

59th ACER Board of Regulators Meeting
Wednesday, 14 September 2016, 09.00-16.00
CEER, cours Saint-Michel 30a, Brussels

Minutes (public)

Member States	Name ¹	Member States	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch A: Dietmar Preinstorfer	Italy (AEEGSI)	M: Claro Poletti O: Ilaria Galimberti
Belgium (CREG)	M: Marie-Pierre Fauconnier A: Koen Locquet O: Geert Van Hauwermeiren	Latvia (PUC)	O: Lija Makare
Bulgaria (EWRC)	O: Svetla Todorova	Lithuania (NCC)	O: Dalius Kontrimavičius
Croatia (HERA)	M: Tomislav Jureković A: Sonja Tomašić Škevin	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Andreas Poullikkas	Malta (REWS)	M: Marjohn Abela O: Phyllis Micall
Czech Republic (ERO)	M: Martin Sik O: Kateřina Firlová	Netherlands (ACM)	M: Henk Don O: Maarten Klijn O: Debby vander Pluijm
Denmark (DERA)	O: Malene Alempiew	Poland (URE)	A: Małgorzata Kozak
Estonia (ECA)	O: Marilyn Tilkson	Portugal (ERSE)	A: Artur Trindade O: Natalie McCoy
Finland (EV)	A: Antti Paananen	Romania (ANRE)	A: Lusine Caracasian O: Florin Tobescu
France (CRE)	O : Aude Le Tellier O : Camille Hubac	Slovakia (RONI)	Excused
Germany (BNetzA)	A: Annegret Groebel	Slovenia (AGEN-RS)	M: Bojan Kuzmic
Greece (RAE)	M: Sotirios Manolkidis	Spain (CNMC)	O: Gema Rico
Hungary (HEA)	A: Attila Nyikos	Sweden (Ei)	A: Caroline Törnqvist
Ireland (CER)	M: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) O: Mark Copley O: Cecile Garcia O: Jenny Pyper

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

ACER	Alberto Pototschnig, Fay Geitona, Sean Hennity
European Commission	Klaus-Dieter Borchardt, Oliver Koch, Adriano Addis, Marie-Christine Jalabert
CEER	Andrew Ebrill

MEETING CONCLUSIONS SUMMARY

1. *The minutes from the 58th BoR meeting were approved. As was the agenda for the 59th meeting.*
2. *The ACER Director provided an update on the recent work and publications of the Agency.*
3. *The Director also informed the BoR of the preparations of the 2018 Single Programming Document. It is proposed that the document will be submitted to the BoR for endorsement in December 2016 after a draft outline has been presented to the BoR at the October meeting and following a public consultation. The preliminary budget will be submitted to the BoR for its opinion in December.*
4. *The 2017 ACER Work Programme was approved by the BoR by consensus of the members present or represented.*
5. *The Director presented the key findings of the electricity and gas wholesale volumes of the 2016 MMR to the BoR. He informed the BoR that the (electricity and gas) wholesale volumes will be published on 15 September and findings will be discussed at a workshop in Ljubljana on 21 September. The Main Document with the recommendations (which will also take into account the feedback from stakeholders at the workshop), the Consumer Protection and Empowerment Volume and the Retail Market Volume are still under discussion and will be finalised for submission to the October BoR. Publication is intended to be on 9 November. Members noted the need to better link the evidence to the conclusions and ensure consistency in the recommendations across all volumes and the main document.*
6. *The BoR Chair informed the BoR of the joint ACER and CEER conference that is currently being planned to discuss the key issues and regulatory challenges emerging from the new context set by the EC's proposals on the new energy market design on January 2017 in Brussels. He also informed the BoR about the establishment of a Policy Committee to coordinate at a high level the preparation of the feedback to the EC's new energy market design proposals. The Director noted the need carefully to consider the scope and content of this event with a view to respecting the institutional role of ACER. This is also relevant to the process presented by the Chair for preparing any possible reaction to the EC's proposal.*
7. *Mr Trindade provided an update on the ongoing work of the AGWG. He provided an update on the status of the TAR network code and CAM network code amendments.*
8. *The Director presented the main conclusions and recommendations from the CMP implementation report. The report will be submitted to EC and published.*

9. *The ACER Opinion on the ENTSOG Annual Report was given the favourable opinion of the BoR by consensus of the members present or represented.*
10. *Mr Trindade and the EC provided an update on the preparations of the Madrid Forum held on 6/7 October.*
11. *Mr Locquet provided an update on the ongoing work of the AIMP WG and its Task Forces. In particular, he informed the BoR of the progress that is being made in the MMR TF on the development of the 2016 MMR. Also preparations for a legal workshop expected to be held on 30 November are underway.*
12. *The PWS prepared a note for the involvement of the BoR in the adoption process for the acts of the Agency. The paper concludes that as Article 9 of the ACER Regulation is referred in Article 15(1) and Article 17(3) of the ACER Regulation, all acts made under Article 9 are also covered by Articles 15(1) and 17(3). According to the paper, a favourable opinion of the BoR is required for the additional tasks which are referred to in Article 9(2) which are considered as secondary legislation and cannot prejudice the governance arrangements under the ACER Regulation. This legal interpretation was supported by all BoR members. Some members also argued that this would also apply to ACER reports under 9(2) and, therefore, a (favourable) opinion of the BoR would be also needed. The Director noted that Article 15(1) of the ACER Regulation clearly refers to BoR opinions being required in respect of ACER Opinions, Recommendations and Decisions. On the content of the PWS note he does not share this legal interpretation or the conclusion. The BoR Chair concluded that it would be best to seek an interpretation from the EC.*
13. *The BoR agreed to make a request to the EC to clarify how the relevant provisions with regard to the BoR involvement in the adoption of Agency's acts should be legally interpreted. To this end, the PWS was invited to provide a quick report on the legal position on the treatment of reports in terms of requiring a BoR opinion. This will be submitted at the October BoR.*
14. *Mr Borchardt provided an update on the ongoing work of the EC on the new energy market design proposals and the discussion at the Regulatory Scrutiny Board regarding RES integration, consumer empowerment, governance, getting the right investments signals through market functioning. He also informed the BoR of the consultation on the annual priority list for network codes which closes on 14 October; the EC does not expect a need for new codes or guidelines in new areas for 2017.*
15. *Mr Copley provided an update on the ongoing work of the AEWG. He also provided the latest updates on the XBID project following the letter received from the Chair of the NEMOs committee raising concerns on cost recovery. The NRAs are in the process of considering a common response. The EC also reported on progress which looks good at this stage.*

16. The Director presented to the BoR the Recommendation on cross border capacity calculation methodologies which has now been prepared. It 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. The BoR had an orientation discussion. Some members welcomed the draft Recommendation while others were sceptical about the costs being disproportionate to the expected benefits. The Director noted that there is a window of opportunity in the next months (10 -14 months) to influence the process of the capacity calculation methodologies. He also clarified that the Recommendation will envisage the possibility of derogating from the High-Level Rules with appropriate justifications. He expects to submit a final Recommendation for a BoR opinion in October.

17. The Director informed the BoR that the consultation on all TSO's proposal on Capacity Calculation Regions closed on 20 July following which ACER have produced a draft decision paper, evaluation of stakeholder's views paper and technical justification document. The BoR had an orientation debate and a new round of comments will be launched. The EC remarked that the decision should be without prejudice to the outcome of the bidding zone study. Some members supported the draft decision. E-Control and BNETZA made statements with regard to the references in the draft decision to internal congestion in the relevant countries. The ACER decision has to be issued by 17 November and, therefore, will be submitted again to the October meeting and then to the November BoR for an opinion.

18. The ACER Opinion on the ENTSO-E summer outlook report 2016 and winter review 2015/16 was given the favourable opinion of the BoR (by consensus of the members present or represented).

19. The ACER Opinion on the ENTSO-E Research, Development and Innovation Roadmap was given the favourable opinion of the BoR (by consensus of the members present or represented).

20. The Director and the AMIT WG provided an update on the ongoing work of the AMIT WG and Task Forces. The Director informed the BoR of the budget proposals, the short and long-term secondments in MMD, provided updates on the current SMARTS implementation and the memo in preparation on the use of REMIT data for monitoring tasks. He also updated the BoR on progress in data sharing with NRAs.

21. The ACER Director presented the draft REMIT Annual Report. This fourth annual report outlines the activities undertaken in 2015 in order to implement REMIT and to carry out its requirements. Publication is currently envisaged around 7 October and a list of recommendations is being made to the EC. It was proposed to capture the key elements and recommendations in an executive summary.

22. The ACER Opinion on the ENTSO-E Scenario Development Report was given the favourable opinion of the BoR by consensus of the members present or represented.

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 57th BoR meeting

BoR Decision agreed: (D 2)

The 58th BoR minutes were approved.

Lord Mogg introduced Ms Pyper from the Utility Regulator (N. Ireland) who participated as an observer at the BoR.

2. Update from the Director

2.1. Update on recent developments

- **ACER**

The Director provided an update on the latest publications: On 9 August, ACER launched a call for Evidence on the “congestion indicators” included in the Congestion Management Procedures. The Agency invited stakeholders to provide feedback by 15 September 2016 and propose alternative or additional “congestion indicators” to be used by the Agency, with a view to have the feedback of stakeholders ahead of the next Madrid Forum (scheduled for 6 and 7 October).

The ACER Director confirmed during the meeting that NRAs might share their views regarding this issue directly and internally, directly to the Agency’s Gas Department.

The market monitoring report findings on wholesale electricity and gas markets will be discussed at a workshop on 21 September in Ljubljana. The workshop will provide an opportunity for stakeholders to hear first-hand from the Agency about its key findings on both markets and provide feedback which can input into the recommendations being prepared. In addition a presentation of the report at the EP ITRE Committee as well as a launch event in Brussels are scheduled on 9 November.

SPD 2018

The Director updated on the next steps on the preparation of the Single Programming Document (SPD) for 2018. In line with the new Framework Financial Regulation, the SPD and the estimate of revenue and expenditure must be submitted to the European Commission by 31 January 2016. This will be presented to the BoR in December for endorsement and to the AB in January for adoption. The normal process for the approval/adoption of the 2018 WP will, subsequently, apply. According to the detailed timeline presented a conference call with AWG chairs on the preliminary draft outline WP will be held in early October and the draft outline WP will be presented to the October BoR; subsequently, the draft outline will be presented to stakeholders for consultation until 18

November with a view to finalising it and submitting it to the BoR for endorsement in December and to the AB in mid-January 2017. The draft estimate of revenue and expenditure will be also submitted to the BoR (for an opinion) in December – January.

3. ACER cross-sectoral activities

3.1. 2017 ACER Work Programme

The Director provided the background. The EC opinion was received on 30 June. On the basis of the EC opinion the revised version of the WP is submitted for approval. The Administrative Board has to adopt it by 30 September. The revised WP is based on the draft budget, as adopted by the Administrative Board. If the additional resources are not assigned by the Budgetary Authority, the AWP 2017 will be revised in line with the level of resources actually available.

The Director noted that the Commission's priorities such as implementation of network codes remain one of the Agency's priorities. However, additional staff is needed to fully implement the Agency's mandate under REMIT - (FERC deployed 89 FTEs to analogous activities). Therefore, additional activities cannot be undertaken; (for example on infrastructure, the EC calls for a closer cooperation between ACER and INEA monitoring of PCIs, but the Agency's lack of resources does not allow it. The EC also proposes that the Agency updates its Recommendation 03/2014 focusing on methods that accelerate the implementation of PCIs but the Agency's lack of resources does not allow it. The Commission further invites ACER to provide support to its mid-term review of the TEN-E Regulation due in 2017, by providing a report on the lessons learnt from an ACER and National Regulators' perspective. The Director noted that a position paper on improving the effectiveness of the European framework for energy infrastructure development has been issued in July).

The EC thus considers that there is a gap between the vision of the Director with regard to the Agency's activities and the resources available and thus a need to revise the WP in January next year.

The Director clarified that ACER is asking for 33 additional staff. The EC position is to cut one staff member. The Director's stance is to keep the ACER request for 33 - between minus one and 33 there is a big difference and he does not want to settle with minus one; in his view, there will be opportunities to get a better deal by the Council and EP (last year the EC was proposing 10 additional staff but the Budgetary Authority assigned 15). The redeployment pool has been objected by the EP.

3.2. Market Monitoring Report

- Joint Monitoring Report

Lord Mogg reported on the CEER GA discussion the previous day on the Consumer Protection and Empowerment Volume of the report and reported on the members' concerns.

The Director clarified that he is currently reviewing the consumer protection and empowerment volume.

This needs to be closed at some stage and needs to go to the production so any comments need to be submitted by the end of this week. The main volume containing the recommendations is still open and will also take account of the feedback by stakeholders at the workshop on 21 September. The rest of the volumes are a work in progress.

Lord Mogg sought some clarifications on the next steps since the chapter is being reviewed after its approval by the GA. There are some concerns about whether the recommendations are consistent and supported by the data in the each of the volumes.

Overall the good collaboration between ACER and NRAs team was noted.

Mr Locquet reported about the discussions at their meeting at the end of August; there has been a good discussion on the retail volumes and the key recommendations and the process had been very smooth.

The Director reported that the retail markets volume along with the consumer protection and empowerment volume and the main document will be submitted to the October BoR.

Wholesale volumes

The Director reported on the electricity and gas wholesale volumes and referred to some of the key findings. He informed the BoR that for the gas target model indicators of those volumes have used REMIT data in an aggregated form. The volumes will be realised on 15 September ahead of the workshop to discuss the results scheduled for 21/09.

Mr Trindade mentioned that most members were happy with the findings in the Gas wholesale volume. Some members have raised some methodological comments (e.g. welfare analysis). However, given the time constraints the Chair has invited them to discuss more fully the methodology for the next year's edition.

The Director thanked for the feedback but clarified that the wholesale volumes are now finalised. This year we tried a different approach of preparing the different volumes and of involving more the AEWG and AGWG on the electricity and gas wholesale volumes respectively. It has been successful. He does not see a problem for the other volumes to be released in November. We still have time to refine the conclusions, actions and recommendations following the workshop with stakeholders next week.

3.3. Joint ACER-CEER event on the Winter Package

Lord Mogg noted that the EC new energy market design proposals (EMD) will be issued by the end of the year and reported on the discussions at the CEER GA on the approach and process presented to the CEER and to the Director to input to the EC proposals. He underlined that the proposed "Policy Committee" (PC) –will help to ensure coordination on cross-cutting issues and timely/clear regulatory input to the new energy policy legislative process. The scope of the EMD is wider than the remit of any single WG and we must provide a coordinated regulatory input. Any papers emerging from those discussions will, subsequently, be decided in line with the deliberation processes for each Institution. Given the sensitivity on governance, it was proposed to replicate the Bridge approach.

He stressed the importance of regulators having a single voice, with regulators being stronger if they act collectively. Evidently there will be differences but it is important to join our efforts to prepare, where possible, joint CEER-ACER positions and minimise the differences. He reported on the discussions at the GA to implement such a mechanism.

It was considered useful to organise a joint event in January to discuss key issues and regulatory challenges emerging from the new context set by the European Commission's proposals on the new energy market design. The agenda is now being shaped.

The Director in response remarked that he can see the benefits of the proposed approach regarding the joint event and the Policy Committee. However, he noted the need to carefully consider the scope and content of this event with a view to respecting the institutional role of ACER. This is also relevant for the process presented by the Chair for preparing any possible feedback to the EC's proposal. On the Policy Committee the Director also hopes that we can arrive at joint positions as we did at the Bridge, EMD response and the regulatory treatment of new entities. We could make an effort but it is difficult to set the tone at this stage and the scope of any possible feedback until the EC proposals are issued. He also highlighted the importance that the decision-making process in the Agency on any response complies with its governance rules.

Lord Mogg mentioned that the proposed date for the conference is in January 2017 in Brussels. It is envisaged to be a large conference inviting a wide selection of Institutions, stakeholders, NRAs, academics. The time for influencing the EC package has passed. The conference is a first opportunity to give a cohesive view on the key regulatory challenges in the new scene set by the winter package.

4. Gas

4.1. Update on FGs, NCs and other work

The AGWG Chair provided an update on the Working Group's ongoing activities. He also provided the latest updates on the tariffs network code and CAM network code amendments stating that comitology votes are expected on 29-30 September. The last AGWG was held on 7 September.

4.2. 2nd CMP implementation monitoring report

The Director presented the report and the key recommendations. He reminded the BoR that the report was hoped to be presented at the July BoR for information but subsequent delays pushed it back to the September meeting. This was due to data quality issues of ENTSOG's Transparency Platform data forming the basis for the calculation of the CEPA IMR indicators. The AGWG was given an opportunity to feed in comments in August. The Director reflected on the experience from the report and called for better data quality. He noted the benefits of a transparency platform for consumers.

Mr Urbantschitsch noted that this report is based on Article 9 of the ACER Regulation and thus a favourable opinion was required. The Director referred to Article 15(1) of the ACER Regulation stating that this is a report (not an opinion, recommendation or decision). Reports and position papers fall outside of the scope of Article 15(1) of the ACER Regulation. The BoR Chair responded stating that this was an issue to be considered under item 5.2.

The report will be submitted to the European Commission and published.

4.3. Opinion on the ENTSOG Annual Report

The Director presented the draft Agency's opinion. On 8 June, ENTSOG published its Annual Report for 2015. Pursuant to Article 6(3) (b) of Regulation (EC) No 713/2009 and Articles 8(3) (e) and 9(2) of Regulation (EC) No 715/2009, the Annual Report has been evaluated by the Agency and the Director informed the members of the key comments included in the Opinion.

The Annual Report highlights ENTSOG's main achievements in 2015, and in particular the following:

1. The change of focus in the area of gas network codes (NCs) from codes development to ensuring that the codes are working;
2. The publishing of the 2015 Ten-Year Network Development Plan (TYNDP), which for the first time incorporates a cost-benefit analysis (CBA) in support of the selection of projects of common interest (PCIs);
3. The enhancement of the Transparency Platform which aims at providing comprehensive information on gas transmission to and within Europe.
4. The release of the implementation reports of the CAM and BAL NCs which provide for the first time insights on how the NCs are working.

The draft ACER opinion finds that ENTSOG's Annual Report 2015 adequately takes stock of the priority work carried out by ENTSOG, in line with the targets for the internal energy market.

The draft ACER Opinion on the ENTOSG Annual Report was given the favourable opinion of the BoR by consensus of the members present or represented.

4.4. Preparation for the Madrid Forum (6-7 October)

Mr Trindade updated the BoR of the preparations for the Madrid Forum. The Forum is being held on Thursday 6 and Friday 7 October. Mr Addis also informed the BoR that preparations are underway and an agenda has been circulated. The first day will focus on the repercussions of the market design on gas, which has attracted a lot of attention, whilst the second day is dedicated to network codes.

There will be 5 sessions.

1. State of the EU gas sector: demand and supply
2. Energy market design initiative and need for gas market redesign
3. Network Code development
4. Gas quality harmonisation
5. EU internal gas market/ EU internal market– smart implementation – main challenges.

Presentations need to be sent to the EC by 30 September.

5. Implementation, Monitoring and Procedure

5.1. Update on the AIMP

Mr Locquet provided a short update on the recent activity of the AIMP Working group activities which have focused on the MMR preparations and the organisation of a workshop on the exchange of experiences on Market Monitoring. The Director and Mr Locquet also informed the BoR that there will be a legal workshop held at the end November in Ljubljana (provisionally arranged for 30 November) to bring together legal advisors from ACER and NRAs.

5.2. The involvement of the BoR in the adoption process for the acts of the Agency

The BoR discussed whether the issue raised by Mr Urbantschitsch on whether reports produced under article 9 of the ACER Regulation would require a BoR opinion.

The Director noted that Article 15(1) specifies that a BoR opinion is only required for acts of the Agency (opinions, recommendations, decisions) that are referred to in Articles 5 to 9 of the ACER Regulation or explicitly mentioned in other legal acts. Under Article 15(1) reports are not mentioned. Some members did not share this view and noted that it was worth that the PWS looks into the note.

PWS paper on the BoR involvement in the Agency's Acts

Mr Locquet presented the key elements of the PWS paper on the BoR involvement in the Agency's acts. The paper concludes that a favourable opinion of the BoR is required for the additional tasks provided in network codes and guidelines, which are referred to in Article 9(2).

The Chair noted that the conclusions by the PWS are shared by all NRAs. This is an important issue for the NRAs setting a precedent for the future. Delegated acts such as those under CACM raise a series of important decisions to be made on the implementation of the codes (which are within the ambit of responsibilities of the NRAs); therefore, the governance arrangements for making such decisions by ACER (with the opinion of the BoR) are extremely important.

The Director takes the view that the opinions, recommendations, and decisions which are referred to in subordinate acts do not require a formal opinion unless explicitly stated. The Director stated that the only way to address the legal ambiguity is by consulting the EC.

The Chair proposed inviting the EC to clarify this issue following the PWS's feedback on an additional issue concerning whether the reports would also require a BoR favourable opinion. The EC, subject to the ECJ, is the only Institution to provide an authoritative and definitive legal view. He proposed to invite the European Commission to provide a view and that in the October BoR agreement will be sought to the issues following PWS' feedback. He also underlined that notwithstanding the legal debate, the present cooperative arrangements should continue without disruption.

The Director's view was that such an important institutional issue with legal consequences needed clarification. Until that clarification was given, similar concerns should not be raised

again. In response to the Director's question on who should write to the Commission, the Chair indicated his intention to seek that advice.

The BoR agreed to make a request to the EC to clarify how the relevant provisions with regard to the BoR involvement in the adoption of Agency's acts should be legally interpreted. To this end the PWS was invited to provide a quick report on the legal position on the treatment of reports in terms of requiring a BoR opinion. This will be submitted at the October BoR.

6. Update from the Commission

6.1. Update on recent developments

- EC

Lord Mogg welcomed Mr Borchardt and summarised the highlights from the meeting.

- MMR report and launch.
- The establishment of the Policy Committee which would coordinate feedback to the EC new energy market design proposals.
- A joint conference on the new energy market design.

Mr Borchardt welcomed the creation of the policy committee to provide feedback and express the regulatory views on the new energy market design proposals. This would be useful and would enrich the debate at the European Parliament and the Council.

He welcomed the idea of a joint ACER/CEER conference dedicated to the New Energy Market Design proposals and thought that January was a good choice in timings. He commented that consumer empowerment would have a prominent place in the "winter package".

On the request to the EC to clarify the provisions on the involvement of the BoR in the ACER acts, he welcomed the underlining understanding that, despite the legal clarification request with regard to delegated acts, this will not inhibit constructive cooperation between the Director and the BoR. He also commented that in the market design initiative the EC hopes to find clear-cut solutions and strengthen the role of the NRAs through the BoR involvement whilst with less stringent voting rules at the Board. The EC proposals, however, will have a longer time horizon of at least three years and thus we must clarify the existing arrangements.

New energy market design

The Regulatory Scrutiny Board at a meeting on the same day as the BoR meeting discussed in depth the Commission proposals. Mr Borchardt clarified that that there will be no "4th package"; instead the EC's proposals will have a less ambitious scope but tackle three key objectives:

- Integration of RES into the market;
- Empowerment of consumers and new possibilities for consumers as prosumers; demand side response issue;
- Getting the investment signals right through the market functioning.

Subject to the positive outcome of the scrutiny by the Board, on 16 September, the EC will launch inter-service consultation in mid-October with a view of publishing the package by the end of November.

Mr Borchardt also noted that there is no need to over regulate; the new energy market design proposals will be primary legislation which sets the broad framework. In most of the cases they are simply “guiding principles” with delegated acts to set the details subsequently. The EC will seek to ensure coherence between the Energy Efficiency Directive and the Winter Package despite the different timings. He also referred to an EU DSO body (but not replicating ENTSO-E). This will be aimed at engaging DSOs participating in the drafting of provisions in specific areas such as distributed generation, cyber security; and other key areas. At this stage it will be only relevant to electricity and not to gas. The EC have to make a thorough assessment next year when the Gas Directive will be opened and at that moment it will be considered whether an EU DSO body on gas is also necessary. The new energy market design will address gas issues only where these replicate electricity arrangements (e.g. streamline the process for the adoption of the codes or other institutional issues).

The EC’ Impact Assessment will be public in 2-3 weeks if a positive opinion is reached. On consumers, the EC are not imposing this as one-size-fits-all approach (e.g. the consumer will have the choice between dynamic pricing and standard pricing).

- EC consultation on the Annual Priority list for network codes

Mr Borchardt informed the members of the Annual Priority list for network code. The objective of this consultation until 14 October 2016 is to consult stakeholders on the priorities for the development of network codes and guidelines for 2017 and beyond.

The EC expects that in 2017 there would be no new codes and Guidelines. This year they made a huge push and it is important to finalise the discussions and the vote on the pending codes considered for adoption.

7. Electricity

7.1. Update on NC implementation (in particular the XBID project) and other work

Mr Copley provided an update on the recent activities of the AEWG Working Group. Regarding XBID, a letter has been sent to the EC, NRAs, by the chair of the NEMO committee raising concerns on cost recovery. He reassured the BoR that these discussions surrounding XBID were under control in the CACM TF and that should be maintained there. Only once a position has been agreed should this be discussed in the BoR. At that stage the regulatory authorities will prepare a joint response.

The Director also informed the BoR that the Accession Stream is at work which allows non-NWE^{plus} parties to be involved. The question to NRAs still remains on the part of costs non-NWE^{plus} should bare (if any). The Go-Live is still planned within Q3 2017 but towards the end of Q3. The hosting contract has been agreed. But there is still an ongoing discussion regarding maintenance and there are also some challenges related to other issues.

Mr Borchardt noted that this issue needed to be taken seriously, commenting that the testing phase has started and that all agreements are in place so there is progress. The EC will

support the Regulatory Authorities and will allow the time to respond to the cost recovery issues. He also confirmed that the accession modality has been accepted by all interested parties.

7.2. ACER Recommendation on cross-border capacity calculation methodologies

The Director provided an update on the cross-border capacity calculation methodologies Recommendation under preparation. ACER has drafted a Recommendation setting out three rules to apply to capacity calculation and cost sharing for re-dispatch and counter-trading – areas to be proposed and approved under the CACM and FCA regulations. NRAs have been discussing this draft Recommendation over July and August.

The Director welcomed comments and proposed that the paper be ready for a BoR opinion at the October BoR.

Mr Copley outlined that this discussion should be focused purely on content, as discussions on the process and legal basis for that Recommendation have already been resolved with the EC's letter.

The BoR had an orientation discussion. Some members welcomed the draft Recommendation while others were sceptical about the costs being disproportionate to the expected benefits.

The Director noted that we have a window of opportunity to issue such a Recommendation, as after the CCR decision - expected to be adopted by 17 November - TSOs will start working on the CCM proposal, which will have to be submitted to all-NRA approval. If we want to influence a change to avoid congestion being pushed to the border this is the moment to do so. These proposals will come to all NRAs. The Recommendation will be non-binding but hopefully will be followed by TSOs.

He also clarified that the Recommendation will envisage the possibility of derogation in case the new rules can be proven to create disproportionate costs. However, the aim is to change the default approach which currently is to “push congestion to the border”. We are trying to change the overall default approach and mind set.

The Chair concluded that there was strong support across the BoR for this recommendation which will be submitted for BoR opinion in October.

7.3. Draft Decision and Evaluation of responses on the ACER public consultation on all TSOs proposal on the Capacity Calculation Regions

The Director reminded the BoR that the NRAs referred the CCR decision to ACER on 17 May 2017. On 22 June the Agency opened a consultation on the all TSO's proposal on the CCRs. The deadline for the responses to the consultation closed 20 July 2016. ACER have produced a draft decision paper, evaluation paper of the stakeholder views and a technical justification document. Comments on all 3 documents were due before 9 September. Following this first round of discussion, a revised version will be circulated to NRAs and TSOs for another round of discussions. A second set of feedback is due on 7 October, and will later be submitted for the BoR.

The draft decision concludes that the TSO CCR Proposal is in line with the requirements of the CACM Regulation and Regulation (EC) No 714/2009, provided the CWE and CEE regions are merged. In making this conclusion it addresses a number of issues and the Agency invites the relevant TSOs to submit a new CCRs proposal within 3 years after the Decision and, when doing so, to focus, in particular, on the level of interdependency between the CWE-CEE region and the Channel, Italy-North, South-East, Hansa and Nordic regions.

The BoR had an orientation debate and a new round of comments will be launched. The EC remarked that the decision should be without prejudice to the outcome of the bidding zone study. The EC strongly supports to bring this process under CACM process and would like to see this finalised sooner rather than later.

Some members supported the draft decision. E-Control and BNETZA made statements with regard to the references in the draft decision to internal congestion in the relevant countries.

The Director thanked the BoR for the discussion which he will take into account.

The Chair concluded that the decision will be back for discussion in October and formal opinion in November BoR.

7.4. Opinion on the ENTSO-E summer outlook report 2016 and winter review 2015/2016:

The Director informed the BoR that, on 2 June, ENTSO-E submitted its annual summer generation adequacy outlook report for 2016 alongside the review of the main events which occurred during winter 2015/16. He then presented the key elements of the Agency's opinion such as the Recommendation to conclude a market simulation to understand how both upward and downward adequacy crisis affects electricity prices and market behaviour; the Recommendation to ENTSO-E to provide impact assessments also through adequacy reports and reviews. With regard to the summer outlook, the Recommendation calls on ENTSO-E to include a comparison of the Outlook forecasts with the Reviews of the same season, focusing on potential forecast errors and analysing the reasons for them etc.

The ACER Opinion on the ENTOSE Summer outlook report 2016 and winter review 2015/16 was given the favourable opinion of the BoR by consensus of the members present or represented.

7.5. Opinion on the ENTSO-E R&I Roadmap

The Director informed the BoR that, on 28 June 2016, ENTSO-E released their Research, Development and Innovation Roadmap and submitted it to the Agency on 7 July. The Agency deems that the ENTSO-E R&I Roadmap 2017-2026 meets the objective of non-discrimination, effective competition and the efficient and secure functioning of the internal market in electricity.

The ACER Opinion on the ENTOS-E R&I Roadmap was given the favourable opinion of the BoR by consensus of the members present or represented.

8. Market Integrity and Transparency

8.1. REMIT implementation & operation

The Director reported on the key discussions at the last REMIT Coordination Group on 1 September. The Group addressed the issue of secondments of NRAs and budgetary constraints. There were concerns that funding to REMIT may be cut by 1 million euros next year, which will restrict the services that could be provided. Yet budgetary discussions for 2017 are underway. He informed on the extension of validity of the ACER No-Action letter for the list of contracts reportable at the request of the Agency by one year. He informed the BoR that ACER will issue Guidance in relation to the clarification of standard and non-standard contracts reporting obligation and on the use of EIC codes and commented that this caused a lot of confusion. He provided updates on data quality and the Market Data Reporting Standing Committee. It was discussed that in October a two-day physical meeting in Ljubljana will be held to focus on data quality and data sharing issues. He also informed the BoR on ACER's memo on the use of REMIT data for other monitoring tasks (common understanding of Art. 17(4) of REMIT).

At the last Coordination Group ACER also provided updates on the current status of the market surveillance strategy document; the state of play of SMARTS implementation which is operational. ACER also provided a live demonstration of SMARTS and will prepare a public procurement for surveillance and BI tools as of 2018. The possibility of running a common procurement with the NRAs will be explored. NRAs would then be able to contribute to the tender specifications.

8.2. Draft REMIT Annual report 2016

The Director presented the fourth annual report concerning the activities of the Agency under REMIT. In this report, the Agency presents the activities undertaken in 2015 in order to implement REMIT and carry out its requirements. The report states that despite a level of resources clearly inadequate to its mandate, which forced the Agency to significantly revise its Work Programme in January 2015 with the de-prioritisation of a number of activities, significant progress has been made in the Agency's work to implement and perform its ongoing tasks under REMIT. The publication of the report is currently envisaged around 7 October 2016. This will not be presented for the favourable opinion of the BoR.

9. Infrastructure

9.1 Opinion on the ENTSO-E Scenario Development Report

The Director informed the BoR that, on 21 June, ENTSO-E published a draft version of the TYNDP for 2016, it also published the 2016 Scenario Development Report indicating that this document describes the scenario development for the draft TYNDP 2016. The Agency considers it important to assess the draft SDR 2016 as a stand-alone document and separately from its forthcoming Opinion on the draft TYNDP 2016.

The Agency considers that the draft SDR 2016 meets the objectives of non-discrimination, effective competition and efficient and secure functioning of the internal market in electricity, according to Article 6(3)(b) of Regulation (EC) No 713/2009.

The ACER Opinion on the ENTSO-E Scenario Development Report was given the favourable opinion of the BoR (by consensus of the members present or represented).

10. AOB

The Chair informed the BoR that there has been a change to the date and time of the BoR for November and it would now take place on 8 November given that a launch event for the MMR has been scheduled. There are also some additional ERF meetings scheduled for December and January.

Mr Nyikos invited all members to attend an 'applied mathematics and regulation' conference and a conference on the 'power exchange in eastern Europe and energy trading'.