



All Licensees and any other interested parties

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Dear Colleagues,

### **European Public Limited Liability Companies (Societas Europaea) and licence requirements**

This letter seeks to clarify our position regarding licence transfer requirements<sup>1</sup> in circumstances where an existing licensee undergoes a change in company form to transform into a European public limited liability company or Societas Europaea (SE).

To date Ofgem's practice has been to recognise a company registration number specified in a licence to be the principal identifier for a particular licensee. In circumstances where an existing licensee has undergone any form of restructuring that results in a change to its company registration number we have considered the resulting company to constitute a separate legal entity. To that end, in such circumstances we would expect either:

- the existing licence to be transferred to the new legal entity<sup>2</sup>, or
- an application for a new licence to be made by the new legal entity.

### **SE Companies**

The Council Regulation on the Statute for a European Company ("the EC SE Regulations")<sup>3</sup> govern SEs to enable companies to carry out the reorganisation of their business on a Community scale.<sup>4</sup> An SE may be created on registration in any one of the Member States of the EEA. Article 10 of the Regulations requires Member States to treat an SE as if it is a public limited liability company formed in accordance with the law of the Member State in which it has its registered office.

SEs may be set up according to the conditions and in the manner laid down in the EC SE Regulations<sup>5</sup> which came into force on 8 October 2004. The *European Public Limited-Liability Company Regulations 2004* also came into force on 8 October 2004 to make arrangements for the implementation of the EC SE Regulations in the UK.

Under the EC SE Regulations a SE can be created by the:

- merger of national companies from different member states<sup>6</sup>

<sup>1</sup> Under the s 8AA of the Gas Act 1986 and s7A of the Electricity Act 1989.

<sup>2</sup> In accordance with the procedures set out in our guidance on licence applications.

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=103&refer=LICENSING/WORK>

<sup>3</sup> Council Regulation (EC) No 2157/2001 of 8 October 2001.

<sup>4</sup> Paragraph 1, Preamble to EC SE Regulations.

<sup>5</sup> Article 1.

<sup>6</sup> Article 2, paragraph 1, Council Regulation (EC) No 2157/2001 of 8 October 2001.

- formation of a holding SE<sup>7</sup>
- creation of a SE subsidiary of a national company<sup>8</sup>, or
- transformation of an existing company into a SE<sup>9</sup>.

Although there will be a change of company registration number, Article 37(2) of the EC SE Regulations governing the transformation of an existing public limited liability company into an SE states that the conversion of a public limited liability company into an SE shall not result in the winding up of the company or in the creation of a new legal person.

Accordingly, in circumstances where an existing licensee transforms into a SE in accordance with the requirements for registration under the EC SE Regulations and the implementing UK Regulations we do not consider this process to have an affect on that licensees' ongoing legal existence. Nor, do we consider it to have any impact on its status as a licence holder. Essentially, it is the same legal entity - transforming its company form but retaining its legal identity.

Therefore, we do not consider such circumstances to necessitate the need to either:

- transfer<sup>10</sup> any licences held (by the licensee prior to transformation) to the newly formed SE company, or
- for the resulting SE company itself to have to apply for a new licence.

### **What information will Ofgem require in such circumstances?**

Where an existing licensee undergoes a transformation into a SE company we will:

- require the licensee to provide copies of relevant documentation that confirms the transformation for our records
- update our licence records to reflect any consequential changes of transformation<sup>11</sup>,
- place a note on our Public Registers<sup>12</sup>, noting any consequential changes and the effective date of the transformation, and
- address the licensee as an SE company but continue to treat it as the same legal entity it was prior to the transformation.

The above brings the practice for the transformation into SE companies in line with Ofgem's practice further to the change of company name. Any licence(s) held by a licensee prior to its transformation into an SE would continue to apply in full to the resulting SE company.

Should you have any queries or comments, please contact Ikbal Hussain on Tel: 020 7901 7049 or by email at [ikbal.hussain@ofgem.gov.uk](mailto:ikbal.hussain@ofgem.gov.uk).

Yours faithfully,



Jonathan Dixon  
**Head of Licensing and Industry Codes**

<sup>7</sup> Article 2, paragraph 2, UK-SE Regulations.

<sup>8</sup> Article 2, paragraph 1, UK-SE Regulations.

<sup>9</sup> Article 2, paragraph 4, UK-SE Regulations.

<sup>10</sup> Under the s 8AA of the Gas Act 1986 and s7A of the Electricity Act 1989.

<sup>11</sup> Change in company number, registered address, regulatory contact details etc.

<sup>12</sup> The Ofgem Public Register is located in our library and available for inspection by appointment. We also have an electronic version (the ePR) available to view at : <http://epr.ofgem.gov.uk/>.