

**75<sup>th</sup> ACER Board of Regulators Meeting**  
**Thursday, 6 June 2018 10:00-16:00**  
**CEER premises, Cours Saint Michel 30a, 1040 Brussels**

**Minutes (final)**

Member States	Name <sup>[1]</sup>	Member States	Name
Austria (E-Control)	A: Dietmar Preinstorfer O: Vera Gunsenbauer	Italy (ARERA)	M: Clara Poletti (BoR Vice-Chair) A: Francesco Cariello
Belgium (CREG)	M: Marie-Pierre Fauconnier O: Geert Van Hauwermeiren	Latvia (PUC)	O: Lija Makare
Bulgaria (EWRC)	A: Evgenia Haritonova	Lithuania (NCC)	A: Irma Vasarytė O: Justina Alsytė-Gogelienė
Croatia (HERA)	A: Sonja Tomašić Škevin O: Nataša Mihajlović	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	A: Alkis Philippou	Malta (REWS)	M: Marjohn Abela A: Phyllis Micallef
Czech Republic (ERO)	A: Martin Šik O: Kateřina Firlová	Netherlands (ACM)	M: Henk Don O: Wieger Wiersema
Denmark (DERA)	A: Mads Lyndrup	Poland (URE)	A: Malgorzata Kozak
Estonia (ECA)	O: Tiina Maldre	Portugal (ERSE)	A: Alexandre Santos O: Natalie McCoy
Finland (EV)	M: Simo Nurmi	Romania (ANRE)	O: Florin Tobescu
France (CRE)	A: Hélène Gassin O: Romain Charvet O: Rébecca Radereau	Slovakia (RONI)	A: Marian Záhora
Germany (BNetzA)	M: Annegret Groebel	Slovenia (AGEN-RS)	O: Marko Senčar
Greece (RAE)	O: George Paidakakis	Spain (CNMC)	M: Fernando Hernández O: Gema Rico
Hungary (HEA)	M: Attila Nyikos O: Adam Krinszki	Sweden (Ei)	M: Anne Vadasz Nilsson A: Caroline Törnqvist
Ireland (CRU)	M: Garrett Blaney (BoR Chair) A: Paul McGowan O: Seamus Byrne	United Kingdom (Ofgem)	M: Mark Copley
ACER	Alberto Pototschnig, Martin Godfried, Tomaž Vižintin, Fay Geitona, Sander Ramp		
EC	Florian Ermacora, Michael Schuetz		

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

**MEETING CONCLUSIONS SUMMARY – 75<sup>th</sup> BoR, 6 June 2018**

1. *The BoR approved the minutes of the 74<sup>th</sup> BoR meeting and the agenda of the 75<sup>th</sup> meeting.*
2. *The participants declared no conflict of interest.*
3. *The Director reported to the BoR about the EP ITRE Committee meeting, which took place on 16 May for which ACER was invited. The MEPs present at the meeting expressed their appreciation for the work the Agency is doing and called for ambition in the Council and for the EP to take a strong stance on its position. The Director informed the BoR that the EC formal Communication on the budget 2019 had been received yesterday. Although the REMIT budget seems to be secured (around 3, 5 million), the number of staff (Temporary Agents posts) remains the same.*
4. *The Director reported that the ACER Annual Conference takes place on 5 July at the Brdo Congress Centre. The theme is “An Energy Union for all Europeans”. The Director further updated the BoR on recent ACER publications.*
5. *The Director raised concerns about the latest text by the Council, notably on Articles 13 and 14 of the Electricity Regulation recast, reiterating the concerns expressed at the last Florence Forum from all stakeholders whilst not captured in the conclusions. ACER considers issuing a short public statement reaffirming the position that the CACM Regulation approach must be retained (possibly with ENTSO-E and other stakeholders) and sought the support of the BoR. Members with the exception of BNETZA supported the proposal for an ACER public statement whilst not jointly with ENTSO-E. BNETZA opposed issuing a public statement both in terms of substance as well as due to procedural grounds. The EC supported issuing an ACER statement given that the scope of the issues at hand fall within the core competences of ACER.*
6. *Mr Ermacora provided an update on the negotiations on their proposal Clean Energy for all Europeans. On the ACER Regulation recast, the Presidency issued a new compromise text on 28 May, which was agreed at the COREPER of 1 June as Council General Approach and will be formally adopted at the TTE-Energy Council on 11 June. On the extension of the scope of the definition of interconnectors to third countries in the Electricity Directive, the Council discussions have not progressed due to the parallel discussions on the Gas Directive amendment on the same issue. With regard to the Risk Preparedness Regulation recast, the EC does not foresee any major difficulties, compared to the other Electricity Market Design proposals. There are ongoing trilogues on RES, Energy Union Governance and Energy Efficiency.*
7. *The BoR Chair provided an update on the selection process of the new ACER Director, after the technical briefings and the BoR vote in March. The AB convenes on 7 June and the Chair will update the BoR on the next steps following the AB discussion. Members reiterated their keen interest in having clarity on the next steps as well as the need for a transparent process.*
8. *The BoR Chair reported on the discussion on BREXIT in which took place at the CEER General Assembly on 5 June.*
9. *The BoR Chair proposed to have the September BoR meeting taking place in Brussels instead of Ljubljana. Previously, the BoR had decided to bring back the number of meetings in Ljubljana from four to two per year, due to budget constraints. However, a (previously unforeseen) meeting in Ljubljana took place in May due to the technical briefings of the new ACER Director. The BoR agreed to the change of meeting location of the 77<sup>th</sup> BoR meeting to Brussels.*

<p>10. The Director presented the key findings of the Agency's consolidated report on the progress of electricity and gas Projects of Common Interest for the year 2017. Although the report does not need a BoR endorsement, it will be circulated for written comments to the BoR. The deadline for the adoption of the report is June 30. However, the Director noted that adoption of the report might be slightly delayed to the first days of July. The BoR took note of the key findings of the Agency's consolidated report on the progress of electricity and gas Projects of Common Interest for the year 2017.</p>
<p>11. Mr Šik (LEN Co-Coordinator) updated the BoR on the requests on which LEN is preparing advice.</p>
<p>12. The EC provided an update on the Energy Infrastructure Forum, which took place on 24 and 25 May.</p>
<p>13. Mr Hernández provided an update on the ongoing work in the AEWG and reported on the ERF decisions. The three Common Grid Models (CACM, FCA, SO) are nearly finalised. There is an important methodology under System Operation regarding countertrading and re-dispatching. A proposal is being prepared for a more structural alignment between System Operation and CACM methodologies.</p>
<p>14. The Director presented the draft Agency Decision on the AQUIND exemption request for discussion. The draft decision was circulated in parallel to the BoR for discussion and to the AEWG for comments until 5 June. It states that given the need for capacity on the France-Great Britain border and the fact that no higher risks have been identified for the AQUIND interconnector which would justify the exemption, the Agency concludes that the condition defined by Article 17(1)(b) of Regulation (EC) No 714/2009 for granting an exemption is currently not fulfilled for the AQUIND interconnector. Therefore, the requested exemptions to the AQUIND interconnector pursuant to Article 17 of Regulation (EC) No 714/2009 should not be granted under the current circumstances. Mr Copley complimented the Agency for its analysis, but challenged the conclusion on condition b) due to the inability for a merchant interconnector to operate in France. Ms Gassin will send comments but agrees with the Agency's conclusion, noting, however, that the benefit to the IEM after BREXIT cannot be assessed at this stage, as it is not known if the UK will be part of the internal energy market. Some members, while agreeing to the conclusions of the Decision, stated that the analysis should not be linked to the certainty of the regulatory regime (noting that the PCI status should not imply an automatic application and granting of CBCA by the competent Regulatory Authorities) as well as the need for an EU CBA to assess the IEM benefits. <b>The BoR agreed to an electronic procedure in order to issue the decision by 19 June. The Director invited comments by the end of the day in order to allow ACER to launch the first round of the electronic procedure on Friday.</b></p>
<p>15. The Director presented the Agency Opinion on the Manual of Procedures for the ENTSO-E Central Information Transparency Platform' (the 'MoP'). The ACER Opinion focuses on the basic document, the DDD and the BRS document. <b>The BoR took note of the Agency's Opinion on the Manual of Procedures for the ENTSO-E Central Information Transparency Platform.</b></p>
<p>16. The Director updated the BoR on the Agency's Decision on the all-NEMO proposal on DA and ID Algorithms. Following the referral of this decision to ACER on 30 January, ACER must issue its decision by 30 July 2018. The draft decision will be submitted on 28 June to the AEWG for endorsement and it is expected to be submitted to the BoR for its favourable opinion on 18 July. The Director presented the key issues to be solved. An endorsement of the decision is planned for 28 June at the AEWG and then this will be submitted for a BoR favourable opinion 18 July.</p>
<p>17. The EC informed the BoR on the conclusions of the Florence Forum, which took place on 30 and 31 May.</p>

18. *The Director provided an update on the state of play of data collection, data quality and data sharing under REMIT. In addition, the Director highlighted that in order to further enhance the joint ACER and NRA work on data quality, there is a possibility of sending NRAs' short-term experts to the Agency for any relevant period. Also, with regards to SMARTS sublicensing, providing NRAs with SMARTS creates costs for the Agency, mainly for providing hosting infrastructure, network connections, service desk and consultancy, and a cost-contribution is foreseen. The overall annual SMARTS fee per NRA would be composed of the 100,000 euro license costs (sublicensing from NASDAQ) and the cost contribution to the Agency calculated on the basis of the aforementioned pricing model. This approach would allow the Agency to provide NRAs with access to SMARTS independently of any budget constraints. The new arrangement should apply as of 1/1/2019.*
19. *Mr Vižintin presented an update to the BoR on the Alert Dashboard project. The purpose of the project is to inform BoR members on the statistics of manually assessed and shared alerts to better identify surveillance priorities and resource allocation. It is proposed to inform the BoR about the Alert Dashboard results on a monthly basis and semi-annually present the half-year results to the BoR. ACER will also prepare an end-of-year report which will be shared with the BoR. The first is envisaged to be available in Q1 of 2019. The BoR will be informed of new bespoke alerts and/or important enhancements to existing bespoke alerts.*
20. *Mr Godfried presented an update of the Governance Section of the Market Surveillance Strategy. So far, every six months there has been an update of the surveillance coverage by NRAs. The presentation showed that between the second and third version, the surveillance coverage remained at 18% across all Member States' markets. Given the available surveillance resources among NRAs, it is not likely that this number will increase soon. It is, therefore, proposed to update the Governance Section annually and hence the next update will be provided in spring 2019. However, important changes will be reported on an ad-hoc basis.*
21. *Mr Godfried informed the BoR about the preliminary Internal Guidance Note on Electricity Generation Withholding in Auction-based Day-Ahead markets. It complements the 4th edition of the ACER Guidance on the application of REMIT which the Agency published on 17 June 2016. The ACER Guidance covers specific types of behaviour that may constitute market manipulation or an attempt to manipulate the market pursuant to Article 5 of REMIT. In this Guidance Note, ACER provides further details on its views regarding the application of REMIT in the context of generation capacity withholding in wholesale electricity auction-based day-ahead markets. The work on this topic is thus paused and the current guidance note is considered preliminary and will not be published. It is further proposed that in spring 2020 the Agency will assess whether, based on experiences from NRAs, the Guidance Note could be further developed in coordination with NRAs.*
22. *Ms Poletti updated the BoR about the previously foreseen process of gas NC amendments. The EC will not pursue the initiative on amendments, as there is not sufficient time to run such a process this year. The AGWG Chair, the Director and the members were concerned given the AGWG has put a considerable amount of time and effort in providing input for this process given also that this work had been launched with a full understanding of the above constraints and the EP term. The Director clarified that the Agency put about 80 - 90 man hours in building up the tables, their contents, managing the NRA change requests and reaching a compromise solution with regulators. The EC explained that the conclusion drawn from the results of the useful and necessary process which had been undertaken is that those AMs which were identified as having an added value would require an Impact Assessment and would unlikely be finalised in time before the elections to the European Parliament. However, the regulators' input will not be lost, but taken up in the preparations for possible legislative initiatives or amendments to Network Codes under the new Commission. Members also raised the need for the codes to be amended otherwise they would become obsolete.*

23. Ms Poletti further informed the members of the EC ongoing studies on the following subjects: sector coupling; the 2050 Study; the study on innovation and security of supply; and the new study on green gasses. Ms Poletti noted the need for exchange of information on those studies amongst regulators; she suggested to explore how best to achieve this perhaps through a dedicated folder to facilitate transparency and awareness. She informed the members about the work stream for decarbonisation of the gas sector which will provide strategic views and is planning to publish a consultation document in December. Members supported the need to allow the exchange of information and allow coordination for preparation of common positions on such issues which will be high in the agenda of the next Commission. Members also reiterated the keen interest of NRAs to be involved as appropriate in the committees for studies with the view to provide feedback.

## **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.*

#### **1.2. Approval of the minutes of the 74<sup>th</sup> BoR meeting**

BoR Decision agreed: (D 2)

*The minutes of the 74<sup>th</sup> BoR were approved. No conflict of interest was declared.*

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

#### **2.1. Update on recent developments**

##### **a) ACER**

###### **➤ Report on ACER appearance at ITRE Committee (16 May)**

The Director reported about the ACER appearance at the EP ITRE Committee on 16 May for which ACER was invited. At the meeting the Director reported on recent developments in the Agency, several main challenges, such as 2019 budgetary constraints, decisions on TCMs, and wholesale market surveillance. The Director and the BoR Chair also raised key issues on the Clean Energy Package (CEP) debate, such as on the Agency's new tasks and concerns about elements of the ACER Regulation.

The message was reiterated that in order to fulfil its mandate on market surveillance of wholesale energy markets ACER requires a stable budget for IT services, the costs for the licence of SMARTS and consultancy services. With regard to the CEP, the message was conveyed that the current Council proposals, if adopted, will lead to a step backwards, as the building blocks of the Third Package are not safeguarded: neither in terms of the Agency's current powers (as a last resort), nor in terms of the institutional balance between the BoR and the Director.

The MEPs present at the meeting expressed their appreciation for the work of the Agency and stressed that the European Parliament should push the Council to make progress with the ACER Regulation and to increase its ambition.

The Director reported that the formal communication by the European Commission on the 2019 budget has been received. Although the budget for REMIT is secured, the number of TA posts will not change.

➤ ACER Annual Conference (5 July)

The Director informed the BoR on the ACER Annual Conference which will take place on 5 July at the Brdo Congress Centre. The theme is “An Energy Union for all Europeans”. There are three sessions envisaged: A Smart Future; Coupling the Sectors, and Pricing in the Energy Sector.

➤ Latest publications

On 18 May the Agency published the Third Edition of the Summary Report on Cross-Border Cost Allocation (CBCA) decisions for electricity and gas Projects of Common Interest (PCIs).

On 31 May, the Agency published the fifth edition of the Annual Report on Contractual Congestion at Interconnection Points.

ACER and ENTSOG, with the collaboration of Eurogas, CEDEC and GEODE, will hold their fourth joint workshop on the implementation of the Gas Balancing Network Code on 12 June in Brussels.

ACER and ENTSOG opened on 17 May a consultation process on the Gas Network Codes Functionality issue on data exchange solutions at Virtual Trading Points and Storage Facilities.

Furthermore, the Director reiterated his concerns on the Interinstitutional debate with regard to Articles 13 and 14 of the Electricity Regulation recast setting an arbitrary minimum target for cross-border commercial capacities for all European interconnectors, along with the possibility for Member States to opt out until 2026 from the framework provided by the CACM Guideline where they are unable to meet this target. These provisions, if they were to be adopted, will derail the implementation of efficient cross-border capacity calculation as provided for in the CACM Guideline.

He noted that the last Florence Forum raised similar concerns which unfortunately were not recorded in the conclusions given that the debate on the CEP is ongoing. The Director stressed that, on the occasion of the BoR meeting, the BoR members could reaffirm their approach to retain the CACM Framework reflected by the EC proposal on the relevant Articles.

Mr Ermacora supported ACER issuing a statement, given that the scope of the issues at hand fall within the core competences of ACER. The EC further outlined the complexity of understanding and interpreting the proposed provisions that do not seem clear at all.

The Chair concluded that members with the exception of BNetzA supported issuing an ACER public statement (not jointly with ENTSO-E) with the endorsement of the BoR which would reiterate the concerns on the latest debate and texts of the relevant provisions and reaffirm the need to retain the CACM Regulation framework.

BNETZA opposed issuing a public statement both in terms of substance as well as due to procedural grounds.

## **b) European Commission**

### ➤ Update on Clean Energy Package proposals and Gas Directive amendments

Mr Ermacora provided an update on the negotiations on the EC proposal 'Clean Energy for all Europeans'. On the ACER Regulation recast, the Presidency issued a new compromise text on 28 May, which was agreed at the COREPER of 1 June as Council General Approach and will be formally adopted at the TTE Energy Council on 11 June.

Mr Ermacora referred to the debate about the choice of legal instrument for the adoption of Network Codes and Guidelines (Implementing or Delegated Acts) which is of particular concern to Member States (given their role is different under each procedure). Following the Lisbon Treaty the Comitology process changes. Under delegated acts, Member States have an advisory role, as opposed to a decisive role, in the process. Therefore, Member States are keen on having any NC/GL adopted as implementing acts. This debate was linked to the ACER Regulation discussion and the powers of ACER provided in new Network Codes and Guidelines.

The first preliminary orientation trilogue is scheduled for 27 June, focussing on the Electricity Regulation and Directive, that will also distinguish between technical work (to be undertaken at working level) from the key issues which need a discussion at higher level. The Austrian Presidency hopes to achieve progress on the CEP files under their Presidency. On the extension of the scope of the definition of interconnectors to third countries in the Electricity Directive, the Council discussions have not progressed due to the discussions on the Gas Directive amendment on the same issue. With regard to the Risk Preparedness Regulation, the EC does not foresee any major difficulties, compared to the other Electricity Market Design proposals. There are ongoing trilogues on RES, Energy Union Governance and Energy Efficiency. These texts may be finalised already before the start of the Austrian Presidency.

## **c) BoR Chair**

### ➤ Update on the ACER Director selection process

Mr Blaney provided an update on the selection process of the new ACER Director, after the technical briefings and the BoR vote in May. The responsibility now lies with the AB and the EC. The AB will convene on 7 June and the Chair will update the BoR on the next steps following the AB discussion.

The Chair and members reiterated their keen interest in having clarity on the next steps as well as the need for a transparent process.

### ➤ Preparations for working level discussions on Brexit

The BoR Chair reported on the discussion on BREXIT which took place at the CEER General Assembly on 5 June and also aimed to involve the colleagues from Norway. He informed that there will be a meeting between the directly affected NRAs and the EC. If there are any substantive issues, they will be reported to the BoR.

### 3. Cross-sectoral

#### 3.1. Consolidated Report on the progress of electricity and gas projects of Common Interest for the year 2017

The Director updated the BoR on the progress and key findings of the draft report under Article 5 of Regulation (EU) No 347/2013 which requires the Agency to monitor the progress achieved in implementing the projects of common interest (PCIs). This is the fourth Consolidated Report monitoring PCI progress which, although it does not need a BoR endorsement, will be circulated for written comments to the BoR. The deadline for the report is June 30 but the Director noted that it might be slightly delayed till early July.

In terms of the key findings for gas, the Director noted the following: A lower investment cost has been reported; a poor life-cycle cost coverage as well as very poor benefits coverage by promoters; the need for better CBA method or better CBA implementation; it seems that investments would “peak” in 2022-2023, and more than 50% of the investments will be incurred within 5 years. The PCI life cycle is 3-4 times longer than life of PCI list and the rate of commissioning is very low; there are frequent rescheduling, delays.

Regarding the key findings in electricity, the Director presented the issue of consistency of submitted data. In terms of implementation so far (compared to 2017), the rate of commissioning is very low: 1 PCI commissioned in 2017; 28% of the projects are delayed and 13% rescheduled; the average delay/rescheduling is approximately 2 years; there is a higher investment cost by €9 billion (€59.4billion) than the 2015 PCI list. In reality costs are higher than indicated in the PCI. For the next PCI list we should look at costs and benefits. Approximately 50% of the investment is to be incurred within 4 years (by 2022).

The BoR members took note of the report. The report will soon be circulated to the BoR for final feedback. The aim is to publish the report by 30 June, however, this may be a few days later in early June.

#### 3.2. Update on the requests to LEN

Mr Šik informed the BoR that the LEN is preparing advice on two requests related to the Balansys compliance programme file, which the Agency is handling for approval. Two panels were set up. The first LEN panel examines the conditions under which a TSO can transfer its regulatory balancing responsibilities, currently considered as a typical TSO activity, to another entity. The second LEN panel assesses the effectiveness of the compliance programme (Art. 7(4) Gas Directive). The purpose is to help the Agency in evaluating the request of a joint venture for approval of its compliance programme. The LEN initially expected to have its final assessment ready by the end of May but this is not yet ready as it still receives input from NRAs. It will take another two weeks to finalise the advice. Despite the delay, the work is still aligned with the internal processes in the Agency. Agency staff is reconsidering the request to the second panel and will come with additional questions.

Furthermore, as presented at the previous BoR meeting, the AEWG requested a LEN assessment regarding the involvement of TSOs/NRAs in the submission/approval process of TCMs of the FCA GL in case of not issuance of LTTRs by the TSOs and the procedural consequences of an addition of a bidding zone border to a CCR is still pending. A final assessment by LEN on this issue is planned for July although at this stage we have not yet been able to set up a panel.

Furthermore, the AEWG Chair requested the LEN to look into how the FCA, SO, and CACM Common Grid Model methodologies can be merged into a single consistent methodology. The LEN has started an initial assessment of this request and hopes to come back with some simple answers.

Mr Hernández noted that indeed the AEWG asked legal advice on the possibility to join three methodologies into a single one. There are three legal bases in three different NCs, but the same methodology. Given that there are minor inconsistencies, if in the future there would be a need for revision, we would not need to revise three times.

### 3.3. Report on the Energy Infrastructure Forum (24-25 May)

The EC presented the key conclusions of the Energy Infrastructure Forum which took place on 24 and 25 May.

The Forum agreed with the need for planning the future gas and electricity infrastructure in an interlinked approach, and asked ENTSOs to consult the outcomes of their focus study with ACER, DSO organisations and stakeholders before submitting the interlinked model to the European Commission for approval, by the end January 2019. It welcomed the discussions on sector coupling also in the 2018 Madrid Forum.

On the CBCA sessions, the Forum invited the Commission to organise further work on:

- Scenarios to be used, following the Forum's endorsement of having consistent scenarios along the project development chain: TYNDP, CBA, and CBCA.
- CBCA use for package of projects concentrating on how this can be implemented.

When CBCA is implemented it is important to ensure a fair representation of benefits and costs. Any allocation of costs to a non-hosting country needs to be considered in duly justified cases. The Forum invited FSR together with ACER and the Commission to develop and run training on the CBCA process.

## 4. Electricity

### 4.1. Important AEWG updates

Mr Hernández provided an update on the ongoing work in the AEWG and reported on the ERF decisions. The three Common Grid Models (CACM, FCA, SO) are nearly finalised. There is an important methodology under System Operation regarding countertrading and re-dispatching. A proposal is being prepared for a more structural alignment between System Operation and CACM methodologies.

### 4.2. Agency Decision on the AQUIND exemption request

The Director presented the Agency's assessment and draft decision on the AQUIND exemption request to the BoR. The draft Decision was presented for a discussion at the BoR. The Director, therefore, asked for an electronic procedure to be launched later in the week in order for the Agency to issue the Decision by 19 June.

The Director presented in detail the background and general considerations. Article 17(1) of Regulation (EC) No 714/2009 provides for the possibility of exemptions for new interconnectors from certain requirements of the regulatory framework. The Commission's Staff Working document on new infrastructure exemptions indicates that exemptions are an exception to the general rule of regulated third party access. Such exemptions have to be limited to what is strictly necessary to realise the investment and the scope of the exemptions has to be proportionate. One prerequisite for any such exemption is, *inter alia*, that the level of risk attached to the investment at issue is such that the investment would not take place unless an exemption is granted. As regards a potential financial risk, it is particularly relevant to assess whether a regulated regime (and financial underpinning) can be available to AQUIND, and whether there is a need for more capacity on the FR – GB border.

To have an insight in the risks of the project, the analysis evaluates the need for interconnection capacity and compares costs and benefits (including producer and consumer surpluses and congestion revenue variation) at European level. In order to evaluate the demand, the Agency took a project neutral approach, focussing on cross-border capacity between FR and GB and not on a specific project. The economic assessment and the use of scenarios were carried out in line with ACER Opinions on TYNDP 2016 scenarios, on ENTSO-E CBA methodology and the recommendation on CBCA. A wide set of studies was considered for the evaluation of six benefit categories. An evaluation of costs was made by considering both capital and operating expenditures.

The analysis found that the three capacity increases under assessment (from 4.0 to 8.8 GW) would all be socially beneficial. Thus, there is room for socially beneficial interconnectors on this border. With regard to the risk criteria, there will be demand to justify this project as regulated investment.

The conditions a) c) d) e) and f) of Article 17(1) are met. The only criterion not met is criterion b).

The Agency was not able to identify a level of risk for AQUIND such that the investment in this project would not take place unless the requested exemptions are granted. The draft ACER decision, therefore, concludes that the condition defined by Article 17(1)(b) for granting an exemption is currently not fulfilled and thus the exemption to AQUIND should not be granted.

Mr Copley complimented the Agency for its analysis, but challenged the conclusion on condition b) due to the inability for a merchant interconnector to operate in France. He stated that he felt it was clear that the investment was risky because neither the incumbent TSO in France or the French regulator were supportive of it. Ms Gassin indicated that CRE will send further comments to the Agency today. CRE supports the conclusions of the draft decision. For CRE, it is not possible to take an informed decision on interconnector projects between France and GB as long as the exit terms of the UK from the European Union are not clarified and thus the perimeter to evaluate benefits for the IEM.

The Director agreed that capital for infrastructure should be attracted from investors. And there is much interest by investors. Risk is two-sided. Having the PCI status would allow the promoters to request CBCA and to become a regulated project.

The Chair reminded that the principles laid out here today would apply to projects in the future as well. The Director indicated that private capital and a regulated regime do not exclude each other. In the Agency's reading the TEN-E Regulation (347/2013) the assessment is done at the PCI level.

Members provided feedback: While agreeing to the conclusions of the Decision, some stated that the analysis should not be linked to the certainty of the regulatory regime (noting that the PCI status should

not imply an automatic application and granting of CBCA by the competent Regulatory Authorities) as well as the need for an EU CBA to assess the IEM benefits.

The EC noted that they cannot provide an opinion on negative decisions. They noted that, at the moment, indeed no assumption can be made on the situation after BREXIT. The EC explained that also in their understanding, the PCI status itself cannot guarantee a CBCA. In the past we have granted exemptions to PCI projects. So that the sole effect of PCI as such is not an argument for exemption.

The Director thanked the BoR and the EC for the input. The Director indicated that he will look into BNetzA's input. The Director welcomed any further comments to be sent by the end of the day.

***The BoR agreed to the use of an electronic procedure for the BoR opinion on the draft decision on the exemption of the Aquind interconnector.***

#### 4.3. Agency Opinion on the Manual of Procedures for the ENTSO-E Transparency Platform

The Director provided an update to the BoR, explaining that on 17 April 2018 ENTSO-E submitted to the Agency, for its opinion, an updated version of the 'Manual of Procedures for the ENTSO-E Central Information Transparency Platform' (the 'MoP'), including an update of separate documents referenced in the MoP. The documents include 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. Under Article 5 of Regulation (EU) No 543/2013 the Agency provides an opinion on the draft MoP submitted by ENTSO-E, before its publishing or updating.

The update of the MoP is required, in order to incorporate the publication of information provided for in Article 12(3) of Regulation (EU) No 2017/2195. The draft update of the MoP consists of a concise 'basic document' that refers to more detailed documents (referenced documents), such as the DDD document and the BRS document. The ACER Opinion focuses on the 'basic document', the DDD and the BRS documents.

As regards the 'basic document', the update is minor, and the Agency has no comments.

As regards the DDD document, the update includes the introduction of the new data items required by Article 12(3) of Regulation (2017/2195, with the necessary new definitions, the detailed description and the specification of calculations, as well as several other amendments to definitions and specifications. The Agency appreciates ENTSO-E's efforts to integrate in the updated DDD document the new data requirements. However, in terms of the structure, the content and the definitions included, the Agency considers the updated DDD document as not fully meeting the objective of Regulation (EU) No 543/2013. Therefore, in the Agency's view, a significant restructuring and redrafting of the relevant sections of the DDD document would be necessary.

As regards the BRS document, the Agency has no specific comments in addition to the high-level recommendations 2 to 4 included in the Annex to this Opinion, which are valid both for the DDD and the BRS documents.

Moreover, given the inclusion of a considerable amount of new data items, the Agency recommends to carry out a public consultation on the envisaged update of the MoP, as this would increase the transparency of the process and also be in the spirit of Regulation.

As regards data quality, the Agency's opinion welcomes ENTSO-E's improvements in this area. However, the Agency remains concerned about the insufficient reference, both in the updated DDD document and in the updated BRS document, to well-defined procedures to address data quality issues. In particular, the Agency is concerned about the lack of an efficient procedure to identify and address data quality issues stemming from diverging data providers' interpretations of the data definitions and related calculation rules.

The Director noted that recently there was an instance whereby TSOs published information with a negative load of thousands of MW which was disproportionate to the energy sector in the country. Despite this being evidently a mistake, it was not picked up by the TSO before publication. The Agency has been in dialogue with ENTSO-E on completeness, plausibility and accuracy of data. ENTSO-E has indicated their commitment to ensure this.

***The BoR took note of the Agency's Opinion on the Manual of Procedures for the ENTSO-E Central Information Transparency Platform.***

**4.4. Update on the Agency's Decision on the all-NEMO proposal on DA and ID Algorithms**

The Director updated the BoR on the preparation of the Agency's Decision on the all-NEMO proposal on DA and ID Algorithms. The case of Algorithm methodology was referred to ACER on 30 January 2018. Following the referral of this decision to ACER on 30 January, the Agency must issue its decision by 30 July 2018.

On 15 January all NRAs submitted to ACER a non-paper describing many issues/problems which need to be solved before the adoption of the Algorithm Methodology. Public consultation was organised between 26 April and 18 May (3 weeks). ACER invited all NRAs to come up with some concrete drafting amendments to address the issues in the non-paper.

The Director then resented the main issues to be solved noting that there are many challenging issues to be solved within the Algorithm Methodology and the remaining time is very short. The draft decision will be submitted on 28 June to the AEWG for endorsement and it is expected to be submitted to the BoR for its favourable opinion on 18 July.

**4.5. Report on the on the Electricity Regulatory Forum (30-31 May)**

Mr Schuetz (EC) informed the BoR on the conclusions of the Florence Forum, which took place on 30 and 31 May. With regard to the conclusions, among others, the Forum recognised the importance of R&I H2020 demonstration projects in showing in practice how digitalisation and TSO-DSO cooperation can work, and agreed to strengthen the involvement of all stakeholders, notably SMEs, in R&I projects foreseen in the planned calls for proposals under H2020. The Forum acknowledged the complexity relating to the implementation of network codes as regards the submission and implementation of proposals. The Forum also took note of the challenges arising from the existing CACM framework regarding day ahead and intraday coupling as well as competition between NEMOs and of the need to

clarify further in CACM matters such as the distinction between the regulated MCO function and the non-regulated NEMO activities. The Forum encouraged TSOs and NRAs, in cooperation with DSOs and other stakeholders, to develop methodologies that include all necessary details to ensure that they are transparent and implementable.

The Director added that a part of the discussion which was not recorded in the conclusions related to the discussion on Articles 13 and 14 of the Electricity Regulation recast where most stakeholders around the table conveyed strong messages.

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

### **5.1. Important AMIT WG and CG updates**

The Director provided an update from the REMIT Coordination Group (CG) on the state of play of data collection, data quality and data sharing. In particular the Director informed the BoR on:

#### **- ACER's REMIT Information System (ARIS)**

Data collection (ARIS tier 1&2), data sharing (ARIS tier 4) are very stable. The market surveillance solution SMARTS (ARIS tier 3) is operational for monitoring wholesale energy supply contracts. 2 NRAs (OFGEM and EI) have sublicensed SMARTS. There are 13,288 Market Participants registered so far in the European Register of Market Participants and the number of Market Participants for which data has been reported is 12,875. With regard to the number of records of transactions, in 2018, ARIS received on average more than 2 million records per day.

#### **- Data collection - Ongoing activities**

There is a new IT contractor for ARIS - system integrator. The transition process will take from Q2 to Q4 of 2018.

#### **- Ongoing data quality projects and pending requests for NRA input**

NRAs' input is still pending on the following active projects: 001 Registered MPs reporting, 009 Timeliness of reporting (ACER is offering to provide information per NRA), and 014 EICs in fundamental.

Given the very limited feedback received from NRAs, the Agency is currently considering to open cases through the Case-Management-Tool to progress on data quality. The Director offered that Mr Zuleger, Head of the Market Integrity and Transparency at the Agency, sends a message to reiterate the request for feedback.

#### **- Possibility of NRA Short-Term Experts for data quality work**

The Director highlighted the possibility of sending NRA short-term experts to the Agency for any relevant period. This could also be considered a kind of "training on the job" for new NRA staff members to become familiar with the Agency's data quality work.

#### **- The new SMARTS sub-licensing possibility**

The new Framework Contract between the Agency and NASDAQ for SMARTS offers the possibility for NRAs to purchase the SMARTS license for NRAs as their national market monitoring solution. The license fee offered by NASDAQ is the same as in the previous Framework Contract. NRAs would not have to enter into a sublicensing agreement with NASDAQ anymore, but would instead enter into a public-public partnership with the Agency. As a new element in the sublicensing model, a cost contribution to the Agency is foreseen. Providing NRAs with SMARTS creates costs for the Agency, mainly for

providing hosting infrastructure, network connections, service desk and consultancy. The Director then presented the different pricing model foreseen:

- Start-up fee (one-off cost)
- Annual fee element related to maintenance of the system (cost of infrastructure, changes/improvements, etc.)
- Annual fee element related to the number of NRA users.

This approach would allow the Agency to provide NRAs with access to SMARTS independently of any budget constraints.

The overall annual SMARTS per NRA would be composed of the 100,000 EUR license costs for NASDAQ and the cost contribution to the Agency calculated on the basis of the aforementioned pricing model.

The new public-public-partnership sublicensing model with contractual arrangements only between the Agency and relevant NRAs should make it easier for NRAs to comply with national procurement rules. The new arrangement should apply as of 1/1/2019. NRAs currently sublicensing SMARTS can renew the current licence arrangement until 31/12/2018 without cost contribution to the Agency. New NRAs could phase-in as of 1/10/2018 without cost contribution to the Agency. The cost contribution to the Agency would kick-in as of 1/1/2019.

## 5.2. Update on the Alert Dashboard

Mr Godfried stated that the BoR will receive information on the most recent shared alerts, Twelve NRAs received manually assessed alerts for February 2018 trading. Mr Godfried further informed that due to a lack of resources not all high intensity triggered alerts can be manually assessed. These alerts are, therefore, put in a backlog.

Mr Vižintin provided an update on the work of the past six months in the Alert Dashboard. Mr Vižintin indicated that it is assumed that NRAs are familiar with the disclaimer, assumptions and methodology underlying the results of the presented results. The Alert Dashboard is an overview of manually assessed and shared alerts with SMARTS software for a specified time interval. It depicts surveillance process statistics. The purpose of the Alert Dashboard is to inform BoR members on alert statistics to better identify surveillance priorities and resource allocation. In particular to inform on transparency on surveillance work, surveillance coverage needs, and to stimulate REMIT enforcement. The intended audience is the ACER Board of Regulators, REMIT Coordination Group, Market Monitoring Standing Committee, and Management of the Agency, Agency Market Surveillance and Conduct department staff. The absolute number of triggered alerts which are manually assessed and shared with the NRAs were presented.

It is proposed to inform the BoR about the Alert Dashboard results on a monthly basis and semi-annually present the half year results to the BoR. The Agency will also prepare an end-of-year report which will be shared with the BoR. The first is envisaged to be available in Q1 of 2019. The BoR will be informed of new bespoke alerts and/or important enhancements to existing bespoke alerts.

The members of the BoR were reminded about the document's sensitivity marking, which is "Authorised Parties only".

### 5.3. Update on the Governance Section to the Market Surveillance Strategy

Mr Godfried presented an update on the Governance Section of the Market Surveillance Strategy, which shows an update of the surveillance coverage by NRAs. Mr Godfried showed that, since the last version, the surveillance coverage remained 18% across all Member States' markets.

During the preparation of the third version of the Governance Section the Agency received two replies, which show little to no changes in the surveillance coverage over the past six months. Given the available surveillance resources among NRAs, it is not likely that this number will increase soon. It is, therefore, proposed to update for the Governance Section on an annual basis and hence the next update will be provided in spring 2019. Important changes, however, will continue to be reported on an ad-hoc basis.

### 5.4. Internal Guidance Note on Electricity Generation Withholding in Auction-based Day-Ahead Market

Mr Godfried informed the BoR about the preliminary internal guidance note on Electricity Generation Withholding in Auction-based Day-Ahead markets. The guidance note complements the 4<sup>th</sup> edition of the ACER Guidance on the application of REMIT which the Agency published on 17 June 2016. The ACER Guidance covers specific types of behaviour that may constitute market manipulation or an attempt to manipulate the market pursuant to Article 5 of REMIT. In this guidance note, the Agency provides further details on its views regarding the application of REMIT in the context of generation capacity withholding in wholesale electricity auction-based day-ahead markets.

An internal note with NRA's consolidated comments is available. At this stage, NRAs have indicated that they have exhausted their knowledge on this topic. However, NRAs may gain more knowledge when they start applying the Guidance Note to cases. The work on this topic is thus paused and the current guidance note is considered preliminary and will not be published. It is further proposed that in spring 2020 the Agency will assess whether, based on experiences from NRAs, the guidance note could be further developed in coordination with NRAs. The Director added that although this topic is complicated partly due to the different market designs and features, there is a need for a consistent approach.

## 6. Gas

### 6.1. Important AWG updates

Ms Poletti provided an update on the gas NC amendments process which was initiated by the EC. The EC had opened a process to amend the gas NCs, only for non-substantial issues, and asked ACER and NRAs to provide amendments.

The list of proposed amendments was sent to the EC in April. In May the EC came back to the Agency and NRAs to announce that the initiative would be put on hold as there was not sufficient time to finalise the process due to the EP elections in May 2019, as well as a new Commission taking office in 2019. The EC therefore proposed to make use of the work done for the potentially proposed new Gas Package.

Ms Poletti conveyed the concerns of NRAs and ACER with regard to the Gas NC amendment process organised by the EC. It was disappointing to find out that the process was not considered workable. Even

though NRAs understand that their input will be used in the new Gas Package, the EC should take note of the concern of NRAs with regard to the process.

The Director supported the comments that were made and reiterated the amount of work the Agency and NRAs invested in the process.

Mr Schuetz (EC) clarified that the conclusion drawn from the results of the useful and necessary process which had been undertaken is that those AMs which were identified as having an added value would require an Impact Assessment and would unlikely be finalised in time before the elections to the European Parliament. However, the regulators' input will not be lost, but taken up in the preparations for possible legislative initiatives or amendments to Network Codes under the new Commission.

Mr Schuetz clarified that NCs are indeed instruments set up so that amendments can be made quicker than the ordinary legislative procedure, but the process is not always quick.

Ms Poletti further notified the BoR about the many studies that are launched by, or on behalf, of the EC on a range of topics but all related to regulatory matters which are cross-sectoral. She stressed the importance of coordination among working groups in flagging and following such studies. These studies have an impact on the gas and electricity working groups, but also for example on the distribution systems working group within CEER.

Ms Poletti highlighted four studies.

- Sector coupling study: this study will qualitatively assess the potential synergies and links between gas and electricity and the potential of renewable and decarbonised gases (also considering new technologies, e.g. power-to-gas). It will provide recommendations for creating an enabling regulatory framework for gas and electricity - limited to market issues. The study is launched by DG ENER unit B2.
- 2050 study: this study will assess the role of gas infrastructure in the context of the decarbonisation of the energy sector. It is launched by DG ENER unit B1.
- Study on innovation and security of supply: this study analyses if the current regulatory framework supports innovation and security of supply in electricity and gas infrastructure. The study was launched by DG ENER unit B1 "and carried out by a consortium led by Ecorys.
- New Study on green gasses: this study has not commenced yet. The consultant should be decided in early summer.

Ms Poletti indicated that NRAs are working on similar topics and should be involved in the studies as much as possible as NRAs can provide valuable and important contribution. The Chair added that there is a lot of collective knowledge among the regulators that the EC can tap into.

Ms Poletti indicated that it is important to update the lists of studies and add to this. It could be discussed with the BoR Secretariat to keep a list or dedicated folder or library for this purpose.

Mr Preinstorfer informed the BoR on a study by Frontier Economics with regard to the future use of gas infrastructure. This has a major regulatory impact. Hence, regulators should have a prepared position.

With regard to the studies Mr Schuetz indicated that he would communicate the message of NRAs to colleagues in the EC.