

Code Governance Remedies: working paper on Consultative Board and strategic direction

This working paper provides an update and an overview on our further thinking on the Code Governance Remedies. We are seeking further input from industry at our Q4 workshops.

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Audience	Workshop participants
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Contents

1. Introduction1

2. Consultative Board1

3. Consultative board: what an evolutionary approach could look like7

4. The strategic direction8

Appendix 1: Responses to consultation summary table12

Appendix 2: Possible example of the Evolutionary Approach13

Appendix 3: example work stream dashboard16

Appendix 4: example 1 of one-page timeline17

Appendix 5: example 2 of one-page timeline18

1. Introduction

- 1.1. This working paper provides an update on our thinking on the Code Governance Remedies in advance of the workshops. The purpose of the workshops is to get stakeholder views on the options we have looked into before we consult further.
- 1.2. It sets out the possible content of the strategic direction and flags the questions we will explore at the workshops.
- 1.3. On the Consultative Board (CB), it provides an overview of the core design questions we have looked at, the options we have considered, as well as examples illustrating how the CB and wider industry arrangements could work together. We are seeking views from industry and stakeholders on the broad framework for the proposals.
- 1.4. This paper is intended be useful preparatory reading in advance of the workshops. However, we will provide an overview at each of the sessions. We are planning to use the workshops to:
 - Provide an update on the two remedies that do not require legislation that we are now focussing on.
 - Gather stakeholder views on the different options we are considering for the CB.
 - Test and get views on the option of taking an evolutionary approach.
 - Set out our thinking on the strategic direction.

2. Consultative Board

Background

- 2.1. This section sets out the background to our current work on code governance reform and the views we have received following our first consultation.

- 2.2. The current governance system works well for standard industry changes. We agree with the CMA findings that the current arrangements have a negative and material impact on consumers' interests and competition. Like the CMA, we believe that the current system has been unable to handle the growing need for coordinated code change well enough.
- 2.3. The CMA investigation into the market¹ found that parties' have conflicting interests and limited incentives to promote and deliver policy change. It recommended a forum to bring stakeholders together to discuss and address cross cutting issues.
- 2.4. In November 2016,² we published our initial consultation on the Code Governance Remedies. We set out in our proposals that the Board's key purpose would be coordinating and facilitating the delivery of strategic changes across codes at first. Its main focus being to enable the delivery of the strategic direction by translating it into a joint industry plan, and monitoring its implementation.
- 2.5. Over time, we the role of the board could be re-set to more of a strategic body with additional functions, such as considering the scope of codes. This is because we see the board taking a more proactive role in tackling long-term system level issues.

2.6. Responses to our consultation

- 2.7. We had 41 responses to the consultation with the majority of respondents supportive of the CB and general agreement with the function it should be fulfilling. Respondents made a number of suggestions that included:

- The new body should have a secretariat and needs powers
- It should not add an additional layer without adding benefit
- It should have a programme/delivery function and a role in designing and delivering cross code change
- A number of alternative models

- 2.8. Appendix 1 sets out some of the main themes on the CB from the consultation responses. For the avoidance of doubt, this paper sets out initial, working level views only and does not represent the views of the Authority. Our thinking is continuing to develop, including in light of the further input from we will receive in the current workshops.

- 2.9. Our November consultation envisaged the code governance remedies as a package of reforms; in the absence of legislation to introduce licensed code managers we are now considering how the CB can still play a key role in coordinating and facilitating delivery of strategic changes across codes, and deliver changes that benefit consumers faster through better management and sequencing of change.

What outcomes are we trying to achieve?

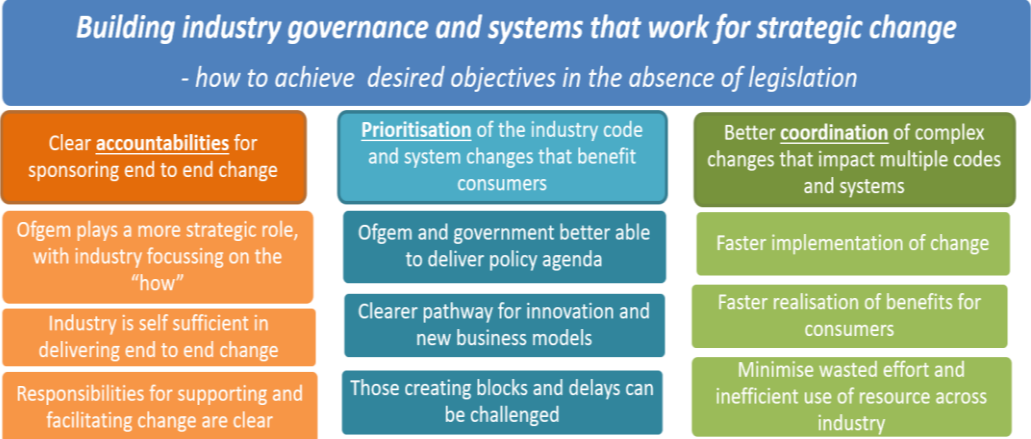
- 2.10. Our objective for these remedies is to achieve greater coordination across codes and deliver strategic change that benefits consumers and competition quickly. We want to build an industry governance and systems that is fit for purpose given the potential scale of change, while addressing the adverse effects for competition that the CMA identified.

¹ <https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf>

² <https://www.ofgem.gov.uk/publications-and-updates/industry-code-governance-initial-consultation-implementing-competition-and-markets-authority-s-recommendations>

- 2.11. The diagram below sets out the outcomes we want to achieve. We want a governance framework that delivers clear accountabilities, prioritisation of code and system changes that benefit consumers, and better co-ordination of cross code changes.
- 2.12. Our November early proposals, although at a very high level, envisaged a role for the new licensed code managers in providing more accountability and being steered and challenged by the consultative board to deliver better prioritisation and co-ordination.

Diagram 2.1: Outcomes



- 2.13. We think there is still value in providing the strategic direction and establishing the CB. We consider that progress can be made to improve the current arrangements, towards achieving the outcomes we have set out.
- 2.14. Given the complexity of the code landscape realistically the governance arrangements may need to evolve and to develop in order to reach a form where they are adding the most value. We are proposing to use this time before there is an opportunity for legislation to test and trial the publication of the strategic direction and the creation of new body to facilitate and drive cross code co-ordination and strategic change. We recognise the CB might not be the best name for this new body, and will look at rebranding it once we have a definitive view of its functions.

Accountability

- 2.15. A key question we want to use the workshops to explore is how we address the question of accountability, without legislation to deliver licensed code managers. In particular, how existing bodies, processes and industry arrangements may be adapted and/or evolve, where appropriate.

Prioritisation

- 2.16. Key questions we want to explore are is how we ensure the arrangements are fit for purpose given the scale of change on the horizon, that change in the interest of consumers is prioritised, and that blocks to innovation are challenged.

Co-ordination

- 2.17. Cross-code working groups, consistency and alignment could deliver a number of efficiencies. We want to explore at the workshops how the CB could work with existing industry parties to facilitate better cross code working and co-ordination.

Core Design Question: options analysis

2.18. Following feedback from industry and in light of ongoing uncertainty regarding the timings of any legislation, we have identified the following key design questions we want to explore at this stage:

- What should be the functions of the body (which the CMA referred to as the 'Consultative Board', but which we recognise could be labelled differently, depending on its role and functions)?
- Who should sit on the new body?
- How do roles and responsibilities need to change?
- How will the body be funded?
- How will any PMO support be provided, where required?
- How will the changes be implemented?
- How will the changes be assessed and evaluated?

2.19. At the workshops we will be focusing on the functions of the board, and how this affects the roles and responsibilities of existing industry participants. The other key design questions are dependent on these. At a later stage, we will further assess the options as appropriate, as part of our impact assessment.

2.20. Table 2.2 sets out the spectrum of options we are assessing at this stage. Our initial thinking is that it may be appropriate to consider these against their strategic fit, achievability, value for money, benefits, and weaknesses. We welcome further thoughts on this in the workshop discussions.

What would the body do?

2.21. We are looking at the spectrum of options from the status quo through to a very wide remit, covering the additional roles of providing assurance and disseminating best practice.

2.22. Our main concern with a BAU option is that without any new forum there is likely to continue to be an issue with co-ordination impacting the delivery of strategic change. The body having a wide remit from the start may mean it is unfocused and needs a wide level of expertise, which might be hard to achieve in practice and may not always be the best value for money.

2.23. There may be some benefits with the new body/CB having a narrow remit at first, and then possibly moving to more intermediate options overtime.

Table 2.2: Spectrum of options

Policy Options	BAU	Do Minimum	Intermediate Option	Intermediate Option	Wider Change
What functions will be the body undertaking? Scope (functions)	(a) The new body does not have an industry role	(b) Narrow remit (i) Supports the co-ordination of panels and code administrators to produce JIP (ii) Reports on progress of SD to Ofgem (iii) Discusses opportunities for cross code co-ordination (no real challenge function) (iv) Panels/industry use it as a forum to discuss cross code mods or strategic change issues	(c) Focus on core functions (i) Own and develop JIP (ii) Monitor, questions delays & blocks, reporting (iii) Provides a view to Ofgem and panels on strategic change	(d) Core Functions (providing firmer "recommendations") with possible future role in advising and considering longer term strategic issues (I) Lead implementation of SD (ii) Own and develop JIP (iii) Appoint leads for working groups on strategic mods & set time table (iv) Monitor, challenge, report (v) Possibly a role advising on future strategic issues on code issues	(e) Wide Remit Body has wide remit - covering CMA and consultation suggestions (eg provide assurance and sharing best practice)
Who will be on the delivery body? Solution (roles & resp)	(a) Industry needs to deliver but no changes to arrangements	(b) Industry only panel	(c) Mixed Panel - Independent chair and experts and industry reps (panel reps and CA's and delivery bodies where appropriate)	(d) Independent Expert panel	(e) Ofgem led panel (with expert & industry reps, & separate PMO)
What is the impact on the roles and responsibilities Delivery (composition/who)	(a) No changes to current arrangements.	(b) Panels and code administrators play a greater role	(c) Strategic changes in the JIP are responsibility of the new body. It is a more "formal" advisory role to Ofgem and industry on strategic mods. Strategic and BAU mods responsibility is still largely with Panels	(d) the Consultative Board makes recommendations relate to SD and strategic mods - There is a shift in responsibility from panels for certain strategic/cross cutting mods but BAU mods remain with panels.	(d) All strategic changes & issues and wider project management advice are responsibility of new body.
How will the changes and interactions be implemented?	(a) No changes to current arrangements. Parties/code administrators expected to support delivery body	(b) Industry implementation with no guidance Provide industry with a timeframe to identify the necessary changes to codes or put in agreements to make arrangements to work	(c) Require industry to develop a MOU and make other framework changes as required	(d) Licence modifications and draft MOU for the interim period. - While we make licence modifications to ensure parties have an obligation to support the delivery of the SD. - Industry would need to raise mods as required and as the role of the body evolves	(e) Ofgem identify and make all framework changes
How will the delivery body and the functions it performs be funded?	(a) Costs incurred are through current charging arrangements - industry need to decide on the division	(b) Cost reflective Approach.	(c) Smeared unless significant (dependent on the materiality of cost)	(d) All costs are smeared	(e) Costs are recovered through a licensee
Is PMO support needed?	(a) No PMO support provided	(b) Code Administrators support on a pro rata basis/as needed - could be specified in MOU	(c) PMO support is tendered	(d) The new body decide who provides the PMO support	(e) Provided by existing an licensee

Who would be on the body?

- 2.24. We are considering composition options that range from an industry only panel to an Ofgem-led body, as well as the option of mixed composition.
- 2.25. We want to achieve an outcome where we are setting the strategy (the 'what') and industry, who are best placed to, determine the 'how'. We see value in us having representation on the body but think an independent chair and experts in appropriate areas would provide useful insights and inform the options industry are considering.³ Attendance by panel and code administrator representatives could be dependent on the relevance of the agenda to ensure the burden of attending the meeting is reasonable.
- 2.26. We are unsure whether an industry-only body, even if it were cross-code, would provide additional value compared to the current arrangements, and ensure appropriate prioritisation of change.

What changes would there be to roles and responsibilities?

- 2.27. In the absence of legislation, responsibility for delivering the strategic direction needs to sit within the current framework. This will have implications for existing roles and responsibilities of various parties, including potentially panels and/or existing code administrators who could potentially have a greater role in facilitating the strategic direction. We appreciate these types of change to existing roles will need further discussion and development with industry to ensure any proposals will be effectively embedded.
- 2.28. The CB could assist and facilitate the strategic direction by becoming a forum for panels and code administrators to discuss cross code issues. It could also be useful for code parties facing blocks, or perceived blocks, to changes that relate to strategic direction (and that may cut across multiple codes) to have a place they can raise issues. Similarly, it could provide innovators a place to engage across codes, and for industry to get a perspective from independent experts on consumer issues, project management or other appropriate areas. We are looking to explore the roles and responsibilities in more depth with industry at the workshop.

How will the delivery body and the functions it performs be funded?

- 2.29. The new body will need to be funded and resourced. We are considering a number of funding routes but the most appropriate options is very dependent on the scale of the costs. The cost and resource requirements are directly related to the functions, the composition, and whether there is a need for PMO support. If the body takes a very narrow remit and, for example, supports panels to identify and provide a view on cross code and strategic issues, there could be quite minimal costs. An approach where the costs are smeared unless they are above a particular threshold could be proportionate.

How should secretariat support be provided?

- 2.30. We agree it is likely that the CB will need some type of secretariat support. Similarly to above, the most appropriate option will be dependent on the role of the CB. For example, if it has a narrow remit and is mainly supporting panels to develop the JIP, it could (initially at least) be supported by the current code administrators on some form.

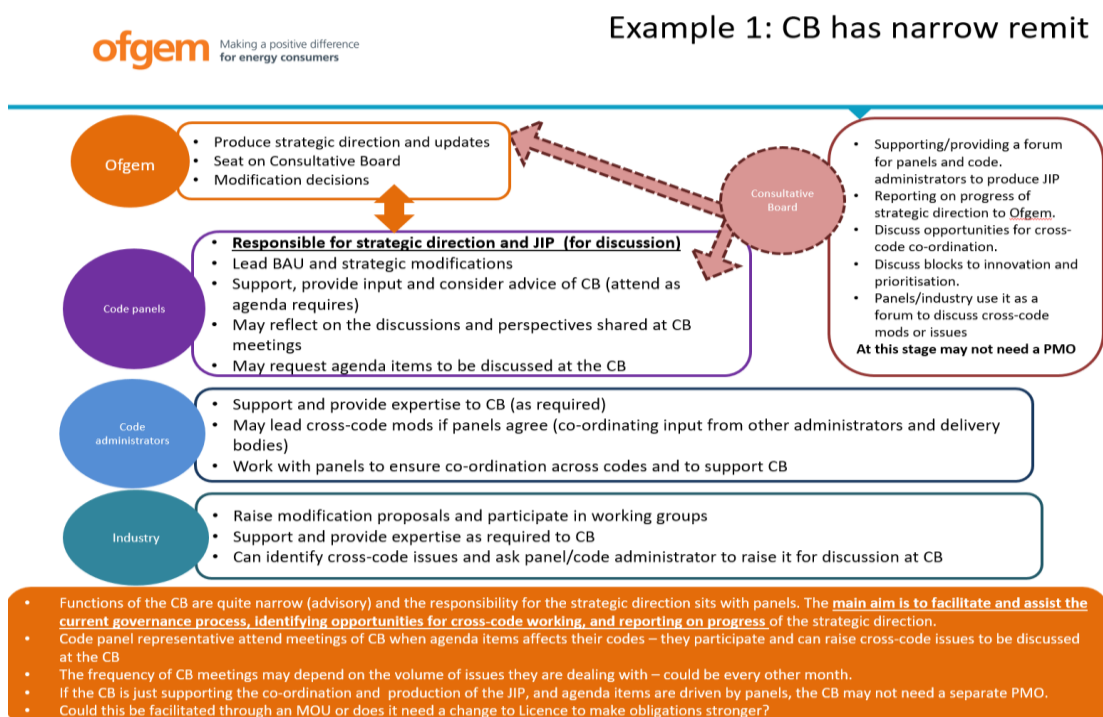
³ Once we have agreed the broad functions we will consider in more detail the appointment and composition to the body. This will include considering issues with conflicts of interest, and looking at existing examples of bodies with independents across different industries.

How will the changes be assessed and evaluated?

- 2.31. It is important that the proposals are assessed and evaluated against the outcomes. If an evolutionary/incremental approach is taken then we will need develop a clear plan to review the role of the CB and consult with stakeholders on changes to its role. We will develop a more detailed approach to reporting, assessing and evaluating the proposals once there is a firmer view on the role the CB should have.

3. Consultative board: what an evolutionary approach could look like

- 3.1. One option we are considering is taking an evolutionary/incremental approach to allow us to test and trial role of the CB. This could help us explore where the new body could add most value and get the balance between roles and responsibilities between different parties right.
- 3.2. There may be some benefits in starting with a new body that has a narrow remit. The main objectives for creating the body at this stage would be to provide a forum to discuss and co-ordinate cross-code issues, and where different perspectives can inform how best to deliver the JIP. Responsibility for delivering the strategic direction needs to sit somewhere within the current governance structure. Given panels will be making recommendations for the mods, one option is that they, supported by code administrators, are responsible for delivery of the strategic direction. We recognise this may require supporting licence and/or code change to implement it (eg potential changes to code objectives). The diagram below sets out an example of how the landscape, with the new consultative board providing a forum to discuss cross code issues and possibly providing an unbinding view, might work.



- 3.3. Over time if the CB is proving a useful forum it might be appropriate for it to take a wider role. It could take more responsibility for questioning blocks to innovation or delays in the implementation of the JIP.

- 3.4. The role of the CB could develop even further to have a larger more formal role in strategic modifications. For example, in future cross-code changes (where there are dependencies and complexities across a number of codes) could be led by the CB. It could provide more formal “advice” that panels are expected to take into consideration to ensure consistency and co-ordination across the industry.
- 3.5. Appendix 2 provides an example of how the CB could evolve through these three illustrative stages. In reality the CB could evolve in different ways, **the examples are provided to stimulate discussion on the approach**, and on whether the body having a narrow remit is the right starting point.
- 3.6. A potential benefit of this approach is providing flexibility and it could create greater consistency across codes gradually, overtime. Even if the body does not have a formal role in leading modification proposals it could still provide a place for consumer groups and innovators to target issues and discuss blocks across codes.
- 3.7. This approach would need regular review and evaluation points to assess whether the changes are adding value and if they are an improvement to the existing arrangements, rather than being another layer or perceived as a “talking shop”. It would also need buy-in and support from across industry to ensure it may evolve over time.

4. The strategic direction

- 4.1. The CMA recommended that Ofgem be responsible for the strategic development of codes. To do this the CMA recommended that we publish a cross-cutting strategic direction for codes to signal how we expect high-level policy changes will be implemented through changes to industry codes and other wider market changes.
- 4.2. We set out in our November 2016 consultation that the strategic direction will play a central role in aligning industry objectives with Ofgem’s focus on consumer interests. It will ensure all participants active in industry codes are working towards the same goal.
- 4.3. In this section we set out initial thoughts on developing the strategic direction and flag the questions we will explore at the workshops.

Recap of our November consultation and responses

- 4.4. In the November consultation, we proposed that the strategic direction would set out the outcomes Ofgem is aiming to achieve through changes to industry codes. We proposed that the strategic direction should contain the key outcomes to be delivered, the roles and responsibilities in relation to it, a ‘vision’ of cross-code reform, and an explanation of our priorities. We also outlined a list of potential activities and projects we may include in the strategic direction.
- 4.5. Respondents expressed wide support for the strategic direction, while flagging that we should consult on it. Most respondents agreed with the projects we suggested we might include in the strategic direction, while a few recommended including other projects too. Some respondents also suggested that it should include longer-term Ofgem projects (5+ years), at least at a high level. In terms of the level of detail required on the projects in the strategic direction, stakeholders expressed a need for balance. Ofgem should be clear on what is needed without being too prescriptive; essentially, we should state what needs to be achieved but not how.

Possible content of the strategic direction

- 4.6. We consider that the strategic direction should contain the following sections:

- Vision
- Roles and responsibilities
- Landscape of code and system changes.

4.7. In the table below we describe in more detail the content that we are considering including in each of those sections. At the upcoming workshops, we intend to explore whether the proposed details would provide the industry with the information they need to understand the outcomes we are aiming to achieve through changes to industry codes. In particular, we are keen to understand whether the industry will be able to use the information to focus their resources on the priorities outlined in the strategic direction.

Contents of the strategic direction – for discussion	
<p>Vision</p> <p>The purpose of the vision is to clarify what Ofgem’s priorities are for the energy market, and to frame this in the context of the industry codes and systems and the governance framework needed to deliver on our priorities. Its purpose is <u>not</u> to set out the work streams that will impact on industry codes (which will be set out in the ‘landscape of industry code and system changes’ section) or the specific code changes we expect to be made the coming years.</p>	<p>In this section we propose to explain:</p> <ul style="list-style-type: none"> • the key drivers that will lead to changes in the energy market (and thus requiring changes to the industry codes and systems), such as technological developments, the decarbonisation agenda, Ofgem’s and government’s market reforms etc. • the market that we want to create, largely drawing on existing materials in the public domain, such as the corporate strategy, forward work programme and other strategy documents • that the code governance framework (including any changes to roles and responsibilities) should enable industry to deliver the code changes needed in light of the key drivers above, by enabling <ul style="list-style-type: none"> ○ prioritisation of the industry code and system changes that benefit consumers, and ○ better coordination of complex changes that impact multiple codes and systems • that the code governance framework should not get in the way of innovation that benefits consumers.
<p>Roles and responsibilities</p> <p>The main purpose of this section is explain the key roles and responsibilities of parties in light of the new arrangements.</p>	<p>In this section we propose to set out the roles and responsibilities of various parties, including:</p> <ul style="list-style-type: none"> • Ofgem • Consultative board • Code Panels

	<ul style="list-style-type: none"> • Code administrators • Code owners • Code users.
<p>Landscape of industry code and system changes</p> <p>The main purpose of this section is to provide details on the key outcomes we are trying to achieve on strategic pieces of work that may affect the industry codes.</p>	<p>In this section we propose to provide:</p> <ul style="list-style-type: none"> • a one-page timeline of upcoming industry code and system changes • for each 'relevant work stream', a one-page dashboard of key information on that work stream <p>We would also explain our criteria for selecting 'relevant work streams'.</p>

4.8. In the strategic direction, we think it would be beneficial to provide further information on a number of Ofgem-led work streams. We intend to provide details on work streams that are strategically important and that we expect to impact on codes. The main aim is to ensure that the industry understand the outcomes that we are intending to deliver through those work streams. However, just because a work stream or code change is not discussed in the strategic direction, it does not necessarily mean that the industry should not focus their resources on it. The industry would need to consider each change on its own merit and in light of the benefits it would deliver to consumers.

4.9. We propose to include a one-page dashboard for each work stream that:

- is referenced in the forward work programme⁴; and
- may or will require code or central system changes to deliver on its desired outcomes (where those changes are not part of business as usual code changes).

4.10. If we were to apply this criteria to the 2017/18 forward work programme, the following work streams would be captured:

Code governance reform	Half-hourly settlement
Embedded benefits	Major onshore transmission investments
EU exit preparedness	RIO2
European network codes and guidelines	Switching programme
Future SO	Targeted charging review
Gas charging review	

4.11. See appendix 3 for an example dashboard. At the workshop we will seek views on what information it would be useful to provide for each work stream.

⁴ On current timescales, we would expect to apply the criteria to the (yet to be published) 2018/19 forward work programme.

- 4.12. We propose to map out on one page the expected timings of code and central system changes for all of the work streams that meet the criteria above. See appendices 4 and 5 for two examples of how this timeline could be presented. We will seek views on these at the workshop.

Prioritisation

- 4.13. The strategic direction alongside our proposals on the roles of the panels and consultative board should help industry to prioritise and focus their resources on the code changes that most benefit consumers. At the workshop, we will explore whether there are other things we or the industry need to do to ensure that resources are focused on those priorities, to ensure timely implementation of beneficial change.

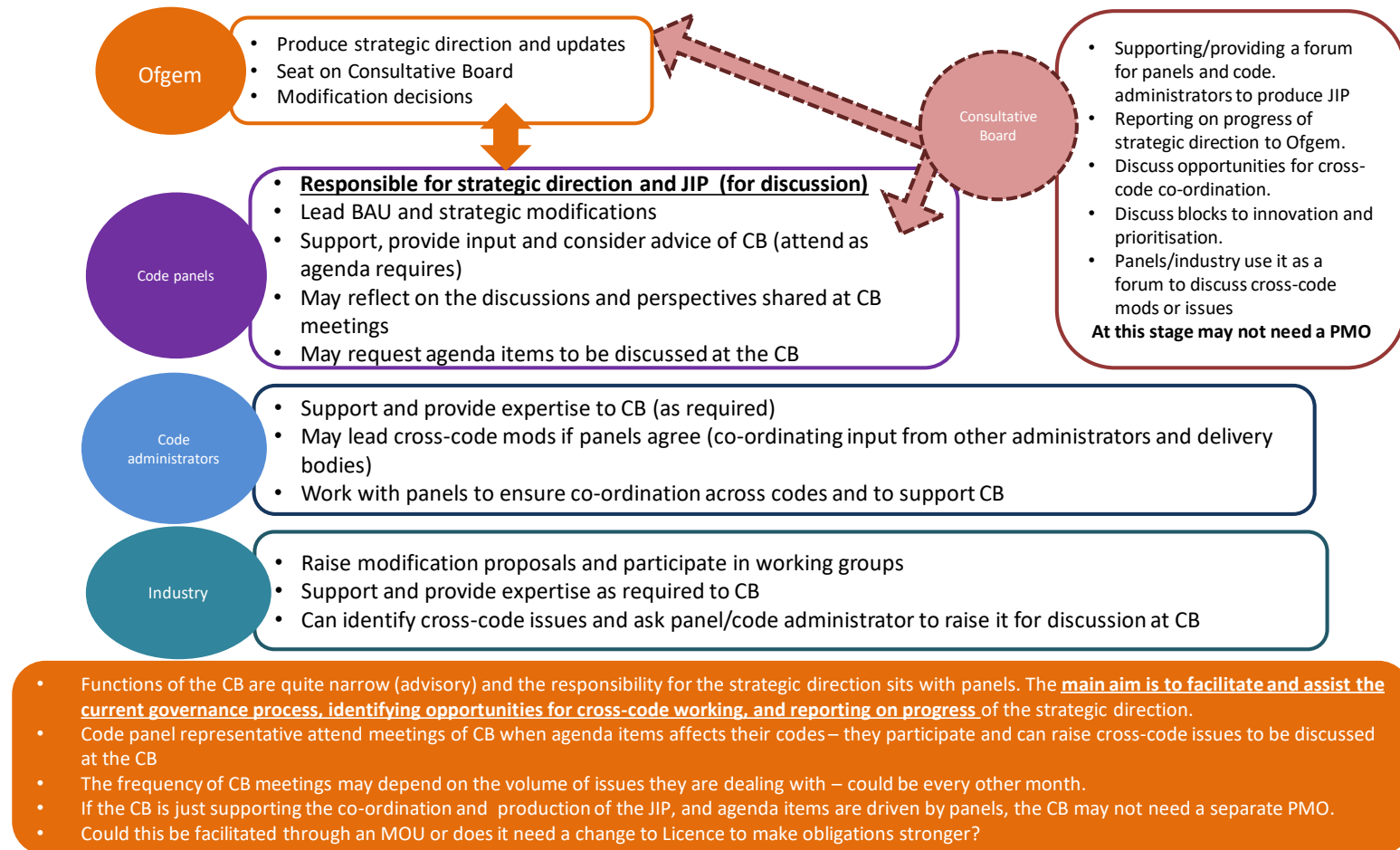
Appendix 1: Responses to consultation summary table

Theme	Description
Functions	<p>Generally: Co-ordination role, responsibility for the JIP, challenge role, checking cross code implications and dependencies.</p> <p>Wider Suggested project assurance, raising code mods, informed buyer</p>
Funding and Resourcing	How the CB and any administrative support will be resourced and funded
Composition	<p>Representative of industry as well as sufficient technical knowledge of codes and project management skills</p> <p>Senior level representation</p> <p>PMO office support</p> <p>Needs to reflect consumer and new business models</p>
Secretariat support	The CB needs to be supported a PMO function
Interaction with current arrangements	Undesired effect of negating the innovation introduced by FGO interaction with existing switching etc. arrangements
Name	Consultation is proposing a wider role than the name "consultative" suggests and "board" indicates decision making powers
Alternative arrangements	<p>Achieve outcomes with current framework (code objectives, MoU, CACoP, Additional oversight body or design authority</p> <p>Independent code adjudicator Super code administrator, code consolidation)</p>

Appendix 2: Possible example of the Evolutionary Approach

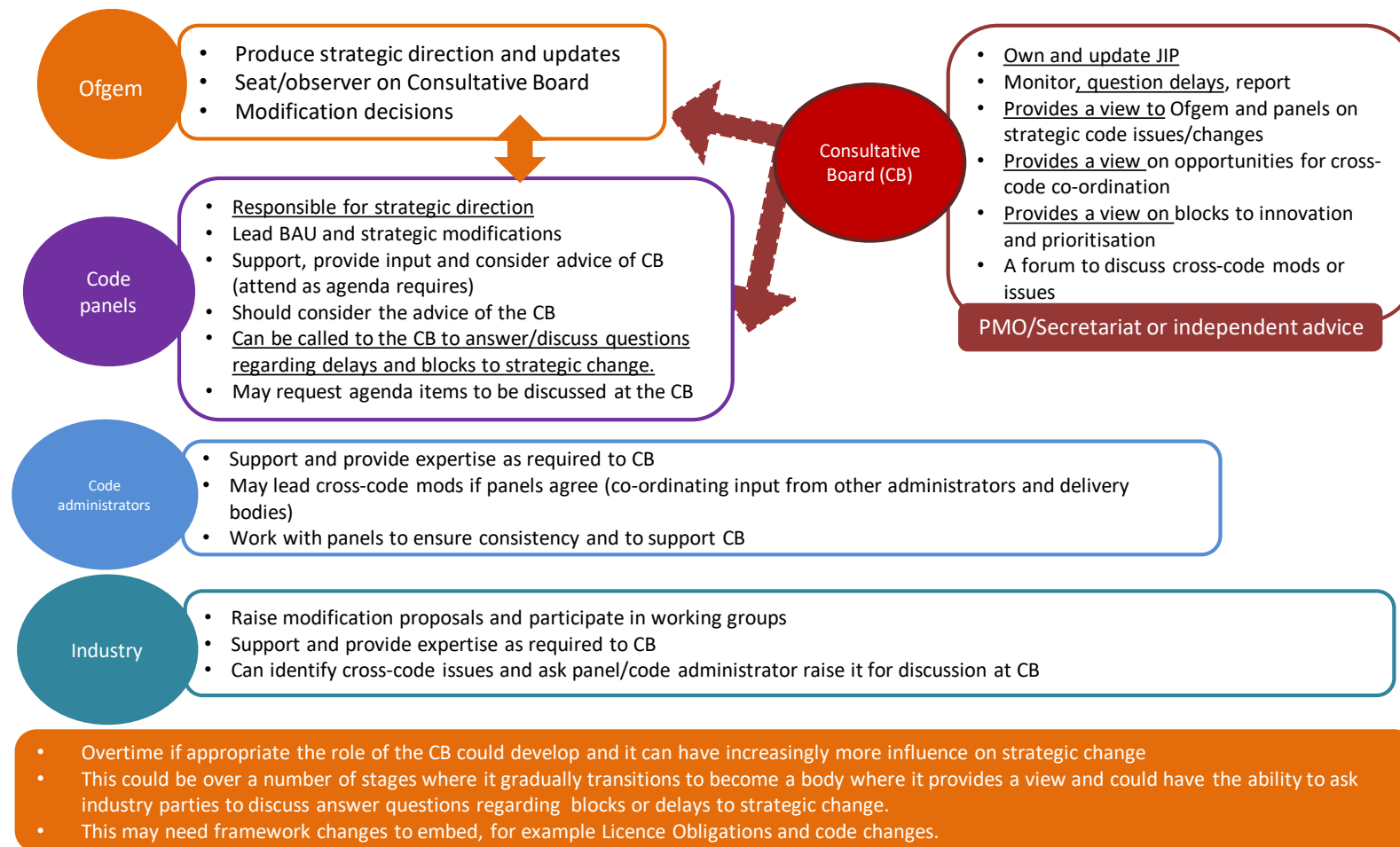
The diagrams below provide an example of the evolutionary approach. In the first stage, the CB is providing a place for panels and code administrators to discuss cross-code issues and the JIP. It could also be a place for new entrants and innovators to raise issues relating to blocks to changes that relate to the strategic direction.

Stage 1: Forum for discussion



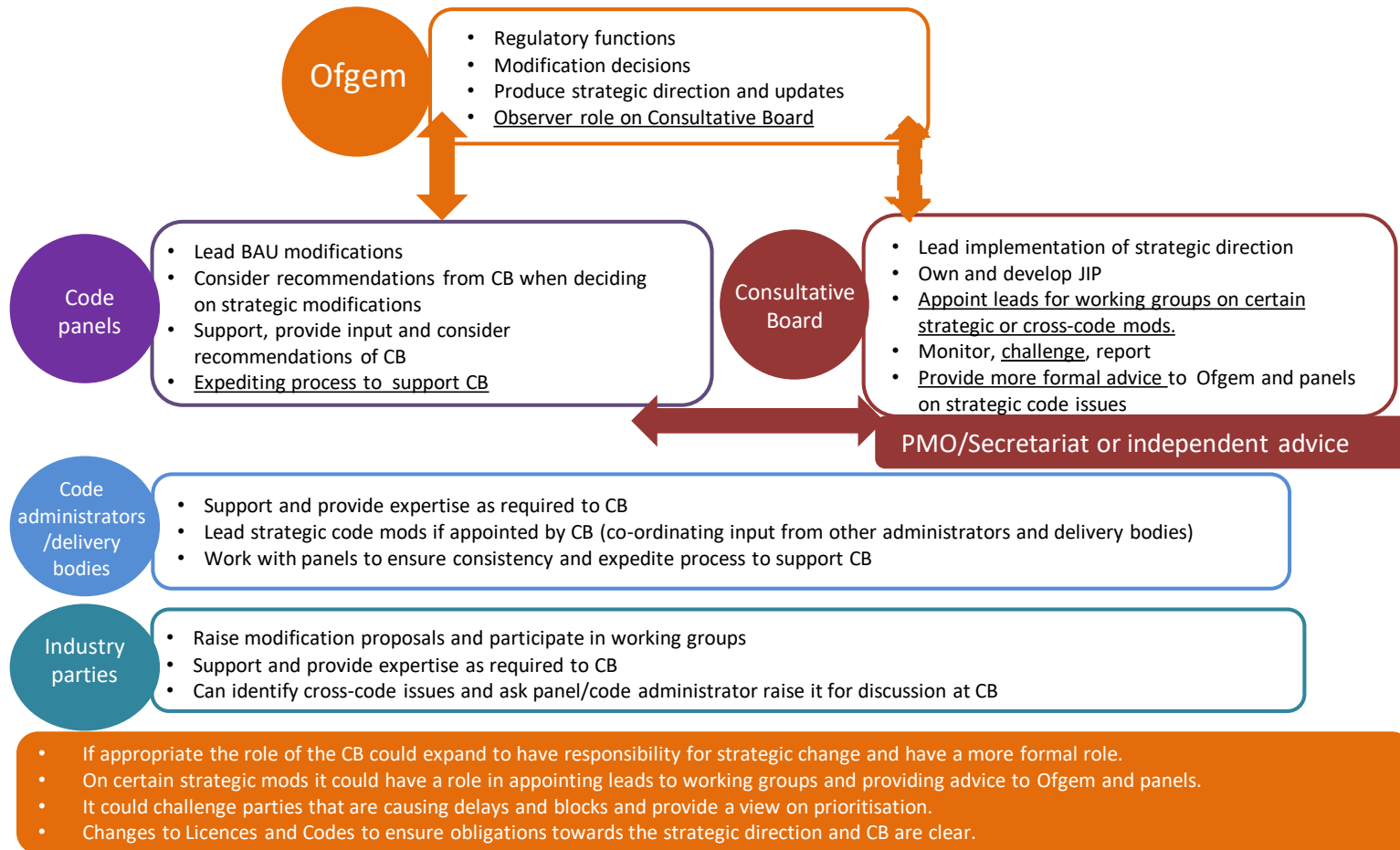
Stage 2: Owning JIP & challenging

In the second stage, the CB has more responsibilities, for example leading more on the JIP and questioning parties that are creating blocks or delays to milestones in the JIP.



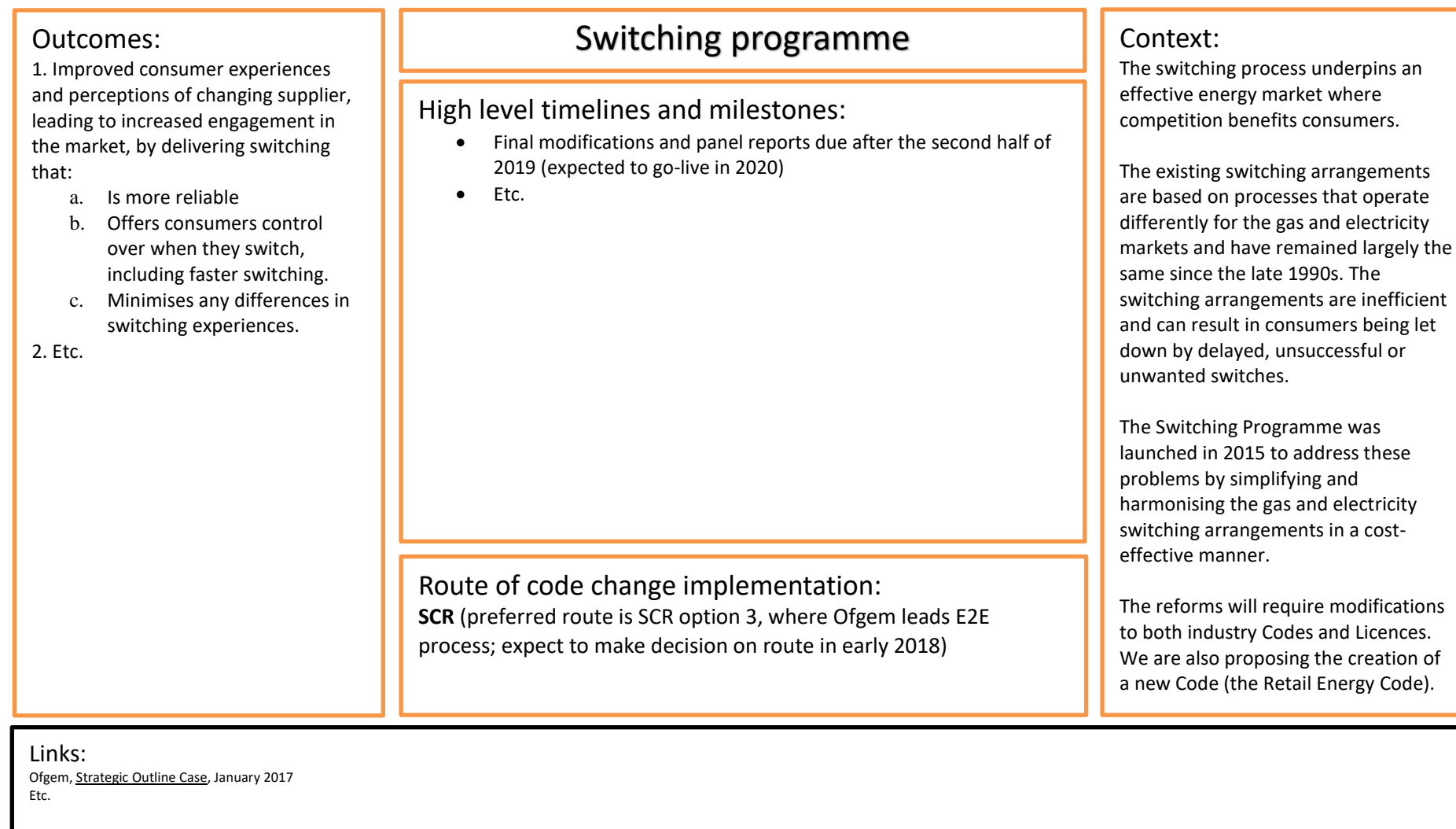
Stage 3: Leading some cross code mods

In the third stage the CB is much more responsible for the strategic direction and in some cases could take a role in appointing cross code working groups. It may provide a “view” on code modifications that it is overseeing for panels to sign-off. This could allow panels to focus on BAU issues and allow the CB to focus where appropriate on the strategic cross cutting issues.



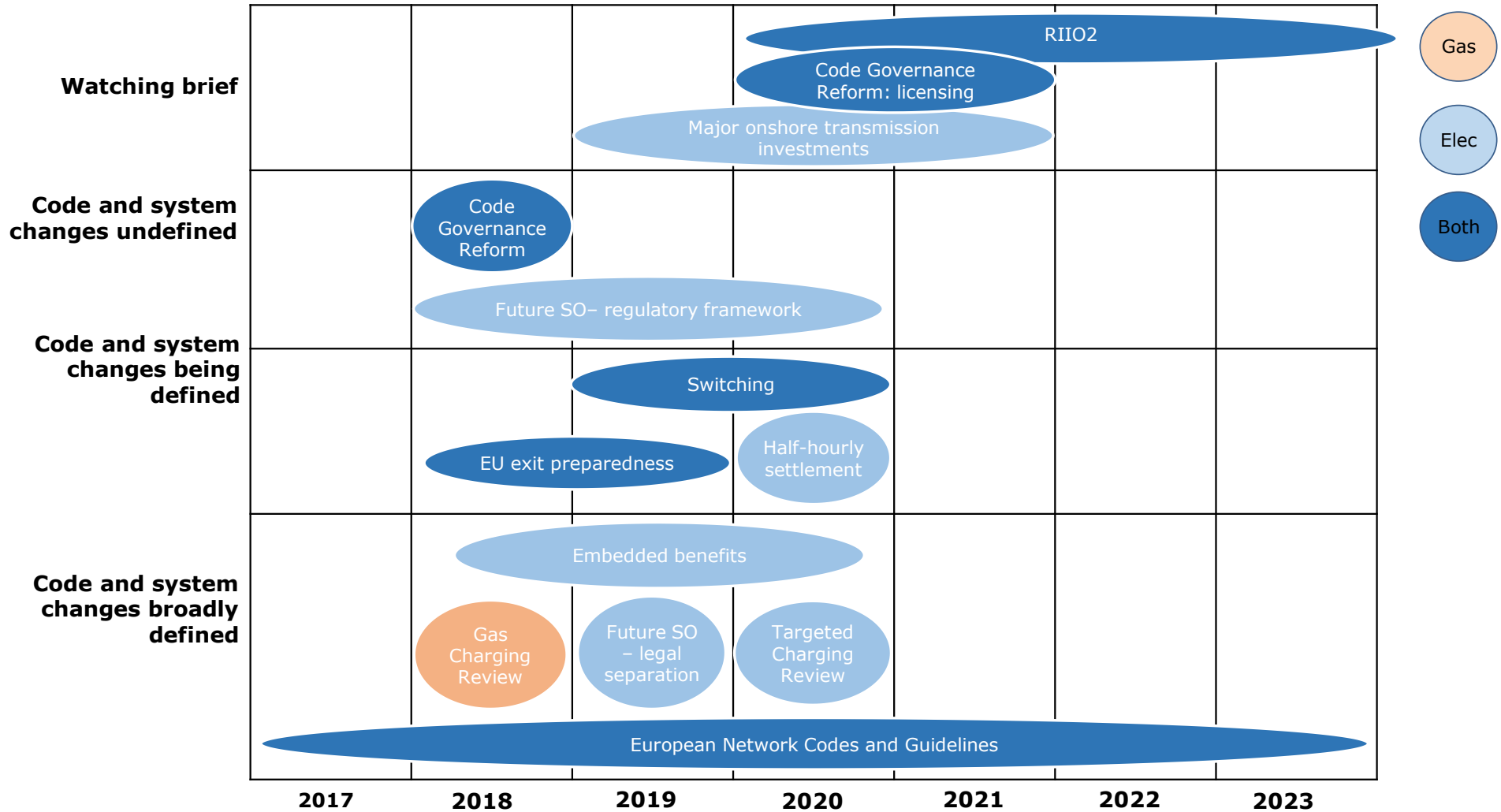
Appendix 3: example work stream dashboard

Illustrative only – content should not be relied upon



Appendix 4: example 1 of one-page timeline

Illustrative only – content should not be relied upon



Appendix 5: example 2 of one-page timeline

Illustrative only – content should not be relied upon

