

**49<sup>th</sup> ACER Board of Regulators Meeting**  
**Thursday, 16 July 2015, 09.00-16.00**  
**ILR, 17 rue du Fossé, 1536 Luxembourg**

**Minutes (final)**

Member States	Name <sup>1</sup>	Member States	Name
Austria (E-Control)	M: Walter Boltz (BoR Vice Chair) A: Dietmar Preinstorfer	Italy (AEEGSI)	M: Valeria Termini A: Clara Poletti O: Ilaria Galimberti O: Anna Maggioni
Belgium (CREG)	M: Marrie-Pierre Fauconnier A: Koen Locquet O: Geert Van Hauwermeiren	Latvia (PUC)	Excused
Bulgaria (SEWRC)	Excused	Lithuania (NCC)	M: Inga Žilienė
Croatia (HERA)	M: Tomislav Jureković A: Sonja Tomašić Škevin	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	Excused	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	A: Martina Krcova O: Martin Sik	Netherlands (ACM)	A: Remko Bos O: Elozona Ochu
Denmark (DERA)	O: Sigrún Eyjólfsdóttir	Poland (URE)	O: Malgorzata Kozak O: Rafal Gawin
Estonia (ECA)	Excused	Portugal (ERSE)	O: Jorge Esteves
Finland (EV)	M: Simo Nurmi	Romania (ANRE)	M: Nicolae Havrilet A: Lusine Caracasian
France (CRE)	O: Hélène Gassin O: Sabine Hinz	Slovakia (RONI)	Excused
Germany (BNetzA)	A: Annegret Groebel O: Daniel Müether	Slovenia (AGEN-RS)	A: Jasna Blejc O: Bojan Kuzmic
Greece (RAE)	Excused	Spain (CNMC)	M: Fernando Hernández O: Gema Rico
Hungary (HEA)	A: Attila Nyikos O: Tamás Gyarmati	Sweden (Ei)	M: Anne Vadasz Nilsson
Ireland (CER)	M: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Martin Crouch O: Frances Warburton O: Sarah Bradbury

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

ACER	Alberto Pototschnig, Fay Geitona, Andrew White
European Commission	Olivier Koch
CEER	Natalie McCoy

<b>Main conclusions from the meeting:</b>
1. <i>The BoR noted the outcome of the electronic procedure to adopt the BoR Opinion under Article 16 endorsing the extension of the Director's mandate for a further three years. The Opinion was adopted on 30 June overwhelmingly and duly forwarded to the Administrative Board which formally extended the Director's mandate on 8 July.</i>
2. <i>The BoR approved in principle - by consensus of the members present or represented - the 2016 ACER WP subject to the EC Opinion. The BoR will formally definitively approve the WP at its meeting in September.</i>
3. <i>The BoR provided by majority of the members (present or represented) its favourable opinion on the ACER Recommendation on the ENTSO-E Balancing network code.</i>
4. <i>The BoR held a short discussion on the proposed agenda for the BoR Summit on 15 September 2015. Moderators and Panellists were requested to notify Ms Geitona of their availability as soon as possible. Members were asked to submit any written comments as soon as possible.</i>
5. <i>A draft agenda for the Bridge Anniversary was circulated to the BoR. Save-the-date and registration pages have been launched on the ACER website. The proposed title of the event is: "Bridge to 2025": Delivering the Energy Union". The speakers were invited to confirm their participation as we must also release the programme.</i>
6. <i>The BoR provided by majority of the members (present or represented) its favourable opinion on the ACER Opinion on the ENTSO-E Research and Development Plan for 2016-18.</i>
7. <i>The BoR held an orientation discussion on the draft ACER Opinion on the URE peer review request pertaining to congestion at the German-Austrian border. It was agreed that a BoR favourable Opinion will be sought in September, allowing for some further work to be carried out in light of the BoR orientation discussion.</i>
8. <i>The BoR noted the forthcoming public consultation on proposed amendments, including on incremental capacity, to the CAM NC. The consultation will be open 17 July to 31 August.</i>
9. <i>The BoR held a discussion on the preparation of the ACER Recommendation on the Gas Transmission Tariffs Harmonisation Network Code. It was agreed that the TAR TF should work over the summer to prepare a draft qualified Recommendation that broadly supports the latest ENTSOE NC and tries to accommodate the concerns raised by members of the BoR. The revised draft should develop a complete explanation of the two proposed methodologies including the definition of clearer criteria and guidance as to their application and the circumstances under which derogation could be applied for.</i>
10. <i>The BoR received an update on the REMIT implementation; the compliance with ISO standard 27000 monitoring; the discussions at the last REMIT coordination group meeting; the SMARTS sub-licencing; the market monitoring handbook; and the ACER-CEER workshop on REMIT, 22-23 July in Brussels.</i>

<p>11. NRAs that have still not appointed a representative to the Remit Information Security Implementation Group were named and reminded that a representative must be appointed.</p>
<p>12. The BoR noted that draft regional 2nd PCI lists are expected to be submitted to the Agency in mid-July for electricity and in September for gas. An ACER opinion is due within 3 months from the date of receipt. Members received an update on the latest discussions on the 2nd PCI list selection.</p>
<p>13. The BoR endorsed the publication of the Unit Investment Cost Indicators report, noting the improvements made since the last BoR meeting.</p>
<p>14. The BoR noted that the PCI Monitoring report was adopted and submitted to the EC.</p>
<p>15. Mr Locquet noted to the BoR that the first chapters of the next MMR have been prepared (on Electricity wholesale markets, Gas wholesale markets, and Retail markets). Comments are requested by 10 August and the AIMP WG will discuss those on 24 and 25 August.</p>
<p>16. The BoR agreed to the use of the Electronic Procedure for the BoR opinions on the draft ACER Opinions on the ENTSO-G annual report, summer supply outlook and potentially the ENTSO-E TYNPD.</p>

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

### 1. Opening

Lord Mogg and the ACER Director thanked ILR, Mr Hierzig for hosting the meetings and for the excellent hospitality.

#### 1.1. Approval of the agenda

BoR Decision agreed: (D 1)

*The agenda was approved.*

#### 1.2. Approval of the minutes of the 47<sup>th</sup> BoR meeting

BoR Decision agreed: (D 2)

*The 48<sup>th</sup> BoR minutes were approved.*

## 2. Update from the Commission and the Director

### 2.1. Update on recent developments

#### - EC

Mr Koch (DG ENER) congratulated the Director on the extension of his mandate following the AB decision on 08 July.

#### EC Communication on the electricity market design

Mr Koch informed the Board that, as part of the Energy Union strategy, the Commission presented on 15 July the proposals to deliver a new deal for energy consumers, to launch a redesign of the European electricity market, to update energy efficiency labelling and to revise the EU Emissions Trading System. The package is an important step towards implementing the Energy Union strategy with a forward looking climate change policy, launched as one of the political priorities of the Juncker Commission in February 2015. The Energy Union strategy is designed to help deliver our 2030 climate and energy targets and make sure that the European Union becomes the world leader in renewable energy. Achieving these goals will require a fundamental transformation of Europe's electricity system including the redesign of the European electricity market.

The Public Consultation is launched on what the new electricity market design should look like in order to meet consumers' expectations, facilitate investments, notably in renewables and low carbon generation; it recognises the need for a more coordinated adequacy assessments (with cross-border assessments to be used). The summer package documents are not expected to bring along changes of the magnitude of the third package; however, they will indeed imply changes to the current legislative framework. On the governance arrangements, a number of stakeholders have pushed for an EU Regulator. EC considers that the current regulatory arrangements with close collaboration between ACER and NRAs are more appropriate, whilst with ACER having more competences, having a role in regional cooperation and the power to take decisions on cross-border issues and ensure compliance with such decisions. There might also be a need for integrating entities (PXs) to be subject to regulatory scrutiny.

Mr Koch also updated the Board on the EC consultation on an EU strategy for liquefied natural gas (LNG) and gas storage launched on 08 July. The objective of the consultation is to ask stakeholders for their views on the challenges and opportunities they see for LNG and gas storage in the EU and how these might boost security of supply, competitiveness and sustainability. He encouraged regulators to take part in this and provide feedback.

Lord Mogg referred to the joint press by ACER and CEER welcoming the summer package. He noted that the response by the Energy regulators (on the electricity market design consultation) is being prepared.

Lord Mogg sought some clarifications on what is meant by regionalisation.

Mr Koch referred to the CACM Guidelines which require groups of NRAs to come to an agreement on a number of issues. In this context there will be a role for ACER.

## - ACER

The Director reported on the ACER conference “An energy Union for consumers” which was held on 09 July in Brdo. It was attended by over 185 participants and the opening addresses were given by Vice President Šefčovič and Commissioner Arias Cañete. In his speech VP Šefčovič noted the common ownership of the Energy Union across Member States and other stakeholders and particularly the importance of making sure its objectives stay on the radar of all relevant national and European authorities. With regard to ACER’s role he emphasised three priorities for the EC (1) that it will ensure ACER is able to carry out regulatory functions at the European level, (2) that it will ensure ACER is able to oversee the evolution of the IEM, and (3) that it will ensure that ACER is able to deal with cross-border issues. In his keynotes speech Commissioner Arias Cañete spoke about the positive record of ACER in complementing and coordinating NRAs and its achievements.

On a separate issue, Lord Mogg registered his concerns about the independence of Regulators and a possible threat of erosion of their powers. He would like to convey a strong message to the EC that independence was one of the central features of the third package but seems to be lost. The EC should be seen to take action against any such risk.

The Director updated that since the last BoR, on 12 June ACER launched a public consultation until 10 July 2015 on the proposed methodology for monitoring the impact of the gas network codes on the internal market. We received 9 replies.

On 29 June ACER published its Opinion and Recommendation on the Network Code on Emergency and Restoration.

Also on 29 June, ACER (together with ENTSO-E) launched a call for interest to all stakeholders to participate in the Market European Stakeholder Committee (Market ESC). The deadline is 19 July. The first Market ESC meeting is scheduled to take place on the 29th September 2015 in Brussels.

ACER published (on 19 June) its Opinion on ENTSO-E’s winter outlook and summer review.

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

#### **3.1. BoR Opinion under Article 16 – outcome of the electronic procedure**

Lord Mogg informed the members that the Commission adopted on 18 June its assessment of the Director’s performance and decision on the proposal for the extension of his term, under Article 16 of the ACER Regulation. The Board adopted on 30 June its Opinion concluding that the Director’s abilities, skills, competences and experience in setting up the Agency are highly suitable and appropriate for the challenges faced by the Agency now and in the next years. The Board fully endorsed the Commission’s Recommendation that the work of the Agency and its upcoming duties and requirements fully justify an extension of the mandate of the current Director for a further three years. The ACER Administrative Board then adopted its decision on 8th July to reappoint the Director for a term of three years starting as of 16 September 2015.

Lord Mogg congratulated on behalf of the members the Director on his reappointment for a term of three years.

The Director thanked the members for their trust and confidence and noted the important progress made since the establishment of ACER which would not have been possible

without the cooperative efforts of NRAs and ACER staff and their strong commitment. He is fully committed to the work ahead.

Lord Mogg reported on the detailed results of the electronic procedure for the adoption of the BoR Opinion on the EC assessment under Article 16. Following the first round, the draft Opinion was updated and the Chair circulated a note responding to the comments and explaining how they were taken into account. The second round of the electronic procedure for the BoR Opinion ended on Tuesday 30 June 2015. 24 members participated in the 2nd round: All 24 of those participating voted in favour of the draft BoR Opinion.

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

*The BoR took note of the outcome of the electronic procedure for the adoption of the BoR Opinion under Article 16 by consensus of all the members which have participated in the electronic procedure.*

### 3.2. ACER 2016 work programme

The Director presented the draft Work Programme for 2016. The consultation on the 2016 WP outline was open until 19 June. The outline of the WP was presented to the ITRE Committee on 16 June. Pursuant to the Regulation, on 30 June, the Director submitted the draft 2016 WP to the EP, EC and the BoR.

Many of the activities which the Agency is planning to perform over the next three years are instrumental to achieve the objectives of the Energy Union strategy. The specific activities which the Agency is planning to perform are developed on the assumption that the Agency will be assigned the resources required. Should these additional resources not be assigned to the Agency, this Work Programme will have to be revised in line with the level of resources actually available. In substance, the WP is focuses on four main areas consistently with the current WP:

- The (Post-2014) Completion of the Internal Energy Market;
- The Infrastructure Challenge;
- The monitoring of wholesale energy markets;
- The longer-term regulatory challenges.

In electricity, the focus over the next few years will be on the implementation of all the Network Codes and on the assessment of whether and how the Electricity Target Model could be improved or refined to meet the impending challenges. The Agency will put particular emphasis on the finalisation of the implementation of the Target Model in the area of Capacity Allocation and Congestion Management and on the integration of the Balancing markets. In gas, no new Framework Guidelines are expected to be put forward for development. The focus will thus shift to implementation and monitoring. The WP also outlines activities for REMIT, infrastructure and future challenges. Evidently in 2015 REMIT represents the key challenge.

Regarding the process, Lord Mogg explained that the BoR must approve the work programme of the Agency for the coming year and must present it by 1 September for adoption by the Administrative Board. He suggested that the WP is agreed in principle, given the EC opinion is pending.

Mr Koch informed the BoR that the draft EC Opinion is in the pipeline for adoption and the EC hopes to be able to adopt it soon, but the exact timetable is unknown. The EC

appreciates the emphasis placed on the monitoring of the implementation of codes. Mr Koch noted, however, some differences in gas and electricity in this area. He is concerned that implementation could not happen because of resource constraints. He invited ACER to shift resources from reporting to implementation which is key, where necessary.

BoR Decision agreed: (D 4)

*The BoR approved in principle - by consensus (of the members present or represented) - the 2016 ACER WP subject to the EC Opinion. The BoR will formally approve definitively the WP at its meeting in September.*

3.3. BoR Summit: Cover note, agenda and orientation paper

Lord Mogg introduced the set of papers distributed (a cover note, an orientation paper and a draft agenda).

The theme of the Summit is the 'Cooperation and Coordination of NRAs within the ACER Framework'. The attendance for the day is proposed to be the BoR Members/ Alternates, the Agency Director and the BoR Secretary.

He explained that following today's orientation discussion, the orientation paper will be finalised in the light of the discussion and be distributed along with a background paper recording key points from previous discussions as indicated in the cover note.

Three sessions are proposed:

- 1) A review of NRA cooperation to-date within the ACER framework.
- 2) Discussion of the evolving work of ACER under the current and potential future ACER's mandate– impact on the role of the BoR.
- 3) Conclusions – How best to enhance cooperation between NRAs and ACER to best meet present and future challenges.

The four AWG Chairs are suggested as panellists for the session 1 (dedicated to the review of NRA cooperation). The starting point for the session is the outcome of the BoR earlier discussions including on the Hilbrecht report (notably on the performance of ACER's regulatory activities), the BoR Recommendations on the first EC evaluation of ACER; and the ACER away day discussions in Bled.

Under sessions 2 and 3, NRAs from different regions are suggested as panel members in order to help gather prepared input from as wide a representation of NRAs as possible. The AWGs chairs could also cover (briefly) suggestions that could be used for Sessions 2 and 3: e.g. how might the lessons learned apply to ACER's evolving work and role in order to ensure continuity.

At the October BoR it is proposed to capture and report the key points of our discussion and conclusions of the Summit. The Chair reported on the successful CEER away day and invited members to volunteer to take part in the discussions. He reiterated how much the success of the Summit will rely on the good preparation.

Lord Mogg thanked members for their feedback and invited all to make suggestions (including on the orientation paper) in the coming days. Moderators and Panellists should confirm their availability shortly to Ms Fay Geitona.

Mr Koch reported that the EC is organising a conference on the Electricity Market Design consultation on 25 September in Brussels.

#### 3.4. Bridge Anniversary event, 24 September

A draft agenda for the Bridge Anniversary was circulated to the BoR. Save-the-date and registration pages have been launched on the ACER website. The proposed title of the event is: "Bridge to 2025": Delivering the Energy Union".

Ms Geitona asked the speakers to confirm their participation as we must also release the programme.

### **Completion of the Internal Energy Market**

#### **Update on FGs and Network Codes**

#### **4. Electricity**

##### 4.1. Update on FG and Codes

Mr Hernandez updated the BoR members on the progress of the NCs. Two NCs (RfG and CACM) have been approved in Comitology and are undergoing the ratification process. Once ratified they will be published in the Official Journal. Three NCs (FCA, DCC and HVDC) are currently in comitology with votes due in July for HVDC and September for the DCC and FCA. Three codes are expected to enter into comitology shortly having been recommended by ACER (OS, OPS and LFCR). The emergency and restoration NC (the BoR provided its favourable opinion on the Agency's opinion and recommendation at the June) will be discussed at the EC trilaterals ahead of going into comitology. The final code is on electricity balancing – the qualified recommendation on this NC was discussed under item 4.2 at this BoR.

Mr Hernandez presented on the Forward Capacity Allocation (FCA) NC. He noted that the FCA NC entered Comitology in June. He alerted the BoR members that the version submitted differs from ACER's Recommendation in two key respects:

1. It includes a cap for compensation equal to all congestion rent collected by one particular TSO (instead of per border). This leads to: subsidies across borders/TSOs; Distorted bidding strategies in auctions; and unclear situations such as when one TSO in a common bidding zone reaches its cap, but another in the same zone does not.
2. The Long-Term Firmness Deadline concept is deleted. This goes against the improvement of the firmness regime close to real time (i.e. when market participants have little time to react).

Mr Hernandez informed the members that the TSOs involved in the early implementation project have submitted the Harmonised Allocation Rules for approval. NRAs are invited to approve the rules. Mr Hernandez noted that the version submitted for approval is the same as the one seen by NRAs previously. Mr Hernandez reminded the members that TSOs need the rules and annexes approved by September (October at the latest) in order for early implementation to proceed as planned with the organisation of auctions for 2016.

Mr Hernandez reminded the BoR that Ofgem is stepping down from its role coordinating the XBID project – the cross-border intra-day market coupling project. The Director echoed Mr Hernandez and Mr Boltz, noting that the XBID project is now reaching an exciting stage in the implementation of intra-day market coupling. The EC hope to encourage the project team to have the cross-border intraday market operating by Spring 2017. The Director noted that this is an important project and one that should be coordinated by an EU NRA.

Mr Blaney provided an update on the progress of the work on flexibility. In particular, he noted that work is still needed to make sure flexibility is properly coordinated across the working groups (and task forces). He noted that there is still a lot of work to be done in this area and it needs to be kept on the agenda of all the relevant parties. Lord Mogg noted that the CEER Away-Day discussion about the structure and arrangements of the CWGs/AWGs might have some impact on how best to ensure a coordinated approach to flexibility. For example, he suggested that the (CEER) WG structure may need to be adapted to better accommodate the cross-cutting nature of the work needed on flexibility.

#### 4.2. ACER Recommendation on the ENTSO-E Balancing NC

The Director noted that he indicated at the June BoR his intention to resubmit the same version of the qualified Recommendation as the one which was submitted for the second round of the electronic procedure. He reiterated that the (qualified) Recommendation presented to the BoR for its opinion aligns with position developed in the AEWG on the length of ISP and the number of CoBAs. However, the Director noted that the Agency cannot support a Recommendation which allows a second implementation derogation because of the delay this would allow on the implementation of balancing harmonisation. The Director explained that he had not proposed another electronic procedure because the urgency that had existed in June, in order to present the Recommendation at the Florence Forum, no longer exists because the EC has stated that the code will not be taken to comitology until next year. Therefore, the Director preferred to bring the qualified Recommendation to the July meeting to have the opportunity for a proper discussion, if needed.

Lord Mogg called a vote to provide a BoR opinion on the proposed Recommendation. Twenty two members of the BoR were present. Two voted against (CRE and EMV), four abstained (OFGEM, URE, ANRE and CREG) and sixteen voted in favour.

#### BoR Decision agreed: (D 5)

*The BoR provided by majority of the members (present or represented) its favourable opinion on the ACER Recommendation on the ENTSO-E Balancing network code.*

#### 4.3. Draft opinion on ENTSO-E R&D plan

The Director presented the draft ACER Opinion on the ENTSO-E research and development plan. He informed the BoR members that, ENTSO-E published its Research and Development Implementation Plan for 2016-2018 and the plan was submitted to the Agency for its opinion. The draft ACER Opinion was submitted for a BoR formal Opinion.

The Director explained that the plan focuses on four topics: Fast storage technologies; tools to provide advanced methods of improving system security in real time; tools for monitoring the life status of individual components; and Load control mechanisms and ancillary services at TSO and DSO level to allow demand side management.

The Director noted that overall the Agency considered the R&D plan to meet its objectives of non-discrimination, effective competition and the efficient and safe functioning of the internal market in electricity. However, the draft Opinion suggests a number of areas where there may be some improvements. These include *inter alia*: the need for annual monitoring of R&D projects' development to facilitate potential annual adjustments of the related Implementation Plan; that ENTSO-E provides a clear explanation on all R&D topics regarding their benefit; monitoring should not stop with the publication of the results of each R&D project; ENTSO-E should provide concrete information on the methodology for defining and updating the R&D priorities, specifically on which suggestions were provided by stakeholders and how they were taken into account by ENTSO-E.

The Agency notes ENTSO-E's concern that few NRAs provide a specific framework for the costs of R&D and will investigate it further.

Mr Hernandez noted that the Opinion was presented to the AEWG and the Working Group members support the ACER Opinion. He informed the BoR that the AEWG members had particularly emphasised the need for future plans to better clarify how projects are selected and the need to ensure that there is an ongoing monitoring process of projects and implementation of learning.

BoR Decision agreed: (D 6)

*The BoR provided by consensus of the members (present or represented) its favourable opinion on the ACER Opinion on the ENTSO-E research and development plan.*

4.4. ACER draft opinion – URE Peer review request

The Director presented the draft Opinion on the peer review request submitted by URE pursuant to Article 7(4) of Regulation (EC) No 713/2009, on the compliance of decisions by AGEN-RS, E-Control, MEKH and URSO – the NRAs for Slovenia, Austria, Hungary and Slovakia respectively - approving methods of allocation of cross-border transmission capacity in the CEE region with Regulation (EC) No 714/2009. The question was whether the absence of a capacity allocation procedure on the German-Austrian border is compliant with Regulation (EC) No 714/2009 and its Guidelines.

He then presented the key findings from ACER analysis and some recommendations.

Mr Locquet presented the peer review request from the perspective of the AIMP WG and the process followed.

Mr Boltz presented E-Control's view on the proposed Opinion.

On the basis of the issues identified, Mr Boltz proposed that the Opinion should be brought to the September BoR rather submitted to the BoR electronic procedure.

On the basis of the discussion, Lord Mogg informed the members that he would not propose an electronic procedure due to the obvious complexity and sensitivity of this Opinion. He noted that this would provide time to analyse the issues more. Lord Mogg also noted that Mr Locquet and the AIMP Working Group could continue to work on the issues raised in the discussion.

Lord Mogg noted that the next stage of this Opinion will be to decide whether to give the favourable opinion of the BoR. He said that this would not include a restatement of positions

given the extensive discussion already held at this BoR meeting. He, therefore, encouraged those concerned to engage in the work ahead.

Lord Mogg informed the BoR that Mr Crouch is stepping down from the BoR and wished Mr Crouch luck in future endeavours.

## **5. Gas**

### **5.1. Update on FGs, NCs and other work**

Mr Boltz presented an update on the implementation of the gas target model (GTM). He explained that there is a two-phase self-assessment. Phase one will last until the end of 2015. In this phase NRAs will assess the current state of wholesale market functioning, identify and describe the key drivers towards improved wholesale market functioning, assess the expected state of wholesale market functioning in 2017 and consult stakeholders. The second phase will begin in 2016. In this phase, NRAs will identify and describe potential structural market reforms and consult stakeholder on their proposals. A template for the self-assessment has been prepared and discussed at the GTM task force and can be used as the basis for the self-assessments. Mr Boltz explained that, ideally, the results of the first phase of the assessment will be ready to present at the next Madrid Forum.

Mr Boltz also presented the progress of implementation projects. Two projects are complete (Austria West and Germany NCG and PEG Sud and TIGF); one project is at an advanced stage (Belgium and Luxembourg). A further six projects are under evaluation.

Mr Boltz updated the members on the current status and next steps of the network codes. Three network codes are already adopted and published and awaiting entry into force: CAM on 1 November 2015, BAL on 1 October 2015 and IO on 1 May 2016. On the TAR NC ACER provided its Reasoned Opinion in March.

Mr Boltz reminded members that the CAM NC calls for a small number of booking platforms and noted that it is not always clear what happens when trades occur across areas using different booking platforms. He suggested that it is likely that the issue will come to ACER at some point in the future.

A group of NRAs and other interested parties have co-sponsored a study to look into this issue. Mr Boltz notified the BoR that Baringa has been selected to perform the study. Baringa will present interim results on 4 August in Vienna. The report will be finalised by the end of August. Mr Boltz asked for NRAs help in making sure that TSOs respond to the consultant's questionnaire to ensure that the study take all relevant information and data into account.

Mr Boltz explained that there are some outstanding legal questions that have been referred to the legal TF for analysis.

Last he provided an update on the preparations of the Balancing Monitoring Report. A survey opened on 1 July and it was extended to 31 July. A preliminary draft report and identification of key outcomes are expected in August. He invited members to engage early with their TSO to complete the questionnaire as there are.

## 5.2. Update on incremental capacity – preparation for summer public consultation

Mr Boltz reminded members that there are a number of proposed amendments to the CAM NC. He informed them that a public consultation will run from 17 July to 31 August 2015. The plan envisages that the final amendments will be brought to the BoR on 16 September for discussion and endorsement so that it may be sent to the EC at the start of October and presented to the Madrid Forum on 14-15 October.

Mr Boltz presented on the key elements of the amendment proposal, highlighting the new chapter covering “Demand assessment”, “Design Phase”, “Auctioning of incremental capacity” and “Principles of alternative capacity allocation mechanism”. He also presented the CAM task force’s new proposed process for incremental capacity projects. Mr Boltz also highlighted a number of other technical amendments. These are detailed in the slides available in the meeting folder.

Members took note of the proposals to be submitted to consultation.

## 5.3. Preparation of the ACER Recommendation on tariffs

Mr Boltz presented on the preparation of the ACER Recommendation on the harmonisation of gas transmission tariffs. He reminded the members of the process that has been followed. In March, ACER published its Reasoned Opinion. A high-level meeting between ACER, ENTSO-G and the EC took place on 7 May and 23 June to address the main issues that remained open. A small drafting team was convened to put the high-level agreement into a document. Mr Boltz clarified that the AGWG and TAR task force were informed about the discussions on a regular basis.

Mr Boltz informed the BoR that agreed solutions have been implemented in the (revised) NC by ENTSO-G. These include a range of issues, most notably on the reduced number of options for cost allocation methodology to just Capacity Weighted Distance and Postage Stamp. The revised NC has been approved by the ENTSO-G Board and the final version is expected to be submitted soon after to the ENTSO-G General Assembly meeting.

The Commission is now reasonably happy with the outcome.

Mr Boltz noted that the AGWG had had the opportunity to discuss the updated NC and a number of issues were raised, including on the number of reference price methodologies.

Mr Boltz reminded the BoR members that the purpose of the high-level cooperation between the EC, ENTSG and ACER was to arrive at an unqualified recommendation that would facilitate discussions in Comitology. Nevertheless, options for BoR at the September meeting are to give an unqualified recommendation, a qualified recommendation or to reject the revised NC. Mr Boltz explained that the drafting of the ACER Opinion and Recommendation is planned for AGWG endorsement on 10 September with a view to seeking the BoR opinion on 16 September. The NC would then enter comitology late in 2015/ early 2016. We have seen the first draft of EC IA and provided comments. If this time line is followed, the TAR NC could be presented to the October Madrid Forum.

The Director supported Mr Boltz’s description of the technical issues and the process. He noted that many attempts have been made to arrive at a NC that could be submitted for comitology with the support of the EC, the Agency and ENTSG. He also noted that a lot of effort has gone into finding the compromise and it is probably as good as it can be.

Lord Mogg reminded the members that we need to make sure that we make a positive contribution to the debate and that the EC may consider a qualified recommendation as a disappointing outcome given the efforts of the high-level group and drafting team to find a mutually acceptable solution. If a qualified Recommendation raises issues which takes us to the stage before the compromise was reached it would in practice mean rejection of the code.

The Director noted that the question of a qualified Recommendation is what the conditions would be. At this stage he does not see that many issues could be changed. He suggested that this is a policy or strategic question not a technical one and, therefore, he is not sure what could be the issues for the task force to address, not least as ACER is not entering into any legal analysis which would be undertaken by the EC.

Mr Boltz suggested that a way forward may be to include clearer guidance on where alternative methodologies would be acceptable as a derogation. He offered the view that strategically a rejection and a qualified recommendation which states there should be 4 methodologies amount to much the same.

The preparation of the ACER Recommendation on Tariffs was discussed by the BoR.

Lord Mogg concluded that the AGWG should make every effort to resolve the outstanding issues on methodologies to allow subsequent agreement based on the ENTSOG revised code. He emphasised that the risk that failure to find such consent would leave the Commission to pursue in comitology its own approach without regulatory comments resulting in significant damage to ACER's reputation. In seeking such agreement the AGWG should develop as positively as possible a complete explanation of the two proposed methodologies including the definition of clearer criteria and guidance as to their application and the circumstances under which derogation could be applied for. The group should also review the outstanding less strategically important issues without reopening any agreed strategic position. Lord Mogg emphasised the importance of rapid and constructive discussions during the coming weeks to allow final agreement of the BoR.

## **Market Monitoring**

### **6. Market Integrity and Transparency**

#### **6.1. REMIT implementation update**

The Director presented an update on the following issues: The key elements of the implementation phase (development and deployment of IT to be completed within 15 months of the Implementing Acts) and the operational phase (collection and screening of data and notification of potential abuses to NRA/ competent authorities, starting with the entry into force of the Implementing Acts).

The Director reiterated the call for short-term NRA experts. NRAs were invited to propose candidates by 31 July 2015.

The Director also referred to the discussions on the potential amendment of the Agency Decision No 1/2012 on market participants registration format. The Agency presented the possibility for an amendment of the Agency Decision to modify the registration format in order to allow for the identification of multiple EIC codes and to make the identification mandatory, but there was no appetite for such amendment on the side of NRA

representatives and the solution will therefore not be pursued any further in 2015. Since the mapping of EIC codes is crucial for data sharing which implies data filtering per country based on EIC codes, the Agency will continue its efforts with ENTSO-E on the mapping of EIC codes and countries. The Director reiterated its request to NRAs to approach Local Issuing Officers for their EIC codes and their mapping of codes at national level and provide the info to ENTSO-E.

Regarding ARIS' Tier 1 and 2 - the Data Collection Solution. Currently, ARIS production release 2.1 is underway as part of the second phase of data collection. The ARIS Central Service Desk has been operational since 2014 – 794 tickets have been dealt with already since 1 January 2015.

As of 7 July 2015, more than 450 additional RRM's were being processed. With a list of 29 pre-registered RRM's already published.

On ARIS Tier 4 – Data Sharing Solution, the pilot project has ended. There are two remaining phases and two test sessions remaining. Discussions on remaining open policy issues are continuing.

- *Implementation and customisation of market monitoring solution*

Regarding the SMARTS Delivery to ACER, phase one was launched on 1 June. It includes data gateways to collect data from ARIS Tier 2, customised SMART interface for the energy sector, ACER initial selections of alerts and reports, data validation tools and a new auction analyser module. Phase two is due to be launched in December 2015. It will include data gateways (for contract and fundamental data), new fundamental data viewer module and enhanced alerts and report (incl. further bespoke reporting and training on Alice development language). It seems that a regional assessment centre will only require one sub-licence if there is only one location. It is for us to decide what would be the geographical scope.

The case management tool is currently under development. User training is due in October, the User agreement is due in October/ November and the tool is due to go live on 30 November.

5 NRAs sent Letters of Intent to the Agency by 1 July 2015 to indicate their interest to sub-licence SMARTS, 1 NRA indicated its ongoing interest after the expiry of the deadline.

Market monitoring activities: As of 30 June 2015, 20 potential REMIT breach cases have been reported to/ by the Agency since the beginning of the year (this compares to 33 for the whole of 2014, and 22 over 2012 and 2013 combined).

## 6.2. Compliance with ISO standard 27000 monitoring

The Director and Ms Groebel presented the latest updates. A second draft of the terms of reference of the new REMIT Information Security Implementation Group (RISIG) was prepared and discussed at the AMIT WG on 16 June and was circulated for info. The new group will be a standing committee under the REMIT Coordination Group, chaired by an ACER representative and meeting every month. The purpose of the REMIT ISIG is to establish a common set of activities aimed at enabling sufficient and credible monitoring of NRAs' compliance with the ACER REMIT Information security policy (based on ISO standard 27000). NRAs have been asked to nominate at least one senior expert (e.g. NRA information security officer) as a member to participate. On the timeline, it seems that the

new Group would need to start working immediately so that requirements for NRAs are clear and that they would be submitted for the group in time for 7 October. The first meeting was planned for 15 July in Brussels. She also raised the case of the regulator of Slovakia who had informed that they would not appoint their representative. They had to find a solution because they are bound by the REMIT obligations.

### 6.3. REMIT coordination group

The second meeting of the REMIT coordination group (CG) was held on 23 and 24 June in Ljubljana. The discussions at the 2nd REMIT CG included: The organisational set-up and sub-groups of the REMIT CG (e.g. RISIG (for compliance monitoring with the REMIT IT Security) and Market Data Reporting Standing Committee (for *inter alia* data quality monitoring). The Group discussed market monitoring strategies across markets and on the basis of markets sizes / liquidities, fundamentals, etc. A "Target Model" is being developed during summer for discussion in the 3<sup>rd</sup> REMIT CG meeting in September. Other issues included an overview of trends in liquidity and prices of wholesale energy markets in the EU; the planning for the start of transaction reporting in October 2015 and April 2016 and an update on state of play of SMARTS implementation and discussion of SMARTS sub-licensing possibility.

The Director Decision establishing the REMIT Coordination Group is circulated for information. Notably, this stipulates that decisions are taken by consensus.

### 6.4. Update on SMARTS sub-licencing

See 6.1.

Five NRAs have formally submitted letters of intent to purchase a sublicense: Ofgem, ERV, ACM, EI and EV. One indicated its interest after the deadline. EI and EV have indicated that they would like to explore a regional solution. NASDAQ OMX indicated orally that regional sub-licences should be possible as long as they are used in a single location and we are awaiting their written confirmation.

### 6.5. Update on market monitoring handbook

The Director reported that the handbook is being updated on Article 8 (data reporting issues on enforcement process) Article 9 (registration) and Article 15 (PPATS STR obligation).

### 6.6. Update on NRAs Q&A sessions on REMIT and CEER-ACER workshop on REMIT, 22-23 July

Ms Groebel reported that on 29 May, ACER published the 6th Edition of the REMIT Question and Answers document. The document contains a summary of the frequently asked questions about Regulation (EU) 1227/2011 on REMIT and the Agency's answers to them. The document covers a range of topics including; REMIT definitions; the role of ACER; obligations and prohibitions for market participants; other background information, RRM; transaction reporting; fundamental data reporting; organised market places; standard contracts; inside information. Subsequently, further Q&A sessions for NRAs have been held on 17-18 June via teleconference and in person on 12 June.

An ACER-CEER workshop on REMIT is planned for 22-23 July in Brussels and a draft agenda is circulated. The workshop is part of the preparations for the start of market reporting on 7 October. The workshop will be for experts from NRAs. NRAs were welcome to submit topics they would like to address.

Ms Groebel noted the importance for all NRAs to be represented at this workshop for which registration is still open. REMIT raises obligations for all countries and any weakness in one market can prove detrimental for the others. She expressed her thanks to the ACER colleagues and NRAs for contributing to the workshop as speakers.

Mr Boltz assumed chairmanship for the following items.

## **7. Infrastructure Challenge**

### **7.1. Update on 2nd PCI process - preparation of NRAs and ACER**

The Director made a presentation. A very short time was allowed for NRAs assessment and the cost data / list of candidate PCIs were only forwarded to ACER/NRAs by June 11th. With regard to the results of the 2nd step checklist for electricity: 103 checklists were submitted for 87 eligible and 9 non-eligible candidate PCIs. NRAs expressed their objection to the inclusion of 7 projects in the final PCI Regional list, and in 3 cases they expressed divergent views. The electricity Regional Group meetings were held on June 25th -26th. At the Decision-Making Body meeting at technical level (July 3rd) NRAs were invited to present their assessment (mainly their objections or divergent views). The EC announced that due to the manageable number of candidate projects, they intend to propose the inclusion of all candidate PCIs, except for those which failed one eligibility criterion or for which a formal objection from one Member State was received. On the gas PCIs, a coordinated NRA assessment was held based on preliminary identification of a) concerned NRAs, b) PS-CBA data submissions, c) initial objections to the projects. The EC urged Project Promoters to provide the missing data to the concerned NRAs. Regarding the next steps, the draft regional lists are expected to be submitted to the Agency in mid-July for electricity and in September for gas. An ACER opinion is due within 3 months from the date of receipt, according to the Regulation. A draft Table of Contents (coordinated in gas and electricity) and the key messages of the opinion were discussed on the joint INF / GI TF meeting of July 9th. The final deadline will be dependent on the official submission of the draft PCI lists by the EC. The next (last) Gas Regional Group meetings were postponed to September. At the next RG meetings, the final JRC methodology has to be presented and adopted and NRAs have to present their assessments. The JRC assessment results (rankings) have to be presented, discussed, and used as a support to selection process in combination with NRAs' assessments.

Mr Boltz also shared the concerns raised in the presentation on the process for the selection of the 2<sup>nd</sup> PCI list. He noted that we would need to capture improvement suggestions towards the end of the year on the basis of lessons learned.

### **7.2. Report on unit investment cost indicators and corresponding reference values for electricity and gas infrastructure**

The Director presented the report. The AGWG reviewed the report on 8 July. The joint infrastructure Task Force discussed the report again on 9 July and agreed a solution to the outstanding concerns.

- LNG indicators will be provided in the report;
- UGS only for the depleted fields (need to recalculate) in an Annex only as historic values for information
- Gas structure would be more aligned with electricity.

The Director clarified that the report reflects an obligation by NRAs cooperating in the framework of the Agency to establish and make publicly available a set of indicators and corresponding reference values for the comparison of unit investment costs for comparable projects of the gas and electricity infrastructure. This is reflected in the WP. This is, therefore, a “NRAs’ report” but which is released under an ACER logo.

Mr Boltz noted that the current format and text of the report is acceptable to all the AGWG members and it is now ready to be released. We could also consider a data collection power of NRAs to overcome issues with collecting data from TSOs for future exercise of this kind.

#### BoR Decision agreed: (D 7)

*The members endorsed the release of the report.*

#### 7.3. PCI monitoring report

The Director reported that a discussion and presentation of the report was held at the last BoR. The report was adopted and submitted to the EC on 30 June 2015, so the report was circulated for information. The Commission has requested some further information in annexes. These are being prepared.

The reports main findings are extremely interesting and include *inter alia* the following: Several PCIs are either not included in any National Development Plans or are mentioned only in the development plans of some of the involved Member States. For both the electricity and gas lists, half the projects are more advanced (i.e. have started the permitting process), and, therefore, can be considered as “projects on the way”. Slightly more than half of the PCIs are behind the original schedule as planned in 2012/2013. Permit granting issues are cited both by gas and electricity promoters as one of the major drivers for delays. Approximately 20% of the promoters in both gas and in electricity either did not provide information about the works performed since the adoption of the first PCI list or indicated that it is non-applicable. This casts doubts over the ambitions and the relevance of these projects on the current or on the upcoming lists. Under the current schedules, a “project commissioning peak” will occur in the years 2019 and 2020 for both gas and electricity when more than 30 PCIs are expected to be commissioned in each sector during these two years.

Mr Boltz noted that there is a question likely to be asked on whether the PCI process has achieved its goal of speeding up implementation of infrastructure projects.

#### 7.4. Note on the draft report by MEP Eriksson on 10% electricity interconnection target

Mr Müether presented the note which captures some key messages related to the EP own initiative report on the 10% Interconnection target. He clarified that the ITRE Committee will discuss the draft report on 15 September and the deadline for tabling amendments has been set for 23 July. The vote in ITRE Committee is scheduled for 13 October and the Plenary vote is planned for 23 November. The INF TF considered that while there is no need to suggest specific amendments to the draft report, the position outlined in the note could be brought to the attention of the rapporteur. This raises a number of issues.

The Director noted that in substance he agrees with the issues raised. He has also been approached by MEPs and has provided his informal input and there might also be other opportunities to informally input. We could further develop and capture such suggestions in the forthcoming ACER Opinion on the 2<sup>nd</sup> PCI list. In his view this would be the “formal” way to record such concerns.

Ms Geitona informed about an exchange between Ms Sikow and Lord Mogg. The EC raised in a response to a CEER letter that the 15% target was not meant to be a one-size-fits-all approach, but be subject to qualifications, including a CBA. The upcoming Energy Infrastructure Forum tentatively set on 9-10 November would be a good opportunity to further debate the best approach and seek improvements on the basis of the lessons learned.

Mr Boltz agreed that whilst the issues raised in the note are well identified, there are more issues and areas for improvement. We need thus to deepen our analysis on the lessons learned and make more coherent proposals to the EC on possible improvements. He thus suggested that the Director in coordination with the INF TF continue to coordinate and provide, where necessary, informal input in the EP discussions but, in parallel, we develop a more coherent and full position based on the lessons learned on the whole process and governance improvements by the end of the year ahead of the next Infrastructure Forum.

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

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

Mr Locquet provided the usual update – the AMIT WG met on 24 June. The AIMP chair has received by the ACER colleagues the first chapters of the next MMR on:

- Electricity wholesale markets
- Gas wholesale markets
- Retail markets

Comments are asked by 10 August and the WG will discuss those on 24 and 25 August.

## **AOB**

The Director noted that there are 2-3 draft ACER opinions on the ENTSO-G annual report, summer supply outlook and potentially the ENTSO-E TYNPD for which the BoR Opinion could be sought through Electronic Procedure as the next BoR will likely to be very late.

### **BoR Decision agreed: (D 8)**

*The BoR agreed to the use of the Electronic Procedure for the BoR opinions on the draft ACER Opinions on the ENTSO-G annual report, summer supply outlook and potentially the ENTSO-E TYNPD.*