

European Code Development

Key Messages

1. Framework Guidelines (FGs) and Network Codes (NCs) are pieces of European legislation, are directly applicable to GB when the 3rd Package takes effect in March 2011, and are not directly in the control of either Ofgem or DECC. The best way for stakeholders to engage with how FGs and NC are developed is at European level.
2. European Heads of State have now agreed that the European Internal Market for Energy should be complete by 2014 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/119175.pdf which makes the development of FGs and NCs more challenging as the formal drafting process only properly starts next month
3. The recent National Grid (NG) workshop highlighted that the current draft FGs and NCs are just that – drafts – and the proper work on them begins from the 3rd Package implementation date. Stakeholders should not consider their ability to influence thinking on either of these as already closed as the NCs will be heavily influenced by the FGs. The fact both have been drafted in parallel to date suggests there is room for change
4. The ENTSO and ACER 3 year workplans – which will be available on the relevant websites links to which were provided in our panel presentation – will set out the timetable for progressing FGs and NCs and stakeholders can respond to the consultations on those workplans when they're issued
5. Compliance with the EU NCs will take precedence over national codes and local code owners, e.g. National Grid, will need to ensure that national codes comply. How they go about doing this – raising change proposals – will be a matter for them once the NCs are ready

Ofgem is keen that NG, as one of the ENTSOs which will draft the NCs, works with stakeholders and code panels to ensure they are up to speed on EU developments and can respond in a timely way. Ofgem will also keep note of stakeholder views when participating in ACER discussions on drafting the FGs but has no special position on drafting the FGs or the NCs that follow – note that the comitology process leading to the creation of the final version of the NCs is an inter-governmental process

Questions and Answers

In response to specific questions asked at the Panel meeting, here are the responses:

- **How often will the EU network codes change after implementation?**

This is uncertain. There is a process for amending the EU codes, but any changes to the codes would need to go through the comitology process every time so changes are not likely to be frequent. How new codes will emerge (and old ones change) will be part of the 3-year work programme for ENTSOE and ACER. This will set out the workplan for the next year and a projection of priorities for the following years. As with everything at a European level, there are opportunities to comment on the workplans for these institutions through stakeholder consultations.

- **Compliance of national codes with the EU codes – how will this work?**

EU network codes are directly applicable to all to whom they apply, i.e. in the case of the Grid Connection Network Code, this will be SOs and grid users. The Network

Code on grid connection will apply to everyone regardless of whether our national code is in line with the European code. There is an obligation on NG to ensure that the national code is compliant and there is likely to be an allowed period in which it should bring the national code into compliance. But regardless of this, the EU code requirements will apply from the date that they come into force. National codes will be fit for purpose so long as they are compliant with the European code. Otherwise they would need to be amended accordingly to bring them into compliance.

The extent to which changes will be necessary to national codes is uncertain at the moment because there is no EU network code yet. Please note that those drafting the Grid Connection Network Code in ENTSOE are basing a great deal of their work on the GB codes and so, in their view, the EU code should not necessitate large scale changes to GB codes.

- Given the number of codes to be developed once the 3rd Package is in place, how will the process of EU code development ensure consistency between those EU codes in draft form and those which are close to or have become final?

Consistency in the long term, i.e. developing the package of EU network codes, is maintained through the workplan process and whether codes are kept consistent will be a matter for those involved in their drafting. Please note that any revisions to EU codes will need to go through comitology every time. Consistency of process in developing the EU codes is achieved as follows:

- 1) ACER/regulators draft the Framework Guideline (FG). ENTSOE uses the FG to draft the relevant Network Code when the consistency between the high level principles in the FG and problem identification and tools to respond to this in the Network Code is achieved
- 2) ENTSOE puts the draft Network Code out for consultation. Stakeholders respond and the ENTSOE would redraft the Network Code and identify how it has amended the draft in response to consultation responses - being clear about where views have been accepted or rejected and the reasons for this.
- 3) ENTSOE produces a final version of the Network Code which is reviewed by ACER to assess consistency with the FG
- 4) The Commission reviews the final Network Code and make a further assessment of the Network Code against its objective of completing the Internal Market
- 5) The Network Code goes into the comitology process where member states get the opportunity to try and push the Network Code to be consistent with their own aims

- Impact on users – how can market participants rely on the process of EU code development when making decisions on investment, shut down of plant, seeking derogations where non-compliant?

Market participants need to engage with European developments. There will be details in the FG, and in the Network Code about how an assessment is made of whether particular grid users must comply with the Network Code. This will vary from code to code and the only way to be sure about what is coming out of Europe is to engage directly with the EU code development processes. The objective of having harmonised European arrangements to tackle cross-border issues is that in the long term it should provide greater investment certainty.

- Would EU codes be more onerous than national codes?

EU codes take precedence over national codes. In general, for technical codes, they should be setting minimum standards, i.e. they will not erode national standards (and reduce the level of compliance required). In some countries this will mean that EU codes are more onerous than national codes, in other countries, where standards are already high - there will be less impact, e.g. in GB.

- How can the CUSC Panel become involved as a stakeholder as it administers the national code that may be affected by an EU code?

As EU law takes precedence over national law, the direct effect of EU network codes places a responsibility on Panel members to be bound by the requirements of EU law in the business that they do. The national code should be compliant with the EU code, and all the affected panels should be aware of the changes that are coming. The responsibility is as much on panel members and on National Grid to prepare for any changes that may be required. Ofgem would encourage Panel members to become a stakeholder in the EU code development process. However, it is for the Panel to determine how to do so - responding to consultations, because they deem this to be an effective means of engagement is a matter for them.

- Does Ofgem not need to run a process for gathering national stakeholder views and use these to lobby a GB position during ACER and comitology process?

The process for engagement is:

1) expert groups (drawn from industry across Europe) advise on the development of the FG, in particular for defining the problem and objectives of the FG/Network Code.

2) ACER drafts the FG with this input, and consults - all stakeholders across Europe can input to the consultation, stakeholders can include Ofgem in their response to ACER on this (indeed many stakeholders already do this).

Ofgem would be interested to see stakeholder views, and would certainly use this to help shape our input into the ACER process. The idea of running concurrent consultations with the FG process is not feasible (this runs into many logistical problems like the validity of sharing drafts, timings of running a national consultation at the same time as a European consultation etc.) and negates the idea that to influence at a European level you need to engage at a European level. The comitology process is run by DECC. Ofgem may be called upon to support DECC in their negotiations in comitology but ultimately the decision for what to present here lies with DECC. As with the FG process, views passed on by GB stakeholders are a welcome addition to developing Ofgem's contribution to DECC for the comitology process.