

65th ACER Board of Regulators Meeting
Wednesday, 3 May 2017, 09.00 – 13.00
CEER premises

Minutes (final)

Member States	Name ^[1]	Member States	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch A: Dietmar Preinstorfer O: Vera Gusenbauer	Italy (AEEGSI)	M: Clara Poletti O: Francesco Cariello
Belgium (CREG)	M: Marie-Pierre Fauconnier A: Koen Locquet O: Geert Van Hauwermeiren	Latvia (PUC)	O: Lija Makare
Bulgaria (EWRC)	A: Evgenia Haritonova	Lithuania (NCC)	O: Dalius Kontrimavičius
Croatia (HERA)	A: Sonja Tomašić Škevin, O: Nataša Mihajlović	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Andreas Poullikkas	Malta (REWS)	A: Phyllis Mycallef
Czech Republic (ERO)	A: Martin Sik O: Kateřina Firlová O: Vladimír Outrata	Netherlands (ACM)	M: Henk Don O: Maarten Klijn
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	A: Małgorzata Kozak
Estonia (ECA)	O: Tiina Maldre	Portugal (ERSE)	A: Artur Trindade O: Natalie McCoy
Finland (EV)	M: Simo Nurmi	Romania (ANRE)	O: Florin Tobescu
France (CRE)	M: Jean-François Carenco O: Michaël Mastier O: Aude Le Tellier	Slovakia (RONI)	A: Nataša Hudcovičová
Germany (BNetzA)	A: Annegret Groebel	Slovenia (AGEN-RS)	M: Bojan Kuzmič
Greece (RAE)	A: Nektaria Karakatsani	Spain (CNMC)	M: Fernando Hernandez
Hungary (HEA)	O: Krisztian Toth	Sweden (Ei)	M: Anne Vadasz Nilsson A: Caroline Törnqvist O: Elin Brostrom
Ireland (CER)	M: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) O: Andy Burgess O: Donagh Cagney

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

ACER	Alberto Pototschnig, Volker Zuleger, Martin Godfried, Fay Geitona, Mitsuko Akiyama
European Commission	Adriano Addis, Klaus-Dieter Borchardt
CEER	Andrew Ebrill

Draft MEETING CONCLUSIONS SUMMARY

1. *The minutes from the 64th BoR meeting were approved, as was the agenda for the 65th meeting. No conflicts of interest was declared by members.*
2. *The ACER Director updated the BoR on the Agency's recent publications. In particular, he informed the BoR of the publication of: the updated overview of cross-border cost allocation decisions for electricity and gas infrastructure projects of common interest; two opinions on electricity network development plans; the results of a survey on the remaining barriers to gas wholesale market trading; and the latest issues of REMIT Quarterly.*
3. *Mr Addis updated the BoR on negotiations relating to their legislative proposal "Clean Energy for all Europeans." The EC reported that the ITRE committee held an exchange of views on the recast of the ACER Regulation, Electricity Regulation and Electricity Directive on 24-25 April. The Council EWP had a discussion the day before and there is a general feeling that the proposals were well received and valued, although there are issues to be further clarified and discussed. The Estonian Presidency is eager to progress with the discussions.*
4. *Mr Borchardt provided an update on the events scheduled for 3 and 4 May on the network codes: a key objective is to raise awareness of the importance of the implementation of codes. At the event we shall have the opportunity to listen to the views of all involved parties and stakeholders including their engagement. The NRAs have an important role in this process. The EC will also pursue the discussions with NRAs on implementation issues given the importance of the effective cooperation between the EC and NRAs. Lord Mogg suggested discussing further at the June BoR the future approach to the monitoring of implementation of Codes and Guidelines on the basis of the EC paper which is currently under preparation.*
5. *The EC informed the BoR members that the agenda for the Infrastructure Forum (to take place in Copenhagen on 1-2 June) is available, and includes high-level discussions on the first day and working level discussions on the next day, including on CBCA and how this relates to the CEF funding (the EC is developing a paper on this issue).*
6. *The independent section of the ACER Annual Activity Report on regulatory activities was approved by the BoR (by consensus of the members present or represented).*
7. *Mr Zuleger and the AMIT WG Chair provided an update on the ongoing work on REMIT, in particular on ARIS, remaining implementation activities and data quality issues. Mr Zuleger reported on a recent case which raises concerns about the potential regulatory gap in the supervision of third-party RRM, where the Agency would be well-placed to exercise additional supervisory powers and also ensure a level playing field for RRM and trade repositories at EU level.*
8. *Mr Godfried provided an update on the preparation of the governance section of the Market Surveillance Strategy document which was endorsed by the BoR in December as a basis for ACER's*

and NRAs' market surveillance activities in 2017. The discussions were pursued on the basis of 3 layers. Layers 1 (regional cooperation) and 3 (cooperation with PPATs) will not be pursued further with a formal proposal for the BoR in June at this stage. In relation to Layer 2 (allocation of surveillance responsibilities between the Agency and NRAs), the REMIT Coordination Group will undertake a 'gap analysis' (on the basis of a questionnaire to be completed by NRAs) to obtain a state of play and to make the best use of available resources. A note on the outcomes of this work will be available for the BoR meeting of 7 June.

- 9. The EC updated the BoR members on preparations for the Florence Forum to take place on 17-18 May, where key issues relating to the Clean Energy Package proposals will be debated along with reports on code implementation and intra-day market coupling. On the latter a letter on cost sharing was sent to the NRAs. The EC suggested exploring the possibility of NRAs preparing guidance on the application of Article 3 of the CACM Guidelines. The members welcomed this approach to be pursued upon request by the EC, whilst indicating the complexity of this issue.*
- 10. The BoR received an update on the preparations of the White Papers and the next steps. Three White Papers were considered for adoption as joint (ACER-CEER) papers on the following topics: Renewables, Efficient Price Formation and Flexibility. The majority of members provided their informal endorsement in principle on the above papers subject to further discussion and approval at the CEER GA, including on the specific concerns raised by CRE, BNETZA and AEEGSI.*
- 11. The remaining White Papers (Efficient System Operation, System Adequacy and Capacity Mechanisms, and Infrastructure) will be finalised for submission at the June meetings. The draft White Paper on the role of the DSO has been submitted to the Director and is expected to be launched for approval and informal endorsement through an electronic procedure, or submitted at the June meetings.*
- 12. The Director informed the BoR members of the outcome of the electronic procedure relating to the draft ACER opinion on the application of Article 30(2) of the Guideline on forward capacity allocation. 24 members participated in the second round, and 23 were in favour of the opinion. The ACER opinion was subsequently adopted on 7 April.*
- 13. The AGWG Chair informed the BoR of the reappointment of the AGWG Vice-Chair and provided an update on the ongoing work of the AGWG, including the Quo Vadis study, the tariff code implementation and the key issues emerging from the draft project plan including the timing of the work on allowed revenues. He also provided an update on the EIP Paper 2, which is in the final phase of elaboration ahead of the Infrastructure Forum (1, 2 June). The BoR steer was sought to finalise the paper and launch the electronic procedure with a view to endorsement by the end of May. The BoR agreed to remove the CBCA-CEF issue from the paper.*
- 14. The BoR members received an update on the status of the European annual gas auctions. The EC noted that the basis for this discussion must only be the correct application of the CAM rules, which must not discriminate between shippers regarding the use of the network.*
- 15. The ACER Director provided an update on the draft 4th report on monitoring of congestion at interconnection points, summarising the key findings and recommendations. Following the BoR orientation discussion, a final discussion will be held at the AGWG, following which the report will be circulated to the BoR for written comments by 22 May. The report will be published on 1 June. AEEGSI raised concerns about some of the results: in their view the definition of congestion used leads to misleading results for Italy. The Director will look into this issue and the results will be qualified in a footnote.*

16. *Following the previous discussions on the appropriateness and effectiveness of continuing with an AIMP WG structure, the Director presented a proposal for the establishment of a Legal Expert Network (LEN). He noted that the future activities of the Agency, including on network code implementation, require the provision of legal advice in a more structured but flexible way. The LEN will ensure access to the legal expertise available within NRAs. The LEN would be able to support, on a standing basis, the Director, the BoR, the Agency's departments and the AWGs seeking expert legal advice. It would essentially serve as a pool of experts, out of which specialised, query-specific panels with the most relevant legal experts would be drawn to deal with specific legal queries brought to its attention. It can be coordinated by two co-coordinators, one chosen among the Agency's legal advisers and the other among NRAs' legal experts. The note detailed its suggested mode of operation. The members acknowledged the good work of the AIMP WG. They welcomed the proposed approach regarding the creation of the LEN, but made a number of suggestions/clarifications including inter alia: that the BoR request for advice must not be subject to the discretion of a legal coordinator; that the LEN must also support the BoR and that the application of the AWGs RoP should be flexible given that confidentiality requirements cannot apply between NRAs and their own staff.*

Part A: Items for discussion and/or decision

1. Opening

1.1. Approval of the agenda & DoI

BoR Decision agreed: (D 1)

The agenda was approved. No declaration of conflict of interest was made by the members.

1.2. Approval of the minutes of the 64th BoR meeting

BoR Decision agreed: (D 2)

The 64th BoR minutes were approved.

2. Update from the Director

2.1. Update on recent developments

- **ACER**

The Director provided an update on the Agency's recent publications. On 23 March the Agency published an updated overview of cross-border cost allocation (CBCA) decisions for electricity and gas infrastructure projects of common interest (PCIs).

On 7 April the Agency issued two opinions on electricity network development plans: one concerned the draft Union-wide Ten-Year Network Development Plan (TYNDP 2016), and the other its consistency with the national network development plans.

On 10 April the Agency published the results of a survey on the remaining barriers to gas wholesale market trading, in which wholesale market participants (shippers, suppliers, traders and energy intensive customers) took part. The results will feed into the assessment of developments in gas wholesale markets which the Agency performs every year in preparation for its Market Monitoring Report.

On 12 April the Agency published the latest issues of REMIT Quarterly.

- **EC Update on Clean Energy Package proposals**

Mr Addis provided an update on the negotiations relating to their legislative proposal "Clean Energy for all Europeans." The ITRE committee held an exchange of views on the recast ACER Regulation, Electricity Regulation and Electricity Directive on 24-25 April. The Council EWP had a discussion the day before and there is a general feeling that the EC proposals are well received but evidently there are issues to be further clarified and discussed. The next session of the Council EWP will be in May. The Estonian Presidency is eager to progress with the discussions.

- **Update on the codes event 4 May**

The EC, ACER, ENTSO-E and ENTSG have jointly organised a conference to be held on 4 May to

present and discuss the achievements and challenges of the implementation of network codes. Mr Borchardt provided an update. A key objective of this event is to raise awareness of the importance of the timely implementation of the codes which have been adopted. The conference will give the opportunity to listen to the views of all involved parties and stakeholders, including on how they can be constructively engaged. The EC intends to have a regular agenda item in the Fora on code implementation to ensure effective reporting. The NRAs have an important role in this process. The EC will pursue the discussions with NRAs including on a bilateral basis on implementation issues given the importance of effective cooperation between the EC and NRAs. In the meantime preparatory meetings have started developing an approach for the monitoring of implementation of codes, which very much relies on the effective cooperation of all parties involved.

Lord Mogg briefly reported on the current thinking regarding the approach to the monitoring of the implementation of codes between the EC, ACER and ENTSOs. He suggested to the EC to discuss further at the June BoR the future approach on the monitoring of implementation of codes and Guidelines on the basis of the EC paper which is currently under preparation.

- **Update on the Infrastructure Forum**

Mr Borchardt updated on the third Energy Infrastructure Forum, which will take place in Copenhagen on 1-2 June and will bring together key stakeholders in European energy network infrastructure to discuss many topics including the financing of energy infrastructure. Discussions on the first day will focus on more high level issues, while working level discussions will be held on the next day including on CBCA and how this is related to the CEF funding; the EC is developing a paper on this. The Forum will also feature follow up sessions to last year's conclusions on Cross-Border Cost Allocation, and issues of public acceptance. The 2nd day will be hosted by the Copenhagen school of energy infrastructure.

3. ACER cross-sectoral activities

3.1. ACER Annual Activity Report 2016: independent section on regulatory activities

The Director presented the 2016 Annual Activity Report (AAR). The BoR is required to approve the independent section of the ACER AAR on regulatory activities under Article 13(12) of the ACER Regulation. This section reports on the activity and regulatory achievements of the Agency during 2016 and is divided in three main parts following the structure of the ACER Work Programme:

1. Completion of the Internal Energy Market- Network Codes, TSO cooperation, Gas regional initiatives and cross-sectoral issues.
2. Guidelines for Trans-European Energy Infrastructure-Opinions and recommendations on its own initiative, activities subject to specific conditions.
3. Wholesale market monitoring – REMIT.

The draft report circulated also includes the statement of the Chair of the Board of Regulators.

Following BoR approval the report will be submitted to the Administrative Board for adoption. The AAR must be submitted to the EC by 15 June.

The independent section of the ACER Annual Activity Report on regulatory activities was approved by the BoR (by consensus of the members present or represented).

4. Market Integrity and Transparency

4.1. REMIT implementation and operation

Mr Zuleger provided a presentation on the most recent updates. The data collection is very stable. The market surveillance solution (ARIS tier 3) is work in progress. 2 NRAs (OFGEM and EI) have sublicensed the SMARTS solution. There is an excellent cooperation with NRAs on data sharing and data quality with weekly phone calls to address remaining issues. The ARIS primary and disaster recovery sites have been migrated to the internal ACER data centre in early April. As a final step of the migration, the environments of the previously two sites will be integrated into one to optimize and advance performance and address increasing space requirements of ARIS by summer 2017. Regarding the remaining implementation activities, inside information collection from the platforms has already started. Only a few platforms have provided usable web feeds so far. Further inside information platforms will start reporting by summer 2017. Other activities will only start in 2018 (e.g. collection of EMIR derivatives and emission allowances in 2018 etc.), subject to additional resources being available to the Agency. Mr Zuleger then presented some key figures: at this stage 12,099 market participants have registered in CEREMP; the number of market participants for which data has been reported is 11,281; 112 RRMs been approved. With regard to the number of records of transactions, including orders to trade, around 1.5 million records of transactions, including orders to trade, are reported per month in 2017.

Mr Zuleger informed the BoR on a case regarding a third-party RRM which illustrates the potential regulatory gap concerning the supervision of third-party RRMs, where the Agency would be well placed to exercise additional supervisory powers over RRMs also to ensure a level playing field for RRMs and trade repositories at EU level. It also demonstrates the need for close cooperation with NRAs, ESMA and EICOM. This is an issue which needs to be looked into and illustrates the risks undermining the quality of data reporting. Lastly he provided an update on data quality following the open letter on data quality from 16 February 2017.

4.2. Governance section on market surveillance

Mr Godfried provided an update on the preparations of the governance section of the Market Surveillance Strategy document. At its December meeting, the BoR endorsed the Market Surveillance Strategy document as a basis for ACER's and NRAs' market surveillance activities in 2017. The BoR supported the delivery of a governance section with the allocation of responsibilities and tasks for market surveillance between the Agency, NRAs and PPATs by June 2017. The BoR agreed that the governance section will be reviewed after 6 months. 2 meetings have been held including at the last REMIT Coordination Group to discuss this issue.

The governance section contains proposals in three layers: Layer 1 on Regional Cooperation, Layer 2 on division of surveillance work, and Layer 3 on Article 15 regarding PPAT monitoring.

Regarding layer 1, ACER proposed to make use of existing regional cooperation regimes and promote the establishment of cooperation among countries in the same geographical region. The proposals for a more formal structured regional cooperation will not be pursued further at this stage. Instead NRAs will

continue to develop their 'organically' developed regional cooperation and will inform ACER appropriately about the status of their cooperation on a semi-regular basis.

Regarding layer 2, NRAs may be given responsibility for surveillance activities in their jurisdiction under national legislation. ACER proposed to prioritise its market surveillance on cross-border surveillance; countries that lack surveillance obligations; national markets with low current surveillance activity; requests from NRAs requiring assistance. NRAs suggested that ACER should focus on the potential surveillance gaps. The agreed proposal for the division of surveillance work will be the core of the governance section. For this the gap analysis is essential and for this purpose NRAs agreed to provide input in reply to a short questionnaire. 23 NRAs have responded to this questionnaire and ACER is now in the phase of analysing this report.

Regarding the 3rd layer, ACER proposed to have Article 15 monitoring carried out through a rotating group of NRAs, using the existing regional cooperation regimes. NRAs appreciated the three coordination scenarios-based proposal by ACM as more flexible and better suited to their needs. NRAs expressed support for ACM's proposal for Article 15 (PPAT)-monitoring, though it requires further considerations in order to ensure consistency.

A conference call with members of the REMIT Coordination Group is scheduled for 16 May to receive their guidance on the assessed responses to the questionnaire. A first draft cover note for the BoR will be prepared on 7 June.

The Director thanked the colleagues who replied to the questionnaire. He noted that going forward we have to find a way to join forces and continuously assess the market to fill in the identified gaps.

Ms Groebel noted that there is still some gap analysis to be done. We should try to have a consistent approach whilst it is important to keep in mind the role and responsibilities of the different bodies.

Layers 1 and 3 will not be pursued further at this stage with a formal proposal for the BoR in June. In relation to Layer 2, following a 'gap analysis' ACER will prepare a draft note for the BoR of 7 June.

5. Electricity

5.1. Preparations for the Florence Forum (17/18 May)

Mr Borchardt provided an update on the preparations for the 32nd Florence Forum to be held on 17-18 May. The agenda has been published and covers the following items:

- the Clean Energy Package for All Europeans: selected topics for discussions include the revision of the Renewables Directive for the period after 2020, Regional Operational Centres (ROCs), coordination of national policies to prevent and mitigate crisis situations in the electricity sector, institutional framework, and upgrading wholesale and retail markets;
- update on Network Codes;
- electricity market developments in the Energy Community; and
- flexibility and variability in a highly integrated system: the Nordic experience.

The EC will ensure that conclusions reflect the majority line as apparent from the discussions, including as regards controversial issues in the Clean Energy Package.

The EC updated the members of the BoR on the Cross-Border Intraday initiative (XBID Project): TSOs and power exchanges met on 26 April with the EC and are satisfied with the XBID Project notwithstanding the delays. There are no substantial obstacles and a technical go-live is expected at the end of October or beginning of November. The EC made reference to a letter on cost sharing which was sent to NRAs.

The EC drew members' attention to the fact that Article 3 of CACM Guidelines, which governs cost recovery, is very 'open': for example, there is no definition of eligible costs. Whilst the final decision will remain national, the EC suggested that NRAs develop a common framework for the application of Article 3. This will not be an interpretative note, but perhaps a guidance document aimed at assisting NRAs. The EC invited members to share their initial reactions.

5.2. The European Regulators' White Papers

The Chair referred to the series of White Papers that BoR members have been working on. Their purpose is to inform the European Parliament of the broad issues, expressing joint positions where possible. The papers will be public but the proposed amendments will not be made public.

Mr Hernández presented three papers (Efficient Price Formation, Renewables in the Market (RES) and Facilitating Flexibility) in respect of which the Agency's views had been sought and which members have agreed to consider for adoption as joint papers subject to further discussion in the CEER General Assembly (GA). The other three papers (System Adequacy & Capacity Mechanisms, Infrastructure and Efficient System Operation) will be redrafted to reflect NRA and ACER comments, and will be presented for approval at the next BoR in June, with publication to take place in the same month. Members were invited to comment on the papers.

The Chair clarified that given the change in the meetings (due to the codes event), as the BoR precedes the GA on this occasion, BoR members will be asked to indicate whether there are any issues that would prevent informal endorsement of the White Papers in principle.

The Director is pleased with the White Papers; however, in respect of the flexibility paper, he suggested that this could further elaborate – at a later stage - on the issues of aggregators and compensation, which are likely to become the focus of debates. An option would be to develop a network code on demand response. The Chair noted that there will be opportunities to address these issues after publication of the White Papers.

CRE, BNETZA and AEEGSI provided comments.

Mr Hernández welcomed Ms Groebel's constructive comments. There has also been constructive engagement with the Director in connection with the Flexibility Paper, specifically the merits of default independent aggregators and the need for a default position on compensation. Mr Hernández also highlighted the need to restructure the papers so that they follow a consistent format.

The Chair proposed taking forward the comments at the GA. The Chair concluded that BoR members had in principle agreed to informally endorse the White Papers on RES, Flexibility and Efficient Price Formation, subject to further discussion of the concerns expressed by 3 BoR members.

5.3. ACER Opinion on the implementation of the FCA Regulation

On 3 March 2017, the regulatory authority of Lithuania, (VKEKK), sought an ACER opinion with regard to the implementation of Article 30(2) of the Guideline on forward capacity allocation (FCA), which was adopted on 7 April. As this opinion needed to be adopted quickly, a BoR electronic procedure, held in 2 rounds, was launched on 29 March. A note on the outcome of the BoR electronic procedure was circulated.

The BoR members had no further comment on the outcome of the electronic procedure. ERO referred to an agreement on the Czech and Slovakian border.

The Director mentioned that there was concern among stakeholders that there is insufficient consultation on long-term transmission rights. The Director also alerted the members to the lack of volunteers to lead the FCA code implementation TF. In the absence of candidates from NRAs ACER will lead, but it would be preferable for NRAs' volunteers to come forward.

6. Gas

6.1. Update on FGs, NCs and other work

Mr Trindade informed the members of the reappointment of the AGWG Vice-Chair.

Concerning the Quo Vadis study, which will assess whether there should be status quo or further integration of the gas market, Mr Trindade informed the BoR members that a consultant had been selected: EY (Prague) and REKK. Mr Trindade informed the members that an interim report is expected in June, and the final report in October, to be followed by workshops to discuss the final report.

The EC clarified that the Quo Vadis study is forward-looking, and that the conclusions will be taken forward by the next Commission in 2020. The mirroring process is different: it looks at policies to be proposed in the first quarter of 2018 mirroring, where appropriate, the provisions of the Clean Energy package. The President's Cabinet and the Secretariat-General have been asked to align the entry into force of electricity and gas proposals. The Inter-Service Consultation might soon be launched. The EC would like to test some of the proposals with the WGs and ENTSOs, a suggestion welcomed by Mr Trindade.

Mr Trindade informed the BoR members of the key issues emerging from the draft project plan relating to tariffs code implementation, the focus being allowed revenues. A report is foreseen on this sensitive issue, which will be a status report and not an opinion. Mr Trindade recommended that this issue be followed by NRAs to anticipate the parameters of allowed revenues, and to determine their respective positions. A final report on allowed revenues is likely to be published in June 2018, after sharing the results with the BoR. Mr Trindade also reported that ENTSOG has incorporated most of the suggested amendments to the iDoc based on the tariffs network code. On 1 October the transparency

requirements will come into force. Ms Groebel added that the forthcoming report under Article 34 will be a compilation of information as opposed to an opinion.

Mr Trindade sought a decision of the BoR on the EIP Paper 2, which is in the final phase of elaboration ahead of the Infrastructure Forum. The intention is to have the paper endorsed via electronic procedure by the end of May. The Infrastructure TF proposes to remove the CEF and CBCA issue from this paper in the absence of agreement between the Agency and NRAs. BoR members agreed to remove the chapter from the EIP Paper 2.

Mr Outrata commented on the target model, noting a lack of coordination between electricity and gas. The EC responded that the Clean Energy Package will align electricity to gas in terms of transparency. In gas full transparency has been achieved, notably via the gas tariff code and benchmarking the methodology. The aim is to achieve the same level of transparency in the electricity sector, but harmonisation of network tariffs (in particular for gas distribution) is not envisaged. Over time there will be convergence, but total harmonisation is not pursued. Mr Trindade concurred, and observed that in electricity there is ITC and a higher level of integration.

6.2. Oral update on the status of the European annual gas auctions

At the March BoR, Mr Nyikos informed the BoR on the outcome of the first CAM network code annual gas auctions on the 6th of March 2017.

The BoR members were also informed of a trilateral meeting between HEO, E-Control and RONI: a way forward has been proposed, with which all three parties are satisfied, and future coordination was discussed.

The EC commented that the basis of the discussion must be the correct application of the CAM rules, which must not discriminate between shippers with respect to the use of the network.

Mr Trindade commented that the matter is being examined and that there is a report detailing what is within the rules.

HEO thanked the EC for their comments.

6.3. 4th Report on monitoring of congestion at interconnection points

ACER produces a report on congestion at interconnection points on an annual basis. The 4th report will assess congestion in 2016. The main purpose of this report is to identify cases of contractual congestion at interconnection points (IPs) between entry-exit zones in the European Union. 'Contractual congestion' means demand for firm capacity exceeded the technical capacity.

The report is currently being drafted and a presentation was made by the Director on some of the key findings and recommendations, namely:

- 23 contractually congested IP sides were identified in 2016. The Director observed that this was a decrease on last year. FDA UIOLI may be implemented at 10 further IP sides;
- physical congestion occurred at 8 of the contractually congested IP sides;

- the application of CMPs yielded additional capacity offers only at the borders of 7 MS (2 MS via FDA UIOLI, 3 MS via OS, 6 MS via surrender);
- transport/CMP data on ENTSOG's Transparency Platform still unreliable/incomplete. The report will set out recommendations concerning data & transparency for ENTSOG and NRAs; and
- the report suggests a CMP amendment proposal, to be brought forward by NRAs/ACER, to clarify and widen the definition of contractual congestion. Whilst a call for evidence was launched in Madrid last year, so far ACER has not received any concrete constructive proposal regarding alternative congestion indicators.

The Director also outlined the proposed timeline:

- 9-12 May: Director's review & release for BoR comments;
- 16 May: final discussion in AGWG, following which the report will be circulated to the BoR for written comments by 22 May; and
- 1 June: it is intended to publish the report on this date.

Given the tight timeline, the Director urged members to submit comments on the provisional findings without delay.

The Director proposed to add a footnote in the report explaining the situation in Italy, specifying that the matter is being addressed.

7. Appointments of the AWG Chairs

7.1. AIMP WG next steps

The Director presented his proposal for the creation of a network of legal experts (wider than in WG contexts) to provide legal input with 2 coordinators who will refer each issue to a panel of expert, drawn from the network, including experts with the most relevant expertise.

The Legal Expert Network (LEN) would be able to support, on a standing basis, the Director, the BoR, the Agency's departments and the AWGs seeking expert legal advice. Legal experts from NRAs would be encouraged to join the LEN, indicating their specific areas of legal expertise. This would be valuable to:

- (1) enable the AWGs to prepare and present the most legally robust proposals;
- (2) provide assurance to the Director on legal aspects faced in the preparation of the acts of the Agency; and
- (3) inform the BoR on all underlying legal aspects of the proposals submitted by the Director.

The LEN would essentially serve as a pool of experts, out of which specialised, query-specific panels with the most relevant legal experts would be drawn to deal with the different specific legal queries brought to its attention. It should be noted that the LEN is intended as a network of legal experts to whom issues of a technical legal nature can be submitted. It is not the intention to use the LEN as a mediation instrument for internal governance or on policy issues. Though working in many respects under the AWG rules, the LEN's functioning would be atypical, due to the specific context and conditions in which it has to operate. The working conditions of the LEN and time constraints would have to be adapted to and geared towards the specific needs of the Director, the BoR, the Agency's

departments and them; its scope of operation could be very broad. The LEN would be coordinated by two co-coordinators, one chosen among the Agency's legal advisers and the other among NRAs' legal experts, thus reflecting the strong complementarity between the Agency's and NRAs' expertise. In case of disagreement between the co-coordinators, the issue would be referred to the Director. He also presented its mode of operation.

The members acknowledged the good work of the AIMP WG and provided feedback. They welcomed the proposed approach regarding the creation of the LEN, but made a number of suggestions/clarifications including inter alia: that the BoR request for advice must not be subject to the discretion of a legal coordinator; that the LEN must also support the BoR and that the application of the AWGs RoP should be flexible given that confidentiality requirements cannot apply between NRAs and their own staff.

The Director thanked all for the constructive feedback. He fully agrees that the AIMP has worked well, but proposed a more tailored way of securing legal input, as future activities of the Agency, including as regards network code implementation, will require the provision of legal advice in a more structured but flexible way. The Director further clarified that the BoR will be able to request legal advice, and that WG requests should be channelled through the WG Chairs. The Director is not to act as gatekeeper; he is only to intervene where necessary to resolve a dispute. On confidentiality requirements, his view is that the usual rules on confidentiality in the WGs can apply. Annual meetings could be set up, but advice can be shared immediately. The calendar or timeline should be guided by the issues under examination. The intention is not to exclude anyone so long as wider participation does not hamper the process.