



**Implementation of TSO and DSO  
Unbundling Provisions  
Focus on DSO unbundling**

**Legal affairs committee  
Brussels, 3 July 2019**

## Implementation of TSO and DSO Unbundling Provisions

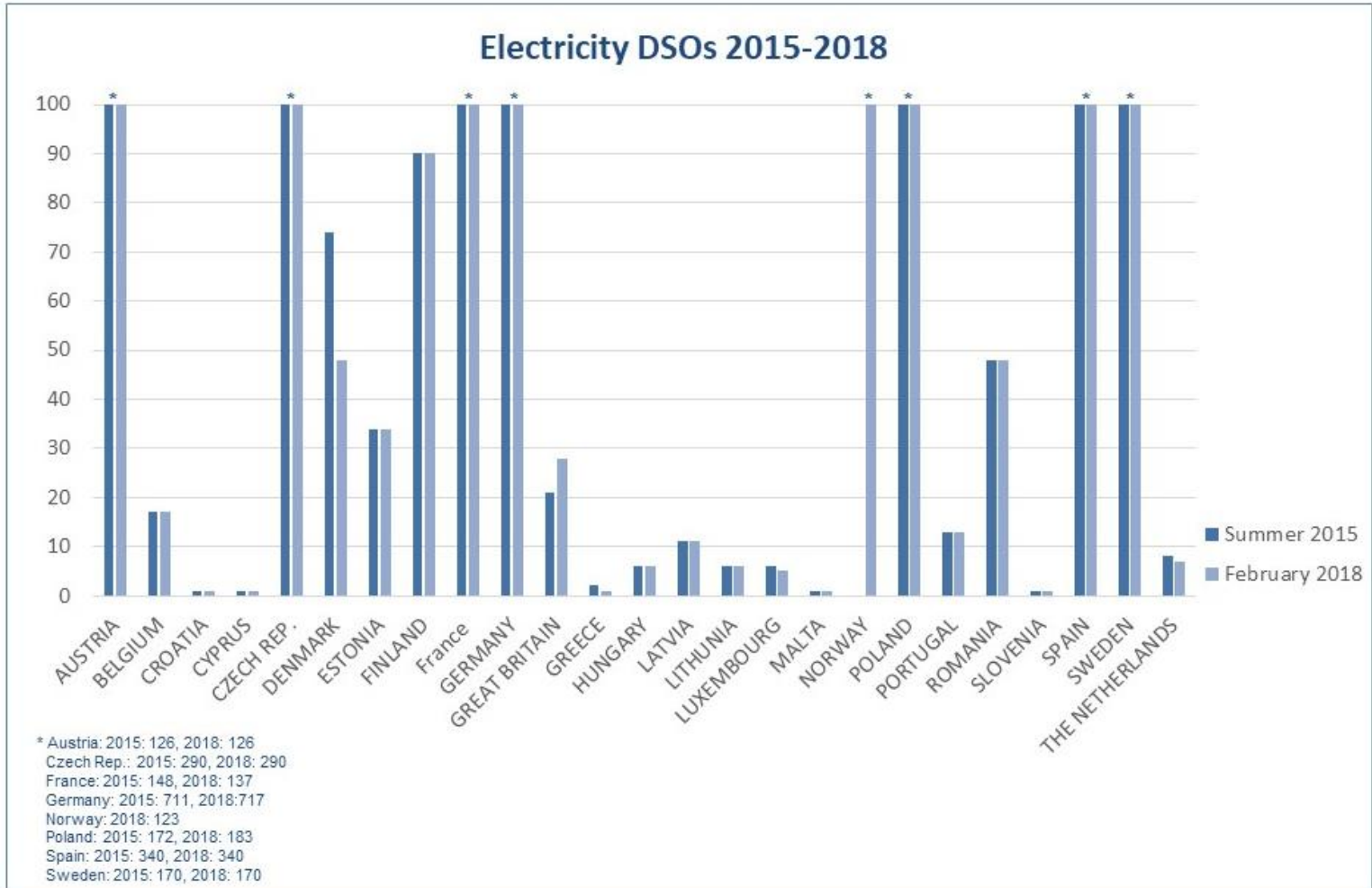
### Main outcomes of DSOs status review

- DSO landscape:
  - ▶ No major change in the total amount of DSOs in Europe
  - ▶ Clear contrasts with TSOs' where a consolidation trend has been visible
  - ▶ Difficult to implement detailed and fully harmonised European standards as regards DSOs
- Main conclusion: satisfactory independence level for most DSOs
- DSO branding: almost half of the NRAs of the participating Member States stated that they had been directly involved in a DSO rebranding/communication process change



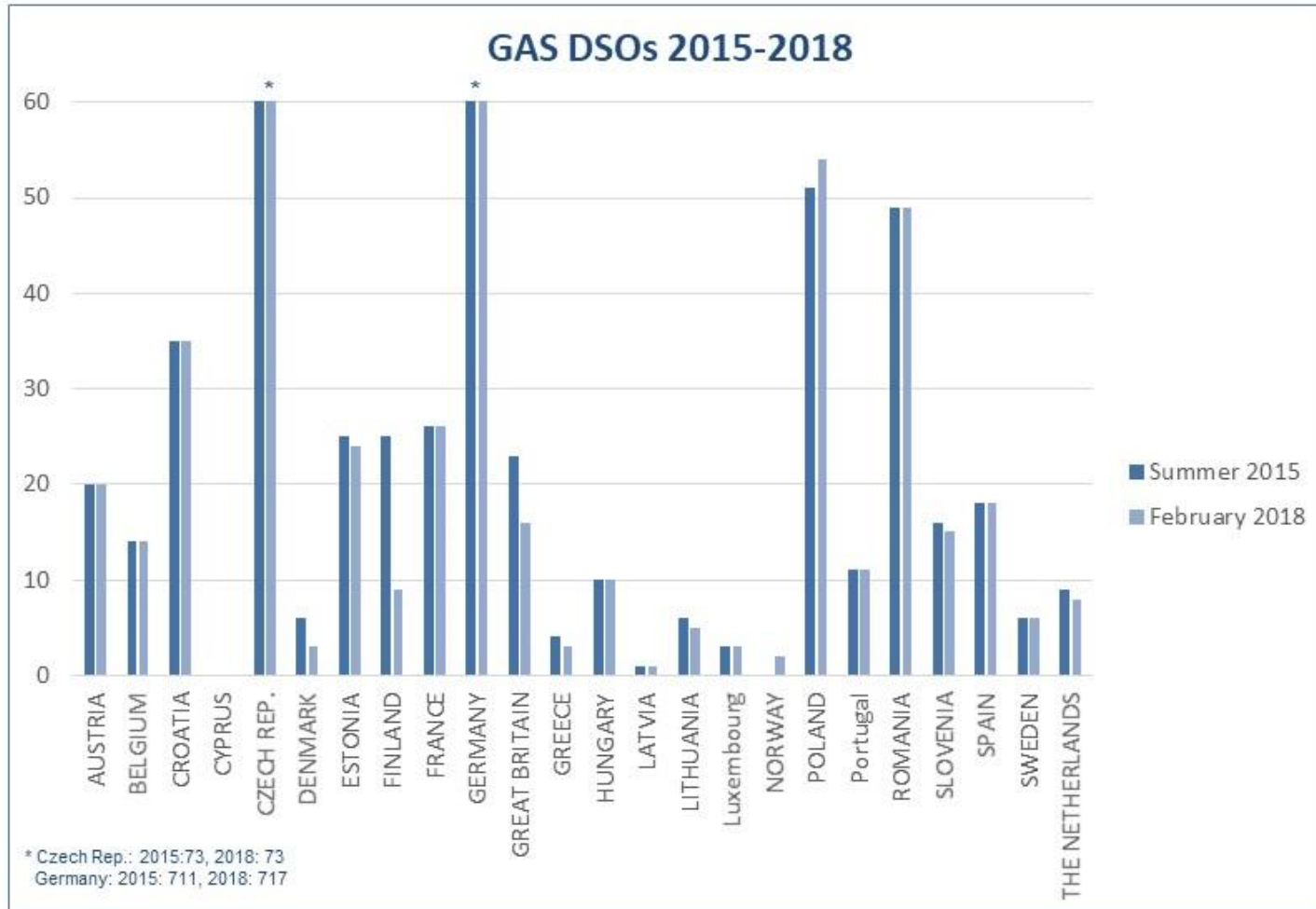
# Implementation of TSO and DSO Unbundling Provisions

## Main outcomes of DSOs status review



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## Implementation of TSO and DSO Unbundling Provisions

### Focus on DSO rebranding/naming

- One of the most relevant issues NRAs had to deal with in terms of DSO unbundling is linked to DSOs' naming and branding
- **Article 26(3) of 2009/72 Electricity Directive:** *“vertically integrated distribution system operators shall not, in their communication and branding, create confusion in respect of the separate identity of the supply branch of the vertically integrated undertaking”*
- **Commission staff working paper interpretative note on the unbundling regime:** *“This implies a general obligation to avoid any confusion for consumers between the DSO and the supply company. In order to identify whether or not there is confusion in a particular case, European Union trade mark law may serve as a point of reference”*



## Implementation of TSO and DSO Unbundling Provisions

### Focus on DSO rebranding/naming

- Council Regulation (EC) n° 207/2009 of 26 February 2009 on the Community trade mark
- Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks
- ECJ, 11 November 1997, Sabel/Puma, C-251/95:
  - ▶ Appreciation of the likelihood of confusion depends on numerous elements and, in particular, on the recognition of:
    - the trade mark on the market
    - the association which can be made with the used or registered sign
    - the degree of similarity between the trade mark and the sign and between the goods or services identified
  - ▶ Global appreciation of the visual, oral or conceptual similarity of the marks must be based on the overall impression given by the marks (signs, words, or designs, letters, numerals, colours, sounds, *etc.*) bearing in mind their distinctive and dominant components
  - ▶ Perception of marks in the mind of the average consumer of the type of goods or services in question plays a decisive role in the global appreciation of the likelihood of confusion
- General Court, 5 May 2015, Sky/Skype, T-183/13:
  - ▶ Risk that the public might believe that the goods or services at issue come from the same undertaking or from economically-linked undertakings constitutes a likelihood of confusion



## Implementation of TSO and DSO Unbundling Provisions

### Focus on DSO rebranding/naming

#### Different scenarios:


- ▶ Renaming/rebranding conducted voluntarily by DSOs
- ▶ Naming/branding challenged before Courts/dispute settlement bodies
- ▶ Renaming/rebranding requested by NRAs





## Implementation of TSO and DSO Unbundling Provisions


### Focus on Denmark

Old VIU logo	Old DSO logo
	





## Implementation of TSO and DSO Unbundling Provisions

### Focus on Denmark

New VIU logo	New DSO logo
	




## Implementation of TSO and DSO Unbundling Provisions Focus on Luxembourg

Old VIU logo	Old DSO logo
	





## Implementation of TSO and DSO Unbundling Provisions Focus on Luxembourg

New VIU logo	New DSO logo
	



## Implementation of TSO and DSO Unbundling Provisions



### Focus on France

VIU logo	Old DSO logo
	



## Implementation of TSO and DSO Unbundling Provisions



### Focus on France

VIU logo	Updated DSO logo
	



## Implementation of TSO and DSO Unbundling Provisions

### Focus on France

VIU logo	New DSO logo
	



## Implementation of TSO and DSO Unbundling Provisions

### Open questions

- Potential for improvement:

- ▶ Shared services?
- ▶ Personnel resources?

- Next steps:

- ▶ Further refinements of the independence criteria?
- ▶ Stability zone reached? Simple need to consolidate achievements?

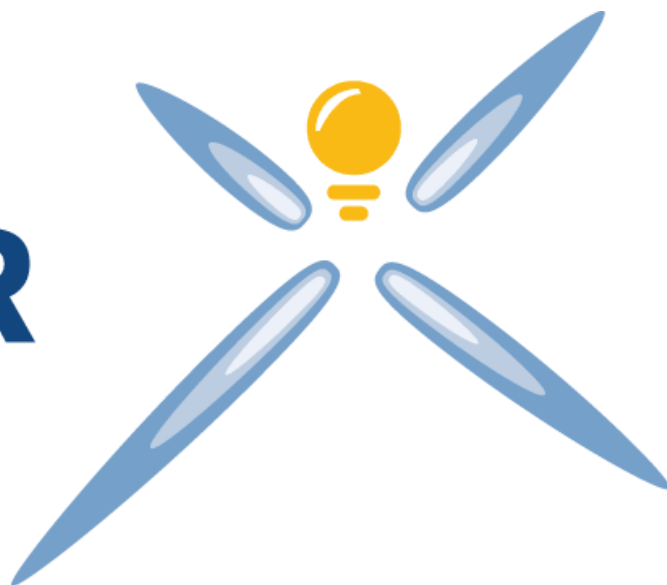




# Thank you for your attention!

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