

## Regulating Energy Networks for the Future: RPI-X@20 - Update on domestic and EU policy context

**Document type:** Supporting paper

**Date of publication:** 20<sup>th</sup> January 2010

**Target audience:** Consumers and their representatives, those with sustainable development interests, energy transmission and distribution companies, generators and offshore producers, suppliers, shippers, Government, investors, academics and other interested parties.

### Overview:

RPI-X@20 is Ofgem's detailed review of energy network regulation. We are looking to the future on behalf of consumers by considering how best to regulate energy network companies to enable them to meet the challenges and opportunities of delivering a sustainable, low carbon energy sector whilst continuing to facilitate competition in energy supply. There is considerable uncertainty about how best to meet these challenges whilst maintaining value for money for existing and future consumers.

Alongside our February Principles, Process and Issues consultation, we published a supporting paper setting out the energy policy context. This supporting paper, published in parallel with our main Emerging Thinking consultation document, provides an update on relevant domestic and EU energy policy.

We welcome views on this supporting paper.

**Contact name and details:** Hannah Nixon, Partner - RPI-X@20 and Regulatory Finance

**Tel:** 020 7901 7165

**Email:** [RPI-X20@ofgem.gov.uk](mailto:RPI-X20@ofgem.gov.uk)

**Team:** RPI-X@20 and Regulatory Finance

---

## Table of contents

|  |          |
|--|----------|
| <b>Summary .....</b>   | <b>1</b> |
| <b>1. Domestic policy .....</b>                                | <b>3</b> |
| Heat and Energy Saving Strategy .....                          | 3        |
| Community Energy Savings Programme .....                       | 4        |
| The UK Low Carbon Transition Plan .....                        | 4        |
| The UK Renewable Energy Strategy .....                         | 5        |
| National Policy Statements on energy infrastructure.....       | 6        |
| Energy Bill 2009 .....   | 7        |
| Smart meters .....   | 7        |
| Why this is relevant to energy network regulation .....        | 8        |
| <b>2. European Union energy policy .....</b>                   | <b>9</b> |
| Introduction .....   | 9        |
| The Third Package.....   | 9        |
| Certification and unbundling .....                             | 10       |
| Independence of National Regulatory Authorities (NRAs) .....   | 12       |
| Agency for the Cooperation of European Regulators (ACER) ..... | 13       |
| Second Strategic Energy Review .....                           | 14       |
| Why this is relevant to energy network regulation.....         | 15       |

## Summary

1.1. Energy policy, both domestic and European Union (EU), provides an important part of the context within which energy network companies and the associated regulatory framework operate.

1.2. In February 2009, we set out the energy policy context in a supporting document to our Principles, Process and Issues consultation document. Since then, there have been a number of policy developments. This supporting paper to our Emerging Thinking consultation document updates the energy policy context (both domestic and EU policy). We intend this to be only a high-level illustration of the most important policy developments, up to December 2009. Many of these and other policy developments are worked on jointly by Ofgem and Government (e.g. transmission access review and offshore transmission) and further details can be found on our website ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)). Updates from the Committee on Climate Change can be found on their website ([www.theccc.org.uk](http://www.theccc.org.uk)). We will continue to monitor all policy developments over the next few months to inform our summer 2010 recommendations.

1.3. We are publishing this supporting paper alongside our main Emerging Thinking consultation paper, which sets out, for consultation, a potential new regulatory framework. The main consultation document attempts to provide an accessible overview of our emerging thinking and is aimed at a wide range of interested parties. Our ideas on 'embedding financeability in a new regulatory framework' are discussed in more detail in a parallel consultation paper. We will also shortly be publishing a related consultation paper on whether we should introduce a third-party right to challenge to our final price control decisions, as some participants in the review have advocated.

1.4. This is one of a series of technical supporting papers that provide further details on key aspects of the new framework. These supporting papers are aimed primarily at the network companies, investors and other stakeholders who require a more in depth understanding of our thinking and the rationale underpinning it in some or all areas. References for these papers can be found in Appendix 10 of our main Emerging Thinking consultation paper:  
(<http://www.ofgem.gov.uk/Networks/rpix20/publications/CD/Documents1/merging%20thinking.pdf>)

1.5. The table below shows the key policy developments reflected in this paper.

**Table 1: summary of policy developments described in this supporting paper**

| <b>Date</b>     | <b>Policy development</b>   |
|-----------------|---|
| <b>Domestic</b> |   |
| February 2009   | Consultation on Heat and Energy Saving Strategy                           |
| February 2009   | Consultation on Community Energy Savings Plan (CESP)                      |
| July 2009       | The UK Low Carbon Transition Plan   |
| July 2009       | The UK Renewable Energy Strategy  |
| September 2009  | CESP comes into force   |
| November 2009   | Consultation on National Policy Statements on energy infrastructure       |
| November 2009   | Energy Bill - first reading   |
| December 2009   | Smarter Grids: The Opportunity  |
| <b>EU</b>       |   |
| Ongoing         | Implementation of Third Package (to be consulted on by DECC) <sup>1</sup> |
| Ongoing         | Second Strategic Energy Review  |

1.6. In addition to the above, the House of Commons Energy and Climate Change Select Committee launched (6 February 2009) an inquiry into 'the future of Britain's electricity network'. It has suggested that this should be an input into our review. We will consider the recommendations of the Committee once published.

1.7. We have and will continue to consider the development of our regulatory framework across Government including within policy from the Scottish Parliament and Welsh Assembly.

---

<sup>1</sup> A summary of the key provisions of the "third package" of European energy markets liberalisation legislation is contained in Section 2 of this paper.

## 1. Domestic policy

1.1. This Chapter provides a high-level update of policy developments since February 2009. It is an illustration of part of the context within which we are carrying out our review and highlights a number of policy developments that may impact on the future of energy networks and energy network regulation. Table 2 below sets out the targets on greenhouse gas emissions and the use of renewable energy that were previously provided in our February 2009 papers.

**Table 2: Targets on greenhouse gas emissions and use of renewable energy**

| Policy area                                     | Policy objective   | Further detail  |
|---|--|---|
| <b>Reduction in UK greenhouse gas emissions</b> | Legally binding target to reduced greenhouse gas emissions by at least 80% by 2050, compared to 1990 levels <sup>2</sup> . | Carbon budgets provide a pathway for emissions reductions. The first three carbon budgets have been set and require: 2008-2012 emissions to be 22% below 1990 levels; 2013-2017, 28% below 1990 levels; and 2018-2022, 34% below 1990 levels <sup>3</sup> . |
| <b>Renewable energy</b>                         | 15% of our energy from renewable resources by 2020.  | This is the UK contribution to the EU target to deliver 20% renewable energy by 2020.   |

### Heat and Energy Saving Strategy<sup>4</sup>

1.1. The Government consulted on its Heat and Energy Saving Strategy on 12 February 2009. The aim was to encourage greater efficiency in energy use and the use of de-carbonisation heating both now and in the future. Issues consulted on included:

- information/tools related to efficient use of energy;
- financial options for energy efficiency and low carbon energy;

<sup>2</sup> Section 1(1) of the Climate Change Act 2008

<sup>3</sup> Further details on carbon budgets can be found on the DECC website at the following link: [http://www.decc.gov.uk/en/content/cms/what\\_we\\_do/lc\\_uk/carbon\\_budgets/carbon\\_budgets.aspx](http://www.decc.gov.uk/en/content/cms/what_we_do/lc_uk/carbon_budgets/carbon_budgets.aspx)

<sup>4</sup> Further details on the 'Heat and Energy Saving Strategy Consultation' can be found at the following link: <http://hes.decc.gov.uk/>

- extension of Carbon Emissions Reduction Target (CERT) arrangements;
- review of delivery model for household energy efficiency;
- changes to incentives to encourage the move to a low carbon economy;
- district heating; and
- combined heat and power and surplus heat.

## **Community Energy Savings Programme<sup>5</sup>**

1.2. Also on 12 February 2009, the Government consulted on its CESP. It then implemented the plan by order on 1 September 2009. The key features of the consultation were:

- an obligation on energy suppliers and generators to achieve CO2 reductions by making certain energy efficiency improvements to domestic properties (with a particular focus on areas with high levels of low incomes);
- offering these energy efficiency measures as a package to homes so that they receive all the energy efficiency measures they need, i.e. a 'whole house approach to energy efficiency' (this may include district heating schemes); and
- restricting the measures that are eligible to count towards the CO2 targets. This will place a focus on those measures which can make a significant difference to household emissions and fuel bills.

## **The UK Low Carbon Transition Plan<sup>6</sup>**

1.3. In July 2009 the Government published its White Paper 'The Low Carbon Transition Plan'. This plan aims to deliver emissions cuts of 18% on 2008 levels by 2020 (and over a one third reduction on 1990 levels).

1.4. Key parts of the White Paper are:

- all major UK Government Departments allocated own carbon budget;
  - 40% of electricity to come from low carbon sources by 2020 (30% from renewables by increasing the requirement for electricity suppliers to sell renewable electricity);
  - fund up to four demonstrations of capturing and storing emissions from coal fired power stations;
  - facilitate the building of new nuclear power stations;
- 

<sup>5</sup> Further details on the CESP can be viewed on the Communities and Local Government website at the following link: <http://www.communities.gov.uk/publications/planningandbuilding/communityenergysaving>

<sup>6</sup> The 'UK Low Carbon Transition Plan, National strategy for climate change and energy' can be viewed at the following link: [http://www.decc.gov.uk/en/content/cms/publications/lc\\_trans\\_plan/lc\\_trans\\_plan.aspx](http://www.decc.gov.uk/en/content/cms/publications/lc_trans_plan/lc_trans_plan.aspx)

---

- 
- clarifying that Ofgem should help tackle climate change and ensure security of supply;
  - provide funding in relation to delivering energy efficient households;
  - roll out smart meters in every home by end of 2020 (see also below);
  - pay as you save methods (using savings on energy bills to repay the upfront costs);
  - clean energy cash-back schemes where people/businesses are paid if they use low carbon sources to generate heat or electricity;
  - town/city/village competition around pioneering green innovation;
  - mandated social price support at earliest opportunity;
  - piloting community-based approach to delivering green homes in low income areas;
  - increasing level of Warm Front grants;
  - specific support to development and use of clean technologies;
  - target of 40% reduction in carbon dioxide emissions from new cars across the EU (compared to 2007 levels);
  - supporting demonstration of new electric cars;
  - sourcing 10% of UK transport energy from sustainable renewable sources by 2020;
  - formal framework for tackling emissions from farming;
  - setting out the Government's assessment of the outlook for energy security.

1.5. In addition, the paper referred to the production of a longer-term roadmap for transition to a low carbon UK for 2020 - 2050 and a vision for a smart grid.

## The UK Renewable Energy Strategy<sup>7</sup>

1.6. Directive 2009/28/EC on the promotion of the use of energy from renewable sources<sup>8</sup> commits the UK to a legally binding target of 15 percent of energy from renewables by 2020. This target is equivalent to a seven-fold increase in UK renewable energy consumption from 2008 levels: the most challenging of any EU Member State. The government recognise that such an increase is ambitious, and will be challenging, but are fully committed to meeting the target.

1.7. Following the major consultation on the Renewable Energy Strategy in 2008, the Renewable Energy Strategy and Executive Summary were published in July 2009. This strategy sets out how everyone has a role to play in promoting renewable energy, from individuals to communities to businesses. It includes:

---

<sup>7</sup> The 'UK Renewable Energy Strategy' is available from DECC's website:

[http://www.decc.gov.uk/en/content/cms/what\\_we\\_do/uk\\_supply/energy\\_mix/renewable/res/res.aspx](http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/renewable/res/res.aspx)

<sup>8</sup> See Annex 1 of Directive 2009/28/EC on the promotion of the use of energy from renewable sources, available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0016:0062:EN:PDF>

- financial support, targeting a wider range of technologies/ groups;
- swifter delivery, including in the planning system, supply chains, grid connection and sustainable bioenergy; and
- a stronger push on new technologies and resources, to help reduce the cost of meeting our targets for 2020 and beyond; and
- details on the role for communities and businesses.

## National Policy Statements on energy infrastructure<sup>9</sup>

1.8. On 9 November 2009, the Government consulted on draft National Policy Statements (NPSs) for energy infrastructure.

1.9. National policy statements (NPSs) lie at the centre of the new regime for nationally significant infrastructure projects. NPSs will be a primary consideration for the new Infrastructure Planning Commission (IPC) (as established under the Planning Act 2008) when considering applications for and making decisions on whether to grant a development consent.

1.10. Table 2 below identifies the role of each of the six energy related NPSs.

**Table 2: National Policy Statement relating to energy**

| National Policy Statement (NPS)                                    | Summary   |
|--|---|
| Overarching NPS (EN-1) for energy                                  | Sets out rationale for new energy infrastructure and instructs the IPC how to assess the impacts of energy infrastructure development in general terms. |
| NPS (EN-2) – Fossil Fuel Electricity Generating Infrastructure     | Provides additional information to overarching NPS on specific types of energy infrastructure.  |
| NPS (EN-3) – Renewable Energy Infrastructure                       | Provides additional information to overarching NPS on specific types of energy infrastructure.  |
| NPS – (EN-4) – Gas Supply Infrastructure and Gas and Oil Pipelines | Provides additional information to overarching NPS on specific types of energy infrastructure.  |
| NPS – (EN-5) – Electricity Networks Infrastructure                 | Provides additional information to overarching NPS on specific types of energy infrastructure.  |
| NPS – (EN-6) – Nuclear Power                                       | Provides additional information to  |

<sup>9</sup> The 'Consultation on draft National Policy Statements for Energy Infrastructure' is available from the DECC website at: <http://data.energynpsconsultation.decc.gov.uk/documents/condoc.pdf>



| National Policy Statement (NPS) | Summary  |
|---------------------------------|--|
| Generation                      | overarching NPS on specific types of energy infrastructure and identifies a list of sites that Government has judged to be potentially suitable for the deployment of new nuclear power stations by the end of 2025. |

## Energy Bill 2009<sup>10</sup>

1.11. The fifth Energy Bill (the Bill) had its first reading in the House of Commons on 19 November 2009 and received its Second Reading on 7 December 2009.

1.12. The Bill aims to implement certain elements of the Government's 'UK Low Carbon Transition Plan'. It is divided into 4 parts:

- carbon capture and storage (CCS); to create the framework for a financial mechanism to fund up to four CCS demonstration projects;
- fuel poverty; including provision of mandatory social price support (direct assistance with energy bills) to more of the most vulnerable consumers by energy suppliers and a reconciliation mechanism to allow the costs of the scheme to be shared equitably between suppliers;
- regulation; including making it clear that Ofgem, in relation to its principal objective of protecting the interests of existing and future consumers, must: include the reduction of carbon emissions and the delivery of secure energy supplies in its assessment of the interests of consumers; and step in proactively to protect the consumer interest as well as considering longer term actions to promote competition.
- the introduction of the Market Power Licence Condition (MPLC);
- the extension of the time limit within which a financial penalty can be imposed from 12 months to 5 years from breaches of licence conditions; and
- final provisions; sets out procedures for the Secretary of State for Energy and Climate Change to make orders and regulations under the Bill.

## Smart meters<sup>11</sup>

1.13. In December 2009 Government set out its decision on the:

<sup>10</sup> The Energy Bill 2009-10 can be viewed at the following link: <http://services.parliament.uk/bills/2009-10/energy.html>

<sup>11</sup> Towards a Smarter Future: Government response to the consultation on smart metering for electricity and gas is available from DECC's website at: <http://www.decc.gov.uk/en/content/cms/consultation/closed/closed.aspx>

- delivery model for domestic smart meters;
- high-level smart functionality requirements for domestic electricity and gas meters;
- provision of a real-time display and information with a smart meter; and
- approach on smart functionality requirements for non-domestic meters.

1.14. The delivery model is to be the Central Communications model where energy suppliers are responsible for purchasing and installing meters and where communications are co-ordinated centrally.

1.15. The Government stated that it would need to do further work on functionality to enable/disable gas supply remotely. Otherwise the previous proposals will be implemented including:

- remote provision of accurate reads/information;
- two way communication;
- a range of time of use tariffs; and
- in relation to electricity only capacity to communicate with a measurement device within a microgenerator.

1.16. The Government therefore proposes to require that electricity and gas meters at sites in this category must have smart functionality by the end of 2020 except:

- where advanced meters have been installed before April 2014 and the customer wishes to retain the existing meters;
- where advanced meters have been installed after April 2014 under pre-existing contractual arrangements; and
- where there are technical constraints on the achievement of smart functionality.

### **Why this is relevant to energy network regulation**

1.17. The changes since February 2009 show that there is:

- a wide range of elements relevant to meeting the overall energy policy objectives particularly delivery of a low carbon economy;
- a central role for network companies in facilitating delivery of many of these; and
- a need to be sufficiently flexible and responsive when considering what needs to be delivered and how best to deliver, to prevent network companies being a block on necessary developments and putting at risk the overall energy policy objectives.

1.18. Energy network companies therefore need to be proactive in their contribution to the delivery of these objectives and open minded as to how best to facilitate their delivery. The regulatory framework needs to encourage them in this way.

## 2. European Union energy policy

### Introduction

1.19. This Chapter summarises policy developments from the Third Package, implementation of which will be consulted on by Government, and the Second Strategic Energy Review.

### The Third Package

2.1. The term “third package” refers collectively to a package of legislation on the liberalisation of the EU gas and electricity markets, consisting of an Electricity Directive<sup>12</sup> and Electricity Regulation<sup>13</sup>, a Gas Directive<sup>14</sup> and Gas Regulation<sup>15</sup>, and a Regulation that establishes the Agency for Cooperation of Energy Regulators<sup>16</sup> (ACER)<sup>17</sup>.

2.2. The overall aim of the third package is to liberalise European energy markets further. It does this by seeking to strengthen regulatory controls, enhance non-discriminatory conditions to secure appropriate investment and improve the competitiveness, transparency and security of the internal European market in both electricity and gas.

---

<sup>12</sup> Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (Electricity Directive), available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0055:0093:EN:PDF>

<sup>13</sup> Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (Electricity Regulation), available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0015:0035:EN:PDF>

<sup>14</sup> Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (Gas Directive), available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0094:0136:en:PDF>

<sup>15</sup> Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (Gas Regulation), available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0036:0054:EN:PDF>

<sup>16</sup> Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (ACER Regulation), available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0001:0014:EN:PDF>

2.3. The third package entered into force on 3 September 2009. Member States have a period of 18 months (until March 2011, with an additional 12 months for the unbundling provisions) to implement the Directives into national law.

2.4. This section of the paper sets out the key provisions of the third package which are likely to be most of particular relevance to energy networks. These include:

- Certification and unbundling of transmission system operators;
- Independence of National Regulatory Authorities (NRAs);
- Establishment of the ACER; and
- Legal vires for the development of legally-binding European network codes<sup>18</sup>.

## Certification and unbundling

2.5. The unbundling provisions seek to achieve greater structural separation of network operation (transmission systems and transmission system operators (TSOs)) from generation/production and supply activities recognising the high degree of vertical integration that is evident in some Member States across Europe. This can pose barriers to the development of effective competition within individual Member States as well as across the internal European energy market. These competition concerns arise because, where one entity owns both transmission and generation/production/ supply interests (known as vertically integrated undertakings (VIU)), a conflict of interest can arise between producers, suppliers and transmission system operators. The unbundling regime aims to remove the incentive for vertically integrated undertakings to discriminate against competitors as regards network access and investment and create incentives for the necessary investment and guarantee access for new market entrants.

2.6. The third package sets out 3 models for the unbundling of TSOs:

- **Full ownership unbundling:** The default position is that of full ownership unbundling, the requirements of which are set out in Article 9.1. One element of this model is that the same person or persons cannot "directly or indirectly exercise control over an undertaking performing any of the functions of generation [production] or supply, and directly or indirectly exercise control or exercise any right over a TSO or over a transmission system (and vice versa).

---

<sup>18</sup> On cross-border issues related to network security and reliability rules; network connection codes; third-party access rules; data exchange and settlement rules; interoperability rules; operational procedures in an emergency; capacity allocation and congestion management rules; rules for trading related to technical and operational provision of network access services and system balancing; transparency rules; balancing rules including network-related reserve power rules; rules regarding harmonised transmission tariff structures; and energy efficiency regarding electricity and gas networks.

The concept of "any right" is set out in Article 9.2 and includes the power to exercise voting rights, to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking or holding of a majority share<sup>19</sup>.

- **'Deep' Independent System Operator (ISO) model<sup>20</sup>:** In this model the transmission system continues to belong to the VIU, but it requires that the ISO (which satisfies a number of conditions set out in the Directives), rather than the VIU, carries out a number of functions, such as granting and managing third party access, charging, operating, maintaining and developing the transmission system and undertaking investment planning<sup>21</sup>.
- **Independent Transmission Operator (ITO) model:** Like in the ISO model, the transmission system belongs to the VIU. This model however requires the TSO to act as an independent business; there would be strong "Chinese walls" with an increased role for the NRA. For example, under this model, the NRA may compel the TSO to make certain investments or allow other parties to make the investment instead<sup>22</sup>.

The third package also allows a TSO to apply for a derogation to full ownership unbundling if it can be demonstrated that there are arrangements in place on 3 September 2009 which guarantee more effective independence of the TSO than those provided by the ITO model.

2.7. There is a requirement for each TSO to be certified by the NRA as having complied with one of the 3 models or with the derogation, which are outlined above.

2.8. The decision on which unbundling model to apply and on whether to apply the derogation lies with the Member State. Before an undertaking can be designated as a TSO, the TSO is to be certified by the NRA as having complied with one of the unbundling models or with the derogation upon notification by a TSO or upon a reasoned request from the Commission. The NRA must notify its decision on the certification of a TSO to the Commission. The Commission will deliver an opinion on the compatibility of this decision with the relevant Directive within 2 months (which can be extended by a further 2 months if an opinion from the Agency is sought). The NRA will then have to take 'utmost account' of this opinion and publish its final

<sup>19</sup> As provided for in Article 9(1) of the Electricity Directive and of the Gas Directive.

<sup>20</sup> Where on 3 September 2009 the transmission system belongs to a VIU, Article 9.8 allows a Member State not to apply Article 9.1 and to comply instead with the ISO model or with the ITO model instead. Both of these models require certain structural, functional, administrative and other arrangements to be put in place to ensure the effective independence of the TSO from generation/ production and supply activities.

<sup>21</sup> As provided for under Article 13 of the Electricity Directive and Article 14 of the Gas Directive.

<sup>22</sup> As provided for in Chapter V of the Electricity Directive and Chapter IV of the Gas Directive.

decision. However, where the NRA notifies a decision to apply the derogation, the Commission may veto this. Once a TSO has been certified by the NRA as having complied with one of the models or with the derogation, the Member State is required to designate the TSO.

2.9. There are provisions in the third package Directives, which require NRAs to undertake certification of TSOs. Member States will have to implement the relevant provisions into national law and to provide the appropriate legal vires to allow the NRA to do this.

1.20. The third package provisions will have to be implemented into national law by 3 March 2011, and the unbundling provisions will need to be implemented by 3 March 2012. Ofgem will consult in early 2010 on the implications of the third package unbundling provisions for GB TSOs.

## **Independence of National Regulatory Authorities (NRAs)**

### **Background/proposals**

2.10. The third package requires Member States to designate a single National Regulatory Authority (NRA) by March 2011 (without prejudice to designation of other regional RAs). NRAs will have a number of objectives and duties<sup>23</sup>, including:

- The obligation to promote, in close cooperation with the Agency for the Cooperation of European Regulators, other NRAs and the Commission, a competitive, secure and environmentally sustainable internal market;
- The obligation to develop competitive and properly functioning regional markets;
- The duty to fix or approve transmission and/or distribution tariffs;
- The duty to ensure compliance of the obligations under the Gas Directive and the Electricity Directive and other relevant Community legislation;
- The duty to cooperate with the Agency and regulatory authorities of other Member States; and
- numerous monitoring duties, including monitoring of the investment plans of the TSOs, the occurrence of restrictive contractual practices and the level and effectiveness of market opening and competition at wholesale and retail levels<sup>24</sup>.

---

<sup>23</sup> See Article 36 and 37 of the Electricity Directive and Article 40 and 41 of the Gas Directive.

2.11. The third package also seeks to ensure further NRA independence from Government and from any market interests and seeks to ensure that the NRA exercises its powers impartially and transparently.

### **Agency for the Cooperation of European Regulators (ACER)**

2.12. The rationale underpinning the establishment of the ACER (or the Agency) is that it will help to facilitate effective regulation, where appropriate, of cross-border infrastructure. Tasks the ACER will perform include<sup>25</sup>:

- With respect to NRAs:
    - It shall provide a framework within which NRAs can cooperate and promote cooperation between the NRAs;
    - It may make recommendations to assist regulatory authorities and market players in good sharing practices;
    - It shall provide an opinion based on matters of fact at the request of a regulatory authority or the Commission on certain matters and, where the NRA does not comply with the opinion of the NRA, inform the Commission and the MS concerned; and
    - It shall decide on terms and conditions for access to and operational security of cross-border infrastructure.
  
  - With respect to TSOs:
    - It shall provide an opinion on the European TSOs' draft annual work programme, draft Community-wide network development plan and make recommendations to the Commission (amongst other bodies) in respect of certain issues;
    - It shall participate in the development of network codes and submit a non-binding framework guideline to the Commission on request for the development of network codes;
    - It shall provide opinion to the European TSOs on the network code and shall submit the network code to the Commission and may recommend that it be adopted; and
    - It shall monitor and analyse the implementation of the network codes and monitor the implementation of the Community-wide network-development plans;
    - It shall monitor progress as regards the implementation of projects to create new interconnector capacity and shall monitor the regional cooperation of TSOs;
- 

<sup>24</sup> Note that the Member State may provide for monitoring duties to be carried out by other authorities other than the NRA.

<sup>25</sup> See chapter II of Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (ACER Regulation).

---

1.21. Through the work of the European Regulators' Group for Electricity and Gas (ERGEG), we continue to monitor and contribute to the input for the framework guidelines<sup>26</sup>.

## **Second Strategic Energy Review**

2.13. In November 2008, the Commission published a wide-ranging set of policy proposals, the second Strategic Energy Review (SER), primarily to address security of supply. The package consists of an umbrella document, "Second SER - An EU Energy Security and Solidarity Action Plan" and a number of other documents on, among other issues, energy networks, offshore wind and supplies of gas and oil<sup>27</sup>. It is a forward-looking consideration of how to address these energy issues in the future, rather than a firm set of policy proposals.

2.14. The review considers:

- Infrastructure needs and diversification of energy supplies: It recognises six infrastructure development projects as energy security priorities of the Community, including the Southern gas corridor, LNG, and the North-Sea offshore grid;
- How to make the best use of the EU's indigenous energy resources. To this end, the Commission has said it will consider further how barriers to the deployment of renewable energy can be overcome and how sustainable forms of energy are financed;
- The remit of the ACER, and whether it could be extended to include security of supply; and
- The creation of a more coordinated, stream lined approach to the approval and permits for large infrastructure projects.

2.15. The 'Prioritisation of infrastructure projects', which addresses the North Sea Offshore grid, could have a significant impact on GB energy markets. We recognise the important role Ofgem can play in such a project and, both individually and

---

<sup>26</sup> Only ACER is permitted to develop the framework guidelines. Prior to its formal establishments, European regulators are developing the input to these guidelines. The focus is currently on pilot projects and other priority areas, such as electricity grid connection or gas balancing, for example.

<sup>27</sup> For further information, see [http://ec.europa.eu/energy/strategies/2008/2008\\_11\\_ser2\\_en.htm](http://ec.europa.eu/energy/strategies/2008/2008_11_ser2_en.htm)



through ERGEG, are closely engaged with the Commission and the key stakeholders in considering the issues associated with such a project.

### **Why this is relevant to energy network regulation**

2.16. Developments in EU energy policy since February 2009 show that:

- there are various pieces of legislation emerging from Europe which contain obligations on transmission companies and on Ofgem as the regulator;
- action will be required by Ofgem and by transmission companies to ensure that these obligations are adhered to;
- Ofgem and transmission companies must work closely with EU bodies such as the ACER in order to deliver requirements of EU legislation and to encourage EU wide communication and co-operation; and
- Ofgem and TSOs should work towards and build upon the recommendations of EU proposals such as the second Strategic Energy Review.

2.19. Ofgem and TSOs must therefore be proactive and open-minded in delivering the requirements of emerging EU legislation. The regulatory framework will need to be designed to encourage this and should not be a constraint on effective implementation of these policies.