

48th ACER Board of Regulators Meeting
Wednesday, 10 June 2015, 09.00-16.00
CEER, cours saint-Michel 30a, 1040 Brussels

Minutes final

Member States	Name ¹	Member States	Name
Austria (E-Control)	M: Walter Boltz A: Dietmar Preinstorfer	Italy (AEEGSI)	A: Clara Poletti O: Ilaria Galimberti
Belgium (CREG)	M: Marrie-Pierre Fauconnier A: Koen Locquet O: Geert Van Hauwermeiren	Latvia (PUC)	O: Lija Makare
Bulgaria (SEWRC)	Excused	Lithuania (NCC)	A: Vygantas Vaitkus
Croatia (HERA)	M: Tomislav Jureković A: Sonja Tomašić Škevin	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Georgios Shammas	Malta (MRA)	A: Anthony Rizzo O: Marjohn Abela
Czech Republic (ERO)	A: Martina Krcova O: Martin Sik	Netherlands (ACM)	A: Henk Don
Denmark (DERA)	A: Mads Lyndrup	Poland (URE)	O: Malgorzata Kozak
Estonia (ECA)	A: Külli Haab	Portugal (ERSE)	A: Alexandre Silva Santos
Finland (EV)	M: Simo Nurmi	Romania (ANRE)	
France (CRE)	O : Hélène Gassin O : Aude Le Tellier	Slovakia (RONI)	Excused
Germany (BNetzA)	A: Annegret Groebel O: Daniel Müether	Slovenia (AGEN-RS)	A: Jasna Blejc
Greece (RAE)	O: Katerina Sardi	Spain (CNMC)	M: Fernando Hernández
Hungary (HEA)	O: Krisztián Toth O: Adam Krinszi	Sweden (Ei)	A: Caroline Törnqvist
Ireland (CER)	M: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) O: Mark Copley

ACER	Alberto Pototschnig, Fay Geitona, Andrew White
European Commission	Klaus-Dieter Borchardt, Zsuzsanna Széles,
CEER	Natalie McCoy

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

Main conclusions from the meeting:
<i>1. The BoR members received an update from the EC on the forthcoming Communications on the electricity Market Design and Retail markets.</i>
<i>2. The BoR members received an update from the Director on recent ACER developments.</i>
<i>3. The BoR approved the independent section of the ACER annual activity report for the year 2014 concerning the regulatory activities of the Agency.</i>
<i>4. The BoR agreed the use of the electronic procedure for the adoption of its Opinion on the Commission's assessment under Article 16(3) of Regulation (EC) No 713/2009.</i>
<i>5. The BoR discussed the scope of the September BoR Summit.</i>
<i>6. The BoR recommended to the Director Ms Groebel as the co-chair of the AMIT working group.</i>
<i>7. Regarding third countries' participation to ACER, Lord Mogg concluded that the EC agreed that a) it is satisfied that Norway should be allowed to participate in the AWGs and that this will be confirmed in writing by the EC; and b) that it agrees with the Director's proposal for the involvement of EnC countries in the AWGs to be linked to their progress, to be notified by the EnC secretariat. Lord Mogg further noted that this agreement is at the discretion of the Agency. In practical terms, participation could be withdrawn if any issues or concerns arise.</i>
<i>8. Should the Director choose to table the Recommendation on the electricity balancing network code again, the members agreed to use the Electronic Procedure on the Opinion of the BoR, as opposed to waiting for the July BoR.</i>
<i>9. The BoR provided by consensus (of the members present or represented) its favourable opinion on the ACER Opinion and Recommendation on the ENTSO-E Emergency and Restoration network code.</i>
<i>10. The BoR provided by consensus (of the members present or represented) its favourable opinion on the draft ACER Opinion on the ENTSO-E winter outlook report 2014/15 and summer review 2014.</i>
<i>11. The BoR received an update on the preparation of the ACER Recommendation on the Tariifs NC.</i>
<i>12. The BoR provided by consensus (of the members present or represented) its favourable opinion on the ACER Opinion on the compliance of the decision of the National Commission for energy control and prices of the republic of Lithuania with the Guidelines referred to Directive 2009/73/EC, Regulation (EC) no 715/2009 or with other relevant provisions of this Directive or Regulation.</i>
<i>13. BoR members received an update on REMIT implementation and financial Regulation and discussed the ACER annual report on REMIT activities.</i>
<i>14. The BoR members discussed the preparation of the NRAs' assessments on the 2nd PCI list and the PCI monitoring reports. They also discussed the report on the preparation of the unit investments costs indicators.</i>

Main conclusions from the meeting:

15. The BoR members received an update on current work under the AIMP WG.

Part A: Items for discussion and/or decision

1. Opening

1.1. Approval of the agenda

BoR Decision agreed: (D 1)

The agenda was approved.

1.2. Approval of the minutes of the 47th BoR meeting

BoR Decision agreed: (D 2)

The 47th BoR minutes were approved.

2. Update from the Commission and the Director

2.1. Update on recent developments

- EC

Follow-up on Energy Union & summer package

Mr Borchardt provided an update. The Commission has discussed internally what format the Electricity Market Design Consultation and Retail Market Communication should take. Mr Borchardt informed the BoR that the Inter Service consultation was launched on 10 June for both Communications. The date for adoption is 15 July.

Mr Borchardt informed the BoR that the Florence Forum conclusions have been published on the EC website. He noted that a highlight of the Forum was the news that the master service agreement for the XBID intraday market coupling project was in the process of being signed and has by now been signed. Mr Borchardt brought to the BoR members' attention the Press Release issued by the project parties which acknowledged the positive contribution of regulators in providing assurances that allowed the project partners to move forward. Mr Borchardt noted that the 2nd day of the Forum included a more strategic-level discussion on the elements of the electricity market design Communication. It was noted that the only element not on the agenda at the June Forum were the governance issues which will be included in the agenda for the next Florence Forum.

Lord Mogg invited Mr Borchardt to provide an update on what the EC expects to address in the Winter Package. Mr Borchardt confirmed that the package will include the Gas Security of Supply Regulation revision; the EC is now working on an impact assessment and plans to have a decision in December by the Impact Assessment

Board with a view to making revisions to Gas Security of Supply Regulation. The Commission is also preparing a strategy paper on Storage and LNG to be completed towards the end of the year.

- ACER

2016 Work Programme

The Director and the BoR Chair will present the 2016 ACER Work Programme to the European Parliament Committee on Industry, Research and Energy (ITRE) on 16 June. On 3 June, ACER held a stakeholder workshop on the draft Work Programme of the Agency for 2016, in Ljubljana. There were 17 participants through Adobe connect and all stakeholders were invited to provide feedback in writing by 19 June.

IV ACER Annual Conference

The Director reminded the BoR about the IV ACER Annual Conference to take place on Thursday 9 July at the Brdo Congress Centre near Kranj, Slovenia. The Director informed the BoR that Vice-President Šefčovič and Commissioner Arias Cañete have confirmed their attendance to the conference.

Publication of a list of preregistered RRM

On 3 June, ACER published a list of pre-registered third party RRM applicants for the first phase of reporting, which are in the final registration stages. Two RRM applicants passed the testing phase and have been registered.

Congestion report

The Director noted that on 29 May the Agency's released its annual congestion report after incorporating the feedback from members.

ACER Budget & EP developments

The Director informed the BoR that the European Parliament has been quite active in supporting ACER. Attending the ITRE committee to present the 2016 Work Programme will provide another opportunity to push the resourcing issue with the committee. On 19 May, the Chair of the ITRE committee, Jerzy Buzek, wrote to Vice-President Šefčovič and Commissioner Arias Cañete highlighting the concern of the committee with the resourcing issues faced by ACER, particularly with regards to its REMIT obligations. The letter is circulated.

The Director also informed the BoR members that ACER's resourcing was discussed at the European Parliamentary Plenary in Strasbourg on 21 May where the vast majority of MEPs in the debate spoke of the importance of ensuring the proper resources for ACER.

Resources and budget

The Director gave a report on staff recruitment. The Agency currently has 77 positions in total with 22 nationalities represented. The Director also presented on the number of SNEs currently at ACER. The Director informed the BoR that the EC has presented the statement of estimates for the 2016 budget and reported that there has been some success in getting the Commission to acknowledge that ACER needs more resources. In the statement of estimates the total proposed budget for ACER is €15.55m for 2016, up from €10.85m in 2015 (and up from €11.49m in

previous estimates for 2016). In the budget, the EC has proposed to assign 10 additional staff members for ACER and to renew some IT hosting contracts. The Director noted that the current proposal still falls short of the requirements of the Agency, which estimates the need for additional 44 staff members. The Director expressed the gratitude of the Agency to DG ENER for its support and perseverance on the matter of ACER's budget.

3. ACER cross-sectoral activities

3.1. ACER annual activity report (section on regulatory activities)

Pursuant to the ACER Regulation, the Administrative Board adopts and publishes the annual report on the activities of the Agency and transmits 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 BoR, concerning the regulatory activities of the Agency during the year considered.

The section on regulatory activities was presented for approval after a first discussion at the last BoR meeting. The Director explained that this year the report follows a new format based on a table for each deliverable, presenting its legal basis, the WP objective for 2014, targets and deadlines (indicative), performance indicators, risk assessment, achievement against the target and Traffic lights. The Director noted that no comments had been received from the members following the discussion at the previous BoR meeting. The final version of the document also includes a foreword by the BoR Chair. The Director informed the BoR that most of the deliverables are completed or on track.

BoR Decision agreed: (D 3)

The BoR approved the independent section of the ACER annual activity report for the year 2014 concerning the regulatory activities of the Agency.

3.2. BoR Opinion on the EC assessment under Article 16 of ACER Regulation

Lord Mogg reminded the BoR that the EC is required by legislation to carry out an assessment of the Director's performance relevant to the extension of his term and to submit this to the Administrative Board. The BoR provides its opinion on that assessment to the AB, which decides on the extension of the Director's term.

Lord Mogg noted that the Commission has not yet formally adopted its assessment, expected to be adopted formally on 17 June. The EC has indicated that its assessment will be favourable and thus Lord Mogg proposed to circulate a draft BoR Opinion along the same lines for the BoR members' approval via the electronic procedure as soon as the EC assessment has been finalised. The members agreed to the use of the electronic procedure. Lord Mogg noted that there will be an

extraordinary meeting of the AB on 8 July to decide the extension of the Director's term (pending the EC assessment and the opinion of the BoR).

BoR Decision agreed: (D 4)

The BoR agreed the use of the electronic procedure for the adoption of its Opinion on the Commission's assessment under Article 16(3) of Regulation (EC) No 713/2009.

3.3. BoR Summit: Next steps & preliminary scope

Lord Mogg reminded the BoR members that the BoR Summit is scheduled for 15 September - 15h00 - 21h00. He drew the members' attention to a note from the Chair outlining some preliminary ideas on the scope. The proposed topic for the Summit is cooperation and coordination of the NRAs within the ACER framework in relation to the Agency's current and future mandate. The aim will be to assess the lessons learned from experience so far and how these can be applied going forward. The Chair proposes that the participants are the BoR Members (and alternates), the ACER Director and the BoR Secretary. Lord Mogg invited the BoR members to submit any comments by 23 June to Fay Geitona, noting that a more detailed discussion paper will be circulated at the July BoR (following comments on this initial proposal). Lord Mogg noted that the outcome of the Summit will be reported to the EC which will not be present to the summit.

3.4. BoR Recommendation on the AMIT WG co-chair

Nominations for the AMIT WG chairmanship closed on 28 May and there was only one candidate for the position Ms Groebel, BNetzA, recommended by the BoR. The Director thanked the BoR for the Recommendation.

BoR Decision agreed: (D 5)

The BoR recommended to the Director Ms Groebel as the co-chair of the AMIT working group.

3.5. Update on third countries involvement to ACER

The Director presented the background, on how article 31 of the Agency Regulation regarding third countries participation to ACER should be applied. The Director recalled that he wrote to the EC on 7 May (his letter was circulated to the BoR). In the letter he noted, in similar terms as in previous letters, that the involvement in the Agency's Working Groups should be offered to NRAs of the Contracting Parties to the Energy Community, or any other Third Country on track to meeting the requirements for participation in the Agency according to Article 31 of the Regulation that can be expected to meet them within a reasonable period of time (e.g. 6-12 months). The Director explained that he sees merit in linking participation in the Agency's Working Groups to the progress being made towards formal participation

at the BoR. He proposed that the EnC Secretariat could indicate the Contracting Parties which are on track (subject to the Commission's agreement).

Mr Borchardt agreed that the Director's proposal seems sensible.

The Director noted that with regard to Norway, the Director is keen on receiving the EC's confirmation that they can be involved in the AWGs.

A question was raised about reimbursement for representatives of third countries' NRAs attending BoR meetings. It was noted that this is not applicable for the working groups, so not an issue as far as informal participation is concerned. As far as formal participation is concerned, this and other issues are still to be determined including whether a formal mandate by the Council for negotiations is required; or whether a "softer" approach could be followed. The EC is considering the possibility of an MOU with the Contracting Parties but this is still to be confirmed.

Conclusion

Lord Mogg noted for the minutes that the EC agreed that a) it is satisfied that Norway should be allowed to participate in the AWGs and that this will be confirmed in writing by the EC; and b) that it agrees with the Director's proposal for the involvement of EnC countries in the AWGs to be linked to their progress, to be notified by the EnC secretariat. Lord Mogg further noted that this agreement is at the discretion of the Agency. In practical terms, participation could be withdrawn if any issues or concerns arise.

4. Electricity Regional Initiatives update

4.1. Update on Intraday

Mr Borchardt provided an update. He explained that all signatures have been confirmed since the Florence Forum (when the signing process was ongoing). He informed the BoR members that the next step are the local implementation projects which currently foresee a long testing phase with intraday market coupling expected to go live in September 2017. The EC hopes to be able to encourage the parties to reduce the testing phase and bring the 'go live' forward to spring 2017.

Mr Borchardt noted that the Florence Forum welcomed the confirmation by the parties that the key implementation contract for intraday market coupling is in the process of being signed and noted the widespread support for the project. It encouraged the project participants to develop an ambitious plan to deliver local implementation projects as quickly as possible with the involvement of stakeholders.

Completion of the Internal Energy Market

Update on FGs and Network Codes

5. Electricity

5.1. Update on FGs, NCs and other work

Mr Hernández provided an update on the progress of the electricity Network Codes. Three Grid Connection NCs are currently handled in parallel in the Cross-Border Committee: The Requirements for Generators code moves towards voting by end June with some remaining improvements. The Demand Connection code is also progressing and voting is foreseen for September. The HVDC code was presented the first time to Member States on 29 April and it is likely to progress quickly. The System Operation codes' merge should be finalised by the end of this month. The ACER Opinion and Recommendation on the Code on Emergency and Restoration is submitted for a BoR Opinion, however, this is linked to the electricity market design initiative as the EC set out and will thus not be tabled to Comitology yet.

5.2. ACER Recommendation on electricity balancing network code – Outcome of the BoR electronic procedure

Lord Mogg reported on the outcome of the electronic procedure on the BoR Opinion on the ACER Recommendation on the electricity balancing code. The second round was launched on 1 June, with the BoR members invited to vote on the revised recommendation by 4 June. The result of the second round was: 22 NRAs participated. 12 Voted in favour, 3 against and 7 abstained. 3 NRAs (HERA, ERSE and ECA) responded after the deadline and their votes did not count. Although, their votes would all have been in favour. As such, the necessary two thirds majority of those voting was not achieved.

The Director indicated that he needs to understand what issues were behind the outcome of the procedure. He noted that, after the previous BoR meeting, the AEWG has confirmed that there were no outstanding technical issues. He then explained his proposal submitted for the second round. The BoR Chair also explained the results of the deliberation process.

The Director clarified that, in his view, the purpose of the first round is for the BoR members to submit comments. He also noted that, as a matter of procedure, if the AWGs are not able to reach a consensus, they should present to the Director the different views, with the pros and cons associated to them. It is then the prerogative of the Director to weigh the views and to present the Recommendation to the BoR for its Opinion.

BoR Decision agreed: (D 6)

Should the Director choose to table the Recommendation on the electricity balancing network code again, the members agreed to use the Electronic Procedure on the Opinion of the BoR.

5.3. ACER Opinion & Recommendation on Emergency and Restoration network code

The Director presented the draft ACER Opinion and Recommendation submitted to the BoR for its Opinion. He noted that the Agency is largely satisfied with the Network Code and, on this basis, proposes the Agency's Opinion and Recommendation, whilst with some suggestions for further improvements, at the same time.

Mr Hernández reminded the BoR that this is the fourth system operation network code. He explained that the AEWG agreed that the Network Code is compliant with the Framework Guidelines and fully supports the Director's proposal to issue both the Opinion and Recommendation together. The Recommendation will, nevertheless, note some areas for improvement: the market integration provisions for the suspension of markets by the TSO under certain circumstance need close examination; the provisions relevant to energy storage need to take better account of emerging technologies and to ensure they can participate in ancillary services; areas of the network code where regional cooperation (and relevant bodies) could add value need to be identified and investigated.

BoR Decision agreed: (D 7)

The BoR provided by consensus (of the members present or represented) its favourable opinion on the ACER Opinion and Recommendation on the ENTSO-E Emergency and Restoration network code.

5.4. Terms of Reference for the European Network Codes Stakeholder Committees & EoR

The Director presented the Terms of Reference for the European Network Codes Stakeholder Committees and EoR which have been circulated to the BoR for information. He confirmed that ACER will chair the committees (at the request of stakeholders) and ENTSO-E will provide secretariat support to them.

The Director notified the BoR that a call for interested members will be launched in July. The first meeting is expected to be held in September.

Mr Boltz raised a question about how the flow of information from the stakeholder committees to the BoR and NRAs should be organised: How do we agree the positions to be taken. The Director responded, noting that the usual reports will be provided at the BoR. He also clarified that the committees will not replace the obligation for public consultation, which will continue to be carried out in the normal manner.

5.5. Update on flexibility

Lord Mogg invited Mr Hernández to provide an update on flexibility. Mr Hernández informed the BoR that Mr Blaney has been leading the work to coordinate flexibility across the different WGs.

Mr Blaney mentioned that there has been a discussion on flexibility between the WG chairs. He noted that flexibility is a cross cutting issue (wholesale, retail and networks) and that the challenge is to come up with an approach that takes into account each area. Following the discussion amongst the WG chairs, each WG will now work to set out the issues around flexibility that falls within its remit. The aim is for the WGs to identify where legislation may be needed/ may need to be changed to maximise the opportunity for flexibility in the future. Mr Blaney noted the complexity of the topic and that it is further complicated by the communication that needs to take place between numerous parties.

Lord Mogg noted that it is important the work on flexibility progresses but also that it does so in a way that captures the whole picture. Lord Mogg requested that Mr Blaney continue to coordinate the work on flexibility. Mr Borchardt proposed that he could arrange a meeting with Mr Blaney and Mr Sanchez to discuss how to improve the process of NRAs providing input into EG3.

5.6. ACER Opinion on the ENTSO-E winter outlook report 2014/15 and summer review 2014

The Director presented the draft ACER Opinion on the ENTSO-E Winter Outlook Report 2014/15 and Summer Review 2014 (Pursuant to Article 6(3) (b) of Regulation (EC) No 713/2009) for BoR Opinion. The Director noted that the Opinion is late because of resourcing issues.

The Summer Review 2014 covers the period from 1 June to 20 September 2014. It outlines the main events during the previous summer, according to TSOs, with reference to security of electricity supply.

In its Opinion on the Winter Outlook Report 2013/14 and Summer Review 2013, the Agency outlined several actions for ENTSO-E to improve the future outlooks and reviews. This Opinion therefore also takes stock of the progress made by ENTSO-E regarding these actions. ACER positively acknowledges some enhancements implemented by ENTSO-E in the WOR 2014/15:

- The Pan-European Climatic Database now contains 14 years data;
- Inclusion of a more detailed analysis taking into account the load-temperature relationship, for regions which are found to experience adequacy risks;
- Publication of information about expected weekly net load per country for normal and severe conditions.

Nevertheless, the Agency urges ENTSO-E to implement in the forthcoming outlook reports all the enhancements described in the ENTSO-E document 'Seasonal Outlook Report Evolution', and envisaged for the Winter Outlook Report 2014/15, such as publication of information about (a) installed generation capacity, (b) sensitivity of consumption to temperature conditions, (c) load management and (d) Net Transfer Capacity (NTC) values at the time points used for the downward adequacy analysis.

ACER also re-iterates its previous request noting that priority should be given to the actual weekly peak load levels and to the actual average temperatures and their deviation in relation to the forecasts.

BoR Decision agreed: (D 8)

The BoR provided by consensus (of the members present or represented) its favourable opinion on the draft ACER Opinion on the ENTSO-E Winter Outlook Report 2014/15 and Summer Review 2014.

5.7. Joint Declaration for Regional Cooperation on Security of Supply

Lord Mogg informed the BoR members that the German Member State delegation at the Florence Forum gave a presentation (circulated to BoR members for information) on a forthcoming declaration on regional cooperation for addressing security of supply by maximising regional synergies in supply adequacy. There are 12 countries involved (BE-NE-LUX, FR, DE, AT, CH, IT, PL, CZ, DK, SE and NO). A concrete declaration was subsequently made on 8 June, based on the high level political buy-in from all parties.

Ms Groebel reported that the purpose of the initiative is to strengthen cooperation on (electricity) SoS issues. She noted that BNetzA' have to participate in a number of different regional groups and it is often a challenge to keep them all aligned. Ms Groebel explained that the countries participating have been brought together because they share a direct electricity connection with Germany. However, she stressed that this should not be seen as a closed shop. After the MOU is signed it will be open to other Member States for signature. Mr Groebel expressed the view that the MOU and the initiative as a whole conform to the Energy Union ideas and principles, notably on reinforced regional cooperation.

Lord Mogg noted that such cooperative initiatives are welcome. He also noted that there will be wider implications, including for Member States not directly involved.

6. Gas

6.1. Update on FGs, NCs and other work

Mt Boltz provided an update on the progress of FGs and codes.

On booking platforms, Art. 27 (1) of the CAM code provides that TSOs shall apply NC CAM by offering capacity by means of one or a limited number of joint web-based booking platforms. He presented the outcome of the first workshop on CAM TF/Booking Platform Operators/TSOs. An assessment is being undertaken on whether all three booking platforms are able to fulfil requirements according to Art. 27 (1) and (2) of the code on CAM. Due to the existence of three booking platforms, ACER is assessing the legal terms for the coordination of booking platforms which need to be compliant with all legal requirements. With regard to the state of play of the study, PRISMA agreed on the financial contribution. Regional Booking Platform (RBP) considers co-financing the study and has committed to provide all necessary information and cooperate with the consultant. Gas System Platform (GSA) has initially indicated the readiness to financially contribute and has also committed to cooperate in the study. RBP and GSA will provide a final indication by the end of this week. The request for offers by E-Control was issued and a steering committee will be established by the end of June to also choose the consultant. The study is to be conducted during June and July and the final report will be provided by the end of July. The CAM TF invited the CEER LTF to carry out the legal analysis of requirements for capacity booking platforms according to Art. 27 of the CAM code.

Regarding the balancing NC implementation, preparations for the monitoring report are under way. A questionnaire has been prepared by ACER and BAL TF in cooperation with ENTSOG. The report is to be prepared by summer-autumn. A workshop is also being organised, whilst the date is not yet confirmed, and it will be open to NRAs, TSOs and stakeholders.

Regarding Interoperability, following the favourable Gas Committee vote on the Network Code on Interoperability and Data Exchange Rules, the code was published in the OJ on 1 May and will be applicable as of May 2016. The draft interconnection agreement template will be developed by ENTSOG by 30 June 2015.

6.2. Incremental amendment proposal

Regarding incremental capacity, the CAM TF presented the new proposal (simplifying the process) on incremental process to ENTSOG and most changes seem to be supported by ENTSOG members. The CAM TF will draft a concrete text proposal and consultation document by the end of June and the AGWG and BoR endorsement is foreseen for July with a public consultation to run until mid-August. The endorsement of the proposal following the public consultation is foreseen for September.

6.3. Preparation of the ACER Recommendation on Tariffs NC

The Director provided an update on the purpose of the High Level group. The purpose of the High Level restricted group (composed of EC, ACER and ENTSOG) is to try and find reasonable solutions to specific set of issues. At their meeting on 7 May, some reasonable solutions were identified that each of the parties would, subsequently, submit through their own internal constituencies. The purpose of the

meeting was not to bypass the formal process but to seek a solution and provide the overall direction and there are still some few loose ends to wrap up. It was clear that going to comitology with very different views would be untenable and thus the idea was to have a restricted group to help find a compromise before ENTSOG resubmits the final proposal to the Agency.

Mr Boltz also noted that the purpose was also to influence the discussion on the final code, rather than leaving it entirely to the Commission. Reasonable solutions have been identified and two Task Force meetings have been held. A concrete drafting on a number of issues has been developed but for a few issues, questions for clarification were sent to the HLM participants on 26 May. There has been an extraordinary AGWG meeting on 8 June to discuss the main concerns and to provide feedback to feed into HLM discussion on 10 June, especially regarding the transparency provisions; the issue of no physical backhaul pricing and additional issues in Annex I of the ACER Reasoned Opinion.

In particular, the following topics have been discussed: the cost allocation methodologies, and the limitation of the number of approved cost allocation methodologies to postage stamp and capacity-weighted distance; the removal of storage, where we should consider whether network tariffs should be adjusted to reflect the value of storage for gas networks; regarding multipliers, where we should consider whether, where a review is envisaged, the cap for the interim period should be set at a level which creates data to compare with the status quo; on transparency, where the RAB and WACC should be published in any case, not just “where relevant”. Regarding interruptible, back haul cannot be priced at marginal cost and we should be committed to market-based auction mechanisms that allow capacity to be purchased, cost reflectively, at the lowest possible cost. Second, interruptible cannot have a zero reserve price.

Regarding the next steps, if the Network Code is resubmitted by ENTSOG, the aim is to adopt the ACER Recommendation following a BoR opinion.

The members discussed three open issues and the process.

Mr Borchardt recognised that this is a very complex issue. The High Level meeting discussions aimed to seek common solutions and only reflect the starting point. Under no circumstances do they introduce a suspension of the (internal) procedures of the different Institutions which will of course apply. The EC has the ultimate responsibility to table their proposal to the Comitology but they thought that discussions should seek a broader agreement ahead of the formal process. If the EC’s proposal is supported by ENTSOG and ACER, there are better chances for a success in the comitology process.

Lord Mogg concluded by noting that there are legitimate concerns of NRAs with regard to the issues and solutions addressed and their broader impacts given this area is particularly complex. Those concerns should not be considered as negative nor be interpreted as eliminating a good prospect for agreement. Equally, it is important also to recognise the value of the High Level Group meetings in order to achieve progress and broader consensus in an effort to break the deadlock. We

should be aware of the process and build confidence and draw lessons to be learned such as how to better communicate the outcomes of the High Level Group meetings in a way which builds trust. Reassurance has been given and the AGWG delegates should be informed about the process. We should now intensify our efforts to reach progress.

6.4. ACER Opinion on NCC peer review

Mr Locquet and the Director presented the draft ACER opinion on the peer review under article 7(4) of the Agency Regulation submitted for a BoR Opinion (first peer review Opinion handled by ACER). This has been prepared in accordance with the process envisaged for the preparation of such opinions. There is no formal deadline for the adoption of an Opinion on a peer review. Once the Agency's Opinion is reached, if a NRA does not comply within 4 months, the Agency shall inform the Commission accordingly. The European Commission is free to decide whether to start an infringement procedure against the Member State. Mr Locquet was concerned on some of the legal aspects concerning infringements addressed to Member States given those responsibilities fall within the tasks of NRAs. Mr Locquet then presented the timeline of the peer review and the process. 11/11/14 the request was received. On 09/02/15 ACER finalised data collection; on 1st April the opinion was sent to the review team and on 19 May the opinion was evaluated by the AIMP WG.

The Director presented the key elements of the ACER Reasoned Opinion: The decision of NCC on the amendment of the methodology for the determination of national regulated prices in natural gas sector are deemed not to comply with Directive 2009/73/EC and Regulation (EC) No 715/2009, and in particular with Article 13 (1). Pursuant to Article 7(5) of the ACER Regulation, the Agency invites NCC to take the necessary measures to comply with the Reasoned Opinion and to report on the measures that have been adopted within four months of its receipt.

Mr Vaitkus sought for further collaboration with ACER in the preparation of the amended methodology and all the necessary measures to comply with this Reasoned Opinion and to report on the measures that have been adopted.

Mr Locquet and the Director thanked all NRAs who participated in this process. There may be some lessons to be drawn from the application of the process. This experience could also be important in the context of the implementation of the network codes. Mr Locquet felt it is important that NRAs can see that the peer review process can lead to concrete answers on the issues raised.

BoR Decision agreed: (D 9)

The BoR provided by consensus (of the members present or represented) a favorable Opinion on the ACER Opinion on the compliance of the decision of the Commission for energy control and prices of the republic of Lithuania with the Guidelines referred to Directive 2009/73/EC, Regulation (EC) no 715/2009 or with other relevant provisions of this Directive or Regulation.

Market Monitoring

7. Market Integrity and Transparency

7.1. REMIT implementation update

The Director gave a presentation on the REMIT implementation programme milestones. REMIT has now entered into its operational phase, while the implementation is still ongoing. A call for NRA experts to contribute to the initial operation of the Agency's market monitoring, data collection and data sharing activities under REMIT was reiterated. NRAs experts are expected to work jointly with the Agency's Market Monitoring Department during the following months. NRAs were invited to propose candidates by 31 July 2015.

With regard to CEREMEP, from NRAs of type A, 23 NRAs out of 25 are using CEREMP. Only 2 NRAs are not connected (Cyprus and Northern Ireland). For NRAs of type B, 4 out of 4 NRAs are connected to CEREMP.

ACER Published a list of twenty-five Pre-registered Reporting Mechanisms (RRMs) on 3 June. More than 300 additional RRM applications are currently being processed. More than 1000 Market Participants have been registered.

The Director presented the current status of Market surveillance solution. ARIS Production Releases 1.0-1.2 cover the first phase of data collection; ARIS Production Releases 2.0-2.1 cover the second phase of data collection. The ARIS Central Service Desk is operational since August 2014. 794 tickets have been handled since 1 January 2015.

There is a potential postponement of SMARTS phase 2 delivery for reasons of resource constraints by up to three months; this is currently under discussion.

On SMARTS sublicensing, a joint workshop with ACER and NASDAQ OMX to interested NRAs was held on 28 April. This provided background information on sublicensing possibility. NRAs should provide a letter of intent to the Agency no later than 1 July 2015 (so that ACER can assess the total staff and budget impact of support and hosting) and confirm their intent no later than two months prior to the start of sublicensing. A follow-up event is planned with interested NRAs for 24 June 2015 in the context of the 2nd REMIT Coordination Group meeting.

The Director reported that at this stage there are 2 NRAs interested in using the sub licencing possibility. The Director also noted that if as a market participant you report via an RRM you have discharged your obligations. Therefore, some sort of supervision of RRM's seems sensible, even though REMIT does not address this issue. The obvious party to do this seems to be the NRAs, whilst this is not a legislative requirement. It is expected that the RRM's would be subject to the NRA's scrutiny and we should pass this message to market participants. This, however, creates a conflict of interest if the NRA itself considers becoming a RRM.

Mr Boltz presented the E-Control experience of market surveillance. E-Control will get data pretty close to real time and they have the possibility to process those. E-Control collects information from 14 resources so far and they have developed a quite sophisticated security system. A number of issues are likely only to come up once data start coming in. Some stakeholders are having trouble with which data needs to be submitted under REMIT, MIFID and EMIR. The non-standardised contracts are to be collected as of October. E-CONTROL is permitted to receive surveillance-ready information. In his view, it is a mistake to rely only on ACER validation tests given also the alleged lack of clarity of the ACER specifications (TRUM). ACER's screening is only useful if the data are reliable. Software costs amounted to 500,000€ for E-CONTROL.

The Director responded that TRUM has already been revised ahead of its publication on 8 July and most of the issues raised by stakeholders already addressed.

As of 31 May, there are 41 pending cases of potential breaches. As of the end of April, there were 9 new cases from this year.

7.2. ACER annual report on its activities under REMIT in 2014

Ms Groebel presented the report. This is the third annual report concerning the activities of the Agency under REMIT. In this report, the Agency presents the activities undertaken in 2014 in order to implement REMIT. The Agency's workload under REMIT increased drastically since the end of 2014. The main conclusion is that the Agency has achieved major REMIT Implementation milestones in 2014 and will continue its REMIT implementation activities in 2015, despite the limited resources allocated to the Agency. It will further enhance its market monitoring and coordination activities in 2015. Efficient and effective market monitoring will, however depend heavily on the appropriate financial and human resources being made available to the Agency. The report recommends that the Commission: (a) considers the specificities of energy markets when reviewing EU financial market legislation; (b) monitors the transposition and implementation of enforcement and sanctioning powers at national level; and (c) provides appropriate financial and human resources to the Agency.

The report sets out that the case statistics for 2014 show that in a number of cases potential breaches of REMIT could not be sanctioned due to the lack of national implementation of enforcement and sanctioning powers of NRAs. The Agency is particularly concerned about the potential lack of enforcement powers of NRAs and it urges the European Commission to monitor the implementation of appropriate enforcement powers at national level or to enable the Agency to receive enforcement powers with regard to the supervision of RRMs.

The Director noted that the publication of the report is foreseen for the beginning of July.

7.3. Update on financial legislation

Mr Borchardt explained the three issues on the table and the latest developments on discussions: The most important being the physically delivered contracts definition: 1) specification of physically delivered wholesale products. ESMA has proposed a proportionality test linked to production and storage (this would have an impact on trade and liquidity); 2) the threshold of MIFID exemptions (ESMA came forward with very low thresholds of 0.5% and 5%); and 3) bank guarantees.

Mr Borchardt noted that his sense is that the problem has been understood and there is recognition by FISMA that there is a problem.

The Director noted that ACER has already issued a Recommendation. In his view, the key issue is whether Physical Forwards are considered as derivatives (in the US this is not the case). ESMA is most concerned about systemic risks which are very limited whereas REMIT addresses market manipulation.

8. Infrastructure Challenge

8.1. Update on preparation of the report on unit investment cost indicators and corresponding reference values for electricity and gas infrastructure

The Director presented the background and the state of play. The revised 2015 ACER WP had included this deliverable: “NRAs cooperating in the framework of the Agency shall establish and make publicly available a set of indicators and corresponding reference values for the comparison of unit investment costs for comparable projects of the gas and electricity infrastructure. Those reference values may be used by ENTSOs for the CBA carried out for the subsequent TYNDPs.”

The Director noted there was an expectation at the last BoR and during the preparation of the report that the Agency would publish the report. He asked the BoR members to confirm that this was still the expectation which they did.

The Director also noted that there is some concern that the Electricity and Gas sections of the report are still not properly aligned. However, he proposed that at some point we draw a line and accept slight differences between the two (particularly with regards to deflators). It was noted that if the Agency published the report, there is an outstanding question about what involvement the NRAs would like to have. This is the first time that the Agency is publishing unit values. The report needs to be clear that it is nothing more than a description of historical data. It was noted that there is plenty in the text to try to avoid misinterpretation of the data. The Director suggested that it would be good to speed up the process (since the report is already late).

Ms Széles noted that EC would like it to be published in June (mid-July at the latest). She also noted that this is the first time this exercise has been carried out, therefore, the report can note and explain the different approaches between gas and electricity; there is not necessarily a need to resolve them.

The Director indicated that he will review the report in light of the comments received.

8.2. 2nd PCI selection process - preparation by ACER and NRAs

The Director updated the BoR members on the preparations of ACER and the NRAs on the selection process for the 2nd PCI list.

In order to allow NRAs to fulfil their obligations accordingly and to carry out joint assessments of the candidate PCIs, a two-step approach assessment is being undertaken and ACER has facilitated and coordinated this task. The first step was a preliminary assessment to identify, for each candidate PCI, the concerned NRAs of potentially affected countries and any preliminary objection to the inclusion in PCI lists. The next step will be a more coordinated assessment on the basis of the checklists prepared by ACER. A joint (electricity and gas) infrastructure TF meeting was held on 2nd June.

Regarding the next steps on electricity, the 2nd step is the checklist (i.e. the detailed one) which was sent to NRAs by ACER on June 1st (and for this to be filled in by 18th June). Regarding the next steps on gas, the on-line Checklist (detailed project assessment: costs, benefits, commissioning date) was launched by ACER on June 1st (deadline 18 June, ready for RGs by 24 June). For electricity, the Regional Groups meetings are set for 25 -26 June. However, data essential for NRAs' assessment is still missing.

The Director suggested exploring a way for NRAs to communicate the more fundamental issues to the Commission.

Lord Mogg proposed a message to the Commission raising the concerns about the timelines and the overall planning of the process.

8.3. PCI monitoring report

The Director presented the report (noting that it is currently in two drafts – one for gas and one for electricity). He noted that the AWGs have been consulted and informed the BoR members that one of the key findings of the report is the lack of a consistent CBA methodology, which has been particularly problematic.

The first Union list of PCIs was adopted on 14 October 2013 by the European Commission pursuant to Article 3 of the Regulation. It is in force since 10 January 2014 and consists of 248 PCIs. Project Promoters of gas and electricity PCIs were under an obligation to submit by 31 March of each year following the year of inclusion of a PCI on the Union list an annual report, for each project. Pursuant to Art. 5(5) of Reg. 347/2013, the Agency prepares a consolidated report to be submitted to the Regional Groups within three months of the receipt of the annual reports, which includes the evaluation of the progress achieved and – if appropriate -

recommendations on how to overcome the delays and difficulties encountered. The ACER report needs to be submitted by the end of June 2015. 2 drafts one for electricity and one for gas were circulated on which the AEWG and AGWG have been consulted.

The Director then presented the main findings on Gas including *inter alia* the following: the quality and the completeness of the reports by the project promoters must be improved in the future. Just over half (52%) of the projects are reported to be beyond the planning stage. Projects of common interest usually appear only in one Member State's National Development Plan and not in the plans of other Member States, even though such projects would impact more than one Member State. PCIs – similarly to other major infrastructure projects – constantly evolve by adapting to the changing technical and market conditions of the time.

The lack of a Union-wide CBA methodology in gas in 2013 makes the cost-benefit information submitted by project promoters only illustrative. The Agency underscores the importance of the next PCI list and future reports by PCIs, whereby project promoters will be requested to carry out a CBA and provide its outcome in line with the methodology approved by the European Commission.

The Director then presented the main findings on electricity: The completeness of the information provided varied from project to project. Some promoters had to be asked to resubmit, focussing on the most important information. 48% of projects are still in pre-permitting; 37% are in the permitting stage; 13% in the construction stage and 2% are commissioned. Benefits are often poorly reported. More than half of the projects are delayed or rescheduled. Reasons vary but most commonly relate to permitting (in particular to environmental issues). Projects do not always appear in the relevant TYNDP, NNDP and RIP.

The Director informed the BoR that the monitoring report is to be finalised and published by the end of June.

9. Implementation, Monitoring and Procedures

9.1. Oral update on AIMP WG

- Methodology for monitoring the implementation of gas codes (CEPA report)

The AIMP WG had been also asked to comment on the methodology for monitoring the implementation of gas codes subsequently by ACER. The report will be submitted for public consultation.

9.2. Pending work for the MMR 2014

Mr Locquet presented the note for information for NRAs to invite their comments. In view of the pending data collection process for the fourth edition of the joint ACER-CEER Market Monitoring Report (MMR), the note circulated shows the data which the MMR team envisages to use in the further process of preparing the report.

At the end of August there will be a meeting to discuss any further comments that each NRA has given. He called all NRAs to be aware. A first draft will be available by the first half of August.

Mr Locquet then informed the BoR on the forthcoming 2nd peer review as well as the legal questions raised with the Legal TF on the CAM code and the coordination of the booking platforms against the legal requirements of Article 27 of the CAM code.