

**77<sup>th</sup> ACER Board of Regulators Meeting**  
**Wednesday, 19 September 2018**  
**CEER, Cours Saint-Michel 30a, 1040 Brussels**

**Minutes (final)**

Member States	Name <sup>[1]</sup>	Member States	Name
Austria (E-Control)	O: K. Ledermann-Tappeiner	Italy (ARERA)	M: Clara Poletti (BoR Vice-Chair) A: Francesco Cariello
Belgium (CREG)	O: Geert Van Hauwermeiren	Latvia (PUC)	O: Lija Makare
Bulgaria (EWRC)	O: Svetla Todorova	Lithuania (NCC)	A: Irma Vasarytė
Croatia (HERA)	O: Nataša Mihajlović	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)		Malta (REWS)	A: Phyllis Micallef
Czech Republic (ERO)	M: Vladimír Outrata A: Martin Šik O: Katerina Firlová	Netherlands (ACM)	M: Henk Don O: Wieger Wiersema
Denmark (DUR)	A Mads Lyndrup	Poland (URE)	A: Małgorzata Kozak
Estonia (ECA)	O: Marilyn Tilkson	Portugal (ERSE)	M: Cristina Portugal O: Natalie McCoy
Finland (EV)	M: Simo Nurmi	Romania (ANRE)	O: Florin Tobescu
France (CRE)	A: Hélène Gassin O: Miyuki Tsuchiya O: Claire Hellich-Praquin O: Anne-Lise Teani	Slovakia (RONI)	A: Marian Záhora
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov	Slovenia (AGEN-RS)	O: Marko Senčar
Greece (RAE)	O: Nektaria Karakatsani	Spain (CNMC)	O: Gema Rico Rivas
Hungary (HEA)	A: Attila Nyikos O: Adam Krinszki	Sweden (Ei)	M: Anne Vadasz-Nilsson
Ireland (CRU)	M: Garrett Blaney (BoR Chair) O: Aoife MacEvilly O: Seamus Byrne	United Kingdom (Ofgem)	M: Andrew Burgess O: Christoph Gräfe
ACER	Alberto Pototschnig, Fay Geitona, Sander Ramp		
European Commission	Klaus-Dieter Borchardt, Michael Schuetz		

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

### MEETING CONCLUSIONS SUMMARY

1. The minutes of the 76<sup>th</sup> BoR meeting were approved, as was the agenda for the 77<sup>th</sup> meeting.
2. No conflict of interest was declared by the participants.
3. The Director informed the BoR about the latest development in the foreseen 2019 budget of the Agency. The Council envisages a €2.6 million cut to the Agency's 2019 budget as proposed by the Commission (€16.1 million). Members stressed the important implications if the Council's proposal were to be adopted on the surveillance responsibilities of the NRAs' themselves, as well as on the overall credibility of the energy system to safeguard market integrity to the benefit of consumers. Mr Borchardt noted that for 2019 the EC would firmly stand by its budget proposal for ACER.
4. The Director referred to the language waiver arrangements. Members confirmed their agreement to the pragmatic approach for the forthcoming ACER decisions with the exception of CRE, BNetzA, CREG and ERSE who noted the need for an official translation of the ACER decision in their respective national languages (French, German and Portuguese) in order to be able to apply and enforce those decisions. They agreed to issuing the ACER decisions in English and to ex-post official translations in their languages without being able financially to contribute to the cost for such translations.
5. The Director reported on the 2<sup>nd</sup> EMIT Forum which took place on 6 and 7 September in Ljubljana. Attendance was very high (close to the turn out of the ACER annual conference) and good debate ensued.
6. The Director informed the BoR of the 2020 Programming Document preparations. An outline will be presented to the BoR in October. A conference call will take place on 8 October with the ACER Working Group Chairs for feedback.
7. Mr Borchardt provided an update on the negotiations on the European Commission proposal: "Clean Energy for all Europeans" and on the Energy Council's position, as well as on the amended Gas Directive. He reported on the informal Member States' Ministers meeting in Linz on 17-18 September.
8. On 11 September the 2<sup>nd</sup> trilogue on the Electricity Regulation and Directive was held. In general, there was incremental progress, the Council and the EP are committed to the process. The first trilogue on the Risk Preparedness Regulation is scheduled for 25 September and the first trilogue on the ACER Regulation will be held on 26 September. The EC hopes that agreement on all four electricity market design proposals will be reached soon.
9. Mr Borchardt also noted that during the informal Member States' Ministers meeting, 12 Member States urged the Austrian Presidency to go for a General Approach on the Gas Directive in the Council so that the trilogues can be opened.
10. Mr Borchardt also noted that in July the trilateral Ministerial with Ukraine and Russia on EU transit started. It was decided to establish a working group consisting of senior experts to further discuss. The working group convened last week in Brussels. On 26 September the group will continue looking into the template contract. The next step is to have another Ministerial trilateral (end of October). Overall, the first meetings have been rather positive.
11. The BoR Chair informed the BoR that the current Director, Mr Pototschnig, will remain in office as Director ad interim beyond the end of his mandate on 15 September 2018. The EC informed the BoR that a new selection process for the new ACER Director is expected to be launched by the end of September and encouraged all to join efforts to ensure that good candidates apply.

<p>12. The BoR was informed on the outcome of the BoR EP on the Agency Decision on the extension request for agreement on the cross-zonal capacity calculation methodology in CCR Baltic which ended on 27 August 12:00. 25 members participated and all voted in favour of a BoR favourable opinion. The Decision was adopted on 28 August 2018.</p>
<p>13. The BoR Chair presented the next steps towards the BoR Summit, following the internal workshop in March. The BoR Summit is scheduled for January. A preparatory discussion will be organised in December to determine what the output of the BoR Summit will be and to work towards a draft skeleton. The BoR Summit in January will consolidate the brainstorming on the identified issues (in the context of the agreed output (e.g. joint paper)) and draw high-level messages and key principles under each area. The AWG Chairs and ACER Heads of Department will provide an overview taking stock of the CEP proposals and new developments and initiatives by the EC in the gas sector at the October BoR, in order to propose particular areas to focus on at the BoR Summit.</p>
<p>14. <b>Members agreed the proposed timetable and next steps and had a debate on the scope of the event.</b> The EC, Mr Borchardt, welcomed that ACER and CEER could be part of that discussion.</p>
<p>15. The Director presented the ACER Decision on the fallback methodologies for the Core CCR, which was referred to the Agency on 27 March 2018. The Agency considers the amended proposal in line with the requirements of the CACM Regulation and approves it subject to the amendments described in this Decision, as presented in Annexes I and II. <b>The BoR provided by majority of the members present or represented its favourable opinion on the ACER Decision with a dissenting opinion of BNETZA.</b></p>
<p>16. The Director presented the Agency's Opinion on ENTSO-E's Annual Report 2017. <b>The BoR provided, by consensus of the members present or represented, its favourable opinion on the ACER Opinion.</b></p>
<p>17. The Director presented the Agency's Opinion on ENTSO-E's Annual Summer Supply Outlook and Winter Review. Two comments were made by ARERA and CRU (regarding the appropriateness of market simulation scenario to be undertaken by ENTSO-E as it may affect electricity prices and a suggestion by CRU on the executive summary). <b>The BoR provided, by consensus of the members present or represented, its favourable opinion on the ACER Opinion.</b></p>
<p>18. The Director presented the Agency's Opinion on the ENTSG 2017 Annual Report. The Opinion provides some specific feedback on the Annual Report in terms of the timeliness, completeness and provision of information as well as an assessment of its content. <b>The BoR provided, by consensus of the members present or represented, its favourable opinion on the ACER Opinion.</b></p>
<p>19. The Director presented the Gas Wholesale Volume and the Retail Volume of the Market Monitoring Report aimed to be published by the end of the month. Members suggested that NRAs must have the possibility to provide feedback to the retail market Volume given that the report is co-branded with CEER. The Director referred to the process for the MMR preparation previously agreed which places the report under the final scrutiny of the Agency. He also recalled that each NRA was contacted directly at technical level to verify the correctness of the data used for this Volume. <b>In any case, he invited any comment on data quality by the end of this week, given that ACER intends to release it next week.</b></p>
<p>20. A short presentation of the key messages of the MMR at the ITRE Committee is planned to take place on 9 October. A public event on the presentation of the MMR is foreseen for 22 October at CEER premises.</p>

<p>21. The Director presented the Agency's summary report on project-specific risk-based incentives to PCI's, which summarises the findings of the Agency's monitoring for the period 2013-2017 in application of Article 13 of Regulation (EU) No 347/2013. <b>The BoR took note of the summary report.</b> Mr Borchardt expressed surprise and asked if there is reason for concern about the apparent lack of interest of project promoters in the incentives available under Article 13, as portrayed by the report given the importance of incentives in the context of the PCI process. The Director replied that administrative (permitting) procedures appear to be of relatively higher importance for project promoters. <b>The BoR took note of the summary report. The latest version of the report will be circulated for any final comments for one week before publication.</b></p>
<p>22. Mr Šik, LEN co-coordinator, provided an update on the status of ongoing assessments by the various LEN Panels.</p>
<p>23. The Director recalled on the previous agreement to review the LEN after its initial stages of operation. He noted that the LEN has proved to be the right structure, has operated very well and provided useful legal advice on the issues under consideration. He was supported by Ms Rico Rivas who, on behalf of the AEWG Chair, thanked the LEN co-coordinators for the work of the LEN.</p>
<p>24. Ms Rico Rivas provided an update on the ongoing work in the AEWG on behalf of the AEWG Chair. Cooperation with the ENC is being reinforced. She then reported on the nominations for the position of the AEWG Vice-Chair. The Director and the BoR Chair thanked Mr Copley for his important contribution as a Vice-Chair of the EWG.</p>
<p>25. Mr Don recalled a note that was circulated on behalf of Mark Copley on July 19<sup>th</sup>, which echoed the call of Mr Bos on improving cooperation on implementation of NCs and to allow for more strategic discussions. Only two reactions were received so far. Mr Don called on all members to provide input.</p>
<p>26. Mr Borchardt thanked the NRAs for the contribution back in June on the cost sharing issue which was crucial for the launch of the intraday market coupling on 12 June. He informed the BoR on the invitation for a celebrating event on 27 September.</p>
<p>27. The Director informed the BoR that the ACER decision on the exemption of Aquind has been appealed. The BoA will have to deliver its decision by 18-19 October.</p>
<p>28. The ACER Director presented the Agency's Opinion on the ENTSO-E monitoring plan in accordance with the guideline on electricity balancing. The Director explained that the Agency expresses three concerns and invites ENTSO-E to address them and revise the ENTSO-E Monitoring Plan within the timeline established but no later than 1 March 2019. <b>The BoR took note of the Agency Opinion on the ENTSO-E monitoring plan in accordance with the guideline on electricity balancing.</b></p>
<p>29. The Director presented the Agency's Opinion on ENTSO-E's amended monitoring plan in accordance with the forward capacity allocation Guideline. <b>The BoR took note of the Agency Opinion on ENTSO-E's amended FCA monitoring plan.</b></p>
<p>30. Ms Poletti provided an update on the ongoing work in the AGWG, which last met on 4 September and referred, in particular, on the FUNC issue on VIP and on the next Madrid Forum which will take place on 16 and 17 October 2018 which has a different structure.</p>

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| <p>31. The Director presented the Agency's Opinion on ENTSOG's template for the main terms and conditions, in compliance with Article 20(2) of the CAM NC. The Director explained that this opinion does not need a formal opinion of the BoR whilst the Agency must give due regard to the opinions of NRAs (pursuant to the relevant provisions) and, to this end, the Director indicated that NRAs were consulted, which was confirmed by the BoR. <b>The BoR did not provide any additional feedback on the Agency's Opinion on ENTSOG's template on terms and conditions in accordance with Article 20(2) of the CAM NC.</b></p> |
| <p>32. Ms Groebel provided an update on the ongoing work in the AMIT WG, which last met on 6 September. The WG is looking for a new co-convenor for the REMIT Policy TF.</p>  |
| <p>33. The members were informed on the documents of common interest, which are uploaded in the "library", related to EU agenda legislative initiatives, stakeholder positions, forthcoming events and studies by the EC. The members were also informed about the revised calendar which includes the dates for the 2019 Madrid Fora and the proposal by ANRE to host the May BoR meeting in Bucharest.</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. No conflict of interest was declared.*

#### 1.2. Approval of the minutes of the 76th BoR meeting

BoR Decision agreed: (D 2)

*The minutes of the 76<sup>th</sup> BoR were approved.*

### 2. Updates from the Director, EC, and BoR Chair

#### 2.1. ACER

##### ➤ Latest developments on the 2019 budget

The Director presented the latest developments on the budget. The Council envisages a €2.6 million cut to the Agency's 2019 budget as proposed by the Commission (€16.1 million). The latter includes €3.5 million (€2.8 and €0.7) for REMIT IT. If the Budgetary Authority agrees to the cut proposed by the Council, the Agency would be forced to discontinue the collection of trade and fundamental data reported under REMIT and the sharing of such data with NRAs. The Agency would no longer be able to afford the licence for SMARTS, its main surveillance tool and with the money left ACER could realistically only continue to operate CEREMP, the notification tool and the case management tool. For infrastructure replacements ACER needs more than 2.8 million, as it also needs to recover missed replacement from this year, already postponed because of budgetary limitations. Therefore, the €16.1 million proposal by the EC included an additional sum to catch up on infrastructure investments.

The European Parliament (EP) will be discussing two amendments on the ACER budget. The first is from the ITRE Committee proposing a budget of €19.1 million (as per ACER's adopted budget) and the other by MEP Geier, who also seeks to restore the Agency's initial request, but the proposed amount is €300.000 less than the ACER budget as adopted by the AB. The Director has approached the Austrian Presidency and circulated a template letter which NRAs can at their discretion use in the communication with their Ministries.

During the debate that followed members stressed that if the Council's proposal were to be adopted there would be important implications on the surveillance responsibilities of the NRAs' themselves, as well as on the overall credibility of the energy system to safeguard market integrity to the benefit of consumers.

The Director clarified that the Council and the EP positions agree on introducing fees with regard to registrations for REMIT. But these will come into force in 2020-2021 at the earliest and cannot alleviate the situation in 2019.

Mr Borchardt noted the Commission's and DG ENER's efforts to secure enough funding for ACER given its importance for the IEM. The EC will firmly defend its proposal for €16.1 million but often the Council approaches all Agencies homogenously and does not fully distinguish the special role of ACER in not only implementing European energy policies but also providing oversight. This must be appropriately conveyed and the BoR has an important role to disseminate the value and merits of ACER. The overall discussions on the new MFF are complex given also the global EU budget in the light of BREXIT.

The Chair emphasised that there is a chance to influence the Council position and called upon members to use that opportunity.

➤ Language waiver arrangements

The Director raised again the language arrangements with the BoR. At the BoR meeting of 14 March 2018, a pragmatic interim solution was agreed: the Agency will adopt its decision in English only (based on Language Waivers, unless a national court requires a translation in the national language). The significant procedural and budgetary implications of translations (approximately €10,000 the cost for a translation of a decision and its annexes and significant delays) were also discussed at the September Administrative Board meeting. The Administrative Board resolved to invite NRAs to financially support any translation which they may require.

Members confirmed their agreement to the pragmatic approach for the forthcoming ACER decisions with the exception of CRE, BNetzA, CREG and ERSE who noted the need for an official translation of the ACER decision in their national languages (French, German and Portuguese) in order to ensure their applicability and their enforcement. However, they agreed to the ACER decision being issued in English and to ex-post official translations in their language without being able to financially contribute to the cost for such translations. Ms Ledermann-Tappeiner suggested that although financial contributions to the translations would be excluded they could consider helping to check the official translations as a "contribution in kind".

➤ Report on 2<sup>nd</sup> EMIT Forum

The Director reported that the 2<sup>nd</sup> EMIT Forum took place on 6 and 7 September in Ljubljana. Attendance was high. The Director reiterated some of the Forum's conclusions. REMIT implementation has been a success story thanks to the competence and coordination of the Agency, NRAs, as well the efforts made

by market participants, OMPs and RRM. The overall REMIT framework is well-functioning and can serve as a precedent for the future. In a next stage of REMIT the focus will be on adapting the legislative framework and improving the efficiency of monitoring by means of cooperation with all relevant market segments. The Forum repeatedly expressed concerns about the possible repercussions for the REMIT operations and, more widely, the surveillance of wholesale energy markets, of the persistent lack of resources under which the Agency is forced to operate.

➤ Latest publications

The Director informed the BoR about the latest ACER publications.

- The ACER Evaluation of responses to the consultation on the Decision for the selection of a gas booking platform on the German-Polish border (4 September 2018).
- The Agency Decision on the extension request for agreement on the cross-zonal CCM in CCR Baltic (28 August 2018).
- The third IMR for the Balancing NC (6 August 2018).
- The first IMR for the NC DC and NC HVDC (2 August 2018).
- The Agency Decision on methodology to establish market coupling algorithms (26 July 2018).
- The Analyses of the Consultation Document on Gas Transmission Tariff Structure (for Sweden and Netherlands) (published on 30 August and 27 July respectively).
- The REMIT Quarterly (Q2 2018).

## 2.2. European Commission

➤ Update on Clean Energy Package proposals, Gas Directive amendments

Mr Borchardt provided an update on the negotiations on their proposal: “Clean Energy for all Europeans” and on the Energy Council, as well as on the amended Gas Directive. He informed the BoR about the informal Member States’ Ministers meeting in Linz on 17-18 September. The discussions focused on capacity mechanisms and adequacy assessments, on the EP amendment which aims to give priority to strategic reserves over capacity mechanisms and on the emission performance standard etc.

The second trilogue on the Electricity Regulation and the Directive recast was held last week in Strasbourg. In general there was incremental progress (mainly on definitions and wording) but not yet enough to reach agreement by the end of the year although the Council and the EC are committed to the achieve progress and reach agreement by the end of the year.

On the Electricity Directive recast, there was also an exchange on contractual conditions and information to be provided to consumers, disconnection measures, and 24-hours switching which has been agreed to become a right for consumers. On billing, the discussion focused on the periodicity of the information (e.g. once a year or once a month). Regarding dynamic contracts it seems that a *de minimis* rule will be introduced.

There was a decision that all issues will first be discussed at technical level and then will be brought up at the next trilogue on 18 October in Strasbourg.

The first trilogue for the risk preparedness Regulation is scheduled for 25 September and for the ACER Regulation recast for 26 September.

Mr Borchardt also noted that, at the informal Member States Ministers' meeting, Poland raised the issue of the amendment of the Gas Directive. Twelve Member States urged the Presidency to move this file and progress with a General Approach in the Council so that the trilogue can be opened. The AT Presidency prioritises the CEP. However, a General Approach by the end of the year is achievable. The last Energy Working Party is scheduled for 27 September after which this is transferred to COREPER.

Mr Borchardt also reported on the trilateral Ministerial meeting with Ukraine and Russia on EU transit started in July.

### 2.3. BoR Chair

- Report on the ACER Director selection process and the AB decision on the acting Director

The BoR Chair noted that the ACER Administrative Board, in its meeting of 23 July 2018, took note of the fact that the procedure for the selection of the next Director of the Agency, launched with the publication of the vacancy notice on 30 August 2017, did not result in any appointment and, therefore, invited Mr Pototschnig to remain in office as Director *ad interim* beyond the end of his mandate on 15 September 2018. An ACER announcement was issued on 13 September.

Mr Borchardt informed the BoR that the EC will launch a new selection process by the end of September. The whole selection process is expected to last for one year. Mr Borchardt also expressed the gratitude of the EC that Mr Pototschnig has accepted to stay on as Director *ad interim*.

The BoR Chair also expressed his gratitude to Mr Pototschnig for stepping in as Director *ad interim*.

- Next steps towards the BoR Summit

The BoR Chair presented a note which captures the agreed process to the Summit as well as the next steps. He explained that there is a new context emerging from the Clean Energy Package (CEP) which will result in key changes to the electricity market design and the future functioning of the electricity markets. He suggested that there is now an opportunity to provide feedback and thus we must fully grasp, explore and consider the new framework and develop our potential input in anticipation of the new gas proposals when the new EC takes office. This work must also target, if possible, to a joint, concrete paper from the Agency and the regulatory authorities. We have to be ambitious and develop a clear and strong vision of Regulation.

In terms of the next steps, the Chair explained that the BoR Summit will be postponed to January. A preparatory discussion will be organised in December to determine what the output of the BoR Summit will be and to work towards a draft skeleton. The BoR Summit in January will consolidate the brainstorming on the identified issues (in the context of our agreed output (e.g. joint paper)) and draw high-level messages and key principles under each area. The AWG Chairs and ACER Heads of Department (HoDs) will provide an overview taking stock of the CEP proposals and new developments and initiatives by the EC in the gas sector at the October BoR, in order to propose particular areas to focus on at the BoR Summit.

Members supported the proposed timetable and next steps and had a debate on the scope of the event noting the importance of having clarity of the new framework once CEP is agreed and also taking stock of what has been achieved since the Bridge highlighting that the record of achievements is rather high. It



was also proposed to clarify the target of this exercise and its scope (e.g. influencing the EC proposals on gas or more long term regulatory challenges) and to recognise the need for flexibility and adaptability of the system.

The Chair thought that it is feasible to look into both aspects: The forthcoming proposals on gas as well as the longer term challenges of the energy system. He also highlighted how much progress has been achieved in Europe regarding the integration of the IEM.

The Director agreed that this exercise should also involve taking stock of what happened since the Bridge and this would also ensure consistency of our work and previous positions. He noted that the vision presented in the “Bridge” was quite ambitious and in fact its “title” – “the future challenges emerging from developments in the internal energy market” - still fits. However, the Bridge was more focused on electricity. In the future we should take a more holistic view of the energy system. We perhaps can look into the challenges from an energy wide point of view, how do we decarbonise at least cost, how can gas contribute to make the system more resilient and how the one sector can support the other.

Mr Borchardt welcomed that ACER and CEER be a part of such a discussion. The Council has asked the EC to explain which instruments could be used to reach the 2050 decarbonisation targets. For the EC the next immediate step is their Communication in November. Amongst the three axes, the energy sector is important and the EC will be considering both the energy side sector coupling as well as the energy sector integration, although at this stage there is no clarity on these amongst all stakeholders. In his view, in electricity we should focus more on implementation issues and monitoring. Nevertheless, for gas there is also a good opportunity to influence the gas debate (on the future role of gas, as well as the improvement of market rules and mirroring); he thus considers this step as a stepping stone for identifying the broader challenges and longer-term transition of the energy system. The forthcoming gas proposals will also have some elements on sector coupling. The next Madrid Forum will kick off discussions on those issues. We must identify a set of issues on which work should be pursued and the EC is considering workshops for next year as well as two Madrid Fora.

The Director noted that the FSR organises a workshop on 12/10 on sector coupling, in Florence.

### **3. Items for BoR opinion, endorsement or agreement**

#### **3.1. ACER Decision on the fall-back methodologies for the CORE CCR**

The Director presented the Agency’s Decision on the Fallback methodologies for the Core CCR. This Decision in accordance with Article 44 of the Commission Regulation (EU) 2015/1222 was referred to the Agency on 27 March 2018. The Agency consulted on the compliance of the Fallback Procedures proposed by the TSOs of the Core CCR with the CACM Regulation from 1 until 24 August. The Agency cooperated with the Core CCR TSOs and the Core CCR regulatory authorities and further consulted on the proposed amendments during teleconferences.

The Agency considers the Amended Proposal in line with the requirements of the CACM Regulation and approves it provided that the amendments described in this Decision are integrated in the amended proposal, as presented in Annexes I and II.

The decision finds that that the requirements of the CACM Regulation are complied with. Regarding the assessment of the point of disagreement among CORE CCR regulatory authorities, the Agency agrees

with the majority of the Core CCR regulatory authorities that the shadow allocation rules are an essential component of the Fallback procedures and that their inclusion can be considered as covered by Article 44 of the CACM Regulation. The Agency is, therefore, of the opinion that the shadow allocation rules should be annexed to the Core CCR Fallback Procedures and can be subject to regulatory approval.

Ms Groebel stated that BNetzA cannot accept that the shadow allocation rules are included in the annex as this entails contract liabilities which cannot be included in a decision. BNetzA submitted its dissenting opinion on the proposal.

The Director noted that this concern had already been fully assessed but without the shadow allocation rules the Decision would not be complete.

*The BoR provided by majority of the members present or represented its favourable opinion on the ACER Decision with a dissenting opinion of BNetzA.*

### **3.2. ACER Opinion on ENTSO-E's Annual Report 2017**

The Director presented the Agency's Opinion on ENTSO-E's Annual Report 2017. On 30 May 2018, ENTSO-E submitted its Annual Report. The Opinion notes the importance of adjusting the level of detail to the specific issue to ensure adequate clarity and completeness. Thus a few aspects in the ENTSO-E Annual Report 2017 could have benefitted from further elaboration, in particular:

- Mentioning delays or failures of some CCRs to submit methodologies.
- Erroneous representation of EU CO 2030 as a scenario although it is an input to create the so-called "external scenario".
- Wrongly reflected opinion of NRAs with regard to the scenarios for the TYNDP.
- Mistakes in the section on Europe Power System 2040.
- In the transparency section it should be specified whether all data providers are effectively submitting data or when it is expected.

*The BoR provided, by consensus of the members present or represented, its favourable opinion on the ACER Opinion on ENTSO-E's Annual Report 2017.*

### **3.3. ACER Opinion on ENTSO-E's Annual Summer Supply Outlook and Winter Review**

The Director presented the Agency's Opinion on ENTSO-E's Annual Summer Supply Outlook and Winter Review. ENTSO-E published their Annual Summer Supply Outlook and Winter Review on 30 May 2018. With regard to the Summer Outlook, the Agency notes that most of its past requests formulated by the Agency for improvement of the seasonal outlook methodology have not been implemented. It calls on ENTSO-E to continue and complete the improvements of the seasonal outlook methodology, and in particular the "probabilistic approach" objective which ENTSO-E identified already in its summer 2014 consultation on the target methodology for adequacy assessments.

With regard to the Winter Review, the opinion notes that an additional overview of recorded voltage violations and significant frequency deviations and misalignments of such situations with the forecast of the previous outlook (comparison of seasonal outlooks and reviews) is missing. It is also suggested covering all the months of the year which are currently not in the scope of ENTSO-E's analysis, especially regarding the analysis of downward regulation.

The Director reported that few of the Agency's recommendations have been taken into account.

ARERA was concerned about the appropriateness of market simulation scenario to be undertaken by ENTSO-E as it may affect electricity prices and CRU made a suggestion on the executive summary noting that even if SNSP was allowed to go to 100% it is still possible that there could be excess variable generation on very windy nights; to this end they suggested to have a footnote included to alleviate this.

*The BoR provided, by consensus of the members present or represented, its favourable opinion on the ACER Opinion on ENTSO-E's Annual Summer Supply Outlook and Winter Review.*

### **3.4. ACER Opinion on ENTSOG 2017 Annual Report**

The Director presented the Agency's Opinion on ENTSOGs 2017 Annual Report. The Agency welcomes the publication of the Annual Report in compliance with Article 8(3)(e) and 9(2) of Regulation (EC) No 715/2009. The Agency's draft Opinion provides some specific feedback on the timeliness (the Agency reiterates its recommendation to ENTSOG to consider publishing its annual reports earlier); completeness and provision of information of the report. In terms of the content, on network codes, the Agency appreciates the inclusion in the Annual Report of information related to monitoring the effects of the implementation of the NCs but reiterates its recommendation provided in 2017, namely that these efforts be taken further. The Agency appreciates the publication of the NCs Monitoring Report summaries as well as the inclusion of an overview of the Functionality Process. On data quality the Agency reiterates that there is a need to standardise the methodology for the published data, improve the alignment of the Energy Identification Coding (EIC) applied on the TP, and to consider other relevant improvements to enhance the implementation of the legal requirements. The Agency recommends that ENTSOG consider providing in its future annual reports information about work leading to harmonisation of the methodologies underlying the data collection from TSOs and the data fed into the TP; improvements of data quality; more effective data provision on infrastructure development. Finally, the opinion includes recommendations on organisational issues (e.g. information about staff).

*The BoR provided, by consensus of the members present or represented, its favourable opinion on the ACER Opinion on the ENTSOG 2017 Annual Report.*

## **4. Cross-sectoral**

### **4.1. 6<sup>th</sup> Market Monitoring Report**

#### **➤ Gas Wholesale Volume**

The Director presented the timeline for the volumes of the Report which are intended for publication by the end of the month. The Electricity Volume and Consumer Protection will be brought for information to the BoR in October.

The Director presented some of the key findings of the Gas Wholesale Volume, including *inter alia*:

- Europe is becoming more dependent on gas imports.
- Total EU hub-traded volumes in 2017 were around 3% lower than in 2016.
- The European gas system is characterised by high levels of resilience.
- Markets in the North-West Europe region tend to be the most competitive and resilient.

- European gas wholesale markets continued to show increasing levels of convergence in 2017.
- The difference between better functioning hubs and those without transparent trading venues continues to increase.
- More market zones or Member States are engaged in integration efforts.
- Bookings for shorter-term transportation capacity products are increasingly facilitating cross-border trade.
- Day-ahead price spreads between many hub pairs are often below transportation tariffs, indicating high levels of market integration.
- Gas consumption is increasing but levels of capacity bookings are decreasing, while technical capacity is increasing, hinting overcapacity.
- The commercial management of EU IPs is gradually incorporating short-term market fundamentals and price signals provided by hubs.

➤ Retail Volume

The Director also presented some of the key findings of the Retail Volume. As in previous years, retail electricity and gas prices for both households and industrial consumers continued to vary greatly across Europe, reflecting the heterogeneity of national energy and taxation policies. For household consumers, the prices in the highest-priced Member States (MSs) are still more than three times higher than those in the lowest-priced Member States. In 2017, household consumers further benefitted from the falling retail energy prices as the downward price trend that started in 2016 continued. However, as changes in retail prices have often not been responsive to changes in wholesale prices, it is also clear that the savings made from the reduction in wholesale prices were not always and everywhere passed on to household consumers.

The Director indicated that a slot at the ITRE Committee meeting of 9 October was assigned for a presentation of the MMR. The slot is rather short, about 30 minutes. The messages will therefore be high-level. Further, the Agency and CEER will hold a public event to present the MMR, the date has been set for 22 October.

Members suggested that NRAs must have the possibility to provide feedback to the retail market Volume given that the report is co-branded with CEER and given that the retail market volume is not discussed within an ACER WG. BNetzA raised a problem with the data origination of the household price and regarding the graph on p. 28 regarding the evolution of wholesale electricity prices.

The Director responded that the data on the Retail Volume was checked bilaterally with NRAs. The Director invited NRAs to write within this week if there are still concerns, so that the MMR team can contact NRA colleagues. With regard to the co-branding of the Report, the Director reminded the BoR that the process for the preparation of the report has been agreed several years ago. The agreement at the time was that the Report would be fully co-branded but under the final scrutiny of the Agency and signed off by the Agency. In his view, the Director indicated, this agreement has worked thus far

Ms Groebel and Ms Vadasz Nilsson confirmed that the approach for co-branding of the Report should be continued. Their remarks pointed towards providing more time for NRAs to check the Retail Volume as this would be beneficial for the robustness of data quality given also that the retail markets Volume is not being discussed at an AWG (as opposed to the electricity and gas wholesale market Volumes which are being discussed at the AEWG and AGWG respectively).

Ms Poletti supported this.

The Director noted that the simplified process on the Retail Volume was the only way forward apart from abolishing the Volume altogether. The breakdown of the retail prices into different components and the mark-ups is still adding value. But as mentioned, on the ACER side there is an issue with resources that can be devoted to this chapter. The Director indicated that any comments should be sent before the end of the week and should only be focussing on data quality issues. The Director agreed that there is room for improvement, the signing off shall ultimately be with the Agency.

The Chair concluded that this discussion has exemplified the willingness of NRAs to continue to cooperate in the production of the report and to seek ways to improve the efficiency of the process.

#### **4.2. Summary report on project-specific risk-based incentives to PCI's**

The Director presented the summary report for information to the BoR. This report summarises the findings of the Agency's monitoring in application of Article 13 of Regulation (EU) No 347/2013, which aims to ensure that appropriate incentives are granted to PCIs in instances where the promoter(s) of the project incur higher risks for the development, construction, operation or maintenance, compared to the risks normally incurred by a comparable infrastructure project.

The Agency's report notes that from 2013 until 2017, 6 requests have been made by promoters for the granting of project-specific risk-mitigating incentives under Article 13, of which 2 in electricity (2 in the Netherlands) and 4 in gas (1 in the Czech Republic, 1 in Slovakia and 2 in Lithuania). 1 request in electricity and 3 in gas eventually led to the granting of project-specific incentives.

The report also provides more clarity on the differences between non project-specific incentives and Article 13 incentives, as there have been cases where non-project specific incentives were mistakenly considered to be Article 13 incentives.

Mr Borchardt indicated that the outcome portrayed by the report may be of concern, since giving incentives to PCIs is an important element in the PCI process. The EC is including this issue in a study on national regulatory frameworks on investments. Project promoters often bring up that there are not enough incentives. The EC will come with more concrete conclusions once the study is finalised.

The Director replied that, when looking at PCI project monitoring, the Agency already realised that there are not many project promoters that apply for incentives. However, the root of the problem seems to be more related to the administrative (permitting) burden than anything else.

Members noted that perhaps the regular regime is sufficient and that the main hurdle for project promoters are the permitting times. This was addressed in the infrastructure regulation.

*The BoR took note of the summary report. The latest version of the report will be uploaded for any final comments for one week before publication.*

#### **4.3. Update on the requests for LEN advice**

Mr Šik provided an update on the ongoing assessments by the LEN Panels.

The 2<sup>nd</sup> LEN Panel: related to Balansys, the panel examines the conditions under which a TSO can transfer its regulatory balancing responsibilities, currently considered as a typical TSO activity, to another entity.

The 3<sup>rd</sup> LEN Panel: related to Balansys, the panel assesses the effectiveness of the compliance programme (Art. 7(4) Gas Directive). The purpose is to help the Agency in evaluating the request of a joint venture for approval of its compliance programme. This advice was put on hold pending the 2<sup>nd</sup> LEN Panel's advice.

The 5<sup>th</sup> LEN Panel: the panel investigates the involvement of exempted TSOs/NRAs in all NRA decisions as well as the consequences for the applicability of decisions if a new TSO were to be included in a region. The panel is close to reaching a consensus.

The 1<sup>st</sup> and 4<sup>th</sup> Panel delivered their advice.

As a general remark, Mr Šik pointed out that through the various panels and related assessments, the regulatory community is gaining much common understanding on legal issues and problems.

The Director thanked the LEN for their assessments and support. Ms Rico Rivas agreed and reiterated also the AEWGs gratitude for the work of the LEN.

## **5. Electricity**

### **5.1. Important AEWG updates**

Ms Rico Rivas provided an update on ongoing AEWG work. The last AEWG meeting was held on 5 September. The Energy Community participated in the last AEWG meeting and presented an update on the status of implementation of NCs in the Energy Community. A workshop on this topic will also be held in Rome on 21 September.

Ms Rico Rivas also indicated that at the next AEWG meeting there will be a back-to-back meeting with regard to strategic issues.

#### ➤ Report on the AEWG Vice-Chair position

Ms Rico Rivas reported to the BoR that a call for nominations for the position of AEWG Vice-Chair was opened after Mark Copley stepped down from his position as AEWG Vice-Chair due to his departure from Ofgem at the beginning of September. A new Vice-Chair will, therefore, have to be appointed. The call for nominations was open until 14 September. Ms Christine Materazzi-Wagner (from E-Control) and Ms Marie Montigny (from CRE) have applied. According to the AEWG RoP, the Director, having consulted the Chairperson(s), may appoint one or more Vice-Chairpersons of an AEWG.

The Chair thanked Mr Copley for his commitment to the AEWG and BoR. The Director also expressed his gratitude to Mr Copley. The Director also thanked colleagues who expressed their interest in taking up the AEWG Vice-Chair position

## **5.2. ACER Opinion on ENTSO-E's EB Monitoring Plan**

The Director informed the BoR of the Agency's Opinion on ENTSO-E's EB Monitoring Plan in accordance with Article 3(2) of Commission Regulation (EU) 2017/2195 establishing a guideline on electricity balancing. The Opinion is focused on general aspects related to the ENTSO-E Monitoring Plan. The Agency expresses three concerns in its Opinion.

The first concern is related to the submission to the Agency of the proposal for a draft European report on the integration of balancing markets pursuant to Article 59(5) of the EB Guideline.

The second concern is related to the data collection process foreseen for the first European Report (related to a disclaimer about completeness of data).

The third concern is related to the proposed scope of the Monitoring Report (the Agency is of the opinion that additional items should be included in order to cover all the requirements of the EB Guideline, e.g. the provisions that directly apply to TSOs, such as the requirements (Article 18) on national terms and conditions related to balancing, the definitions of specific products (Article 26), additional settlement mechanisms (Article 44); a description of the problems emerged during the implementation, etc.).

The Agency invites ENTSO-E to address the above concerns and revise the ENTSO-E Monitoring Plan within the timeline established in cooperation with the Agency but no later than 1 March 2019.

*The BoR took note of the Agency's Opinion on ENTSO-E's EB Monitoring Plan.*

## **5.3. ACER Opinion on ENTSO-E's FCA amended Monitoring Plan**

The Director presented the Agency's Opinion on ENTSO-E's amended FCA Monitoring Plan. On 14 April 2017 ENTSO-E submitted to the Agency its plan for the monitoring of the implementation of forward capacity allocation and the establishment of a single allocation platform. The Agency published an Opinion on the ENTSO-E FCA Monitoring Plan on 7 November 2017, inviting ENTSO-E to revise the FCA Monitoring Plan, taking the Agency's concerns into consideration. ENTSO-E submitted the amended FCA Monitoring Plan on 24 April 2018.

The Agency welcomes the alignment of the monitoring plans and appreciates that ENTSO-E included several elements in the report as requested by the Agency. Although the Agency does not consider that the FCA Monitoring Plan needs to be amended again, it invites ENTSO-E seriously to consider several further elements: The monitoring of regional firmness regimes was not reflected in the amendments to the FCA Monitoring Plan. Regarding the report on the effectiveness of the operation of the forward capacity allocation and the single allocation platform, the Agency reiterated that the first submission should not be conditional on the establishment of the single allocation and thus ACER invites ENTSO-E to shift the first submission of this report to an earlier date linked to the HAR. The consultation with the Agency is necessary for the statistical and quality indicators on capacity calculation. The description of indicators cannot yet be provided but the Agency requests to be consulted on these indicators again once implementation has moved to a further stage. Finally, the Opinion does not evaluate the appropriateness of the scope and action plans of the reports listed therein, such an evaluation will be appropriate once more clarity on the reports is available.

*The BoR took note of the Agency's Opinion on ENTSO-E's amended FCA Monitoring Plan.*

## **6. Gas**

### **6.1. Important AGWG updates**

Ms Poletti provided an update on ongoing work in the AGWG. Ms Poletti provided an update on the perceived ambiguity in the text of Regulation 459/2017 (NC CAM) regarding the implementation of virtual interconnection points (VIPs), which was reported through the Functionality Platform.

In Art. 19(9) of NC CAM it is stated that TSOs shall implement functional virtual interconnection points (VIPs) where two or more Interconnection Points (IPs) connect the same two adjacent entry-exit systems. There is an ambiguity in NC CAM on how implementing the VIP regarding existing contracts. On 3 August, the EC addressed a letter to ACER and ENTSOG giving their interpretation of Article 19(9) CAM NC, stating that an amendment of the Article is not required to infer its meaning and ensure its correct implementation. The letter included EC's view that the transfer of contracted and available capacity to the VIP is implicitly required according to Article 19(9) CAM NC. Therefore, the issue is now solved. ACER supports the EC's interpretation and it is now up to Member States to implement the VIPs.

### **6.2. Preparations for the Madrid Forum**

Ms Poletti reported on the preparations for the Madrid Forum which will take place on 16 and 17 October. The first day focuses on the role of gas and gas infrastructure in the decarbonisation of the EU mix, the potential challenges of gases in the energy transition, and sector coupling – the potential of linking the electricity and gas sectors. The second day is devoted to the EU internal gas market focusing of codes implementation and improving the market functioning in the Energy Community.

### **6.3. ACER Opinion on ENTSOG's template CAM NC Art. 20 alignment terms and conditions**

The Director presented the Agency's Opinion on ENTSOG's template on the alignment of terms and conditions. Article 20(3) NC CAM provides that the Agency, having due regard to the opinions of the national regulatory authorities, shall provide an opinion on the template for the main terms and conditions within a further 3 months. Taking into account the opinion provided by the Agency, ENTSOG shall publish on its website the final template for the main terms and conditions no later than 3 months after receiving the Agency's opinion.

On 5 July 2018, ENTSOG submitted to the Agency its template. The Agency took due account of the opinions of the NRAs, received in response to a draft of this Opinion, pursuant to Article 20(3) of the CAM NC. The Agency notes that ENTSOG has fulfilled its obligation under Article 20(2) of the CAM NC, however, the template does not always go as far as would be desirable and thus a number of observations are made. The Director explained that this opinion does not need a formal opinion of the BoR (under Article 15(1) of the ACER Regulation) whilst the Agency must give due regard to the opinions of NRAs (pursuant to the relevant provisions) and, to this end, the Director indicated that NRAs were consulted, which was confirmed by the BoR.

Ms Poletti clarified that the document has been discussed at the AGWG and that that the NRAs were consulted.



*The BoR took note of the Agency's Opinion on ENTSOG's template on terms and conditions in accordance with Article 20(2) of the CAM NC and did not provide any additional feedback.*

## **7. Market Integrity and Transparency & Surveillance and Conduct**

### **7.1. Important AMIT WG and REMIT CG updates**

Ms Groebel provided an update on ongoing work in the AMIT WG. As the budget and the potential impact on REMIT had already been discussed she did not further cover those aspects. Also, the AMIT WG is looking for a new co-convenor for the REMIT Policy Task Force.

Ms Groebel provided some further feedback from the 2<sup>nd</sup> EMIT Forum, and particularly on the participation of market participants and the need for awareness on the potential implications of a budget cut for REMIT.