Minutes of the 36th ECRB Meeting

18 April 2017, 10:00-17:00

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

1. Opening

The President welcomed the ECRB members as well as Mrs Stamati, representing the ECRB Vice-Presidency and Mr Hesseling, representing ACER. The President also welcomed the new chair of the regulatory authority of Moldova, Mr Copaci. Mr Prelevic thanked the Greek Regulatory Authority for hosting the meeting and confirmed the presence quorum necessary for ECRB decision making.

Mr Manolkidis, Vice President of RAE, gave an opening address. He also drew attention to the identical acronyms used for the regulatory authorities of Greece and Montenegro and suggested that transparency would benefit from adding the relevant country to the abbreviations. Mr Prelevic noted that the name of the regulatory authority of Montenegro is set by legislation but agreed that a mutually comfortable solution should be found.

2. Agenda of the 35th ECRB meeting (approval)

The President introduced the draft agenda and asked for comments; no comments were made.

Conclusions / Action Points: The draft agenda was approved for upload to the Energy Community website.

3. Minutes of the 34th ECRB meeting (approval)

The President asked for comments on the draft minutes; no comments were made.

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

4. ECRB Work Program 2017 (approval)

Mrs Grall introduced two proposals for amending the ECRB Work Program 2017, as approved by the respective Working Groups, namely:

- Electricity Working Group (EWG): development of a report monitoring the electricity wholesale market developments in the Contracting Parties; and

- Customer and Retail Markets Working Group (CRM WG): development of a report monitoring the electricity and gas retail market developments in the Contracting Parties.

Mrs Grall noted that the two topics have been already earlier proposed for the ECRB Work Program – the Working Groups in charge, however, decided to make these activities subject to final information on whether ACER would cover these areas in its 2017 Market Monitoring Report. Mrs Grall informed that, based on an Administrative Arrangement between ACER and the Energy Community Secretariat, ACER agreed to also cover the Contracting Parties in its monitoring activities.

Mr Hesseling explained that, due to human resource restrictions, the 2017 Market Monitoring Report of ACER will only cover the wholesale gas markets of the Contracting Parties and price developments in their gas and electricity retail markets; future expansion to electricity wholesale markets might be possible but has not been agreed so far.

Mr Stefanovic informed that, based on this information, the EWG decided to repeat its 2015/2016 monitoring activity and develop a report on the progress of the wholesale electricity markets. He confirmed that the report will follow the indicators used by ACER for its related monitoring on EU level.

Mr Zametica informed that, having in mind the rather limited scope of the retail market related monitoring activity of ACER the CRM WG decided to additionally develop a more comprehensive review of the gas and electricity retail markets in the Contracting Parties.

Mrs Anicic introduced a third proposal for amendment of the ECRB Work Program 2017, namely:

- A report on the enforcement powers and practices of the Energy Community regulators.

Mrs Anicic reminded of the invitation by the 2016 Gas Forum for ECRB to present a related overview.[1] She further presented a suggested set of questions that could be addressed to regulators for preparation of the report, namely:

1. Whether the regulator has sanction powers; and
   - if so, which and for which cases of non-compliance;
   - if not, whether any other national body has sanctioning powers instead including possible cooperation of the regulator with this/these body(-ies).
2. Whether, so far, a need to issue penalties occurred; and
   - If so, whether the measure has proven to be effective or why, in case not;
   - If so but the competent body did not issue penalties, why.

The President re-called that regulators have been invited by email correspondence to declare whether they would be ready to contribute to assessment of the effectiveness of regulatory enforcement practises. During consultation, the regulatory authorities of Serbia and fYR of Macedonia did not confirm positively; and SERC noted its restricted competences, limited to electricity transmission sector only, but expressed readiness to contribute to the analysis within its area of responsibilities. No other feedback was received during consultation.

[1] Cf conclusion no. 3: *In the context of promotion truly competitive markets, NRAs shall ensure to supervise consistent and continuous application of primary and secondary legislation and make use of their enforcement and penalty rights in case of non-compliance. The Forum invited the Energy Community Regulatory Board (ECRB) to present an assessment of the effectiveness of regulatory enforcement practices to the next Forum.*

Mr Maksimovic noted that tacit agreement of regulators not responding during consultation must not be assumed, having in mind that the consultation process required explicit confirmation of the readiness to participate in this activity. He also confirmed that AERS was not ready to participate in the proposed activity. He specifically highlighted that the scope of the exercise was not clear, that a methodology for assessing "the effectiveness of regulatory enforcement practices" (cf conclusion no. 3 Gas Forum 2016) does not exists and that development of such would not be worth the effort.

Mr Prelevic referred to the set of questions proposed by Mrs Anicic and explained that such would not target a review of effectiveness as such but an overview of existing powers and practices.

Mrs Grall noted that the activity could help identifying necessary improvements of the legal powers of regulators, as previously successfully performed for the independence of regulators. As regards the latter a related ECRB report indeed helped to carve out existing legal shortcomings and addressing them through legal reforms in the Contracting Parties.

Mr Maksimovic asked for clarification whether the report would be prepared by the Secretariat or ECRB. Mrs Grall confirmed that the activity would not involve the Secretariat.

Upon request of the President, the following regulatory authorities declared readiness to participate in and supported the development of an overview of existing sanctioning powers and practices by ECRB: AEEGSI (Italy), ANRE (Moldova), CRE (France), E-Control (Austria), ERC (fYR of Macedonia), ERE (Albania) ERO (Kosovo*), NEURC (Ukraine), RAE (Greece), RAE (Montenegro) and SERC (Bosnia and Herzegovina; within the limits of responsibilities of the State regulator). All of them stressed that the activity should only provide an overview but not an effectivity check. The Vice-Presidency supported the activity as useful contribution to ensure regulatory enforcement. Mrs Karakatsani highlighted the added value of such review that has, similarly, proven usefulness on CEER level in context with enforcement powers of EU regulators under the REMIT Regulation.

Conclusions / Action Points: ECRB approved the following amendments to the ECRB Work Program 2017:

- Electricity Working Group (EWG): development of a report monitoring the electricity wholesale market developments of the Contracting Parties;
- Customer and Retail Markets Working Group (CRM WG): development of a report monitoring the electricity and gas retail market developments of the Contracting Parties;
- Development of an overview on the enforcement powers and practices of the Energy Community regulators under the umbrella of a new ad-hoc Task Force led by Mrs Anicic. The activity shall be performed within the scope defined by the 36th ECRB and for the regulators that explicitly confirmed their participation commitment at said meeting.

5. Update on market developments in Greece (information)

[Ref. presentation Mrs Karakatsani]

Mrs Karakatsani updated the participants on the recent developments in the gas and electricity markets of Greece (ref. presentation).

Conclusions / Action Points: no conclusion required.

6. New acquis – gas network codes (discussion)

[Ref. presentation Mrs Grall]

Mrs Grall updated on the state of discussions on implementation of Third Package related gas network codes in the Contracting Parties (cf presentation). She re-called that an adapted version of the network code on interoperability and data exchange as well as the guideline on congestion management has been agreed by a dedicated working group of Contracting Parties' regulators and gas TSOs and was presented to the Permanent High Level Group (PHLG). The PHLG confirmed readiness to adopt these acts upon proposal of the Commission under Title II of the Energy Community Treaty. In this context, Mrs Grall underlined that the working group, PHLG and the Secretariat stressed the need to ensure applicability of the codes and guidelines not only between Contracting Parties but also on the interconnection points to neighboring Member States. She explained that related reciprocity is part of ongoing discussions for a reform of the Energy Community Treaty, as proposed by the Secretariat. Until such legally binding solution can be achieved, the Secretariat in cooperation with the Commission, negotiated with EU regulators the signature of a declaration according to which the relevant EU regulator confirms readiness to apply network codes and guidelines to its interconnection point(s) to a Contracting Party, provided that this Contracting Party has transposed and implemented the codes and guidelines in question (cf declaration shared as meeting material). The regulators of Bulgaria, Greece, Hungary, Poland and Romania signed this declaration.

Mrs Stamati explained the intention of the Commission to also collect the signatures of Contracting Parties' regulators on this declaration. This should, vice versa, also provide EU regulators with a confirmation of the Contracting Parties regulators' commitments towards them.

Upon debate, the regulatory authorities confirmed as follows:

- general support for signature subject to review of the declaration: AERS (Serbia), ANRE (Moldova), ERE (Albania), NEURC (Ukraine);
- ERC (fYR of Macedonia) noted readiness to sign the declaration but stressed that effective implementation will depend on the completion of legislative reforms transposing the Third Package as basis for, consequent, transposition and implementation of network codes / guidelines;
- ERO (Kosovo*) and RAE (Montenegro): no national gas market;
- SERC (Bosnia and Herzegovina) invited the Secretariat and Commission to also arrange for signature of the declaration by HERA (Croatia) and explained that SERC will not be able to sign a declaration due to lack of any regulatory competences over the gas sector.

Conclusions / Action Points: the Commission will present a draft declaration for discussion to the next ECRB meeting.

7. ECRB Opinion on certification of EMS (discussion)

[Ref. presentation Mrs Grall]

The President re-called the duty of ECRB under the Third Package to provide an Opinion on preliminary decisions of Contracting Parties' regulators on certification of national transmission system operators to the Secretariat. He invited Mrs Grall to introduce the draft results of the ECRB review on the preliminary decision issued by AERS (Serbia) for certification of the Serbian electricity transmission system operator, EMS (cf presentation Mrs Grall). Mr Prelevic invited AERS to provide potential feedback and explanations to questions outlined in the draft ECRB Opinion upon presentation by Mrs Grall. AERS explained as follows:

- Ad: what is the status of EMS' ten year transmission system development plan (TYNDP) that is to be adopted by AERS?
  - Information by AERS: development of the TYND is one of the certification conditions and is currently for public consultation.
- Ad: does EMS have sufficient financial, technical, physical and human resources to perform transmission system operation?
  - Information by AERS: in the view of AERS, proven as part of the certification material.
- Ad: requirements of Article 9(1)(b), (c), and (d) / legal and functional unbundling of the owner of the transmission system – how is separation of control between Ministries guaranteed?
  - Information by AERS: such separation will require adjustment of legislation (several pieces of legislation might need to be changed). According to information available to AERS, EMS already approached the Ministry of Energy concerning related law reforms; details on progress is not available to AERS.
- Ad: appropriateness of the conditions imposed on EMS
  - Information by AERS: except for the proof for registration of ownership of transmission assets, indeed the required improvements are not in the sphere of EMS; however, AERS can only impose conditions on EMS, not on Ministries or the government.
- Ad: which would be the consequence of non-compliance with the imposed conditions?
  - Information by AERS: AERS shall withdraw the license after re-launching the certification procedure and withdrawing the certificate.

Conclusions / Action Points: ECRB will provide a final Opinion on the preliminary decision of AERS (Serbia) on certification of the Serbian electricity transmission system operator, EMS, to the Secretariat.

8. ACER developments (information)

[Ref. presentation Mr Hesseling]

Mr Hesseling updated the participants about recent ACER and EU gas and electricity market developments (ref. presentation).

As regards the participation of Contracting Parties' regulators in Working Groups of ACER, Mr Maksimovic asked whether ACER intends to stick to the approach that only the likelihood of the relevant country's transposition and effective implementation of the energy acquis within six to twelve months ahead has to be proven; or whether, in addition, also certification of national transmission system operators – as suggested by the Secretariat in its reviews – will be required. Mr Hesseling informed that admission of Contracting Parties' regulators to Working Groups of ACER remains at the sole discretion of ACER's Director. According to an Administrative Arrangement of ACER and the Secretariat, ACER will however take into account the view of the Secretariat for its decision.

Conclusions / Action Points: no conclusion required.

9. Latest Energy Community developments (information)

[Ref. presentation Mrs Grall]

Mrs Grall updated the participants about recent Energy Community developments (ref. presentation).

Conclusions / Action Points: no conclusion required, information item.

10. Latest regulatory developments in the CPs (information)

The President invited representatives to present a short update on the regulatory developments since the last ECRB meeting. Participants updated on recent regulatory developments as follows:

- Albania: certification of the electricity transmission system operator, OST, is to be finalized – ERE received technical assistance from the Secretariat financed from Western Balkan 6 Connecta funds for incorporating the ECRB and Secretariat's Opinions; secondary legislation on balancing and transparency in electricity is under preparation;
- Bosnia and Herzegovina: ref. presentation;
- fYR of Macedonia: the government approved a decision on establishment of a national electricity power exchange; ERC assumed new competences on regulating water supply; the Bulgarian export ban had significantly negative impact on electricity prices in the fYR of Macedonia – in this context Mrs Stramati informed that the Commission commissioned a study to further investigate the export ban. Mrs Grall explained that also the Secretariat launched investigations in this regard, also reviewing a breach of the Energy Community Treaty by Bulgaria in this context;
- Kosovo*: ref. presentation;
- Moldova: ref. presentation;
- Montenegro: ref. presentation;

- Ukraine: ref. presentation.

Conclusions / Action Points: no conclusion required.

11. Customer & Retail Markets Working Group (information)

[Ref. presentation Mr Zametica]

Mr Zametica updated on recent CRM WG developments (ref. presentation).

Conclusions / Action Points: no conclusion required.

12. Electricity Working Group (information)

[Ref. presentation Mr Stefanovic]

Mr Stefanovic updated on recent EWG developments (ref. presentation).

Conclusions / Action Points: ERB approved the recommendation on harmonizing cross border transmission capacity and agreed on written approval of the report on electricity balancing.

13. Gas Working Group (information)

[Ref. presentation Mrs Stratulat]

Mrs Stratulat updated on recent GWG developments (ref. presentation).

Conclusions / Action Points: no conclusion required.

Annex – List of Participants

Name	Institution
ANICIC, Jelena	REGAGEN
BIANCARDI, Alberto	AEEGSI
BISLIMOSKI, Marko	ERC
CIOFFO, Vincenzo	AEEGSI
COPACI, Tudor	ANRE
FRAGOUDAKI, Evi	RAE
GANI, Bucaj	ERO
GRALL, Nina	ECS
GRAVIER, Amelie	CRE
GUSENBAUER, Vera	E-Control
HESSELING, Dennis	ACER
KARAKATSANI, Nektaria	RAE
JANOVA, Arsim	ERO
LANZA, Salvatore	AEEGSI
MAKSIMOVIC, Petar	AERS
MANOLKIDIS, Sotirios	RAE
PRELEVIC, Branislav	President
STEFANOVIC, Nenad	EWG chair
STAMATI, Markela	EC, Vice-Presidency
STRATULAT, Elena	GWG chair
SZABO, Gergely	MEKH
TSAPLIN, Valerii	NEURC
ZAMETICA, Edin	CRM WG chair