

Appendix 3

Co-ordination of Decisions at Regional and European level

1. Introduction

1. The ultimate goal of the 3rd energy package is the achievement of a single European gas and electricity market. Currently there are many different approaches to the operation and development of national and regional markets that inhibit trade and the achievement of this ultimate goal. A few examples are differences in gate closure times, gas days, different market models (e.g. pool-based or bilateral), different synchronous areas and different gas quality areas. It is inconceivable that these differences can be overcome instantly through the implementation of the 3rd package measures. Rather, a process of change must be envisaged which will enable the necessary reforms to take place over a period of time so that the relevant issues can be addressed. Additionally, an important prerequisite for well-functioning integrated markets is the adequate level of interconnection. To provide the necessary network infrastructure also requires time.
2. A key aspect of importance when addressing the regional dimension is that growing interactions between neighbouring markets will require greater co-operation between regulators and TSOs.
3. In all the phases of the transition between the current legislation until the single European energy market is fully achieved, it is crucial to allow regions to make progress whilst ensuring that regional markets converge as they develop, and that the work under the framework of the Regional Initiatives within individual regions is tied firmly to wider European objectives where that is appropriate.
4. For these reasons it is essential to have a full understanding of regional situations and differences so that codes and other European regulatory policies can take them into full account, and that the process of convergence to a single European market can be managed in an orderly way.
5. This paper considers the challenges of co-ordination between the European and regional levels of energy market regulation firstly during the interim period when the third package has been adopted but when the Agency is not yet operational, and, secondly, when the Agency becomes operational and the European codes are emerging. Whilst it is recognised that the specific problems faced in gas and electricity may differ, the approach to co-ordinating developments at the European and regional levels does not need to be different. Whilst co-ordination must happen between the bodies established by the third package to operate the European regulatory framework, it is important that these processes are well understood by customers and other stakeholders so that they can interact with them effectively during the consultation processes.

6. This paper's focus is on the interaction between the work and eventual decision making at the regional level within the Regional Initiatives' Regional Energy Markets and the decision making on the European level by the Agency. It therefore does not comment (other than where directly relevant) on national regulation or the regulatory role of the Commission. Furthermore, the paper looks at coordination between TSOs and European energy regulators at the regional level and also at the European level.

2. The Problem of Co-ordination

7. As the third package reaches the stage of implementation the Regional Initiatives (RIs) will continue to be a central part of the implementation process. European energy regulators proposed the Regional Initiative approach as a means of managing progress towards a single European market, using the development of regional markets as a stepping stone. The concept of regional markets is inherent in the Third Package. The Regional Initiatives are based on the regional needs and priorities.
8. In the third package there are no specific provisions for regional bodies with formal decision making powers. Accordingly, the actual decision making powers rest with the national regulatory authorities, the Agency and the Commission. There are, however, proposals to extend the duties of national regulators beyond national boundaries, in particular regarding regional cooperation in specific area (Article 22d, 1 and 2 and Article 24d 1.2). Moreover the Commission is empowered to eventually propose potentially binding guidelines to extend duties of the regulatory authorities to cooperate with each other and the Agency (Article 22d(4) and Article 24.d(4)). To this end the Agency may make recommendations to the Commission. TSOs are required to co-operate at a regional level within the framework of the ENTSOs. This means that 'regional decisions' will, in reality, be a series of co-ordinated decisions taken by national bodies.
9. This implies that formalised governance structures will be needed to co-ordinate decisions within a region (even where these decisions are subject to a European level endorsement). To ensure that regional developments, over time, converge towards single European market there must be strong links between these regional governance structures and those of the Agency, and possibly the ENTSOs. Rather than create new regional governance structures, the European energy regulators consider that it would be better to build on the existing Regional Initiative arrangements. The basic Regional Initiative structure consists of:
 - a Regional Co-ordination Committee (RCC), which is composed of regulators in the region and the Commission;
 - an Implementation Group (IG) composed of regulators, TSOs and, in some cases, exchanges;
 - a Stakeholder Group (SG), which is a forum of all stakeholders and regulators.

10. In the interim period ERGEG will continue to coordinate the work within the gas and electricity Regional Initiatives. Similarly, the national regulatory authorities who carry on the work to lead the work in the regions and who through participating in the Regional Co-ordination Committee can – on the basis of their national mandate – agree on positions and make coordinated individual decisions.
11. After the interim period when the Agency is established, there arises the issue of the ownership and coordination of the RIs. Indeed, the Agency Regulation states that the rules of procedures (of the Board of Regulators) may foresee specific working methods for the consideration of issues arising in the context of regional cooperation initiatives. Furthermore, it is proposed that the Agency shall monitor the regional cooperation of the transmission system operators. Therefore, after the interim period it is the Agency who should be in charge of co-ordinating and monitoring the regional development.
12. Another feature of the RIs is that the electricity Regional Energy Markets and the gas Regional Energy Markets do not cover all Member States in the European Union. As regards electricity it is the non-interconnected electricity systems of Malta and Cyprus that are not currently participating. As far as gas is concerned, the current three gas Regional Energy Markets only cover a part of the Member States although not all Member States have a significant gas market or the gas market may not be connected to the interconnected European gas network. An attempt needs to be made to include all Member States, where relevant, to build on these RI structures. Critical third countries such as Switzerland will need to be accommodated, but that issue has been, or is in the process of being, addressed within the current regional arrangements on an ad hoc basis.

3. The Proposed Approach to Co-ordination

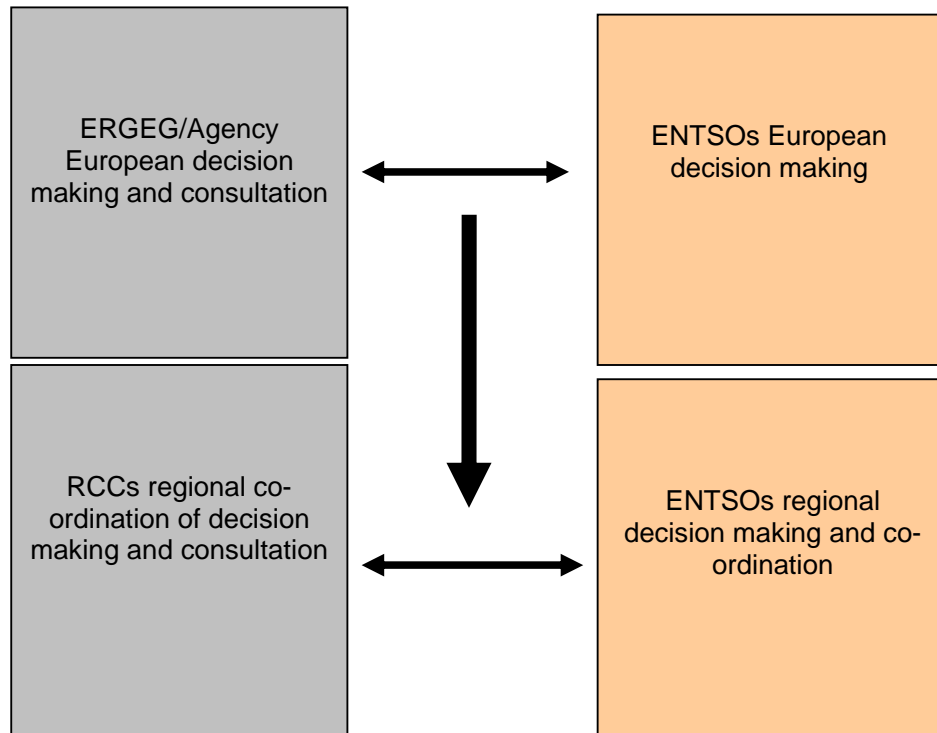
13. So far the basic model which has been followed in respect of the RIs and which will continue until the third package is implemented is that common principles, and sometimes detailed and binding obligations, are established at European level. The role of the Regional Initiatives has been to implement such requirements.
14. The established model will continue during the interim period until the European codes as envisaged by the third package proposals come into effect. As the aim in the third package is to prepare European codes on a large number of areas, this will inevitably reduce the need for Guidelines of Good Practice or similar guidance for the practical implementation of the listed issues. However, it seems likely that the need to continue with the RIs will remain and the RIs can be used as an efficient tool for promoting market integration and market functioning.
15. Both in the interim period and during the time after that, regional ambitions may mean that regional developments may overtake those at European level in some areas, and in

such cases it is necessary to ensure that the overall direction remains consistent with the achievement of a single European market.

16. The challenge is to ensure that arrangements are put in place so that there is a sufficient level of oversight of European and regional activity so that the two layers are properly co-ordinated. This suggests that the solution lies in ensuring sufficient co-ordination between the European and regional governance structures of ERGEG in the interim period and Agency after the interim period, the ENTSOs, and Member States, and that the oversight arrangements are adequate to ensure consistency of approach. The governance structures of the RIs may need to be adapted as a result of these considerations and the consultation arrangements at the regional and European level should be developed to recognise the interaction between the two levels.
17. A new aspect introduced by the third package relates to enforcement actions. Although the third package extends the duties of national regulators so that they extend beyond national boundaries, only national regulators have enforcement powers (other than the Commission) as jurisdictions remain national. Co-ordination arrangements at regional and, if necessary, European level are needed to ensure that the relevant national regulator is in a position to take action where the problem manifests itself in another Member State. The Agency should have a role in determining disputes between regulators in such cases.

4. The Decision Making Process

18. There are vertical and horizontal aspects to ensuring proper co-ordination of regional decisions and activity with European policy development. Vertically there will be interactions between ERGEG (in the interim period)/Agency (after the interim period) and the RCCs of the RIs. Horizontally when looking at the European level there will be interaction between ERGEG/Agency and the ENTSOs, and at the regional level it will be the RCCs of the RIs with their interaction with the regional decision making and co-ordination arrangements of the TSOs. The following diagram describes the relationships between the ERGEG/Agency, RCCs and the ENTSOs:



Vertical and horizontal aspects of European and regional decision making

19. There is substantial and growing interaction between European policy decisions and regionally co-ordinated decisions, both in respect of the issues and the timing of policy development. This has become clear with the progress of market development in the regions and recognising the cross-regional interdependencies of the solutions planned in the regions. Against this background the regional issues very often contain elements of Europe-wide issues. In these cases it is important that the regions recognise the European significance of issues and the eventual need to elaborate on European solutions instead of regional ones.
20. Horizontal interaction is also a substantial issue. It is clear that there must be significant interaction between ERGEG/Agency and the ENTSOs (and ENTSO-E/GTEplus before the ENTSOs are formally in place). Similarly, there is significant interaction currently between regional regulators and TSOs. As the third package is implemented, and as the RIs progress, we can expect a new element of regional interaction between the RCCs and the regional arrangements of the TSOs. This suggests that the governance structures of the ENTSOs in gas and electricity must be fully compatible (but not necessarily identical) with the governance arrangements in the Agency (and in their shadow organisations). The processes of engaging with stakeholders must also be co-ordinated to ensure that stakeholders understand the overall process and that their resources devoted to reacting to consultations are used effectively.

21. Co-ordination of congestion management is an example of an issue where there could be widespread application across the Union but where, as today, there could (at least in the medium term) be detailed differences of approach between regions. In cases like this, the question arises whether the regional developments are consistent with overall European regulatory policy, whether the European regulatory policy needs to be developed to reflect regional experience, and whether the proposals in the region have implications for other regions (for example, whether there is an advance in best practice). Such an issue would involve regulators and TSOs at all levels.
22. In undertaking this monitoring and oversight it is important to ensure that any new procedures:
- do not impose a significant burden on the involved entities;
 - are consistent with, and if possible build upon, existing structures;
 - ensure that there is a compatible approach applied by the ERGEG/Agency, the regional structures of the RIs and the TSO bodies.

5. Possible Practical Co-ordination Arrangements

23. To achieve adequate co-ordination and oversight of European and regional decisions, a number of enhancements to the existing co-ordination arrangements established by European energy regulators are proposed. Additionally, a number of proposals are made to pave the way for co-ordination and oversight when the interim period has come to an end and the third package is fully implemented with its new structures, i.e. the Agency and the ENTSOs.
24. The proposed enhancements for the interim period are:
- The European energy regulators' Work Programme should be further coordinated with the work programmes and action plans of the Regional Energy Markets.
 - The inclusion of the major regional targets for work into the European energy regulators' Work Programme would increase proactive in-year oversight of the progress of work to ensure coherent development of regulatory policy at regional and European levels.
 - The RCCs are in a key position to recognise the potential European level aspects and effects of regional issues dealt with in their specific Regional Energy Markets. They will inevitably continue this vigilance and duly inform the ERGEG and its appropriate structures about any potential European wide issues.
 - Within the regions co-ordination of enforcement issues by the regulators directly concerned is the envisaged approach, with a report to the relevant RCC.

- Disputes between regulators would, as proposed in the third package, be referred to the Agency for resolution. The Agency might choose to seek advice from the relevant RCC before reaching a view.
- The development of annual work plans of the Agency and the ENTSOs will establish an efficient and co-ordinated allocation of work between the Agency and the ENTSOs, and with the regions.
- Specific processes for the development and regulatory oversight of the 10 year network development plans at regional and European levels.

25. The proposed enhancements for the post-interim period are:

- The development of annual work plans of the Agency and the ENTSOs will establish an efficient and co-ordinated allocation of work between the Agency and the ENTSOs, and with the regions.
- The Agency's work plan should be coordinated with the work programmes and action plans of the Regional Energy Markets.
- The inclusion of the major regional targets for work into the Agency's work plan would enable proactive in-year oversight of the progress of work to ensure coherent development of regulatory policy at regional and European levels.
- The RCCs are in a key position to recognize the potential European level aspects and effects of regional issues dealt with in their specific Regional Energy Markets. They will inevitably continue this vigilance and duly inform the Agency and its appropriate structures about any potential European wide issues.
- Within the regions co-ordination of enforcement issues by the regulators directly concerned is the envisaged approach, with a report to the relevant RCC.
- Disputes between regulators would, as proposed in the third package, be referred to the Agency for resolution. The Agency might choose to seek advice from the relevant RCC before reaching a view.

26. The engagement of stakeholders in the process will be very important. It is expected that the consultation procedures for the Agency will specify that formal consultation should happen on regional proposals and on European proposals. Where it is anticipated that a regional proposal may be developed further for European application this will be stated clearly in any regional consultation. A regional consultation in these circumstances will not be an acceptable substitute for a European consultation when the proposal is further developed for that purpose. The existing consultation arrangements used for the RIs will continue to form the basis for regional consultations.