



## MODIFICATION REPORT for Modification Proposal P161

### Enhancement of BSCCo Board Structure

Prepared by: ELEXON

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This document has been distributed in accordance with Section F2.1.10<sup>1</sup> of the Balancing and Settlement Code.

#### RECOMMENDATIONS

Having considered and taken into due account the contents of the draft P161 Modification Report, the Balancing and Settlement Code Panel recommends:

- **that Proposed Modification P161 should not be made;**
- **the P161 Implementation Date of 30 Working Days after an Authority decision (in the event that the Authority determines that Proposed Modification P161 should be made); and**
- **the proposed text for modifying the Code, as set out in the draft Modification Report.**

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<sup>1</sup> The current version of the Balancing and Settlement Code (the 'Code') can be found at [www.elexon.co.uk/ta/bscres\\_docs/bsc\\_code.html](http://www.elexon.co.uk/ta/bscres_docs/bsc_code.html)

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### SUMMARY OF IMPACTED PARTIES AND DOCUMENTS

The following parties/documents have been identified as being potentially impacted by Modification Proposal P161:

Parties	Sections of the BSC	Code Subsidiary Documents
Suppliers <input checked="" type="checkbox"/>	A <input type="checkbox"/>	BSC Procedures <input type="checkbox"/>
Generators <input checked="" type="checkbox"/>	B <input type="checkbox"/>	Codes of Practice <input type="checkbox"/>
Licence Exemptable Generators <input type="checkbox"/>	C <input checked="" type="checkbox"/>	BSC Service Descriptions <input type="checkbox"/>
Transmission Company <input type="checkbox"/>	D <input type="checkbox"/>	Service Lines <input type="checkbox"/>
Interconnector <input type="checkbox"/>	E <input type="checkbox"/>	Data Catalogues <input type="checkbox"/>
Distribution System Operators <input type="checkbox"/>	F <input type="checkbox"/>	Communication Requirements Documents <input type="checkbox"/>
<b>Party Agents</b>		
Data Aggregators <input type="checkbox"/>	G <input type="checkbox"/>	Reporting Catalogue <input type="checkbox"/>
Data Collectors <input type="checkbox"/>	H <input type="checkbox"/>	MIDS <input type="checkbox"/>
Meter Operator Agents <input type="checkbox"/>	J <input type="checkbox"/>	<b>Core Industry Documents</b>
ECVNA <input type="checkbox"/>	K <input type="checkbox"/>	Grid Code <input type="checkbox"/>
MVRNA <input type="checkbox"/>	L <input type="checkbox"/>	Supplemental Agreements <input type="checkbox"/>
<b>BSC Agents</b>		
SAA <input type="checkbox"/>	M <input type="checkbox"/>	Ancillary Services Agreements <input type="checkbox"/>
FAA <input type="checkbox"/>	N <input type="checkbox"/>	Master Registration Agreement <input type="checkbox"/>
BMRA <input type="checkbox"/>	O <input type="checkbox"/>	Data Transfer Services Agreement <input type="checkbox"/>
ECVAA <input type="checkbox"/>	P <input type="checkbox"/>	British Grid Systems Agreement <input type="checkbox"/>
CDCA <input type="checkbox"/>	Q <input type="checkbox"/>	Use of Interconnector Agreement <input type="checkbox"/>
TAA <input type="checkbox"/>	R <input type="checkbox"/>	Settlement Agreement for Scotland <input type="checkbox"/>
CRA <input type="checkbox"/>	S <input type="checkbox"/>	Distribution Codes <input type="checkbox"/>
Teleswitch Agent <input type="checkbox"/>	T <input type="checkbox"/>	Distribution Use of System Agreements <input type="checkbox"/>
SVAA <input type="checkbox"/>	U <input type="checkbox"/>	Distribution Connection Agreements <input type="checkbox"/>
BSC Auditor <input type="checkbox"/>	V <input type="checkbox"/>	<b>BSCCo</b>
Profile Administrator <input type="checkbox"/>	W <input type="checkbox"/>	Internal Working Procedures <input checked="" type="checkbox"/>
Certification Agent <input type="checkbox"/>	X <input checked="" type="checkbox"/>	<b>Other Documents</b>
MIDP <input type="checkbox"/>		Transmission Licence <input type="checkbox"/>
TLFA <input type="checkbox"/>		
<b>Other Agents</b>		
SMRA <input type="checkbox"/>		
Data Transmission Provider <input type="checkbox"/>		

X = Identified in Report for last Procedure  
 N = Newly identified in this Report

# 1 DESCRIPTION OF PROPOSED MODIFICATION AND ASSESSMENT AGAINST THE APPLICABLE BSC OBJECTIVES

## 1.1 Modification Proposal

Modification Proposal P161 "Enhancement of BSCCo Board Structure" (P161) (Reference 1) was raised by National Grid Transco ('the Proposer') on 30 January 2004. P161 proposes that two new 'Executive Director' positions should be added to the BSCCo Board of Directors ('the Board') to improve the corporate governance of BSCCo.

According to the Proposer, the present Board structure is not in line with current best practice in corporate governance in that its membership does not include the BSCCo Chief Executive or a senior commercial/financial post holder from within BSCCo. Under the proposal, the BSCCo Chief Executive and a senior BSCCo executive, holding a commercially and financially orientated position, would be added to the Board as Directors.

The Proposer supports the conclusions of the Saxton Bamfylde Hever <sup>2</sup> (SBH) report on the Board structure. SBH, a management assessment company, was commissioned in May 2003 by the Board to review the management structure and reporting lines of BSCCo to enable the company to better fulfil its Code obligations. SBH delivered a report, containing its findings and recommendations, to the Board in November 2003. The report concluded that the present structure, which is prescribed by the Code, is not in line with 'best practice' in corporate governance and that a mixed Board (i.e. one comprising both executive and non-executive members) should be adopted. SBH proposed that BSCCo's Chief Executive and 'Chief Financial Officer' should be added to the Board.

Furthermore, the Proposer supports the SBH conclusion that the proposed Board structure would better facilitate the following:

- **Communication** (i.e. between the Board and BSCCo's executive); and
- **Commercial challenge** (i.e. scrutiny of performance and costs by non-executive Directors).

The Proposer believes that the proposed Board structure would assist the company in addressing and responding to stakeholder concerns about the effectiveness of commercial drivers and cost control in BSCCo. In addition, a majority of non-executive Directors, and the associated advantages (i.e. independent scrutiny), would be retained, as would the expertise and perspective of the two Industry Directors.

The Proposer believes that P161 would improve the efficiency of the administration of the trading arrangements (i.e. better facilitate achievement of Applicable BSC Objective (d)), through a reduction in the costs and an increase in the efficiency of BSCCo, and thereby enhance competition through a reduction in the financial barriers to entry (i.e. better facilitate achievement of Applicable BSC Objective (c)).

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<sup>2</sup> The SBH report was confidential to the ELEXON Board. However, a comprehensive set of extracts from the report (see Annex 6 of the Assessment Report), presenting SBH's recommended Board structure and the rationale for that structure, was made available to the GSMG and issued as part of the Consultation Document. Accompanying the extracts was a letter from SBH confirming that these extracts constituted an accurate representation of its views and recommendations (see Annex 7 of the Assessment Report).

An Initial Written Assessment (IWA) of P161 (Reference 2) was considered by the BSC Panel ('the Panel') at its 12 February 2004 meeting. The Panel, in accordance with BSCCo's recommendation, submitted P161 to a two-month Assessment Procedure. The Governance Standing Modification Group (GSMG) was assigned to carry out the Assessment Procedure<sup>3</sup>.

The GSMG met three times to carry out the Assessment Procedure, on 19 February 2004, 2 March 2004 and 24 March 2004. In addition, a consultation exercise was undertaken. A consultation document (Reference 3) was issued on 10 March 2004, with a deadline for responses of 19 March 2004. Eleven responses (52 Parties) were received.

An Assessment Report (Reference 4), containing the conclusions of the GSMG and the consultation responses, was presented at the Panel meeting held on 8 April 2004. By a majority, the Panel endorsed the GSMG's recommendation that P161 should be submitted to the Report Phase with a recommendation that the proposed change should not be made. The rationale for Panel's decision is summarised in Section 3 of this report.

A draft Modification Report was prepared and issued for consultation on 14 April 2004, with a 28 April 2004 deadline for responses. Eight responses (38 Parties) were received. Copies of the responses are included attached as Annex 3 and summarised in Section 6.

The Panel considered the draft P161 Modification Report (including the consultation responses) at its 13 May 2004 meeting. By a majority, the Panel confirmed its initial recommendation to the Authority that P161 should not be made. The rationale for the Panel's recommendation is documented in Section 3 of this report.

## 1.2 Proposed Modification

The Code specifies certain rights of Directors (e.g. expenses, remuneration and indemnity) and prescribes their nomination procedures and terms of office. P161, as submitted, specified that the proposed Executive Directors should have "the same rights and obligations as the Industry Directors and Other Directors" and that the senior BSCCo financial executive "shall be a person nominated and provided by BSCCo to the Board", (with the caveat that the Board must consult with the Panel prior to the appointment). The Proposer later clarified that the intention was that Executive Directors would have broadly the same rights and obligations as the Industry Directors<sup>4</sup>. However, the Proposer indicated that the detail of Executive Directors' rights, their nomination/appointment process and their terms of office should be developed during the Assessment Procedure.

The GSMG established what the Code rights, nomination/appointment process and terms of Office for the proposed Executive Directors would be under the Proposed Modification. Table A below summarises the conclusions of the GSMG:

**Table A: Proposed Rights, Obligations & Processes for Executive Directors**

Right/Process	Nature	Rationale	Location
Expenses	Entitled to re-imburement by BSCCo for "reasonable" costs and expenses incurred as a consequence of Board business	Identical to existing entitlement to expenses afforded to both "Industry Directors" and "Other Directors"	Existing Code provision would be used (i.e. C4.4.1)
Remuneration	Explicitly prohibited from additional remuneration for	Identical to existing prohibition on "Industry Directors" receiving	Existing Code provision

<sup>3</sup> The Panel made several additions to the standard Assessment Procedure Terms of Reference (see Annex 2)

<sup>4</sup> The rights of Industry Directors and Other Directors are not identical under the Code (e.g. remuneration).

	role as Director	remuneration for their services as Directors	would be used (i.e. C4.4.3)
Nomination	Incumbents of BSCCo's Chief Executive role and BSCCo's most senior commercial and financial role would automatically be eligible for Directorship by virtue of their positions	Most transparent de facto method for realising P161 proposal of 'BSCCo nomination'	Added to Code
Voting Right	'One Member One Vote' (i.e. Executive Directors would have a single vote each, like each of the other Code categories of Director)	Consistent with existing provisions in BSCCo Articles of Association (AA) and current 'best practice' in corporate governance	Existing AA provisions would apply
Appointment	By Board resolution (with Panel consultation)	Consistent with existing provisions in BSCCo Articles of Association (AA) covering appointment of Directors	Existing AA provisions would apply
Term of Office	Concurrent with incumbency in BSCCo in relevant executive position	Logical and comparable to "Industry Director" terms of office (i.e. concurrent with Panel membership)	Added to Code
Removal	- by NGT as 'Shareholder' - Disqualification (e.g. due to mental disorder, bankruptcy etc...)	Consistent with existing provisions in BSCCo Articles of Association (AA) covering removal of Directors	Existing AA provisions would apply
Indemnity	Indemnified by BSCCo for all liabilities incurred in execution of role as a BSCCo Director	Consistent with existing provisions in Code and BSCCo Articles of Association (AA) for existing Directors	Existing Code (C4.5.1) and AA provisions would apply

### 1.3 Issues raised by the Proposed Modification

The following issues were considered by the GSMG during the Assessment of Proposed Modification P161:

- Original rationale for the current Board structure;
- Role of the Board;
- Potential advantages of Executive Directors;
- Attendees versus Directors;
- Case for the Proposed Executive Directors;
- Potential Conflict of Roles for Executive Directors;
- Balance of the proposed Board structure;
- Appropriateness of the proposed Board structure for a non-profit organisation; and
- Potential Alternative Modifications.

These issues are discussed in the Assessment Report (Reference 4) and are not covered further here.

## 1.4 Assessment Against the Applicable BSC Objectives

The GSMG agreed that the relevant Applicable BSC Objective for the assessment of P161 was (d) - *the promotion of efficiency in the implementation and administration of the balancing and settlement arrangements*. The GSMG noted that Applicable BSC Objective (c) - *the promotion of effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity* – had also been cited by the Proposer as being better facilitated through implementation of P161. The GSMG considered that impact on Applicable BSC Objective (c) (e.g. a more effective Board, by applying more effective cost control, might reduce the financial barriers to entry) would be very much a second order effect.

The majority of the GSMG concluded that, on balance, P161 would not better facilitate achievement of Applicable BSC Objective (d). The case for change had not been proven, in particular there appeared to be no additional, quantifiable, benefit that would be realised by making executives Directors rather than requiring them to attend Board meetings and participate in discussions where necessary. Moreover, P161 would introduce the risk of a conflict of roles for the Executive Directors (i.e. between their objectives as managers and Directors) which could undermine the effective scrutiny and thus accountability of BSCCo. One of those GSMG members who was unconvinced that the change proposed by P161 was necessary noted that the latest Business Strategy and Annual Budget forecast decreasing BSCCo costs over the next three years.

One GSMG member believed that P161 would actually detract from the achievement of Applicable BSC Objective (d) by reducing the accountability of BSCCo. Accountability is an incentive for efficiency, and the perception that BSCCo is accountable is essential for market participants' confidence in the trading arrangements. Removing the clear distinction between the Board and the BSCCo management that currently exists would undermine the ability of the Board to exercise effective control over BSCCo costs.

However, one GSMG member, the Proposer, believed that P161 would better facilitate achievement of Applicable BSC Objective (d). P161 would enhance communication between Board and management by full involvement of BSCCo executives in Board decision-making and providing the Board with a greater insight into how BSCCo is managed on a day-to-day basis. Furthermore, P161 would enhance the accountability of the most senior, and potentially most influential, BSCCo executives to stakeholders. As Directors, these executives would assume a legal responsibility to act in the best interests of the company, whose objective is the delivery of efficient balancing and settlement arrangements, and be liable for failing to discharge that responsibility. This GSMG member acknowledged that improvements to working practices might deliver some of the benefits sought by P161, but noted that structural reform was the best way to ensure that these benefits are realised and persist. Working practices and incumbents on the Board change over time, whereas the legal duties of directorship do not (or at least less so).

## 1.5 Alternative Modification

The GSMG, whilst having considered a number of alternative solutions, concluded that there was no Alternative Modification which would better facilitate achievement of the Applicable BSC Objectives as compared to the Proposed Modification.

## 1.6 Governance and regulatory framework assessment

No impact on the Code's statutory, regulatory and contractual framework was identified.

## 2 COSTS<sup>5</sup>

### PROGRESSING MODIFICATION PROPOSAL

<b>Demand Led Cost</b>	0
<b>ELEXON Resource</b>	43 Man days £ 15,920

### IMPLEMENTATION COSTS

		Stand Alone Cost	P161 Incremental Cost	Tolerance
<b>Service Provider<sup>6</sup> Cost</b>	Change Specific Cost	0	0	N/a
	Release Cost	0	0	N/a
	Incremental Release Cost	0	0	N/a
	<b>Total Service Provider Cost</b>	0	0	N/a
<b>Implementation Cost</b>	External Audit	0	0	N/a
	Design Clarifications	0	0	N/a
	Additional Resource Costs	0	0	N/a
	Additional Testing and Audit Support Costs	0		N/a
<b>Total Demand Led Implementation Cost</b>	0	0	N/a	

<b>ELEXON Implementation</b>		10 Man days £4,000	10 Man days £4,000	+/- 10% +/- 10%
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<sup>5</sup> Clarification of the meanings of the cost terms in this section can be found in annex 7 of this report

<sup>6</sup> BSC Agent and non-BSC Agent Service Provider and software Costs



<b>Resource Cost</b>				
<b>Total Implementation Cost</b>		10 Man days £4,000	10 Man days £4,000	+/- 10% +/- 10%

## ONGOING SUPPORT AND MAINTENANCE COSTS

	Stand Alone Cost	P161 Incremental Cost	Tolerance
Service Provider Operation Cost	0	0	N/a
Service Provider Maintenance Cost	0	0	N/a
ELEXON Operational Cost	negligible (i.e. Executive Director's expenses )	negligible (i.e. Executive Director's expenses )	N/a

### 3 RATIONALE FOR PANEL'S RECOMMENDATIONS

#### 3.1 Initial Recommendation

The Panel considered the P161 Assessment Report at its April 2004 meeting and, by a majority, decided that P161 should proceed to the Report Phase with a recommendation that the change should not be made. The two Panel members who are also Directors of the BSCCo Board abstained from both the discussion and the vote.

##### 3.1.1 Majority View

The majority of Panel members concurred with the majority GSMG view - that P161 would not better facilitate achievement of the Applicable BSC Objectives – and the rationale for that view. These Panel members agreed that the current Board appeared to function satisfactorily and that the case for change, in terms of the Applicable BSC Objectives, had not been convincingly made. In particular, the benefits envisaged from making specified BSCCo executives Directors (as opposed to requiring those executives to attend Board meetings) had not been convincingly demonstrated.

Several Panel members noted and supported the GSMG's interpretation of the original DTI/Ofgem rationale for a non-executive Board - assurance that BSCCo would be subject to independent and effective scrutiny and cost control.

One Panel member noted that a significant number of responses had been received to the consultation document issued during the Assessment Procedure, including some from several organisations which do not usually respond. Furthermore, the responses presented a clear message – the organisations which the Proposer believed would benefit from P161 do not support the change.

Two Panel members noted the view expressed by both members of the GSMG and respondents to the consultation that, owing to BSCCo's funding arrangements, independent budgetary control was essential. One of these members indicated that a key consideration in devising the current Board structure was ensuring that BSCCo was accountable to those who funded its operations.

### **3.1.2 Minority View**

A minority of Panel members disagreed with the majority GSMG view and concurred with the minority view – that P161 would better facilitate achievement of the Applicable BSC Objectives – and the rationale for that view. These Panel members believed that P161 would better facilitate communication between Board and management and effective scrutiny by the Board of BSCCo. In addition, they believed that the two principal concerns of the GSMG, the possibility that Executive Directors would face conflicting objectives and a potential dilution of the ‘industry perspective’, were unwarranted.

In respect of the concern over the possibility of a ‘conflict of roles’, it was noted that mixed Boards are not only common practice but widely considered ‘best practice’ by authorities on corporate governance. Therefore, the possibility for Directors to have conflicting objectives, by virtue of also being executives, was an issue faced by all organisations with mixed Boards and would not be peculiar to BSCCo were it to adopt a mixed Board. Moreover, the legal duties of directorship would militate against this conflict manifesting itself – i.e. all Directors have a legal duty to act in a company’s best interests.

Regarding the concern over a potential dilution of the ‘industry perspective’, it was noted that Industry Directors would still be present on the Board and would retain the unfettered right to participate fully in Board decision-making. Moreover, one of those Panel members who supported P161 indicated that the ‘industry’ was not the only stakeholder to whom BSCCo should be accountable. In particular, he noted that the goal of efficient balancing and settlement arrangements was ultimately designed for the benefit of consumers. Therefore, ensuring that BSCCo is accountable to as broad a range of its stakeholders as possible would be best achieved by empowering the Board to scrutinise BSCCo as effectively as possible.

One Panel member, who supported P161, believed that a key benefit of P161 is that it would facilitate improved internal succession planning for the Chief Executive position.

### **3.2 Final Recommendation**

The Panel considered the draft P161 Modification Report and the associated consultation responses at its 13 May 2004 meeting. By a majority, the Panel confirmed its initial recommendation to the Authority that P161 should not be made. Once again, the two Panel members who are also Directors of the BSCCo Board abstained from both the discussion and the vote.

## **4 IMPACT ON BSC SYSTEMS AND PARTIES**

An assessment of the impact of P161 on BSC Systems, BSCCo and Parties was undertaken by the GSMG. No material impacts were identified.

The GSMG acknowledged that the two Executive Directors would be entitled, under the Code, to reimbursement by BSCCo for “reasonable” costs and expenses incurred as a consequence of Board business. However, the GSMG did not consider that this would represent a material impact, especially given that the Executive Directors would be BSCCo employees and that Board meetings are held at BSCCo’s offices.

## 5 IMPACT ON CODE AND DOCUMENTATION

### 5.1 Balancing and Settlement Code

Implementation of P161 would require changes to Section C "BSCCo and its Subsidiaries" and Annex X-1 "General Glossary" of the Code. The changes that would be required are summarised in the table below:

Code Section	Change(s) Required
Section C "BSCCo and its Subsidiaries"	<ul style="list-style-type: none"> <li>▪ Expand Board to include BSCCo "Chief Executive" and "Chief Financial Officer"</li> <li>▪ Provide BSCCo "Chief Executive" and "Chief Financial Officer" with same provisions regarding remuneration as "Industry Directors"</li> <li>▪ Remove restriction on BSCCo Chief Executive being a Director of the Board</li> <li>▪ Add provision that BSCCo Chief Executive and Chief Financial Officer may not be the same person</li> <li>▪ Specify that the directorships of the BSCCo "Chief Executive" and "Chief Financial Officer" end when the incumbents cease to hold those offices</li> </ul>
Annex X-1 "General Glossary"	Add entry for "Chief Financial Officer"

Legal text is attached as Annex 1 of this report.

### 5.2 Code Subsidiary Documents

Implementation of P161 would have no impact on any of the Code Subsidiary Documents.

### 5.3 BSCCo Memorandum and Articles of Association

Implementation of P161 would require changes to BSCCo's Articles of Association. The maximum permissible number of Directors would need to be raised from five to seven. The changes that would be required are attached as Annex 5 of this report.

### 5.4 Impact on Core Industry Documents and supporting arrangements

Implementation of P161 would not impact any of the Core Industry Documents (or the supporting arrangements).

## 6 SUMMARY OF CONSULTATIONS

The draft Modification Report was issued for consultation on 14 April 2004, with a 28 April 2004 deadline for responses. Eight responses (38 Parties) were received.

Consultation question	Respondent agrees	Respondent disagrees	No Opinion Expressed
Do you agree with the Panel's views on P161 and the provisional recommendation to the Authority contained in the draft Modification Report that P161 should not be made?	6 (36)	1 (1)	1 (1)

Do you agree with the Panel's view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal?	4 (27)	0	4 (11)
Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P161?	6 (34)	0	2 (4)

The following subsections summarise the responses to each question and the views of the Panel on those responses.

## 6.1 Panel's Provisional Recommendation

The majority of respondents supported the Panel's provisional recommendation that P161 would not better facilitate achievement of the Applicable BSC Objectives and thus should not be made. The following rationales were provided:

- P161 would have negative consequences – the introduction of a potential "conflict of role" for Executive Directors, the dilution of both the non-Executive and industry perspectives on Board business and a reduction in the accountability of the Board.
- P161 is not necessary – the Board is performing satisfactorily and the alleged "defects" identified in the SBH report and P161 should be able to be addressed within the existing Board structure (e.g. via executive attendance of Board meetings).
- Support for original DTI/Ofgem rationale for a non-executive Board – it ensures that the checks and balances necessary for cost control are present. One respondent noted that the nature of BSCCo's funding arrangements makes independent budgetary control essential.
- The case for P161 in terms of the Applicable BSC Objectives has not been proven.

One respondent, the Proposer, did not support the Panel's provisional recommendation that P161 should not be made. This respondent was of the opinion that P161, through the addition of BSCCo executives to the Board, would facilitate more effective communication and more efficient discharge of BSCCo's obligations. Executive Directors could only enhance the Board's ability to make decisions that best serve the interests of the company and a continued non-executive majority would ensure that no "set of views formed along partisan lines" could dominate the decisions of the Board. In addition, this respondent supported the view expressed by a minority of Panel members that the change proposed by P161 is in line with best practice and that the alleged potential conflict of interest associated with the change is an issue faced by all mixed Boards.

One respondent did not comment on the Panel's provisional recommendation.

## 6.2 Draft Legal Text

All respondents who commented on the draft legal text agreed with the Panel's view that it correctly addresses the issues identified by P161.

## 6.3 Recommended Implementation Date

All respondents who commented on the Implementation Date supported the Panel's proposed Implementation Date of 30 Working Days after an Authority decision.

## 6.4 Further Comments

One respondent indicated that, given the cost recovery structure of the current funding arrangements, the "devolution of greater financial control to BSCCo employees" would not "serve the best interests of the Code".

One respondent, who supported the Panel's provisional recommendation, noted that if it is felt that the current Board structure is not appropriate, this would best be addressed through a full review of the wider governance structure of which the Board is part, and the role of the Board within that structure. This would enable all options for reform to be explored and the key issues to be investigated (e.g. accountability and cost control) without the constraints of the Modification Procedure (e.g. a specified defect and a limit of a single Alternative Modification).<sup>7</sup>

## 6.5 Comments and views of the Panel

The Panel noted and considered the consultation responses received, in particular the response which suggested that a full review, outside the Modification Procedure, of the BSC governance model would be the best way to address any perceived issues with the current Board structure. One Panel member expressed their support for such a review. Another Panel member noted that the current transition to BETTA was premised on an endorsement of the existing BSC governance model and that, as such, a review of that model would not be appropriate at this time. Finally, the Panel noted ELEXON's view that the initiation of such a review was not within the vires of ELEXON.

## 7 SUMMARY OF TRANSMISSION COMPANY ANALYSIS

The Transmission Company reported that implementation of P161 would have no impact on it.

## 8 SUMMARY OF EXTERNAL ADVICE

No external advice was sought in relation to P161.

## 9 IMPLEMENTATION APPROACH

The GSMG recommended an Implementation Date of 30 Working Days after an Authority decision. This would provide sufficient time to make the required changes to the Code and BSCCo's Articles of Association, as well as sufficient time to pass the Board resolution necessary to appoint the proposed Executive Directors. The Panel supported the Implementation Date proposed by the GSMG.

BSCCo has estimated that making the necessary changes to the Code and Articles of Association would require 10 man days of ELEXON effort.

## 10 DOCUMENT CONTROL

### 10.1 Authorities

Version	Date	Author	Reviewer	Change Reference
0.1	13.04.2004	Change Delivery	Change Delivery	Initial Draft for Peer Review
0.2	14.04.2004	Change Delivery	Industry	Revised Draft for Consultation
0.3	30.04.2004	Change Delivery	Change Delivery	Revised Draft including Responses (Technical Review)

<sup>7</sup> The respondent clarified and expanded on this part of their response subsequent to its submission.

0.4	04.05.2004	Change Delivery	Change Delivery	Revised Draft including Responses (Quality Review)
0.5	07.05.04	Change Delivery	Panel	Final Draft for Decision
1.0	17.05.2004	Change Delivery	Authority	Final Report

## 10.2 References

Ref	Document	Owner	Issue date	Version
1	P161 Modification Proposal	-	30 January 2004	-
2	P161 Initial Written Assessment	ELEXON	6 February 2004	1.0
3	P161 Consultation Document	ELEXON	10 March 2004	1.0
4	P161 Assessment Report	ELEXON	2 April 2004	1.0

## ANNEX 1 LEGAL TEXT

See separate attachment

## ANNEX 2 MODIFICATION GROUP DETAILS

The membership of the GSMG, for the purpose of undertaking the P161 Assessment Procedure, was as follows:

Name	Organisation (Role)	Member	Meeting Attendance		
			19/02/04	02/03/04	24/03/04
David Warner	ELEXON (Chairman)	Y	Y	Y	Y
Roger Salomone	ELEXON (Lead Analyst)	Y	Y	Y	Y
Kevin Rendell	NGT	Y	Y	N	Y
James Nixon	Scottish Power	Y	Y	Y	Y
Joanne Ellis	Cornwall Consulting	Y	Y	Y	Y
John Sykes	Scottish & Southern	Y	N	N	N
Mark Manley	BGT	Y	Y	Y	Y
Neil Smith	Powergen	Y	Y	Y	Y
Terry Ballard	Innogy	Y	Y	N	Y
Jerome Williams	Ofgem	N	Y	Y	Y
Gareth Forrester	ELEXON (Attendee)	N	Y	N	Y
David Ahmad	ELEXON (Attendee)	N	Y	N	N

Please note that there was a clear distinction in role of the ELEXON GSMG members and the ELEXON attendees:

- David Warner and Roger Salomone were GSMG members, acting as Chairman and Lead Analyst respectively.
- The ELEXON attendees were present at the first meeting to provide information. David Ahmad, an ELEXON legal advisor, was present to provide information on the legal role and duties of the Board and its Directors. Gareth Forrester, manager of ELEXON's Governance and Regulatory Affairs team, was present to present and explain the SBH report's recommendations.

The Panel made the following additions to the standard Assessment Procedure Terms of Reference:

1. Assess the case for the inclusion of Executive Directors on the Board (i.e. advantages of executives as Directors rather than attendees);

2. Assess the case for specifying that a senior BSCCo executive holding a commercially and financially orientated should be added to the Board (i.e. should the appointment of the second executive be restricted to such a post holder?);
3. Assess the proposed Board structure in light of the original rationale for the current Board structure (i.e. an entirely non-executive membership and the existing balance between Industry and Other Directors); and
4. Assess whether the proposed Board structure would be appropriate for a Non-Profit Organisation such as BSCCo.

### ANNEX 3 CONSULTATION RESPONSES

See separate attachment

### ANNEX 4 CLARIFICATION OF COSTS

There are several different types of costs relating to the implementation of Modification Proposals. ELEXON implements the majority of Approved Modifications under its CVA or SVA Release Programmes. These Programmes incur a base overhead which is broadly stable whatever the content of the Release. On top of this each Approved Modification incurs an incremental implementation cost. In order to give Stakeholders a feel for the estimated cost of implementing an Approved Modification the templates shown in Attachment 1 have three columns:

- **Stand Alone Cost** – the cost of delivering the Modification as a stand alone project outside of a CVA or SVA Release, or the cost of a CVA or SVA Release with no other changes included in the Release scope. This is the estimated maximum cost that could be attributed to any one Modification implementation.
- **Incremental Cost** - the cost of adding that Modification Proposal to the scope of an existing release. This cost would also represent the potential saving if the Modification Proposal was to be removed from the scope of a release before development had started.
- **Tolerance** – the predicted limits of how certain the cost estimates included in the template are. The tolerance will be dependent on the complexity and certainty of the solution and the time allowed for the provision of an impact assessment by the Service Provider(s).

The cost breakdowns are shown below:

PROGRESSING MODIFICATION PROPOSAL	
<b>Demand Led Cost</b>	This is the third party cost of progressing a Modification Proposal through the Modification Procedures in accordance with Section F of the Code. Service Provider Impact Assessments are covered by a contractual charge and so the Demand Led cost will typically be zero unless external Legal assistance or external consultancy is required.
<b>ELEXON Resource</b>	This is the ELEXON Resource requirement to progress the Modification Proposal through the Modification Procedures. This is estimated using a standard formula based on the length of the Modification Procedure.



<b>SERVICE PROVIDER<sup>8</sup> COSTS</b>	
<b>Change Specific Cost</b>	Cost of the Service Provider(s) Systems development and other activities relating specifically to the Modification Proposal.
<b>Release Cost</b>	Fixed cost associated with the development of the Service Provider(s) Systems as part of a release. This cost encompasses all the activities that would be undertaken regardless of the number or complexity of changes in the scope of a release. These activities include Project Management, the production of testing and deployment specifications and reports and various other standard release activities.
<b>Incremental Release Cost</b>	Additional costs on top of base Release Costs for delivering the specific Modification Proposal. For instance, the production of a Test Strategy and Test Report requires a certain amount of effort regardless of the number of changes to be tested, but the addition of a specific Modification Proposal may increase the scope of the Test Strategy and Test Report and hence incur additional costs.

<b>IMPLEMENTATION COSTS</b>	
<b>External Audit</b>	Allowance for the cost of external audit of the delivery of the release. For CVA BSC Systems Releases this is typically estimated as 8% of the total Service Provider Costs, with a tolerance of +/- 20%. At present the SVA Programme does not use an external auditor, so there is no External Audit cost associated with an SVA BSC Systems Release.
<b>Design Clarifications</b>	Allowance to cover the potential cost of making any amendments to the proposed solution to clarify any ambiguities identified during implementation. This is typically estimated as 5% of the total Service Provider Costs, with a tolerance of +/- 100%.
<b>Additional Resource Costs</b>	<p>Any short-term resource requirements in addition to the ELEXON resource available. For CVA BSC Systems Releases, this is typically only necessary if the proposed solution for a Modification Proposal would require more extensive testing than normal, procurements or 'in-house' development.</p> <p>For SVA BSC Systems Releases, this will include the management and operation of the Acceptance Testing and the associated testing environment.</p> <p>This cost relates solely to the short-term employment of contract staff to assist in the implementation of the release.</p>
<b>Additional Testing and Audit Support Costs</b>	Allowance for external assistance from the Service Provider(s) with testing, test environment and audit activities. Includes such activities as the creation of test environments and the operation of the Participant Test Service (PTS). For CVA BSC Systems Releases, this is typically estimated as £40k per release with at tolerance of +/-25%. For SVA BSC Systems

<sup>8</sup> A Service Provider can be a BSC Agent or a non-BSC Agent, which provides a service or software as part of the BSC and BSC Agent Systems. The Service Provider cost will be the sum of the costs for all Service Providers who are impacted by the release.

	Releases this is estimated on a Modification Proposal basis.
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### TOTAL DEMAND LED IMPLEMENTATION COSTS

This is calculated as the sum of the total Service Provider(s) Cost and the total Implementation Cost. The tolerance associated with the Total Demand Led Implementation Cost is calculated as the weighted average of the individual Service Provider(s) Costs and Implementation Costs tolerances. This tolerance will be rounded to the nearest 5%.

### ELEXON IMPLEMENTATION RESOURCE COSTS

Cost quoted in man days multiplied by project average daily rate, which represents the resources utilised by ELEXON in supporting the implementation of the release. This cost is typically funded from the "ELEXON Operational" budget using existing staff, but there may be instances where the total resources required to deliver a release exceeds the level of available ELEXON resources, in which case additional Demand Led Resources will be required.

The ELEXON Implementation Resource Cost will typically have a tolerance of +/- 5% associated with it.

### ONGOING SUPPORT AND MAINTENANCE COSTS

<b>ELEXON Operational Cost</b>	Cost, in man days per annum multiplied by project average daily rate, of operating the revised systems and processes post implementation.
<b>Service Provider Operation Cost</b>	Cost in £ per annum payable to the Service Provider(s) to cover staffing requirements, software or hardware licensing fees, communications charges or any hardware storage fees associated with the ongoing operation of the revised systems and processes.
<b>Service Provider Maintenance Cost</b>	Cost quoted in £ per annum payable to the Service Provider(s) to cover the maintenance of the amended BSC Systems.

## ANNEX 5 PROPOSED TEXT TO MODIFY BSCCO MEMORANDUM AND ARTICLES OF ASSOCIATION

To implement P161, the following changes to BSCCo's Articles of Association would be required:

### 18. Number of Directors

Unless otherwise determined by ordinary resolution, the number of directors shall not be greater than ~~five~~ seven and the minimum number of directors shall be one.

### 26. Majority shareholders' right to appoint and remove directors

Any member or members holding a majority in nominal amount of the issued ordinary share capital which confers the right to attend and vote at general meetings may at any time appoint any person to be a director, whether as an additional director or to fill a vacancy, and may

remove from office any director howsoever appointed provided that no such appointment or removal shall take effect unless it ~~has first been approved in accordance with the Code~~ is in accordance with the provisions of the Code. Any such appointment or removal shall be effected by notice in writing to the Company signed by the member or members making the same or in the case of a corporate member signed by any director thereof or by any person so authorised by resolution of the directors or of any other governing body thereof. Any such appointment or removal shall take effect when the notice effecting the same is delivered to the registered office or to the secretary of the Company, or is produced at a meeting of the directors. Any such removal shall be without prejudice to any claim which a director may have under any contract between him and the Company.