

36th ACER Board of Regulators meetings

Tuesday, 18 March 2014, 09.00-16.00

ACER, Trg Republike, 1000 Ljubljana

Minutes (final)

Participants

Member States	Name ¹	Member States	Name
Austria (E-Control)	M: Walter Boltz O: Dietmar Preinstorfer O: Zsuzsanna Szeles	Italy (AEEG)	M: Valeria Termini A: Clara Poletti O: Ilaria Galimberti
Belgium (CREG)	M: Marie-Pierre Fauconnier A: Koen Locquet O: Geert Van Hauwermeiren	Latvia (PUC)	O: Lija Makare
Bulgaria (SEWRC)	M: B. Boev Excused	Lithuania (NCC)	A: Vygantas Vaitkus
Croatia (HERA)	M: Tomislav Jureković	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Georgios Shammias	Malta (MRA)	A: Anthony Rizzo
Czech Republic (ERO)	O: Miroslav Belica	Netherlands (ACM)	A: Remko Bos O: Elozona Ochu
Denmark (DERA)	O: Mads Lyndrup	Poland (URE)	A: Halina Bownik-Trymucha
Estonia (ECA)	M: M. Ots Excused	Portugal (ERSE)	A: Alexandre Silva Santos O: Eduardo Teixeira
Finland (EV)	A: Riku Huttunen	Romania (ANRE)	A: Lusine Carcasian
France (CRE)	A: Philippe Raillon O: Michel Thiollière	Slovakia (RONI)	M: J. Holjenčík Excused
Germany (BNetzA)	A: Annegret Groebel O: Daniel Müether	Slovenia (AGEN-RS)	A: Jasna Blejc
Greece (RAE)	M: Michael Thomadakis	Spain (CNMC)	M: Fernando Hernandez
Hungary (HEA)	A: Attila Nyikos	Sweden (EI)	M: Anne Vadasz Nilsson
Ireland (CER)	A: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Martin Crouch O: Feodora von Franz

Observers	Name
ACER	Alberto Pototschnig, Dennis Hesselring, Christophe Gence-Creux, Volker Zuleger, Fay Geitona
European Commission	Klaus-Dieter Borchardt, Kamila Kloc
CEER	Natalie Mccoy

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

Main conclusions from the meeting:
1. <i>The members had an orientation discussion on the Green Paper: Energy Regulation a Bridge to 2025. A revised version taking account the comments of the BoR and the ad-hoc group will be circulated next week for a first (informal) round of comments. BoR members agreed to use the electronic procedure for the formal endorsement of the paper ahead of its launch on 29 April (given there is no meeting of the BoR scheduled in April). The formal electronic procedure will be launched between 1st-10 April.</i>
2. <i>The BoR approved the ACER 2014 Work Programme revision.</i>
3. <i>The BoR held an orientation discussion to the 2015 ACER WP outline ahead of the Director's proposal for the 2015 WP which will be submitted to the May BoR for an orientation discussion.</i>
4. <i>The BoR agreed the BoR Opinion on the draft ACER 2015 budget and the MSPP 2015-1017.</i>
5. <i>The BoR discussed the draft agreement on information that the Agency receives in accordance with Article 7(1) and Article 8 of REMIT and its sharing with NRAs and concluded that the next AMIT WG on 9 April will finalise the few remaining issues (notably the sharing of fundamental data and the use of SMARTS as well as the review clause). The agreement will be subsequently finalised and circulated to the BoR of May for its signing.</i>
6. <i>The BoR recommended Ms Clara Poletti (AEEG) as the co-chair of the AMIT WG. The Director will take utmost account of the BoR Recommendation in its decision on the appointment of the AMIT WG co-chair.</i>
7. <i>The members took note and discussed the Service Legal Agreement on Centralised European Registry for Energy Market Participants (CEREMP) which is now ready for signature.</i>
8. <i>The BoR received an update on the GTM review, on the overall progress on Gas FGs and codes and the upcoming Madrid Forum.</i>
9. <i>The BoR took note of the update on the overall progress on electricity FGs and codes, as well as on the ACER Recommendation on forwards network code, which will be finalised for submission to the BoR for a BoR opinion.</i>
10. <i>The BoR gave by consensus (of the members present or represented) its favourable opinion on the ACER Opinion on Electricity Balancing network code.</i>
11. <i>The BoR took note and discussed the draft ACER Opinion on the appropriate range of transmission charges paid by electricity producers.</i>
12. <i>The BoR had an orientation debate on the draft ACER Recommendation on risk evaluation methodologies and on incentives for gas and electricity infrastructure projects. This will be submitted to the May BoR.</i>
13. <i>The BoR provided by consensus of the members present or represented a favourable opinion on the ACER Opinion on the national Ten Year Network Development Plans.</i>
14. <i>The BoR received an update by the AIMP WG chair on the work on the 3rd MMR and the revision of the BoR RoP.</i>

Part A: Items for discussion and/or decision

1. Opening

Mr Borchardt informed that the Commission intends to conduct a more thorough assessment of ACER next year on the basis of Article 16(3) of the ACER Regulation which provides that

in the nine months preceding the end of the 5 year terms of the Director the Commission undertakes an assessment on the performance of the Director; and the Agency's duties and requirements in the coming years which is carried out with the assistance of an independent external expert. The Commission has hired an external consultant, PwC, for this assessment and will also consider any necessary changes to the Regulation.

Ms Geitona informed the members that she has been contacted by the experts from PwC who will arrange interviews with some of the BoR members as well as with the AB Chair, the Director and the ACER Heads of Departments. She has provided all the contact details to PwC.

1.1. Approval of the agenda

BoR Decision agreed: (D 1)

The agenda was approved.

1.2. Approval of the minutes of the 35th BoR meeting

BoR Decision agreed: (D 2)

The 35th BoR minutes were approved.

2. Update from the Commission and the Director

2.1. Update on recent developments

Mr Borchardt informed the BoR Members about the current security of supply situation (outcome of the last two gas coordination meetings, OPAL and South Stream).

The Commission's Communication on IEM 2014 will be published end-May/early-June. It will contain country specific reports – the drafts will be sent to the regulators for their review and to suggest any modifications. The deadline for this feedback will be very short.

The EC has also carried out an ITO study and its results will be published as an Annex to its 2014 IEM Communication. The ITO study is based on a consultation on the basis of a questionnaire. Mr Borchardt thanked the involved regulators of countries where an ITO is established for their participation in the ITO-Study by filling out the questionnaire.

The Director reported that the EC has given its green light on the MoU with FERC. On the FERC side they are also checking with the State Department the relevant formalities. The Director hopes that ACER shall be able to sign it before the ACER annual conference.

The ACER away day (AWGs leadership) will be held on 11 - 12 June, and the Director has issued the invitation to all WGs chairs, vice chairs, TFs and WS conveners. The purpose of this exercise is to take stock of the accumulated rich experience on the functioning of the AWGs and to identify ways in which the collaboration within the AWGs and between the AWGs and the other parts of the Agency could be enhanced.

The Director gave a presentation on staffing needs according to the establishment plan. For 2015, the Agency is requesting additional staff which will bring the total to 118. In total in 2014 there will be 77 staff and 68 are already in office. On the staff composition he noted

that 47 staff is in the operational departments, 14 staff are dedicated to administrative support, 4 in technical support, 7 in legal and communication support and 7 in Director's office. He also reported on the current vacancies. There are currently 24 nationalities in ACER. The SNE are in total 14 most of them in the ACER operational departments. ACER is pleased to receive cost free SNEs as well.

The Director then reported about REMIT preparations. The Director invited the BoR members to a demonstration of the pilot of the ARIS system's market surveillance solution SMARTS, the platform that the Agency will use to monitor the wholesale energy markets under REMIT. Using one-month worth of data from only one trading platform, the pilot is raising approximately 20 alerts per day. The staffing requirements for REMIT are a key element for ACER to be able to monitor the markets. At the moment there are 15 colleagues working on REMIT (only 3 for market surveillance). The Agency will be put under pressure and the kind of expertise needed for REMIT is different than the one currently available in the Agency, so there is very limited scope for staff redeployment. The Director presented a benchmark with FERC. For data management there are 6 FTEs; for monitoring there are 35 FTEs; and for surveillance 20-25 FTEs. The FCA (UK) has 55 staff for market monitoring.

3. Post 2014 Strategy

3.1. "Energy Regulation: A Bridge to 2025"- Green paper:

Lord Mogg presented the latest timeline for the Green paper. An electronic procedure will be held on 1-10 April subject to the agreement of members, ahead of which an informal round of comments will be sought from 25 March to 29 March. Any comments should be communicated to the Chair via Fay Geitona. We shall launch the paper on 29 April with a "launch event" in the afternoon 14.30-17.30 for the formal public consultation of 6 weeks by 16 June 2014. An invitation-only roundtable will be held on 5 June in the afternoon to discuss the text with key stakeholders. The final adoption of the paper "Bridge to 2025" is planned for September 2014 with a workshop on 23 September to launch its publication.

Lord Mogg introduced the draft from the Chairman, which is presented to the BoR for an orientation discussion. This consultation paper will be issued by the Board of Regulators and the Director of the Agency with the support of CEER. Lord Mogg explained that there were further discussions and comments during the Ad Hoc Steering Group's meeting on 17 March and thus the paper is still subject to changes. The paper will be further reorganised (to tie together DSOs, consumers and demand side, the infrastructure chapter will be brought forward) and will incorporate the latest input from the DSO group (which was not incorporated in the version circulated to the BoR) as well as additional comments from the Steering Group. The paper will include a table of contents and questions will be brought forward. The introductory part is being revised to reflect the centrality of consumers and the broader international context, e.g. Ukraine developments which will have an impact on SoS. The Chair explained that the paper should strive to be more ambitious and he welcomed concrete suggestions to this end.

Lord Mogg reported that we are now finalising the agendas for both the launch event and the draft agenda for the meeting with the EC.

BoR Decision agreed: (D 3)

The BoR members had an orientation debate on the Green paper. A revised version taking account the comments by the BoR and the adhoc group will be circulated next week for a first (informal) round of comments – from 25-29 March.

BoR members agreed to use the electronic procedure for the formal endorsement of the paper ahead of its launch on 29 April (given there is no meeting of the BoR scheduled in April). The formal electronic procedure will be launched between 1st-10 April.

4. ACER cross sectoral activities

4.1. Revision of the 2014 ACER Work Programme

The Director presented the revised ACER 2014 WP. The Agency's budget in 2014 amounts to € 10,880,000. This is approximately € 4.6 million lower than the draft Agency Budget adopted by the Administrative Board on 20 March 2013. As a result he proposed a review of the Work Programme in which some activities, mainly concerning the REMIT and TEN-E areas, are removed or postponed. Furthermore, the Framework Guidelines on Rules on Harmonised Electricity Transmission Tariff Structure is postponed to 2015. Regarding REMIT: the Budgetary Authority did not allocate any additional staff to the Agency for the implementation of REMIT. At the same time the adoption of the Implementing Acts by the European Commission is now planned for June 2014. This means that the reporting obligations for market participants and other stakeholders will not come into effect until the end of 2014. Therefore, the timing of some of the activities has been reviewed. The Agency has therefore postponed several activities including the establishment of appropriate mechanisms to access emission allowances data and the monitoring of trading activity in wholesale energy markets to detect and prevent trading based on inside information and market manipulation; the scope of other activities has been reviewed. With regard to the TEN-E Regulation, the Budget Authority allocated only 5 additional staff to the Agency. Therefore, some deliverables/activities have been deprioritised and will be considered in the framework of the 2015 Work Programme (e.g. annual Report on progress of PCI, the Guidance on CBCA methodology).

Mr Borchardt reassured the BoR that the Commission will continue to support ACER in its resource and budget requests. However, he noted that as a horizontal issue, the Commission is subject to cuts. He regrets that the situation is unlikely to change. With regard to the activities postponed/removed Mr Borchardt remarked that ACER should play an active part in facilitating NRA discussions within the 6 month period for agreements on cost allocation decisions in the context of the TEN-E Regulation. This could be helpful in minimizing the number of cases where the decision by NRA is referred to ACER after the 6 months period in which the NRAs have to reach an agreement. ACER's role as a facilitator would speed the decision-making process up.

Mr Muether suggested clarifying whether the FGs on electricity tariffs is removed or postponed. The scoping will be continued next year.

BoR Decision agreed: (D 4)

The BoR approved the ACER 2014 WP revision.

4.2. Outline of 2015 ACER WP

The Director presented the outline of the ACER 2015 WP listing the main ACER activities. This was presented at a virtual meeting with the AWG chairs for an initial discussion on 4 March following which a number of modifications have been introduced. The Director prompted the members to provide comments at the meeting or in the next couple of days as

ACER has started preparing the 2015 WP on the basis of the outline. In June a public consultation is scheduled and there will be a presentation of the WP outline on 4 June in Ljubljana. The Board will be consulted again in May ahead of the Director's formal proposal by the end of June.

BoR Decision agreed: (D 5)

The BoR held an orientation discussion on the 2015 ACER WP outline ahead of the preparation of the Director's proposal for the 2015 ACER WP which will be submitted to the May BoR for an orientation discussion.

4.3. Draft ACER 2015 budget

The Director presented the draft decision on estimates of revenues and expenditure which is circulated along with the MSPP 2015-2017. The Chair presented the draft BoR opinion on the 2015 Budget.

The draft ACER 2015 budget is 16.558.587€. The 2015 preliminary budget covers the new staffing for the implementation of the new tasks assigned under the TEN-E Regulation and REMIT. The Director explained that the two new Regulations have substantially widened the mission, role and responsibilities of the Agency. The staff envisaged in the final EU Budget 2014 is 77 and the draft 2015 budget foresees an increase to 118 in 2015. For REMIT, ACER estimates 30 additional staff: 15 additional staff members (5 monitoring officers, 1 legal officer, 3 policy officers, 3 IT officers and 3 IT assistants) are required to fulfil the additional tasks stipulated by the REMIT legislators as well as 12 additional monitoring officers supported by 2 assistants and one new HoD. With the new tasks to be covered and the additional staff devoted to them, it is expected that the Market Monitoring Department will have to be restructured into two Departments. This will require one additional management position graded at AD11 to achieve the following organisational structure: Department of Market Oversight (DMO), and Department of Analysis and Surveillance (DAS), responsible for developing and implementing surveillance tools to detect potential instances of market abuse.

The Director noted that a regional approach is necessary to ensure that regional market specificities are taken into account and that market monitoring is performed effectively as NRAs cannot substitute this given that their ambit of responsibilities is limited to national markets. Therefore, the Agency envisages establishing "regional desks" with 1 monitoring officer for each of the 5 regional areas for electricity and 5 regional areas for natural gas.

For TEN-E tasks the draft budget estimates 6 FTE.

The Director explained that the increase in staff numbers and the substantial expansion in the activities of the Agency require some addition to the resources available for central and support functions by 5 additional staff.

The BoR Chair presented the draft BoR opinion which supports the above proposal. The opinion underlines that the preliminary draft budget for 2015 of 16 558 587€ is justified notably in respect of the overall tasks of the Agency on the basis of the draft 2015 Work Programme outline, including the effective execution of its tasks under the TEN-E Regulation and REMIT. In particular, the opinion noted that in terms of human resources, as the Agency was only allocated 5 additional FTEs for the implementation of the TEN-E Regulation and no additional resources for REMIT, some activities envisaged in the 2014 Work Programme have been reprioritised and postponed to 2015. The draft opinion specifies that the Director's

estimate of the additional staff required is endorsed.

BoR Decision agreed: (D 6)

The BoR provided its opinion on the draft 2015 budget and the MSPP 2015-1017.

4.4. ITRE delegation visit to ACER

The Director reported on the latest agenda which was circulated. The ITRE Delegation is composed of the MEPs, Dr Romana Jordan, Mr. Giles Chichester and Mr Béla Kovács though not yet confirmed. The Political Groups Staff: Mr Gareth Goldsmith (ECR) and Mr Manlio Massei (NI) and from the ITRE Secretariat, Mr Hannes Kugi.

The agenda focuses on REMIT, infrastructure, ACER evaluation, IEM completion, 2030 and the Bridge to 2025. At the lunch following the Director's invitation 6 BoR members will participate. Furthermore, we shall organise a visit to the GTM workshop (which takes place on 19 March in LJU) and there will be session with the ACER staff.

4.5. BoR Roadmap

The Roadmap was circulated for information.

Market Monitoring

5. Market Integrity and Transparency

5.1. Information sharing between ACER and NRAs under REMIT

A cover note and the consultation paper were circulated. The Director explained that the Agency prepared a Discussion Paper, directed to the NRAs, on the sharing with NRAs of the information that the Agency receives in accordance with Article 7(1) and Article 8 of REMIT. The Discussion Paper included seven questions. As a result of the Discussion Paper, the Agency received, so far, four replies from: Ofgem, CRE, BNetzA and AEEG. In the cover note, a short overview of their replies was presented including on whether the information sharing mechanism be established by means of decision or by means of agreement.

The Director presented the paper which addresses the access by NRAs to the "relevant data" held by ACER. ACER and NRAs have developed concepts to link data to a Member State (market participants, point of delivery, and a number of criteria for national pools of data). The other issue under consideration is whether this would enter into force by virtue of a Director's decision or an agreement. The Director's preferable option is for an agreement to enter into force (for each NRA) as soon as it is signed. Failing to sign the agreement by a NRA does not mean that the NRA would not have access to the data but that the access requests will be treated on a case by case basis and may, therefore, be delayed.

Mr Zuleger in response underlined that the fundamental data availability is sorted out in the Commission's Implementing Acts on the records of transactions. Only in case the Implementing Acts should not provide for the reporting of fundamental data to NRAs, those data will be made available to NRAs by the Agency.

Conclusion:

The BoR discussed the draft agreement on information that the Agency receives in accordance with Article 7(1) and Article 8 of REMIT and its sharing with NRAs and concluded that the next AMIT WG on 9 April will finalise the few remaining issues (notably, the sharing of fundamental data and the use of SMARTS as well as the review clause). It will be subsequently finalised and circulated to the BoR in May for its signing.

5.2. BoR recommendation for the AMIT WG co-chair

BoR Decision agreed: (D 7)

The BoR Recommended Ms Clara Poletti (AEEG) as the co-chair of the AMIT WG. The Director will take utmost account of the BoR Recommendation in its decision on the appointment of the AMIT WG co-chair.

5.3. EC Implementing Acts

Mr Borchardt reported that the bilateral discussion with Member States on the draft implementing Acts continues, and the EC intends to present a new draft by the end of this month. The EC has also submitted an Impact Assessment on the IA Board. The EC plans the adoption of the Implementing Acts in June. Mr Borchardt thanked ACER on its contributions on the details to be reported that will be annexed to the Implementing Acts

5.4. Transaction Reporting User Manual for public consultation

Mr Zuleger presented this public consultation paper for an orientation discussion, in order that ACER starts the consultation shortly thereafter. This public consultation paper is intended to collect views from all parties interested in the implementation of REMIT (market participants, organised markets and other persons professionally arranging transactions, financial regulatory authorities, etc.) on the TRUM. ACER started the drafting last summer and we plan to seek comments from stakeholders at the beginning April. The Agency's proposal for the first release of the TRUM is attached as an annex to the consultation paper. The early public consultation in parallel with the comitology procedure of the draft Implementing Acts would enable the Agency to finalise the TRUM in parallel with the adoption of the Commission's Implementing Acts by June 2014.

5.5. Service Level Agreement on CEREMP

The Director and Mr Zuleger presented the Service legal agreement on Centralised European Registry for Energy Market Participants (CEREMP) which addresses the interactions between NRAs and ACER during the registration process (in order to enable the establishment and maintenance of the National Registers of Market Participants; to transmit registration data from National Registers of Market Participants to the European register of market participants; to enable the establishment and maintenance of the European Register of Market Participants; to enable NRAs to access data from the European Register of Market Participant). There are 2 alternative approaches. ACER provides the platform for registration at national level or a national software is used and data are reported to CEREMP.

BoR Decision agreed: (D 8)

The members took note and discussed the draft Service Legal Agreement on Centralised European Registry for Energy Market Participants (CEREMP) which is now ready for signature.

**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 gave an update. On Interoperability ENTSOG submitted the revised code in December to ACER. Following ACER's unconditional recommendation to EC in January 2014, the Commission is preparing for comitology and the draft proposal is under inter service consultation. The comitology meetings are scheduled for 28 April and 10-11 July. On tariffs, the ACER IIA will be shortly finalised. A meeting between ACER and EC was held on 5 March; the IIA will be shortly sent to EC.

Mr Hesseling remarked that the initial impact assessment and the justification paper will be sent out to the EC on Friday and will, subsequently, be published.

The work on the CAM network code amendment is on track. ENTSOG is expected to deliver by 2014.

Regarding the EC draft decision on the establishment of the annual priority list (which is now under consultation) this includes FGs rules for trading. Mr Boltz noted that ACER must still identify whether binding EU rules for the further harmonization of the design of capacity products and contracts as regards firmness, restrictions to allocation or secondary market are needed, taking into account both existing codes and those under development. The scoping phase is until Q2/2014. The first meeting of the expert Group took place on 27 January 2014. The main question is whether there is a need for Framework Guidelines Rules for Trading. The scoping will continue before reaching a final decision.

Regarding balancing, the code will apply as of 1 October 2015. A possible transitional period of 24 months as from 1 October 2015 to October 2017 is envisaged. The Madrid Forum encouraged NRAs and TSOs to consider early implementation projects. The ACER BAL TF and GRI coordination group will prepare for the Madrid Forum a timeline for early implementation as guidance for all involved parties but at the moment there are difficulties to find volunteers.

On congestion management implementation, the EC is preparing an interpretative note on CMP implementation issues (to be ready for the May Madrid Forum).

Mr Hesseling reported that the ACER congestion monitoring report was released on 28 February 2014 covering Q4 2014. The ACER CMP implementation monitoring report – which is a separate exercise from the congestion monitoring report and assesses whether all CMP provisions have been implemented in the MS - is planned for May/June following an analysis and evaluation of TSOs/NRAs responses.

Mr Borchardt informed the members that the Comitology meeting for 28 April will be postponed

6.2. GTM update & draft GTM structure

Mr Boltz presented the feedback from recent events including the 2nd ACER informal advisory panel meeting on 26 February 2014, with the participation of 14 experts. There is an overall support for the ongoing work, to discuss and analyse existing problems. There was also a discussion on specific topics.

Regarding FSR Gas Target Model Workshop on 13 March 2014, this was attended by academia, FSR sponsors, NRAs. Issues discussed included the staking out the goal of functioning gas wholesale markets; the status and update of the GTM pillars 1 and 2; the forward market functioning; the evidence from price correlations between markets; whether business requirements be met by current markets; and the market connection as a booster and / or replacement of functioning home markets.

Mr Boltz also reported that in the course of the GTM process, ACER distributed a questionnaire to suppliers, traders, and large end users of gas to explore the current status of gas forward markets and future requirements of stakeholders. He presented the first results from analysing the responses to that questionnaire and presented the preliminary results.

Mr Boltz presented the draft structure of the GTM.

The 2nd ACER GTM stakeholder workshop will be held on 19 March 2014 (Ljubljana) and the agenda was circulated to the BoR for information. Following the workshop we will invite written stakeholder comments.

6.3. Madrid Forum preparation

A draft agenda was discussed. Main topics include: on the first day: Future Challenges in the EU gas sector, including impact of Ukraine crisis on security of supply and market development in the EU; supply and demand balance in the EU gas sector; and developing an effective trading architecture for the EU internal market; the future of the Regional Initiatives; the review of progress on Gas Target Model implementation. The second day is devoted to infrastructure and network codes developments.

Lord Mogg suggested including the Green paper: "Energy Regulation: A Bridge to 2025" in the MF agenda.

7. Electricity

7.1. Oral update on the FG an NCs

Mr Crouch gave an update. A number of codes (CACM, Requirements for Generators and Demand connection) have been recommended to the EC by ACER since March 2013. These are currently with the Commission either for inter-service translations or for informal Member States' comments. The codes on Operational Security and Load Frequency Control and Reserves, have also been recommended by ACER to the EC for adoption since November 2013 and September 2013 (respectively) and are currently with the Commission. Key dates are the 10 and 11 April when the electricity cross border committee meetings are planned.

7.2. Preparation of ACER opinion on forwards network code

Mr Crouch presented an update: ENTSO-E confirmed they plan to resubmit the NC by the end of March and the ACER Recommendation will potentially be submitted to the May BoR. One pending issue is still under discussion on Art 34 of the code which provides that where the conditions/criteria for the evaluations of the financial instruments are defined and the process for the decision whether or not long-term transmission rights need to be allocated or not is defined. Although NRAs agreed to have a regional coordinated assessment, no consensus was reached for the geographical scope for the decision making process. The view expressed by some NRAs is that such decisions need to be done separately per bidding zone border by the NRAs on each side of the bidding zone border, which would be according to them the only “concerned” NRAs. On the contrary, the view of many other NRAs is that the decision should be done in a widely coordinated manner in capacity calculation regions. A regionally coordinated decision-making ensures that uncoordinated patchworks (transmission rights allocated or not) which may hamper market integration within a certain geographical area can be avoided. There are conflicting legal arguments and it seems unlikely that further legal review will help.

Mr Crouch invited the BoR members to consider whether such decisions are better made bilaterally or regionally. He also sought the BoR views on whether the default position should be to avoid proposing a modification to the code and to address this by the Commission at the comitology stage. Some of the issues perhaps need to be discussed by the EC’s legal service.

The Director noted that ACER will probably provide a qualified recommendation and it will be for the EC to take a view. We should try our best to propose an approach (including on the geographical scope for the decision making process) and give a steer to what is best in the ACER Recommendation without prejudice of course to the EC’s right to table its own proposal (and approach on this issue) at the Comitology stage.

BoR Decision agreed: (D 9)

The BoR took note of the update on ACER opinion on forwards network code, which will be finalised for submission to the May BoR.

7.3. ACER opinion on electricity balancing network code

The Director and Mr Crouch presented the draft ACER opinion on the electricity balancing network code submitted for the BoR formal Opinion. ACER recognises ENTSO-E efforts to align the NC to the FG and that it brings significant added value. However, in some areas it is not in line with the FG: the key issues include the central role of TSOs in integrating balancing markets: timelines are not respected and the code does not introduce a legally enforceable framework. The harmonisation and standardisation of key elements is not sufficient to achieve well-functioning competitive and integrated balancing markets. These concerns can be addressed within a period of a few months, with very limited impact of the process (assumed entry into force around Sep 2015).

The key amendments proposed relate to:

- (a) Reducing balancing needs with adequate incentives on parties;
- (b) Fostering competition amongst market participants in the balancing arrangements;
- (c) The efficiency of balancing actions performed by TSOs.

MR Borchardt saw the need to move forward on this issue. We should, in parallel to the adoption and implementation of this code, work on real balancing target model and pursue pilot projects.

BoR Decision agreed: (D 10)

The BoR gave by consensus (of the members present or represented) its favourable opinion on the ACER opinion on electricity balancing network code.

7.4. ACER opinion on the appropriate range of transmission charges paid by electricity producers

The Director presented this report which does not need a formal BOR opinion. An earlier draft has been presented at the December BoR, following which the EC has granted the green light for the postponement of the report until April. It was presented for a final round of discussions before it is adopted, in April.

The EU Regulation 838/2010 (on Guidelines relating to the inter-transmission system operator compensation mechanism) requires ACER to monitor the appropriateness of the ranges of G-charges, taking particular account of their impact on the financing of transmission capacity needed for Member States to achieve their targets for the promotion of energy from renewable sources and their impact on system users in general. Based on its G-charge monitoring activity and on the economic assessment of G-charges at national and transnational level, the Agency, in its report, provides its conclusions as to the appropriate range of G-charges for the period after 1 January 2015.

The Agency notes that G-charges should be cost-reflective, applied appropriately and efficiently and, to the extent possible, in a harmonised way across Europe. In particular, the Agency considers that: energy-based G-charges (€/MWh) shall not be used to recover infrastructure costs; and, therefore, except for recovering the costs of system losses and the costs related to ancillary services, where cost-reflective energy-based G-charges could provide efficient signals, energy-based G-charges should be set equal to 0€/MWh. The Agency considers it unnecessary to propose restrictions on cost-reflective power-based G-charges and on lump-sum G-charges. Each NRA should report to the Agency, by 31 July the level and structure of G-charges in its jurisdiction and the average G-charge value for the previous year; notify the Agency without delay about proposals (e.g. public consultations) or decisions taken to amend the national G-charging methodology. The proposed G-charge levels should be applied from 1 January 2015 to 31 December 2018.

Mr Gence-Creux noted that inevitably there will be changes at some jurisdictions as a result of this Opinion but a transitional period is introduced (of two years) for its implementation. In the context of the scoping exercise on tariffs the issue of G-charge and the need for further harmonisation should be further addressed but this is only envisaged for 2015. He suggested issuing the ACER opinion and continuing to work on this issue in the context of the scoping exercise.

BoR Decision agreed: (D 11)

The BoR discussed and took note of the draft ACER opinion on the appropriate range of transmission charges paid by electricity producers

7.5. Florence Forum preparation

The invitation for 20, 21 May has been issued but not the agenda. Mr Borchardt remarked that the EC envisages to start with an exchange of 2030 outlook, generation adequacy and flexibility (including balancing projects) plus regulatory and market aspects of demand side flexibility and system operation; to be followed by a discussion on network codes (CACM) and a session on infrastructure.

8. Regional Integration

8.1. Progress on ERI cross regional roadmaps

Mr Gence-Creux presented an update. On the day ahead after the launch of the North-West Europe region market coupling, South-West day-ahead market decided also to join in May.

On the intraday, PXs have asked again for a delay in the first step of the Early Start Agreement (ESA) which began on 17 January and was planned to be completed on 7 March. Instead there seems to be delay of few additional weeks and the EC will convene a high level group meeting on 2 April.

With regard to the balancing target model, ENTSO-E will organise a stakeholder group to follow the implementation of the pilot. He agreed with the EC and stakeholders that ACER and NRAs should steer the discussion with regard to the further elaboration of the target model for the balancing timeframe.

Last on the flow based market coupling a MOU was signed.

8.2. Progress on GRI

Mr Hesseling presented an update. Regarding the NW region, there is still no NRA volunteering to become Lead NRA; the final call is until 31 March. A possibility to consider is to have rotating Lead NRAs with fixed term; if still no candidate(s) step in, the NW region will be dissolved.

Regarding the composition and geographical scope of SSE region, a survey was launched by SSE Lead NRAs to collect views from NRAs in the region. There were different views about the convenience to reshape the region and whether it would help solve the current issues and different opinions on the main obstacles for further integration in the region. The early implementation of codes was widely acknowledged as a main priority. The RCC meeting is scheduled for 27 March to discuss results and agree on a common message and way forward.

Regarding the CAM Roadmap governance, there have been recent discussions with ENTSOG and PRISMA with a goal to find a way to fit in the new regulatory groups proposed by PRISMA within the current organisational arrangements in the CAM Roadmap. A proposal is being developed that will soon be submitted to ENTSOG and PRISMA. An update of CAM Roadmap will be given for the Madrid Forum (6-7 May).

Regarding the early implementation of network nodes, on balancing, the current state of play includes discussions with ENTSOG to consider the approach for monitoring early implementation of the balancing code. There seem to be common views by TSOs and NRAs on expected timelines for implementation and on most challenging parts of the code:

No formal administrative monitoring process will be set up (like CAM Roadmap) at this stage. The details of this monitoring framework will be defined over the next weeks.

Mr Hesseling reported on an internal survey launched to NRAs in GRI Coordination Group on 20 February. Nine responses were collected and the main results include that the responding NRAs seem to be generally satisfied with current way work is organised under the GRI Coordination group with some specific proposals by a few NRAs. The detailed results will be presented to NRAs at next GRI Coordination meeting.

Mr Thomadakis suggested considering how to involve the gas group of the Energy Community to the GRI process (South East).

Mr Borchardt responded that there is two-fold dimension. The first is how to keep the EnC involved and informed and the Commission fully supports this. The second is how to “institutionalize” their involvement. The latter should, in his view await the final report by Mr Buzek on the review of the EnC process.

9. Investment Challenge

European Network Planning and infrastructure challenge

9.1. Update on work in progress

ACER Recommendation on risk evaluation methodologies and on incentives for gas and electricity infrastructure projects.

The Director reported on the possible CBCA decisions which may be received by ACER in May in case NRAs do not agree. There will only be 3 months for ACER to deliver its decisions and this will involve quite intense work on those cases. In case ACER receives such requests, the Director invited the members to consider seconding (on an ad-hoc basis), for 2-3 months experts from their NRAs, to work with the Electricity and Gas Departments (subject to them not being amongst the countries involved in the cost allocation decision).

Mr Gence-Creux gave a presentation of the draft ACER Recommendation. Article 13 (1) of the TEN-Regulation requires NRAs to ensure that appropriate incentives are granted where a project promoter incurs higher risks for the development, construction, operation or maintenance of a project of common interest compared to the risks normally incurred by a comparable infrastructure project. The incentives shall ensure timely implementation of PCIs and commensurate with the level of specific risk of the project and the net positive impact provided by the project. The Regulation envisages that each NRA should submit to the Agency its methodology and the criteria used to evaluate investments in electricity and gas infrastructure projects and the higher risks incurred by them, where available. Under the Regulation, by 31 December 2013, which has been delayed, the Agency should facilitate the sharing of good practices and make recommendations regarding:

- (a) the incentives referred on the basis of a benchmarking of best practice by national regulatory authorities;
- (b) a common methodology to evaluate the incurred higher risks of investments in electricity and gas infrastructure projects.

The draft ACER Recommendation is therefore divided in 2 parts: The first addresses the risk evaluation methodology as well as the recommendation on common methodology for risk identification and risk assessment; the second part addresses the incentives and best

practices and should be considered as work in progress. From the NRAs' contributions the main conclusion is that a project-specific risk evaluation methodology currently does not exist as a best practice. In the draft Recommendation ACER seeks to propose a project specific evaluation. The idea is to have a "check list" approach for a NRA (or NRAs) to evaluate each project in order to have a joint approach to deal and assess the risks.

The next steps envisaged are that after the orientation discussion, ACER intends to have this finalised at the AEWG and then submit it to the BoR on 8 May.

BoR Decision agreed: (D 12)

The BoR had an orientation debate on the draft ACER Recommendation on risk evaluation methodologies and on incentives for gas and electricity infrastructure projects which will be submitted at the May BoR.

9.2. ACER Opinion on the national Ten Year Network Development Plans

The Director presented the draft ACER Opinion following a monitoring exercise with the input from NRAs on the consistency of national investment plans with the TYNDP 2012 (regarding electricity). The Agency identified 51 national components of transmission investments in the ENTSO-E TYNDP 2012, which are not included in national development plans for various reasons (because the national development plan was prepared before ENTSO-E TYNDP 2012; the investment is no longer included because it has been meanwhile commissioned or cancelled; or because the timespan of the national development plan is shorter than the one of ENTSO-E TYNDP 2012 etc.). The TYNDP is a biannual overview of the transmission development plans identified so that the network facilitates EU energy policy goals, while some countries have an annual frequency.

The Agency makes some recommendations including on the frequency of national development plans in order to allow for consistency of national development plans with the EU TYNDP.

Furthermore, the Agency identifies 24 national components of transmission investments in the ENTSO-E Regional Investment Plans 2012, which are not included in national development plans. The Agency identifies 11 TPPs which are included (or at least referred to) in national development plans.

The Agency also recommends a coding system (unique for each investment) is adopted in each national development plan and suggests the systematic publication of the specific information for each investment item in the national development plans as a consistent practice (this includes the commissioning date, the investment status; the increase of net transfer capacity, the cost).

BoR Decision agreed: (D 13)

The BoR provided a favourable opinion on the ACER Opinion on the national Ten Year Network Development Plans.

10. Implementation, Monitoring and Procedures

10.1. Oral update on current work

Mr Locquet gave an update: The AIMP WG Group met on 6th March. They discussed the MMR 2014 report skeleton (sent to them by ACER) as well as the timing for the preparation of the report and the next steps. The Group discussed the deadline for the MMR – which this year will be one month earlier - and the time by which NRAs can provide data. They also discussed the skeleton on what it should include. An update will be provided at the May BoR.

10.2. Update on work for the review of the ACER BoR Rules of Procedures

Mr Locquet reported that the PWS and the IMP WG Group had a first discussion on the basis of some preliminary suggestions from the ACER Legal Department. They decided to follow a two-step approach and prepare for the May BoR a note outlining the areas that need revision for an orientation discussion by the BoR. On the basis of the steer of the BoR, the PWS will then consider the specific amendments to the provisions.

Lord Mogg noted that the mandate of the AIMP WG was clear: on the basis of the experience acquired during the first years of the BoR operation, to consider whether there are additional provisions of the BoR Rules that need to be updated and present a proposal to the BoR. In this context, he stressed that we should indeed avoid rewriting the rules but rather focus on the areas on which we have noticed problems, are outdated and which would deserve a revision in the light of the experience of the BoR operation.

Part B: Items for Information only and not for an oral update / discussion

11. Others

11.1. Next Meetings

A calendar of the meetings was circulated. The September BoR meeting will be held in Rome instead of Ljubljana given the Italian Presidency.

11.2. AOB

The Decision of the Administrative Board on the appointment of Mr Fernando Hernandez as the new Spanish member of the BoR and Ms Esther Espeja as the new Spanish Alternate of the BoR was circulated.