

**64<sup>th</sup> ACER Board of Regulators Meeting**  
**Wednesday, 15 March 2017, 09.00 – 16.00**  
**ACER premises**

**Minutes (final)**

Member States	Name <sup>[1]</sup>	Member States	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch	Italy (AEEGSI)	O: Ilaria Galimberti O: Francesco Cariello
Belgium (CREG)	M: Marie-Pierre Fauconnier A: Koen Locquet O: Geert Van Hauwermeiren	Latvia (PUC)	O: Lija Makare
Bulgaria (EWRC)	A: Evgenia Haritonova O: Velichka Marinova	Lithuania (NCC)	O: Dalius Kontrimavičius
Croatia (HERA)	A: Sonja Tomašić Škevin	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	A: Alkis Philippou	Malta ( REWS)	A: Phyllis Mycallef
Czech Republic (ERO)	A: Martin Sik O: Kateřina Firlová	Netherlands (ACM)	A: Remko Bos O: Maarten Klijn
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	A: Małgorzata Kozak
Estonia (ECA)	A: Külli Haab	Portugal (ERSE)	A: Artur Trindade
Finland (EV)		Romania (ANRE)	O: Florin Tobescu
France (CRE)	A: Helene Gassin O: Amélie Gravier O: Sabine Hinz	Slovakia (RONI)	A: Natasa Hudcovicova
Germany (BNetzA)	A: Annegret Groebel	Slovenia (AGEN-RS)	M: Bojan Kuzmič O: Duška Godina
Greece (RAE)	M: Sotirios Manolkidis	Spain (CNMC)	
Hungary (HEA)	A: Attila Nyikos O: Adám Krinszki	Sweden (Ei)	M: Anne Vadasz Nilsson
Ireland (CER)	M: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Mark Copley

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

ACER	Alberto Pototschnig, Denis Hesselning, Voler Zuleger, Fay Geitona, Sean Hennity
European Commission	Adriano Addis
CEER	Andrew Ebrill

### **Draft MEETING CONCLUSIONS SUMMARY**

1. *The minutes of the 63rd BoR meeting were approved, as was the agenda for the 64th meeting with the addition of one item on the recent EU gas capacity auctions and its market effect.*
2. *The ACER Director updated the BoR on the Agency's recent publications; moreover he informed the BoR of the upcoming ACER Annual Conference that will take place on 29 June with the expected participation of Vice President Šefčovič. He also briefed the BoR about the open letter on REMIT transaction reporting data quality and the latest edition of the Gas Regional Initiative Status Review Report. The ACER Director informed the BoR that on 8 February he issued a Director's Decision to allow third countries' NRAs to participate as observers in the ACER WG, TFs and other substructures subject to the requirement of "imminent implementation" of the EU energy acquis by the respective countries.*
3. *The Director reported that the Lithuanian NRA requested an official opinion from the Agency (under Article 7.6) about the possibility to postpone the deadline to take a decision on the implementation of Long Term Transmission Rights by one month (i.e. from 17 April to 17 May 2017) in order to take into account the delayed publication of the CCR decision. According to Article 7.6, ACER has 3 months to issue its Opinion but this will have to be issued as soon as possible and submitted for a BoR electronic approval.*
4. *The BoR Chair provided an update from the BoR Review Panel that met prior to the BoR. The panel comprises the BoR Chair, the BoR Vice-Chair, Mr Tomislav Jurekovic, Mr Remko Bos (as an alternate to any of the three panel members where their declarations were considered) alongside the Director as an observer. Based on their assessment of the information provided, the Panel did not identify any conflicts of interest amounting to a Level 3 in the classification provided by the Policy. Where potential interests were declared, and considered by the Review Panel to be potentially relevant, the BoR Chair will write to the respective NRAs. In addition the Chair will apply the relevant provision in the BoR RoP which requires the declaration of interest by each member in respect of any particular item on the agenda.*
5. *Mr Addis provided an update on the progress of the discussions on the EC's new energy market design proposal – part of the Clean Energy for all Europeans package. Discussions are accelerating with the hope to reach agreement under the Estonian Presidency. The next trilogue will be held on 27 March during which the EC aims to have a compromise text on the SoS Gas Regulation signed off. The EC issued a corrigendum to the recasts of the Agency, Electricity Regulation and Directive on 23/02.*

<p>6. <i>The EC informed the members about the organisation of an event on codes on 4 May with ACER and ENTSOs and other stakeholders with the participation of Commissioner Arias Cañete. Despite the clash with the BoR (scheduled on 4 May), there was no other possible date for the Commissioner. The members agreed to reschedule the BoR/GA meetings on 3 May (starting with the BoR in the morning) and the ERF on 2 May afternoon.</i></p>
<p>7. <i>The Director informed the BoR that the revised 2017 ACER Work Programme was approved and submitted on 7 March to the AB for adoption.</i></p>
<p>8. <i>The Director presented a draft internal note on the enforcement of ACER decisions on Regional/EU wide bodies and on aspects of regional governance under the Clean Energy Package framework following the EC proposals as a basis for discussion. Members raised concerns on certain elements and were keen on considering separately the issue of enforcement of ACER decisions and regional governance. In respect of the proposals on enforcement, there were concerns about the constitutional and legal aspects given the subsidiarity principle. Ms Vadasz-Nilsson was mandated in CEER to pursue this analysis with the view to scoping the regional governance aspects. The BoR Chair suggested that she consult with the Director to see whether there is the possibility to prepare a joint paper.</i></p>
<p>9. <i>The AMIT WG chair presented the latest update on the ongoing work on REMIT implementation and operation. Members were informed of the establishment of an NRAs user group (ongoing on a continuous basis, weekly or fortnightly call), which would be considered as a forum for discussion for any opened topics regarding REMIT IT systems impacting NRAs. The BoR was also informed of the intention to set up a new expert group on REMIT.</i></p>
<p>10. <i>The Director reported on the meeting that took place between ESMA and ACER on 10 March. Mr Zuleger informed the BoR that progress was still being made in terms of data sharing and ARIS is now in a stable position. The main focus of ACER is on data quality and migration to a new hosting environment. He informed the BoR that on 16 February, ACER published an open letter on REMIT transaction reporting data quality.</i></p>
<p>11. <i>Mr Copley provided an update on the ongoing work of the AEWG and noted the upcoming vote on the balancing code.</i></p>
<p>12. <i>The Agency's list of relevant information to be communicated by ENTSO-E to monitor the implementation of the FCA GL Network Code was endorsed by the BoR (by consensus of the members represented) subject to a final check (with the FCA TF) to ensure that all the data required are at the disposal of the TSOs.</i></p>
<p>13. <i>The ACER Opinion on the ENTSO-E Recommendation relating to the coordination of technical cooperation between the Union and third country Transmission System Operators was given the favourable opinion of the BoR (by consensus of the members present or represented).</i></p>

14. *The ACER Director provided an update on the ACER Report on the use of congestion revenues for 2014. The report identifies that there was no particular pattern in how the Member States used the congestion revenues in 2014. The observations seem to confirm the findings of the Agency's Recommendation on the common capacity calculation and re-dispatching and countertrading cost sharing methodologies.*
15. *The BoR Chair updated on the CEER discussions held the previous day about the upcoming White Papers. At this stage 5 draft White Papers are currently being considered and intended to be joint ACER-CEER European Regulators' White Papers subject to agreement on their content: The Efficient Price Formation White Paper; Renewables in the Market; Flexibility (already circulated at the BoR), on which the Director presented some comments; and 2 more papers on the DSOs' role and distribution tariffs, which have in parallel been submitted to the Director for consideration.*
16. *The ACER Position Paper "NRA coordination of emerging technological classification decisions" was endorsed by the BoR (by consensus of the member represented).*
17. *The AGWG Chair provided an update on the ongoing work of the AGWG. He provided an update on the Quo Vadis study and next steps, a status update on the TAR network code and Gas Target Model self-evaluation by NRAs.*
18. *The ACER Director had informed the BoR about his decision to dissolve the AIMP WG based on the reduction of the scope of the MMR and the consideration of a different format for the provision of legal advice given the sensitivity of the legal issues. In this light the Director's Decision to reappoint the AIMP WG Chair, Mr Locquet for chairmanship of the AIMP WG, was effective until 31 March. The Director also informed the BoR of his Decision on the re-appointment of Mr Hernández for chairmanship of the AEWG, for the period until 10 February 2019. This was taken to ensure continuity and stability in the operation of the AEWG during the discussions of the Clean Energy Package proposals. The BoR Chair and members raised strong concerns on the above decisions. The Director was invited to reconsider his decision with due account of the BoR recommendation and the concerns of the members.*
19. *The AIMP WG chair provided an update on the ongoing work of the AIMP WG and its Task Forces and referred to all the previous legal requests handled by the PWS.*
20. *The ACER Opinion on the ENTSOG draft TYNDP 2017 was given the favourable opinion of the BoR (by consensus of the members present or represented and one abstention).*
21. *The ACER Director informed the BoR of the ACER Opinion on the ENTSO-E Guideline for the cost-benefit analysis of Grid Development projects, which was issued on 6 March.*
22. *The ACER Director informed the BoR of the ACER Opinion on the ENTSOs consistent and interlinked electricity and gas market and network model.*
23. *The ACER Director informed the BoR of the ACER Opinion on NDP consistency with TYNDP – electricity.*

24. The ACER Director informed the BoR of the report on CBCA decisions taken by NRAs and the Agency.

25. Ms Groebel reported on the launch of an EC questionnaire on the "Cost Reduction Directive SMART 2015/0066" to NRAs. The European Commission has launched a study on implementation and monitoring of measures under Directive 61/2014 Cost Reduction Directive. WIK-Consult, together with VVA and Ecorys is conducting this study and have shared with us a draft of the questions that would be relevant for energy authorities at a national level. If there are any comments or suggestions on the questionnaire, those need to be submitted no later than 17 March to the consultants. Thereafter, they will finalise the questionnaire, and they will distribute it to relevant national energy authorities.

## Part A: Items for discussion and/or decision

### 1. Opening

#### 1.1. Approval of the agenda

##### BoR Decision agreed: (D 1)

The agenda was approved with the addition of an item on the recent and EU gas capacity auctions and its market effect.

#### 1.2. Approval of the minutes of the 63rd BoR meeting

##### BoR Decision agreed: (D 2)

The 63rd BoR minutes were approved.

### 2. Update from the Director

#### 2.1. Update on recent developments

##### - **ACER**

The Director reported that on 8 March, ACER published its latest edition of its Gas Regional Initiative Status Review Report informing on the voluntary progress made towards the regional gas markets' integration. He reported that the Lithuanian NRA requested an official opinion from the Agency (under Article 7.6) about the possibility to postpone the deadline for taking a decision on the implementation of Long Term Transmission Rights by one month (i.e. from 17 April to 17 May 2017) in order to take into account the delayed publication of the CCR decision. According to Article 7.6, ACER has 3 months to issue its Opinion, but this will have to be issued as soon as possible and probably submitted for a BoR electronic approval.

The Director informed the BoR that the ACER Annual Conference 2017 – 'Regions for the Internal Energy Market' will be held on 29 June with the expected participation of the EC Vice President Šefčovič. Commissioner Arias Cañete is unfortunately not available to join.

The Director informed about his Decision on third countries' participation, as observers, in the ACER WGs, TFs and other substructures. It envisages that the Director, by his/her decision, may allow the participation, as observers, in the AWGs, Task Forces and other substructures, or some of them, of representatives of national regulatory authorities of third countries which are assessed as making good and steady progress towards meeting the requirements of Article 31 of the ACER Regulation.

#### **- EC Update on Clean Energy Package proposals**

Mr Addis provided an update on the progress of the discussions on the EC's new energy market design proposal – part of the Clean Energy for all Europeans package. Discussions are accelerating with the hope to reach agreement under the Estonian Presidency. The next trilogue will be held on 27 March where the EC aims to have a compromise text on the SoS Gas Regulation signed off. The EC has issued their corrigendum to the recasts of the Agency Regulation and of the Electricity Regulation and Directive on 23/02. In parallel, the EC is pursuing the discussions reaching out to Member States (Ministries and other authorities) on the proposals. The EC is willing to pay visits where there is a need to raise awareness of the proposals in the Member States.

On a separate topic, Mr Addis informed that the EC has signed the Quo Vadis study contract. This will take 6 months, and the EC hopes to get results before the end of this year.

The EC informed the members about the organisation of an event on codes on 4 May with ACER and ENTSOs and other stakeholders with the participation of Commissioner Arias Cañete. The previous evening drinks will be organised by the ENTSOs. Despite the clash with the BoR (scheduled on 4 May), there was no other possible date for the Commissioner. Members agreed to reschedule the BoR/GA meetings on 3 May (starting with the BoR in the morning) and the ERF on 2 May afternoon.

#### **- Update on the BoR review panel**

The BoR Chair provided an update from the BoR Review Panel that met prior to the BoR. The panel comprises the BoR Chair, the BoR Vice-Chair, Mr Tomislav Jurekovic, Mr Remko Bos (as an alternate to any of the three panel members where their declarations were considered) alongside the Director as an observer. Based on their assessment of the information provided, the Panel did not identify any conflicts of interest amounting to a Level 3 in the classification provided by the Policy. Where potentially conflicting interests have been declared, and considered by the Review Panel to be relevant, the BoR Chair will write to the respective NRAs. In addition the Chair will apply the relevant provision in the BoR RoP which requires the declaration of interest by each member in respect of any particular item on the agenda.

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

#### **3.1. Outcome of the EP on the revision of the revised ACER Programming Document 2017 – 2019**

The Director reported on the approval of the ACER revised Programming Document 2017 – 2019. During the first round of the ACER 2017 WP 7 NRAs submitted comments. The Director reported on the main issues raised during the electronic procedure and the revisions made.

On 7 March, the revised ACER Programming Document 2017 – 2019 was approved and submitted to the Administrative Board for adoption. A note on the outcome of the BoR electronic procedure was circulated for information. 23 members approved it while one NRA abstained.

### 3.2. Enforcement of ACER decisions on Regional/EU wide bodies

The Director presented a draft internal note on the enforcement of ACER decisions on Regional/EU wide bodies in respect of the data collection issue as a basis for discussion.

The issue on enforcement of ACER decisions was discussed at the previous BoR and the Chair suggested to add this item to the agenda. The draft internal note which is work in progress, addresses both elements, and builds on the previous ACER position papers outlining the core need that the Agency be given adequate powers effectively to fulfil the important monitoring responsibilities assigned to it. It mainly addresses how this aspect could be captured in the EC proposals for Clean Energy for all Europeans. The Director noted that where there are entities operating beyond national borders and regions, we need robust regulatory oversight. The Agency's opinions in the past have several times been ignored and we have seen the same incidents in the context of the ERF discussions.

On regional governance, his draft proposal attempts to clarify the specific roles and responsibilities on the basis of the EC proposals (in particular under Article 7 of the ACER Regulation).

Members raised concerns on certain elements and were keen on considering separately the issue of enforcement of ACER decisions and regional governance. In respect of the proposals on enforcement, there were concerns about the constitutional and legal aspects given the subsidiarity principle.

The Director clarified that he was invited to prepare a proposals paper. In the previous position papers issued jointly by ACER and CEER, the existence of a gap was acknowledged as well as the possibility of ACER being able to issue legally binding decisions and impose sanctions in case of non-compliance with these decisions. The ACER opinions are not binding and cannot be enforced. Ms Vadasz-Nilsson was mandated to pursue this analysis with the view to scoping the regional governance aspects in consultation with the Director, to assess whether there is the possibility of formulating a joint paper.

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

### 4.1. REMIT implementation and operation - Oral update

The Director reported on the meeting that took place between ESMA and ACER on 10 March in Paris. He commented that it was a constructive meeting to propose enhanced ways to cooperate, but reflected that, given the respective resource constraints, there may be limitations as to how the two organisations could work together.

Mr Zuleger informed the BoR that the updates were very similar to the previous meeting in January, as progress was still being made in terms of data sharing and noted that ARIS has now reached a stable situation. Our main focus is on data quality and migration to a new hosting environment. He informed the BoR that on 16 February, ACER published an open letter on REMIT transaction reporting data

quality. The purpose of this letter was to inform Organised Market Places (OMPs), Market Participants (MPs) and Registered Reporting Mechanisms (RRMs) that the Agency is conducting an assessment of the completeness, accuracy and timely submission of the data received under REMIT. He reported that the Agency is making progress with active data and data sharing. There will be a workshop held in April that focuses on data quality and reporting. He informed the BoR of the migration of a new hosting environment that will also be set up at the beginning of April.

Mr Zuleger reported that the Agency's surveillance solution SMARTS was successfully implemented by the Swedish and British NRAs with a possibility for new NRAs implementing it in the future. He commented that it will be extremely helpful to learn from the experiences of the implementation process in both Sweden and Britain.

He also discussed data sharing and commented that data sharing is subject to the certification that NRAs can comply with the requirements for data sharing and invited more NRA colleagues to come to Ljubljana to access the data on the site. Regrettably space and human resource are limited, but he is happy to host NRA colleagues on a monthly basis.

Mr Zuleger also informed the BoR that to increase cooperation and interaction between NRAs and ACER on IT matters, an NRA user group will be established (ongoing on a continuous basis, either weekly or fortnightly call). This is currently being finalised and expected to be launched in April. NRAs who are ARIS users, should be members of this group.

Ms Groebel asked for one volunteer from the NRAs to nominate an expert for the IT Task Force to ensure an equal ACER and NRA representation.

## **5. Electricity**

### **5.1. Update on NC implementation and other work – presentation**

Mr Copley commented that the AEWG is currently undertaking a huge amount of work; the White papers, various ERF documents, the Balancing Network code is nearing adoption and thanked the experts working within the relevant Task Forces and Working Groups for their excellent contribution.

### **5.2. The Agency's list of relevant information to be communicated by ENTSO-E to monitor the implementation of the FCA GL**

Mr Copley and the Director provided an update on FCA Guidelines. Under Articles 8(9) of Regulation (EC) No 714/2009 and 63 of Regulation 2016/1719 (FCA GL) the Agency requests ENTSO-E to provide the information required to monitor the implementation of the FCA Regulation.

They informed the BoR that the list focuses on the information needed to monitor the effect of the implementation of the FCA Regulation on the harmonisation of applicable rules aimed at facilitating market integration, non-discrimination, effective competition and the efficient functioning of the market. The list comprises (a) those items that will have to become available to ENTSO-E for its own monitoring

duties and (b) those items, which are not necessarily of direct relevance for ENTSO-E's monitoring duties, but are essential for the Agency. In both cases, the request is proportionate and reasonable.

In this respect, the Director recalled the agreement with NRAs that, as soon as the information reported to the Agency reached appropriate quality to satisfy the NRAs, they would not require double reporting.

The information that the Agency receives is definitely available to the relevant NRAs.

The Agency's list of relevant information to be communicated by ENTSO-E to monitor the implementation of the FCA GL Network Code was endorsed by the BoR (by consensus of the members represented) subject to a final check (with the FCA TF) to ensure that all the data required are at the disposal of the TSOs.

### 5.3. Opinion on ENTSO-E's recommendations relating to the coordination of technical cooperation between the Union and third-country Transmission System Operators

The ACER Director informed the BoR that on 24 January 2017, ENTSO-E submitted its recommendations relating to the coordination of technical cooperation between the European Union and third country TSOs, to the Agency pursuant to Article 8(3)(c) of Regulation No 714/2009.

The Director acknowledged ENTSO-E's efforts to take into account the Agency's Opinion No 03/2016 on ENTSO-E's recommendations for the cooperation between EU and third country TSOs. He also noted that, according to Regulation No 714/2009, ENTSO-E's recommendations should relate to the coordination of technical cooperation between the EU and third country TSOs. The Opinion suggests that ENTSO-E considers and makes reference to the TYNDP in any future recommendations document in order to provide a more comprehensive picture of grid development. He stated that the Agency, therefore, welcomes ENTSO-E's commitment to the continuous improvement and development of the recommendations document. In particular, the Agency welcomes the initiative to consult with third country TSOs with the intention of making changes that would be beneficial to this framework for technical cooperation.

Mr Copley commented that there was no objection at WG level and that the issue is not contentious.

The ACER Opinion on the ENTSO-E recommendation relating to the coordination of technical cooperation between the Union and third country Transmission System Operators was given the favourable opinion of the BoR (by consensus of the members present or represented).

### 5.4. ACER Report on the use of congestion revenues for 2014

The Director informed the BoR that this report looks at the congestion revenues in 2014 across 27 Member States in Europe. 4 Member States did not receive any congestion rent as no commercial electricity cross-border trade took place. The main findings include that out of the 23 Member States, the congestion revenues in 2014 differed significantly from one Member State to another, even when the size of the market and the number of connection to other markets are similar. There was no particular pattern in how Member States used the congestion revenues in 2014. Aggregated values at

EU level show that more than half of the congestion revenues (54%), collected by the 23 Member States, was not used to support a short/medium- term increase of the level of cross-border capacity made available to the market.

This observation seems to confirm the findings of the Agency's Recommendation on the common capacity calculation and re-dispatching and countertrading cost sharing methodologies and in the Agency's Market Monitoring Report that more effort could be put in increasing the level of cross-border capacity made available to the market.

Mr Blaney commented that it would be useful to link the size of the revenues to the size of the market and the percentage of the congestion of the total market.

#### 5.5. The ACER-CEER European Regulators' White Papers

The BoR Chair opened the discussion by reiterating concerns that colleagues expressed in the General Assembly meeting in regards to the internal 'non-paper' circulated by the Director to the BoR members addressing some of the issues of the Clean Energy EC proposals. The BoR Chair acknowledged that it was important that the draft paper was circulated to the NRAs for transparency and awareness. Colleagues have strong views against certain elements of this paper.

The Director commented that the understanding from all previous preparations (including in the Policy Committee) was to attempt to prepare joint positions which he has favoured in all previous occasions. All the previous position papers including on the EC consultation on the energy market design, the oversight of regional and EU entities were joint positions, which was not pursued at the January meeting.

The BoR chair urged that we should not lose the cooperative spirit built over the years and that we should maintain the effort to work as collaboratively as possible, as is the case on the technical White Papers and if possible the paper on regional governance. However, we must still achieve collaboration and benefit from joint contributions in the areas that we can. Regional governance could be, if possible, a joint contribution.

The Director agreed that a common approach is his preferred option where possible. Going forward, the European Parliament will have the first discussion in the next month. If we want to influence the legislative process, we have weeks not months to act. The deadline for amendments on the ACER Regulation is June 29<sup>th</sup>.

#### White technical papers

The BoR then discussed the White Papers (WPs) submitted by the EWG. The Director noted that the 'flexibility' and 'price formation' WPs could be considered as joint and that he provided comments on both. The Director had concerns with a few points in the flexibility White Paper. He commented that demand-response providers should participate in balancing markets and we have been pushing for an integrated market across the Union. The Director also commented that he was fairly sceptical about some of the suggestions.

He also commented that the White Paper on 'price formation' does not convey new messages, as it mainly endorses the EC proposals.

The White Paper on 'RES in the Market', DSOs role and tariffs are not *strict sensu* within the Agency's responsibility but he is happy to consider them for adoption as joint papers.

Mr Copley stated that he had ensured that the AEWG worked collectively throughout with ACER, informing the Director that Mr Gence-Creux had been involved in discussions at every point. Therefore, he noted that the AEWG has worked with the understanding that the three papers are joint papers.

Ms Gassin stated that the two papers developed and agreed by the DSO WG were sent to the Director by the CEER secretariat.

The Chair concluded that at this stage all 5 draft White Papers are currently being considered and intended as joint ACER-CEER European Regulators' White Papers subject to agreement on their content. In parallel with their review by the Director and the Secretariat incorporating the comments of the members, a press release will be prepared. If an agreement is not reached, those will be adopted and published as CEER-only papers.

The BoR Chair asked for CEER and BoR Secretariat to assist with the preparation of amendments related to the White Papers subject to their agreement.

#### 5.6. The Position Paper: NRA coordination of emerging technology classification decisions

Mr Copley provided an update on the paper. He informed the BoR that NRAs requested ACER to prepare a position paper to coordinate a decision under Article 69 of Regulation 2016/631 - network code on requirements for grid connection of generators (RfG). The paper outlines ACER's proposal on the most appropriate approach for applying specific provisions of the network code RfG. He stated that the paper outlines that it is reasonably foreseeable that, if all original applications are considered by NRAs, double counting may take place in those Member States which choose to classify both the primary PGM technology and the specific PGMs as an emergency technology. In these cases, the information received on accumulated sales from all the concerned manufactures, in accordance with Article 70(1) of the network code RfG, would include double counting. ACER was, therefore, requested to prepare a position paper which explains the most appropriate approach for addressing the double counting issue across the EU. The NRAs (or the competent authority) will subsequently aim to coordinate their decisions in accordance with Article 69, taking into account ACER's position paper which presents an analysis on those issues.

Mr Copley and the Director concluded that this paper was a good example of cooperation and practice.

The Position Paper "NRA coordination of emerging technological classification decisions" was endorsed by the BoR (by consensus of the members present or represented).

## 6. Gas

### 6.1. Update on FGs, NCs and other work – presentation

Mr Nyikos informed the BoR on the status of the European annual gas auctions.

Mr Addis would consult the EC and provide further feedback at the next meeting.

Mr Trindade informed the BoR on the 'Quo Vadis' workshop that was held on 30 January in Brussels. He reported the main messages:

- . Where not yet completed, the 3rd package should be fully implemented.
- . Network codes should be given some time to deliver their benefits.
- . Market mergers could be done on a voluntary basis but only if there is a positive CBA.
- . No one-size-fits-all approach should be applied for the whole EU but rather targeted solutions for some regions.
- . Future role of gas should be reflected in the study.
- . Main question under "do-nothing option" is what will be the impact of the expiry of long-term capacity contracts on the spreads between markets?
- . Technical and political feasibility of an EU-wide ITC mechanism in gas should be carefully studied.

With regard to the next steps, the consultant selection process was finalised in February 2017; the preliminary report and the 2nd Stakeholder workshop to exchange on preliminary report will be held in April/May 2017. The final report – 3rd Stakeholder workshop on final draft report – is scheduled for September 2017. He noted that ACER is given the same role with ENTSOG which is not welcomed.

On the issue of GTM self-evaluation, Mr Trindade informed members that the Member States that had completed the self-evaluation were UK, NL, DE, AT, SK, ES, PT but commented that BE/LU, CZ, PL and LT have not been done or will be completed at a later stage. He presented the brief overview of results.

Mr Trindade also provided a status update of TAR network code. ENTSOG has prepared a detailed implementation manual which has been discussed extensively within the ACER TAR TF. Over 100 comments have been sent to ENTSOG. ENTSOG and the EC presented the manual at the TF meeting in February. Discussions with the EC and ENTSOG are held to align on process and content. On 1 March, there was a direct discussion between ENTSOG and a delegation from ACER and NRAs. Many points were resolved, and depending on the final text, ENTSOG will include in the manual a light or strong disclaimer from ACER and NRAs, clarifying that the manual is in no way binding on regulators.

He reported that ENTSOG is keen to influence the process on code implementation. There are several deadlines in the TAR network code. The deadline for NRA to publish (transparency-related) information is 1 October 2017.

The BoR chair reiterated that NRAs are not a stakeholder, like ENTSOs, and should be involved in a different status in the Quo Vadis study. This is a clear message to the EC.

Mr Addis recognised the frustration from NRAs, but urged them to focus on the content of the study which is ultimately the aim. Side-lining NRAs was not the EC intention and the NRAs' contribution is fully recognised.

The BoR chair commented that NRAs are contributing constructively, yet sometimes are not treated fairly. There are 28 NRAs and the Agency. A reduction in the importance and minimisation of their impact is damaging for the oversight of the markets.

## **7. Appointments of the AWG Chairs**

### **7.1. Appointment of the AIMP and AEWG Chairs**

Lord Mogg reported on the issue. The Director's decision to dissolve the AIMP WG and the re-appointment of Mr Hernández for chairmanship of the AEWG, for the period until 10 February 2019 raise strong concerns and opposed the BoR Recommendation without any legitimate reason.

The Director noted his perspective. Despite the WG restructuring discussion within CEER, it is clear that ACER would continue to have an AEWG. There are no scenarios whereby there would be no electricity WG. In any case, the reappointment of the AEWG chair makes clear reference to paragraph 2.2 of the AWG RoP which makes an early termination possible. He gave utmost consideration to the BoR Recommendation before taking his decision and, if the BoR would come with another recommendation, he is open to reconsider. He did not want to give any uncertainty for the future. In any case the outcome is the same.

On the AIMP WG, the Director had shared his view at the January meeting and stated that he still thought it was best to dissolve the WG given the reduction of the scope of the MMR and the consideration of a different format for the provision of legal advice given the sensitivity of the legal issues.

The BoR Chair noted that in respect of the appointment of the AEWG Chair the BoR proposed the extension of the current chair until the finalisation of the discussion on restructuring. In this respect there was no risk of uncertainty. Regarding the AIMP WG, this has performed a number of useful achievements in terms of advice and this decision was taken unilaterally without a proper consultation with the BoR despite the resources devoted by NRAs to this group.

The Director noted that it is true that there are more legal issues at the moment (governance, procedural challenges) and fully values and respects the NRA experts' contributions, yet the PWS was not the right framework for such legal advice. Moreover, we cannot afford a fully-fledged MMR this year. This is an outcome of the resource limitations. NRAs might be willing to step up in drafting but we do not have the ACER colleagues available. The MMR is a flagship report and the Director is happy for CEER to take it over this part. He was happy to consider how to have the legal expertise but it must be in a different paradigm.

The BoR Chair was willing to pursue the issue with the right format and process. He asked the Director to reconsider the decision, considering that NRAs were still willing to continue to provide resources. He also noted that the BoR may explore the option to issue guidance to the Director.

The Director concluded that he was prepared to reconsider, but would not react at this point in time.

## **8. Infrastructure**

### **8.1. ACER Opinion on ENTSOG's draft TYNDP 2016**

The ACER Director informed the BoR that on 5 January 2017, ENTSOG submitted the draft TYNDP 2017 to the Agency for its Opinion.

The Agency notes ENTSOG's willingness to consider both stakeholder feedback and the Agency's Opinion for the adaptation of the draft TYNDP before its final publication, expected by April 2017. However, it is, therefore, not obvious how the content of the Opinion is taken into account.

The Agency's Opinion deals with the role of the TYNDP as required by the Regulation; the improvements of the draft TYNDP 2017 compared to the TYNDP 2015; the identification of the main areas where improvements are still recommended, in particular with respect to the application of the cost-benefit analysis (CBA) methodology to the TYNDP, as well as for the presentation and the interpretation of the analysis and its results in the TYNDP 2017.

The Agency finds that the draft TYNDP 2017 is in line with the objectives of Regulations 713/2009 and 715/2009 in terms of contributing to non-discrimination, effective competition, and secure market functioning, but it also has shortcomings, in particular regarding the quality of the CBA, a significant part of which are also noted in the Opinion of the Agency on the TYNDP 2015. Due to the lack of proper CBA, the draft TYNDP 2017 may not sufficiently contribute to the efficient functioning of the market.

The Agency encourages ENTSOG to implement the "short-term" recommendations when finalising the TYNDP 2017, and urges ENTSOG to start working on implementing the "long-term" recommendations, in particular by improving the CBA methodology for its full application in the next TYNDP 2018 and the 4th PCI selection process.

Mr Cariello abstained from supporting the document. He acknowledged the work of the ACER staff but stressed it was important to give a strong signal to ENTSOG. This was the 4th opinion on the plan and this is not the first time that it was not taken into account. Striving to strengthen the position of the Agency, he deemed it was important to abstain. His decision was reinforced by the approach taken by ENTSOG to issue the TYNDP before the Agency's Opinion.

The ACER Opinion on the ENTSOG draft TYNDP 2017 was given the favourable opinion of the BoR (by consensus of the members presented or represented and one abstention).

## 8.2. Opinion on the ENTSO-E Guideline for the cost-benefit analysis (CBA) of Grid Development projects

The ACER Director informed the BoR that on 6 December, ENTSO-E submitted an updated draft CBA Methodology. The ACER opinion was adopted on 6 March given the deadline and was simply circulated for information to the BoR. It states that the draft CBA Methodology 2.0 also misses various previous recommendations and includes some backward steps when compared to the CBA Methodology 1.0.

The Agency's Opinion therefore encourages ENTSO-E to adapt the draft CBA Methodology 2.0, in accordance with the Agency's considerations in section 5 of this Opinion before ENTSO-E submits it to the European Commission for approval, pursuant to Articles 11(6) and 11(4) of Regulation No 347/2013.

## 8.3. Opinion on ENTSOs consistent and interlinked electricity and gas market and network model

The ACER Director informed the BoR that on 21 December 2016, ENTSO-E and ENTSOG developed and jointly submitted to the Agency a proposal for a consistent and interlinked electricity and gas market and network model pursuant to Article 11(8) of Regulation (EU) No 347/2013.

The Agency finds that the submitted model is largely lacking, especially due to the missing fundamental elements, namely the specifications of the input data set to run the model, the endogenous variables, and the output data set generated by the submitted model, duly accompanied by the algorithms of the Submitted model and their formal description. Furthermore, it is limited in its ability to capture interlinkages, as just 3 elements are interlinked.

As a result, the Agency invites the Commission not to approve the submitted model and neither to include it in the CBA methodologies, until such time when the ENTSOs make available the respective lacking elements and interlinkages. The Director informed the BoR that ENTSOG are not intending to publish the document.

Mr Trindade stressed the lack of transparency in the ENTSOG position.

## 8.4. ACER Opinion on NDP consistency with TYNDP – electricity

The Director reported that Article 8(11) of Regulation No 714/2009 tasks the Agency with providing an opinion on the national ten-year network development plans, to assess their consistency with the Community-wide ten-year network development plan (EU TYNDP).

The ACER opinion on electricity projects in the national ten-year network development plans and in the EU-wide ten-year network development plan 2016 provides detailed information regarding the NDP investments with cross-border relevance and aims at identifying whether an NDP project with cross-border relevance does not appear in the EU TYNDP 2016 or whether an EU TYNDP 2016 cluster is missing from any of the relevant NDPs.

The Opinion also aims at highlighting any substantial difference among the projects in NDPs and the ones in the EU TYNDP 2016. The Agency notes that the EU TYNDP and the NDPs are updated with different frequency and timing, while the projects are continuously evolving over time, which does not enable capturing a snapshot where all NDPs are up-to-date and fully comparable vis-à-vis the TYNDP. The main differences are highlighted in the Opinion and a number of recommendations are made.

#### 8.5. Report on CBCA decisions taken by NRAs and the Agency

The Director informed the BoR that this report provides information regarding decisions on the investment requests, including cross-border cost allocation decisions (CBCA decisions) for electricity and gas projects of common interest (PCIs), adopted either by NRAs or the Agency. It is intended to provide facts which may be useful for interested stakeholders and for project promoters and NRAs dealing with investment requests and CBCA decisions; and to derive some factual findings about the CBCA processes, which may be also useful in the context of the review of Regulation 347/2013.

This follows a first edition of the CBCA summary report, which was published by the Agency together with its second Recommendation on investment requests and CBCA. The first edition presented information about 16 CBCA decisions adopted before August 2015.

The report provides that since the adoption of the first Union list of PCIs in October 2013, 24 investment requests resulted in a decision on how to allocate the costs of the projects. 22 decisions were taken by NRAs, while 2 were adopted by the Agency. The report presents the main findings of the Agency's monitoring of the decisions.

#### AOB

Ms Groebel reported on the launch of an EC questionnaire on the "Cost Reduction Directive SMART 2015/0066" for the attention of NRAs. The European Commission has launched a study on implementation and monitoring of measures under Directive 61/2014 Cost Reduction Directive. WIK-Consult, together with VVA and Ecorys is conducting this study and have shared with us a draft of the questions that would be relevant for energy authorities at a national level. If there are any comments or suggestions on the questionnaire, those need to be submitted no later than 17 March to the consultants. Thereafter, they will finalise the questionnaire, and they will distribute it to relevant National Energy Regulatory Authorities.