



Ofgem Consultation – Switching Programme: Proposed Modifications to regulation and governance

E.ON Response

Executive Summary

We support the proposal to develop a Retail Energy Code (REC) and for this ultimately to act as the regulatory vehicle to consolidate some of the existing industry codes. As the CMA highlighted in their recent investigation into the retail energy market the considerable number of existing industry codes presents challenges to the successful functioning of the energy market. Rationalising some of these into one code, dedicated to retail issues, is an important step in addressing this issue.

The proposal to make consumers at the centre of this new code and for it to be more accessible and easier to understand by all industry parties are all welcome proposals.

We support the suggestion for the REC to have the underlying intent to encourage and facilitate innovation in the market. The establishment of a more empowered and comprehensive code manager compared to the current code administrators might help to support this aim. Although this will require checks and balances to be in place to ensure that this objective is not abused by the code manager to the detriment of the energy market and consumers.

We are sceptical that the appointment of independent NED's to the RECCo Board will assist with the objective of fostering innovation. Where we have seen this approach used in other codes they have been an expensive overhead, whose costs are ultimately borne by energy consumers. The value they have brought to the industry code has not been material. The RECCo is not a normal corporate entity where the value of NEDs might be beneficial in providing new commercial insight and direction.

It has a specific purpose and requirement therefore having individuals not aligned with the industry may undermine the smooth operation of the governance arrangements rather than helping them. Experience shows that the best way to achieve the aims of the REC will be to ensure that the quality of the people appointed into the key governance roles (CEO of the Code Manager and the Panel/Board Chair) is correct.

The involvement of Ofgem and consumer groups in the REC governance structure should provide the required consideration and input regarding what consumers and the market needs and what change would be helpful. Attempting to outsource this to a series of NEDs is not an efficient approach to take.

There is very little emphasis on an objective of promoting competition in the energy sector in the proposals for the REC governance. This has been at the heart of the current governance arrangements since the energy sector was privatised. Considering the scope of the REC governance arrangements it is surprising that this objective doesn't feature more prominently.

The initial drafting of the REC and the amendments to the DCC licence and SCR seem clear and logical. The amount of work undertaken by the Ofgem project is clear from this document and it provides confidence to us that the timescales for the implementation of the new governance arrangements can be achieved.

We are not convinced that Ofgem's preferred option for the RECCo Board and REC Panel are optimal and we would prefer that option A were adopted. This model replicates that seen in most of the current industry codes to date. We have seen these codes function reasonably well and do not believe that the REC would be any different.

The Ofgem preferred model for REC governance is viable but will introduce a number of different risks that will need to be considered if the arrangements are to be a success.



For example, it isn't clear from the proposal as to how the new empowered industry code manager will be sufficiently held to account and not potentially pursue their own agenda at the expense of the industry parties and consumers.

It is also not clear as to how the RECCo Board would engage with industry parties. There is a risk that they would be remote from the parties to the REC which would not be in the interests of the efficient and effective operation of the governance arrangements.

The draft text for the REC outlined a key role for a future REC Forum in decision making although this group was missing from the consultation diagram explaining how the different groups would function. It also wasn't clear to us as to how some of the interactions between the proposed REC Board, REC Panel and REC Forum would work in practice.

As an example the budget setting process seems to have the REC Board setting the direction for the company with the assistance of the Code Manager. The responsibility for then developing the budget then passes to the REC Panel who have not been involved in this process and may have differing views on what strategy should be. This may present the REC Forum with a confused message on which they would be asked to decide as to whether to approve the budget or it may lead to delays in the process which may lead to issues with the effective working of the governance arrangements.

Although not an explicit consultation question we noted that the draft REC text included options for a change process. Our preference at this stage would be for option 1, a vote by industry parties, to be the change process used for determining the REC Panel recommendation for the purposes of appeals and for self-governance modifications. This ensures that all REC parties can be engaged with and participate in the change process. It may be worth considering the value of constituency based thresholds for change approval in this option. Although controversial this has proved to have value in those current codes that use a similar change process by clearly setting out where support for change in the industry lies.

It would be helpful if the REC Change Schedule included flow diagrams explaining how the process operates. This approach is found in other codes (e.g. MRA MAP 17) and is useful in making the processes clearer for parties reading this code to understand how the change process functions.



Response to consultation questions:

Chapter 2: Transitional requirements

Q2.1: Do you support our proposal to introduce a high level duty upon licensees to cooperate, where appropriate, in delivering the outcome of a significant Ofgem-led programme, such as a SCR?

Yes, experience from Project Nexus showed the value of having a regulatory mechanism that ensures that all industry parties engage with and co-operate with the implementation of industry projects. It ensures that all parties are appropriately motivated to engage with the programme and to ensure that they are delivered in a successful manner which doesn't create problems for the market or for consumers.

The implementation of the faster switching reforms will be a similar industry project that affects multiple industry parties and that will also depend for its success on many of these co-ordinating and implementing various changes to their own business process and systems.

We therefore support the proposal to introduce a licence obligation upon parties to co-operate with the Ofgem led industry programme. The idea of implementing a broad requirement into the licences has advantages. It provides clarity to all parties as to the expectation for them to be involved periodically in an industry project. It also removes the requirement for new time bound Licence conditions to be developed each time a new industry project is developed.

The concept of these new powers only applying to designated 'significant code projects' is interesting as it allows the Licence condition to be proportionate and to be only applied when a set of defined criteria are met. It also allows for a process to be developed and followed to designate an industry activity or project as being a 'significant code project'.

Greater clarity on what the process would be for designating an industry project would be helpful as this will be the safeguard to ensure that it is not abused and becomes a regulatory burden upon industry and an additional cost for consumers.

We would like to see a clearly defined set of principles set out by Ofgem, potentially as guidance, as to when an industry project would be classed as a Significant Code Project. These could include principles around the materiality, the impact to the market, to consumers and the interdependency of the projects success on different industry parties participating.

We would envisage that Ofgem would be required to consult with industry parties before a Significant Code Project is initiated. This should include a clear set of objectives and deliverables that industry parties will be expected to provide.

In the example of the Switching Programme this would for example include the type and timing of when plans would need to be submitted, the outlining of any testing regimes that a party would be required to be involved with and the provision of any data that would be expected.

These need to be clear, unambiguous and achievable. In the example of this programme we have concerns for example around setting requirements around data quality on industry parties. This seems a laudable aim but in practice can be highly challenging to measure and is often subjective in its nature.

Q2.2: Do you agree that the RECCo should be established earlier than REC v2 in order to assist with the successful delivery of the Switching Programme?

Yes, the new REC will need to procure and contract for services to fulfil its remit and therefore the early establishment of a corporate entity will help facilitate the delivery of this.



Q2.3: Do you agree that the bodies constituted under the REC could suitably play a formal part in the programme governance?

Yes, the early establishment of the enduring groups and arrangements will help with the transition from the Ofgem project to the enduring industry governance. If managed in an appropriate way it should be possible for the project to use the new governance groups as part of the programme governance. This should avoid duplication in governance and assist the programme from a resourcing perspective.

Q2.4: Do you agree that our definition of 'large supplier' in REC v1 is suitable for ensuring an adequate level of engagement with User Entry Process Testing?

Yes, this definition seems consistent with other regulatory uses and to be valid in the context of the faster switching programme.

Q2.5: Do you agree that it would be appropriate to have in place interim governance arrangements prior to REC v2 coming into effect?

Yes, evidence from the Smart Metering Implementation Programme has shown the value of having defined transitional requirements set out clearly in an industry code. They provide clarity to all parties as to what they will be expected to do and what services will be provided for them. It also provides a regulatory framework to ensure that all parties achieve what the project expects from them.

Chapter 3: REC Governance

Q3.1: Do you agree with the proposed powers and functions of the RECCo Board, REC Panel and REC Manager, and how they would be distributed amongst them?

The split of responsibilities between the RECCo Board and REC Panel need to be clear, unambiguous and well documented.

Recent experience from the operation of the Alt HAN arrangements have shown the value that this clarity provides to the members of the two groups; in understanding their roles and what is expected from them, and to ensure that decision making is clear. In the situation of the Alt HAN arrangements this was not made sufficiently clear in the Licence wording and the Smart Energy Code which has subsequently created problems for the functioning of the governance arrangements. We should learn from this and not repeat the same mistakes with the creation of the RECCo Board and Panel.

The proposed split of activities between the RECCo Board and REC Panel are potentially workable as long as this clarity is provided.

The proposal to create a 'code manager' for the REC rather than a 'code administrator' is welcome as the lack of depth of knowledge and engagement from code administrators has held back the development of some industry codes and made them operate in a less than efficient manner.

However, It is not entirely clear from the proposals within the consultation as to whom the code manager would be accountable to. The proposal for the RECCo Board to only have 'periodic performance reviews' of the code manager seems to imply that there would be no one overseeing their performance on a regular basis. This is concerning and something that we would like to see addressed.

The proposal to develop a set of qualitative as well as quantitative RFI's to judge the code manager is welcome but needs further development. A set of ill-defined or loose measures will introduce uncertainty into the process for the choice of a REC code manager which may impact upon the eventual costs that the industry pays for the service.

The role of the REC Forum was not shown in the overarching governance diagram in the consultation which is a shame as it would have been useful to understand the total picture of the REC governance arrangements. It



would be useful to provide some examples of key aspects of the governance arrangements and how these would work in practice in the proposed arrangements.

Examples could include the annual budget setting process (which seemed to have some potential conflicting areas), management of the code manager and REC change management. Walking through these processes should test whether the proposed arrangements would be workable and where amendments or additional clarity might be needed.

Q3.2: Do you agree with our proposal that independent Non-Executive Directors (NEDs), potentially from outside of the energy industry, should be present on the RECCo Board and that the composition of the RECCo Board should be subject to thorough review, both periodically and/or whenever the scope of the REC/RECCo Board responsibilities changes substantively?

No, it is not clear to us that Model A, as used in the current industry code arrangements, is flawed and can't be said to have delivered successful results. Numerous industry initiatives (big and small) have been implemented via these governance arrangements and therefore they should be seen as having a proven track record.

Models B and C have not been proven and therefore could potentially introducing additional risk to the industry.

Introducing Model B and a strongly independent code manager to the REC introduces several risks to the governance arrangements:

- How will the RECCo Board be engaged with and relevant to the industry parties that are signatories to the REC, who are bound by the obligations set out within it and are dependent upon the services that it provides?
- What value will independent RECCo Board members provide if they have limited understanding of the energy market? Advice from other sectors can always be procured on a one-off consultancy nature for specific tasks in a more efficient basis if considered useful for a specific task.
- What checks and balances will be in place to ensure that the activity of the code manager is in the best interests of REC parties and the energy industry rather than themselves?
- What criteria would Ofgem use when appointing these independent RECCo Board members and how would this be consulted upon and amended?

Before we could support the implementation of Model B we would need to understand how these risks would be mitigated and managed.

Q3.3: Do you agree with the proposed composition, powers and functions of the REC Panel?

The four considerations set out in the consultation for the composition of the REC Panel are good and we would support these being used as the test for the chosen model.

We do not believe that there is much divergence from the option put forward by the projects Regulatory Design Team and that recommended in this consultation by Ofgem.

The enfranchisement and expertise of the REC Panel members comes from them having a constituency of members to represent. Their accountability derives from their ability to represent all members of that constituency and not just the organisation who employs them.

Therefore, by having a clear set of constituency representatives on the REC Panel, it should ensure that they have the level of buy in from the parties that the Regulatory Design team suggest is important, as well as the level of independence that Ofgem believe is needed.



Considering the potential future scope of the REC it might be difficult for it to remain a small body and still achieve its other aims. We would therefore suggest that the size of the REC Panel should not be a constraining issue. A good REC Panel Chair and strong administrative support can counter the potential problems of a REC Panel which has many people on it.

It would be useful to have more clarity on what the role and purpose of the REC Panel would be in the proposed REC governance structure. If the REC Board is undertaking the roles of strategic direction and the management of the Code Manager and the REC Forum is approving budgets, what practical roles does the REC Panel have? A more comprehensive explanation of this may help determine what its' size and composition should be.

Q3.4: Do you agree that there should be entry and systems testing requirements placed on new entrants, comparable to those that we expect incumbent suppliers to undergo as part of the transition to the new switching arrangements?

Yes, there are a considerable number of new entrants coming into the market and this number does not seem to be reducing. Ensuring that these new entrants can operate in the market successfully and not create problems and costs for existing parties is in the markets and the consumers best interests.

Chapter 4: REC Content

Q4.1: Do you agree with the proposed minimum content for REC v2 (as listed in Appendix 3)? Is there any other content we should consider for inclusion in REC v2? If yes, please provide further details.

Yes, this list seems comprehensive and in line with the content we see in other codes. It might be useful to include a subsidiary document or schedule with a list of active REC parties, the date they acceded to the code and their relevant details (company registered number and address).

Q4.2: Do you agree with our proposal that the REC Code Manager should collate Switching Domain Data and make it available to Market Participants? Or do you consider that the Data Master for each element of Switching Domain Data should make it available to Market Participants?

Yes, it seems logical and in the ultimate best interests of the market and consumers for a single party to be responsible for this activity. Making individual market participants responsible risks creating inefficiencies and differing levels of service.

Q4.3: Paragraphs 4.20-4.24 suggest that the DCC should be subject to a data quality objective and performance standards around the quality of REL Addresses. Do you have suggestions on the quality measure areas and levels quality measures will take? Do you believe that the REC Panel should have a role in setting these targets (initially and/or on a periodic basis)?

Yes, it seems a sensible approach to make the DCC responsible for the quality of the data on the CSS systems that it will be providing.

The quality of the data on the CSS database will have a direct impact upon the services that are provided to market participants and on the experience that consumers will have from the energy market.

The CSS itself will not be directly affected by the implications of any data quality issues. Which is why it is important that they are appropriately incentivised to provide good quality data in the service that they provide to the industry.

Having the REC Panel be involved in setting the relevant targets, both initially and ongoing, will help to ensure that the users of the CSS database are actively engaged, and involved, in the process.

Q4.4: Paragraph 4.25 outlines that the REL Address data quality indicator is currently intended to be an internal measure for the CSS. Do you believe there is value in making this available to other market participants? If so, please provide your rationale for this and outline which market participants should have access.



Yes, having access to this information will be useful for parties to understand the level of quality of the information held on the CSS database. It may assist parties when considering complaints or issues raised by customers and may also help to act as an early warning that may prevent issues from arising in the first place.

If there is a logic and use for this measure to be developed by the CSS, then this must also apply to the visibility of this data to all market participants.

Q4.5: Paragraph 4.25. suggests that the DCC should set out the methodology it will apply to meet the REL Address data performance standards on an annual basis. Do you agree that it would be beneficial to make this methodology publicly available?

Yes, transparency of the services that are being provided by the CSS is in the interests of all market participants. It therefore follows that this should include visibility of the methodology that the CSS is employing. We would expect to see this consulted upon by the DCC with all users. There is probably value in having this methodology agreed and signed off by the REC Panel rather than relying on this being solely at the discretion of the DCC.

Q4.6: Do you support the creation of an Enquiry Services Schedule in REC v2? If so, which of the options around the requirements (in paragraph 4.32) do you prefer? Please provide details to explain your answer.

Yes, we prefer Option 1 and for all aspects being governed in one place, within the REC. The option of splitting governance for DES risks creating inefficiencies, delays to change and unnecessary costs.

The argument that some data items in DES are mastered by gas shippers and therefore cannot be governed under the REC is flawed. Many of the data items held by the enquiry services are mastered by parties not directly governed by the relevant industry code (e.g. MOP data in ECOES).

The REC provides the suitable regulatory framework to govern the two single fuel enquiry services and to potentially look to rationalise these in the future with their successor application(s).

The inclusion of suppliers and network providers in the REC will provide a robust regulatory linkage to the gas shippers. In the unlikely event that some data items are not covered by this relationship then this can be resolved via an appropriate link within the UNC to reference the provision of all relevant information to the REC enquiry service.

It is worth at this early stage considering the wider requirements for data and MIS within the REC governance arrangements. The programme took the decision at an earlier stage to remove the requirement to provide a MIS service as this was now being progressed by the industry under the leadership of Xoserve and Gemserv. We believe that it still needs to provide support in the form of the implementation of suitable supporting governance arrangements.

Work on the MIS has progressed and it is now clearer as to what the scope of this service is. The definition of the MIS as being 'a suite of data products and services that support the improvement in the reliability of switching' seems sensible and something we would support.

It has been highlighted by the MIS project that a supporting requirement for a successful implementation of the MIS is the development of a robust open data framework for the energy sector. The open data framework provides clarity on common standards for data definitions and information catalogues and sets out the security and audit requirements that need to be used by the energy sector.

The REC would seem to be the logical home for this and its early development could be transformational in unlocking innovation in the sectors access to data, reducing costs to industry and ultimately providing innovative services for consumers, similar to that recently introduced in the banking sector.



Q4.7: Do you agree with our proposal to create a REC Exceptions Schedule to be contained in REC v2, with the scope outlined in Figure 3? If not, please provide further details.

We support the development of these in an easy to understand drafting format compared to the option of moving these across from the existing codes.

It might be useful to include within the schedule the Smart Meter Exceptions process currently found within the MRA MAP 24 and Schedule 38 of the SPAA.

Q4.8: Do you agree that the grey areas highlighted in Figure 3 should be out of scope of an Exceptions Schedule for REC v2? If not, please provide further details.

Yes, although we would like to see the full merger of the other relevant codes within the REC as soon as possible.

Q4.9: A list of suggested content for a set of REC Technical Documents can be found in section 4.44. Do you believe that any of the content listed is unnecessary or is there any content that you would expect to be included? If so, please provide details.

No, the list seems comprehensive and there are no elements that would appear to be unnecessary. There are no additional technical documents that we are aware of now that should be included within the REC. This may change as the procurement of the CSS service providers progresses and the programme moves to its next phases. Therefore, it should be an area that is kept under review by the project.

Q4.10: Do you believe that table 1 captures all of the items that should become a REC subsidiary document? If not, please provide details of the additional items that should be included and why.

Yes, the list provided seem to be appropriate candidates for REC subsidiary documents. The list of these will no doubt grow over time as the REC is established and it becomes apparent what documentation is needed. One additional document that may be useful from the outset may be a list of active REC parties and their contact details.

Q4.11: Do you believe we have assigned the correct responsibility for producing each REC subsidiary document? If not, please provide further details.

Yes, although we believe that the Switching Programme should have the ultimate responsibility for producing all documents including those that are initially drafted by the DCC.

In the consultation Interpretation Schedule there are references to the Gas Retail Data Agent and Electricity Retail Data Agent. Some other existing industry parties have also been renamed. These new terms might be ultimately more fitting and descriptive but in the short term it risks creating greater confusion for industry parties.

A stated objective of the REC is to make it easier to understand and read than existing industry documents. It isn't clear that creating new terminology is consistent with this objective unless there are corresponding changes in the other codes to align them with the new naming conventions.



Chapter 5: The DCC licence

Question 5.1: Do you agree with the role we have set out for DCC during the DBT phase and steady state operations? If not, why not?

Yes, these seem clear and logical.

Question 5.2: Do you believe that our proposed drafting to amend LC 15 of DCC's licence would, if implemented, accurately reflect our expressed intentions? If not, why not?

Yes, it would appear to.

Question 5.3: Do you agree with our proposal to add new CRS specific price control terms. Do you think any of these terms are unnecessary or are there other terms we should consider adding?

Yes, none of those proposed in the consultation seemed unnecessary at this point in time.

Question 5.4: Do you agree with the high-level programme outcomes we believe the programme should look to incentivise? Can you suggest further areas we should look to include and are there aspects you believe should be prioritised?

Yes, the high-level programme outcomes described in the consultation seem correct. Although it is advisable to keep the areas of incentivisation for the DCC under review as the next phase of the programme progresses.

Once the scope of the services provided by the CSS service is clear and the requirements of the DCC within the REC are refined it might be necessary to review and revise the incentives that there are upon the DCC.

Chapter 6: The SCR process

Q6.1: Do you agree with the changes that we propose to make to the scope of the Switching SCR?

Yes, the proposed changes all seem logical and update the SCR to reflect the current programme.

Q6.2: Are there any further changes that you consider we should make, either to bring something into scope, or to explicitly rule it out of scope?

No, there would not seem to be any need to expand the scope of the SCR at this stage.

Q6.3: Do you agree with our proposed approach of publishing the drafting of all SCR related changes circa Q1 2019, but waiting until systems have been proven through testing before submitting the proposals into the modifications process?

Yes, due to the one-off nature of the SCR process being used here this is a logical approach. It would be helpful for all industry parties to see sight of the final modifications as early as possible. This will provide clarity to parties as to what to expect and help with the consultation process.