

50th ACER Board of Regulators Meeting
Wednesday, 16 September 2015, 09.00-16.00
ACER, Trg Republike 3, 1000 Ljubljana

Minutes final

Member States	Name ¹	Member States	Name
Austria (E-Control)	M: Walter Boltz (BoR Vice Chair) A: Dietmar Preinstorfer	Italy (AEEGSI)	A: Clara Poletti O: Ilaria Galimberti
Belgium (CREG)	M: Koen Locquet O: Geert Van Hauwermeiren	Latvia (PUC)	O: Lija Makare
Bulgaria (SEWRC)	Excused	Lithuania (NCC)	A: Vygantas Vaitkus
Croatia (HERA)	M: Tomislav Jureković	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Georgios Shammas O: Maria-Eleni Delenta	Malta (MRA)	Excused
Czech Republic (ERO)	A: Martina Krcova O: Martin Sik	Netherlands (ACM)	M: Henk Don O: Maarten Klijn
Denmark (DERA)	O: Sigrún Eyjólfsdóttir	Poland (URE)	A: Malgorzata Kozak
Estonia (ECA)	O: Tiina Maldre	Portugal (ERSE)	A: Alexandre Silva Santos
Finland (EV)	A: Antti Paananen	Romania (ANRE)	A: Lusine Caracasian
France (CRE)	A: Hélène Gassin O: Sabine Hinz	Slovakia (RONI)	A: Natasa Hucovicova
Germany (BNetzA)	A: Annegret Groebel O: Daniel Müether	Slovenia (AGEN-RS)	A: Jasna Blejc O: Bojan Kuzmic
Greece (RAE)	M: Michael Thomadakis	Spain (CNMC)	M: Fernando Hernández
Hungary (HEA)	A: Attila Nyikos O: Adam Krinszki	Sweden (Ei)	M: Anne Vadasz Nilsson A: Caroline Törnquist
Ireland (CER)	M: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Frances Warburton O: Ryan McLaughlin

ACER	Alberto Pototschnig, Fay Geitona, Andrew White, Volker Zuleger, Christophe Gence-Creux, Dennis Hesseling, Stefano Bracco
European Commission	Olivier Koch
CEER	Natalie McCoy

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

Main conclusions from the meeting:
1. <i>The agenda was approved.</i>
2. <i>The 49th BoR minutes were approved.</i>
3. <i>The BoR agreed to run a single-stage electronic approval of the revised 2016 ACER Work Programme, following the EC's Opinion. This will be launched as soon as possible.</i>
4. <i>Lord Mogg reminded the members that the decision was taken during the BoR Summit to require BoR documents to be submitted for uploading 7 days in advance of the BoR. This deadline will be strictly enforced. The Chair may provide exceptions, where appropriate, on the basis of written justification provided by the AWGs Chairs and/or the Director. This approach will be trialled for a period of 6-months and, if confirmed, the BoR RoP (which provide for a 2 week period for circulation of documents) will be changed. It was agreed that the BoR Secretary will circulate a note to explain the new approach to colleagues in NRAs and AWGs, including an explanation of why it is necessary. A detailed report on the summit will be available for the October BoR.</i>
5. <i>The response to the EC consultation on the new Energy Market Design will be developed in two parts. The section on governance will be circulated to members for informal comments after the BoR. The technical section will be developed and discussed at the EWG on 28 September. After the EWG, the two documents will be combined and an electronic procedure for BoR endorsement will be launched. A first round for comments will end on 2 October. A second round for endorsement will end on 6 October.</i>
6. <i>The Director was invited to consider the discussion in the BoR Summit when updating the AWG rules.</i>
7. <i>It was agreed to coordinate the press releases of NRAs and ACER on 7th October for the launch of REMIT.</i>
8. <i>The BoR held an orientation discussion on the draft ACER Recommendation on the tariffs code. It was agreed that the AGWG chair will draw a comparison between the current proposed Agency Recommendation on the TAR NC and CRE's proposal. The AGWG will consider the comparison and carry out further work on the criteria.</i>
9. <i>In September, a written procedure at the AGWG will be held on the Incremental Capacity amendment and a BoR electronic procedure will be launched for the amendment proposal for submission to the EC by October 2015.</i>
10. <i>The BoR members agreed to the use of the electronic procedure to provide the BoR Opinion on the Agency's Opinion on ENTSOG's Ten-Year Network Development Plan.</i>
11. <i>The BoR provided by majority of the members (present or represented) a favourable opinion to the draft Opinion of the Agency on the compliance of national regulatory authorities' decisions approving the methods of allocation of cross-border transmission capacity in the Central-East Europe region with regulation (EC) no 714/2009 and its Guidelines on the management and allocation of available transfer capacity of interconnections between national systems. E-Control provided a dissenting opinion annexed to the minutes. Until its release, the draft ACER Opinion remains embargoed.</i>
12. <i>The BoR provided by consensus (of the members present or represented) its favourable opinion on the draft ACER opinion on the ENTSO-E Summer Outlook and Winter Review.</i>
13. <i>The BoR took note of the draft letter to ENTSO-E stating that ACER confirms the request for additional scenarios. All but one NRA endorsed the letter.</i>
14. <i>The BoR took note that the draft ACER Recommendation on the CBCA and the ACER Opinion on the 2nd PCI are being finalised and will be submitted for the BoR Opinion at the October BoR.</i>

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 47th BoR meeting

BoR Decision agreed: (D 2)

The 49th BoR minutes were approved.

2. Update from the Commission and the Director

2.1. Update on recent developments

Mr Koch updated the BoR on the next steps following the publication of the Commission's summer package, first of all noting the deadline for the Energy Market Design consultation on 8 October. He noted that the EC is still forming its views in a number of areas and is open to engagement with all relevant parties. Mr Koch further explained that the EC's intention is to develop a series of legislative proposals to be put before the co-legislators. The first of these will come with the Commission's proposed Winter Package in January 2016 and will consist of proposed reforms to gas Security of Supply legislation, overhaul of IGA decision making rules, a new heating and cooling strategy, and a new LNG and Storage strategy. This will be followed by new legislation on energy efficiency in September 2016. New legislation on electricity market design, governance and renewables support schemes is expected in December 2016. Mr Koch highlighted that these timings are, at this stage, indicative only.

Mr Koch noted that there are two open questions of particular relevance to ACER. First, regarding how to streamline all the reporting obligations in the energy sector. Second, regarding communication of the alignment of REMIT and other internal market initiatives.

Mr Koch also notified the members that the report on the state of the Energy Union is expected in November 2015.

The Director updated the BoR on recent Agency activity. He informed the members about a recent meeting between the Agency and the ACER contact group of the ITRE committee. From the Agency, the meeting was attended by the Director, the BoR Chair and Mr Luis Martin-Oar of the Administrative Board. At the meeting, the Director updated the MEPs on ACER's draft work programme for 2016 and the preparations for REMIT go-live. The Director noted that the contact group members expressed support for the full level of resources requested by ACER. Members of the contact group also highlighted that amendments to the ITRE committee's report on Energy Union supporting greater resources for ACER have a high level of cross-party support.

The Director also informed the BoR that ACER presented at the Council Energy Working Party on Thursday 10 September. The Agency was invited by the Luxembourg Presidency to discuss REMIT implementation and ACER's budgetary challenges. The Director appeared

with the BoR Chair and the Administrative Board Vice-chair, Mr Piotr Wozniak, and Norman Bay, Chairman of FERC (the US federal energy regulatory body). Chairman Bay presented to the Working Party on FERC's experience in the US on market oversight. This included an illustration of some high-profile cases and the resources FERC currently devotes to wholesale energy market monitoring (which amount to 89 FTEs). The Director noted that Chairman Bay voiced support for greater resources for the Agency. A press conference was held following the meeting and ACER issued an announcement. The FERC Chairman also attended a series of meetings during his visit including with the ACER Heads of Department and AWG leaders; DG Energy Heads of Unit and staff; and DG ENER Director General, Mr Ristori.

The Director informed the members that, on 19 August, he wrote to the Swiss and Norwegian energy regulators (ECom and NVE) to invite NVE to participate as observers in the Agency Working Groups and REMIT CG and ECom in the Electricity WG. Their participation will be subject to a MoU between them and the Agency which is still to be concluded. The Director also informed the BoR members on the discussions with the Energy Community Secretariat on the compliance of Contracting Parties with the EU energy acquis.

The Director informed the BoR that, on the occasion of the Agency's 10th Public Workshop on REMIT implementation on 08 September, ACER published its annual report on its activities under REMIT in 2014. He noted that the constructive attitudes evident during the event show the progress that has been made as a result of the significant effort that has been made by the Agency and the NRAs.

The Director brought the member's attention to the publication of ACER's Recommendation on the Electricity Balancing Network Code on 22 July. This followed the favourable opinion of the BoR at the July BoR meeting.

3. ACER cross-sectoral activities

3.1. ACER 2016 Work Programme

The Director explained that the 2016 Work Programme was not brought to the BoR for approval as expected because the EC's Opinion was only received the previous day. He proposed that the ACER work programme be submitted for the formal approval via the electronic procedure once the Agency has had the opportunity to consider the EC's Opinion and make any necessary change to the work programme. The BoR members agreed to the use of the electronic procedure.

The Director summarised the key elements of the EC Opinion:

- The Commission notes that the draft work programme of ACER for 2016 is rightly focused on the tasks related to the completion of the internal energy market.
- The Commission encourages ACER to consider the implementation work of network codes and guidelines as priority in the coming years and to shift resources internally if need be to make sure that ACER can fulfil its task.
- The Commission invites ACER to assume a more proactive role in ensuring effective and well-coordinated implementation across Europe in the gas sector in terms of the monitoring of the implementation of the network codes and guidelines. Namely (i) on ensuring a coherent and coordinated implementation of network codes and guidelines across the EU, (ii) on regional implementation in the Gas Regional Initiative (GRI) focusing on the areas

where ACER can have the most added value, i.e. mainly in the GRI SSE and (iii) monitoring of implementation and reporting activities.

- The Commission reiterates its view that additional 10 staff for the implementation of REMIT and the TEN-E Regulation is sufficient. Accordingly, ACER is invited to align the Work Programme to the levels of human and financial resources proposed by the Commission in the Draft Budget 2016 (64 establishment plan posts and EU contribution of EUR 15,547,582 including assigned revenues), subject to the final decision of the Budgetary Authority.
- The Commission considers that ACER should step up cooperation with the ENTSOs on elements related to cost-benefit analysis.
- The Commission invites the Agency to elaborate a report on the alignment of national, regional, European network development plans and the list of projects of common interest (PCIs).
- Concrete measures, powers and responsibilities for ACER arising from the new Energy Market Design consultation are unlikely to affect the 2016 ACER work programme, given the envisaged timing of legislative proposals. The Agency is invited to revise its work programme to focus on existing tasks.

The Director clarified that while the Work Programme will be amended to take into account other comments of the EC, the Work Programme will not be updated to take into account the EC's opinion on the Agency's staffing requirements until the EU budgetary process is finalised.

It was noted that the use of the Electronic Procedure may result in missing the 30 September deadline for the adoption of the Work Programme, but that this could not be avoided as a result of the late submission of the EC's Opinion. Lord Mogg sought and received the BoR members' approval to run a single-stage electronic approval of the revised Work Programme, which will be carried out as soon as possible.

The Director took the opportunity to update the BoR on the process that will be in place for developing and adopting future work programmes from 2017. The new process is in line with the Common Approach for decentralised agencies and the Framework Financial Regulation (FFR). Work programmes for 2017 onwards must be submitted in the form of a "single programming document" (SPD). This means that the draft work programme of the Agency for 2017 will need to be ready by 31 January 2016.

To start the development of the 2017 work programme/ SPD, there will be a conference call in October with the AWG chairs to discuss an outline. The outline will then be presented to the BoR in October for discussion with a complete draft to be submitted to the BoR in December following consultation with stakeholders in November. Further guidance from the Commission is expected regarding the process for the SPD.

In any case, the SPD will be submitted without prejudice to the preliminary draft budget sent by the Director to the AB by 15 February, to the draft estimate of revenue & expenditure made by the AB by 31 March and to the approval of the WP by the BoR by 1 September and final adoption by the AB by 30 September.

3.2. Report on BoR Summit

Lord Mogg gave a brief overview of the discussions held during the Summit, noting that a full report will be brought to the BoR in October. Lord Mogg stated that the Summit had provided an opportunity for a productive and open discussion between the members of the BoR, in which the significant work of all NRAs and Agency staff was recognised and the value of their cooperation. Lord Mogg also noted that the importance of reinforcing cooperation and mutual support was a key theme of the discussions. He reported that there was a widespread view that the EC should be doing more to support NRAs struggling against insufficient resourcing. Lord Mogg reminded the members that the decision was taken during the Summit to require BoR documents to be submitted for uploading 1 week in advance of the BoR meeting and that this deadline would be strictly enforced with a let-out clause for the Chair to provide exceptions where appropriate and subject to appropriate justifications by the AWGs Chairs and/or the Director. This approach will be trialled for a period of 6-months and, if confirmed, the BoR RoP (which provide for a 2 week period for circulation of documents) will be changed. It was agreed that the BoR Secretary will circulate a note to explain the new approach to colleagues in NRAs and AWGs, including an explanation of why it is necessary.

Lord Mogg also recalled suggestions made during the Summit to improve the website and to also make other organisational improvements. He also reported that there was a very interesting discussion on the BoR and AWG working arrangements including on the interaction between the Director, BoR and the AWGs prompted by proposals from Mr Boltz. Through these discussions it was agreed there is a need to provide greater clarity regarding the role of the AWGs, in particular to put into practice what is already provided for in the AWG Rules regarding the role of the AWGs in informing and providing input to the BoR. The members also considered the use of guidance by the BoR to the Director as provided for in the Regulation including what issues guidance would be useful on and which it would not. It would be neither politically or practically wise to give the BoR guidance on specific elements of decisions under discussion – perhaps more suited to strategic issues. The Director was also invited to consider the discussion in the Summit when updating the AWG rules.

3.3. Update on the Bridge anniversary event, 24 September

The agenda for the event was circulated to the BoR members for information.

3.4. Preparation of response to the Electricity Market Design Communication

The Director outlined the efforts and process towards preparing a joint ACER/CEER response to the energy market design consultation. He explained that the response will be drafted in two parts: One on governance and the other one on more technical elements of the consultation. At the end of the process they will be submitted together. Members were keen on providing input to the draft being prepared. The Director explained that the governance paper will be circulated informally to the BoR members in 2 days – giving members the opportunity to comment directly. He stated that the existing draft is fully in line with “the Bridge” proposals. Furthermore, members will have the chance to input during the first informal round for comments to be launched shortly. Following this, once the two parts are combined in a single document, an electronic procedure for BoR endorsement will be launched. The first round will be launched on 28 September until 2 October. Final comments will be invited during this round. The second round will be launched on 5 October for endorsement. The deadline for the procedure will be 6 October. This procedure will allow the response to be finalised in time for both the close of the EC consultation and the high level meeting in Florence on 8 October. This proposal was agreed by the BoR members.

Market Monitoring

4. Market Integrity and Transparency

4.1. Update on REMIT implementation

Mr Zuleger presented on the progress of REMIT implementation.

He informed the BoR that ACER has published its annual report on REMIT activities in 2014. Mr Zuleger indicated that we have completed a MoU with FERC already in the beginning of the year and that more MoUs are foreseen with 28 financial market authorities in addition to the one already completed with ESMA. He noted that a MoU with the European Competition Network is also planned. The outstanding MoUs have been postponed to 2016 Work Programme because there was neither time nor resources to prepare them in 2015.

Mr Zuleger also informed the BoR that ACER has published all the supporting documentation for REMIT and that activities to refine the IT system have been underway since February. Only one NRA is pending for CEREMP (Cyprus). He noted that there has been a significant number of REMIT-related questions submitted to the ARIS service desk; around 1500 tickets on IT-related issues in addition to more than 1000 policy related questions submitted directly to the Agency. Mr Zuleger noted that this represents a significant challenge and the number of questions may rise further after the 7 October 'go live'. He informed the members that there are now 2577 registered market participants (with thanks to significant work of NRAs to get them registered).

Mr Zuleger updated the members that the REMIT quarterly updates have been well received, because it concentrates all potential changes to ACER documents in one place, and stakeholder feedback has been good. To date, there are 24 approved third-party RRM, 36 pre-registered (includes approved ones). 450 additional market participant RRM are currently processed. ACER has focussed on those with first phase reporting obligations, such as organised market places.

Mr Zuleger noted that ACER has been notified of 22 potential cases of REMIT breaches this year.

Ms Groebel suggested that it would be good to coordinate press releases between NRAs and ACER on 7th October. It was agreed that this would be a sensible approach.

Lord Mogg noted that FERC Chairman, Mr Bay, was supportive of the need for greater ACER and NRA resources for REMIT. In the US, market surveillance has led to US\$ 1 billion in penalties from a few successfully managed cases, illustrating the value of investing in the appropriate resources. He also noted that investigations of potential breaches are going to affect NRAs more than the Agency – it will be potentially a massive burden and one of the greatest challenges facing NRAs and ACER in the immediate future. He reiterated the need to contemplate arranging training courses for NRAs' staff delivered by financial market experts with experience of market monitoring. Mr Thomadakis suggested that the training programme should be expanded significantly with regard to REMIT – including for senior people as well as technical level. While Lord Mogg noted that FERC use an algorithm rather than NASDAQ SMARTS solution, Mr Zuleger noted that this is foreseen for ACER in the future as well, but will not be immediately possible given the current lack of data and experiences.

- **3rd REMIT Coordination Group meeting**

Mr Zuleger reported to the BoR on the 3rd REMIT coordination group meeting. In particular, he updated the members on the market monitoring and surveillance strategy under development in that group. Mr Zuleger explained that the concept under discussion is one of bottom up surveillance at national level from NRAs using national data leveraging on the already existing regional cooperation in combination with top down surveillance at ACER using all EU data. It is based on the principle that efficient and effective market monitoring at European, regional and national level is essential for deterring market abuse in wholesale energy markets. Therefore, surveillance carried out by ACER at Union-level in close cooperation and collaboration with surveillance by NRAs at national level will be key. The approach is that NRAs will cooperate with one another and ACER at a regional level as well as at Union-level and that these regional 'colleges' will be able to learn from one another's experiences of market surveillance. More detail on the strategy will be brought to the December BoR. Ms Groebel reiterated the need to have a coordinated surveillance approach and to ensure data sharing and that systems cooperate securely. She suggested that the market monitoring and surveillance strategy should aim to make use of resources efficiently by leveraging synergies with regional cooperation for electricity and gas using regional MoUs for market monitoring between NRAs. In particular, she noted that the number of "colleges" should not be too big in order to be accommodated, but the number of NRAs involved should also not become too numerous to facilitate cooperation.

Mr Zuleger noted that ACER received 5 letters of intent from NRAs planning to use SMARTS. He explained that ACER has been informally told that others may be interested. However, none of the NRAs interested in sub-licensing SMART will go ahead this year – they will start next year.

- **Preparations for 7 October data collection 'go live'**

Mr Zuleger reminded the BoR members that from 7 October market participants (MPs) executing trades on organised market places (OMPs) will be required to report these trades. Mr Zuleger explained that ACER will publish a list of OMPs to facilitate reporting. He updated the BoR that most (of 65 listed) organised market places are in the testing stage to become RRM or have elected to use a third-party RRM. Mr Zuleger stressed that MPs trading in OMPs must be registered with the NRA, pointing out that unregistered MPs is likely to be one of the main issues cropping up in the first few weeks and months. He acknowledged that NRAs are working hard to register MPs before the deadline, but noted that in some places the necessary identification codes (e.g. EIC codes) are not being provided in the registration which may pose data quality issues once data collection starts.

Mr Zuleger explained the contingency plans in place for managing potential issues. There are now weekly webinars to answer last-minute questions from RRM and OMPs. Work is ongoing to put in place notifications to relevant parties if there are any problems (such as a back loading of data). Mr Zuleger explained to the BoR the structure of the ARIS central service desk, which will be a first point of contact for issues under REMIT. He noted that ACER is currently working to overcome some problems experienced by users of the service desk so far – in particular to reduce response times by the service desk. Two additional agents are being brought in as part of these improvements.

A question was raised regarding registration fees levied by RRM for reporting. Mr Zuleger clarified that ACER has no competence on reporting fees. He noted that the question of fees mostly relates to competition rules for ensuring a level playing field between OMPs and RRM.

Mr Zuleger noted that there will also be post go-live activities, including continuation of REMIT Q&A sessions, maintenance releases to fix bugs, new functionalities, running contingencies, setting up of operational tools and preparations for the second phase of reporting.

A question was raised about the application of exemptions from REMIT available in the Regulation. Mr Zuleger responded that this issue has been addressed in Q&A reports previously. He clarified that the exemption is for final use customers. It has been agreed that those entering the organised market place need to be registered to ensure a full picture.

- 1st REMIT Information Security Implementation Group meeting

Mr Bracco reported on the 1st REMIT Information Security Implementation Group meeting. In particular, he updated the BoR on the outcome of the voluntary self-assessment on compliance with information security.

Mr Bracco noted that there will likely be a number of RISIG meetings in the run up to the “go live”. He requested that NRAs allocate time for security personnel to ensure that declarations received comply with reality on the ground.

Lord Mogg pointed out concerns with the low level of compliance with cryptography requirements. Mr Bracco noted that issues on cryptography can be overcome relatively quickly and easily. He further explained that the aim by 7 October is to clear 5 applications for data. He noted that it took 11 months alone on developing the information security policies in consultation with all NRAs. There is still work being carried out on training and awareness to ensure that NRAs are ready. Mr Zuleger noted that ACER can have the central data system in place but that it is also necessary for NRAs to have their systems ready to receive data.

- CEER/ACER workshop on REMIT 22-23 July

The workshop was attended by representatives from over a dozen NRAs. A number of ACER staff attended to lead and provide expert input to the sessions. There were 26 registrations in all. The workshop covered basic background information on the legal framework of REMIT; a practical introduction to data reporting from 7 October onwards; case studies on market monitoring and case management; and an overview of interactions between REMIT and financial market regulation. The workshop received positive comments from attendees.

- Ad hoc data quality meeting on 10-11 August

An ad hoc interim data quality meeting was set up to invite all experts to look at data quality issues. It took place on 10-11 August 2015 in Ljubljana. The main topics discussed were: Article 8 enforcement issues (this includes the process pathways describing how ACER will alert NRAs that there are data problems, for NRAs to take enforcement action, when appropriate); Data validation rules and issues; Data quality assessment and how RRM will be contacted, including the process to identify incorrect to corrected data.

There remain a number of outstanding issues that need to be concluded in this area and which will be taken on by the newly established Market Data Reporting Standing Committee under the REMIT CG umbrella.

4.2. Public consultation on a common schema for the disclosure of inside information

Mr Zuleger noted that a draft manual for the disclosure of inside information is circulated.

From 27 May to 26 June 2015, the Agency held a public consultation on the proposed common schema for disclosing inside information - set of fields, definitions and list of accepted values – for the web-feeds under Article 10(1) of the Implementing Regulation.

There were more than 40 responses from more than ten countries. The majority of responses were from Market Participants or Industry Associations, though a range of other stakeholders also responded.

Feedback was mostly positive. However, two fields attracted concerns: ‘Decision Time’ and ‘Impact on carbon permit prices’.

Respondents suggested that ‘Decision Time’ data would be difficult to establish, not relevant to MPs and potentially burdensome.

Respondents suggested that ‘Impact on carbon permit prices’ would be difficult to assess in urgent timeframes, would require guidelines on how to assess such an impact, and would require agreement with ESMA.

The final draft of the Manual taking into account comments from NRAs through the AMIT WG was uploaded for information to the BoR and will be published by the end of September.

4.3. Update on financial legislation

Ms Groebel informed the BoR that CEER responded to the EC’s consultation on EMIR, making clear that energy wholesale trading is covered by REMIT and does not, therefore, need additional financial supervision. The CEER response is publicly available and was circulated to the BoR for information. She informed members that on 24 September there is another meeting of ESMA and financial regulators to discuss the impact of MiFID on energy markets and REMIT. She invited NRAs to make the CEER response available to national financial regulators to at the least make them aware of the issues. Both CEER and ACER responses to the consultation are uploaded.

4.4. Draft Security Compliance Commitment

Mr Zuleger drew the BoR’s attention to the draft Security Compliance Commitment declaration circulated in advance of the meeting. He explained that ACER has proposed that NRAs perform a self-assessment of their compliance with ACER’s security policy prior to the start of data reporting. NRAs will sign the Security Compliance Commitment following this assessment to declare compliance with the policies prior to an ex-post review of compliance by the RISIG group and possibly the Agency. He explained that no comments on the draft declaration were received in the REMIT CG meeting and invited BoR members to comment on the proposed process. Lord Mogg proposed that the declaration should require the signature of both the responsible Head of Department for REMIT and the NRA Chair.

The Director informed the BoR that the Security Compliance Declaration will be annexed to a forthcoming Agency’s Decision establishing that access to data sharing will be subject to NRAs complying with the REMIT Security Policy, in the same terms as specified in the Security Compliance Declaration.

Completion of the Internal Energy Market

Update on FGs and Network Codes

5. Gas

5.1. Update on FGs, NCs and other work

Mr Boltz provided an update. He informed the members that Mr Ryan McLaughlin will step down as the Balancing TF Co Chair and a call for the new Co Chair is now open until 25 September.

He presented the main topics to be discussed at the Madrid Forum to be held on 14-15 October 2015 including the GTM implementation. 20 September is the deadline for speakers to deliver draft presentations. It is foreseen that presentations will be circulated to the GA/BoR on or around 30 September to then be delivered to the EC by the 7 October deadline.

Regarding the booking platforms, GSA, RBP, PRISMA, E-Control, URE and BNetzA agreed on financial contribution to the consultancy study. The consultant chosen was Baringa Partners LLP. The platforms were invited to be (non-voting) members of the Steering Committee. 3 Steering Committee meetings were held on 6 July, 4 and 25 August and the final report is expected by mid-September.

Regarding balancing, an interim report will be provided for the next Madrid Forum. It is worth looking at the balancing implementation plans of the various TSOs. A questionnaire has been prepared by ACER and the Balancing TF, in conjunction with ENTSOG with inputs received from EFET and the Commission. There have been extensive ongoing consultations between ACER staff, TF Co-chairs and ENTSOG to draft the report and the presentation for the next Madrid Forum will summarise the main outcomes. Ideally, a consolidated version of the report and the presentation should be ready by mid-September to undergo the formal approval by ENTSOG and the AGWG and BoR in time for Madrid. The publication of the report is envisaged for the end of October and on 24 November a workshop will be held. The idea is to hold the meeting in an Eastern European country (a possible choice is between Budapest and Sofia).

Regarding the interoperability NC, ENTSOG provided a draft interconnection agreement template at the end of June. The ACER opinion (on the ENTSOG template) needs to be provided by 31 October, having due regard to the opinions of the national regulatory authorities. A final draft opinion will be circulated to the TF in the coming weeks, with a view to be submitted to the AGWG on 1st October and to the BoR on 13 October. After taking into account the Opinion provided by the Agency, ENTSOG shall publish on its website the final template.

5.2. ACER Recommendation on the harmonisation of gas transmission tariffs NC

The Director informed the members that the draft ACER Recommendation on the Tariffs network code was circulated to the BoR for a final orientation discussion. The key elements have been crystallised and although some small technical issues could again be reconsidered at the AGWG, there is not at this stage room for substantial changes. If we were to propose major changes the broad agreement reached at high level between ACER, EC and ENTSOG will no longer stand and all issues would be opened. This means we are

back to the drawing board. We can thus improve the Recommendation on some technical aspects, but he is minded to maintain substance unchanged. The draft Recommendation will be finalised and submitted to the BoR for its formal opinion in October (in Madrid).

Mr Boltz presented an update on the latest discussions. ENTSOG sent a revised code on 31 July. As discussed at the July BoR, a draft Recommendation was to be prepared that broadly supports the latest ENTSOG NC and tries to accommodate at least some of the concerns raised by a few members in relation to the selection of cost allocation methodologies. Mr Boltz invited the BoR to reconfirm that the draft ACER qualified Recommendation should broadly support ENTSOG's NC. We could also indicate that we are ready to assist in the further EC-led process to improve the drafting, where necessary.

Mr Boltz explained that a maximum number of detailed comments raised by the Tariffs TF members were taken on board in the revised draft Recommendation. However, some comments have not been incorporated in the revised draft Recommendation.

Mr Boltz noted that there is no merit in postponing any longer the decision given extensive discussions have been held. In substance, Mr Boltz remarked that the two envisaged methodologies - the postage stamp and capacity-weighted distance - are not *per se* the "best" methodologies, but rather those which best fit the overall approach, i.e. default methodologies and there is the possibility to opt for a more refined methodology that fits the transmission system characteristics. A partial postponement (2 phase approach) has already been proposed by stakeholders but without mentioning the expected outcome at the end of neither the 2nd phase nor the concrete steps/time plan. The 2 phase approach remains as a fallback option later on but it should not be proposed now.

ACER must remain closely involved in the further process and further drafting improvements can be carried out. At this stage we can further define the criteria for selecting an alternative methodology, refine the criteria for the ACER Recommendation and make small additional clarifications.

The Director is ready to consider input by members but we must quickly finalise the Recommendation to be submitted for the October BoR as the EC timeline is fierce. The risk is that failure to find agreement would leave the Commission to pursue in comitology its own approach without an ACER Recommendation.

Lord Mogg concluded that the AGWG chair will draw a comparison between the current proposal and CRE's input for the next AGWG. The AGWG will further work on the criteria. The Director will then finalise his proposal for submission at the October BoR for a formal BoR opinion.

5.3. Update on the PC on incremental capacity

The final proposal and Evaluation of Responses (EoR) to the public consultation was discussed at the AGWG on 10 September. It resulted in 20 responses, which are broadly supportive, but some specific proposals, clarifications are suggested. The CAM TF members preliminary "categorised" the suggestions/proposals in 4 groups: Proposals that could possibly be supported; proposals that could possibly be declined; proposals to be further discussed; proposals considered out of scope of this PC, but that could be taken up later (as those may require additional stakeholder consultation). Regarding the next steps, from 21 - 25 September a written procedure at the AGWG will be held and there will be a need for a BoR electronic procedure in order to finalise the amendment proposal to the EC by October 2015.

5.4. Agency Opinion on ENTSOG's Ten-Year Network Development Plan – Orientation discussion

A draft Opinion on ENTSOG's TYNDP was circulated to the BoR for an orientation discussion with a view to seeking approval to submit it for a formal opinion via electronic procedure. The Director noted that the ACER opinion needs to be provided by the end of September and, therefore, the electronic procedure would need to be launched shortly.

BoR Decision agreed: (D 3)

The BoR members agreed to the use of the electronic procedure for the provision of the BoR Opinion on the Agency's Opinion on ENTSOG's Ten-Year Network Development Plan.

6. Electricity

6.1. Update on FGs, NCs and other work

Mr Hernandez provided an update. The CACM Guidelines came into force and many implementation tasks are upcoming including the NEMOs designation procedures, the opinion on the capacity calculation regions, the day ahead algorithms etc. We received the proposal from ENTSO-E to increase the number of regions and the draft position of ACER is being prepared. It is expected to be submitted to the BoR's endorsement for the November BoR. On the Forward capacity allocation code the Comitology vote is expected in October. The HVDC code was adopted in Comitology last Friday. We have received the merged text of the System Operation codes. It does not propose any material changes; by the end of October they will also be submitted to Comitology.

The Balancing and the Emergency and Restoration codes will be considered in the context of the electricity market design initiative.

He informed the BoR that CREG volunteered to lead the XBID project. Any other volunteer to help is welcome.

Mr Koch also noted that since the CACM Guidelines were adopted, there are many implementation issues and legal questions to address such as the question of participants (including from third countries). He also noted that a project plan for power exchanges is needed.

6.2. ACER Opinion on URE peer review request

The Director introduced the draft Opinion. The opinion addresses some of the concerns raised at the July meeting including whether congestion in Germany could be within the scope of the Opinion. The current text is sufficiently clear.

Mr Boltz presented E-Control dissenting opinion on the draft Opinion. The impact of the ACER Opinion on Austria, Germany and the region is significant.

Last Mr Boltz mentioned that Germany and Austria are fully aware of the situation. Effective and efficient mitigation measures are being identified and are already or will be soon implemented. Network development in the region is the only sustainable solution.

Ms Groebel made the following statement: BNetzA provides its favourable opinion (pursuant to Article 15 (1) of Regulation (EC) No 713/2009 on the draft Opinion of the Agency on the compliance of national regulatory authorities' decisions approving the methods of allocation of cross-border transmission capacity in the Central-east Europe region with regulation (EC) 714/2009 and its Guidelines on the management and allocation of available transfer capacity of interconnections between national systems (hereafter: Opinion)).

However, BNetzA disagrees with the following statements in the Opinion:

According to par. 84 and par. 115 “the Agency considers re-dispatching and countertrading might be needed to address structural congestions during the transition period.” This statement is respectively provided with a footnote according to which “the Agency notes that measures such as implementation of capacity allocation requires a certain transition period for stakeholders to prepare, as was done in the Swedish case where this period was set to 18 months. During this period, curative re-dispatching and countertrading might be needed to address structural congestions. (...)”

In BNetzA's view the notion “transition period” should be understood as the due time until the network development measures on the grid – on internal network elements as well as on the interconnectors – necessary to tackle the repeating congestions described in the Opinion are accomplished. Only with the aid of such network related, i.e. physical measures can the physical congestions causing the described loop flows and unscheduled flows, the limitations of the available cross-border capacity and thereby the limitations on cross-border trade of electricity in the CEE region be rectified in a sustainable way. However, this is only the case, if during the time until these network investments are realised all means necessary are adopted to tackle congestion. These means can include re-dispatching and countertrading if under the circumstances such measures are required.

BNetzA highlights that both capacity allocation procedures as a midterm measure and interim measures such as re-dispatching, and finally also a combination of both measures might mitigate the described effects which hamper trade of electricity across the Union or parts of it. In their view, network investments alone or in combination with said measures – congestion management by means of market splitting or re-dispatching or a combination of both – may be appropriate to address the problem of loop flows depending on the overall situation.

BNetzA disagrees with the assertion in para. 119 according to which “(...) the increasing amount of north-to-south exchanges within Germany causes severe structural physical congestions within Germany and in the neighbouring countries and this indicates that additional measures would also be needed. The Agency recommends that this issue be further investigated and seriously addressed in a coordinated way, i.e. in the framework of the bidding zone review process or in any other appropriate framework.” This statement does not fall within the scope of the request of URE and such statement is not covered by the legal basis laid down in Article 7 (4) of Regulation (EC) No 713/2009.

The Director noted that most of the issues raised by E-Control were already addressed during the process. In particular, the main issue addressed by the Opinion is about compliance with the relevant provisions and suggestions on how the issues can be remedied. ACER is not, in this case, carrying out a Cost Benefit Analysis of different measures. The draft Opinion states that we should speed up flow based capacity allocation and this would lead to a significant reduction in the unplanned flows. The current draft is careful to reflect that the issue of internal congestion is not neglected but clarifies that it

needs to be addressed either in the bidding zone review or in any other appropriate framework. The Director submitted the draft Opinion to the BoR for its formal Opinion.

In terms of next steps, the Director informed that the Opinion would be adopted next week, probably on Wednesday and ACER will coordinate its announcement on the publication with BNetzA and E-Control. Until next Wednesday the Opinion remains embargoed and the members were invited to respect this.

BoR Decision agreed: (D 4)

The BoR provided by majority of the members (present or represented) a favourable opinion to the draft Opinion of the Agency on the compliance of national regulatory authorities' decisions approving the methods of allocation of cross-border transmission capacity in the Central-east Europe region with regulation (EC) no 714/2009 and its guidelines on the management and allocation of available transfer capacity of interconnections between national systems. E-Control provided a dissenting opinion.

6.3. ACER Opinion on Summer Outlook and Winter Review

The Director presented the draft Opinion which was submitted to the BoR for a BoR opinion. On 3 June 2015, ENTSO-E submitted to the Agency its annual summer generation adequacy outlook report for 2015 together with the review of the main events which occurred during the winter 2014/2015. The draft Opinion of ACER encourages ENTSO-E to provide more insights into the operational issues (e.g. voltage stability) raised by high RES production exceeding national demand and how TSOs are planning to address them. The Agency encourages ENTSO-E to clarify whether a number of improvements to the methodology of the 2015 report were included. Furthermore, the Winter Review 2014/2015 covers the period from 1 December 2014 (week 49) to 19 April 2015 (week 16). It outlines the main events during this winter period, which were relevant for security of electricity supply according to TSOs. The Agency would have expected a description of the countermeasures adopted by TSOs, as similar situations may occur with larger impacts in the future. While information regarding individual countries is given in Appendix 2, the Agency recommends ENTSO-E to draft a summary of the lessons learned when comparing the forecast (seasonal outlook report) and realisation (seasonal review).

BoR Decision agreed: (D 5)

The BoR provided by consensus (of the members present or represented) its favourable opinion on the draft ACER Opinion on the ENTSO-E Summer Outlook Report 2015 and Winter Review 2014/2015.

6.4. Draft letter to ENTSO-E regarding the Bidding zone review process

The Director presented the draft letter for information (and possible endorsement). He informed the members that while there was a long discussion with ENTSO-E on how to proceed; the moment has come to input into the process. The Director would like to send the letter and would like to get NRAs' input.

Ms Groebel noted that the draft letter states that ACER, in close coordination with all involved NRAs, confirms the request for additional scenarios. However, BNetzA will not approve the extension of scenarios. The Director, therefore, informed the BoR that in finalising the letter he will take into account that there is no unanimous support from NRAs.

7. Infrastructure Challenge

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

Mr Gence-Creux provided an update on the latest developments on the 2nd PCI selection. Candidate projects were reviewed by NRAs in June 2015. With regard to electricity, the draft electricity PCI lists was submitted to the Agency on May 11th (smart grids) and July 13th (transmission and storage). The drafting of the ACER opinion has started over the summer, following orientation discussions (on table of contents and key messages) within the INF TF. Regarding gas, the process was postponed by the EC to the fall of 2015. The EC is asking ACER to provide the Opinion on time for the adoption of the list in November 2015, which means that the Opinion will have to be adopted by the end of October 2015. We have started the drafting. He then presented the key recommendations for future selection processes (common to gas and electricity).

Regarding the next steps for electricity, on 28 September the AEWG will be invited to endorse the draft opinion and the Opinion will be submitted to the October BoR for its formal opinion. Regarding gas, the submission of the list to ACER is expected late October. The (ACER) Opinion on the Gas PCI will have to go through a BoR electronic procedure and be submitted by end of October.

Mr Gence-Creux also presented the state of play on the preparation of the ACER CBCA Recommendation. The first ACER CBCA Recommendation No 07/13 had already envisaged the possibility of update. The ACER CBCA monitoring report announced a review and an identification of NRAs' and stakeholders' concerns. The draft Recommendation has been revised and has been discussed at the AEWG and AGWG. The draft Recommendation provides for some key messages for promoters and some key messages (for NRAs).

Regarding the next steps, the draft ACER Recommendation is currently being finalised and will be submitted for the BoR Opinion at the October BoR.

8. GRI update

8.1. GRI update

Mr Hesseling provided an update. The SSE region needs a new co-lead NRA. The Polish regulator (URE) will step down soon. ANRE will remain as co-lead NRA and there is one potentially interested NRA, which is Hungary. A survey was sent to South and SSE GRIs at the beginning of August regarding progress made. We have not got a reply from South GRI. In September, a public consultation on OSBB was launched. The next South GRI meeting (CAM IG) will be held on 29 September. The SSE completed the survey, except for projects involving the Greek regulator (RAE). All projects related to capacity booking platforms have been progressing. Most other projects are under way (meetings held or to be held in the following months). The next CAM IG meeting is scheduled on October 2015 but the date is to be confirmed. The next RCC and Stakeholder Group (SG) will be held on 19-20 November in Bucharest. At the next GRI Coordination Group meeting (7 October), ACER will invite GRI SSE to actively contribute to the CESEC project. There is also ongoing cooperation with the Energy Community. The study on market integration (consultant Elbling) is in the final phase (presentation on 5 October in Ljubljana). It assesses 4 market integration options, two with quantitative CBA. The Energy Community Gas forum will be held in Ljubljana on 6-7 October. The next GRI Coordination meeting will take place back to back with the Energy Community Gas Forum, on October 7 in Ljubljana.

Mr Hesseling informed the members that a SNE position within the Gas department for next year working on the Market Monitoring report will become available (we look for somebody with an economic background).

9. Implementation, Monitoring and Procedures

9.1. Oral update on AIMP WG

The AIMP WG met on 24 and 25 August and discussed issues including third country participation and the URE peer review. Mr Locquet provided an update including on the preparations of the next edition of the MMR. More NRAs are involved in the preparation of the MMR than last year. We must insist that the consumer protection chapter can be delivered on time. Time is already short which makes it difficult to collect comments from the other WGs in CEER. On retail prices, the draft report shows a moderate increase in electricity and reduction in gas. It has been decided to have at the beginning of each chapter a short summary to make the report easier to read.

10. Post-2014 strategy

10.1. Update on the Bridge Map

Ms Geitona provided an update on the Bridge Map since the last update (in April). She thanked the WG chairs and the HoD for providing the most recent updates on ongoing work. She also referred to the ACER Contact Group meeting of the ITRE Committee on 3 September which discussed progress in ACER work notably preparations on REMIT, the ACER 2016 WP and the budgetary challenges. With regard to the ACER appearance on the special session on REMIT by the Council's Energy Working Party on 10 September an update has been provided by the Director and the BoR Chair. All material (including the FERC and ACER presentations) has been uploaded at the BoR meeting folder under the libraries.

11. Florence Forum

Mr Koch updated the members that the agenda and invitation for the High Level Conference on the new energy market design as well as the Florence Forum (to be held on 08 and 09 October, respectively) will be circulated shortly.