Conclusions

# Minutes of the 32nd ECRB Meeting

1 December 2015, 10:00-17:00

Premises of the Greek Regulatory Authority (132 Pireus Avenue, Athens)

## 1. Opening

ECRB President Branislav Prelevic welcomed the ECRB members from the Contracting Parties' and EU regulators as well as Mr Bartek Gurba, representing the Vice-Presidency. Mr Prelevic thanked the Greek Regulatory Authority for hosting the meeting.

The President confirmed the presence quorum necessary for ECRB decision making.

## 2. Agenda of the 32nd ECRB meeting (approval)

The ECRB President introduced the draft agenda. Mr Gurba asked for correction of the legal reference to Infrastructure Regulation 347/2015.

**Conclusions / Action Points**: The draft agenda has been approved with the requested adjustments. ECRB Section to upload the final agenda to the Energy Community website.

## 3. Minutes of the 31st ECRB meeting (approval)

The President asked for comments on the draft minutes; no comments were made before or at the meeting.

**Conclusions / Action Points:** The draft minutes have been approved. ECRB Section to upload final minutes to the Energy Community website (long version members´ area only; short version for publication).

## 4. Election of the ECRB President for the years 2016 and 2017

The Vice-President introduced the procedures for election of the ECRB President (ref. background paper and ECRB Internal Rules of Procedure) and informed that one candidacy has been received, namely by Mr Branislav Prelevic.

The ECRB elected Mr Prelevic with 8 out of 8 votes. Mr Prelevic thanked the ECRB members for their support and trust. ECRB congratulated Mr Prelevic to his re-election.

**Conclusions / Action Points**: ECRB elected Mr Prelevic President for the years 2016 and 2017.

## 5. Election of the ECRB GWG co-chair for the year 2016

The President re-called that, as a consequence of Mr Cioffo stepping back from his position as GWG co-chair, a procedure was initiated before the 32nd ECRB meeting in line with the ECRB Internal Rules of Procedure calling for candidatures for the GWG co-chair for the year 2016. He informed that within – even extended – deadline, no applications have been received.

Mr Prelevic noted that the lack of a co-chair would not necessarily hinder operation of the GWG, provided the co-chair in office, Mr Vistica, would accept acting as only chair.

**Conclusions / Action Points:** ECRB decided to investigate readiness of the current co-chair to act as only GWG chair; in case this would not be confirmed positively, a new call for applications shall be initiated.

## 6. ECRB Opinion on TSO certification (approval)

Mr Prelevic informed about an amendment inserted in the ECRB Procedural Act on TSO certifications (PA 01/2015), related to protection of confidentiality. He noted that no comments have been received on the suggested amendments before the meeting.

Mr Zametica suggested deleting plural reference to "authorities" in the newly inserted Article 4 having in mind that the certification decision will be national.

Mrs Grall informed that the draft decision of ERE on certification of Trans Adriatic Pipeline has not been formally submitted to the Secretariat yet; therefore the foreseen discussion of an ECRB Opinion on the draft decision has to be cancelled from the agenda.

**Conclusions / Action Points:** ECRB approved adjustments to Procedural 01.2005 Act laying down the rules for development of an ECRB Opinion on draft certification decisions.

## 7. Cooperation ECRB-ACER (information)

Mr Prelevic and Mrs Grall updated on the discussions at a trilateral meeting between ACER, ECRB and ECS (ref. meeting summary) related to (1) participation of Contracting Party (CP) National Regulatory Authorities (NRAs) and ECS in ACER Working Groups; (2) monitoring activities of ACER in relation to CP markets; and (3) dispute resolution on interconnection points between Contracting Parties and Member States, currently shared between ACER and ECRB (except for an existing legal gap).

As regards participation of CP NRAs in ACER Working Groups, Mrs Grall explained ACER's requirement of a confirmation by ECS on the relevant CP having implemented the Third Package in primary legislation and 2ndary legislation likely to be in force within the next six to twelve months (cf letter of Director Pototschnig to Director Kopac of 24 July 2015 and the related reply of Director Kopac of 28 July 2015). In this context, Mrs Grall invited CP NRAs to communicate (draft) 2ndary legislation to the Secretariat, once available.

Mr Maksimovic took note that the outcome of the Ljubljana meeting was unconditional presence of ECS to ACER WG meetings, while the participation of CP NRAs as observers has been made conditional on an opinion of ECS on 3rd package implementation. He also noted that such requirement of ACER goes beyond the requirements of EU energy acquis (as per the letter of Mr. Borchardt to Mr. Pototschnig of 25th March 2015, there are no obstacles in EU acquis in granting CP NRAs observer status in the ACER WGs; it is up to ACER Director to decide on their involvement in AWGs as he deems appropriate). He also stressed that ECS involvement is not questioned, but ECS should not present views of ECRB or NRAs at ACER Working Groups. He also underlined that it is not appropriate for the ECS to participate in developing a common (ECS/ACER) position paper with ACER related to cooperation between ACER and ECRB related to EU MS-CP interface issues (i.e. any agreement on ECRB-ACER cooperation should be developed by ECRB and ACER). Finally, it would be useful to clarify with ACER details on timing and means of the proposed (by ACER Director) extension of ACER market monitoring to the Contracting parties in order to have the possibility to timely amend the ECRB WP if necessary.

Mrs Grall noted that, indeed, the preferred approach would be for NRAs to directly participate in ACER Working Groups; the participation of the ECS is, first, meant to bridge the time gap until CP NRA participation can be accepted and ECS, secondly, is not supposed to participate in a permanent form but in an expert role. In any case ECS does not envisage representing CP NRA positions but those of the Energy Community Secretariat.

Mr Biancardi stressed that it should not be of relevance whether CP NRAs or ECS participate in ACER Working Groups but the most important point would be to ensure involvement of the Energy Community.

Mr Gurba stressed the need to examine whether it is possible for ECS to sign a Memorandum of Understanding (MoU) with ACER. Mrs Grall explained that such MoU is primarily supposed to address ACER's confidentiality rules; related rules also exist between ACER and its member NRAs as standing procedure for participation in ACER Working Groups. The question whether related agreements between ACER and ECS need to have the format of a MoU is not a main priority.

Mr Zametica noted that, until participation in ACER Working Groups is possible for CP NRAs, it would be interesting to be granted electronic access to meeting results.

Mr Nashi underlined the importance of CP NRA involvement in ACER having in mind the expected applicability of Third Package Network Codes / Guidelines in the CPs.

Mr Langeder clarified that it needs to be left to ACER to define criteria for participation and that it has to be kept in mind that ACER can only operate within the given legal framework.

With respect to market monitoring ECRB favored CP related data to be included in a (future) ACER Market Monitoring database and suggested that, having in mind the planned development of an ACER Market Monitoring database, it should be the right moment to clarify ACER's views on (1) database access / possibility to include CP data; (2) data submission (by each NRA individually / collectively by ECRB?); (3) use of data (ACER only / ECRB members / ECS / CP NRAs?); data access / confidentiality; (4) cost (sharing); (5) status of database development.

With regard to dispute resolution on interconnection points between Contracting Parties and Member States, currently shared between ACER and ECRB (except for an existing legal gap), Mrs Grall stressed that Energy Community related competences should not be exclusively covered by a non-Energy Community body but adequate involvement by Energy Community institutions – either ECRB or ECS (to the extent ECS does not have a review role under the Third Package already) – should be ensured.

**Conclusions / Action Points:** ECRB President to address ACER with respect to ACER market monitoring database related questions and the possibility for CP NRAs to be granted access to ACER Working Group results before their direct participation in ACER Working Groups.

## 8. ECRB decisions on infrastructure exemptions and cross-border cost allocations (discussion)

[Ref. presentation Mrs Grall]

Re-calling the first related discussions at the 31st ECRB meeting (cf minutes), Mrs Grall presented the open points for defining the decision making rules for ECRB decisions on infrastructure exemptions (under Electricity Regulation (EC) 714/2009 and Gas Directive EC/73/2009) and cross-border cost allocations (under Infrastructure Regulation (EC) 347/2013), namely: status of related Decisions under the EnC Treaty (Title II, III, IV) and consequent ECRB decision making rules; possible format for cooperation with ACER on developing a joint Decision in case the relevant infrastructure crosses EU MS(s) and EnC CP(s); dispute resolution in case of disagreement between ECRB and ACER.

In this context, Mrs Grall informed about first related discussions at the ECRB-ECS-ACER coordination meeting on 6 October 2015 (cf minutes; agenda item 7) showing that in case of ACER related Decisions are taken by the ACER Director with Board of Regulator involvement limited to a positive or negative position on the Director's proposal only but excluding the right of the Board to change the Director's proposal. She noted that a similar procedure could facilitate also the ECRB Decision making process, subject to agreement of ECRB on such approach.

Mr Maksimovic proposed further discussion based on a concrete proposal for an ECRB Procedural Act at the next ECRB meeting.

**Conclusions / Action Points:** ECRB Section - in agreement with the President and Vice-Presidency - to develop a draft Procedural Act laying down the rules for ECRB decision making on exemptions / CBCA decisions for discussion at the first ECRB meeting in 2016. The draft shall, in this first first step, ignore elements of ECRB-ACER coordination arising in case the relevant infrastructure crosses EU MS(s) and EnC CP(s).

## 9. Recent Energy Community developments (information)

Mrs Grall updated the participants on the following recent Energy Community developments:

- WB6 Initiative: ECS developed roadmaps for implementation of the so-called WB6 soft measures and discussed deadlines and necessary national measures with all WB6 CPs; a dedicated section on WB6 has been opened on the Energy Community website (https://www.energy-community.org/portal/page/portal/ENC_HOME/AREAS_OF_WORK/WB6) where also the first monitoring report is available; reporting will be provided every second month;
- CESEC Initiative: ECS developed roadmaps for implementation of the CESEC market related measures and discussed deadlines and necessary national measures with most CPs already; reporting will be provided every second month starting with a first edition in December 2015;
- Ministerial Council 2015: Mrs Grall updated on the conclusions and decisions made; documents and conclusions are available at https://www.energy-community.org/portal/page/portal/ENC_HOME/INST_AND_MEETINGS?event_reg.category=E14340.
- ECS published a report on compliance of Turkey with the Energy Community acquis that is available at https://www.energy-community.org/portal/page/portal/ENC_HOME/NEWS/News_Details?p_new_id=11881.

## 10. Recent regulatory developments (information)

[Ref. presentations ERO, NEURC, REGAGEN, SERC]

- Albania: Third Package compliant primary gas and electricity legislation has been adopted, 2ndary legislation is under preparation including a project related to the establishment of a Power Exchange in Albania; certification of TAP in under development;
- Bosnia and Herzegovina: cf ppt;
- FYR of Macedonia:a supply code and new switching rules have been approved; Mr Petrov has been re-appointed as President and Mr Kulevski as Board member for a 5 years term each;
- Kosovo*: cf ppt,
- Montenegro: cf ppt;
- Serbia: gas prices have decreased due to low oil prices; certification rules have been approved by the Ministry; the electricity transmission code gas been approved by AERS;
- Ukraine: cf ppt.

**Conclusions / Action Points:** no conclusion required.

## 11. Update on recent ACER developments (information)

[Ref. presentation Mr Thomadakis]

Mr Thomadakis updated the participants on other ACER developments (cf presentation of Mr Thomadakis).

**Conclusions / Action Points:** no conclusion required.

## 12. Customer & Retail Markets (information)

[Ref. presentation Mr Zametica]

Mr Zametica updated on the recent CRM WG developments (cf slides).

**Conclusions / Action Points:** ECRB agreed to approve the following 2015 CRM WG deliverables by written procedure: (1) Monitoring Report on gas and electricity retail markets; (2) Benchmarking Report on quality of supply.

## 13. Electricity (information)

[Ref. presentation Mr Stefanovic and Mr Lanza]

Mr. Stefanovic and Mr Lanza updated on the recent CRM WG developments (cf slides).

Mr Lanza noted the need for flexible ECRB decision making when it comes to CP NRA input to the already started and continuously following rule / methodology developments under the CACM Regulation 2015/1222. The President and Vice-Presidency confirmed that there would be no obstacles for WGs to agree on positions outside the regular meetings by written procedure and also address the Board for approval by written procedure.

The EWG co-chairs stressed the need for training of CP NRAs on CACM Regulation 2015/1222.

Mr Zametica urged the need to table Board decision relevant WG results – such as an ECRB recommendation on adoption of CACM Regulation 2015/1222 (cf slide 8 presentation Mr Stefanovic and Mr Lanza) or an ECRB position on CAO / JAO (cf slide 11 presentation Mr Stefanovic and Mr Lanza) – explicitly on the agenda and not "hide" them under the heading "WG update". He further noted the clear understanding of SERC that, first, all (CP and EU) TSOs of South East Europe need to comply with their legal obligation for participating in a regionally coordinated CACM mechanism before merger with JAO may be discussed in a next step. Thus, the position of SERC is clearly urging for the TSOs so far not represented in SEE CAO to join without further delay. This position was explicitly supported by Mr Thomadakis and Mr Prelevic.

Mr Stefanovic replied that ECRB EWG members made conclusions with an aim to present them to ECRB members just for information and initial discussions at ECRB level. Furthermore, he said that each ECRB WGs activity report should not contain only a report on WGs documents' presentation and finalization, but also a constructive and professional regulatory analysis which would benefit and improve regulatory development in the region with an aim to strengthen regulatory capacity. He stressed that all mentioned items were not presented to ECRB members with an aim to be adopted, voted or approved, but just with a purpose to raise discussion at ECRB level and for the ECRB benefit, so that there was no intention or reason to "hide" anything. Also, he claimed that all ECRB EWG proposals were fully in line with EU regulation and EnC Treaty and the question on all European Auction Offices merger with JAO is pan-European topic, regardless of individual NRAs interpretations, and there is no reason to treat SEE CAO with different approach, as there is no legal provision that "SEE TSOs need to comply with their legal obligation for participating in a regionally coordinated CACM mechanism before merger with JAO".

With regard to the ECRB recommendation on adoption of CACM Regulation 2015/1222 suggested by the EWG, the President noted that a recommendation for adoption of Third Package related Network Codes / Guidelines already exists. Mr Stefanovic replied that, indeed, ECRB issued recommendation for the adoption of the Third Package related to Network Codes, but as we are facing now the fact that the Network Codes are adopted one by one in the EU, ECRB should make a new recommendation on deadlines WHEN to adopt them and give clear timeframes for this activity.

**Conclusions / Action Points:** no conclusion required.

## 14. Gas (information)

**Conclusions / Action Points:** ECRB expressed its concern about lacking presence of the GWG chair or his alternative excuse for absence and coordination of a presentation of GWG activities with the ECRB President and/or Section. ECRB requested President Prelevic to address the GWG chair in this respect.

## 15. ECRB Work Program 2016 (discussion)

Mrs Grall presented the draft Work Program 2016 as discussed with the WGs and circulated for WG approval by 10 December 2015. She informed that, after incorporation of all WG comments, the Work Program will be sent for ECRB approval by written procedure.

Mrs Grall further explained that the Work Program 2016 consists of two main pillars, namely (1) finalization of 2015 deliverables (by the first ECRB meeting in 2016 the latest) and (2) new activities.

Mr Stefanovic requested including monitoring of compliance with transparency requirements in the EWG Work Program.

Mr Maksimovic noted that ACER proposal on extending its monitoring to CPs has not been reflected in the WP (Market Monitoring was only foreseen as EWG activity in 2016), reiterating the need to clarify with ACER whether such activities will take place in 2016. Mr Zametica explained that, as follow up of this year's retail market monitoring activities, the CRM WG 2016 will next year look into improvement of the indicators. Mrs Grall informed that the GWG members did not raise interest in repeating the gas wholesale market related monitoring activity next year.

The WG chairs stressed that the quality of ECRB results is subject to either more active participation and contribution of NRAs or an even stronger role of the ECRB Section in drafting of deliverables. Lack of human resources made available on NRA level for ECRB related work remains a central problem. In this context Mrs Grall noted that, due to additional tasks, the ECRB Section will have to reduce its contributions to drafting of agendas / minutes and editing / proof reading of documents; all other, i.e. content and document drafting related, work will have to be done on NRA level. She stressed that, different to previous years, this will also require applications for Task Force leadership to come along with a clear commitment to actively prepare the relevant Task Force deliverable.

**Commented [ngr1]:** Nenad Stefanovic: It is not clear what the ECRB Section additional tasks are. Are there additional regulatory tasks that ECRB Section is performing for ECRB or SEE NRAs? ECRB should be informed about it. ECRB Section task is to have administrative and professional supporting role to ECRB and EnC NRAs, and to be a part of ECS only in terms of structure.

Mr Zametica underlined that the quality of ECRB results will also depend on the number of meetings and noted concerns about the reduction from previously 4 to now 3 WG meetings p.a. Mrs Grall noted that the number of meetings is per se not limited; however, ECS can only provide reimbursement for 3 meetings p.a.; in this context she re-called the possibility to use the ECS web-conference tool for discussion outside the regular meetings.

Mr Langeder informed that the problem of lacking human resources is also faced on CEER level. CEER therefore calculates available man days per NRA and compares them to necessary man days per deliverable; deliverables lacking sufficient back up of NRA resources are usually deleted from the Work Program.

**Conclusions / Action Points:** Work Program 2016 to be approved by written procedure. Task Forces for which no leader can be identified until the first meeting of the relevant Working Group in 2016 shall be eliminated from the ECRB Work Program 2016.

ECRB President to address the NRAs' Chairmen with the request for adequate human resource related contribution to ECRB activities.

## 16. ECRB Annual Report 2015 (information)

Mrs Grall informed that the Annual Report 2015 was still under development. After agreement by the WG chairs it will be circulated for ECRB approval by written procedure.

**Conclusions / Action Points:** Annual Report 2015 to be approved by written procedure.

## 17. AOB

President Prelevic informed that Mr Thomadakis' position as ACER representative in ECRB will expire in December 2015 due to termination of Mr Thomadakis' term as Board member of RAE. The President thanked Mr Thomadakis in the name of the ECRB for his long-lasting support and contribution to ECRB activities and wished him success for his future activities.

ECRB expressed its concern about lacking presence of ANRE-Moldova at ECRB WG and Board meetings during 2015. ECRB requested President Prelevic to address ANRE-Moldova in this respect.

## 18. Next meetings

The ECRB agreed on the following meeting dates 2016: 20 April, 28 September (with a proposal for back to back organisation of the 3rd ECRB-MedReg Roundtable), 6 December.

Mrs Grall informed that the 2016 Energy Community event calendar will be online before end of 2015, including all ECRB related meetings as well as (among others) dates of the Gas / Electricity Fora.

**Annex – List of Participants**

| Name | Institution |
|---|---|
| ANICIC, Jelena | REGAGEN |
| BIANCARDI, Alberto | AEEGSI |
| BISLIMOSKI, Marko | ERC |
| FRAGOUDAKI, Evi | RAE |
| GRALL, Nina | ECS |
| GURBA, Bartek | ECRB Vice-Presidency |
| HALIMI, Enver | ERO |
| LANGEDER, Gerhard | E-Control |
| LANZA, Salvio | EWG co-Chair; AEEGSI |
| MAKSIMOVIC, Petar | AERS |
| MERSINA, Ioanna | RAE |
| NASHI, Agim | ERE |
| PANOUSOPOULOS, Vasileios | RAE |
| PRELEVIC, Branislav | ECRB President |
| PROKOFJEVA, Inga | ECS |
| STEFANOVIC, Nenad | EWG co-Chair |
| THOMADAKIS, Michael | ACER representative in ECRB |
| TSALIKIDIS, Charis | RAE |
| TSAPLIN, Valerii | NEURC |
| ZAMETICA, Edin | CRM WG Chair |