

51st ACER Board of Regulators Meeting
Tuesday, 13 October 2015, 14.00-18.30
CNMC, Calle Alcalá 47, 28014 Madrid (Spain)

Minutes final

Member States	Name ¹	Member States	Name
Austria (E-Control)	M: Walter Boltz (BoR Vice Chair) A: Dietmar Preinstorfer	Italy (AEEGSI)	M: Guido Bortoni O: Ilaria Galimberti
Belgium (CREG)	M: Koen Locquet O: Geert Van Hauwermeiren	Latvia (PUC)	O: Lija Makare
Bulgaria (SEWRC)	Excused	Lithuania (Network CodeC)	
Croatia (HERA)	O: Nataša Mihajlović	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	Excused	Malta (REWS)	Excused
Czech Republic (ERO)	A: Martina Krcova O: Martin Sik	Netherlands (ACM)	A: Remko Bos O: Maarten Klijn
Denmark (DERA)	O: Sigrún Eyjólfsdóttir	Poland (URE)	A: Malgorzata Kozak
Estonia (ECA)	A: Külli Haab	Portugal (ERSE)	A: Alexandre Silva Santos
Finland (EV)	Excused	Romania (ANRE)	Excused
France (CRE)	A: Héléne Gassin O: Sabine Hinz	Slovakia (RONI)	Excused
Germany (BNetzA)	A: Annegret Groebel	Slovenia (AGEN-RS)	Excused
Greece (RAE)	Excused	Spain (CNMC)	M: Fernando Hernández O: Gema Rico
Hungary (HEA)	A: Attila Nyikos O: Adam Krinszki	Sweden (Ei)	A: Caroline Törnquist
Ireland (CER)	M: Garrett Blaney	United Kingdom (Ofgem)	M: John Mogg (BoR Chair) A: Frances Warburton

ACER	Alberto Pototschnig, Dennis Hesseling, Fay Geitona,
European Commission	Klaus-Dieter Borchardt
CEER	Natalie McCoy

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

Main conclusions from the meeting:
1. <i>The BoR received an update from the EC on the High Level Conference and the Florence Forum held on 8 and 9 October as well as the new Energy Market design consultation.</i>
2. <i>The BoR received an update from the Director on recent developments including the participation of third countries to ACER.</i>
3. <i>The BoR had an orientation discussion on the outcomes of the Summit and the next steps on the basis of a paper by the Chair. Members welcomed the Chair's paper on the outcomes and next steps of the Summit as a basis for further development as appropriate of the detailed practical arrangements. These would ensure that problems identified are addressed in a future cooperation process. To do so the Chair will organise a meeting with the AWGs chairs and any other member or alternate who wishes to be involved.</i>
4. <i>The members discussed the 2017 ACER WP outline.</i>
5. <i>The BoR did not provide a favourable opinion on the draft ACER Recommendation on the network code for harmonised transmission tariff structures for gas.</i>
6. <i>The BoR provided its favourable opinion by consensus (of the members present or represented) on the draft ACER Recommendation on the amendment to the network code on capacity allocation mechanisms in gas transmission systems.</i>
7. <i>The BoR provided by consensus (of the members present or represented) its favourable opinion on the draft ACER Opinion on the draft Ten-Year Network Development Plan 2015 submitted by ENTSOG.</i>
8. <i>The BoR took note of the draft ACER Opinion on the ENTSOG template on interconnection agreements.</i>
9. <i>The BoR provided its favourable opinion by consensus (of the members present or represented) on the draft ACER Opinion on ENTSO-E annual report.</i>
10. <i>The BoR received an update on REMIT implementation; had a discussion on the template of the "Agreement on data sharing for cooperation at regional level under Articles 7(1) and 16(1) of REMIT". The BoR had a discussion on the draft MoU for administrative arrangements between ACER and NRAs for market monitoring under REMIT. An electronic procedure for its endorsement will be launched after the BoR meeting.</i>
11. <i>The BoR endorsed the (revised) Market Monitoring Handbook (Article 15 of REMIT).</i>
12. <i>Members agreed to the use of the electronic procedure for the provision of the BoR opinion on the 2 ACER Opinions on the 2nd Union PCI list (for electricity and Gas).</i>
13. <i>The BoR did not provide its favourable opinion on the draft ACER Recommendation on good practices for the treatment of the investment requests including cross border cost allocation requests for electricity and gas projects of common interest.</i>
14. <i>The BoR members discussed the next edition of the joint ACER-CEER Market Monitoring Report.</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 50th BoR meeting

BoR Decision agreed: (D 2)

The 50th BoR minutes were approved.

2. Update from the Commission and the Director

2.1. Update on recent developments

- EC

Mr Borchardt provided a report on the High-Level Conference and the Florence Forum held on 8 and 9 October. There was an interesting discussion on future challenges to be addressed in the new Energy Market Design including on flexibility with a lot of convergence; there was also an interesting discussion on capacity mechanisms. During the Florence Forum a number of issues were discussed including the progress on the development of the network codes. The outcome of the one day Forum was remarkably rich including the discussion on the governance issues. The EC's consultation on the new energy market design received 308 responses which seem extremely interesting. The joint ACER and CEER contribution was welcomed and Mr Borchardt thanked the regulators for their contribution. The EC has set up the dates for the next Florence Forum on 3, 4 March 2016. The EC is keen on testing their ideas on the new legislative proposals to address the new Energy Market Design, given that this will be the last chance ahead of their Impact Assessment to be issued by June (2016). There are also elements beyond the market design and perhaps the amendments of some network codes will be necessary but the EC still need to crystallise their ideas on how these new proposals covering the new Energy Market Design and the retail markets would be reflected in legislation.

The SoS consultation received 136 replies. The EC is currently working on the revision of the SoS Gas Regulation and has submitted to their Impact Assessment Board a second submission to accommodate their recommendations; following this the Commission will commence their inter-service consultation. The EC plans to adopt the revision of the SoS Regulation towards the end of January (2016) as part of the overall winter (legislative) package (which will comprise a revised Security of Gas Supply Regulation, an EU strategy for LNG and the Storage Strategy Paper).

He then provided an update on the latest developments on the Russia-Ukraine dialogue.

Mr Borchardt also informed the members about the launch the new Infrastructure Forum on 9 and 10 November in Copenhagen. The agenda is now being finalised and will shortly be released. The first Infrastructure Forum will be more in the format of a conference; the next Forum will take place in June (2016). In terms of the audience, Mr Borchardt noted that in addition to the usual attendees of the Electricity and Gas Regulatory Fora, project promoters, companies and investors, EIB, EBRD are also invited.

Lord Mogg reported on his appearance at the Directors General meeting on 9 October following an invitation by the Luxembourg Presidency.

- ACER

The Director reported on the recent release of the joint ACER-CEER response on the Electricity Market Design consultation as well as the outcome of the electronic Procedure. The joint ACER-CEER response to the electricity market design consultation was endorsed

by the BoR and submitted to the EC on 7 October. It was made available on the ACER and CEER websites on 8 October.

The Director reported on the Bridge to 2025 one year anniversary event which took place on 24 September in Brussels. Around 180 participants attended in person (with about a further 100 logging in to the live stream throughout the day). The participants represented a wide range of stakeholders.

Regarding the third countries participation in ACER, on 6 October, the Energy Community Secretariat (EnCS), ACER and the Energy Community Regulatory Board (ECRB) met in Ljubljana. They discussed the participation of Energy Community in the Working Groups of the Agency.

The Director informed the BoR that he sent NVE a draft MoU between NVE and the Agency regarding NVE's participation in (all the four) Agency's Working Groups and the REMIT Coordination Group (as observers). In similar terms, the Director also sent to EICom a draft MoU regarding EICom's participation in the Agency's Electricity Working Group (as observers). There are strict provisions on confidentiality included in the MoUs.

The Director informed Members that the Agency's Opinion on the URE peer review request was adopted and published on 23 September.

The Director informed Members that following the BoR approval of the 2016 Work Programme by Electronic Procedure which closed on Wednesday 23 September, the Administrative Board adopted the Work Programme. This was sent to the European Institutions and published on the ACER website on 30 September.

3. ACER cross-sectoral activities

3.1. Report on BoR Summit & follow up actions

Lord Mogg introduced the discussions and the follow up of the Summit. There are 2 documents circulated: A report of the Summit prepared by the Secretariat which highlights the key topics of discussion. A paper from the Chair which sets out the next steps and recommendations for further action. The Chair noted there has been a rich debate which recognised the essence of NRAs collaboration within ACER and its achievements but also the need for improvements. Trust and confidence are key to move in the direction of closer collaboration which will be needed in a more integrated market. The Chair recalled a number of broad principles and objectives on which the future arrangements and action must be based as follows:

First, the need to safeguard the present complementarity of European and national-level regulatory activities and demonstrate the usefulness and strengths of the present model.

Second, the need to ensure that any differences of opinion can be minimised in respect of the objectives, roles and responsibilities of the Director, the BoR, the AWGs and the Agency as a whole.

Third, the need to maximise the input and expertise of all NRAs (particularly those with fewer resources) and their opportunity to participate fully in the work of the BoR and AWGs.

Fourth, the need to recognise and seek to counteract the risk posed by an accelerating erosion of NRAs' independence.

Finally, the Chair noted the importance to implement any changes and improvements that are agreed.

The Chair suggested developing two strands for improvements: The first must cover how best to intensify our internal cooperative arrangements which also relate to some issues of internal governance; these intend to address the remaining concerns about the roles of, and the cooperation between, the BoR, AWGs and the Director from a practical (and not legal) perspective, as well as improvements to the preparation and planning of meetings. The second would address topics which relate to wider institutional issues, including the risk of erosion of independence of NRAs due to resources' constraints and the external communication of ACER's work and NRAs contributions.

Lord Mogg thanked the members for the orientation debate. He concluded that the members welcomed the Chair's paper on the outcomes and next steps of the Summit as a basis for further development as appropriate of the detailed practical arrangements. The Chair made the following concluding remarks:

- We should not overlook the achievements of the NRAs cooperation within ACER so far and the progress made, although we must recognise the need for improvements. Any potential improvements should, nonetheless, not understate the successes and best practises we have developed, but rather build on them.
- We must recognise that there have been problems and difficulties in the past and these must be treated with the right governance and working arrangements. These should take account of the diversity and different positions of the BoR members which also reflect ACER's plurality. Where we identify problems, we should focus on implementing improvements effectively.
- The main aspects regarding the interaction between the Director, AWGs and the BoR are addressed in pages 3 and 4 of the Chair's note. The members noted that the AWGs RoP are deficient regarding the role of AWGs and need to be revised to reflect their dual role vis-a-vis the Director and the BoR. The details of the cooperative arrangements need to be developed further in more detail to ensure a smooth cooperation.
- It is our task as regulators to consolidate the Agency's internal governance and working arrangements.
- The internal operations were debated. The frequency of meetings could not be changed fundamentally (for example to a quarterly basis) given the number of decisions which need to be taken. Other internal operations and improvements (related to the preparation of meetings and better communication of their outcomes) need to be implemented. Equally actions related to the external communication of NRAs contributions and other institutional issues such as independence must be further pursued. Those aspects of the paper not discussed are treated as accepted given that members did not raise specific comments or concerns.
- Regarding the next steps, the proposals have been enriched by the orientation debate and now need to be translated into practical cooperative arrangements and detailed action. Whilst the paper was welcomed there are, nonetheless, practical issues and arrangements that need to be developed to ensure a future cooperation process which addresses any problems identified. We should first identify the problems before seeking solutions. To do so the Chair will organise a meeting with the AWG Chairs and any other member or alternate who wishes to be involved. This *ad-hoc* process group will discuss further the lessons learned and the problems identified and try to seek solutions and actions from a practical and not a legal perspective. Those would need to be reflected in the working arrangements and

processes and be captured, where appropriate, in the RoP and/or in codes of conduct to ensure clarity in our cooperative and working arrangements.

3.2. Respect of the confidentiality arrangements by BoR members

Lord Mogg and the Director reiterated the need to respect the confidentiality provisions as specified in the BoR RoP and marked their disappointment about the appearance of the outcome of the URE peer review request in the media despite the Director's request at the BoR that press activity be held until the formal adoption of the Opinion by the Agency. The relevant provisions of the BoR rules of procedure must be respected. Mr Boltz had proposed creating a "Panel of honour / Court of honour" which at least officially condemns violations and publishes its findings. The Chair invited the members to respect the rules on confidentiality and under no circumstances reveal the draft acts of ACER before their formal adoption and release.

3.3. ACER 2017 Work Programme Outline

The Director presented the preliminary draft outline of the 2017 work programme for discussion. The content of this preliminary draft outline will serve as the basis for the preparation of the Annual Work Programme that will be submitted to the European Commission, as part of the Single Programming Document (SPD), by 31 January 2016. Since the Agency's budget for 2016 has inevitably not yet been approved, and the draft budget for 2017 is also not yet known, the final list of deliverables and tasks listed in this draft will depend on:

- (a) the Agency's budget for 2016 (the scope of tasks in 2017 will in part depend on those performed in 2016) and
- (b) the preliminary draft budget for 2017, which will only be submitted by the Director by 15 February 2016 and approved by the Administrative Board by 31 March 2016.

The foreseen process to have the work programme ready for inclusion in the Single Programming Document is to consult on the 2017 WP with stakeholders in November, following discussion of the outline at the October BoR. In December, the work programme will be brought to the BoR for endorsement. The formal adoption process as described in the ACER Regulation will apply as normal in the period June to September 2016.

The outline includes 59 deliverables for 2017 under eight headings: (1) Framework Guidelines and network codes; (2) Gas Regional Initiatives; (3) Internal Energy Market monitoring, cross-sectoral; (4) TSO cooperation; (5) guidelines for trans-European energy infrastructure; (6) REMIT; (7) deliverables subject to request or specific conditions; and (8) Agency's own initiatives.

An outline of the Work Programme will be issued to all interested parties at a public workshop to be held in Ljubljana on 5 November.

Ms Groebel noted that it is too early to define the areas of work for 2017 since the year 2016 has not started and that will evidently impact on the quality of the outline. She sought clarifications on this process and the normal procedure for the adoption of the WP as defined in the ACER Regulation.

The Director mentioned that he understands that the draft must be without prejudice to the normal process for the adoption of the WP which starts with the Director's proposal in June. Of course this process will also help with the preparation of the draft budget (in February).

Mr Borchardt noted that it is likely that the single planning document would replace the proceedings for the Work Programme as defined in the ACER Regulation. The EC will clarify the legal aspects.

Completion of the Internal Energy Market

Update on FGs and Network Codes

4. Gas

4.1. Update on FGs, Network Codes and other work

Mr Boltz provided an update to the BoR on recent changes to the TF chair. Mr Johannes Heidelberger has stepped down as co-chair of the Interoperability Task Force. Mr Luis Manuel Schultz has withdrawn his candidature and a new call for candidates has been issued to the AGWG.

He then presented the draft agenda for the Madrid Forum and the respective (ACER) presentations.

Mr Boltz provided an update on booking platforms and the Member States and pilot projects per booking platforms. We have assessed compliance on the different aspects on the basis of the required functionality being available in the production environment.

Mr Boltz then presented the work plan on balancing for 2015. By 1st October large part of Europe will be compliant, although a number of them by means of a transitional period or interim measures. A high number of Member States report early or timely implementation and there is an improvement compared to last year's implementation plans. However, there are also a number of cases where outstanding issues/slow progress could undermine timely implementation of effective measures. Where interim measures are being implemented, the level of information provided in most responses suggests that more work is needed to ensure that sufficiently detailed plans are in place on how these measures will work in practice. Member States implementing interim measures should also plan for how a timely transition will be conducted. A joint ACER-ENTSOG workshop will take place on 17 November 2015. For 2016, ACER and ENTSOG will jointly collect data for the first monitoring exercise after the implementation deadline of October 2015.

4.2. ACER Recommendation on the harmonisation of gas transmission tariffs Network Code

Mr Boltz presented the background. A draft Agency Recommendation on the harmonisation of gas transmission tariffs Network Code was circulated for BoR Opinion. The proposal reflects some changes proposed to the code but not on the methodology as such. Mr Boltz presented the main amendments proposed.

The Director presented the state of play as there have also been comments about the process. ACER started with the FGs providing for 4 methodologies and 2 variants, the code prepared by ENTSOG provided for 5 and the High Level Meeting decided on 2 standard

reference price methodologies, given that this is a code about harmonisation of tariff structures. In case TSOs/NRAs intend to apply an alternative reference price methodology the assessment of the NRAs - and subsequently of the Agency - should focus on the comparison with the more "appropriate" standard reference price methodology for the purpose. Otherwise the alternative reference price methodology would always come out as the better one.

There was a discussion under which conditions an alternative methodology can be used. The version proposed has specific criteria to be further elaborated in the Guidance to follow within a reasonable timeframe. The proposal balances the need for harmonisation with recognition of the national specificities. We are now at a stage which lasted 3 or more years. The process has not been optimal but the *ad-hoc* process was used only after the normal process was exhausted.

BoR Decision agreed: (D 3)

The BoR did not provide its favourable opinion on the draft ACER Recommendation on the network code for harmonised transmission tariff structures for gas.

4.3. Incremental proposal

The Director and Mr Boltz presented the draft amendment proposal circulated for the BoR opinion (along with the Evaluation of Responses (EoR) which was circulated for information). The Director presented this for a formal opinion. The evaluation of responses document summarises the changes made to the Network Code CAM on the basis of the comments received after this second consultation from 17 July to 31 August 2015. ACER carried out two public consultations on the CAM amendment in February and in August. Stakeholders have highlighted two main areas of concern: The process for running an incremental capacity project was considered unclear and too complex; allocation mechanisms different from the regular CAM auction are necessary in some circumstances. The conditions to allow those alternative mechanisms have to remain simple and workable. ACER took these comments into account and proposed simplified provisions. The Tariffs Network Code made a modification of the auction calendar necessary. Stakeholders are now broadly supportive and the Agency can recommend the adoption of the amendment.

Mr Boltz presented the key elements of the proposal in the light of the comments received: The process has been simplified: Every two years, after the yearly auctions, a demand assessment has to be carried out potentially leading to an incremental procedure. A yearly incremental process can also be launched at the initiative of TSOs. In all cases, incremental capacity should be allocated at the same time as existing capacity (annual auctions). The public consultation is now part of the design phase so stakeholders can participate and be informed of the relevant details of preliminary studies (e.g. project design, capacity, charging, terms of access). The level of transparency has been improved. Regarding how to use alternative allocation mechanisms, in the previous proposal, alternative CAM were allowed only after the default CAM auction and economic test had failed. The new text is more flexible. An alternative CAM can be designed and used at project level when specific criteria are met. Last, adaptation of the auction calendar to implement the future tariff Network Code has been proposed.

BoR Decision agreed: (D 4)

The BoR provided its favourable opinion on the draft ACER Recommendation on the amendment to the network code on capacity allocation mechanisms in gas transmission systems by consensus (of the members present or represented).

4.4. ACER opinion on ENTSOG TYNDP 2015

The Director and Mr Boltz presented the draft Agency Opinion on the ENTSOG TYNDP 2015 submitted for BoR Opinion. ENTSOG submitted its draft TYNDP 2015 to the Agency on 23 July 2015. The draft Opinion invites ENTSOG to properly consider all stakeholder comments received via all channels in order to increase public interest in the development of the TYNDP and increase transparency. The Agency recommends that ENTSOG releases the final TYNDP only after duly considering stakeholder feedback and the Agency's Opinion on the TYNDP. Other suggestions include, *inter alia*, ensuring that cost information is submitted to ENTSOG and included in future TYNDPs, as already done in the electricity TYNDP. The Agency also suggests that, for each TYNDP project, relevant reference cost value(s) be published by ENTSOG as well as the development of a robust methodology for the sufficient monetisation of all benefits expected to be realised by the projects. The Agency also invites ENTSOG to consider the merits of a regional approach towards the definition of the most relevant scenarios for the assessment of a given project, both in terms of flow patterns and infrastructure scenarios. The Agency recommends including in future TYNDPs a grouping of projects by maturity level.

BoR Decision agreed: (D 5)

The BoR provided its favourable opinion by consensus (of the members present or represented) on the draft ACER Opinion on the draft Ten-Year Network Development Plan 2015 submitted by ENTSOG.

4.5. ACER opinion on the ENTSOG template on interconnection agreements

The Director presented the draft ACER Opinion on the ENTSOG draft interconnection agreement template (for default terms and conditions) for final discussion. Pursuant to Article 5(2) of the Interoperability Network Code, the Agency shall provide an Opinion on the ENTSOG template by 31 October 2015, having regard to the opinions of any NRA on the compliance of the template with national law. The draft Agency Opinion welcomes the submission and publication of the draft interconnection agreement template, which is expected to facilitate the uniform application of the default rules contained in the Interoperability Network Code and make interconnection as predictable, timely, and reasonably priced as possible. The template cannot be seen as a complete interconnection agreement. The Agency moreover recommends that the guidance to the application of the default rules of Articles 6 to 10 of the Interoperability Network Code is complemented by reference to current best practices of interconnection. To that end, the Agency suggests that the Guidance to the application of the default rules is published in a separate form, along with samples of existing interconnection agreements which are identified as best practices in Member States. The Agency stresses the importance of data publication of the terms and conditions covered by such interconnection agreement, as required by the Interoperability Network Code, for the sake of reinforcing transparency and cooperation between adjacent transmission system operators.

BoR Decision agreed: (D 6)

The BoR took note of the draft ACER Opinion on the ENTSOG template on interconnection agreement.

5. Electricity

5.1. Update on FGs, Network Codes and other work

Mr Hernandez provided an update on the overall planning and status of the (electricity) Network codes.

On the Forward Capacity Allocation Network Code the vote in the Comitology Committee is expected by the end of October and on the Demand Connection Code, the vote at the Comitology Committee is expected on 15-16 October 2015.

5.2. Opinion on ENTSO-E's annual report

The Director presented the draft Agency Opinion on the ENTSO-E Annual Report 2014 which was circulated to the BoR for its formal opinion. The draft Opinion finds that the ENTSO-E Annual Report 2014 covers all areas of ENTSO-E's activities but it is also important to inform about what has been realised. With regard to the ENTSO-E's Transparency Platform, the Agency welcomes efforts to ensure that data providers and ENTSO-E work constantly to improve the processes and systems to ensure timely and consistent publication of data, with regular maintenance fixes implemented as required, but notes that further work is needed in particular on guaranteeing an adequate data quality level. The Agency encourages ENTSO-E to gather best practices from the TSOs in the R&D encouraging regulatory frameworks, summarize the advantages and drawbacks of individual frameworks and come up with suggestions for future framework developments.

BoR Decision agreed: (D 7)

The BoR provided its favourable opinion by consensus (of the members present or represented) on the ENTSO-E annual report.

Market Monitoring

6. Market Integrity and Transparency

6.1. Update on REMIT implementation

The Director reported on latest developments. Data reporting under the EU Regulation on wholesale energy market integrity and transparency (REMIT) started on Wednesday 7 October. By 12 October 2015 at 08:45, 29 RRM's out of the registered 33 RRM's have started with the submission of data. These RRM's submitted more than 22,000 files including more than 65,000 trades and 1,700,000 orders, for a total of over 2.3 million records. Therefore, it currently looks like the Agency is heading to around 1 million records of transactions, including orders to trades, per day. Over the first three days of data collection, 16 RRM's achieved a success rate of at least 90%, reporting 1.3 million records.

For a large pan-European IT project of this scale and taking into account the circumstances and resource constraints under which the Agency had to launch it, there were surprisingly only little hiccups that some reporting parties had to deal with. The transaction reporting from RRM's seems to work well and there are only some delays in the issuing of receipts which should be sorted out within the following days. But these are minor problems which are possible in the normal course of business and were anticipated by the Agency. They are more likely to happen at the early stage of a new reporting regime like the REMIT

transaction reporting. The Agency, together with the National Regulatory Authorities closely observe the progress.

Lord Mogg congratulated the Director and the REMIT team for this achievement.

The Director also reported that at the moment a handful of NRAs have requested to have access to the ACER system for registration.

6.2. Template of “Agreement on data sharing for cooperation at regional level under Articles 7(1) and 16(1) of REMIT”

Ms Groebel informed that a draft template agreement for data sharing was circulated for discussion. It is important for the NRAs to use and also for ACER to keep track of data sharing at this level. ACER has standardised data sharing agreements. The template stipulates that the purpose of the Agreement is to provide the principles for the cooperation between the Parties, according to the respective Articles of the MoU between the Agency and NRAs, on the sharing of information under REMIT. It doesn't create additional responsibilities or amend existing legislation. The template can be used for both ad hoc and continuous data sharing arrangements. The template also stipulates that data shared must be treated in accordance with the REMIT Information Security Policy as well as the security rules set out in the User Manual. The template also requires the parties to agree how disputes between the parties (i.e. under which law and in which courts) are resolved.

6.3. Update on MoU for administrative arrangements between ACER and NRAs for market monitoring under REMIT

Ms Groebel reported on the preparations of the MoU. The MoU will be sent for a written procedure for endorsement after the BoR. The Director clarified that its endorsement is important but also that each and every NRA will have to sign it. The MoU for administrative arrangements between the Agency and NRAs concerns cooperation and coordination of market monitoring under REMIT. The purpose of the MoU is to set out the procedures that the Agency and the NRAs intend to follow in carrying out their complementary functions under REMIT. The MoU sets out that cooperation between the Agency and NRAs based on the principles of distribution of powers and mutual collaboration. In the MoU there are articles covering:

- Cooperation on market monitoring.
- Cooperation at Union, regional and national level.
- Notifications by NRAs to the Agency of suspected breaches of REMIT.
- Requests by the Agency to NRAs to supply information related to a suspected breach of REMIT.
- Requests by the Agency to NRAs to commence investigations of a suspected breach of REMIT.
- Establishment and coordination of investigatory groups by the Agency.
- General procedures for the cooperation, and
- Public communication.

The MoU also deals with professional secrecy and includes an annex on the terms and conditions of use of the Case Management Tool.

BoR Decision agreed: (D 8)

The BoR agreed to have an electronic procedure for the endorsement of the MoU after the BoR meeting. Subsequently, it would need to be signed by each NRA.

6.4. Market Monitoring Handbook

Ms Groebel presented the draft Monitoring Handbook for endorsement. The new chapter for the Market Monitoring Handbook covers breaches of registration obligations (Article 9 of REMIT) and proposed amendments to chapter 3.1 “communication strategy; notifications by PPATs” (Article 15 of REMIT). The new chapter addresses which market participants have to register under the Implementing Regulation and when they must register. It also addresses the expected typical case lifecycle of potential Article 9 breaches with the first stage on surveillance, review, pre-investigation; the second stage of investigations; the third stage of enforcement; and the fourth stage of evaluation. The NRAs and ACER should ensure that there is a follow-up on cases, particularly in those situations that may create precedent for future investigations and actions. Subsection 3.1 defines when Persons Professionally Arranging Transactions (PPATs – mostly organised market places and brokers) should notify the NRAs and ACER and identifies the scope of the information to be included in the Suspicious Transaction Reports (STRs). The section also specifies that ACER may carry out a cross-border impact assessment of suspicious trades reported and notify other affected NRAs.

BoR Decision agreed: (D 9)

The BoR endorsed the revised Market Monitoring Handbook.

7. Infrastructure Challenge

7.1. ACER Opinion on the 2nd PCI selection (Electricity only)

The Director withdrew his proposal for a draft Opinion of the Agency on the draft regional list of proposed electricity PCI 2015 (which has been initially circulated for the BoR’s formal Opinion). He explained that since the EC has now formally submitted the draft PCI list for gas, on which the Agency is also required to provide its Opinion by the end of October, the draft ACER Opinion on the Gas list is also being prepared. Therefore, the Director will submit both ACER Opinions for a BoR opinion through Electronic Procedure (subject to the BoR agreement). The Director also informed the BoR that he intends to reflect some of the aspects of the (current draft) Opinion on Electricity which relate to the process and also concern the gas PCI lists process in a (joint) cover letter. This seems more appropriate given that whilst it is useful to register with the EC those aspects covering the process, they fall outside the scope of the ACER Opinion(s) on the draft regional lists which cover (in accordance with the TEN-E Regulation), in particular, the consistent application of the criteria and the cost-benefit analysis across the regions.

Lord Mogg invited the members to agree on the use of the electronic procedure on the 2 Opinions on the PCI lists.

BoR Decision agreed: (D 10)

BoR members agreed to the use of the electronic procedure for the provision of the BoR opinion on the 2 ACER opinions on the 2nd Union PCI list (for electricity and Gas).

7.2. Next steps for the preparation of the ACER Opinion on the 2nd PCI selection (Gas)

See item (7.1 above).

7.3. ACER Recommendation on CBCA

The Director presented the draft Recommendation on good practice for the treatment of investment requests including cross border cost allocation. This draft Recommendation revises and completes the Recommendation 07/2013 on CBCA taking into account the experience gained with the investment requests for the PCIs included in the first Union list. He also presented the background of the discussions on a key issue about compensation. This should be provided if at least one Member State hosting the project is deemed to face a net negative impact. In such a case, unless the NRAs agree otherwise, the aim of the cross-border cost allocation should be to compensate the net negative impact in the relevant Member States, unless a proper justification for a higher compensation is provided. The Director proposed and reflected in the draft Recommendation that compensation might also be considered if at least one Member State hosting the project is deemed to have a minimal net positive impact compared to other Member States so as to result in a particularly uneven distribution of the net positive impact among Member States. In essence, the NRAs have the discretion to justify their approach as the Director explained. But if the decision came to ACER, this is the approach to be applied by ACER.

The members provided comments. The Director in response stated that the Recommendation related to the CBCA decisions to be adopted by the NRAs or the Agency, that the CBCA process is a “zero-sum game” and, therefore, the counter-posing interest should guarantee that there is no overcompensation. Moreover, Regulation (EU) No 347/2013 aims at promoting investments and the CBCA is one of the tools for this purpose. If hosting Member States facing negative net benefits were only compensated up to the point when they become indifferent (zero net benefits), they would be little interest in pursuing the project.

BoR Decision agreed: (D 11)

The BoR did not provide its favourable opinion on the draft ACER Recommendation on good practices for the treatment of the investment requests including cross border cost allocation requests for electricity and gas projects of common interest.

7.4. ITC monitoring report

The Director presented the draft report to the EC on the implementation of the ITC (Inter-TSO compensation) mechanism in 2014 which was circulated to the BoR for discussion. The ITC mechanism was implemented on 3 March 2011 and the Agency is required by the Regulation (EU) 838/2010 to prepare a yearly report on its implementation.

The report described the Agency's review process, presents the Agency's findings on the alignment of the ITC implementation in 2014 with the regulation and provides concluding remarks.

The BoR took note of the ITC report.

8. Implementation, Monitoring and Procedures

8.1. Oral update on AIMP WG

Mr Locquet provided an update on the current activities of the AIMP group which met on 29, 30 September. Under the CACM different legal questions are addressed by the PWS.

8.2. ACER and CEER joint Market Monitoring report

Mr Locquet informed the BoR that a draft MMR is circulated to the BoR for discussion. The AIMP WG had discussed the draft chapters of the report on 29 September. The existing chapters are: Consumers, Gas Wholesale, Electricity Wholesale and Retail. For each chapter some conclusions and recommendations are provided.

Ms Groebel will send her comments on 2 issues regarding the report and sought clarifications on when the report will be finalised. The Director reported that the report is now being finalised. While he has reviewed all the chapters he has not yet reviewed the consumer protection chapter which had been prepared by the CEER. The report is now getting to the final stage and any comments need to be sent to the Director as soon as possible. Mr Locquet clarified that the consumer protection chapter is submitted for the GA approval at the CEER GA the following day.

The Director informed the BoR that the report will be presented at the EP ITRE Committee on 30 November in the afternoon and we plan the launch event just before that.

Outcome of the BoR Electronic Procedure for the approval of the Agency's Work Programme for 2016

The BoR took note of the outcome of the Electronic Procedure for the approval of the Agency's Work Programme for 2016. The Board of Regulators of the Agency provided its approval of the ACER Work Programme 2016 on 23 September 2015 by consensus of those participating in the electronic procedure.