

**67<sup>th</sup> ACER Board of Regulators Meeting**  
**Wednesday, 19 July 2017, 09.00 – 16.00**  
**Tallinn**

**Minutes (final)**

Member States	Name <sup>[1]</sup>	Member States	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch A: Dietmar Preinstorfer	Italy (AEEGSI)	M: Clara Poletti A: Francesco Cariello O: Ilaria Galimberti
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)	M: Inga Žilienė O: Irma Vasarytė
Croatia (HERA)	M: Tomislav Jureković A: Sonja Tomašić Škevin,	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	A: Alkis Philippou	Malta (REWS)	Excused
Czech Republic (ERO)	A: Martin Sik O: Kateřina Firlová	Netherlands (ACM)	A: Remko Bos O: Maarten Klijn
Denmark (DERA)	O: Kimmie Laage-Petersen	Poland (URE)	M: Maciej Bando A: Małgorzata Kozak
Estonia (ECA)	M: Mart Ots A: Külli Haab	Portugal (ERSE)	M: Alexandre Santos
Finland (EV)	A: Antti Paananen	Romania (ANRE)	O: Florin Tobescu
France (CRE)	M: Jean-François Carenco A: Hélène Gassin O: Sabine Hinz O: Michaël Mastier	Slovakia (RONI)	A: Nataša Hudcovičová
Germany (BNetzA)	M: Annegret Groebel	Slovenia (AGEN-RS)	A: Bojan Kuzmič O: Jasna Blejc
Greece (RAE)	M: Sotirios Manolkidis	Spain (CNMC)	M: Fernando Hernandez
Hungary (HEA)	M: Attila Nyikos O: Adam Krinszki O: Ágnes Csermely	Sweden (Ei)	M: Anne Vadasz Nilsson
Ireland (CER)	M: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Mark Copley

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

ACER	Alberto Pototschnig, Fay Geitona, Mitsuko Akiyama
European Commission	Adriano Addis
CEER	Andrew Ebrill

### **CONCLUSIONS SUMMARY of the 67<sup>th</sup> BoR**

1. *The minutes from the 66th BoR meeting were approved, as was the agenda for the 67th meeting. No conflict of interest was declared by the participants.*
2. *The Director informed the BoR of the recent publication of the Agency's Annual Activity Report. The Director reported on the VI ACER Annual Conference, which took place in Brdo on 29 June 2017 and focused on the regional dimension of the Internal Energy Market. There were approximately 150 participants. The Director informed the BoR that ACER received the PCI list from the EC on 14 July; the EC requested the Agency's opinion to be issued by 1st October 2017 so that the Regional Groups could decide on the PCI list in October.*
3. *Mr Addis updated the BoR on the negotiations relating to the EC legislative proposal "Clean Energy for all Europeans". The EC reported on the ITRE Committee meeting of 11 July, where MEPs exchanged views on the draft reports on the recasts of the ACER Regulation and of the Regulation and Directive on the internal market for electricity. The Council Energy Working Party met on 20 June and 10-11 July to discuss the legislative proposals. The EC also reported on the EU Sustainable Energy Week, where public authorities, energy agencies, research organisations, NGOs, businesses and private consumers exchanged ideas about providing secure, clean and efficient energy.*
4. *Mr Addis informed the BoR of the vacancy for the position of the next ACER Director, which is due to be published this month. Following the closing date for applications (foreseen for end of September) a number of steps will be taken. The BoR was updated on issues related to cooperation with China and relevant exchanges with Ms Fauconnier and ACER. This item will be added to the agenda of the next BoR meeting to discuss the framework and objectives for that cooperation, with a view to streamlining the response and approaches. To enable an informed discussion the EC was invited to provide a background paper from the EC setting out the context and explaining the scope of potential cooperation and what specific actions CEER and ACER could pursue.*
5. *The EC provided an oral update concerning the way forward for the monitoring of network code implementation. A high-level meeting took place on 19 June to discuss the objectives, composition and tasks of the new Implementation and Monitoring Group (IMG). These elements are set out in a "reference paper" to be circulated to NRAs and TSOs for comments by the end of August, to enable its endorsement at the next meeting of the IMG on 2nd October. It was decided that working level practices in electricity and gas will continue and that the IMG will mainly be responsible for resolving issues which are escalated from working level structures, and for developing principles for coordinating the actions of all parties involved in network code implementation, including as regards amendments to network codes and guidelines. The next meeting of the IMG will address high-level principles for coordinated guidance and other matters on which coordination is needed. While recognising the restricted membership of the Group (the Director and the BoR Chair representing NRAs plus their alternates), members noted the need to involve the Electricity and Gas Agency Working Group Chairs where necessary as experts actually dealing with implementation issues, and since NRAs are responsible for enforcing the codes.*

6. *The Director informed BoR members about the status of the Agency's Draft Programming Document, including the Agency's Annual Work Programme (WP) 2018. The Draft Programming Document will be revised in the light of the Commission's opinion, and circulated for BoR approval. The members agreed to the use of an electronic procedure after 19 July for its approval. It will then be presented to the Administrative Board for adoption by 30 September. Members raised concerns about the budget constraints faced by ACER both in relation to the current tasks and the 2018 WP, and in relation to the new tasks assigned to ACER under the Clean Energy Package. Further actions are being taken in respect of the 2018 budget, including vis-à-vis the European Parliament. The ITRE committee has adopted an amendment supporting an increase in the Agency's resources in its opinion on the 2018 Budget. It seems that actions vis-à-vis the Council should also be pursued (although the Council is proposing further cuts to ACER resources). The EC clarified that 18 additional staff are envisaged in the context of their CEP proposals.*
7. *The Director informed the BoR of the publication of the third consolidated annual report on the progress of Projects of Common Interest on 7 July, which confirmed the findings presented at the June BoR meeting.*
8. *The Director circulated his decision of 12 July 2017 on the dissolution of the Agency's Implementation, Monitoring and Procedures Working Group. The Director also presented his draft decision on the establishment of the Legal Expert Network (LEN), a virtual network of NRA legal advisors that will advise the Director, the BoR, the Agency Working Groups and Departments on legal matters. Members had an orientation discussion: they noted the resource constraints faced by NRAs, and considered it important that NRAs can decide on the resources to be devoted to the LEN on the basis of their availability; they want to ensure that NRAs would have some flexibility, possibly by allowing the appointment of a contact point within the NRA; they also noted that confidentiality arrangements should not alter the relation between the NRAs and their staff; the process for the appointment of the co-Coordiators was also discussed; the need to report back to the BoR on the work done by the LEN; the possibility for the BoR (including members) to submit requests, which would not be subject to the discretion of the co-Coordiators. The Director thanked members for their feedback. He is happy to consider the feedback and pursue the discussion at the next BoR, particularly on how best to select LEN members. However, he also pointed to the need to set up the LEN without further delay.*
9. *The process for the election of the BoR Chair and Vice-Chair was agreed. The election of the new BoR Chair is scheduled for the September BoR, in accordance with the provisions of Regulation 713/2009 and the BoR Rules of Procedure. The new Chair will take office as from 6 November 2017, for a term of two and a half years. Nominations will be opened on 20 July and will end on 30 August. The details and organisational arrangements will be circulated shortly.*
10. *The Director and Ms Groebel provided updates on the ongoing work of the REMIT Coordination Group and the Agency's Monitoring, Integrity and Transparency Working Group; in particular on ARIS, data collection and sharing, ongoing implementation activities, and the 1st REMIT Forum to take place in Ljubljana on 11 October. This will bring together stakeholders, market participants, industry and the NRAs and will include a series of sessions. In parallel, CEER will send a letter to the Institutions raising the issue of the Agency's resource constraints in regard to REMIT. The Director informed members that ACER has launched a new tender procedure for a system integration contract regarding REMIT.*

11. *Mr Hernandez updated BoR members on the ongoing work of the Agency's Electricity Working Group, including as regards network code implementation and the all-NRAs' agreement to issue a number of requests for amendments to all TSOs' and NEMOs' proposals. Members were informed about a recent correspondence between ENTSO-E and the EC in respect of the participation of the Norwegian TSO and Nordpool in the all TSOs' and NEMOs' proposals under the network codes. The issue will be revisited in September, after coordination with the EC as to how this would affect NVE's participation in the all NRAs' decisions.*
12. *BNetzA, E-Control and DERA provided updates on their agreements regarding the capacity to be made available to the market on the Germany/Luxembourg – Austria and Germany – Denmark bidding zone borders, both of which were discussed at the June BoR meeting. BNetzA, E-Control and DERA reported on the coordination steps taken so far, including a technical meeting of 11 July concerning the DE-AT bidding zone border agreement. Individual members reiterated their concerns about ex-post consultation on this issue; on the fact that this did not include the whole CORE region and, in respect of the next steps, ensuring compliance with the ACER decision and the CACM Regulation 2015/1222. Whilst recognising that this has been a transitional period, the spirit of collaboration should not be lost and all parties of the CORE region as defined in the CCRs Decision should be involved in forthcoming meetings*
13. *.The Director informed BoR members of a letter issued to ENTSO-E earlier this month concerning monitoring information requirements under the Network Code on Demand Connection (DCC). The DCC provides that the Agency, in cooperation with ETNSO-E, shall produce by 12 months after its entry into force a list of relevant information to be communicated by ENTSO-E to the Agency in accordance with Articles 8(9) and 9(1) of Regulation 714/2009. No data has been requested at this stage, as implementation is ongoing and the Agency is unable to foresee the scope of the data request.*
14. *The Agency opinion on the ENTSO-E Annual Report for 2016 was given the favourable opinion of the BoR (by consensus of the members present or represented).*
15. *The Director presented the Agency's draft response to a Position Paper recently published by ENTSO-E entitled: "Optimising available transmission capacities for trade while ensuring system security." The Agency Director and the BoR Chair will send a letter to ENTSO-E stating that this Paper does not consider discrimination between internal and cross-zonal trade, whereas this problem is widely recognised as one of the most significant barriers to the well-functioning of the Internal Energy Market and is prohibited by European Union law. ACER will urge ENTSO-E and its members to take into account this important dimension when developing the regional capacity calculation methodologies for NRAs' approval in September 2017, and to justify transparently and thoroughly any deviation from the high-level principles set out in the Agency's recommendation.*
16. *Mr Santos provided an update on ongoing work of the Agency Gas Working Group including as regards: the Quo Vadis study; the report on allowed revues; PRISMA costs; Gas Regional Investment Plans; and capacity booking Nordstream II landing point.*
17. *Members were informed of the conclusions reached by the Capacity Allocation Mechanisms (CAM) Task Force regarding the compliance of the first CAM network code annual gas auctions held on 6 March 2017 with the CAM network code requirements. HEA also presented its analysis and recommendations. The Director made a distinction between compliance with the current rules, and whether the rules are delivering the desired objectives of the IEM and are fit for purpose. The latter could be addressed in the forthcoming ACER MMR. On the remark of HEA that request for sharing transaction data was not accepted, the Director noted that ACER is unable to share transaction data unless the security requirements are fulfilled. The EC reiterated their remarks that a supplier cannot be discriminated against where CAM rules are complied with.*

18. *The Agency's opinion on ENTSOG's Sumer Supply Outlook 2017 and Summer Review 2016 was given the favourable opinion of the BoR (by consensus of the members present or represented).*
19. *The Director informed the members of the Agency's preliminary comments on ENTSOG's capacity conversion model. The latter will be adopted and published by ENTSOG later this month. Comments concerned: the need for a harmonised Conversion Model; potential limitations as regards the date of conclusion of the contract for unbundled capacity; the lack of examples of applied discounts and their calculation methods; lack of information on how Booking Platforms could facilitate implementation of the services and requests; and the need for a summary table on the capacity conversion services that are applied at national level, including links to detailed national rules on TSO websites.*
20. *Ms Poletti presented the known features of a gas market measure proposed by the Italian Ministry and known as the "Liquidity Corridor." The "Liquidity corridor" is being proposed by the Italian government in its draft "National Energy Strategy 2017" and consultation closes on August 31st. She also presented AEEGSI's observations on a preliminary basis as it has not yet reached a definite position. The members noted the implications of such a regime on neighbouring countries. The Director noted that there are issues with this mechanism whereby the route is subsidised; the intention to lower the pieces may be legitimate, but calls for more reflection on whether this is the optimal approach. He is in favour of market-based approaches. ACER is now analysing the facts. The EC is also looking into this issue and will gather more information. In respect of the next steps, the EC and the Italian Government are meeting in September, by which time the approach is likely to have crystallised. The Chair proposed a response to the consultation through CEER; the tonality should be appropriate and the GWG will pick this up.*
21. *Following the resignation of the AGWG Chair in June, the nominations were opened and ended on 13 July. The BoR decided to postpone its recommendation to the Director until after the election of the BoR Chair scheduled for September. The current Agency Gas Working Group Vice-Chair will continue to run the Group in the meantime.*

## 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. No declaration of conflict of interests was made.*

#### 1.2. Approval of the minutes of the 66<sup>th</sup> BoR meeting

BoR Decision agreed: (D 2)

*The minutes of the 66<sup>th</sup> BoR were approved.*

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

#### 2.1. Update on recent developments

##### - **ACER**

The Director reported on the latest ACER publications: the Annual Activity Report (containing a summary of activities carried out by the Agency last year) was published on 15 June; and the third consolidated annual report on the progress of Projects of Common Interest in electricity and gas was published on 7 July (see item 3.3 below). In the meantime ACER received the PCI list from the EC. The Agency's opinion is sought for 1st October so that the Regional Groups could decide on the PCI list in October. The timeline is tight and thus we are now working out the process with a view to having a draft opinion ready, if possible, for the September BoR.

#### **Report on VI ACER Annual Conference**

The Director reported on the VI ACER Annual Conference which took place in Brdo on 29 June and was attended by approximately 150 participants. The Conference opened with a welcome address by the Slovenian Minister of Infrastructure, Peter Gašperšič. One of the highlights of the day was a keynote speech by Norman Bay, former Chairman of the Federal Energy Regulatory Commission of the United States. During his keynote speech the EC Vice-President for the Energy Union, Maroš Šefčovič, highlighted that cooperation among Member States in different regions of the EU will be the cornerstone of the Energy Union Governance. The regional dimension of the Internal Energy Market was debated in 3 sessions.

##### - **EC**

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

Mr Addis provided an update on the negotiations on the EC proposal: "Clean Energy for all Europeans". The Council's Energy Working Party met on 20 June and 10-11 July and discussed the proposals Article by Article. Last week the proposals were debated in the ITRE Committee of the European Parliament on the basis of the draft reports. The EC welcomes the reports in principle, but have reservations on some points. The deadline for amendments to the ACER Regulation is set for 14 September. The deadline for

tabling amendments to the Electricity Directive and Regulation is 15 September. The deadline for tabling amendments to the risk-preparedness regulation is 13 September.

### **Report on the EU Sustainable Energy Week**

In the course of the EU's Sustainable Energy Week public authorities, energy agencies, research organisations, NGOs, businesses and private consumers exchanged ideas about providing secure, clean and efficient energy. It was very well attended with approximately 300 participants. The elimination of subsidies was a key takeaway from the sessions.

Mr Addis informed the BoR on the launch of the selection process for the next ACER Director. This is subject to ongoing discussions at the Administrative Board (AB). The EC plans to publish the vacancy before August. Following the closing day for applications (envisaged for end of September), a number of steps will be taken.

Mr Santos sought clarification on the postponement of the mirroring exercise in gas. This delay raises concerns as there is a risk of inconsistencies in particular in respect to the retail market provisions.

Mr Addis responded that the technical work is well advanced but - at this stage - there is no specific timeline as there is a focus on the discussions on the Clean Energy Package. The Estonian Presidency is determined to progress the latter. He will report back to the EC the concerns expressed today.

Ms Fauconnier referred to recent requests submitted to CEER and related correspondence for potential contacts with China: the State Planning Commission in China asked CEER to establish contact. They have a partnership with FERC. They are not interested in ICER but they are looking to have bilateral close cooperation with European Energy Regulators (they are not clear about the roles of CEER, ACER etc.). She volunteered to contact them to shed some light on the scope of such requests and their specific points of interest. Members referred to Chinese ownership of some EU TSOs and market participants. Infrastructure issues might thus be another point of interest.

The EC reported that the EU-China Summit took place recently with the participation of Commissioner Arias Cañete and Mr Borchardt. The 2017 EU-China Energy Dialogue led to the decision to significantly intensify cooperation between Europe and China, and designated cooperation on energy infrastructure as one of the focus areas. There is also a MoU with China. The EC envisages organising 3 workshops. The first is scheduled in September in Beijing, China.

It was noted that there is a need for a more strategic approach, and to avoid any perception of discrimination against other countries in terms of international cooperation.

Lord Mogg suggested including this issue in the agenda for the September BoR to have a full discussion and clarity from the EC on what the approach will be and the next steps. To enable an informed discussion it would be useful to have a background paper from the EC setting out the context and explaining the scope of potential cooperation and what specific actions CEER and ACER could pursue.

### **3. Cross-sectoral & infrastructure**

#### **3.1. Approach to monitoring of code implementation**

Mr Addis reported on the background and rationale of this exercise. At a preparatory meeting on 20 May, the EC presented the approach to implementing network codes (NC)/guidelines (GL) and monitoring. This considered the way forward including the establishment of a NC Implementation and Monitoring Group (IMG). While maintaining the existing coordination at working level, this high level quadrilateral coordination forum will focus on strategic issues concerning NC/GL implementation. It is not meant to replace but to complement existing implementation Working Groups without prejudice to the roles of the different actors as defined in legislation. The NC IMG will play a strategic role by: taking stock of the progress in NC/GL implementation and implementation monitoring; discussing strategic issues; and providing non-binding implementation guidance to requesting parties.

A meeting at high level took place on 19 June to organise the work of NC IMG and to plan the next steps. Participation was limited to senior members from the EC, ACER and ENTSOs. As part of the outcomes of the meeting, a reference paper is now under preparation. This will be circulated to NRAs and TSOs for comments by the end of August, to allow its endorsement at the next meeting of the NC IMG on 2nd October.

The BoR Chair and the Director also reported on this initiative launched by the EC. The NC IMG will not be a successor to the Planning Group. It is more akin to a troubleshooting group that will deal with issues which are escalated from working level, and ensure appropriate coordination. The idea is that it would meet twice per year. ACER will be represented by its Director and the BoR Chair. At the next meeting the NC IMG will discuss high-level principles for coordinated guidance and other matters on which coordination is needed.

Lord Mogg and the Director explained the arrangements and the intention to have a small group. However, there will be alternates of the Director and the BoR Chair, who will accompany them. The composition of the ACER delegation will also depend on the agenda and the potential split of the electricity and gas items allow ACER to change its representatives in a flexible way. This was raised at the meeting of 19 June. There will be regular reporting to the BoR and constructive, early coordination with the Agency Working Group Chairs and ACER Heads of Departments.

#### **3.2. ACER Work Programme**

The Director reported on the 2018 Work programme preparations. The EC's opinion was expected on 1st July but has just been received. ACER received an advanced unofficial copy of the EC opinion and thus the Agency's Annual Work Programme is now being revised in light of the Commission's opinion. The unofficial comments shared by the Commission so far include general comments such as that ACER's staff allocation does not follow stated priorities; the need to focus on the implementation of Guidelines and Network Codes as an area of utmost priority and should be accompanied by resources; and an invitation to make the best of allocated resources where necessary by shifting them internally) as well as specific comments on tasks related to the Third Energy Package, REMIT, the TEN-E Regulation and communication and transparency. The revised Programming Document will be circulated for BoR approval after 19 July. Members agreed on the use of the electronic procedure for that purpose. It will then be presented to the AB (by 1 September), for adoption by 30 September.



The Director also reported on the ITRE Committee amendment to the budget opinion, which supports ACER's request for the 2018 budget and additional resources.

Members noted the need for ACER to have sufficient resources particularly given that the Clean Energy Package proposes new competences for ACER. Ms Groebel reported that CEER has also prepared a letter on ACER resources in respect of REMIT, which will be addressed to the Budgetary Institutions and explain that any lack of resources for the Agency has a huge impact on NRAs resources, which are also limited. She noted that, in the EC draft 2018 budget, the subsidy to cover IT costs has been reduced, with the effect that there will be a lack of monitoring capacity within ACER and an impact on the pre-screening of the data received.

Mr Addis took note of the concerns and reassured the members that DG ENER is aware of this issue. He also stressed that within the Clean Energy Package, 18 additional staff are foreseen.

The EC reported that they will be undertaking a study on NRA independence. The ToR for this study are under preparation.

The Director thanked the members and the NRAs for their support. The Council is proposing a reduction of 300,000 euros from the amount proposed by the EC. In any case the imminent priority is to ensure resources to complete the 2018 Work Programme. EU Agencies have also expressed concerns regarding the common approach and there are joint efforts to address them via the Agencies' network. There are particular concerns with restrictions to the flexibility of Agencies' Directors in deciding how to use their resources. The Directors should be in a position to use their resources in the best way. The Agency in the context of the Clean Energy Package discussion has proposed the possibility of charging fees, and this is reflected in the draft EP ITRE reports, but this does not automatically mean more staff for the Agency.

### 3.3. Update on the ACER PCI monitoring report

The Director updated members about the Agency's report for monitoring progress achieved in implementing projects of common interest (PCIs), put together on the basis of annual reports submitted by the project promoters. The PCI monitoring report was circulated to the BoR members for comments by 27 June, the final PCI monitoring report was submitted to the Commission on 30 June, and published on the Agency's website on 7 July. It confirmed the preliminary findings presented at the June BoR including *inter alia*:

- Several promoters reported progress in the implementation of the projects and an advancement in their status compared to 2016; in most instances, the projects entered the permit granting process after completing earlier project development stages. However, some PCIs did not report on any work or activity being done since 2015.
- Approximately half of the PCIs fell behind last year's schedule. Over the last two years, only one-third of all the PCIs have managed to keep their original commissioning date.
- The investment costs, as estimated and reported by the promoters, amount to €49.8 billion for electricity PCIs and €52.7 billion for gas PCIs. Since 2015, promoters have spent approximately €6 billion on gas and €4.3 billion on electricity PCIs.

- Regarding the benefits which the projects would bring, in electricity the reported monetised benefits amount to €66.1 billion. The Agency was not able to evaluate the benefits of the gas PCIs as the promoters did not provide sufficient monetised benefits data for gas project.
- The interest of the promoters in using the regulatory tools made available by Regulation (EU) No 347/2013 and exemptions remained low.

#### 3.4. Update on AIMP WG and Legal Expert Network

The Director referred to the March BoR discussions, during which members were informed of his decision to dissolve the Agency's Implementation, Monitoring and Procedures Working Group (AIMP WG). As explained in the Director's Decision on the dissolution of AIMP WG dated 12 July, a restructuring of the way in which the expertise present in the Agency and NRAs is used became necessary due to the parallel functioning of the Agency Working Groups (AWG) and the time constraints for taking a decision in each.

The draft Director's Decision on the establishment of the LEN was discussed. The aim was to keep the ToR as simple as possible rather than replicating the RoP of the AWGs. The LEN would be a dedicated, virtual network of legal experts available to advise the Director, the BoR, all AWGs and substructures (via the respective AWG Chairpersons) and the Agency's Departments on legal matters.

Members had an orientation debate. They expressed concerns including *inter alia* on the following issues: the process for the selection of the experts; given the NRAs' resources constraints, how best to ensure that NRAs will have the discretion to choose their own staff on the basis of their availability; the clarification of the role and appointment process for the LEN co-ordinators; the regular reports to BoR on the work by the LEN; and the full support of the BoR by the LEN.

The Director thanked the members for the feedback. He will review detailed comments but noted the need to finalise the ToR to proceed with the establishment of the LEN. Regarding how the experts will be chosen, he clarified that evidently the LEN is based on volunteers and no one will be forced to be part of the network; he is open to further discussions to arrive at a solution taking into account the constraints faced by NRAs, given that the LEN relies on their resources.

#### 3.5. Process for the election of the new BoR Chair

The Chair and Ms Geitona summarised the process for the election of the new BoR Chair, which is scheduled for the September BoR. This reflects the agreed processes which have been followed since the first BoR in accordance with the ACER Regulation and the BoR RoP. The deadline for submitting expressions of interest will be 30 August 2017. The new Chair will take office as from 6 November 2017, for a term of two and a half years. The details on the organisational arrangements, including the exact date of the elections, will be communicated shortly.

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

#### 4.1. REMIT implementation and operation

Ms Groebel updated the members on the work of the AMIT WG: the matters mentioned by Mr Zuleger at the last BoR meeting are ongoing, and a number of documents have been updated and published on the

ACER website, including FAQs on REMIT and REMIT Quarterly. On the new call for experts, Ms Groebel clarified that NRAs may also participate. The next meeting of the AMIT WG has been moved to Ljubljana.

The Agency is organising the 1<sup>st</sup> Energy Market Integrity and Transparency Forum, which will take place on 11 October 2017: there will be a roundtable with NRAs and industry representatives, and a number of sessions to discuss technical issues. The event will take place at an external venue as a large number of participants are anticipated.

The Director referred to the gap analysis performed earlier this year and discussed at the June BoR meeting: the analysis identified gaps in the national monitoring of the wholesale energy market, which will be filled by the Agency subject to resource availability. The Director also informed members that a new tender procedure for System Integrator Services and IT Consultancy has been launched, to transition from the current programme management/IT service model to a REMIT information management model. The work previously done by Agency staff in coordinate contractors will be contracted out.

## **5. Electricity**

### **5.1. Update on NC implementation**

Mr Hernandez informed members that 5 methodologies have already been approved by all NRAs, and 2 decisions are pending. The latter concern the request for amendment to the all TSOs' proposal on the intraday cross-zonal gate opening and gate closure times, and the all TSOs' proposal for Congestion Income Distribution Methodology, which has been referred to the Agency.

7 all NEMOs' proposals on day ahead and intraday products were discussed at the European Regulators Forum on 18 July: requests for amendments will be issued in respect of 5 of them, and 2 of them will be referred to the Agency. The deadline for submitting a proposal for regional capacity calculation methodology is 14 September.

### **5.2. Updates on recent developments concerning the Germany/Luxembourg – Austria and Danish – German bidding zone borders**

BNetzA, E-Control and DERA updated members on the implementation of capacity allocation on the German-Austrian border and regarding the level of cross-border capacity to be made available to the market on the DE-AT and DE-DK bidding zone borders.

Ms Groebel referred to two documents that have been circulated: a document detailing the recent and ongoing coordination steps, and a presentation made at a technical meeting arranged by BNetzA and E-Control, which took place on 11 July. CEE NRAs and an Agency representative attended the technical meeting, where BNetzA and E-Control provided additional information on the German-Austrian bidding zone border agreement, including the 4.9 GW long-term capacity to be made available for market players. The process is ongoing and also involves the CORE region. A dedicated project webpage was launched by the TSOs. Additional technical meetings (potentially involving TSOs) will be arranged once the calculations for the CORE region become available in September. Mr Urbantschitsch also explained that the process is ongoing, and referred to a meeting at ministerial level with the German neighbours which

took place at the beginning of the month, where Germany presented both the DE-AT and DE-DK bidding zone border agreements to representatives from neighbouring countries.

Ms Groebel referred the members to a document detailing the DE-DK bidding zone border agreement, which was circulated in advance of the BoR meeting. It is a non-public document explaining how the agreement will be implemented i.e. increasing available capacity in a stepwise approach. The main aspects were presented in a letter circulated in June, as well as a teleconference with the neighbouring regulators. A technical meeting will also be arranged. Ms Laage-Petersen added that TSOs had been asked to start implementing the agreement from 1 July, and to arrange a consultation.

Individual members expressed the following strong reservations about the process: a methodology should be developed first, on the basis of which it is possible to evaluate the capacity available at the border, not the other way round. Coordination with the relevant NRAs of the region was undertaken only ex post. There is a need for early implementation of a methodology given the implications for cost sharing. Some sought clarification on the substance including the capacity figure of 4.9 GW. It was noted that it is unclear how the two bilateral agreements implement the CACM Regulation, which for example does not allow day ahead auctions. Members also requested that the matter be added to the agenda of the next meeting of CORE regulators scheduled for 1 August.

E-Control observed that the process is unclear as many Regulations are not in force yet, and so far long-term capacity at borders has been the outcome of bilateral agreements between TSOs. This agreement, in his view, reflects a very big step and progress.

The Director commented that if the process had run in reverse order, it would have been almost perfect.<sup>1</sup> Point 3.1 of Annex I to Regulation 714/2009 requires coordination where an issue has an impact beyond the border notwithstanding that methodologies are yet to be adopted. The Director has written to the 3 NRAs urging them to involve the impacted regions in the discussions, including CORE regulators. The Director supports this request given that a decision has already been made to merge CWE and CEE CCRs.

The EC reiterated that all concerned parties should be involved in the discussions. The EC welcomes reassurances that interim solutions have been found, but for the purposes of long-term CACM implementation there must be coordination.

The Chair summarised the discussion and concluded that since CACM provides for cooperation, the request for a discussion at CORE level should be accepted notwithstanding legal arguments.

E-Control is willing to share information on the bilateral agreement with interested parties, as it did at the meetings with CORE NRAs and TSOs in June, as well as the ministerial and technical meetings. E-Control would like to ensure that the correct process is followed whilst also ensuring a timely implementation of the agreement.

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<sup>1</sup> E-Control would like to clarify that in their interpretation of point 3.1 of Annex I to Regulation 714/2009, the coordination requirement only applies where there are significant negative effects on third countries. However, the concerned stakeholders acknowledge widely that capacity allocation at this border will in general improve the grid situation, i.e. have positive effects for them. Therefore, the process that was followed in finding the agreement has not violated Regulation 714/2009.

### 5.3. ACER list of relevant information to be communicated by ENTSO-E under DCC and HVDC NC

The Director noted that Article 57(2) of the network code on Demand Connection (DCC) and Article 76(2) of the network code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules (HVDC NC) provide that the Agency, in cooperation with ENTSO-E, produces by 12 months after the entry into force of the DCC/HVDC NC a list of relevant information to be communicated by ENTSO-E to the Agency in accordance with Articles 8(9) and 9(1) of Regulation 714/2009.

The matter was discussed within the Agency's Electricity Working Group, which agreed not to make any data request to ENTSO-E at this stage, as DCC implementation is ongoing and the Agency is not yet able to determine the scope of a potential data request. The list may be drawn up at a later stage, on the basis of discussions with the Grid Connection European Stakeholders Committee and NRAs. A letter from the Agency to ENTSO-E dated 11 July, which explains the current status, was circulated to the BoR for information.

### 5.4. ACER opinion on ENTSO-E Annual Report 2016

The Director reported that on 5 May 2017 ENTSO-E submitted its annual report for 2016 to the Agency for opinion. This report covers ENTSO-E's work in the areas of market integration, IT & data, regional cooperation, infrastructure development, research, development & innovation, with a focus on NCs and their implementation.

Pursuant to Article 6(3)(b) of Regulation 713/2009 the Agency must provide an opinion on the annual report in accordance with Articles 9(2) and 8(3). The Agency considers that the report provides a good account of ENTSO-E's activities in the year 2016, with a good level of detail, and communicates relevant information in a way that is easy to understand. The Agency will make two main recommendations: (i) basing the annual report on a common and consistent reference date and indicating this date in the report could enhance the understanding of the reported context; and (ii) there should be a more detailed analysis of the implementation of network codes and the outcome, as opposed to general statements, in accordance with Article 8(8) of Regulation (EC) No 714/2009. Mr Hernandez agreed with the latter point.

The BoR provided the favourable opinion to the Agency's Opinion by consensus of the members present or represented.

### 5.5. Agency's response to ENTSO-E's communication on capacity calculation methodologies

On 5 July ENTSO-E issued a Position Paper entitled: "Optimising available transmission capacities for trade while ensuring system security," to which the Agency proposes to respond as outlined in the document circulated in advance of the BoR meeting.

In the Director's view, the Agency should react to ENTSO-E's interpretation of its Recommendation (issued in November 2016) to improve the capacity calculation methodologies and the methodologies to share redispatching and countertrading costs. The Agency welcomes efforts to optimise available transmission capacities made available for trade, but is concerned that ENTSO-E does not in any way consider the discrimination between internal and cross-zonal trade in its communication, despite this

problem being recognised as one of the most significant barriers to the well-functioning of the Internal Energy Market. The communication prejudices TSO solutions on the matters discussed therein. The Director would also like to avoid a complaint from ENTSO-E such that the Agency failed to alert it to the fact that it was heading in the wrong direction. The response should come from the regulatory community as a whole, and highlight that ENTSO-E's interpretation does not reflect the Agency Recommendation.

Mr Hernandez agreed that a response would be appropriate. However, he recalled that there was no unanimity on the Recommendation at the time it was issued. Members discussed the appropriate way forward and agreed to a joint letter by the Director and the BoR Chair.

## **6. Gas**

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

Mr Santos updated members about the work of the Agency's Gas Working Group, which met on 27 June:

- Quo Vadis: the first EC workshop on scenarios took place in June, following which comments on the draft study were submitted. The second EC workshop on modelling will take place at the end of July;
- allowed revenues report: NRAs have been asked to submit AR summaries by 15 July, which will provide the basis for a survey. ACER's report is to provide an in-depth review of AR methodologies;
- PRISMA costs: some Member States were concerned about PRSMA costs, for which a solution has been found. There are ongoing negotiations for prolonging the service contracts with ENAGÀS, Eustream, PLINACRO, PLINOVODI, Net4Gas and REN on the same terms;
- A number of Gas Regional Investment Plans have been published, including the South-North Corridor Grip published this month. The rest of the GRIPs are expected in 2017. The Agency will monitor the regional cooperation of TSOs and the GRIPs developed by them.

### **6.2. Update on the status of the European annual gas auctions**

At the March BoR meeting, Mr Nyikos informed the members about the outcome of the first CAM network code annual gas auctions held on 6 March 2017, whereby Gazprom gained effective control over EU gas infrastructure in Eastern Europe.

The Capacity Allocation Mechanisms (CAM) Task Force analysed the matter and drew some conclusions which will be presented at the September Gas Working Group meeting.

Mr Nyikos presented HEA's position, which is that there has been a partial assessment focusing only on a subset of requirements under CAM network code. HEA's proposal is that the system can do without long-term capacity bookings on existing pipelines.

The Director identified two separate issues raised by Mr Nyikos: (i) compliance with current rules, which is the subject under discussion and on which HEA's conclusions seem aligned with the conclusions of the CAM Task Force, and (ii) whether the rules deliver what they were intended to do, which is a separate matter (which may probably be assessed in the context of the ACER MMR). If it transpired that 10% is insufficient, the CAM network code can be amended. Responding to another point raised by Mr Nyikos, the Director explained that the Agency is unable to share transaction data unless security requirements

are met, but the Agency will revisit the matter as part of market monitoring. The Director also made reference to Article 7(4) of the ACER Regulation 713/2009, which enables the Agency to intervene only at the request of an NRA.

The EC appreciates the work that has gone in, but as Director Borchardt mentioned at the May BoR, whilst having a unique supplier raises concerns, third country operators should not be discriminated against. There is an ongoing assessment, notably the Quo Vadis study, to determine whether the regulatory framework is delivering.

The Chair summarised the discussion: a distinction should be made between the issue of whether rules have been breached, and whether they should be changed. Rules were not breached according to the EC and the Agency. HEA's point is that there should have been earlier intervention; however, there is sensitivity in taking discriminatory action against operators from a specific country, even if such a country is under sanctions.

### 6.3. ACER opinion on ENTSOG's Summer Supply Outlook 2017 & Summer Review 2016

The Director reported that on 28 April ENTSOG published the Summer Supply Outlook in accordance with Article 8(3)(f) of Regulation 715/2009. The stated objective is to assess whether gas infrastructures will meet both demand and storage injection needs during Summer 2017.

Pursuant to Article 6(3)(b) of Regulation 713/2009 the Agency is required to issue an opinion on the Summer Supply Outlook (SSO Opinion). The draft SSO Opinion has been circulated to the Agency's Gas Working Group for comments.

The draft opinion essentially notes that ENTSOG's main findings and conclusions are in line with the declared objective, namely that the European gas network is sufficiently robust in most parts of Europe to handle gas demand and supply at adequate levels, and that existing systems are reliable and flexible. The Agency also draws stakeholders' attention to the importance of storing gas during the summer to ensure adequate volumes of gas in storage at the beginning of the winter season. The Agency notes that the modelling tool used by ENTSOG is the same as that used in the TYNDP and the Winter Supply Outlook, and reiterates its concerns regarding the quality and limitations of the gas modelling tool and the underlying model. The Agency, therefore, invites ENTSOG to improve, without delay, its model, modelling methodology, and assumptions used for the production of the supply outlooks and, where applicable, for other purposes.

The BoR approved the favourable opinion on the Agency's Opinion by consensus of the members present or represented.

### 6.4. Update on ACER observations on ENTSOG's capacity conversion model

The Director referred to Article 21(3) of the CAM network code, which requires ENTSOG to develop a capacity conversion model by 1 October 2017, on the basis of which the TSOs will offer capacity conversion services as of 1 January 2018. ENTSOG must develop the capacity conversion model in consultation with stakeholders and the Agency.

ENTSOG's capacity conversion model was discussed in the CAM TF of 12 June, following which the Agency put together a number of comments to be annexed to a letter for the attention of ENTSOG. ACER's main comments were the following:

- i. A harmonized Conversion Model is missing. The Agency recommended that the same conversion model be applied at least per entry-exit zone border, should several Interconnection Points connect the respective entry-exit zones.
- ii. The Agency noted that the current model contains potential limitations concerning the date of conclusion of the contract for unbundled capacity. The Agency is of the view that a model without limitations for annual, quarterly and monthly products is necessary.
- iii. The document lacks examples of applied discounts and their calculation methods. The Conversion Model should prescribe them.
- iv. The Agency queried how Booking Platforms might facilitate the implementation of the service and whether this could be done free of charge.
- v. The Agency recommended that ENTSOG provide a summary table on the capacity conversion services that are applied at national level, as a second best option to a fully harmonised model across the European Union. Such a table is expected to contain links to the detailed national rules on the TSOs' websites.

ENTSOG has assessed ACER's comments and revised the conversion model, which will be published this month.

#### 6.5. Italian legislation on the "Liquidity Corridor": presentation by AEEGSI and initial reactions

Ms Poletti presented a measure proposed by the Italian government in its draft "National Energy Strategy 2017" and known as the "Liquidity Corridor." There is an ongoing consultation, which closes on 31 August, and AEEGSI will publish its observations in early September. AEEGSI does not yet have an official position, and EU regulators' views are welcome.

The aim of the measure is to achieve full integration of the Italian hub with the most competitive and liquid EU markets and to enhance security of supply. It is expected to resolve inefficient price spread between the Italian virtual trading point PSV and other northern EU liquid gas and provide a solution for non-harmonised energy regulatory framework with Switzerland, which is a barrier to integration. Tariffs pancaking distorts (i) competition and trading by increasing wholesale price differentials, and (ii) the utilisation rate of existing infrastructures. According to the Agency data, current hubs price convergence may be linked to long-term contracting surpluses, and new players have no or little economic incentive to acquire new physical capacity to engage in price arbitrage between hubs because short-term capacity costs wouldn't compensate the low profitability of negligible spreads.

AEEGSI presented its preliminary observations: a high price spread is a problem, and the proposal may contribute to its reduction. AEEGSI is in the process of analysing compliance of the proposal with EU network codes, but does not expect any problem as the Liquidity Corridor will mainly use secondary capacity.

The Chair welcomed AEEGSI's initiative to seek other members' reactions, but sought clarification as to how their views would feed into the national consultation process. Ms Poletti answered that AEEGSI



could include a statement such that the measure has caught the attention of many regulators; however, it is not AEEGSI's role to address members' comments as it is a government proposal.

Members noted the implications beyond neighbouring countries and supported the idea of a collective analysis and response and had some concerns.

The Director thanked AEEGSI for the presentation and noted that there are many issues with the mechanism: in particular, the fact that a route is subsidised creates issues. The aim of reducing prices may be legitimate, but subsidies are not the solution. The Director reserves his judgment pending further analysis by the Agency. The Agency does not participate in national consultations, especially where they are run by governments; instead it will address the issues via its market monitoring activity. It is also for the EC to address any competition issues directly with the Italian government.

The EC also thanked AEEGSI for additional clarification despite limited data being available at this point. The EC is in contact with the Italian ministry and is aware that the Corridor is part of a larger package aimed at promoting competitive prices in Italy. The EC is always in favour of market approaches wherever possible, and on the basis of a preliminary analysis has concerns about a regulated entity being at the centre of a mechanism which undermines the market and competition. This could have "boomerang effects" which are particularly damaging. Therefore, the EC shares some of the concerns expressed today. The EC is following this closely with the Italian ministry. Mr Addis sought clarification on what role AEEGSI might be asked to play if the measure were to be adopted.

It was agreed that the CEER Gas Working Group would put together a response with an interrogative tone, seeking clarification on the proposal, taking the costs/benefits to consumers as a starting point and also analysing the state aid issue. The response should be submitted through CEER and not ACER.

#### 6.6. Resignation of the AGWG Chair and BoR recommendation for the appointment of his successor

Mr Santos thanked the Agency's Gas Working Group members and the BoR on behalf of Mr Trindade for their support.

Following Mr Trindade's resignation, the position of Gas Working Group Chair is vacant. The BoR Chair outlined the process whereby the BoR must recommend a candidate to the Director. He suggested making a recommendation to the Director for the new Gas Working Group Chair after the election of the new BoR Chair scheduled for September. The Director agreed with this timing and noted that, in any case, the Vice-Chair will continue to run the Gas Working Group in the interim period.