

**58<sup>th</sup> ACER Board of Regulators Meeting**  
**Wednesday, 13 July 2016, 09.00-16.00**  
**CEER, cours Saint-Michel 30a, Brussels**

**Minutes (final)**

Member States	Name <sup>1</sup>	Member States	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch A: Dietmar Preinstorfer	Italy (AEEGSI)	M: Guido Bortoni O: Ilaria Galimberti
Belgium (CREG)	M: Marie-Pierre Fauconnier A: Koen Locquet O: Geert Van Hauwermeiren	Latvia (PUC)	M: Rolands Irklis
Bulgaria (EWRC)	O: Borislava Petrakieva	Lithuania (NCC)	O: Irma Vasarytė
Croatia (HERA)	M: Tomislav Jureković A: Sonja Tomašić Škevin	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	O: Philippos Philippou	Malta ( REWS)	A: Phyllis Mycallef
Czech Republic (ERO)	M: Martin Sik O: Kateřina Firlová	Netherlands (ACM)	A: Remko Bos O: Maarten Klijn
Denmark (DERA)	O: Søren Lorenz Søndergaard	Poland (URE)	A: Małgorzata Kozak
Estonia (ECA)	O: Tiina Maldre	Portugal (ERSE)	A: Artur Trindade O: Natalie McCoy
Finland (EV)	Excused	Romania (ANRE)	O: Florin Tobescu
France (CRE)	O: Aude Le Tellier O: Amelie Gravier	Slovakia (RONI)	Excused
Germany (BNetzA)	A: Annegret Groebel O: Martin Mueller	Slovenia (AGEN-RS)	M: Bojan Kuzmic A: Jasna Blejc
Greece (RAE)	A: Nektaria Karakatsani	Spain (CNMC)	M: Fernando Hernández
Hungary (HEA)	Represented by URE (Poland)	Sweden (Ei)	A: <u>Caroline Tömqvist</u>
Ireland (CER)	M: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) O: Mark Copley O: Cecile Garcia
ACER	Alberto Pototschnig, Christophe Gence Creux, Fay Geitona, Sean Hennity		
European Commission	Oliver Koch, Adriano Addis, Marie-Christine Jalabert		
CEER	Andrew Ebrill		

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

**MEETING CONCLUSIONS SUMMARY**

1. *The minutes from the 57<sup>th</sup> BoR meeting were approved. As was the agenda for the 58<sup>th</sup> meeting.*
2. *Mr Koch provided an update on the current main areas of Commission's work including the proposals on the new market design initiative. The EC is finalising their impact assessment before the summer break to be followed by their legislative proposals by the end of the year. These will cover all the third package legislation. In addition the RES and energy efficiency Directives will be revised.*
3. *The ACER Director provided an update on the recent work of the Agency and its recent publications. On 23 June the Agency published its position paper on improving the European framework for energy infrastructure development and on 5 July it published its second consolidated annual report on the progress of Projects of Common Interest in gas and electricity (which was sent to the EC for circulation to the Regional Groups on 30 June). The Director also informed the BoR that the Agency published its paper on regulatory oversight of new entities on 6 July. The Director informed the BoR that the joint ACER-CEER response on the EC sector inquiry was submitted to the EC on 6 July.*
4. *The Director reported on the ACER Annual Conference that was held on 16 June 2016 and attended by 145 participants.*
5. *The Director presented a note with an interpretation of those cases where a BoR (formal) opinion is required. Members provided feedback on the legal interpretation raising also the value of the overall cooperation with the NRAs beyond the strict legal requirements. The legal analysis of the Director will be further considered by the PWS. A further discussion on this issue will be undertaken at the September BoR.*
6. *The Director informed the BoR that the Head of Gas Department, Dennis Hesseling has been appointed as the Agency's representative to the Energy Community Regulatory Board (ECRB) (as Dr Michael Thomadakis has relinquished his duties). The BoR suggested having relevant developments related to the EnC/ECRB regularly reported to the BoR for information.*
7. *The Revised BoR Rules of Procedure were approved by the BoR by consensus of the members present or represented. The Chair urged members to begin implementation of the new procedural improvements on the preparation of the ACER acts considered for adoption as soon as possible. The Director will launch the revision of the AWGs RoP after some experience is gained from the implementation of the new procedural improvements. This is expected in autumn.*
8. *The Director informed the BoR that the ACER Annual Activity Report was adopted by the Administrative Board on 24 June and sent to the Institutions.*

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| <p>9. <i>The EC's Opinion on the ACER Work Programme was received on 30 June. The Director presented the key elements and informed the BoR that he will now revise the WP in light of the Opinion. The ACER 2017 WP will be submitted to the BoR for approval as soon as it is ready. The BoR will approve it in its September meeting. It will then be submitted to the AB for adoption.</i></p>  |
| <p>10. <i>Mr Hernandez provided an update on the ongoing work of the AEWG and the recent discussions on the Comitology of the balancing Guideline.</i></p>   |
| <p>11. <i>The Director and the EC reported the conclusions and key outcomes of the 31st Florence Forum held on 13-14 June.</i></p>   |
| <p>12. <i>The Director and Mr Gence-Creux informed the BoR that the consultation on some aspects of the all-TSO's proposal on Capacity Calculation Regions was launched on 22 June and will close on 20 July, and invited comments in regards to the proposal. ACER will produce an evaluation paper of the feedback received. The letter from EC on the legal interpretation of the CCR proposal will be circulated. ACER will consult NRAs on the draft decision in August and submit it for a favourable opinion to the BoR in October.</i></p>   |
| <p>13. <i>The Director and Mr Gence-Creux informed the BoR that the draft Recommendation on cross border capacity calculation methodologies which is now being prepared, proposes a few simple High-Level Rules that should be followed by TSOs when developing their CCMs with the possibility to derogate, and proposes a governance framework for the implementation of these rules at regional level, which should guarantee the full transparency of the process, and limit the possibility of circumventing the rules. He stated that during the summer, the Agency will continue the discussion with NRAs, the EC and stakeholders and in September discuss a revised version of the Recommendation, taking into account feedback to submit a final text for BoR Opinion, if possible, in September or otherwise in October. The members provided feedback on the key elements of the proposal some supporting it while others being more cautious. They raised attention to the need to allow sufficient time for a thorough consideration of the issues given their importance.</i></p> |
| <p>14. <i>Mr Locquet provided an update on the ongoing work of the AIMP WG and its Task Forces. In particular, he informed the BoR that progress is being made in the MMR TF on the development of the 2016 MMR. The report is expected to be submitted to the BoR for information in September. The report will be presented at the EP/ITRE Committee on 9 November.</i></p>  |
| <p>15. <i>Mr Trindade provided an update of the ongoing work of the AGWG and its Task Forces. In particular he updated the BoR that the comitology process on the TAR NC started on 29 June and that the final comitology meetings will be on 15/16 September with the code expected to enter into force by March 2017.</i></p>  |
| <p>16. <i>The Director reported that the gas Network Code functionality platform has so far not received any submission. Therefore, the pilot period has been extended to last until 3 months after the first submission has been received, in order to evaluate the effectiveness and usefulness of the platform.</i></p>   |

17. The Director reported that there had been some delays with the CMP Implementation monitoring report due to data quality issues and a new IP list. The report is expected to be presented to the BoR for information in September, allowing for AGWG to provide comments in August. Following the September BoR the report will be submitted to the EC and published.

18. The EC and the Director reported the conclusions following the 2nd Infrastructure Forum held on 23-24 June.

19. The follow up paper regarding improvements of the TEN-E framework which is under preparation by the AGWG needs also to capture the AEWG input and ensure, where appropriate, consistent proposals.

20. The ACER Opinion on the implementation of investments in electricity transmission networks was given the favourable opinion of the BoR by consensus (of the members present or represented) subject to minor corrections (to be submitted to the Director).

21. The Director and the AMIT WG Chair provided an update on the implementation of REMIT, informing the BoR that the Agency published the 4th edition of the Guidance on the application of Regulation (EU) No 1227/2011 on REMIT. Revisions to the Market Monitoring handbook are being finalised. The BoR was informed on the progress on registrations of market participants, work on quality of data, and progress on reporting activities.

22. The BoR had a discussion on the basis of the EC proposal on the appointment of the BoA members and alternates appointment with a view to providing its opinion in accordance with Article 18 of the ACER Regulation. To preserve confidentiality, the discussion was restricted to members only (or their authorised representatives) the Director and the EC. The EC short list, the vacancy notice and the CVs and motivation letters were made available to the members by email only to preserve confidentiality. The BoR Chair will prepare the letter incorporating the BoR Opinion on this issue. This will be circulated for a short round of comments early next week before its finalisation and submission to the AB Chair ahead of the AB meeting in September.

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

*BoR Decision agreed: (D 2)*

*The 57<sup>th</sup> BoR minutes were approved.*

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

#### 2.1. Update on recent developments

##### - EC

The Commission provided an update on the preparation of the proposals on a new Energy Market Design. Mr Koch mentioned that the EC is also working on revisions of the RES and energy efficiency Directives. These will be tabled before the Winter Package expected by December. On the Winter Package, the EC now focuses on the preparation of the impact assessment. The EC have compiled an evaluation of 300 pages of the existing Third Package legislation, the RES Directive, the energy efficiency Directive and governance issues. Their impact assessment is expected before the summer break. The proposals themselves will be submitted after the summer. The market design proposals relate to electricity but there are also horizontal issues; thus all the Third Package Regulations/Directives, including the gas ones, will be opened whilst without the intention to open fundamental gas provisions.

##### - ACER

The Director presented an update on ACER's work: The ACER's 5th Annual Conference: 'ACER, Past, Present and Future' was held 16 June in Ljubljana. The conference was a success and had around 145 participants. The EC was represented by Christopher Jones and the EP/ ITRE Chair provided a video message.

On 23 June ACER published its position paper on improving the European framework for energy infrastructure development. The outcome of the BoR EP is circulated under 9.2.

On 5 July ACER published its second consolidated annual report on the progress of Projects of Common Interest (PCIs) in electricity and gas. The report was sent to the EC for circulation to the Regional Groups on 30 June. The report contains the results of the monitoring of the progress of the projects on the second EU list of PCIs adopted in November 2015, for the 12-month period from January 2015 to January 2016. The Director thanked the NRAs for verifying the data.

On 6 July ACER published its paper on the regulatory oversight of new entities (the outcome of the BoR electronic procedure on this paper is circulated under 9.3). The paper was endorsed by the BoR by 2/3 majority.

The Director also informed the BoR that the joint CEER and ACER response to the EC sector inquiry was submitted on 6 July.

The Director informed the BoR that pursuant to Article 7.5 of the CACM Guideline, there is a requirement to produce a report to the Commission in August on 'whether the progress in establishing and performing single day-ahead coupling or intraday coupling is satisfactory'. ACER intends to prepare a short and factual report which will be discussed in the CACM TF and will be ready by the end of July. The Director informed the BoR that the report will be issued before the next BoR (the report does not need the BoR endorsement). He thus invited the members to provide their feedback during the AEWGs discussions.

- Note on the requirement of the BoR Opinion on legal acts

The Director presented a note providing the Agency's interpretation on where the BoR opinion is needed according to the Regulation. He clarified that in practice we have gone far beyond the formal legal requirements and the BoR has been consulted and has had orientation discussions on several occasions without it being provided in the Regulation.

According to Article 17(3) of Regulation (EU) No 713/2009, a favourable opinion of the Board of Regulators is required prior to the adoption of any opinion, recommendation and decision referred to in Articles 5, 6, 7, 8 and 9. Article 15(1) of Regulation (EU) No 713/2009 reiterates this obligation, by calling on the BoR to provide an opinion on the opinions, recommendations and decisions referred to in Articles 5, 6, 7, 8 and 9 that are considered for adoption.

The Director noted that while he fully recognises the value of cooperation and consultation of the BoR, the question at the last BoR meeting was raised as a legal question, in fact on a document that, while in his view not requiring a BoR opinion, was nonetheless submitted to the BoR for information and comments. Therefore, what needs to be clarified is the legal interpretation of the provisions and his note only focused on these aspects and not on the overall collaboration within ACER. The Director welcomes the PWS looking into this analysis and providing feedback to the Director with a view to finalising this discussion at the September meeting. The definitive interpretation, however, lies with the Commission and if this issue is still unresolved at the next BoR meeting, he is inclined to seek clarification from the EC.

Mr Koch also mentioned that the plan of the EC in the upcoming energy market design proposals is to retain the Board's involvement but there will also be decisions for the Director without a requirement of the consent of the BoR.

The Chair underlined that the approach which has been followed since ACER's establishment is evolutionary and has in practice deepened the cooperation between the BoR and the Director through orientation discussions and consultations on many issues. In reality there is fruitful cooperation between ACER and NRAs and the strong commitment of NRAs to ACER's work. This collaborative effort is very important. I

## Conclusion

*The PWS was invited to consider the note from the Director and provide feedback. A second discussion on this issue will be held at the September BoR.*

### - Decision on appointment of the ACER Representative to ECRB

The Director's decision on the appointment of the ACER representative to the ECRB was circulated and the Director presented it. Taking into account the likelihood of a convergent evolution of the Energy Community *acquis* with the EU internal market legislation in the areas of electricity and gas, the Head of the Gas Department, Mr Dennis Hesseling was appointed as the Agency's representative to the ECRB for a two year period. The Director noted that at this stage the efforts to integrate the ENC to the ACER's work must be stepped up and there are many legal complexities and procedural aspects to address (the Agency might have a mandate for the trans-border resolution of issues where a Regulatory Authority of an ENC contracting party and an NRA of an EU MS are involved). ACER is also finalising the administrative arrangements with the ENC Secretariat. Mr Hesseling's appointment will help in this respect.

Ms Fauconnier mentioned the CEER is also engaging in work in the ENC through the ISG WG and suggested that the ACER Representative is in contact with the ISG Chairs to exchange information, where appropriate.

The Chair also invited the ACER Representative to provide reports to the BoR on a regular basis.

The Director welcomed that the ACER representative reports to the BoR on issues which are of relevance on a regular basis and also maintain contacts with CEER where relevant.

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

### 3.1. Revised BoR rules of procedure

Ms Geitona presented the revisions on the BoR RoP following the last BoR orientation discussion and very useful feedback received from the AIMP WG. In the light of the comments received, the RoP have been finalised by the Chair and aim to incorporate the new procedural improvements in the preparation of the ACER acts and the process for guidance.

In brief they changes relate to the following issues:

Items in the Agenda are submitted for information, for an orientation discussion, for informal endorsement, for an opinion and for approval and where each will be required; (e.g. where there is no formal requirement for an opinion or approval of the BoR under the Regulation No 713/2009, a document may be submitted for informal endorsement where the BoR agreement is deemed desirable even though not procedurally necessary). Documents for an opinion or approval should, under normal circumstances, be accompanied by a report from the relevant AWG Chair. Possibility for amendments on the draft proposals and a new Article (7) on Guidance are also reflected in the revisions.

The Director had also announced that the RoP regarding the Agency Working Groups will be revised only after some experience has been gained on the implementation of the process. This process is expected to be launched in autumn.

Following his letter to all the AWGs and TFs chairs and ACER HoD on 22 June, the BoR Chair invited again to take note of the new arrangements (including the timelines) and to start implementing those as soon as possible.

Decision (D03)

*The revised BoR RoP was approved.*

3.2. ACER Annual Activity Report for 2015

The Director reported that the Annual Activity Report was expected to be sent to the Institutions on June 15. However it was in fact sent later in June since, during the AB written procedure, the Commission raised some comments (whilst not related to the regulatory section). Therefore, the AB had to re-launch the written procedure, with the EC comments included, and the Report was adopted on Friday, 24 June and sent to the Institutions. The report was circulated for information.

3.3. Draft 2017 ACER Work Programme

The Director informed the BoR that at the January BoR the 2017-2019 Single Programming Document (SPD) and the draft 2017 estimate of revenue and expenditure were endorsed by consensus of the members present (or represented). This was tabled in line with the new Financial Regulations which provide that both must be submitted to the European Commission by 31 January 2016. The normal process for the approval/adoption of the 2017 WP would, subsequently, apply but this was an early draft of the Work Programme which will also allow the EC to provide its opinion earlier this year.

The EC opinion was received on 30 June. The Director informed the BoR that he is still working on the revision of the WP and expects to submit it to the BoR for approval in 2 weeks' time. The Administrative Board has to adopt it by 30 September. The BoR can either launch an electronic procedure if it expects to approve it by 1 September (in accordance with the ACER Regulation) or consider it at its September 14<sup>th</sup> meeting given that this takes place a week before the Administrative Board. In brief the EC opinion is proposing for the Agency to do more but without safeguarding additional resources.

Lord Mogg drew attention to the extracts of the EC opinion clearly stating that the ACER staff is sufficient for its tasks and does not need any reinforcement. The Chair invited the BoR to approve the 2017 ACER Work Programme at the September BoR meeting.

Mr Koch mentioned that the EC opinion outlines the importance of the efforts to be focused on the network codes implementation which also implies a shift in the resources in the implementation of codes given their importance for reaping the benefits of the IEM completion. Concerning the field of electricity, the need for the correct implementation of adopted acts is of particular importance. These require "TSOs", power exchanges and regulators to develop numerous terms, conditions and methodologies and the development of such terms and methodologies will require ACER's direct involvement. The Commission

encourages ACER to shift resources internally although DG ENER has supported the need for more resources for ACER.

Decision (D04)

*The BoR will approve the 2017 revised ACER WP at its meeting in September.*

3.4. BoR opinion on the BoA members (Restricted)

The BoR and AB received on 31 May the short list for the appointment of the new BoA members from the EC. The Commission provided its proposed list of members and alternates and their CVs. The Chair noted that under Article 18 of the ACER Regulation, the members of the Board of Appeal shall be formally appointed by the Administrative Board, on a proposal from the Commission, following a public call for expression of interest, and after consultation of the Board of Regulators. The BoR must deliver its opinion to the AB. The Chair will reflect the discussion in a letter to the AB and outlined that he can also make some oral observations where appropriate. The letter will be circulated for a short round of comments and will then be submitted to the AB.

The BoR discussion on this item was restricted to members only (or their authorised representatives) the Director and the EC. Members discussed the EC decision and its proposed list of members and alternates.

Decision (D05)

*A letter will be prepared by the Chair to reflect the debate and the opinion of the BoR and will be circulated for a short round of comments ahead of its submission to the AB.*

**4. Electricity**

4.1. Update on NC implementation and other work

Mr Hernandez provided an update on the balancing Guideline. The balancing Guideline was discussed at the Comitology meeting held on 24 June and has been circulated to the Member States for comments. The next Comitology meeting is scheduled for 15 and 16 September and Mr Hernandez encouraged NRAs to actively follow the debate.

The previous AEWG was held on 21 June in Barcelona. The next meeting will take place on 30 August.

4.2. Report on 31st Florence Forum (13-14 June)

The Director reported to the BoR the conclusions following the 31st Forum which was held on 13 and 14 June. The Director commented on the focus of the first day of the Forum on an overarching holistic view, looking at the importance of the coordination of state intervention and into both wholesale and retail markets.

The Director discussed the key elements including on coordinating state intervention; regarding wholesale market, the issue of price zones, tariffs design, capacity calculation and congestion in the market design initiative; bidding zone decision-making process and improvement in the capacity calculation process. The Forum also discussed progress on implementation of network codes and guidelines.

The next Florence Forum is expected to be held in May 2017.

#### 4.3. Draft ACER Public consultation paper on all-TSO's proposal on Capacity Calculation Regions

Mr Christophe-Gence-Creux presented the Agency's consultation paper which focuses on the new elements of the all TSOs proposal. This was launched on 22 June and the consultation is open until 20 July 2016. Mr Gence-Creux welcomed comments. ACER will produce an evaluation paper of the feedback received which will be shared. The feedback from the European Commission on the approach was positive and the letter from the EC on the legal interpretation of the CCR proposal will be circulated to the members. ACER intends to consult the NRAs and TSOs before submitting the final decision to the BoR for a favourable opinion. The decision is expected by November and, therefore, is expected to be submitted to the October BoR as well.

#### 4.4. Draft ACER Recommendation on cross-border capacity calculation methodologies

Mr Gence-Creux illustrated the background of the Recommendation which is being prepared: In the framework of the CACM Guideline implementation, the CCMs and the methodology to share re-dispatching and countertrading costs are to be submitted by all TSOs to all NRAs for their approval. The Agency intends to provide an early guidance to TSOs on how these principles can best be fulfilled. The current approach for capacity calculation is inefficient, uncoordinated, non-transparent and creates barriers. In an attempt to address these concerns the draft Recommendation which is being prepared proposes a few simple high-level rules that should be followed by TSOs when developing their CCMs with the possibility to derogate and proposes a governance framework for the implementation of these rules at regional level, which should guarantee the full transparency of the process, and limit the possibility of circumventing the rules.

**Rule 1:** TSOs of a Capacity Calculation Region (CCR) shall not be allowed to consider (limitations in) internal critical network elements in their CCM.

**Rule 2:** The capacity of the cross-zonal critical network elements considered in the CCMs shall not be reduced in order to accommodate loop flows.

**Rule 3:** The costs of remedial actions shall be shared according to the polluter-pays principle.

A derogation framework is also provided, as well as a governance framework for the implementation of these high-level rules at regional level, in order to guarantee the full transparency of the process, and limit the possibility of circumventing the rules.

It is expected that this will bring an important paradigm shift in the current TSOs' practices: instead of considering cross-zonal capacities as a residual value in the overall network security equation, TSOs would have an obligation to achieve results in terms of the level of

cross-zonal capacities. This will allow much more transparency, higher incentives for TSOs to coordinate the close-to-real-time operation of the system much better; higher incentives for Member States to speed up the permit granting process to build new (internal) infrastructures and to properly take into account the need for internal grid reinforcement; an increase of the expected contribution from neighbouring countries in national adequacy assessments and a better coordination of their RES support schemes. Lastly, higher incentives for Member States to seriously consider a bidding-zone reconfiguration are expected.

Mr Gence-Creux concluded that during the summer, ACER will continue the discussion with NRAs, the EC and stakeholders. One particular point of vigilance will be the enforceability of these rules in the context of the CACM Guideline implementation process and of the forthcoming Winter Package. He expects that the revised draft version of the Recommendation will be ready in September (at the latest in October) and welcomed the views of the BoR.

Lord Mogg raised some concerns in regards to the timeframe for September. He wondered whether within this timeframe the proper consideration of the issues will be undertaken. Mr Gence-Creux outlined that a draft recommendation had already been discussed at the AEWG. Discussions continue and there will be a meeting in Milan on 19 July to discuss strategy and another meeting at the end of July purely dedicated to discuss the draft Recommendation.

The BoR had an orientation discussion and provided feedback on the key elements of the proposal some supporting it while others being more cautious. They raised attention to the need to allow sufficient time for a thorough consideration of these issues given their importance.

The Chair expressed concerns with the tight timeframe, echoing that speed can be the enemy of the solution. He wants to be convinced that this is well analysed before it is put in the September agenda. He looks forward to a post-holiday discussion and opinion.

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

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

Mr Locquet informed the BoR of a Legal Workshop with ACER to be held in November/December in Ljubljana. The agenda is currently being established. The intention of the meeting is to discuss current legal issues and to strengthen relationships and reinforce cooperation between ACER and NRAs lawyers. He also informed the BoR on the work by the PWS on other issues. There will be a workshop on exchange of NRAs' experiences with monitoring to be held on 10 October at CEER, Brussels.

### **5.2. The 5th Market Monitoring Report: Discussion of first chapters prepared**

Mr Locquet informed the BoR on the preparations of the report. The MMR first draft has been sent to the Director and will be discussed at AGWG and AEWG in early September before finally being brought to the BoR for information on 14 September.

The retail chapters were circulated on 12 July and comments are expected in September. A joint meeting will take place on 29/30 August to discuss the customer protection chapter. The report is expected to be finished on time.

## **6. Gas**

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

Mr Trindade provided the usual update on the Working Group's ongoing activities. He provided an update on the discussions on the network code on tariffs and on the CAM network code amendment, an update on the booking platforms, and on the ACER Balancing NC Implementation Report which will be supported by consultancy work from Sisman Energy Consultancy - contracted until September 2016.

Mr Trindade informed the BoR that the official Comitology process on the tariffs code started on 29 June. The requested changes by Member States were discussed at the last AGWG meeting. New versions of the tariffs code and the amendment on the CAM code have been circulated in advance of the comitology sessions on 29th and 30th of June. The final Comitology meetings will be held on 15/16th September and the codes are expected to enter into force March 2017.

The Director reported that the gas network code functionality platform went live in February, with a 3 month pilot period. Although since then a few dozen stakeholders registered on the platform, so far nobody has put forward an issue on the code implementation through the platform. This makes it difficult to evaluate the functioning of the platform. The Director stated that in cooperation with ENTSOG, it was, therefore, decided to extend the pilot period to 3 months after the first issue has been put forward on the platform. In this way, we should be able to evaluate the effectiveness and usefulness of the process foreseen to deal with such issues.

### **6.2. Congestion Management Procedures (CMP) implementation monitoring report**

The Director provided a short update on the preparations and next steps on the CMP report. The Director informed the BoR that work is ongoing with the report but there have been some delays due to data quality issues (for indicators) and new IP list. It is due to data quality issues of ENTSOG's Transparency Platform data forming the basis for the calculation of the CEPA IMR indicators. It was hoped that the report would be presented at the July BoR for information but subsequent delays have pushed it back to the September meeting. The AGWG will be given an opportunity to feed in comments in August. Once presented at the BoR for information (in September) it will subsequently be submitted to the EC and published.

The first CMP Implementation Monitoring Report (2014), published on January 2015 showed a lack of CMP implementation in some Member States. The upcoming 2016 update of this report focuses on two main aspects:

- Updates of the 2014 NRA responses to the online survey on CMP implementation, checking implementation status "provision-by-provision" for those Member States which were not fully compliant with the CMP Guidelines. He then referred to some

preliminary results on CMP implementation. The majority of Member States are now compliant with the CMP Guidelines, but there are exceptions.

- Presentation and interpretation of calculated CMP Implementation Monitoring Indicators (as proposed by CEPA) to show effects of CMP application, taking into account data limitations and the fact that this is done for the first time, so we are now at the beginning of building a time series.

Mr Sik sought some clarification on this upcoming report and the ACER annual report on contractual congestion at interconnection which was released on 31 May.2016.

The Director clarified that this report is about the implementation of the various measures and the implementation of the CMP provisions. The other report on congestion at interconnection dealt with the identification of congestion and remedial measures. They are of course linked as they both relate to the provisions of the CMP.

## **7. Infrastructure Challenge**

### **7.1. Report on the 2nd Infrastructure Forum (23-24 June)**

Mr Koch provided a short update on the Infrastructure Forum which took place in Copenhagen on 23-24 June. Lord Mogg noted the importance that NRAs are invited to the next Forum given their valuable contributions and expertise relevant to the issues under discussion.

The Director then informed the Board that the Forum did not focus on reviewing the TEN-E process, but it was more about financing infrastructure and the implementation of PCIs. The Forum welcomed the initiative of the Copenhagen Business School and Energinet.dk to launch the Copenhagen School of Energy infrastructure project to contribute to the works of the Energy Infrastructure Forum. This will mimic FSR and host in the future the technical part of the Forum.

Mr Blaney commented on the inherent criticism about regulatory instability. He suggested a letter to the EC to raise that further engagement and involvement of the NRAs is important.

Ms Groebel referred to the paper on the improvement of the TEN-E framework under preparation by the AGWG and stated the importance to ensure that the AEWG would have the opportunity to review and input, to ensure, where appropriate, consistent proposals.

### **7.2. ACER Opinion on the implementation of TYNDP**

The Director presented the ACER Opinion on the implementation of the TYNDP. The Agency has to monitor the progress as regards the implementation of investments to create new interconnector capacity and the implementation of the electricity Union-wide ten-year network development plan. NRAs have provided essential input for this Opinion by submitting information on components of transmission investments in an online data collection process. This review focusses on the status, the timing and the increase of Cross-Border Grid Transfer Capability (XB GTC) which the implementation of each project is supposed to bring. Based on the data provided by the NRAs, the following major findings were identified:

- An important decrease in the number of the EU-TYNDP 2014 investments compared to the 2012 EU-TYNDP was observed, mostly as a result of the application of the new Cost-Benefit Analysis (CBA) methodology and, in particular, of the new clustering rules.
- Less than half of the investment items are “on time” (or ahead of schedule) while 35% of the investments encountered delays and 22% have been rescheduled.
- The number of cancelled investments significantly increased (+60%) compared to the number reported by NRAs for the previous Opinion. The main reason reported for cancellation was related to the change on the generation side (in the 56 %).
- 66 projects have been commissioned since the last monitoring exercise.
- Most of the “new” investments included in the 2014 EU-TYNDP have the status “under consideration”. This fact could be considered to some extent as a normal feature for a plan, but it also emphasises the exploratory role of the 2014 EU-TYNDP.
- Since 2014, three interconnectors were commissioned, which contributed to an increase of NTC of up to 1650 MW, while the expected XB GTC increase was 2600 MW.
- The majority of reported delays concerns projects which are in the permitting phase.

According to the draft Opinion, the following recommendations can be made taking into account results of the monitoring exercise:

- To facilitate transparency, the mapping of cross-references between investment codes in different plans should be ensured, as already proposed by the Agency. ENTSO-E should ensure consistency with the national development plans already in the first steps of the preparation of future EU-TYNDPs.
- Information about the XB GTC and costs (especially for the interconnectors) should be included in the Regional Investment plans. When applicable, the uncertainty of the XB GTC forecasts should be explained in the EU TYNDPs.
- Future EU-TYNDPs should adopt a clear definition of investment items and the following state of play for consistency with the Agency’s monitoring activities: under consideration, planned and not yet in permitting, permitting, under construction, commissioned and cancelled.
- Future EU-TYNDPs and the related ENTSO-E monitoring activities should clearly define and differentiate between “rescheduled” and “delayed” investments.
- Future EU-TYNDPs should include the indications of the costs per investment item and the list of commissioned investment items.

Mr Blaney suggested having a strategic discussion on decarbonisation in long term. What is best for consumers. The decisions we make today must have longevity as will last 20/30 years.

The Director mentioned that maybe this issue should be considered when reviewing the CBA methodologies which are extremely important in the development of the TYNDPs but also in the PCI selection and implementation. For example, how much the longer perspective could be taken into account in assessing the benefits of projects.

#### Decision (D06)

*The ACER Opinion on the implementation of investments in electricity transmission networks was given the favourable opinion of the BoR (by consensus of the members present or represented) subject to minor corrections (to be submitted to the Director).*

## **8. Market Integrity and Transparency**

### **8.1. REMIT implementation & operation**

Ms Groebel provided an update on the work by the AMIT. She commented that more and more NRAs have now passed the peer review for data sharing and can participate fully in the data exchange. The process is well underway. Initial teething problems such as IT challenges have been smoothed out now. She then referred to the EIC codes to be used by market participants. These codes have been issued at different levels by NRAs, TSOs. However, these EIC codes turned out not to be unique identifiers and, therefore, make it difficult for ACER and NRAs to identify transactions. There is now a solution proposed: a list of so-called “super codes” to be used. The obligation falls on market participants to map the codes they use with the list of super-codes in order to be identifiable without doubts.

She then noted the importance to point the Market Participants to the REMIT portal to have the most recent information.

The Director reported that on 7th July was the last deadline for back loading pre-existing contracts. We have the impression that this has not been done by all market participants, some of them claiming reporting problems. We still have a very long backlog of RRM applications, more than 1200 still outstanding. The delay in processing RRM application is now becoming evident to stakeholders, who are starting to complain. The Agency now receives up to 1.2 million records of transactions daily and more than 28 million data records in one month. 104 Registered Reporting Mechanisms (with more than 1200 applications pending). More than 11,000 registered market participants with NRAs. Smarts is available since the last month. Data are being collected there are still some issues with their quality.

Revisions to the market monitoring handbook will be finalised at the WMS task force on 19th July pending NRA comments.

### **AOB**

The Chair proposed the idea of a joint ACER/CEER Conference held in Brussels early next year as an opportunity to present and react to the Commission’s 4<sup>th</sup> package. The Director confirmed that the date of the ACER Annual Conference would not be affected.