

62nd ACER Board of Regulators Meeting
Wednesday, 14 December 2016, 09.00 – 16.00
ACER, Trg Republike 3, 1000 Ljubljana

Minutes (final)

Member States	Name ¹	Member States	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch A: Dietmar Preinstorfer	Italy (AEEGSI)	A: Clara Poletti O: Ilaria Galimberti
Belgium (CREG)	M: Marie-Pierre Fauconnier A: Koen Locquet O: Geert Van Hauwermeiren	Latvia (PUC)	O: Lija Makare
Bulgaria (EWRC)	O: Svetla Todorova	Lithuania (NCC)	O: Dalius Kontrimavičius
Croatia (HERA)	M: Tomislav Jureković A: Sonja Tomašić Škevin	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	A: Alkis Philippou	Malta (REWS)	A: Phyllis Mycallef
Czech Republic (ERO)	A: Martin Sik O: Kateřina Firlová	Netherlands (ACM)	A: Remko Bos O: Maarten Klijn
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	M: Maciej Bando A: Małgorzata Kozak
Estonia (ECA)	O: Tiina Maldre	Portugal (ERSE)	A: Artur Trindade
Finland (EV)	M: Simo Nurmi	Romania (ANRE)	O: Florin Tobescu
France (CRE)	O: Camille Hubac O: Amélie Gravier	Slovakia (RONI)	A: Natasa Hudcovicova
Germany (BNetzA)	A: Annegret Groebel	Slovenia (AGEN-RS)	M: Bojan Kuzmic O: Duška Godina
Greece (RAE)	O: Athina Tellidou	Spain (CNMC)	M: Fernando Hernández
Hungary (HEA)	A: Attila Nyikos O: Adam Krinszki	Sweden (Ei)	A: Caroline Tornqvist
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, Christophe Gence Creux, Dennis Hesseling, Martin Godfried, Fay Geitona, Sean Hennity
European Commission	Adriano Addis
CEER	Andrew Ebrill

MEETING CONCLUSIONS SUMMARY

1. *The minutes from the 61st BoR meeting were approved. As was the agenda for the 62nd meeting.*
2. *The ACER Director updated the BoR of the Agency's recent publications; the recommendation on the common capacity calculation and redispatching and countertrading cost-sharing methodologies, the report to the EC on the implementation of the Inter-Transmission System Operator Compensation mechanism, the ACER decision on TSOs proposals for Capacity Calculation Regions. He also informed the BoR of the recently appointment of the Board of Appeal Chairman, Mr Andris Piebalgs and Vice Chairman, Mr Jean-Yves Ollier.*
3. *The Director informed the BoR that ACER signed the Administrative Arrangement with the Energy Community Secretariat on working modalities in the areas of gas and electricity. According to this, staff of the Energy Community Secretariat will be allowed, inter alia, to attend, as observers, the meetings of the Agency's Electricity, Gas, and Implementation Monitoring and Procedures Working Groups, according to the conditions specified therein.*
4. *Mr Addis provided an update on the recently published EC's proposal the new energy market design "Clean Energy for all Europeans". The EC aims to launch explanatory discussions during the Presidency by Malta not least to raise awareness of the Institutions of the breadth of the package.*
5. *The 2017 September and December BoR meetings (initially scheduled to be held in Ljubljana) will be held in Brussels. A revised calendar will be circulated.*
6. *The Director presented the draft Programming Document (PD) 2018 – 2020 which comprises the updated draft multiannual section and the Strategic Outlook for 2018 along with the human and financial resources outlook for 2018-2020 and details of the Agency's Work Programme for 2018. In line with the new requirements of the Framework Financial Regulation, ACER must submit its draft Programming Document 2018 to the Institutions by 31 January 2017. In order to prioritise its activities, and to allocate resources accordingly, the Agency's tasks and deliverables have been clustered into three priority levels. The BoR had an orientation discussion. Members welcomed the new approach on prioritisation whilst some remarked that those need to be considered in the context of the specific legal obligations under the ACER Regulation. Members made detailed comments on the 2018 WP and, in particular, on the sections on risks. The EC will provide its feedback to the AB and provide suggestions on the allocation of resources in the specific areas of work. Following the BoR orientation discussion, in January, the 2018-2020 PD as well as the 2018 budget will be submitted for endorsement and a BoR opinion, respectively, through electronic procedure.*

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| <p>7. The BoR received an update on the revisions to the AWGs RoP by the Director. A meeting in AEEESGI, Rome, has been arranged on 11 January with the AWGs chairs. The Director intends to have a discussion with the view of reaching a common understanding, where possible, on the main goals and the role of the AWGs rather than having a drafting session; the feedback he received often reflects fundamental differences on the respective roles and responsibilities. The Director called for senior participation in the meeting. The Chair suggested that where AWG chairs cannot participate, the vice chairs would participate to allow all AWGs to be present. Confirmations of participation to be sent to the BoR Secretary.</p> |
| <p>8. Registration is now open for the joint ACER and CEER conference “towards the future-proofed EU energy market design” and have reached 235 participants. This event will be held on Monday 23 and 24 January 2017 in the Albert Borschette Congress Centre, Brussels and EC Vice President Šefčovič, the ITRE Chair J. Buzek and Mr D. Ristori have confirmed their participation.</p> |
| <p>9. Lord Mogg updated the BoR on the 2nd Policy Committee meeting discussions. In term of preparations of the joint reaction to the Winter Package the following strands which are interlinked will be undertaken in different timeframes: (a) Preparation of a “vision paper” with high level messages to serve as a response to the 8 weeks consultation period (under the Better Regulation new feedback process) and ahead of the joint conference; (b) a limited number of short punchy regulatory white papers by spring ;</p> |
| <p>10. Mr Hesseling provided an update on the ECRB meeting that took place on 6 December in Athens. He informed the BoR of the latest Energy Community developments. The BoR Chair will circulate a letter by the ECRB President requesting their participation (as observers) in the ERF. A position will be reached at the next ERF.</p> |
| <p>11. The term for both the AEWG Chair, Mr Hernandez, and AIMP Working Group chair, Mr Locquet, will end in February (they were appointed by Director’s Decision in February 2015). The call for nominations will be opened following the December BoR. The BoR Recommendation to the Director (in accordance with the AWGs RoP) will be formulated at the January BoR meeting.</p> |
| <p>12. The Director presented the latest update on the ongoing work on REMIT implementation and operation. He informed the BoR that as of 16 November 2016, there have been 2 departments under REMIT: Market Surveillance and Conduct Department (headed by Mr Godfried) and Market Integrity and Transparency Department (headed by Mr Zuleger). The Director and the AMIT WG Chair informed the BoR that there will be a new hosting provider; there has been a major problem with CEREMP, but the issue is now settled and for the time being the system is working smoothly.</p> |
| <p>13. The BoR endorsed the Market Surveillance Strategy document as a basis for ACER’s and NRAs’ market surveillance activities in 2017. The BoR supported the delivery of a governance section with the allocation of responsibilities and tasks for market surveillance between the Agency, NRAs and PPATs by June 2017, whilst 2 members would like to allow some flexibility on this allocation with the possibility to review it on the basis of the experience gained. This governance section will be reviewed after 6 months.</p> |
| <p>14. The Director informed the BoR of the Evaluation of Responses on the Public Consultation “Functioning and Usefulness of the European Register of Market Participants“. The document summarises the responses received to the consultation. On the basis of this discussion ACER will decide whether to update the registration format or to submit to the EC a report on the usefulness of the EU register.</p> |
| <p>15. The draft letter to ENTSO-E incorporating the proposal on the Agency’s data request under article 8.2 of the CACM guidelines was endorsed by the BoR (by consensus of all the members).</p> |

16. *The ACER Opinion on the ENTSO-E Work Programme was given the favourable opinion of the BoR (by consensus of all the members).*
17. *The AGWG Chair provided an update on the ongoing work of the AGWG. He informed the BoR of the Study on Quo vadis gas market regulatory framework and the preparation of the comments on the EC discussion papers and on the EIP Position Paper. He also requested NRAs to progress with the NRAs self-assessment on the GTM and provided an update on the balancing workshop which was held in November.*
18. *The ACER Opinion on the ENTSOG Winter Supply Outlook was given the favourable opinion of the BoR (by consensus of all the members).*
19. *The Director informed the BoR of the Evaluation of Responses to the ACER Call for Evidence on Congestion Indicators. The Agency and NRAs will continue their joint assessment and discussions on the issues raised in this document during the 1st quarter of 2017. Mr Hesselting reported that the next steps will need to be considered including the possibility of a proposal for an amendment of the Congestion Management Guidelines.*
20. *The AIMP WG chair provided an update on the ongoing work of the AIMP WG and its Task Forces. In particular, he informed the BoR of a workshop on national indicators and the next year's cooperation on ACER/CEER MMR that took place on 14 November including concerns raised by members. The members were keen on clarifying the cooperative arrangements between ACER and CEER in preparation of the report. The Director provided feedback on the procedural and substantial concerns and indicated some preliminary thoughts on the preparation of the next edition of the MMR.*

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 61st BoR meeting

BoR Decision agreed: (D 2)

The 61st BoR minutes were approved.

2. Update from the Director

2.1. Update on recent developments

- **ACER**

The Director provided an update on the recent ACER publications. He also informed the BoR that on 17 November the ACER Board of Appeal appointed Mr Andris Piebalgs as its Chairman and Mr Jean-Yves Ollier as Vice Chairman for a two and a half year term.

The Director informed the BoR that ACER signed the Administrative Arrangement with the Energy Community Secretariat on working modalities in the areas of gas and electricity. According to this Administrative Arrangement, staff of the Energy Community Secretariat will be allowed, inter alia, to attend, as observers, the meetings of the Agency's Electricity, Gas, and Implementation Monitoring and Procedures Working Groups, according to the conditions specified therein. He has already informed the AWGs chairs about the new arrangements.

The Director and the BoR Chair also informed the BoR on the implications in respect of the BoR meetings and reimbursements for next year of the reduced ACER budget for 2017 which does not allow the current level of activities to be maintained. A few proposals were considered for reducing the BoR reimbursement at a rate of 15%. The Chair proposed to transfer two additional meetings from Ljubljana in Brussels (given that the option to reduce the number of BoR meetings was rejected). He announced that the September and December 2017 meetings, initially planned for Ljubljana, will be moved to Brussels to ensure some savings.

- **EC (Winter Package)**

Mr Addis provided an update on the recently published EC's proposals "Clean energy for all Europeans", released on 30 November. He reported that the fundamental internal structure of ACER remains unchanged, despite calls to align ACER to the common approach endorsed by an inter-institutional agreement. The EC intends during the Maltese Presidency to launch the inter-institutional debate, not least to raise awareness of the Institutions on the breadth of the package. The EC is looking forward to the joint conference on 23, 24 January.

3. ACER cross-sectoral activities

3.1. Programming document: ACER work programme 2018 and draft 2018 budget

The Director presented the Programming document (PD). In line with the new requirements of the Framework Financial Regulation, ACER must submit its draft Programming Document (PD) 2018-2020 to the Institutions by 31 January 2017. This comprises the draft multiannual section and the Strategic Outlook for 2018 which has been updated along with the human and financial resources outlook for 2018-2020; the 2018 WP with an indicative overview of the Agency's human resources and budgetary needs in 2018. The PD 2018-2020 also includes details of the Agency's Work Programme for 2018. The Director explained that he has taken a new approach in the preparations of the PD given the discussion at the last BoR and the budget constraints. In parallel, in January, the 2017 ACER WP will be revised against the definitive budget. In order to prioritise its activities, and to allocate resources accordingly, ACER have clustered the tasks and deliverables according to the following three priority levels:

- Priority level 1 – Critical: Activities/tasks to be performed/executed under any circumstance. (Activities under this category include REMIT implementation; and the monitoring of codes);
- Priority level 2 – Important: Activities/tasks that could be postponed, reduced or de-scoped with only limited repercussion on the Internal Energy Market.
- Priority level 3 – Relevant: Activities/tasks that the Agency could perform subject to adequate resources.

In case the resources will not be sufficient to perform all the activities for 2018, the de-prioritisation of activities will be performed starting from those classified as "relevant" and then, to the extent necessary, including those classified as "important", in order to devote sufficient resources to the "critical" activities. ACER is short of staff in wholesale energy market monitoring, which requires a different expertise than those for traditionally regulatory activities and therefore the possibility of redeploying staff is limited.

The additional staff the Agency is requesting for 2018 is 30:

- 4 additional posts for the Electricity Department;
- 2 additional posts for the Gas Department;
- 7 additional posts for the Market Integrity and Transparency Department;
- 12 additional posts for the Market Surveillance and Conduct Department;
- 5 additional posts for the Administration Department and Director's Department.

The proposed budget for 2018 amounts to 19.596, 383€.

In terms of the next steps, following the BoR orientation discussion, in January, the 2018 SPD as well as the 2018 budget will be submitted to the BoR for endorsement and for a BoR opinion respectively through electronic procedure. This will allow the AB also to adopt the relevant documents by electronic procedure ahead of the end of January by which their submission to the Institutions is envisaged.

Mr Addis remarked that the EC will send their comments. The Commission is aware of the budget constraints but has some concerns on the priority areas. In their view, staff allocation does not always reflect the priorities (e.g. monitoring of codes); the EC would like to see less staff allocated in the codes' development and more in implementation. The EC intends to invite a meeting with ACER colleagues to discuss the WP and work around a more realistic programme.

The BoR had an orientation debate and provided specific comments.

Mr Addis remarked that, without pre-empting the AB discussion, the EC wants to ensure that ACER has a Work Programme in line with its legal mandate and against the available resources; the EC has a defined role which is part of the Work Programme and Budget process as defined in the ACER Regulation.

The Director remarked that all ACER activities are based on a legal obligation but still need to be prioritised as a result of the budget reduction. The ACER mandate which was enlarged by the Institutions themselves by the REMIT and TEN-E Regulations has not been matched with the appropriate resources. We need to be realistic.

On the comments with regard to the risks, the Director remarked that ACER has indeed a major risk in case of the lack of resources in NRAs. In respect of the EC's opinion on the Work Programme, this will be submitted by 1st July (in the context of the process of the adoption of the 2018 WP as provided for in the ACER Regulation).

Lord Mogg remarked also that the reality is that there are no additional resources and that impacts on activities related to legal obligations. All ACER areas of work are within its legal mandate but still there is a need for prioritisation.

The members agreed to the use of the electronic procedure for the 2018 PD endorsement and budget opinion in January. The Chair clarified that he still needs to consider the arrangements for the electronic procedure (e.g. whether it would be held in one or 2 rounds).

3.2. ACER Working Group, Rules of Procedure revision

The Director presented the state of play following the previous BoR discussion. He has received written feedback by members as well as a compilation of all the comments by the AIMP WG Chair. A meeting in AEESGI, Rome, has been arranged with the AWGs chairs to discuss further this issue on 11 January.

The Director will use this opportunity to outline the key issues and key goals we try to address following the previous discussions in Bled, the BoR summit etc. and consider whether we can develop a common understanding on the main issues as well as on the overall role of the AWGs. To this end, the meeting will discuss the rationale for the changes and the way to address the key objectives in the light of the experience gained. It is not intended to be a drafting session.

The Chair noted that the AGWG and AEWG meeting dates' clash and that he hoped that the Vice Chairs would be able to attend in order to ensure that all WGs are represented. He reiterated the need to finalise revisions.

Ms Poletti clarified that AEEGSI can provide video conference facilities in a separate room (if any participant would need to join their meetings in Brussels or elsewhere, in parallel).

3.3. Winter Package

a) Agenda of the joint ACER-CEER event

The joint conference "Towards a Future-proofed Energy Market Design" (23 and 24 January, afternoon and morning respectively, in Brussels) is now announced; the registrations are open and have already reached 235 participants. The latest agenda of the event was circulated. There has been a strong interest and many speakers have accepted the invitation (EC Vice President Šefčovič, DG D. Ristori, ITRE Chair J. Buzek, and key stakeholders' Eurelectric, BEUC, ENTSO-E/G, IFIEC etc.).

The conference will take place at the Albert Borschette building, EC which holds 269 seats and organisation is underway.

b) Update on the Policy Committee discussion & Paper A "Mapping Commission's priority areas across Working Groups"

The Chair informed the BoR on the discussions of the Policy Committee established to coordinate preparations on a joint reaction from regulators on the new energy market design proposals. All papers to be issued will be subject to the normal deliberation processes of CEER and the Agency, as appropriate. In brief, preparations for the reaction to the new energy market design proposals will be taken gradually and through the different strands which will be completed each with different timeframes but are interlinked.

The Chair presented briefly some of the preliminary concerns on the institutional aspects including the common approach and its impact on the internal governance of ACER, the regional governance which will need to be clarified etc. He also remarked that an underlining issue of paramount importance will be to retain the confidence of NRAs cooperation within ACER.

In terms of the EC's planning, the EC aims at the upcoming Presidency (by Malta) to have preliminary explanatory sessions not least to raise awareness of the package during the Malta's Presidency while discussions will be pursued in the second half of 2017. On the Gas proposals an assessment during the next year of the challenges of the gas market will be held to decide on the way forward on gas.

3.4. Report on ECRB Plenary

Mr Hesseling provided a report on the ECRB meeting that took place on 6 December in Athens. He presented the new Chairs of the WGs. The ECRB Opinion on the decision of the Albanian NRA ERE on the preliminary certification of the electricity TSO is to be dealt with by written procedure. The latest Energy Community developments include: the list of Projects of Mutual Interest and PECIs was approved. Georgia became full member of EnC upon signature of the Treaty at the MC 2016. The EC

financed technical assistance for WB6 countries. The Gas network codes implementation is under preparation, including a declaration to ensure simultaneous application of NCs on both sides of on IP in case of EU MS – EnC CP borders. In respect of customer and retail markets, a brochure informing consumers on their out of court dispute settlement possibilities was approved. On electricity, the report on compliance with transparency Regulation 543/2013 was approved. On gas the report on compliance with Interoperability Network Code was approved as was the report on distribution losses.

The Chair informed the BoR that the ECRB President has written to consider the possibility for accepting participation (observership) of Energy Community NRAs in ERF with a view to facilitate regulatory knowledge exchange. The letter will be circulated and this will be discussed at the next ERF meeting.

3.5. Next steps on the appointment of the AEWG and AIMP WG

The term for both the AEWG Chair, Mr Hernandez and AIMP Working Group chair, Mr Locquet, will end in February (they were appointed by Director's Decision 2015-05 in February). A call for nominations will follow the December BoR. It is envisaged that the BoR Recommendation to the Director (in accordance with the AWGs RoP) will be formulated at the January BoR meeting given that there is no BoR meeting scheduled for February.

4. **Market Integrity and Transparency**

4.1. REMIT implementation and operation - Oral update

The Director provided an update on recent REMIT activities.

He informed the BoR of the re-organisation of the Agency's REMIT activities. As of 16 November 2016, there are now 2 departments under REMIT: Market Surveillance and Conduct Department (headed by Mr Martin Godfried) and Market Integrity and Transparency Department (headed by Mr Volker Zuleger). He also stated that the next REMIT Annual Report will be significantly downsized, REMIT updates will be provided through the REMIT Quarterly publication. He informed the BoR that there is going to be a new hosting provider as of next year to gain more flexibility. This will be 'in house' at the ACER offices but the service will be provided from an external provider. The data sharing solution was stabilised and is now working well. Remaining issues with the identification of relevant EIC codes for the filtering of data are currently being sorted out in bilateral discussions between the Agency and each relevant NRA. He also informed the BoR that there was a major issue with registration with CEREMP, service centre, which might have affected up to 100 market participants. The issue is being addressed and is the first major problem to have been occurred affecting market participants. He offered his apologies.

4.2. Presentation on the Market Monitoring Strategy

Mr Godfried presented the key elements of the Market Monitoring Strategy (MMS) submitted to the BoR for endorsement. The aim is to establish a market surveillance regime which achieves credible deterrence and ensures a high level of market integrity. Given the limited surveillance resources available and the fact that market abuse is difficult to detect, to investigate and to prosecute, there is a

need for a carefully laid out strategy, which incorporates all available resources in the most effective and efficient way.

The current version of the Market Surveillance Strategy document provides an overview of a number of challenges including:

1. Cross-border issues and market interdependencies
2. Changing regulatory and evolving market landscape
3. Issues relating to data collection
4. Staffing skills and technological Systems
5. Resources

Mr Godfried also set out the specific goals and the objectives outlining what work needs to be done to effectively survey the markets. The MMS document will ensure the best possible level of surveillance coverage of the Union by: mapping out the existing surveillance focus and capabilities amongst ACER and NRAs (roadmap); advocating for the inclusion of all NRAs in regional surveillance groups (compass); directing and prioritising the use of the existing surveillance resources as a result of the roadmap project (guidepost).

Enhanced cooperation between the Agency and NRAs both at Union and regional level is key to strengthen the surveillance of cross-border wholesale energy trading. However, this requires an allocation of surveillance duties, i.e. who does what. Therefore, the BoR was invited to support the delivery of a governance section with the allocation of responsibilities and tasks for market surveillance between the Agency, NRAs and PPATs by June 2017.

The Director outlined that the aim of the strategy is to make the most of the available resources of both ACER and NRAs. The next challenge is to implement this strategy and cover the ground in the best possible way which relies on a clear definition of roles and responsibilities.

Some members commenting on the future governance section were keen on providing some flexibility on the allocation of responsibilities as this is a learning process.

The Director stated that the cooperation between the Agency and NRAs both at Union and regional level requires a concrete allocation of surveillance responsibilities and tasks. The Director also agrees that this is a learning process; but we need some clarity on 'who does what' to avoid duplication. Whatever would be the outcome we could review it in December. Therefore, the next version of this document will be extended by adding a governance section for the EU market surveillance strategy which defines the responsibilities and tasks for market surveillance between the Agency, NRAs and PPATs.

4.3. Evaluation of Responses (EoR) on PC: Functioning and Usefulness of the European Register of Market Participants

The Director informed the BoR that the Agency launched a public consultation on the Functioning and Usefulness of the European Register of Market Participants) which ran from 18 March to 22 April 2016 under Article 9 of REMIT Regulation.

The purpose was to collect input from stakeholders regarding the European Register of market participants with the perspective to improve the current Registration Format in light of the experience gained so far. A second objective was to get stakeholders' views regarding the functioning and usefulness of the European Register of market participants with the long term perspective of enhancing the overall transparency and integrity of wholesale energy markets and to ensure a Union-wide level playing field for market participants.

The Director summarised the responses received to the consultation. Based on the input received, discussions with National Regulatory Authorities, and on its own assessment, the Agency will decide whether to:

1. Update the Registration Format adopted in ACER Decision No 01/2012. NRAs would then have to update their national registers accordingly.
2. Submit to the European Commission a report evaluating the functioning and usefulness of the European Register proposing solutions that can enhance the overall transparency and integrity of the wholesale energy markets while ensuring a Union-wide level playing field for market participants (as per Recital 21 of REMIT).

Ms Groebel commented that the AMIT WG has agreed to let stakeholders know what is happening with registrations ahead of publication.

5. Electricity

5.1. Update on NC implementation and other work – presentation

There was no update provided on the implementation of electricity NC's.

5.2. Proposal on the Agency's data request

Mr Gence-Creux updated the BoR on this issue and the background. Under Article 82.4 of the CACM Guidelines, the Agency, in cooperation with ENTSO-E, shall draw up by six months after the entry into force of this Regulation a list of the relevant information to be communicated by ENTSO-E to the Agency in accordance with Articles 8(9) and 9(1) of Regulation (EC) No 714/2009. There are similar provisions in other Guidelines and network codes. At the last BoR a proposal was made to address this deadlock with regard to proportionality and ENTSO-E's commitment, different interpretations of the CACM provisions and the data collection process on the basis of 2 options.

The EC, through a letter has confirmed that ENTSO-E will have to develop this platform. ENTSO-E should start developing this platform imminently and both ACER and NRAs commit to limit, as much as possible, double reporting. The draft letter circulated for endorsement outlines that pending the answer from ENTSO-E on how and when the remaining data items will start to be collected and stored, ACER and NRAs agree that overlapping data requests in the context of the network code monitoring should be avoided. NRAs ensure not to request from TSOs the same data items that are included in the "List", to the extent possible if a data archive has been established that meets all necessary requirements.

The BoR endorsed the letter to be sent to ENTSO-E.

5.3. ACER Opinion on the ENTSO-E Work Programme

The Director informed the BoR that on 7 October 2016, ENTSO-E submitted the ENTSO-E annual work programme for the period 2016 through December 2017. The Agency assessed the WP on the basis of the following main criteria: (i) the annual work programme's essentials as specified in Article 8(5) of Regulation (EC) No 714/2009, and (ii) the objectives set out in Article 6(3)(b) of Regulation (EC) No 713/2009 and Article 9(2) of Regulation (EC) No 714/2009.

The focus of the Work Programme is on the implementation of network codes, enhanced cooperation and co-creation with stakeholders, enhanced transparency, contributions to new EU policy and legislative initiatives, the retail-wholesale interface and TSO-DSO co-operation, and the regional co-operation.

The Work Programme contains a list and a description of the network codes to be prepared, observations with regard to the envisaged coordination of the network operation, a plan of the research and development (R&D) activities to be realised, and indicative calendars of the deliverables.

On that basis the Agency considers the Work Programme as well focused and in line with the requirements of Article 8(5) of Regulation (EC) No 714/2009 as well as with the objectives of Article 6(3)(b) of Regulation (EC) No 713/2009 and Article 9(2) of Regulation (EC) No 714/2009.

The ACER Opinion on the ENTSO-E Work Programme was given the favourable opinion of the BoR (by consensus of all the members).

6. Gas

6.1. Update on FGs, NCs and other work – presentation

Mr Trindade provided an update of recent activities of the AGWG. He provided an update on the Study on Quo vadis gas market regulatory framework as well as the preparation of the comments on the EC discussion papers until 16 January 2017. The study will be launched in February and will finish in September. The EC plans at least 2 workshops.

He also informed the BoR on the Gas Target Model NRAs self-evaluation. All NRAs committed themselves to review the progress made towards the development of fully functioning gas wholesale markets and to conducting periodic self-evaluations (once every 3 years). He has asked NRAs to inform the AGWG by 30 December on the status of their self-evaluation.

Mr Trindade informed the BoR on the tariffs network code and the varying application dates for its implementation, the CMP call for evidence on congestion criteria preliminary conclusions. He also provided a status update on the EIP position paper.

Mr Trindade started a discussion at the last AGWG on the monitoring reports with regard to codes' implementation. We have codes which are technically difficult; there are recommendations which are

not strictly speaking related to the compliance but of general interest; and others related to other shortcomings of the Regulation. The AGWG will discuss how best to handle in a coherent way the preparation of such reports and the handling of such recommendations.

6.2. ACER Opinion on the ENTSO-G Winter Supply Outlook

The Director informed that BoR that pursuant to Article 6(3)(b) of Regulation (EC) No 713/2009, the Agency shall provide an opinion to ENTSOG on, inter alia, relevant documents referred to in Article 8(3) of Regulation (EC) No 715/2009, pursuant to Article 9(2) of Regulation (EC) No 715/2009.

The Director outlined the importance of the main conclusions of the Winter Supply Outlook, that:

- the European gas infrastructure is able to transmit gas – assuming that it is physically available – to the whole European gas market in high demand situations;
- the level of gas stocks in the European underground gas storages is higher in October 2016 than in October 2015 (91% vs. 82% of total working gas capacity at European level);
- a certain level of gas supply can be provided via flows from the European Union to Ukraine in all simulated cases;
- in case of a disruption of Russian gas supply via Ukraine in a high demand situation, demand may need to be curtailed in some Member States in South-Eastern Europe.

The Agency also made a series of recommendations and finds that the Winter Supply Outlook 2016/17 meets the objectives of Regulation (EC) No 713/2009 and Regulation (EC) No 715/2009 in terms of contributing to non-discrimination, effective competition and the efficient and secure functioning of the internal natural gas market.

The ACER Opinion on the ENTSO-G Winter Supply Outlook was given the favourable opinion of the BoR (by consensus of all members).

6.3. Evaluation of Responses to the ACER Call for Evidence on Congestion Indicators

Mr Hesseling informed the BoR that, on 9 August 2016, the Agency launched a “Call for Evidence on the conditions for the application of FDA UIOLI pursuant to paragraph 2.2.3.1 a) to d) of the CMP Guidelines”.

14 stakeholders responded to the public consultation, which closed on 23 September 2016.

Considering the limited number of responses received on the survey, no definite conclusions or recommendations can yet be drawn from this “Call for Evidence”. However, some of the respondents’ suggestions triggered sensible discussions on a number of aspects. Mr Hesseling and Mr Trindade summarised the initial ACER/NRAs views on the most important aspects.

The Agency and NRAs will continue their joint assessment and discussions on the issues raised in this document during the 1st quarter of 2017 including on its follow up. The work will be continued and may deliver a common ACER opinion/recommendation to the Commission on a potential CMP Guidelines

amendment before the end of 2017, depending on ongoing discussion with the Commission regarding their availability to follow up on such a document.

7. Implementation, Monitoring and Procedure

7.1. Update on the AIMP – presentation

Mr Locquet informed the BoR that on 14 November, a workshop on national indicators and the next year's cooperation on ACER-CEER MMR was held in Ljubljana. He stated that ACER only participated with one person part-time at the meeting despite the location in Ljubljana. NRAs noted of the good collaboration with ACER over the last year, but NRAs seek for more collaboration and raised some concerns with regard to a number of issues identified in the note. The members were keen on clarifying the cooperative arrangements between ACER and CEER in preparation of the report.

The Director stated that the next edition of the MMR will not resemble the 2016 report as the area of market monitoring is the area most affected by resources constraints with its resources potentially being deployed to REMIT (the team will be smaller now, originally it was 9 staff and now 5). It was decided in the work programme to keep the report, but to reduce it. It is likely to have 4 volumes, each with an executive summary rather than 5 volumes (omitting the main volume) and for each volume to be shorter. It is difficult to sustain the level of quality and content when the team is significantly reduced. He welcomed ideas on the future structure of the report.

Mr Locquet stated that it would be useful to have a joint meeting with all TFs participants, as these are the key experts who work on this and discuss this issue as well.

Mr Hesselings agreed with the importance of physical meetings and welcomed all efforts to ensure and improve cooperation between ACER and NRAs in the preparation of the report.

The Director informed the BoR that ACER will need to recruit a new team leader for the MMR electricity, but in the meantime Mr Vereecke will oversee both sides.

8. AOB

Mr Sik invited for all AWG chairs to upload provisional agendas to the meeting folders ahead of the meetings.