European Regulators Group for Electricity & Gas

ERGEG Public Consultation on Guidelines of Good Practice on Functional and Informational Unbundling for Distribution System Operators

Evaluation of Comments

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Council of European Energy Regulators ASBL
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Unbundling of functions

G01: The management of the system operator shall work in a geographically separated structure from the competitive business structures.

BGW/VDEW/VKU:
The objective of the directives is to prevent access to network information by the employees of the competitive business, which would result in a competitive advantage for this business unit. Therefore clear rules for access and data security have to be established.

Justification:
Geographical separation is not necessary. Other measures such as access rights have to be considered as equal to physical separation. Clear rules for access and data security (such as locking offices or filing cabinets) have to be established and are a much more efficient way to achieve the above-named objective. Moreover, well-trained staff and "mental" unbundling are the relevant preconditions rather than separate locations.

Centrica:
Supported - However the document here – following the Directives - focuses on ringfencing 'the system operator' from other functions, assuming that this is what is needed to ensure neutrality of the monopoly network activity. Elsewhere the guidelines relate to ringfencing the network company. The document should be consistent in its terminology as to what should be ringfenced, and should spell out the competitive functions (generation, production, supply).

More importantly, with the possibility of system operation and transmission ownership being separately defined roles (and system operation potentially covering more than one transmission network), we would suggest a footnote to the guidelines at this point to explain the need for ringfencing of network ownership too, if this is to be separately defined, and it should be made clear that the footnote applies generally to the guidelines, not just to G01.

Such a footnote will capture the situation of a network owner with a merchant affiliate(s) in cases where there is also a system operator, all of which – depending on the nature of the ISO - could be within the same vertically integrated company. In such situations, ringfencing system operation only is totally inadequate, particularly if major powers, e.g., investment, continue to rest with the network owner. The guidelines should explicitly preclude the kind of thin 'Netbeheer' model which has been tried under the current directives, and which is indirectly alluded to in G02 and perhaps G11.

G01 refers to geographically separate structures. This would be a good place to address the issue of shared areas such as canteens, and the need for access controls on the ringfenced business generally, not just between floors in the same building

Distrigaz:
In order to limit the cost of this measure, this should not imply the requirement to have separate buildings for the network company. A strict control of access to the premises used for network activities, especially avoiding any access by the personnel involved in the commercial activities, seems satisfactory.

EON Bulgaria/Romania/CZ
A geographical separation is not necessary. Other measures such as access rights shall be considered as equal to physical separation. Moreover, well trained staff and mental unbundling are the relevant preconditions and not separate locations.

EON Nordic
Different offices are ok.

ENECO
Guidelines are an important step to effectively enforce unbundling.

ENEL
The recommendation that independent system operators should be “physically” separated from other business structures is not very clear. Generally speaking, we agree that confidentiality of data and information needs to be protected.

FGW
There is no cost-benefit analysis. Some of the ERGEG recommendations will inevitably lead to disproportionately high costs for companies (e.g. G 01, G09, G24) but have no positive effect for the customer. We see only the perceived positive effects of unbundling reflected in the paper and no mentioning of the unavoidable negative aspects such as cost increases, loss of information and synergies, which for us is a very biased approach. The paper should put unbundling in the right context and also list in a separate section the assumed practical benefits, ideally on a country-by-country or regional basis, for gas and electricity separately.
The suggestions in their current wording (e.g. G01, G03, G04) conveniently neglect the provision in the Gas Directive 2003/55/EC, which leaves it in the discretion of the member states to apply the provisions for legal and functional unbundling (Art. 13 paragraph 1 and 2) to companies with less than 100,000 customers. Introducing even more stringent unbundling provisions through the backdoor of the Guidelines is not only inadmissible (see arguments under “General remarks”) but for the companies affected also economically damaging. The resulting pressure to merge into large entities is tantamount to forcefully changing the structure of the gas industry.

Finland
This is an example of those guidelines on which it would be interesting to see some analysis on the potential damage caused by, e.g. physical proximity, compared to costs of localizing some activities to new places.

GEODE
Information can easily be shared between management from the regulated and competitive business in many different ways, independent of location. In this case, the measure is not proportional to the economic impact it represents when there is no evidence of the benefits of a geographical separated structure.

RWE
A geographical separation of the network operator must generally be seen as a "cosmetic measure". The objective of non-discrimination is served much better by an effective compliance programme than by separate buildings. As both cases actually occur within the RWE Energy group, we are in a good position to judge from practical experience. The two largest distribution system operators, for instance, are located in Wesel and Recklinghausen. They are thus geographically separated from the RWE Energy AG

headquarters in Dortmund and the two responsible regional companies in Dortmund and Essen. RWE TSO Strom GmbH has its legal domicile in Dortmund; most of its staff, however, works in Brauweiler (Rhineland). RWE TSO Gas GmbH is domiciled in Dortmund, but in a building separated from the RWE Energy AG headquarters. We cannot see any differences in the unbundling-compliant behaviour of the network operators in this variety of cases.

SSE
In practice, it is more effective to control access to the parts of shared sites containing system operator functions. This technology is readily available, cheap to implement and effective in restricting access to confidential information. The alternative would be very expensive to implement and in our view would be disproportionate.

Swedenergy
This guideline appears to be unnecessarily onerous. There is no evidence to suggest that geographically separated structure guarantees the non-discrimination of competitive businesses. Information can easily be shared between management via different ways of communication even where the businesses are geographically separated. The guidelines requirement will not solve the issue but rather have a disproportionate impact from a financial point of view. It is much more important to ensure the independence of the network operation through the adoption and monitoring of a clear, detailed and enforced compliance programme.

VEÖ
We doubt that in the age of modern information and communication technologies intentional infringements against the discretion obligation can be prevented through geographically separate offices. The Austrian network operators advocate a strict and well structured separation within a building which has to be considered as completely sufficient to achieve the intended effects. ERGEG's proposal would thus result in an unnecessary increase of the administration costs, in particular with smaller companies, which in the end would be passed on to the network customers via increased tariffs.

Vychodoslovenska
We believe, that well-functioning Compliance Program is a better tool for assuring the non-discriminatory behaviour of network operator than „geographical separation".

Wienenergie
However, the suggestion of geographically separated buildings is going much too far. This will only lead to needlessly increased administrative costs that have to be passed on to the network customers.

Zapadeslovenska
A geographical separation is not necessary. Other measures such as access rights shall be considered as equal to physical separation. Moreover well trained staff and mental unbundling are the relevant preconditions and not separate locations.

Eurelectric
The management of the system operator shall be located in such a way to ensure its independence from work in a geographically separated structure from the competitive businesses structures.
Justification:

This guideline appears to be unnecessarily onerous. The risk that the behaviour of the DSOs is affected by the sharing of a same building with generation/ supply is low. It is much more important to ensure the independence of the network operation through the adoption and monitoring of a clear, detailed and enforced compliance programme.

CEDEC
Measures like G01 (geographically separated structure), G07 (new employment con-tract when changing from commercial to regulated company), G08-f (temporary limits on information access or even prohibition of certain function switches), G09 (separate call centres…) seem logic for big integrated companies, but are not evident at all or even impossible to apply for small and medium sized DSOs.

Comments of the TF URB:
The Guidelines need to ensure consistency of language, either we refer to “network company” or “system operator”.

A number of companies say geographic separation would impose disproportionate costs and we should focus instead on access rights. Proposal is to divide into an A and B category: a B category means that implementation depends on national circumstances and should be decided by the relevant regulators.

G02: The system operator must have enough financial and personnel resources to ensure real decision making power and his independence. He must also be free to choose his. The system operator that employ personnel of the vertically integrated company must before define the profile of the employees he needs and must not accept the personnel sent by the vertically integrated company that don't match with this profile

Centrica
Agreed: it is essential to avoid the thin network management model, in which most of the activity is outsourced back to the parent company. It should be made clear that 'sufficient resources' covers not only 'decision making' but to the implementation of those decisions.

Some wording is committed at the end of the second sentence.
The word 'employ' should be 'employs', and after 'personnel', the words 'who previously worked for the vertically integrated company' should be added, to make it clear that there is a clear change of roles required.

EON Nordic
OK but please note further comments on financial resources. Further, trainees etc must have the possibility to be sent to a system operator

ENECO
Guideline is important step to truly enforce unbundling

ENEL
We also understand the requirement for network operators to have adequate financial and personnel resources, while complying with certain obligations of belonging to an integrated group

GABE
All here-up activities of ISO must be done by its own human resources which must be sufficient (number and competence) and have new employment contract with ISO company.

RWE
"The system operator must have ENOUGH financial and personnel resources [00'] ". Basically, we think that it is right that the network operator must be able to make independent decisions within its sphere of responsibility. The ERGEG formulation, however, does not make it clear what ENOUGH resources are explicitly. Moreover, it must be taken into account that decisions by the network operator must not violate the ownership rights of the parent company. Thus, a conflict with G07 - the right of the parent-company to decide on the financial planning of the network operator - must be excluded.

SSE
This is unnecessary if legal unbundling is in place because employment contracts will stipulate the company employing the member of staff.

Swedenenergy
It is crucial that system operators have sufficient financial and human resources to conduct their activities. Network companies should – as indicated in the interpretative note of DG Tren on unbundling – have complete independence "within the scope of the approved financial plan. In application of Guideline 15, the financial plan shall be proposed by the

system operator and refusals of that plan, by the parent company, shall only be permitted on specific grounds. This should guarantee that the financial plan provides the necessary resource for the system operator.

Total
One advantage of an integrated transport subsidiary is precisely its relationship with a group able to provide financial support when necessary. Moreover, its association with a parent company having a recognised financial rating can have the positive effect, due to the size of the company, of permitting lower borrowing cost for project investments. This has a beneficial overall impact on cost.

VEÖ
This specification is existing standard in Austria and can be considered to be extensively fulfilled.

Vychodoslovenksa
Basically, we agree with stipulation of independent decision-making process of network operator. But this must not lead to drop-out of financial control from Mother Company, such as approval of financial plan etc.

The system operator must have enough financial and personnel resources to ensure real decision making power and his independence. He must also be free to choose them in the respect of the financial plan approved by the parent company (in the respect of guideline 15). The system operator that employ personnel of the vertically integrated company must before define the profile of the employees he needs and must not accept the personnel sent by the vertically integrate company that don't match with this profile.

Justification:
It is crucial that system operators have sufficient financial and human resources to conduct their activities. DSOs should thus have complete independence so long as they remain within the scope of the approved financial plan. In application of Guideline 15, it is important to note that the financial plan shall be proposed by the DSOs and refusals of that plan shall only be permitted on specific grounds. This should guarantee that the financial plan provides the needed resources for the network company to perform its activities appropriately.

Eurelectric
The system operator must have enough financial and personnel resources to ensure real decision making power and his independence. He must also be free to choose his employees. The system operator that employ personnel of the vertically integrated company must before define the profile of the employees he needs and must not accept the personnel sent by the vertically integrated company that don't match with this profile.

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GdF

The system operator must have enough financial and personnel resources to ensure real decision making power and his independence. He must also be free to choose his employees. The system operator that employ personnel of the vertically integrated company must before define the profile of the employees he needs and must not accept the personnel sent by the vertically integrated company that don't match with this profile.

Comments of the TF URB:

Broadly this guideline is accepted, some clarifications may be useful

GO3 Personal identity of the management of the system operator with the management of a competitive business unit, wherever they might be located (Holding or affiliated company), shall be prohibited.

Centrica
The meaning of this guideline is not immediately clear. Does it refer to cases where the system operator is claiming or implying a unique relationship with the competitive business, or the competitive business with the system operator? If so, it should be clearly stated to apply to both situations (see also comment on G09 below).

It may simply mean that that the same individual cannot hold two conflicting management positions, in which case the wording could be more explicit and should be expanded to cover conflicting non-Executive roles too. The system operator should have its own clearly defined management, reporting into a Group board member whose independence can be assured; the guidelines should clearly state this principle.

Eon Nordic
The managing director must have the possibility to be part of the group management team.

Eneco
The Guideline is important step to truly enforce unbundling.

ENEL
Enel concurs that independent operators should not be simultaneously engaged in competitive activities, but it maintains that there is no need to establish any rules incompatible with the controlling company's activities.

FGW
The suggestions in their current wording (e.g. G01, G03, G04) conveniently neglect the provision in the Gas Directive 2003/55/EC, which leaves it in the discretion of the member states to apply the provisions for legal and functional unbundling (Art. 13 paragraph 1 and 2) to companies with less than 100,000 customers. Introducing even more stringent unbundling provisions through the backdoor of the Guidelines is not only inadmissible (see arguments under "General remarks") but for the companies affected also economically damaging. The resulting pressure to merge into large entities is tantamount to forcefully changing the structure of the gas industry.

SSE
The intent of this guideline is not clear and it should be removed

Swedenenergy
The content of this guideline follows from the directive itself and needs no further specification.

VEÖ
In Austria this suggestion can be seen as extensively fulfilled for companies which are obliged to legal unbundling.

Comments of the TF URB:
There is some confusion as to what this guideline means - some clarifications may be useful.

G04: The management and the employees of the system operator shall not participate in any internal group activities of the vertically integrated company, in which information can be disclosed and give an advantage to the competitive business.

BGW etc

The management and the employees of the system operator **must not supply the competitive business with or disclose** information **that** can give an advantage to the competitive business. **This is true especially for any internal group activities of the vertically integrated company.**

Justification:
ERGEG has pointed out the danger that network operators do not comply with the obligation to treat relevant information confidentially. But disobedience by the staff will be prevented by means of labour law already. Employees that do not comply with their duties will have to face sanctions. The basic assumption is that employees will normally follow the instructions. Random control should verify this assumption. It is important that managers or employees of the network operators are properly trained and aware of the fact that disclosure of protected information can lead to legal consequences. Still it should be allowed for any competitive business (inside or outside the group) to ask for advice in network-related questions.

German Company Law also demands a consistent corporate management and governance considering both sides – network and competitive business. Of course measures have to be taken as to ensure that no legally protected information is passed on the competitive business. This can be achieved by separating working groups whose information can be aggregated on corporate level.

Centrica

Suggestion: 'in which commercially sensitive information related to the network can be disclosed and which would give an advantage…' It should be made clear that 'internal group activities' includes management and supervisory board meetings, where the management of the network/system operator will need to absent themselves from particular agenda items. This will help minimize the possibility of the ringfenced business pursuing policies which it knows will benefit its affiliate.

For similar reasons, another guideline should be added to cover the flow of information in the opposite direction, to ensure that the rest of the business is not permitted directly or indirectly to participate in the policy of the network activity or to influence the operation of the system, except through a public consultation process or as may be agreed by the regulator.

EON Nordic

Ok.

ENECO

Nonetheless we have some remarks on G04 "The management and the employees of the system operator shall not participate in any internal group activities of the vertical integrated company, .."

This may seem reasonable for commercial activities, but is not necessary for activities the system operator may outsource to the parent company. To preserve the level playing field the parent company should not be excluded from doing activities for the system operator.

Enel
We find it reasonable for independent operators to be banned from participating in certain meetings of other companies of the group that operate in sectors subject to competition, if in these meetings an exchange of business-sensitive information takes place. Obviously, such a ban should not apply to meetings in which no exchange of information is expected to occur.

FGW
The suggestions in their current wording (e.g. G01, G03, G04) conveniently neglect the provision in the Gas Directive 2003/55/EC, which leaves it in the discretion of the member states to apply the provisions for legal and functional unbundling (Art. 13 paragraph 1 and 2) to companies with less than 100,000 customers. Introducing even more stringent unbundling provisions through the backdoor of the Guidelines is not only inadmissible (see arguments under “General remarks”) but for the companies affected also economically damaging. The resulting pressure to merge into large entities is tantamount to forcefully changing the structure of the gas industry.

RWE
A general exclusion of system operator employees from group activities is unacceptable. This demand represents a wrongful interference with the rights and career opportunities of these employees. The prohibition to pass on confidential data which is ensured within the framework of the compliance programme applies irrespective of their participation in events and programmes.

SSE
This is overly prescriptive and should be removed. A more general obligation on confidentiality supported by effective remedies in case of breach would be sufficient.

Swedenenergy
The guidelines describes in more detail one aspect of the requirement on the system operator not to disclose information to the competitive business, within the vertically integrated company, where such information might give a serves as an advisory instruction on how to practically implement, in the specific situation, the requirement in the directive and should therefore not constitute a general guideline as such. Implementation of guideline 4 as a general guideline to be applied in any case will exclude staff within the system operator from participating in any internal group activity where there is a risk of information being disclosed. The guideline applied in such a general way will not have the effect of preventing information from being shared but rather alienate staff from different departments within the vertically integrated company. This can not be the purpose of the directive since the directive does not prohibit vertically integrated companies. The problem should be dealt with through a proper implementation of the compliance programme und monitoring by the compliance officer. This approach is also more proportionate

VEÖ
This specification is the existing standard in Austria and can be considered to be extensively fulfilled.

Vychodoslovenska
A general restriction for employees of network operators to take part on any activities within the frame of integrated company goes fully beyond the reason and purpose for unbundling.

As well as in G01, a compliance program with enhanced and well-observed restrictions for shifting the sensitive information would lead to a better result.

Eurelectric

The management and the employees of the system operator shall not participate in any **company structure** of the vertically integrated company **that is responsible for the day-to-day operation of generation or supply.**

Justification:
The proposed guideline goes much further than the text of the Directive (see article 15.2 a) in proposing that both management and employees be excluded from almost any group activity. Here also, the role of a compliance programme and compliance officer can prove more effective and proportionate

GdF

The management and the employees of the system operator shall not participate in any internal group activities of the vertically integrated company, in which information can be disclosed and give an advantage to the competitive business. We support the need for behaviour guidance as regards the participation by network operator's employees and management to internal group activities but it has to remain realistic and pragmatic for the people concerned .But we also note that the risk of information disclosure from the part of network operator's employees is well managed when clear rules exist pertaining to the protection of commercially sensitive and advantageous information, according to the principles defined in these draft guidelines. This should prevent the problems addressed by this guideline.

Proposal for modification Guideline G04:
When the management and the employees of the system operator participate in internal group activities of the vertically integrated company, they should not disclose any information that would give advantage to the competitive business.

Comments of the TF URB:
Some companies feel this is too prescriptive. Nevertheless the URB TF considers this regulation to be necessary to ensure no information can be disclosed.

G05: The management of the system operator must neither own shares of the competitive businesses nor shares of the vertically integrated company as this would undermine their independence.

BGW etc

The issue of shareholding by the management of the system operator must **be addressed in such a way as to ensure** their independence. **This includes measures prohibiting a considerable part of their payment being dependent on the result of the vertically integrated company.**

Justification:
This measure is disproportionate and discredits the persons working in the electricity sector in an unacceptable manner. It interferes with general ownership rights. Furthermore, it is very difficult to see how it could be implemented in practice. Provided independence can be guaranteed by way of observing the rules of the compliance programme, employees and management of the system operator should be able to hold and buy shares of the holding company.

Moreover, this postulation goes far beyond the Directives and the Note of DG Energy & Transport on the unbundling regime of the Directives 2003/54/EC and 2003/55/EC on the internal Market in Electricity and natural Gas (16.1.2004) which states:
"Equally, the issue of shareholding on a personal basis of the management of the network company needs to be addressed in a way that ensures the independence of management. The concern is that if, for instance, executive directors of the network company own many shares of the related supply/production company, conflicts of interests arise." Clearly, the commission has assumed that shareholding is possible but has to be monitored closely. Otherwise a general prohibition of shareholding for the management of system operators of any competitive business would have to be the compulsory consequence.

Centrica

It is unclear whether 'management' refers to only the most senior directors of the system operator or more widely. Ideally no employee of the ringfenced business should have any significant interest in the performance of the vertically integrated company, and in this regard the nature of employee share schemes and incentive and bonus arrangements which are dependent on the performance of the company (rather than on the performance of the ringfenced business) will need to be carefully scrutinised (see G08).

Distrigaz

We do not consider that the ownership of a few shares of the vertically integrated company by the management of the system operator will challenge is independence. This criterion should be eased.

EON Bulgaria/Romania/Hungary/Czech

The management of the system operator has very limited possibility to influence the share price. The whole issue is not expected to have a major impact on the success of unbundling. This is also the opinion of the EU-Commission (s. EU-Guidelines, January 2004): the possession of shares of the parent utility does not have any influence on the independence of the grid management.

EON Nordic

This is going too far. Management in the system operator must be allowed to own shares in a listed parent company.

ENECO
The Guideline is important step to truly enforce unbundling.

GEODE
This Guideline interferes with general ownership rights within national legislation that are protected by the EC Treaty.

RWE
To prohibit the management from owning shares is an inadmissible interference with the freedom of ownership. As far as asset formation through employee shares is concerned, which is a usual and admissible procedure under German labour law, the persons concerned are discriminated and limited unproportionally.

SSE
We believe that, in principle, there should be no restrictions on an individual's right to own shares. In GB, there are no such restrictions, yet the market is very competitive. The intent of this guideline appears to be to ensure that the system operator does not act in such a way as to favour affiliates. This objective is better achieved by setting enforceable obligations on the system operator regarding non-discrimination. This level of restriction would, in our opinion, make it very difficult to attract and retain staff into the networks business.

Swedenenergy
This guideline is disproportionate and calls into question the integrity of the persons working in the electricity sector in a manner that is difficult to accept. The guideline interferes with general ownership rights within national legislation which is protected by the EC Treaty. Furthermore, it is very difficult to see how the requirements could be implemented in practice.

Provided independence through compliance with the compliance programme, employees and management of the system operator should be able to hold and buy shares in the holding company or any affiliated company.

Total
As long as the truly relevant measures within the GGP are implemented properly, there is no reason to forbid employees of the subsidiary from owning shares of the integrated company. Moreover, supplementing the remuneration of subsidiary employees, in part, with shares or stock options of the listed parent is a very common practice in Europe. To cease doing so would abruptly remove one of the essential elements of the benefits package of the integrated company's employees, a transformation of their status which would be very complex and difficult to put into effect in the context of French labour relations.

VEÖ
In this general form this suggestion is unrealistic as it means a limitation of the right to ownership which is questionable in terms of the basic constitutional law. This however does not exclude the exclusion of shares of the mother company on a contractual level.

Zapadoslovenksa

The management of the system operator has very limited possibility to influence the share price. The whole issue is not expected to have a major impact on the success of unbundling. This is also the opinion of the EU-Commission (s. EU-Guidelines, January 2004): the possession of shares of the parent utility does not have any influence on the independence of the grid management

Eurelectric
This guideline should be deleted.

Justification
The measure is disproportionate and calls into question the integrity of the persons working in the electricity sector in a manner that is difficult to accept. It moreover interferes with general ownership rights and it is very difficult to see how it could be implemented in practice. Provided independence can be guaranteed through the compliance programme, employees and management of the system operator should be able to hold and buy shares in the holding company.

GdF
The management of the system operator must neither own shares of the competitive businesses nor shares of the vertically integrated company as this would undermine his independence. We note that this guideline represents a step further than DG TREN's comment in its explanatory note on unbundling which referred to a possible conflict of interests in case the management of the system operator would possess a significant amount of shares.

Proposal for modification:
- DG TREN's comment on the possession of shares by the network operator's management remains the guiding principle,
- and that the guideline allows for the allocation of shares of the vertically integrated company as part of group incentive policies, as long as the conditions of allocation do not create conflicts of interest for the network operator's management. There is no conflict of interest if the allocation measures do not constitute an essential part of the network operator management's wage or when they are allocated on a general basis to all employees (same amount, same criteria …) or when they remain within reasonable limits.

Comments of the TF URB:
There is some opposition to this measure. Note this issue is also being discussed in the context of the 3rd package.
The TF URB still insists this guideline is necessary.

G06: Activities and rights of the mother company on the system operator have to be limited to secure her financial interest (supervisory function). Interference by the mother company outside this supervisory function in the network business and knowledge of the day-to-day network business is not allowed.

BGW etc

Activities and rights of the mother company on the system operator have to be limited to secure **supervisory function**. Interference by the mother company outside this supervisory function in the network business and knowledge of the day-to-day network business is not allowed.

Justification:
The supervisory function of the parent company is not restricted to securing its financial interest. A number of other activities are also associated with this function, e.g. the assignment of management, the fulfilment of statutory obligations such as health and safety and the adoption of strategic decisions such as how to fulfil the requirements of incentive regulations.

Centrica

This guideline is agreed. Centrica suggests 'ensure' rather than 'secure'. Also, the guidelines should be consistent in references to 'the mother company' and 'the vertically integrated company'. There should be much more detail here on what is meant by the 'supervisory function', the role of supervisory boards at corporate level and the constraints on the participation in them of those in the ringfenced business.

Distrigaz

The mother company should have the right to implement its industrial strategy, for example in creating synergies among several affiliates, which could lead to costs savings for the full benefit of all network users.

EON Bulgaria/Romania/Hungary/Czech

Acceptable, as long as it is in line with national company laws.

EON Nordic

In principle OK but the parent company must have the right to set criteria's for investments and also thresholds above which all decisions must be confirmed by the parent company in order to manage the overall financial position of the group.

ENEL

The ERGEG Consultation Paper seems to limit the holding's activities to sole financial control over independent operators. According to Enel, instead, and in compliance with company policy, the holding should be able to exercise powers of strategic decisions (even of the industrial kind), supervision and control over all companies of the group (please see "Unbundling of decisions").

GABE

Any investment has to be proposed by the ISO and approved by the Regulatory Authority which imposes the return on investment percentage. If another company conserves the property of the existing grid (either in the same group as the ISO or not), it may accept the return on investment or sell its grid. For any new investment, this "historical owner" has no right to supervise, authorize, … the project. It only may accept to invest or refuse, implying

the ISO becomes owner of the new investment. If the historical integrate company is not happy, it may sell its ISO subsidiary stakes.

RWE
G06 rightly refers to the securing of the parent company's financial interests by the supervisory bodies concerned. The wording, however, ignores that especially according to the risk monitoring obligations under European law and the commercial law obligations the supervisory body is entitled and obliged to monitor the proper management of business also with regard to the fulfilment of legal obligations.

SSE
We believe two issues are being confused here. Firstly “knowledge of the day to day network business” is covered by the confidentiality requirements already discussed. The financial interest of the mother company is relevant in ensuring that the network company can finance its activities and this is covered in other guidelines. This guideline should therefore be removed.

Swedenenergy
The supervisory function of the parent company is not restricted to securing its financial interest. A number of other activities are also associated with this function, e.g. the assignment of management, the fulfilment of statutory obligations such as health and safety and the adoption of strategic decisions such as on how to fulfil the requirements of incentive regulations.

Furthermore, the right of the parent company to exercise its rights as a shareholder follows from national provisions of company law and should not be subject to regulatory supervision by the regulator but rather the rules of competition law and the competencies of the national competition authorities.

Swedenenergy proposes the following wording of the guideline. “Activities and rights of the parent company on the system operator have to be limited to securing the supervisory function of the parent company as the owner of the subsidiary, as follows from competition law.”

Total
TIGF is already on a yearly budget approval system. Concerning your proposal to go further, we believe that:
- The parent company must conserve its access to the full details of the overall annual budget and of the pluri-annual budgets of the main projects in order to be in a position to give its prior approval of the investments. The proposition contained in the draft GPP will lead, in practice, to an Independent System Operator. We must point out that this proposition has been criticised by all representatives of industry. A preliminary impact study is viewed as being clearly necessary before any implementation.
- Our principle (but not sole) criterion for investment approval is precisely the return on capital. Nevertheless, we need the right to debate the adequacy of such return with the regulator in view of the risks, the optimisation of the technical configuration and the costs of capital for each project.
- Sarbanes Oxley rules and norms (reinforced by similar national laws) require listed parent companies to have access to full detailed financial information in order to foresee and prevent business failures.

Additionally any proposed budget increase or foreseeable over-run must obtain additional approval before going forward. Long term business plans are not addressed by the draft GGP. It is normal business practice in large companies to review, on annual basis, the long term development outlook of their activities. Financial activities, in particular, require adequate long term visibility. With regard to the proposal in the closing section of the GGP to appoint a trustee to supervise the financial affairs of integrated subsidiaries, it is our policy not to externalise this essential function, especially since the subsidiary has adequate resources to perform it.

VEÖ
This specification is existing standard in Austria and can be considered to be extensively fulfilled.

Zapadeslovenska
Acceptable, as long as it is in line with national company laws.

Eurelectric
Activities and rights of the mother company on the system operator have to be limited to **supervisory function**. Interference by the mother company outside this supervisory function in the network business and knowledge of the day-to-day network business **is** not allowed.

Justification:
The supervisory function of the parent company is not restricted to securing its financial interest. A number of other activities are also associated with this function, e.g. the assignment of management, the fulfilment of statutory obligations such as health and safety and the adoption of strategic decisions such as on how to fulfil the requirements of incentive regulations.

GdF
Activities and rights of the mother company on the system operator have to be limited to secure her financial interest (supervisory function). Interference by the mother company outside this supervisory function in the network business and knowledge of the day-to-day network business is not allowed. **More see Table 29**

Comments of the TF URB:
Responses are split on this issue, with some seeing it as essential and others believing it goes too far. We need to ensure it is compatible with eg., accounting/governance rules such as Sarbannes Oxley.

This Guideline is being reviewed by a consultant to inform the TF whether the comments by the industry have any basis and whether there are mechanisms to avoid any conflict of unbundling with "Corporate Governance".

Unbundling of professional interest

G07: When a person employed in an affiliated company is assigned to a regulated subsidiary of the group, it is necessary, either for the employee to sign a new employment contract with this subsidiary, or for the company he belongs to, to sign a contract with the subsidiary to define the conditions of the assignment. In this second situation, an amendment will be signed to the employment contract of the person. In both cases, the contract or the amendment will clearly define the assignment conditions to guaranty the professional interest of the employee. If the assignment is not to a subsidiary but to a regulated department of the vertically integrated company (not legally unbundled), an amendment to the employment contract must be written down defining the assignment conditions to guaranty the professional interest.

BGW etc
A way to fulfil this aim is to guarantee the professional interest of the management of the system operator and introduce therefore specific stipulations in their contract of employment.

Suggestion: When a person employed in an affiliated company is assigned **as a person responsible for the management of the transmission and distribution system operator** to a regulated subsidiary of the group, **this person has** to sign a new employment contract with this subsidiary.

Centrica
...an amendment to the employment contract must be written down defining the assignment conditions **to guarantee** the professional interest

EON Nordic
Ok.

Eneco
Guideline 07 "specific stipulation in the contracts of employment" will impede the level playing field for the integrated company. Limiting the career perspective of the personnel to only one part of the integrated company may lead to loss of quality workforce in both parts of the company.

GABE
All here-up activities of ISO must be done by its own human resources which must be sufficient (number and competence) and have new employment contract with ISO company.

SSE
This is unworkable in the varied legal arrangements that can apply.

Swedenenergy
Swedenenergy does not see the purpose of guideline 7 in relation to the purpose of the guidelines in terms of functional and informational unbundling. The role of the system operator as an employer and the terms and conditions applicable to employment contracts is subject to national labour law.

The regulator should at most use employment contracts as relevant facts on a case-by-case

basis on breach of the unbundling rules, not as a general provision on how the system operator should organise itself in its role as employer.

VEÖ
This suggestion is fulfilled in Austria according to labour law.

GdF
We agree with the principle set by G07 of formally clarifying the assignment conditions of network operator's management and employees on the one hand, and with the assignment conditions as specified in G08, on the other hand.

Proposals for modification:
We would suggest to explicitly recognize in the guideline:
- alternative schemes as regards the form in which employment conditions are notified to the employees, in order to take into account possible sector specificities (for instance the French Electricity and Gas Industry Convention that does not provide a contract as such but an initial letter of assignment referring to the general sector conditions).
- and, notwithstanding the network operator's autonomy of decision as regards staff recruitment, wages and incentives, etc, :
-> the right for vertically integrated companies to implement group processes in relation to employment (such as for instance identifying high potentials) with a view to ensuring coherence and continuity at the advantage of the employees ; and that the network operator's decisions regarding certain employment conditions can be affected by framework mechanisms defined at the level of the industry sector (for instance in France the Gas and Electricity Industry Convention sets a global margin for wage rise annually, then individual companies members of the Convention implement it at their convenience.
- as regards movements of network operator's employees to an affiliated entity, which indeed may sometimes justify that some functions be temporarily forbidden, the guideline could – rather than predefined principles - provide for an assessment process on a case by case basis to define the most appropriate accompanying measures.

Cedec
Measures like G01 (geographically separated structure), G07 (new employment con-tract when changing from commercial to regulated company), G08-f (temporary limits on information access or even prohibition of certain function switches), G09 (separate call centres…) seem logic for big integrated companies, but are not evident at all or even impossible to apply for small and medium sized DSOs.

Comments of the TF URB:
There is a general concern that the provisions in this chapter could contravene national employment laws. Some companies suggest a proportionality measure for small companies.

G08: The assignment conditions of the management and employees of the system operator shall in particular, specify the following items:

BGW
The assignment conditions of the management of the system operator shall in particular, specify the following items:

GABE
Any investment has to be proposed by the ISO and approved by the Regulatory Authority which imposes the return on investment percentage. If another company conserves the property of the existing grid (either in the same group as the ISO or not), it may accept the return on investment or sell its grid. For any new investment, this "historical owner" has no right to supervise, authorize the project. It only may accept to invest or refuse, implying the ISO becomes owner of the new investment. If the historical integrate company is not happy, it may sell its ISO subsidiary stakes. The ISO management transfer to energy business companies should not be authorized within a delay of some years, in order to avoid the risk of actions influenced by the promise of a future super job. But, recruitment of highly qualified people with career restrictions implies salaries higher as the market.

RWE
The measures generally required for employees in this section go widely beyond the regulatory framework of the directives on organisational unbundling without differentiation. The rules mentioned do only apply to employees with managerial tasks assigned by the network operator.

SSE
We would agree that some degree of "quarantine" should be applied if a person with access to commercially sensitive information moves to a different part of the company (or outside the company) consistent with good commercial practice. See answer to question 4. However, in more general terms we believe it is better to ensure non-discrimination by defining procedural obligations on network companies, rather than by trying to define in great detail their personnel management systems.

Some guidelines also might conflict with employment legislation in the member states. For example guideline 8 (d) would be unacceptable because any dismissal would be subject to the normal rights of appeal under employment law.

Swedenenergy
General national provisions on data protection and labour law should be applied to the specific situations mentioned in the guideline, to the extent necessary in order to achieve the purpose of the directive. However, Swedenenergy finds it very disproportionate to introduce specific guidelines and specific applications of national provisions, to staff within the system operator. Especially where the guidelines and applications are deviant from general rules of data protection and labour law in the EU member states.

Swedenenergy therefore suggests the following wording of paragraph (b), (d) and (f) and of guideline 8, whereas paragraph (g) should be deleted.

VEO
These suggestions (lit. a, b) are fulfilled in Austria according to labour law.

Vychodoslovenska
Measures stipulated in this Guideline can not apply to all employees of network operator, only to those who are in management positions.

It can not be a task for regulators to decide on labour law questions, such as ending or change of labour relation of network operator's managers. Beside of sensitive nature of labour relations, this is a clear task for civil courts. Interference to such operational questions by regulators is inappropriate

GdF
Affiliated entity, which indeed may sometimes justify that some functions be temporarily forbidden, the guideline could – rather than predefined principles - provide for an assessment process on a case by case basis to define the most appropriate accompanying measures.

G08 a. During the period of assignment, the employee shall be subject only to the authority of the management of the regulated entity.

BGW
During the period of assignment, the employee shall be subject only to the authority of the management of the regulated entity.

Centrica
We would prefer this to refer to 'employment' (covering appointment or secondment) rather than 'assignment', to make it clear that there is a complete and formal change of role, and to cover situations where staff is recruited directly by the ringfenced business.

EON Nordic
Ok.

G08 b. Wages and incentives are exclusively based on the results of the system operator.

Suggestion of the TF URB:
G08 b. Wages and incentives are exclusively based on the results of the **network company.**

BGW
Wages and incentives are exclusively must not be considerably based on the results of the system operator vertically integrated company.

Centrica
Suggest adding 'and on individual performance'

EON Bulgaria/Romania/Hungary/Czech
It has to be ensured that the part of incentives and wages, coming outside the grid business, is not essential. Smaller amounts should be allowed.

Eon Nordic

OK as concerns wages. However, an incentive program should be allowed to have at least a part of the program based on the performance of a group.

Finnish Energy Industries
These guidelines might be in conflict with present legislation, e.g. labour laws. This should be analyzed further.

Swedenenergy
Wages and incentives are not linked directly to the performance of generation or supply company affiliates.

Zapadoslovenska
It has to be ensured that the part of incentives and wages, coming outside the grid business, is not essential. Smaller amounts should be allowed.

Eurelectric
Wages and incentives are not linked directly to the performance of generation or supply company affiliates.

Justification:
The issues concerned would only provide a very weak incentive for discrimination, while it would be more important to ensure that employees feel that they belong to one same group as this would help the DSO attract and retain good quality staff. Furthermore, these provisions should not conflict with national legislations on data protection and employment legislation.

G08 c. Promotions and sanctions during the assignment can be only decided by the management of the system operator

Suggestion of the TF URB:
Promotions and sanctions during the assignment can be only decided by the management of the **network company.**

BGW etc
Promotions and sanctions concerning the management of the system operator during the assignment can be only decided by the management responsible company organ of the system operator.

Centrica
Suggest ‘employment’ instead of ‘assignment’

EON Nordic
Doubtful if this is legally possible.

RWE
Moreover, the requirements specified in G08 c) inadmissibly interfere with the labour law sphere between the employee and the assigning Group company. It cannot be excluded that an employee of a Group company can be dismissed by his or her employer, for instance, if the employee harms colleagues of the Group company outside network operations in a way

that would have criminal law relevance (for reasons that are not connected with network operation). Conversely, the application of an employee from network operation for a position (which is higher or desirable for other, e.g. family reasons) cannot be made dependent on the network operator's approval.

VEÖ
This suggestion is contrary to the Austrian Temporary Work Act (AÜG).

G08 d. The management of the system operator shall not be dismissed without prior justification. The justification is based on network issues and shall be notified to the regulator.

Suggestion of the TF URB:
G08 d. The management of the **network company** shall not be dismissed without prior justification, **in accordance with national labour laws**. The justification is based on network issues and shall be notified to the regulator.

BGW etc
The management of the system operator shall not be dismissed without prior justification. The justification is based on network issues and shall be notified to the regulator.

Centrica
As with the previous points, this should cover individual appointments/secondments, not just to managers / the management of the system operator; we therefore believe the drafting of this point should be widened accordingly. However it is unclear why, under normal employment law, dismissal would not be required to be justified.

CEZ
CEZ takes the view that the conditions under d) and g) would violate the existing Czech legislation in force.

EON Bulgaria/Romania/Hungary/Czech
This notification is not necessary because the contract with the company is strictly confidential.

EON Nordic
The management of the system operator shall not be dismissed without prior justification. Any principles for this must be objectively decided. The justification is based on network issues and shall be notified to the regulator. This is not an issue for the regulator otherwise OK.

Finnish Energy Industries
These guidelines might be in conflict with present legislation, e.g.labour laws. This should be analyzed further.

RWE
The transmission of dismissal reasons to the regulatory authority (as required in G08 d) should cause considerable concern with regard to data and personal protection rights. In Germany, in any case, it is up to independent courts to decide whether a dismissal is permissible and thus valid, however only if the employee concerned takes legal action. The

passing on to the authority of reasons for a dismissal with probable cause should itself be a criminal offence.

Swedenenergy
The management of the system operator shall not be dismissed without prior justification, in accordance with labour law.

Total
What is to be understood by “management”? We agree that the General Manager is directly concerned, but we do not consider the supervisory board to be “management”.

VEÖ
A reason for termination / firing follows business and labour law limitations and can therefore not be limited solely to the network operation related reasons. The demanded information to regulatory authorities is rejected since there is no regulatory authority competence in the narrow sense. In Austria the licensing authority is responsible for this.

Wienenergie
There seems to be no reason why regulators have to be involved in personnel decisions of a network company.

Zapadoslovenska
This notification is not necessary because the contract with the company is strictly confidential.

Eurelectric
The management of the system operator shall not be dismissed without prior justification, in accordance with the relevant legislation, notably labour law. The justification is based on network issues and shall be notified to the regulator.

Justification:
The issues concerned would only provide a very weak incentive for discrimination, while it would be more important to ensure that employees feel that they belong to one same group as this would help the DSO attract and retain good quality staff. Furthermore, these provisions should not conflict with national legislations on data protection and employment legislation.

G08 e. The conditions of the return of an employee of the system operator to an affiliated company shall mention the problems related to the disclosure of commercially sensitive information acquired during his/her previous assignment.

Suggestion of the TF URB:
G08 e. The conditions of the return of an employee of the **network company** to an affiliated company shall **address** the **need for safeguards** related to the disclosure of commercially sensitive information acquired during his/her previous assignment.

BGW etc
The conditions of the return of employed persons responsible for the management of the system operator to an affiliated company shall mention the problems related to the disclosure of commercially sensitive information acquired during his/her previous assignment.

Centrica
Suggest 'fully address' rather than merely 'mention' and rather than 'problems related to', should refer to 'the need for safeguards around' the disclosure etc. Also Centrica suggests 'employment' rather than 'assignment', so that it applies to permanent as well as temporary roles.

EON Bulgaria/Hungary/Czech
This is far beyond the law: "temporarily forbidden depending on the task he will have to deal with" – could be ensured by other measures like confidential clauses in the contracts. Otherwise it has to be applied also for persons coming from other grid companies.

EON Nordic
Ok.

VEÖ
According to the provisions of the labour law, the employee is obliged to keep business and operation secrets to himself; his qualifications however belong to his intellectual property.

Wienenergie
Normally due to labour laws the employee is obliged to nondisclosure of business information.

Zapadoslovenska
This is far beyond the law: "temporarily forbidden depending on the task he will have to deal with" – could be ensured by other measures like confidential clauses in the contracts. Otherwise it has to be applied also for persons coming from other grid companies.

G08 f. For the implementation of point 3e, the employment contract shall foresee that if the employee had access to commercially sensitive information a period of work without access to such information shall be imposed. If necessary, some functions in the vertically integrated company can be temporarily forbidden depending on the task he will have to deal with.

BGW etc
For the implementation of point 3e, the employment contract shall foresee that if the employee persons responsible for the management of the system operator had access to commercially sensitive information a period of work without access to such information shall be imposed. If necessary, some functions in the vertically integrated company can be temporarily forbidden depending on the task he will have to deal with. It will also be satisfactory if he signs a non-disclosure agreement.

Centrica
Some indication should be given of the minimum period of 'quarantine' or 'gardening leave' should be determined - typically 3 months, but taking account the seniority of the individual and his/her access to sensitive information, a longer or shorter period may be appropriate. The 'quarantine' requirements will have the added advantage of deterring short-term assignments.

CEZ
In the condition under f) the following part „If necessary, some functions in the vertically integrated company can be temporarily forbidden and do not seem very clear and needs further explanation.

EON Bulgaria/Romania/Hungary/Czech
This is far beyond the law: “temporarily forbidden depending on the task he will have to deal with” – could be ensured by other measures like confidential clauses in the contracts. Otherwise it has to be applied also for persons coming from other grid companies.

EON Nordic
Ok.

ENEL
Personnel that have come into possession of commercially-sensitive information during their stay in a company belonging to a vertically-integrated group must be trained with regard to any information they have acquired. It remains valid, for Enel, that such a solution must be shared with the regulator in the compliance programme.

Finnish Energy Industries
These guidelines might be in conflict with present legislation, e.g. labour laws. This should be analyzed further.

Swedenenergy
For the implementation of point 3e, the employment contract shall foresee that if the employee had access to commercially sensitive information, compliance training shall be given to him when leaving his position in the system operator. Retraining of the employee leaving the system operator to the competitive business should prove sufficient assurance that commercially sensitive information obtained during the course of his job in the system operator is not passed on.

Total
Prohibiting any assignment of an ex-employee of the integrated subsidiary to a position where he or she could theoretically abuse confidential information would be an unnecessarily harsh rule. We do understand, however, the usefulness of a cooling off period without any access to fresh confidential information prior to assuming a new assignment in which confidential information of the relevant category, if too current, could be abused.

VEÖ
This demand impinges up on legal limitations. The economic ability of the employee to work may not be intensified further through competitive clauses. At any rate the general labour law competition ban regulations as they are valid for the entire remaining economy should not be limited.

Wienenergie
Especially this suggestion seems to be a kind of ban from profession.

Zapadoslovenska
This is far beyond the law: “temporarily forbidden depending on the task he will have to deal with” – could be ensured by other measures like confidential clauses in the contracts. Otherwise it has to be applied also for persons coming from other grid companies.

Eurelectric
For the implementation of point 3e, the employment contract shall foresee that if the employee had access to commercially sensitive information, compliance training shall be given to him when leaving his position in the network business to such information shall be imposed. If necessary, some functions in the vertically integrated company can be temporarily forbidden depending on the task he will have to deal with.

Justification
Retraining of the employee leaving the network company to the competitive businesses should prove sufficient assurance that commercially sensitive information obtained during the course of his job in the distribution business is not passed on. General provisions of labour law should be applicable to all industrial sectors.

CEDEC
Measures like G01 (geographically separated structure), G07 (new employment con-tract when changing from commercial to regulated company), G08-f (temporary limits on information access or even prohibition of certain function switches), G09 (separate call centres…) seem logic for big integrated companies, but are not evident at all or even impossible to apply for small and medium sized DSOs.

Comments of the TF URB:
This guideline will be deleted.

G08 g. If the duration of the assignment of the executive director of the regulated department/entity is modified, the modification must sent by the regulated department/entity to the regulator for an a priori opinion.

BGW etc
If the duration of the assignment of the executive director of the regulated department/entity is modified, the modification must sent by the regulated department/entity to the regulator for an a priori opinion.

Centrica
Some indication should be given of the minimum period of 'quarantine' or 'gardening leave' should be determined - typically 3 months, but taking account the seniority of the individual and his/her access to sensitive information, a longer or shorter period may be appropriate. The 'quarantine' requirements will have the added advantage of deterring short-term assignments.

CEZ
CEZ takes the view that the conditions under d) and g) would violate the existing Czech legislation in force. CEZ considers that in case of change of the executive director of the regulated department/entity, the regulator could receive such information in advance. Nevertheless, its opinion would have no legally binding effect.

EON Bulgaria/Romania/Hungary/Czech
Not acceptable, because it would mean deep interference to a private business and bureaucracy without added value.

Regarding additional measures to reinforce functional unbundling concerning customer relations: Customers shall be informed and not „convinced“. Related question: will the household customer at the end really want to pay for additional information and business separation especially separated call centres, rebranding?

EON Nordic
This is not an issue for the regulator and should not be so either.

Finnish Energy Industries
These guidelines might be in conflict with present legislation, e.g. labour laws. This should be analyzed further.

RWE
The a priori opinion on a modified duration (longer or shorter - as required in G08 g) of the assignment by the regulatory authority cannot be of significance for the abovementioned reasons. A regulatory approval of a contract extension does not seem reasonable. Should the executive employee be unsuitable, the general supervisory rights of the regulatory authorities should be sufficient to complain about the employee's lack of suitability. The regulatory rejection of an (amicable) shortening of the assignment for whatever reasons unjustly interferes with the rights of the employee. The employee would possibly be forced to terminate his or her assignment with unforeseeable social law consequences instead of seeking an amicable solution with the network operator and/or the Group company. Upon request and only upon request by the party dismissed, the courts are responsible for checking the dismissal by the network operator or the Group company.

VEÖ
The information to regulatory authorities is rejected since the regulatory authorities have no formal powers there in the narrow sense. In Austria the licensing authority is responsible for this.

Wienenergie
The information to the regulator and this option to make an a priori opinion is rejected since this is not task of regulators.

Zapadoslovenska
Not acceptable, because it would mean deep interference to a private business and bureaucracy without added value. Regarding additional measures to reinforce functional unbundling concerning customer relations: Customers shall be informed and not „convinced“. Related question: will the household customer at the end really want to pay for additional information and business separation especially separated call centres, rebranding?

Eurelectric
If the duration of the assignment of the executive director of the regulated department/entity is modified, the modification must sent by the regulated department/entity to the regulator for a priory opinion.

Justification:
The issues concerned would only provide a very weak incentive for discrimination, while it would be more important to ensure that employees feel that they belong to one same group as this would help the DSO attract and retain good quality staff. Furthermore, these

provisions should not conflict with national legislations on data protection and employment legislation.

CEDEC
On some points (like G08-g: a priori opinion of the regulator), it is not clear what the practical impact should be of the proposed measure.

BGW etc
Justification:
Chapter 3 does not distinguish properly between persons responsible for the management of the system operator on one the one hand side and other employees on the other hand side as would be necessary. In case the proposals of the Guidelines are meant to be applicable not only to the management but also to other employees they go far beyond Art. 15 and 10. 2 lit. a of the Directives, if these employees have no power of decision These Articles are designed only for the management of the network operator and not for all employees occupied with network issues. Activities related to the network operator with little or no impact on non-discriminatory access to the assets do not inevitably have to be carried out by the network operator itself but can be delegated to other internal or external service providers. Further regulations should for this reason apply to the management only. Moreover, these issues are subject to national employment law. Further regulations for employees are at least in Germany not necessary. The provisions of present law require to address measures, which prohibit that a considerable part of the payment will be dependent on the result of the vertically integrated company. These rules do not demand a complete disconnection. Naturally vertically integrated companies must not elude the law by constantly transferring staff from the network system operator to the competitive entries. To prevent any employee to work is not acceptable, however, because it would mean deep interference with private business without added value and create bureaucracy. It is sufficient if the relevant person signs a non-disclosure agreement. Otherwise, this rule has to be applied for persons coming from other grid companies too.

Additional measures to reinforce functional unbundling concerning customer relations:

BGW
Customers must be convinced informed of the separation of the system entity and energy suppliers...

EON Romania
Customers shall be informed and not „convinced“. Related question: will the household customer at the end really want to pay for additional information and business separation especially separated call centres, rebranding?

Comments of the TF URB:
A number of respondents do not think this provision is necessary. This guideline will be deleted.

G09: Network companies shall have their own identity; nothing shall imply a link from the system operator to the supply business. This involves clearly separate branding strategies, communication policies, and separate contact routes to the network and supply business such as separate telephone numbers, separate call centres and home pages (including transparent linking policies).

BGW

Network companies shall have their own identity; nothing shall imply a link from the system operator to the supply business. This involves to as clearly as possible separate branding strategies, communication policies, and separate contact routes to the network and supply business such as separate telephone numbers, separate call centres and home pages (including transparent linking policies).

Justification:
Of course customers have to be informed of the separation of the system entity and energy supplier. It must be clear for customers that the system operator is a neutral separated entity. Information of customers needs to be designed in a way that network operators appear as independent companies and that customers who wish to contact the system operator will not be referred to the energy supplier. However, it should not be the objective to convince customers that there is no connection between associated companies. Customers are mature enough to make their choice in full knowledge of all conditions. Moreover, this postulation goes far beyond the Note of DG Energy & Transport on the unbundling regime of the Directives 2003/54/EC and 2003/55/EC on the internal Market in Electricity and natural Gas (16.1.2004). which states: "It seems appropriate to look at this issue on a case by case basis. If common services are permitted it shall be required in any case that certain conditions are fulfilled, to reduce competition concerns and exclude conflicts of interest." Shared callcenter are not prohibited by current legislation, if certain requirements are fulfilled. Even the Interpreting note of DG TREN acknowledged that a requirement to systematically duplicate such common services would significantly increase costs without bringing corresponding additional benefits.

Centrica

Agrees, neutrality (both actual and perceived) is essential not just for system operators but also where there is also a distinct network owner role (see comment on G01). Separate branding should also be applied to e.g. routine repair and maintenance of the network, attending to emergency situations etc. by the asset owner, as well as applying to the narrower role of system operation.

The reference to separate branding strategies etc of monopoly network activities should be more explicit that common branding is not acceptable, and that this covers not just the name of the entity but also its logo/visual identity.

On websites, suggest 'transparent and non-discriminatory linking policies'. In general, there should be no direct links between the web-pages of the ringfenced and competitive entities, and the website of the ringfenced network business should not give any preference to its supply affiliate

CEZ

CEZ believes that the requirement to separate marks, communications, contact channels – phones, call centres, home pages should be evaluated taking into account the additional costs versus real effects resulting from the separation. As to the proposal, CEZ has already

separated the home pages as this is the only requirement that does not bring high additional costs.

Any other separation would bring an increase in costs that would be paid by the customers and the effect for the customers would not correspond to the additional costs he would have to pay for.

The problem of common call centres is already addressed in European Commission's Note "Practical measures for distribution resulting from the opening up to competition (16/01/2004) – in the part Distribution:

A system for providing more detailed information, via a telephone help line to provide information and deal with requests, may be set up by the distribution system operator and/or also at the various suppliers. The consumer must receive a personal reply to a specific request.

The other European Commission's note on the unbundling regime (16/01/2004) that forms together with the directive the basis for this draft, states:

„ If common services are permitted it shall be required in any case that certain conditions are fulfilled, to reduce competition concerns and exclude conflicts of interest:
- any cross subsidies being either given to or received by the network business are excluded; the ensure this, the service shall be provided at market conditions, which shall be laid down in a contractual arrangement between the company providing the common service and the beneficiary company,
- common services shall normally be operated and managed outside the network business – i.e. by the related supply company or, even better, a holding company - unless the network is the predominant user."

According to the European Commission's aforementioned note CEZ uses a common call centre that is operated by an independent company CEZ Zákaznické služby, the customer service company vertically integrated into CEZ Group.

This company provides the call centre services for both electricity supply and distribution. Hence, the customers receive better and interconnected information and it leads to lower costs in comparison to the situation where two separate call centres exist.

EON Bulgaria/Romania/Hungary/Czech
Measures like rebranding are not necessary for the companies' identity. Further, more separate call centers or separate billing services for the distribution and sales part especially in the household customer sector cannot be accepted. The EU-Commission accepted shared services under certain conditions (informational unbundling, no subsidisation). Providing two systems would increase costs, bureaucracy without any benefit for the customers. The rules can be installed by compliance programmes and by internal, contractual rules.

EON Nordic
For MU Nordic this would lead to huge investments and considerably higher costs to serve both retail and network customers. Separate call centres would also problems for the customers who would have to make different calls to the both call centres. Today customers often have questions or need help with both their electricity purchase and the network

charges at the same time. As concerns branding this is more an issue for retail since retail needs the brand more than the network operations.

ENECO
Guideline 09 "... nothing shall imply a link from the system operator to the supply business. ... separate branding strategies, ... separate phone numbers, separate call centres ..." leads to unnecessary additional costs. Outsourced activities are often executed by companies for multiple businesses. Combining these activities leads to synergy effects for the integrated company and will reduce the costs for the customers.

Another argument is that the supplier may want to be the primary contact for the customer. To realize this he must be allowed to make deals with system operators on communication, administration and financial settlement.

Enel
Enel cannot accept such a guideline, because measures of this sorts seem to be disproportionate to the unbundling goals (e.g. brand separation might cause further confusion among consumers).

FGW
There is no cost-benefit analysis. Some of the ERGEG recommendations will inevitably lead to disproportionate high costs for companies (e.g. G 01, G 09, G 24) but have no positive effect for the customer. We see only the perceived positive effects of unbundling reflected in the paper and no mentioning of the unavoidable negative aspects like cost increases, loss of information and synergies, which for us is a very biased approach. The paper should put unbundling in the right context and also list in a separate section the assumed practical benefits, ideally on a country-by-country or regional basis, for gas and electricity separately.

Finnish Energy Industries
Suggested measures would mean disproportionate cost compared to benefits, especially with a structure with a rather big number of smaller companies.

Geode
Effective application of national and European competition Law would render this guideline unnecessary. For small DSOs separate branding will incur significantly higher costs than for TSOs, since the public perception does not separate between network operation and distribution. TSOs are not directly dealing with end-customers. Consequently establishing a different brand for a TSO will not impose similar costs. ERGEG should therefore be aware of the danger of discriminating DSOs. At the same time, from customers point of view, the guideline could create confusion to customers.

RWE
Separate branding of the network operator must generally be seen as a "cosmetic" measure. An effective compliance programme with the aim of non-discrimination is much more efficient than various brand names. The prohibition to include a link to a possibly related energy supplier under group law on the network operator's website is contradictory by all means if this supplier is the legally prescribed basic or replacement supplier. Reference to the latter must be made by the network operator in any case. But we are also of the opinion that any other references by the network operator are not permissible. Conversely, it must be admissible nonetheless to include a link on the website of an energy supplier, a supplier who is entrusted with basic supply anyhow - whether related or not - to

the site of the competent network operator. This must be so as the network operator as monopolist is obliged to provide each network user with connection and service.

SSE
We agree that there should be separate branding of networks compared to other businesses. For example, SSE have separate brands for the energy companies compared to the networks businesses, and different number for call centres as to whether there is an enquiry about energy contract, or whether a customer is reporting a network problem.

Swedenenergy
Swedenenergy considers the guideline to be very disproportionate in order to achieve the purpose of the directive. It is important to separate the unbundling rules from the competition law. Following EC competition law, as well as national competition law, system operators are prohibited from interfering with or in any other way distorting competition. Under the terms of competition law there is nothing to say that similar brands, contact routes, telephone numbers, call centres and home pages, in itself imply distortion to competition. This can only be decided upon on a case basis by the competition authorities.

To the opposite, there are great benefits from a customer point of view, as far as possible under the rules of unbundling and competition law, to simplify the communication and contracts between the customer and market players. Some of the proposals in the guideline may cause even more confusion for the customers and would also imply great costs, especially for minor system operators.

VEÖ
Measures affecting the identity of the network companies should be proportionate as well as the resulting increase of costs. As already listed in the general part above, the competition is not ensured through excessive unbundling measures but rather due to a discrimination free network access and the creation of suitable framework conditions with harmonic market rules and processes. However measures to improve an independent corporate image of the network operators are conceivable.

Vychodoslovenska
We believe, that well-functioning Compliance Program is a better tool for assuring the non-discriminatory behavior of network operator than „re-branding“.

Wienenergie
Improving the identity of network companies shall not cause higher costs. These suggestions will lead to increased costs for the networking companies e.g. by separate call centres. Also the creation and design of branding strategies shall be the task of the management of networking companies. When improving competition in the electricity market it is necessary to harmonise general conditions like market rules etc and not to over-regulate network companies.

Zapadoslovenska
Measures like rebranding are not necessary for the companies' identity. Further, more separate call centers or separate billing services for the distribution and sales part especially in the household customer sector cannot be accepted. The EU-Commission accepted shared services under certain conditions (informational unbundling, no subsidisation). Providing two systems would increase costs, bureaucracy without any benefit for the

customers. The rules can be installed by compliance programmes and by internal, contractual rules

Eurelectric
Network companies shall have their own identity; nothing shall imply a link form the system operator to the supply business. This involves clearly separate branding strategies, communication policies, and separate contact routes to the network and supply business such as separate telephone numbers, separate call centres and Web-pages (including transparent linking policies).

Justification:
This guideline does not appear to be proportionate or necessary to meet the goal pursued by unbundling. Rebranding in particular can bring further confusion for customers and would be costly to perform. Provided network businesses are prohibited from distorting competition, similar brands are not an issue. Whereas the DSO must be able to refer to the supplier of last resort in its call center or webpage, reference to other competitive businesses should be forbidden. Suppliers as for them should always be allowed to inform customers about the DSO that is responsible for their distribution of electricity.

Enel
Enel considers that the holding should be able to exercise control, not only of financial kind, over all companies of the group, including the network company. The network company is required to define a financial plan consistent with payment levels adopted by the integrated company, no exceptions should be allowed. Return-on-the capital rates considered as adequate for the integrated company, should also apply to network operations, including operations subject to Third Party Access (TPA). Enel also proposes the adoption of a Corporate Governance model in Italy, capable of ensuring that the controlling company exercises its powers of strategic decisions, supervision and control, while also ensuring managerial and operational independence of the independent operator's activities. We suggest that the network operator's Border of Direction maintains jurisdiction over high-level matters; whereas an executive committee, independent from the holding, maintains jurisdiction over operational matters, including definition of the investment plan. Lastly, we also suggest an auditing body in charge of supervising compliance with the principles specified above.

Comments of the TF URB:
A number of respondents do not think this provision is necessary. A number of companies agree with the need for separate branding, but some argue that this provision causes confusion by going beyond the existing Commission interpretation notes. The TF URB still insists that this guideline is necessary.

Effective decision making rights

G10: All commercial and operational decisions related to the operation, maintenance and development of the network must be made within the network business, without involvement of the related supply business or holding company of the integrated company. Affiliated companies shall have no right to change decisions already taken.

Centrica

Agreed: there should be no interference in what is intended to be the independent network activity. This also applies for when system operation and network ownership are distinct activities.

The guideline should also acknowledge the possibility of the related supply business being involved in network issues where this is part of a general and transparent process of industry consultation. In such cases, we would expect there to be separate consultation responses from the network and supply businesses, reflecting their different perspectives.

E.ON Bulgaria/Romania/Hungaria/Csech/Zapadoslovenska

Operative decisions concerning day to day business have to be made by the management of the network company, but strategic decisions having severe impact on the financial supervision task of the parent company has to be taken by the management of the parent company.

E.ON Nordic

Ok, but the parent company of the group must be able to take care of and decide on the overall financing of the group and have the right to set thresholds above which approval must be obtained from the parent company.

SSE

Again this is unduly prescriptive. We would agree that supply business should not interfere with decisions of the network business. Indeed they should have no knowledge of the decisions of the network business. However, at holding company (main board level) there are fiduciary and corporate governance requirements to ensure that the financing is adequate. There is a big difference between the day to day decision making within the limits of the prescribed budget (which we agree should rest with the network company) and the budgetary cycle to obtain the funding for capital investment projects. Such projects should be developed in accordance with the legal and licence obligations on the network company but the decision to authorise the budget would rest with the main board.

Svensk Energi

The guideline follows from the general requirement that the system operator shall have the necessary financial and other resources as well as decision making powers in order to operate on an independent basis. There is no need to go into further detail in a guideline on this issue. The guideline should therefore be deleted.

VEO

This requirement is existing standard in Austria and is fulfilled by the network operators.

BGW

All commercial and operational decisions related to the operation, maintenance and development of the network must be made within the network business, without involvement of the related supply business or holding company of the integrated company. Affiliated

companies shall have no right to change decisions already taken, beyond exercise of appropriate co-ordination mechanisms to ensure the economic and management supervision rights granted by Art. 10 and 15 of the Directives.

Justification:
Operative decisions concerning day-to-day business have to be made by the management of the network company. However, according to Art. 10 and 15 of the Directives strategic decisions have significant impact on the financial supervision of the parent company have to be made by the management of the parent company.

Comments of the TF URB:
Proposal for G10
All commercial and operational decisions related to the operation, maintenance and development of the network must be made within the network business in a non-discriminatory way, without involvement of the related supply business or holding company of the integrated company.

G11: The network company shall have enough human and physical resources at its disposal to carry out its work and decide independently from other parts of the integrated company. This includes having enough resources to prepare decisions, to evaluate alternatives and to be assisted by external consultancy.

Centrica
Agreed: as noted under G02, it is essential to avoid the 'thin' network management model, in which the system operator is not standalone in terms of personnel or financial resources.

Distrigaz Sud
The company understand that the idea is to avoid a network company employing directly only management without employees. We agree with this criteria as long as it does not prevent the vertically integrated undertaking to share some common support functions (financial, IT, HR,…) in order to limit the redundancy of personnel

GABE
All here-up activities of ISO must be done by its own human resources which must be sufficient (number and competence) and have new employment contract with ISO company

GEODE
ERGEG should be aware of the fact that strict adherence to this guideline imposes additional costs.

VEÖ
This – also legal – requirement should in principle be fulfilled. However certain transitional periods for the implementation of adaptation measures of this often very complex process are necessary.

Gaz de France
We support the idea that the system operator must be provided with sufficient resources to ensure real decision making power and his independence, to carry out its work and decide independently from other parts of the integrated company. However it should be allowed that for certain non-essential functions not directly related to the network operation, the network entities rely on shared services, in compliance with the requirements of accounting unbundling. This would contribute to cost optimization, with positive impacts on the network tariffs for the benefits all network users and final consumers.

Proposal:
The above guidelines could provide that where several infrastructure entities (legally unbundled or not) exist within a group, they can share services that are not related to essential functions. Companies should be free to determine the organisation of shared services within the infrastructure entities (for instance: dedicated platforms located outside the entities or services hosted within one of these entities), provided the principles of cost sharing are clearly defined by contracts.
Essential functions should be understood as those directly relating to the core activity, that is:
- Marketing and sales (design and implementation)
- Infrastructure operation (including balancing, measuring, dispatching, etc)
- Infrastructure maintenance
- Investments (investment planning and execution).
- Staff recruitment policy

Whereas non-essential functions would refer notably to:
- Facility management (building maintenance, etc.)
- Technical tasks related to accounting, employees management.

Network companies directly employing only management will have to rely on information provided by employees of affiliated companies with the potential consequence that they do not dispose of any credible disciplinary measures in order to enforce management decisions. It is hardly conceivable to act independently from the mother company when the majority of the workforce depends on essential decisions of the mother company.

Centrica Agreed
Though the wording of this paragraph could be improved. The second sentence also applies if the careers of employees working for the ringfenced business similarly depend on the 'mother company', and this should be added.

E.ON Nordic
Ok.

SSE
We agree that the network company should have adequate resources.

Svensk Energi
Swedenergy does not see the need for further detailed guidelines on how the system operator shall operate its daily business in terms of human and physical resources. If the system operator has nothing but management employed, thus having to rely on the cooperation of the parent company and its staff in order to execute the operational decisions of the system operator, the system operator will have to prove that it meets the requirements of independence. If this is possible under such circumstances there should be no problem with the staff being employed by the parent company.
Again, the specific guidelines should not be applied in a general manner but rather on a case by case basis and to the extent it is found necessary.

Vychod
Shared Services are not required to be executed by network operator neither be EU-Directive, nor the Slovak energy legislation. The utmost crucial elements are the prices for such services, which are to be controlled by national regulators.

Wien Energie
The question whether or not a network company has enough human resources can only be verified by the management of this company.

RWE
The attitude expressed in these sections that a network operator must not use third parties to maintain its networks contradicts the express legal requirements in the directives. With regard to the short time which has passed since the coming into force of the corresponding regulations and the fact that the implementation deadline for the legal demerger of distribution system operators has not yet elapsed, such a restrictive assessment does not seem to be justified. It is not understandable, for instance, why the network operator should have its own training staff for its employees.

Comments of the TF URB:

Proposal for G11:

The network company shall **have enough human and physical resources** at its disposal to carry out its work. This includes having sufficient resources to prepare decisions, to evaluate alternatives and to be assisted by external consultancy.

G12: Personnel leasing from an affiliated company should be strictly limited to pure maintenance work. The network company has to fully "manage" the work force which operates the grid. This shall include training, rewards, layoffs etc.

Centrica
It would be helpful if examples could be included of what is meant by 'pure' maintenance work.

E.ON Bulgaria/Romania/Hungaria/Csech/Zapadoslovenska
Personnel leasing in general should not be restricted to certain areas. It is more important to ensure that the relevant non discriminatory rules apply for internal services providers.

E.ON Nordic
Ok.

ENECO
"Personnel leasing from an affiliated company should be strictly limited to pure maintenance work. ..." is too strict. There may be more activities that the system operator may wish to outsource. The key issue is not whether personnel of an affiliated company or any other company may be hired by the system operator but is about the neutrality and independence of the system operator. It is therefore sufficient to describe which activities the system operator must execute himself and which he may outsource. Any company - including an affiliate company - should be allowed to perform the activities that may be outsourced.

FGW
The freedom of purchasing services may not be limited; this would contradict the free market economy

Finnish energy industries
The suggested guidelines is unnecessarily detailed

GEODE
There should be no restrictions for the network operator on the hiring of personnel from an affiliated company.

RWE
The attitude expressed in these sections that a network operator must not use third parties to maintain its networks contradicts the express legal requirements in the directives. With regard to the short time which have passed since the coming into force of the corresponding regulations and the fact that the implementation deadline for the legal demerger of distribution system operators has not yet elapsed, such a restrictive assessment does not seem to be justified. It is not understandable, for instance, why the network operator should have its own training staff for its employees.

SSE
We believe the network company should be able to source its personnel in the most efficient way, subject always to the confidentiality obligations. Different company structures might allow different ways of working in the most efficient manner, and the guidelines should not preclude such options.

Svensk Energi
There should be no restriction for the system operator on the personnel leasing from affiliated companies. Naturally, staff managed by the system operator operates under the management of the system operator to the extent necessary for the system operator to fulfil its obligations under the unbundling requirements. The system operator shall always be responsible for satisfying this obligation following from the directive. There is thus no need to more specifically regulate this on a national basis. Rather, the guideline should be part of the regulatory decision making process, the most important issue being cross-subsidisation.

Total
This restriction appears to us to be particularly excessive. Personnel leasing is efficient not only for maintenance operations but also for construction and development and even for office assistance, legal work and accounting. In fact, there should not exist any barriers which would reduce the flexibility available to the integrated company to access experienced industry staff from time to time in accordance with its changing needs.

VEÖ
This demand is too extensive. The freedom of purchasing services must not be limited as this would contradict the free market economy. In addition this request is impossible to implement in a standard manner throughout Europe as it affects pure micro-organisational aspects of each individual company.

Wien Energie
There shall be no restriction on personnel leasing from affiliated companies.

Eurelectric
“The network company has to fully manage the work force which operates the grid. This shall include training, rewards, layoffs etc.” The most important in relation to leasing is that it does not lead to cross subsidisation (i.e. leasing should take place at market based prices). There is no need to restrict leasing, under those terms, to pure maintenance.

EBL
In our opinion it is unclear why it is deemed necessary to limit this to “strictly limited to pure maintenance work”. We assume such a limitation has been included by editorial error. On the other hand any number of people and functions in a complete and well run network company can be hired without posing a threat to “independent effective decisions”.

BGW
Activities related to the network operator with little or no impact on non-discriminatory access to the assets do not inevitably have to be carried out by the network operator itself but can be delegated to other internal or external service providers. Moreover these issues are subject to national employment law. Further regulations for employees are at least in Germany not necessary. All this leads to the conclusion that there is no need to restrict leasing, under those terms, to pure maintenance.

Comments of the TF URB:
This guideline will be deleted.

G13: If independent decisions of the network company imply certain actions by the parent company (for instance in case of assets owned by the parent company) the statutes of the parent company have to foresee an obligation to follow decisions taken by the network company. [E.ON Nordic this is not legally possible] Compensation for any damages incurred by the network company has to be agreed by contract between the network company and the asset owning mother company.

E.ON Nordic
Ok.

Centrica
Supported.

Distrigaz Sud
The company think that independent decisions of the network company can be more easily guaranteed through the infrastructures agreement to be negotiated between the mother company owning the assets and the network company using them

E.ON Bulgaria/Romnia/Hungaria/Csech/Zapadoslovenska
Legally not enforceable. It contradicts with ownership rights of the parent company as asset owner and the financial supervision rights.

ENEL
ENEL disagrees with the proposal that a holding should have, in any case, an obligation to follow up on actions decided by independent operators that entail obligations for other companies of the group, given that an independent operator's autonomy is only valid with regard to its actions. The consultation paper proposal is not clear enough about what resources the network company is supposed to rely on for indemnifying the group, in case of damages inflicted due to actions taken by independent operators. In fact, the hypothesis that an independent operator should use its funds ignores the fact that these funds already belong to the group, and if used it would just be in case of a simple transfer of resources from one company to another company of the group, without any real compensation taking place. Real compensation requires that such forms of reimbursement are covered by the tariff system.

GEODE
The guidelines are too detailed. Decision making powers of the network operator and terms and conditions of contracts should constitute relevant facts within the regulatory decisions making process.

SSE
It is not clear what this guideline is trying to achieve and it should be deleted.

Svensk Energi
Swedenergy considers the guideline to be too detailed as a general provision/guideline as it follows from the general requirement of the directive. Rather, the decision making powers of the system operator and the terms and conditions of contracts regarding assets etc. should constitute relevant facts within the regulatory decision making process.

VEÖ
This specification has in principle been fulfilled in Austria, this kind of regulation must however not only be covered by the ordinances, but also through leasing or company management contracts

Wien Energie
In Austria this is fulfilled by contracts

EBL
As this guideline proposes nothing new, we suggest that it is removed from the directive.

Comments of the TF URB:
Further clarification required, the guideline is too detailed.

G14: It shall also have sufficient financial means available to fulfil its tasks to maintain and develop the network. Decision making rights which are sometimes limited by company law must be attributed to the management of the network company. At the same time the competencies of the supervisory boards have to be limited to financial supervision. Any day-to-day decision within the scope of the approved financial plans (or equivalent) must not be subject to further consultation or approval of the parent company.

Centrica
Supported.

E.ON Nordic
Ok, but the parent company of the group must be able to take care of and decide on the overall financing of the group and have the right to set thresholds above which approval must be obtained from the parent company.

ENEL
See G 06.

Finnish Energy Industries
It should be analyzed, whether the suggested guideline is against legislation on companies. The board is responsible to oversee the functioning and the finances of the company. It is fundamental for the shareholders, creditors, tax authorities etc. that a responsible body exists.

GABE
The ISO principle is a minimum: either the management, the operation, the studies of the grid must be done by an independent company with a fully independent book-keeping.

GEODE
The guidelines are too detailed. Decision making powers of the network operator and terms and conditions of contracts should constitute relevant facts within the regulatory decisions making process.

RWE
The guidelines cannot put the owner of the network company under the obligation to make additional payments, which are not provided for by company law, irrespective of whether the company is an energy utility or a financial group. If a company neglects its obligation for the proper maintenance of the networks, it is up to the competent regulatory authorities to enforce these obligations. However, it is not possible to make any stipulations in advance if there are no indications of violation. It is not acceptable that the guidelines shift decision-making rights and limit supervisory obligations under mandatory company law which is focused on European law. The guidelines themselves must not call for violations of the law.

SSE
Guideline G11 covers the requirement to have sufficient resources to carry out its functions and could simply be extended to include financial resources. See also our comment on Q1 about the guidelines overriding national law.

Svensk Energi
Swedenergy considers the guideline to be too detailed as a general provision as it follows from the general requirement of the directive. Rather, the decision making powers of the system operator and the terms and conditions of contracts regarding assets etc. should constitute relevant facts within the regulatory decision making process.

VEÖ
This legal requirement is fulfilled in Austria.

Vychod
Guidelines go under our opinion beyond the valid legislation and thus can not be enforced.

Eurelectric
Delete “At the same time the competencies of the supervisory boards have to be limited to financial supervision” see justification to the proposed amendment for guideline 06

EBL
The recommendation regulates the competencies of a “supervisory board” in relation to management. This is formally related to countries with a supervisory board structure in its company law. We assume that in relation to the relevant Norwegian company law (which is without this function of supervisory boards) this will have the same meaning for the mother company’s instructions and voting rights as at the AGM (annual general meeting). In our opinion this is in conflict with article n°15(2) c) last sentence, to only give the mother company the right to exercise financial control. According to the directive mentioned above, the right to instruct and make decisions in separate cases exceeding the financial plan as agreed for the network company, can be preserved for the mother company. The recommendation is stricter than the directive and therefore not acceptable.

Gaz de France
It shall also have sufficient financial means available to fulfil its tasks to maintain and develop the network. Decision making rights which are sometimes limited by company law must be attributed to the management of the network company. At the same time the competencies of the supervisory boards have to be limited to financial supervision. Any day-to-day decision within the scope of the approved financial plans (or equivalent) must not be subject to further consultation or approval of the parent company. More see Table 29.

BGW
It shall also have sufficient financial means available to fulfil its tasks to maintain and develop the network. Decision making rights which are sometimes limited by company law must be attributed to the management of the network company. At the same time the competencies of the supervisory boards have to be limited to financial supervision. Any day-today decision which is not concerning profitability and the management supervision rights within the scope of the approved financial plans (or equivalent) must not be subject to further consultation or approval of the parent company.

Justification:
The supervisory function of the parent company is not restricted to securing its financial interest. According to Art. 15 of the Directives vertically integrated companies are allowed to establish appropriate co-ordination mechanisms to ensure the economic and management supervisory rights of the company. The effective decision-making rights do not interfere with the management supervision rights of the vertically integrated companies.

E.ON Bulgaria/Romnia/Hungaria/Csech/Zapadoslovenska

The points G14, G15 and G16 are less comprehensible and may be contradictory, clearer formulation would be good. It is necessary that the network company receives the necessary financial sources and proposes the financial plan to the parent company. It is also right, that "sufficient financial means available to fulfil its tasks to maintain and develop the network" are necessary.

But having enough financial resources is also a matter of proper tariff setting of the regulatory bodies. Distribution revenues shall provide basis for the necessary OPEX / CAPEX elements.

Furthermore the parent company has certain financial supervision rights also by company law. So certain value limit shall be set, in order to avoid the endangering the prudent business as usual and therefore to avoid endangering the security and the quality of supply.

The point is also in contradiction with the implementation of the "trustee" position (see question 8.3.).

Comments of the TF URB:

Proposal for G14: more clarification, a similar guideline is already in existence.

G15: The financial plan shall be proposed by the network company. Any refusal of that plan must only be based on a pre-defined risk adjusted return on capital in line with internal requirements and capital market conditions. For investment under Third Party Access (TPA) the return on capital is usually set by the regulatory authority.

Distrigaz Sud
While regulatory authority has to create a favourable environment linked to its strategy as regards the development of the gas market, such as fair remuneration of the investments, the approval of the investment program must be also under the responsibility of the mother company, according to its own criteria of profitability, without prejudice of the investment obligations which could exist besides (from concessions agreement …)

E.ON Nordic
Ok.

ENEL
It is necessary that the controlling company exercises financial control over all companies of the group, including the network company that is required to define a financial plan consistent with payment levels adopted by the integrated company. Financial control by the financing company affects all investments, including those regarding third party access.

GABE
Any investment has to be proposed by the ISO and approved by the Regulatory Authority which imposes the return on investment percentage.
If another company conserves the property of the existing grid (either in the same group as the ISO or not), it may accept the return on investment or sell its grid.
For any new investment, this "historical owner" has no right to supervise/authorize the project. It only may accept to invest or refuse, implying the ISO becomes owner of the new investment. If the historical integrate company is not happy, it may sell its ISO subsidiary stakes.

SSE
This is similar to G10, where the budget or financial plan prepared by the network company would be designed to comply with its statutory obligations. In the example of TPA, a valid objection to the plan would be that inadequate funding or return on capital had been allowed by the regulator.

Svensk Energi
There should be other possible reasons for the parent company to refuse the financial plan proposal of the system operator, e.g. where the total amount of investment does not reach the objective of the incentive regulation in place. Swedenergy suggest the following wording of the guideline: "The financial plan shall be proposed by the system operator. Any refusal of that plan must only be based on a reasonable justification in line with internal requirements and capital market conditions. For investment under Third Party Access (TPA) the return on capital is usually set by the regulatory authority".

Total
See G06.

VEÖ
This requirement is fulfilled in Austria as far as the companies have an influence on it. The demands pertaining to return on capital can not be fulfilled to a proper extent due to regulatory framework conditions.

Eurelectric
replace “Any refusal of that plan must only be based on a pre-defined risk adjusted return on capital in line with …” by “Any refusal of that plan must only be based on reasonable justification in line with …” There should be other possible reasons for the parent company to refuse the financial plan proposal of the DSO such as for example when the total amount of investment does not reach the objective of the incentive regulation in place. These reasons must however be sound enough (“reasonable justification”).

Gaz de France
See G06.

RWE
The call for full sovereignty of the network operator even with regard to the approval of the investment budget (to limit the decision-making rights of the Supervisory Board regarding the financial plan (refusal only if the predefined rate of return is not achieved)) is an unacceptable interference with the relationship between parent company and network operator. European law regulations and the unbundling provisions of the Energy Industry Act provide that measures of general corporate governance are maintained. These include, for instance, the approval of major individual investments as far as these do not fall under the approved financial plan and the order of magnitude of the approval reservations is proportional to the size of the network operator. The complete prohibition of individual approvals "whatever it costs" explicitly violates the accounting law and risk management provisions of commercial and company law which have a European focus.

Východoslovenská energetika
Network operator can not by fully independent in any financial decisions „what ever it cost“. Under the valid EU-Directive the mother company has right to control, for example the approval of financial plan. Any decision, which would go beyond such financial plan, has to be approved by mother company as well.

Comments of the TF URB:
Proposal G15:
The financial plan shall be proposed by the network company. Day-to-day decision within the scope of the approved financial plans (or equivalent) must not be subject to further consultation. For investment under Third Party Access (TPA), the return on capital is usually set by the regulatory authority.

G16: The supervisory board may approve the global amount of investments but must not be consulted on any individual investment, whatever its cost.

Centrica
It is not sufficient to prevent the supervisory board from being consulted on any individual investment – they must not seek to influence that investment as long as it is within the overall amount allowed.

CEZ
It is a common view that the Supervisory board can approve the investments above certain amount similarly to other interconnected companies. The amount is fixed according to operating necessities of the company.
Due to the different conditions in individual EU member states CEZ proposes to let the power to regulate the question of the individual investments to national regulators (whether it is possible as such and if yes, which is the relevant amount of the investment).

E.ON Bulgaria/Romania/Hungaria/Csech/Zapadoslovenska
The points G14, G15 and G16 are less comprehensible and may be contradictory, clearer formulation would be good. It is necessary that the network company receives the necessary financial sources and proposes the financial plan to the parent company. It is also right, that "sufficient financial means available to fulfil its tasks to maintain and develop the network" are necessary.
But having enough financial resources is also a matter of proper tariff setting of the regulatory bodies. Distribution revenues shall provide basis for the necessary OPEX/CAPEX elements.
Furthermore the parent company has certain financial supervision rights also by company law. So certain value limit shall be set, in order to avoid the endangering the prudent business as usual and therefore to avoid endangering the security and the quality of supply.
The point is also in contradiction with the implementation of the "trustee" position (s. question 8.3)
In the Hungaria/Csech/Zapadoslovenskan law biannually a network development plan needs to be elaborated by the TSO together with the DSOs for the network at 110 kV and higher. The regulator should approve and if the plan is not fulfilled there is a right of the Regulator to issue a tender for third parties to built the relevant piece of network. So the issue can be solved in a proper regulatory regime without additional unbundling measure.

E.ON Nordic
Within all companies in the world there are limits and thresholds set on the decision powers of management and the board of directors and possibly the parent company within a group of companies. This must of course also apply to DSO:s and TSO:s, anything else is an example of over regulation.

ENA
The question is whether the supervisory board of an integrated company could reasonnably be excluded from considering „any individual investment whatever its cost"

RWE
The call for full sovereignty of the network operator even with regard to the approval of the investment budget (limiting the decision –making rights of the supervisory board regarding the financial plan (refusal only if the predefined rate of return is not achieved) is an unacceptable interference with the relationship between parent company and network

operator. European law regulations and the unbunling provisions of the Energy Industry Act provide that measures of general corporate governance are maintained. These include, for instance, the approval of major individual investments as far as these do not fall under the approved financial plan and the order of magnitude of the approval reservations is proportional to the size of the network operator. The complete prohibition of individual approvals „whatever its costs" explicitly violates the accounting law and risk management provisions of commercial and company law which have a European focus.

SSE
This is unduly prescriptive and unworkable. In particular if there is a very large project, this can be subject to considerable risks both in timing, cost and, increasingly, public perception which the parent company would have a legitimate interest in.

Svensk Energi
Swedenery suggests the following wording of the guideline: "The supervisory board may approve the global amount of investment but must not be consulted on any individual investment, whatever its cost as long as it is in line with the financial plan."
Should the individual investment not be in line with the financial plan due to its cost, it has to be approved separately by the supervisory board. The general clause "whatever its costs" meaning that the investment is accepted whichever the amount provided it stays within the limits of the financial plan.

Total
See G06.

VEÖ
This legal requirement is fulfilled in Austria.

Vychod
G15+G16- Network operator can not by fully independent in any financial decisions „what ever it cost". Under the valid EU-Directive the mother company has right to control, for example the approval of financial plan. Any decision, which would go beyond such financial plan, has to be approved by mother company as well.

Eurelectric
"…whatever its cost so long as it is in line with the financial plan" If an individual investment is not in line with the financial plan due to its cost, it has to be approved separately by the supervisory board. The general clause "whatever its cost" must thus be clarified to mean that investment is accepted whichever its amount, provided it stays within the limits of the financial plan.

EBL
This guideline is unclear and not in compliance with the most common principles of corporate governance. It is not reasonable and clearly unacceptable that a CEO should not be able to ask detailed questions about multi-million Euro investments, or details of alternative investments in the network company he is responsible for. Limiting the CEO, chairman of the board or other competent persons' opportunity to express views or concerns only in relation to "Global amount of investments" is simply unacceptable. As the CEO reports to the board and is under obligation to the company owners, this guideline is inappropriate in its current form. As mentioned in our comments to G14 the greatly exceeds the demands of the directive and is therefore unacceptable.

BGW

The supervisory board may approve the global amount of investments but must not be consulted require an affirmation on any individual investment, whatever its cost beyond the approved financial plans (or equivalent).

Justification: If an individual investment is not in line with the financial plan due to its cost, it has to be approved separately by the supervisory board. Thus, the general clause "whatever its costs" must be deleted. Investment is accepted by the parent company whatever the amount provided this amount stays within the limits of the financial plan. It should be possible to budget a certain amount in the financial plan. This amount must on the other hand not be kept down in a manner that it will lead to interference in day-to-day business.

ENEL

ENEL considers that the holding should be able to exercise control, not only of financial kind, over all companies of the group including the network company**.** The network company is required to define a financial plan consistent with payment levels adopted by the integrated company, no exceptions should be allowed. Return-on-the-capital rates considered as adequate for the integrated company should also apply to network operations, including operations subject to third party access.

ENEL also proposes the adoption of a corporate governance model in Italy, capable of ensuring that the controlling company exercises its powers of strategic decisions, supervision and control, while also ensuring managerial and operational independence of the independent operator's activities. We suggest that the network operator's Border of Direction maintains jurisdiction over high-level matters ; whereas an executive committee, independent from the holding, maintains jurisdiction over operational matters, including definition of the investment plan. Lastly, we also suggest an auditing body in charge of supervising compliance with the principles specified above.

Comments of the TF URB:

G16: The supervisory board may approve the global amount of investments but must not be consulted on any individual investment, whatever its cost, provided it stays within the limits of the financial plan.

Unbundling of Information

Wien Energie
This chapter deals with information but there is no exact and complete definition which information is meant in this chapter.

Proposal to add:
The commercially advantageous information are all the information describing the network and it's planned evolution, te degree of utilization of the different element of the network, past, present and future, and all the information necessary for the suppliers or clients to have an efficient access to the network. If disclosed, non-discriminatory access to these information has to be guaranteed.

CEDEC
The measures mostly seem sensible (G17 till G22) but –here again- the "guidelines on information management" (G23 & G24) are far too complex and thus relatively too costly for small and medium sized DSOs.

G17: The grid operator shall define commercially sensitive information where third parties are data owners.

E.ON Bulgaria/Romania/Hungaria/Csech/Zapadoslovenska
The ex ante categorisation and definition of all possible information is not a proper way to ensure informational unbundling. It is impossible to have a complete list of grid information as the required information may differ according to the application/answers. Well trained staff can take its decision on its own. If they have any doubts they will discuss it with their executives.

E.ON Nordic
Ok.

SSE
We believe that this is the wrong way round. It is only the data owner who can decide whether it is confidential or can be released into the public domain.

VEÖ
This legal requirement is fulfilled in Austria.

Comments of the TF URB:
G17: The network company shall define for all network information at its disposal whether it is commercially sensitive (where it is owned by third parties) or commercially advantageous (where it is owned by the network company).

G18: If required for the transparency and functioning of the system, the network operator has to seek agreement of data owners for general data disclosure.

E.ON Nordic
Ok.

SSE
This is correct and consistent with our comment on G18 above.

Svensk Energi
The system operator should always include data protection and data management clauses in the contracts with customers. Such measures are useful and necessary in order to fulfil the commitments towards the customers as well as regarding unbundling rules.

VEÖ
This legal requirement is fulfilled in Austria.

Comments of the TF URB:
G18: no change

G19: For such data he will define data collection, data processing as well as data access rules in a "data management system". This system will make sure that confidentiality is respected and that equal, well specified and non-discriminatory access of contract partners (or non-discriminatory disclosure) is guaranteed. This involves equal treatment related to time, procedures, updating, cost and data quality.

E.ON Bulgaria/Romania/Hungaria/Csech/Zapadoslovenska
Definition needed for "data management system", s. note to G 17: it is creating a huge bureaucracy.

E.ON Nordic
Ok.

SSE
In general, the more information in the public domain, the better for transparency.

VEÖ
This legal requirement is fulfilled in Austria

BGW
For such data that is particularly important in order to operate the network in a non-discriminatory way he will define data collection, data processing as well as data access rules in a "data management system". This system will make sure that confidentiality is respected and that equal, well specified and non-discriminatory access of contract partners (or non-discriminatory disclosure) is guaranteed. This involves equal treatment related to time, procedures, updating, costs and data quality.

Justification:
Vertically integrated companies have to stipulate clear and precise rules for data processing as well as data access to make sure that confidentiality is respected and that equal, well specified and non-discriminatory access of contract partners (or non-discriminatory disclosure) is guaranteed. Companies have to choose their own way to implement a proper method, since there is not only one solution applicable in all situations. Important is that there is the possibility to implement an electronic system without there being an obligation to do so. The current draft Guidelines covers all imaginable information and will cause more bureaucracy and expenditure without measurable benefits. This is particularly the case for the extensive documentation requirements applying to all processes without exception. Therefore the main issues should be „mental" unbundling and well-trained staff. These are much more important than the documentation of every single process where information is exchanged.

Comments of the TF URB:
Proposal for G19: no change

G20: The network company shall define commercially advantageous information on network business where the network company is the data owner.

E.ON Bulgaria/Romania/Hungaria/Csech/Zapadoslovenska
The ex ante categorisation and definition of all possible information is not a proper way to ensure informational unbundling. It is impossible to have a complete list of grid information as the required information may differ according to the application/answers. Well trained people can take the decision on their own. If they have doubts they shall discuss it with their executives.

E.ON Nordic
Ok.

VEO
This legal requirement is fulfilled in Austria.

Eurelectric
Proposal: replace “commercially advantageous” by non-commercially advantageous”. Listing the information that is not commercially sensitive (such as information on health and safety, on environment, on human resources etc.) would be much clearer and simpler since the list would be much shorter than a list of all commercially sensitive information.

Gaz de France
We have no problem with the principle of a well defined management process also for generic information, as long as there is a clear definition of their scope.
We understand that in the current legislative framework, in the absence of any clear definition of this term, when referring to commercially advantageous or generic information these guidelines mean the information that transmission operators have to publish according to the provisions of Regulation 1775/2005. It could be better to specify the guidelines on this point.

Centrica
In broad terms, guidelines G17 – G22 seem sensible, but it would be helpful if these guidelines could be more tightly (legally) drafted and if some of the illustrative types of information noted in the consultation could be reflected in the guidelines themselves. In particular, consideration should be given to defining the phrase ‘commercially advantageous information’ and making it a defined term within the guidelines as a whole.
We would also note the distinction is here made between G 17 – G19, which apply to the grid operator, whereas G20 – G22 refer to the network company. We do not see the reason for the difference at this point and believe the wording of the guidelines generally needs to be improved for consistency and clarity in this regard. We would also refer ERGEG to our comments under G01, which address the situation where there are separate system operator and network owner roles.
As regards the generic information covered in G20 – G22, we believe there should be a presumption that all information being disclosed by the network business (whether or not the network company believes that it is commercially advantageous) should be disclosed to all market participants equally, excepting of course shipper-specific information (e.g. on the shipper’s use of the network, balancing position etc.) which is ‘third party’, and other information where the regulator has accepted that the information would not be commercially advantageous to any recipient(s) if it were made available selectively.
VEÖ

Due to a lack of clarity, no direct position can be taken on this suggestion in view of the management system and organisational aspects. The transmission of data to third parties is also comprehensively regulated in Austria. No excessive implementation requirements should be generated.

CEDEC
On unbundling of information (point 5 – page 14) the measures mostly seem sensible (G17 till G22) but – here again the "guidelines on information management" (G23 & G24) are far too complex and thus relatively too costly for small and medium sized DSOs.

Comments of the TF URB:
See G 17: The network company shall define for all network information at its disposal whether it is commercially sensitive (where it is owned by third parties) or commercially advantageous (where it is owned by the network company).

G21: For these data the network company shall define whether they are to be disclosed or not (respecting the transparency needs of the market).

E.ON Nordic
Ok.

SSE
Comment on G20 and G21: Network information is important to inform potential users of the network of capacity bottlenecks and opportunities. We believe that this should be in the public domain as far as possible (see the GB "Seven Year Statement" as an example)

VEÖ
This legal requirement is fulfilled in Austria.

Gaz de France
See comments G20.

Comments of the TF URB:
Proposal for G21: no change

G22: All commercially advantageous information has to be included in the data management system which shall guarantee either non-disclosure or non-discriminatory disclosure of information. This involves equal treatment related to time, procedures, cost and data quality.

E.ON Bulgaria/Romania/Hungaria/Csech/Zapadoslovenska
see note to G 19: bureaucracy – some kind of documentation yes, but not concrete rules about the handling.

E.ON Nordic
Ok.

FGW
The transmission of data is legally regulated in Austria. The existing barriers are sufficient, a further tightening of the provisions is not necessary.

SSE
We agree that market related information should either not be made available, or made available to all parties at the same time.

Gaz de France
See comments G20.

Centrica
In broad terms, guidelines G17 – G22 seem sensible, but it would be helpful if these guidelines could be more tightly (legally) drafted and if some of the illustrative types of information noted in the consultation could be reflected in the guidelines themselves. In particular, consideration should be given to defining the phrase 'commercially advantageous information' and making it a defined term within the guidelines as a whole.
We would also note the distinction is here made between G 17 – G19, which apply to the grid operator, whereas G20 – G22 refer to the network company. We do not see the reason for the difference at this point and believe the wording of the guidelines generally needs to be improved for consistency and clarity in this regard. We would also refer ERGEG to our comments under G01, which address the situation where there are separate system operator and network owner roles.
As regards the generic information covered in G20 – G22, we believe there should be a presumption that all information being disclosed by the network business (whether or not the network company believes that it is commercially advantageous) should be disclosed to all market participants equally, excepting of course shipper-specific information (e.g. on the shipper's use of the network, balancing position etc.) which is 'third party', and other information where the regulator has accepted that the information would not be commercially advantageous to any recipient(s) if it were made available selectively.

VEÖ
Due to a lack of clarity, no direct position can be taken on this suggestion in view of the management system and organisational aspects. The transmission of data to third parties is also comprehensively regulated in Austria. No excessive implementation requirements should be generated.

Comments of the TF URB:
Proposal for G22: no change

G23: All commercially advantageous and sensitive pieces of information have to be part of well defined information processes in written form, which have to be sent to regulators together with the compliance programme. These written processes have to be updated whenever a change occurs.

Centrica
The wording could be improved to make it clearer that it is the written processes which have to be sent to the regulator, rather than the commercially advantageous information itself.

E.ON Bulgaria/Romania/Hungaria/Csech/Zapadoslovenska
This is going beyond the Directives. There is no requirement that defined information processes in written form either:
- have to be sent to the regulator
- have to be part of the compliance programme

Parts of the compliance programme are the duties of the employees and the measurements how the unbundling requirements are fulfilled but no process descriptions.

E.ON Nordic
Why send the written processes to the regulator?

SSE
This is unduly prescriptive and, in our view, unworkable.

Svensk Energi
Swedenergy sees no need, for the purpose of unbundling, to make available to the regulator the information processes applied within the system operator. Rather, the compliance programme should be incorporated into the internal quality systems of the system operator. The information processes should constitute relevant facts in the regulatory decision making process on a case by case basis.

VEÖ
This suggestion can be assessed as critical in view of the scope and the administrative expense. It is not clear to which extent information can be considered sensitive and due to the concrete experiences when dealing with regulatory authorities it must be feared that this demand goes overboard.

Wien Energie
It is ambiguous which kind of commercially advantageous and sensitive pieces of information is meant that has to be documented. However, there has to be a clear definition.

Eurelectric
Delete. To avoid bureaucracy, compliance programmes should be integrated into company quality systems.

BGW
All commercially advantageous and sensitive pieces of information have to be part of well defined information processes in written form, which have to be sent to regulators together with the compliance programme. These written processes have to be updated whenever a change occurs. Internal business processes which are vital in order to pass on information in a non-discriminatory way should be well defined and in written form. This is particularly true

for the following processes such as the switching process that are relevant for non-discriminatory behaviour of the system operator.

Justification:
Bureaucratic efforts have to be reduced as much as possible. It is nearly impossible and has numerous disadvantages to write down all possible commercially advantageous or sensitive information. Clarifying “crucial” processes and putting them under sufficient internal control is essential. This is the reason for the listing above. The German regulatory authority has enacted binding regulatory standards for electronic data exchange. It regulates all procedures connected with the switching process including timing and data type.
The German regulatory authorities have mentioned the following processes as crucial:
- grid connection for energy input and output
- calculation of access tariff
- technical issues of access to the system
- planned and unplanned grid maintenance work
- calculation of grid capacity and power flow studies
- processes of access to the grid
- extension of the grid
- extension of capacity
- demand of compression for better workload

CEDEC
On unbundling of information (point 5 – page 14) the measures mostly seem sensible (G17 till G22) but – here again the “guidelines on information management” (G23 & G24) are far too complex and thus relatively too costly for small and medium sized DSOs.

Comments of the TF URB:
Proposal for G23:
All processes including the data management system have to be defined in written form in the compliance programme. These processes will define the behaviour of employees in relation to customers, employees of other parts of the integrated company and third companies. The compliance programme should be integrated into the company quality system where applicable.
See G 25.

G24: The best practice to comply with these requirements would be to separate databases for the network and competitive business. This would allow each market participant to have equal access to information.

Centrica
Separate databases for the network and competitive businesses should be the ultimate objective, rather than being merely 'best practice', to ensure clear barriers to information flows (in both directions) and clarity of cost allocation, and to avoid the problems which arise with the further development of existing shared systems.
If for a transitional period there is to be a single database, it should be behind its own Chinese wall, providing separate information as required by the network and commercial businesses.

CEZ
The requirement to separate different activities and businesses have to be assessed as a whole, taking into account the additional costs versus real effects that such a separation could practically bring. This proposal is contradictory to the aforementioned European Commission's note on the unbundling regime.

E.ON Bulgaria/Romania/Hungaria/Csech/Zapadoslovenska
Alternatively to the best practice method of "separate databases" other measures like access rights, confidential clause etc. in one database should be accepted.

E.ON Nordic
Ok as long as one common IT system can be used. However, this can be in the same data base if access authorization is used.

ENEL
ENEL believes that to preserve data confidentiality, it is not necessary a physical separation of data banks, and that the same goal can be reached less costly through an efficient access system (e.g. password protection)

FGW
There is no cost-benefit analysis. Some of the ERGEG recommendations will inevitably lead to disproportionate high costs for companies (e.g. G 01, G09, G24) but have no positive effect for the customer. We see only the perceived positive effects of unbundling reflected in the paper and no mentioning of the unavoidable negative aspects like cost increases, loss of information and synergies, which for us is a very biased approach. The paper should put unbundling in the right context and also list in a separate section the assumed practical benefits, ideally on a country-by-country or regional basis, for gas and electricity separately.

GABE
Additionally, ISO computers and data networks must be separate and ISO computer access must be restricted to ISO people.
But, rules must also impose that any data base, mathematical model, specific software… of either the grid or the electrical system of the zone must be given to the ISO, with legal prohibition any other company of the "historical integrated company" to conserve a copy.

GEODE
If the network operator limits database access to licensed staff employed by the network operator only, there is no need for separation of databases. Provided that terms and conditions of licensing are known to and can be checked by the national regulator.

SSE
We agree that separate database should be used.

Svensk Energi
Swedenergy would like for the guidelines to consider the fact that not all problems of informational unbundling will be dealt with by various IT-solutions. Only, the organisation of the system operator together with relevant IT-solutions will achieve the purpose sought by the directive. Hence, the regulator must not always require the system operator to separate the databases. Such a measure is useless if the staff employed by the system operator as well as well staff employed by the competitive business can access to databases. Further, should the system operator limit database access to licensed staff employed by the system operator only, there is no need for separation of databases.

VEÖ
This demand is excessive, not necessary and is rejected. The existing barriers and access conditions are sufficient. The transmission of data to third parties is legally regulated in Austria. In addition the Austrian network operators have resorted to additional voluntary measures.

Wien Energie
The separation of existing databases and the operation of separated databases will, lead to nothing but increased costs that have to be passed to the network customers. In our view existing barriers and existing concepts for limited access are sufficient to improve competition by establishing clear and transparent market rules for data transfer to all market partners.

CEDEC
On unbundling of information (point 5 – page 14) the measures mostly seem sensible (G17 till G22) but – here again the “guidelines on information management” (G23 & G24) are far too complex and thus relatively too costly for small and medium sized DSOs.

BGW
The best practice to comply with these requirements would be to separate databases for the network and competitive business, or to establish non-discriminatory access to such data. This would allow each market participant to have equal access to information. The processes have to guarantee confidentiality and equal access to information for all market participants. Equal treatment includes the content of information, the timelines of provision, updating, data formats used as well as prices for accessing the information. Commercially advantageous information remains confidential (confidentiality has to be ensured by the network operator) until it has been disclosed. The processes handle the management of information from their creation to data processing, updating, access rules and formats, prices, protocols, monitoring, reporting and training.
Justification:
To establish non-discriminatory access to relevant data is an equally effective but for some companies more efficient way and should therefore be mentioned.

The processes have to guarantee confidentiality and equal access to information for all market participants. Equal treatment includes the content of information, the timelines [Centrica timeliness] of provision, updating, data formats used as well as prices for accessing the information.

E.ON Nordic
Ok.

CEZ
The rules for functional unbundling are completed by the obligation for TSO and DSO to assure a disclosure of sensitive business information (e.g. § 12 and 16 of the electricity directive).
This excludes for example unlimited access of the supply staff into databases containing information that could bring commercial advantage such as detailed information on existing or future network users. This does not mean the necessity to create separate database systems, but access rights must be clearly defined and limited to meet the requirement of information disclosure.
According to CEZ the creation of further separate database systems would bring additional costs that would have to be paid by the final customers and the effects for the customers would not correspond to the additional costs he would have to pay for.

Comments of the TF URB:
Comments:

1) it is true that a software Chinese wall could be built, for a cost less than the separation of databases, but such a separation would be harder for suppliers to and for regulators to control.
2) in most answers, it is assumed that the cost of separation should be borne by the network operator, that is by all the suppliers. It could be considered that it should be paid by the incumbent, representing the cost for inheriting from the previous monopoly.

Proposal G24:
B category.

G25: The vertically integrated company as well as the system operator identify all processes to be examined within the compliance programme. This will be undertaken by, or at least in cooperation with, the compliance officer. All processes have to be defined in written form. The processes are part of the compliance programme. The processes will define the behaviour of employees in relation to customers, employees of other parts of the integrated company and third companies. The data management system is one of these processes.

E.ON Bulgaria/Romania/Hungaria/Csech/Zapadoslovenska
Only processes which have a certain potential for discriminatory behaviour shall be defined. It is not necessary that all possibly discriminatory processes are written down in the compliance programme. This is confusing the employees because of two reasons: the processes can be changed, employees don't have to know all possible processes but only those they are dealing with. So it may be much more helpful for the employees to have specific rules or note written by the executives of their department than within the compliance programme.

E.ON Nordic
Ok.

GEODE
The compliance program should not cover processes other than those involving the network operator, as the compliance programme is part of the unbundling rules.

SSE
We believe it is the role of the regulatory authority to define the duties on the network company in terms of confidential information and for the compliance officer to report on the effectiveness of the company in complying with those duties.

Svensk Energi
Unbundling rules are part of the provision regarding the regulated system operator. The system operator undertakes the regulated system operator. Since the compliance programme is part of the unbundling rules the guideline should not cover processes other than those involving the system operator. Thus, processes of affiliates within the vertically integrated company not involving the system operator shall not be examined within the compliance programme.

VEÖ
This legal requirement is fulfilled in Austria.

Wien Energie
It seems not to be useful that all processes of the network company are part of the compliance program.

BGW
The vertically integrated company as well as the system operator identify all relevant processes to be examined within the implementation of the compliance programme. This will be undertaken by, or at least in cooperation with, the compliance officer. The processes will define the behaviour of employees in relation to customers, employees of other parts of the integrated company and third companies. The data management system is one of these processes.

Justification:
Bureaucratic efforts have to be reduced as much as possible. To write down all thinkable processes is nearly impossible and has numerous disadvantages. Employees need detailed knowledge only of processes relevant to them. Particularly in bigger companies it will exceed the sensible scope of compliance programmes if all processes are listed in detail. Furthermore processes are often changed. This would lead to permanent new editions of the programme and thus to inefficient effort and extra expense. The compliance programme should only be modified if relevant amendments of structure or organisation in the company.

Centrica
G25 – G29 (and the subsequent compliance sections) are a good overview of compliance, but must provide more detail. They should refer to:

- the development of an internal formal code (or codes) of conduct covering all employees and specific groups of employees (e.g. designated persons).
  These codes should prohibit not just disclosure but also solicitation of commercially sensitive information, and what the employee should do if he becomes aware of an actual or potential breach. Failure to comply with the code(s) would be a disciplinary matter.
- the reporting line of the compliance officer, and the possibility for there to be a compliance officer on each side of the Chinese wall, operating complementary compliance programmes.
- the need for the compliance programme(s) to be overseen by a board-level committee e.g. the audit committee.
- it would be good practice for the compliance programme to be sent for review or approval to the regulator before implementation.

E.ON Nordic
Ok.

ENEL
The structure of the compliance programme and the compliance programme report should be defined in cooperation with the national regulatory authority, while taking into account the idiosyncrasies of different national systems.

Comments of the TF URB:
Proposal for G25:
The network company will identify all processes to be examined within the compliance programme. This will be undertaken by, or at least in cooperation with, the compliance officer. All the procedures relating to the processes must be defined in written form. The procedures are part of the compliance programme. The procedures will define the behaviour of employees in relation to customers, employees of other parts of the integrated company and third companies. The compliance program should be integrated into the company quality system, where applicable.

G26: The vertically integrated company as well as the system operator ensure compliance with the processes by its employees. They will train employees in the processes they are involved in and make these processes binding. Adequate internal measures in case of non-compliance have to be defined.

E.ON Nordic
Ok.

GEODE
The processes should not be applied to employees within the vertically integrated company if they are not involved in any day-to-day business of the network operator.

SSE
The network company should provide a statement setting out the practices and procedures it has adopted or intends to adopt to comply with the duties defined above.

Svensk Energi
Guideline 26 must not be applicable to employees within the vertically integrated company where the employees are not involved in any day-to-day business with the system operator.

VEÖ
This legal requirement is fulfilled in Austria.

Centrica
G25 – G29 (and the subsequent compliance sections) are a good overview of compliance, but must provide more detail. They should refer to:

- the development of an internal formal code (or codes) of conduct covering all employees and specific groups of employees (e.g. designated persons).
  These codes should prohibit not just disclosure but also solicitation of commercially sensitive information, and what the employee should do if he becomes aware of an actual or potential breach. Failure to comply with the code(s) would be a disciplinary matter.
- the reporting line of the compliance officer, and the possibility for there to be a compliance officer on each side of the Chinese wall, operating complementary compliance programmes.
- the need for the compliance programme(s) to be overseen by a board-level committee e.g. the audit committee.
- it would be good practice for the compliance programme to be sent for review or approval to the regulator before implementation.

E.ON Nordic
Ok.

ENEL
The structure of the compliance programme and the compliance programme report should be defined in cooperation with the national regulatory authority, while taking into account the idiosyncrasies of different national systems.

Comments of the TF URB:
Proposal for G26: no change

G27: The compliance officer monitors and assesses the processes, compares them to the requirements set in the law and regulations and draws up reports on the results. To do so he is provided with all the necessary information and adequate resources. Internal mandatory Guidelines of the network operator oblige employees to support the Compliance Officer in fulfilling his tasks.

E.ON Nordic
Ok.

SSE
We agree it should be the role of the compliance officer to assess the process for compliance and that he should be provided with all the necessary information to do so.

VEÖ
This legal requirement is fulfilled in Austria.

Centrica
G25 – G29 (and the subsequent compliance sections) are a good overview of compliance, but must provide more detail. They should refer to:

- the development of an internal formal code (or codes) of conduct covering all employees and specific groups of employees (e.g. designated persons).
  These codes should prohibit not just disclosure but also solicitation of commercially sensitive information, and what the employee should do if he becomes aware of an actual or potential breach. Failure to comply with the code(s) would be a disciplinary matter.
- the reporting line of the compliance officer, and the possibility for there to be a compliance officer on each side of the Chinese wall, operating complementary compliance programmes.
- the need for the compliance programme(s) to be overseen by a board-level committee e.g. the audit committee.
- it would be good practice for the compliance programme to be sent for review or approval to the regulator before implementation.

ENEL
The structure of the compliance programme and the compliance programme report should be defined in cooperation with the national regulatory authority, while taking into account the idiosyncrasies of different national systems.

Comments of the TF URB:
Proposal for G27: no change

G28: The compliance officer sets objectives and creates a schedule for the measures to be taken to correct any deviations detected in attaining the planned results and continuing to improve the processes.

E.ON Bulgaria/Romania/Hungaria/Csech/Zapadoslovenska
According to the EU-Directives this is not the task of the compliance officer. Supervising and monitoring that is right, he/she has also a suggestion right and can make proposals. The creation of schedules for implementation is in the responsibility of the executives of the relevant departments.

E.ON Nordic
Ok.

SSE
Rather than setting objectives, we believe it should be the role of the compliance office to identify any shortcomings and provide advice to the company to assist in ensuring effective implementation of the plan.

Svensk Energi
The role of the compliance officer is to execute the compliance programme decided by the system operator. However, the compliance programme should be decided by the system operator, perhaps in cooperation with the compliance officer. The compliance officer should also be provided with the necessary tools, competencies and relative independence necessary to execute its task.
Furthermore, it is not for the compliance officer to take the corrective measures regarding any areas of non compliance with the compliance programme that he might identify. The corrective measures themselves are a matter for the system operator.

VEÖ
This legal requirement is fulfilled in Austria.

Eurelectric
“The compliance officer advises on the measures and a reasonable schedule to be taken to correct any deviations detected in attaining the planned results and contributing to improve the process. It is up to the network company to implement th necessary measures.” It is not for the compliance officer to take the corrective measures regarding any areas of non compliance with the compliance programme that he might identify. The corrective measures themselves are a matter for the DSO.

BGW
The compliance officer **advises on** the measures to be taken **in due time** to correct any deviations detected in attaining the planned results and continuing to improve the processes.

Justification:
It is not the compliance officer taking the corrective measures regarding any areas of non compliance with the compliance programme that he might identify. The corrective measures themselves are a matter for the network business or the vertically integrated company.

Centrica

G25 – G29 (and the subsequent compliance sections) are a good overview of compliance, but must provide more detail. They should refer to:

- the development of an internal formal code (or codes) of conduct covering all employees and specific groups of employees (e.g. designated persons).
  These codes should prohibit not just disclosure but also solicitation of commercially sensitive information, and what the employee should do if he becomes aware of an actual or potential breach. Failure to comply with the code(s) would be a disciplinary matter.
- the reporting line of the compliance officer, and the possibility for there to be a compliance officer on each side of the Chinese wall, operating complementary compliance programmes.
- the need for the compliance programme(s) to be overseen by a board-level committee e.g. the audit committee.
- it would be good practice for the compliance programme to be sent for review or approval to the regulator before implementation.

ENEL

The structure of the compliance programme and the compliance programme report should be defined in cooperation with the national regulatory authority, while taking into account the idiosyncrasies of different national systems.

Comments of the TF URB:

Proposal for G28:

The compliance officer shall advise on the measures to be taken to correct any deviations detected in attaining the planned results and to continue to improve the processes.

G29: As a result of the assessment and development stage, the compliance officer shall draw up an annual public report, publish it and submit it to the regulatory authority (details see G33).

ENECO
ENECO has no objections to guideline G29 "... the compliance officer shall draw up an annual public report, publish it and submit it to the regulator..." as long as the annual report is kept company confidential and is only to be submitted to the regulator. It is only to the regulator to investigate the compliance programme of a company based on if this report or other information.

GEODE
The network operator should be free to delegate any internal obligation, as well as to draw up an annual report, to staff of its choice and it should not be limited to the compliance officer.

SSE
Agreed.

Svensk Energi
The directive puts the obligation, to draw up an annual public report, publish it and submit the report to the regulatory authority, on the system operator. The system operator may delegate any internal obligations to staff of its choice, be it the compliance officer or someone else. Swedenergy does not find any reason to change this guideline following from the directive.

VEÖ
This legal requirement is fulfilled in Austria.

Centrica
G25 – G29 (and the subsequent compliance sections) are a good overview of compliance, but must provide more detail. They should refer to:

- the development of an internal formal code (or codes) of conduct covering all employees and specific groups of employees (e.g. designated persons).
  These codes should prohibit not just disclosure but also solicitation of commercially sensitive information, and what the employee should do if he becomes aware of an actual or potential breach. Failure to comply with the code(s) would be a disciplinary matter.
- the reporting line of the compliance officer, and the possibility for there to be a compliance officer on each side of the Chinese wall, operating complementary compliance programmes.
- the need for the compliance programme(s) to be overseen by a board-level committee e.g. the audit committee.
- it would be good practice for the compliance programme to be sent for review or approval to the regulator before implementation.

E.ON Nordic
Ok.

ENEL

The structure of the compliance programme and the compliance programme report should be defined in cooperation with the national regulatory authority, while taking into account the idiosyncrasies of different national systems.

Comments of the TF URB:

Proposal for G29: no change

G30: The contact details of the compliance officer, such as name, address, e-mail, phone number, have to be published in the compliance programme and communicated to all employees of the vertically integrated company in the ways generally applied (such as Intranet etc.). As a matter of principle any employee in the company shall have easy access to the compliance officer in case of discrimination or non-compliance or related disputes.

Centrica Suggest
'actual or suspected discrimination, disputes or queries, and breaches of the compliance programme'. Here and subsequently 'compliance officer' should be 'compliance officer(s)'

E.ON Nordic
Ok.

SSE
In our experience, once clear obligations have been established, companies will set up their own internal departments to monitor compliance with such obligations. In the GB framework, this would typically be a regulation department since unbundling requirements are detailed by the regulator. It is more important, in our view, that periodic compliance reports by external compliance officers are equally important.

VEÖ
This legal requirement is fulfilled in Austria.

Comments of the TF URB:
Proposal for G30:
The contact details of the compliance officer, including name, address, e-mail, phone number, must be published in the compliance programme and communicated to all employees of the vertically integrated company in the ways generally applied (such as Intranet etc.). As a matter of principle, any employee in the company shall have easy access to the compliance officer in case of actual or suspected discrimination, disputes or queries, and breaches of the compliance programme.

G31: The compliance officer shall be guaranteed the necessary independence by the management in his employment contract and through the compliance programme. He shall be trained properly in all aspects necessary for the job. He shall be equipped with the resources necessary to accomplish his mission.

Centrica
It is unclear whether 'management' refers to the management of the network company/system operator, or the management of the vertically integrated company. To be credible, it has to be the latter, and the guideline should be explicit on this point.
It would also be helpful if the appointment of the compliance officer was made subject to the approval of the regulator.

E.ON Nordic
Ok.

SSE
As noted above, we believe that the compliance officer should be an external organisation. Once this has been established with clear requirements for unbundling, we believe companies will establish their own internal compliance sections.

Svensk Energi
Swedenergy proposes the following wording of the guideline: "The compliance officer shall be guaranteed the necessary independence by the management through the compliance programme. He shall be trained properly in all aspects necessary for his task. He shall be trained properly in all aspects necessary for his task. He shall be equipped with the resources necessary to accomplish his mission."

Adapting the employment contract to the person who becomes compliance officer (when taking on his position and leaving this position) would represent an unnecessary complexity. It should be sufficient to ensure means for his independence through the compliance programme.

VEÖ
This legal requirement is fulfilled in Austria.

Eurelectric
Delete "in his employment contract and" Adapting the employment contract of the person who becomes compliance officer (when taking on this position and leaving this position) would represent an unnecessary complexity. It should be sufficient to ensure means for his independence through the compliance programme.

BGW, VDEW und VKU
The compliance officer shall be guaranteed the necessary independence by the management in his employment contract and or through the compliance programme. He shall be trained properly in all aspects necessary for the job. He shall be equipped with the resources necessary to accomplish his mission.

Comments of the TF URB:
Proposal for G31:
The compliance officer shall be guaranteed the necessary independence by the management of the network company through the compliance programme. He shall be

trained properly in all aspects necessary for the job. He shall be equipped with the resources (including human resources) necessary to accomplish his mission and provided with all the necessary information.

G32: In order to monitor the compliance programme in an appropriate manner, the compliance officer shall receive the following competencies (remuneration to be integrated in his employment contract):

- **Elaboration and improvement of the compliance programme (if possible enforcement).**
- **Control of compliance of the employees and management with the obligation of non-discrimination and equal treatment of customers through random sampling in the company.**
- **Unrestricted access to all data, documents and offices in the company.**
- **Right to request support in order to assess all processes.**
- **Organisation of training on compliance issues in the company.**
- **Instruction of new employees.**
- **Right to propose to the management disciplinary sanction in case of violation of the compliance programme in accordance with internal guidelines.**
- **Direct access to the management.**

Centrica
See comment under G31. Direct management access must refer explicitly to the senior management of the vertically integrated company at group or audit level.

E.ON Bulgaria/Romania
The remuneration of the tasks and competencies of the compliance officer are important but can be done and organised in different ways (instructions of new employees can also be delegated – not an originally task of the compliance officer). So his tasks and competencies can also be written down within the compliance programme or a side letter with the appointment etc. The proposals for implementation are too much detailed. E.g. not only processes with potential for discriminatory behaviour should be investigated.

E.ON Nordic
Ok.

SSE
See above re external compliance officer. Also, these obligations on an internal compliance officer are overly prescriptive and unworkable. For example, instruction of new employees on the obligations regarding compliance would, in our organisation, form part of the standard induction training. It is not necessary, in our view to prescribe in guidelines how organisations go about such training and to give a specific role to a compliance officer.

VEÖ
This legal requirement is fulfilled in Austria.

EBL
This guideline appears far too detailed. In our opinion it would be sufficient to repeat the statement from the directive about such a programme. On the other hand, a detailed list could be helpful and work as a voluntary checklist for some companies. It is essential that a “compliance programme” becomes a useful tool to improve business practices, not a bureaucratic hindrance.

RWE

A change in the compliance programme requires a good cause which is also relevant to and verifiable for the employees as addressees, such as a substantial organisational change. Experience has shown that compliance-related changes have had a deep impact on corporate culture. Inflationary changes of the compliance programme involve the risk, which is not to be underestimated, of diminishing the already achieved acceptance on the part of employees and sustainably disturbing the positive development of the company's compliance culture. In this connection it must be taken into account that a change in the compliance programme would again require the involvement of the codetermination bodies, approval by the Executive Board and new disclosure throughout the company.
However, to have a new decision-making process every year for an unchanged compliance programme together with the corresponding reporting would be a superfluous ritual.
The call for including all process descriptions existing within a (large) company into the compliance programme would render it impossible for the employees to read it and would mean to lose track of the reality of a large energy utility.

BGW

Justification:
Adapting the labour contract of the person who becomes compliance officer (when taking on this position and leaving this position) would produce unnecessary complexity. It is sufficient ensuring his independence by the binding compliance programme. Furthermore his field of activity should be limited to processes which have relevance for non-discriminatory network operation.

Comments of the TF URB:

Proposal for G32:
In order to monitor the compliance programme in an appropriate manner, the compliance officer shall have the following competencies which will be part of the compliance programme:

- Elaboration and improvement of the compliance programme (if possible, enforcement).
- Control of compliance of the employees and management with the obligation of non-discrimination and equal treatment of customers through random sampling in the company.
- Unrestricted access to all data, documents and offices in the company.
- Right to request support in order to assess all processes with regard to their relevance for potential discrimination.
- Organisation of training on compliance issues in the company for instruction of new employees.
- Right to propose to the management disciplinary sanction in case of violation of the compliance programme in accordance with internal guidelines.
- Direct access to the senior management of the network company.

G33: The report must inform the regulator on the following issues:

- **Promulgation of the compliance programme within the company (How were employees informed about the compliance programme? Did they receive a personal copy? Did they have to confirm the receipt of the programme with their signature making it a binding rule?)**
- **Training of the employees (How was training organised, by whom and on which issues?)**
- **Report on all incidents (Have sanctions been imposed? Has the compliance officer been involved in the procedure?)**
- **Cooperation with the management (Has the compliance officer been supported by the management? If yes how?)**
- **Consultation of the compliance officer (Has the compliance officer been consulted? If yes, on which issues?)**
- **Presentation of the result of potential process analysis**

Centrica
There is already a requirement in the directives to publish the compliance report. We believe it would be good practice for the compliance report be published online and available to users. The company report should also include details of the success rate of the compliance programme (proportions of managers covered), not just how it was handled.
The compliance officer should be automatically involved in all incidents/breaches, which should be covered in the report.

E.ON Nordic
Ok.

VEÖ
This legal requirement is fulfilled in Austria.

The report must be signed by the director of the company, published and submitted to the regulator. The regulator can write an annual report on the monitoring of the compliance programme and the compliance report.

Centrica
Who is supposed to sign the report (s), apart from the compliance officer? A senior director of the vertically integrated company? the managing director of the network subsidiary? Ultimately the report should be on behalf of the main Board, to the Chairman.

We believe it would improve confidence in the process if, as in some member states, the regulator was required by the guidelines to produce an annual report on compliance, rather than it just being an option. To give additional weight to this key area, we suggest an annual overview report from ERGEG is produced, based on the reports of the individual regulators and summarising the extent of compliance (or otherwise) with the guidelines across the EU.

SSE
In general, it would be for the regulator to determine what aspects of compliance he would require to be included in the report. Again, we would reiterate that the compliance report should be by external auditors who would potentially have the capability to be more critical of the organisations compliance programme than internal compliance officers.

RWE

As required by law, the compliance report is an independent report of the compliance officer. The call for a mandatory signature by the company's management contradicts the prominent positions of the compliance officer who is the person responsible for reporting to the regulatory authority.

Comments of the TF URB:

Proposal for G33:

The report must inform the regulator on the following issues:

- Promulgation of the compliance programme within the company
  - Information to employees about the compliance programme
  - Binding compliance programme
  - Signature of employees
- Training of the employees
  - Main issues
  - Organisation
- Report on all incidents
  - Number of sanctions imposed
  - Involvement of CO
- Cooperation from management
  - Support for CO
  - Consultation of the compliance officer
  - Number of consultations
  - Issues
- Presentation of the result of potential process analysis including audits performed by external auditors

The report must be signed by the managing director of the network subsidiary, published and submitted to the regulator. The regulator will write an annual report on the monitoring of the compliance programme and the compliance report.

ERGEG will produce an overview report, based on the reports of the individual regulators and summarising the extent of compliance with the guidelines across Europe.

Comment: it seems important for the managing director of the network subsidiary to prove his implication in non-discrimination by signing the annual report.