

**66<sup>th</sup> ACER Board of Regulators Meeting**  
**Wednesday, 7 June 2017, 09.00 – 16.00**  
**CEER premises**

**Minutes (final)**

Member States	Name <sup>[1]</sup>	Member States	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch O: Katharina Tappeiner	Italy (AEEGSI)	M: Clara Poletti O: Francesco Cariello
Belgium (CREG)	M: Marie-Pierre Fauconnier A: Koen Locquet	Latvia (PUC)	O: Lija Makare
Bulgaria (EWRC)	A: Evgenia Haritonova	Lithuania (NCC)	O: Irma Vasarytė
Croatia (HERA)	A: Sonja Tomašić Škevin, O: Nataša Mihajlović	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	A: Alkis Philippou O: Neophytos Hadjigeorgiou	Malta (REWS)	Excused
Czech Republic (ERO)	A: Martin Sik O: Kateřina Firlová O: Vladimír Outrata	Netherlands (ACM)	M: Henk Don O: Maarten Klijn
Denmark (DERA)	A: Mads Lyndrup	Poland (URE)	A: Małgorzata Kozak
Estonia (ECA)	O: Tiina Maldrea	Portugal (ERSE)	A: Artur Trindade O: Natalie McCoy
Finland (EV)	M: Simo Nurmi	Romania (ANRE)	Excused
France (CRE)	A: Hélène Gassin O: Michaël Mastier	Slovakia (RONI)	Excused
Germany (BNetzA)	M: Annegret Groebel	Slovenia (AGEN-RS)	M: Bojan Kuzmič
Greece (RAE)	M: Sotirios Manolkidis	Spain (CNMC)	M: Fernando Hernandez
Hungary (HEA)	O: Krisztian Toth O: Adam Krinszki	Sweden (Ei)	A: Caroline Törnqvist O: Elin Brostrom
Ireland (CER)	M: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Mark Copley

ACER	Alberto Pototschnig, Volker Zuleger, Martin Godfried, Dennis Hesseling, Fay Geitona, Mitsuko Akiyama
European Commission	Adriano Addis
CEER	Andrew Ebrill

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

**Draft MEETING CONCLUSIONS SUMMARY**

1. *The minutes from the 65th BoR meeting were approved, as was the agenda for the 66th meeting. No conflict of interest was declared by the participants.*
2. *The Director updated the BoR on the Agency's recent publications. In particular, he informed the BoR of the publication of the White Papers on: Renewables in the Wholesale Market; the role of the DSO; Flexibility; and Wholesale Price Formation. ACER also published its fourth report on Contractual Congestion at Interconnection Points. The Director informed members about the upcoming VI ACER Annual Conference to take place in Brdo on 29 June 2017, which will focus on the regional dimension of the Internal Energy Market. EC Vice-President for the Energy Union Maroš Šefčovič will connect live from Brussels to provide a keynote speech.*
3. *The Director reported on the ALDE group Hearing on the recast of the ACER Regulation. This took place on 1 June and was hosted by MEP Mr Morten Helveg Petersen (rapporteur for the recast of the ACER regulation), with the participation of: MEP Mr Hans-Olaf Henkel (shadow rapporteur); MEP Mr Davor Skrlec (shadow rapporteur); Mr Herbert Reul (shadow rapporteur); Mr Urbantschitsch (E-Control); Ms Groebel (Bundesnetzagentur); Mr Gerald Kaendler (Amprion); Mr Martin Salamon (BEUC); and Mr Florian Ermacora (DG ENER). There was a good exchange in particular on ROCs.*
4. *Mr Addis updated the BoR on the negotiations relating to their legislative proposal "Clean Energy for all Europeans". The EC reported that the Council Energy Working Party had met on 30 May to discuss inter alia the recast of the Regulation and Directive on the internal market for electricity and risk preparedness. The EC reported on the Florence Forum: the Clean Energy Package and regional governance were among the key topics discussed. The EC also reported on the Infrastructure Forum, where key stakeholders in European energy network infrastructure discussed: the financing of energy infrastructure, the evaluation of the TEN-E Regulation, which seems premature at this stage; the work carried out by INEA to support projects, calling for further closer cooperation between INEA and project promoters in order to monitor progress; the challenges in achieving public acceptance to limit the costs associated with delays; and the study by the Florence School of Regulation concerning regulatory approaches to improve public awareness and trust in electricity infrastructure development, to be launched in 2017 and presented at the 2018 Forum.*
5. *The EC provided an oral update concerning the way forward for the monitoring of network codes' implementation. The next meeting of the Implementation and Monitoring Group (IMG) for which the agenda will shortly be available is set for 19 June. The Director and the Chair suggested that at its first meeting the IMG should discuss its future mandate and ToR, and should thus restrict participation to senior level. Subsequently, this group should deal with real issues of implementation and its composition should thus involve appropriate experts from each organisation.*
6. *The BoR was provided with an update on ongoing work relating to the paper on regional governance and ROCs currently under preparation within the CEER. The Director presented his views on the process for the adoption of the terms and conditions for the implementation of codes at regional level by NRAs of the concerned region, subject to two caveats: ACER would intervene where the impact of such proposals is broader and in case of inconsistencies between the regions; the second element is the ROCs and, in particular, ensuring their effective oversight by ACER. The members discussed the need to raise awareness of the new framework proposed by the EC given that often the debate and arguments put forward are misleading and the EC offered help and clarifications in this respect. The EC welcomed any feedback and contribution on regional issues by ACER and energy regulators.*

7. *The BoR was informed of the publication of the Agency's position paper on improvements to the Energy Infrastructure Package on 31 May, ahead of the Infrastructure Forum. The paper was endorsed through electronic procedure in which 18 members participated, all of whom endorsed it. The paper was subsequently adopted and released.*
8. *Mr Hesseling updated the BoR on the preliminary findings in connection with the monitoring of Projects of Common Interest (PCI). Findings include: a general improvement in the quality of data (although the Agency notes that significant changes to project attributes tend to alter basic project features including benefits, of which Regional Groups should be made aware). Formal compliance with Regulation (EU) No 347/2013 is not always evident. Very few PCIs were commissioned in the last 2 years, and half of the PCIs are behind schedule. The Agency also noted a decrease in expected investment costs, and limited interest in the use of exemptions and incentives. Only 12 PCI promoters provided monetised benefits, notably due to the poor quality of the gas CBA methodology, preventing the Agency from carrying out a substantial analysis of the expected PCI benefits. The draft report will be circulated to BoR members in the second half of June, and the annual consolidated report will be finalised by 30 June.*
9. *The Director provided an update on the process for the selection of candidates for the 3rd PCI list. The Agency launched an online checklist for a coordinated PCI assessment pursuant to Annex III(7) of Regulation (EU) 347/2013, for which the submission deadline was 1 June. The Agency is also involved in the assessment of the projects via the cooperation platform. The results of the checklist assessment have been communicated to the EC in advance of the Regional Group meetings (7-8 June). In terms of next steps, the EC will finalise the assessment methodology and the draft regional lists of proposed projects will be submitted to the Agency in July 2017. The Agency will issue an opinion on the draft regional lists and accompanying opinions within three months of receiving those documents. The decision-making body of each Group will adopt its final regional list within one month of receiving the Agency's opinion. Some members raised concerns about the short timetable envisaged for the NRAs' assessment.*
10. *Mr Zuleger provided an update on the ongoing work of the REMIT Coordination Group and the AMIT Working Group, in particular on ARIS and remaining implementation activities. Strong concerns were raised regarding the lack of ACER resources for REMIT activities, and the resulting risk that ACER may not be able to fulfil its mandate. The EC explained their efforts to secure ACER resources despite difficulties due to the EC having to report back on its target for staff reduction this year. Ms Groebel explained that insufficient funding for ACER has implications for NRAs given that they also rely on ACER carrying out its mandate.*
11. *Mr Godfried presented the Guidance Note on wash trades, and changes to the ACER Guidance on the application of REMIT to bring the latter in line with the former. The Guidance Note on Wash Trade is the first of a series of Guidance Notes to be prepared by the Agency concerning specific types of practices that may constitute market manipulation under REMIT, or attempts thereof. The Guidance Note will be published in June.*
12. *Mr Godfried provided an update on the governance section of the Market Surveillance Strategy document, which has now been finalised. Mr Don and Ms Groebel welcomed this initial analysis, but noted that the BoR should keep good track of the progress achieved, also to explore where the resources should be invested. They would have liked a more stepwise approach and suggested that by November a roadmap is prepared detailing the shared responsibilities to allow NRAs to prepare their own systems and fulfil their responsibilities. Mr Godfried welcomed the suggestion for a stepwise process given that it is not possible to look far ahead. The document commits to carrying out a gap analysis every half a year.*

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| <p>13. The AEWG Chair updated the BoR members on the AEWG's ongoing work relating to network code implementation and the latest decision by all NRAs at the last ERF, including the agreement on the all TSOs' proposals on Intraday Cross-Zonal gate opening and closure times and the agreement to refer to ACER the decision on the amended Congestion Income Distribution methodology.</p>   |
| <p>14. The BoR informally endorsed the joint ACER-CEER White Paper on Infrastructure by consensus of the members present or represented, and was updated on ongoing work relating to the other draft White Papers.</p>   |
| <p>15. The BoR Chair informed members of the outcome of the electronic procedure for the informal endorsement of the joint ACER-CEER White Paper on the role of the DSO. 24 members participated in a single round procedure and informally endorsed the paper with the exception of 1 NRA. The White Paper was thus deemed to have been endorsed by the BoR, and was subsequently adopted and released on 15 May, ahead of the Florence Forum.</p>  |
| <p>16. The BoR members discussed the implementation of the Agency's Decision No 06/2016 of 17 November 2016 on the electricity transmission system operators' proposal for the determination of Capacity Calculation Regions in respect of the Germany/Luxembourg – Austria bidding zone border. On 15 May the Austrian regulatory authority (E-Control) and the German regulatory authority (Bundesnetzagentur) agreed on the introduction of a congestion management scheme for the exchange of electricity at the border between Austria and Germany as from 1 October 2018. Both NRAs outlined that the German-Austrian border will initially be integrated into the CWE FB MC and this agreement is a step towards that. They also noted that this is a temporary solution pending a fully coordinated CORE CCR flow-based capacity calculation and allocation methodology. Under the agreement, long-term capacity amounting to at least 4.9 GW is to be made available for the market players for exchanges between Austria and Germany. Members raised concerns both about the substance (verification of the figure of the 4.9 GW of long term capacity) and the process. Members thought that this might prejudice the overall process for the implementation of the CACM code. The Director and members invited BNetzA and E-Control to ensure effective coordination and transparency in the sharing of information beyond the legal obligations. The Chair invited a report at the next BoR meeting including on the DE-DK interconnector which is subject to similar discussions. In the meantime a technical meeting will be held, for which the Chair urged a broad participation to ensure transparency and information sharing amongst all interested parties.</p> |
| <p>17. The AGWG Chair provided an update on the ongoing work of the AGWG which covered: a presentation of the selected interim results for the 2016 gas wholesale Market Monitoring Report; the Quo Vadis study; the ACER's upcoming report on allowed revenues of TSOs; a template available on ACER's website designed to simplify the process for sending national consultation documents relating to the reference price methodology; publication requirements under the network code on rules regarding harmonised transmission tariff structures for gas (the TAR NC); and the Capacity Allocation Mechanism (CAM) TF's assessments of PRISMA costs and of the conformity of long-term bookings with CAM network code.</p>   |
| <p>18. The AGWG Chair provided an update on the 4th report on monitoring of congestion at interconnection points, which was published on 31 May, outlining its main conclusions and recommendations.</p>   |
| <p>19. A process for the election of the next BoR Chair will be discussed at the July BoR meeting.</p>   |

## 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 interests was made.*

#### 1.2. Approval of the minutes of the 65<sup>th</sup> BoR meeting

##### BoR Decision agreed: (D 2)

*The minutes of the 65<sup>th</sup> BoR were approved.*

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

#### 2.1. Update on recent developments

##### - **ACER**

The Director referred to recent publications of ACER and the CEER-ACER White Papers including on: Renewables in the Wholesale Market; the role of the DSO; Flexibility; and Wholesale Price Formation. On 31 May the Agency also published its fourth report on Contractual Congestion.

#### **VI ACER Annual Conference**

The Director reported on the preparations for the VI ACER Annual Conference, to be held in Brdo on 29 June 2017. Registrations are now open. The EC Vice-President for the Energy Union Maroš Šefčovič will connect live from Brussels to provide a keynote speech, followed by a session of Q&As. The conference will focus on the regional dimension of the Internal Energy Market.

##### - **EC**

#### **Update on Clean Energy Package proposals**

Mr Addis provided an update on the negotiations of the proposals on the Clean Energy for all Europeans. The Council's Energy Working Party debated the proposals one week ago and discussed market design including risk preparedness. We are now approaching the end of the first phase of discussions; the EC foresees that by the 2<sup>nd</sup> half of this year we will have a revised text. The EC is aware that some Member States are concerned about the tight timelines, but hopes to achieve progress by the end of this year or beginning of 2018 at the latest.

The Director reported on the discussions at the ALDE Group hearing regarding the recast of the ACER Regulation. This took place on 1 June and was hosted by MEP Mr Morten Helveg Petersen (rapporteur for the recast of the ACER Regulation) and with the participation of: MEP Mr Hans-Olaf Henkel (shadow rapporteur); MEP Mr Davor Skrlec (shadow rapporteur); MEP Mr Herbert Reul (shadow



rapporteur); Mr Urbantschitsch (E-control), Ms Groebel (Bundesnetzagentur); Mr Gerald Kaendler (Amprion); Mr Martin Salamon (BEUC); and Mr Florian Ermacora (DG Energy). Key elements of ROCs were discussed. The Director reported that there was a very good discussion with a number of MEPs, particularly on ROCs.

The Chair raised awareness on the negotiations to avoid disrupting the balance achieved. He noted the problems ACER have faced in the past in terms of non-compliance with information requests from the Agency. It is important that the EC is alerted to this and appropriate measures are introduced to ensure adequate oversight by ACER.

### **Report on the Florence & Infrastructure Fora**

The EC reported on the conclusions of the Florence Forum (the 32nd EU Electricity Regulatory Forum, 17-18 May). Its focus included the Clean Energy Package and regional governance. The agenda also included an update on network codes. The conclusions have been circulated to BoR members for information.

Mr Addis provided a report on the Infrastructure Forum which took place on 1 and 2 June. A general conclusion was that an evaluation of the TEN-E Regulation seems premature at this stage while there is already scope for improvements through implementation and interpretation. The Forum welcomed the work carried out by INEA to support projects and calls for further closer cooperation between INEA and project promoters in order to monitor progress. The Forum invited the Commission to establish a roundtable with relevant stakeholders to discuss further the interrelationship between CBCA decisions and possible CEF co-financing with a focus on more effective cost sharing and a better elaboration of the need for financial assistance. The participants underlined the importance of a streamlined and inclusive permitting process as specified in the TEN-E Guidelines, and challenges in achieving public acceptance to limit the costs associated with delays. They welcomed the study by the Florence School of Regulation on regulatory approaches to improve public awareness and trust in electricity infrastructure development, to be launched in 2017 and presented at the 2018 Forum.

### **3. Cross-sectoral**

#### **3.1. Approach to monitoring of code implementation in light of the Florence Forum and workshop of 4 May**

The BoR Chair and the EC reported on the codes event held on 4 May organised jointly by the EC, ACER and ENTSOs, to discuss the achievements and challenges of network code implementation. Presentations focused *inter alia* on the benefits that electricity and gas network codes have already delivered, and the role of the different actors in their implementation. A key objective of the event was to raise awareness about the importance of timely implementation of codes following their successful adoption. Its success relies on appropriate cooperation amongst all involved parties. Against this background the EC has started reflections on setting out an implementation strategy involving all actors; this approach also includes the establishment of an Implementation and Monitoring Group. Its first meeting will be held on 19 June. The agenda is expected to be finalised shortly. At this first meeting there will be a limited number of senior officials discussing the modus operandi of the group.

Mr Copley noted that the implementation process and strategy should not overlook the importance of the amendment process for the codes: there must be a quick, sensible process to amend the codes, otherwise they will become obsolete.

### 3.2. White Paper: Regional Governance

The last BoR discussed the possibility of a joint CEER-ACER paper on regional governance, which did not materialise given the difference of views. The Chair reported that the discussions are now pursued at the CEER level.

The Director was invited to present his own considerations, which comprise 2 axes: the first is the approval of regional terms and conditions or methodologies for the implementation of codes and Guidelines (by the NRAs of the region) and the second is about the ROCs. On the first point, such regional proposals should be decided by the NRAs of the concerned regions subject to two caveats: where those have a wide impact for the IEM the Agency should decide on them; furthermore, the Agency would be responsible for undertaking a consistency check of regional proposals to ensure that the regions do not diverge, and ensure compliance with the key objectives of the IEM. The second axis relates to ensuring the effective oversight of regional entities (ROCs), which must be robust and consistent: this cannot be ensured by a joint action of all the concerned NRAs *vis-à-vis* their TSOs. Instead he sees a role for the Agency to ensure the oversight of ROCs.

Ms Geitona noted the need to increase awareness of the EC proposals particularly on the regional governance and ROCs. At this stage debates often present misleading arguments against EC proposals.

The EC thanked all for their reports and the plurality of views on this issue. The EC noted the usefulness of receiving regulators' and ACER's feedback on such issues as soon as possible. There are many complex issues and the EC has been engaging with different Member States to explain. The EC offered their help in raising awareness on such technical issues and their proposals more generally.

Members welcomed initiatives to raise awareness of the details of the proposals. The Director also noted the need to dispel some myths. The regional arrangements, in his view, and ROCs are an inevitable evolution of the current framework notwithstanding the governance arrangements which may need to be debated and a few small issues to be clarified.

### 3.3. Energy Infrastructure Package Improvements position paper

Following the endorsement of the paper by the TFs on 24 May the paper was circulated to the BoR and in parallel to the AEWG and AGWG members for comments by 29 May given the time constraints (to release it in advance of the Infrastructure Forum on 1 June). 18 members participated in the electronic procedure, all of whom endorsed the paper. AEEGSI submitted comments, most of which related to editorial changes and were endorsed. WGs members similarly endorsed the paper. Therefore, the paper was adopted and released on 31 May.

The paper covers 3 key aspects; (a) improving scenarios and the cost-benefit analysis methodologies; (b) streamlining monitoring activities of infrastructure projects and information requirements for the PCI selection; and (c) regularly updating the Unit Investment Costs report.

#### 3.4. PCI monitoring report

Mr Hesseling presented some preliminary findings from the PCI monitoring report. Article 5(5) of Regulation (EU) No 347/2013 requires the Agency to monitor the progress achieved in implementing projects of common interest (PCIs), on the basis of annual reports submitted by the project promoters.

He made the following preliminary comments:

- PCI progress is tracked for the first time during the full cycle of a PCI list (2 years); the results in the body of the report portray the situation on an aggregated level while the annexes contain information on project level;
- A better quality and quantity of data than in 2016 is noted, but there is still room for improvement;
- The project attributes usually change but significant changes alter basic project features (including benefits); the Regional Groups should be aware of substantial changes in PCI features;
- The formal compliance with the Regulation is not always evident. PCIs should be present in the National Development Plans of their hosting Member States;
- Very few PCIs were commissioned over the last 2 years. Furthermore, commissioning dates of several PCIs are shifted further 1-2 years into the future because of delays and rescheduling;
- Half of PCIs kept their 2016 schedule and another half is now behind the 2016 schedule. While electricity PCIs are largely delayed, gas PCIs tend to be rescheduled;
- There are some decreases noted in expected investment costs;
- Only 12 PCI promoters provided monetised benefits, which do not allow the Agency to carry out a substantial analysis of the expected PCI benefits. It appears that most promoters are not in a position to provide clear monetised or quantified data about the benefits of their projects, due to the poor quality of the gas CBA methodology;
- There seems to be a limited interest in using exemptions and incentives.

In terms of the next steps, the gas and electricity chapters will be revised in light of discussions in the TFs and AWGs. BoR members will receive the draft report in the second half of June so that they may also provide comments in advance of the deadline for the annual consolidated report, which is due on 30 June. The key messages, however, are not likely to change.

#### 3.5. Update on the selection of candidates for the 3rd PCI list

The Director presented the progress achieved in the selection of candidates for the 3rd PCI list as well as the next steps.

ACER launched an online checklist for a coordinated candidate PCI assessment (pursuant to Annex III. 2(7) of Regulation (EU) 347/2013), for which the submission deadline was 1 June. NRAs were expected to coordinate to ensure there is only one checklist per candidate PCI.



ACER will also be involved in the assessment of the projects via the cooperation platform. For the first time in PCI selection there was an examination of whether the benefits of the projects outweigh their costs. The results of the checklist assessment had to be communicated to the EC before the next Regional Group meetings (7-8 June).

As regards next steps, the EC will finalise the assessment methodology. In terms of the eligibility check, open issues include: TYNDP scenarios on which the selection will be based; benefits to be considered on top of monetised ones; and ranking methodology. The draft regional lists of proposed projects should be submitted to the Agency six months before the adoption date of the Union list, in July 2017. The Agency will issue an opinion on the draft regional lists and accompanying opinions within three months of receiving those documents. Within one month of receiving the Agency's opinion, the decision-making body of each Group will adopt its final regional list by the end of the year.

It was noted that the timeframe for NRA assessment is very short (2 weeks for electricity and even less for gas), in particular as there is a need for cooperation among NRAs.

#### **4. Market Integrity and Transparency**

##### **4.1. REMIT implementation and operation**

Mr Zuleger provided a REMIT update, including an update on ARIS: data collection is very stable (ARIS tiers 1 & 2) and the market surveillance solution (ARIS tier 3) is work in progress. Data sharing (ARIS tier 4) with NRAs is very stable, with more NRAs asking to use the data. The ARIS Primary and Disaster Recovery sites were migrated to the internal ACER Data Centre in April. By the end of this month the environments of the previous sites will be integrated into one, to optimize and advance performance and address increasing space requirements.

Remaining REMIT implementation activities depend on available resources and include: inside information collection from platforms; review of the XML schemas foreseen for 2017; collection of EMIR derivatives and emission allowances in 2018; sample transaction data requests from market participants to verify accuracy and timelines of data submission to the Agency; publication of aggregated REMIT information to promote transparency on what the market looks like; and improvement of the market participant registration form (to improve registration at national level) and of CEREMP (postponed to 2018).

Mr Zuleger reported key figures based on data from May 2017: there is an increasing number of registered market participants, and the gap between those who report data and those who do not (e.g. intra-group trading) has decreased. The record of transactions has also increased in number.

Progress on data quality was presented as a follow up to the last BoR meeting: reports on the gap between the number of registered market participants and the number of reporting market participants, which can be perfectly legitimate for instance in the context of intra-group transactions, were shared with interested NRAs. Further data quality reports are currently being shared with NRAs and/or RRMIs to improve data quality. In relation organised market places, the Agency is checking the data it has received: for example, there were minor gaps in OMP reviews, with some market participants not

reporting (e.g. EPEX spot). The Agency can approach such market participants via the NRAs and rely on such successful collaboration to fill in the gaps. In general, data quality appears to be significantly better in comparison with data collected by financial regulatory authorities under MiFID or EMIR as the Agency could benefit from lessons learnt under EU financial market legislation.

Mr Zuleger stated that for the second year in a row, the Commission's budget proposal did not take account of the Agency's requests for greater IT and HR budgets despite that a review carried out by DG ENER which had confirmed the need for a bigger budget. Mr Zuleger highlighted that REMIT delivery requires a high level of IT security and, therefore, implies significant costs.

Mr Addis explained that the decision on budget was made across policies, and that the Agency had achieved only around 60% of its payment appropriations in 2016, which compared negatively with other EU Agencies.

The Chair pointed out that the Commission did not support the Agency's suggestion to introduce the ability to self-fund as part of the Clean Energy Package proposals.

The Director appreciates DG ENER's efforts to support the Agency's requests for additional resources. The Director explained that contrary to the HR budget, investment funds cannot be reprioritised/reallocated. The Agency was criticised for delays in filling a number of vacancies, but there is higher turnover compared to elsewhere. In terms of committing to spend the budget, the issue is the annuality of the budget, where REMIT involves substantial carry-over. It should also be noted that the Agency has not faced any criticism from auditors so far.

Mr Addis also reminded BoR members that this is a very particular year, notably because the Commission is reporting on its proposal for 5% staff cut.

Ms Groebel urged the Commission to recognise the need for IT investments to deliver REMIT objectives, including at national level.

#### 4.2. Guidance Note on Wash Trades

The Guidance Note on Wash Trades is the first of a series of Guidance Notes to be prepared by the Agency concerning specific types of practices that could constitute market manipulation under REMIT. As such they complement the general ACER Guidance on the application of REMIT, which has also been amended to bring it in line with the Guidance Note. Both documents have been uploaded to the June BoR for information, and will be published this month.

As this is a subject which was extensively debated by NRAs, there was no further discussion on this issue.

#### 4.3. Market surveillance and conduct: governance section of the market surveillance document

This item was also extensively debated by NRAs, whose comments have either been taken on board or addressed.

At the May BoR Mr Godfried updated BoR members on the draft governance section of the Market Surveillance Strategy (MSS) document. The Governance Section has now been finalised and will be annexed to the MSS document. The revised document has been circulated for information and outlines the results of the gap analysis: in essence, current surveillance coverage of the European wholesale energy market is not comprehensive. To address that gap, the Agency envisages deploying two surveillance regimes. The first constitutes a semi-automated dissemination of calibrated alerts to the relevant NRAs on a monthly basis through the use of SMARTS and the CMT. Under the second regime, the Agency will follow up on alerts that have been triggered for products in the jurisdictions of NRAs who meet one of the three conditions set out in section 3 of the MSS document. Over time the surveillance activities of NRAs may evolve and it will, therefore, be essential to update the state of play of market surveillance performed by NRAs at regular intervals. The proposal is to do so every 6 months.

Mr Don appreciates the efforts, but noted that the work has only just begun and has budgetary implications. He would like to understand where NRAs should invest, and what to expect from the Agency. To that end he requested a roadmap identifying which gaps will be filled by whom, which takes us to 2018, to clarify mutual expectations. The roadmap should be circulated by November of this year.

Ms Groebel supports ACM's proposal so that NRAs can prepare their own systems and fulfil their responsibilities.

Mr Godfried thanked the NRAs for their feedback and referred them to the documents which have been circulated, which commit to undertaking a gap analysis every 6 months. It is difficult to look much further ahead. The Agency will aim to provide precise information that NRAs can use, and will run workshops on REMIT enforcement.

The Director informed members that the workshop could be brought forward to December, and commented that it would be preferable for NRAs to specify what they are willing and able to do in their own jurisdictions, so that the Agency can identify and fill any gaps. The gap analysis is leading to that.

Mr Blaney observed that members have invested heavily, but we are as good as the weakest link. The UK's exit from the EU is likely to open up another gap, which presents a risk to all. That gap should not undermine the positive work achieved so far.

## **5. Electricity**

### **5.1. Update from the AEWG Chair**

The AEWG Chair informed the BoR members about decisions that were taken at the 12<sup>th</sup> European Regulators Forum (ERF) on 6 June.

Mr Hernandez reported that NRAs had discussed and will likely approve the amended MCO Plan through an ARA WG and ERF electronic Procedure. The ERF also adopted proposals relating to the Day Ahead Firmness Deadline and the Common Grid Model. TSOs submitted a revised proposal for the Common Grid Model following an all NRA request for amendment, which was complied with.

The ERF discussed a number of methodologies, and agreed to request amendments to: the backup methodology submitted by NEMOs (which will be submitted for decision at the July ERF); and the all TSO proposals on the Intraday Cross Zonal Gate Time (intraday gate opening and closure times). The methodology on Congestion Income Distribution will be referred to the Agency for a decision. In respect of the latter, the Chair noted that it was regrettable that TSOs had not complied with regulators' requests for amendments despite clear NRA positioning. As the TSOs are unlikely to change their stance, and mindful of the need to accelerate the process, it was decided that the matter will be referred to the Agency.

The AEWG Chair also commented on the overall quality of the proposals submitted so far, which could be improved: only 1 out of 8 proposals was accepted by NRAs without a request for amendment.

## 5.2. The European Regulators' White Papers

The BoR members informally endorsed the joint CEER-ACER White Paper on Infrastructure by consensus of members present or represented.

The Chair also reported that the draft CEER White Papers on System Adequacy & Capacity Mechanisms and Efficient System Operation are on the point of being agreed as CEER-only papers.

## 5.3. Outcome of the BoR electronic procedure for the endorsement of the White Paper on the role of the DSO

Ms Geitona reported that the draft joint White Paper on the role of the DSOs was circulated to BoR members for informal endorsement via electronic procedure ending on 12 May.

It was a single round procedure without the possibility to submit comments (so as to meet the target publication date). 24 members participated and informally endorsed the paper with the exception of one member.

The White Paper on the role of the DSO was thus deemed to have been endorsed by the BoR. It was subsequently adopted and released on 15 May ahead of the Florence Forum.

## 5.4. Implementation of the CCRs decision: Germany/Luxembourg – Austria bidding zone border

The Chair invited Mr Šik to report on this item, which was added to the agenda on a request submitted by ERO and supported by URE.

Mr Šik thanked the members for the opportunity to discuss the agreement reached between BNetzA and E-Control last month. Whilst ERO appreciates the difficulties in reaching agreement, it is concerned about the lack of coordination and transparency despite that this has an impact on the CORE region. ERO is bringing thus this issue back before the ACER BoR (following discussions relating to the ACER

Opinion No 09/2015, “ACER Opinion”, as confirmed by the Agency decision of 17 November 2016 on Capacity Calculation Regions, the “CCRs decision”).

Secondly, on the substance ERO queried the reference in the press releases to the figure of 4.9 GW (the agreement to make available to market players long-term capacity amounting to 4.9 GW for exchanges between Austria and Germany).

Ms Kozak added that the Polish transmission network system is significantly impacted by the agreement, and requested that BNetzA and E-Control share the schedule for implementing the temporary solution agreed between them. URE also expects that BNetzA will require German TSOs to introduce and implement the polluter pays principle immediately to protect Polish consumers against substantial price increases, as they should not bear the costs of remedial measures which are included in the Polish TSO’s tariff.

HEA supports the views expressed by ERO and URE.

Mr Urbantschitsch made reference to past discussions including at the ERF meeting in Madrid. E-Control and BNetzA have since arrived at a common position, which was a big step in terms of bringing a political issue back to the regulatory realm and reaching an agreement. BNetzA and E-Control have convinced stakeholders to commit to applying capacity allocation as from 1 October 2018, which is a significant departure from the initial stance i.e. a common bidding zone. URE and ERO believe that applying capacity allocation will have positive effects on the network and physical flows, and in terms of reducing effects of imports from Germany to Austria.

Ms Groebel also thanked all for the possibility to explain its position. In October 2016, BNetzA requested that German TSOs take steps to prepare for the implementation of the CCRs decision planned for winter 2018. The agreement reached with E-Control goes in that direction, and provides the best and fastest method of implementation, the ultimate goal being to integrate the CORE region.

A number of members believe that the NRAs and TSOs of the CWE region should have been informed and consulted as the agreement will impact the CWE region.

Mr Hernandez noted that CACM implementation by 2019 – both in letter and in spirit - must not be jeopardised.

The Director appreciates the difficulty that E-Control and BNetzA faced as capacity allocation was not easily accepted. The Director is also mindful of the fact that not all the relevant provisions have already come into force. However, the CORE region has already been identified, and coordination in the region was expected. Moreover, the need for coordination is already stated in the Electricity Regulation. The Agency has already shared its view with BNetzA and E-Control. He emphasised the need for regional coordination, including with reference to the imminent conclusion of similar negotiations for the German-Danish border.

The European Commission welcomes the step forward in breaking the deadlock. However, the Clean Energy Package is moving towards regional, as opposed to bilateral, decision-making and a flow-based system, so the Commission echoes all the concerns expressed by NRAs who were not consulted despite being affected by the decision. In addition to technical issues the incidence raises trust issues:



as we enter the implementation phase, members should ensure that gaps do not undermine implementation. Decisions must be transparent and include any impacted NRAs.

The Chair summarised the views expressed by BNetzA and E-Control, namely that their agreement is a step towards implementation, which other NRAs welcome. However, several NRAs have expressed concerns as regards the means chosen and the lack of transparency and coordination with the NRAs of the region. There is also difference of views surrounding the 4.9 GW figure, which highlights the importance of proper monitoring by the European Commission and the Agency. Any technical meeting to be arranged by E-Control and BNetzA should include all members concerned and any others interested in attending. The Chair alluded to bilateral discussions concerning the DE-DK interconnector, and invited them to be transparent to pre-empt similar issues. The Chair proposes to hold a follow-up discussion at the July BoR meeting as well as an update on the DE-DK discussions.

DERA confirmed that there had been discussions to find technical solutions for the DE-DK border, and that all Nordic regulators (Ei, EV and NVE) had been informed throughout. The market has also been consulted about the delivery and potential model. Should agreement be reached on offering greater capacity at the border then this would be a progress for local countries as well as for CACM implementation. Denmark does not have a flow-based system; the solution envisaged is seen as an interim solution (pending CACM implementation) to improve capacity at local level.

## **6. Gas**

### **6.1. Update on FGs, NC implementation and other work**

Mr Trindade provided an update on the work of the Gas Working Group, which met on 16 May to discuss among other things:

- Selected interim results of the 2016 gas wholesale Market Monitoring Report (MMR), including the rising dependency on external imports and further price convergence among key global gas regions. Following discussions in the Task Forces and AGWG the draft MMR will be presented to the BoR in September and released in advance of the Madrid Forum. The intention is to publish the MMR (including the gas wholesale volume) on 19 October;
- The Quo Vadis study: the Commission met with the consultant on 17 May to agree the scenarios, and Member States were informed of recent developments at a meeting on 30 May. There will be a stakeholder workshop on 26 June to exchange views on the preliminary report;
- A call for all NRAs to involve their experts in discussions regarding ACER's upcoming report on allowed revenues of TSOs: it would be preferable to involve NRAs as sensitive economic/financial data will be needed;
- A template was made available on ACER's website designed to clarify and simplify the process for sending national consultation documents relating to the reference price methodology;
- NC TAR publication requirements: the task is to determine the responsibilities of TSOs and NRAs as regards publication requirements;
- the CAM TF's assessment of PRISMA costs: a temporary arrangement to spread those costs to participating TSOs has expired and some countries (including Spain and Slovenia) have voiced concerns as regards PRISMA costs assigned to different countries; and

- CAM TF's assessment of MEKH's concerns relating to the long-term bookings by Gazprom at Czech and Slovakian IPs.

## 6.2. 4<sup>th</sup> report on monitoring of congestion at interconnection points

This item was covered previously: in summary, the draft ACER annual report on congestion at interconnection points was circulated for comments following the presentation of its key findings at the last BoR. The deadline for comments was 22 May, and a number of NRAs submitted comments. The report was subsequently finalised and released on 31 May. It has been circulated to BoR members.

## 7. **AOB**

### 7.1 BoR Chair Elections

A note on the process for the election of the BoR Chair elections will be submitted at the July meetings.

### 7.2 EU Sustainable Energy Week

Mr Addis announced that the EU Sustainable Energy Week will take place in 2 weeks' time. There will be a three-day conference discussing energy policy and events around it. Of interest to regulators would be the session on market design to be held in De Gasperi (Charlemagne building) from 11 – 12.30 on 21 June. Panellists include industry and NGO representatives as well as Mr Ermacora from DG ENER. More than 200 participants have registered so far.