

### References to EU Concepts in DCUSA

This table was produced in September 2017, based on a review of the DCUSA at that time. Only the final column has been updated in December 2020.

EU legislative 'root' of the provision	Code Reference	What does it say	Effect	Legally inoperable post-exit	Any other comments	<i>Approach in 2020 Change Proposal</i>
Regulation 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators	Section 1A (Definitions), p. 7	<b>'Agency for the Cooperation of Energy Regulators'</b> means the agency of that name established <u>under Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009</u> establishing an Agency for the Cooperation of Energy Regulators	Defines the term 'Agency for the Cooperation of Energy Regulators' as referring to the EU body of that name.  See also 'Authority Change Proposal' below.	No. The provision will remain operable as ACER will continue in existence post-exit.	The provision may be redundant depending on the outcome of the Article 50 negotiations as ACER may have no future role in UK energy regulation post-exit.  The approach taken will need to be considered in the context of electricity distribution licence condition 22 (from which this concept derives).	<i>Amended as per November 2020 modifications to Distribution Licences.</i>
Article 19 Regulation 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the	Section 1A (Definitions), p. 8	<b>'Authority Change Proposal'</b> means modifications proposed to this Agreement:  (a) Where the Authority reasonably considers the modifications are necessary to comply with or implement the	Defines the term 'Authority Change Proposal' to include where Ofgem considers modifications to DCUSA to be necessary to comply with the Regulation on Cross-Border Exchanges and relevant legally binding decisions of the European	No. The provision will remain operable post-exit.  The Regulation will form part of domestic law post-exit by virtue of the European Union (Withdrawal) Act (as introduced to	Depending on the outcome of the Article 50 negotiations, the Commission and/or ACER may have no future role in UK energy regulation post-exit. Decisions made pre-exit will still	<i>This is covered by the proposed amendment to the definition of 'Regulation on Cross-Border Exchanges in Electricity' (see below).</i>

network for cross border exchanges in electricity and repealing Regulation 1228/2003		<u>Regulation on Cross-Border Exchanges in Electricity and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Cooperation of Energy Regulators</u> ; and/or ...	Commission and/or ACER.  Such modifications are subject to a different procedure before being made under section 11 of DCUSA, with respect to which Ofgem can specify a timetable and the date from which the modification shall take effect.	Parliament), subject to modification under the Act.  Pre-exit decisions of the Commission and ACER are likely to remain binding by virtue of the European Union (Withdrawal) Act and post-exit decisions will not be binding, depending on the outcome of the Article 50 negotiations.	be legally binding.  The approach taken will need to be considered in the context of electricity distribution licence condition 22 (from which this concept derives).	
	Section 1A (Definitions), p. 12	<b>'Competent Authority'</b> means the Secretary of State, the Authority, and any local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of the government of the United Kingdom <u>or of the European Union</u> insofar as it is acting within the limits of its proper authority.	Defines the term 'Competent Authority' to include the officials and bodies of the EU acting within the limits of their authority.  Parties are relieved of various confidentiality obligations where Confidential Information is required under a duty imposed by a Competent Authority (sections 34.2.3, 35.5.3, 50.2.3, 51.3.3, 52E.2.3(D)(i), 52F.3.3, 52K3.3(A), 52L.3.3).  Under section 60.3, if any provision of DCUSA is held invalid or unenforceable by a binding judgement or	No. The provision will remain operable post-exit.  The sections in relation to the lifting of the confidentiality requirements apply only in relation to duties imposed by a Competent Authority. If no Competent Authority has the authority to impose duties on parties then the relevant sections, as they apply to EU officials and bodies will be redundant. However, if following the Article 50 negotiations, some EU officials or bodies can	If, following the Article 50 negotiations, no official or body of the EU will continue to be empowered to impose duties on parties to DCUSA then the reference to the 'European Union' will be redundant.	<i>The final position is not yet known. Given the light-touch approach in the licences, we propose to leave this unchanged. If no EU body continues to have jurisdiction, then the reference will be redundant, but will do no harm.</i>

			<p>decision of any Competent Authority that provision is deemed to be severable.</p> <p>The definition of a Competent Authority flows through to the definition of a Directive under section 1A. A 'Directive' is defined as any present or future directive, requirement, licence condition, instruction, direction or rule of any Competent Authority which either has the force of law or is in accordance with the general practice of persons to whom the Directive is addressed.</p> <p>The definition of 'Force Majeure' in section 1A includes where a Party cannot perform its obligations because of any Directive.</p> <p>A Company is relieved of the obligation to compensate a User in relation to Modifications that the Company has made to a Connection Point where that Modification is required by any Directive (section 52.9).</p>	<p>continue to impose duties on parties then the sections on confidentiality will continue to operate effectively with respect to those duties.</p> <p>Likewise, in relation to section 60.3, pre-exit decisions of Competent Authorities are likely to remain binding by virtue of the European Union (Withdrawal) Act and post-exit decisions will not be binding, depending on the outcome of the Article 50 negotiations.</p> <p>The same will apply in relation to force majeure and section 52.9.</p>		
Regulation 714/2009 of the	Section 1A (Definitions),	<b>'Regulation on Cross-Border Exchanges in</b>	Defines the term 'Regulation on Cross-Border Exchanges	No. The provision will remain operable post-		<i>Amended as per November 2020</i>

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 1228/2003	p. 38	<b>'Electricity'</b> means <u>Regulation 2009/714/EC 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 2003/1228/EC</u>	in Electricity' to mean Regulation 2009/714/EC.  The Regulation is referred to in the definition of an Authority Change Proposal, as discussed above.	exit as, under the European Union (Withdrawal) Act (as introduced to Parliament), the Regulation will form part of domestic law, subject to modification under the Act.		<i>modifications to Distribution Licences.</i>
N/A	Section 1A (Definitions), p. 43	<b>'Significant Code Review'</b> means a review of one or more matters which the Authority considers likely to:  ...  (b) be of particular significance in relation to its principal objective and/or general duties (under section 3A of the Act), statutory functions and/or <u>relevant obligations arising under EU law</u> , ...	An Authority Change Proposal (discussed above) is defined to include modifications to DCUSA proposed in respect of a Significant Code Review.  Under section 10.22 the Panel shall refuse to refer a Change Proposal that it considers to fall within the scope of a Significant Code Review and shall, under section 10.23 notify Ofgem of any representations received in relation to any such proposal and comply with any direction from Ofgem in relation to whether or not the proposal falls within the scope of a Significant Code Review.	The provision may not have any practical effect post-exit.  'EU law' is not defined in DCUSA but – to the extent that it may be taken to mean those laws applying in the UK by virtue of the UK's membership of the EU – it will not apply in the UK post-exit (subject to the outcome of the Article 50 negotiations). EU law will therefore not give rise to any 'relevant obligations' post-exit.  This will not prevent the provision from being legally operative, but it may render it of no practical effect.	If the European Union (Withdrawal) Act is passed, the provision could be amended to refer to the European Union (Withdrawal) Act (in place of EU law) to ensure that the provision captures those obligations which will be brought into domestic law by that Act (either in addition to, or instead.  The approach taken will need to be considered in the context of electricity distribution licence condition 22 (from which this concept	<i>This has not been changed in the Distribution Licences, so no change is proposed in the DCUSA.</i>

					derives).	
Article 14 Regulation 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 1228/2003	Section 3.1.5 (DCUSA Objectives), p. 54	<p>3.1 The objectives of this Agreement (such objectives being the General Objectives), except in respect of the Charging Methodologies, are set out in Condition 22 of the Distribution Licences. For ease of reference, the General Objectives are set out below using the terminology of this Agreement (but in the case of any inconsistency with the Distribution Licences, the Distribution Licences shall prevail):</p> <p>...</p> <p>3.1.5 compliance with the <u>Regulation on Cross-Border Exchanges in Electricity and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators</u>.</p>	<p>This section repeats the General Objectives of DCUSA as set out in condition 22 of the electricity distribution licence.</p> <p>Apart from in respect of the Charging Methodologies, the General Objectives form part of the DCUSA Objectives under the definition of the latter in section 1A.</p> <p>Where an Applicant believes that the content of a prescribed Application Form is not consistent with the DCUSA Objectives, the Applicant may refer the matter to Ofgem for determination (section 4.9.2).</p> <p>The DCUSA Objectives also form part of the Panel Objectives under section 5.2.2, in accordance with which the Panel must conduct its operations.</p> <p>Under section 5.3.7, Ofgem must periodically review DCUSA and operations under it to evaluate whether</p>	<p>No. The provision will remain operable post-exit.</p> <p>The Regulation – and pre-exit decisions of the Commission and ACER – will form part of domestic law post-exit by virtue of the European Union (Withdrawal) Act (as introduced to Parliament), subject to modification under the Act.</p> <p>Post-exit decisions of the Commission and ACER will not be binding, depending on the outcome of the Article 50 negotiations.</p>	<p>As this provision links to standard licence condition 22 of the electricity distribution licence it will need to reflect any relevant modification of that condition.</p>	<p><i>The update to the Regulation on Cross-Border Exchanges in Electricity is covered by the proposed amendment to the definition of 'Regulation on Cross-Border Exchanges in Electricity' (see above).</i></p> <p><i>The text on 'relevant legally binding decisions' has been left unchanged in the Distribution Licence, so we have adopted the same approach of no change in the DCUSA.</i></p>

			<p>DCUSA meets the DCUSA Objectives.</p> <p>Under section 5.4.3 the Panel has the power to consider, approve and authorise the licensing, sub-licensing, or any other manner of dealing with Intellectual Property belonging to DCUSA Ltd, for any use which does not hinder, delay or frustrate, in any way whatsoever, the DCUSA Objectives.</p> <p>Any Change Proposal must be justified on the basis that the DCUSA Objectives will be better met in light of the proposed change than without it (sections 10.4.5, 11.20.5A, 11.20.6(A), 11.20.6(C), 12.7, 13.9.2 and 13.20.3).</p> <p>One of the objectives of the DCUSA standing issues group is to consider solutions to issues in light of the DCUSA Objectives (section 2.1(d) of Schedule 7).</p>			
Article 14 Regulation 714/2009 of the	Section 3.2.5 (DCUSA Objectives),	3.2 The objectives of this Agreement in respect of the Charging	This section repeats the Charging Objectives of DCUSA as set out in	No. The provision will remain operable post-exit.	As this provision links to standard licence condition 22A of the	<i>The update to the Regulation on Cross-Border</i>

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 1228/2003	p. 55	<p>Methodologies only (such objectives being the Charging Objectives) are set out in Condition 22A of the Distribution Licences. For ease of reference, the Charging Objectives are set out below using the terminology of this Agreement (but in the case of any inconsistency with the Distribution Licences, the Distribution Licences shall prevail):</p> <p>...</p> <p>3.2.5 that compliance by each DNO Party with the Charging Methodologies facilitates compliance with the <u>Regulation on Cross-Border Exchanges in Electricity</u> and any relevant <u>legally binding decisions of the European Commission</u> and/or <u>the Agency for the Co-operation of Energy Regulators</u>; and</p>	<p>condition 22A of the electricity distribution licence.</p> <p>The Distribution Charging Methodologies Development Group must review issues related to the Charging Methodologies and consider solutions to those issues in light of the Charging Objectives (paragraph 2.1 of schedule 28).</p>	<p>The Regulation – and pre-exit decisions of the Commission and ACER - will form part of domestic law post-exit by virtue of the European Union (Withdrawal) Act (as introduced to Parliament), subject to modification under the Act.</p> <p>Post-exit decisions of the Commission and ACER will not be binding, depending on the outcome of the Article 50 negotiations.</p>	electricity distribution licence it will need to reflect any relevant modification of that condition.	<p><i>Exchanges in Electricity is covered by the proposed amendment to the definition of 'Regulation on Cross-Border Exchanges in Electricity' (see above).</i></p> <p><i>The text on 'relevant legally binding decisions' has been left unchanged in the Distribution Licence, so we have adopted the same approach of no change in the DCUSA.</i></p>
N/A	Schedule 2B (National Terms of Connection), Section 3, clause 1.1	<b>'Competent Authority'</b> includes the Secretary of State, the Authority and any local or national agency, authority, court, department, inspectorate,	Provides a definition of the term 'Competent Authority' in section 3 of the National Terms of Connection (NTC). The NTC are the standard terms to apply to	<p>No. The provision will remain operable post-exit.</p> <p>Pre-exit Directives (as defined in paragraph 1.1 of section 3), are likely to</p>	If, following the Article 50 negotiations, no official or body of the EU will continue to be empowered to	<i>The final position is not yet known. Given the light-touch approach in the licences, we propose to leave</i>

	(page 353)	<p>minister, ministry, official or public or statutory person (whether autonomous or not) of (or of the government of) the United Kingdom <u>or of the European Union</u>, insofar (in each case) as it is acting within the limits of its proper authority;</p>	<p>distribution-connected premises in Great Britain. Although they are set out in the DCUSA, they create obligations between distributors and owners/occupiers of premises.</p> <p>Section 3 applies to connections with C/T metering or those connections to unlicensed distribution systems that do not have their own settlement meters at the boundary with the network but would most likely be metered with C/T metering if they were metered.</p> <p>The definition of a Competent Authority flows through to the definition of a Directive under paragraph 1.1 of section 3. A 'Directive' is defined as any present or future directive, requirement, licence condition, instruction, direction or rule of any Competent Authority which either has the force of law or is in accordance with the general practice of persons to whom the Directive is addressed.</p>	<p>remain binding by virtue of the European Union (Withdrawal) Act and post-exit Directives will not be binding, depending on the outcome of the Article 50 negotiations.</p>	<p>impose duties on parties to DCUSA then the reference to the 'European Union' will be redundant.</p>	<p><i>this unchanged. If no EU body continues to have jurisdiction, then the reference will be redundant, but will do no harm.</i></p>
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			<p>The definition of 'Force Majeure' in clause 1.1 of section 3 includes where a Party cannot perform its obligations because of any Directive.</p> <p>A Company may De-energise a connection if instructed or required to do so pursuant to any Directive (clause 5.6.1) or the Customer's acts, omissions and/or continued Connection cause the Company to breach any Directive (clause 5.6.5).</p> <p>Under clause 7.1 a Customer shall ensure compliance at all times with the Directives that are binding on the Customer.</p>			
	<p>Schedule 2B (National Terms of Connection), section 4, clause 1.1 (page 391)</p>	<p><b>"Competent Authority"</b> includes the Secretary of State, the Authority and any local or national agency, authority, court, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of (or of the government of) the United Kingdom <u>or of the European Union</u>, insofar (in each case) as it is</p>	<p>Provides a definition of the term 'Competent Authority' in section 4 of the National Terms of Connection (NTC). The NTC are the standard terms to apply to distribution-connected premises in Great Britain. Although they are set out in the DCUSA, they create obligations between distributors and owners/occupiers of premises.</p>	<p>No. The provision will remain operable post-exit.</p> <p>Pre-exit Directives (as defined in paragraph 1.1 of section 3), are likely to remain binding by virtue of the European Union (Withdrawal) Act and post-exit Directives will not be binding, depending on the outcome of the Article</p>	<p>If, following the Article 50 negotiations, no official or body of the EU will continue to be empowered to impose duties on parties to DCUSA then the reference to the 'European Union' will be redundant.</p>	<p><i>The final position is not yet known. Given the light-touch approach in the licences, we propose to leave this unchanged. If no EU body continues to have jurisdiction, then the reference will be redundant, but will do no harm.</i></p>

		<p>acting within the limits of its proper authority;</p>	<p>Section 4 applies to unmetered supplies.</p> <p>The definition of a Competent Authority flows through to the definition of a Directive under clause 1.1 of section 4. A 'Directive' is defined as any present or future directive, requirement, licence condition, instruction, direction or rule of any Competent Authority which either has the force of law or is in accordance with the general practice of persons to whom the Directive is addressed.</p> <p>The definition of 'Force Majeure' in clause 1.1 of section 4 includes where a Party cannot perform its obligations because of any Directive.</p> <p>A Company may De-energise a connection if instructed or required to do so pursuant to any Directive (clause 5.6.1) or the Customer's acts, omissions and/or continued Connection cause the Company to breach any Directive (clause 5.6.5).</p> <p>Under clause 8.1 a Customer</p>	50 negotiations.		
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			shall ensure compliance at all times with the Directives that are binding on the Customer.			
Article 25 & 26 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data	Schedule 25 (Description of Services to be Procured Pursuant to the TRAS Contract), paragraph 12.2, (page 1015)	12.2 The TRAS Service Provider shall ensure that each data centre site:  (a) is located within the <u>European Economic Area</u> ;	The provision places an obligation on the TRAS Service Provider to ensure that the data centres that it provides are located in the EEA.	No. The provision will remain operable post-exit. The retention of the requirement will not cause any legal difficulty.	The intention behind the requirement is to ensure compliance with EU data protection law. Whether or not such compliance remains necessary post-exit will depend on the outcome of the Article 50 negotiations and any amendment to any EU data protection laws retained post-exit by the European Union (Withdrawal) Act.  Regulation 2016/679 (General Data Protection Regulation) comes into force in 2018.	<i>No change is necessary. As this text will shortly be moved to the REC, we don't propose making changes at this time.</i>

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