

**70<sup>th</sup> ACER Board of Regulators Meeting**  
**Wednesday, 22 November 2017, 09.00 – 16.00**  
**CEER offices, Cours Saint-Michel 30a, 1040 Bruxelles**

**Minutes (final)**

Member States	Name <sup>[1]</sup>	Member States	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch A: Dietmar Preinstorfer O: Vera Gusenbauer	Italy (AEEGSI)	M: Clara Poletti A: Francesco Cariello O: Ilaria Galimberti
Belgium (CREG)	M: Marie-Pierre Fauconnier A: Koen Locquet O: Geert Van Hauwermeiren O: Tom Maes	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)	M: Andreas Poullikkas	Malta (REWS)	A: Phyllis Micallef O: Rachelle Riolo
Czech Republic (ERO)	M: Vladimír Outrata, A: Martin Sik O: Vladimír Vlč O: Kateřina Firlová	Netherlands (ACM)	A: Remko Bos O: Maarten Klijn
Denmark (DERA)	M: Finn Dehlbaek	Poland (URE)	O: Joanna Buzar
Estonia (ECA)	O: Tiina Maldre	Portugal (ERSE)	M: Alexandre Santos O: Natalie McCoy
Finland (EV)	M: Simo Nurmi	Romania (ANRE)	O: Florin Tobescu
France (CRE)	A: Héléne Gassin O: Michaël Mastier O: Aude Le Tellier O: Romain Charvet	Slovakia (RONI)	A: Natasa Hudcovicova
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov	Slovenia (AGEN-RS)	A: Bojan Kuzmič O: Marko Sencar
Greece (RAE)	A: Nektaria Karakatsani	Spain (CNMC)	M: Fernando Hernández O: Gema Rico
Hungary (HEA)	A: Attila Nyikos O: Adam Krinszki	Sweden (Ei)	M: Anne Vadasz Nilsson O: Elin Broström
Ireland (CER)	M: Garrett Blaney (BoR Chair) O: Seamus Byrne	United Kingdom (Ofgem)	A: Mark Copley O: Jenny Pyper

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

ACER	Alberto Pototschnig, Dennis Hesseling, Volker Zuleger, Martin Godfried, Antonio Santos, Fay Geitona, Sander Ramp
European Commission	Adriano Addis, Michael Schuetz
CEER	Andrew Ebrill

**Draft MEETING CONCLUSIONS SUMMARY of the 70<sup>th</sup> BoR**

1. *The minutes from the 69th BoR meeting were approved, as was the agenda for the 70th meeting. No conflict of interest was declared by the participants.*
2. *The new BoR Chair, Mr Blaney, provided introductory remarks. He offered several ideas for restructuring the agenda for the BoR meetings with the view to increasing efficiency and to allowing time for more substantive and strategic discussions at the BoR. This could also include consideration of invitation of external speakers from key stakeholders. The Chair invited members to provide feedback and a more concrete proposal will be presented at the December BoR meeting. The Chair also suggested the idea of the next BoR summit to be held back to back to the March BoR. This summit will launch preparations and brainstorming for a discussion on forward-looking challenges in the context of the IEM. To this end, a proposal by the Chair will be presented at the December BoR meeting. A revised calendar to accommodate a half-day event will be circulated.*
3. *The Director reported on the public presentation of the 6th Market Monitoring Report, which took place on 24 October at the CEER premises in Brussels. The European Commission was present to provide initial reactions (Mr Ermacora from DG ENER, Mr Mazeika from DG JUST). 65 participants attended and 79 were connected through the livestream.*
4. *The Director informed the BoR that on 25 October he adopted a Decision allowing the Energy Regulatory Authority of the Republic of Montenegro, ('RAE Montenegro') to participate, as an observer, in the Agency's Gas and Electricity Working Groups. Their participation shall be subject to certain conditions and a separate administrative arrangement which is expected to be signed soon.*
5. *The Director informed the BoR that despite the EP Plenary's positive vote on the amendments to the general budget of the EU for 2018 resulting in an increased budget (total 18.6 million) and posts (30) for the Agency, regrettably the budgetary trilogue negotiations did not foresee any increase of the ACER budget. The BoR Chair urged NRAs to support still an increase of the ACER budget, where possible.*
6. *The EC informed the BoR on the negotiations relating to the EC legislative proposal "Clean Energy for all Europeans" and on the proposed revision of the Gas Directive, which makes the Gas Directive applicable to all pipelines to and from third countries. In respect to the latter, a fast track procedure will be applied.*
7. *The BoR Chair provided a set of forward-looking visions on the energy market, which he would like to convey in a keynote speech at the ENTSO-E Annual Conference on 5 and 6 December. Members provided feedback on the topics and the Chair will consider this in the preparation of his final keynote speech.*
8. *The BoR Chair informed the members of the next NC IMG meeting, which will take place on 29 November. The agenda was circulated to the BoR and it focuses on monitoring of implementation of codes issues.*

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| <p>9. <i>The Agency's Board of Regulators (BoR) elected Ms Clara Poletti, Director General, AEEGSI, as its next Vice Chair for a term of office of two and a half years (renewable). She will succeed Ms Annegret Groebel who stepped down.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>10. <i>The BoR Chair thanked Ms Groebel for her contribution and work as the Vice Chair during the previous years.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>11. <i>The BoR recommended Ms Annegret Groebel (BNetzA) and Mr Fadhel Lakhoua (CRE) as co-chairs for the AMIT WG, as well as Ms Clara Poletti (AEEGSI) as the Chair of the AGWG. The Director indicated that he looks forward to working with Ms Groebel, Mr Lakhoua and Ms Clara Poletti. The appointments will be formalised in the next few weeks.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>12. <i>The Director informed the members on the revised Director's Decision on the Establishment of the Legal Experts Network (LEN). The Director explained the changes made after taking into account members' feedback given at the last BoR meeting. Following its establishment, the LEN will be reviewed in approximately a year's time.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>13. <i>The BoR Chair updated the BoR on the ongoing discussions with the Administrative Board (AB) Chair regarding the process for the selection of the next ACER Director. He presented some preliminary elements of the approach and next steps as currently envisaged. It is intended that the AB Chair will send the list of (the three) candidates (selected by the EC) to the BoR Chair, asking the BoR for its technical advice regarding the regulatory/technical knowledge of the candidates. To this end, interviews will be conducted by the BoR to allow the BoR Chair to inform the AB on its technical advice. The preliminary planning for the interviews was communicated to the BoR.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>14. <i>Mr Hesseling provided a brief update to the members on the two last ECRB meetings, which took place on 18th April and 4 October in Athens, Greece.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>15. <i>Mr Zuleger and Ms Groebel provided an update on the REMIT Coordination Group and the work of the AMIT WG including on the Market Monitoring handbook, the preparations of the ACER decision on the registration format, the use of Blockchain in the energy sector and the implications for REMIT. Members also discussed the mismatch between the vast change in the energy sector and market surveillance needs and the resources available.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>16. <i>A presentation was given by Mr Santos on the Case Management Tool (CMT). The presentation focused on the main functionalities and benefits of the tool and the interaction between this tool and the Notification Platform (another IT tool that is the entry point of potential cases of market abuse notified to ACER and NRAs). A key issue he raised is that the cross-border component is increasing. The need for case-related data exchanges and communication are at unprecedented levels. There are more instances of potential breaches which are notified to more than one NRAs and, therefore, information security is of paramount importance. In respect to the ACER CMT, he noted the importance that all NRAs are on board so that we can mitigate security risks and ensure effective cooperation and they can get access to other relevant information (alert sharing was referred as an example). Regarding the notification platform, he encouraged BoR members to verify internally if their NRAs have a well visible link to the platform in their website and encouraged all NRAs to have it.</i></p> |

<p>17. Mr Godfried provided an update on the Market Surveillance Strategy Governance Document (MSS). In 2016, the BoR endorsed the MSS as a basis for the Agency's and NRAs' market surveillance activities in 2017 and supported the delivery of a Governance Section allocating the responsibilities for market surveillance between the Agency, NRAs and Persons Professionally Arranging Transactions (PPATs). Moreover, Mr Godfried presented the progress on alerts implementation in SMARTS and the calibration of alerts. With respect to the next steps: on 6-7 December 2017 an in-depth alerts NRA workshop in Brussels will be held; on 13 December 2017, the presentation of first results (Dashboard project) at the 71<sup>st</sup> BoR meeting is envisaged and on 8 January 2018 a first test alert sharing with NRAs through the CMT. Provisionally, depending on the available resources for market surveillance in the Agency in 2018, on 16 April 2018 a production implementation of alert sharing under the 1st Regime of the Governance Section is scheduled and on June 2018 the update of the Governance Section.</p>
<p>18. Mr Hernández updated the BoR members on the ongoing work of the Agency's Electricity Working Group (AEWG), including as regards network code implementation and the ACER Decision on CIDM. The AEWG is now finalising the discussions on the deliverables of the future Policy Task Force. NRAs were invited to propose further topics to the Future Policy Task Force. A list of foreseen deliverables is being prepared.</p>
<p>19. The Director presented the draft ACER Decision on the Congestion Income Distribution methodology and presented the remaining open issues in particular with regard to the treatment of external flows in case of flow-based CCRs; the allocation constraints; the remuneration of LTTRs; the treatment of non-intuitive flows; and the distribution of congestion income on bidding zone border. The Agency will table the CIDM decision for the favourable opinion of BoR on 13 December 2017 in order to, subsequently, adopt a decision. The members provided feedback on the open issues on the basis of which the proposal of the Director will be finalised for the December BoR</p>
<p>20. The Agency's opinion on ENTSO-E's practical implementation document for the inclusion of Transmission and Storage Projects in the Ten-Year Network Development 2018 was given the favourable opinion of the BoR (by consensus of the members present or represented).</p>
<p>21. The Director informed the BoR on the Regional Annexes to HAR. The Agency has been asked to adopt a Decision on the proposal on the Regional Specific Annex for South East Europe Capacity Calculation Region (SEE CCR). The ACER Decision is being prepared within a fierce timetable, as it needs to be ready before the yearly 2018 auction takes place. The BoR agreed that the relevant decision(s) (potentially there are two additional decisions on regional annexes to be referred to the Agency) will be tabled for BoR opinion through an electronic approval procedure. The AEWG Chair invited the regions to notify ACER whether they have, or do not have, an agreement.</p>
<p>22. The Agency's Gas Working Group (AGWG) Vice-Chair provided an update on ongoing work including on network code implementation, tariffs and gas infrastructure (including the joint ENTSOs consultation on scenarios for TYNDPs 2018; a request received from the EC to investigate issues related to the expiration of exemptions to the EU legislation on third party access to infrastructure; the ACER Opinion on ENTSG WP 2018 and the ACER Opinion on ENTSG Winter Supply Outlook 2017/2018).</p>
<p>23. The Agency's opinion on ENTSG's Draft Annual Work Programme 2018 was given the favourable opinion of the BoR (by consensus of the members present or represented).</p>

24. *The Director presented the Implementation Monitoring Report for the Network Code Interoperability and Data Exchange Rules for discussion. Beyond the issue of legal compliance, the Report explores the effectiveness of the implementation of the provisions of the Code in addressing problems initially identified by the Agency. It uses a detailed assessment methodology consistently applied to each national regime. It provides conclusions and recommendations across the EU. The report shall be published by the end of November and thus feedback by NRAs must be provided ASAP. NRAs were invited to proactively assess the IAs in place or delegate this assessment to the Agency and to promote the implementation of the ENTSOG (Common Network Operation Tool ("CNOT") Data Exchange standard by TSOs. The Agency will further monitor the evolution of the implementation of the provisions of the Code in the coming years, with the view to also exploring if there is a need for amendment.*

25. *The Director provided an update on the ACER Opinion under Article 7(6) of Regulation 713/2009 on the application of the surrender mechanism, at the request of CNMC. The final Opinion was adopted and communicated to CNMC after the positive conclusion of the European Commission's consultation. The BoR had already given a favourable opinion to the Opinion, pending the positive conclusion of the EC consultation. Mr Hernández thanked ACER for the opinion and the BoR and AEWG for reaching a common interpretation of the relevant provisions. This is extremely useful for their pending Court case.*

## 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 69<sup>th</sup> BoR meeting

BoR Decision agreed: (D 2)

*The minutes of the 69<sup>th</sup> BoR were approved.*

### 2. Introduction new BoR Chair

#### 2.1. Introductory remarks

The BoR Chair provided some introductory remarks. In these introductory remarks, the Chair suggested the idea of restructuring the agenda for the BoR meetings in order to increase efficiency and to allow sufficient time for more substantive and strategic discussions at the BoR. He suggested also considering the possibility of invitation to external speakers from key stakeholders. The Chair invited members to provide feedback through the Secretariat in order to present a more concrete proposal at the December BoR meeting.



The Chair also suggested the idea of the next BoR Summit to be held back to back to the March BoR meeting. This Summit will launch preparations and brainstorming for a discussion on the forward-looking challenges. To this end, a proposal by the Chair will be presented at the December BoR meeting. A revised calendar to accommodate this half-day event will be circulated.

With regard to the BoR electronic procedures, Mr Nyikos proposed to create a platform/tool on the website for the BoR electronic voting instead of the current practice of emails for the BoR electronic procedures. This would structure the BoR electronic voting processes as well as the record for such voting. He also suggested that several of the updates from AWG Chairs and HoD could also be provided in writing unless there are major developments, which would need to be orally reported.

### **3. Update from the Commission and the Director**

#### **3.1. Update on recent developments**

##### **- ACER**

###### **➤ Report on the MMR presentation 24 October**

The Director reported on the joint ACER and CEER event on 24 October to present the 6th Market Monitoring Report. The European Commission was present to provide initial reactions (Mr Ermacora from DG ENER, Mr Mazeika from DG JUST). A total of 65 participants attended the meeting in person. Another 79 were connected through the livestream.

The Director informed the BoR that, although he had hoped that the 2018 MMR could again contained a fully-fledged Retail Volume, the recent disappointing news on the budget for the Agency for next year forces the Agency to maintain the same reduced format as for this years.

###### **➤ Participation of Montenegro's NRA in ACER's Electricity and Gas Working Groups**

The Director reported that on 25 October he adopted a Decision allowing the Energy Regulatory Authority of the Republic of Montenegro, ('RAE') to participate, as an observer, in the Agency's Gas and Electricity WGs, on the condition that the certification of the national transmission system operator in line with the Third Energy Package legal requirements, including the related certification Opinion to be issued by the Energy Community Secretariat, is completed in the forthcoming period. Such a participation shall be subject to a separate Administrative Arrangement (AA).

RAE will be the first NRA of an Energy Community Contracting Party being granted such a possibility and may show the way for other Contracting Parties to advance in the implementation of the EU energy acquis.

###### **➤ EP Plenary vote on the ACER Budget (not in agenda)**

The Director reported that despite the EP Plenary's positive vote on the amendments to the general budget of the EU for the financial year 2018 providing for an increased budget (total €18 613 970) and posts (30) for the Agency, regrettably the budgetary trilogue negotiations did not reflect the EP position and do not foresee any increase of the ACER 2018 budget.

The Director is in contact with the EC with the view to finding a solution to this issue which is likely to negatively affect ACER's REMIT operations. An update will be provided at the December BoR.

Mr Blaney noted also the impact on NRAs' resources and underlined that there is now an opportunity to emphasise the importance of ACER resources.

**- EC**

➤ Update on Clean Energy Package proposals

Mr Addis congratulated Mr Blaney on his election. An opportunity to celebrate the transition will be provided at the High Level conference on Electricity Regulation in Florence, on Monday, 27 November. He reported that he will be moving to DG MOVE as of December and his successor at the BoR will be Mr Michael.Schuetz.

The EC provided an update on the negotiations on their proposal: "Clean Energy for all Europeans" and the next Energy Council of 18 December. There might be parts of the CEP which need more time to be agreed. He informed the BoR that on 8 November the EC presented its proposal on the revision of the Gas Directive and the EC President speech on the Energy Union.

➤ Proposed update on the Gas Directive

Mr Addis reported that the EC published on 8 November their proposal for amending the Gas Directive to make the Gas Directive applicable to all pipelines to and from third countries. The pipelines connecting Member States with third countries currently do not fall under the definition of interconnector. Therefore, the definition is amended in Article 2, to include any transmission line which crosses or spans a border between Member States or between Member States and third countries up to the border of Union jurisdiction. There are also amendments to ensure cooperation with third countries and the process for derogations expanded to them.

**- BoR Chair**

➤ Input for the ENTSO-E Conference 5/6 December

Mr Blaney was invited to the ENTSO-E Annual Conference to give a keynote speech, opening the session "What The Future Holds: Climate, Power Networks, Energy Union". He provided some key thoughts/visions which he would like to convey in his keynote speech including on the delivery of our current mandate; the decarbonisation at least cost; the digitisation as an enabler for consumer empowerment and sought members' feedback on these. These mainly seek to raise the key issues rather than proposing an answer. The BoR members provided feedback.

➤ Next NC Implementation Monitoring Group

Mr Blaney informed the BoR that the next NC IMG will take place on 29 November. The agenda was circulated to the BoR and addresses specific market monitoring issues.

## **4. Cross-sectoral**

### **4.1. Election of the BoR Vice-Chair**

The BoR members were informed on 25 October 2017 that the BoR Vice-Chair, Ms Groebel, who was appointed at the 56th BoR for a term of office of two and a half years taking effect on 27 April 2016, stepped down. The BoR Chair thanked Ms Groebel for her important contribution and work as the BoR Vice Chair during the previous years.

Expressions of interest for the BoR Vice Chair's position were opened on 25 October 2017 with a closing date of 13 November 2017. Following the close of the nominations, two candidates submitted their nomination for the position of the ACER BoR Vice Chair:

- Dr. Attila Nyikos, Vice President for International Affairs, Magyar Energetikai és Közmű-szabályozási Hivatal (MEKH), Hungary; alternate of the BoR.
- Ms Clara Poletti, Director General, Autorità per l'Energia Elettrica e il Gas (AEEGSI), Italy; member of the BoR.

Ahead of the formal voting, the candidates were invited to present themselves. Members of the BoR were offered the opportunity to ask questions to each candidate after their presentation.

In accordance with the agreed election process, given that there were more candidates, the BoR proceeded to a vote. All 28 BoR members were present or represented. Pursuant to the ACER Regulation and the BoR RoP, any candidate who reaches 2/3 majority of the members present or represented will be appointed.

In the first round Ms Poletti received most of the votes and subsequently, Mr Nyikos withdrew his candidature. The BoR was invited to indicate whether there was consensus on Ms Poletti's appointment and all members present or represented agreed to her appointment as the next ACER BoR Vice-Chair.

#### 4.2. BoR Chair Recommendation to the Director on the AGWG and AMIT Chairs

Nominations for the Chairs of the Agency's Gas Working Group (AGWG) and Market Integrity and Transparency Working Group (AMIT WG) were opened on 26 October. Nominations for the position of the AGWG and AMIT WG Chairs were open until 10 November 2017.

The BoR recommended Ms Annegret Groebel (BNetzA) and Fadhel Lakhoua (CRE) to the Director as co-chairs for the AMIT WG, and Ms Clara Poletti (AEEGSI) as the Chair of the AGWG. The Director confirmed that he looks forward to working with Ms Groebel, Mr Lakhoua and Ms Poletti. Their appointment will be formalised in the next weeks.

#### 4.3. Update on the Legal Expert Network (revised Decision)

The Director presented his revised proposal for the Legal Expert Network (LEN) which addresses the following issues: the possibility for the BoR Chair to nominate the second co-Coordinator of the LEN from among the NRAs' experts; the possibility for the Director to consult the BoR Chair in case of disagreement between the two co-Coordicators; the Director's confirmation of the requests to LEN coming from the ACER HoDs. The Director expressed his hope that the new decision can be supported.

Mr Blaney concluded that despite the few concerns raised the LEN should be established and it will be reviewed after a year in the light of the experience gained from its initial operation.

The Director noted that by that time the new ACER Director can have a fresh look at it. He also referred to the experience of one year ago when we tried to update the rules of procedure of the AWGs; despite the fact that the existing provisions were at that time heavily debated, they have worked smoothly for more than 5 years.



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

The BoR Chair updated the BoR on the ongoing discussions with the Administrative Board (AB) Chair regarding the process for the selection of the next ACER Director with the view to make it operational, robust and ensure effective cooperation between the two Boards and the EC. To this end he thanked Mr Borchardt for his intervention at the last BoR meeting which clarified how best to organise a “technical involvement” of the BoR and the next steps. He presented some preliminary elements of the approach and next steps as currently envisaged. It is intended that the AB Chair will send the list of (three or more) candidates (selected by the EC) to the BoR Chair, asking the BoR for its technical advice regarding the regulatory/technical knowledge of the candidates. This will be assessed through briefings conducted by the BoR following which the BoR Chair will inform the AB on the BoR’s technical advice. The preliminary planning for the BoR briefings was provided. Prior to the beginning of the AB interviews, the AB will be informed by the BoR Chair on the BoR’s technical advice.

The AB will consider the process and next steps at their meeting in December. The BoR Chair shall also present the planning and procedural arrangements for agreement at the December BoR. The BoR Chair indicated that, if possible, an early indication from the EC on the state of play of the procedure could facilitate the planning of the AB and BoR.

#### 4.5. Update on the last ECRB meeting

Mr Hesselning provided an update on the last two ECRB meetings. With regard to the ECRB meeting in Athens on 18 April, the key discussions focused on the following: the Work Programme 2017 which was adapted to include (the changes to the Agency’s 2017 MMR); the market monitoring report on electricity wholesale in Contracting Parties (CPs); the market monitoring report on electricity and gas retail market developments; an overview of the enforcement powers and practices of Energy Community (EnC) NRAs.

In order to ensure reciprocity regarding implementation of Gas NCs on EnC–EU borders, the Commission asked for neighbouring EnC CP NRAs to also sign a declaration to apply the NCs on such borders (as EU NRAs have already done); most NRAs were willing to do so. The ECRB Opinion on the certification of EMS (Serbian electricity TSO-E) was discussed. In June a decision was issued by the Serbian regulator that the unbundling conditions were met. The ECRB disagreed with that and in September the ENC Secretariat asked a revision of the certification decision.

Last the adapted NC on Interoperability and adapted Guidelines on Congestion management procedures were presented.

The 37<sup>th</sup> ECRB meeting, was held on 4 October. Key discussions included the regulatory duties under Regulation 347/2013, in particular project evaluation, risk assessment and unit costs for infrastructure projects; the declaration on application of codes and guidelines at IPs between MSs and CPs.

## **5. Market Integrity and Transparency**

### **5.1. REMIT implementation and operation**

Ms Groebel provided an update on the last AMIT WG meeting, which took place on 10 October, the day before the first Energy Market Integrity and Transparency Forum. The WG discussed the CEREMP (Centralised European Register of Energy Market Participants) review - ACER analysis on the use of EIC X codes in fundamental and transportation data reporting. The WG also discussed the Market Monitoring Handbook and the use of Blockchain in the energy sector and its implication for REMIT. Some first thoughts by ACER were presented during the WG meeting. The issue is being discussed intensively already among financial market regulators. Moreover, the WG already started thinking how to deal with a potential limitation in the Agency's budget.

Mr Zuleger noted that the Agency is finalising procurement procedures for next year. The Agency may change IT providers, which would pose an additional challenge in terms of resources. However, data collection and sharing will not yet be impacted.

The Chair concluded that NRAs shall continue efforts to indicate our position directly to the European Commission and the European Council.

### **5.2. Presentation of the Case Management Tool (for REMIT)**

A presentation was given on the Case Management Tool by Mr Santos. The presentation focussed on the Case Management Tool (CMT) and the Notification Platform (NP) and their interaction. The presentation aimed to inform the BoR members on these tools and their benefits. These tools have been in place since 2012 and 2016, respectively.

The CMT is an IT tool that is used by ACER and NRAs to organise case information and communicate on potential cases of market abuse under REMIT, while ensuring information security (through encryption and auditing), facilitating cooperation, allowing business continuity, and all at low costs for NRAs. Currently 12 NRAs have access to it (in order to have access NRAs need to comply with the security policy). Since the entry into force of REMIT the number of potential REMIT breaches has increased, and the number of NRAs involved in reviewing these potential breaches has increased as well, increasing also the cross-border component in these reviews. A key challenge is how to deal with sensitive information where numerous NRAs have access to the information and to make sure that information security is ensured.

The NP is another IT tool, which serves as the entry point of potential cases of market abuse notified to ACER and NRAs. The NP conforms to ARIS security standards, and it standardises the notifications aligning them with ACER Guidance requirements. The NP also allows multiple NRAs to be notified simultaneously. Again, there are no relevant costs related to the use of the tool for NRAs. He encouraged BoR members to verify internally if the NRAs they represent have a link to the platform well visible in their website and encouraged all NRAs to have it.

### **5.3. Update on the surveillance governance strategy (for REMIT)**

Mr Godfried provided an update on the Market Surveillance Strategy Governance Document.

In 2016, the Agency and NRAs defined a joint Market Surveillance Strategy (MMS) for the detection and deterrence of potential market misconduct. The MMS was endorsed by the BoR on 14 December 2016 as a basis for the Agency's and NRAs' market surveillance activities in 2017. In addition, the BoR supported the delivery of a Governance Section for the EU MSs allocating the responsibilities for market surveillance between the Agency, NRAs and Persons Professionally Arranging Transactions (PPATs). The Governance Section was made available to the BoR at its meeting on 7 June 2017. The first update of the Governance Section was completed in November 2017 and benefitted from NRAs' input to the questionnaire.

Mr Godfried indicated that the information presented was based on the assumption that ACER will receive the required budget to carry out the described tasks.

Mr Godfried presented the approach, logistics and resources for market monitoring using SMARTS (trade surveillance software). If SMARTS is used, the market monitoring process would then follow the cycle of data acquisition, automatic screening in SMARTS, assessing anomalous events, notification of suspicious events, coordination of NRAs (if needed). Significant progress has been made in the calibration of alerts. It was emphasised to members that triggered alerts are not REMIT breaches. A minor proportion of alerts lead to cases. Due to results calibration the triggered alerts per day decreased from 250 to 100. A maximum of 80 alerts can be assessed manually with the current number of surveillance analysts.

With respect to the next steps, on 6-7 December 2017 an in-depth alerts NRA workshop in Brussels will be held; on 13 December 2017, the presentation of first results (Dashboard project) at the 71st BoR meeting is envisaged and on 8 January 2018 a first test alert sharing with NRAs through the CMT will start. Provisionally, depending on the available resources for market surveillance in the Agency in 2018, on 16 April 2018 a production implementation of alert sharing under the 1st Regime of the Governance Section is scheduled and on June 2018 the update of the Governance Section. Any feedback from NRAs is welcome.

Mr Godfried alerted members that sensitive documents relating to REMIT will only be shared with BoR members.

## **6. Electricity**

### **6.1. Update on NC implementation**

Mr Hernández updated the BoR members on the ongoing work of the Agency's Electricity Working Group, including network code implementation and the ACER Decision on CIDM. The AEWG met on 24 October. The AEWG is now finalising the discussions on the deliverables of the future Policy Task Force. These deliverables are looking both into short-term and long-term issues. NRAs were invited to propose further topics to the Future Policy Task Force. A list of foreseen deliverables is being prepared.

### **6.2. ACER Decision on the Congestion Income Distribution Methodology**

The Director informed the members on the state of play and background of the draft ACER decision on the Congestion Income Distribution Methodology. The matter was referred to the Agency on 14 June,

after TSOs failed to take on board the all NRAs' requests for amendments. After the referral of the case to the Agency, the following issues were widely discussed with NRAs and TSOs:

- a. Treatment of external flows in case of flow-based CCRs
- b. Allocation constraints
- c. Remuneration of LTTRs
- d. Treatment of non-intuitive flows
- e. Distribution of congestion income on bidding zone borders

From July to September 2017, the Agency organised several web-conferences with all TSOs and all NRAs to discuss the issues raised by all NRAs and subsequently by the Agency. This period of informal consultation continued with the formal consultation involving all TSOs and all NRAs lasting from 6 October until 20 October 2017. In the consultation document, the Agency proposed amendments to the CIDM proposal. Seven NRAs responded to the consultation as well as ENTSO-E and one TSO.

The Director explained his position on the open issues.

The Agency has until 14 December 2017 to take a decision. To this end the Director plans to table his proposal for the formal opinion of BoR at the meeting on 13 December 2017.

The BoR Chair asked the members for feedback on the current draft decision of the Agency. Moreover, the Chair indicated that given the timing it is of utmost importance that NRAs indicate any further comments at the meeting.

The Director thanked all members for their feedback.

### 6.3. ACER Opinion on ENTSO-E's practical implementation document of Transmission and Storage Projects in the Ten-Year Network Development 2018

The Director presented the ACER Opinion on ENTSO-E's practical implementation document for the inclusion of Transmission and Storage Projects in the Ten-Year Network Development 2018. The guidelines for inclusion of transmission and storage projects in the TYNDP 2018 is an important building block of the next TYNDP. On 3 October ENTSO-E published the TYNDP guidelines, which address the major elements of the project collection and identification, including:

- Technical and administrative criteria for inclusion in the TYNDP.
- The list of the documents and information that promoters are required to submit to fulfil these criteria.
- Information about the use and distribution of the information submitted.

The draft ACER opinion is generally positive to the introduced changes as they provide more clear and robust rules regarding the inclusion of projects and data provision, eventually improving the quality and credibility of the TYNDP 2018. However, it recommends further improvements for the next guidelines.

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

#### 6.4. Update on the Regional Annexes to HAR

The Director informed the members that the Agency was notified by the Regulatory Authorities of the SEE CCR, with regard to the respective TSOs proposal on the Regional Specific Annex for SEE CCR to the Harmonised Allocation Rules for long-term transmission rights that all Regulatory Authorities of SEE CCR have not been able to reach an agreement on the above proposal within the period described in the Article 4 of the FCA Guidelines. Therefore, the Agency has been asked to adopt the respective decision.

The Director indicated that there are potentially two additional decisions on regional annexes to be referred to the Agency. The Director highlighted the oddity of having regions deviate from approved main rules through HAR annexes. Eventually all regions will join JAO as joint allocation platform. There are regional derogations in place until joining JAO.

The ACER Decisions are being prepared within a fierce timetable as these need to be ready before the yearly 2018 auction takes place. The BoR agreed that the relevant decisions will be tabled for BoR opinion through an electronic approval procedure.

The AEWG Chair stressed the importance of regions notifying ACER at all times, whether they have or do not have an agreement.

### 7. **Gas**

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

The AGWG Vice Chair, Mr Maes, provided an update on the ongoing work in the AGWG; network code implementation and gas infrastructure.

Mr Maes informed the members that the (early) implementation of the tariffs network code is foreseen for December 2017. Information (such as reference price methodology) on interconnection points shall be published on ENTSOG's Transparency Platform, and information on all points shall be published on NRAs' and TSOs' websites.

Ms Tanja Held (BNetzA) was appointed as co-convenor of the Capacity Allocation Management Task Force. There is still an open position for co-convenor of the Interoperability Task Force.

Between 2 October 2017 and 10 November 2017 the ENTSOs for Electricity and Gas ran the public consultation on their TYNDP 2018 Scenario Report. This public consultation is part of the overall formal interaction with stakeholders in order to build the scenarios. Besides the joint scenario, ENTSOG will also develop a scenario report individually.

The ACER Opinion on ENTSOG's Winter Supply Outlook 2017/2018 will be submitted to the BoR in December.

#### 7.2. ACER Opinion on ENTSOG's Draft Annual Work Programme 2018

The Director informed the BoR that, in line with Art 9(2) of Regulation 715/2009, ENTSOG submitted the annual draft work programme (AWP) to the Agency for its opinion. The Agency finds that the final draft



AWP 2018 meets the objectives of the Regulation in terms of contributing to non-discrimination, effective competition and the efficient and secure functioning of the internal gas market.

The Agency reiterates its previous recommendation that future annual work programmes indicate which objectives, activities and deliverables may be exposed to significant risks that could hinder due performance, along with the risk factors that could lead to such an outcome and any planned specific risk mitigation measures.

The Agency further recommends ENTSOG to *inter alia*:

- Focus implementation monitoring efforts on problem issues (non-implementation, data quality provision for quantitative assessments done by the Agency).
- Delete from the draft WP the publishing of GRIPs by the end 2018, and rather foresee this for 2019.
- Improve network modelling, simulation, as well as methodologies and tools for network planning and adequacy assessments.
- Use the updated Transparency Platform as a cross-activity support tool, including data collection purposes under REMIT, and transparency obligations arising from NCs.
- Facilitate data flows, based on Article 8(9) of Regulation (EC) No 715/2009, whenever it is required or useful.
- The Agency invites ENTSOG to focus on the implementation of the Network Codes, namely in the area of Interconnection Agreements and Common Network Operation Tools.

*The Agency's opinion on ENTSOG's Draft Annual Work Programme 2018 was given the favourable opinion of the BoR (by consensus of the members present or represented).*

### 7.3. Implementation Monitoring Report for the NC on Interoperability and Data Exchange Rules

The Director presented the Implementation Monitoring report for the Network Code on Interoperability and Data Exchange Rules which presents the results of the monitoring of the implementation of the Interoperability Network Code (Regulation (EU) No 2015/703). Beyond the issue of legal compliance, the report explores the effectiveness of the implementation of the provisions of the Code in addressing problems initially identified by the Agency. It uses a detailed assessment methodology consistently applied to each national regime. It provides conclusions and recommendations across the EU. The main conclusions from the Report were set out by the Director, and include *inter alia*:

- Most Interconnection Agreements ('IAs') are in place, but regulatory supervision is insufficient. The full assessment is difficult as the Agency does not have access to all necessary input.
- The harmonisation of data exchanges is not achieved as the process faced initial delays and is still on-going.
- While Gas Quality and Odourisation do not currently cause barriers to trade, the transparency standard set in the Code is not met in particular regarding information on short-term gas quality variations.

The main recommendations include:

1. NRAs shall proactively assess the IAs in place using the standard methodology set in the Report; alternatively, NRAs may delegate this assessment to the Agency.
2. NRAs should promote the implementation of the ENTSOG (Common Network Operation Tool ("CNOT") Data Exchange standard by TSOs.

3. The Agency will further monitor the evolution of the implementation of the provisions of the code in the coming years.

The Director informed the members that the report will be published by end of November after taking into account any comments provided by the BoR as soon as possible.

Mr Bos acknowledged and appreciated the work done by the Agency. He indicated that ACM is assessing the interconnection agreements. With regard to CNOTs ACM believes TSOs are not obliged to implement these, though there would be value in doing so.

The Director invited NRAs proactively to assess the IAs in place or delegate this assessment to the Agency and to promote the implementation of the ENTSOG (Common Network Operation Tool ("CNOT") Data Exchange standard by TSOs. The Agency will further monitor the evolution of the implementation of the provisions of the Code in the coming years, with the view to also exploring if there is a need for amendment.

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

The Director provided an update on the ACER Opinion under Article 7(6) of Regulation 713/2009 on the application of the surrender mechanism. On 30 August CNMC requested under Article 7(6) of the ACER Regulation, an opinion of the Agency on the application of point 2.2.4 of Annex I to Regulation 714/2009 (as amended by Commission Decision 2012/490/EU i.e. the "CMP Guidelines" adopted pursuant to Article 23(1)(b) of Regulation 715/2009).

The provisions in question relate to the conditions for access to the natural gas transmission networks. CNMC sought an opinion on whether the surrender mechanism foreseen in point 2.2.4 is applicable only in the event of contractual congestion.

The opinion was tabled at the October meeting but the EC's opinion was still pending. The Agency's opinion was at that time given a favourable opinion of the BoR (by consensus of the members present or represented) conditional to the positive conclusion of the EC consultation. Subsequently, the EC provided their opinion and the opinion was adopted on 14 November and communicated to the CNMC on the same day.

The ACER opinion states 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.

Mr Hernández thanked the Agency for the opinion and the BoR and AEWG for reaching a common interpretation of the relevant provisions.