

74th ACER Board of Regulators Meeting
Thursday, 3 May 2018 and Friday 4 May
ACER premises, Trg Republike 3, 1000 Ljubljana

Minutes (final)

Member States	Name ^[1]	Member States	Name
Austria (E-Control)	M: Wolfgang Urbantschitsch	Italy (ARERA)	M: Clara Poletti (BoR Vice-Chair) A: Francesco Cariello O: Ilaria Galimberti
Belgium (CREG)	M: Marie-Pierre Fauconnier O: Geert Van Hauwermeiren	Latvia (PUC)	M: Rolands Irklis O: Lija Makare
Bulgaria (EWRC)	A: Evgenia Haritonova	Lithuania (NCC)	M: Inga Žilienė
Croatia (HERA)	A: Sonja Tomašić Škevin	Luxemburg (ILR)	M: Camille Hierzig
Cyprus (CERA)	M: Andreas Poulikkas	Malta (REWS)	A: Phyllis Micallef
Czech Republic (ERO)	A: Martin Sik	Netherlands (ACM)	A: Remko Bos
Denmark (DERA)	M: Finn Dehlbæk	Poland (URE)	A: Małgorzata Kozak
Estonia (ECA)	O: Marilyn Tilkson	Portugal (ERSE)	A: Alexandre Santos
Finland (EV)	M: Simo Nurmi	Romania (ANRE)	O: Florin Tobescu
France (CRE)	A: Hélène Gassin O: Michaël Mastier O: Romain Charvet O: Miyuki Tsuchiya	Slovakia (RONI)	A: Marian Záhora
Germany (BNetzA)	M: Annegret Groebel O: Alexander Linov	Slovenia (AGEN-RS)	M: Duška Godin
Greece (RAE)	O: George Paidakakis	Spain (CNMC)	M: Fernando Hernández
Hungary (HEA)	M: Attila Nyikos O: Adam Krinszki	Sweden (Ei)	A: Caroline Törnqvist
Ireland (CRU)	M: Garrett Blaney (BoR Chair) A: Paul McGowan O: Mariela Atanasova	United Kingdom (Ofgem)	M: Mark Copley
ACER	Alberto Pototschnig, Christophe Gence-Creux, Martin Godfried, Volker Zuleger, Fay Geitona, Sander Ramp		

MEETING CONCLUSIONS SUMMARY – 74th BoR, 3 May 2018

1. The BoR approved the minutes of the 73rd BoR meeting and the agenda of the 74th meeting.

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

2. *The participants declared no conflict of interest.*
3. *The Director provided an update to the BoR on the exemption request by CRE and Ofgem with regard to AQUIND Limited. Mr Gence-Creux presented the state of play, next steps, and possible outcomes particularly on the interpretation and assessment of the conditions b) and f) in Article 17 of Regulation (EC) No 714/2009. With regard to the next steps, Mr Gence-Creux reported that in May there will be a potential meeting with the applicant; the sharing of the draft decision with ACER/NRAs working structures is envisaged for mid-May. On 22 May, a discussion at AEWG is envisaged and the decision will be submitted to the 6 June BoR for a BoR opinion.*
4. *The Director informed the BoR that the EP ITRE Committee invited ACER to appear at the ITRE meeting on 16 May. The Agency will report on recent developments and 2019 budgetary constraints and raise key issues on the Clean Energy Package debate.*
5. *The Director reported on the meeting between himself, the ACER Heads of Department and European Commission Vice President Mr Šefčovič on 26 of April 2018 to discuss the latest developments in the work of the Agency. The visit to Ljubljana was part of Mr Šefčovič's second Energy Union tour.*
6. *The Director informed the BoR of Director Decision 2018-03 amending the AWG rules and the LEN rules providing that participation in the Agency's Working Groups and LEN implies in itself acceptance of and compliance with the respective rules.*
7. *The Director informed the BoR on the latest ACER publications. On 27 April, the Agency's REMIT Quarterly was published on the REMIT Portal; on 26 April, the Agency launched a public consultation on the compliance of the proposed algorithms for day-ahead and intraday coupling under the Guideline on Capacity Allocation and Congestion Management. On 22 March 2018, ACER published a Guidance Note on capacity hoarding in intraday electricity markets that could constitute market manipulation under REMIT. Cambridge Economic Policy Associates (an economics and policy consultancy) is carrying out a survey on behalf of ACER on the value of electricity for domestic and business consumers. Kantor is doing a similar study on the Cost of Disrupted Gas. The ACER Annual Conference will be held on 5 July.*
8. *The European Commission provided a written update on the Clean Energy Package proposals and the amended Gas Directive. While the European Parliament on 21 February had finalised its positions on all four Electricity Market Design proposals, the Council positions still have to be settled on the ACER Regulation and on the definition of "Interconnector" in the Electricity Directive. The two main outstanding issues in the ACER Regulation were discussed at the Informal Energy Council on 19 April in Sofia with the aim to resolve the current impasse between a majority of Member States and a group of Member States with a blocking minority. The next discussion in the Energy Working Party is planned for 15 May. While trilogues on the Electricity Market Design files may start under Bulgarian Presidency, most negotiations are expected to take place under Austrian Presidency.*
9. *As regards the Gas Directive, the EP finalised its position on 21 March. Work towards an agreement in the Council is less advanced. Next discussions in the Energy Working Party are planned for 22 May.*
10. *The BoR Vice-Chair reported on the next steps following the 13 March BoR internal workshop on future IEM challenges on the basis of a note. The following actions were presented for discussion and endorsement, of the BoR: The time horizon we should be looking at in the context of the IEM future challenges should be around 10 years (by 2030). A discussion will be organised at the September BoR dedicated to the new CEP framework, and to this end the AWG Chairs, together with the ACER HoDs, will be responsible for mapping the CEP proposals and presenting proposals at the September BoR on key areas to explore in preparation for the Summit. The Summit, foreseen for December 2018, will consolidate our brainstorming on the identified issues based on the finalised CEP and gas market discussion. The aim of the Summit is to crystallise the outputs, and kick-off the dialogue with stakeholders at a more strategic level beyond our "business as usual" agenda. **The BoR endorsed the***

proposed next steps towards the BoR Summit. Two members proposed to undertake a mid-term review of the “Bridge to 2025”.

11. The Director presented the independent section on regulatory activities of ACER Annual Activity Report (AAR) 2017 to the BoR for its approval. Ms Groebel provided comments. The Director clarified that the report should also highlight when work has not been delivered due to budget constraints. **The BoR approved the AAR section on regulatory activities, subject to the above revisions.** The AB will adopt the AAR following the BoR’s approval. The AAR must be submitted to the EC by 15 June.
12. The Director presented the third edition of the summary report on CBCA decisions, which provides information regarding decisions on investment requests, including cross-border cost allocation decisions (CBCA decisions), for electricity and gas, projects of common interest (PCIs), adopted either by NRAs or by the Agency. The purpose of this summary report is to provide factual findings about the CBCA processes, which may be useful for project promoters and NRAs dealing with investment requests and CBCA decisions, as well as for interested stakeholders. **The BoR took note of the report and the key findings presented by the Director.**
13. Mr Sik (LEN Co-Coordinator) presented progress on the three requests to the LEN (two on gas, one on electricity). Two of the submitted requests relate to the conditions under which a TSO can transfer its regulatory balancing responsibilities, currently considered as a typical TSO activity, to another entity. The second LEN panel assesses the effectiveness of the compliance programme (Art. 7(4) Gas Directive). The LEN expects to have its final assessment ready by the end of May. With regard to electricity, the AEWG submitted a further request for a LEN assessment regarding the involvement of TSOs/NRAs in the submission/approval process of TCMs of the FCA GL in case of not issuance of LTTRs by the TSOs and the procedural consequences of an addition of a bidding zone border to a CCR. The LEN and the AEWG Chair agreed to have a final assessment by July 2018. They clarified that the final LEN advice is not binding, but provides a guidance to NRAs. **The BoR took note and endorsed the request.**
14. Ms Poletti updated the BoR on the fourth edition of the Energy Infrastructure Forum, which will take place on 24 and 25 May in Copenhagen. The first day will focus on high-level discussions, particularly on “Shaping the digital transformation of our energy networks”. The second day will consist of five working sessions.
15. Mr Hernandez provided an update on the ongoing work in the AEWG. The last meeting was on 10 April. The next meeting will be on 22 May. He also suggested that the available tracker of the methodologies (at the ERF), could be available for the BoR.
16. Mr Hernandez provided an update on the preparations for the Florence Forum, which will take place on 30-31 May. The AEWG is preparing presentations on the issues where a reaction or update is requested from ACER (Agenda items: 3.1 Guideline on CACM, 3.2 Challenges facing the implementation of the CACM GL, 4.4 security of supply and electricity market integration). A presentation is also envisaged by ACER on REMIT (agenda item 6). Further, Mr Hernandez clarified that he has suggested to the EC to introduce a brief discussion/presentation in the agenda about interlinks between implementation of different terms and conditions and methodologies (TCMs) and between different network codes (NCs). He explained that regulators find that some details in the TCMs have the potential to shape significantly the market and system structure for electricity. In several cases, timelines (chains of decisions) do not match and decisions under one NC significantly affect other NC/GL, hence causing problems during implementation. The EC has accepted this.
17. Ms Poletti provided an update on the ongoing work in the AGWG. The last meeting took place on 17 April. The next meeting will take place on 17 May. On 24 April, the proposed amendments to the Network Codes were sent to the EC. The file splits the proposals between ‘editorial’ and ‘minor’. ‘Substantial’

amendments are listed separately as input to the bigger review after this year. Where applicable, the file indicates the minority views of NRAs. A first discussion on the proposals together with the EC and ENTSOG has taken place, with a view to arriving at a unified list for stakeholder consultation and, later, comitology of those proposals. The EC will decide on the next steps.

18. The AGWG and the ACER Director presented the draft main findings of the Agency's fifth report on contractual congestion at interconnection points. The Agency has to report each year on the congestion of interconnection points. The main findings were presented to the BoR for discussion. The planning is to publish the report by 1 June and to this end comments will be sought by the BoR by 17 May along with a discussion at the AGWG on 17 May. ARERA, E-Control, CRE and ERSE provided several comments and suggestions for footnotes or disclaimers to provide explanations for specific circumstances around some IPs. **The Director invited any comments to be sent to him and to the ACER Head of the Gas Department.**
19. The Director provided an update on the format and guidance for the Agency assessment of the Reference Price Methodologies for gas transmission tariff's national consultations. The ACER format and guidelines have been circulated. His presentation related to the timings for NRAs consultations and the guidelines that ACER would use to analyse the national consultations. He noted that only cross border trade and volume risk are discussed. Particularly, the presentation focussed on the scope of ACER's analysis under Article 27.2.b.1 which requires assessing the reference price methodology (RPM), but it is not clear what the RPM entails. He clarified ACER's position with respect to the scope of the analysis. ACER's compliance analysis of the RPM is based on the principles laid out in Article 7 of the NC TAR. Therefore, two elements of Article 7 were focussed on in particular: Volume risk (Article 7(d)) and non-distortion of cross-border trade (Article 7(e)). Last, some guidance on regional networks was presented given that in some Member States, the costs of serving domestic customers ('regional networks') are treated separately from the rest of the transmission costs. The Director noted that ACER received the first consultation on the network code implementation from the Dutch regulator and he congratulated ACM for the good work.
20. Mr Bos presented the ACM's experience and lessons learned and advised NRAs to start in time with the process, and to involve stakeholders from the beginning of the process. Several members commented on the Guidelines, particularly on commodity charges, and the inclusion of regional networks.
21. Ms Groebel provided an update on the AMIT WG and the REMIT CG (RCG). The last meetings took place on 21 and 22 February, which was before the last BoR meeting. The next AMIT WG meeting will be held on 17 May back to back to the REMIT CG meeting. She informed the BoR on a recent notice by DG ENER on BREXIT implications. She noted that on 27 April the 2nd trading enforcement Forum took place with ESMA and Financial Regulators.
22. Mr Zuleger provided an oral update on the current state of play with regard to the potential sublicensing of SMARTS and the possibility of short-term experts from NRAs to support us on data quality work.
23. Mr Godfried informed the BoR about the sharing of alerts. He announced that at the next BoR (in June) (after the REMIT CG in mid-May) a presentation will be provided on the Alert Dashboard project, and update of the Governance Section part of the Market Surveillance Strategy and the Internal Guidance Note on Electricity Generation Withholding in Auction-based Day-Ahead markets. Mr Godfried informed the BoR of the 17 April meeting with ESMA in Paris.

New ACER Director selection process

The BoR members invited by the BoR chair to declare any interest that could have impaired the impartiality of the procedure, did not declare any relevant interest.

The Chair set out the legal framework: Pursuant to the ACER Regulation, Article 13(1), “the Administrative Board AB) shall, after having consulted the Board of Regulators (BoR) and obtained its favourable opinion in accordance with Article 15(2), appoint the Director in accordance with Article 16(2)”. The Chair recapped the process agreed for the first stage of the technical briefings of the three shortlisted candidates (*Ref: A17-BoR-74-B1_stage1*) and for the provision of the opinion of the Board of Regulators (BoR) on the candidate selected by the Administrative Board (AB) (*Ref: A17-BoR-74-B2_stage2*). Their aim is to ensure strict confidentiality arrangements as provided under Article 11 of the BoR RoP and impartiality of the whole process.

The EC decision on the shortlisted candidates was adopted on 13 March and was communicated by the AB Chair to the BoR Chair, inviting the Board of Regulators’ (BoR) to provide their technical advice regarding the knowledge of the energy regulatory policy, the supervision of energy markets and the market design of the shortlisted candidates for the post of ACER Director.

After receiving the official short list from the AB Chair, the BoR Secretary, on behalf of the Chair, distributed the relevant information (by email) to the BoR members (or nominated alternates/proxies) who confirmed their attendance to the briefings (one per delegation).

The BoR invited the shortlisted candidates and conducted technical briefings of the three shortlisted candidates on 3 May (in alphabetical order).

This session was restricted to members only or their nominated representatives (one per delegation). The AB Chair, as well as the BoR Secretary, participated as observer.

Each candidate was invited to answer questions, which were agreed before the technical briefings, (the same set of questions was put to all candidates) and follow-up questions, from the floor. Each technical briefing lasted for 40 minutes.

Following the technical briefings, in reaching its technical advice, the BoR based its considerations on the responses to the questions which sought to explore the candidates’ technical knowledge, particularly the respective knowledge of the energy regulatory policy, the supervision of energy markets and the market design, as well as their relevant experience as provided in their CVs in the light of the criteria in the vacancy notice and in the ACER Regulation. In order for the BoR to formulate its technical advice it took due account of the profile of each candidate, and their strengths and weaknesses against the above requirements.

The BoR Chair presented the BoR technical advice to the AB meeting on 3 May in the afternoon after the AB had conducted its interviews of the three shortlisted candidates. The AB selected one candidate for the ACER Director post.

According to Article 15(2) of the ACER Regulation, “the BoR delivers its opinion to the Administrative Board on the candidate to be appointed as Director in accordance with Article 13(1) and Article 16(2) of the ACER Regulation. The Board of Regulators shall reach that decision on the basis of a three-quarters majority of its members”.

The BoR convened on 4 May to provide its opinion on the basis of a secret vote and in accordance with the agreed process. After three rounds, the BoR did not reach the required three quarters majority of its

members, pursuant to Article 15(1) of the ACER Regulation, to provide a favourable opinion to the candidate elected by the AB.

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. No conflict of interest was declared.

1.2. Approval of the minutes of the 73rd BoR meeting

BoR Decision agreed: (D 2)

The minutes of the 73rd BoR were approved.

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

2.1. Update on recent developments

a) ACER

➤ Status update on the AQUIND project

Mr Gence-Creux made a presentation on the state of play, potential outcomes and the next steps: Given that the interpretation and positive assessment of conditions a), c), d) and e) seem straightforward, ACER focus is more on conditions b) and f). Among other elements, condition f) relates to the potential exemption for AQUIND being to the detriment of competition among projects ("project crowding-out" effect). Competition among projects is interpreted taking into account the EC staff working paper 2009/642. With regard to the next steps, on 22 May a discussion at AEWG is planned following which the draft decision will be submitted for a BoR favourable opinion on 6 June.

The Director informed the BoR that ITRE has invited ACER to appear on 16 May. ACER will report on recent developments and budgetary constraints and the CEP.

The Director also reported that as part of his second Energy Union tour EC Vice President Šefčovič met him and ACER Heads of Department on 26 April to discuss the latest developments in the work of the Agency.

The BoR Chair reported on the outcome of the BoR electronic procedures:

- BoR's opinion for the ACER decision on all transmission system operators' proposal for intraday cross-zonal gate opening and intraday cross-zonal gate closure times, as proposed by the Director

The first round ended on 18 April. The second round ended on Tuesday 24 April at 12.00. 26 members participated and 19 indicated they are in favour to the BoR favourable opinion. 6 members were against and one abstained. The BoR favourable opinion was deemed to be provided with a 2/3 majority.

- BoR's agreement on the proposed arrangements for the 2nd stage for the provision of the BoR opinion for the ACER Director

The process for the BoR deliberations at the 2nd stage for the provision of the BoR opinion for the ACER Director was submitted for a BoR agreement through a single round electronic procedure which ended on 5 April. 24 members participated and all were in favour. The procedural arrangements were thus agreed.

- BoR's opinion on the ACER Decision on the extension request of the regulatory authorities of DE, DK, PL & SE to reach an agreement on CCM in the Hansa CCR

The single round electronic procedure for the BoR opinion on the Agency's decision on the request of the regulatory authorities of DE, DK, PL & SE to reach an agreement on CCM in the Hansa CCR 10:00 CET ended on 28 March. 24 members participated (please refer to the table below) and all were in favour of the Agency's decision. The BoR favourable opinion was deemed to be provided with the required majority.

- BoR's opinion on the ACER opinion on the application of articles 5 and 141(2) of Commission Regulation (EU) 2017/1485 establishing a Guideline on Electricity Transmission System Operation.

The first round of the electronic procedure on the draft ACER opinion on the application of articles 5 and 141(2) of Commission Regulation (EU) 2017/1485 establishing a Guideline on Electricity Transmission System Operation, ended 16 April at 11.00 CET. All members who have participated indicated their agreement to the use of the electronic procedure and provided no comments on the draft opinion. The second round of the EP for the BoR's opinion for the ACER opinion on the application of Articles 5 and 141(2) of Commission Regulation (EU) 2017/1485 ended on 19 April at 12.00. 23 members participated one member abstained and 22 indicated their favourable opinion. The BoR favourable opinion was deemed to be provided with the required majority.

The Director informed the BoR on recent ACER publications (as above).

b) European Commission

- Update on Clean Energy Package proposals and amended Gas Directive

The European Commission provided a written update on the Clean Energy Package proposals and the amended Gas Directive as above.

c) BoR Chair

- Report and next steps following the March internal workshop on future IEM challenges

Ms Poletti explained that the internal workshop on future challenges to the Internal Energy Market (IEM) was held in the margins of the March BoR on 13 March. Following discussions with the AWG Chairs and ACER Heads of Department, the next steps in preparation of the Summit were presented as follows:

- The time horizon we should be looking at in the context of the IEM future challenges should be around 10 years (by 2030).
- It is proposed to organise a dedicated discussion as part of the September BoR to take stock of the new CEP framework.
- The AWG Chairs, with the ACER HoDs, will be responsible for providing the mapping of the CEP proposals and they will present some proposals at the September BoR on key areas to be explored in preparation for the Summit.
- The Summit, foreseen for December 2018, will consolidate our brainstorming on the identified issues based on the finalised CEP and gas market discussion. The Summit is aimed to crystallise the outputs, and kick-off the dialogue with stakeholders at a more strategic level beyond our “business as usual” agenda.

The BoR is invited to discuss and endorse the actions proposed in preparation of the Summit.

Ms Groebel and Ms Gassin proposed that a mid-term review of the Bridge to 2025 be undertaken as a possible output of the Summit. Ms Poletti agreed to have a mid-term review of the Bridge as part of the September dedicated session. Besides the review, the aim should be to then look further ahead to 2030.

The BoR endorsed the foreseen next steps towards the BoR Summit, as proposed by the BoR Chair and Vice-Chair.

3. Items for BoR opinion, endorsement or agreement

3.1. Draft ACER Annual Report 2017 (independent section on regulatory activities).

Each year the BoR is required to approve the independent section of the ACER Annual Activity Report (AAR) on regulatory activities under article 13(12) of the ACER Regulation. Following BoR approval the report is submitted to the AB for adoption. The AAR must be submitted to the EC by 15 June.

The Director presented the key findings of the report in more detail.

Achievements in the area of electricity network codes include that all NRAs' decisions and, where relevant, Agency's decisions were delivered according to the legal timeline. There has been no delay so far in the implementation of the requirements pursuant to the adopted Network Codes and Guidelines. The Agency established dedicated stakeholder committees for several groups of Network Codes and Guidelines. It discussed with the European Commission some possible amendment proposals. The Agency monitored the development of the Network Codes and Guidelines, as well as entities having obligations. The Agency published its first monitoring report of the Network Code on requirements for grid connection of generators on 7 November 2017 and its Opinion on ENTSO-E's monitoring plan for the Forward Capacity Allocation Guideline.

In the area of gas network codes the Agency prepared a template for the periodic consultation on the reference price methodology on 13 June. The Report on the implementation of the Balancing Network Code was published on 16 November 2017. The Report on Interoperability and data exchange was published on 4 December 2017. The Fourth Report on Congestion at interconnection points was published on 31 May 2017.

Further, the Agency published its Annual Market Monitoring Report on 6 October, which contains (in the wholesale electricity chapter) an in-depth monitoring of the effect of the Network Codes implementation

process. With regard to TSO cooperation, due to the prioritisation of available resources, the Opinion on ENTSO-E's work programme, on the ENTSO-E's annual report and the monitoring report on the ITC mechanism were significantly trimmed down. On infrastructure, the Agency published its Opinion on the draft regional lists of Electricity and Gas projects of common interest on 19 October 2017. The Agency adopted its Opinion on the ENTSOs draft consistent and interlinked electricity and gas market and network model on 20 March 2017.

On REMIT, 2017 was the first full year of data collection following the core implementation of REMIT in 2016. Overall, REMIT has been successfully implemented and is operational. No update of the 4th edition of ACER Guidance was undertaken in 2017. The Transaction Reporting User Manual was updated in 2017. The Manual of Procedures on transaction and fundamental data reporting was updated in 2017. The Requirements for the Registered Reporting Mechanisms was not updated in 2017, but its technical documentation was. FAQs on transaction reporting and fundamental data and inside information collection were updated in 2017 as required. Data quality of reported data significantly improved following the publication of an open letter on REMIT transaction reporting data quality on 16 February 2017, but further improvement of data quality remains an ongoing task with scarce resources. Market monitoring started in the last two quarters of 2017, and the first Preliminary Initial Assessments of potential market abuse cases have been delivered. However, due to lack of resources the KPI target on this activity was not achieved.

The Chair opened the floor for any questions and for approval of the independent section on regulatory activities of the AAR.

Ms Groebel provided comments.

The BoR approved the AAR section on regulatory activities, subject to the minor revisions as suggested by Ms Groebel, which the Director will take into account.

4. Cross-sectoral

4.1. Summary report on CBCA decisions (third edition)

The Director provided an update to the BoR on the third edition of the summary report on CBCA decisions.

The third edition of the summary report provides information regarding decisions on investment requests, including cross-border cost allocation decisions (CBCA decisions), for electricity and gas projects of common interest (PCIs), adopted either by NRAs or by the Agency. The draft report builds on its previous editions but was restructured to be aligned with the Agency's CBCA Recommendation and completed with some additional factual information from the previous and new CBCA templates. The purpose of this summary report is to provide factual aspects about the CBCA processes, which may be useful for project promoters and NRAs dealing with investment requests and CBCA decisions, as well as for interested stakeholders.

The main findings relate to the promoter(s) preparation of investment requests (complementarities between projects, sufficient maturity, location, TSO consultation) and the relationship between CBCA decisions and grants for works under the Connecting Europe Facility (CEF). In most instances, the NRAs considered that the investment request demonstrated a sufficient level of maturity of the project; 70% of the investment requests (21 out of 30) are for internal projects, i.e. PCIs located in only one country. 30% are for interconnectors. In most of the cases, the NRAs reported the existence of consultations of the

TSOs of the Member States. In all instances, the promoters accompanied the investment request with a project-specific Cost-Benefit Analysis (CBA). However, the Agency has identified various shortcomings in the CBAs and the NRAs treatment and assessment of the investment requests. In line with the Agency's guidelines on CBCA, in most of the instances (3 exceptions), after the receipt of the investment request, the NRAs jointly nominated a single "coordinating NRA" to facilitate the process of assessing the investment. Overall investment costs of the projects included in the investment requests amount to approximately 7.6 billion Euros in gas and 4.5 billion Euros in electricity. In all investment requests (30 out of 30) the project promoter(s) expressed an intention to apply for EU grants from CEF-energy. In 8 instances (6 in electricity, 2 in gas) the decisions allocated only part of the investment costs, expecting public funding to fill the financing gap: only one decision in the electricity sector, and 14 decisions in the gas sector allocated 100% of the investment costs without conditionality of public funding.

Ms Poletti thanked the Director for the update and the BoR took note of the summary report.

4.2. Requests to the LEN

Mr Sik presented three requests that were sent to the LEN. Two requests are related to gas, and one to electricity.

The first two requests were received from the Agency's Head of the Gas Department, and confirmed by the Director. The panels were set up to deal with the following aspects:

- Regulatory aspects of regional TSO cooperation in the area of gas balancing, in particular, the LEN panel is requested to examine the conditions under which a TSO can transfer its regulatory balancing responsibilities, currently considered as a typical TSO activity, to another entity.
- Effectiveness of compliance programme (Art. 7(4) Gas Directive): the LEN panel is asked to help the Agency in evaluating the request of a joint venture for approval of its compliance programme, submitted pursuant to Article 7(4) of the Gas Directive.

Mr Sik explained that the LEN decided to pursue involvement from legal experts from a group of NRAs as wide as possible. The LEN should ideally deliver its input by May 2018.

With regard to the electricity-related request to the LEN: the last AEWG decided to submit a further request on the involvement of TSOs/NRAs in the submission/approval process of terms and conditions or methodologies (TCMs) of the FCA GL, in case of not issuance of long term transmission rights (LTTRs) by the TSOs and the procedural consequences of an addition of a bidding zone border to a capacity calculation region (CCR).

Mr Hernandez further clarified the request. Both the involvement and a lack of involvement, of TSOs and NRAs regarding TCMs within the FCA GL, in cases where they are exempted by article 30(7), by the Regulation on issuing LTTRs seems problematic. It is unclear what the consequences are of a possible addition of a bidding zone border to a CCR.

Members provided some comments.

Mr Sik clarified that BoR members will be provided with a legal assessment which can help in concrete cases. This legal assessment does not reflect a legally binding interpretation/decision. Mr Hernandez added that the issue does not have a simple solution. The Guideline does not provide any hints and there is no precedence. This is not a binding opinion but will be a majority legal view from NRAs. It is important to be practical. The LEN was requested to provide their guidance by the end of July 2018.

The BoR took note and endorsed the requests to LEN and the deadlines as discussed.

4.3. Energy Infrastructure Forum agenda (24-25 May)

Ms Poletti shortly set out the agenda of the upcoming Energy Infrastructure Forum. The fourth edition of the Energy Infrastructure Forum will take place on 24 and 25 May 2018 in Copenhagen.

The first day will focus on high-level discussions, particularly on “Shaping the digital transformation of our energy networks”. Also, the Copenhagen School of Energy Infrastructure will be launched. The second day will consist of 5 working sessions.

5. Electricity

5.1. Important updates (such as NC implementation)

Mr Hernandez explained that there were no urgent updates to be given. The last AEWG meeting took place on 10 April, and the next AEWG meeting will be held on 22 May.

5.2. Preparations for the Florence Forum (30-31 May)

The Florence Forum will take place on 30 and 31 May. The AEWG is preparing presentations on the issues where a reaction or update is requested from the Agency.

Mr Hernandez told the BoR that he had suggested to the EC to include a brief intervention in the agenda under agenda item 3.1 for the Agency/NRAs to react to the links between the implementation of different terms and conditions or methodologies and between different NCs (e.g. European intraday gate times and regional capacity calculation methodologies, common security analysis under SO GL influences re-dispatch and countertrading methodology under the CACM GL). The EC agreed to the inclusion of such an intervention.

6. Gas

6.1. Updates on the gas NCs amendments proposals

Ms Poletti provided an update on the work ongoing in the AGWG.

Mr Leveille (CRE) was appointed as a new co-convenor of the ACER CAM TF. A new call for expressions of interest for the other CAM co-convenor will be launched since Ms Held (BNetzA) stepped down from the position.

Ms Poletti informed the BoR on the updated file with the proposed amendments to the NC/GLs on Transparency, CMP, CAM, Balancing and Interoperability which has been sent to the EC on 24 April. As agreed, the proposals are classified as ‘editorial’ or ‘minor’. The substantial ones will not be dealt with in this round, and are, therefore, mentioned separately as input to a bigger review later on. The European Commission had noted at the last BoR that it plans to go ahead with the amendments that do not require an Impact Assessment, i.e. amendments classified as “editorial” and/or “non-substantial”. This means that the selected amendments should provide additional transparency and legal certainty and they should not change the substance of NCs, nor introduce new rules. The file sent also indicates NRAs’ minority views where applicable, as an indication of the level of support the various proposals have in the NRA community. It was offered to discuss the proposals together with the Commission and ENTSOG, with a

view to arriving at a unified list for stakeholder consultation and, later, comitology. Also, coordination shall take place in order to have a cross-check between ACER and ENTSOG amendments.

6.2. 5th Implementation monitoring report on contractual congestion at interconnection points

The Director presented the preliminary findings of the 5th implementation monitoring report on contractual congestion at interconnection points for an orientation discussion at the BoR. In compliance with Regulation (EC) 715/2009, the Agency has to report each year on the congestion of interconnection points. The report is an important input in the work of NRAs and it provides key information to the public/stakeholders.

The Director set out the main findings, which include, *inter alia*:

- 366 CAM relevant IP sides, of which 262 CMP relevant IP sides;
- 17 IP sides labelled “congested” in 2017 (<7% of CMP relevant IPs);
- 6 due to the occurrence of auction premia, 11 due to non-offer of firm capacity;
- Of these 17 IP sides, 9 were already congested in 2016, 10 in 2015 and 6 in 2014 (5 points were “congested” in all reports).

The Director showed a list of congested IP sides and the use of CMPs at these IPs and an evolution of use of CMPs.

Regarding the next steps, the report shall be released for written comments. Final discussion will take place in the AGWG of 17 May. May 17th is also the deadline for final written comments from the BoR.

Some BoR members made specific comments.

The Director clarified that the purpose of the report is to provide information on the basis of which NRAs can determine whether they should ask their TSOs to use FDA UIOLI as CMP (notwithstanding the interpretation of the relevant provisions). The criteria used in the report are suboptimal, but it seems difficult to improve them. Last year ACER tried to get input on improvements to the criteria (through a consultation), but no input was received.

The Director invited any comments to be sent as soon as possible to him and to the ACER Head of the Gas Department.

6.3. TAR NC implementation: ACER analysis format and guidance for national consultations (Art 27 TAR NC)

The Director made a presentation on the ACER format and guidance for the assessment of national consultations and he presented the timeline.

The guidelines were circulated. ACER will be using them to analyse the national tariffs consultations that we will be receiving this year pursuant to Art. 27(2) of Regulation on the requirements establishing a network code on harmonised tariffs structures for gas (‘NC TAR’). The scope of ACER’s analysis under Article 27.2.b.1 is on whether the proposed reference price methodology (RPM) complies with the requirements set out in Article 7. This calls for the scope of the RPM to be set out. The compliance analysis of the RPM then is based on the principles laid out in Article 7. The following elements of Article 7 are focused on: cost-reflectivity, volume risk, non-discrimination and undue cross-subsidisation, cross-

border trade, and transparency. Particular attention is given to volume risk and non-distortion of cross-border trade.

The format document (or template) that ACER will be using to publish the conclusions was also circulated.

There has been some rescheduling in the consultation dates with the result that the Agency can expect a peak workload over the summer months which poses a challenge in the project planning.

The Director highlighted the first consultation on the Network Code implementation which was received from ACM, and explained that this example can serve as a sample of good practice. The consultation document is published in both Dutch and English, and although the Dutch version was published first, the English version was also soon available. The decision is well motivated and the methodology is straightforward using one and the same RPM for all allowed revenues, without using commodity charges or non-transmission charges, making limited use of secondary adjustments and setting storages to the default discount of 50%.

Mr Bos shared some lessons learned with the BoR. First, ACM published a draft on the implementation of the TAR NC. ACM invested much time in the involvement of stakeholders. This stakeholder involvement has improved the decision-making of the regulatory authority. Stakeholders also appreciate the opportunity to be involved. In recent years some stakeholders complained that the tariff structure was not transparent enough. Mr Bos warned that the overall process takes time and effort, and that it is crucial to start in time. But discussing and explaining your choices to stakeholders greatly helps.

The Director reiterated the message to NRAs to pay close attention to the timelines. Members provided comments.

The Director thanked the members for their comments. He explained that the intention of the Guidelines is to be an internal document used by whomever is involved in the review. The guidance thresholds serve to indicate that an issue may be problematic and that the issue needs to be looked into. This does not constitute a definitive position of the Agency on what needs to be done. That said, however, the Agency believes that regional networks are also transmission services and should be included in the single methodology. Therefore, the Agency may comment on a methodology that does not follow this approach. The report as such has no binding effect. The purpose is to provide transparency to give market operators a sense on how methodologies apply and tariffs are set.

7. Market Integrity and Transparency

7.1. Important updates (REMIT implementation and operation)

Ms Groebel provided an update on the AMIT WG and the REMIT CG (RCG). The last meetings took place on 21 and 22 February, and a report was provided to the March BoR meeting. The next AMIT WG meeting will be held on 17 May back to back to the REMIT CG meeting. She informed the BoR on a recent note by DG ENER on BREXIT implications in case of a withdrawal from the IEM. She noted that on 27 April the 2nd trading enforcement forum took place with ESMA and Financial Regulators. There is still an ongoing discussion with financial regulators as to what falls under financial regulation and what under REMIT. It is important to avoid double reporting.

Mr Zuleger provided an oral update on the current state of play with regard to the potential sublicensing of SMARTS and the possibility of short-term experts from NRAs to support the Agency on data quality

work. Data sharing is currently undertaken with 7 NRAs. 8 NRAs are in the process towards data sharing, but are all at various stages of the process. With regard to SMARTS, a procurement procedure was held last year. The system integrator will take over several tasks and the move from the current contractor to the next contractor will now take place. The cost contribution by NRAs in order to cover costs will kick-in next year. Mr Zuleger indicated that further knowledge and work on data-quality will be shared at the next BoR.

Mr Godfried informed the BoR about the sharing of alerts. He announced that at the next BoR (in June) (after the REMIT Coordination Group in mid-May) a presentation will be provided on the Alert Dashboard project, and update of the Governance Section part of the Market Surveillance Strategy and the Internal Guidance Note on Electricity Generation Withholding in Auction-based Day-Ahead Markets. Mr Godfried informed the BoR of the 17 April meeting with ESMA in Paris.