

EECC Team

European Electronic Communications Code
Digital Infrastructure Directorate
Department for Digital, Culture, Media and Sport
1C/09 100 Parliament Street
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Sent via email to: EECC@culture.gov.uk

10 September 2019

Dear EECC Team,

Implementing the European Electronic Communications Code

This is a high-level, energy industry response to the DCMS consultation on implementing the European Electronic Communication Code Directive (EECC). Energy UK's response focuses primarily on the proposed implementation of Article 107 (bundled offers). Fundamentally, there is a pressing need to ensure clarity of responsibility and to avoid any additional complexity as far as possible.

Energy UK is the trade association for the GB energy industry with a membership of over 100 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership covers over 90% of both UK power generation and the energy supply market for UK homes. We represent the diverse nature of the UK's energy industry – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

Energy UK's primary concern with the proposed implementation of Article 107 is the increased complexity and regulatory burden that could be imposed upon energy suppliers offering a relevant bundle. This additional burden could result in increased costs for consumers, or to such products being taken out of the market to their detriment, especially if it contradicts or goes far above and beyond current supply licence requirements.

The additional complexity could disrupt the future development of the energy retail market's regulatory framework, which is currently being considered in the joint Ofgem and BEIS Future Energy Retail Market Review.¹ A key element of this is regulatory simplicity and consistency, and the removal of unnecessary barriers to innovation. There is a risk that the current implementation proposal of Article 107 could undermine this aim by stifling innovation and act as a barrier to offers coming to market which would have benefitted customers.

Energy UK agrees (Question 28) that the potential for Article 107 to create 'regulatory clash' is limited at the current time. However, this potential is not *non-existent*. There are several suppliers with significant customer numbers already offering energy-inclusive bundles on the market today which

¹ <https://www.gov.uk/government/publications/future-energy-retail-market-review>

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would be covered, so there would be some immediate impacts which should be considered. We are not confident that there are effective and consistent measures in place to ensure that where such clashes do occur, or may occur due to proposed regulatory changes, that they can be avoided or resolved effectively with minimal detriment to consumers or markets.

To address these concerns, we would urge DCMS to ensure that it fully engages with Ofgem and BEIS on a number of ongoing workstreams which will be impacted by the implementation of these proposals. As well as the Future Energy Retail Market Review, BEIS are considering a joint Ofgem-Ofcom general authorisation regime for third-party intermediaries through its Smart Data Review.² Ofgem are also undertaking a strategic review of microbusiness protections.³ As Article 107 also extends to microbusinesses and SMEs, there may be a risk of 'regulatory clash' depending upon that review's findings and recommendations. The National Infrastructure Commission is also currently undertaking a study into the future of regulation in the telecoms, energy and water sectors.⁴

Energy UK also believes that there needs to be a more explicit and pro-active process in place to guard against regulatory clash between Ofcom and Ofgem going forward. Indeed, such a process would be beneficial across all sector regulators, in addition to the Competition and Markets Authority and Information Commission's Office, to ensure there is consistency in events of regulatory clash, especially as the likelihood of market convergence increases. This in particular relates to Ofcom's discretionary power to extend the bundle protections to include other provisions of the EECC, but could also result from changes to energy supplier regulation. In its engagement with regulators, DCMS should seek to map out processes to follow in order to resolve or avoid regulatory clash, ensuring regulatory simplicity and consistency going forward.

I would be happy to discuss any of the points made above in further detail with DCMS or any other interested party. Energy UK would also be happy to facilitate DCMS' engagement with our supplier members if it would find that beneficial. Please contact me directly on 020 7747 2931 or at steve.kirkwood@energy-uk.org.uk.

Yours sincerely,

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² <https://www.gov.uk/government/consultations/smart-data-putting-consumers-in-control-of-their-data-and-enabling-innovation>

³ <https://www.ofgem.gov.uk/publications-and-updates/opening-statement-strategic-review-microbusiness-retail-market>

⁴ <https://www.nic.org.uk/publications/future-of-regulation-study-terms-of-reference/>