

Our date
2010-01-18

Our reference
Role of Regional Initiatives

Administrative officer
Davide Rubini

Your date
2010-01-31

Your reference
Statoil's response

ERGEG

Attn.: Mrs Fay Geitona
28 rue le Titien
1000 Brussels
Belgium

OBJECT: Response to consultation on the Draft Strategy for delivering a more integrated European energy market: the role of Regional initiatives

Dear Mrs Geitona,

We appreciate the opportunity offered to comment on the work and the role that the Regional Initiatives (RIs) could have in the new regulatory context defined by the Third Liberalisation Package and now being implemented.

In the response to the consultation on the RIs Progress Report we have already expressed the following main points:

- *Main achievements.* RIs have provided an alternative forum for regulators to discuss pending regulatory issues although progress has not always matched ambitions and/or expectations;
- *Investment in new infrastructure.* Leaving behind a national approach to the advantage of singled cross-border procedures is more and more necessary;
- *Capacity allocation and congestion management.* RIs should contribute towards progressive harmonisation of methodologies and strive for a European wide approach;
- *Transparency.* TSOs have improved sensibly the quantity and the quality of data provided, although more could be done with respect to harmonising the way data are made available;
- *Interoperability and hub development.* Increased liquidity at all hub should stay as main priority to be addressed. Lack of liquidity should mainly be read as a consequence limited access to entry capacity;
- *Security of supply.* RIs should continue to act as an additional channel to gather information as well as to identify the main challenges and problems to be overcome.

It is in light of our response on the Progress Report that we would like to add the following message. We see the future role of RIs towards the completion of the internal market through the lenses of these four key words:

- *Identify.* RIs represent a privileged point of observation of the development of the internal market and should exploit the full benefit of such position. By representing an intermediate level

between National Regulatory Authorities (NRAs) and the there to come Agency for Cooperation of Energy Regulators (ACER) they have the opportunity to better monitor the *specific-to-a-regional-market* challenges in the harmonisation process. A way to ensure that such monitoring exercise continues and improves could be on one hand to give RIs a formal and visible role in the governance structure of ACER and on the other hand to allow a systematic overlapping of the different regions.

- *Inform*. As a consequence of the previous role RIs should work as critical ring the communication chain between NRAs and ACER and in both direction. Formally including RIs in the governance structure of ACER would create a direct and unfiltered link among the three different levels and ensure continuous and extended dialogue. This would also allow ACER to better target aspects of its consultative activity while maintaining control of the overall picture and ensuring that different regions work in parallel although at times with a different pace.
- *Foster*. The main contribution of RIs so far has consisted in supporting the activity of NRAs in implementing the liberalisation process. Such role could be further enhanced through the exchange of best practices, permanent shared communication tools and structures, and governance twinning experiences. RIs should continue to see themselves as the most appropriate tool and forum to ensure and foster the adaptation of national regulatory regimes to the principles, guidelines and rules approved by the EU. Beyond the duty to identify and inform NRAs and ACER, Statoil does not see the RIs as standing on the creative side of the regulatory activity in that this would merely lead to the proliferation of processes and discussion forums ultimately slowing down the pace of reforms and harmonisation.
- *Fix*. In parallel to fostering the implementation process, and fundamentally through the same range of tools and practises indicated above, RIs could further develop their role as fixer, for instance, should a situation of infringement occur. Again for their proximity to both the national and the European level RIs are best positioned to do so. Provided that this does not lead to situations of limited transparency and that the strong independence of regulators is maintained, the proposal to include representatives of Member States in the Implementation Groups would definitely beneficial to performing both the fostering and fixing role.

A high degree of flexibility should stay as guiding principle for the management of the RIs and in the performance of their roles. In this respect Statoil believes that regional experiences parallel to the RIs should continue to exist as independent frameworks. However the RIs could have a coordinating role among all the existing and future initiatives to avoid doubling of work and an endured tension among different visions and perceptions on the future development of the European market which would inevitably postpone or even jeopardise the work done and to be done towards the construction of the single market.

Please note that our response is built looking at the gas market only and that we are available for any further clarification should find it necessary. Attached you find our answers to your four set of questions.

Kind regards
Statoil ASA

Davide Rubini
drub@statoil.com

Questions – set 1

There is no ‘blueprint’ for achieving a single energy market, and yet activity towards that goal is taking place across a number of levels. Do you consider that a high level/strategic vision is needed to set the overall direction of market integration? Should this vision be the same in gas and in electricity? How do you think it should be formed, and who should be involved? Which sort of forum do you think would be appropriate for the development of such a strategic vision? Do you see a risk that developing a strategic vision may delay implementation in the regions under current structures, or that it could facilitate progress?

Provided that sufficient flexibility is maintained to avoid excessive adjustment costs, moving with direction in a complex process like the establishment of the single market is desirable in that it would avoid conflicting developments to emerge and it would ensure some degree of regulatory predictability.

For such a strategy to be consistently pursued a solid endorsement is the necessary pre-condition. For this reason the most extensive number of stakeholders should be involved in any process intended to define long-term ambitions. Hence the Madrid Forum together with an extensive and ongoing consultation process managed by ERGEG, and then ACER, remain the best way forward to gather all relevant views and input to found the consensus. However, ACER, independent both from governments and country-tailored regulatory positions, should stay on the driving seat of the harmonisation process.

Where a comprehensive vision should result too difficult to achieve and to define, pending the risk of too much of a general description that would probably be worth little or of a too rigid blueprint unable to take differences into account, a good alternative is already available. What ERGEG has done with respect to work in preparation of the Framework Guidelines for Gas Capacity Allocation Mechanisms is a good compromise in that it points a long-term development in one specific area. By stating that the European gas market will work through *a set of entry/exit market zones with their own virtual hub connected through a limited number of bundled capacity products identical all over the EU and allocated via auction* ERGEG has clearly indicated what the end point of an ongoing process, hopefully resolving a long-lasting debate for good.

In this context RIs have a role to play in identifying the most stringent challenges to overcome both in reaching a common vision and in implementing it, and in informing relevant parties about developments in both respects (see *cover letter*).

Questions – set 2

Member States have an important role in establishing a legally binding cross-border regulatory framework, as well as in relation to their own Member State’s interests. Work in the Regional Initiatives

will be very relevant. Do you agree that Member States should be more closely involved in the work of the Regional Initiatives? If so, how should this happen?

The process built in the Third Liberalisation Package foresees that for the network codes defined by ENTSOG on the basis of ACER's Framework Guidelines to become binding the codes have to go through comitology procedure. This gives both the European Parliament and the Council an important role in the establishing the new regulatory framework.

Participation to the RIs implantation groups, as suggested by ERGEG, of representatives of Member States coupled with participation of representatives from the European Parliament, in light of the terms of the reformed comitology procedure, would definitely help making the process smoother in that it would prepare the ground to build the necessary consensus.

Questions – set 3

There are currently 7 electricity regions in the ERGEG Regional Initiative, and 3 in gas whereas the overall target is to create a single region – the Single European market. How should the number of regions in the ERGEG Electricity Regional Initiative evolve towards a single market? Should the number of regions be reduced? And/or should specific topics firstly be merged across the regions? Which regions do you think should be merged or topic areas reconfigured, and what criteria should be used in reaching a view? How many regions should result initially, and what topics might be reconfigured?

The question is of less relevance for the gas market. However, some changes could intervene in the way Gas RIs are defined and organised. Progressive and systematic overlapping of the different RIs together with giving RIs the role of coordinator of existing or there-to-be-created alternative regional aggregations and experiences would add to the ability of RIs to contribute to the progressive harmonisation of national markets.

4. Questions – set 4

Not all regional market projects are part of the ERGEG Regional initiative, and yet the achievement of a single European energy market is the goal of all such regional projects. Do you agree that the regional market initiatives which are outside of the ERGEG Regional Initiative should be incorporated in some way in the overall approach to achieving a single European energy market? How do you think this should happen? If you disagree, what role do you think these initiatives should have and how do you think convergence of European markets should be achieved?

See set 3. RIs should foster the development of the single market rather slowing down the process by imposing pre-configured geographical borders or thematic limits. We are convinced that for RIs to do so

they must remain the response to concrete market demands and market needs. RIs should not be thought like permanent structures but rather adaptive ones. In this context alternative experiences should not be bound to a rigid scheme but rather increase the fitness of the regulatory response. While coordination of alternative regional regulatory experiences through RIs is welcome, a degree of independence in the way they are organised and work should remain.

5. Question 5

Could ACER improve co-ordination across the regions in a better way than is proposed in this paper?

Any ordinary democratic governance structure is fairly rigid at its top to allow for an efficient decision-making and flexible and open at its bottom to allow for continuous input flow and for permanent innovation forces to be deployed and directed towards the decision-makers. Similarly the regulatory institutional framework in the EU should clearly identify in ACER its main decision-making centre, at least with respect to those tasks assigned to it by the Third Liberalisation Package, and look at other institutional entities, like RIs and NRAs and the wider pool of stakeholders, with different degrees as supportive and complementary but in any case bound to be coherent with the decisions and the views defined by the centre. High transparency conditions and a permanent dialogue with all stakeholders will ensure that the work of ACER is maintained in line with its mandate and with the regulatory needs manifested in the market.

With specific reference to the RIs, their inclusion in the governance structure of ACER, with sufficient visibility and permanent communication channels towards all stakeholders and in all governance levels direction, should ensure their ability to perform the four core functions listed in the cover letter. Involving different RIs on cross-regional topics and issues under ACER's supervision would also improve coordination.