

# SIDE-LETTER EU DSO entity

April 2018

## 1 INTRODUCTION

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This side letter proposes how the EU DSO entity should be regulated, establishing a clear distinction between which principles, rules and guidelines should be defined in the EU Regulation on the internal market for electricity and which in the upcoming Statutes. According to the Regulation, the upcoming Statutes will be drafted by the DSOs under the scrutiny of ACER and the European Commission.

The side letter is jointly agreed by Eurelectric, EDSO for Smart Grids and Geode, European associations that overall represent almost 100% of DSOs in Europe (small, medium and large DSOs).

## 2 STATUTES VS. REGULATION

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In view of encouraging fast and proactive ground for an efficient and effective operation of the upcoming EU DSO entity, we favor a Regulation with lighter prescriptions and obligations than the current drafting endorsed by the Parliament and the Council.

It is important that the Regulation sets the general framework and guidelines for the future entity, paving the way for a structure as open and flexible as possible, easily adjustable to future changes at a later stage. This is needed particularly in light of the rapidly changing and constantly evolving energy landscape. We agree that in the Regulation it should be made clear that the entity is designed as a strong industry-focused and expertise-based body, with EU DSOs as members.

Fixing too many details in the Regulation, from specific voting rights and decision-making procedures, to specific criteria for participation/exclusion from the various bodies would be premature. All those details should be carefully analysed, supported by relevant detailed impact assessment and thus deployed in the new Statutes. If these elements are retained in the Regulation, it might be extremely difficult to amend them. It would be better to leave the task of establishing its own governance and statutes to the members of the Entity, considering that ACER and the Commission will check them not only at the beginning but any alterations of the statutes as well.

## 3 GENERAL PRINCIPLES TO BE DETERMINED IN THE REGULATION

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- All DSOs in the EU are free to associate themselves - membership is possible for all DSOs irrespective of their size.
- The voting weight for each DSO member should be proportional to the connected customer number (NRAs have the obligation to approve the number of connected customers per DSO).

- Fair and proportionate membership fees should be based on the voting weight.
- Fair terms for representation of all EU DSO entity members.
- Costs related to the activities of the EU DSO entity shall be borne by DSOs who are registered members and shall be taken into account in the calculation of tariffs.
- In the regulation, it should be ensured a level playing field between ENTSO-E and the EU DSO entity.
- General obligation for the Statutes to contain at least provisions on the following points (non-exhaustive list):
  - the entry and exit of members
  - conditions for the membership of DSOs from non-EU countries
  - membership fees and voting weights proportional to customers numbers
  - the formation of the General Assembly and its tasks and responsibilities
  - the formation of the Board of Directors and its tasks and responsibilities
  - the formation of the Expert Groups and their tasks and responsibilities
  - the formation of a Strategic Advisory Group and its tasks and responsibilities
  - the formation of the Secretariat
  - definition of proxy criteria for the GA and substitutes criteria for the BoD
  - the participation of guests and observers
  - budgetary matters: formation, annual accounts, decisions of surpluses and deficits
  - establishment of rules of procedure
  - other issues: amendments of Statutes, liquidation etc.
- Procedures adopted by the EU DSO entity shall safeguard the fair and proportionate treatment of its members and reflect the diverse geographical, technical and economic structure of its membership.
- Tasks of the EU DSO entity to include TSO-DSO collaboration.
- Statutes and rules of procedures' to be approved by ACER and the European Commission
- The Regulation should assign the leading role of drafting or amending network codes if mainly related to distribution aspects to the EU DSO Entity.
- For drafting new or amending existing EU network codes related to both transmission and distribution systems, the Regulation should assign it both to the EU DSO entity and to ENTSO-E.

#### **4 GENERAL PRINCIPLES FOR UPCOMING STATUTES**

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As already foreseen in the Regulation, the EU DSO entity consists of the following bodies: General Assembly, Board of Directors, Strategic Advisory Group, Expert Groups and a Secretary General. Their tasks, rights and composition should be laid down in the statutes and rules of procedure. Some principles the Associations regard as important are the following:

- The entity's main aim is to work not-for profit for the common interest, avoiding to influence the decision making process or to defend specific interests.
- DSOs shall have the opportunity to bring in their know-how and therefore to engage in the work of the EU DSO entity.
- The bodies of the EU DSO entity should reflect diversity and foster adequate and fair representation of all types of DSOs in Europe.

- Precautions shall be enacted that prevent DSOs from the same Member State or from the same industry group obtaining overrepresentation.
- DSOs from non-EU countries may take part in the General Assembly if suitable arrangements have been made between Europe and Third Countries such as access to the internal energy market.
- Proxies for DSOs to represent strictly DSO interests in the General Assembly should be chosen by the DSOs themselves.
- Unbundling rules will be fully respected in the drafting of the upcoming statutes as well as in the EU DSO entity decision making process.

#### **4. 1 General Assembly (GA):**

##### **a) Tasks and Obligations**

- Strategic decisions regarding the activities of the EU DSO entity and policy guidelines for the Board of Directors (BoD) are adopted by the GA;
- The GA approves and amends the statutes of the entity;
- The GA elects and dismisses the Board of Directors;
- On proposal by the BoD, the Secretary General is ratified by the GA for a four years mandate, renewable;
- Based on the proposal by the BoD, the chairpersons are ratified by the GA;
- The GA approves the budget and relieves the BoD;
- On proposal by the BoD, Expert Groups (EGs) are appointed by the GA;
- Each approval of the NCs in the BoD should be borne by consensus of the General Assembly who has the right to ask for revision.
- The GA decides the membership.
- The rules and procedures and the final statutes are approved by the GA.
- The GA adopts a code of conduct.

##### **b) Composition**

- All DSOs registered as Members are part of the GA.
- DSOs may represent themselves within the GA of the DSO Entity or choose a proxy.

##### **c) Decision making procedure and voting rights**

- Membership fees and voting weight should be proportional to connected customer numbers
- For all decisions, except for Statutes modification, the General Assembly will need DSO representing:
  - More than 65% of the number of customer connections to agree.
  - 35 % of the number of customer connections to block.

- For Statutes' modification, there is a need for 80% of represented number of customer connections to agree.
- Extra requirements on quorum will be elaborated.

## **4.2 Board of Directors (BoD):**

### **a) Tasks and Obligations**

- The BoD is the executive body of the DSO entity and will be mandated to govern the EU DSO entity within the statutes' competences.
- The Board of Directors elects and dismisses the President and one Vice-Presidents for each cluster among its members.
- The Board of Directors proposes the establishment of and the scope of work of Expert Groups to the General Assembly.
  - The Board of Directors formally appoints members of Expert Groups, taking into account their qualifications.
  - The Board of Directors approves all Expert Group proposals (e.g. network codes) and amendments.
- The Board of Directors proposes the budget and the strategy.
- The Board of Directors appoints the Secretary General, the management and support structure.
- DSO-TSO cooperation pursuant to Articles 52 and 53 of the EU electricity regulation is led by the Board of Directors.
- The Board of Directors shall establish a Strategic Advisory Group consisting of representatives of the European DSO associations.
- The Board of the EU DSO entity should meet the Strategic Advisory Group on a regular basis without any obligation to comply with its opinions (EU DSO entity as an autonomous body). However a reason opinion must be given why the Advisory Group's opinion is not taken into account.

### **b) Composition**

- BoD members must represent DSO companies.
- Proxies are not allowed but substitutes.
- The Board of Directors is elected by the General Assembly for a mandate of maximum 3 years.
- The members of the Board will be elected according to clusters based on the number of connected customers.
- Guests and observers can be admitted upon invitation from the Board, without voting rights.

### **c) Decision making procedure and voting rights**

- The voting at the Board should be per capita.

- Ordinary decisions of the Board of Directors are adopted by a simple majority.
- Extra requirements on quorum will be elaborated.

### **4.3 Experts Groups (EGs):**

#### **a) Tasks and Obligations**

- Expert Groups (EGs) are the main bodies responsible for the content related technical work (network codes).
- The Expert Groups shall be established for certain functions.
- The Expert Groups may be permanent or provisional depending on the content.
- One permanent Expert Group shall be the contact body for DSOs of all Member States, notably for those who are not members of the Board of Directors. The group shall receive all relevant information from and being consulted by other Expert Groups as well as the BoD in order to give an opinion on relevant decisions and projects. The tasks of this permanent Expert Group require extensive insight into and knowledge of national regulation and national traditions of implementing EU law.

#### **b) Composition**

- Expert Groups composition shall reflect the technical and geographical diversity across member DSOs and respect the relevant expertise.
- Each Expert Group shall not exceed 30 members, but with the possibility of 1/3 members coming from outside the membership.
- EGs members require to have technical expertise in the relevant topics.

#### **c) Decision making procedure and voting rights**

- No final decision-making assigned to Expert Groups, but a record will be made of the numbers in agreement and any dissent.

#### **d) Particular case: Permanent Expert Group**

- The tasks of the Permanent Expert Group require understanding of the networks, the electricity market and other questions regarding framework implementation. The experts must therefore, have the necessary expertise in order to fulfil the requirements of the group. The experts should comprise 1 nominee per country returned by the DSOs from each country at the General Assembly.
- The Permanent Expert Group should deal with questions regarding implementation. The Group shall also be able to take a broader approach if necessary, as the Group is the point of contact for those not represented in the BoD.

## 5.4 Strategic Advisory group:

### a) Tasks and Obligations

- Joint meeting of autonomous entities with the aim to deliberate opinions without obligation to converge or reach agreement in key issues.
- Informative (two-way street): confronting strategy, plans and decisions of EU DSO entity with opinions and expectations of the sector.
- Board of the EU DSO entity should meet the Strategic Advisory Group on a regular, recurring basis without obligation to comply with its opinion (EU DSO entity as an autonomous body).
- The Board of Directors must give reasoned opinion why the Advisory Group's opinion is not taken into account.
- The group shall receive all relevant information and is allowed to give an opinion on relevant decisions and projects.

### b) Composition:

- The four EU DSO associations (CEDEC, EDSO for Smart Grids, Eurelectric and GEODE) represented via their members (Chair (s) of respective committees) or Secretariats.
- Simple governing structure, no statutes, no authority.
- Industry-experts focus only, no member states representatives.
- The BoD may decide to invite additional experts.

### c) Decision making and voting rights

- The mandate of the Strategic Advisory Group will be limited only to expressing opinions.
- No decision-making, therefore no voting rights necessary but a record will be made of the discussions.

## 5.5 The Secretariat

### a) Tasks and Obligations

- Assist and support the bodies of the EU DSO entity..
- Inform bodies and members on the EU DSO entity activities

## 5.6 The Secretary General

### a) Tasks and Obligations

- Supervise and manage the Secretariat.
- Day-to-day management of the EU DSO entity.
- Monitor the budget and report budget status to the BoD.

**b) Appointment**

- The Secretary General is appointed by the BoD and is ratified by the GA for a four years mandate, renewable.