

46th ACER Board of Regulators Meeting
Wednesday, 25 March 2015, 09.00-16.00
ACER premises, Ljubljana

Minutes (final)

Member States	Name ¹	Member States	Name
Austria (E-Control)	M: Walter Boltz A: Dietmar Preinstorfer	Italy (AEEGSI)	M: Clara Poletti O: Ilaria Galimberti
Belgium (CREG)	A : Koen Locquet O: Geert Van Hauwermeiren	Latvia (PUC)	O: Lija Makare
Bulgaria (SEWRC)	Excused	Lithuania (NCC)	A: Vygantas Vaitkus
Croatia (HERA)	M: Tomislav Jureković A: Sonja Tomašić Škevin	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Georgios Shammas	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	A: Martina Krcova O: Martin Sik	Netherlands (ACM)	A: Remko Bos O: Elozona Ochu
Denmark (DERA)	O: Henrik Nygaard Jensen	Poland (URE)	A: Halina Bownik-Trymucha
Estonia (ECA)	A: Külli Haab	Portugal (ERSE)	A: Alexandre Silva Santos
Finland (EV)	O: Timo Partanen	Romania (ANRE)	M: Nicolae Havrilet A: Lusine Caracasian
France (CRE)	O : Hélène Gassin O : Aude Le Tellier	Slovakia (RONI)	Excused
Germany (BNetzA)	A: Annegret Groebel O: Daniel Müether	Slovenia (AGEN-RS)	A: Jasna Blejc
Greece (RAE)	M: Michael Thomadakis	Spain (CNMC)	M: Fernando Hernández
Hungary (HEA)	A: Attila Nyikos O: Gergely Szabo	Sweden (Ei)	A: Caroline Törnqvist
Ireland (CER)	M: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Martin Crouch O: Feodora Von Franz

ACER	Alberto Pototschnig, Volker Zuleger, Dennis Hesselting, Christophe Gence-Creux, Fay Geitona, Sarah Bradbury
European Commission	Oliver Koch, Zsuzsanna Széles,
CEER	Una Shortall, David Haldearn

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

Main conclusions from the meeting:

1. *The BoR agreed by consensus (of the members present or represented) the revisions of the BoR Rules of Procedure (RoP) to reflect the ACER Conflict of Interest (CoI) Policy. With regard to new provisions on honours, decorations, favour, gifts or payments, it was agreed to wait until the AB defines the rules and then adopt similar provisions.*
2. *A letter on the next steps and timeline will be sent shortly by the Director.*
3. *The BoR Opinion on the ACER Budget for the 2016 Financial Year and the Multi-Annual Staff Policy Plan (MSPP) 2016-2018 was agreed by consensus of the BoR members (present or represented).*
4. *Lord Mogg was re-appointed (with a majority exceeding 2/3 of members present or represented) as Chair of the ACER Board of Regulators for a new term of office of two and a half years, taking effect from 6 May 2015.*
5. *The call for nominations for the BoR Vice-Chair position will be opened by the Secretary and the appointment of the BoR Vice-Chair will be held at the 47th BoR meeting.*
6. *The members received an update on progress on the electricity network codes (NCs) and Framework guidelines (FGs) and had an orientation discussion on the preliminary ACER Opinion on the code on electricity balancing.*
7. *Regarding intraday, Lord Mogg summarised the discussion as follows: we are now in a different situation, not least given the upcoming entry into force of the CACM Guidelines. If we have agreement on the statement of principles (subject to minor modifications to be made at working level) we can give reassurance to the project parties. More specifically, following the discussion, the BoR members recognised that the North-West European cross-border intraday (XBID) project forms the basis of the intraday solution as described in CACM Guidelines of a pan European intraday project which will result in obligations for all NRAs. The members confirmed, in principle, the statement of principles governing cost recovery for the European cross border intraday (XBID) project (with costs incurred before CACM Guidelines entry into force to be covered by NWE+ parties only, while costs incurred after to be shared by all parties in line with the CACM Guidelines). However, there are still clarifications to be made including on the point when the XBID and CACM projects join, and whether this occurs 8 months after entry into force of the CACM Guidelines or 14 months after their entry into force. These would need to be considered and resolved at working level by the Task Force. The EC must be firm to support progress on the project. The TF is to be charged with making the modifications on the basis of which the final document will be circulated to all NRAs before agreement.*
8. *The BoR members received an update on the status of REMIT Implementation.*
9. *The BoR members were informed on the outcome of the BoR electronic procedure on the draft ACER Recommendation on technical advice of ESMA. The BoR provided (on 16 March), by consensus of the members which participated in the electronic procedure, its favourable opinion.*

10. The BoR discussed REMIT IT Security (data classification) and received an update on the final PPAT discussion and communication paper.

11. The BoR provided a favorable opinion (by consensus of the members present or represented) on the draft ACER opinion on the NC on Harmonised Transmission Tariff Structures for gas.

12. The BoR received an update on current work by the AIMP WG.

Part A: Items for discussion and/or decision

1. Opening

1.1. Approval of the agenda

BoR Decision agreed: (D 1)

The agenda was approved.

1.2. Approval of the minutes of the 45th BoR meeting

BoR Decision agreed: (D 2)

The 45th BoR minutes were approved.

2. Update from the Commission and the Director

2.1. Update on recent developments

- European Commission

- Follow-up on Energy Union

Mr Koch updated the BoR members on the Energy Union Strategy, following the Commission's Communication, and the follow-up actions. Enforcement of existing energy legislation is a major priority for the European Commission (EC). On electricity, a key initiative is the electricity market design which will cover demand-side aspects and renewable energy sources (RES) integration. However, the Emissions Trading System (ETS) is not related to the core electricity market design. In terms of governance, there will not be a "fourth package" but there is indeed a discussion on the role of ACER and the need for stronger cooperation through the ENTSO-E and ACER. Evidently, Member States (MSs) need to consider and be convinced of the benefits of this. There is also an emphasis on strengthening regional cooperation. At this stage, there is no specific timeline on actions but the EC expects to issue the consultative paper on the electricity market design perhaps in June or in autumn. The electricity market design initiative is led by B2 in DG ENER.

ACER update

The Director commented that he finds it unfortunate that market integrity and transparency was not captured by the Energy Union Communication Strategy given that 2015 is the year of the start of the wholesale energy market monitoring under REMIT.

The Director provided a progress report including on staff developments. There are currently 77 staff members of 22 different nationalities in ACER. Regarding staff recruitment, some vacancies are open. In addition, some of the seconded national expert (SNE) positions have been converted into contractual agents (CAs), with the possibility for a further four SNE positions to be converted to CA posts in 2016. When the Agency opened, 22% of staff were SNEs whereas at this stage, only ten SNEs are in office. ACER would rather keep the SNE positions to take advantage of the expertise of regulators, especially for longer periods of time, but this has not always been possible due to resource limitations in NRAs.

The traineeship programme has been very successful. It was launched in summer 2013 and opened to graduates for a 5-6 months traineeship period. So far, nine trainees have completed the programme and the successful experience has led to an increase in the number of positions offered in current traineeship period, from five to nine.

The date for the ACER annual conference is still to be confirmed (the new dates for the availability of Vice-President Šefčovič and Commissioner Arias Cañete are on 9 or 10 of July). It will be entitled 'An Energy Union for Consumers'; national consumer associations will be invited.

The London Forum was held on 12/13 March and the Agency delivered a presentation to the pre-meeting in order to start a dialogue with consumer organisations representatives on facilitating greater consumer awareness and involvement in ACER's work. ACER also issued a new consumer-friendly flyer translated into EU languages.

On 16 March ACER published an Opinion on ENTSO-E's draft Ten-Year Network Development Plan 2014. On 17 March, ACER opened the European Register of Market Participants, with 304 market participants currently being registered through NRAs, published the list of standard contracts and the updated REMIT Q&A paper. ACER is also setting up an informal ad-hoc expert group on REMIT.

On 24 March a workshop on electricity transmission tariff harmonisation scoping took place in Ljubljana. The Agency will host an Open-House in both Ljubljana and Brussels on 1 April 2015 on the draft Network Code on Harmonised Transmission Tariff Structures for Gas.

The Director updated that as part of ACER efforts to make ACER work more accessible, steps have been taken to widen the multilingual footprint of our website, especially in relation to the material of interest to the widest range of stakeholders. ACER has sent the citizens summaries to NRAs for translations. We have been able to cover 17 languages, with 9 sets of translations already received. The Director thanked NRAs for their invaluable support in providing these. We hope to have as many as possible in time for the ACER Annual Conference.

3. ACER cross-sectoral activities

3.1. Conflict of interest

- Proposal on revision of the BoR RoP

Mr Locquet presented the revisions to the Rules of Procedure (RoP) which are kept to the minimum necessary to reflect the Conflict of Interest (CoI) policy adopted by ACER on 31 January 2015. A first proposal for an additional recital and Article was discussed at the 45th meeting of the BoR on 25 February 2015 and, subsequently, at the Procedure Work Stream (PWS) and Agency Implementation and Monitoring Working Group (AIMP WG).

The new provisions introduce the following:

Any deliberations of the BoR shall be subject to the regular voting rules as laid down in Article 6. If a member is subject to a 'Breach of Trust' procedure he/she shall not participate in the deliberations of the BoR on the 'Breach of Trust', and will be replaced by his/her alternate or an authorised proxy (and vice-versa). Mr Locquet explained that this solution reflects that each NRA is represented and a NRA cannot be deprived of their right of vote.

The new provisions also address the deliberation process for the BoR review panels responsible for the review of the Declarations of Interest (DoI) of BoR members, alternates and AWGs Chairs, Vice-Chairs and TF Conveners as described in the adopted policy and their deliberation process (by simple majority).

Mr Locquet noted the new provisions do not address the obligation under the Col policy adopted for the Boards to include in their rules of procedure provisions on honours, decorations, favour, gifts or payments. A general policy on this issue is being prepared by the Agency, and in order to keep a consistent approach it was proposed to either wait until the Administrative Board (AB) defines the rules and then adopt similar provisions, or to consider that the AB Decision cover directly all Boards, similarly to the approach taken in the AB Decision No 02/2015. The AIMP WG signalled a preference for the first option.

The Director noted that ACER is working on rules for honours, decorations, favour, gifts or payments and he expects to be able to present those to the AB for adoption in June. It would be preferable that all Boards respect the same standards.

- Next steps for Col Declarations

The Director informed the BoR members that his letter will be sent shortly to the Chair and Members of the BoR, as well as to the AWG Chairs, Vice-Chairs and TFs conveners to clarify the next steps and timeline. In brief, the submission of the DoI and CVs (under a common format) is envisaged by 30 April 2015 to the BoR Secretary. Both the Dols and the CVs will be published on the Agency's website as soon as possible after the deadline for their submission. The review panels must be established to be ready for the assessment of the Col and for taking appropriate action.

BoR Decision agreed: (D 3)

The BoR agreed the revisions of the BoR RoP to reflect the ACER Col Policy. With regard to new provisions on honours, decorations, favour, gifts or payments, it was agreed to wait until the AB defines the rules and then adopt similar provisions.

3.2. ACER 2016 Budget & MSPP (2016-2018)

The Director presented the preliminary ACER Budget for 2016 and the Multi-Annual Staff Policy Plan (MSPP) 2016-2018. The preliminary draft budget for the 2016 financial year is 20.078.441EUR and is based on 44 additional staff, mainly to cover tasks under REMIT and TEN-E Regulation. It also reflects that in 2016, ACER must renew the hosting deployment and operations contract for REMIT. The implementation phase is until July 2016 but the operational stage already began on 7 January when the Implementing Acts entered into force and the registration of RRM was opened, and on 7 October of this year the monitoring of wholesale energy markets will start. The hosting deployment and operations contract allows ACER to keep the system going, and, therefore, the risk would be great if the resources were not secured to renew this contact beyond mid-2016, when the funds allocated so far will run out.

The Director submitted to the AB and to BoR Chair the preliminary draft budget and as stipulated in Article 23(1) of Regulation (EC) No 713/2009, before the Administrative Board proceeds with making an estimate of revenue and expenditure of the Agency for the 2016 financial year, the BoR may deliver a reasoned opinion on the preliminary draft budget.

He explained that the increased budget is due to the need for additional staff, as previously requested, but also to the large costs related to the IT infrastructure and hosting services needed for REMIT. BoR members were asked for early views on the draft budget on the basis of which a draft BoR opinion was prepared.

A new version of the MSPP 2016-2018 was prepared by the Director. It takes account of the preliminary input of BoR members, the outcome of an informal exchange of views between the AB Chair, the BoR Chair and the Director, as well as informal comments from the EC. The new version also contains references to the Energy Union Strategy which was adopted in the meanwhile.

BoR Opinion on the Budget

Lord Mogg noted that the BoR has consistently supported through its opinion the need for additional resources for ACER. He explained the background and his initial concerns about the *de-minimis* option. The BoR opinion once agreed would be presented to the AB the next day.

The draft opinion circulated was supportive to the preliminary budget (including the total of 44 additional staff required). It notes that the preliminary draft budget for 2016 of 20.078.441EUR is in line with the requirements of the Agency for that year; the increase of the budget for the 2016 Financial Year with respect to the 2015 Budget is fully justified. The opinion notes that further postponement of the activities related to the implementation of REMIT will no longer be possible, given that wholesale energy trading data reporting and market monitoring by the Agency will start on 7 October 2015 and the 2015 ACER WP has already been revised to accommodate the lack of additional resources. Therefore, the MSPP 2016-2018 reflects the staffing requirements for the Agency to perform its tasks and responsibilities under the Third Package, as expanded by REMIT and the new TEN-E Regulation (of 44 additional staff).

The Director duly noted DG ENER's suggestions and noted that DG ENER has been supportive to ACER. He also proposed making available to members the specific note prepared for the Commissioner which also provides evidence and the relevant cases in detail. The Director reported that the ITRE Committee has agreed an oral question on REMIT resources with an overwhelming majority of 57 votes in favour. This will be shortly tabled to the EP Plenary, in May.

BoR Decision agreed: (D 4)

The BoR Opinion on the ACER Budget for the 2016 Financial Year and the MSPP 2016-2018 was agreed by consensus of the BoR members (present or represented).

3.3. Appointments of BoR Chair and Vice Chair

Ms Geitona reported that the present BoR Chair and Vice-Chair, Lord Mogg and Walter Boltz respectively, were appointed on 6 November 2012 with a renewable term of office of two and a half years which comes to an end in May 2015. The 46th BoR should decide on

the new appointments and the new terms of office of the Chair and Vice-Chair will subsequently take effect as of May. The RoP of the BoR provide that a quorum of at least two-thirds of the members present or represented is required. 26 members were present or represented. Ms Geitona then explained the legal background and process on the basis of a note agreed at the last BoR meeting. A successful candidate must secure two-thirds of the members present or represented. According to the process agreed, a formal election process (based on a secret vote) is envisaged only if there is more than one candidate for the position; where there is only one candidate, the BoR will be invited to indicate whether there is consensus for that candidate's appointment. Candidates may withdraw during any stage of the process.

The closing date for nominations was 11 March. For the position of Chair, two candidatures were received: Mr Walter Boltz, E-Control, and Lord Mogg, OFGEM. With regard to the position of the BoR Chair, Ms Geitona informed the members that Mr Boltz had withdrawn his candidature and thus the only candidate for the position was Lord Mogg.

Ms Geitona invited the BoR to indicate whether there was consensus to the reappointment of Lord Mogg given his was the only candidate. With the exception of Hungarian Energy Authority (HEA) which indicated dissent, all members present or represented agreed to Lord Mogg's reappointment as the ACER BoR Chair.

Lord Mogg informed the BoR on the latest developments on the position of the Vice Chair and suggested that the call for nominations for the BoR Vice Chair position be re-opened. The appointment of the Vice Chair will be postponed to the 47th BoR meeting (May 6th).

BoR Decision agreed: (D 5)

Lord Mogg was appointed (with a majority exceeding 2/3 of members present or represented) as Chair of the ACER Board of Regulators for a new term of office of two and a half years, taking effect from 6 May 2015.

The call for nominations for the BoR Vice-Chair position will be opened by the Secretary and the appointment of the BoR Vice-Chair will take place at the 47th BoR meeting.

Market Monitoring

4. Market Integrity and Transparency

4.1. Status update on REMIT implementation

Mr Zuleger presented an update on REMIT implementation to the BoR. As reported previously, with the entry into force of the Implementing Acts, we are now entering the operational phase. Since 7 January, all of the REMIT policy documents required under the REMIT Implementing Acts have now been published and the REMIT portal was launched on 8 January. 17 March was an important milestone, as NRAs had to have their national registration systems open for registration of Market Participants by this date. ACER published the European Register of Market Participants, with in the meantime already more than 400 market participants being registered through NRAs, and the List of standard contracts, with more than 6,000 standard contracts from organised market places being listed. ACER also published the updated REMIT Q&A paper which contains questions and answers concerning the European Commission Implementing Regulation (EU) No 1348/2014 (the 'Implementing Acts'). ARIS software development for 1st phase data collection, which take place as of 7 October 2015, was already concluded last week and

besides refining of the current ARIS software solution and the ongoing development of the solutions for data collection as of 7 April 2016 for market monitoring and for data sharing, the Agency is focussing now on the registration of reporting parties.

On Memoranda of Understanding (MoU), ACER's MoU with FERC was completed on 6 January. The signing of the MoUs with Organised Market Places on Cooperation is ongoing, with 15 already signed by 17 March; the signing of MoUs with the Financial Market Authorities and ESMA, and between ACER and the European Competition Network, is expected later this year. The MoU between ACER and NRAs on Security policy is expected in the second quarter of 2015.

The publication of the first edition of the REMIT Quarterly newsletter is to be launched soon. It is foreseen to give a periodical, consolidated update on the market conduct and transaction reporting issues that ACER is looking at. It will be used for updates of *inter alia* the ACER Guidance on the application of REMIT, the transaction reporting user manual (TRUM), the Manual of Procedure (MoP) on data reporting, and the registration reporting mechanism (RRM) requirements documents.

On REMIT IT Implementation, all the 25 NRAs interested in using the Centralised European Registry for Energy Market Participants (CEREMP) for national registration have signed the service level agreement (SLA) and by 17 March only two of them have not yet established access, due to resource limitations: Cyprus and Northern Ireland. Four NRAs are using their own software for the registration of market participants at national level. On virtual private network (VPN) establishment, 26 are complete, and three are in progress (Northern Ireland, Cyprus, and Romania). On market participant (MPs) registration status: more than 400 MPs are registered. On ARIS development, there are three development cycles and we are in the third cycle. The current status is that we are in ARIS Production Release 1 (which had a go-live date of 8 January). The REMIT portal was launched and more than 160 entities have initiated the RRM registration so far. Security Policies have been adopted for the Agency with a Director's Decision for February 2015. A case management tool was launched and development activities started in 2015. An ARIS central service desk has been operational since August 2014 and more than 600 tickets have been handled until mid-March 2015. ARIS Production Release 1.2 was achieved at the beginning of March 2015 and ARIS is now ready for 1st phase of data collection.

On SMARTS delivery, the first beta drop was deployed to the Agency on 10 October 2014 which enables the Market Surveillance and Analytics team to gain increased familiarity with the SMARTS Integrity application. There are two phases of software delivery.

In terms of cases, there were 30 pending at the end of last year, two were reported in January, and three further in February and March so far.

The Director acknowledged the progress, gave credit to the colleagues in the Market Monitoring Department, under the leadership of Mr Zuleger, and emphasised the close cooperation it had required with NRAs, for whose support and engagement he is most grateful.

4.2. ACER Recommendation on technical advice of ESMA – Outcome of electronic procedure

Ms Geitona introduced the topic. As decided at the last BoR, the ACER Recommendation on technical advice of ESMA was submitted for the electronic procedure process and was adopted. Uploaded for information were the Recommendation and cover letter to the EC as

well as the outcome of the electronic procedure. The ACER Recommendation has been submitted to the Commission, Mr. Maroš Šefčovič, Vice-President for Energy Union, Mr. Miguel Arias Cañete, Commissioner for Climate Action and Energy and Mr. Jonathan Hill, Commissioner for Financial Stability, Financial Services and Capital Markets Union.

Outcome of the electronic approval

Following the first round, the 2nd round of the electronic procedure for the draft ACER Recommendation was launched on 11 March and ended on 16 March. 19 members participated in the 2nd round and all voted in favour of the draft ACER Recommendation. One member, Regulatory Authority for Energy (RAE), voted in favour after the deadline. The ACER Recommendation was adopted on 17 March by the Director and will be published shortly.

4.3. Status update on REMIT CG

The next meeting is scheduled for June. The Director reported that the revised RoP reflecting discussion in the BoR had been uploaded just before the meeting and he invited NRAs to send feedback, possibly within a couple of weeks. If no major issues were raised, this would be finalised ahead of the May BoR meeting.

4.4. IT Security (data classification)

Ms Groebel introduced the topic. Uploaded for information was a table providing a summary of NRAs' replies regarding their views on data classification: whether the criteria for the EU classification of information may apply to REMIT information and, if so, whether it should apply for all or only for certain REMIT information.

The results demonstrated that different national implementation of certain classifications is causing complications in terms of software and data sharing, in some cases with significant additional costs associated. All NRAs consider REMIT data sensitive data and undoubtedly data exchange needs to be completed in a secure way. However, it was raised that it could be possible to achieve secure data sharing without the application of a classification. The alternatives need investigating, in particular ensuring that ACER is reassured that NRAs are implementing and working according to the standards. This will be looked at the next AMIT WG to be held on 16 April.

The Director expressed his agreement with the presentation of the issues, but highlighted that the Agency has responsibility for the reliable operation of REMIT, which includes the security aspects. It is, therefore, the responsibility of the Director to ensure that the confidentiality of the REMIT information is protected. There are clear advantages, in terms of enforcement, in adopting the EU classification, whose requirements are not particularly demanding, even though the implementation in some Member States has resulted in much stricter standards and therefore higher costs; it is possible to take an alternative approach, but it would have to be based on a clear agreement that the Agency would be given the powers to conduct wider and deeper monitoring on NRAs and, should the Agency have concerns at any time that the agreed security standards are not met, to suspend access to REMIT data by the NRA in question, while the issue is explored and resolved.

4.5. Final PPAT discussion and communication paper

Ms Groebel introduced the topic. At the last BoR meeting, members were updated on the development of the (1) Discussion paper on the concept of “Professional Persons Arranging Transactions” (PPATs) and (2) Communication (Guidance Note) paper on the concept of PPATs (for external stakeholders). The discussion paper intends to develop a legally sound perspective for a first perimeter delimitation of the concept of PPATs under REMIT and to provide a non-binding customary interpretation of the concept itself. It will remain internal and is intended to help NRAs to classify whether an organisation is a PPAT or not. However, the whole paper should not be published as some aspects relate to the assessment of cases. A separate external communication will be published so participants can have an idea of whether or not they fall into this category. Both documents have been finalised and were uploaded for information.

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

5. Electricity

5.1. Oral update on the FGs and NCs

Mr Hernández provided a presentation on the Framework Guidelines (FGs) and Network Codes (NCs) highlighting only minor changes since the last BoR.

Update on Network Codes, Guidelines – Overview of planning and status

The Capacity Allocation and Congestion Management (CACM) Guidelines were adopted at the end of 2014 and publication in the Official Journal (OJ) is expected in the second quarter of this year. The Forward Capacity Allocation (FCA) Code is currently with the EC. An updated text is expected in April and the vote in the Committee for September. The Requirements for Generators Code is with the EC and is being translated; the vote at the Committee is expected in May. The Demand Connection Code is with the EC under Inter-Service Consultation, with an updated text expected for the end March. The vote is expected in June/July. The High Voltage Demand Connection Code is also with the EC, with an updated text expected for the end of May and vote in August. The OpSec/OPS and Load Frequency Control and Reserves Codes are being finalised by the EC for Comitology with ACER and ENTSO involvement. These are to be combined into one NC by the end of June 2015. On the Emergency and Restoration Code, ENTSO-E is in the process of drafting and will submit this by 31 March. On the Balancing NC, the re-submission was received and ACER is drafting their Opinion and Qualified Recommendation.

Mr Koch highlighted that on the Connection Codes, the EC made a significant investment in smoothing out complaints and concerns with stakeholders and hope that the necessary resources will be attributed to completing the process, which is currently on track.

Update on FCA early implementation: EU HAR

Mr Hernández then presented an update on the “Shadow Opinion” on the draft EU Harmonised Auction Rules (HAR) and related annexes. The EU HAR have been submitted for public consultation until 30 March. The FCA WS strived to provide an informal shadow opinion on the EU HAR and border specific annexes before the end of the public consultation, in order to facilitate future approval of the EU HAR. Agreement was reached at the last BoR meeting that the EU HAR should contain all elements of the FCA NC as submitted by ENTSO-E, which represent an improvement compared to the firmness

provisions currently in place; any step back compared to the current firmness regime would not be approved by NRAs. For the Italian borders, the implementation of the firmness regime specified in the firmness note is subject to the approval of AEEGSI, once their national public consultation process is completed, which is expected by June as noted by Ms Poletti.

5.2. Intraday

Mr Hernández introduced the topic. Two documents were uploaded for endorsement: a note confirming the North-West European cross-border intraday (XBID) project as the basis for the pan-European intraday solution (under the CACM Guidelines) and a statement of principles governing cost recovery for the European XBID project. He noted that developing a single intraday market across Europe is a key element of the electricity target model. The North-West European XBID Project is an early implementation project towards this single European platform and regulators have consistently supported the XBID project and facilitated the recovery of efficiently incurred costs.

On 16 January 2014, NWE+ regulators provided comfort to the Power Exchanges (PXs) and TSOs of the region that efficient costs would be recoverable. Although NWE+ NRAs had expected the project to be delivered before the CACM Guidelines enter into force, we are now expecting the platform to be delivered in late 2017. Therefore, the way the XBID voluntary project and CACM Guidelines implementation interact (the latter expected to enter into force in July) needs to be considered.

On 27 February 2015, NWE+ NRAs received a letter from the XBID project parties providing a budget and asking for confirmation of comfort before they sign the development contract with the platform provider, Deutsche Boerse AG (DBAG), on 1 April. A proposed response to this request letter was uploaded for endorsement by NWE+ NRAs to explain our understanding of the CACM Guidelines and allow the project to move forward.

The key element is that regulators see the current XBID project as the basis of the pan-European solution required by the CACM Guidelines. An approach is, therefore, proposed whereby the voluntary project and the CACM Guidelines come together in a managed way such that all TSOs and NEMOs become involved over time. This approach includes all countries accruing a share of costs from the time CACM enters into force, but costs being funded by NWE+ parties until the time when other TSOs and NEMOs join. Project parties will develop a mechanism to reconcile costs between all parties so that non NWE+ NEMOs and TSOs are retroactively liable for their share of all common costs occurred after CACM entry into force.

In order for the project parties to sign the contract with DBAG, there should be first an explicit recognition by all regulators that the NWE+ XBID project forms the basis of the intraday solution as described in the CACM Guidelines. All NRAs were also asked to confirm the statement of principles governing cost recovery for the European XBID project as above, including the detailed conditions as set out in the letter.

Mr Gence-Creux also added that contract parties had raised an issue on the interpretation of the point when the XBID and CACM projects join; eight months after entry into force of the CACM Guidelines or 14 months after entry into force. In any case, the statement of principles remains valid although the uncertainty on the timing needs to be solved. The Commission, NRAs and project parties, need to clarify this as soon as possible. According to the interpretation of the CACM Guidelines it could be that 14 months (after the proposal is agreed by all NRAs) is the correct date. The same principles apply to both cases.

Lord Mogg reflected that the text could be subject to some changes and a small WG should clarify these points.

Mr Koch mentioned that market coupling has deadlines and that 14 months is in line with the Regulation. The EC endorses the solution which is in line with the CACM process and he emphasised the importance of completing the project as one that is crucial for market design.

Conclusions

Lord Mogg summarised the discussion as follows: We are now in a different situation not least given the entry into force of CACM Guidelines. If we have agreement on the statement of principles (subject to minor modifications to be made at working level) we can give reassurance to the project. He concluded the discussion as follows: The BoR members recognised that the North-West European cross-border intraday (XBID) project forms the basis of the intraday solution of a pan European intraday project, as described in CACM Guidelines, which will result in obligations for all NRAs. The members confirmed, in principle, the statement of principles governing cost recovery for the European cross border intraday (XBID) project (with costs incurred before CACM Guidelines entry into force to be covered by NWE+ parties only, while costs incurred after to be shared by all parties in line with the CACM). However, there are still clarifications to be made including on the point when the XBID and CACM projects join, and whether this occurs 8 months after entry into force or 14 months after entry into force of the CACM Guidelines. These would need to be considered and resolved at working level by the TF. The EC must be firm to support progress on the project. The TF is to be charged with making the modifications on the basis of which the final document will be circulated to all NRAs before agreement.

5.3. Draft ACER Recommendation on Electricity Balancing Network Code

Mr Hernández presented the draft Qualified Recommendation and the main issues regarding the Electricity Balancing Network Code. The Agency is required to submit a Recommendation to the Commission on the adoption of the Electricity Balancing Network Code. It will recommend that the code is adopted subject to significant amendments. As there are many changes, the Qualified Recommendation will contain a main document with an explanation of changes proposed by ACER plus an annex consisting of an amended Network Code with tracked changes. The annex was submitted for an orientation discussion and the draft ACER Recommendation will be submitted for a BoR favourable Opinion in May.

The main points presented for discussion included *inter alia*: the definition of Coordinated Balancing Areas (COBAs) for Regional Integration Models, ENTSO-E is proposing a “bottom-up approach” to define regions based on willingness of TSOs. However, top-down oversight is needed in order to avoid: (i) small regions, (ii) overlapping regions and (iii) risks and barriers for future integration of regions. COBAs need to be large and consistent for different balancing processes. Other crucial points were regarding the targets for imbalance settlement (to apply from July 2019). The need for harmonisation of the calculation of the imbalance price should be based on a single pricing for positive and negative imbalances. Other points included: the implementation deadlines need to be aligned with the Framework Guidelines; three balancing processes are mandatory for all TSOs, which may require significant changes of LFCR NC; on standardisation of products, stronger harmonisation and stricter rules are needed for specific products; in zonal market model, self-dispatching is a standard however central-dispatching may be an exemption for some MSs (Italy, Poland, Greece, Ireland); and, designation of non-essential tasks which can be mandated to third parties are limited to functions which do not require joint regional/European decision making.

It was also considered whether the network code should define a specific framework for aggregators to enable them to compete with retailers in the Demand Response market. Finally, realignment of general articles with the CACM Regulation was also raised for example regulatory approvals, consultations, monitoring, stakeholder involvement, etc.

The EC confirmed that it is planning to start Comitology in early 2016. The annex is currently being consulted with ENTSO-E and stakeholders. ENTSO-E requested ACER to take more time for finalisation of Recommendation. The AEWG proposed not to change the deadlines (ENTSO-E resubmission already in September 2014). The process towards a Qualified Recommendation is that this will be submitted to the BoR on 6 May for its opinion.

Lord Mogg summarised that the Recommendation will come back in May as confirmed by Mr Gence-Creux.

6. Gas

6.1. Oral update on FGs and NCs & other work

Mr Boltz provided his usual update. There are already amendments on codes which are now being discussed. There has also been a meeting with the EC to discuss whether further codes are needed but the priority for the time being is the implementation of existing codes and thus no new codes should start.

Regarding the ENTSOG's amendment proposal on Incremental Capacity, the public consultation on ACER's suggested changes to ENTSOG's proposal received 16 responses. The assessment and evaluation of responses (EoR) is currently ongoing. There was no formal requirement for consultation but the text now reflects a broad agreement. He then referred to the main issues raised by stakeholders. Regarding the timeline, the AGWG endorsement of the final proposal and EoR is expected in April and there will be a short presentation at the Madrid Forum. The BoR will discuss it at its meeting on 6 May.

Regarding the Oil & Gas UK amendment proposal to retain the UK gas day, ACER rejected this request following a public consultation undertaken to which we received 26 replies. The letter was circulated and will also be published. This reflects the first request for amendment received and ACER notes the importance of having a firm process in terms of scrutinising the relevant requests and any non-justified requests would be rejected.

The Director also noted the usefulness of the letter - communicating that the Agency will not propose the Network Code amendment request to the European Commission sent on 18 March 2015 - in creating the right precedent in terms of the process followed as well as the assessment of the justification (and evidence) of the request; the feedback was that the process was much appreciated.

On 19 March an informal Member State meeting on gas network codes was held.

The Madrid Forum agenda has been uploaded for information. Topics include *inter alia*: the Energy Union; Security of Supply; the European gas market design; gas quality harmonisation; network code development work; completing the European internal market; and, progress on market rules implementation and main challenges.

6.2. Draft ACER Opinion on Gas Tariffs Code

Mr Boltz presented the draft ACER Opinion which was tabled for a BoR Opinion. The ACER opinion assessed the alignment of the code with the FGs and points to a significant number of important misalignments. There are many substantive issues which raise concerns. The Agency has serious concerns about the content of the Network Code as submitted as in number of areas it diverges from the policy objectives defined in Regulation (EC) No 715/2009 and in the Framework Guidelines, and provides a lower degree of harmonisation. ACER remains concerned about the level of harmonisation, the potential loopholes in the (scope of the) code and the overall coherence of the (different chapters of the) code.

In parallel, ACER will strive to resolve any outstanding issues so that during the time that ENTSOG will need to resubmit, we will have reached some agreement on a widely acceptable text. We expect shortly the draft revised NC from ENTSOG. On 31 March we expect the submission of the revised NC to ENTSOG Board. On 1 April, an ACER “open-house” event is organised. On 13 April, the AGWG will discuss the ACER Recommendation. The submission of the revised code to ENTSOG General Assembly is expected on 23 April. The ACER Recommendation will be submitted to the ACER BoR in May (or June).

The Director clarified that in the FGs there were two requirements, related to the share of revenues and the definitions of dedicated services. None of these have been met by the draft code and thus we have to make the point.

The EC noted that there was an informal meeting with Member States on 19 March and there is also work on an impact assessment which is ongoing. It is important that NRAs participate and provide input as we all as ACER. There are many open questions, for example in electricity we have created stakeholder committees. Would this be the case in gas as well?

BoR Decision agreed: (D 6)

The BoR provided a favourable opinion (by consensus of the members present or represented) on the draft ACER opinion on the network code on harmonised transmission tariff structures for gas.

7. Implementation, Monitoring and Procedures

7.1. Oral update on IMP WG

Mr Locquet provided an update on the last AIMP WG held on 3 March. The WG discussed the BoR Rules of Procedure following the adoption of the new Col policy. They also discussed the finalised MMR skeleton for this year's report. NRAs are undertaking an exercise to see what additional data could be taken up for future MMRs. On the Peer Reviews, volunteers have been found both for electricity and gas. It was also proposed to carry out a lessons learnt exercise following these first two peer reviews to see whether the procedure can be improved going forward.

8. AOB

Mr Koch informed the BoR members that the next Florence Forum will be held on 4-5 June 2015.