30 June. The key findings will be presented to the Copenhagen Forum. The members suggested linking the key findings of the report to the recommendations in the paper on improving the effectiveness of the European Energy Infrastructure Framework given their relevance.</p>   |
| <p>34. The BoR took note of the Internal G-Charge monitoring report which was circulated for</p>  |

*information. For the next year's report, consideration will be given to the possibility to publish it.*

*35. A discussion was held on the position paper on improving the effectiveness of the European Energy Infrastructure Framework. A discussion was held on two key issues relating to the inclusion of non-TYNDP projects in the PCI process and on the decoupling of the CBCA/ CEF procedures. The Director will finalise the paper in the light of the discussion, maintaining the current proposal on the non-TYNDP projects to convey that those could be considered under exceptional circumstances, which was considered to be a good approach, and making the drafting on CBCA/CEF more general to indicate that further work is need to understand how these process can be improved..*

## 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.*

Mr Urbantschitsch suggested including 6.3 for a formal BoR opinion (instead of info).

#### 1.2. Approval of the minutes of the 56<sup>th</sup> BoR meeting

BoR Decision agreed: (D 2)

*The 56<sup>th</sup> BoR minutes were approved.*

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

#### 2.1. Update on recent developments

##### - EC

Mr Supponen provided an update on the recent and ongoing work of the Commission. He reported on the Comitology discussion on the Network Code on harmonisation of gas transmission tariff structures. It was also reported that the senior official meeting of the CESEC group will prepare the Ministerial meeting on 8 and 9 September in Budapest.

Regarding the Market Design initiative, Mr Supponen reported that the Commission is currently drafting the legal text and hopes to submit the impact assessment of the proposals after the summer, in preparation for the inter-service consultation in October. This would allow for the Commission to adopt the proposals in December. He clarified that the package will include revisions of some key legal acts; RES Directive, Electricity SoS Directive (which might be tabled as a Regulation), Energy efficiency Directive as well as the third package acts. There are five main clusters on the new energy market design. Flexibility cluster, retail cluster; self-consumption data, tariffs; SoS cluster (with capacity remuneration mechanisms and risk preparedness being key topics); the governance structure (powers and governance of ACER); 5<sup>th</sup> cluster ENTSOs (and possibly an entity for Distribution System Operation).

##### - ACER

#### Guidance to the TSOs/ ENTSO-E on cross-border capacity calculation

The Director repeated his concern that the trend (identified in last year's MMR) of a large gap between existing cross-border thermal capacity and the capacity being made available to the market for trade appears to be continuing, and even worsening, based on the latest data. The Agency will seek to develop guidance to the TSOs/ ENTSO-E on cross-border capacity calculation – before they are required by CACM to submit their own proposals. It was reported that the Electricity Department has

shared a draft Recommendation with AEWG on methodologies to calculate cross border capacities and to share remedial actions costs to be issued in the framework of the CACM GL implementation.

Therefore, in parallel to the (just starting) discussions with NRAs on the draft Recommendation, the Agency will be seeking advice from the EC on how the Agency's proposal and the System Operation Guidelines could fit with each other.

An update on these parallel discussions will be provided at the next BoR in July.

#### ACER's annual conference

The Director reported on the next ACER annual conference "ACER: Past, Present and Future" which will take place on 16 June in Ljubljana. The main session will be the one after lunch about the future of the Energy Union. Commissioner Miguel Arias Cañete will not be able to join and the EC's intervention will be on session 3. Christopher Jones will deliver his speech after lunch.

The Conference will aim to define how the Agency can best contribute to the common goal of completing a well-functioning, competitive, sustainable and secure Internal Energy Market in the context of the Energy Union. Registration is open.

#### MOU with Norway and the EnC countries

The Director reported that the MoU with the Norwegian regulator (NVE) was signed on Thursday 2 June. Though it is not yet public, the AWGs chairs were informed. NVE will be allowed formally to participate as observer in all Agency's Working Groups, in the REMIT Coordination Group and in their substructures, according to the terms specified in the MoU.

The MoU with the EnC has not progressed at the same pace. The EnC countries have some distance from complying with the conditions of Article 31 of the ACER Regulation. Also there are some pending legal issues to address given the EnC Secretariat is an organisation and not a country and thus the capacity in which it would sign an MoU must be clarified.

#### Other ACER publications and workshops

The 5th edition of the REMIT Quarterly was released on 31 May. On 10 May, ACER hosted a workshop on scenarios and cost-benefit analysis methodologies for assessing cross-border infrastructure projects.

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

#### **3.1. Post-Summit updates & preparation of the BoR and AWG rules of procedure**

Lord Mogg noted that the internal inventory of NRA resources has been circulated to the BoR for information, following the request of some members to have it for our internal record. He informed the members that he reported to the Administrative Board (the previous day) on the resources NRAs commit to ACER work on the basis of the results of the inventory. He commented that the NRAs are frequently accused of being self-interested but noted, however, that the significant resources that NRAs provide to supporting ACER work are important to the Agency. The Director also commented that the Seconded National Experts provided by NRAs to the Agency also represent an important and valuable contribution.

### Revisions to the BoR rules of procedure

Ms Geitona introduced the draft changes to the BoR rules of procedure. These incorporate the procedural improvements as agreed at the April BoR meeting to be implemented on a trial basis of 6-9 months as well as a new Article on guidance as agreed. The revisions have been circulated in parallel to AIMP WG for comments.

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The Director mentioned that the Agency's Working Group Rules of Procedure have not yet been revised. This will be carried out once there has been some experience of the implementation of the new process. Furthermore, the Director noted that we need to find an accelerated process for those decisions which are straight forward and uncontroversial. The Director will consult the AWG Chairs during/after the summer on the draft of the revised AWG RoP and inform the BoR afterwards.

The RoP of the BoR will be finalised after the feedback and submitted to the BoR in July for approval. In parallel, following the suggestion of Mr Locquet, it was agreed to raise awareness of the procedural changes of all involved in the process including those providing administrative support - in particular, with regard to the new timelines and reports by the AWGs - in order to be able to apply it firmly and gather experience from its implementation.

### 3.2. ACER Recommendation on ensuring the independence of ACER and the NRAs

The adopted ACER Recommendation to the EU Institutions on ACER and NRAs independence is circulated for information. The Recommendation was adopted on 30 May and published on 2 June and sent to the Institutions. At the same time, a press release, an executive summary of the Summit work and the public version of the resources survey were also published on the ACER website. All of which were circulated to the BoR for information. The final Recommendation was circulated for information along with a note on the outcome of the BoR electronic procedure.

The Director reported on the outcome of the electronic procedure. 26 Members participated in the second round of the procedure. 25 voted in favour of the Recommendation. 1 member, Italy, voted against. Greece and Slovakia did not participate. The required majority was, therefore, achieved.

### 3.3. ACER Annual Activity Report for 2015

The Agency Annual Activity Report was circulated for information along with a note on the outcome of the BoR electronic procedure. The Director reported that BoR approved the independent section on regulatory activities via electronic procedure on Wednesday 25 May. 24 members participated in the second round of the procedure. All 24 gave their approval. The section on regulatory activities was, therefore, approved by consensus of the BoR.

The Director reported that, on 7 June, the Administrative board was not in a position to approve the complete report and a written procedure is already launched to approve the report with a view to send it to the Institutions by 15 June.

### 3.4. Position paper on regional oversight of new entities

The Director reminded the BoR of the background and the key elements of the paper which has been discussed at the April BoR and at a subsequent workshop on 18 May and has been revised to incorporate those suggestions which are in line with the established position of the Agency. The Director explained that, for EU-wide bodies, the transfer of responsibilities for their regulatory oversight to the Agency reflects the established position (in the Bridge to 2025 and EMD response) that an approach based on an agreement by 28 NRAs is not sufficiently robust. The same approach should be used when the regional approach is only a stepping-stone towards full integration. For new regional bodies, the proposed oversight approach is based on the cooperation among NRAs and the Agency intervenes only in a coordination role. The aim is to have cooperation converging not diverging between regions and that it develops on the basis of common criteria and methodologies. If a concern persists in a particular region, ACER would issue an opinion or recommendation indicating the concerns. The nature of the oversight has been much debated: the exact form of such an oversight (both of EU-wide and regional) will have to be defined on the basis of an assessment of the risks to the integration and well-functioning of the Internal Energy Market posed by the governance of these entities, the functions they perform and the way in which such functions are performed.

BoR members provided feedback. Some BoR members welcomed the revised paper subject to some clarifications and concerns with regard to the application of a common methodology on regional cooperation whilst recognising the need to adhere to EU principles as well as other suggestions. Other members raised a number of more fundamental concerns including the need for a more thorough analysis before a regime is proposed regarding the oversight of EU and regional entities as well as the need to avoid prejudicing the NRAs responsibilities for enforcement.

The Director thanked the members for the feedback. The reality has moved further and, therefore, the paper attempts to capture and respond to this evolution. T

The Chair summarised the available options. Lord Mogg called on the Director to revisit the paper and to consider how the concerns of NRAs could be taken into account as far as possible. This further effort, to reach a mutually acceptable solution, could (time allowing) include a senior-level workshop. Following this the paper could be submitted to the BoR for a single-stage electronic procedure for BoR endorsement.

The Director clarified that while he is ready to further discuss suggestions, he is not prepared to change fundamentally the proposed approach. He is happy to convene a high-level meeting in the coming days.

Lord Mogg concluded that there will be a meeting at senior level to discuss and seek to resolve the remaining issues in the paper. Following this, a single-stage electronic procedure will be held to seek the BoR's endorsement. This would either be endorsed by the BoR or would be forwarded as a Director paper.

The Director noted that we need to ensure a quick process. He agreed that we must make every effort to resolve the remaining differences. He confirmed he will propose a day, and clarified that it will be a high-level meeting of alternates and members to address the situation of having endorsement of the paper.

### 3.5. Update on the BoR opinion on the BoA

Lord Mogg updated the BoR on the appointment of new members and alternates of the Board of Appeal. He reminded the BoR that the members will need to provide an opinion to the Administrative Board which will make the final appointment. Lord Mogg informed the BoR that the Commission has provided its proposed list of members, but stressed that we have not yet seen any CVs, or the rejected candidates or other information of this kind. He clarified that the same procedure as last time will be followed. Members and alternates only will be provided with information about the candidates (by email to preserve confidentiality) and there will be a closed discussion in July (with members, the Director and the EC) with a view to crystallise the BoR Opinion. The Chair will invite the EC to make available the CVs and motivation letters. Following this, the Chair will send a letter to the Administrative Board. The Director noted that the Administrative Board will next meet on the same day as the mandate of the current board expires.

## 4. Gas

### 4.1. Update on FGs, NCs and other work

Mr Trindade provided the usual update on the Working Group's ongoing activities. He noted in particular the progress of the TAR NC and Incremental Capacity amendment to CAM NC in comitology, informing the BoR that a vote is envisaged for September. He also reminded the BoR that the GTM TF is formally involved in the drafting of the gas wholesale chapter of the MMR and reported that work is progressing as expected with an expectation to present it at the BoR in September. Mr Trindade updated the BoR on the outstanding booking platform issues, noting that there are some concerns but work is progressing to address them. The IO TF survey on gas quality issues will close on 15 July and will be useful for proceeding with the work ahead.

### 4.2. Update on formal appointment of the AGWG Chair

The Director reported that Mr Jurekovic informed him that he is at present unable to commit himself as co-chair of the AGWG due to unforeseen circumstances and, therefore, following discussions with Mr Trindade, Mr Trindade has been appointed by the Director as the sole AGWG Chair. The Director's Decision appointing Mr Artur Trindade as the new AGWG Chair was circulated for information.

### 4.3. ACER Opinion on ENTSOG's annual Summer Supply Outlook

The Director introduced the Opinion explaining that on 20 April, ENTSOG published the Annual Summer Supply Outlook 2016. Pursuant to Article 6(3) (b) of Regulation (EC) No 713/2009, the Agency shall provide an Opinion on the report.

The Opinion states that the outlook meets the objectives of the Regulation in terms of contributing to non-discrimination, effective competition and the efficient and secure functioning of the internal natural gas market. At the same time, the Agency identifies potential improvements of the modelling approach which could be relevant for the Summer Supply Outlook, in particular, for the purpose of identifying infrastructure gaps, and from the perspective of improving security of gas supply.

The Agency also invites ENTSOG to consider providing more insights into the expected profiles of supply from the European Union's main gas sources, such as any likely significant changes in volumes

and patterns of supply, as well as supply from new sources, including liquefied natural gas (LNG), in pursuit of better coverage of the requirements of Article 8(3) (f) of Regulation (EC) 715/2009.

**BoR Decision agreed: (D 3)**

*The ACER Opinion on ENTSOG's annual Summer Supply Outlook received the favourable opinion of the BoR (by consensus of the members present (or represented)).*

**4.4. 3<sup>rd</sup> report on monitoring of congestion at interconnection points**

Mr Hesseling provided an update, informing the BoR that the report was adopted and published on 31 May. This followed an orientation discussion at the BoR in April and a round of electronic comments in the Gas Working Group and BoR during May.

The Director raised the possibility of launching a call for evidence on the definition of congestion provided in the CMP. He noted that some stakeholders have been particularly vocal in their criticisms of the existing definition, but none has offered an alternative so far. On the basis of the input received to the call for evidence there could be a useful discussion at the upcoming Madrid Forum.

**5. Implementation, Monitoring and Procedures**

**5.1. Update on work by the AIMP WG**

Mr Locquet updated the BoR on the AIMP WG. He noted that the Working Group discussed the new entities paper and stands ready to carry out further work and analysis if required. He also noted that work is ongoing in the MMR TF to develop the wholesale markets and retail chapters of the Market Monitoring Report and is progressing as expected. At the end of August there will be a common meeting with the WG and the MMR TF to run through the existing text and prepare an executive summary. Mr Locquet called on all NRAs to ensure that they are represented at meetings in the coming months.

Mr Locquet also announced a planned workshop on monitoring experiences and sharing of practices.

**6. Electricity**

**6.1. Update on NC implementation and other work**

Mr Hernandez provided an update on the progress of the electricity network codes and Guidelines, noting that the main update is that the System Operation Guideline has been approved and we are in the ratification process before entry into the Official Journal.

It was also reported that the Balancing network code process has been reinitiated and the EC has circulated a new text to be discussed for the first time on 23 June. The main new issues are that the EC intends to abandon the concept of CoBAs (which ENTSO-E does not support). Other changes include removal of points on cross-border capacity reservation. Lastly there is also a change on the imbalance settlement period. The proposal is for 15 minute settlement period in continental Europe. The UK and Ireland will have a separate imbalance period as a result of the CBA analysis carried out for the EC.

Mr Hernandez also noted an upcoming paper for July following up on the “scoping flexible response”. The new paper will draw some general and specific principles for the deployment of flexibility.

#### 6.2. ACER Opinion on ENTSO-E’s Annual Report 2015

The Director introduced the opinion, informing the BoR that, on 5 April, ENTSO-E submitted its annual report for 2015 to ACER for its opinion. The report is entitled ‘Energy without borders’ and is intended to highlight ENTSO-E’s work in the areas of infrastructure development, market integration and research, development and innovation, whilst placing a special focus on network codes and their implementation.

The ACER opinion states that the ENTSO-E Annual Report 2015 communicates the relevant information in a way that is generally easy to understand for all stakeholders while summarising complex technical issues and concepts succinctly.

#### BoR Decision agreed: (D 4)

*The ACER Opinion on ENTSO-E’s Annual Report for 2015 received the favourable opinion of the BoR (by consensus of the members present (or represented)).*

#### 6.3. ACER Opinion on ENTSO-E’s Monitoring Plan pursuant to CACM Guideline

The Director introduced the Opinion noting that, on 12 February 2016, ENTSO-E submitted its plan for the monitoring of the implementation of single day-ahead and intraday coupling in accordance with Article 82(3) of CACM. The draft ACER opinion is submitted to the BoR for information. The Director noted that this is circulated for information because its legal basis is not among the Articles mentioned in Article 15(1) of the ACER Regulation which require the BoR favourable opinion. Instead it stems from Article 82 of the CACM Guideline.

The BoR took note of the Opinion and Lord Mogg suggested that the Director submits a note clarifying the legal position on which case a (favourable) opinion of the BoR is required for a proper discussion at the next BoR.

#### 6.4. Agency’s contribution to DG COMP sector inquiry on CRMs

The Director noted that the formal deadline for submissions to DG COMP is 6 July. He also noted that we are expected to respond on the issue at the Florence Forum. The Director reported that the contribution generally supports the approach of the EC, but also comments specifically on a number of areas including:

- A credible Action Plan for removing the remaining barriers and regulatory failures for all Member States considering implementing a CM.
- More guidance on the meaning of transitional capacity versus long-term adequacy problems.
- Addressing market concentration.
- Better pricing of reserves in wholesale markets.
- Explaining the delay in removing market and regulatory failures.
- Making reliability standards and associated cost transparent.

Mr Hernandez reiterated that NRAs were of the understanding that this would be a joint ACER-CEER response.

Lord Mogg concluded that the Agency contribution to the DG COMP enquiry was endorsed (subject to removal of reference to FR and IT raised by Ms Poletti).

BoR Decision agreed: (D 5)

*The contribution to the DG COMP enquiry on Capacity Remuneration Mechanisms was endorsed (subject to a modification) by the BoR (by consensus of the members presented (or represented)). This will be a joint ACER-CEER response.*

6.5. Preparation for the 31st Florence Forum (13-14 June)

Mr Hernandez noted that the agenda for the Forum was circulated to the BoR for information. In particular, he noted that ACER and the NRAs are to present on DSR and Flexible DSOs. The second day will focus on market design and will focus on generation adequacy and capacity markets. The presentations have been circulated to the BoR.

6.6. Update on preparation of ACER decision on all-TSO's proposal on Capacity Calculation Regions

The Chair noted that the Energy Regulators' Forum was established to facilitate all-NRA decisions under the CACM Guidelines. On this occasion, NRAs were not able to reach a unanimous agreement on the all-TSO proposal, nor were they able to reach a unanimous decision to refer the decision to the Agency ahead of the deadline. Therefore, the Chair wrote to the Director on 17 May to inform him of the outcome of discussion.

Mr Supponen clarified that the question put to the Commission is how to read the CACM Guidelines. He noted that there is reference to single NRA or multiple regulators submitting requests for amendments. The EC's view is that for regional or "all NRAs decisions", such request must be made by all the relevant NRAs. A regulatory authority may not unilaterally request an amendment against the agreement of other regulators under the CACM GL. The issue is, therefore, formally with ACER, despite the amendment request sent to TSOs by E-Control.

The Director reported that the Agency has received an informal indication of the EC's view as above and is also seeking a formal clarification from the EC. Nevertheless, the Agency has already starting work. A note on the Agency's preliminary views was circulated to the BoR. The conclusion is that the proposal of all-TSOs is not in line with CACM. As such, ACER intends to send an amendment request to the TSOs requesting the merger of the CWE and the CEE Region, while indicating the need for further mergers in the future. There will first be a stakeholder consultation. ACER will proceed with preparation of its decision within the 6 months and will launch the consultation upon receipt of the EC formal confirmation.

## **7. Market Integrity and Transparency**

### **7.1. REMIT implementation & operation**

Mr Zuleger presented the latest implementation and operation of REMIT. He noted that the IT system is stable and that the only remaining milestone is the back-loading of data by 7 July. There are some data quality issues with the market surveillance solution, but these should soon be resolved. There are 3 NRAs active in data sharing although there are some remaining issues with the filtering of EIC codes. Mr Zuleger noted that there is excellent cooperation on data quality from NRAs. The next major software release is planned for 20 July 2016.

The BoR was informed that there are now 100 approved RRM (44 third-party RRM and 56 MP). There are still more than 1200 RRM applications in the pipeline. However, many of these appear not to be active and ACER aim to clear this list. The hope is to limit final list to 200 RRM. ACER is now receiving 1.2m records per day for 3675 market participants. However, this number of reporting MP is much lower than the 10,000 registered market participants. There may be good reasons for this (small market participants may only make one transaction per year, or other may only be registered as precaution). There will be a clearer picture after back-loading is completed in July. Mr Zuleger also reported that the first sanction under REMIT was appealed and overturned.

Ms Groebel gave an update on the recent financial legislation. In the end, the EC agreed with the position pushed by regulators and DG ENER on the delegated acts under MIFID II. Particularly, on the definition of financial instruments and the carve-out for wholesale energy products. In the end, the narrow definition of FISMA was not taken up.

### **7.2. Update on REMIT Market Monitoring Strategy**

Mr Zuleger updated on the potential division of labour for market monitoring that has been discussed in the REMIT CG. He noted that the context of the discussion is how to be effective with the limited available resources for both NRAs and the Agency through a reinforced cooperation at regional and Union level.

The focus of discussions has been on the data quality issues to ensure a solid basis of any follow up actions. The aim of the REMIT Coordination Group is to look into market monitoring strategies by the end of the year and to present it to BoR in December.

Lord Mogg suggested the issue of ensuring sufficient resources and preparation for REMIT could be brought before the Slovakian presidency and the Council at large. Ms Hudcovicova will aim to bring this to the attention of the Chair of the Authority and explore the possibility to speak with the Slovakian representation in Brussels and perhaps the Financial Ministry. She further noted the great use of the Q&A documents made by the Slovakian regulator; at national level there are lots of discussions with market participants which are significantly helped by the Q&A documents.

### **7.3. Consultation responses on European Register of Market Participants**

Mr Zuleger reminded the BoR of the background of the ERMP. On 17 March 2015, the Agency published for the first time the European register of market participants. Pursuant to recital 21 of the

REMIT Regulation, one year after the establishment of the European register of market participants, the Commission should assess in cooperation with the Agency the functioning and usefulness of the register.

At the March BoR a public consultation paper was endorsed. It was intended to collect views from all interested parties (market participants, OMPs, PPATs, financial regulators etc.) on the register and possible areas for improvement.

The consultation paper was launched with responses due by 22 April 2016. A summary of the responses was circulated to the BoR for information.

A draft evaluation of the responses of the 24 stakeholders having responded is circulated to the BoR for information. The Agency will report on these results to the Commission. The feedback may lead to an amended registration format – which will be discussed with NRAs in the AMIT WG at the end of June. Ms Groebel noted that there was no appetite in the responses for a European trade licencing, which is in line with the discussions of the BoR and the AMIT WG.

Mr Zuleger noted to the BoR that he is looking for an SNE on market data reporting for a period of 6-12 months.

## **8. Infrastructure Challenge**

### **8.1. Preparation for the 2nd Infrastructure Forum (23-24 June)**

The Director provided an update on preparations for the Infrastructure Forum. The first day of the Forum will consist of high-level sessions opened by Mr Ristori DG ENER, The Commissioner for Climate action and Energy, Miguel Arias Canete. It will be oriented towards current challenges for energy infrastructure such as network infrastructure financing and funding, energy networks for energy transition and public acceptance. During the first day, the Forum will also host the Good Practice Award granted by the Renewable Grid Initiative.

The second day will be composed of working level sessions related to the Commission services' activities with regard to High-Level Groups for regional cooperation, Cross-Border Cost Allocation decisions and the development of the Projects of Common Interest (PCIs). The Agenda was uploaded for information.

ACER will be presenting on CBCAs and on PCIs (key findings and Recommendations of the report (under 8.2.) on the PCI monitoring).

### **8.2. Update on the preparation of the annual consolidated report on progress of projects of common interest**

Mr Gence-Creux presented the report on the progress of the PCIs. He summarised the findings of the report, noting that many of the projects are not moving. For most of the “old” PCIs no change in their maturity status was reported compared to 2015. A remarkable number of promoters did not report any activity carried out in the last year and for approximately half of the “old” PCIs, the commissioning dates are postponed compared to the 2015 report.

The BoR Vice-chair also supported that we should acknowledge the link between this report and the EIP position paper. One point is that the CBA methodology could be cross-referenced between the EIP papers.

Mr Supponen welcomed the efforts of ACER to provide good quality data and the EC does use the report in discussions. ACER is invited to make available a summary of the findings at the Copenhagen Forum.

Mr Gence-Creux noted that the importance of the completeness, quality and consistency of the data are made as big messages in both papers and that most of the recommendations in both could be linked. At the Forum there can be a presentation that summarise the main points for the infrastructure forum, whilst we are not sure that will be in the form of an executive summary. The main results will be available, and the full results will be available with the report later.

### 8.3. G-charge Monitoring Report

Mr Gence-Creux reminded the BoR members that the Agency prepares an (internal) report on generation charges every year. This year GB and Belgium did not submit data. Ireland did submit them late and they are still to be incorporated. Based on the information received it is concluded that the range of charges comply with the ranges set in the regulations.

In the report actions by NRAs to implement the ACER recommendation are also favourably acknowledged. The Commission thanked the Agency for the report, noting that the EC is well aware of the ACER Recommendation. The Commission further noted that the right context for discussion of G-charges also should include distributed generation charges and could be covered more generally on tariffs.

In the future it might be useful to publish the reports.

### 8.4. Position paper on improving the effectiveness of the European Energy Infrastructure Framework

The Director introduced the topic and Mr Hesseling presented on the paper as a whole. There are a number of points on which there is agreement. Specifically, that there should be a more comprehensive understanding of infrastructure needs; that there should be a joint description of scenarios from the two ENTSOs; that TYNDPs should identify cross-border needs and that these should then go to the regional groups. Furthermore, there is agreement on the need to ensure that all benefits are monetised in the CBA, and that more is needed to ensure that information on projects is reliable.

However, there are two points that are not yet resolved. The first is in relation to the possibility of non-TYNDP projects being consider for PCI status. The second is in relation to the view that CEF funding can be applied for without a CBCA decision, in cases where no country has a net negative impact.

Most BoR members suggested finalising the paper and releasing it in time for the INF Forum.

Lord Mogg concluded that on the second point there would be a redrafting to raise more generally (and not in detail) that work needs to be done, in particular introducing a more differentiating wording with regard to the relationship of CEF funding and the necessity of “decoupling” this from CBCA in order to avoid that the “CBCA application” route is “abused” for the sake of being able to receive CEF funding. Furthermore, the purpose of CBCA should not be confused with “affordability” issues. The Director will finalise paper on this basis and circulate electronically for EP for endorsement with the view to releasing the paper ahead of the INF Forum.