

**53<sup>rd</sup> ACER Board of Regulators Meeting**  
**Wednesday, 16 December 2015, 09.00-16.00**  
**ACER, Trg Republike 3, 1000 Ljubljana**

**Minutes (final)**

| Member States        | Name <sup>1</sup>   | Member States          | Name  |
|----------------------|---|------------------------|---|
| Austria (E-Control)  | A: Dietmar Preinstorfer   | Italy (AEEGSI)         | O: Ilaria Galimberti  |
| Belgium (CREG)       | M: Marie-Pierre Fauconnier<br>O: G.Van Hauwermeiren             | Latvia (PUC)           | O: Lija Makare  |
| Bulgaria (EWRC)      | O: S.Todorova      Excused                                      | Lithuania (NCC)        | M: Inga Žilienė   |
| Croatia (HERA)       | M: Tomislav Jureković<br>A: Sonja Tomašić-                      | Luxemburg (ILR)        | M: Camille Hierzig  |
| Cyprus (CERA)        | M: Andreas Poullikkas<br>A: Alkis Philippou                     | Malta ( REWS)          | Excused   |
| Czech Republic (ERO) | A: Martina Krcova<br>O: Martin Sik                              | Netherlands (ACM)      | O: Maarten Klijn  |
| Denmark (DERA)       | O: Henrik Gommesen  | Poland (URE)           | A: Malgorzata Kozak   |
| Estonia (ECA)        | O: Tiina Maldre   | Portugal (ERSE)        | O: Artur Trindade   |
| Finland (EV)         | M: Simo Nurmi   | Romania (ANRE)         | A: Lusine Caracasian  |
| France (CRE)         | A: Hélène Gassin<br>O: Amélie Gravier<br>O: Patricia de Suzzoni | Slovakia (RONI)        | Excused   |
| Germany (BNetzA)     | A: Annegret Groebel<br>O: Martin Mueller                        | Slovenia (AGEN-RS)     | M: Bojan Kuzmic   |
| Greece (RAE)         | M: Michael Thomadakis<br>A: Nektaria Karakatsani                | Spain (CNMC)           | M: Fernando Hernández   |
| Hungary (HEA)        | A: Attila Nyikos<br>O: Adam Krinszki                            | Sweden (Ei)            | M: Anne Vadasz Nilson<br>A: Caroline Törnqvist                  |
| Ireland (CER)        | M: Garrett Blaney   | United Kingdom (Ofgem) | M: John Mogg (BoR Chair)<br>O: Mark Copley<br>O: Sarah Bradbury |

|                     |  |
|---------------------|--|
| ACER                | Alberto Pototschnig, Fay Geitona, Andrew White,<br>Dennis Hesselning, Volker Zuleger |
| European Commission | Oliver Koch  |
| CEER                | Natalie McCoy  |

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

**MEETING CONCLUSIONS SUMMARY**

1. *The agenda was approved and the minutes of the 52<sup>nd</sup> BoR meeting were approved.*
2. *The EC updated the BoR on:*
  - *the Energy Union state of play report and the related initiatives (new Energy Market Design initiative consultation).*
  - *The winter package is expected for adoption by the EC on 10 February. The EC will inform the BoR on their draft proposals ahead of their public release.*
3. *The BoR received an update from the Director on recent developments, including recent publications and events.*
4. *The Director informed the BoR members of the next steps on the annual review of the Col policy. All members and alternates need to submit the Dol and CV by 31 January to the BoR Secretary (in accordance with the ACER Col Policy).*
5. *The Director informed the BoR about a new investment request received regarding the Paldiski LNG terminal on which the NRAs concerned did not reach an agreement during the 6-month period.*
6. *Regarding the 2016 budget, the Budgetary Authority assigned 15 additional posts to ACER, as well as the corresponding appropriations.*
7. *The BoR discussed the work resulting from the Summit and the Chair reported on the 2<sup>nd</sup> Process Group which was held on 15 December. Members had been invited to provide comments regarding the proposals under Strand A, axis 2 (guidance) within the next week. The co-leaders of axis 2 of strand A will elaborate in more detail their proposals on improving internal cooperation. Under strand B the actions were in principle welcomed and enriched.*
8. *The BoR discussed the preliminary draft work programme section of the draft single programming document (SPD) for 2017. Members notably raised concerns about page 16 on risks and considered that the requirement of the BoR favourable Opinion reflects the legislative process and thus cannot be categorised as a “risk”. Following the BoR feedback, the Director will finalise the SPD and circulate it to the BoR for endorsement.*
9. *The BoR noted the (near) final draft of the Regional Initiatives Status Review Report. Members were invited to provide any final comments by 18 December. The report will be finalised and published in January 2016.*
10. *The BoR took note of the Guidelines for cooperation between ACER and ENTSOG for the joint functionality process for gas network codes. The Members in principle welcomed this useful tool and initiative but raised concerns about the governance and the respective roles and responsibilities. The Guidelines will be further developed in line with the feedback received notably and resubmitted at a forthcoming BoR meeting.*
11. *The Chair invited the BoR to hold a discussion in March on aspects of the monitoring of the implementation of (electricity and gas) codes on the basis of a proposal by the Director in coordination with the AEWG and AGWG Chairs.*
12. *The BoR provided its favourable opinion, by consensus of Members present (or represented), on the ACER Opinion on the ENTSOG Winter Supply Outlook.*

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| <p>13. The BoR received an update on the latest REMIT operations. In addition to an update on the number of registered market participants and registered reporting mechanisms, it was reported that the Agency is receiving approximately 1 million data points per day. The BoR also received an update on the monitoring strategy and potential breach cases.</p>           |
| <p>14. The BoR endorsed the MoU for administrative arrangements between ACER and NRAs for market monitoring under REMIT. Each NRA is in the process of signing the declaration of consent. The MoU is intended to enter into force on 1<sup>st</sup> January.</p>  |
| <p>15. The BoR endorsed the 2<sup>nd</sup> edition of the Market Monitoring Handbook.</p>  |
| <p>16. The BoR provided its favourable opinion, (by consensus of the Members present or represented), on the ACER Recommendation on good practices for the treatment of the investment requests including cross border cost allocation requests for electricity and gas projects of common interest. The Recommendation will now be adopted by the Director and published.</p> |
| <p>17. The BoR provided its favourable opinion (by consensus of the Members present or represented), on the ACER Opinion on the ENTSO-E Work Programme for 2016.</p>   |
| <p>18. The BoR received an update on the work by the AIMP WG including on the forthcoming internal workshop on the “new entities/platforms/Nemos”. This is jointly organised by the AIMP, AEWG and AGWG.</p>   |

## 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 52<sup>nd</sup> BoR meeting

BoR Decision agreed: (D 2)

*The 52<sup>nd</sup> BoR minutes were approved.*

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

#### 2.1. Update on recent developments

##### - EC

Mr Koch provided an update on the latest developments and initiatives of the European Commission including on the Energy Union state of play report and the Council conclusions on it. This includes many interesting elements. He also informed the BoR about a report of the European Court of Auditors on what is needed on the Internal Energy Market from a security of supply point of view. DG ENER concurs with most of the measures therein and he invited the members to look at this report. DG ENER are further developing the market design proposals.

The EC has invited the Madrid Forum attendees to an information session dedicated to the Tariff Network Code in Gas and the amendment to the CAM Network Code on 15 December 2015 in Brussels.

Mr Koch updated the BoR on the winter package expected to be adopted on 10 February. The EC will inform the BoR about the proposals and will bring those to the BoR for discussions ahead of their publication.

**- ACER**

The Director informed the BoR that the Agency has been assigned by the Budgetary Authority 15 additional posts for next year and thanked DG ENER for their support. He also noted ACER's appreciation of the EP's support.

The Director updated the BoR on other recent ACER publications: On 2 December, ACER published the conclusions of the electricity transmission tariff structures scoping activities, undertaken during 2015.

The 12th edition of REMIT Questions and Answers containing the most up to date information concerning the EU Regulation on wholesale energy market integrity and transparency was published at the beginning of December.

The Director informed the Board that the annual review of declarations of interest and CVs will take place in February next year. According to the conflict of interest policy of the Agency, all BoR members and alternates, as well as WG and TF chair/ vice-chairs/ co-chairs are required to submit an up-to-date DoI and CV by 31 January each year. ACER shall also invite all AWGs and TFs to submit their compliance commitments given the last exercise took place some time ago, in 2012, and there are many changes to the membership of the AWGs and TFs.

The Director informed the BoR about the envisaged timetable for developing the ACER Recommendation on improvements to future PCI selection processes which is scheduled for a first discussion in January. ACER considers that this should be also looked at from the perspective of how the TYNDPs fit into the process (and improvements to data). We will look at past experience and also the long list of "recommendations" we had identified from which only a few were not eventually included in the ACER opinion on the second PCI list. The EC is also seeking to improve the process and we shall of course coordinate with the EC.

The Director informed the BoR that the Agency has received a new investment request regarding the investment request for Paldiski LNG terminal. The NRAs of Estonia, Latvia, and Finland have not reached an agreement on the investment request within the six-month period specified in Regulation (EU) No 347/2013, which expired on 19 November 2015. ACER had last week the hand-over meeting with the concerned NRAs, and also met the concerned and project promoter. Within three months of the date of referral, the Agency is required to adopt a decision on the said investment request including on cross-border cost allocation, as well as on the way the costs of the investments are reflected in the tariffs (unless additional information is required, in which case the deadline is extended by 2 months).

MMR launch

The Director reported on the Market Monitoring Report launch. On 30 November, there was a launch event to present the findings of the report to stakeholders which was attended by

approximately 60 participants and 246 followers through high-quality web-streaming. At the EP, the presentation was well received in the ITRE committee. This year the presentation of the report focused on the main highlights and key messages which was more successful. The Director informed the BoR members that he is considering how to improve the structure and make next year's report more user-friendly. The main report should not cover more than 80 pages to make it readable. This could be accompanied by an executive summary of 20 pages and a citizen's summary of 2 pages and a number of thematic detailed, technical papers (electricity wholesale, gas wholesale, retail and customer protection). As of next year some REMIT data may also be used. The Director is consulting colleagues on finalising the practicalities for the structure and preparation of next year's MMR.

Lord Mogg also noted that the very successful presentation of the MMR to the EP and the warm words by the ITRE Chair about the Agency.

He invited the Director to prepare a short note to outline the arrangements for the structure and preparation of the MMR for next year for discussion at the January BoR. He also supported the idea that the structure of the report becomes more user-friendly and his preference for short, digestible report and for as early as possible publication of key messages, to be followed (perhaps) later by the more detailed area-specific analysis. The references to the report must be given in a more accessible way.

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

#### **3.1. Summit follow up**

##### **- Oral report from the Chair on the work by the ad hoc Process Group**

Lord Mogg provided an oral update on the discussions at the Process Group on 15 December and the progress on work resulting from the Summit. On Strand B under the Axes of the reinforcement of cooperation the Chairs of the AEWG and AGWG were invited to implement the idea of Q and A which are implemented in REMIT and have proved a very useful instrument to ensure consistency in the codes implementation process.

Another key axis is the independence and some actions were identified. In seeking to understand the current situation of NRAs, the information already gathered through the CEER survey and the Summit preparatory questionnaire will be complemented by all NRAs which have not responded to these and a short "resources survey" could be carried out to get information about resources in NRAs dealing with ACER issues.

The third axis deals with communication activities to facilitate the exchange of best practices of NRAs and demonstrate their value. Lord Mogg reiterated that BoR members represent their NRAs and cooperation at European-level is evident in the structures and the record of adopting the majority of the ACER's opinions unanimously.

Under the Strand A, work on improving our internal collaboration arrangements is being undertaken. It aims to address controversial cases through a clear process - thereby better preparing the discussion for the BoR and helping to avoid deadlocks. It also aims to clarify and improve the (dual) role of the AWGs vis-a-vis both the BoR and the Director, ensure smooth decision-taking processes; and address problems from the past experience. The work which is being pursued aims at linking better all those involved in the preparation of ACER acts including the Director, the AWGs and the BoR. The work is intended to ensure early awareness and cooperation at the AWG level between the NRAs representatives and the Director ahead of the submission of the Director's formal proposals to the BoR and to

better involve them in the consideration of the formal proposals by the Director to the BoR. Subsequently, the specific steps for the process at the BoR level are being considered.

Regarding the work on when and how the BoR may exercise guidance to the Director, the Process Group has a discussion on the paper by the co-leaders and the BoR chair invited further comments with regard to the scope of such guidance and the process for the issue of guidance. The former aims to clarify the potential areas, goals and criteria against which guidance could be issued while the latter aims to clarify the procedural aspects and deliberations for taking such decision for issuing guidance.

The Chair noted that progress is being made through the Process Group and the format of having members and alternates participating in the Process Group is the appropriate one.

#### **- Administrative Improvements**

A letter was circulated to all NRA and Agency members and observers of the Agency's working groups and task forces describing the administrative improvements which have been introduced following the Summit. The new shared folder on the ACER extranet – the "ACER BoR, AWGs and TF working corner" – is now operational and agendas and conclusion summaries from all the AWGs December meetings and the last BoR's can be found there. Mr Sik suggested adding a link of the corner for NRAs to the BoR meeting folders.

#### **3.2. Draft work programme of preliminary programming document for 2017**

The Director presented the draft (preliminary) work programme section of the 2017 Single Programming Document (SPD) circulated to the BoR for its endorsement. The SPD in its complete form (including a detailed section on the draft budget resource programming which is based on the review by the AB of the Agency's Strategic Outlook for 2017) will be submitted to the EC by 31 January 2016. A preliminary draft outline was discussed at the BoR in October, and presented to stakeholders at a Workshop on 5 November. Stakeholders were asked to provide their views in writing on the Agency's priorities, if they so wish. The consultation period ended on 27 November. On the basis of the outline, the BoR comments, and stakeholder inputs the draft Annual Work Programme has been developed. The draft Programming Document consists of the multiannual programming 2017-2019 and the draft work programme 2017 together with several mandatory annexes.

The Director will be discussing the next day with the AB the budgetary aspects. The merit of the SPD is that the EC will have a document to work on early notwithstanding the formal adoption process (under the ACER Regulation) which will apply as normal in the period June to September 2016. The final list of deliverables and tasks listed in this draft will depend on the Agency's budget for 2016 (the scope of tasks in 2017 will in part depend on those performed in 2016) and the preliminary draft budget for 2017, which will only be submitted by the Director by 15 February 2016 and approved by the Administrative Board by 31 March 2016.

The Director informed the BoR that the items 43 and 44 (at the previous outline) have now been dropped.

Members notably raised concerns notably about page 16 on risks and considered that the requirement of the BoR favourable Opinion reflects the legitimate legislative process and thus cannot be categorised as a "risk". Members also provided some specific remarks.

Lord Mogg concluded that although the draft work programme of preliminary programming document for 2017 was welcomed in principle, the statement on page 16 would need to be revised in line with the comments and resubmitted to the BoR electronically for endorsement.

BoR Decision agreed: (D 3)

*Following the BoR feedback, the Director will finalise the SPD and circulate it (electronically) to the BoR for endorsement.*

3.3. Draft Regional Initiatives Status Review Report 2015

The Director presented the Regional Initiatives (RIs) report which provides an update on the activities and achievements of the Electricity Regional Initiatives (ERI) and the Gas Regional Initiatives (GRI). This will be the last Status Review Report for the ERI. Henceforth progress and obstacles experienced by the relevant projects will be reported through other channels, in particular the Market Electricity Stakeholder Committee. The report sets out the Agency's view on the areas the GRI still need to focus on. The Director then presented the main updates on ERI and GRI. The NRAs were invited to provide any final comments by 18 December. Following final editorial checks by the ACER drafting team, the report will be published on the ACER website in January.

**4. Gas**

4.1. Update on FGs, NCs and other work

Mr Hesseling provided an update on the work in the AGWG in place of Mr Boltz.

He presented the new timeline of the tariffs network code. On 15 December, the informal Members States meeting in Brussels was held and the EC presented the tariffs network code. On 11 March, the next Member State meeting on the basis of EN language texts (TAR NC and CAM NC incremental amendment) will be held. The formal Comitology meetings are foreseen for April and June. The new Regulation is expected to enter into force in 2018. Therefore, as of 2017 Member States are asked not to release new tariff methodologies (unless this would be in the context of an early implementation of the code). The EC has communicated that it is focusing less on harmonisation and more on consistency and transparency.

Mr Hesseling then informed the BoR regarding the capacity mismatch paper by ENTSOG of July 2015 which relates to bundling of capacities. The CAM TF developed a paper focussing on issues related to bundling of capacities known as 'capacity mismatch' as a response to ENTSOG comments. It lays down principles for finding a solution. It seems that ENTSOG's proposal to apply "Capacity Conversion Mechanism" is the most feasible and practical option. The national and EU legal framework is sufficient to handle this problem and there is no need for a pan-European action such as amending CAM or adopting one specific mechanism for all IPs. The heterogeneity of situations across IPs rather advocates for a case-by-case treatment (per IP and with NRA agreement).

Mr Hesseling presented the first CAM implementation monitoring report timetable. It is envisaged that the report will be tabled to the July (or September) BoR in 2016.

On November 17, the ACER-ENTSOG joint workshop on Gas Balancing took place in Budapest. The workshop focused on the status of the implementation of the Network Code Balancing. More than 60 participants from TSOs, NRAs and traders discussed requirements and implementing opportunities in gas balancing. This was one of the most interesting events on the gas balancing NC. The discussion was based on the concrete experience gained by NRAs and stakeholders on the different implementation challenges. One of the key messages was the time it takes to get into a proper balancing implementation regime.

Mr Hesseling reiterated the call for the position of a Seconded National Expert in the Gas Market Monitoring team. Given that the previous calls have not resulted in filing the position, this is the final call. ACER is looking for someone with an economic/ analytical background. The deadline for expressions of interest is January 4, after which, if no suitable candidates is proposed, the position will be converted to a full time post Contract Agent position, which will allow the Agency to recruit externally.

#### 4.2. ACER-ENTSOG functionality platform

Mr Hesseling presented the Guidelines for cooperation between ACER and ENTSOG for the joint functionality platform for gas Network Codes which have been circulated to the BoR for information. A number of meetings with ENTSOG took place starting on 21 October. This joint functionality process is not a formal procedure but it is a pilot project. It shall be co-managed by ACER and ENTSOG and is supported by the Commission. It will provide stakeholders with a possibility to raise and discuss implementation and operational issues regarding existing gas network codes, as well as involve stakeholders in the prioritisation and elaboration of the solutions, which at the end of the process will result in recommended solutions.

A joint Coordination Team consisting of two representatives from ACER and two representatives from ENTSOG will be responsible for operational decisions. For supportive purposes and day-to-day activities the Coordination Team will establish a Support Group, consisting of the appropriate representatives respectively from ACER and ENTSOG. The responsible WG managers (ENTSOG) and TF chairs (ACER) from the relevant work-streams on Balancing, Capacity, Interoperability (and later Tariffs) will take charge of coordinating and communicating the appropriate decision making bodies on the issues identified (e.g. the BoR).

Mr Hesseling also informed the BoR about the discussions at the last AGWG on 10 December. There has been one comment by AEEGSI and a number of comments by BNetzA. Mr Hesseling reported that a new version will be circulated to the BoR to address those comments whilst he underlined that this is not a legally binding document.

Lord Mogg and members noted that this is a very good initiative but raised concerns: although this is a pilot project (at this stage) and reflects many good aspects of streamlining the process of the monitoring of the implementation of codes the BoR must be reassured that the right governance is reflected in the Guidelines.

The Director had initially shared some of the concerns but clarified that the functionality can by no means prejudice the governance of the sector and the respective role and responsibilities of ACER and NRAs on monitoring the implementation of codes (including the enforcement responsibilities of NRAs) as those are specified in the legislative framework. This is only a platform and a voluntary project and the Director is reassured that with some improvements in the text this initiative would be valuable.



The Director clarified that he referred to potential outcomes of the monitoring of the implementation which can lead to amendments. However, by no means this initiative or process will cover potential amendments.

Lord Mogg concluded that this is a useful but sensitive tool and we have to recognise that this is a pilot initiative. The BoR appreciated the value of such a tool but has concerns with regard to the (presentation of the) governance which must be taken into account. Those relate in particular the right perceptions about roles and responsibilities (including the definition of “stakeholders”, as well as clarity about the role of the ACER and the BoR, the NRAs and the delicate balance with the ENTSOG). The Guidelines must be revised in line with the feedback received and submitted to the next BoR with a clear proposal of how this process would work with clarity on the above mentioned issues.

Lord Mogg also remarked that we are now in the phase of the implementation of codes and thus we have to consider such issues in a broader and consistent way. He invited the Director to come forward with some proposals and ideas on how this phase of implementation should be operated (in terms of standards, processes). This discussion can take place around March. The Director can consider this in cooperation with the AEWGs and AGWG chairs in order to also ensure, where necessary, consistency between electricity and gas. The Director welcomed this proposal but would like to consider the best way to bring this forward.

#### 4.3. ACER Opinion on ENTSOG Winter Supply Outlook

Mr Hesselning presented the draft ACER Opinion on the ENTSOG Winter Supply Outlook for 2015/16, to the BoR for its formal opinion pursuant to article 15(1) of the Agency Regulation.

This Opinion was endorsed by the AGWG via electronic procedure ending on 7 December.

The Agency welcomes the Winter Supply Outlook 2015/16 and is of the view that it meets the objectives of the Regulations in terms of contributing to non-discrimination, effective competition and the efficient and secure functioning of the internal natural gas market. He then presented the key elements. The Agency also encourages ENTSOG to publish its seasonal supply outlooks further ahead of the season so as to allow stakeholders to take earlier action where the outlooks identify potential shortfalls in gas supply or shortcomings in gas infrastructure operations. The Agency invites ENTSOG to provide more clarification on the assumptions behind the principle of ‘optimal crisis management’ underlying the modelling of high demand situations and disruptions. The Agency reiterates its view that analysing the physical flow and availability of gas supplies is as important as examining the technical cross-border capacities and the ability of the transmission system to respond to sudden and unforeseen changes in gas supply and demand dynamics. The Agency recognises ENTSOG’s efforts to expand its assessment of the commodity dimension of gas in seasonal supply outlooks, and encourages ENTSOG to further develop the inclusion of additional supply and demand elements in future supply outlooks.

Ms Kozak noted that URE is in favour of the ACER Opinion. However, she informed the BoR Members that the situation at the Malnow interconnection point (on the German-Polish border) may change depending on the outcome of ongoing discussions with BNetzA. Ms Kozak noted that the outcome of the ongoing discussions could impact the situation described in the report. She requested that this be reflected in the minutes. Ms Groebel agreed that it should not be added to the report now as discussion is ongoing, but noted that it is fair to reflect in the minutes that the IP is under discussion.

BoR Decision agreed: (D 4)

*The BoR provided its favourable opinion on the ACER Opinion on the ENTSOG Winter Supply Outlook 2015 by consensus of the Members (present or represented), pursuant to article 15(1) of the ACER Regulation.*

## **5. Market Integrity and Transparency**

### **5.1. REMIT implementation & operation**

Mr Zuleger provided an update on REMIT operations. The BoR members were informed that all Reporting User Package updates have been issued and that REMIT Q&A and FAQs will continue to be published on a monthly basis. Mr Zuleger also noted to the BoR members that all MoUs have been signed with the exception of the MoUs with Financial Market Authorities and the European Competition Network, which have been postponed until 2016. The signing of the MoU on administrative arrangements for cooperation between NRAs and ACER is ongoing.

On the operational side, all NRAs are either using CEREMP directly (25) or are connected via an alternative system (4) for registering market participants. As of 1 December 2015, 4436 market participants were registered. Mr Zuleger noted that many more are expected in the second phase of reporting. 37 registered reporting mechanisms have been approved of which 32 are active. There are more than 700 RRM applications currently being processed. ACER is prioritising those who are obliged to provide fundamental data from the second phase of reporting onwards.

Mr Zuleger updated the BoR members on the contingency plan in place for ensuring that reporting entities are supported which reporting as envisaged is hindered or not possible. The BoR members were also updated on the latest data collection statistics. Up to 1 December 2015, almost 10m trades and nearly 30m orders had been reported (not including fundamental data from TSOs). This represents the trades reported from 1557 market participants.

The BoR members were reminded that there is a data quality standing committee under the REMIT Coordination Group which aims to ensure that processes are in place to check that data is complete and to check that it is accurate. Mr Zuleger reported that there has been an issue with the ARIS database in the first few weeks of live operation but that these issues were addressed by a maintenance release on 11 December.

It was also reported that the SMARTS software for the second phase of data reporting as of 7 April 2016 has been already delivered, with the possibility for updates and maintenance releases at a later stage.

A number of NRAs have expressed an interest in sublicensing but no sooner than spring 2016.

Mr Zuleger informed the BoR that the data sharing system has been live since 13 November and that 1 NRA currently has full access. 2 further NRAs have been approved for access (CRE and Ofgem) and are in the process of technical implementation, which is expected to be completed by the end of 2015.

Members were reminded that there are many post-go live activities, meaning that work of REMIT is only increasing. Mr Zuleger noted that ACER is still developing the 2<sup>nd</sup> phase of

the reporting obligation as well as developing and deploying maintenance releases for phase 1. Work is also continuing on updating the Q&A, setting up of data quality assurance process, and looking into suggestions to improvements to CEREMP.

Mr Zuleger presented the latest details of the market monitoring strategy and related activities. The idea is to have colleges of regulators for carrying out monitoring and investigation activities. These colleges will build on existing monitoring hubs. The idea is also to have regional and horizontal topics.

The Director noted that ACER will not be able to implement the second phase as expected because of the much higher than expected number of RRM's (700 vs 200). The system is scalable but this will take time and resources. He noted that there will be further discussion on ways forward in January. His main message was congratulations to everyone for what has been achieved so far.

#### 5.2. MoU for administrative arrangements between ACER and NRAs for market monitoring under REMIT

The Director introduced the MoU tabled for endorsement by the BoR. He noted that the MoU was discussed at the November BoR, with particular concerns raised by NRAs regarding whether the CMT should be the 'default' or 'preferred' means of sharing information. Following the comments at the November meeting the Director informed the BoR Members that the MoU was updated to take these discussions into account. It now states that "under exceptional circumstances related to the sensitivity marking of the confidential information exchanged, another secure communication channel, agreed in advance between the relevant NRA and the Agency, may be used" and includes an annex specifying the particular security requirements to be met.

Ms Groebel thanked the Director for finding the solution that works for all circumstances. Changed article 4(3) where the words "secure gateway" now refer to annex 1, where the security requirements are specified. The annex will not be public. She also added that there is an appendix to the annex with detailed provisions for IT parameters (check by IT security officers). The purpose is to state the relevant aspects of the security policies, rather than all. This will also not be published.

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

*The MoU for administrative arrangements between ACER and NRAs for market monitoring under REMIT (as amended) and including the annexes was endorsed by consensus of the Members (present or represented).*

All NRAs are now in the process of submitting signed declarations of their acceptance.

#### 5.3. Market Monitoring Handbook (2nd Edition)

Ms Groebel introduced the completed 2nd edition of the Market Monitoring Handbook (for internal use) circulated to the BoR for endorsement.

This 2<sup>nd</sup> edition complements the first. The 1<sup>st</sup> edition covered potential breaches of articles 3 and 5 of the REMIT Regulation. The 2<sup>nd</sup> edition also covers the potential breaches of the obligations included in articles 4, 8 and 9 of the REMIT Regulation. A new chapter covering breaches of reporting obligations (Article 8 of REMIT) has been included in the latest

complete version. The new chapter clarifies the reporting obligations on Market Participants under Article 8 of REMIT; it describes the typical life-cycle of breach cases (surveillance/review, investigation, enforcement, and evaluation); and it recommends how cases with cross-border elements may be allocated.

The complete version of the MMR (2<sup>nd</sup> Edition) circulated also incorporates the two chapters for the MMR, which were already endorsed by the BoR in October. A new chapter for the MMH covering breaches of registration obligations (Article 9 of REMIT) and proposed amendments to chapter 3.1 “communication strategy, notifications by PPATs” (Article 15 of REMIT).

BoR Decision agreed: (D 6)

*The 2<sup>nd</sup> Market Monitoring Handbook was endorsed by consensus of the members of the members (present or represented). This will be an internal document not for publication.*

## **6. Infrastructure Challenge**

### **6.1. ACER Recommendation on CBCA**

The Director presented the revised CBCA Recommendation circulated to the BoR for its formal Opinion under 15(1) of the Agency Regulation. The circulated version takes into account the solution identified through discussions following concerns raised on the text discussed at the November BoR. The Director explained he called two telcos to discuss the Recommendation and to find a common understanding of the different positions and to help find a viable drafting. The first took place on 2 December and the second on 7 December. The text in the Recommendation circulated is the result of these discussions and seems to be accepted by all. Specifically, paragraph 2.6 on cost allocation now reads:

*“Therefore, the Agency recommends that, unless NRAs agree otherwise, compensations are provided if at least one Member State hosting the project is deemed to have a net negative impact in at least one of the scenarios deemed plausible by all involved NRAs. In such cases, the aim should be, in general, to compensate the net negative impact in the relevant Member States. Agreements that go beyond the compensation of the net negative impact, taking into account the uncertainties in the analysis of benefits or unreasonably different net impacts across members States after cost allocation, are possible”.*

The footnote stating what the Agency would do regarding compensation should a decision be referred to it, has been removed. A new footnote is included on CBA scenarios referring to section 1.5 (information to be provided with the investment request), which now clarifies that a CBA for each TYNDP scenario should be provided (and that the promoter is free to include any additional scenarios it deems plausible). The Recommendation also specifies that the assessment of the significant net positive impact should be based on the project-specific CBA.

The Director thanked the NRAs that took part in those discussions and noted that the discussions were both interesting and useful to reach an agreement on the revised proposal.

Ms Groebel agreed that the discussions were indeed interesting and that the proposal of the Director reflects the good solution reached.

BoR Decision agreed: (D 7)

*The BoR provided its favourable opinion, (by consensus of the Members presented or represented), on the ACER Recommendation on good practices for the treatment of the investment requests including cross border cost allocation requests for electricity and gas projects of common interest. The Recommendation will, subsequently, be adopted by the Director and published.*

## **7. Electricity**

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

Mr Hernandez gave an update on the current status of the electricity Network Codes. He noted a slight delay to the System Operation Guideline which is now expected for final vote in Comitology in April 2016 (as opposed to February/ March). He also noted that the EC's draft is in line with the Opinion provided by ACER. He reported that there are a couple of areas where TSOs have been arguing for changes where we strongly support the current draft and informed the BoR that the AEWG and the relevant TF will continue to monitor the progress.

Mr Copley noted that the pending "all NRAs' decision" on Capacity Calculation Regions is an important one from a process perspective (and not just from a substantive perspective). He reminded the Members that all NRAs are required to do something. We must find a way to do that as smoothly as possible and, therefore, recognise that this is more than a normal market decision.

Ms Groebel commented to the BoR that BNetzA understands that a change has been made to the system operation Guideline regarding the length of time that storage provides output for 15mins (previously 30 mins); this raises problems for markets which operate under the 30 minutes regime.

Mr Sik noted that the Czech NEMO has informed ERU that it has received a letter regarding the cost sharing of the day-ahead project. Mr Sik asked whether the same approach would be taken for the intraday project. Mr Sik also noted that it was reported previously that the Commission would develop an accession process and that a letter would be sent to the XBID project. He asked for an update on this.

Mr Copley noted that he was not aware of a letter on day ahead cost sharing but stated that he would imagine that cost sharing would be as set out as part of CACM. He noted that on intraday there have been discussions about a route for a pilot to become pan-European. We are not going to get forward progress if we keep widening the scope of the project, which is why the approach of an "accession workstream" alongside implementation of the project under its current scope has been proposed. Mr Koch noted that there is an agreement to create the accession process and stated that there is no problem with ACER sharing the letter with other NRAs. It is crystal clear that this will be a Europe-wide project. There will be a meeting in February to ensure that the steps have been followed as agreed. He invited ERU to notify EC if there are hold ups. He also requested that NRAs do not forget that they need to designate NEMOs. Finally, he stated that the EC would appreciate an early signal from NRAs where PXs are not on track.

## 7.2. ACER Opinion on the ENTSO-E Work Programme 2016

The Director presented the draft ACER Opinion on the ENTSO-E Work Programme (WP) for 2016, circulated for BoR opinion pursuant to article 15(1) of the Agency Regulation.

The draft was discussed at the AEWG on 2 December and final comments were submitted up to 4 December.

The Agency Opinion finds the WP to be in line with the relevant requirements of the Third Package Regulations. The key elements presented by the Director and the AEWG Chair include *inter alia*: The WP contains a list and description of the network codes to be prepared, observations with regard to the envisaged coordination of the network operation, a plan of the research and development (R&D) activities to be realised, and an indicative calendar of the deliverables. The Opinion also invites ENTSO-E to provide greater clarity on a number of topics, including on activities proposed in the context of the network code implementation. The Opinion also calls on ENTSO-E to explain why joint publication of the Regional Investment Plans and the TYNDP has not been envisaged for 2015/16 as it has been in previous years. It also asks for clarification on work to improve the methodology for producing TYNDP as well as clarification of the cooperation planned with ENTSO-G. The Opinion invites ENTSO-E to clarify the expected output with regards to work identified on TSO-DSO cooperation.

Mr Hernandez informed the BoR Members that there was limited discussion at the AEWG and, therefore, no particular issues to report for BoR attention. Mr Jurekovic requested a clarification on the wording of a specific paragraph. The Director confirmed that the drafting would be reviewed and clarified before final adoption.

### BoR Decision agreed: (D 8)

*The BoR provided is favourable opinion on the ACER Opinion on the ENTSO-E Work Programme for 2016 by consensus of the Members present (or represented).*

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

### 8.1. Update on work by the AIMP WG

Ms Geitona updated on the work of the AIMP working group on behalf of the Chair, Mr Locquet who was unable to join the BoR meeting. The working group last met on 24 November and 8 December. Main topics were the lesson learned exercise regarding on peer review process; the Group discussed the MMR TF approval 2016 indicators for the next JMMR; and ongoing work on several legal questions regarding CACM Guidelines.

Ms Geitona also noted that AIMP WG has held preparatory discussions on holding an internal workshop on “new entities” (e.g. NEMOs, RSCs and capacity booking platforms) in February 2016. Ms Geitona noted that this is proposed as a joint workshop for experts from the AEGG, AGWG and AIMP and a provisional date is set on 24 February in Vienna. The AIMP WG chair is in touch with the AEWG and AGWG Chairs for the preparations.

She explained that the workshop could be in the context of the EC’s ongoing legislative work. ACER and CEER first set out a position on “new entities” in the Bridge to 2025 paper (Sept 2014), which were further elaborated in the joint response to the Commission’s energy market design consultation. The aim of the workshop could be to develop our thinking further on the appropriate legal frameworks/ regulatory oversight regimes.

## **AOB**

The BoR Chair brought the members attention to the 2016 Rolling Agenda – noting that it usefully indicate the upcoming items for the BoR meetings in 2016.

The BoR secretary also reminded members that the conclusions of the BoR would be uploaded to the new “BoR/ WG/ TF working corner” folder.