

**37<sup>th</sup> ACER Board of Regulators meetings**

**Thursday, 8 May 2014, 13.30-16.00**

**CNMC, Alcalá 47, 28014 Madrid**

**Minutes (final)**

**Participants**

Member States	Name <sup>1</sup>	Member States	Name
Austria (E-Control)	M: Walter Boltz O: Dietmar Preinstorfer O: Zsuzsanna Szeles O: Silke Ebnet	Italy (AEEGSI)	A: Clara Poletti O: Ilaria Galimberti
Belgium (CREG)	O: Geert Van Hauwermeiren	Latvia (PUC)	
Bulgaria (SEWRC)	Excused	Lithuania (NCC)	A: Vygantas Vaitkus
Croatia (HERA)	Excused	Luxemburg (ILR)	Excused
Cyprus (CERA)	Excused	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	O: Miroslav Belica	Netherlands (ACM)	O: Jan de Maa O: Menno Van Liere
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	A: Halina Bownik-Trymucha
Estonia (ECA)	O: Tiina Maldre	Portugal (ERSE)	A: Alexandre Silva Santos O: Mónica Cunha
Finland (EV)	A: Riku Huttunen	Romania (ANRE)	A: Lusine Carcasian
France (CRE)	Excused	Slovakia (RONI)	Excused
Germany (BNetzA)	A: Annegret Groebel O: Daniel Müether	Slovenia (AGEN-RS)	Excused
Greece (RAE)	M: Michael Thomadakis	Spain (CNMC)	A: Esther Espeja O: Gema Rico
Hungary (HEA)	A: Attila Nyikos	Sweden (EI)	M: Anne Vadasz Nilsson
Ireland (CER)	A: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) O: Mark Copley O: Feodora von Franz

Observers	Name
ACER	Alberto Pototschnig, Dennis Hesseling, Fay Geitona
European Commission	Inge Bernaerts, Aurora Rossodivita
CEER	Natalie Mccoy, David Haldearn

<sup>1</sup> M: Member – A: Alternate – O: Observer

<b>Main conclusions from the meeting:</b>
1. <i>The BoR approved the independent section of the 2013 Annual Activity Report concerning the regulatory activities of the Agency.</i>
2. <i>The BoR had an update from the EC on the ACER assessment under Article 16 of ACER Regulation.</i>
3. <i>The BoR received an update on the preparation of the 2015 ACER WP, the annual ACER Conference on 10 June and the ACER away day WGs leaders on 11, 12 June.</i>
4. <i>The BoR members took note of the consultation paper on the first release of the Manual of Procedures on Fundamental Data Reporting.</i>
5. <i>The BoR provided by majority (of the members present or represented) its favourable opinion on the ACER Recommendation on the Forward Capacity Allocation network code.</i>
6. <i>The BoR provided by consensus (of the members present or represented) a favourable opinion on the ACER Opinion on the ENTSO-E R&amp;D implementation plan 2015-2017.</i>
7. <i>The BoR provided by consensus (of the members present or represented) a favourable opinion on the ACER Opinion on the Annual Report 2013 of ENTSO-G.</i>
8. <i>The BoR discussed the consultation on fundamental data user manual, took note of the MOU and SLA agreement, and received an update on the Commission's implementing acts.</i>
9. <i>The BoR received an update on GTM and progress on electricity and gas network codes.</i>
10. <i>The BoR received an update and discussed the draft ACER Recommendation on incentives.</i>
11. <i>The BoR received an update on AIMP WG work including on the BoR RoP and the preparation of the third edition of the MMR.</i>

## 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 36<sup>th</sup> BoR meeting

BoR Decision agreed: (D 2)

*The 36<sup>th</sup> BoR minutes were approved.*

## **2. Update from the Commission and the Director**

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

#### **- Update on work on ACER Assessment**

Ms Bernaerts updated on the preparation of the report for the ACER evaluation under Article 16 of the ACER Regulation. The EC has recruited an external consultant, PWC to assist the EC in the report. She invited the BoR members to respond to the consultants and provide feedback.

Lord Mogg remarked that the interviews were well constructed.

#### **- EC's legal assessment on the nomination and appointment of BoR members – for info**

The letter from the EC was circulated providing an assessment of the EC's legal service on the issue of nominations of the BoR members, clarifying some ambiguity in the Regulation.

#### **- ACER- Update on requirements for CVs and declarations of interest for BoR members**

The Director gave the background of this. The EP, in its Resolution of 3 April 2014 with observations forming an integral part of its Decision on discharge in respect of the implementation of the budget of ACER for the financial year 2012 observed that the CVs and declarations of interests of the BoR's members, the Director, senior management and the experts participating in the Agency's expert groups, as well as the CVs of the Administrative Board and Board of Appeal's members are not publicly available and called on the Agency to remedy the situation as a matter of urgency.

ACER is already proceeding with making the Director's CV and Declaration of Interests, as well as those of the Heads of Department, available on ACER website. The BoR members and alternates were asked to provide: a CV and the duly signed Declaration of interests.

The Director gave an update on other recent publications of ACER as well as other events. A MoU was signed with key electricity players in Austria, Czech Republic, Germany, Hungary, Poland, Slovakia, Slovenia and ACER in context of Regional Initiatives process.

ACER will organise stakeholder workshops: Gas Target Model on 15th May in Brussels and 19th May in Ljubljana on Network Code on High Voltage Direct Current Connections.

## **3. Post 2014 Strategy**

### **3.1. "Energy Regulation: A Bridge to 2025"- Report on the launch event for the Green paper and senior level meeting with EC**

Lord Mogg reported on the latest developments. The consultation on the Green Paper was launched on 29 April until 16 June. We will upload a video recording of the event. The launch event was very successful with 101 participants and 68 tuned in on web stream. A press release was issued. In the eve of the BoR the adhoc group was convened and discussed the next steps for the preparation of the conclusions paper as follows.

There will be two documents: An evaluation of responses received during the public consultation and the conclusions paper which will include general comments as well as specific proposals for deliverables and actions. The conclusions document will need to be approved at the BoR on 17 September. A process is required which will allow a draft of the

conclusions paper to be prepared in time for discussion at the BoR and GA meetings in July, and, therefore, a degree of parallel working is required. The paper will be submitted for approval at the 17 September BoR.

We also plan a close Roundtable on 5 June, to which we shall invite the main European Associations.

The dates for the next meetings of the adhoc group will need to be reconsidered and members will be informed accordingly.

*The BoR took note of the next steps for the preparation of the conclusions paper "A Bridge to 2025". The Chair will also write to all members to outline in more detail the next steps and timeline.*

#### **4. ACER cross-sectoral activities**

##### **4.1. Draft 2015 ACER work programme**

The Director updated on progress for the preparations of the 2015 WP. An outline was presented and discussed at the last BoR meeting and members were invited to provide comments at the meeting or asap as ACER have started preparing the 2015 WP. No comment has been received. There will be a presentation of the 2015 WP outline on 4 June in Ljubljana. A "mini consultation" will be held for 2 weeks (until 18 June) for receiving stakeholders' feedback. Furthermore, the Director and the BoR Chair will present the outline to the EWP of the Council on 26 May in the afternoon. The issue of resources will remain critical for the delivery of the WP and the Director continues contacts with the EC and with Commissioner's Oettinger's Cabinet.

##### **4.2. Regulatory activities section of the 2013 ACER annual report**

The Director presented the annual activities report - section on the regulatory activities which was uploaded for approval. Pursuant to the ACER Regulation, the Administrative Board adopts and publishes the annual report on the activities of the Agency and transmits that report to the European Parliament, the Council, the Commission, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions by 15 June of each year. The annual report on the activities of the Agency contains an independent section, approved by the Board of Regulators, concerning the regulatory activities of the Agency during the year considered which was circulated for approval.

##### **BoR Decision agreed: (D 3)**

*The BoR approved the independent section of the 2013 Annual Activity Report concerning the regulatory activities of the Agency.*

##### **4.3. ACER annual conference**

The latest programme was circulated. The ACER Annual Conference will be held on 10 June and will be devoted to REMIT. Commissioner Oettinger has confirmed a keynote speech at lunch time. As the ex Head of FERC's Monitoring Department is now appointed as Chair of FERC, confirmation of his participation is pending. The Director of ESMA has also confirmed her participation.

#### 4.4. ACER away day

The Director reported on the preparations of the AWG Leaders away day, which will be held on 11 - 12 June in Bled. Invitations have been issued to all AWGs chairs, vice chairs, TFs and WS leaders and we currently have 16 persons confirmed from NRAs plus the ACER staff and the EC IAS team leader who has delivered a report on the FG/NC process. The Director strongly welcomed active participation of all NRAs staff involved in the WGs leadership. Mr Lowe will moderate the event. The EC IAS' Report includes interesting ideas to improve the functioning of the AWGs.

The programme foresees starting on 11 June at 17.00 with a session setting the scene - the goal of this event, NRAs expectations, formal setting (RoP), and auditors' recommendations – followed by dinner. The second day 12 June, the participants will be split in 3 groups and in the afternoon we have a plenary report from each group.

#### 4.5. BoR Roadmap

Fay Geitona reported on progress on the Roadmap which is captured under the different items of the agenda. Regarding relations with the EP, the ITRE delegation visit to the ACER premises was held on 19, 20 March. Specific actions will be pursued following the EP elections. The importance of re-establishing the ACER contact group after the European elections was reiterated and the possibility of including a Member in the contact group from the Budget Committee (due to the importance of budgetary issues for ACER) was proposed. Other issues raised included the provision of technical expertise on the codes through also engaging and ameliorating the understanding of the assistants etc.

### **Market Monitoring**

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

##### 5.1. Report on REMIT implementation

This item was removed from the agenda.

##### 5.2. Report on the launch of the consultation on TRUM

This item was removed from the agenda.

##### 5.3. Report on MOU with FERC

The Director reported that he has now had the green light from the EC and ACER is looking for a date for the actual signature. DG ENER and the other services of the Commission found the MoU a positive development in the EU and US energy cooperation. ACER should soon be in a position to sign, after some last refinements of the text by FERC. The Director hopes that the signature can take place at the conference in June.

#### 5.4. Consultation on fundamental data user manual

The Director introduced this consultation paper. The draft Implementing Acts of the EC provide that the Agency should establish procedures, standards and electronic formats for the reporting of fundamental data. The reporting obligation will start applying when defined in the Implementing Acts. The consultation aims at collecting views from specific interested parties on a draft of the first release of the Manual of Procedures on Fundamental Data Reporting which is an annex to the consultation paper. ACER has developed this Manual to assist and provide guidance to reporting entities such as ENTSOs, TSOs, LNG System Operators, Storage System Operators, or third parties acting on their behalf to report fundamental data under REMIT. It is not designed to be a comprehensive list of how to report in every situation nor is it intended to be a replacement of the Commission's implementing acts and it will not provide full scale technical specifications for fundamental data reporting through RRM. It will be updated periodically to reflect the situation at publication, with sufficient lead time for Reporting entities to adopt.

*The BoR members took note of the consultation paper on the first release of the Manual of Procedures on Fundamental Data Reporting.*

#### 5.5. Draft Implementing Acts

Ms Bernaerts thanked ACER for the excellent cooperation and feedback in the process for the preparation of the Implementing Acts and gave an update on key remaining issues: regarding the exception of contracts from reporting obligations, the EC has opted for a different approach. Instead of exempting those contracts, the EC has changed the modalities of reporting and they are excluded from systematic reporting. They can, nevertheless, be reportable upon ACER's request.

She invited ACER to adopt the user manual in a timely way so that market participants have the time to prepare for reporting. On the issue of parallel reporting of Fundamental data to ACER and NRAs the EC will revise the text.

In terms of timing, the text has now passed through the Impact Assessment Board and is currently under inter-service consultation. The EC intends to launch the formal invitation for the formal Comitology in the 2<sup>nd</sup> half of June, and to have the first meeting of the Committee in the first half of July. Perhaps a second meeting is needed. Ms Bernaerts confirmed that there is no need for the 3 months period of regulatory scrutiny of the EP. The Implementing Acts can be adopted after a positive vote of the MS's committee and enter into force around September - October.

*Lord Mogg concluded by inviting the EC to provide clarity on the timeline for the adoption of the Implementing Acts.*

#### 5.6. Service Level Agreement on CEREMP and MOU on information sharing between ACER and NRAs

The MOU and the SLA were sent by the Director last week to all members to inform about the process and the next steps. The Director reported that the signature will take place either in Florence or at the next BoR in June. Both documents were already discussed at the last BoR meeting (in March), The MoU and the SLA are meant to be signed by (a duly-

empowered representative of) each individual NRA. There are two ways in which this can be done:

- by signing the joint List of Signatories, which will be available at the Florence Forum (20 – 21 May) and at the June BoR meeting (11 June, in Ljubljana); or
- By signing a separate signatory page according to the model provided in Annex A of each document and sending it to the Agency.

If and when the MoU is signed by all NRAs signatories of the Multilateral Memorandum of Understanding of 17 July 2013, it will become an Annex to that Multilateral Memorandum of Understanding.

The Director clarified that signing of the MoU is not strictly required for a NRA to have access to the information held by the Agency; however, it will indeed facilitate such information sharing.

The Chair concluded as follows:

*The MOU text is finalised and signature will take place as the Director has notified the members.*

*Regarding the SLA, in light of the above comments, the Director will review the text to reflect the distinction between emergencies and normal circumstances. In case of emergency, ACER should act to avoid any situation which may jeopardise the integrity of the system. Under normal circumstances, ACER would alert and regularly update NRAs about security issues in order to be able to assess any financial implications.*

## **Completion of the Internal Energy Market Update on FGs and Network Codes**

### **6. Gas**

#### **6.1. Update on FGs and NCs & other work**

Mr Boltz provided an update on current work with regard to Framework Guidelines and Network Codes. On tariffs, ENTSOG will submit the code in December 2014. ACER closely follows the process. There is a concern about ENTSOG openly diverging from the FG already in some areas and these points were underlined at the Madrid Forum. The ACER Recommendation is then expected in January 2014. ENTSOG will also develop CAM NC amendment proposal by 31 Dec 2014. On rules for trading, the ACER scoping is progressing and results are expected in Q2 2014. There are Expert Group meetings and the consultation is running until 12 May. ACER gathered input from MF participants. The way forward is to continue scoping (consultation, expert group meeting) before reaching final decision on whether such rules are needed and the legal instrument. Regarding balancing, NRAs and TSOs are not too keen on early implementation and a presentation was given to the Madrid Forum on state of play. There is a need for a timeline for early implementation as guidance for all involved parties. Regarding CM, the EC finished its interpretative note. The ACER congestion monitoring report was published on 28 February 2014 covering Q4 2014. By May/June there will be a report on CMP implementation.

## 6.2. GTM update & draft GTM

Mr Boltz presented the state of play and the main findings including inter alia, on the low liquidity levels, below the target churn rate, in most large Western European gas markets, except UK and NL. There is some pluralism of supply sources, owing to LNG, and diverse market structure with imports from multiple firms and production by multiple firms, but dependence on large suppliers may increase again should gas demand pick up. Many consumers (in largest markets) already benefit from wholesale gas competition. With regard to Central and Eastern Europe, most gas markets do not have transparent hub trading. Often there is high concentration on the supply side and heavy reliance on the largest supplier, i.e. Gazprom. The lack of competition in smaller Member States should not be ignored.

Mr Boltz also presented the key conclusions of the study on functioning of European gas wholesale markets. With regard to retail market competition, Mr Boltz noted that all consumers have the right to benefit from a functioning IEM, and a genuine choice between alternative suppliers of energy; minimum service and supply standard; a price level for the energy part of the bill that is linked to wholesale prices; protection of vulnerable customers; fair distribution of necessary costs.

ACER plans to commission a study on the new usage for gas to further develop this aspect of the GTM update. With regard to the next steps, the 3rd ACER stakeholder workshop will be held on 15 May 2014; by September/October 2014 we expect the finalisation of GTM update on the basis of the stakeholder comments and the gas relevant responses to the "Bridge to 2025" public consultation.

Ms Bernaerts emphasised regarding the GTM, that the Commission fully supports the work being undertaken, with 2 important points: 1) this assessment must take into careful account the current implementation of a range of measures; and 2) it should integrate fully the security of supply dimension. Recent events in Ukraine have brought to the forefront the influence/impact of political events on markets (storage, joint purchasing initiatives, etc.).

*Lord Mogg concluded by raising the importance of making clear our commitment to continue implementation efforts in addition to the future proposals in the update of the GTM.*

## 6.3. Feedback from Madrid Forum

Mr Boltz reported on the main discussions in Madrid. The draft conclusions were circulated.

Ms Bernaerts underlined the comments made by the European Commission during the Madrid Forum regarding in-depth and enhanced work on the CBCA for infrastructure projects/PCIs. The Commission has the impression that some Regulators have been too lenient in assessing to what extent PCIs qualify for public funds. Regulators should be cooperative on CBCA and take action on time for the first round of CEF funding. The latter is critical given the current political priorities.

On CMP she noted the controversy between ACER and ENTSOG; on whether contractual congestion exists. She suggested that regulators clarify bilaterally with their TSOs the situation and enhance the quality of the next report.

Mr Hesseling noted that ACER is already in contact with ENTSOG on the data. The discussions at the Forum raised reservations about the choice of the indicators used and

that regardless of the reliability of data such comments will persist. He proposed that the analysis could, therefore, be extended in some way to other indicators to address such concerns, while still fulfilling the obligations from the CMP Guidelines.

#### 6.4. Opinion on the annual report 2013 of ENTSO-G

The Director presented the draft ACER Opinion. On 19 March 2014, ENTSOG submitted to the Agency the Annual Report for the year 2013 which has to be evaluated by the Agency. The draft ACER opinion notes the timely release of the Annual Report. ACER recommends that ENTSOG reverts in the future to the earlier reporting practice. ACER encourages ENTSOG to support the development of the first CAM NC - compliant capacity allocation platform and to facilitate the early implementation of the CAM NC via the CAM Roadmap. The Agency encourages ENTSOG to keep pace with the BAL NC's implementation. The Agency encourages ENTSOG to report on findings and analysis from CMP monitoring and to include the final results of that analysis in its next annual report. The Agency appreciates ENTSOG's activity in the development of a Common Network Operations Tools ("CNOTs"). In particular, the Agency invites ENTSOG to aim for greater consistency between the long-term development perspective offered by the TYNDP, and the findings of the seasonal outlooks. The Agency also recommends a strong level of cooperation with ENTSO-E and welcomes the establishment in 2013 of continuous working collaboration between ENTSOG and ENTSO-E; it also welcomes ENTSOG's effort in the area of expanding the relationships with TSOs of third countries.

#### BoR Decision agreed: (D 4)

*The BoR provided by consensus (of the members present or represented) a favourable Opinion on the ACER Opinion on the annual report 2013 of ENTSO-G.*

## **7. Electricity**

### 7.1. Oral update on the FG an NCs

Mr Copley gave an update on behalf of the AEWG Chair. The CACM is under inter-service consultation and translation. The codes on Requirements for Generators and Demand Connection are actually being commented on by the MSs. The codes on OpSec/OPS and Load Frequency Control Reserves are for a couple of months with the EC. The Balancing code is currently with ENTSO-E redrafting it after the ACER opinion (in March).

Ms Bernaerts reported that for the CACM network code there has been some feedback from the legal service. Some redrafting was required in order to reflect legal phrasing and robustness. The changes have been discussed with ENTSO-E to clarify and reassure them on the changes. The EC hopes to be able to have a better view by the Florence Forum on the CACM.

Regarding grid connection, progress has indeed been difficult, in part due to the sequential process for the approval of the network codes (including the review and 'cleaning' by the legal services).

Ms Bernaerts explained that given this situation, all comitology meetings have been cancelled, in order to avoid confusion and disappointed expectations, until a solution can be found.

Mr Huttunen noted that this delay affords us the time to usefully consider the network codes in greater detail.

## 7.2. ACER Recommendation on the Forward Capacity Allocation network code

Lord Mogg informed the members of the note circulated by Mr Huttunen reflecting the views of several NRAs (Finland, Germany, Sweden, Luxembourg and Denmark) regarding the decision-making process on cross-zonal hedging opportunities of the network code.

The Director presented that draft Recommendation. On 3 April 2014, ENTSO-E resubmitted to the Agency the Network Code on Forward Capacity Allocation. The draft Recommendation recommends the adoption of the Network Code after having introduced the proposed amendments in a number of issues such as the timelines for establishing the single allocation platform and for harmonising the type of Transmission Rights, the allocation rules, and the nomination rules; the principles for Long-Term transmission rights remuneration; the firmness provisions; the decision on cross zonal risk hedging opportunities; the amendments with respect to other issues such as Legal robustness and regulatory approvals.

Lord Mogg explained that 20 members are present, and two more represented with 2 proxies (from ILR to BNetzA and CRE to CER). CRE had already indicated that it is in favour of the Director's proposal. He invited the Director to advise whether he would like to proceed to a vote or to withdraw the proposed recommendation and return the work to the EWG for further elaboration.

The Director indicated that, the issue at stake being of fundamental market design and already discussed extensively at AEWG level, he intends to maintain his proposal.

### BoR Decision agreed: (D 5)

*The BoR provided by a majority (of the members present or represented) a favourable opinion on the ACER Recommendation on the Forward Capacity Allocation network code: 16 members voted in favour, 5 against and one member abstained.*

## 7.3. Opinion on ENTSO-E R&D implementation plan 2015-2017

The Director introduced the draft ACER Opinion. On 4 March 2014 ENTSO-E published its Research and Development Implementation Plan 2015-20. On 31 January 2014 ENTSO-E released the 2013 Monitoring Report of the R&D Roadmap 2013-2022. In preparing its Opinion the Agency has taken due account of the 2013 Monitoring Report.

The Agency finds that the R&D Implementation Plan 2015-17 meets the objectives of non-discrimination, effective competition and the efficient and secure functioning of the internal market in electricity. However, the Agency emphasises the importance of increasing the R&D activities supporting TSOs in performing their short-term duties in areas such as the preparation of network codes, network planning and the assessment of transmission and generation adequacy, and the importance for ENTSO-E to coordinate this work.

ACER's opinion lists also a number of specific remarks relevant to:

- The methodology for the development of the R&D Implementation Plan 2015-17.
- The involvement of research parties and stakeholders.
- The R&D resources, budget & financing strategies.

- The monitoring and evaluation of R&D fulfilment, Key Performance Indicators (KPI), dissemination of R&D results.
- The specific functional objectives of the R&D Implementation Plan 2015-17.

BoR Decision agreed: (D 6)

*The BoR provided by consensus (of the members present or represented) a favourable opinion on the ACER Opinion on the ENTSO-E R&D implementation plan 2015-2017.*

7.4. Florence Forum preparation

The Florence Forum will take place on 20-21 May. The agenda includes a more strategic discussion as well as specific sessions on Flexibility, CRMs, Network Tariffs, Market Coupling, and Infrastructure. Presentations need to be sent to the EC by 9 May and are now being finalised at the AEWG.

**8. Regional Integration**

8.1. Progress on ERI and GRI cross regional roadmaps

The ERI and GRI progress reports were circulated.

The Director reported that Spain and Portugal should join the day-ahead market coupling this month. Italy and Slovenia should join by the end of the year, provided that some payment timing issues are resolved on the Italian side. Regarding intraday, the Commission continues its efforts and a meeting with PXs is planned next week on 12 May. No real progress has been achieved in the last 6 months.

Lord Mogg added that at the next high level meeting a decision should be taken on whether the 'early start' agreement will be respected or abandoned.

Mr Hesseling reported that ACER will henceforth issue two progress reports for electricity and gas one in spring and one in fall, instead of 4 Quarterly reports.

He then reported on key developments on GRI. The North West region is declared "inactive" as no NRA has volunteered to chair it. The proper composition of the SSE is currently also being considered. At the end of the month a stakeholders' group meeting of the region will be held. The CAM Roadmap will be chaired by BNetzA. With regard to pilots for balancing code a lead Regulator is sought.

**9. Investment Challenge**

*European Network Planning and infrastructure challenge*

9.1. Preparation of ACER recommendation on risk evaluation methodologies and incentives for gas and electricity infrastructure projects

The Director made a presentation on the state of play and the key issues on the ACER's recommendation on risk evaluation methodologies. The draft Recommendation was discussed at the recent AEWG and AGWG, but its submission for a formal opinion has been postponed for June. The legal basis for ACER Recommendation, focus on the "higher risks

for the development, construction, operation or maintenance of PCIs compared to the risks normally incurred by a comparable infrastructure project". While PCIs may be more complex, they may not necessarily be more risky and, to the extent that they are, this risk is typically already mitigated at national level. ACER sought to reinforce the evidence on national mitigation and therefore ACER has issued a short questionnaire to collect more evidence. 15 NRAs have replied for both electricity and gas and 2 for electricity. The Recommendation will be finalised and submitted to the June BoR for its formal opinion.

Furthermore, the Director felt that we need to show awareness of a more relevant issue: the extent to which existing national regulatory frameworks take into account the two main features of PCIs (i.e. higher complexity due to their cross-border nature and higher expected net benefits) and are consistent with each other. The Director proposed that this message is added in the introduction without changing the scope of the recommendation. The Green Paper already identifies that Regulators clearly have a critical role to play in facilitating investment and we need to play our part to ensure that Member States' regulatory regimes operate in such a way that those projects with the greater economic benefits are favoured regardless of whether they are national or cross-border.

The BoR had an orientation discussion.

## **10. Implementation, Monitoring and Procedures**

### **10.1. Oral update on current work**

Ms Ebnet reported under the relevant items below.

### **10.2. Revision of the ACER BoR rules of procedures**

Ms Ebnet reported that the BoR Chair had invited the IMP WG to assess the need for any modifications on the BoR Rules of Procedure in addition to the latest modifications on the treatment of abstentions in electronic procedures which have been incorporated. The note from the PWS which has been circulated concludes that the PWS do not see any need to update the current version of the BoR rules of procedure.

The BoR Chair concluded therefore that there is no need for a further review of the rules at this stage.

### **10.3. Preparation of 3<sup>rd</sup> edition of the Market Monitoring report**

Ms Ebnet introduced the note. It states that in view of the pending data collection process for the third edition of the joint ACER-CEER Market Monitoring Report (MMR), the NRAs are invited to comment on the ongoing data collection. The note shows the data which the MMR team envisages to use in the further process of preparing the report and the still to be collected information. This file has been submitted to NRAs for consultation through the relevant task force and working group in March. Their feedback and constant support has been instrumental to create a consistent and validated set of data.

This note reports on the following data topics:

- Electricity and gas end-user prices across Europe – Break-down;
- Electricity and gas retail prices – standard offers;

- Electricity RES charges for industrial consumers;
- Electricity and gas non-price elements – composition of offers across Europe;
- Mark ups for electricity and gas;
- Loop flows;
- RES support regimes;
- IPs capacity utilisation;
- Gas supplies diversity of origins;
- Gas flows and capacity utilisation values of EU-28 cross-border IPs;
- Market shares (one sheet per country); and
- Overview still missing (pending) information for gas and electricity.

Ms Ebnet invited comments from the members and informed the members that by July a first draft of the third edition of the MMR will be available.