

Stage 01: Initial Written Assessment

P303 'Amendments to the Provisions for BSCCo Directors'

This Modification Proposal seeks to amend the current BSCCo Board Director provisions with the aim of increasing the pool of potential candidates that may fill a BSCCo Board Director position.



ELEXON recommends P303 is progressed to the Assessment Procedure for assessment by a Workgroup

This Modification is expected to impact:

- BSCCo (ELEXON)
- BSC Parties

What stage is this document in the process?

01 Initial Written Assessment

02 Definition Procedure

03 Assessment Procedure

04 Report Phase

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About This Document

This document is an Initial Written Assessment (IWA), which ELEXON will present to the Panel on 12 June 2014. The Panel will consider the recommendations and agree how to progress P303.



Any questions?

Contact:

Claire Anthony



claire.anthony@elexon.co.uk



020 7380 4293

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1 Why Change?

What is the BSCCo?

ELEXON Limited fulfils the role of the Balancing and Settlement Code (BSC) Company (BSCCo) as defined in BSC Annex X-1.

BSC Section C sets out the powers, functions, responsibilities and constitution of BSCCo, whose principle role is to give proper, effective and efficient implementation of the BSC.

What is the function of the BSCCo Board?

Under the BSC, the Board is responsible for:

- Appointing the BSCCo Chief Executive after consultation with the Panel (BSC Section C4.6); and
- Approving BSCCo's Annual Budget following consultation with BSC Parties and other interested parties (BSC Section C6.4).

In addition to its specific BSC requirements, the Board has the wider role of directing BSCCo. This role includes responsibility for monitoring BSCCo's performance, scrutiny of BSCCo's finances and ensuring that BSCCo operations are subject to effective cost-control. The manner in which the Board fulfils its role is not prescribed in the BSC. However, requirements (e.g. regarding quorum at meetings) are included in BSCCo's Articles of Association.

Recent changes to Board structure

P281 'Change of BSCCo Board of Directors and Chairman'

The current BSC Board arrangements in BSC Section C4.1.3 were introduced by [P281 'Change of BSCCo Board of Directors and Chairman'](#) in October 2012.

The size and composition of the BSC Board is determined by a Nomination Committee as defined in BSC Annex X-1. The Terms of Reference of the Nomination Committee are approved by the BSC Panel. The BSC states that the Terms of Reference must set out that the majority of the Board directors (excluding the Chairman) must have relevant electricity industry experience, and that at least two directors should be 'industry independent' members; meaning that in the last five years they must not have been a Panel Member or an employee, director or representative of a Party.

Board Member expenses and remuneration

All directors are entitled to recover reasonable costs and expenses including travel and accommodation costs. However, only industry independent directors are remunerated for their time and effort as directors on the Board. As set out in BSC Section C4.4.2, industry independent directors' remuneration and benefits are decided by the Panel Chairman following consultation with the Panel.

Although considered during the discussions of the Modification, P281 did not amend the restriction in BSC Section C4.4 that only the industry independent directors shall be entitled to receive remuneration and benefits.



Where can I find more information about the Nomination Committee?

You can find further information on the duties and responsibilities of the Nomination Committee in its Terms of Reference [here](#).

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Some Workgroup members had expressed the view that under the P281 arrangements, industry Board members should be remunerated, with the Nomination Committee Terms of Reference allowing some direction around pay, to ensure that Board members of the right calibre can be found (i.e. without the framework of Panel elections). However, the Group agreed that changes to Board remuneration arrangements were outside the scope of P281 and should be considered separately.

Overall, the P281 Workgroup agreed that no changes around Board remuneration arrangements should be made. However, the Panel and Workgroup highlighted that a separate change in this area could be progressed in the future. Similarly, the Authority decision letter on P281, whilst not explicitly commenting on remuneration, did not place any restrictions on a further modification being raised if it was considered that changes to other elements of the BSCCo Board arrangements would further contribute to the achievement of efficiency in the BSC.

What is the issue?

The Proposer of P303 believes that the current BSCCo Board Director provisions restrict the pool of candidates who may apply, with the absence of remuneration for industry directors and the requirement of a five year gap in the definition of an industry independent director.

There are two elements that the Proposer is seeking to address with the aim of increasing the pool of potential candidates:

Firstly, the Proposer argues that the current lack of remuneration for industry members does not reflect the considerable time and effort that an industry member will need to commit in their capacity as a Board member. This lack of remuneration for time and effort may put off potential candidates to the role.

The Proposer also notes that it is possible that industry directors may not be employed, and whilst they but may have the experience to be an industry Board member, they may not be encouraged to apply while there is an absence of remuneration, which again restricts the pool of suitable candidates to fill the positions.

Furthermore, the Proposer also believes that there is an inequality with the current situation, as the existence of remuneration for other industry independent directors reflects their value to the Board and the time and effort they commit. The role of a BSCCo Board director is a responsible and substantive one and the Proposer therefore argues that this effort should be reflected for all directors, as it may pose as a barrier for potential candidates who may wish to apply to fill a position.

Secondly, the Proposer argues that the timescale in the current definition of an industry independent director of a five year gap since a Board member has been a Panel Member or an employee, director or representative of a Party is not necessary. It is not clear why there needs to be this gap rather than simply the requirement that a director is not currently a Panel Member or an employee, director or representative of a Party. Having this requirement again restricts the potential pool of candidates who may apply to fill a director position.

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Proposed solution

P303 seeks to amend the current BSCCo Board Director provisions in BSC Section C with the aim of increasing the pool of potential candidates that may apply to fill a BSCCo Board Director position. To achieve this, P303 proposes the following two changes:

1) Remuneration restriction

The current restriction that only industry independent directors can be awarded remuneration and benefits should be removed to ensure that all directors are eligible to be awarded remuneration and benefits as determined by the Panel Chairman after consultation with the Panel.

The role of a BSCCo director is a responsible and substantive one, requiring considerable time and effort on behalf of the post holder to discharge the role well. It is therefore envisaged that remuneration would support industry directors to fulfil their roles both through remuneration itself, and through the signal that this would send on the importance of the position.

2) Five year industry independent gap requirement

The definition of an industry independent director needs to be amended by removing the requirement of a five year gap since a Board member has been a Panel Member or an employee, director or representative of a Party. Instead, the requirement should only determine that a director is not currently a Panel Member or an employee, director or representative of a Party.

It is anticipated that removing this specific timescale within the requirement would also increase the pool of suitable industry independent candidates. For the avoidance of doubt, these directors would also be eligible for remuneration under the current rules.

Applicable BSC Objectives

The Proposer believes that P303 will better facilitate:

- **Applicable BSC Objective (d)** as the change would improve the functioning of the BSCCo Board and improve the quality of scrutiny, challenge and decision-making.

The Proposer believes this would be achieved by ensuring that all members, including industry appointees, are properly able to devote the time and commitment required to discharge their roles effectively through being appropriately remunerated. It would therefore increase the pool of candidates able to devote the necessary time and effort to the role. Changing the five year requirement around industry independent directors would also expand the number of suitably qualified candidates eligible to become Board members who would, under the current rules, qualify for remuneration.



What are the Applicable BSC Objectives?

(a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence

(b) The efficient, economic and co-ordinated operation of the National Electricity Transmission System

(c) Promoting 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

(d) Promoting efficiency in the implementation of the balancing and settlement arrangements

(e) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency [for the Co-operation of Energy Regulators]

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3 Areas to Consider

In this section we highlight areas which we believe the Panel should consider when making its decision on how to progress this Modification Proposal, and which a Workgroup should consider as part of its assessment of P303. We recommend that the areas below form the basis of a Workgroup's Terms of Reference, supplemented with any further areas specified by the Panel.

Implementation approach

We recommend that the P303 Workgroup considers the appropriate implementation approach for the proposed changes.

When should the proposed changes go live and what are the impacts of these?

The Workgroup needs to consider at what point the new provisions would apply. The Workgroup therefore needs to take into account whether the proposed changes should only apply to future Board members, i.e. the next time a Board position is advertised or whether the proposed changes should apply to the existing Board members as well.

The Workgroup also needs to consider what the impacts of the proposed changes would be on the existing Board make-up. It should be taken into account how the proposed changes may therefore affect the type of applicant that could apply for the position in future.

Terminology

Currently, both industry directors and industry independent directors have relevant skills, expertise and knowledge, and are all independent Board members. The use of independent therefore causes some confusion as it appears that other directors are not acting in an independent manner. If the requirement of five years without being a representative or employee of a party is amended, the Workgroup should consider whether a new term such as 'industry affiliated' should be used instead to remove any potential confusion.

Areas to consider

The table below summarises the areas we believe a Modification Workgroup should consider as part of its assessment of P303:

| Areas to Consider |
|--|
| What changes are needed to BSC documents? |
| Consider the appropriate implementation approach for the proposed changes |
| What are the impacts on the existing Board make up? |
| Discuss the process of remuneration for existing industry members <ul style="list-style-type: none">Should the process currently used for industry independent members be mirrored for industry members? |
| Are there any Alternatives to stop the restriction of suitable candidates? |
| What are the benefits of P303? |
| Does P303 better facilitate the Applicable BSC Objectives than the current baseline? |

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4 Proposed Progression

Next steps

We recommend the Modification is progressed to a three month Assessment Procedure for consideration by a Workgroup.

The Proposer is not requesting that P303 is progressed as a Self-Governance Modification Proposal. We agree that it does not meet the Self-Governance Criteria (as defined in BSC Annex X-1), because it would have a material effect on the BSC's governance procedures.

Workgroup membership

We recommend that the P303 Workgroup should comprise of any interested BSC Parties and any other interested parties.

Timetable

We recommend that P303 undergoes a three month Assessment Procedure, meaning the Workgroup will submit the Assessment Report to the Panel at its meeting on 11 September 2014.

As part of the Assessment Procedure, the Workgroup will need to develop and consider the merits of the Proposed Modification (and any Alternative). We will issue the solution for industry consultation (15 Working Days duration) for industry to comment on the Proposed (and any Alternative) solution.

Proposed Progression Timetable for P303

| Event | Date |
|--|-----------------------|
| Present Initial Written Assessment to Panel | 12 Jun 14 |
| Workgroup Meeting | W/B 30 Jun 14 |
| Workgroup Meeting | W/B 14 Jul 14 |
| Assessment Procedure Consultation | 25 Jul 14 – 15 Aug 14 |
| Workgroup Meeting | W/B 18 Aug 14 |
| Present Assessment Report to Panel | 11 Sep 14 |
| Report Phase Consultation | 12 Sep 14 – 3 Oct 14 |
| Present Draft Modification Report to Panel | 13 Nov 14 |
| Issue Final Modification Report to Authority | 14 Nov 14 |



What is the Self-Governance Criteria?

A Modification that, if implemented:

- (a) is unlikely to have a material effect on:
 - (i) existing or future electricity consumers; and
 - (ii) competition in the generation, distribution, or supply of electricity or any commercial activities connected with the generation, distribution, or supply of electricity; and
 - (iii) the operation of the national electricity transmission system; and
 - (iv) matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies; and
 - (v) the Code's governance procedures or modification procedures; and
- (b) is unlikely to discriminate between different classes of Parties.

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5 Likely Impacts

This is our initial view of the probable impacts of this Modification. The detailed impact of the Modification will be fully assessed as part of the Assessment Procedure.

Impact on BSC Parties and Party Agents

| Party/Party Agent | Potential Impact |
|-------------------|---|
| BSC Parties | The proposed changes may impact the funding of BSCCo. |

Impact on Transmission Company

There is no direct impact however the Transmission Company may have an interest in the governance of BSCCo as a BSC Party.

Impact on BSCCo

| Area of ELEXON | Potential Impact |
|----------------|---|
| BSC Governance | The governance of ELEXON (as BSCCo) would be amended by P303. |

Impact on Code

| Code Section | Potential Impact |
|--------------|---|
| Section C | Changes will be required to implement the solution. |

Impact on BSC Systems and processes

No impact.

6 Recommendations



We invite the Panel to:

- **AGREE** that P303 progresses to the Assessment Procedure;
- **AGREE** the proposed Assessment Procedure timetable;
- **AGREE** the proposed membership for the P303 Workgroup; and
- **AGREE** the Workgroup's Terms of Reference.

Recommendation

We recommend the Panel submits P303 to a three month Assessment Procedure.

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Appendix 1: Glossary & References

Glossary of defined terms

Acronyms and other defined terms used in this document are listed in the table below.

| Glossary of Defined Terms | |
|---------------------------|---------------------------------------|
| Acronym | Definition |
| BSC | Balancing and Settlement Code |
| BSCCo | Balancing and Settlement Code Company |
| IWA | Initial Written Assessment |

External links

A summary of all hyperlinks used in this document are listed in the table below.

All external documents and URL links listed are correct as of the date of this document.

| External Links | | |
|----------------|---|---|
| Page(s) | Description | URL |
| 3 | Link to Nomination Committee Terms of Reference webpage | http://www.elexon.co.uk/wp-content/uploads/2013/06/Nomination-Committee-Terms-Of-Reference-1.0.pdf |
| 3 | Link to P281 webpage | http://www.elexon.co.uk/mod-proposal/p281-change-of-bscco-board-of-directors-chairman/ |