



Ofgem Consultation - Code Governance Review Phase 2

Response from E.ON

General Comments

We support the general proposals by Ofgem to improve the effectiveness of the industry codes. Industry codes contain the detailed rules that are vital to ensuring a successful functioning competitive retail market. Ensuring that they therefore can easily evolve and develop to meet the changing needs of the industry and consumers is therefore very important.

Ensuring that the principles of good governance are applied to the regimes that support these codes is essential. From the 1st phase of the Code Governance Review (CGR) we have debated and accepted the relative merits of Significant Code Reviews (SCR), the ability for Ofgem to send back modifications that are not robustly considered and the benefits of the Code Administrator Code of Practice (CACoP).

We believe that the uniform application of these principles across all industry codes would be a good thing. In particular the application of the SCR process to all codes would help achieve its objective and should deliver industry change in a more efficient manner. Similarly the option for Ofgem to send back incomplete modifications for further analysis is useful in preventing changes from having to be rejected and then resubmitted into the process. Both of these developments assist in making the code modification process more efficient for parties.

Another aspiration of the 1st phase of the CGR was to develop common change control practice across all industry codes and a common high level of service from code administrators. This would reduce costs for all parties and encourage participation by all signatories to the codes by making the processes clearer to understand and engage with.

As a company active in all the industry codes we can see the benefit of this aspiration and fully support it. However our experience from the 1st phase of the CGR is that change was not implemented robustly and that significant differences and weaknesses still exist with the BSC and UNC change processes. As the recommendations have not been implemented in full we believe that the retail codes, subject to this latest 2nd phase of the CGR, provide better existing change processes, have a higher level of industry engagement and self governance and better meet the criteria for good governance.

We therefore would support Ofgem if it were to mandate and drive the harmonisation of all industry codes, including the UNC and BSC. We believe that this would make the change process easier for us

to manage and would encourage rationalisation of industry codes which in turn would lead to lower costs for the industry.

We would not however support the amendment of the retail codes, whose change control processes are robust and efficient, if the end result is to make them have imitations of the currently flawed BSC or UNC change control functions. We do not believe that this would aid in the efficient functioning of the market or encourage more participation from industry participants in the industry code governance process.

One aspect of industry code governance that we believe warrants further investigation as part of this phase of CGR is the value of a panel recommendation and how it is arrived at. Debate with DECC regarding the implementation of the Smart Energy Code has shown that the only value that this serves is a filter for the number of potential appeals that may be made to Ofgem decisions regarding modifications and yet it is one of the most contentious parts of the current industry Code change process.

Ofgem has made it clear that it takes into account all parties views on change rather than just those involved in the relevant panel making a recommendation. It therefore seems that a fundamental review of the panel recommendation process and value should be undertaken.

Our preference would be for a similar process to that adopted by say DCUSA to be used where all stakeholders are involved in determining the panel recommendation. This would seem to be more equitable, avoid the acrimonious debates around panel membership and provide a clearer view to Ofgem of what industry parties actually think of a change proposal.

Our responses to the consultation questions:

Question 1: Do you consider that a "fast track" self governance process should be available in the industry codes for minor housekeeping changes?

Yes, the ability to amend codes to address minor housekeeping issues in a quick and expedient process is useful for their efficient operation. A similar process for amendment should be adopted by all the industry codes.

Question 2: Do you agree that the Agency Charging Statement should fall under the governance of the Uniform Network Code, rather than the Gas Transporter licence?

Yes, this is consistent with the principles of good governance and will be particularly useful as the funding arrangements of Xoserve are revised in the future.

Question 3: Do you agree that self governance should be introduced into the iGT UNC and STC, and increased in the DCUSA?

Yes in principle, although the areas within the DCUSA that are subject to self governance are very detailed within the agreement and are those that are specifically not restricted as Part 1 matters within the code. The definition of a Part 1 matter is taken directly from the Standard licence conditions of the Distribution Licence. These areas relate to the interests of customers, competition, security of networks, discrimination between parties, governance and change control or legally binding matters from the European commission. It is difficult to envisage which of these areas could become areas for self governance, certainly not without changes to the Distribution licence.

There may be instances of purely housekeeping changes that relate to Part 1 areas where it may be acceptable not for them to be referred to the authority for decision, but these should be dealt with by exception by the DCUSA Panel and the Authority when they are raised and placed into the change process. Aside from that the current split between Part 1 matters that need authority consent and Part 2 matters that are subject to self governance seem fit for purpose.

Question 4: Do you consider it appropriate to apply the same governance principles to the Grid and Distribution Codes as are applied to the commercial codes?

Yes, in principle there is no reason as to why these technical codes should not have the same governance principles as the more commercially orientated codes. This is already true of some of the gas codes where there is a less clear delimitation between technical codes and commercial codes.

An alternative proposal maybe preferable whereby the Distribution Code is included as part of the DCUSA. This principle was applied when the charging arrangements for DUoS were reviewed and a similar logic could be applied here. Including the Distribution Code under DCUSA would allow the established governance arrangements to be used thereby providing the industry with a cost effective solution to governance administration and would allowing greater accessibility for stakeholders to become involved with the Distribution Code.

Question 5: Do you consider that both the Distribution Code and the Grid Code should be modified to allow for an open governance framework? In particular, allowing code users to raise code modifications; enabling code panels to have a more formal role in evaluating and recommending code changes; and the governance procedures brought into the codes? Are there any other areas of governance that you consider could be improved in Distribution Code and Grid Code?

Yes, applying the principles of good governance to these Codes would seem appropriate although the limited number of changes that are progressed to these Codes would suggest that a cost effective solution to allowing this to happen would be warranted.

Question 6: Should MRA modifications be subject to a materiality test, to determine whether Authority approval of changes is required?

Maybe, if all Code governance change arrangements are to be harmonised then there would need to be some method of deciding what modifications to the MRA would undergo a process of industry self governance and what would be need Authority approval.

The changes to the MRA to accommodate the proposed changes could be significant and would entail a significant amount of development. The costs and time of achieving this should be considered against the potential long term benefits and objectives that would be achieved from harmonising all industry codes.

We would only be willing to support this change to the MRA if it were part of a wider initiative to harmonise all industry codes in a more robust manner than was the case in the first phase of the Code Governance Review. Here we saw inconsistent application of the principles and only limited harmonisation of the change process which significantly undermined the delivery of Ofgem's objectives of the review.

Question 7: Do you consider that it is appropriate to obligate non-domestic gas suppliers to accede to the SPAA?

Yes, there would seem to be no reason why only a subset of Gas Suppliers should be obliged to be signatory and abide by the requirements within SPAA. Issues which SPAA are currently managing, for example the MAMCoP Accreditation Scheme and Theft Risk Assessment Service, are equally of relevance to non-domestic customers.

Question 8: Do you agree that SPAA modifications should be subject to a materiality test, to determine whether Authority approval of changes is required?

Arguably they already are and the number of Change Proposals that are sent to Ofgem for final approval is a small subset of those that are processed within the SPAA.

Question 9: Do you have any comments on Ofgem's guidance for discharging self governance appeals (Appendix 7), and on the proposed adjustment to the BSC, CUSC and UNC appeal windows?

No, these seem sensible.

Question 10: Do you consider that the ability to appeal a self governance determination should be consistent across all codes?

Yes, a common approach to Codes governance would be beneficial to all industry participants, regardless of size of organisation, who are interested in being involved in their development and evolution.

Question 11: Do you agree with the proposal to extend the Significant Code Review process to DCUSA, iGT UNC, MRA, SPAA, STC, Grid Code and Distribution Code?

Yes, the arguments for the development of the SCR process were considered in detail in the first phase of the CGR. Having decided to implement the process it is inconsistent for it not to be applied to all Codes and undermines the value of the SCR process.

Question 12: Do you agree that all industry code panels (or their equivalent) should provide substantive reasons for their recommendations/decisions?

No, where the Code Panel has delegated the recommendation/decision on a change to an industry voting mechanism, as found in the MRA, DCUSA and SPAA, then adding this additional step is of limited value and may discourage parties from participating in the Code change control process.

As Ofgem takes into account all responses by parties to a Code change before making a decision, this provides a sufficient incentive for parties to provide as much detail in their response to a change as possible. If Ofgem find the process for interpreting or managing these responses difficult then it would be better to tackle this issue via amendments to the Code Administrator Code of Practice and be more prescriptive about the Code change report that is prepared and included with the change when it is submitted for a decision.

Question 13: Do you agree that the MRA should contain objectives against which code modifications are assessed?

No, the MRA has functioned very well since the late 1990's without the need of code objectives and therefore the need for them is not proven.

Question 14: Do you agree that the Authority should be able to "send back" final modification reports in all codes, where a deficiency/ flaw in the report is identified?

Yes, this is a useful part of the processes and allows changes to be amended rather than rejected and having to be resubmitted which takes more time and effort for all parties.

Question 15: Do you agree with the proposal to require all codes to have regard to and, to the extent relevant, be consistent with the CACoP principles?

Yes, these should be more prescriptive and more rigorously enforced. This initiative was only partially successful in the first phase of the CGR. The BSC and UNC still have significant problems with their governance arrangements (e.g. all BSC parties not being able to attend and participate in BSC workgroups, UNC modifications not providing clear and accurate costs and timescales for changes). Many of the Codes under review in the 2nd Phase of the CGR are far more compliant with principles of the CGR than those considered under the 1st Phase and therefore this shouldn't be a too difficult task. One exception is SPAA where the Code Administration was deliberately kept as light touch as possible to reduce costs to the industry. Full compliance with the CACoP would therefore probably result in higher costs for the industry from this Code.

Question 16: Do you consider that a requirement on code administrators to fulfil a "critical friend" role should be set out in the relevant licence?

Yes, this helps ensure clarity for parties and aids in ensuring compliance.

Question 17: Do you agree with the amendments to the CACoP (Appendix 2) and do you consider that the standard process and templates described by the CACoP should have the status of guidance (rather than being mandatory) at this stage?

Yes we agree with the amendments and no with do not agree that they should only have the status of guidance.

From experience of the 1st phase of the CGR not making common change processes mandatory undermines the value and point of the CACoP. Those Codes that were considered in the 1st Phase of the CGR have not adopted the standard templates and processes and therefore the objectives of the review have not been met. The change control process for the BSC or UNC has not materially improved and still has many flaws which undermine parties involvement and increase costs for all. Only by mandating change will it be introduced.

If the CACoP is not to be mandated then we do not believe that this would be a cost effective exercise and therefore we would not support its inclusion for those retail Codes whose change control processes currently work in an efficient manner.

Question 18: Do you agree with the timetable proposed?

No, the timetable for the consultation phase of the CGR seems reasonable but the implementation time would take each of the Codes longer to undertake than is provided for. It is our view that this phase would probably take 9-12 months to implement once the final decisions have been made.