

**69<sup>th</sup> ACER Board of Regulators Meeting**  
**Wednesday, 18 October 2017, 09.00 – 16.00**  
**Madrid**

**Minutes (public)**

Member States	Name <sup>[1]</sup>	Member States	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch A: Dietmar Preinstorfer	Italy (AEEGSI)	M: Clara Poletti A: Francesco Cariello
Belgium (CREG)	M: Marie-Pierre Fauconnier A: Koen Locquet O: Geert Van Hauwermeiren	Latvia (PUC)	O: Lija Makare
Bulgaria (EWRC)	O: Svetla Todorova	Lithuania (NCC)	O: Irma Vasarytė
Croatia (HERA)	M: Tomislav Jureković A: Sonja Tomašić Škevin,	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	A: Alkis Philippou	Malta (REWS)	A: Phyllis Micallef
Czech Republic (ERO)	A: Martin Sik O: Kateřina Fířlová	Netherlands (ACM)	A: Remko Bos O: Maarten Klijn
Denmark (DERA)	M: Finn Dehlbaek	Poland (URE)	A: Małgorzata Kozak
Estonia (ECA)	A: Külli Haab	Portugal (ERSE)	O: Natalie McCoy
Finland (EV)	A: Antti Paananen	Romania (ANRE)	O: Florin Tobescu
France (CRE)	A: H��l��ne Gassin O: Micha��l Mastier O: Aude Le Tellier	Slovakia (RONI)	Excused
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov	Slovenia (AGEN-RS)	Excused
Greece (RAE)	M: Sotirios Manolkidis	Spain (CNMC)	M: Fernando Hernandez O: Gema Rico
Hungary (HEA)	A: Attila Nyikos O: Adam Krinszki	Sweden (Ei)	M: Anne Vadasz Nilsson
Ireland (CER)	M: Garrett Blaney O: Aoife MacEivilly O: Seamus Byrne	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) O: Edward Freeman

ACER	Alberto Pototschnig, Dennis Hesseling, Fay Geitona,
European Commission	Klaus-Dieter Borchardt
CEER	Andrew Ebrill

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

<b>Draft MEETING CONCLUSIONS SUMMARY of the 69<sup>th</sup> BoR</b>
1.
2. <i>The minutes of the 68th BoR meeting were approved, as was the agenda for the 69th meeting. No conflict of interest was declared by the participants.</i>
3. <i>The Director informed the BoR of the recent publication of: the Agency's Work Programme for 2018 and the wholesale and retail market volumes of the 6th ACER-CEER Market Monitoring Report, which will be presented at the launch event in Brussels on 24 October.</i>
4. <i>The Director reported on the 1st Energy Market Integrity and Transparency Forum, which took place in Ljubljana on 11 October, and focused on REMIT policy topics, the experience gained thus far and the way forward. The Forum was attended by more than 110 participants. The Director also reported on the ITRE Delegation visit to ACER, which took place on 21 September: MEPs Morten Helveg Petersen and Miroslav Poche attended discussions relating to the implementation of network codes (NCs) and guidelines (GLs), the Clean Energy Package proposals, the Energy Infrastructure Package and REMIT implementation.</i>
5. <i>The Director informed members that on 27 September the EP Committee on Budgets voted on the amendments to the general budget of the EU for the financial year 2018, proposing an increased budget (+5.58 million euro) and posts (+30) for the Agency. This position is likely to be confirmed by the EP Plenary at the end of October.</i>
6. <i>The Director and the BoR Chair announced that the nominations for the Chairs of the Agency's Gas Working Group (AGWG) and Market Integrity and Transparency Working Group will be opened following the October BoR, in order for the BoR Recommendation to the Director to be issued at the November BoR. The Director will coordinate with the AEWG and AMIT Chairs on the appointment of the Vice Chair of the AEWG and the AMIT WG whose terms have also expired.</i>
7. <i>The Director informed the members that the process to collect language waivers from all TSOs in respect of ACER decisions is very burdensome and often practically impossible given the tight deadlines to prepare such decisions. Moreover, some TSOs seem reluctant to provide the waiver. The cost of translating any decision into several languages is prohibitive for the Agency. Not receiving the waiver from some TSOs exposes the Agency's decisions to legal proceedings. The Director invited all NRAs to raise TSOs' awareness about this issue and to help ACER make the process smoother and legally robust. The BoR and the Director discussed pragmatic solutions to address this problem including seeking the waivers early in the process and, where these are not provided, relying on the support of NRAs for translations.</i>
8. <i>The Director informed the members about the gas transport tariffs methodologies review to be conducted by ACER as of March next year: The Agency will have to review the national tariff methodologies in all the Member States from March 2018 to May 2019. The review will take place two months after the final consultation closes. Given that this task is very challenging in itself, the Director invited the members to provide all documentation in English, as far as possible.</i>

9. *Mr Borchardt updated the BoR on the negotiations relating to the EC legislative proposal “Clean Energy for all Europeans”. He provided a report on the current discussions in the European Parliament (EP) and the Council Energy Working Party (EWP) on the CEP proposals. At its meeting of 12 October the EP ITRE Committee considered the proposed amendments to the Commission proposals for the recast of the ACER Regulation 713/2009 and of the Directive and Regulation on the internal market for electricity, and the proposal for a Regulation on Risk-preparedness. The Council EWP also had 2 meetings in October to discuss its position in respect of those legislative proposals including the ACER Regulation. The EC presented the key issues which are the subject of the negotiations including the ROCs and their effective oversight, the ACER governance, the BoR deliberation process, the possibility for ACER to charge fees, the bidding zone review. The EP ITRE has set their vote for 11/12/2017.*
10. *The EC informed the BoR that the Electricity Balancing Guideline and Restoration Network Code have completed the scrutiny process and will soon be adopted.*
11. *The Director informed BoR members about the outcome of the electronic procedure for the adoption of the Agency’s Opinions on the 2017 gas and electricity lists of proposed PCIs, which ended on 10 October: 25 members participated in the second round, all of whom were in favour of the proposed ACER opinions. The Agency Opinions on the third Union PCI list were, therefore, adopted on the same day. The Director presented them at the meeting of the Decision Making Body on 17 October.*
12. *The Director presented the draft outline of Agency Work Programme for 2019 for discussion. The document will serve as the basis for the preparation of the Annual Work Programme, which will be submitted to the EC by 31 January 2018 as part of the Single Programming Document. It covers the tasks that the Agency expects to be engaged in and the external deliverables for 2019. For the first time the outline assigns a priority level (1-Critical, 2-Important, and 3-Relevant) to the deliverables and foresees some tasks under the CEP. Evidently the final list of tasks is subject to resources being available to ACER and the adoption of the CEP. It was noted that in certain cases different priority is assigned to the same tasks under electricity and gas. The Director will review the outline with the view to providing appropriate explanations where needed and this will be presented on 25 October in Ljubljana.*
13. *The Director presented his revised draft decision on the establishment of the Legal Expert Network (LEN) for a discussion along with a note explaining how he addressed the comments received. Members gave feedback, which the Director undertook to take into account in particular on the following issues: the possibility for the BoR to appoint the 2nd co-coordinator of the LEN from the NRAs; the possibility for the Director to consult the BoR Chair in case of disagreements; the Director’s confirmation of the requests to LEN coming from the ACER HoD. The provision of information to the NRAs’ single point of contact where an invitation is issued for the establishment of an expert panel. The revised draft decision will be submitted for information to the BoR at the November meeting. Following its establishment, the LEN will be reviewed in approximately a year’s time.*

14. The EC reported on the 2nd meeting of the NC IMG, which took place on 2 October. The terms of reference (ToR) of the NC IMG was approved subject to minor changes and will be published on the EC, ACER and ENTSOs website. With regard to coordinated implementation guidance, the NC IMG may issue non-binding implementation guidance (by consensus), which will be without prejudice to the legal obligations and responsibilities of each party. The NC/GL implementation issues were discussed, including: (i) the roles of the parties, in particular the ENTSOs' obligation to provide robust data to enable monitoring by the Agency; (ii) the need for early coordination through this group ahead of formal amendment requests of the NCs and GLs; and (iii) the ENTSO-E paper on optimising available capacity to trade while ensuring system security. On the ENTSOG and ENTSO-E Transparency Platforms, parties agreed that there is no need for a new structure for addressing data quality, and that the Agency and the ENTSOs will pursue discussions. The Director reported that a follow up meeting was held between ACER and ENTSO-E on the data provision and the quality of data and progress was made. The next meeting of the NC IMG will be held in Brussels on 29 November.

15. The BoR Chair updated the BoR on ongoing discussions with the Administrative Board (AB) Chair regarding the process for the selection of the next ACER Director with the aim of ensuring effective cooperation and early coordination between the two Agency Boards and the EC. The EC also presented the next steps and timing regarding the preselection and selection procedure. The EC explained in legal terms the role of the BoR under the ACER Regulation, which is to provide its opinion on the candidate nominated by the AB. However, in terms of the procedural practical arrangements, the BoR would receive information on all the short listed candidates in order to allow it to provide informal technical advice to the AB following its request.

16. The Director and Ms Groebel provided updates on the ongoing work of the REMIT Coordination Group and the Agency's Monitoring, Integrity and Transparency Working Group, in particular on ARIS, data collection and sharing, and ongoing implementation activities. Ms Groebel also informed the BoR on some issues related to MIFID II entering into force next year which raise questions on whether certain derivatives fall under REMIT or MIFID II.

17. The Director informed the BoR about the envisaged Guidance Note (Note) on generation capacity withholding which is under preparation on which there seem to be different views on substance and the way forward. The BoR agreed that, without prejudice to the relevant responsibilities and jurisdictions for enforcement, work needs to be pursued to allow ACER and NRAs to arrive to a common view on market abuse issues.

18. Mr Hernandez updated the BoR members on the ongoing work of the Agency's Electricity Working Group, including as regards network code implementation. He presented the detailed list of the EU and regional methodologies to be approved under Article 9(6) and (7) of the CACM Guidelines.

19. The Director presented the first Implementation Monitoring Report (IMR) of the network code on Requirements for Grid Connection of Generators (NC RfG). The report fulfils a legal obligation and promotes the implementation of the NC RfG by identifying challenges and recommending concrete actions and best practices leading to more efficient implementation. The NC RfG entered into force on 17 May 2016, but only a handful of provisions apply before 27 May 2019. The IMR covers the information on the implementation status of the specific NC RfG provisions that were due to be implemented by mid-2017. The BoR took note of the Agency's IMR of the NC RfG.

20. The Agency's Decision on Harmonised Allocation Rules was submitted to the BoR for a two-round electronic procedure for BoR opinion as agreed in the last BoR. At the second round 23 members participated: 21 members voted in favour, one against and one abstained. The Agency's decision was, subsequently, adopted.

21. The Director presented the ACER Decision on Harmonised Maximum and Minimum Clearing Prices (HMMP) for single day-ahead and intraday coupling. All NRAs referred the HMMP for single day-ahead and intraday coupling to ACER for a decision. NRAs considered that these proposals were not fully compliant with Regulation 2015/1222 because NEMOs failed to take into account the Value of Lost Load. Also NRAs could not find a unanimous position on the value of the maximum clearing price proposed by all NEMOs. The Agency's Decision on HMMP for single day-ahead and intraday coupling was given a favourable opinion of the BoR (by majority of the members present or represented) with the dissenting opinion of AEEGSI on the day ahead HMMP decision.

22. The Director informed the BoR on the Agency's Decision on the Congestion Income Distribution Methodology. The matter was referred to the Agency on 20 June, after TSOs failed to take on board the all NRAs' request for amendment. There are some remaining open issues to be solved in further discussions with TSOs. The Decision will be tabled to the BoR on 22 November for its Opinion. Members raised some concerns about the draft decision being prepared including on the scope of the proposed amendments.

23. The Agency's Gas Working Group (AGWG) Vice-Chair provided an update on ongoing work including as regards the tariffs code, the ACER allowed revenues report, and the ENTSOG 2nd NC tariffs implementation workshop held on 5 October to which 6 NRAs presented their implementation activities. He provided updates on the Implementation Monitoring reports (interoperability and balancing) under preparation. He reported on the CAM implicit allocation methods and calls for TF convenor (CAM and IOP) extended until 18 October and on the Madrid Forum presentations.

24. The Director presented the Agency's Opinion on ENTSOG's methodologies for cost-benefit analysis (CBA) for infrastructure for discussion to the BoR. The Opinion provides recommendations on the way forward for further work leading to the adoption of a robust CBA methodology, including the feasibility of implementing such recommendations in the short run (by early 2018) and in the longer run. The Opinion should be finalised and adopted by 24 October 2017. The BoR took note of the Agency's Opinion.

25. The Director informed the BoR that with regard to the ACER Opinion pursuant to Article 7(6) of Regulation 713/2009 on the application of the surrender mechanism, which was tabled for a BoR favourable opinion, the EC's opinion is pending. ACER consulted the EC, but the EC's opinion is still under inter-service consultation and will not be provided until later in the month or at the beginning of November. As a way of background, the CNMC has sought an opinion of the Agency on whether the surrender mechanism 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. The Agency's 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. Given its ultimate aim to prevent contractual congestion it should be applied prior to such event. The Agency's opinion was given a favourable opinion of the BoR (by consensus of the members present or represented) conditional to the positive conclusion of the EC consultation. The EC confirmed its agreement, in substance, to the interpretation provided by the Agency. The BoR agreed to the Director sending a letter to the CNMC capturing the main considerations developed in the Opinion pending its formal adoption.

26. *The Director and the ACER Head of Gas Department presented the key conclusions on the Implementation Monitoring Report for the NC on balancing which is under preparation. This 2nd report introduces an analytical framework and applies it across 7 balancing zones. (Part I of the Report). An enhanced review of the country assessment sheets is provided for 26 balancing zones (Part II of the Report). The next steps were presented for the finalisation of the report. The report will be sent to the AGWG for comments. Following its review by the Director, it will be circulated to the BoR for information ahead of its publication envisaged on 15 November, in time for the ACER-ENTSOG Workshop on Balancing (22 November 2017, Vienna).*

27. *Mr Blaney informed about the invitation he received to participate at the ENTSO-E annual conference on 5 and 6 December "Connecting the dots of the energy transition". He invited any suggestions, contributions from the members to be submitted to the BoR Secretariat on possible issues he could cover in his intervention and to have a short discussion at the November BoR.*

28. *The BoR paid tribute and thanked Lord Mogg for his outstanding contribution and leadership of the BoR from its inception.*

## Part A: Items for discussion and/or decision

### 1. Opening

#### 1.1. Approval of the agenda

BoR Decision agreed: (D 1)

*The agenda was approved. No declaration of conflict of interests was made.*

#### 1.2. Approval of the minutes of the 68<sup>th</sup> BoR meeting

BoR Decision agreed: (D 2)

*The minutes of the 68<sup>th</sup> BoR were approved.*

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

#### 2.1. Update on recent developments

##### - ACER

The Director updated on the recent publications. On 25 September the Agency published the ACER Work Programme for 2018. Other recent publications include the 6<sup>th</sup> ACER-CEER Market Monitoring Report, three Volumes of which were published on 6 October. It will be presented at an event in Brussels on 24 October and to the EP ITRE Committee on 28 November.

The Director informed the BoR that on 27 September the EP Budget Committee voted on amendments to the general budget of the EU for the financial year 2018, proposing an increased budget (+5.58 million euro) and posts (+30) for ACER. This is expected to be confirmed by the EP Plenary at the end of October, after which it will become the official EP position.

##### ➤ Report on the First Market integrity and Transparency Forum

The Director reported on the 1<sup>st</sup> Energy Market Integrity and Transparency Forum held on 11 October in Ljubljana. A number of NRAs attended and the AMIT WG Chair chaired a panel. The idea was to make REMIT more visible again and very interesting discussions were held. The Forum was supported by the Slovenian Government and the Ministry for Foreign Affairs hosted a lunch for all participants in Vila Podrožnik, its protocol venue. More than 110 participants attended. The Forum discussed REMIT policy topics (e.g. Urgent Market Messages, REMIT data quality etc.), the experience gained thus far and the way forward. Mr Koch from DG ENER also participated.

##### ➤ Report on the ITRE Delegation visit to ACER

The Director reported that the ITRE Delegation visit to ACER took place on 21 September. The delegation comprising MEPs Morten Helveg Petersen (ALDE) and Miroslav Poche (S&D) attended presentations on: the implementation of the network codes and guidelines in the gas and electricity sectors; the Clean Energy Package proposals; the Energy Infrastructure Package; and REMIT implementation. The discussion focused in particular on challenges relating to market integration, and it was proposed that the next meeting of the ACER Contact Group be set up.

➤ ACER-CEER Market Monitoring Report Launch Event (not in agenda)

The date for the MMR presentation in Brussels (CEER premises) has been set for 24 October. The draft agenda is available on the ACER website and registrations are open. Mr Buzek cannot participate as this is a Strasbourg week. ACER and CEER will present the key findings from the MMR, which comprises Volumes on Electricity Wholesale Markets, Gas Wholesale Markets, Electricity and Gas Retail Markets, and Consumer Protection and Empowerment, and a Q&A session will conclude the event. Mr Florian Ermacora will provide reactions on behalf of DG ENER. Mr Renatas Mazeika will provide reactions on behalf of DG JUST.

➤ Terms of the AWG Chairs (not in agenda)

The Director and the BoR Chair announced that the nominations for the Chairs of the Agency's Gas Working Group (AGWG) and Market Integrity and Transparency Working Group (AMIT), following the resignation of Mr Trindade and the expiration of the term of Ms Groebel, will be opened following the October BoR. This will allow the BoR Recommendation to the Director to be issued at the November meeting. The Director will coordinate with the AEWG and AMIT WG Chairs on the appointment of the Vice Chair of the AEWG and AMIT whose term have also expired.

➤ Language waivers from TSOs (not in agenda) (also related to the ACER HAR Decision)

The Director informed the BoR about the obligation of issuing ACER decisions in all languages which is not feasible in terms of the tight deadlines and the high costs involved. Before issuing its HAR decision, the Agency asked all concerned TSOs to send a letter waiving their right to be notified the decision in their own language (and accepting therefore to receive the decision in English). By the deadline of the issuance (2 October), and after a lot of reminders, the Agency eventually managed to receive all TSOs' waiver letter but one. The cost of translation of the whole HAR decision into each language would approximately amount to 30.000 euro, which is a prohibitive for the Agency – and even more so if several translations were to be provided. The Director kindly invited NRAs to exert some pressure on TSOs to issue such waivers as in certain cases TSOs are reluctant or late. This is crucial to help ACER to make the process smoother and legally most robust. If the waivers are not issued the ACER decisions are open to legal proceedings.

The Chair urged the Director and Mr Blaney to pursue the discussion on this in order to seek pragmatic solutions.

➤ Tariffs methodologies (not in agenda)

The Director informed the BoR that ACER will have to review the gas transport national tariff methodologies in all the Member States as of next year, from March 2018 to May 2019. The review will take place two months after the final consultation closes. The consultation lasts two months and the Agency will also use that time period to build up knowledge about the file. The large amount of tariff methodologies to be reviewed, the complexity of these methodologies and the timelines provided requires planned processes. Given that this task is challenging, the Director invited the regulators to provide all documentation in English, as far as possible. Filling in the template provided by the Agency online would also support the review process.



**- EC**

➤ Update on Clean Energy Package proposals

Mr Borchardt provided an update on the Inter-Institutional debate on the CEP. The work of the EP is advancing. There have been approximately 3000 amendments tabled on the Electricity Regulation and Directive, a sign that the European Parliament assigns particular importance to this file and the meetings between the rapporteurs and the shadows are progressing. Key points include the debate on the priority dispatch of RES installations and the relevant thresholds, the Bidding Zones review on which there are also political considerations, the approach on ROCs which the EP proposes to rename as RCC reflecting better their ambit of responsibilities which do not include day-to-day operation. Also the missing link in the EC proposals which was addressed by Mr Petersen's report regarding the ROCs effective regulatory oversight. There are also some other proposals on macro-economic regions. A similar debate is being held at the Council which names the ROCs "Regional Security Coordinators" with a reduction of their responsibilities. There are also discussions on the ACER Regulation recast on which there are different trends in terms of the powers of the Director vis-à-vis the AB and the BoR. There are different views on the possibility of ACER to charge fees in relation to specific activities despite the strong support by the EP to address the problem of resources of ACER. In terms of the BoR deliberation process, there is strong support for maintaining 2/3 majority.

The debate in the Council' EWP is being pursued under the Estonian Presidency. There has been a revision of the ACER Regulation recast which covers the less disputed issues.

The EC has a keen interest for a robust quality assessment of the proposals which should not be undermined for the sake of speediness. The EP has planned the ITRE vote on 11 December over the ACER Regulation recast and the Electricity Regulation and Directive recasts.

On 18 December the Energy Council will consider the CEP and either adopt a common position or decide how to move forward. The next Presidency will be the Bulgarian Presidency.

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

#### **3.1. Outcome of the electronic procedure for the ACER Opinion on the third Union list of PCIs**

The Director informed the BoR on the electronic procedure on the Opinions on the third Union list of PCIs. The first round of the EP was launched on 28/09 and the deadline for comments was Tuesday 3 October.

The second round was launched 5 October and closed on the 10th. 25 members participated, all of whom were in favour of the two PCI Opinions. The PCI Opinions were adopted on the same day. The Director presented them to the Decision-Making Body on 17 October. The EC intends to launch the Inter service consultation next week and the possible adoption of the PCI list is envisaged for November.

#### **3.2. Draft outline of the ACER WP 2019**

The preparation of the Work Programme 2019 has started with the production of a preliminary draft outline. The draft outline will serve as the basis for the preparation of the Annual Work Programme (which will be submitted to the European Commission by 31 January 2018, as part of the Single Programming Document). Once the Commission has issued its opinion (by end of June) the BoR will approve the Programming Document and the AB can formally adopt it (by 30 September). The Director explained that

for the first time this year ACER has attempted to assign priority levels to the specific deliverables (1-Critical, 2-Important, and 3-Relevant). The outline also includes the ACER activities which are foreseen under the CEP, notwithstanding the fact that the CEP scope is not yet fully defined, pending the outcome of the ongoing negotiations. The AWG Chairs were consulted on 10 October and the draft outline was revised to reflect their comments. The Director will present the outline on 25 October in Ljubljana. He invited any comments by then.

The full scope of activities (including internal administration) will be presented in the Agency's Annual Work Programme but will depend on the Agency's budget for 2018; the preliminary draft budget for 2019; and the outcome of the legislative process of the "Clean Energy for all European" package which also provides others tasks for ACER.

### 3.3. Update on the Legal Expert Network

The Director presented his draft decision on the establishment of the LEN which was discussed at the July BoR. Several members submitted written comments and the Director explained how he addressed the comments received. The members provided feedback and raised concerns on the body responsible for the appointment of the NRAs' co-coordinator suggesting that it should be the BoR; the involvement of the BoR in case of disagreements; the discretion of the NRAs over their resources being involved in the expert panels.

*The members endorsed the LEN decision subject to the following revisions: the possibility for the BoR to appoint the NRAs' co-coordinator of the LEN; the possibility for the Director to consult the BoR Chair in case of disagreements; the Director's confirmation of the requests to LEN coming from the ACER HoD; the provision of information to the NRAs' single point of contact where an invitation is issued for the establishment of the expert panels. The revised decision will be submitted at the November BoR.*

The BoR Chair suggested reviewing the LEN in approximately one years' time.

### 3.4. Report on the NC IMG meeting of 2 October

Mr Borchardt reported on the key outcomes of the 2nd meeting of the NC IMG which took place on 2 October. The Group agreed the reference paper which will be released on Friday on the website of the EC, ACER and ENTSOs. The Group discussed the possibility for coordinated implementation guidance (by consensus) and public information tools: existing gas and electricity platforms will continue to be used (e.g. Q&As released by coordination groups), but they should cross reference one another to ensure transparency. Where issues cannot be addressed within those structures, the NC IMG may issue non-binding implementation guidance. The Group discussed the network codes' implementation issues including:

- (i) roles of parties: the discussion focused on ENTSOs' obligation to provide robust data to ACER for monitoring purposes and the proportionality of data requests;
- (ii) amendments: the NC IMG should coordinate ahead of requests for amendments by analysing any issues and differentiating between those which can be resolved via informal guidance and those which require amendments;
- (iii) ENTSO-E paper on optimising available capacity for trade while ensuring system security: all reaffirmed the importance of non-discrimination between internal and cross-border trade, and

ENTSTO-E invited ACER to draw NRAs' attention to it when examining TSO proposals for methodologies to be approved by NRAs.

The next meeting of the NC IMG will take place on 29 November.

The Director noted that ACER had a follow up meeting with ENTSO-E on the quality and data provision.

### 3.5. Update on the selection of the ACER Director

Lord Mogg reported on the latest discussions with the EC and the AB Chair to ensure an early involvement of the BoR in the whole process for the selection of the Director and to ensure effective coordination of both Boards and the EC. He emphasised the different roles of the EC and ACER Bodies during this process and the need to have a sound understanding and respect of the different roles and responsibilities.

The EC reported that following the closing date for applications (27 September 2017) a certain number of candidates will be invited for interviews following which the EC will establish a short list of at least 3 candidates who will have to pass through their assessment centre. The EC will then formally table the short list to the AB. Notwithstanding the formal role of the BoR which is to provide its opinion on the AB nominated by the AB candidate, a "technical involvement" of the BoR will be discussed in order to allow it to provide informal technical advice to the AB following its request. The EC will inform the AB Chair of such possibilities and the BoR Chair will further coordinate with the AB Chair on the next steps and practical arrangements.

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

### 4.1. REMIT implementation and operation

Ms Groebel reported on a very successful first REMIT Forum with a very knowledgeable audience. At the Forum there have also been some discussions on a possible update of the REMIT Regulation. The clear message from the EC was that this is not on the agenda of this Commission. Participants emphasised the need to focus at this stage at the correct implementation of the current REMIT Regulation. She referred to the positive news from the EP budget committee to support the increase of the ACER budget and emphasised that NRAs face the same resources constraints. There are also some further issues related to MIFID II which will enter into force and there are discussions on whether certain derivatives fall under REMIT or not. She noted the need to provide as soon as possible a clear signal to market participants on such issues.

The Director reported that data collection and data sharing work fine. He apologised for having some delays in the adoption of the decision to admit NRAs to data sharing. ACER resources have to focus on how to implement a new data protection Regulation which was urgent and thus ACER has been a bit late. However, the aim is to increase the number of NRAs receiving data through the data sharing solution.

The Director informed the BoR about the envisaged Guidance note on generation capacity withholding which is under preparation: There seem to be different views on substance and the way forward. He has asked his colleagues to pursue work on the guidance. He believes this is a relevant topic because under Article 16 of REMIT we have the task to ensure a consistent application of market manipulation provisions

of REMIT. The Agency appreciates that the debate at technical level is complicated and relates to the market design across EU Member States. There are also issues on the relevant jurisdictions for enforcement. However, we could hopefully shape a consistent view on such issues and then decide the next steps including whether to publish it or not.

The Director is pleased that there is support for discussing this issue further with the view to arriving at a common understanding. At a first stage we must come to a view on whether abuse of market power is always market abuse. Evidently the case law should be looked into. At this stage the relevant jurisdiction is not important.

*The BoR agreed that without prejudice to the relevant responsibilities and jurisdictions for enforcement, work needs to be pursued to allow more clarity and possibly ACER and NRAs to arrive to a common view on market abuse issues and what constitutes market manipulation.*

## **5. Electricity**

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

The AEWG met on 27 September. Mr Hernandez provided an update including as regards network code implementation. He presented the detailed list of the EU and regional methodologies to be approved under Article 9(6) and (7) of the CACM Guidelines. Mr Hernandez noted that the discussion on the bidding zone review process is ongoing. We are on top and we expect to look into this issue in March. A workshop will be held on the coming months.

### **5.2. Implementation Monitoring Report for the NC on RfG**

The Director presented the first Implementation Monitoring Report of the Network Code on Requirements for Grid Connection of Generators (NC RfG). The report fulfils a legal obligation and aims to highlight learnings and promote the implementation of the network codes by identifying challenges in implementing the network codes and recommending concrete actions and best practices that can lead to more efficient implementation. The NC RfG entered into force on 17 May 2016, but only a handful of provisions apply before 27 May 2019. The IMR covers the information on the implementation status of the specific NC RfG provisions that were due to be implemented by mid-2017:

- Non-binding guidance on implementation, Article 58;
- List of relevant information for implementation monitoring, Article 59.2;
- Criteria for granting derogations, Article 61.1;
- Transitional Arrangements for Emerging Technologies, TITLE VI.

Three last-minute change requests for the Implementation Monitoring Report were received from PUC (Latvia), DERA (Denmark) and the Finnish NRA to provide missing data and update incorrect data. The Agency is willing to take these changes on board.

*The BoR took note of the report.*

### 5.3. Outcome of the electronic procedure regarding the ACER Decision on Harmonised Allocation Rules

The Director reported on the outcome of the electronic procedure. The HAR Decision was submitted for a BoR favourable opinion through a two-round electronic procedure, as agreed in the last BoR. The second round ran from 25 September and until 28 September. 23 members participated. 21 members voted in favour, BNetzA voted against and ILR abstained. The Agency's decision was subsequently adopted.

The Director raised his concerns about 2 members not participating in the electronic procedure to avoid complicating the process given that the decision does not apply to their TSOs. Lord Mogg suggested having the input of the TF and WG with the view to exploring this issue more fully.

### 5.4. ACER Decision on Harmonised Maximum and Minimum Clearing Prices for single day-ahead and intraday coupling

The Director presented this decision: On 25 July and 2 August all NRAs referred the all NEMOs' proposals on Harmonised Maximum and Minimum Clearing Prices (HMMP) for single day-ahead and intraday coupling to ACER for a decision.

A main reason for the regulatory authorities not being able to reach a unanimous position was the value of the maximum clearing price proposed by all NEMOs. At least one regulatory authority opposed the value of 3000 EUR/MWh arguing that it will not give sufficient incentive for a well-functioning energy-only market and proposed a value of 5000 EUR/MWh instead. Also, NRAs considered that these proposals were not fully compliant with Regulation 2015/1222 because NEMOs failed to take into account the Value of Lost Load.

On 24 August 2017, the Agency launched a public consultation on the proposal, inviting all regulatory authorities, TSOs and NEMOs, as well as any other market participants, to submit their comments by 15 September 2017. The summary and the evaluation of the responses received are presented in Annex II to this Decision.

It is specified that, in the event that the clearing price exceeds 60 percent of the harmonised maximum clearing price for SDAC, the latter shall be increased by 1000 EUR/MWh the next day, however, it shall be applied in bidding zones five weeks later.

The Director explained that the Agency considers the proposal to set the harmonised maximum clearing price for SDAC equal to 3000 EUR/MWh, combined with a very dynamic automatic adjustment mechanism as proposed by NEMOs and amended by the Agency in Annex I to this Decision, as an adequate response to the various concerns expressed by regulatory authorities and stakeholders.

In the Agency's view, this automatic adjustment mechanism for harmonised maximum clearing price for SDAC may well meet the requirement in Article 41(1) of the CACM Regulation to take into account an estimation of the VoLL.

However, if, during this five-week period, the clearing price exceeded 60 percent of the newly valid increased harmonised maximum clearing price for SDAC, the harmonised maximum clearing price for SDAC would increase again with effect from the next calendar day onward, and applied in bidding zones

five weeks later. This transition period aims to give time to market participants to adjust to the amended value of the harmonised maximum clearing price for SDAC, while minimising the impact on free price formation.

Both HMMCPs apply at the date of implementation of the MCO functions, i.e. 01.07.2018.

Mr Hernandez noted that the AEWG is in favour of the proposed decision.

*The Agency's Decision on HMMP for single day-ahead and intraday coupling was given a favourable opinion of the BoR (by the majority of the members present or represented) with the dissenting opinion of AEEGSI on the HMMP day ahead.*

#### 5.5. ACER Decision on the Congestion Income Distribution Methodology

The Director informed the BoR that the matter was referred to the Agency on 20 June, after TSOs failed to take on board the all NRAs' request for amendment. There are some remaining open issues to be solved with TSOs regarding external flows, in particular on the notion to be used. There are two options: Scheduled exchange equal to commercial flow (i.e. this gives more time to solve the external flow problem in scheduled exchange methodology); or exact rules in CIDM and transparency of allocated flows.

The ACER Decision on CIDM was discussed at the AEWG of 27 September. The NRAs/TSOs consultation was launched 6 October and closes on 27 October. The draft Decision is aimed to be tabled for the BoR on 22 November for its Opinion.

The Director considers that the single system paradigm without borders in Europe should be the reference point and he is trying to explore an approach which minimises distortions and arbitrary solutions. In terms of the legal considerations, the EC has indicated that ACER can amend such all TSOs proposals. He thus considers that we should not feel constrained about the scope of amendments.

Mr Blaney reported that he received a request to participate at the ENTSO-E conference on 5, 6 December. He invited any suggestions to be included in his intervention from members to be sent to the Secretariat and to have a short discussion at the next BoR.

## 6. Gas

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

The AGWG Vice-Chair, Mr Maes presented some updates from the current work covering the tariffs codes and the ACER allowed revenues report, and the ENTSOG 2<sup>nd</sup> network code tariffs implementation workshop held on 5 October to which 6 NRAs presented their implementation activities. He provided updates on the Implementation Monitoring reports (interoperability and balancing). CAM implicit allocation methods and the call for TF convenor which was extended until 18 October; last he updated on the Madrid Forum presentations.

## 6.2. ACER Opinion on ENTSOG's methodologies for cost-benefit analysis for infrastructure

The Director presented this Opinion. The Agency evaluated ENTSOG's submission and the accompanying information, covering the scope, process, consistency with legal requirements, content (covering improvements in line with previous guidance issued by the Agency, and areas where further improvements are recommended). The Opinion provides recommendations on the way forward for further work leading to the adoption of a robust CBA methodology, including the feasibility of implementing such recommendations in the short run (by early 2018) and in the longer run.

In terms of process: The Opinion had undergone extensive redrafting at Task Force level after the 3 October virtual AGWG meeting as there were still some open technical issues to be discussed among experts. There have also been concerns on the short deadlines for comments. The Director explained that the NRAs were informed that the document was under the Director's review in parallel with comments being sought at the AGWG. While this process was not ideal, it allowed for having a supported version ready by 11 October.

It is intended to finalise the Opinion by 24 October 2017. The BoR took note of the ACER opinion on ENTSOG's methodologies for the Cost-Benefit Analysis.

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

The Director informed the BoR that with regard to the ACER Opinion under Article 7(6) of Regulation 713/2009 on the application of the surrender mechanism which was tabled for a BoR favourable opinion, the EC's opinion is still pending. ACER has consulted the EC which prepared its opinion which is subject to inter-service consultation before its formal adoption which will take some time. Thus the ACER Opinion cannot be adopted. As a way of background, the CNMC has sought an opinion of the Agency on whether the surrender mechanism foreseen in Point 2.2.4 of Annex I to Regulation 714/2009 is applicable only in the event of contractual congestion. The Agency's draft Opinion provides that Point 2.2.4 of the CMP Guidelines is contractual congestion. Given its ultimate aim to prevent contractual congestion it should be applied prior to such event.

Mr Borchardt clarified that the EC was not capable to meet the tight deadline and the EC's inter-service consultation will be launched this week. The EC opinion will be adopted at the earliest the end of the month. There seems to be no problem with the substance but the EC needs to go through its formal procedure.

The Director and the BoR discussed the next steps.

The Agency's Opinion was given a favourable opinion of the BoR (by consensus of the members present or represented) conditional to the EC's opinion. The BoR also agreed that the Director will write to the CNMC, outlining the substance of the Agency's Opinion, while signalling that the latter will be adopted only once the EC consultation process will be positively completed.

## 6.4. Implementation Monitoring Report for the NC on Balancing

Mr Hesseling provided a presentation on the draft second IMR report on the Balancing NC. The report will be technical:

- It introduces an analytical framework and applies it across 7 balancing zones. (Volume I of the Report)

- it dives deep in effects analysis.
- it includes an enhanced review of the country assessment sheets for 26 balancing zones (Volume II of the Report).

A first round for written comments of the BoR shall be launched after the BoR. A second round, for information, shall be launched after the Director's review. On 15 November ACER intends to publish the Report as it should be ready in time for the ACER-ENTSOG Workshop on Balancing on 22 November 2017 in Vienna.

Lord Mogg suggested that the report be followed up by 3 types of letters to NRAs, as the case may be:

1. A letter to those NRAs to whose balancing system the analytical framework has been applied in this year's report, asking them to apply the same framework next year and to report on the learnings;
2. A letter to those NRAs who are foreseen to be covered in the next report by the analytical framework, asking them for their cooperation and preparation;
3. A letter to NRAs with an interim measures regime, alerting them to the upcoming deadline and the concerns the Agency has.

## **AOB**

Mr Borchardt, the ACER Director and the BoR paid tribute and thanked Lord Mogg for his outstanding contribution and leadership of the BoR from its inception. They praised his exceptional contribution to the EU and international energy regulatory scene from the European energy regulators' side, which has been instrumental in the establishment and first years of successful operation of ACER, in fostering cooperation, in building trust amongst the NRAs and between the NRAs and the Director and in fostering the dialogue with the Institutions to the benefit of an Internal Energy Market.