

68th ACER Board of Regulators Meeting
Monday, 18 September 2017, 12.00 – 17.30
Brussels

Minutes (final)

Member States	Name ^[1]	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: Tom Maes O: Geert Van Hauwermeiren	Latvia (PUC)	M: Rolands Irklis 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)	M: Andreas Poullikkas	Malta (REWS)	A: Phyllis Micallef O: Mark Camilleri
Czech Republic (ERO)	M: Vladimír Outrata A: Martin Sik O: Vladimír Vlček O: Kateřina Fířlová	Netherlands (ACM)	A: Remko Bos O: Maarten Klijn
Denmark (DERA)	M: Finn Dehlbaek	Poland (URE)	M: Maciej Bando A: Małgorzata Kozak
Estonia (ECA)	A: Külli Haab	Portugal (ERSE)	M: Alexandre Santos O: Natalie McCoy
Finland (EV)	A: Simo Nurmi	Romania (ANRE)	M: Niculae Havrilet O: Florin Tobescu
France (CRE)	A: H��l��ne Gassin O: Micha��l Mastier, O: Aude Le Tellier	Slovakia (RONI)	A: Nataša Hudcovi��ov��
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov	Slovenia (AGEN-RS)	A: Bojan Kuzmi�� (represented by CREG)
Greece (RAE)	M: Sotirios Manolkidis	Spain (CNMC)	M: Fernando Hernandez
Hungary (HEA)	M: Attila Nyikos O: Adam Krinszki	Sweden (Ei)	M: Anne Vadasz Nilsson O: Caroline T��rnqvist
Ireland (CER)	M: Garrett Blaney A: Laura Brien O: Seamus Byrne	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, Sander Ramp, Dennis Hesseling
European Commission	Florian Ermacora, Catharina Sikow-Magny, Ms Jalambert

Draft MEETING CONCLUSIONS SUMMARY of the 68th BoR	
1.	<i>The minutes of the 67th BoR meeting were approved, as was the agenda for the 68th meeting. No conflict of interest was declared by the participants.</i>
2.	<i>The Agency's Board of Regulators (BoR) elected Mr Garrett Blaney as their next Chair. He is a Commissioner at the Commission for Energy Regulation (CER) in Ireland. He will succeed Lord Mogg as of 6 November 2017 for a term of office of two and a half years (renewable).</i>
3.	<i>The Director informed the BoR of recent or ongoing stakeholder engagement, including in respect of the upgrade of the Gas Network Codes Functionality Platform, and a workshop and consultation on the main body of the Harmonised Allocation Rules for long-term electricity transmission rights developed by all Transmission System Operators (TSOs) and the proposals for maximum and minimum prices in single day-ahead and intraday coupling proposed by all Nominated Electricity Market Operators (NEMOs) respectively.</i>
4.	<i>The Director also informed the BoR on a request received from the Baltic NRAs, regarding problems faced by Baltic TSOs in developing a common capacity calculation methodology. Baltic NRAs requested an opinion from the Agency on how to manage the link between the calculation and allocation of capacity with third countries (in particular between Belarus and Lithuania) and the capacity calculation and allocation within the Baltic region. Due to the tight timeframe for the submission of the proposal for the capacity calculation methodology, the Baltic NRAs agreed to receive informal advice by the Agency. The provided advice referred to the high-level principles, set out in the Agency's Recommendation No 02/2016, which could represent a useful reference for the Baltic TSOs when developing their proposal for a common capacity calculation methodology.</i>
5.	<i>The Director also updated the members on recent developments in connection with the general budget of the EU for the financial year 2018: the ITRE committee voted on amendments to the ACER budget line in July, and issued an opinion on 6 September to highlight that the Agency must be provided with sufficient resources to cope with its extended mandate. The vote in the Committee on Budgets is scheduled for 25-28 September.</i>
6.	<i>Mr Ermacora updated the BoR on the negotiations relating to the EC legislative proposal "Clean Energy for all Europeans". The EC reported that MEPs have tabled several amendments to the Commission proposals for the recast of the ACER Regulation and the Electricity Directive and Regulation on the internal market for electricity. The Council Energy Working Party have also held a number of meetings in September to discuss those legislative proposals.</i>
7.	<i>The EC and Ms Fauconnier reported on recent developments regarding EU cooperation with China in the field of energy. In particular, Ms Fauconnier reported on her exchanges with the State Planning Commission, which is looking to establish bilateral cooperation with European Energy Regulators interest. Two CEER experts will participate at the EU China workshop, Ms Šnuka and Mr Jamme.</i>

<p>8. <i>The Director informed BoR members about the outcome of the electronic procedure for the approval of the Agency's Draft Programming Document, which ended on 8 August: 24 members participated, all of whom approved the document. The revised Programming Document was, therefore, deemed to have been adopted, and will be presented to the Administrative Board for adoption at its meeting of 21-22 September.</i></p>
<p>9. <i>The Director presented the draft ACER opinions on the draft 2017 gas and electricity lists of proposed Projects of Common Interest (PCIs). In relation to electricity, the draft opinion highlights the need for improvement as regards: the overall process and specifically the PCI selection process; the identification of the infrastructure needs; the PCI assessment methodology; and ENTSOs' compliance with Agency recommendations. Similarly, the opinion in relation to gas also sets out</i></p>
<p>10. <i>t recommendations for improvements to the PCI selection process and the methodology for assessing PCI candidates. The draft opinions will be sent for the BoR's formal opinion via electronic procedure, with a view to finalising them by early October. The opinions will now be reviewed by the Director with the view to address any inaccuracies. The Director will also consider how best to convey the messages therein.</i></p>
<p>11. <i>The EC presented the revised Reference Paper for the Network Code Implementation and Monitoring Group (NC IMG), which sets out its objectives and organisational matters. The Reference Paper will be finalised at the next meeting of the NC IMG (scheduled for 2 October), which will also discuss high-level principles for implementation guidance and other matters on which coordination is needed. The revised version takes account of the comments provided by the BoR members.</i></p>
<p>12. <i>The EC updated the BoR on the selection of the next ACER Director: the vacancy notice was published on 30 August and describes the selection process. The new Director will take up the position from 16 September 2018. The BoR Chair reported that this issue will be discussed at the next AB meeting and he is in contact with the AB Chair with the view to ensuring a common understanding between the BoR and the AB of the practical arrangements for the implementation of the selection process and the BoR involvement. A report will be presented at the October meeting in order to ensure effective coordination between the two Boards and the EC.</i></p>
<p>13. <i>The Director informed the BoR on the current status of the Market Monitoring Report. The MMR was circulated for information and for final comments. Comments should be provided as soon as possible and before 19 September COB. Any comments to be provided should be circulated to the whole BoR for information. The Director thanked both NRAs and the MMR Team for the cooperative effort. The wholesale volumes will be published between 6 and 18 October in order to be in time for the Madrid Forum and to inform the ongoing debates on the Clean Energy Package.</i></p>
<p>14. <i>Mr Volker 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, and ongoing implementation activities. Registrations for the 1st Energy Market Integrity and Transparency Forum are now open.</i></p>
<p>15. <i>Mr Hernandez updated the BoR members on the ongoing work of the Agency's Electricity Working Group, including as regards network code implementation.</i></p>
<p>16. <i>The Director presented the draft ACER opinion on ENTSO-E's Monitoring Plan for the Guideline on Forward Capacity Allocation for a discussion. The draft opinion broadly supports the proposed high-level overview of the reports in the Monitoring Plan, but sets out two main concerns (on deliverables and the need for coordination with ACER in respect of overlapping monitoring obligations), and invites ENTSO-E to revise the Monitoring Plan by 1 October. The BoR members took note.</i></p>

<p>17. <i>The Agency's opinion on ENTSO-E's Summer Outlook Report 2017 and Winter Review 2016/17 was given the favourable opinion of the BoR (by consensus of the members present or represented).</i></p>
<p>18. <i>The Agency's opinion on the Research and Innovation Implementation Plan 2017-2019 was given the favourable opinion of the BoR (by consensus of the members present or represented).</i></p>
<p>19. <i>The Director updated BoR members on the progress achieved and next steps in respect of three decisions under preparation which have been referred by the all National Regulatory Authorities (NRAs), namely: (i) the all TSOs' proposals on Harmonised Allocation Rules (HAR) for long-term</i></p>
<p><i>electricity transmission rights; (ii) the all TSOs' proposals relating to the Congestion Income Distribution Methodology (CIDM); and (iii) the all NEMOs' proposals on Harmonised Maximum and Minimum Clearing Prices (HMMP) for single day-ahead and intraday coupling.</i></p>
<p>21. <i>An orientation discussion took place concerning NVE's participation in the all NRA decisions on the proposals for terms, conditions and methodologies to be developed under the guidelines and network codes, following the recent exchange between the EC and ENTSO-E on this issue. Following the last BoR, the Chair has sought some clarifications and the legal interpretation of the EC on this issue. The EC articulated its stance and stated that NVE can be involved in the discussions but cannot vote along with NRAs from EU Member States on proposals for terms, conditions and methodologies to be developed which are submitted for approval under the guidelines and network codes, in contrast with the Norwegian TSO and Nordpool, which can participate in the formal voting on all TSOs' and all NEMOs' proposals under the network codes, subject to the transposition of the CACM Regulation. The members were concerned and sought clarification on the issue with the view to ensure parity of treatment of NVE and the TSO.</i></p>
<p>22. <i>The BoR endorsed the following list of indicators for the monitoring of the effect of the network code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules (NC HVDC): "continuous monitoring of the ratio between new and existing installed capacities of HVDC converter stations and of the ratio between new and existing installed capacities of DC-connected power park modules." A request for information has been drafted on the basis of that list, and will be issued to ENTSO-E in accordance with Article 76(2) of the NC HVDC.</i></p>
<p>23. <i>The Agency's Gas Working Group (AGWG) Vice-Chair provided an update on ongoing work including as regards: network code implementation; AGWG input for the Madrid Forum; reactions to a gas market measure proposed by the Italian Ministry known as the "Liquidity Corridor"; and the Agency's opinion on the ENTSSOG Annual Report 2016.</i></p>
<p>24. <i>Members were updated on the preparations for the 30th Madrid Forum, which will take place on 19-20 October 2017. The agenda has been circulated and covers: gas wholesale market functioning; future development of the gas sector; LNG and storage market developments; the EU internal gas market; and improving market functioning.</i></p>
<p>25. <i>The Agency's opinion on ENTSSOG's Annual Report 2016 was given the favourable opinion of the BoR (by consensus of the members present or represented).</i></p>
<p>26. <i>CNMC is currently defending a case before the Spanish courts and has sought an opinion of the Agency under Article 7(6) of the ACER Regulation 713/2009 on whether the surrender mechanism</i></p>
<p><i>foreseen in Point 2.2.4 of Annex I to Regulation 714/2009 (as amended by Commission Decision 2012/490/EU i.e. the "CMP Guidelines") is applicable only in the event of contractual congestion</i></p>

28. *The Director presented the draft opinion, which will be submitted for BoR opinion at the October BoR meeting given that CNMC confirmed that this will be ahead of the Court hearing. In summary, the draft opinion provides that Point 2.2.4 of the CMP Guidelines is to be interpreted to the effect that the surrender mechanism is not exclusively applicable in the case of contractual congestion. This view is supported by a literal, teleological and contextual interpretation of the relevant provisions.*

29. *Ms Groebel raised issues of procedure and substance concerning a letter commenting on ENTSO-E's position paper on capacity calculation methodologies, which pre-empts, in her view, the outcome of an ongoing bidding zone review process. It was decided that the letter will be circulated to all BoR members.*

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. At the request of Ms Groebel an item was added under Any Other Business, regarding the letter commenting on ENTSO-E's position paper on capacity calculation methodologies.

1.2. Approval of the minutes of the 67th BoR meeting

BoR Decision agreed: (D 2)

The minutes of the 67th BoR were approved.

2. BoR Elections

2.1. Election of the BoR Chair

The Chair informed the BoR on the BoR Chair election process. At the July BoR members agreed to the process as outlined in the circulated note and followed in all elections since the inaugural meeting of the BoR. The new 2.5-year term covers the period 6 November 2017 - 5 May 2020. Members interested in standing for the position of BoR Chair were asked to notify the Secretariat in confidence by COB Wednesday 30 August. Following the closing of nominations, the names of candidates were circulated to all BoR members:

1. Mr Garrett Blaney, Commissioner, CER, Ireland
2. Dr. Annegret Groebel, Director International Relations/Postal Regulation, BNetzA, Germany
3. Dr. Attila Nyikos, Vice President for International Affairs, MEKH, Hungary
4. Ms Clara Poletti, Director General, AEEGSI, Italy

Ahead of the formal voting, the candidates were invited to present themselves for 7-10 minutes (in alphabetical order by last name). The candidates were invited to focus on their concrete proposals and

vision for the role of ACER BoR Chair and the ACER BoR itself, and what they aim to achieve during their term of office. Candidates stepped out of the meeting while others gave their presentations; another representative from their respective organisations was present. Members of the BoR were offered the opportunity to put questions to each candidate following their presentation.

In the first round Mr Blaney and Ms Poletti received the most votes. During the second round Mr Blaney received the highest number of votes. Ms Poletti withdrew her candidature. The BoR was invited to indicate whether there was consensus on Mr Blaney's appointment and all members (present or represented) agreed to Mr Blaney's appointment as the next ACER BoR Chair.

As a result, Mr Garrett Blaney was elected as the next BoR Chair. He will succeed Lord Mogg as of 6 November 2017 for a term of office of two and a half years (renewable).

Ms Groebel confirmed that she will continue her term as the BoR Vice-Chair.

3. Update from the Commission and the Director

3.1. Update on recent developments

- ACER

Request received from Baltic NRAs

The Director informed the BoR that on 26 July ACER received a request from the Baltic NRAs regarding problems faced by Baltic TSOs in developing a common capacity calculation methodology. The Baltic NRAs requested an Opinion from the Agency on how to manage the link between the calculation and allocation of capacity with third countries (in particular between Belarus and Lithuania) and the capacity calculation and allocation within the Baltic region. Due to the tight timeframe for the submission of the proposal for the capacity calculation methodology, the Baltic NRAs agreed to receive informal advice by the Agency. In the provided advice, the Agency indicated that, in line with Agency Recommendation No.2/2016 on the common capacity calculation and redispatching and countertrading cost sharing methodologies, a series of high-level principles could represent a useful reference for the Baltic TSOs when developing their proposal for a common capacity calculation methodology.

Upgrade of the Functionality Platform

The Director reported that ACER and ENTSOG have upgraded the Functionality Platform, a web-based tool to support the implementation of gas NCs. Since 1st August new features allow the posting of an issue by any relevant party, not just directly affected parties, to report any issue relating to Network Codes (NC) and Guidelines, not just implementation issues, to promote stakeholder engagement in NC implementation.

Ongoing consultations

The Director informed the BoR that the Agency has been consulting on a number of matters referred by all NRAs to ACER for a decision, including: (i) a workshop held in Ljubljana on 11 September on the main body of the Harmonised Allocation Rules for long-term electricity transmission rights developed by all TSOs, and (ii) the all NEMOs' proposals for maximum and minimum prices in single day-ahead and intraday coupling (this consultation closes on 15 September).

First Market Integrity and Transparency Forum

The Director informed the BoR on the First Market Integrity and Transparency Forum which is to be held on 11 October in Ljubljana. All NRAs are kindly invited to join the Forum.

ACER budget and ITRE delegation visit to ACER

Concerning the general budget of the EU for the financial year 2018, in July the ITRE Committee voted the amendments to the ACER budget line (budget increase and changes to the Establishment Plan) proposed by the ITRE Chair Mr Buzek. A paragraph on ACER has also been included in the draft ITRE opinion on the 2018 Budget (published on 6 September) to highlight that the Agency must be provided with sufficient resources to be able to cope with its extended mandate. The vote in the BUDG committee is scheduled for 25-28 September.

An ITRE delegation will visit ACER in Ljubljana on Thursday, 21 September. This is an opportunity for the ITRE Committee to have a direct vision on the Agency's work, and also to discuss the budget constraints in a joint session with the Administrative Board.

- EC

Update on Clean Energy Package proposals

Mr Ermacora provided an update on the negotiations of the EC proposal: "Clean Energy for all Europeans", focussing on both procedural aspects as well as substance.

The deadlines for tabling amendments to the ACER Regulation and the consideration of those amendments are set for 14 September and 11/12 October respectively. National parliaments have also filed their contributions. The deadline for tabling amendments to the Electricity Directive and Regulation was 15 September. The deadline for tabling amendments to the risk-preparedness regulation was 13 September. Rapporteurs received 3000 amendments on the ACER Regulation, Electricity Directive and Electricity Regulation. The ITRE vote is scheduled for 27/28 November, and the plenary vote is scheduled for February or March. The deadline for tabling amendments to the recast of the RES Directive was 29 June. The amendments aim to strengthen the links between the RES Directive and the Paris Agreement (and raise the Union/national targets relating to the share of renewable energy) as well as the role of RES in promoting the security of energy supply. Other amendments include new Article 20 provisions which retain priority access and priority dispatch for RES.

The Council Energy Working Party met on 5 September and discussed the Regional Operational Centres (ROCs) based on the Presidency's non-paper. The subsequent meeting on 7 September focused on TSO issues, NRA issues, NCs and final provisions of the recast Electricity Directive and Regulation. The next meeting is scheduled for 14 September.

Regarding the substance of the European Commission proposal, Mr Ermacora explained the overall approach of the European Commission, which is to strive for a better integration of renewables. This is broadly supported by stakeholders, and by the European Parliament. Regarding capacity mechanisms, Member States understand the proposals, but the European Parliament follows more the approach of the European Commission. Contentious issues include; the creation of ROCs, proposals on regulated prices, adequacy assessment, bidding zones, and CO2 limits. Trilogues are expected to start in the first half of 2018.

4. Cross-sectoral & infrastructure

4.1. EU-China Energy Cooperation: framework and objectives

Ms Fauconnier informed the BoR on the EU-China Energy Cooperation. In July, Ms Fauconnier informed NRAs that the Chinese State Planning Commission approached CEER to establish bilateral cooperation with European Energy Regulators and sought clarification on the roles of CEER and ACER. Ms Fauconnier volunteered to contact the Chinese State Planning Commission to understand better their objectives. Members felt it would be useful to adopt a strategic approach. The issue was discussed in the BoR meeting in order to have the European Commission present for the discussion, as the EC's EU-China Energy Dialogue is relevant to the discussion.

The European Commission reported that the 2017 EU-China Energy Dialogue had led to the decision to significantly intensify cooperation between the EU and China, and designated cooperation on energy infrastructure is one of the focus areas. The Work Plan for 2017-2018 agreed as part of the implementation of the EU-China Roadmap on Energy Cooperation includes a number of introductory workshops aimed at fostering a common understanding on policies relating to RES, energy efficiency, market regulation, energy networks and both sides' processes and mechanisms for energy policy formulation.

Two CEER experts were nominated to engage in this cooperation: Ms Snuka (PUC) and Mr Jamme (CRE). The European Commission thanked NRAs for their involvement in this work.

4.2. Outcome of the electronic procedure for the ACER Work Programme

The Director reported that the Agency's Annual Work Programme was revised in the light of the European Commission's opinion, and that the Work Programme was circulated to BoR members for approval by means of electronic procedure in two rounds, which ended on 8 August. 24 members participated, all of whom approved the document. Consequently, the revised Programming Document was deemed to have been approved. A number of minor changes were introduced after the BoR electronic procedure to update graphs showing gender and geographical balance and the organisational chart. The document must be submitted to the Administrative Board for adoption at its meeting of 21-22 September. The outcome of the electronic procedure as well as the Programming Document as submitted to the Administrative Board and the European Commission opinion were circulated to the members.

4.3. Draft ACER Opinion on the third Union list of PCIs

The Director informed the BoR on the current status of the draft ACER Opinion on the third Union list of PCIs. The European Commission has requested the Opinion by 1 October, in time for the meeting of the high-level decision making body scheduled for 17 October.

The draft ACER Opinions were brought to the BoR for discussion, not yet for favourable Opinion. The draft opinions contain a number of observations and recommendations on the process and methodology applied for the establishment of the draft lists of PCIs, as well as comments in respect of specific regional lists of proposed PCIs. The EC provided comments on the draft opinions raising some concerns about the messages conveyed therein. The EC clarified that it intended to increase transparency by presenting a second list of proposed projects as the second list gives an early insight into what projects the high-

level decision making body can still consider. The Regulation also allows room for qualitative criteria that cannot be taken into account in the assessments, but are important politically (e.g. number of Member States involved). Two members were concerned about the recently introduced practice of the selection from a second subcategory of proposed gas PCIs leading to an ex-post qualitative assessment of the unsuccessful projects, once the assessment within the pre-agreed framework has been carried out.

The BoR was invited to provide comments at the meeting, as well as by email, in the following two days, after which the Director will finalise them for submission for a two-round electronic procedure for the BoR favourable opinion.

The Opinions will be reviewed by the Director with the view to addressing any inaccuracies. The Director will also consider how best to convey the messages therein. Following the BoR meeting and the Director's review, the Opinions will be sent for the BoR's formal opinion through electronic procedure.

4.4. NC IMG reference paper

The Chair informed the BoR on the background of the Network Code Implementation and Monitoring Group (NC IMG) reference paper. At the July BoR members were informed of a high-level meeting which took place on 19 June to organise the work of the NC IMG and to plan the next steps. The reference paper is a common paper of the European Commission, ACER and ENTSOs to serve as a reference for the future high-level coordination through the NC Implementation and Monitoring Group, setting out the structure, objectives and organisational matters. In July, some members were of the view that AWG Chairs should attend the IMG meetings although they understood the need to keep the number of participants to a minimum. The Chair added that the paper is intended to be high-level and that there are already some issues earmarked to be referred to the group.

The European Commission presented the revised Reference Paper to the BoR and explained that the key substance of the paper was discussed at the last NC IMG meeting. The EC will finalise the paper in advance of the next meeting of the NC IMG on 2 October in Brussels. The intention of the NC IMG is to have a high-level oversight of the implementation process, to discuss strategic issues, to issue non-binding implementation guidance, and possible future NC developments/amendments thereto. There should be a proper relay to the BoR. The revised version takes account of the comments provided by the BoR members.

The representation at the group is at high level. The European Commission is represented in the NC IMG at Director level. Further, the ACER Director, Chair of the BoR, and ENTSO-E and ENTSG will take part in the meetings. Working Group Chairs should be able to participate on an *ad hoc* basis depending on the issues to be discussed at the meeting. In the current proposed structure transparency is ensured and AWG Chairs can be involved at the discretion of the Director and Chair. The European Commission will know more detail on the next steps of the Group after the 2 October meeting.

4.5. Selection of ACER Director

The Chair provided an update on the selection of the ACER Director who will succeed Mr Pototschnig in September 2018. The vacancy was published on 30 August. The closing date for applications is 27 September 2017. A further update will be given at the October meeting of the Board of Regulators. The issue is to be discussed by the Administrative Board on 21-22 September. The European Commission

will communicate a list of most suitable candidates to the Administrative Board. The Administrative Board will interview the candidates before appointing the Director and following the BoR opinion. Interviews are scheduled to take place in March or April. The final decision should be taken in June. At this stage the BoR Chair is coordinating with the AB Chair to ensure that practical arrangements for the selection safeguard the effective cooperation between the two Boards and the EC and the effective involvement of the BoR.

4.6. 6th Market Monitoring Report (electricity retail and wholesale and gas market volumes)

The Director informed the BoR on the current status of the Market Monitoring Report. The intention is to publish the electricity and gas retail and wholesale volumes by 6 October, but if this is not feasible the plan is to have them published by 18 October in order to be in time for the Madrid Forum and to inform the ongoing debates on the Clean Energy Package.

The Director explained that all volumes except the retail volume follow a similar structure. The retail volume differs in that it has no recommendations. This year's Market Monitoring Report for the first time covers part of the Energy Community Contracting Parties (pursuant to a Memorandum of Understanding between ACER and Energy Community Contracting Parties). The inclusion of data on some of the Contracting Parties will give a perspective on the Energy Union as a whole rather than only on the European Union. The reports have already been endorsed by the relevant Working Groups. The Director thanked both NRAs and the MMR Team for the cooperative effort.

The Director indicated that comments should be provided as soon as possible and before 19 September COB. The consumer protection and empowerment chapter was received by the Director the day before the BoR and will be circulated to the BoR as soon as possible. The Director expressed his hope that next year the report will have a stronger focus again on retail issues than this year.

5. At BoR members' request the Director asked all members providing comments to the Agency to circulate these to the BoR for information. Comments should be sent as soon as possible and by COB 19 September. The presentation of the report at the EP ITRE Committee is scheduled for 28 November at 16.00. Market Integrity and Transparency

5.1. REMIT implementation and operation

Ms Groebel and Mr Zuleger provided an update on the ongoing work in the REMIT Coordination Group and the AMIT WG, covering the Agency's REMIT Information System (ARIS), data collection and sharing, and reported on ongoing REMIT implementation. The last AMIT WG meeting was held on 5 July and the REMIT Coordination Group last met on 6 September.

Within CEER a letter was drafted directed to the European Parliament and Council raising concerns with regard to ACER REMIT budget. The letter addresses NRAs' serious concerns that ACER will not be able to fulfil its REMIT responsibilities with the budget proposed by the Commission and that this will have serious negative consequences for the integrity of European wholesale power and gas markets. The budget proposal can seriously compromise the effectiveness of the REMIT framework, and is likely to lead to a significant waste of resources and the risk that NRAs need to fund activities at national level for which significant public funding is needed. A similarly serious problem relates to the REMIT IT budget, needed to maintain the basic operation of ARIS. The cutback endangers the prolongation of ACER's

current monitoring software license. A massive surveillance gap would be created as only 6 out of 28 Member States actively monitor their respective markets with (their own) surveillance software. All other European energy markets as well as cross-border aspects of energy trading would no longer be monitored.

6. Electricity

6.1. Update on NC implementation

Mr Hernandez informed the BoR on the ongoing work within the ACER Electricity Working Group, specifically focussing on NC implementation. Seven methodology proposals have passed through the Working Group since the start of summer. Recently, the AEWG discussed *inter alia* the NEMOs' proposals for maximum and minimum prices in single day-ahead and intraday coupling, and the all TSOs' proposal on Harmonised Allocation Rules, both of which were referred to ACER for a decision.

6.2. ACER Opinion on ENTSO-E's monitoring plan for the Guideline on Forward Capacity Allocation

Article 63(2) of the Guideline on Forward Capacity Allocation (FCA) provides that ENTSO-E will submit a monitoring plan to the Agency for opinion by six months after the entry into force of the FCA Guideline.

The Director presented the Agency's draft opinion on the ENTSO-E Monitoring Plan for a discussion: the Agency broadly supports the proposed high-level overview of the reports in the ENTSO-E Monitoring Plan, but has two main concerns:

- the Agency disagrees with the assumption that the deliverables listed in Article 63(1) of the FCA Guideline (which in the Agency's view is non-exhaustive) constitute the only monitoring reports to be submitted by ENTSO-E pursuant to Article 8(8) of Regulation 714/2009. The Monitoring Plan should encompass the monitoring of all significant provisions of the FCA Guideline with regard to its implementation, as well as to its effect on the harmonisation of applicable rules aimed at facilitating market integration; and
- since ENTSO-E and the Agency have similar monitoring obligations under Regulation 714/2009, there is a need for closer coordination, starting with a description of the general monitoring process covering potentially overlapping monitoring obligations.

The Agency has invited ENTSO-E to revise the Monitoring Plan by 1 October, taking into account the above points.

The members took note of the above.

6.3. ACER Opinion on SOR 2017 and WR 16/17

On 2 June 2017, ENTSO-E submitted its annual summer generation adequacy outlook report for 2017 with a review of the main events which took place during winter 2016/17. The Agency provides an opinion on the same in accordance with Article 6(3)(b) of the ACER Regulation and Article 8(3) of Regulation 714/2009.

The opinion reiterates the requests and recommendations made previously:

- ENTSO-E should monitor the behaviour of the system, namely the stability of the frequency and locally also of voltage.
- ENTSO-E should get feedback from its TSO members on constraints of voltage regulation in their reviews of the past season, by complementing ENTSO-E's questionnaire with questions dedicated to the quantification of voltage issues.
- ENTSO-E should perform market simulations to understand how periods of both upward and downward adequacy problems affect electricity prices and market behaviour.
- ENTSO-E should further work on the identification of probabilities of individual events leading to inadequacy situations (i.e. severe atmospheric conditions and their link to power plant and infrastructure outages, minimum Net Transfer Capacity, etc.).

In relation to the Winter Review 16/17, the Agency provided general observations, noted a number of deficiencies, and suggested the inclusion of a comparison of the Outlook forecasts and the reviews for the same season to improve the forecasts and the overall quality of the seasonal adequacy outlooks.

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

6.4. ACER Opinion on the R&I Plan

In June of this year ENTSO-E published its R&I Implementation Plan 2017-2019 (R&I Plan), and submitted it to the Agency on 13 July 2017.

Pursuant to Article 6(3)(b) of Regulation 713/2009 and Articles 8(3) and 9(2) of Regulation 714/2009, the Agency is to issue an opinion on research plans adopted by ENTSO-E.

The Director presented the Agency's opinion on the R&I Plan, which contains general remarks along with specific remarks on (i) funding, resources and regulatory framework, and (ii) an assessment of R&D activities.

The general remarks state that the R&I Implementation Plan meets the objective of non-discrimination, effective competition and the efficient and secure functioning of the internal market in electricity, however raise concerns as regards the need for more transparency on the assessment of the criteria for prioritisation of R&I topics as well as for additional information on the challenges associated with R&I, and qualification of those challenges.

As regards funding, resources and the regulatory framework, the Agency reiterates the need to set out the assumptions underpinning the budget estimates, and calls for more accuracy. Regarding the potential lack of incentive to conduct R&I, the Agency concludes that although the large majority of the regulatory frameworks do not limit R&I activities, potential improvements to the regulatory frameworks in some Member States could be investigated in order to stimulate TSOs to perform R&I activities with the goal of optimising their operation, and encourages ENTSO-E to promote monetisation and quantification of specific R&I project benefits, which would help NRAs in considering the possible role of further incentives for such activities.

In relation to the assessment of the results of R&D activities, the Agency welcomes the approach adopted by ENTSO-E, which looks at the concrete achievements of specific R&I projects and invites ENTSO-E to

improve it, especially through focusing on quantified and if possible, monetised benefits. The analysis also showed that for most projects only the TSOs directly involved apply the results of their R&I activities, and the Agency invites ENTSO-E to encourage and promote knowledge sharing among TSOs.

The R&I Plan was given the favourable opinion of BoR members (by consensus of the members present or represented).

6.5. Preparation and next steps of the ACER Decisions on the all TSOs' and NEMOs' proposals for HAR, CIDM and HMMP for DA and ID

A number of all TSOs'/all NEMOs' proposals have recently been referred to ACER for a decision, as mentioned by the Director and Mr Hernandez under items 3.1 and 6.1 respectively:

- Harmonised Allocation Rules (HAR): a draft decision will be ready by 15 September and will be sent for BoR approval via an electronic procedure. Publication is expected in October;
- Congestion Income Distribution Methodology (CIDM): the draft decision will be discussed at Task Force and Working Group levels, and is likely to be presented to the BoR in November;
- Harmonised Maximum and Minimum Clearing Prices (HMMP) for single day-ahead and intraday coupling: these will be discussed at the CACM Task Force meeting on 18 September and submitted for endorsement by the AEWG. The draft decision is likely to be submitted to the October BoR for an opinion.

Concerning the all NEMOs' proposals on CIDM, the Director stated that whilst the Agency will give utmost consideration to the NRAs' position, it is his duty to explore alternatives to seek the best solution for the Internal Energy Market.

6.6. Orientation debate on Norway's participation in all NRA decisions on proposals for terms, conditions and methodologies under network codes and guidelines

Recent exchanges between the Commission and the Secretary-General of ENTSO-E clarified that third country TSOs and NEMOs (specifically, Statnett and Nord Pool Spot) that are subject to the EU rules of the Third Energy Package may participate in the voting on joint TSO/NEMO proposals for terms, conditions and methodologies to be developed under the guidelines and network codes. The BoR Chair has had an exchange with the EC in order to clarify his issue.

An orientation discussion took place concerning NVE's participation in the all NRA decisions on the proposals for terms, conditions and methodologies to be developed under the guidelines and network codes, following the recent exchange between the EC and ENTSO-E on this issue. The EC articulated its stance and stated that NVE can be involved in the discussions but cannot vote along with NRAs from EU Member States on proposals for terms, conditions and methodologies to be developed which are submitted for approval under the guidelines and network codes. As the EC has clarified in their letter, the Norwegian TSO and Nordpool, can participate in the formal voting on all TSOs' and all NEMOs' proposals under the network codes, subject to the transposition of the CACM Regulation. The members raised some concerns about the practical implications of the Norwegian TSO voting on the TSO proposals without NVE being able to vote; in terms of the notifications which trigger the deadlines for the all NRAs decisions; the cost sharing principles which are relevant to certain codes; and the regional arrangements

for the NRAs of the region. The EC drew a distinction between Member States and third countries. Further clarification is necessary as to whether NVE can vote on all NRA decisions under the network.

The Chair concluded the discussion by noting the need for a solution which would not give third countries the power to block EU law making, but which would put NRAs from countries like Norway (which fall into the category of countries implementing the EU acquis) on parity with Norwegian TSOs.

6.7. List of indicators for the monitoring of the effect of the NC HVDC

The following indicators for the monitoring of the effect of Commission Regulation (EU) 2016/1447 of 26 August 2016 establishing a network code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules (NC HVDC) were endorsed by the members: Continuous monitoring of the ratio between new and existing installed capacities of HVDC converter stations and of the ratio between new and existing installed capacities of DC-connected power park modules.

In accordance with Article 76(2) of the NC HVDC, the Agency will send ENTSO for Electricity a request for the data relating to the above indicators.

7. Gas

7.1. Update on FGs, NC implementation and other work (PPT)

The AGWG Vice-Chair presented updates from the last AGWG meeting, focusing in particular on network code implementation.

On the network code on rules regarding harmonised transmission tariff structures for gas (TAR), the Agency produced a consultation template, which is now available on the Agency's website. Work is ongoing in relation to the report on Allowed Revenues. Reference was made to the ENTSOG-ACER joint TAR implementation survey as well as the Implementation Document (iDoc 2.0) to be published ahead of an ENTSOG workshop on 5 October. ENTSOG is also organising a second tariff workshop on the same date, at which NRAs will make presentations. The ENTSOG-ACER joint tariff workshop will also take place in October.

An implementation report concerning the Interoperability (IO) Network Code is under preparation and will be presented to the AGWG for endorsement on 25 October. It will then be presented at the November BoR for information.

On capacity allocation management, the Capacity Allocation Mechanisms (CAM) Task Force presented its compliance analysis, such that the first CAM network code annual gas auctions held on 6 March 2017 had complied with CAM network code requirements, whilst noting HEA's view that the spirit of the CAM network code should also be respected. HEA welcomed the suggestion to revisit the issue at the level of law-making.

A report on the implementation of the Balancing Network Code will be presented to AGWG members on 25 October, and is likely to be presented for BoR endorsement via an electronic procedure to ensure publication ahead of the workshop planned for the second week of November.

The AGWG Vice-Chair also informed members that AGWG had prepared a joint response to the consultation on the draft Italian legislation known as “Liquidity Corridor,” which was subsequently submitted for approval by the CEER General Assembly ahead of the deadline for submission.

A number of Working Group management issues were raised: calls for expressions of interest have been circulated to replace two Task Force convenors (for CAM and IO), and the new AGWG Chair will be appointed at the November BoR meeting. The Chair thanked Mr Maes for stepping in pending the appointment of the Vice-Chair.

7.2. Preparations for the Madrid Forum

The 30th Madrid Forum will take place on 19-20 October 2017. The agenda has been circulated and covers:

- gas wholesale market functioning;
- future development of the gas sector (based on Quo Vadis and CEER studies);
- LNG and storage market developments;
- the EU internal gas market (NC implementation and monitoring framework); and
- improving market functioning (including in the Energy Community).

The AGWG Vice-Chair informed BoR members that the Agency and NRAs are preparing presentations and interventions in respect of five topics, which will be approved at a meeting on 12 October and thereafter circulated to BoR members for information.

7.3. ACER Opinion on ENTSOG Annual Report 2016

ENTSOG published its Annual Report for 2016 on 13 June, and submitted it to the Agency for its opinion. Pursuant to Article 6(3)(b) of Regulation (EC) No 713/2009 and Articles 8(3)(e) and 9(2) of Regulation (EC) No 715/2009, the Annual Report must be evaluated by the Agency taking into account the objectives of non-discrimination, effective competition, efficient and secure functioning of the internal gas market.

The Director presented the Agency’s opinion, which states that the Annual Report addresses all the relevant tasks foreseen under Article 8 of Regulation (EC) No 715/2009. It comments on matters relating to the implementation of network codes and guidelines, infrastructure development and organisational issues. It encourages ENTSOG to go further particularly as regards monitoring of the implementation of network codes and guidelines, and to increase transparency in respect of financial statements. The opinion also notes some inaccuracies in the section addressing the interlinked electricity and gas network and market model.

The AGWG Vice-Chair added that AGWG members had endorsed the Agency’s opinion without comment.

The opinion was in turn given the favourable opinion of the BoR (by consensus of the members present or represented).

7.4. Draft ACER Opinion under Article 7(6) of Regulation 713/2009 on the application of the surrender mechanism

On 30 August CNMC requested, under Article 7(6) of the ACER Regulation, an opinion of the Agency on the application of point 2.2.4 of Annex I to Regulation 714/2009 (as amended by Commission Decision 2012/490/EU i.e. the “CMP Guidelines” adopted pursuant to Article 23(1)(b) of Regulation 715/2009). The provisions in question relate to the conditions for access to the natural gas transmission networks. CNMC is seeking an opinion on whether the surrender mechanism foreseen in point 2.2.4 is applicable only in the event of contractual congestion.

In accordance with Article 7(6) of Regulation (EC) No 713/2009, the Agency must issue the opinion within three months of receiving the request, after consulting the European Commission (whose view is yet to be confirmed). However, CNMC requires the opinion by mid-October to defend a case before the Supreme Court. The hearing is expected to take place in late October. This item was, therefore, added to the agenda for a first discussion and will be submitted for BoR opinion via an electronic procedure.

The Agency is of the view that Point 2.2.4 of the CMP Guidelines is to be interpreted to the effect that the surrender mechanism is not exclusively applicable in the case of contractual congestion. Its ultimate aim is to prevent contractual congestion; it should thus be applied prior to contractual congestion so as to prevent its potential occurrence by bringing unused capacity back to the market so as to be reallocated in the course of regular allocation processes. In support of that analysis the draft opinion sets out the literal, teleological and contextual interpretation of Point 2.2.4 of the CMP Guidelines.

The opinion will be submitted for BoR opinion at the October BoR meeting.

8. Any Other Business

8.1 Agency letter concerning ENTSO-E’s position paper on capacity calculation methodologies

Ms Groebel formally raised the following issues of procedure and substance in respect of a letter co-signed by the BoR Chair and the Director and dated 24 July, which comments on a position paper issued by ENTSO-E entitled: “Optimising available transmission capacities for trade while ensuring system security.”

Referring to previous discussions, the Chair and the Director reiterated that the letter of 24 July concerned pressing matters (i.e. significant barriers to the well-functioning of the Internal Energy Market), about which the European Commission has also written to ENTSO-E to express similar concerns. The splitting of the bidding zones was recommended as the ultimate solution.

The letter will be circulated to all BoR members.

8.2 January BoR meeting

The Chair informed members that the provisional 2018 calendar has been circulated. He drew members’ attention to the proposal to hold the January BoR meeting in Sofia, following the kind invitation of EWRC to host a meeting during the Bulgarian Presidency.