

ERGEG Gas Regional Initiative

North and North West Regional Energy Market

REGULATORY COORDINATION

Subfocus: removal of regulatory obstacles to cross-border investment

DRAFT

Regulator key contact person:

Keelin O'brien – kobrien@cer.ie

Operator key contact person:

Britta van Boven - b.k.van.boven@gastransport.nl

REGULATORY COORDINATION

Issues and Challenges

Achieving a regional market will require a common regulatory philosophy and approach to cross-border trade. This will create consistency in regulatory treatment of cross-border flows, resulting in a more stable and predictable regulatory regime across the region. To achieve this will demand cooperation among the member states within the region. This work stream will therefore help the RCC to assess where political, regulatory or legal barriers exist and make proposals to address any issues arising if appropriate. It may be that resolution rests with each individual member state if a common approach is not practical. In any event there must be basic criteria with which all member states comply and these should be set out by the RCC.

The process of improving coordination between regulators may be iterative with the RCC setting out the high level goals, then assessing barriers and a modified approach being recommended by the RCC. The scope of work for this work stream will therefore evolve over the life of the project.

A common challenge facing regulators in the regional market will be to forge a shared philosophy that facilitates regional integration, in particular in attitudes to cross-border flows and transit. A vital issue is how regulation in one member state impacts on the market of another. The RCC is driven by a shared belief that market integration is to the longer term benefit of consumers in each national market. However, current approaches are not always driven by concerns for market integration. There will be a need for careful examination of any proposed change to adopting consideration of cross-border impacts as a criterion for decision making by national regulators. At the extreme the RCC would need to understand what would happen if an action is in the interest of the regional market but not an individual member state.

As a starting point this work stream does not envisage creating a new governance structure with new legislation in the region. Rather, the goal of the RCC should be to improve coordination and cooperation between regulators and to establish a transparent process of resolving disputes. In particular, the work stream will review regulatory and legal approaches to issues of particular importance to cross-border flows (e.g. treatment of transit, allocation of cross-border network capacity, balancing of cross-border flows, avoiding dual regulation, among others).

As a final point, the RCC should emphasize that there are rules already laid down by the Commission regarding cooperation between member states, and can be seen in Directive 2003/55/EC (“the Gas Directive”) and Regulation (EC) No 1775/2005 (“Regulation 1775”). For example, Article 25 paragraph 12 of the Gas Directive states, “*National regulatory authorities shall contribute to the development of the internal market and of a level playing field by cooperating with each other and with the Commission in a transparent manner.*” Article 10 of Regulation 1775 states, “*Where appropriate they [NRAs] shall cooperate with each other and with the Commission.*” Working towards improving regulatory coordination is thus an obligation for all member states.

Scope of Work

As a first step the RCC needs to agree a common philosophy and approach to cross-border issues including interconnection and transit. A survey mapping existing powers of national regulatory authorities (NRAs) in the region will be conducted, focussing in particular on those that matter to cross-border trade.

Once the RCC has a better understanding of NRA’s powers, the RCC should then survey the existing regulation of cross-border issues in each member state. This will help the RCC better understand where regulatory obstacles restrict cross-border trade and also how cross-border flows impact on both domestic markets and the wider regional market.

It is proposed that the RCC ties in to the CEER Regulatory Benchmark report 2005 (Ref: C05-IEB-08-03) and ERGEG project of monitoring the implementation of Regulation 1775. If the findings from ERGEG’s assessment of European energy markets¹ do not contain the needed information, some further questions would be added to their questionnaire to probe further into the regulatory powers of each member state. The analysis will focus in particular on areas of regulatory overlap, interconnections and cross-border flows.

This will be a useful exercise in gaining experience of the approach of different member states in the region and may give insight into the different environments in which each member state operates. This may signal where structural barriers may arise in the future. The RCC recognises that some of this work may overlap with that in the Transparency work stream and possibly others, and the RCC will seek to co-ordinate this. The RCC

¹ A Preliminary Assessment of the European Energy Market by the European Regulator’s Group for Electricity and Gas (ERGEG), November 2005.

may also attempt to identify any lessons that may have been learnt from the electricity RCC.

The Implementation Group (“IG”) had a number of comments regarding how this work stream should focus in particular on improving regulatory coordination with regards to investment. The IG stated that investment in gas infrastructure is characterised by very high initial financial commitments and long payback periods. Investors therefore require stable conditions far into the future before taking investment decisions.

The IG suggested that in order to improve coordination and cooperation between NRAs, a set of guidelines should be set up on how to evaluate investments and proposed changes to the individual systems from a European point of view. This included the suggestion that these guidelines should cover how NRAs interpret Article 22 of the Gas Directive.

The RCC is in full agreement that the removal of regulatory obstacles to cross-border investment should be a focus of this work stream. Consideration will be given to mechanisms, such as Memorandums of Understanding, between NRAs that could provide a greater degree of regulatory certainty for parties seeking to invest in cross-border projects. However, it must be recognised that any coordination mechanism must be consistent with, and will be constrained by, the European and national legislative frameworks.

However the RCC is of the view that the interpretation of Article 22 within the Gas Directive must be decided by the Commission, not by regions within the Gas Regional Initiative. The RCC also believes that there are limits on how far it will be possible to go within the region in creating a common investment climate.

Work Plan

Issue	Description	Responsibility	Timing
<u>Fact finding stage</u>			
1. Develop an understanding of each NRA's current powers, focussing on areas of regulatory overlap, interconnection, cross-border flows and investment.	CEER and other ERGEG work have or will form an overview of the powers of NRAs. If there are still gaps this REM will issue the questionnaire of ERGEG to each NRA for the missing information. If necessary the RCC will add questions. This work will deliver a matrix of NRA’s powers.	The RCC will draw up a matrix of powers and regulatory overlap using ERGEG and CEER information.	September – end November 2006

2. Develop an understanding of regulatory coordination issues faced by TSOs.	TSOs and interconnectors to produce an overview of regulatory coordination issues faced.	TSOs and interconnectors within the IG	September – end November 2006
<u>Madrid</u>	Inform of work plan and progress.		December 2006
3. Compare results from TSO's paper and RCC matrix and produce conclusion paper.	The results from the matrix and TSO paper will be compared with the overall philosophy developed and identify barriers that may exist. Based on this a conclusion paper will be produced.	RCC with full involvement of IG	End February 2007
4. On the basis of the conclusions, develop guidelines for regulators.	Guidelines for regulation will be developed, if deemed necessary, in order to remove identified barriers.	RCC with full involvement of IG	February – end March 2007
<u>Madrid</u>	Presentation of philosophy, identified barriers and guidelines for regulators.	RCC	May 2007
5. Undertake full stakeholder consultation on the guidelines.	The Guidelines presented at the Madrid Forum should be consulted upon and revised based on the outcome.	RCC	May – end July 2007
<u>Action stage</u>			
6. Establish a process of regional coordination.	Further issues regarding regulatory coordination are likely to arise. The RCC should establish a process to facilitate better regulatory coordination and dispute resolution.	RCC with full involvement of IG	January 2007 – end April 2007

References

- ERGEG Gas Focus Group TF TRA – Questionnaire to regulators concerning the level of TSO's compliance with the transparency requirements of the Gas Regulation (1775/2005/EC);
- Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks;
- A Preliminary Assessment of the European Energy Market by the European Regulator's Group for Electricity and Gas (ERGEG), November 2005.
- Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC.