

## 73<sup>rd</sup> ACER Board of Regulators Meeting

Wednesday, 14 March 2018

ACER premises, Trg republike 3, 1000 Ljubljana

### Minutes (final)

| Member States        | Name <sup>[1]</sup>   | Member States          | Name  |
|----------------------|---|------------------------|---|
| Austria (E-Control)  | M: Wolfgang Urbantschitsch                                    | Italy (ARERA)          | M: Clara Poletti<br>A: Francesco Cariello<br>O: Ilaria Galimberti |
| Belgium (CREG)       | M: Marie-Pierre Fauconnier<br>O: Geert Van Hauwermeiren       | Latvia (PUC)           | O: Lija Makare  |
| Bulgaria (EWRC)      |   | Lithuania (NCC)        | M: Inga Žilienė<br>O: Irma Vasarytė                               |
| Croatia (HERA)       | M: Tomislav Jureković<br>A: Sonja Tomašić Škevin              | Luxemburg (ILR)        | M: Camille Hierzig  |
| Cyprus (CERA)        | M: Andreas Poullikkas   | Malta (REWS)           | A: Phyllis Micallef   |
| Czech Republic (ERO) | A: Martin Šik   | Netherlands (ACM)      | A: Remko Bos<br>O: Maarten Klijn<br>O: Wieger Wiersema            |
| Denmark (DERA)       | M: Mads Lyndrup   | Poland (URE)           | A: Małgorzata Kozak   |
| Estonia (ECA)        | O: Tiina Maldre   | Portugal (ERSE)        | A: Alexandre Santos   |
| Finland (EV)         | M: Simo Nurmi   | Romania (ANRE)         | O: Florin Tobescu   |
| France (CRE)         | A: Hélène Gassin<br>O: Rébecca Radereau<br>O: Anne-Lise Teani | Slovakia (RONI)        | A: Marian Záhora  |
| Germany (BNetzA)     | M: Annegret Groebel   | Slovenia (AGEN-RS)     | M: Duška Godina<br>O: Marko Senčar                                |
| Greece (RAE)         |   | Spain (CNMC)           | M: Fernando Hernández<br>O: Gema Rico                             |
| Hungary (HEA)        | M: Attila Nyikos<br>O: Adam Krinszki                          | Sweden (Ei)            | M: Anne Vadasz Nilsson  |
| Ireland (CRU)        | M: Garrett Blaney (BoR Chair)<br>O: Seamus Byrne              | United Kingdom (Ofgem) | M: Mark Copley  |

|                     |   |
|---------------------|---|
| ACER                | Alberto Pototschnig, Christophe Gence-Creux, Dennis Hesseling, Fay Geitona, Sander Ramp |
| European Commission | Florian Ermacora  |
| CEER                | Andrew Ebrill   |

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

**MEETING CONCLUSIONS SUMMARY – 73<sup>rd</sup> BoR, 14 March 2018**

1. *The minutes of the 72<sup>nd</sup> BoR meeting were approved, as was the agenda for the 73<sup>rd</sup> meeting.*
2. *The participants declared no conflict of interest.*
3. *The Director reported that the date for the ACER annual conference is now set for 5 July; the title will be “An Energy Union for all Europeans”. The 2<sup>nd</sup> EMIT Forum will be held in Ljubljana on 6 and 7 September.*
4. *The Director reported that the Agency, in line with the new data protection rules that will come into force in May, is implementing the electronic acknowledgement of the privacy statement. In this process, the Agency will also simplify the collection of compliance commitments and IP waivers (which are required under the AWG Rules of Procedure).*
5. *The Director further reported that in January new members from the EP and the Council were appointed in the AB. Dr Romana Jordan was reappointed by the Board as its Chair for a two-year period, while Dr Jochen Penker was reappointed as Vice-Chair for the same period.*
6. *The Director informed the BoR on the referral of an exemption request with regard to AQUIND Limited by CRE and Ofgem and outlined the planning. Both CRE and Ofgem provided the background for the referral of the decision to ACER as well as their estimations for the fulfilment of the criteria. The Agency foresees taking a decision on the exemption request by 19 June 2018, which will be submitted, to the June BoR for an opinion.*
7. *The Director provided an update on the tariffs network code implementation and consultations. He urged the members to carefully plan the work in order to finalise the process by 31 May 2019 (the timing of the consultation in some MSs has changed). ACER has to publish a report on the revenue methodologies (under Art. 34). Questionnaires have been sent out to NRAs/TSO. An assessment of the first transparency requirements on national websites and ENTSOG Transparency Platform was concluded by December 2017. ACER is suggesting standardising the information via guidelines based on best practices and encourages the publication of the information that is already available.*
8. *Mr Ermacora, on behalf of the EC, provided a regular update on the negotiations on the CEP. With regard to the Energy Union Governance, Energy Efficiency Directive and RES Directive, trilogues are held under the Bulgarian Presidency and a political agreement is expected soon. With regard to the market design, the ITRE vote on the ACER and Electricity Regulations recasts and the Electricity Directive recast took place on 21 February. The draft EP reports are now issued and they will serve as the basis for the trilogues scheduled to start under the Bulgarian Presidency. The Council is still discussing its position. The Council has adopted a general approach on the Electricity Regulation and Directive (the latter with the exception of the issue of the electricity interconnectors’ definition) as well as on the Risk Preparedness Regulation, but has still not finalised its approach with regard to the ACER Regulation. Mr Ermacora also updated on the latest discussions on the amendment of the Gas Directive (on the definition of interconnections to include those with third countries); the Council is not yet close to a substantive discussion on the proposal and thus the discussions might be dealt with under the Austrian Presidency.*
9. *The Director provided an update on the EC workshop on digitalisation which took place on 7 March and addressed the following questions: What is digitalisation in the context of the energy sector? What are the challenges? What roles should parties (TSOs, DSOs, NRAs, others) have? There was an agreement to address some of the above questions on the basis of concrete examples such as TSOs and DSOs flexibility market.*

10. *The Director provided an update on the last NC Implementation Monitoring Group meeting which took place on 8 March. Discussions included inter alia the following: progress on data provision and transparency by ENTSOs; the creation of a TSO-DSO NC/GL Implementation Group by the TSO-DSO Platform that will serve as a forum for ENTSO-E and EU DSO associations to discuss and coordinate regarding the implementation of NCs/GLs. Monitoring aspects for the gas NCs were also discussed including how to streamline efforts between ACER and ENTSOG; the proposals for amendments on the gas codes; and the coordination of regional proposals including the EC's potential role.*
11. *The BoR Chair reported on the discussions that took place at the BoR internal workshop on future challenges to the Internal Energy Market. The discussion was initiated to capture the issues and challenges for the IEM, but was not conclusive. The Chair indicated that he would consider the key "takeaways" of the workshop and work with the AWG Chairs and the ACER Heads of Department in order to develop the next steps towards the BoR Summit.*
12. *The BoR Chair reported on the outcome of the BoR electronic procedure on the Agency's decision on the request of all Regulatory Authorities to extend the period for agreement on the proposal for the single methodology for pricing intraday cross-zona; capacity. The BoR provided its favourable opinion on the Agency's decision.*
13. *The BoR Chair also reported on the BoR review panel assessment of the 2018 submissions of declaration of interest statements and CVs from all 28 Members and 28 Alternates of the BoR, as well as all Working Group and Task Force leaders. Based on its assessment of the information provided, the Panel did not identify any conflicts of interest and concluded that no action by the Agency or the BoR is required.*
14. *The ACER Director submitted to the BoR for endorsement the Agency's Opinion on the participation of Switzerland in the European platforms for the exchange of standard products for balancing energy. The Agency generally agrees with the all TSOs' assessment that the full participation of Switzerland in the European platforms for the exchange of standard products for balancing energy could be an efficient solution to help remove possible congestion problems in the Swiss network and increase the efficiency of the Swiss cross-zonal capacity calculation and allocation, as well as the overall operational security in the region. The Agency finds it important that, in such a case, Switzerland implements all the requirements of the EB Guideline and other related provisions. **The BoR endorsed the Agency's Opinion on the participation of Switzerland in the European platforms for the exchange of standard products for balancing energy.***
15. *The BoR Chair and Vice-Chair presented the proposed practical arrangements for the BoR involvement in the selection of the next ACER Director. The technical briefings of the shortlisted candidates (initially scheduled on 13 March) have been postponed. The BoR discussed the new arrangements including the timing for the technical briefings in May and the location, in light also of the AB interviews. The BoR also discussed the arrangements for the second stage of the process which is the BoR opinion following the communication of the designated candidate by the AB.*

16. *The Director presented the planning of this year's Market Monitoring Report (MMR). The MMR is foreseen to be similar to last year's report, and will consist of four Volumes covering: the Electricity Wholesale Market (EWM), the Gas Wholesale Market (GWM), the Electricity and Gas Retail Markets; and Consumer Protection and Empowerment (CPE). For the EWM Volume, the planning is to submit for information to the BoR of 16 October and publish in the last week of October. For the GWM Volume, the planning is to submit for information to the BoR of 19 September and publish ahead of the 17 October Madrid Forum. For the Retail Markets Volume, the planning is to submit to the 19 September BoR (possibly October). For the CPE Volume the planning is to submit for the 16 October BoR. The BoR Chair noted that the Citizens Forum is scheduled for 21 September in Dublin and this must be taken into consideration in the overall planning. The public presentation of the report is foreseen to take place in November. Mr. Ermacora on behalf of the EC underlined the strong interest of EC to see developments of the retail market fully covered by the market monitoring report, according to the level of reporting seen pre-2016. The Director indicated his availability to reconsider the scope of the Retail Market Volume, if the Commission were able to second an expert to the Agency to work on this volume. The BoR took note of the indicative planning of the MMR.*
17. *Mr Gence-Creux informed the BoR members on the status of the Agency's Decision on the Intraday Cross-Zonal Gate Times (IDCZGT) methodology as proposed by all TSOs, which was referred to ACER on 24 October 2017. The consultation amongst stakeholders ended on 30 January and the received contributions can be accessed on the ACER website. The Decision is foreseen to be submitted for BoR electronic procedure in the week of 16-20 April. The deadline for the ACER Decision is 24 April. The BoR agreed to the use of the electronic procedure and discussed the suggested approach with regard to the gate opening and gate closure times along with some concerns on the timing of the entry into force of the latter and the possibility for derogations.*
18. *Ms Poletti provided an update on ongoing work in the AGWG. This update included the request from the EC to review the gas NCs. NRAs and ACER have worked on identifying issues and to classify these as controversial or non-controversial. Mr Ermacora mentioned that the EC aims at "quick fixes" ahead of the reform of the Comitology process. These would mainly concern technical clarifications. Ms Poletti clarified that the classification on contentious and non-contentious was proposed by the AGWG; however, even technical issues can be contentious. ACER and NRAs have collected 78 amendments, 60% of which are considered non-controversial. There are also controversial issues which need more time. The EC clarified that for the more controversial issues the timelines would be defined by ACER and NRAs as they will not be part of the quick fixes.*
19. *Ms Poletti presented a summary of best practices for establishing guarantees in some EU Member States for transactions on the EU gas markets has been developed. The note mentions that generally, the rules of establishing guarantees are not regulated in the EU law. The aim of this summary is to present how some EU Member States try to mitigate this risk.*
20. *Ms Poletti presented the letter of energy regulators to the Quo Vadis consultation. Mr Ermacora informed the BoR that the Quo Vadis study will not be the sole basis for legislative initiatives. He presented the current thinking of the EC on three strands: a gas mirroring exercise; other issues in terms of legislative changes that deserve more analysis; and 'sector coupling' on which the EC will launch a study. The timeline for any possible legislative proposal would be the first full year of the new EC, 2020.*

21. *The Director presented the ACER Guidance Note on Transmission Capacity Hoarding which is almost complete. Following any comment from members, the Guidance Note will be released. The ACER Guidance pursuant to Article 16(1) of REMIT aims to ensure that NRAs carry out their tasks under REMIT in a coordinated and consistent way. The Guidance Notes complement the ACER Guidance by providing more in-depth information on specific types of behaviours that may constitute market manipulation and attempt to manipulate the market pursuant to Articles 5 of REMIT. The 4<sup>th</sup> edition of the ACER Guidance, which is published, will be slightly amended in order to reflect that the Agency now issued a Guidance Note on the behaviour of hoarding cross-border capacity when completed. The progress on the pending Guidance Note on Capacity Withholding of Available Generation Capacity in Day-Ahead Electricity Markets was also presented to the BoR. The Director noted that this is a topic that must be addressed and we have a collective interest to do so. The Director would want this note to be finalised before his mandate is over. The GN will probably come to the BoR in June.*
22. *The Director addressed the Case Management Tool (CMT). On 31 January 2018 version 4.0.7.5 of the CMT was successfully launched. This version has, after more than half a year of development, a range of enhancements that allow more efficient management of REMIT cases with NRAs. At this stage 12 NRAs are employing the CMT and 5 NRAs envisage to complete the process to employ the tool in 2018. 7 NRAs indicated intention to receive training from ACER on the use of the CMT this year. The Director thanked the NRAs for the wider coverage of the CMT.*
23. *The Director provided an update on the alert dissemination progress. In the context of ACER's market surveillance activities ACER has sent to NRAs manually assessed alerts with trading dates of October 2017 and November 2017. In line with a dedicated feedback procedure, all NRAs provided valuable feedback on the received alerts, which was discussed during the 14<sup>th</sup> MMSC and presented to the 13<sup>th</sup> REMIT CG. In addition, during these meetings the format of the Alert Dashboard was debated. An updated dashboard will be shared at the 75<sup>th</sup> BoR meeting.*

## 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 and no conflict of interest was declared.

The BoR Chair reported on the BoR review panel assessment of the 2018 declaration of interest statements and CVs from all 28 BoR members and alternates, as well as all relevant Working Group and Task Force leaders. Based on its assessment of the information provided, the Panel did not identify any conflicts of interest and concluded that no action by the Agency or the BoR is required.

#### 1.2. Approval of the minutes of the 72<sup>nd</sup> BoR meeting

##### BoR Decision agreed: (D 2)

*The minutes of the 72<sup>nd</sup> BoR were approved.*

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

#### 2.1. Update on recent developments

##### **a) ACER**

###### ➤ - ACER Annual Conference and 2<sup>nd</sup> EMIT Forum

The Director announced that on 5 July the 2018 ACER annual conference will be held in Brdo pri Kranju and will be titled “An Energy Union for all Europeans. The energy sector beyond the Clean Energy Package”. The second EMIT Forum will be in Ljubljana on 6 and 7 September.

##### Data protection and related ACER website tools

The Director introduced the members to the new tools to be available on the ACER website to submit compliance commitments and IP waivers along with the rules and next steps on data provision revisions.

In line with the new data protection rules that will come in force in May, the Agency is implementing the electronic acknowledgement of the privacy statement. In this process, the Agency will also simplify the collection of compliance commitments and IP waivers (which are required under the AWG RoP).

###### ➤ AB appointments

The Director reported that in January new members from the European Parliament and the Council were appointed in the AB. The European Parliament appointed Ms Edit Herczog to serve as member and Ms Britta Thomsen to serve as alternate member for a period of four years. The Council appointed Mr Jurijs Spiridonovs and Dr Jochen Penker to serve as members and Mr Pal Kovacs, Mr Diego Vazquez Teijeira and Mr Pavel Pikus to serve as alternates, also for a period of four years. Also Mr Michel Thiolliere and Mr Hansen were appointed to serve until 2020, replacing Mr Piotr Wozniak and Mr Georgios Shammas, who resigned last year. Mr Georgios Shammas and Mr Lubomír Kuchta have been appointed to serve as alternates until 2020. Dr Romana Jordan was reappointed by the Board as its Chair for a two-year period, while Dr Jochen Penker was reappointed as Vice-Chair for the same period.

➤ Agency's proceeding on AQUIND exemption request

The Director provided an update on the AQUIND exemption request. CRE and Ofgem have referred the request of AQUIND Limited for exemption under Article 17 of Regulation 714/2009 with regard to a new 2000 MW electricity interconnector between France and Great Britain to the Agency for decision. The request is admissible. The Agency shall take a decision on the exemption request by 19 June 2018. Pursuant to Article 17(1) of Regulation 714/2009 an exemption may be granted if all the conditions therein are met.

The indicative planning is to hold, by mid-March, bilateral meetings with the applicant and bilateral meetings with System Operators and other parties with a potential direct interest in the exemption decision. On 3 May a BoR status update will be provided on the AQUIND project and the draft decision will be shared at the AWG level in the same month. The draft decision will be provided for a BoR opinion in June. The Agency has to take a decision by 9 June.

**b) European Commission**

➤ Update on Clean Energy Package proposals (including electricity Regulation recast)

Mr Ermacora, on behalf of the EC, provided a regular update on the negotiations on their proposal: "Clean Energy for all Europeans" and the next Energy Council. With regard to the Energy Union Governance, Energy Efficiency Directive and RES Directive, trilogues are held under the Bulgarian Presidency and a political agreement is expected soon. With regard to the market design, the ITRE vote on the ACER, Risk Preparedness & Electricity Regulations recasts and the Electricity Directive recast took place on 21 February. The draft EP reports are now issued and they will serve as the basis for the trilogues scheduled to start under the Bulgarian Presidency. The Council is still discussing its position. The Council has adopted general approaches on the Electricity Regulation and the Electricity Directive on 19 December and on the Risk Preparedness Regulation on 4 December. For the Electricity Directive the only remaining pending issue is the electricity interconnectors' definition to be extended to include those with third countries, in order to avoid pre-empting the Gas Directive discussions on the same issue. At this stage the Council has not had a substantive discussion on this issue. The Council has still not finalised their approach with regard to the ACER Regulation.

➤ Update on EC workshop on digitalisation, 7 March

The Director provided an update on the EC workshop on digitalisation which took place on 7 March and addressed the following questions: What is digitalisation in the context of the energy sector? What are the challenges? What roles should parties (TSOs, DSOs, NRAs, others) have? There was an agreement to address some of the above questions on the basis of concrete examples such as TSOs and DSOs flexibility market.

➤ Update on the last NC IMG meeting, 8 March

The Director provided an update on the 4<sup>th</sup> Network Code Implementation and Monitoring Group (NC IMG) meeting, which took place on 8 March in Brussels. The agenda was circulated and the conclusions will be circulated once agreed. The NC IMG discussed the following issues:

- Progress on data provision and transparency which seems to be made by ENTSOs; ENTSO-E signed a data provision agreement with ACER and ENTSO-G will also explore this option; ENTSO-E will release a simplified version of their dashboard for monitoring progress on terms & conditions and methodologies.

- The TSO-DSO Platform which has established a TSO-DSO NC/GL Implementation Group that will serve as a forum for ENTSO-E and EU DSO associations to discuss and coordinate regarding the implementation of network codes and guidelines.
- Monitoring aspects for the gas network codes were discussed, including how best to streamline efforts between ACER and ENTSOG.
- The proposals for amendments on network codes and guidelines: the Commission would like to complete the process for two of the three categories (editorial and non-controversial) before the comitology process is reformed as it is unclear how the process for network code amendments will run afterwards. Both ENTSOG and the Agency are expected to come up with a list of proposals for amendments classified according to three categories: editorial, substantive but non-contentious, and contentious. The Commission will make a proposal on the process and next steps.
- The NC IMG also discussed how best to track and coordinate regional proposals including the Commission's potential role in following up regional proposals. Furthermore, it was also discussed what happens if there are delays, or if the TSOs do not agree on a proposal and Article 9(4) would be triggered.
- Last given the forthcoming meetings of the Forums it was discussed in which Forum the electricity and gas coupling would be handled. The EC would like to address this at the Madrid Forum with the possibility of inviting ENTSO-E as well.

Mr Ermacora clarified that with regard to the proposals for amendments, the Commission aims at "quick fixes" ahead of a reform of the Comitology process. This would mainly relate to technical clarifications. The Commission clarified that for the more controversial issues the timelines would be dictated by the Agency and NRAs as they will not be part of the "quick fixes" that the EC aims to address rapidly.

Ms Poletti clarified that the classification on contentious and non-contentious was proposed by the AGWG itself, however, even technical issues could be contentious, which makes the distinction unclear and not straightforward. The Agency and NRAs have collected 78 proposals for amendments, 60% of which are considered non-controversial. There are also controversial issues which need more time. The list of amendments will be shared at the next NC IMG meeting in June.

### **c) BoR Chair**

#### **➤ Report on the conclusions of the internal Workshop on future IEM challenges**

The BoR Chair recapped the discussions that took place at the BoR internal workshop on future challenges to the Internal Energy Market. The workshop took place on 13 March. The BoR workshop was divided into three sessions focussing on the electricity market, gas market and cross-sectoral issues.

The electricity session focussed specifically on the following key challenges: the adequate zone/price configuration, maximising available cross-border capacity, security of supply, adequacy and price signals, and the governance and structure of ENTSOs and NEMOs.

- The gas session focussed on the current state of the gas market, the regulatory regime, and the future gas scenarios. The key challenges explored were: managing the transition towards a low carbon energy system (gas as a bridge technology, the use of new gas and hydrogen technologies) and uncertain demand scenarios (new investments, stranded assets, increased up stream market power).
- The cross-sectoral session focussed specifically on electricity and gas sector coupling, mainly at wholesale level, but also moving beyond, such as the interlinkages between network and sales, retail and wholesale, and demand-side responsibility.

In the final wrap-up session, the external dimension of the IEM was also noted. The Chair thanked the moderators, panellists and the attending BoR members for their valuable input into the discussion and



providing the initial thoughts on the fundamental challenges to the IEM now, and in the post-CEP framework. Key actions that were taken from the workshop include *inter alia* the following:

- The Chair will build on the rich discussion of the workshop and work with the AWG Chairs and ACER Heads of Department to develop a process towards the BoR Summit, which will include the next steps to take and the delegation of tasks between the AWGs. A proposal to this end will be made for the May BoR.

### **3. Items for BoR opinion, endorsement or agreement**

#### **3.1. Opinion on the participation of Switzerland in the European Platform for the exchange of standard products for balancing energy.**

The Director provided the background of the resubmission of the Opinion. At the last BoR meeting, the ACER opinion on the participation of Switzerland in the European platforms for the exchange of standard products for balancing energy was withdrawn from the agenda, as it seemed that there could be soon a clearer picture as to the shape of a possible agreement of the EU with Switzerland. On 2 March, the Swiss government agreed on a negotiation mandate. However, since there is no clarity on when the negotiations can be expected to be concluded. The Opinion was submitted for the BoR's endorsement, without substantial changes compared to the previous version.

The Agency opinion indicates that the Agency generally understands that 'system security' as referred to in Article 1(6) of the EB Guideline actually refers to operational security, as 'system security' is a legally undefined notion. For this reason, the Agency's opinion refers only to possible congestion problems in the Swiss network caused by excluding Switzerland from the European platforms for the exchange of standard products for balancing energy.

The Agency generally agrees with the all TSOs' assessment that the full participation of Switzerland in the European platforms for the exchange of standard products for balancing energy could be a much more efficient solution to help remove those negative impacts of possible congestion problems in the Swiss network and increase the efficiency of the Swiss cross-zonal capacity calculation and allocation, as well as the overall operational security in the region.

At the same time, the Agency finds it important that, in such a case, Switzerland implements all the requirements of the EB Guideline and other related provisions, which are needed to ensure a level playing field between the rights and responsibilities of the Swiss TSO and market participants and the TSOs and market participants operating in the Union.

*The Opinion was endorsed.*

#### **3.2. Appointment of new ACER Director: next steps and practical arrangements**

The BoR Chair indicated his concerns with the timing of delivery of the shortlist, which resulted into having to reschedule the technical briefings and the regular back-to-back meetings. The understanding, however, is that the Commission has taken a decision and a formal notification will be received in due time.

Two notes were circulated to the BoR with regard to the arrangements for the Director selection. The first regarded the agreed arrangements for conducting the technical briefings which had been agreed at the

previous meeting. The second note set out the proposed arrangements for the second stage of the process regarding the BoR opinion on the candidate designated by the AB to be appointed as Director which were discussed by the BoR. The BoR discussed the second note which will be finalised and submitted for agreement through EP.

#### **4. Cross-sectoral**

##### **4.1. Language Waivers**

Mr Šik, presented the LEN advice on the issue of language waivers which has raised many concerns in all the previous BoR discussions including on the legal implications. Mr Sik informed the BoR that the LEN assessed and provided answers to questions pertaining to the use of language waivers in ACER decision, and the possible legal issues that such approach may create for the Agency and for NRAs at the national level.

The Director congratulated the LEN co-coordinators and the panel on the process and their advice. He noted that there is a timing issue and a budgetary issue (even if there is only one or a few requirements for translation). So far, for the acts that the Agency adopted, language waivers have worked and TSOs were willing to provide the language waivers regime. The last NC IMG discussed this issue and it was proposed to suggest and test the following approach: the adoption of the ACER Decision in English to save time on the basis of waivers with the understanding that if a national court required a translation in the national language, ACER would then do the official translation. This approach would not take valuable time out of the six-month timeline in order to provide the translations. This would allow us to circumvent the costs and delays in issuing an ACER decision in more languages.

The Director suggested that this solution be immediately implemented until a better solution is found given that the next ACER Decision has a deadline of 24 April. That way the Agency can start approaching the addressees to provide the language waivers.

The BoR was favourable to the proposed process, subject to the clarification of one member.

Mr Nyikos offered to look for translation tools for the future. The rest of the members welcomed the suggestion, while noting that automatic translation tools thus far have various flaws. Mr Urbantschitsch informed about a terminology database that was developed in E-Control. This database could be circulated and such a database could be helpful for consistency purposes, also in relation to translations.

##### **4.2. Market Monitoring Report 2017 – Planning**

The Director reported about the planning of this year' MMR, which is foreseen to be very similar to the one published in 2017 as well as the key topics to be addressed therein. The MMR will consist of four Volumes, covering the Electricity Wholesale Market (EWM), the Gas Wholesale Market (GWM), the Electricity and Gas Retail Markets; and Consumer Protection and Empowerment (CPE).

The Agency may decide to publish the Retail and CPE Volumes as a merged one, but this is a decision for later in the process. The Retail Volume (limited in scope) will be produced internally with the information on each Member State verified bilaterally with the respective NRA. The CPE Volume will be produced by a CEER substructure, which will, however, be co-Chaired/co-Convened by an NRA expert and Mr Vereecke.

In terms of the substance, this year the EWM Volume will, as usual, focus on:

- The evolution of cross-zonal capacity, including further improvements in the methodology to assess the so-called benchmark cross-zonal capacities.
- The level of efficient use of cross-zonal capacity in the DA/ID/BAL timeframes.
- Update on the state of play of CMs/adequacy issues.

The EWM Volume will also focus on new aspects:

- ID markets: detailed overview of liquidity before the go-live of SIDC, including the potential impact of some elements of its design on the liquidity shared across borders, through SIDC.
- Monetisation of different dimensions of market integration (already achieved benefits vs. potential untapped benefits).

This year the GWM Volume will focus on market developments, GTM assessment of EU gas markets performance, and the impact of NC/FGs on market functioning. Notably, on NC market effects the focus will be on holistic cases at IP level by combining market effects impact analysis of NCs implementation with liquidity aspects. A model which will allow a granular view per IP and a holistic, integrated view on market effects is almost developed. It is still to be decided which IPs to include, which is data dependent, as well as granularity level, i.e. individual, border or regional which is relevance dependent.

The retail market topics to be covered include:

- Retail energy prices in EU MSs and EnC countries;
- Breakdown of prices based on retail offers available to household consumers for EU MSs and ENC for capital cities;
- Retail mark-ups: to be included in order to link wholesale and retail.

With regard to the planning, the Director noted that it is intended to plan each volume around October.

The BoR Chair noted that the Citizens Forum would be held on 21 September in Dublin.

Mr Ermacora noted that the MMR is of key importance to the Commission, in preparing policy and on implementation work. The Commission is very interested in keeping a broad retail part in the MMR, and of particular importance there is the retail competition index. This is the only tool available to compare retail market functioning in EU.

The Director referred to the resources constraints and noted that the EC could second an expert for the development of the MMR.

## **5. Electricity**

### **5.1. Important updates (such as NC implementation)**

Mr Hernandez provided a short update on the NC implementation work. There are three all-NRA decisions under CACM pending: IDCZCP (for which a six-month extension has been granted), IDCZGT (which has been referred to the Agency), and scheduled exchanges. The Agency will launch the first review of the CACM implementation after the summer.

## 5.2. Agency Decision on the all-TSOs Intraday Cross-Zonal Gate Times (IDCZGT) proposal

Mr Gence-Creux presented the timing and substance of the decision on the proposal for cross-zonal gate opening and gate closure times for intraday coupling developed by all Transmission System Operators (TSOs), which was referred to the Agency in October 2017. The consultation among stakeholders ended on 30 January and the received contributions can be accessed on the ACER website. In his view this decision is an illustration of difficult decisions to come. Given the previous discussions on language waivers, he noted that the Agency has one month to finalise the Decision and it is clear that there will not be time for translations. Mr Gence-Creux indicated that he hopes to receive all language waivers on time.

In terms of legal competence, the Agency is of the opinion that it can only decide on the point in time when cross-zonal capacity between bidding zones is traded. However, the following questions are out of the scope of the decision:

1. How cross-zonal capacity is allocated (continuous, auction). This is defined pursuant to the CACM Regulation and intraday cross-zonal capacity pricing methodology.
2. How much cross-zonal capacity is released and when. This should in the Agency's view be defined within the existing and future intraday capacity calculation methodology.
3. When the intraday market opens inside bidding zones. This is out of scope of CACM and is subject to national trading rules.

Based on this legal framework the Agency sees more room to define a harmonised gate opening time to 15:00 with an ambitious implementation deadline. In addition, there is a need for transitional arrangements which would be applicable at the XBID Go-Live.

With regard to the gate closure time, the Agency proposes to accept the TSO proposal.

*The deadline for the ACER Decision is 24 April. The BoR agreed to the use of an electronic procedure on the provision of a favourable opinion on the Agency's Decision on the IDCZGTs.*

## 6. Gas

### 6.1. Important updates (such as NC implementation)

Ms Poletti provided an update on the following issues:

- The request from the Commission to review the gas NCs (Transparency, BAL NC, CAM NC and IO NC (there are no issues on TAR NC)). NRAs and the Agency work on identified issues to classify them by controversial / non-controversial and they have identified 78 proposals (46 controversial and 32 non-controversial). As mentioned before, the distinction between substantial and non-substantial issues is not straightforward.
- The note on best practices on guarantees which is summarising practices on guarantees for transactions in some EU gas markets. Data has been provided by 9 NRAs (Belgium, Germany, Hungary, Ireland, Netherlands, Poland, Slovakia, Slovenia and Spain). Many aspects are analysed, such as types and level of guarantees, type of transaction covered, compulsory guarantees, and special rules for new market participants, securement of the payments. The rules of establishing guarantees are not regulated in the EU law. The aim of this summary is to present how some EU Member States try to mitigate this risks.

## 6.2. Response to Quo Vadis consultation –version for publication

Ms Poletti explained that the AGWG has developed a publishable version of NRAs reaction to the Commission's Quo Vadis study, for when Quo Vadis is published.

Mr Ermacora clarified that the Quo Vadis publication is imminent, and is expected to happen this week or next week.

With regard to the follow-up on the Quo Vadis, the Commission is now looking into initiatives in the area of the internal gas market. Three strands are being considered by the EC.

- First, gas mirroring: adjusting and balancing the provisions between the Gas and Electricity Directive and Regulation with the new provisions established in the electricity market design, as appropriate.
- Second, upgrading the market: this includes anything to be done in legislative changes to improve the working of the internal gas market. The Quo Vadis study contained possible elements for such work, and the Commission follows closely the responses from NRAs and other stakeholders. However, further studies, and impact analyses need to follow: Quo Vadis would not be the sole basis of any legislative initiative. In that context it is interesting to get input on controversial issues in the NC updates.
- Third, sector coupling: these are issues following the decarbonisation agenda where a possible need can be seen to adjust the framework in gas market legislation to contribute effectively to decarbonisation (such as: power to gas, the use of existing gas infrastructure). The Commission is about to launch a large study to kick-off the assessment on what is needed in terms of sector coupling for decarbonisation.

If there is a need for such legislative proposals, the earliest point for such proposals to come up would be first full year of new Commission, which is 2020.

The Director provided an update on the tariffs network code implementation and consultations. He urged the members to carefully plan the work in order to finalise the process by 31 May 2019 (the timing of the consultations in some MSs has changed). ACER has to publish a report on the revenue methodologies of TSOs (under Article 34). ACER has hired ECA to support its work. Questionnaires have been sent out to NRAs/TSOs on first transparency requirements on national websites and ENTSOG Transparency Platform by December 2017. It includes information on allowed revenues (Art. 30). The Agency has completed its preliminary assessment. ACER is suggesting to standardise the information via guidelines based on best practices. ACER encourages the publication of the information that is already available.

## 7. **Market Integrity and Transparency**

### 7.1. Important updates (REMIT implementation and operation)

Ms Groebel provided an update on the latest AMIT and REMIT CG meetings. In particular, on the three main deliverables for 2018:

1. Disclosure of Inside Information Transparency
2. Notion of PPATs
3. Common understanding on commodity products

Regarding the disclosure of Inside Information, Ms Groebel stressed that it is important to have easy access to, and the obligation to disclose information on, inside-information platforms (IIP). It is legally however not possible to have such an obligation. Nonetheless, the aim is to highlight this as the safest

possibility for disclosure of inside information. Together with the Agency a relevant document for guidance is being prepared. Further, it is important to note that market participants may also be subject to relevant disclosure measures and obligations under financial regulation, therefore double obligations should be avoided. Discussions with financial regulators will take place to work towards avoiding duplicate obligations and hence reduce unnecessary burdens on market participants.

With regard to PPATs (persons professionally arranging transactions), obligations with regard to investigations are ongoing on whether TSOs or certain parts of their activity fall under this regime.

With regard to the common understanding on commodity products, there has been a long lasting discussion regarding MIFID regulation, in which there is an exemption (“REMIT carve-out”) for products that fall within the scope of REMIT, so that market participants trading wholesale energy products under REMIT, do not fall under MIFID II, to avoid duplicate obligations. However, there are questions remaining on how wholesale energy products are defined. Detailed discussion takes place in order to find clear-cut criteria as to what falls under REMIT or under supervision of financial regulators. This work shall be finalised to preliminary discuss on 17 April with ESMA, the Agency and NRAs.

Further, some other work was envisaged on IT systems, such as the registration tool which now needs to be delayed due to the limitations of the ACER budget on REMIT. This does have immediate impact on NRAs and their possibility to use systems and data on which they rely as NRAs.

## 7.2. ACER Guidance note on Transmission Capacity Hoarding

The Director presented an update on two guidance notes (GN) regarding capacity hoarding: transmission capacity hoarding, and generation capacity hoarding.

The GN on Transmission Capacity Hoarding was uploaded for information to the BoR. There are still some small changes which are being made (editorial). However, the Agency is confident that it can release the GN after today’s final comments from the BoR. To this end the 4<sup>th</sup> edition of the ACER Guidance which is published will be slightly amended in order to reflect that we have now issued a GN on the behaviour of hoarding cross-border capacity.

The Director also presented the progress on the pending GN on Capacity Withholding of Available Generation Capacity in Day-Ahead Electricity Markets (“GN on Capacity Withholding”). After the last round of comments on substance planned for 19 March, the comments from NRAs will be consolidated. The consolidated version will be shared with the REMIT CG members. It is the Agency’s duty to ensure a consistent interpretation and implementation of the Regulation and we must make all efforts to this end to achieve a common understanding and view on this matter. The BoR supported the approach to develop progressively a common understanding and to pursue a common effort to finish the GN before summer.

The note will be submitted to the June BoR for further discussion.

## 7.3. Case Management Tool

The Director reported that on 31 January 2018 version 4.0.7.5 of the Case Management Tool (CMT) was successfully launched. This version has, after more than half a year of development, a range of enhancements that allow more efficient management of REMIT cases with NRAs. At this stage 12 NRAs are employing the CMT and 5 NRAs envisage to complete the process to employ the tool in 2018. 7

NRAs indicated intention to receive training from ACER on the use of the CMT this year. The Director thanked all involved NRAs, as this is best way to be in touch with REMIT teams. An even wider coverage would be beneficial.

#### 7.4. Progress on alert dissemination

The Director reported that in the context of ACER's market surveillance activities and according to plan, ACER has sent to NRAs manually assessed alerts with trading dates in October 2017 and November 2017. In line with a dedicated feedback procedure, all NRAs provided valuable feedback on the received alerts which was discussed during the 14<sup>th</sup> MMSC and presented to the 13<sup>th</sup> REMIT CG. In addition, during these meetings the format of the Alert Dashboard was debated. The updated dashboard will be shared at the 75<sup>th</sup> BoR meeting.