



3rd Legislative Package Input
Paper 4: ETSO*plus*/GIE*plus*

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This paper considers the legislative requirements for establishing the enhanced EU networks bodies, ETSOplus and GIEplus. It is important to note that these organisations must comprise fully unbundled TSOs (the regulatory requirements of unbundling are considered further in Paper 1 of this package). If full ownership unbundling is not achieved within the “3rd package” of legislation, elements of these arrangements will need to be reconsidered.

1 Establishment of ETSOplus and GIEplus

ETSOplus and GIEplus must be given a legal form in European law and their form must recognise that the underlying purpose of these bodies is to fulfil obligations placed on individual TSOs which can in practice only be fulfilled by actions taken by TSOs collectively.

Proposal

An obligation is placed on each EU electricity TSO that it must ensure that ETSOplus exists, and that each TSO must provide its share of the resources necessary for the operation of ETSOplus. The requirements that the form of ETSOplus must fulfil must be established in legislation as it is necessary that it is within the EU and that it has an appropriate legal form. This form must recognise the responsibilities of ETSOplus, but must also take account of any restrictions imposed by competition law. Restrictions on the activities of ETSOplus will be to the scope identified in legislation.

A parallel obligation should apply to EU gas TSOs for the establishment of GIEplus.

Legal instruments

The obligations on TSOs to be incorporated in a new Regulation establishing the ESER. Requirements on ETSOplus and GIEplus also to be included in a new Regulation.

2 Objectives of ETSOplus and GIEplus

To co-ordinate the activities of EU TSOs in respect of their obligation to have in place a secure, economic and co-ordinated European electricity/gas grid.

3 Functions of ETSOplus and GIEplus

- The development and maintenance of technical standards, including operating and security standards.
- The development and maintenance of methodologies for the allocation of the costs and risks of the European electricity and gas grids (recognising that the ITC mechanism already exists in law for electricity).
- Facilitating co-operation between TSOs to improve efficiency or security.
- The preparation of reports – listed separately for electricity and gas e.g.:
 - ETSOplus: winter outlook, 7 year statement, annual report;
 - GIEplus: 10 year statement, winter outlook, and annual report regarding security of supply.

4 Obligations on ETSOplus and GIEplus

Requirements vis-à-vis: confidentiality, accuracy, having approved internal rules in place, the efficient management of the affairs of ETSOplus and GIEplus, and the publication of internal rules and accounts. ETSOplus and GIEplus must also be obliged to undertake work properly requested by the Regulators' Council of the ESER.

5 Powers of ETSOplus and GIEplus

Principally data collection and data sharing. (Further consideration is needed of other powers that may be needed in an emergency situation – e.g. suspending all or parts of the technical standards).

6 Organisation

- The financing of ETSOplus and GIEplus remains unclear – reflecting Member State's contribution to the Community budget, or basing financial contributions on voting rights, as with ERGEG, does not seem appropriate in a body comprising commercial entities which are not always national. A clear, long term basis for appropriate funding must, however, be established.
- Recovery of ETSOplus and GIEplus costs – TSOs could recover the cost of their contribution through tariffs if the EU contribution formula was adopted.
- Internal rules – to be prepared by ETSOplus and GIEplus, and subject to approval by the Regulators' Council of the ESER. The Regulators' Council of the ESER should impose rules if there is no agreement after a reasonable time.
- Keeping and publishing accounts.

7 Decision making

As with the financing of ETSOplus and GIEplus, the appropriate decision making procedures to ensure the functions described above are not clear. ETSOplus and GIEplus might have an 'executive board', who would act by Qualified Majority Voting as per the Regulators' Council of the ESER. Country votes might be allocated according to network user numbers where there is more than one TSO per country (or some other method?).

Where decisions are not significant from a European perspective (and therefore are regional) decisions should be taken by the ETSOplus and GIEplus executive boards on the basis of a recommendation of the group of TSOs from that region. In these circumstances the ETSOplus and GIEplus executive boards should be able to amend the recommendation only on grounds of wider European interest.

Certain decisions should be subject to the regulatory approval of the Regulators' Council of the ESER. These include decisions relating to technical standards, investment plans, cost allocation methodology, and changes to ETSOplus and GIEplus internal rules.

8 Disputes

ETSOplus and GIEplus must have a transparent and fair process for dealing with disputes. The disputes authority should be Regulators' Council of the ESER (see paper C07-SER-13-06-2-PD).

9 Enforcement

In the case of non-fulfilment of the statutory obligations on ETSOplus and GIEplus, the Regulators' Council of the ESER will be empowered to investigate. The relevant NRA responsible should allocate any resulting penalties to culpable TSOs directly after establishing fault. ETSOplus and GIEplus should be obliged to keep full records or an audit trail of their activities to enable the Regulators' Council to undertake this enforcement task.

In order to remedy any non-fulfilment of obligations by ETSOplus and GIEplus, within a reasonable time the Regulators' Council of the ESER must be able to impose a solution to the situation (e.g. impose changes to standards etc).

10 Liabilities

ETSOplus and GIEplus will be liable for damages in the normal way for e.g. negligently releasing commercially confidential information, or negligent actions which cause damage. ETSOplus and GIEplus should not be protected from the financial consequences. Costs are to be shared by member TSOs and not passed through to customers in tariffs.

11 Transparency and accountability

The Regulators' Council of the ESER will provide non-binding guidelines specifying the contents of the reports identified above. Further reports and information should be collected and provided and, where appropriate, published, at the request of the Regulators' Council or the European Commission.