

## 81<sup>st</sup> ACER Board of Regulators Meeting

Wednesday, 20 March 2019

CEER premises, Cours Saint-Michel 30a, 1040 Brussels

### Minutes (final)

Member States	Name <sup>[1]</sup>	Member States	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch O: Christine Materazzi-Wagner	Italy (ARERA)	M: Clara Poletti (Chair) A: Francesco Cariello O: Ilaria Galimberti
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren	Latvia (PUC)	M: Rolands Irlkis O: Liga Sadovica
Bulgaria (EWRC)	O: Borislava Petrakieva	Lithuania (NCC)	M: Inga Žilienė
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)	M: Martin Šik O: Jana Haasova	Netherlands (ACM)	A: Remko Bos O: Wieger Wiersema
Denmark (DUR)	O: Thomas vom Braucke	Poland (URE)	A: Małgorzata Kozak
Estonia (ECA)	A: Marilin Tilkson	Portugal (ERSE)	A: Pedro Verdelho O: Natalie McCoy
Finland (EV)	M: Simo Nurmi	Romania (ANRE)	O: Florin Tobescu
France (CRE)	A: Jean-Laurent Lastelle O: Michaël Mastier O: Miyuki Tsuchiya O: Frank Heseler	Slovakia (RONI)	A: Marian Záhora
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov	Slovenia (AGEN-RS)	A: Bojan Kuzmič
Greece (RAE)	A: Nektaria Karakatsani	Spain (CNMC)	M: Fernando Hernández O: Gema Rico
Hungary (HEA)	M: Attila Nyikos O: Adam Krinszki	Sweden (Ei)	M: Anne Vadasz-Nilsson A: Caroline Törnqvist
Ireland (CRU)	M: Paul McGowan	United Kingdom (Ofgem)	M: Andrew Burgess O: Christoph Gräfe
ACER	Alberto Pototschnig, Dennis Hesselning, Martin Godfried, Fay Geitona, Sander Ramp		
European Commission	Florian Ermacora, Michael Schuetz, Zsuzsanna Szeles, Colin Kuehnhanss, Lucian Indries		

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

**MEETING CONCLUSIONS SUMMARY**

1. The 2<sup>nd</sup> BoR Summit focussed on the development of a paper regarding regulatory challenges emerging from the energy system transition due to decarbonisation with a focus on the internal gas market and energy sector coupling issues. The BoR noted the aim to provide technical regulatory advice for the upcoming EC legislative proposals on gas. To this end, the BoR noted the need to prioritise key issues on the basis of evidence and problem analysis given the ambitious timeline for the preparation of the paper.
2. The BoR welcomed the paper's draft skeleton and endorsed in principle the consideration of the issues included therein. With regard to the overall scope of the paper, members noted the need to take account of the CEER work on gas and mirroring. The members also acknowledged the need to reflect the consumer perspective and in this respect to integrate the relevant CEER work in an appropriate way. The paper is intended to take the format of the Bridge (ACER Recommendation with an Annex prepared in cooperation with CEER).
3. The BoR agreed to the planning for the preparation of the paper. The final agreement on the paper is foreseen at the BoR meeting on 22 October. A public event may be organised in November to present the paper.
4. The minutes of the 80<sup>th</sup> BoR meeting were approved.
5. The agenda of the 81<sup>st</sup> BoR meeting was approved subject to one change to agenda item 4.4 (ACER Decision on HUAT gas interconnection project was submitted for discussion and not for a BoR favourable opinion).
6. No conflict of interest was declared by the participants.
7. The Agency's Board of Regulators (BoR) elected Mr Rolands Irlis, Chairman of PUC, Latvia, as the Vice-Chair of the Board of Regulators for a term of office of two and a half years. The term of office will be effective immediately.
8. The Director informed the BoR of the latest publications by the Agency.
9. The Director informed the BoR on the budget constraints of the Agency related to the imminent tasks to be delivered following the entry into force of the CEP. The Agency has prepared a contingency plan which envisages that certain monitoring activities mainly related to the electricity sector will be suspended for this year.
10. The Director informed the BoR of his previous communication to the AWGs and TF Convenors regarding the withdrawal of the UK from the EU and the implications for the UK membership of the BoR and their participation in the AWGs, the REMIT Coordination Group and their respective substructures (e.g. Task forces, standing committees). The European Commission clarified that the cut-off date for the UK participation in ACER Bodies and AWGs is at the end of the Article 50 period, hence if this period is extended the cut-off date will be when the agreed extension ends.
11. The EC informed that the entry into force of the EMD is expected by mid-June. The Electricity Regulation will take effect as of 1 January 2020 and some provisions will take effect at a later date. The ACER Regulation will take effect immediately after its entry into force.
12. Ms Poletti informed the BoR on the discussions she had with the EC and the Administrative Board regarding the practical arrangements for the interviews of the candidates, the coordination between the two Boards, and the selection of the new Director. The BoR agreed on the proposed general approach.

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| <p>13. The BoR Chair presented a note to the BoR which maps the new tasks and responsibilities of the BoR following the entry into force of the ACER Regulation recast. Key areas for further work, working arrangements and the timeline were agreed on the basis of a two-step approach: an immediate stage which would be a quick adaptation for necessary changes followed by a fuller revision of the rules on the basis of the lessons learnt later on.</p>   |
| <p>14. The Agency's draft Decision on the CCR amendment was presented by the Director for the BoR's favourable opinion. <b>The BoR provided its favourable opinion on the ACER Opinion with a majority of the members present or represented (DUR and Ei voted against and BNetzA, ERO, and ILR abstained).</b></p>   |
| <p>15. The Agency's draft Opinion on ENTSO-E's draft Ten-Year Network Development Plan 2018 was presented by the Director for the BoR's favourable opinion. <b>The BoR provided, by consensus of the members present or represented, its favourable opinion on the ACER Opinion.</b></p>  |
| <p>16. The Agency's Opinion on ENTSOG's Recommendations relating to the coordination of technical cooperation between Community and third-country TSOs was presented by the Director for the BoR's favourable opinion. <b>The BoR provided, by consensus of the members present or represented, its favourable opinion on the ACER Opinion.</b></p>   |
| <p>17. The Agency's draft Decision on the HUAT gas interconnection project was presented for discussion by the Director and Mr Hesseling. HEA presented their concerns which raised fundamental substantive and legal procedural concerns on the Agency's draft Decision. E-Control supported the Agency's draft</p>  |
| <p>18. Decision. The Agency responded to those concerns and the BoR had an orientation discussion on the issues raised. <b>The BoR agreed to the use of a single round EP for three days for the provision of the BoR opinion in order to adopt the decision by the deadline of 9 April.</b></p>  |
| <p>19. <b>The BoR recommended to the Director to appoint Mr Pedro Verdelho, member the ERSE Board, as Chair of the ACER Gas Working Group.</b> The Director will issue his decision on the appointment, taking utmost consideration of the BoR recommendation.</p>  |
| <p>20. <b>The BoR agreed to the appointment of Mr Jurekovic and Mr Bos as member and alternate member respectively of the BoR Review Panel</b> to review the DoI and CV submissions in line with the Agency's Policy for the prevention and management of Conflicts of Interest. The BoR Review Panel shall convene as soon as possible to assess the submitted Dols.</p>   |
| <p>21. Mr Hernández provided an update on the MCO Governance Subgroup meeting which took place in early February and focussed on how to reinforce the governance of MCO. A non-paper was presented with possible options on which the Group was keen to take a realistic approach.</p>  |
| <p>22. The discussion on the handling of terms, conditions and methodologies under the CEP and the transitional period for those proposals which are already under consideration by all regulatory authorities at the time the CEP enters into force was postponed to the May BoR meeting to allow sufficient time for the discussion. Notwithstanding this discussion, the Director indicated it would greatly facilitate the work of the Agency if NRAs could provide any material/analysis already done when referring such decisions to the Agency.</p> |
| <p>23. Mr Hesseling provided an update on the ongoing work in the AGWG and in particular on the current work of the Balancing and Tariffs Task Forces. Members were informed about the suspected fraudulent behaviours in Germany and Netherlands and the discussions on how to prevent this in the future.</p>   |

24. The Director provided an update on the appeal to the Agency's Decision 11/2018 establishing the capacity booking platform to be used on the German-Polish interconnection points and the subsequent ACER Board of Appeal (BoA) Decision, published on 22 February 2019, to annul the Agency Decision No 11/2018. The Agency has decided to reiterate the procedure from the outset. A new public consultation will soon be launched by the Agency as part of the new proceedings, after which candidate booking platforms will be invited to submit a new offer.
25. Ms Kozak voiced URE's concern on the next steps planned by the Agency which were included in their letter, including its particular impact on the market. She noted that this issue should have been discussed at the BoR level and that the procedural aspects would need to be addressed in the future in the Agency's RoP.
26. The Director and Mr Hesseling presented the Agency's Report on the conditionalities stipulated in contracts for standard capacity products for firm capacity. The Report, supported by the factual findings of the Study (prepared by the Consultant), is considered as fulfilling the Agency's reporting obligation under Article 38(4) of the NC CAM. NRAs can send final comments on factual aspects in track-changes
27. by 27 March to Mr Hesseling. BNetzA and ILR provided some comments which the Agency will look into. The Report is foreseen to be published by 6 April 2019.
28. Mr Lakhoua provided an update on the ongoing work in the AMIT WG and REMIT Coordination Group (CG) regarding operational issues on registrations after BREXIT and data sharing among NRAs of coupled markets.
29. Mr Godfried presented the Agency's Guidance Note (GN) 1/2019 on the application of Article 5 REMIT on the prohibition of market manipulation through layering and spoofing in continuous wholesale energy markets. The BoR took note of the Agency's GN 1/2019.
30. Mr Godfried indicated that the Agency is aware that BNetzA will publish their White Paper, and – whilst being grateful for BNetzA's consultation of the 17<sup>th</sup> REMIT CG on the matter – expressed his concerns which were supported by ARERA and CNMC. Several NRAs (strongly) disagree on the substance of the Paper, which may harm their pending cases. They noted that NRAs are not requested by REMIT to issue guidance. There is also a risk to the effectiveness of the REMIT framework if more NRAs issue inconsistent 'national' guidance. Given that the paper is published, the Agency intends to accelerate the finalisation and publication of the ACER Guidance.
31. The BoR was informed about the outcome of the electronic procedure on the Agency's Decision on the request of all regulatory authorities to extend the period for reaching an agreement on the amended proposal for a common methodology for calculating scheduled exchanges resulting from single intraday coupling (SCH EXC). The single round of the BoR electronic procedure on the Agency's Decision on the SCH EXC extension request ended on 1 March. 28 NRAs participated and all voted in favour and thus **the BoR opinion was deemed to be provided.**
32. The BoR was informed about the outcome of the electronic procedure on the Agency's Decision on the Core CCR TSOs' proposals for the regional design of the day-ahead and intraday common capacity calculation methodologies. The second round of the electronic procedure ended on 20 February. 25 members participated, and 22 voted in favour. One NRA voted against and two NRAs abstained. **Thus, the BoR opinion was deemed to be provided by the required majority.**

## **BoR Summit**

The first session of the Summit focussed on the draft skeleton of the paper. The second session focussed on the next steps in the development of the paper.

The Chair explained that the energy sector is undergoing profound change driven by decarbonisation and digitalisation, including the phase out of unabated natural gas. The Clean Energy Package addressed market design issues in the electricity sector and, therefore, attention must now turn to the internal gas market and sector coupling and sector integration. Regulators' priorities are, in principle, decarbonisation at least cost, improved resilience/security of supply and consumer/system benefits. The Agency should provide timely input on this matter, building on previous work and discussions. The paper to be prepared is intended to be an Agency Recommendation with an Annex prepared in collaboration with CEER.

### **First session**

The Chair presented a draft skeleton of the paper. Key areas to be addressed include:

- *Mirroring with the Electricity Market Design (EMD)*

Are there benefits from common arrangements in gas and electricity following the changes introduced by the CEP? This includes extending arrangements for ENTSO-E to ENTSO-G; consistency of relevant frameworks on consumer rights and retail markets; EU DSO entity for gas; the need for regional gas TSO entities (like RCCs); and the regulation of booking platforms like NEMOs.

- *Upgrading the Gas Directive and Gas Regulation (new areas) (market design, targeted regulation, infrastructure planning)*

New issues to address arising from previous discussions include the market design (entry-exit system, ITC for gas, how to regulate new entities, balancing entities); targeted regulation; tools to improve competition; regional integration and cooperation (and how to govern regional collaboration); infrastructure planning and infrastructure decommissioning.

- *Sector coupling and market integration*

Priority areas include power-to-gas (P2G) and energy for transport and heating. Relevant roles and responsibilities must be explored together with appropriate unbundling arrangements. Other issues include P2G assets; a level playing field for energy storage and P2G. Areas that could be focussed on include integrated network modelling and planning, aligning the approach to tariffs and markets, and market integration (e.g. transport, heating and cooling).

- *Renewable gases and new uses of gas*

What opportunities are there for decarbonised gas and is there a predictable framework to drive decarbonisation in gas? Areas to focus on are biogas, synthesis gas, hydrogen blending, direct H<sub>2</sub> use, and carbon capture. Moreover, in this regard there is a range of issues to take into account, such as the role of system operators and unbundling issues, technical issues, trade in renewable gas, wholesale market rules, and investment in H<sub>2</sub> infrastructure. As the future is increasingly difficult to predict and change will happen faster than we expect, regulation needs to be flexible and dynamic.

The Chair acknowledged that a wide range of issues has been identified and noted that it is important to focus on the most strategic ones. There may be other important issues to be discussed with regard to the forthcoming proposals by the EC, but which may be outside the direct scope of the paper. Such issues could be addressed in the annex of the paper. The Chair opened the floor for a discussion on the areas identified in the draft skeleton.

Members had a discussion on the draft skeleton and provided their input.

Mr Ermacora noted that the EC initiative for new gas proposals is subject to the strategic priorities of the next EC and thus the EC cannot confirm that there will be a gas “package”. But the EC has launched the discussion on those issues. An important challenge as a result of decarbonisation is security of supply and affordability. He sees significant convergence between issues under study by the EC and the skeleton. He suggested exchanging information on studies’ results.

The Director thanked the BoR members for their comments and clarified that, whilst this initiative has similarities with the Bridge, the objective now is to support the EC from a technical regulatory perspective on the forthcoming gas proposals. There will be a wider bridge between gas and electricity in the years to come. But, we need to proactively provide target technical arguments and advice. This paper should not “reopen” the Electricity Market Design. There are discussions on CACM and the alignment of other network codes but this should not be part of the paper’s scope. We should be realistic in our ambition, focus on the strategic issues in the gas sector until 2030 and make use of CEER work where relevant.

### **Conclusions and next steps**

The BoR welcomed the paper’s draft skeleton and endorsed in principle the consideration of the issues included therein. The list of issues included in the annex will be further considered by the AGWG for any additional proposals.

The members acknowledged the need to include the consumer perspective and to this respect to integrate in an appropriate way the relevant CEER work on consumers and gas. They discussed how best to prioritise and address strategic issues while emphasising the importance of the regional dimension as well as the need to explore the scope of tailored-made Regulation as a means to address problems of a region.

The paper is intended to take the format of the Bridge (ACER Recommendation with an Annex prepared in cooperation with CEER).

The BoR agreed on the establishment of an informal *ad-hoc* group, composed of the BoR Chair and Vice-Chair, the ACER Director, the AEWG and AGWG Chairs, the ACER HoDs, the CEER President as well as the Chairs of the CRM and DS WG, and the BoR Secretariat.

In terms of next steps, the draft consultation paper shall be prepared for discussion at the May BoR. The aim is to endorse the consultation paper at the 12 June BoR meeting and for a public consultation to be launched in the second half of June. At the 18 September BoR, the evaluation of input from stakeholders shall be presented and final key messages shall be discussed. Agreement on the final paper is foreseen for the BoR meeting on 22 October. Potentially, a public event will be organised in November to present the paper.



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

### **1. Opening**

#### **1.1. Approval of the agenda**

*The agenda was approved with one change to item 4.4 (ACER Decision on HUAT gas interconnection project). The draft Decision was submitted for discussion and not for a BoR favourable opinion. No conflict of interest was declared.*

#### **1.2. Approval of the minutes of the 80<sup>th</sup> BoR meeting**

*The minutes of the 80<sup>th</sup> BoR were approved.*

### **2. BoR Vice-Chair elections**

#### **2.1. Election of the BoR Vice-Chair – for decision**

Following the election of Ms Poletti (former BoR Vice-Chair) as BoR Chair at the 80<sup>th</sup> BoR meeting on 23 January, the BoR Vice-Chair position fell vacant. The election for the BoR Vice-Chair was held in accordance with the process agreed and followed in all elections since the inaugural meeting of the BoR.

The nominations for the position were opened from 4 February until 21 February 2019. There were 2 nominations: Mr Rolands Irklis (Chairman of PUC, Latvia) and Martin Šik (European Affairs Advisor to the Board, ERO, Czech Republic). Ahead of the formal voting, the candidates were invited to present themselves. The presentations and voting procedure took place in *'huis clos'*.

In accordance with the election process the BoR proceeded to a vote. A ballot paper was circulated to each of the BoR members, who were invited to mark one candidate only. In the first round Mr Irklis and Mr Šik received equal numbers of votes and in the second round Mr Irklis received the most votes. Mr Šik withdrew his candidature and the BoR was invited to indicate whether there was consensus on Mr Irklis' appointment. All members present or represented agreed to Mr Irklis' appointment as the next BoR Vice-Chair. He will succeed Ms Poletti as of 20 March for a term of office of two-and-a-half years (renewable).

### **3. Updates from the ACER Director, EC, and BoR Chair**

#### **3.1. Update from ACER**

##### **Budgetary Constraints**

The Director updated the BoR on the budget constraints faced by the Agency. Although the Agency asked for 20 Temporary Agents (TA) for 2019 to cope with the Agency's extended mandate from the CEP, it was only assigned 8 Contract Agents (CA). The EU Institutions were called upon to revise the financial statement in the EC's proposals. The Director also requested the EU Institutions to postpone the deadlines for the Agency's new tasks by twelve months. The Director will meet on 20 March with Ms Cristina Lobillo Borrero, Head of Cabinet of Commissioner Arias Cañete, on this issue.

The Agency has prepared a contingency plan which envisages certain monitoring activities of the Agency to be suspended (such as the PCI MMR, the ITC report, the electricity wholesale chapter of the MMR and the best practice reports on transmission and distribution tariffs).

Mr Ermacora recognised the need to be pragmatic whilst noting the legal obligations of the Agency. Mr Schuetz indicated that (as stipulated by the Legislative Financial Statement accompanying the Commission's proposal for the ACER Regulation recast) in 2019, the Agency has 8 CA posts in the highest function group (FGIV) more than in 2018 for additional tasks under the Clean Energy Package. Additional posts (4 TA and 6CA) for Clean Energy Package tasks will be provided next year.

Mr Burgess, Mr Verdelho and the BoR Chair stated that the Agency should receive additional resources given that it has been mandated with additional tasks.

### Latest publications

The BoR members were informed about the latest ACER publications:

- 11/03/2019: ACER annual report on the costs reported by NEMOs and TSOs in order to establish, amend and operate single day-ahead and intraday coupling, according to the CACM Regulation.
- 07/03/2019: ACER analysis on Tariff Code implementation for gas in Slovakia.
- 06/03/2019: ACER Decision on the extension of the period for reaching an agreement on the amended proposal for a common methodology for calculating scheduled exchanges resulting from single intraday coupling.
- 04/03/2019: ACER analysis on Tariff Code implementation for gas in Czech Republic.
- 27/02/2019: ACER Decision on methodologies for capacity calculation in 13 Members States for single day-ahead and intraday electricity market coupling.
- 19/02/2019: ACER Decision on the methodology for coordinated redispatching and countertrading for Bulgaria, Greece and Romania.
- 14/02/2019: ACER analysis on Tariff Code implementation for gas in Italy.
- 01/02/2019: 15<sup>th</sup> edition of the REMIT Quarterly on the REMIT Portal.
- 30/01/2019: ACER first monitoring report on the implementation of the CACM and FCA GLs.
- 25/01/2019: ACER Decision setting the framework for the pricing of capacity among bidding zones in the intraday electricity market.

The outcomes of the BoR electronic procedures since the last meeting were reported.

### Brexit

On 4 March, the Director wrote to the AWG Chairs and TF Convenors regarding the withdrawal of the UK from the EU and the implications for the UK NRA's membership of the BoR and their participation in the AWGs, the REMIT Coordination Group and respective substructures (e.g. Task Forces, Standing Committees).

The Director noted that, based on guidance received from the EC Secretariat General, UK representatives can no longer be members of and participate (in whichever capacity) in meetings of the Agency's Board of Regulators, the Agency's Working Groups, the REMIT Coordination Group and their respective substructures after the Article 50 period has ended and invitations to meetings, if scheduled to take place on or after the end of the Article 50 period, shall not be addressed to UK representatives and access to the members' area of the ACER website will be discontinued.

Mr Burgess raised the importance of having arrangements given the geographic position of the UK and its importance for IEM.



The EC clarified that, unless there were other arrangements, the assumption is that the UK after a disorderly Brexit would be a third-country without a transitional period and processes such as market coupling are not open anymore to third countries. The EC clarified that the cut-off date for the UK participation in ACER Bodies and AWGs is at the end of the Article 50 period, hence if this period is extended the cut-off date will not be March 29 but when the agreed extension ends. The EC also recalled that they had issued a stakeholders' notice on Brexit and its implications on the internal energy market.

### 3.2. European Commission

#### [Update on Clean Energy Package entry into force](#)

The EC provided an update concerning the entry into force of the Clean Energy Package. The European Parliament (EP) has scheduled the vote in the Plenary on the EMD legislation, including the ACER Regulation, for 26 March and the adoption by the Council is envisaged on 15 April.

The vote on the gas Directive by the EP is foreseen later probably in an EP plenary in Brussels (3-4 April) with Council adoption shortly after. Then the legislation still need to be signed by the EP and Council Presidencies which will at the latest take place in early May. In practice, after signing, it takes 2-3 weeks for the publication in the Official Journal and the entry into force is 20 days following publication. The entry into force of the EMD is expected by July.

The Electricity Regulation will take effect as of 1<sup>st</sup> January 2020, but some provisions will take effect already with entry into force of the Regulation. The ACER Regulation will take effect immediately after its entry into force.

There are a number of implementation issues on which the EC has to work intensively. The EC will meet with Member States and regulators in the Electricity Cross Border Committee on 28 March to prepare for the new target for cross border transmission capacity of 70%. If Member States cannot meet this target by 1 January 2020 they have to come forward with an action plan. Therefore, this preparatory work needs to take place this year. The EC also needs to get prepared for the capacity mechanisms provisions which depend on the existence of market reform plans by Member States.

#### [Gas Directive negotiations](#)

The compromise text needs to be approved by the ITRE Committee being submitted to Plenary. The vote on the Gas Directive by the EP is foreseen later, probably at the EP Plenary (3-4 April) with Council adoption shortly after. Then, the legislation still needs to be signed by the EP and Council Presidencies which will at the latest take place in May. Nine months are foreseen after the entry into force of the Gas Directive for transposing into national legislation.

### 3.3. BoR Chair

#### [Update on the ACER Director selection process](#)

The BoR Chair informed the BoR on the discussions with the EC and the Administrative Board regarding the practical arrangements for the interviews of the candidates, the coordination between the two Boards, and the selection of the new Director.

The BoR agreed to the proposed approach, the process for the formulation of questions, the separate BoR and AB deliberations afterwards, and the delivery of the BoR's assessment of each candidate to the AB by the BoR Chair, followed by the BoR formal opinion after the AB selected a candidate.

Members welcomed the closer cooperation by the two Boards whilst maintaining their respective roles. Members sought some clarifications with regard to the details of the approach, which need to be further scoped out.

Mr Ermacora informed the BoR that the EC intends to issue the short list before the summer break. With the entry into force of the ACER Regulation recast there will be new rules for the BoR quorum which set out a 2/3 majority for the provision of the BoR opinion, which will likely be sought in autumn.

#### [Note on ACER Regulation recast implementation with regard to BoR](#)

The BoR Chair presented a note which maps the new role of the BoR following the entry into force of the new ACER Regulation and sets out the key areas for further work in the light of the new tasks/responsibilities of the BoR and of the new governance and deliberation process

The areas for further work include:

- Revision of the BoR Rules of Procedure to adapt the deliberations of the BoR and its operations, and, if needed, the procedures for the Guidance to the Director and to the AWGs.
- Joint proposal of the BoR and the Director to the AB for the establishment/removal of the AWGs; the AWG support to the BoR and to the Director (new RoP); the assignment of activities to the AWGs;
- Input of the BoR to the Director on the Agency's RoPs;
- Information to the European Parliament on BoR meeting agenda and minutes;
- Procedural arrangements and working methods beyond the rules of procedures (TCMs criteria to assess the wider impact of regional proposals, and communication and dissemination plans and RoPs for relations with third countries or international organisations).

The BoR agreed on the above key areas of work and on the proposed timeline and working arrangements to pursue this work.

With regard to the planning, the BoR agreed the following two-step approach with regard to the adaptation of the rules, with a testing phase followed by a fuller revision on the basis of the lessons learnt:

- A revision of the BoR RoP is foreseen to be approved at the June BoR meeting. The Chair of the BoR and the BoR Secretariat will prepare a proposal for an orientation discussion in May.
- The input to the Director on ACER RoP for the June BoR meeting.
- Regarding the AWGs structure, a proposal will be made for the May BoR in order to allow a joint proposal by the BoR and the Director to be submitted to the June AB for the formal establishment of the AWGs. It is also foreseen to provide the BoR's input to a limited revision of the AWGs' RoP for June. The latter will, nevertheless, cover their new mandate and focus only on the key elements which are necessary for their participation (for providing advice) in the process for the adoption of ACER acts and not a wider revision which would need more time and will be undertaken later on. The preparation of proposals in this case could be mandated to a small team composed by the Director, the BoR Chair, Chairs of the AWGs, and HoDs.

The Director welcomed this approach, which allows for an imminent "quick fix" and a more thorough revision once the new ACER Director is in office.

## 4. Items for BoR opinion, endorsement or agreement

### 4.1. ACER Decision on the CCR amendment

The Director presented the Agency's draft Decision on the capacity calculation regions (CCR) amendment. The Decision was referred to the Agency on 2 October. The deadline for the Agency to issue its Decision is 2 April 2019.

The Director focussed specifically on the DK1-NL interconnector (Cobra Cable). The new interconnector between DK and NL is establishing a new bidding zone border between bidding zones of DK1 and NL. The cross-border exchanges on this bidding zone border have a significant impact on bidding zone borders of the Core CCR (namely the bidding zone border of DE/LU-NL) as well as on bidding zone borders of the Hansa CCR (namely the bidding zone border of DK1-DE/LU).

The Director explained that the new bidding zone border is assigned to Hansa CCR as this solution does not require an amendment of the Core CCR and only an amendment of the Hansa CCR. This is expected to have a minor impact on the implementation projects and initiatives in the Hansa CCR as it applies the coordinated net transmission capacity approach to capacity calculation, which requires significantly less coordination between bidding zone borders of a CCR. This is a pragmatic solution. In contrast, attributing this bidding zone border to the Core CCR now would risk delaying existing initiatives, since this CCR aims to apply the flow-based capacity calculation approach, which requires extensive coordination at CCR level. Nevertheless, within 18 months after the adoption of this second amendment to the determination of CCRs, TSOs should further analyse where this bidding zone border should optimally be attributed.

Mr vom Braucke expressed DUR concerns that the TSOs have to come up with a proposal within 18 months and regretted the process where significant changes to the decision have been made in the last few weeks. In DUR's view there is no specific urgency to handle the DK1-NL border compared to all other borders. For this reason, DUR cannot accept the Agency's view that the assessment in question will not require a simulation of the soon to be implemented capacity calculation methodologies. The scheduled and unscheduled flows will certainly change significantly with the implementation of the new CCMs based on the CGM. DUR thus recommended to re-include the condition that day-ahead flow-based CCM has been implemented in CCR Core and CCR Nordic before having the TSOs submitting a new amendment; to revise the date for a new amendment from 1 to 3 years from now; and to include a reference to the expected implementation of day-ahead CCM within the 3 year timeframe.

Ms Vadasz Nilsson indicated Ei's support for DUR's arguments and could not provide a favourable opinion.

Mr Lastelle indicated CRE's support for the Agency's proposal.

Ms Groebel supported the comments from DUR.

Mr Šik echoed Ms Groebel's argumentation with regard to the process.

Mr Bos indicated that ACM sees the decision as a pragmatic compromise.

Mr Hernández pointed out that the goal of the AEWG discussions is to make sure a proposal is technically sound and feasible. The AEWG has not voted on the issue. The ACER solution was one of the middle including an assessment of the TSOs of the Nordic NRAs. CNMC is in favour of the proposal.

The Director thanked the members for their comments and the AEWG Chair for the clarification of the process. The current proposal reflects the original proposal of the Agency with the exception of the timeline

that shifted to give TSOs more time. There is an open question with regard to allocating this border to Hansa and this should be solved within a short timeframe. There are many projects scheduled in the CCRs and we cannot wait for all projects to finish first and then find an optimal solution for unscheduled allocated flows. The Agency, therefore, proposes a short deadline for the assessment in order to provide early visibility to existing projects on which borders and when they will be reallocated. The sooner this visibility is provided the smaller the impact of these changes on existing projects.

**The BoR provided its favourable opinion on the ACER Opinion with a two-thirds majority of the members present or represented. DUR and Ei voted against; BNetzA, ERO and ILR abstained.**

#### 4.2. ACER Opinion on ENTSO-E's draft Ten-Year Network Development Plan 2018

The Director presented the Agency Opinion on ENTSO-E's draft TYNDP 2018. On 28 November 2018, ENTSO-E submitted a first part of the draft TYNDP 2018 to the Agency and on 31 January 2019, ENTSO-E completed its submission by providing additional clarifications.

Notwithstanding the various drawbacks reported in the Opinion, the Agency's opinion did not identify elements suggesting that the draft TYNDP 2018 have clear negative effects on non-discrimination, effective competition and the efficient and secure functioning of the market. The Agency considers that ENTSO-E should further enhance the future TYNDPs by implementing several Agency recommendations as described in the Opinion.

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

#### 4.3. ACER Opinion on ENTSG's Recommendations relating to the coordination of technical cooperation between Community and third-country TSOs

The Director presented the Agency Opinion on ENTSG's Recommendation relating to the coordination of technical cooperation between the Community and third-country TSOs. On 31 October 2018, ENTSG submitted to the Agency ENTSG's Recommendations on the potential participation of TSOs of third-countries in groups of TSOs of the Union coordinated or facilitated by ENTSG. Such groups are for the cooperation and exchange of information on technical matters, and include the Regional Coordination System for Gas, ENTSG's External Contact Platform, and other fora for technical exchanges.

The Agency finds that ENTSG's Recommendations meet the objectives of Regulations 713/2009 and 715/2009 in terms of contributing to effective competition and the efficient and secure functioning of the internal natural gas market. The Agency underlines that ENTSG should work on broadening the participation and technical cooperation to include those third-country TSOs which are currently not participating in ENTSG's cooperation structures but whose systems are connected to the EU gas system, taking all necessary efforts to preserve the confidentiality of potentially sensitive information.

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

#### 4.4. ACER Decision on HUAT gas interconnection project

The Director and Mr Hesseling presented the Agency's draft Decision on the incremental capacity project proposal for the Mosonmagyaróvár gas interconnection point (HUAT project), which connects the markets of Austria and Hungary. As E-Control and HEA did not agree on a coordinated incremental capacity proposal for this interconnection point within the legal deadline, the decision was referred to the Agency.

Mr Hesseling presented the key elements of the Agency's draft Decision. ACER approves the HUAT project proposal to carry out a binding phase for marketing of incremental capacity at offer level I and offer level II at the interconnection point Mosonmagyaróvár. The Agency's draft Decision covers the terms and conditions to proceed to the next step in the incremental capacity process, which is to request binding capacity commitments from network users in the annual auction and to carry out the economic test. The main parameters for the economic test are assessed against the requirements of the CAM and TAR Network Codes (NCs). In the draft Decision it is also set out that there shall be no step back rights.

Mr Nyikos presented the dissenting opinion of HEA which raised fundamental substantive and legal procedural concerns with regard to the ACER draft decision regarding the lack of procedural rules, the unfounded methodologies, non-reproducible calculations, bad modelling which has never been applied, the disregard of negative welfare and economic consequences of a parallel project and the remaining cost burdens of Hungarian consumers. He made the following comments:

- The CAM NC does not specify the exact procedure in case there is no agreement between NRAs, but it does foresee that NRAs shall continue to have discussions in order to have a coordinated decision.
- The Agency has not published any methodology or procedural rules regarding its Decision.
- The basic concept of the draft Decision is wrong, i.e. that carrying out incremental gas capacity auctions (as formal procedures) under all conditions prevail over substantive law.
- The draft Decision appears to disclaim the right of NRAs to decide on the necessity of new infrastructure projects, disregarding the principle of efficient utilisation of existing assets.
- The HU-AT gas corridor was not economically nor socially well founded for HEA's positive decision.
- The underlying calculation methodologies of the decision cannot be reproduced nor implemented due to the lack of information.

Mr Urbantschitsch presented E-Control's view on the case, specifically regarding the background, process and content of the draft Decision. He indicated that there was a transparent procedure with a clear time schedule, three hearings, and well-prepared and impartial staff of the Agency throughout the process. E-Control supports the Agency's draft Decision.

Mr Hesseling clarified that the draft Decision does not constitute an investment decision; it only sets the parameters under which a market test of the merits of a possible investment will be carried out. A possible negative outcome of the test and discontinuation of the current HUAT project as proposed is expressly foreseen in the draft Decision. Furthermore, the draft Decision has no bearing on the right of NRAs to decide on the necessity of new infrastructure projects. There is also no hierarchical distinction of rules. The Agency assesses a project proposal in view of the substantive legal requirements of the CAM network code (rules for the offer of incremental capacity) and TAR network code.

Mr Zahora relayed the position of RONI that the HUSKAT project is more beneficial for both Hungary and Austria and considers the opinion of HEA reasonable.

Mr Cariello indicated that the BoR has responsibility on an important matter and indicated that the draft decision is reasonable and the market should decide.

Mr. Šik explained that ERÚ would not consider the development of parallel infrastructures in line with best practice natural monopoly regulation.

Mr Hesseling added that this is not exactly a comparison between an existing and future project as the existing project would also need investment. The issue was brought to the Agency under the CAM NC.

**The BoR agreed to the use of a single round EP for three days for the provision of the BoR opinion in order to adopt the decision by the deadline of 9 April.**

#### 4.5. BoR Recommendation to the Director on the AGWG Chair

After the election of Ms Poletti as BoR Chair at the 80<sup>th</sup> BoR meeting on 23 January she stepped down as AGWG Chair. Therefore, the position of AGWG Chair fell vacant. The time window to submit expressions of interest for the position was opened from 4 February until 21 February. Three candidates came forward: Mr Pedro Verdelho (ERSE), Mr Benoit Esnault (CRE), and Mr Markus Krug, (E-Control).

**The BoR recommended to the Director to appoint Mr Verdelho as Chair of the ACER Gas Working Group.** The Director will make his final decision on the appointment after taking utmost consideration of the BoR recommendation. The appointment will be for a period of two years which may be extended.

#### 4.6. Establishment BoR Review Panel for 2019 Col

The BoR Chair sought the BoR's agreement that the review of the DoI/CV submissions can be carried out on the same basis as in previous years by the BoR Review Panel. She sought the BoR's agreement on the composition of the Review Panel with Mr Jureković as the member and Mr Bos as the alternate member. The BoR Review Panel consists of the BoR Chair, BoR Vice-Chair and a Member of the BoR (and an Alternate). The Review Panel shall convene to discuss any issues arising from the submissions, probably within a few weeks after the March BoR meeting (likely through videoconference).

**The BoR agreed to appoint Mr Jureković and Mr Bos as BoR Review Panel member and alternate respectively.**

## 5. Electricity

### 5.1. Important AEWG updates

Mr Hernández provided an update on the 4 February MCO Governance Subgroup meeting.

Mr Hernández explained that the main question at stake was what to propose to reinforce the governance of MCOs when performing regulated functions. Regarding the outcome of NRAs' preliminary assessment on MCO governance there are three main alternatives based on the degree of separation along with the three different degrees of centralization.

NRAs were requested to submit a second contribution to the MCO Governance, conveying alternative solutions, which are to be delivered by the end of May and a next subgroup meeting would then be convened in June, or at least before the summer. The contribution should consist in proposing alternative options to address a number of issues. More concrete proposals can be presented to the BoR in May.



5.2. Transition of the all regulatory authority decisions to the Agency after the entry into force of the ACER regulation recast.

**The Chair decided to postpone the issue to the June BoR to allow sufficient time for discussion.**

Mr Hernández agreed it would be good to allow more time for such a discussion. He briefly introduced the key question of the matter, which relates mainly to what happens to proposals that have already been submitted for agreement by all regulatory authorities NRAs by the time the ACER Regulation recast enters into force which would refer these decisions to the Agency. Mr Hernández added that there is now a set of electricity balancing methodologies, which are very tricky and fundamental, and are already under consideration by the regulatory authorities (deadline for national decisions would be in August). The ACER Regulation does not provide a transitional provision for such cases. Mr Hernández will provide a deeper insight in the mentioned methodologies under the EB Guidelines at the next BoR.

The Director indicated that – irrespective of the result of the discussion – it would be very helpful if NRAs could provide as much documentation as possible when such decisions are referred to the Agency.

**6. Gas**

6.1. Important AGWG updates

Mr Hesselting provided an update on the ongoing work in the AGWG, particularly on the work within the Balancing and Tariffs Task Forces. NRAs were informed about the suspected fraudulent behaviour in 2018 in Germany and the Netherlands, where companies used gaps in balancing regulations. These companies were or are also active in other markets. NRAs will discuss and assess how to prevent this from happening in the future.

Mr Locquet thanked the neighbouring NRAs for the exchange of information. He introduced the idea of having an alert system for such fraud cases, through which information can be sent immediately to all NRAs.

6.2. Update on the appeal to the Agency's Decision 11/2018 establishing capacity booking platform to be used on DE-PL interconnection points

The Director provided an update on the appeal to the Agency's Decision 11/2018 establishing the capacity booking platform to be used on the DE-PL interconnection points.

On 16 October 2018 the Agency issued its Decision on the establishment of the capacity booking platform to be used at Mallnow interconnector point and 'GCP' virtual interconnector point. The ACER Board of Appeal (BoA) in its Decision, published on 22 February, annulled the Agency Decision No 11/2018. The BoA decided to annul the contested Decision, as the case file did not contain documents corroborating the Agency's evaluation method. In order to remedy this procedural flaw, the BoA suggested two possible approaches. The Agency considers that the expiry, in October last year, of the period over which the offers submitted by the candidate booking platforms were binding would significantly impair the practical implementation of the second option. Therefore, the Agency has decided to reiterate the procedure from the outset. The Agency will soon launch a new public consultation as part of the new proceedings, after which candidate booking platforms will be invited to submit a new offer. The Agency will take its decision within a period of 6 months following the notification of the BoA's Decision.

Ms Kozak expressed URE's concerns about the lack of transparency and information towards interested entities as well as on the effectiveness of the procedural steps planned by the Agency. The Agency's intention to repeat the tendering procedure, in URE's view, puts at risk the implementation of the CAM network code and precludes the offer of bundled capacity products during the capacity auctions of 1 July. The Agency's approach also hampers the incremental capacity process for the market border of Poland and GasPool. Currently, URE and BNetzA are finalising administrative procedures aiming at coordinated approval of the incremental capacity project proposal. This decision should be issued by 23 April. The lack of the capacity booking platform creates uncertainty to shippers and the involved TSOs, and the selection of the booking platform is urgent. Ms Kozak also expressed URE's concern about the Agency's way of communication. URE's concerns were communicated to the ACER Director and the BoR Chair by letter.

The Director explained that the Agency uses infoflashes as a way to push information out and that the public announcement was made for transparency purposes given that the BoR had not scheduled a meeting at the time, but this may not have been most effective and is a lesson learnt.

Ms Groebel commented that there should be a relevant provision in the ACER or BoR rules of procedure.

### 6.3. Report on the conditionalities stipulated in contracts for standard capacity products for firm capacity

Mr Hesseling presented the Agency's Report, which results from the "Study on the conditionalities stipulated in contracts for standard capacity products for firm capacity sold by gas TSOs", for which the Agency retained a consultant, with the aim to conduct a detailed analysis of conditional firm capacity products offered by gas transmission system operators in the European Union. The Agency provides its own recommendations in the last section of this Report. The Report, supported by the factual findings of the Study, shall be considered as fulfilling the Agency's reporting obligation under Article 38(4) of the NC CAM.

Ms Groebel and Mr Hierzig provided comments.

**Any final comments on factual mistakes can be sent in track-changes by 27 March to Mr Hesseling. The Report shall be published by 6 April 2019.**

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

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

Mr Lakhoua provided an update on ongoing work within the AMIT WG. He addressed operational issues in relation to Brexit. Also, a communication was issued by Ofgem and ESMA, with regard to registration of market participants.

Secondly, initial discussions on data sharing of order books in the context of market coupling, there was a proposal of one NRA to share data between relevant NRAs concerning coupled markets in electricity. Strong backing initially, but this has not entered into technical discussions yet, which needs to be conducted first at Task Force level.

7.2. Guidance Note 1/2019 on the application of Article 5 REMIT on the prohibition of market manipulation layering and spoofing in continuous wholesale energy markets

Mr Godfried presented the Agency's Guidance Note (GN) 1/2019 on the application of Article 5 REMIT on the prohibition of market manipulation through layering and spoofing in continuous wholesale energy markets.

In a series of GNs, the Agency complements the 4<sup>th</sup> edition of the ACER Guidance by providing more in-depth information on the specific types of behaviour prohibited by Article 5 of REMIT which constitute market manipulation or an attempt to manipulate the market. In this GN, the Agency aims further to clarify the application of REMIT in the context of the trading behaviours associated with layering and spoofing. Layering and spoofing refers to the issuing by a market participant (MP) of one large or multiple non-genuine orders to trade on one side of the order book, in order to enter into one or multiple transactions on the other side of the order book. These behaviours influence the expectations of other MPs regarding the supply and/or demand and/or price of one or more wholesale energy products.

The GN describes a general framework which promotes a consistent approach to the NRA's assessment of these behaviours. Its purpose is to assist NRAs in reviewing suspicious behaviours involving layering and/or spoofing and in deciding whether investigation and enforcement procedures need to be undertaken. The scope of this GN does not include specific tools for the investigation of possible cases of layering and/or spoofing.

Mr Godfried further referred to the White Paper on abuse control under competition law and wholesale energy market law in the power generation/wholesale sector. Ms Groebel informed the BoR that the White Paper was published on 20 March by BNetzA and the Bundeskartellamt.

ARERA and CNMC expressed their fundamental concerns regarding the White Paper and its inconsistency with the ACER Guidance.

Mr Godfried noted that there have been many discussions on how to iron-out inconsistencies with the Agency's Internal Guidance Note and many inconsistencies have been addressed. However, there are still some concerns regarding the publication of the White Paper. There are several NRAs which disagree on the substance and for which the publication of the White Paper may legally harm their pending cases. Moreover, NRAs are not requested by REMIT to issue Guidance. There is a risk that more NRAs are also going to issue inconsistent 'national' guidance endangering the effectiveness of the REMIT framework. Also, the White Paper is vague and hence does not provide guidance by leaving REMIT elements out. This may seriously jeopardise pending cases run by NRAs. Against this background the publication of the Agency's Internal Guidance Note would need to be reconsidered. Therefore, the Agency proposes soon to discuss again the substance in order to finish what was debated at the BoR in May 2018, which is to apply the Internal Guidance Note on actual cases and then to finalise and publish it.

Ms Groebel echoed the good cooperation and noted that the White Paper which was published is not, in BNETZA's view, inconsistent with the ACER Guidance Note.