

**55<sup>th</sup> ACER Board of Regulators Meeting**  
**Wednesday, 16 March 2016, 09.00-16.00**  
**ACER, Trg Republike 3, 1000 Ljubljana**

**Minutes (final)**

Member States	Name <sup>1</sup>	Member States	Name
Austria (E-Control)	M: Walter Boltz A: Dietmar Preinstorfer	Italy (AEEGSI)	A: Clara Poletti O: Ilaria Galimberti
Belgium (CREG)	M: Marie-Pierre Fauconnier O: Geert Van Hauwermeiren	Latvia (PUC)	O: Lija Makare
Bulgaria (EWRC)	O: Evgenia Haritonova	Lithuania (NCC)	Excused
Croatia (HERA)	M: Tomislav Jurekovic O: Nataša Mihajlović	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Andreas Poulikkas	Malta ( REWS)	A: Phyllis Micallef
Czech Republic (ERO)	O: Martin Šik	Netherlands (ACM)	A: Remko Bos O: Maarten Klijn
Denmark (DERA)	O: Henrik Gommesen	Poland (URE)	A: Malgorzata Kozak
Estonia (ECA)	O: Tiina Maldre	Portugal (ERSE)	A: Artur Trindade
Finland (EV)	M: Simo Nurmi	Romania (ANRE)	A: Lusine Caracasian
France (CRE)	A: Hélène Gassin O : Amélie Gravier	Slovakia (RONI)	Excused
Germany (BNetzA)	A: Annegret Groebel O: Martin Mueller	Slovenia (AGEN-RS)	M: Bojan Kuzmič O: Duška Godina
Greece (RAE)	A: Nektaria Karakatsani	Spain (CNMC)	M: Fernando Hernández
Hungary (HEA)	O: Adam Krinszki O: Krisztián Tóth	Sweden (Ei)	M: Anne Vadasz Nilsson
Ireland (CER)	M: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Frances Warburton

ACER	Alberto Pototschnig, Dennis Hesseling, Fay Geitona, Andrew White
European Commission	Klaus-Dieter Borchardt
CEER	Andrew Ebrill

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

**MEETING CONCLUSIONS SUMMARY**

1. *The minutes from the 54th BoR meeting were approved. As was the agenda for the 55th meeting.*
2. *DG ENER provided an update on the current main areas of Commission work of relevance to the BoR. The members were informed that the SoS Package was adopted on 16 February – it comprises: a revised security of gas supply regulation (994/2010); new rules for energy agreements between EU and non-EU countries (EC Decision); an EC communication on an LNG and storage strategy; and an EC communication on a heating and cooling strategy. The EC also updated the BoR on the discussions of the 30th Florence Forum held on 3-4 March which was devoted to the new energy market design. The next Florence Forum will take place on 13 and 14 June with a focus on retail market issues. The EC’s impact assessment on the new energy market design proposals will be finalised for the summer. The EC also updated on the latest discussions at the Comitology Committee regarding System Operation Guideline which was not adopted.*
3. *The ACER Director provided an update on the recent work of the Agency and recent publications. He announced the publication of a call for applications (by 30 April) for the position of ACER Head of the Market Surveillance and Conduct Department (AD11).*
4. *He also referred to the ACER response to a letter from the Baltic NRAs regarding the resource pressure created by the implementation of the NC.*
5. *The ACER Administrative Board has appointed a new Chair, Dr Romana Jordan, and Vice-Chair, Mr Jochen Penker. On 11 February, a delegation from the European Parliament ITRE Committee visited the Agency’s offices in Ljubljana.*
6. *On 23 February, the Agency held a ‘consumer hearing’ with national consumer bodies to discuss how ACER can facilitate their involvement in the Agency’s stakeholder consultation activities.*
7. *The Director updated the BoR on the timing and next steps for the preparation of the next ACER Annual Activity Report, and, in particular, the regulatory section. A first draft will be presented for discussion at the April BoR.*
8. *The Director presented for discussion an outline of the proposed approach to monitoring the implementation of the Network Codes ensuring consistency across Member States. This includes establishing a platform for NRAs to share Q&A on the implementation of the Codes. The platform is expected to go live around the summer. The BoR members welcomed the approach, noting their keen interest to be involved in the development of this tool.*
9. *The BoR Chair provided an update on the work taking place in the ad-hoc Process Group, which met on 15 March. This includes work under Strand A (internal cooperation arrangements and guidance) and under Strand B (institutional issues) including the work by a small group of legal experts looking at issues related to independence. The work developed under Strand A (axis 1 and 2) will be prepared in a form that can be tabled at the Process Group in April (including the diagram to be translated in a short written agreed process on the basis of our common understanding (“code of conduct”) reflecting the process). The consequential revisions of the BoR RoP will be undertaken by the AIMP WG in coordination with the BoR Chair and Secretary and those regarding of the AWGs RoP will be undertaken by the Director in coordination with the AWG Chairs.*

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| <p>10. <i>With regard to Strand B – the legal group should be thanked for some excellent work. The legal group will finalise the paper (within a week) taking into account the comments of members. This will form the basis for the preparation of a formal ACER Recommendation to be submitted to the BoR for its favourable opinion at the April meeting.</i></p>   |
| <p>11. <i>Lord Mogg will prepare a paper to the EC to highlight the main outcomes of the BoR Summit including the level of collective effort taking place to address such issues and reinforcing the NRAs collaboration as well as the huge contribution of NRAs to the Agency's work.</i></p>   |
| <p>12. <i>The ACER Director presented a revised proposal for the structure and drafting process for the 2016 Market Monitoring Report which was also shared with the CEER GA and agreed. The proposal is that there will be a main document to set the main messages and the recommendations. There will also be 4 separate thematic documents on: wholesale electricity markets; wholesale gas markets; retail markets; and consumer protection and empowerment. It was agreed that all would be co-branded, but will be published as soon as they are ready with the main document being published alongside the final thematic document. The consumer empowerment and protection document will be drafted by a dedicated ACER-CEER workstream chaired jointly by a CEER expert and an Agency's staff member. The wholesale market chapter will be drafted by ACER with the direct input of the AEWG and AGWG.</i></p> |
| <p>13. <i>It was noted that Mr Boltz's term at E-Control will come to an end leaving open the positions of BoR Vice-Chair and ACER Gas Working Group Chair. The BoR Chair announced that nominations for the position of BoR Vice-Chair will be open from 16 March to 30 March by the BoR Secretary. A note on the procedure for nominating and electing the new BoR vice-chair was circulated on the basis of the agreed process. It was noted that a process to appoint a new CEER Gas Working Group Chair will run in parallel. After which, the BoR will make a recommendation to the Director for the position as the ACER Gas Working Group Chair.</i></p>   |
| <p>14. <i>The members received an update on the AGWG work from the Working Group Chair including on latest developments on the codes including tariffs and incremental capacity; a proposed GTM internal workshop in April/ May; the timeline for the 1st CAM implementation monitoring report; the timeline for the 3rd congestion management report; and remaining issues on CAM booking platforms; and the timelines for the 1st balancing implementation monitoring report.</i></p>  |
| <p>15. <i>The members received an update on the AIMP WG work. The update included a report on the workshop on "new entities", which took place 1st March 2016 in CREG premises. Following the workshop, work will be carried out to identify areas where action is required to ensure that an appropriate regulatory framework exists for each of the new entities (activities) emerging. It is provisionally planned that a paper which will identify the main issues and potentially some initial recommendation will be presented to the BoR for endorsement in April, in order for the findings to be available to the Commission in May (at the latest) before the Impact Assessment is finalised, which is planned for June.</i></p>   |
| <p>16. <i>The members received an update on the AEWG work from the Working Group Chair. The System Operation Guideline was not voted on in Comitology as planned – the vote is now envisaged for May. The outstanding issue is related to the regional approach to the RSCs. He also informed the BoR about the next decisions of "all NRAs" under the CACM Guideline.</i></p>   |
| <p>17. <i>The ACER Opinion on ENTSO-E's network operation tools report received a favourable opinion of the BoR by consensus of the BoR members present (or represented).</i></p>  |

18. *The ACER Opinion on ENTSO-E's recommendations on coordination of technical cooperation with third country TSOs received a favourable opinion of the BoR by consensus of the BoR members present (or represented).*

19. *The BoR took note of the internal scoping report on flexible response.*

20. *The Director provided an update on the implementation and operation of REMIT. It was reported that issues with the REMIT IT systems have been resolved and that now all data is being reported and logged without issues. It was also reported that preparations for the next stage of data reporting are well underway with the next deadline for reporting on 7 April. The unexpectedly large number of applications to become a reporting party (more than 900) is still of some concern – though processes have been put in place to prioritise the registration for TSOs, SSOs, LSOs and third-party reporting mechanisms.*

21. *The BoR endorsed by a consensus of the members present (or represented) the public consultation on the European Register of market participants subject to a modification of the wording on the question regarding a European trading licence. The consultation will be launched with responses to be submitted by 22 April 2016.*

22. *Members received an update on work related to the infrastructure. A joint meeting was held between ACER, the Commission and the ENTSOs on 5th February to kick start the new Cooperation Platform for the PCI selection process. On 15 February, ACER published a MoU with 25 national Competent Authorities to facilitate and coordinate the monitoring of the implementation process for the development of key energy infrastructure projects. Preparations are underway on the PCI monitoring report 2016.*

23. *The BoR discussed the ACER Opinion on the consistency of National Development Plans with the European Ten-Year Network Development Plans. The Director invited comments within one week ahead of finalising the report for adoption and release.*

## 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 54<sup>th</sup> BoR meeting

BoR Decision agreed: (D 2)

*The 54<sup>th</sup> BoR minutes were approved.*

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

#### 2.1. Update on recent developments

##### - EC

Mr Borchardt reported to the BoR on the Florence Forum which took place on 3-4 March (the written conclusions were circulated). Mr Borchardt informed the BoR that a key focus of the most recent Forum was wholesale markets, whereas at the next Forum on 13 and 14 June, there will be a greater focus on retail issues and market design. He also noted that Commissioner Arias Cañete's speech gave a very good overview of the issues to be addressed by the market design initiative. Mr Borchardt highlighted that among the crucial issues addressed at the Forum, regional cooperation and system operation were particularly central to the discussions.

Mr Borchardt noted that there is excellent progress on the System Operation Guideline (SO GL), but that the vote anticipated in March did not go ahead because of one outstanding issue on the RSCs. The Commission hope to be able to announce a positive vote (on 4 May) on the System Operation Guideline GL.

Mr Borchardt reported that the X-BID project is on track despite the difficulties. He also reported that the accession procedure to XBID is now understood by everyone. This will be followed up at another workshop in April.

With regard to the Market Design Initiative, Mr Borchardt reminded the members that the Commission is currently working on the Impact Assessment. This will be finalised by June or July. The Commission is still expecting input from others (including the regulators) on a number of topics. These should be provided no later than the end of May so that they can be incorporated into the Impact Assessment. Once the Impact Assessment is complete, it is very difficult to change course. The Commission's proposals will be voted and approved in Q4 of 2016 (in practice either the end of November or early December).

Mr Borchardt informed the BoR that the deadline for applications to the Board of Appeal has been extended with applications now due by 19 March. He invited the BoR members to promote interest in the available Board of Appeal positions.



**- Update on Energy Security Package**

Mr Borchardt reminded the BoR that on 16 February the Commission published the Security of Supply Package. It comprised revisions to the rules for EU gas supply security (including Impact Assessment); revisions to the rules for energy agreements between the EU and non-EU countries (including Impact Assessment and report on existing agreements); a Communication on an EU LNG and gas storage strategy (and staff working document); and a Communication on an EU strategy for heating and cooling (and staff working document).

In particular, Mr Borchardt highlighted the LNG and storage strategy. He noted the roles and important tasks foreseen in the strategy for NRAs. The strategy calls on NRAs to define a roadmap (with timelines) on how to bring the regulatory regimes in order in CESEC and BEMEC regions and, specifically, to scrutinise what is missing to be fully compliant with the Third Package. For the Baltics, NRAs are also called upon to look at the derogations still in place and to make proposals to ensure a smooth transition from these arrangements to the general systems. The strategy further calls on NRAs to monitor closely the existing LNG terminals in terms of transparency of capacity allocation and to ensure that there are no barriers for new entrants. NRAs are encouraged to explore where there are barriers (regulatory or administrative) and where they find them, the NRAs should seek to implement solutions for ensuring a level playing field.

**- ACER**

The Director noted that the Agency has advertised for the position of ACER Head of the Market Surveillance and Conduct Department (AD11). The deadline for applications is 30 April. He kindly requested NRAs to advertise this position. The Director explained that the new department will deal with the assessment of anomalous events and the coordination of REMIT breach investigations by NRAs.

The Director noted the letter from the Baltic NRAs in November raising concerns with the implementation of the Codes under the “all-NRAs” procedure. The Agency’s reply was circulated to the BoR for information. The Director informed the BoR that the response was in line with the joint ACER-CEER response to the EMD consultation, in which it was recommended to the EC that in the future the Commission could consider that the Agency decides directly on such issues, subject to the favourable opinion of the BoR.

The Director informed the BoR that on 28 January, the ACER Administrative Board unanimously appointed Dr Romana Jordan as its new Chair and Mr Jochen Penker as its new Vice-Chair. They will each serve a mandate of two years. Dr Jordan has a long experience in collaborating with ACER and has an extensive knowledge of the Agency, which she acquired during her term as Member of the European Parliament (MEP) and of its ITRE Committee. Mr Penker is the Director of European and International Energy Policy at the Federal Ministry of Science, Research and Economy in Austria and has a long experience in public service in the energy field, both in Austria and at the EU level.

The Director informed the BoR that the approval of the independent section on regulatory activities of the Agency’s Annual Activity Report needs to take place by 1 June. According to the ACER Regulation, each year the Director prepares a draft annual report with an independent section on the regulatory activities of the Agency and a section on financial and administrative matters. The Administrative Board shall adopt and publish the annual report on the activities of the Agency and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions by 15 June of each year. The annual report on the activities of the Agency shall contain an independent section, approved by the Board of Regulators, concerning the regulatory activities of the Agency during the year considered.

Given that the Administrative Board will meet on 7 June, before the BoR meets on 8 June, the Director proposed to make available a draft on the regulatory activities section for discussion at the April BoR meeting and to, subsequently, submit the section to the BoR for approval through electronic procedure in May. This would allow the final report to be submitted to the Administrative Board for adoption at its meeting on 7 June.

The Director informed the BoR that on 11 February, a delegation from the ITRE Committee visited the Agency in Ljubljana. The delegation comprised eight MEPs, with at least one representative from each of the major groups. The delegation discussed the latest developments in the Agency's work towards the IEM (including REMIT, implementation of codes and Infrastructure). The Director commented that it was an engaging and useful day. He also informed the BoR that the next ACER Contact Group is scheduled for 4 April.

The Director updated the BoR on the Agency's consumer hearing that was held in London at the end of February, immediately ahead of the Citizen's Energy Forum. The purpose of the hearing was to increase the consumer organisations' awareness and understanding of ACER's work (Third Package, REMIT and TEN-E), to explain how this work benefits consumers, and to promote the involvement and engagement of consumer organisations in the regulatory process. The key points of feedback received were that, while the consumer bodies understand ACER's work to be important and of benefit to consumers, they do not have the resources to follow it, let alone provide input to it. They stressed that ACER should view BEUC as its primary interlocutor when seeking stakeholder input from a consumer perspective. The consumer organisations noted that in parallel to the normal consultation process, ACER could hold workshops specifically aimed at consumer organisations – so that discussions could be pitched at a non-technical level on specific issues identified as being of relevance to consumers. The Director also noted that the Agency is already looking at ways to improve the website – including a forthcoming “consumer corner”.

The Director updated the BoR members on the workshops and publications since the last BoR meeting on 27 January. In particular, he noted that ACER hosted the 11th Public Workshop on REMIT implementation on 16 February in Ljubljana. The Director noted that stakeholders were informed at this workshop that not all applications to become an RRM for phase 2 reporting will be processed in time because of the overwhelming volume of applications (see REMIT update under item 7.1).

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

#### **3.1. Director's proposal on monitoring of NC implementation**

The Director reminded the BoR that at the December meeting, the members requested a proposal from the Agency on how it plans to coordinate the monitoring of the implementation of the Network Codes in the Member States – with the aim of ensuring consistency.

The Director presented a slide outlining the proposed approach, which had been endorsed by the AEWG. It is proposed that the Agency will provide a question and answer platform on the ACER website that will be available to experts from all NRAs and the Agency. This platform will allow the involved experts to capture, share and store all Q&A related to NC implementation. The tool will be searchable allowing past Q&A to serve as a reference point for consistent implementation. The aim is that the platform will be available by April (depending on the choice of tool) and that content will be uploaded from June.

### 3.2. Follow-up from the BoR Summit: Update on work by Process Group

Lord Mogg reported on the Process Group. He reminded the members that this group comprises senior staff (at the level of BoR Members and Alternates) and the Director to ensure a firm commitment to the work. The latest meeting took place at 12.00 – 14.00 on 15 March.

Lord Mogg reported that under Strand A: Axis 1, work has been carried out by Ms Groebel and Mr Hernandez (with input from the Director) to evolve a more effective process for the preparation of Agency Acts requiring a BoR favourable opinion. This work is currently in the form of a flowchart and needs to be crystallised into a written form for agreement at the April Process Group. Following that, revisions can be prepared of the BoR Rules of Procedure (by the AIMP in coordination with the BoR Chair and secretary) and the AWG Rules of Procedure (by the Director, consulting as usual the AWG Chairs). Lord Mogg reported that the debate on the process, steps and timing was demanding, with some members of the Process Group feeling that the process is still complicated. The functioning of the process will be kept under review to address any issues that arise and will also allow the possibility for a fast track process to be applied where acts are less complicated.

Under Strand A: Axis 2, work has been carried out to develop a process for issuing guidance to the Director. Agreement has been reached that it should be mainly for important and strategic issues and the Process Group also discussed how much guidance can overlap with other areas where the BoR gives its opinion. This process too will be crystallised in a form to be agreed at the April Process Group for subsequent inclusion in the revised Rules of Procedure.

Under Stand B, work was delegated to a small legal group to look at legislative gaps regarding NRA independence. This group is producing an internal paper which will act as the basis for actions to follow up. This may result in a formal Recommendation proposed by the Director, in cooperation with the BoR Chair, and on which the BoR will be called to provide an opinion in April. A key part of this work on independence has been an assessment of the issue of resources – there has been significant amount of information collected from NRAs (through CEER and ACER) regarding the shortage of NRAs resources at national level. In particular, the data demonstrates the amount of resources contributed by NRAs to the work of the Agency.

Lord Mogg will prepare a paper to the EC to highlight the main outcomes of the BoR Summit underlining the level of collective effort taking place to address the issues of NRAs collaboration within the Agency. This would reinforce the need for proper resources and would reflect the major contribution of NRAs to the Agency's work. It will outline the key findings and recommendations and be accompanied by the completed survey of NRAs resources devoted to ACER.

### 3.3. Proposal on structure and process for 2016 Market Monitoring Report

The Director noted that the proposal to amend the structure and process for producing the Market Monitoring Report is aimed at improving the process of analysis and drafting as well as at addressing the excessive length of the current reports. He noted that he already presented his initial views at the previous BoR.

The Director took note of the discussion held at the CEER General Assembly. The Director noted that on the basis of that discussion it was agreed that the report would be structured



and produced according to the Director's proposal, with the exception that all documents will be co-branded as joint ACER and CEER documents – not just the customer protection and empowerment chapter.

As proposed previously, there will be one main document with overall conclusions and recommendations, and four thematic documents containing factual conclusions emerging from the analysis. The four thematic documents will be: wholesale electricity markets, wholesale gas markets, retail markets, and customer protection and empowerment. Each thematic document will be published as soon as the analysis and drafting is completed. And the main document will be released together with the final thematic document. However, a preliminary short statement on the main trends and messages earlier in the process may also be considered.

Although the bulk of the drafting of the documents (other than on consumer protection and empowerment) will be carried out by ACER staff – as has been the case in the past - the NRAs will remain fully involved in the analysis and drafting, through the AEWG, and AGWG. The current involvement of the AIMPWG in providing comments on the Electricity and Gas Retail thematic document will be maintained as well as on the main document. Also the practice of a workshop to discuss and collect comments on the main document, the Executive Summary and the recommendations will continue.

The consumer protection and empowerment thematic document will be drafted by a dedicated CEER-ACER Workstream, which will be co-chaired/co-convened by a CEER expert and an Agency's staff member.

#### 3.4. Opening of nominations for BoR Vice-Chair/ AGWG chair positions

On 17 February, Mr Boltz announced that his mandate at E-Control has not been renewed. His positions as ACER gas working group Chair and BoR Vice-Chair will, therefore, soon become vacant. The nomination processes will be formally launched immediately after the BoR meeting, with nominations to be received by 30 March. The decision on the new BoR Vice-Chair will be taken at the April meeting. At the April meeting, the BoR will also recommend to the Director a new Chair for the ACER gas Working Group. The Chair of the GTM Task Force will also become vacant and an appointment will be made by the AGWG.

A note was circulated to the BoR on the timing for the nominations and the process which has been agreed for the election/appointment of the BoR Vice chair to be held at the April BoR meeting.

## 4. Gas

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

Mr Boltz reported on the current status of the gas network codes, noting that the work on the first set of Codes is almost complete. Only the Tariffs Network Code remains to be approved in comitology and ratified. Mr Boltz notified the Members that it has been decided that ACER will not recommend a Framework Guideline on rules for trading.

Mr Boltz informed the BoR that there is already some experience of market integration under the Gas Target Model. For example, through the BELUX project as well a BNetzA study. An internal discussion on the evolution of the GTM among NRAs is envisaged with a possible public workshop later in the year.

The BoR was reminded that the TAR NC and the CAM NC amendment are being developed in parallel. The first comitology meeting on these is scheduled for 28-29 April. A second comitology meeting is planned for 29-30 June. This means that voting before the summer is still a possibility. Mr Boltz noted that the difficulties relate to the TAR NC – about which there are a number of outstanding concerns – whereas the CAM amendment is largely uncontroversial.

Mr Boltz updated the BoR on the Network Code implementation monitoring activities. The 1st CAM implementation monitoring report is being prepared and a draft will be available in May. It is anticipated that the report will be submitted to the July BoR. The 3<sup>rd</sup> Congestion report is being produced in parallel – Mr Boltz noted the possibility for streamlining monitoring reports in future. There will be a first BoR orientation in April. It is likely that an online endorsement will be required in May because the report must be published by 1 June. The 1<sup>st</sup> Balancing implementation monitoring report is expected to be published in September, with a first workshop envisaged in June/July. Towards the end of the year there will be an ACER-ENTSOG workshop to deal with any outstanding issues.

Mr Boltz informed the BoR that some Interconnection Points (IPs) still have not decided on a gas capacity booking platform to be used. Some NRAs consider that this means that it is not possible for long-term (greater than year-ahead) trading to occur across these IPs. In other words there are consequential problems resulting from these few outstanding IPs. Mr Boltz noted that the EC has floated the idea that it will address the issue through an amendment to the Network Code providing for one booking platform, but this is not yet confirmed.

Mr Boltz noted that the gas functionality platform is up and running but that so far no issues have been raised. An evaluation of the process is planned for around summer.

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

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

#### **- Report on the “Governance of new entities” workshop (1 March)**

On behalf of Mr Locquet, the Director presented on the workshop on governance arrangements for new entities which took place on 1 March with the participation of experts from the EWG, GWG and AIMP. The purpose of the workshop was to:

- Engage legal, electricity and gas specialists on the key regulatory gaps pertaining to new entities in the energy market, such as NEMOs, gas booking platforms, RSCs and others.
- Identify the main challenges in developing a regulatory framework for new entities.
- Start developing specific proposals for what measures and provisions should be included in such a framework.

On the timing of this work, the Director pointed out that we need to provide some input by the end of April as far as possible – in order to feed into the Commission’s work on an Impact Assessment which is to be finalised in June. The Director suggested that the absolute detail of the oversight does not need to go into regulation. But rather that the activities/ entities that require oversight and by whom should be defined there.

Ms Fauconnier summarised that we need to first to identify which entities need to be regulated, how and by whom ahead of formulating the specific recommendations (which is scheduled for June). On behalf of Mr Locquet, she requested that NRAs aim to submit their comments through the Working Groups by 18 March – so that they can be incorporated by April.

Lord Mogg suggested accelerating the second part of the work earlier than June.

Mr Borchardt noted that the Commission welcomes this initiative very much. He acknowledged that the time schedule is very tight but also noted that a first view in April with more detail in May would allow for including something in the Impact Assessment. The fine-tuning can come later.

Mr Blaney noted a single DSO representative body at European-level (which regulators called for in the joint response to the energy market design consultation) may need to be considered within an exercise of this sort.

## **6. Electricity**

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

Mr Hernandez provided an update on the work of the AEWG. The last AEWG meeting took place on 12 February. He reiterated the news, already mentioned by Mr Borchardt, that the System Operation Guideline (SO GL) vote in comitology has been postponed to May. The only remaining issue is on Article 77 on the regional coverage of the RSCs. Under the SO GL the responsibility for the RSC function stays with the TSOs.

Mr Hernandez updated the BoR on the ongoing CACM implementation activities.

The NEMO designation process is complete (following a slight delay). Some countries have designated several NEMOs. The Capacity Calculation Regions all-NRAs decision is under discussion in the newly established ERF. There will be a workshop on the Congestion Income Distribution Methodology on 8 March. A proposal for the Common Grid Model and Generation and Load Data provision from ENTSO-E is due on 14 June. After which NRAs will have 6 months to take an all-NRAs decision through the ERF. A shadow opinion is already being developed. The AEWG is discussing the MCO Function plan for the NEMOs. Once the plan is submitted by the NEMOs, the NRA's will have six months to take a decision in the ERF. Mr Hernandez summarised that there are four proposals for all-NRA decisions to be submitted for consideration between April and August.

Mr Hernandez informed the BoR about the early implementation of the Forward Capacity Allocation Guideline. Currently, ENTSO-E is updating the main body of the HAR and the TSOs are preparing the annexes. The next steps are a stakeholder meeting on 23 March, a publication consultation in April-May, and submission to NRAs for approval in July.

Mr Hernandez reminded the BoR that an internal report on Capacity Remuneration Mechanisms (CRMs) is under development, informing them that there are some contentious points. He noted that DG Competition will look at CRMs and will also look at cross-border participation. Mr Hernandez will report fully on developments in April.

Ms Gassin emphasized that there will need to be a discussion on the CRM report at the next BoR. Mr Hernandez requested that all NRAs ask their experts to engage in the work at the AEWG level and report back in preparation for the discussion at the BoR.

The BoR was updated that an initial discussion took place on restructuring the AEWG Task Forces and Work Streams. On the basis of feedback during this discussion, the AEWG Chair and co-Chair will make a formal proposal to the next AEWG.

## 6.2. ACER Opinion on ENTSO-E network operation tools report

The Director informed the BoR that, on 15 May 2015, ENTSO-E submitted the adopted common network operation tools to ensure coordination of network operation in normal and emergency conditions to the Agency for its opinion. The legislation requires the Agency to issue an opinion within 12 months of the adoption of the specifications, in which it considers whether they sufficiently contribute to the promotion of cross-border trade and to ensuring the optimal management, coordinated operation, efficient use and sound technical evolution of the European electricity transmission network.

The Director explained that the Opinion states that the Agency considers that the reported specifications may sufficiently contribute to the promotion of cross-border trade and to ensuring the optimal management, coordinated operation, efficient use and sound technical evolution of the European electricity transmission network. However, the Agency reserves the right to issue a further opinion on the specifications following the adoption of the legislation concerning transmission system operation and forward capacity allocation and following the approval by all regulatory authorities of the proposal for generation and load data provision methodology and the proposal for the Common Grid Model methodology. The Agency also requests that ENTSO-E a) re-submit the specifications, following the implementation of the approved generation and load data provisions methodology and Common Grid Model methodology; b) publish on their website an update on the progress of the Common Grid Model programme, including specific planning and implementation milestones.

On behalf of the AEWG, Mr Hernandez, recommended that the BoR provide a favourable opinion.

### BoR Decision agreed: (D 3)

*The favourable opinion of the BoR on the ACER Opinion on the ENTSO-E network operation tools report was given by consensus of the members present (or represented).*

## 6.3. ACER Opinion on ENTSO-E recommendations on coordination of technical cooperation with third country TSOs

The Director informed the BoR that ENTSO-E is required by the legislation to provide “Recommendations relating to the coordination of technical cooperation between Community and third-country transmission system operators”. He explained that ENTSO-E submitted these recommendations to the Agency on 2 January 2016. Under the Regulation the Agency is required to provide its Opinion on these recommendations and the favourable opinion of the BoR is requested pursuant to article 15(1).

The Director explained to the BoR that in its Opinion, the Agency welcomes the leadership role that ENTSO-E has sought to play. However, it also recommends a number of changes

to the ENTSO-E document. These include: changes to the structure to more clearly differentiate between categories of third country (e.g. those in the Energy Community and those outside it - who are under a different set of agreements) – and for third countries which are or are likely to be electrically linked and for other third countries; and to differentiate between what is necessary for third countries with interconnections, those with planned interconnections and those with no interconnections. This would allow ENTSO-E better to reflect the current status of negotiations and thus make recommendations that are third-country specific. EU TSOs, cooperating with third country TSOs on issues subject to EU law provisions, may have to consider to what extent the concerned third country TSOs have incorporated the relevant EU provisions. ACER also proposes more specificity, and explanation of the recommendations and tools needed to implement them.

Furthermore, ACER recommends that ENTSO-E takes a more proactive role in ensuring the implementation of the recommendations and in coordinating between ENTSO-E and non-ENTSO-E countries; explore the potential of ENTSO-E membership (membership, associated membership or observer membership) as a platform for technical cooperation between the EU and third countries. ACER also suggests that ENTSO-E specifies in greater detail why ENTSO-E has not issued recommendations to third country members of ENTSO-E.

The Agency requests that ENTSO-E amends and resubmits the recommendations relating to the coordination of technical cooperation between European Union and third country TSOs, taking into account the Agency's recommended changes. When resubmitting these recommendations, ENTSO-E should include the stakeholder comments it received during the consultation (20 May - 31 July 2015) as well as ENTSO-E's reasons for including or not including the stakeholder comments.

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

*The favourable opinion of the BoR on the ACER Opinion on ENTSO-E recommendations on coordination of technical cooperation with third country TSOs was given by consensus of the members present (or represented).*

**6.4. Scoping of flexible response**

Mr Hernandez drew the attention of the BoR to the internal report on flexible response which was circulated for information. The BoR took note.

**7. Market Integrity and Transparency**

**7.1. REMIT implementation & operation**

Ms Groebel updated the BoR on the implementation of REMIT – commenting that the progress is very positive. She reiterated the call for more experts for the peer review process for passing the “ISO standard test” – this is the procedure NRAs must undertake to prove that their systems work safely and securely before they can receive REMIT data from the Agency.

The Director reported on the latest work of the REMIT Coordination Group. The last REMIT Coordination Group meeting was on 19 January. Key items of discussion were the Market Monitoring strategy; updates on ongoing market monitoring activities, including SMART implementation and fundamental issues arising from ongoing cases; and implementation of the REMIT information security policy.



The Director explained that the next main milestone in the implementation of REMIT is the second phase of data reporting (which will apply to non-standard contracts and fundamental data). He reported that there has been some de-scoping of other REMIT activities to cope with large number of applications for RRM status (over 900 applications have been made compared with initial estimates – for which the system has been designed – of ~200 RRMs). The focus for processing these applications is on TSOs, SSOs and LSOs and third-party RRMs. All others are being encouraged to find a third-party RRM. The Director noted that of the 900+ outstanding applications only 36 are from TSO, SSO, LSOs. The vast majority are from other market participants.

The Director reported that all NRAs are now connected to CEREMP and there are 6624 Market Participants registered. This has represented a huge effort on the part of NRAs. Of these market participants, there are 1850 for whom transactions are being reported. This adds up to approximately 1m data points per day.

With regards to other REMIT implementation activities, the Director reported that ACER is developing business analytics to test the quality and completeness of data. The BoR was reminded that the possibility of sub-licensing is only available to those who notified the Agency that they wished to do so. This is because the system has been designed to specification based on the number of NRAs that said they would. 4 NRAs are starting to see data from the Agency.

## 7.2. Public Consultation on European Register of market participants

The Director presented the consultation paper on the European Register of market participants. He explained that pursuant to recital 21 of the REMIT Regulation, one year after the establishment of the European register of market participants, the Commission has to assess, in cooperation with the Agency, the functioning and usefulness of the register. The public consultation paper is intended to collect views from all interested parties (market participants, OMPs, PPATs, financial regulators etc.) on the register and possible areas for improvement. The consultation paper will be launched with responses due by 22 April 2016.

### BoR Decision agreed: (D 5)

*The BoR endorsed the consultation by consensus of the members present (or represented) with the condition that the question on a European trading license would be redrafted.*

## **8. Infrastructure Challenge**

### 8.1. Update on Infrastructure topics

The Director updated the BoR on a number of infrastructure topics.

A joint meeting of the TEN-E Regional and Thematic Groups was held on 4 February 2016 with the objective of triggering a discussion on lessons learnt from PCI implementation and on the design of the process in view of the 3rd PCI list. With respect to regulatory issues, where the measures taken are not sufficient to ensure the timely implementation of projects of common interest, the Commission may issue guidelines regarding incentives. The EC will carry out a study on compliance-check of national regulatory practice with Article 13 of the Regulation. The Director noted that the process of PCI selection 2017 was presented and it seems that the EC adopted some of the ACER recommendations regarding the

improvement of the process. The innovations relate to structure and planning, most notably the Cooperation Platform, which was presented for the first time to stakeholders. A joint meeting was held between ACER, the Commission and the ENTSOs on 5 February to kick-start the Cooperation Platform that will work on improving the 3rd PCI list selection process, along with the CBA and TYNDP methodology that feed into the process.

The Director informed the BoR that on 15 February ACER published a Memorandum of Understanding (MoU) signed with the Competent Authorities in 24 Member States responsible for facilitating and coordinating the monitoring of the implementation process for the development of key energy infrastructure projects in Europe. These projects of common interest (PCIs) are essential for completing the European internal energy market and for reaching the EU's energy policy objectives of affordable, secure and sustainable energy. The agreement will allow promoters of Projects of Common Interest (PCIs) to carry out a single reporting on the progress of their projects of common interest (PCI) to both ACER and the relevant national Competent Authorities. ACER will provide a single reporting window to reduce their administrative burden. Since then, another Competent Authority signed the MoU, bringing the total to 25 (France, Germany and the Netherlands have not signed it).

The Director noted that preparations are underway for the upcoming report on the progress of PCIs (due in Q2 of 2016). Data from project promoters is due by the end of March. He pointed out that the 2<sup>nd</sup> Infrastructure Forum is planned for 23-24 June and, therefore, that it is likely we will seek to have the content of the report ready to present there.

## 8.2. ACER opinion on compliance of NDP with TYNDP

The Director presented on the Agency's opinion on the national ten-year network development plans to assess their consistency with the Community-wide ten-year network development plan (EU TYNDP).

The Director explained that the Opinion reaffirms the Agency's previous recommendations regarding the transparency of NDPs, in particular in relation to:

- The use of a coding system (unique for each investment);
- The cross-referential mapping with the codes from the EU TYNDP and from the Regional Investments Plans;
- The information on commissioning date;
- The information on project status;
- The information on increases of net transfer capacity;
- Project costs.

Based on the information and data received from NRAs, the Agency presents some recommendations for ensuring and improving the consistency of NDP and TYNDP. These include that the NDPs should include market studies for projects of cross-border relevance as they support the assessment of benefits. The Agency also recommends that NDPs should use the European network models for projects of cross-border relevance to fully assess the project's influence on the interconnected network. Furthermore, the Agency considers that the NDPs should better identify infrastructure costs by assessing all cost elements, and particularly by including operating costs.

The Director also explained that the Agency proposes that ENTSO-E's EU-wide TYNDPs should specify costs at investment item level and include the cost estimates for projects in the Regional Investment Plans, in order to ensure a proper basis for a consistency check with the NDPs. In addition, the scenarios for future EU-wide TYNDPs should include input

data sets for the years n+5, n+10, n+15 and n+20, in order to ensure comparability with the NDPs scenarios. Finally, the Agency recommends that future EU TYNDPs should include a mapping of cross-references between the investment codes in different plans. ENTSO-E should ensure consistency already in the first steps of preparation of future TYNDPs.

The Director invited any feedback or comments on the paper within one week.

The Chair concluded the meeting, noting that the April meeting will be an important one as there will be no meeting after that until June. Among other things, there will be a conclusion to the Process Group discussions and the all-NRAs decision on CCR. There will also be an election for the BoR Vice-Chair position and a BoR recommendation to the Director for a new AGWG Chair.