

71st ACER Board of Regulators Meeting
Wednesday, 13 December 2017, 09.00 – 16.00
CEER offices, Cours Saint-Michel 30a, 1040 Bruxelles

Minutes (Final)

| Member States | Name ^[1] | Member States | Name |
|----------------------|---|------------------------|---|
| Austria (E-Control) | M: Wolfgang Urbantschitsch | 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) | O: Svetla Todorova | Lithuania (NCC) | O: Irma Vasarytė (telco) Represented by Ireland |
| Croatia (HERA) | M: Tomislav Jureković A: Sonja Tomašić Škevin, | Luxemburg (ILR) | M: Camille Hierzig |
| Cyprus (CERA) | A: Alkis Philippou | Malta (REWS) | A: Phyllis Micallef |
| Czech Republic (ERO) | A: Martin Sik O: Kateřina Firlová | Netherlands (ACM) | A: Remko Bos O: Maarten Klijn |
| Denmark (DERA) | A: Mads Lyndrup | Poland (URE) | A: Małgorzata Kozak |
| Estonia (ECA) | | Portugal (ERSE) | O: Natalie McCoy |
| Finland (EV) | M: Simo Nurmi | Romania (ANRE) | O: Florin Tobescu |
| France (CRE) | A: Hélène Gassin O: Michaël Mastier O: Aude Le Tellier O: Rébecca Radereau | Slovakia (RONI) | |
| Germany (BNetzA) | M: Annegret Groebel | Slovenia (AGEN-RS) | A: Bojan Kuzmič |
| Greece (RAE) | M: Sotirios Manolkidis (telco) | Spain (CNMC) | M: Fernando Hernández O: Gema Rico |
| Hungary (HEA) | O: Adam Krinszki (telco) | Sweden (Ei) | M: Anne Vadasz Nilsson |
| Ireland (CER) | M: Garrett Blaney (BoR Chair) O: Paul McGowan O: Seamus Byrne | United Kingdom (Ofgem) | M: Mark Copley |

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

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| ACER | Alberto Pototschnig, Volker Zuleger, Martin Godfried, Tomaz Vižintin, Fay Geitona, Sander Ramp |
| European Commission | Florian Ermacora, Michael Schuetz |
| CEER | Andrew Ebrill |

Draft MEETING CONCLUSIONS SUMMARY - 71st BoR, 13 December 2017

1. *The minutes from the 70th BoR meeting were approved, as was the agenda for the 71st meeting. No conflict of interest was declared by the participants.*
2. *The Director alerted the members about the revised 2018 BoR meetings calendar. The Agency has to make cuts with regard to the budget for the BoR reimbursements (as last year) given the definitive ACER budget as agreed is well below the budget adopted by the AB. Thus the revised calendar envisages only two meetings to take place in Ljubljana (March and September) and the rest of the meetings are scheduled for Brussels (Sofia and Madrid). It was also suggested to consider the possibility to reduce by one the number of BoR meetings scheduled in the second half of 2018.*
3. *The Director reported on the presentation of the 6th Market Monitoring Report at the European Parliament's ITRE Committee, which took place on 28 November in Brussels.*
4. *The BoR was informed about the Director's decisions on the appointment of Ms Groebel and Mr Lakhoua as co-chairs of the AMIT WG, and Ms Poletti as AGWG Chair*
5. *The Director reported that on 25 October a Decision was adopted on allowing the Energy Regulatory Authority of the Republic of Montenegro, ('RAE Montenegro') to participate, as an observer, in the Agency's Gas and Electricity Working Groups, subject to certain conditions and an administrative arrangement, which was signed on 6 December.*
6. *The EC informed the BoR members on the negotiations relating to the EC legislative proposals of the "Clean Energy for all Europeans" package. The Energy Council to be held on 18 December will discuss the Council's position I("General Approach") on the Electricity Directive and Regulation recasts (not yet the ACER Regulation recast); the ACER Regulation recast will be discussed in early 2018, also in order to take into account the Council positions on the Electricity Directive and Regulation. He also reported on the key issues under discussion including: decarbonisation and capacity mechanisms; the EU generation adequacy assessment and whether this would be the definitive (or rather an advisory) instrument for assessing the need for capacity mechanisms; the bidding zone review process and the role of the different bodies (including the role of the EC); the debate on the Regional Security Coordinators; issues related to the ACER competences and governance, and the overall approach on issues to be addressed by Network Codes and Guidelines.*
7. *The Director informed the BoR members on the last Network Code Implementation Group (NC IMG), which took place on 29 November. Key discussions included the data provision through the transparency platform as the default tool; some progress on the relevant discussions with ENTSO-E; the revision of the ACER Guidance on codes amendment process for next year etc. The conclusions of the meeting were circulated and they will henceforth be published.*
8. *The BoR Chair briefed the members on the ENTSO-E Conference which was held on 5 & 6 December where he provided a keynote speech on the topic: "What The Future Holds: Climate, Power Networks, and Energy Union".*

9. *The Chair presented some preliminary ideas and planning with regard to the next BoR Summit. This is foreseen for 13 March 2018 and it was proposed that the practical arrangements for participation would replicate those of the first summit bringing together the BoR members, the ACER Director and the HoDs. The objective is to launch the brainstorming on the future challenges and possibly reviewing the Bridge but not with regard to the governance aspects. The future challenges would be considered against an evolving IEM framework which is radically changing as a result of the EC proposals on the CEP as well as the discussion on the future role of gas and the anticipated gas market design proposals by the EC expected in 2020: The Chair presented tentatively some areas for discussion which focus on: removing RES support; regulating networks with falling demand; regulating data; the role of the regulator, the role of incentives; how much harmonisation versus diversity. Members provided feedback on the event and the areas. The BoR agreed to hold an informal orientation brainstorming discussion on future IEM challenges, in the margins of the March BoR, ahead of a formal Summit to be postponed for later on in the year, which would benefit from more clarity on the CEP framework and the presence of the new Director who is expected to take office in mid-September.*
10. *The BoR Chair presented some ideas to reorganise the BoR meetings' agendas in order to increase efficiency and to allow sufficient time for more substantive and strategic discussions. Members provided feedback on the basis of which the format of the agenda will be adapted.*
11. *The Director informed the BoR that an extensive review of the 2018 Work Programme will be submitted for approval at the January meeting, in order to align it with the definitive budget as agreed by the Budgetary Authority which reflects the EC proposal approximately 6 million less than the budget as adopted by the AB. At this stage, ACER is looking into adapting its activities according to the budget available. Activities must be prioritised even if they fall within ACER's legal mandate. Areas such as the implementation of codes and REMIT are key areas but activities under those areas will be affected. The Chair noted that this is very disappointing and raised the implications for NRAs' resources. Members were also very much concerned with regard to the implications of budget constraints on market monitoring in the context of REMIT*
12. *The Director also presented the draft Single Programming Document (SPD)2019 -2021 / Work Programme 2019 to the BoR and the relevant resources allocated. The Agency has to submit the draft Programming Document to the Institutions by 31 January 2018.*
13. *Members provided feedback. Members suggested a round of comments before the endorsement of the Single Programming Document. Comments to the Single Programming Document must be submitted within one week; following which the SPD 2019-2021 will be submitted for BoR endorsement through a single round of electronic procedure scheduled for early January; subsequently the 2019 SPD will be submitted to the AB for endorsement.*
14. *The Chair updated the members on the process for the selection of the next ACER Director setting out the scope of the BoR's technical involvement and the process. The BoR agreed the procedural arrangements as set out in the note circulated.*
15. *The Director reported on his Decision on the establishment of LEN. Applications for NRA experts to be nominated as co-Coordinator were opened on 7 until 12 December and one candidate applied, Mr Sik. The BoR Chair nominated Mr Sik, for that position. The Director informed the BoR that he would soon write to the members inviting applications of NRAs' legal experts for LEN membership.*
16. *Mr Zuleger provided an update on REMIT implementation and operation and, in particular, with regard to ARIS (key figures, change of the outsourcing strategy, the public consultation on changes to electronic formats, and REMIT policy topics to be tackled in coordination with NRAs), data sharing, and other remaining activities. The AMIT WG co-chairs also informed the members about the latest discussions.*
17. *Ms Groebel presented the 3rd edition of the Market Monitoring Handbook (MMH) on the application of REMIT which was endorsed by the BoR. The MMH aims to ensure coordination and consistency in the investigations of potential REMIT breaches. It identifies the roles of each of the entities with wholesale energy market monitoring responsibilities (ACER, NRAs, PPATs), and provides guidance on case handling processes comprising interactions between those entities and defines the principles for efficient cooperation between ACER and the NRAs on REMIT breach cases.*

18. *Mr Zuleger presented the Agency's foreseen work on the review of the REMIT operations and rulebook in the light of limited resources and the definitive budget. The aim for 2018 is to focus on: the review of the 4th edition of ACER Guidance with a focus on transparency issues (disclosure of inside information); the review of the Agency's REMIT Reporting User Package but with some downsizing of activities or postponement due to resource reasons. He also reported that in the context of the inter-institutional negotiations on the recast of the ACER Regulation, the Council and the European Parliament discuss the possibility to raise fees for the registration of reporting parties which would alleviate a lot the resources constraints of ACER given the numbers of reporting parties registered.*
19. *Mr Zuleger presented the Conclusion paper on the shared common understanding of Article 17(4) of REMIT for an orientation discussion. This focuses on the reception, exchange and transmission of REMIT information between NRAs and other authorities, bodies or persons at national level on an ad-hoc basis. Some members raised the need of developing a process for data sharing with the Financial Authorities (under Article 10). Mr Zuleger explained that this has been postponed due to resource constraints but members will have the opportunity to reconsider this in the context the 2018 annual ACER WP review at the January BoR.*
20. *Mr Godfried informed the BoR members about the surveillance workshop that took place on 6 and 7 December (19 NRAs participated) and the technical documents the Agency has made available detailing the alerts and logistics in view of the alerts dissemination to NRAs through the case management tool in January.*
21. *Mr Godfried and Mr Vizintin presented the "Alert Dashboard", which is an overview of alerts triggered by the SMARTS surveillance platform for a specified time interval. In June the members will receive an update.*
22. *Mr Hernandez updated the BoR members on the network codes implementation. He referred to the latest proposals by NEMOs under consideration by all NRAs which have been submitted with a delay of one month. This is an important issue as it affects the deadlines for the all NRAs decisions. The intraday cross-zonal gate times methodology was referred to ACER and a consultation will be open in January. The Decision is expected in March and he explained the key issues. The intraday capacity pricing decision is due by mid-February by which time this will either be transferred to ACER or "all NRAs" shall request an amendment. He also mentioned that the new Guideline on System Operation provides new implementation decisions by all NRAs.*
23. *The Director presented the ACER Decision on the Congestion Income Distribution Methodology and the key issues. The Decision needs to be adopted by 14 December 2017. The Agency considers the proposal in line with the requirements of the CACM Regulation, subject to the amendments presented in Annex I to the draft Decision. The ACER Decision on the Congestion Income Distribution Methodology was given the favourable opinion of the BoR (by majority of the members present or represented) with a dissenting opinion of CREG; URE abstained.*
24. *The Director presented the ACER Opinion on ENTSO-E's Work Programme 2018. The Agency considers the Work Programme as well focused and in line with the requirements of the Regulations. Two specific remarks are provided in the Opinion, with regard to infrastructure grid development and regional security coordinators. The ACER Opinion on ENTSO-E's Work Programme 2018 was given the favourable opinion of the BoR (by consensus of the members present or represented).*

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| <p>25. <i>The Director presented the issue of language waivers for ACER Decisions. The process to collect language waivers from all TSOs in respect of ACER decisions is very burdensome and often practically impossible given the tight deadlines to prepare such decisions. At the last IMG NC meeting on 29 November, a pragmatic approach to address this issue was discussed. The proposed approach relies on ENTSO-E to collect the TSOs waivers early in the process in time for issuing the Agency's decision. However, if a TSO or a NRA could not agree to the provision of a language waiver, they should commit that the translation of the relevant Agency's decision in their own language is carried out by the NRA or by TSO within the relevant deadline for the publication of the decision. Several members raised strong concerns about the proposed approach given their obligation to have such decisions translated in their own national languages as well as the legal obligation of ACER to translate officially such decisions. Other members raised that, notwithstanding those concerns, the obligation to translate such ACER decisions could be extremely detrimental in terms of timing and the costs and thus pointed to a pragmatic approach. The Director reiterated that although the safest option in legal terms would be the translation of the ACER Decisions in all languages, language waivers represent perhaps the most pragmatic option to address this problem. He will also raise this issue with the AB seeking its steer. It was also suggested that the legal implications of this issue would be considered by the LEN which is now established.</i></p> |
| <p>26. <i>The Director presented the ACER Inter-Transmission System Operator Compensation (ITC) Monitoring Report for information. The Agency concludes that the implementation of the ITC mechanism and the management of the ITC Fund in 2016 continues to be in line with the requirements set out in the Regulation. The BoR took note.</i></p> |
| <p>27. <i>The Director informed the members that the Agency received an extension request from the Italian and Greek regulatory authorities with regard to the proposal for Complementary Regional Intraday Auctions (CRIDA) (submitted by TSOs and NEMOs of IT and GR). The proposal is tightly interlinked with and/or dependent upon other methodologies, whose approval is still pending at EU or regional level (notably IDCZGTs, cross zonal capacity pricing, and Common Capacity Calculation Methodologies). Given the regional dimension of the CRIDA proposal, the concerned regulatory authorities deem it important to obtain more information about the development of the above-mentioned pending methodologies before issuing a decision about the CRIDA proposal. Therefore, the concerned regulatory authorities request ACER to provide a six-month extension (starting on 9 December) for their decision pursuant to Article 8(1) of the ACER Regulation. The Agency's decision on the extension request will seek the BoR opinion through a short single round electronic procedure before Christmas. The BoR agreed to the use of the single round electronic procedure on that and on a similar decision expected for the Italian Northern border region.</i></p> |
| <p>28. <i>Ms Poletti provided an update on the ongoing work of the Agency's Gas Working Group (AGWG). An interoperability network code issue was reported through the FUNC platform with regard to an obligation under Article 23. On 22 November the third joint ACER ENTSSOG workshop on balancing was held.</i></p> |
| <p>29. <i>Mr Urbantschitsch provided an update on the explosion at Baumgarten gas hub on 12 December 2017. The exact cause was unclear, but most probably a technical fault. Gas flows were interrupted and there were immediate consequences especially for flows to Italy. A state of emergency was declared. In the evening it became clear that no adjustment of flow schedules would be necessary. After about 14 hours, Baumgarten was back to handling 100% of gas flows. No more reduction of gas flows has been witnessed since this morning.</i></p> |
| <p>30. <i>The ACER Opinion on ENTSSOG's Winter Supply Outlook 2017/2018 was given the favourable opinion of the BoR (by consensus of the members present or represented).</i></p> |
| <p>31. <i>The BoR members were informed about the practical arrangements circulated by the host with regard to the organisation of the next BoR meeting in Sofia in January.</i></p> |

Part A: Items for discussion and/or decision

1. Opening

1.1. Approval of the agenda

BoR Decision agreed: (D 1)

The agenda was approved.

1.2. Approval of the minutes of the 70th BoR meeting

BoR Decision agreed: (D 2)

The minutes of the 70th BoR were approved.

2. Update from the Commission, the Director, and the BoR Chair

2.1. Update on recent developments

- ACER

➤ Report on the ITRE MMR presentation 28 Nov

The Director reported on the MMR presentation at the ITRE committee on 28 November. There was a good turnout and some very interesting questions were posed by MEPs. At the end of this session, MEP Petersen reported on the ITRE delegation visit in Ljubljana (in September) with extremely complimentary remarks referring to the success of ACER in delivering its work and the high expertise, commitment and enthusiasm of its staff.

➤ Appointment of the AMIT WG and AGWG chairs

The Director reported on his decision on the appointments of Ms Groebel and Mr Lakhoua as co-chairs of the AMIT WG, and Ms Poletti as AGWG Chair.

The Director also reported that on 25 October a Decision was adopted on allowing the Energy Regulatory Authority of the Republic of Montenegro, ('RAE Montenegro') to participate, as an observer, in the Agency's Gas and Electricity Working Groups, subject to certain conditions and an administrative arrangement, which was signed on 6 December.

- EC

➤ Update on Clean Energy Package proposals

Mr Ermacora on behalf of the EC provided an update on the negotiations of the "Clean Energy for all Europeans" proposals. The Energy Council to be held on 18 December will discuss the Council's position ("General Approach") on the Electricity Directive and Regulation recasts (not yet the ACER Regulation recast which will be considered in early 2018, also in order to take into account the Council's position on the Electricity Directive and Regulation. He also reported on the key issues under discussion. The ITRE vote on the ACER Regulation recast has been postponed to February.

- BoR Chair

➤ Report on the ENTSO-E Conference 5&6 Dec

Mr Blaney reported on the ENTSO-E Annual Conference opening the session “What The Future Holds: Climate, Power Networks, and Energy Union”.

➤ BoR Summit March 2018

The Chair presented some preliminary ideas and planning with regard to the next BoR Summit. This is foreseen for 13 March 2018. It is proposed that the practical arrangements for participation would replicate those of the first summit bringing together the members, the Director and the ACER Heads of Department. The objective is to launch the brainstorming on the future challenges and possibly reviewing the Bridge (but not with regard to the governance aspects). He referred to the evolving IEM framework, which is radically changing as a result of the EC proposals on the CEP as well as the discussion on the future role of gas and the anticipated gas market design proposals by the EC in 2020.

The Chair presented tentatively some areas for discussion.

Mr Ermacora found this initiative extremely interesting and timely given the negotiations on the Clean Energy Package (CEP) are expected to have advanced in the first half of 2018 (with the ITRE vote scheduled for February). In addition, he referred to the EC forthcoming Communication on the energy and climate issues that need to be addressed by 2025. The implementation of this Communication might be a project for the new Commission. A strategic discussion could start in March, but certainly it will not be the end. Especially those issues are interesting to the Commission: decarbonisation and its impact on long-term investments; digitalisation trends with impacts on consumers Equally interesting are a number of issues related to the development of electricity storage: the idea of sector coupling; will gas have some role in the storage of electricity?

Members provided feedback on the areas presented and the timing of the event suggesting to postponing it for until after the discussions on the CEP are more crystallised.

The BoR Chair in response suggested using the time scheduled for March for an informal, orientation discussion. There is a question of giving also a direction to the AWGs. We can come back after the summer to crystallise our thoughts in a formal Summit. He sees it as extremely useful that regulators are discussing those issues since they have the technical knowledge to contribute to that debate.

The BoR agreed to hold an informal orientation brainstorming discussion on future IEM challenges, in the margins of the March BoR, ahead of a formal Summit to be postponed for later on in the year, which would benefit from more clarity on the CEP framework and the presence of the new Director who is expected to take office in mid-September.

➤ Update on last NC IMG meeting

The NC IMG took place on 29 November and the Director reported on the discussions on data provision and the transparency platform which would be the default platform for that and the good positive meeting with ENTSO-E on the drop of the proportionality issue. On ENTSG transparency platform, the weaknesses on the missing data and quality concerns were also discussed. All participants agreed to explore more fully efficient ways to manage data and perhaps having efficiency indicators. The Group also agreed that there was no intention to amend the NC RfG. The ACER Guidance on the amendments process will be reviewed the second half of 2018; the Director had proposed to be pursued as a non-binding guidance of the NC IMG Group; this has not yet been definitively decided but will be reconsidered

at the next meeting. Short conclusions of the IMC NC will henceforth be published and have been uploaded to the BoR meeting folder. Three meetings of the NC IMG are scheduled for next year.

➤ Organisation of BoR meetings

The BoR Chair presented a note on restructuring the agenda for the BoR meetings, in order to increase efficiency and to allow sufficient time for more substantive and strategic discussions at the BoR.

On the basis of the feedback from the members, the BoR meetings' agenda will be adapted with a view to increasing efficiency.

3. Cross-sectoral

3.1. Single Programming Document: Work Programme 2019 -2021

The Director informed the BoR that an extensive review of the 2018 work programme will be submitted for approval at the January meeting, in order to align it with the definitive budget as agreed by the Budgetary Authority which reflects the EC proposal (which is approximately 6 million less than the budget adopted by the AB). At this stage, ACER is looking into adapting its activities according to the budget available. Activities must be prioritised (not all of the ACER opinions are of the same value) and some must be postponed even if they fall within ACER's legal mandate. Areas such as the implementation of network codes and REMIT are priority areas but activities under those areas will also be affected. ACER asked for 2.8 million for REMIT but the budget for next year only allows for 1.5 million. The SMARTS licence will currently run until June and then it would stop. In the last few days we have identified savings in other areas of the Agency and we can use them to pay for the licences until the end of next year; but we are at a very precarious state. We might not be able to afford the costs of providing hosting for the use of SMARTS by NRAs anymore. Therefore, as two NRAs have sublicensed SMARTS, ACER might need to invite them to support some of the costs.

In light of the budget cuts for 2018, only two meetings are scheduled in Ljubljana (instead of four).

Mr Blaney noted that the final allocated budget is very disappointing and he raised the implications for NRAs' resources. He commented that it is a pity that the EC is keen on a strong ACER without it being matched by adequate resources. The budget of ACER is minimal when compared to the benefits for the consumers. Members were also very much concerned with regard to the implications of budget constraints on market monitoring in the context of REMIT and suggested developing a strategy to alleviate those.

Mr Ermacora recognised that ACER needs adequate resources.

The Director noted that despite the EP efforts and support he wrote twice to the Estonian Presidency but did not manage to bring this issue to the attention of the Council's EWP. We are still bound by 2013 paper on functioning of the decentralised agencies which results in less money for next year. He stressed that it is necessary to influence the next Multiannual Financial Framework.

The Director then presented the ACER draft Programming Document (PD) 2019-2021 which has to be submitted to the Institutions by 31 January 2018. The draft multiannual section and the Strategic Outlook for 2019 have been updated providing an indicative overview of the Agency's human resources (35 additional resources) and budgetary needs in 2019. Over the next years the Agency will focus its activities

at least on the following four main areas, which will already guide the Agency's work this and the next year: The Completion of the Internal Energy Market and the monitoring of its functioning; the infrastructure challenge; the monitoring of wholesale energy markets; and longer term challenges depending on the available resources. Section III includes the 2019 Annual Work Programme for which the Agency has clustered its tasks and deliverables according to the following three priority levels. Priority level 1 – Critical – Activities/tasks that must be performed/executed under any circumstance. Priority level 2 – Important – Activities/tasks that could be postponed, reduced in scope or de-scoped with only limited repercussion on the Internal Energy Market. Priority level 3 – Relevant – Activities/tasks that the Agency could usefully perform, provided adequate resources were made available.

The PD also includes some deliverables expected under the CEP which are evidently subject to its adoption and tasks resulting from the Regulation (EU) No 2017/0327 concerning measures to safeguard the security of gas supply which applies from 1 November 2017.

Members provided feedback noting the need to avoid conveying that new areas could be explored at the same time when resources are constrained and activities are abandoned particularly given that those fall within ACER's legal mandate. Members suggested having a round of comments before the endorsement of the Single Programming Document.

The Director thanked for the feedback. He explained that as with all previous years the 2019-2021 Single Programming Document lists all activities and work ACER would be doing on the basis of the budget proposed. With regard to REMIT, ACER cannot find the amount which is missing out of "efficiency gains". Indeed, it would be most unfortunate if we were to compromise REMIT operations and we try at his stage to postpone everything not essential to 2019.

The Director invited comments to be submitted within one week, following which the SPD 2019-2021 will be submitted for BoR endorsement through a single round of electronic procedure scheduled for January.

3.2. Next steps and arrangements for the BoR's technical advice to the AB for the selection process of the Director

The BoR Chair presented the proposed practical arrangements. The members agreed on the practical arrangements as presented in the distributed note.

3.3. Establishment of LEN and nomination for the position of LEN NRA co-coordinator

The Director informed about his Decision on the establishment of the LEN. The Director is confident that the rules provide a good basis for the LEN operations. We must now define how NRA experts would apply. The Director will be shortly inviting applications for membership at the LEN. The first issue to be considered is the terms and methodologies applicable to certain jurisdictions and the impact on the all NRAs decisions and the ACER decisions and the respective BoR deliberation process.

The Chair informed the BoR that applications for the NRA expert to be nominated as co-Coordinator were opened on 7/12 until 12 December. The nomination by the BoR Chair will be Mr Sik.

Some clarifications were provided on the role of the single point of contact.

4. Market Integrity and Transparency

4.1. REMIT implementation and operation

Mr Zuleger provided a presentation on REMIT implementation and operation.

With regard to ACER's REMIT Information System (ARIS), data collection and data sharing are stable. The market surveillance solution SMARTS is work in progress. Two NRAs (Ofgem and Ei) have sublicensed SMARTS. 12,786 market participants have been registered so far in the European Register of Market Participants. The number of market participants for which data has been reported is 12,211. There are 117 approved Registered Reporting Mechanisms (RRMs). The number of records of transactions, including orders to trade, reported is around 1.5 million records of transactions, including orders to trade, per day in 2017. Data quality improvements are in progress.

A new Framework Contract for System Integrator Services and IT Consultancy will be signed by the end of 2017/early in 2018 to transition from the current programme management/IT service model to a REMIT information management model in 2018. This provides an opportunity to revisit the outsourcing strategy. Currently there are five contractors with subcontractors. Mr Zuleger mentioned that ideally more operational aspects would be outsourced so that the Agency has more resources available for the analysis of data. However, this discussion is closely related to the discussions on the budget. In addition, a negotiated procedure to extend the current use of the Agency's market surveillance solution beyond summer 2018 is soon to be finalised.

An update on ongoing activities was also provided. There will be continued frequent updates of Q&As and FAQs (currently on an ad hoc basis) on which the awareness of stakeholders should be improved. There will be regular webinars for RRM and ENTSOs as well as roundtable meetings for Associations of Energy Market Participants (AEMPs). The Agency is looking into setting up and operating the tools and systems to support the data quality assurance process. Data completeness and accuracy checks are continuously worked on. The next Market Data Reporting Standing Committee meeting is in Q1 2018. Improvement of the REMIT portal is worked on. The documentation section has been implemented and additional improvements are planned. There was a public consultation (PC) on the revision to electronic formats currently used for the reporting of transaction data, fundamental data and inside information which ended on 8 December.

Policy topics ACER would like to tackle in close cooperation with NRAs are; the usage of inside information platforms (IIP), the Financial Market Regulation, and classification of new projects in the wholesale energy market (given that a number of companies are starting to offer certain services in the wholesale energy market using new technology (e.g. blockchain).

Regarding data sharing improvements are visible. Increased amounts of data are received. A challenge is the time it takes to implement the necessary IT structure at NRAs. The Agency will also look into how to facilitate NRAs working with the data.

An update was also provided on the remaining REMIT implementation activities. The completion of these activities depends on the available budget. Some activities will be postponed to 2019.

Ms Groebel added that it is necessary to show that scarce resources need to be used as efficiently as possible. NRAs are also resource-constrained. Ms Groebel expressed hope that the workload can be

managed through efficiency gains and reshuffling existing funds. Mr Lakhoua supported the comments by Ms Groebel.

4.2. Market Monitoring Handbook (3rd edition)

Ms Groebel presented the third edition of the Market Monitoring Handbook (MMH) on the application of REMIT, which is submitted to the BoR for endorsement. It aims to ensure coordination and consistency in the investigations of potential REMIT breaches. It identifies the roles of each of the entities with wholesale energy market monitoring responsibilities (ACER, NRAs, PPATs), and provides guidance on case handling processes comprising interactions between those entities and defines the principles for efficient cooperation between ACER and the NRAs on REMIT breach cases. The MMH is composed of two parts:

- PART I: Market surveillance (general principles of market surveillance; regional market surveillance and communications strategy).
- Part II: Case handling and coordination process organisations, cases with cross border elements; communication and coordination strategy; confidentiality; external communication plan).

Compared to the previous editions of the MMH, Chapter 6 in particular was updated. Furthermore, the Case Management Tool (CMT) has been introduced. This part was contributed to by the Agency. This tool is managed and operated by ACER. The MMH now provides updates on different operational issues on how NRAs use the CMT. There is also a discussion about the role of NRAs and which information should be provided with regard to investigations. The level of detail is restricted by national administrative rules.

Mr Lakhoua added that now the fundamentals have been updated (concrete data, concrete surveillance) the AWG can start thinking on the practicalities of the cooperation between ACER and NRAs in the more operational phase.

The members endorsed the Market Monitoring Handbook.

4.3. Review of the REMIT operations and rulebook

Mr Zuleger provided an update on the review of the REMIT operations and rulebook. In line with the Agency's Work Programme 2017, the Agency will undertake a review of the REMIT operations and rulebook in the light of the experience with data collection during 2016. Due to a lack of resources, in 2017, the Agency performed a limited review of the REMIT operations and rulebook, focusing mainly on improving data quality. In the context of the discussions of the recast of the ACER Regulation the Council and the European Parliament, consider giving ACER the possibility to raise fees for the registration of reporting parties. If fees are raised from reporting parties this could provide the needed budget. Moreover, for the budget needed, only 250 euro per market participant would need to be raised. In that case SMARTS could even be provided cost-free to NRAs. According to DG ENER, currently there are no plans to update REMIT and/or the REMIT Implementing Regulation although there may be scope for the consideration of modifications (e.g. updating of market abuse definitions in the light of the new Market Abuse Regulation etc.). Furthermore, the review of the 4th edition of ACER Guidance is envisaged in 2018 in the AMIT WG with a focus on transparency issues (disclosure of inside information). The review of the Agency's REMIT Reporting User Package was also envisaged in 2018 (e.g. review of the market

participant registration form, review of the XML schemas further to advance data quality), but again, some activities need to be down-sized or postponed for resource reasons.

4.4. Conclusion paper on the shared common understanding of Article 17(4) of REMIT

Mr Zuleger presented to the BoR the conclusion paper on the shared common understanding of Article 17(4) of REMIT, with the view of having an orientation debate.

Mr Zuleger explained that the REMIT Coordination Group discussed its understanding of Article 17(4) of REMIT during meetings over the past years and that it has been a difficult topic within the REMIT CG. There is a distinction between *ad-hoc* data sharing and continuous data sharing. The impact of potential leakage is very different between those two. The Group came to a common understanding on the general conditions of professional secrecy for the reception, exchange and transmission of confidential information laid down in Article 17(4) of REMIT. The conclusions paper circulated focuses on the reception, exchange and transmission of REMIT information between NRAs and other authorities, bodies or persons at national level on an ad hoc basis.

It was suggested that ACER establishes a practical procedure/mechanism for sharing the data with financial authorities as foreseen by Article 10 of REMIT.

Mr Zuleger pointed out that there are limited resources, but in case the BoR gives a clear steer to look into the issue, it can be prioritised. Mr Zuleger will take the issue back to the REMIT CG and discuss it further, while the BoR would have the opportunity to consider it at the discussions on the revision of the 2018 WP which will be held at the January BoR.

4.5. REMIT – Market Surveillance Strategy Governance - Alert Dashboard project

A presentation was provided by Mr Vižintin (Team leader - Market Surveillance Team I) on the “Alert Dashboard”, which is an overview of alerts triggered in SMARTS software for a specified time interval. It depicts surveillance process statistics. An alert is a set of conditions coded in the alert logic that define the trading behaviour. If these conditions are met, the alert is triggered.

Prior to the presentation, Mr Godfried explained that the presentation at the last BoR served as an introduction to the current one. All NRAs’ staff involved in the work has been briefed on all the details. The Dashboard project is a project that spins off from surveillance work. The presentation is based on the assumption that the same amount of resources will be available as this year.

The purpose of the Alert Dashboard is to inform BoR members on the statistics of alerts triggered to identify better surveillance priorities and resource allocation. In particular, to inform on surveillance work, surveillance coverage needs and to stimulate REMIT enforcement. The Alert Dashboard project will be updated on a regular basis and reports will be shared with the BoR. The BoR provided its feedback.

Mr Godfried indicated that a new update can be given in June. With regard to the next steps, all information has been shared up to this point. If there are any clarifying questions with regard to those next steps he invited NRAs to send them to the team.

5. Electricity

5.1. Update on NC implementation and other work

Mr Hernandez presented the ongoing work in the AEWG, specifically focusing on NC implementation. He referred to the latest NEMOs' proposals under consideration by all NRAs, which have been submitted with a delay of one month. This is an important issue as it affects the deadlines for the all NRAs decisions. The intraday cross-zonal gate times methodology was referred to ACER and a consultation will be open for January. The Decision is expected in March and he explained the key issues. The intraday capacity pricing decision is due by mid-February by which time this will either be transferred to ACER or all NRAs will request an amendment. He also mentioned that the new Guideline on System Operation provides new implementation decisions by all NRAs,

5.2. ACER Decision on the Congestion Income Distribution Methodology

The Director presented the ACER Decision on the Congestion Income Distribution Methodology and the key issues identified therein. The Decision provides that the Agency approves the proposal subject to the necessary amendments and editorial amendments. To provide clarity, Annex I to this Decision sets out the amended Proposal as approved, including the above-mentioned amendments. He then presented the key issues.

The Director also noted that this methodology will not come into play until the capacity calculation methodologies do. A number of concerns were raised to the last meeting, sometime pointing in different directions. The proposed decision provides a fair methodology.

Ms Gassin clarified that this decision was referred to ACER not because NRAs did not reach a common position but because the TSOs failed to reflect the requested amendments.

The Agency's Opinion was given the favourable opinion of the BoR (by consensus of the members present or represented), with a dissenting opinion of CREG. URE abstained.

5.3. ACER Opinion on ENTSO-E's Work Programme

The Director presented the Agency's Opinion on ENTSO-E's Work Programme. The Agency considers the Work Programme as well focused and in line with the requirements of the Regulations. Two specific remarks are provided in the Opinion, which the Director explained: On infrastructure grid development and on Regional Security Coordinators.

The Agency's Opinion was given the favourable opinion of the BoR (by consensus of the members present or represented).

5.4. Language waivers letters for ACER Decisions (cover not & letter)

The Director informed the BoR on the issue with regard to language waiver letters for ACER Decisions and presented a related note and letter that were circulated to the BoR. The process to collect language waivers from all TSOs in respect of ACER decisions is very burdensome and often practically impossible given the tight deadlines to prepare such decisions. The Director reminded that the Agency has already

received many Decisions and that it is impossible time-wise and because of budget considerations to translate these into all official languages. It is understandable that some jurisdictions will need version in the national language(s). This issue was also discussed at the last IMP NC meeting on 29 November which discussed a pragmatic approach on this issue.

The European Commission supported the views of the Director in trying to seek a pragmatic solution.

Several members raised strong concerns with the proposed approach given their obligation to have such decisions translated in their own national language as well as the legal obligation of ACER to translate officially such decisions.

Other members noted that, notwithstanding those concerns, the obligation to translate such ACER decisions could be extremely detrimental in terms of timing for the ACER decision and the costs and thus pointed to a pragmatic approach.

The Director indicated that the only fully safe solution would be to issue, by the deadline date, the decision in 24 official languages. In that case we would need to have the decision ready much earlier than the due time. Besides the time implications there are still the budget implications. The risk is much reduced by the language waiver which represents at this stage perhaps the most pragmatic option to address this problem. The decision would be on time, and the addressees have waived their right to receive the decision in their language but receive it in English instead. If some jurisdictions require a local version, how would this be organised? He would in this case be much more confident that the NRA can do such translations given the complexity of the texts. The Director will raise this with the AB to seek a steer.

The Chair concluded that we will come back on this issue next month.

It was suggested that it could be already the second issue for the LEN to look into, after the experts have been established in the group.

5.5. ACER Inter-Transmission System Operator Compensation (ITC) Monitoring Report

The Director presented the ACER Inter-Transmission System Operator Compensation (ITC) Monitoring Report for information. Pursuant to the Commission Regulation No 838/2010, the Agency is responsible, since 2012, for preparing a yearly monitoring report on the implementation of the Inter-Transmission System Operator Compensation ("ITC") mechanism and the management of the ITC Fund. The Agency has reviewed the implementation of the ITC mechanism and the management of the ITC fund in 2016 based on the ITC Agreement and its amendments, relevant data and information from ENTSO-E, NRAs' criteria for the valuation of transmission losses for the purpose of calculating the losses' compensation amount in the ITC mechanism. The Director explained that the Agency has concluded that the implementation of the ITC mechanism and the management of the ITC Fund in 2016 continues to be in line with the requirements set out in the Regulation.

5.6. Proposal for a regional auction – Request for 6 month extension – next steps

The Director informed the members that the Agency received an extension request from the Italian and Greek regulatory authorities with regard to the proposal for Complementary Regional Intraday Auctions (CRIDA) (submitted by TSOs and NEMOs of IT and GR). The proposal is tightly interlinked with and/or

dependent upon other methodologies, whose approval is still pending at EU or regional level (notably IDCZGTs, cross zonal capacity pricing, and Common Capacity Calculation Methodologies). Given the regional dimension of the CRIDA proposal, the concerned regulatory authorities deemed it important to obtain more information about the development of the above mentioned pending methodologies before issuing a decision about the CRIDA proposal. As a consequence, the concerned regulatory authorities request ACER to provide a six-month extension (starting on 9 December) for their decision pursuant to Article 8(1) of the ACER Regulation.

The Agency's decision on the extension request will seek the BoR opinion through a short single round electronic procedure before Christmas

Mr Cariello announced that it should be anticipated that an identical request will be sent to the Agency from the Italy Northern Region.

The BoR agreed to the use of the single round electronic procedure and also on a similar decision expected for the Italian Northern border region.

6. Gas

6.1. Update on NC implementation and other work (PPT)

Ms Poletti provided an oral update on the ongoing work of the Agency's Gas Working Group (AGWG). An interoperability network code issue was reported through the FUNC platform with regard to an obligation under Article 23. On 22 November the third joint ACER-ENTSOG workshop on balancing was held.

6.2. ACER Opinion on ENTSOG Winter Supply Outlook

The Director presented the ACER Opinion on ENTSOG's Winter Supply Outlook, which was submitted for the BoR's favourable opinion.

The Agency welcomes the Winter Supply Outlook 2017/2018 and is of the view that it meets the objectives of the Regulation. The Agency reiterates its view that a crucially important type of analysis is still missing from the Winter Supply Outlook, namely the analysis determining the required minimum level of gas supplies from each major supply corridor that cannot be substituted for by other gas flows due to the minimal flow requirements across routes needed to guarantee the flow dispatching capabilities of the networks.

Further, the Agency notes that it is essential that ENTSOG deliver a more comprehensive assessment, including both the network capability and the dispatching of physical gas flows to meet demand balance.

The Agency's Opinion was given the favourable opinion of the BoR (by consensus of the members present or represented).

Presentation on the explosion at Baumgarten gas hub on 12 December 2017.

Mr Urbantschitsch provided a brief presentation to the BoR on the incident which occurred at Baumgarten gas hub in Austria. Baumgarten gas hub is located in eastern Austria, close to the border with Slovakia.

The entry capacity is 8.5 million cubic meters per hour. The hub is linked to the Hungary-Austria line (connection with Hungary), the West-Austria line (connection with Germany), the Trans-Austria line (connection with Italy) and the South-East line (connection to Slovenia). The exact cause is still unclear, but was most probably linked to a technical fault. The gas flows were interrupted which had immediate consequences especially for flows to Italy, though flows went down in all transit lines. A state of emergency was declared. An emergency centre was set up in E-Control, setting up direct contacts with the Ministry and with stakeholders. After about 14 hours it was possible to resume 100% of the gas flows. There was no reduction of gas flows since the morning of 13 December.

The Chair thanked Mr Urbantschitsch for his presentation and indicated that it is useful for all NRAs to learn about such incidents and how to deal with those. As an initial take-away from this, Mr Urbantschitsch indicated that it is crucial to have clarity at all times on the roles of different stakeholders in emergency situations. A few months ago, E-Control had a training in this regard, and that experience helped them a lot in dealing with this emergency. It is also important to have clear communication lines ready with stakeholders and to be prepared for a surge in media attention.