

## 80<sup>th</sup> ACER Board of Regulators Meeting

Wednesday, 23 January 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 A: Dietmar Preinstorfer O: Christine Materazzi-Wagner	Italy (ARERA)	M: Clara Poletti A: Francesco Cariello O: Ilaria Galimberti
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren	Latvia (PUC)	M: Rolands Irklis A: Lija Makare
Bulgaria (EWRC)	A: Evgenia Haritonova	Lithuania (NCC)	A: Irma Vasarytė
Croatia (HERA)	M: Tomislav Jureković	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	A: Alkis Philippou	Malta (REWS)	M: Marjohn Abela A: Phyllis Micallef
Czech Republic (ERO)	M: Vladimír Outrata A: Martin Šik O: Jana Haasova O: Katerina Firlová	Netherlands (ACM)	M: Henk Don O: Wieger Wiersema
Denmark (DUR)	M: Carsten Smidt	Poland (URE)	A: Małgorzata Kozak
Estonia (ECA)	O: Marilyn Tilkson	Portugal (ERSE)	M: Maria Cristina Portugal O: Natalie McCoy
Finland (EV)	M: Simo Nurmi	Romania (ANRE)	O: Florin Tobescu
France (CRE)	A: Héléne Gassin O: Michaël Mastier O: Rébecca Radereau	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)	A: Paul McGowan	United Kingdom (Ofgem)	M: Andrew Burgess O: Christoph Gräfe O: Aidan Stringfellow O: Jo Aston (Utility Regulator)
ACER	Alberto Pototschnig, Christophe Gence-Creux, Fay Geitona, Sander Ramp		
European Commission	Oliver Koch, Michael Schuetz		

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

**MEETING CONCLUSIONS SUMMARY 80<sup>th</sup> BoR, 23 January 2019**

1. The minutes of the 79<sup>th</sup> BoR meeting were approved, as was the agenda for the 80<sup>th</sup> BoR meeting.
2. No conflict of interest was declared by any of the participants.
3. The Agency's Board of Regulators (BoR) elected Ms Clara Poletti, Commissioner at ARERA as their next Chair. Ms Poletti will succeed Garrett Blaney as of 23 January 2019 for a term of office of two and a half years. Ms Poletti stepped down from the position of BoR Vice-Chair and Chair of the AGWG. Nominations for both positions will be opened shortly after the 80<sup>th</sup> BoR meeting and the election and appointment will be held at the 81<sup>st</sup> BoR meeting in March.
4. The Director informed the BoR about the Agency's Policy for the management of conflict of interests which requires BoR Members and Alternates, ACER Working Group (Vice-) Chairpersons, and TF Convenors to submit their Declaration of Interests and CVs by 31 January each year.
5. The Director provided an update on the AQUIND appeal. E-Control noted the aspects of relevance to the BoR including regarding the BoR's access to the information relevant to the case.
6. The Director informed the BoR on the latest publications by the Agency.
7. The Director informed the BoR of the forthcoming extension of the term of the AEWG Chair, Mr Hernández (CNMC) for a period of two years starting on 10 February.
8. Ms Geitona presented some key elements of the recast ACER Regulation regarding the powers of the Agency and the role of the BoR.
9. Mr Koch provided an update on the next steps and timing for the adoption of the relevant acts under the CEP; the political negotiations on the CEP have been concluded on 18 December with the political agreement on the Electricity Regulation and Directive. The COREPER voted last week and the ITRE Committee is voting today (23 January) on the Electricity Regulation, the Electricity Directive and on the ACER Regulation. The texts of the Directive and Regulations will eventually be formally approved by the European Parliament and the Council in the coming months. Once endorsed by both co-legislators, the laws will be published in the Official Journal of the Union. He presented the key highlights of the Electricity Regulation recast. The new provisions will have to be reflected in the codes (e.g. CACM and system operation) where appropriate.
10. The BoR Chair informed the BoR on the latest discussions within the Administrative Board (AB) regarding the practical arrangements for the selection process of the next Agency's Director. The BoR provided feedback and their preferences on the practical arrangements for the selection of the new ACER Director. The BoR Chair will present the BoR feedback to the AB on 30 January and report back to the BoR. The EC will inform the BoR about the approximate timing of the process and envisages that the pre-selection interviews will be held in the beginning of February.
11. The Director presented the ACER Single Programming Document (SPD) 2020-2022, which includes the 2020 Work Programme and budget proposal. The 2020 budget proposal amounts to €20,647,663 and 110 staff to fill in the gap from previous years and to cover the new tasks assigned to the Agency by the CEP. **The BoR provided its supportive opinion on the Agency's 2020 budget.** Members noted also the need to consider what can be done with the resources currently available.

12. The Director presented the Agency's Decision on the intraday cross-zonal capacity pricing methodology. ERO and DERA sought some clarifications and BNetzA expressed more fundamental reservations. The Director committed that the Agency can provide clarifications if the need arises, whilst it cannot change the text at this stage. **The BoR provided, by majority of the members present or represented, its favourable opinion on the Agency's Decision. BNetzA provided a dissenting opinion.**
13. The Director presented the Agency's Opinion on ENTSO-E's Winter Outlook Report (WOR) 2018-2019 and Summer Review (SR) 2018. The Agency finds that the WOR 2018/2019 and SR 2018 are in line with the requirements of Articles 6(3)(b) of Regulation (EC) No 713/2009. The Agency's Opinion provides several recommendations to improve future Outlooks and Reviews. **The BoR provided, by consensus of the members present or represented, its favourable opinion on the Agency Opinion.**
14. The Director presented the Agency's Opinion on ENTSOG's Common Network Operation Tools (CNOTs) which sets out that the Common Network Operation Tools for emergency conditions and the common Incidents Classification Scale generally meet the objectives of Regulations No 713/2009 and 715/2009 in terms of contributing to non-discrimination, effective competition, but could better contribute to the efficient and secure functioning of the internal natural gas market. The Agency calls on ENTSOG to take further steps to promote coordination of network operation. **The BoR provided, by consensus of the members present or represented, its favourable opinion on the Agency's Opinion.**
15. The BoR Chair kicked-off a discussion on the next steps towards the BoR Summit and the new scope of the foreseen paper. The BoR agreed to the organisational arrangements and timetable as proposed regarding the preparation of the Summit and the development of the paper. The format of the paper could be decided at a later stage when its substance is clearer but could, to increase formality and institutional impact, take the form of an ACER Recommendation. Members noted the need to clarify the format of the paper and the CEER involvement sooner rather than later and stressed the need to also incorporate complementary CEER work. The Chair will submit a proposal on the format of the paper and the drafting arrangements for the March meeting. **The Summit shall be held in March 2019 in the margins of the 81<sup>st</sup> BoR.**
16. Mr Hernández provided an update on the ongoing work in the AEWG and provided a status review on CACM implementation. The status review covered the main achievements in implementation to date, as well as implementation challenges currently being faced, and potential improvements to be made.
17. Mr Gence-Creux provided an update on the preparations of the Agency's Decision on the Core Capacity Calculation Methodology along with the key issues. He explained the latest developments and amendments made to accommodate the consultation responses. BoR members also discussed considerations on which network elements should be considered as critical network elements. The deadline for the Agency's Decision is 21 February. **The BoR agreed to the use of an electronic procedure for the BoR Opinion.**
18. Mr Gence-Creux provided an update on the development of the Agency's Decision on the Capacity Calculation Region amendment. He presented the proposed compromise, to which there was one change compared to the compromise previously presented in December. The allocation of the Cobra Cable (DK1-NL) shall be in the Hansa CCR as proposed by TSOs. No later than 12 months after the Core and Nordic day ahead flow-based capacity calculation, all TSOs shall submit a proposal for amending CCRs (including supporting documents and amendment proposals). CREG advised the Agency not to use the
19. same approach for the Channel CCR given the different circumstances in each CCR.

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| <p>20. Mr Gence-Creux presented the Agency's Opinion on the amended second update of the MoP for the ENTSO-E central information transparency platform. The Agency finds that the updated MoP fulfils the requirements for the publication of new balancing data items in Regulation (EU) 2017/2195 and meets the objective of Regulation (EU) No 543/2013 to ensure the provision of clear and timely information about balancing markets in a comparable format across borders. The Agency also provided further recommendations to ENTSO-E. <b>The BoR took note of the Agency's Opinion.</b></p> |
| <p>21. Ms Poletti provided an update on the ongoing work in the AGWG and on the Functionality Platform and the Central and South-East Europe Connectivity (CESEC) initiative which has been extended to electricity. NRAs are invited to the plenary meeting for gas in Brussels on 7 February.</p>  |
| <p>22. Ms Groebel provided an update on the work in the AMIT WG and on the Brexit open letter.</p>   |
| <p>23. The Director informed the BoR that the Agency has received input from the European Commission in December 2018 and that it published the open letter on the Brexit impact under REMIT on 9 January 2019.</p>  |
| <p>24. Ms Groebel updated the BoR on the BNetzA's Guidance on Abuse control in the power generation sector and updated the BoR on the next steps. The Director invited BNetzA to share the amended version of the paper before their public consultation.</p>  |
| <p>25. The BoR was informed about the documents of common interest circulated under Part B of the agenda and the EU Corner and about the latest calendar updates. The Director drew the BoR's attention to the Dashboard presentation circulated under part B noting that the number of wash trades take the largest portion of all alerts. The Agency is exploring enhanced monitoring methods to reduce the number of wash trades that require manual assessment as a means also to address resources constraints.</p>   |
| <p>26. Mr Nyikos asked the EC on an update on the EC, Russia, Ukraine trilateral meeting.</p>  |

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

### 1. Opening

#### 1.1. Approval of the agenda

BoR Decision agreed: (D 1)

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

#### 1.2. Approval of the minutes of the 79<sup>th</sup> BoR meeting

BoR Decision agreed: (D 2)

*The minutes of the 79<sup>th</sup> BoR were approved.*

### 2. BoR Chair elections

#### 2.1. Election of the BoR Chair – for decision

Mr Camille Hierzig, being the national regulator for the longest time, chaired the election process. He introduced the process and the candidates. At the December BoR meeting members agreed to the

process as outlined in the circulated note and followed in all elections since the inaugural meeting of the BoR.

Nominations were opened on 13 December and closed on 7 January. The following candidates stood for the position (their CVs and motivations were circulated to all BoR members).

- Dr. Attila Nyikos, Vice President for International Affairs, Magyar Energetikai és Közmű-szabályozási Hivatal (MEKH), Hungary. Alternate of the BoR. The end of his national term is 15/07/2020 and can be renewed for another 7 years.
- Ms Clara Poletti, Commissioner, Regulatory Authority for Energy Networks and the Environment, (ARERA), Italy. Member and Vice Chair of the BoR and Chair of the AGWG. Her national term is seven years as of August 2018.
- Mr Martin Šik, Expert Counsellor, Energy Regulatory Office (ERO), Czech Republic. Alternate of the BoR. He is a public servant under a contract of indefinite duration.

Ahead of the formal voting, the candidates were invited to present themselves (in the alphabetical order of their last names) and their proposals and vision for the role of the BoR and on what they aim to achieve during their term of office as BoR Chair. Members of the BoR were offered the opportunity to put questions to each candidate following their presentation. For the oral presentations by the candidates and the voting procedure, the BoR meeting took place in '*huis clos*'.

In accordance with the election process, given that there were several candidates, the BoR proceeded to a vote. 27 members were present/ represented at the meeting. CRE was represented by ARERA.

In the first round Ms Poletti and Mr Šik received the most votes. Mr Šik, subsequently, withdrew his candidature and all members present or represented agreed to Ms Poletti's appointment as the next BoR Chair. She will succeed Mr Blaney as of 23 January for a term of office of two-and-a-half years (renewable).

Ms Poletti thanked the BoR members and announced that she would step down from her position as Agency Gas Working Group Chair. Due to her election as BoR Chair, the BoR Vice-Chair position also fell vacant. The nominations for the position of the BoR Vice-Chair and AGWG Chair will be opened by the BoR Secretariat after the 80<sup>th</sup> BoR meeting and the elections will be held at the 81<sup>st</sup> BoR meeting in March.

### **3. Updates from the ACER Director and the EC**

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

##### [Conflict of Interest Policy 2019](#)

The Director reminded the BoR of the annual implementation of the Agency's policy for the prevention and management of conflicts of interest, which requires BoR Members and Alternates, AWG (Vice-) Chairpersons, and TF convenors to submit their Declaration of Interests and CVs by 31 January each year (CVs only if not already submitted in the past or if a change with respect to an already submitted CV needs to be notified). The Director indicated that he will ask the BoR Chair to convene the BoR Review Panel soon after the deadline.

Mr Locquet expressed his concerns on the recently implemented system in the “pop up” notifications on the Agency’s website noting that the responsibility for the nomination of the NRAs’ representatives at the BoR, WG and TFs lies with the NRA and not with the Agency.

The Director explained that the new system aims to raise awareness of the rules particularly as the representatives of the NRAs change.

#### [Update on the Aquind appeal](#)

The BoA has issued its Decision to reject AQUIND’s appeal against the Decision taken by the Agency whereby the Agency chose not to grant the exemption requested by AQUIND under Article 17 of Regulation (EC) 714/2009.

Mr Urbantschitsch noted some of the key elements of the decision of relevance to the BoR with regard to the information provided to the BoR.

#### [Latest publications](#)

The Director provided an update on the latest publications and activities by the Agency.

- On 21 December 2018, the proposals of the ENTSO-E for developing methodologies for Coordinating Operational Security Analysis and Relevant Asset Outage Coordination, were referred to the Agency by all national regulatory authorities. The Agency will soon launch the related public consultation.
- On 8 January, the Agency published a Public Consultation Evaluation on the revision of electronic formats for transaction data, fundamental data and inside information reporting under REMIT.
- On 16 January, the Agency launched a new tool “RECORD”, for listing national derogation criteria and decisions on derogations and revocation to monitor national derogations in grid connection codes implementation.

The Director informed the BoR about the outcome of the BoR electronic procedure on the approval of the revised 2019 ACER WP which ended on 19 December and. 24 Members participated, and all voted in favour. The revised 2019 WP was, therefore, approved.

#### [Update on the AEWG Chair](#)

The Director informed the BoR about the extension of the term of Fernando Hernández as AEWG Chair which expires on 10 February 2019. In line with the AWGs rules the requirement for the prior consultation and recommendation of the BoR applies for new AWG chairpersons – and, therefore, not for reappointments. The BoR took note.

#### [Key highlights of the revision of the ACER Regulation of relevance to the BoR](#)

Ms Geitona presented some of the key highlights of the recast ACER Regulation regarding both the Agency’s powers and the role of the BoR, as well as other key elements of the new Governance which are of relevance to the BoR. Amongst the most important changes are the new obligations on information requests by the Agency which can give effect to legally binding decisions of the Agency, the new approach of the oversight of EU entities and RCCs and new powers on risk preparedness, generation adequacy, NEMOs, and the new EU-DSO entity.

Mr Koch clarified that with regard to the terms, conditions and methodologies (TCMs) in new Network Codes and Guidelines adopted as delegated acts, the Agency will be called to decide only in case of voluntary referral by the NRAs (60% of the NRAs concerned) and not where NRAs disagree. Particular

attention was drawn to the new provision on the relation with third-countries. The new arrangements provide that, subject to the conditions set out in the ACER Regulation (compliance with the EU *acquis*), the Agency exercises its tasks under Articles 3 to 14 (regulatory functions) with regard to third-countries. If these countries have mandated the Agency to coordinate their regulator's activities with regulators from Member States, references to cross-border issues concern also borders with third-countries. The Director noted the importance of this provision regarding the Energy Community which amended provisions with the view to giving the Agency responsibility for ruling disagreements between ENC regulators and EU regulators. The EC noted the impact on market coupling given that this provision provides the legal instrument to create the South East region.

The BoR noted that the Agency and the BoR would need to look into their own working arrangements appropriately to prepare the Agency's Decisions including those on TCMs.

CREG sought support from the EC regarding the new enforcement powers which CREG will have as a result of the CEP *vis-à-vis* the EU entities and RCCs where NRAs' or Agency's Decisions have identified the incompliance of such entities with their EU obligations. He noted the constraints in terms of resources that CREG is currently facing.

Mr Koch explained the oversight process which in fact relies on the identification of non-compliance by coordinated decisions of NRAs or the Agency (in case they disagree). CREG would thus be responsible for imposing the sanctions in case an infringement has been identified. He offered all possible support from the EC in this respect and is happy to discuss further with CREG and with other NRAs. The EC would be willing to help on any implementation issues.

### 3.2. European Commission

#### [Update on Clean Energy Package proposals, Gas Directive amendments](#)

Mr Koch updated the BoR on the political agreement reached on the Electricity Regulation and Directive on 18 December. The COREPER voted last week on the recast ACER Regulation and the Electricity Directive and Regulation and the ITRE committee voted on 23 January. Representatives from the three Institutions have technical meetings to finalise the linguistic reviews of the texts. Once adopted by both co-legislators in the coming months the new laws will be published in the Official Journal of the Union. The Regulations will enter into force immediately and the Directive will have to be transposed into national law within 18 months.

Mr Koch also presented some key elements of the new electricity market design following the Electricity Regulation and Directive recast which also includes additional powers for the Agency, whilst without changing the overall mission and role of the Agency.

There are changes brought about by the Electricity Regulation regarding balancing, daily procurement, intraday gate closure times which will inevitably have an impact of the existing codes (e.g. CACM and SO) and thus there is a need for the NCs to be aligned with the new provisions.

He noted the new elements in the NCs development process and informed the BoR on the discussions on capacity mechanisms and the compromise achieved which does not provide for a "legally" binding EU assessment. However, the Agency will be deeply involved in the preparation of the EU generation assessment.

Another new element is the establishment and tasks of the new EU-DSO entity. Regarding the RCCs, there is a list of tasks where RCCs can give recommendations which has been enlarged, whilst they will not issue binding decisions. He then presented the discussion on the tendering of flexibility services. Regarding regulated prices, the *status quo* has not changed; they are not prohibited as long as they comply with specific rules and jurisprudence of the European Court of Justice.

There will be a new framework for bidding zones and capacity calculation on the borders. The new provisions now create more clarity and there is a need to reach the minimum of 70% of available capacity for cross-zonal trade as determined under the CACM GL. This will apply to all Member States in 10 months. An action plan is also possible for those Member States that cannot reach the required 70%.

Regarding the Gas Directive, Mr Koch stated that a new proposal has been tabled by the Romanian Presidency.

### 3.3. Update on the selection of the new Agency's Director and next steps

The European Commission provided an update on the selection process of the new Agency's Director. The first pre-selection interviews are planned for the first week of February, but at this stage there is no specific timetable for the finalisation of the selection process.

Ms Poletti updated the BoR on the latest discussions with the AB with regard to the practical arrangements on the selection of the Director. The arrangements aim at ensuring the necessary collaboration between the Boards in order to avoid deadlocks. The BoR discussed the lessons learnt from the previous process and provided feedback and their preferences on the practical arrangements under discussion.

Ms Poletti concluded the discussion by stressing the need to strengthen the collaboration and information exchange between the two Boards and ensure transparency with due respect to the different roles of the Boards. Members stated their preferences and provided feedback. The BoR Chair will present it to the AB in January and report back to the BoR. The EC will clarify the timing of the selection process in order to know better when the arrangements would need to be finalised. The previously agreed BoR procedural arrangements for the organisation of the BoR preliminary process and for the BoR deliberation for the provision of its opinion will be adapted, where appropriate, in light of the discussions with the AB and the input by members.

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

### 4.1. ACER Single Programming Document 2020-2022; the 2020 Work Programme & budget proposal

The Director informed the BoR about the ACER Single Programming Document (SPD) 2020-2022 which was shared with the BoR for information. The SPD 2020-2022 includes the 2020 Work Programme and budget proposal on which the BoR's supportive opinion was asked. The BoR has discussed the draft outline of the 2020 Work Programme at the 78<sup>th</sup> BoR meeting in October in Madrid. Some comments after that discussion were incorporated. Some final open issues were clarified with E-Control after their comments.



The 2020 budget proposal amounts to 20,647,663€ and 110 staff (compared to 67 in the 2019 adopted budget), and 147 with the Contract Agents (CAs) included (compared to 98 in the 2019 adopted budget).

The Agency is still missing 27 FTE to fulfil its current mandate. On top of that there are additional responsibilities for the Agency resulting from the Clean Energy Package, for which another 16 FTE are asked. The Agency's draft budget would need to fill the gap from the previous years, including 2019 for which the Agency received only CAs but no Temporary Agents (TA). The EC's *fiche financier*, accounts for 18 additional FTE (8 CAs for the 2019 budget and the remainder for the 2020 budget).

The Director indicated he will ask the EC to revisit the *fiche*. Even if the additional 18 FTE were the final number, the Agency would need those to be TAs instead of CAs (given the difficulty to attract staff to very technical positions in Ljubljana). The Agency also asked for six CAs for support on administrative and horizontal tasks. The Agency received eight CAs. There is a risk that in the EC's view we would, therefore, only need another 10 FTE to handle the CEP tasks. To sum up again with regard to the current SPD: apart for the 27 FTE to fulfil the current gap the Agency still needs another 16 FTE (TAs), which amounts to 43 additional FTE.

Mr Schuetz explained that the recast ACER Regulation and the new market design call for an additional 18 FTE for the Agency. Of these 18 FTE, there are four TAs and 14 CAs. Eight CAs will already be included in the 2019 budget, the others in 2020.

**The BoR provided its supportive opinion on the 2020 budget.**

#### 4.2. ACER Decision on intraday cross-zonal capacity pricing methodology

The Director presented the Agency's Decision on the intraday cross-zonal capacity pricing (IDCZCP) methodology, which is submitted for a BoR favourable opinion.

The Agency considers the proposal in line with the requirements of the CACM Regulation, provided that the amendments as described in the Decision are integrated in the proposal. The Agency provided comments and suggested amendments to several recitals, the fundamentals and specifics of the IDCZCP, timing specifications for the IDAs and continuous trading, publication and implementation.

The Director emphasised the pricing of intraday cross-zonal capacity as well as the timing of the IDAs, which the Agency foresees at least at three different moments:

- (i) at the intraday cross-zonal gate-opening time (i.e. 15:00 D-1) using the cross-zonal capacity remaining from the day-ahead timeframe to take advantage of shared order books and more efficient cross-zonal capacity allocation through an auction;
- (ii) at 22:00 D-1, when the first intraday capacity recalculation is, at least as a first step, expected to be finished and;
- (iii) at 10:00 of the delivery day when the second intraday capacity recalculation is, at least as a first step, expected to be finished.

ERO and DERA sought some clarifications and BNetzA expressed more fundamental reservations.

The Director thanked the BoR members for their comments and identified two types of reaction. Some comments relate to textual clarifications whereas others raise more fundamental reservations with regard to the Decision itself. The Director explained that at this point the Agency is not keen on reopening the

text. However, if any clarification needs to be provided in certain cases the Agency can provide NRAs with those should the need arise.

Mr Koch thanked the Agency for the work on the Decision which he hopes will relief some concerns in the foreseen revision of CACM.

**The BoR provided, by majority of the members present or represented, its favourable opinion on the Agency's Decision. BNetzA provided a dissenting opinion.**

#### 4.3. ACER Opinion on ENTSO-E's Winter Outlook Report 2018-2019 and Summer Review

The Director presented the Agency's Opinion on ENTSO-E's Winter Outlook Report (WOR) 2018-2019 and Summer Review (SR).

The Agency finds that the WOR 2018/2019 and SR 2018 are in line with Article 6(3)(b) of Regulation 713/2009. The following measures would improve the WOR 2018/2019 and the SR 2018:

- (a) For upward adequacy assessment, the probabilistic approach needs to be further improved taking into account recital (9) and it needs to be considered for the downward adequacy assessment.
- (b) The seasonal outlooks should provide the volume of strategic reserve and its location and type.
- (c) The impact of severe weather conditions on generation and transmission outage statistics and on the availability of cross-border capacities should be investigated and incorporated into future adequacy assessments.
- (d) The EU-wide state of hydro-reservoir levels should be incorporated in the future adequacy assessments.
- (e) The seasonal outlooks should analyse how gas disruptions and hydro-reservoir levels could affect the overall adequacy results. After the Risk Preparedness Regulation enters into force and is implemented, the impact of gas shortages on electricity can be addressed in the Risk Preparedness framework rather than the seasonal outlooks, although seasonal adequacy related results should be presented in one document to facility the understanding of the subject.
- (f) The seasonal reviews should include overviews of actual curtailments of renewable-based generation in the previous season and of voltage and frequency stability.
- (g) ENTSO-E should clarify in which framework they address the impact of scarce (upward) adequacy on the cost of electricity generation.

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

#### 4.4. ACER Opinion on ENTSG's Common Network Operation Tools

The Director presented the Agency's Opinion on the Common Network Operation Tools ("CNOTs") developed by ENTSG, which also includes a common Incidents Classification Scale ("ICS").

The Agency considers that the adopted ENTSG's Common Network Operation Tools for emergency conditions and the common Incidents Classification Scale meet the objectives of Regulations 713/2009

and 715/2009 in terms of contributing to non-discrimination, effective competition, but could better contribute to the efficient and secure functioning of the internal natural gas market.

The Agency, while noting that ENTSOG's approach of considering obligations from the Security of Gas Supply Regulation as the CNOTs for emergency conditions is formally pragmatic, considers that the CNOTs should go beyond the SoS Regulation obligations and consider all relevant modalities of operations. The Agency calls on ENTSOG to take further work to promote coordination of network operation. The Agency expects ENTSOG to improve the CNOTs for gas by looking at the developments of CNOTs in the electricity sector. ENTSOG should consider publishing a revised version of the CNOTs for the sake of transparency.

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

## 5. Cross-sectoral

### 5.1. Next steps towards the BoR Summit in March and new scope of the paper

The BoR Chair reminded the BoR that, following previous discussions (in March, October and December), it was initially agreed to prepare a paper with a focus on the regulatory challenges emerging from the transition of the energy system due to decarbonisation. However, during discussions in the margins of the last BoR, the different context and timing between gas and electricity were noted and the BoR Vice-Chair sought a steer from the BoR on several elements, mainly on:

- The postponement of the Summit to the margins of the 81<sup>st</sup> BoR in March 2019.
- Focusing efforts on a paper with a narrower scope, addressing the gas sector and energy sector coupling issues better to target the key objective of providing input into the EC's gas proposals and energy sector coupling issues.
- The establishment of an *ad-hoc* group (BoR Chair, Director, AEWG and AGWG (Vice) Chairs and HoDs) and the exploring for an author (internal or external).
- The timetable which foresees a final product by autumn.

The Director noted that it should be paramount to focus our resources on gas and cross-sectoral issues if the objective is to be influential in the discussion on the foreseen gas package. The aim would also be to end up with a deliverable supported by all. If we wanted to increase formality and institutional impact, the final paper could take the form of an Agency's Recommendation as the Bridge.

The BoR agreed to the organisational arrangements and timetable as proposed regarding the preparation of the Summit and the development of the paper (including the establishment of an *ad-hoc* group, exploring possibilities for an external expert, and the aim to finalise the paper by September 2019). The format of the paper could be decided at a later stage when its substance is clearer but could, but to increase formality and institutional impact, it can take the form of an ACER Recommendation like the Bridge. Members noted the need to clarify the format of the paper and the CEER involvement sooner rather than later and stressed the need to also incorporate complementary CEER work.

The Chair thanked the BoR for their feedback and steer. She will submit a proposal on the format of the paper and the drafting arrangements for the March meeting. The Summit shall be held in March 2019 in the margins of the 81<sup>st</sup> BoR.

## 6. Electricity

### 6.1. Important AEWG updates

Mr Hernández provided an update on work ongoing in the AEWG and on the CACM implementation process and its main achievements. This update followed from ACM's request to have more regular updates at BoR level on pending NC implementation issues.

Mr Hernández gave an overview of the key achievements at pan-national level, regional level and national level. Amongst the main challenges of the CACM implementation Mr Hernández pointed out that, once approved, TCMs need to be implemented and NRAs should ensure monitoring and enforcement. Some delays have been experienced so far. A common question in all Guidelines is which leverage or procedures are available to NRAs to ensure the enforcement of TCMs.

Mr Hernández informed the BoR of several further improvements. Following the EC report on NEMOs competition, NRAs have been discussing how to improve the MCO governance and drafted a working paper as an input for the discussion. The Cost report for 2017 is the first attempt to monitor all costs borne to achieve market coupling. Despite the NRAs effort to give guidance to NEMOs and TSOs, the report is expected not to be completely satisfactory. Improvements on how accounting data are recorded, classified, stored and made available are still needed. MRC and 4MMC are still two separate regional DA projects: merging is needed to achieve pan-European market coupling and particular attention should be given to the integration in the Core flow-based CCM. The Algorithm methodology need to be complemented by other two methodologies to be submitted by August 2019: Monitoring and Change Control. Furthermore, the Algorithm methodology should be also amended to take into account new TSOs requirements stemming from IDCZCP methodology. The Common Grid Model is envisaged for long-term, daily and intra-daily allocation as well as coordinated operational security analyses: a consolidation is needed to ensure consistency. Regional TCMs require future harmonisation (e.g. CCM and CTRD cost sharing). Furthermore, CACM has to be assessed against the Clean Energy Package.

### 6.2. Update on ACER Decision on Core Capacity Calculation Methodology

Mr Gence-Creux provided an update on the development of the Agency's Decision on the Core Capacity Calculation Methodology. He informed the BoR on the amendments made to accommodate consultation responses. These relate to providing more clarity on internal CNECs (link to economic efficiency) and additional transparency or publication requirements.

With regard to the intraday capacity calculation, one update and two recalculations are now foreseen, at 15:00 D-1, and 22:00 D-1 and 10:00 D respectively. Day-ahead (DA) leftovers should be offered at 15:00, but TSOs may set them to zero until six months after implementation of the ID CCM, if DA leftovers are not secure.

Mr Gence-Creux explained the two remaining open issues to the BoR. These relate to the definition of minimum capacity to avoid undue discrimination, and to the limitation of loop flows in the base case. BNETZA, ACM, CRE and CREG provided feedback and raised their concerns and the Agency responded to those.

Mr Koch invited NRAs to contact his team in case of any questions on interpretation of the CEP texts.

The AEWG endorsement and the BoR opinion are foreseen for February 2019 through electronic procedure (to be launched by 12 February) in order to allow the decision to be adopted by the deadline of 21 February.

### **The BoR agreed to the use of an electronic procedure for the BoR Opinion**

#### **6.3. Update on ACER Decision on Capacity Calculation Region amendment**

Mr Gence-Creux provided an update on the development of the Agency's Decision on the Capacity Calculation Region amendment. He focused on the only change compared to what was presented at the December BoR meeting.

The compromise remains that the allocation of the Cobra Cable (DK1-NL) shall be in the Hansa CCR as proposed by TSOs. But, the draft Decision states now that no later than 12 months after the implementation of the Core and Nordic day-ahead flow-based capacity calculation, all TSOs shall submit a proposal for amending CCRs (including supporting documents and amendment proposals).

Some open issues remain, which the BoR discussed: First, the status of the Channel CCR, and second, the timing and type of assessment and its resulting CCR request for amendment.

Mr Don requested a clarification on the implication of the new deadline. Mr Gence-Creux responded that the deadline was moved from 3 to 12 months to allow time for a study to be delivered by TSOs on compliance with CACM. If compliant, the Cobra Cable inclusion can be implemented. Otherwise another proposal (merging regions) would need to be found.

The BoR Opinion is foreseen for the March BoR meeting. With regard to the status of the Chanel CCR, CREG advised the Agency not to use the same approach for the Channel CCR given the different circumstances in each CCR. Mr Gence-Creux thanked Mr Locquet for his feedback on this matter and requested other NRAs in the Channel CCR also to provide feedback.

The AEWG endorsement and BoR opinion are foreseen for March 2019. The deadline for the Agency's Decision is 4 April 2019.

#### **6.4. ACER Opinion on the amended second update of the Manual of Procedures for the ENTSO-E central information transparency platform**

Mr Gence-Creux presented the Agency's Opinion on the amended second update of the Manual of Procedures (MoP) for the ENTSO-E central information transparency platform.

ENTSO-E submitted an updated MoP on which the Agency issued its Opinion No 04/2018 of 13 June 2018 which suggested amendments and invited ENTSO-E to revise the submitted MoP. On 4 December 2018, ENTSO-E resubmitted a revised version 3.1 to the Agency, dated 29 October 2018, which included an update of separate documents referenced in the MoP. The referenced documents included a detailed Data Descriptions ('DDD') document, a Business Requirements Specification ('BRS') document and several implementation guides describing the standards and methods used for the submission and transfer of information.

The Agency's Opinion focusses on the DDD document and finds that the updated MoP fulfils the requirements for the publication of new balancing data items envisaged in Regulation (EU) 2017/2195 and meets the objective of Regulation (EU) No 543/2013 to ensure the provision of clear and timely information about balancing markets in a comparable format across borders. However, the Agency also provides further recommendations.

The BoR took note of the Agency's Opinion on the amended second update of the Manual of Procedures for the ENTSO-E central information transparency platform.

## **7. Gas**

### **7.1. Important AGWG updates**

Ms Poletti provided an update on ongoing work in the AGWG. Specifically, Ms Poletti provided an update on the Functionality Platform and on the Central and South-East Europe Connectivity (CESEC) initiative.

With regard to the Functionality Platform, Ms Poletti informed the BoR that since the Platform became truly active in 2018, ten issues have been submitted (4 on the Interoperability NC; 3 on the Tariffs NC, 2 on the Capacity Allocation Mechanisms NC and 1 on transparency). Six issues have been solved, closed or withdrawn. The Agency and ENTSOG have agreed on certain improvements to the platform, mainly relating to IT and processes. The platform should become more user-friendly and facilitate the direct engagement of network users.

In 2015, the EC launched the Central and South-East Europe Connectivity (CESEC) initiative, which involves nine MSs and seven countries from the Energy Community. The aim of the initiative is to facilitate the completion of cross-border and trans-European projects, to develop regional gas markets and implement harmonised EU rules to ensure the optimal functioning of infrastructure. The initiative was initially set up for gas, but has now been extended to electricity and other sectors. There are six big priority infrastructure projects in progress. Ms Poletti informed the BoR that NRAs are invited to the plenary meeting on 7 February in Brussels.

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

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

Ms Groebel provided an update on the work ongoing in the AMIT WG and informed the BoR that BNetzA received several comments from the Agency and NRAs on the joint BNetzA-Bundeskartellamt Guideline ('Guideline on Abuse Control under Competition Law and Wholesale Energy Market Law in the Power Generation Sector – Price Spikes and their Admissibility'). She indicated that these comments are taken into consideration and for that reason the publication of the document has been postponed. She added, however, that no arguments have been brought forward that change BNetzA's stance on the examples used in the Guidance paper.

CNMC and ARERA noted the importance to rely on the Agency for Guidance and not to have multiple interpretations given previous cases of market manipulation that they have handled.

The Director expressed his appreciation to Ms Groebel for the postponement of the publication of the paper. He expressed his hope that the final text of the paper could be shared with the Agency and its REMIT Coordination Group before the public consultation. The Agency would welcome more information about the new foreseen date for the public consultation. The Director indicated however that he still sees critical issues with publishing a differing interpretation. The Agency Guidance was kept internal thus far, as no interpretations were published. However, if national authorities were planning to publish differing interpretations of market abuse under REMIT, it cannot be excluded now that the Agency would have to go out with their guidance, as it is the responsibility of the Agency to ensure a consistent implementation of REMIT.

The Director informed the BoR members that the Alert Dashboard presentation was shared for information under Part B (9.5). The presentation shows the manually assessed high intensity triggered alerts for wholesale energy market trading in September 2018. In line with the processes in place, the Agency has shared detailed information per alert with the NRAs for their follow-up. Wash Trades take the largest portion of all the alerts triggered and the Agency is exploring enhanced monitoring methods to reduce the number of wash trades that require manual assessment given the limited number of experts available.

The Director informed the BoR that the Agency has received input from the Commission services on the draft Brexit letter in December 2018 and the letter was published on 8 January 2019.

## **AOB**

Mr Nyikos asked the EC about the Gas Directive amendments and the trilateral between the EC, Russia and Ukraine. The EC responded that the trilateral took place on 21 January and the following day the Energy Working Party was briefed. Discussions on the amendment of the Gas Directive are ongoing and constructive but not all key differences have been resolved. The last opportunity for approval in the European Parliament Plenary is April.

Mr Locquet indicated that CREG and ILR were asked about the LEN panel's pending advice on new entities and Balansys (2<sup>nd</sup> and 3<sup>rd</sup> LEN Panels) by the Gas TSOs in Belgium and Luxembourg and asked about the status of the work in those LEN Panels.

The Director understood there was much there was much confusion as to the type of relationship between the parent-TSO but believes this is almost clarified. The Director thanked all the experts involved in these panels.