

83rd ACER Board of Regulators Meeting

Wednesday 12 June 2019

ACER, Ljubljana

Minutes (final)

Member States	Name ^[1]	Member States	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch O: Christine Materazzi-Wagner	Italy (ARERA)	M: Clara Poletti (Chair) O: Ilaria Galimberti
Belgium (CREG)	M: Koen Locquet A: Geert Van Hauwermeiren	Latvia (PUC)	M: Rolands Irklis O: Lija Makare
Bulgaria (EWRC)	A: Evgenia Haritonova	Lithuania (NCC)	A: Irma Vasarytė
Croatia (HERA)	M: Tomislav Jureković A: Sonja Tomašić Škevin	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)		Malta (REWS)	A: Phyllis Micallef
Czech Republic (ERO)	M: Martin Šik O: Jana Haasova	Netherlands (ACM)	A: Remko Bos O: Wieger Wiersema
Denmark (DUR)	M: Carsten Smidt	Poland (URE)	A: Małgorzata Kozak
Estonia (ECA)	O: Marilyn Tilkson	Portugal (ERSE)	M: Pedro Verdelho O: Natalie McCoy
Finland (EV)	A: Simo Nurmi	Romania (ANRE)	O: Florin Tobescu
France (CRE)	A: Jean-Laurent Lastelle O: Michaël Mastier O: Frank Heseler O: Miyuki Tsuchiya	Slovakia (RONI)	A: Marian Záhora
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov	Slovenia (AGEN-RS)	M: Duška Godina A: Bojan Kuzmič
Greece (RAE)	A: George Paidakakis O: Elli Sperdokli O: Eleni Gati	Spain (CNMC)	
Hungary (HEA)	A: Attila Nyikos O: Ádám Krinszki	Sweden (Ei)	M: Anne Vadasz-Nilsson
Ireland (CRU)	M: Paul McGowan	United Kingdom (Ofgem)	M: Andrew Burgess
ACER	Alberto Pototschnig, Christophe Gence-Creux, Martin Godfried, Dennis Hesseling, Volker Zuleger, Tomaz Vižintin, Fay Geitona, Sander Ramp		
European Commission	Florian Ermacora		

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

MEETING CONCLUSIONS SUMMARY of the 83rd BoR

1. *The minutes of the 82nd BoR meeting were approved. The agenda for the 83rd BoR meeting was approved by majority of the members (present or represented) subject to the following change: item 4.1 on the BoR RoP was included for 'discussion and general agreement' as opposed to for 'approval'. HEA and RONI did not approve the agenda.*
2. *No conflict of interest was declared by the participants.*
3. *The Director referred the BoR to the recent publications by the Agency. The BoR was informed about the outcome of the BoR electronic procedures on the Agency's Decision on all regulatory authorities' request to extend the deadline to decide on all TSOs' amended proposal for the implementation framework for a European platform for the imbalance netting process (Article 22 Regulation 2017/2195). 25 members participated and all were in favour of a favourable opinion on the draft ACER Decision. The BoR favourable opinion was deemed to have been provided.*
4. *Mr Ermacora provided an update on the new Director General of DG ENER to take office as of August, Ms Ditte Juul-Jørgensen. He also reported on the state of play on the selection process for the new ACER Director.*
5. *The EC reported on the Infrastructure Forum which took place 23 and 24 May and on the Madrid Forum which took place 5 and 6 June.*
6. *The BoR discussed the proposal by the BoR Chair, ACER Director, and CEER President on the next steps for the gas/sector coupling paper. The launch of the consultation on the gas paper is envisaged following the 17 July BoR (84th) until the beginning of autumn. The BoR opinion on the ACER Recommendation will be sought in October at the 86th BoR.*
7. *The BoR discussed the revised BoR RoP, as well as the approach for their formal approval. Given the forthcoming entry into force of the ACER Regulation, the Chair proposed to have a discussion and general agreement on the key issues in order to be able to approve the quick-fix modifications on the RoP ahead of the July BoR meeting. The BoR provided feedback. The majority of the BoR members generally agreed with the approach on the critical issues discussed subject to the specific modifications proposed, with a dissenting opinion of three members (ERO, HEA, and RONI). For the formal approval of the RoP, the majority of the BoR members with the exception of two members (HEA and RONI) agreed to the launch of a (two-round) electronic procedure after the publication of the CEP in the OJ with the view to approve them with effect from the entry into force of the ACER Regulation recast. A wider review of the BoR RoP shall be considered by April 2020. To this end, a small operational team will take forward the work in the second half of the year. This group will be composed of the BoR Chair and Vice-Chair, the BoR Secretary and some volunteers from the NRAs (E-Control and CRE volunteered to participate in this work).*
8. *The ACER Director and ACER Electricity HoD presented the Agency's Decision on the methodology for Coordinating Operational Security Analysis (CSAM). **The BoR provided its favourable opinion with the dissenting opinion of CRE. RAE abstained.***
9. *The ACER Director and ACER Electricity HoD presented the Agency's Decision on the methodology for Relevant Asset Outage Coordination (RAOCM). **The BoR provided its favourable opinion.***
10. *The ACER Director presented the Agency's Opinion on ENTSOG's Ten-Year Network Development Plan 2018. **The BoR provided its favourable opinion.***

<p>11. The ACER Director and MIT HoD presented an update on the 4th edition of ACER Guidance on the application of REMIT with regard to the effective disclosure of inside information. The BoR endorsed the updated chapter 7 of the 4th edition of the ACER Guidance.</p>
<p>12. The BoR Chair provided an update on the next steps on the Director selection after the BoR had already agreed on preliminary proposed arrangements for the provision of the BoR opinion on the Director selection. The short list from the EC is expected before the summer break.</p>
<p>13. The ACER Director provided an update on his proposal to the Administrative Board on the modified ACER Working Group Rules of Procedure following the initial BoR feedback. The timing for this will be explored at the AB meeting on 13 June with the view to finalise the RoP following the publication of the ACER Regulation recast in the OJ. The BoR provided feedback. The next steps for the adoption of the RoP are still to be confirmed by the AB. The BoR agreed to the use of an electronic procedure of two rounds for the provision of the BoR favourable opinion on the RoP .</p>
<p>14. The ACER Director presented the main findings of the consolidated report on the progress of projects of common interest (electricity and gas). The report covers the period from 1 February 2018 until 31 January 2019. BNetzA and RAE provided specific comments.</p>
<p>15. The Agency's representative to the Energy Community Regulatory Board provided an update on the latest ECRB meetings.</p>
<p>16. Ms Groebel and Mr Zuleger provided an update to the BoR on the last AMIT WG and REMIT CG meetings including on the implications after Brexit, the data sharing status quo, the REMIT NRA briefing book, and the new co-convenor of the REMIT Policy TF from Ei. Mr Godfried provided an update on the discussion on the REMIT Coordination Group on the Internal Guidance Note on Capacity Withholding. The Director noted the need to speed up the process to improve the Guidance text as the matter is becoming increasingly urgent.</p>
<p>17. The ACER MSC HoD informed the BoR of a pending survey among NRAs in view of the recast ACER Regulation concerning Article 6(8) which provides that, upon the request of a regulatory authority, the Agency may provide operational assistance to that regulatory authority regarding investigations pursuant to REMIT which shows that approximately 600 requests could be expected over the next 24 months and that additional resources would be required to address them.</p>
<p>18. The ACER MSC HoD presented the Governance Section of the Surveillance Strategy document, which aims to ensure the best possible surveillance coverage of EU wholesale energy markets. The Agency performed the annual update of the surveillance gap analysis on the basis of responses received by NRAs. The BoR took note of the updated Governance Section of the Surveillance Strategy document.</p>
<p>19. The updated Chapter 8 of the ACER Guidance on the application of the market abuse prohibitions and possible signals of potential insider dealing or market manipulation, focusing on exemptions from the prohibition of insider trading, was circulated.</p>
<p>20. Mr Vižintin presented an Alert Dashboard update with data from January 2019. The number of alerts far exceeds what can be currently handled by the available staffing.</p>
<p>21. Mr Verdelho updated the BoR members on the ongoing work of the Agency's Gas Working Group and on ongoing gas cases, including on Balansys, STEP and the booking platform on the DE-PL border.</p>
<p>22. The ACER Director provided an update on the Agency's Decision on the choice of a Booking Platform for interconnection points where the involved TSOs/NRAs fail to reach an agreement.</p>

23. The ACER Director provided an update on the Agency's Decision on the incremental capacity project proposal for the Mosonmagyaróvár interconnection point, informing the BoR that two appeals have been
24. submitted to the BoA. The Director and the EC highlighted that this Decision must be implemented given that appeals do not automatically suspend the effect of the decision.
25. Ms Materazzi-Wagner updated the BoR members on the ongoing work of the Agency's Electricity Working Group.
26. Mr Šik provided an update on the 6 th LEN panel advice on the governance of entity operating balancing platforms according to Arts. 19, 20, 21, and 22 of Commission Regulation (EU) 2017/2195 (EBGL), which was given following the request of the AEWG Chair.
27. The Director provided an update on the Channel CCR TSOs Long-Term Capacity Calculation Methodology. The Channel CCR TSOs were unable to reach consensus on the long-term capacity calculation methodology to be developed in accordance with Article 10 of Regulation 2016/1719 on forward capacity allocation. For the Agency, the next step is to get detailed argumentation from TSOs regarding the different approaches and then inform the EC.
28. Ms Materazzi-Wagner informed the BoR of the Florence Forum preparations undertaken by the Agency and NRAs. The Florence Forum will take place on 17 and 18 June.

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, subject to a change in agenda item 4.1 to "for discussion and general agreement", after the request of ERO and HEA. HEA and RONI indicated their disapproval of the agenda.

No conflict of interest was declared.

1.2. Approval of the minutes of the 82nd BoR meeting

BoR Decision agreed: (D 2)

The minutes of the 82nd BoR were approved.

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

2.1. Update from ACER

Latest publications

The Director reported on the presentation of the Agency's activities, role and challenges at an event organised for this purpose by the Slovenian permanent representation in Brussels on 11 June 2019 and aimed at the Energy and Budget Attachés. The event was well attended, with approximately 40 participants and the initial feedback has been positive. The Director and Mr Ermacora highlighted the important role of the Slovenian representation in Brussels during the CEP negotiations.

The most recent publications were included in the BoR's meeting guide. The BoR was also informed on the basis of a note about the outcome of the electronic procedure on the Agency's Decision on all Regulatory Authorities' request to extend the deadline to decide on all TSOs' amended proposal for the implementation framework for a European platform for the imbalance netting process.

2.2. European Commission

Update on the ACER Director selection process

Mr Ermacora reported that a new Director-General has been appointed in DG ENER; Ms Ditte Juul-Jørgensen. He also reported on the selection process for the new ACER Director: The shortlist by the EC will be released before the summer break. The Chair clarified that subject to the confirmation of this timetable, the September BoR meeting would take place in Ljubljana.

Report on the Madrid and Copenhagen Forums

Mr Ermacora provided an update on the Infrastructure Forum which took place on 23 and 24 May as well as the Madrid Forum which took place 5 and 6 June.

The Madrid Forum dealt with sector coupling issues and had a very constructive discussion. A couple of studies were presented including the study on potential barriers on sector coupling and a study on decarbonised gases. There was an interesting discussion on the taxonomy and definitions of gases. The EC is also looking into upgrading the gas markets. The next Madrid Forum in October will take place in the usual format.

The Infrastructure Forum looked into support for innovation in infrastructure. Mr Ermacora explained the key question revolves around how much the regulatory framework on infrastructure is strengthening security of supply. More work will be pursued by the FSR and the Copenhagen School of Infrastructure which will organise roundtables. Interlinking gas and electricity infrastructure is a key element in the discussion on sector coupling. Both ENTSOs have been asked to take forward the discussion on the interlinked model. The EC should also organise roundtables on speeding up implementation projects. It also seems that many stakeholders expect a European DSO entity in gas as well.

2.3. Update from the BoR Chair

There were no general updates from the BoR Chair.

3. **Gas and sector coupling paper**

3.1. Proposal by BoR Chair, ACER Director and CEER President on next steps for the paper and report on the informal roundtable with stakeholders

The BoR Chair reported on the Roundtable with key stakeholder associations. The discussion was very interesting and stakeholders were very much engaged and confirmed the relevance of the identified issues.

The way forward on the consultation paper was presented. The intention is to launch the consultation on the gas paper following the 17 July (84th) BoR until the beginning of autumn. Therefore, in the next weeks work

will continue to finalise the paper; the new draft will be discussed at the AGWG away day on 27 June; the paper will be circulated for comments to the AGWG and the BoR.

The scope of the consultation paper will cover the three identified areas:

1. Targeted regulation and market functioning
2. Enabling new products
3. Infrastructure governance

Stock will be taken of the feedback from the CEER consultation, so that the issues could be taken forward and be addressed in a more ambitious way. Following the consultation, the aim is to align the timing for the CEER & ACER final paper(s) in autumn. The BoR opinion on ACER Recommendation is intended to be sought in October (86th BoR).

Mr Ermacora noted the experience on the electricity market design; the discussions amongst regulators as well as the workshop are valuable for the EC in collecting evidence for developing potentially a legislative proposal.

The BoR agreed to the way forward.

4. Items for BoR opinion, endorsement or agreement

4.1. Revised BoR Rules of Procedure

The Chair explained the background of the previous discussions. Given the entry into force of the CEP which is expected on 4 July, she invited the BoR to discuss the current proposal to explore the possibility for a general agreement on the open issues and then formally approve the RoP through an electronic procedure to be launched after the publication of the ACER Regulation recast. The RoP may then take effect from the entry into force of the ACER Regulation.

The BoR provided feedback on the specific modifications. The BoR raised the need for coherence between all rules (BoR RoP, AWGs RoP and ACER RoP) and thus the need to have an overall discussion on all rules at a later stage. To this end, the BoR suggested introducing the same revision clause to the BoR RoP and the AWGs RoP (e.g. April 2020). The BoR provided further feedback on the processes, including some clarifications on the electronic procedures; the possibility of members being accompanied by their NRAs' staff; the provision on external experts attending (not as speakers). A member noted the need to define the process after the adoption of amendments and the issue of repeated votes regarding acts. The BoR also discussed the composition of the BoR pursuant to the modifications of the ACER Regulation recast.

The Chair recapped the key issues for general agreement subject to the modifications proposed:

- The use of compromise amendments: the majority of members agreed to their use with the exception of the HEA and RONI who proposed to delete this possibility.
- With regard to the timings for circulation of documents/amendments: the majority of members agreed with the proposal with the exception of HEA, ERO and RONI.
- Organisation of the electronic procedures: the majority of members agreed with the proposal with the exception of ERO, RONI and HEO.
- Postponement of the sunset clause and align it with an earlier sunset clause for the AWGs RoP in April 2020. The majority of members agreed.

- The addition of a paragraph clarifying that if an amendment is adopted a new round can be launched of 3 working days on the Director's proposal (Article 4.9). The majority of members agreed with the proposal.
- The deletion of speakers from Article 4.3 was agreed.
- The participation of the Director in the BoR meetings: to be further considered.

The majority of the members present or represented agreed to the launch of a two-round electronic procedure after the publication of the ACER Regulation in the OJ for the final approval of the RoP with effect from the entry into force of the ACER Regulation recast with the exception of HEA and RONI.

4.2. ACER Decision on the methodology for Coordinating Operational Security Analysis (CSAM)

The Director and Mr Gence-Creux presented the draft Agency Decision on Coordinating Operational Security Analysis. The Decision of the Agency follows from the request of all regulatory authorities. The draft Agency's decision considers the Proposal in line with the requirements of the SO Regulation, provided that the amendments described in this Decision are integrated in the Proposal.

Mr Gence-Creux further pointed out that with this Decision the record of annual Decisions was broken, and next year this will be even more challenging given the large amount of work and the amount of preparation needed for that work.

The BoR provided, by majority of the members present or represented, its favourable opinion on the draft Agency Decision, with a dissenting opinion by CRE. RAE abstained.

4.3. ACER Decision on the methodology for Relevant Asset Outage Coordination (RAOCM)

The Director and Mr Gence-Creux presented the Agency's draft Decision on Relevant Asset Outage Coordination (RAOCM) to the BoR. He explained that there were only minor changes introduced to the RAOCM, which include: editorial changes in line with CSAM and SOGL; reducing the cycle for the re-assessment of the relevant assets for outage coordination from 5 to 3 years; transparency vis-à-vis RSCs regarding the dynamic models, studies and criteria used by TSOs.

The Agency considers the proposal in line with the requirements of the SO Regulation, provided that the amendments described in the Decision are integrated in the Proposal, as presented in Annex I.

The BoR provided, by consensus of the members present or represented, its favourable opinion on the Agency Opinion on the methodology for RAOCM.

4.4. ACER Opinion on ENTSOG's Ten-Year Network Development Plan 2018

The Director and Mr Hesseling presented the Agency's draft Opinion on ENTSOG's Ten-Year Network Development Plan 2018. The draft Agency's Opinion welcomes the various improvements of the draft TYNDP 2018 in comparison to previous editions. However, the Agency also notes that the TYNDP 2018 may not sufficiently contribute to the efficient functioning of the market, mainly due to the following shortcomings which may lead to inefficient system developments. The draft Opinion notes that the draft TYNDP 2018 does not fully comply with the provisions of Article 10 of Regulation (EC) No 715/2009, in particular due to the lack of

consultation of the PS-CBA results and the incomplete publication of all documents and minutes of meetings related to the consultations carried out while preparing the draft TYNDP.

The Agency encourages ENTSOG to implement the Agency's short-term recommendations when finalising the TYNDP 2018, and calls on ENTSOG to consider implementing the long-term recommendations in view of improving the future editions of the TYNDP.

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

4.5. Update of the 4th edition of ACER Guidance on the application of REMIT with regard to the effective disclosure of inside information

Mr Zuleger informed the BoR that the Agency aims to improve transparency on REMIT, and in that regard provided an update to the 4th edition of the ACER Guidance regarding the effective disclosure of inside information. This updated chapter covers the Agency's current understanding of the application of the obligation to disclose inside information in accordance with Article 4 of REMIT. This chapter, as lastly amended, should be fully complied with after a transition period which will be communicated by the Agency. Effective disclosure should be through dedicated platforms. Market participants may use their own websites as a back-up possibility.

The BoR endorsed the update of the 4th edition of the ACER Guidance on the application of REMIT with regard to the effective disclosure of inside information.

5. Cross-sectoral

5.1. Update on the procedural arrangements for BoR deliberations regarding the Director selection and provision of the BoR opinion

The BoR at its last meeting agreed, in principle, on the proposed preliminary arrangements for the BoR providing its opinion on the Director's selection. The definitive procedural arrangements will be submitted for agreement through electronic procedure subsequently. The EC short list is pending.

The BoR Chair informed that she will attend the AB on 13 June.

5.2. Update on the Director proposal to the AB on the modified ACER Working Group Rules of Procedure

The Director provided his feedback on the main issues following the comments from the BoR members. The ACER Regulation is expected to enter into force on 4 July and, therefore, the RoP must be finalised. The Director will submit the formal proposal on the AWGs RoP to the AB, which will subsequently seek the BoR favourable opinion.

The Director highlighted some the key changes that were considered and the members provided feedback including on the introduction of common review clause; the involvement of the BoR on the AWGs appointments; the flexibility for the location of the AWGs meetings; the deadlines for the AWGs' advice; concerns about the

provisions setting out that the Agency can take measures towards NRAs staff in relation to the participation of the AWGs, TF and other substructures with regard to the compliance with the AWGs RoPs by the NRAs staff.

The Director thanked the members for their comments and stressed that for the moment the adaptations are aimed at a quick-fix. Additional modifications will be for the new Director to consider. The Director will consider the introduction of the review clause around April 2020.

The next steps for the adoption of the RoP are still to be confirmed by the AB. The BoR agreed to the use of an electronic procedure of two rounds for the provision of the BoR favourable opinion on the RoP.

5.3. Main findings of the consolidated report on the progress of projects of common interest (electricity and gas)

The Director informed the BoR on the main findings of the consolidated report on the progress of PCIs: Mr Groebel provided a comment related to PCI 2.2.4, an interconnector between Belgium and Germany. Mr Paidakakis and Ms Sperdokli expressed RAE's concern on the validity of the comments included in the report regarding Projects 3.10.2 and 3.10.3, with respect to the accuracy of the description of the relevant factual and legal circumstances. RAE requested revisiting the respective references in ACER's report, taking into consideration its officially submitted feedback of 20.05.2019 and the respective letter of 11.6.2019.

5.4. Energy Community Regulatory Board update

Mr Hesseling provided a brief update with regard to the last ECRB meetings, specifically the 41st ECRB (December 2018) and 42nd ECRB (April 2019).

Regarding the 41st ECRB:

- The cooperation agreement with CEER and MedReg was approved.
- Preparation is ongoing of new EnC duties based on Electricity and Gas NCs, as well as on REMIT.
- Several reports were approved.

Regarding the 42nd ECRB:

- The ECRB REMIT WG Chair was elected.
- Several reports were approved.
- Participation of NARUC in EnC WGs was envisaged.

6. **Market Integrity and Transparency & Surveillance and Conduct**

6.1. Important AMIT WG and REMIT CG

[AMIT WG and REMIT CG updates](#)

Mr Zuleger provided an update on the work within the AMIT WG, which was complemented by Ms Groebel. Mr Zuleger informed the BoR on the ongoing REMIT policy work on a potential REMIT rulebook review and on improving transparency regarding disclosure of inside information. Further, the Agency gave an update on the preparatory REMIT work for the potential UK withdrawal from the EU as of 31 October 2019. The presentation and discussion of XBID issues under REMIT will be further discussed at Task Force level. There is an ongoing discussion on the scope of the MoU on data sharing with regard to market coupling and XBID (which will be

presented at the 84th BoR meeting). Also, Daniel Frisö from Ei was selected as Co-Convenor of the REMIT Policy Task Force.

Mr Zuleger informed the BoR on REMIT information sharing. The usual statistics on REMIT data collection are now provided through the NRA Briefing book. There is room for enhancement based on NRAs' feedback.

[Guidance Note on Capacity Withholding](#)

Mr Godfried presented the status of the Internal Guidance Note (GN) on Capacity Withholding in Wholesale Power Markets. After the launch of the joint BNetzA-Bundeskartellamt White Paper. The Agency proposed two options to address the gridlock at the 18th REMIT Coordination Group:

Nearly all NRAs supported the update of the existing Section 6.4.1. (j) of the ACER Guidance. Some NRAs insisted on publishing the Guidance Note as it provides the level of legal and economic reasoning required for pending court cases and the required clarity to market participants. The update is envisaged to be published this year and the final version will be shared with the 85th BoR meeting in September.

[Survey on Article 6\(8\) of the ACER Regulation recast](#)

Mr Godfried informed the BoR on a survey recently conducted among NRAs in view of the ACER Recast Regulation concerning Article 6(8) which sets out that, upon the request of a regulatory authority, ACER may provide operational assistance to that regulatory authority regarding REMIT investigations. In order to assess the required additional human resources for the Agency for this new task, the Agency conducted a detailed survey among NRAs in May 2019. Preliminary results show that the total number of requested services by NRAs exceed 600 for the next 24 months with on average 14 requests per NRA. After converting these requests for services into required FTEs, the Agency estimates that, in order to be able to accommodate all the estimated requests in 2020, it would require 20 FTEs additional (excluding UK). The number of additional FTEs would be 13, should the Agency not accommodate the three lowest priority services which also are the most resources intensive type of services, e.g. secondment of Agency staff to NRAs for 6 months.

6.2. Update on the Governance Section of the Market Surveillance Strategy

Mr Godfried presented the updated Governance Section of the Surveillance Strategy document to the BoR. The Governance Section aims to ensure the best possible surveillance coverage of EU wholesale energy markets. The Agency performed the annual update of the surveillance gap analysis on the basis of responses received by NRAs. The fourth version of the Governance Section shows similar results as the previous versions. Over time, the surveillance activities of NRAs have evolved and may further evolve. It will, therefore, be essential to update the state of play of market surveillance performed by NRAs at regular intervals. This will likely lead to an updated assessment of the surveillance priorities of the Agency and the related service levels to NRAs accordingly.

The next update will be shared with the BoR in December 2019.

6.3. Update of the 4th edition of ACER Guidance on the application of REMIT with regard to exemption on insider trading

A note with regard to the updated Chapter 8 of the 4th edition of the ACER Guidance on the application of REMIT (section 8.2.3 with regard to exemption on insider trading) was uploaded for the BoR for information. The updated Chapter was not further presented at the meeting.

6.4. Alert Dashboard update

Mr Vižintin provided an update on the Alert Dashboard project. The presentation showed the absolute number of manually assessed and shared alerts per organised market place where the product was traded, country of registration of market participants, and per country of delivery. All data was for January 2019, and the results were split by alert type. Mr Vižintin shared a map of alerts triggered by country in January 2019 as well. He also presented some further enhancements to existing production alerts, alert development, report development and surveillance methodology improvements. He informed the BoR that further developments on alerts are hampered due to budget constraints.

7. Gas

7.1. Important AGWG updates

Mr Verdelho provided an update on the ongoing work in the AGWG. The last AGWG took place on 22 May. He provided updates specifically with regard to the work of the Balancing Task Force, the Tariffs Task Force, and functionality update. Furthermore, Mr Verdelho mentioned the ongoing gas cases on Balansys, STEP, and the DE-PL booking platform.

7.2. Update on the Decision on the choice of a Booking Platform for IPs where the involved TSOs/NRAs fail to reach an agreement – Art. 37 of the CAM NC on capacity booking platforms

The Director informed the BoR on the next steps the Agency is taking in the preparation of the Decision on the choice of a Booking Platform for interconnection points where the involved TSOs/NRAs fail to reach an agreement.

Capacity booking platforms that are active in the European Union and fulfil the requirements of the EU Regulation establishing a Network Code on Capacity Allocation Mechanisms could submit their offers until noon, 7 June 2019. Following the receipt and the evaluation of the offers, the Agency will decide which platform shall perform the capacity allocations for the above-mentioned IPs for a period no longer than three years.

The Director explained how the Agency will assess the platforms under the new proceedings. The same evaluation criteria were maintained but the Agency improved the way in which the offers are assessed against these criteria. This will allow the Agency better to compare these differently organised booking platforms, to the extent it is possible to compare them and their services.

The evaluation of offers will take place in June and the next steps were presented.

7.3. Update on the HUAT Decision

The Director provided an update to the BoR on the Agency's HUAT Decision, informing the BoR that two appeals have been submitted to the Board of Appeal (BoA) The Director stressed that the Decision has to be implemented, given that the submission of an appeal does not have a suspensive effect. The Director also pointed to the obligation of the NRAs to implement such Decisions of the Agency and under the new regime of the ACER Regulation recast the possibility for enforcement will also exist.

Mr Ermacora added, as a general remark, that when the Agency takes a Decision it has to be implemented. If this is not the case, the European Commission starts the infringement procedure. The appeal does not have suspensive effect.

Mr Nyikos informed the BoR that on this issue the Hungarian NRA and TSO have fundamentally opposing views and argumentation. Also, by law there is a permanent exemption on the AT-HU border on the directional flow. This permanent exemption together with the appeal (NRA and TSO) is the reason why no action is undertaken at this point on the Hungarian side to implement the Decision. RONI supported the comments made by Mr Nyikos.

Mr Urbantschitsch pointed out that this ACER Decision needs to be implemented. In order to do so, steps were taken by the Austrian TSO. He indicated that E-Control received information that the Hungarian TSO did not implement this Decision thus far. The issues raised by Mr Nyikos have to be resolved by the BoA. It is possible to have interim measures, but the appeal in itself has no suspensive effect.

8. Electricity

8.1. Important AEWG updates

Ms Materazzi-Wagner informed the BoR on the ongoing work in the AEWG. The last AEWG took place on 21 May.

Ms Materazzi-Wagner informed the BoR that an expert group has been to work on the consistency of Articles CACM 35, CACM 74 and SO 75 and SO 76. The MCO Governance paper was endorsed by all but 2 NRAs and was discussed at the 7 June subgroup meeting. The expert group on the 70% target for interconnection capacity available for cross-border trade planned a second workshop with the Agency, NRAs and TSOs on 24 June in Ljubljana. Furthermore, the BoR was informed that an expert team for assessing the Cost Report has been established. Also, a short questionnaire is planned by the Infrastructure Task Force on integrated network planning.

8.2. 6th LEN panel advice on the governance of entity operating balancing platforms according to Arts. 19, 20, 21, and 22 of Commission Regulation (EU) 2017/2195 (EBGL)

By a request from the AEWG chair, the LEN was asked to assess and provide answers to the following four questions pertaining to the governance of entity operating balancing platforms. The advice was shared for information and the BoR was informed by Mr Šik.

1. Whether the TSO definition of a consortium as one entity is appropriate, or whether the EBGL meant to refer to a 'legal entity' and that a consortium is a collection of more than one legal entity?

Such a definition is not appropriate.

2. Whether the TSO proposal of including the requirements of paragraphs 3(e) of the relevant Articles as part of the operational handbook of the platform would be compliant with EBGL?

Such an approach would not be compliant with the EBGL.

3. *How should NRAs interpret the expression 'perform the functions' in paragraph 3(e) of the relevant Articles?*

The expression 'perform the functions' should be interpreted in such a way that when all the functions are performed by one or several entities, the relevant platform is operated.

4. *A comparative analysis of the differences for regulatory oversight in the governance of the European balancing platforms of their operation by either (i) a consortium, (ii) a single TSO performing the function(s) or (iii) a company owned by TSOs.*

This question was not answered at this stage.

8.3. Update on the Channel CCR TSOs Long-Term Capacity Calculation Methodology

The Director provided an update to the BoR with regard to the Channel TSOs' inability to reach consensus on the long-term capacity calculation methodology to be developed in accordance with Article 10 of Regulation 2016/1719 on FCA Regulation. He indicated that it seems that, despite efforts of NRAs and Channel TSOs, it seems they have reached the point where a non-submission of the Channel long-term capacity calculation methodology and long-term splitting rules cannot be avoided.

The Channel TSOs should provide the Channel NRAs and the Agency with the relevant documentation as described in Article 4(4) of the FCA Regulation.

For the Agency, the next step is to get detailed argumentation from TSOs consider the pros and cons of these approaches. In particular, the Agency will ask some more information on the drawbacks of the statistical approach and the drawbacks of the scenario approach.

8.4. Florence Forum preparations

Ms Materazzi-Wagner informed the BoR of the preparations undertaken by the Agency and regulators for the Florence Forum which will take place on 17 and 18 June. Regulatory authorities and the Agency will give presentations on and/or reactions to the following agenda items:

- 3.2 Framing bidding zones and cross-border capacity allocation
- 3.3 Coordinating State interventions in support of resource adequacy
- 5.1 Reporting on second rollout of XBID and on MCO Governance
- 6.1 Sector coupling – A perspective from the electricity sector
- 6.2 Enhancing TSO-DSO cooperation in active system management

The agenda, invitation, and presentations were uploaded for information. Ms Materazzi-Wagner indicated that feedback on other agenda items might be given on the spot where appropriate.

Ms Groebel provided a comment on the presentation with regard to the 70% target on interconnection capacity available for cross-border trade.