

78th ACER Board of Regulators Meeting

Wednesday, 15 October 2018

CNMC premises, calle Alcalá 47, Madrid

Minutes (public)

Member States	Name ^[1]	Member States	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch O: Katharina Ledermann-Tappeiner	Italy (ARERA)	M: Clara Poletti (BoR Vice-Chair) A: Francesco Cariello
Belgium (CREG)	M: Marie-Pierre Fauconnier O: Geert Van Hauwermeiren	Latvia (PUC)	M: Rolands Irklis O: Lija Makare
Bulgaria (EWRC)	O: Svetla Todorova	Lithuania (NCC)	A: Irma Vasarytė
Croatia (HERA)	M: Tomislav Jureković A: Sonja Tomašić Škevin	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	excused	Malta (REWS)	excused
Czech Republic (ERO)	A: Martin Sik O: Katerina Firlová	Netherlands (ACM)	A: Remko Bos O: Wieger Wiersema
Denmark (DUR)	M: Carsten Smidt	Poland (URE)	A: Małgorzata Kozak
Estonia (ECA)	excused	Portugal (ERSE)	O: Natalie McCoy
Finland (EV)	A: Antti Paananen	Romania (ANRE)	M: Chirita Dumitru O: Florin Tobescu
France (CRE)	A: Hélène Gassin O: Michaël Mastier O: Romain Charvet O: Frank Heseler	Slovakia (RONI)	excused
Germany (BNetzA)	M: Annegret Groebel	Slovenia (AGEN-RS)	excused
Greece (RAE)	A: Nektaria Karakatsani O: George Paidakakis	Spain (CNMC)	M: Fernando Hernández O: Gema Rico
Hungary (HEA)	M: Attila Nyikos O: Adam Krinszki	Sweden (Ei)	M: Anne Vadasz-Nilsson A: Caroline Tornqvist
Ireland (CRU)	M: Garrett Blaney (BoR Chair) O: Aoife MacEvilly O: Seamus Byrne	United Kingdom (Ofgem)	M: Andrew Burgess
ACER	Alberto Pototschnig, Dennis Hesselning, Fay Geitona		
European Commission	Klaus-Dieter Borchardt		

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

Summary conclusions

1. The minutes of the 77 th BoR meeting were approved, as was the agenda for the 78 th meeting.
2. No conflict of interest was declared by the participants.
3. The Chair welcomed the new BoR members from ANRE Mr Chirita and DUR Mr Smidt.
4. The BoR held the first pre-summit discussion: the work should target at a joint paper from the Agency and the regulatory authorities with a focus on the regulatory challenges emerging from the transition of the energy system towards decarbonisation providing a holistic view of the energy system and how it would fit to serve the decarbonisation targets at least cost. The BoR discussed and provided feedback on the proposals for areas to work on towards and at the Summit on the basis of the presentations by the AEWG and AGWG Chairs. The WGs Chairs, in coordination with the HoDs, were mandated to pursue this work further on the basis of the BoR steer and any additional input from experts in the AWGs. The second pre-summit discussion will be held at the December BoR meeting. The BoR Summit will be held in January.
5. The Director informed the BoR about the latest developments in the 2019 budget of the Agency and the EP ITRE position and thanked the NRAs for contacting their administrations to flag the importance of this issue.
6. The Director informed the BoR of the Agency's latest publications and workshops.
7. The Director informed the BoR that the Vacancy notice for the selection of the ACER Director was issued in the EU Official Journal on 15 October and kindly asked the members to publicise this further in order to disseminate the information and attract the largest number of candidates.
8. The Director reported on the presentation of the key findings of the 2017 Market Monitoring Report at the European Parliament's ITRE Committee on 9 October. The EP expressed a lot of appreciation of the report and displayed a keen interest in its findings, in particular, regarding the use of existing infrastructure. A public launch event will take place on 22 October 2018 in Brussels.
9. Mr Borchardt provided an update on the negotiations on the European Commission proposal: "Clean Energy for all Europeans" and on the Energy Council, as well as on the proposed amendment of Gas Directive.
10. Ms Fauconnier reported on recent developments in Belgium with regard to generation adequacy issues following the outages of six nuclear reactors.
11. The Director presented the draft ACER Decision establishing the capacity booking platform to be used at 'Mallnow' interconnection point (IP) and 'GCP' virtual interconnection point (VIP). He also explained the confidentiality arrangements related to this decision. Ms Groebel was concerned about the non-binding governance rules with regard to the platform to be used, which might not safeguard the non-discrimination of the users of the platform. Ms Kozak confirmed that URE will use all its regulatory powers to enforce the governance rules on GSA. The BoR provided, by majority of the members present or represented, its favourable opinion on the ACER Decision with the abstention of BNetzA.
12. The Director presented the draft ACER Opinion on the consistency of gas national Network Development Plans to assess their consistency with the EU Ten-Year Network Development Plan. The BoR provided, by consensus of the members present or represented, its favourable opinion on the ACER Opinion.
13. The Director presented the Agency's Opinion on the ENTSO-E and ENTSG Scenario Development Report for TYNDP. The BoR provided, by consensus of the members present or represented, its favourable opinion on the ACER Opinion.

<p>14. The Director presented the Electricity Wholesale Volume, the Consumer Protection and Empowerment Volume as well as the full Retail Markets Volume of the Market Monitoring Report including the key findings and recommendations. These Volumes are to be published on 22 October 2018 when a public launch event is scheduled to take place at the CEER premises. The BoR took note of the Market Monitoring Report Volumes.</p>
<p>15. The Director presented the draft outline of the Agency's 2020 Work Programme. The Single Programming Document (PD) will be submitted by 31 January 2019 without prejudice to the submission of the AWP and its approval and adoption, according to the process stipulated in the ACER Regulation (EC) No 713/2009. E-Control had provided some comments and sought some clarifications on the priorities which are now being considered by ACER. The EC provided comments with regard to the new tasks of ACER under the CEP pending the CEP negotiations and pertaining to the prioritisation of tasks.</p>
<p>16. Mr Sik, the LEN co-coordinator presented the legal advice of the 5th LEN Panel on the scope of the exception referred to in Art. 30 (7) FCA GL, taking into account Arts. 4 (6) and 4 (7) FCA GL. The BoR took note of the advice by the 5th LEN Panel.</p>
<p>17. Mr Hesselting, ACER Representative to the ECRB, provided a report on the last three meetings of the Energy Community Regulatory Board of 21 December 2017, 19 April 2018, and 4 October 2018.</p>
<p>18. Mr Hernandez provided an update on the ongoing work in the AEWG. Mr Bos reiterated his previous suggestion about having strategic discussions on codes' implementation issues in order to enhance the awareness and role of the NRAs in the network code development process ahead of the final decisions on those.</p>
<p>19. Mr Hernandez informed the BoR on the Director Decision to appoint Ms Christine Materazzi-Wagner as Vice-Chair of the ACER Electricity Working Group.</p>
<p>20. The Director presented the Agency's ITC Monitoring Report and specifically the findings of the report. The Agency concludes that the implementation of the ITC mechanism and the management of the ITC Fund in 2017 continues to be in line with the requirements set out in the Regulation. The BoR took note of the report.</p>
<p>21. Ms Poletti provided an update on the ongoing work in the AGWG including on strategic issues as part of the AGWG away day which will feed into the forthcoming discussions of the BoR on strategic issues.</p>
<p>22. Mr Hesselting presented the Agency's report on the methodologies and parameters used to determine the allowed or target revenue of transmission system operators (following the requirement in Article 34 of the network code on tariffs (NC TAR). The Agency's report, together with the study, are considered as the Agency fulfilling its reporting task under Article 34 of the NC TAR. The Agency invites the NRAs' experts possibly at the Task Force (TF) level to follow up on the findings and final observations of the Study. The BoR took note of the report.</p>
<p>23. Ms Groebel provided an update on the ongoing work in the AMIT WG, including on implications on REMIT of the budgetary constraints regarding the 2019 ACER budget which triggered a reaction from many members vis-à-vis their national administrations with the view to flagging this issue. The next meetings of the AMIT and the REMIT CG are set for 7 and 8 November.</p>
<p>24. Ms Fauconnier informed the BoR that she will step down from her position as CREG chair and thanked the BoR for their fruitful cooperation over the last years. The BoR Chair expressed on behalf of the members the appreciation and gratitude for her contribution to the work of the regulatory community over the last years which was much appreciated.</p>

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| 25. The members were informed on the documents of common interest, which are uploaded under a new page on the ACER website, called the “EU Corner”. On this page, only accessible to BoR members and ACER staff, documents can be found relating to EU agenda legislative initiatives, stakeholder positions, forthcoming events and studies by the EC and stakeholders. |
| 26. A note was circulated on the logistical arrangements for the December BoR meetings in Vienna which is hosted by E-Control. |
| 27. The members were informed about the latest calendar updates, notably the change of the BoR in May which will be held on 16 May. |
| 28. The members were informed about a new system to be soon implemented which would entail pop-up notifications on the ACER website inviting members and participants in the AWGs to take note of and to commit to compliance with the respective rules of procedure. This will enter into force in the coming month. Access thereafter to the dedicated meeting pages will be subject to the acceptance of the above mentioned notification by the users. Subsequently, this will also be implemented and apply with regard to the BoR. |

First Pre-Summit discussion Key highlights

The Chair indicated that the work should target to the preparation of a joint paper from the Agency and the regulatory authorities with a focus on the regulatory challenges emerging from the transition of the energy system towards decarbonisation providing a more holistic view of the energy system and how it would fit to serve the decarbonisation targets at the least cost.

The BoR discussed and provided feedback on the detailed proposals for areas to work on towards and at the Summit by the AEWG and AGWG chairs.

With regard to electricity, members acknowledged that the implementation of the Third Package is key for the IEM operation, including the better use of existing infrastructure while giving appropriate consideration to external drivers such as decarbonisation and digitalisation. Those pose new challenges such as the implications of the full integration of RES and how the electricity target model would be affected.

The members recognised the need to safeguard the building blocks of the electricity target model during the CEP negotiations, to make it even more robust and to ensure its delivery.

Second, the optimised use of existing infrastructure is key for a well-functioning IEM. This includes *inter alia*; the upgrading of its components, providing for smart grids and flexibility, better integration of generation and the grid optimisation of operation.

Furthermore, members noted the need to address the issues emerging from CEP (including resource adequacy and SoS issues, the efficient use of cross border capacity, the configuration of the bidding zones; a sound tariffs design, the regime for the Regional Coordination Centres, the market integration of RES, and any necessary adaptations of the governance model e.g. MCO function).

Members noted the importance to take account of the impact of technology on the energy sector and the need for flexibility to allow the rapid adaptation of a dynamic framework. They noted the need to give due regard to the new responsibilities of ACER and NRAs under the new Clean Energy package framework

and to take account of the interlinkages of the electricity and gas sectors and perhaps beyond (power to gas and hydrogen), and the enhanced cooperation between TSOs and DSOs. Members also recognised the need to have clarity on the ultimate objectives and target given also the reality which often reflects political interventions and distortions of the Internal Energy Market (IEM).

With regard to gas, the success of the current Gas Target Model which is still being implemented was recognised as the sound basis for the future gas market design notwithstanding the need for its upgrade in certain areas to address new challenges. These include a possible gas demand and production reduction which will increase the dependency from non-EU countries; the role of sustainability of LNG and storage infrastructures which is crucial as they are under-used; and the risk for the gas sector to become marginal if green technologies are not deployed which would result in stranded costs. The agenda of the next EC composed of three aspects should also reflect the focus of the Summit with a strategic view.

The first axis relates to the upgrading of the regulatory framework: e.g. addressing distortions by tariffs; developing a LNG storage long-term view looking into the necessary upgrades of the regulatory framework for LNG/storage; illiquid hubs and how to address market power - potentially gas release programmes; exploring the need for more binding actions on regional market integration including proper governance arrangements; the need for tailor made regulation - perhaps developing assessment tools and measures which would enable to target underperforming markets/IPs.

Key aspects discussed included *inter alia*: How to ensure gas and electricity market coordination (reducing differences in scarcity price signals, introducing implicit capacity allocation in the gas sector; ensuring investment decisions are taken optimising across the two sectors); in this respect the sector coupling exercise must also look into the interaction between electricity and gas storage; the development of green gasses; a new investment framework; streamlining current legislation (e.g. more coordination between the incremental capacity and the PCI frameworks). A stronger oversight by ACER and the NRAs of TYNDPs, CBA and scenarios; a cross-border regulatory framework for decommissioning and a regulatory regime after exemptions.

The second axis relates to the development of a framework for decarbonisation (e.g. how to regulate hydrogen, sector coupling, the role of TSOs and DSOs in new activities, guarantees of origin).

The third axis relates to the alignment of the gas legislation (e.g. institutional framework, regional cooperation, gas quality review, network codes amendment process).

The EC noted that this third axis should be the starting point as per the EU agenda.

Members noted the importance of better use of infrastructure that consumers are paying for. It was noted that the storage and LNG SoS considerations are different in different countries. Other members placed particular emphasis on exploring further the options for tailor made Regulation and the role of ACER to safeguard, in particular, an appropriate level of coherence. The fair treatment of transit countries with respect to tariffs design was noted. The political considerations and sensitivities behind decommissioning of plants and stranded costs were raised; the need for a concrete framework for innovation with incentives so that costs are not born by consumers; energy poverty considerations which point to decarbonisation at least cost were also stressed whilst without losing sight of a market based approach. The importance of changing the mind-set and of conveying the potential of gas to support this massive electrification both as a commodity but also in terms of infrastructure.

The EC also noted that in electricity the implementation of the Third Energy Package is key and is an ongoing process which will be consolidated by the CEP adaptations. Efforts to this respect should be intensified. We must make the target model more robust through the CEP negotiations. On gas the EC proposal will emerge on 2020, and thus we now start intense discussions. Alignment of legislation should be the starting point and subsequently the needs for the GTM upgrade. The EC has planned a set of studies to look into those issues; workshops with stakeholders are also planned as well as two Madrid Fora in 2019 for an in-depth discussion. In those discussions regulators' feedback will be of highest interest and thus the EC will continue to observe the BoR discussions on these matters.

The Chair concluded the discussion and informed about the next steps: A second pre-summit discussion will be held at the December BoR meeting. The BoR Summit will consolidate our brainstorming on the identified issues and draw high level messages and key principles under each area. The WGs Chairs were mandated to pursue work on the identified areas and on the basis of additional input from the experts at the WGs to prepare a skeleton for the December, second pre-summit discussion.

Part A: Items for discussion and/or decision

1. Opening

1.1. Approval of the agenda

BoR Decision agreed: (D 1)

The agenda was approved. No conflict of interest was declared.

1.2. Approval of the minutes of the 77th BoR meeting

BoR Decision agreed: (D 2)

The minutes of the 77th BoR were approved.

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

2.1. ACER Director

➤ Budget 2019

The Director noted that following the last BoR update, the ITRE Committee adopted its opinion on 25/09 for the Committee on Budgets on the draft general budget of the European Union for the financial year 2019 in which it notes with concern the insufficiency of those increases and also calls for an increase in staff for ACER, in order for them to fulfil their mandate.

Furthermore, the Budgetary Committee voted in favour of the amendment for ACER which amounts to a €18 807 975 budget. On 18 October, a trilogue ahead of EP reading will be held. On 24 October the adoption of EP reading and on 28-29 November the adoption in EP Plenary.

Several NRAs informed the BoR of their communication with their respective national authorities in flagging this issue.

In relation to the ACER budget constraints and the implications on REMIT, Ms Gassin noted that the CORDIS (France's dispute settlement and sanctions body) issued its first sanction in the REMIT framework against Vitol. The fine imposed amounted to 5 million€.

The Director thanked the BoR members for contacting their national administrations and for providing feedback on this issue.

➤ Latest publications

The Director reported on the latest ACER publications.

- On 20 September, the Agency's Programming Document 2019 - 2021, which includes the 2019 Work Programme, was published.
- On 1 October, ACER published a study on the value of Lost Load in the electricity supply.
- On 3 October, ACER published the Gas Wholesale Volume and the first part of the Retail Volume of the MMR.
- On 5 October, ACER published its Opinion on the draft template for the main terms and conditions in the gas transport contracts for bundled capacity products proposed by ENTSOG.
- On 8 October, the ACER Decision on fallback procedures for the Core Capacity Calculation Region was issued.
- On 10 October, ACER launched a consultation on the methodology for pricing intraday cross-zonal capacity.
- On 4 December, ACER organises a workshop in Brussels on the conditionalities stipulated in contracts for standard, firm gas capacity products.

➤ Report on the presentation of the MMR at the ITRE

The Director reported on the presentation of the MMR on 9 October at the EP ITRE Committee and the key messages. Overall MEPs conveyed a high appreciation of the ACER's work and, in particular, the MMR. MEPs displayed a keen interest in the findings with regard to the restricted use of interconnectors and were concerned about national protective measures against the IEM and the potential lost benefits to consumers. They called for a strong and independent ACER.

The agenda for the launch event for the MMR on 22 October was circulated.

The Director also reported on the strong steer by the EC regarding BREXIT at the recent meeting of the Heads of Agencies last week. The EC recommendation was that Agencies should refrain from entering into negotiations with UK authorities until clarity is given on the forthcoming BREXIT arrangements at the political level.

2.2. European Commission

➤ Update on Clean Energy Package proposals, Gas Directive amendments

Mr Borchardt provided an update on the negotiations on the European Commission proposal: "Clean Energy for all Europeans" as well as on the proposed amendment to the Gas Directive. He reported on the trilogues on the Risk-preparedness Regulation on 25 September and the trilogue on the ACER Regulation recast on 26 September. The second trilogue on the ACER Regulation recast is scheduled for 23 October. On 18 October the 3rd trilogue on Electricity Regulation and Directive recasts was held. Although there is a strong political will for reaching an agreement, progress is not rapid. There was some progress on matters such as the capacity remuneration schemes, but tricky issues such as the bidding zones review are still not resolved. With regard to the Gas Directive amendment, the Austrian Presidency

has set a deadline for the final statements by Member States to be submitted by 18 October. 11 Member States have asked the Presidency to progress this file. It is expected that the Presidency will bring this file to the COREPER to achieve a general approach. The EC had its first meeting with the incoming Romanian Presidency expecting to achieve progress on that file.

CREG Report

Ms Fauconnier reported on recent developments in Belgium with regard to generation adequacy. She thanked the EC for the telco of the ECG on the issue. 6 out of the 7 nuclear reactors in Belgium are out of operation for safety reasons, which relates to 3000 MW or about 25% of Belgium's peak electricity demand.

2.3. BoR Chair

➤ Madrid Forum presentations

The Chair provided an update on the preparations for the Madrid Forum.

3. Items for BoR opinion, endorsement or agreement

3.1. ACER Decision on DE-PL Booking Platform

The Director presented the draft ACER decision. He explained that in order to protect commercially sensitive information the Agency will only publish the non-confidential version of the decision. The concerned NRAs (BNetzA and URE) did not reach an agreement on the use of a single booking platform within six months and the matter was referred to the Agency on 19 April 2018.

The Agency's decision concludes that all three booking platforms meet the legal requirements and are competent and qualified to carry out capacity booking services. GSA has the highest score and thus submitted the overall most advantageous offer. Therefore, the booking platform to be used, for a period no longer than three years, at the 'Mallnow' IP and the 'GCP' VIP shall be GSA.

Following the publication of the decision, the concerned TSOs still have to come to an agreement on the permanent use of a booking platform, in accordance with the CAM network code and this should be done within the three-year period over which the Agency's decision will be valid. Once the TSOs have come to an agreement it takes precedence over the Agency decision.

The Director also explained the rationale behind the implementation timelines which provide that the decision should be implemented 'within a reasonable time' with further guidance on what could be considered 'reasonable time' in this specific matter. He noted that it is ultimately up to the concerned NRAs to make this judgement and to enforce the decision. The Agency wished to provide guidance on the timeline, rather than impose it. The Agency would like to see a functioning Booking Platform by the yearly auctions of 2019 on the German-Polish border.

Ms Groebel was concerned about the "non-binding" nature of the governance rules to ensure non-discrimination by GSA in the interest of Gaz-System if a conflict were to arise with other TSO users of the GSA booking platform.

The Director noted that there are no requirements for unbundling of the platforms. ACER has been in contact with URE about this issue and it is very important that URE oversees that GSA enters into commitments to avoid discrimination against other TSOs using the platform. Ms Kozak confirmed that URE will use all its regulatory powers to enforce the governance rules on GSA.

The BoR provided, by majority of the members present or represented, its favourable opinion on the ACER Decision with the abstention of BNetZA.

3.2. ACER Opinion consistency between national NDPs and Union-wide TYNDPs

The Director introduced the draft ACER opinion on the consistency of gas network developments which is based on Article 8 of Regulation (EC) No 715/2009. The Agency notes that only minor changes have occurred in the NDP since the analogous review carried out two years ago.

The Agency welcomes the improvement of the transparency in the EU TYNDP regarding cross-references to the NDP investment item (project) codes and the progress, although limited, achieved since the last review of NDPs in improving the consistency of the NDPs and the EU TYNDP.

With the aim of further improving the consistency of future EU TYNDPs and NDPs, the Agency's opinion makes recommendations with regard to the modality and frequency of network plans publication; the engagement of stakeholders; the improvement of consultations and NDP methodologies; and the transparency of information.

The BoR provided, by consensus of the members present or represented, its favourable opinion.

3.3. ACER Opinion on the ENTSO-E and ENTSOG Scenario Development Report for TYNDP

The Director presented the Agency's opinion. The draft Scenario Report is characterised by cross-sectoral (electricity and gas) consistency and an increased time horizon (up to 2040), however, its contribution to meeting the objectives of Regulations (EC) No 714/2009 and Regulation (EC) No 715/2009 concerning the efficient functioning of the market and non-discrimination is still rather weak. For instance, non-ENTSOs project promoters do not have the same level of access to the scenario data as members of the ENTSOs. Specific remarks are thus provided with regard to:

- The process for preparing the draft Scenario Report: this should be streamlined, participatory, transparent, and resulting in an integrated view on the future of the electricity and gas sectors in Europe.
- The methodology for developing scenarios: ACER considers that the methodology for building the scenarios needs to result in plausible, consistent, transparent and integrated scenarios. In the future TYNDPs, a "slow progress" scenario should be introduced.
- The consistency and transparency of the scenarios: Any ambiguity should be avoided by the ENTSOs. The underlying data must be published comprehensively and on time to allow stakeholders to gain real insights.

The BoR provided, by consensus of the members present or represented, its favourable opinion on the ACER Opinion.

4. Cross-sectoral

4.1. 7th Market Monitoring Report

The Director explained that on 3 October ACER published two volumes of the latest MMR: the Gas Wholesale Volume and the first part of the Retail Volume. The Electricity Wholesale Volume and Consumer Protection and Empowerment Volume were presented for information to the BoR and will be released on 22 October together with the full version of the Retail Markers Volume.

Furthermore, the Director reported that ACER has agreed with Portugal to perform a correction of the electricity mark-up for Portugal in 2017, given a discrepancy deriving from a change in the retail price breakdown reported by the Portuguese authorities to Eurostat.

Ms Groebel provided some minor comments on the Consumer Chapter.

The Director then presented the key findings of the Electricity Wholesale Volume:

- Average DA electricity prices increased in all bidding zones, except in the Bulgarian, Baltic and Polish markets.
- There are different levels of price convergence across Europe.
- Cross-zonal capacity made available for trading remained significantly below the 'benchmark capacity', as a result of congestions not being properly addressed by the current bidding zone configuration in Europe.
- The relatively low level of available cross-zonal capacity is an indication that structural congestions may be located within bidding zones.

He also presented the recommendations grouped into four categories:

- Recommendations on how to increase the limited amount of cross-zonal capacity made available for trading.
- Recommendations on how to use the cross-zonal capacity made available for trading more efficiently in the different trading timeframes.
- Recommendations on how to ensure market participants' sufficient and non-discriminatory access to forward and intraday markets.
- Recommendations on how to address adequacy concerns in an efficient manner.

With regard to the key findings of the Consumer Protection and Empowerment Volume the Director presented the draft recommendations which include *inter alia*: The design of the suppliers of last resort mechanisms to promote consumer engagement in liberalised energy markets. The call to Member States to ensure that smart meters are equipped with functionalities that allow for short reading intervals so as to enable consumers easily to benefit from and participate in energy efficiency and demand response/flexibility schemes. The offer to consumers of the option to receive monthly bills. The roll out of smart meters as soon as possible. The clear and transparent information on bills. Putting at the disposal of consumers reliable comparison tools without delay and setting more ambitious switching target (the target of within 24 hours could be already reached before 2025).

4.2. Draft Outline ACER Work Programme 2020

The Director presented the Single Programming Document (PD) which must be submitted to the European Commission by 31 January 2019, as per the EC Communication the Guidelines for

programming document for decentralised agencies. The PD will be submitted by 31 January 2019 without prejudice to the submission of the ACER annual Work Programme and its approval and adoption, according to Regulation (EC) No 713/2009. The outline was discussed with AWG Chairs on 8 October and will be presented to stakeholders on 19 October.

It provides the tasks that ACER plans to perform in 2020. As such, it focuses primarily on the external deliverables the Agency expects to produce and classifies those into three priority levels (as per previous practice).

Priority level 1 – Critical – Activities/tasks that must be fully performed/executed under any circumstance. Failure to do so would seriously undermine the functioning of the Internal Energy Market and the achievement of the Energy Union objectives (e.g. monitoring of the implementation of the adopted Network Codes and Guidelines and obligations arising from network codes as well as their amendments, approval of CTM under the Network Codes and Guidelines, most of core activities under REMIT, ACER opinions on the implementation of TYNDPs, opinions on PCI lists, CBCA decisions, ACER decisions under Article 8(1)).

Priority level 2 – Important – Activities/tasks that could be postponed, reduced in scope or de-scoped with only limited repercussion on the Internal Energy Market. (e.g. GRI, ACER opinions on the consistency of the national Network Development Plans with the EU TUNDP, opinions on ENTSOs Work Programmes or Annual Reports, opinions on ACER's initiative or on the request of the Institutions, the annual report on the Agency, activities under REMIT, cooperation with ESMA, competent national financial market authorities and other authorities and with supervisory authorities).

Priority level 3 – Relevant – Activities/tasks that the Agency could usefully perform, provided adequate resources were made available (e.g. Recommendations to NRAs to share good practices, internal Monitoring Report on G-charge, internal monitoring report on the use of congestion revenues; opinions on ENTSO-E's annual Summer and Winter supply outlooks, etc.).

E-Control had provided some comments and sought some clarifications on the priorities which are now considered by ACER. They wondered how best to reflect the CEP tasks given that the CEP negotiations are not yet finalised.

Mr Borchardt noted that the outline can only be considered as preliminary given the specific ACER tasks as specified in the ACER regulation recast are still under discussion. Furthermore, although the Commission has supported the prioritisation of tasks of ACER, but the definition of the prioritisation and tasks must take due consideration of the mandate of ACER as reflected in the ACER Regulation.

The Director in response clarified that the final list of tasks under the CEP negotiations will be incorporated in the draft PD to be submitted to the BoR and to the AB later in the year.

With regard to questions about the priorities, the Director responded that ACER has clarified that all activities, including those assigned the lowest priority, will be performed; but, in case of severe resource limitations, the Priority 3 activities will be performed to the minimum extent compatible with meeting the legal mandate. However, it is clear that there are activities outside the legal mandate are more valuable for the IEM than some of the legally-mandated activities.

The BoR Chair also supported that ACER have some discretion in the development of its Work Programme priorities according to the above considerations.

4.3. Update on the requests for LEN advice

Mr Sik presented the advice of the 5th LEN panel which was circulated to the BoR. This deals with the case of an exemption granted pursuant to Art. 30(7) FCA Guideline (GL), the TSOs which do not have to issue LTTRs do not have to submit the all-TSO and regional TCM foreseen in the FCA GL. Similarly, and consequently, the respective NRAs do not have to approve these TCM for the BZBs on which there are no LTTRs issued. If, after a re-assessment of hedging opportunities, the NRAs of a BZB decide to introduce LTTRs, they will have to lift their coordinated exemption decisions; include in their coordinated lifting decisions a condition, request or an obligation for their respective TSOs to submit the TCM proposals required by the Articles referred to in Art. 30(7) FCA GL and subsequently approve these TCM proposals. If these NRAs (or their respective TSOs) disagree with an already adopted TCM, they would have to coordinate with those NRAs who have adopted the TCM and ask for a request for an amendment to the existing TCM.

The BoR took note of the advice.

4.4. Report on last ECRB meetings

Mr Hesseling provided a report on the ECRB meetings of 21 December 2017, 19 April 2018, and 4 October 2018. With regard to the last meeting key highlights include that the ECRB supported setting up a new REMIT WG, entering into a cooperation agreement with CEER and MedReg in December 2018, involving Azeri NRA in ECRB activities on an *ad hoc* basis, acting as of 2019 as co-organiser of the EC-CEER annual Eastern Partnership regulatory workshop. Regarding the ECRB Opinion on gas network codes for PHLG, input is currently collected with the aim to approve those.

Mr Urbantschitsch reported on the outcome of the last ENC Ministerial Council.

5. Electricity

5.1. Important AEWG updates

Mr Hernandez provided an update about ongoing work in the AEWG which last met on 28 September.

Mr Bos reiterated his previous suggestion in July on enhancing the role of the NRAs in the network codes' development process by having strategic discussions on contentious issues regarding codes' implementation. This would enhance the awareness and role of the NRAs in the network code development process ahead of their final decisions on terms, conditions and methodologies. He explained that many of his suggestions were endorsed by colleagues at the AEWG and invited the AEWG Chair to pursue this discussion.

The BoR Chair welcomed such discussions at the BoR (and not the ERF) to consolidate also ACER and the EC views.

Mr Hernandez clarified that while this issue has not yet been discussed at the BoR pending the CEP mapping exercise, the AEWG has discussed ways to improve codes implementation in terms of operational improvements (e.g. higher engagement, legal support by LEN, discussions with ENTSO-E)

and also supported that the BoR is the appropriate platform for such discussions. He intends to bring the discussion on this issue to the BoR as part of the pre-summit discussions. Mr Bos welcomed the possibility of having and in depth discussion about this matter.

➤ Report on the AEWG Vice-Chair position

The AEWG Chair also reported on the recent appointment of Ms Christine Materazzi-Wagner as AEWG Vice-Chair.

5.2. ACER ITC Monitoring Report

The Director presented the report.

Pursuant to point 1.4 of Annex Part A of Regulation (EU) No 838/2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging, the Agency is responsible, since 2012, for preparing a yearly monitoring report on the implementation of the Inter-Transmission System Operator Compensation (“ITC”) mechanism and the management of the ITC Fund.

The Agency’s report concludes that the implementation of the ITC mechanism and the management of the ITC Fund in 2017 continues to be in line with the requirements set out in the Regulation. The Director referred to the major findings of the report.

6. Gas

6.1. Important AGWG updates

Ms Poletti provided an update on the ongoing work in the AGWG including on strategic issues as part of the AGWG away day which will feed into the forthcoming discussions of the BoR on strategic issues.

6.2. ACER report on methodologies and parameters to determine gas TSO revenues

Mr Hesseling presented the report. Article 34 of the NC TAR requires the Agency to publish, before 6 April 2019, a report on the methodologies and parameters used to determine the allowed or target revenue of transmission system operators. The Agency hired Economic Consulting Associates to assist with this work by undertaking a study to assess the methodologies and parameters used in EU Member States to determine the allowed or target revenues of gas transmission system operators. The study has been delivered to the Agency in September 2018.

The Agency fully supports the findings of the study and its final observations. The Agency’s report shall, together with the study, be considered as the Agency fulfilling its reporting task under Article 34 of the NC TAR.

He invited the NRAs’ experts to follow up on the findings and final observations of the Study. The Agency is willing to facilitate any future work under this scope. Furthermore, the Agency recommends that the list in Article 30(1)(b)(iii) be amended better to reflect the practices across the Member States.

7. Market Integrity and Transparency & Surveillance and Conduct

7.1. Important AMIT WG and REMIT CG updates

Ms Groebel provided an update on the ongoing work in the AMIT WG including on implications on REMIT of the budgetary constraints regarding the 2019 ACER budget which triggered a reaction from many members *vis-à-vis* their national administrations with the view to flagging this issue. The next meetings of the AMIT and the REMIT CG are set for 7 and 8 November.