

## **Memorandum of Understanding**

between

on the one hand:

the European Network of Transmission System Operators for Electricity, an international non-profit association incorporated under the laws of Belgium, having its registered office at Rue de Spa 8, B-1000 Brussels, Belgium, hereby represented by the Secretary-General (**ENTSO-E**)

and, on the other hand:

the European Distribution System Operators Entity, a non-profit association incorporated under the laws of Belgium, having its registered office at Avenue de Tervueren 188A / Box 4, 1150 Sint-Pieters-Woluwe (Brussels), Belgium, hereby represented by the Secretary-General (**EU DSO Entity**).

*ENTSO-E and EU DSO Entity will hereafter be referred to collectively as "the Signatories" and individually as "the Signatory".*

### **Whereas:**

- (1) Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast) acknowledges that new challenges arise with creating an internal market for electricity. Member States of the European Union are expected to foster the integration of their national markets and cooperation among system operators at Union and regional level. The integration of electricity markets requires a high degree of cooperation among system operators, market participants and regulatory authorities.
- (2) In order to increase efficiencies in the electricity distribution networks in the Union and to ensure close cooperation with transmission system operators (hereinafter: "TSOs") and the ENTSO for Electricity, an entity of distribution system operators (hereinafter: "DSOs") in the Union (EU DSO Entity) should be established. For this purpose, Article 52(1) of the Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) provides that DSOs shall cooperate at Union level through EU DSO Entity, in order to promote the completion and functioning of the internal market for electricity, and to promote optimal management and a coordinated operation of distribution and transmission systems.
- (3) In line with Article 5 of Regulation (EC) 2009/714, the European Network of Transmission System

Operators for Electricity, ENTSO-E AISBL, was established on 19 December 2008 at Brussels (Belgium), applying the same principles as for the EU DSOs, but with regard to transmission systems.

- (4) Preceding this Memorandum of Understanding, four associations representing European Distribution System Operators (DSOs), namely CEDEC, E.DSO, Eurelectric and GEODE, acting on behalf of the European DSOs, have been involved with the establishment of EU DSO Entity and the development of this Memorandum of Understanding.
- (5) On 7 April 2021, the European Distribution System Operators Entity, EU DSO Entity [AISBL], is established in accordance with Article 53 of Regulation (EU) 2019/943, which, in terms of cooperation at Union and regional level, shall act as a counterpart of ENTSO-E.
- (6) With this Memorandum of Understanding, ENTSO-E and EU DSO Entity wish to have an enduring cooperation to enable the implementation of their tasks pursuant to Regulation (EU) 2019/943.

## **1. Objective**

The Signatories express in this Memorandum of Understanding their willingness to cooperate on and ensure transparency in the following Areas:

- I. development of all new network codes or guidelines, regardless of whether ENTSO-E or EU DSO Entity have been given the lead, including their formal and informal drafting processes, without prejudice to the formal process as described in Regulation (EU) 2019/943;
- II. monitoring of implementation of the network codes and guidelines adopted in mutual interest areas while acknowledging that there are no general NC/GL monitoring obligations for ENTSO-E and EU DSO Entity;
- III. cooperation on applying best practices on operation and planning of the transmission and the distribution systems;
- IV. any other topic or domain in which EU DSO Entity and ENTSO-E want to work together and develop common positions.

The Signatories express their willingness to cooperate while conducting the tasks resulting from this Memorandum of Understanding in a way that is constructive, with trust and mutual respect and taking into account the European legal framework and the general principles agreed in this Memorandum of Understanding.

## **2. General principles**

For the purpose of delivering results in all Areas, the Signatories agree on the application of the following principles:

- any group is staffed by TSO and DSO-experts according to their expertise, respecting fair balance between TSOs and DSOs representatives. This concerns common e.g. Task Forces, Development Teams (for NCs), Drafting Committees (for NCs) as well as informal groups created on an ad hoc basis. All groups have two co-chairs, i.e. one from the TSO and one from the DSO;
- any group elaborates a clearly defined mission statement (scope, objective and workplan in Terms of Reference);

- topics to be addressed jointly are discussed in trusted, system operators neutral and mutually respected way that makes information available to both sides wherever possible, ensuring that interested parties in production, trade and supply do not have any influence in the decisions, nor any access to the exchanged information under this Memorandum of Understanding;
- all deliverables and/or decision proposals by any group will be made through a consensus building and results-driven approach. This means that it is possible to agree to disagree when views diverge. However, the group should aim for consensus in its final deliverable or decision proposal;
- all deliverables and/or decision proposals shall be validated by the ENTSO-E and EU DSO Entity relevant decision body, in accordance with their respective procedures. On ENTSO-E side the decision-making body will be the relevant ENTSO-E Committee and ultimately the Board and the General Assembly. On EU DSO Entity side, this will be the Board of Directors together with the General Assembly;
- where no consensus can be reached by the group, issues as identified by the group are to be brought to the respective decision-making bodies of both EU DSO Entity and ENTSO-E for approval and/or decision. These respective bodies should develop and agree on a compromise.

### **3. Institutional cooperation**

#### ***Regular meetings***

The Signatories will meet regularly, at least twice per year, which can be extended in case of specific needs expressed by one of the Signatories. Participation to the meetings is required unless justified. The agenda and the topics should be agreed in advance and in a timely manner to allow for due decisions. Minutes of each meeting will be taken and approved.

#### ***Policy and communication papers exchange***

Emphasising common challenges facing both TSOs and DSOs to European institutions, regulatory authorities and other stakeholders is crucial. Working together and presenting common messages is a powerful tool to explain how system operators work towards the achievement of European energy policy goals and the wider societal benefit. These explanations and positions should underline the crucial role of the networks for security of supply, market facilitation and integration of renewable energy and demand response.

To best explain the common challenges and interests, and to improve trust and transparency in the respective activities, the Signatories will strive to keep each other informed of relevant positions and communication papers, particularly those that address tasks and in particular interests of the respective transmission or distribution system operators. The Signatories strive to exchange information ahead of publication and dissemination in order to give the Signatories a chance to highlight content that could be problematic for their organisation(s).

The Signatories agree not to share, outside of their respective association, any draft texts received from the other Signatory, especially with relevant stakeholders. The Signatories are not bound to include suggested amendments received, given that the associations are independent and free to take their own positions.

#### ***Joint activities***

Where joint activities are agreed, the Signatories will endeavour to ensure that ENTSO-E on the one hand and EU DSO Entity on the other hand play a balanced role, and that they are all represented in a balanced way on any joint materials and events, unless otherwise agreed between the Signatories. The Signatories strive for transparency and will communicate the outcome of such activities to other organisations when agreed upon by the Signatories.

#### **4. Development of new network codes and guidelines (Area I)**

The development of all new network codes or guidelines that are required on the basis of Article 55(1)(f) and 59(1) and (2) of Regulation (EU) 2019/943 shall be conducted by the general principles described in chapter 2 and the additional principles below.

The Signatories agreed that, when a proposal for a new network code or guideline is requested by the European Commission in accordance with Article 59(3), (9) or (10) of Regulation (EU) 2019/943, they shall develop it together if any mutual interest is identified. A mutual interest is identified if both Signatories agree upon consideration of the other Party's interest.

The following principles of cooperation shall be used for the formal drafting process, but shall also be used for an informal drafting, and as far as the Signatories have decided to start the drafting informally.

Signatories shall work together and organise themselves by setting up a development team and a drafting committee.

##### ***Development Team***

The Signatories shall set up a common Development Team with the best available experts.

Both ENTSO-E and EU DSO Entity shall provide the respective experts as well as secretariat and project management office (PMO) support for the Development Team. This support shall be balanced between the Signatories unless another way of working is decided by the Signatories.

The Signatories' experts, members of the Development Team can also be member of the Drafting Committee, but not exclusively.

The Development Team shall prepare in different steps the proposals for the scope, proposals on content with different options if relevant and a first text of the network code or guideline (new or to be modified).

After the public consultation of the draft network code or guideline the Development Team shall review all remarks and comments and evaluate them. After the assessment the Development Team will decide on whether changes should be made to the draft or not on the basis of consensus, always accompanied by the necessary justification.

If no consensus is possible on parts of the draft texts within the Development Team, issues as identified by the Development Team are presented and explained to the decision-making bodies in ENTSO-E and EU DSO Entity. The decision-making bodies shall develop and agree on a compromise before re-discussing the proposal within the Drafting Committee.

The Development Team can also be convened at request of one of the experts of the Signatories to discuss intermediate drafts of the network code or guideline coming from the Drafting Committee and containing points to be discussed between system operators only.

##### ***Drafting Committee***

In accordance with Article 59(3) or (10) of Regulation (EU) 2019/943, a Drafting Committee shall be convened and shall consist of representatives of ACER<sup>1</sup>, ENTSO-E, EU DSO Entity, and where appropriate NEMOs<sup>2</sup> and a limited number of the main affected stakeholders.

The invitation of NEMO's and relevant stakeholders to the Drafting Committee shall be decided between the Signatories. In this case, the Drafting Committee shall be organised commonly between the Signatories ensuring the balanced representation of involved parties.

---

<sup>1</sup> European Agency for the Cooperation of Energy Regulators.

<sup>2</sup> Nominated Electricity Market Operators.

Further practical arrangements can be found in the **Annex I: ToR Drafting Committee**. These Terms of Reference shall be made available to stakeholders invited to become member of the Drafting Committee.

### ***Introduction of a new network code or guideline to ACER***

Once the draft network code or guideline has been delivered by the Drafting Committee and approved by the decision-making bodies of EU DSO entity and ENTSO-E, the proposal for a network code or guideline will be introduced to ACER in a common letter signed by EU DSO Entity and ENTSO-E.

### ***Common positions on amendments of existing network codes***

In the case that ENTSO-E or EU DSO Entity propose an amendment to a network code on their own initiative or if ACER requests an opinion of the ENTSO-E or EU DSO Entity or both on amendments proposed by any other entitled person in accordance with Article 60 of Regulation (EU) 2019/943 and Article 14 of Regulation (EU) 2019/942, the Signatories agree that they shall try as far as possible to take harmonised positions on such amendment of existing network codes.

## **5. Cooperation on the monitoring of NC and GL implementation, cooperation and adoption of best practices, other topics and domains (Areas II, III and IV)**

### ***Cooperation on the monitoring of NC and GL implementation***

In accordance with Article 55(2)(a) of Regulation (EU) 2019/943, EU DSO Entity and ENTSO-E will cooperate on the monitoring of implementation of the network codes and guidelines adopted pursuant to this Regulation which are relevant to the operation and planning of distribution grids and the coordinated operation of the transmission networks and distribution networks.

However, the Signatories acknowledge that there are no general NC/GL monitoring obligations for ENTSO-E, since these obligations are now centralized in ACER pursuant to Article 32 of Regulation (EU) 2019/943. Hence, the monitoring foreseen in Article 55(2)(a) cannot be understood as an obligation for ENTSO-E.

### ***Cooperation and adoption of best practices, other topics and domains***

In accordance with Article 55(2)(b) of Regulation (EU) 2019/943, EU DSO Entity and ENTSO-E will develop and adopt best practices on the topic of coordinated operation and planning of transmission and distribution systems, including issues such as exchange of data between operators and coordination of distributed energy resources.

Broad areas for exchange of views, policy and communication papers exchange and joint activities can include the following topics:

- roles and responsibilities of TSOs and DSOs in the energy system, including market facilitation and market development;
- interfaces between DSOs and TSOs;
- active and reactive power management;
- facilitating the integration of renewable energy resources, distributed generation and other resources, including energy storage;
- facilitating demand side flexibility and response and distribution grid users' access to markets;
- digitalisation (such as data management, data access, interoperability, cybersecurity and data protection);
- deployment of smart grids;
- transparency on the electricity system;

- innovation;
- network development planning;
- ENTSO-E and EU DSO Entity annual work programmes.

This list of broad areas is not exhaustive and can change over time. The Signatories will produce and maintain an agreed yearly work programme which sets out in more detail the work items to be produced and the timetable.

## 6. Final provisions

This Memorandum of Understanding is non-binding and shall not be construed or interpreted to create any legal obligations for the Signatories.

The Signatories acknowledge that any interaction or exchange of information under this Memorandum of Understanding shall be done in compliance with:

- (1) their obligations under competition law;
- (2) their obligations not to disclose commercially sensitive information;
- (3) their obligations to protect personal and operational data; and
- (4) any other legal obligation under national and EU law.

Further, the Signatories acknowledge that nothing in this Memorandum of Understanding:

- (1) is a commitment of financial resources by any of the Signatories;
- (2) will restrict any Signatory's individual interactions with third parties on the collaboration activities covered by this Memorandum of Understanding.

The functioning and effectiveness of cooperation under this Memorandum of Understanding shall be reviewed or amended whenever deemed necessary by both Signatories. Any amendment to this MoU requires the mutual consent of Signatories and shall be done in writing.

This Memorandum of Understanding will enter into force once the Signatories conclude a non-disclosure agreement that covers the exchange of information provided under this Memorandum of Understanding.

This MoU shall continue to have effect until terminated by either of the Signatories.

Signed in Brussels on 11.01.2022 in two original copies (in English) each and signed by the Parties' duly authorised representatives.

<i>Vincenzo Ranieri</i> President EU DSO Entity	
<i>Hervé Laffaye</i> President ENTSO-E	
<i>Peter Vermaat</i> Secretary General EU DSO Entity	
<i>Sonya Twohig</i> Secretary General ENTSO-E	

## **ANNEX I - ToR Drafting Committee**

### **1. Introduction**

The Drafting Committee for the development of new network codes or guidelines has been introduced in the Regulation (EU) 2019/943 for guaranteeing early involvement of relevant stakeholders in the drafting process of a new network code or guideline.

Regulation (EU) 2019/943 mentions in Article 59(3) and (10) that this Drafting Committee shall be convened, by either ENTSO-E or EU DSO Entity in cooperation with ENTSO-E. ENTSO-E and EU DSO Entity have decided to convene a Drafting Committee together if a mutual interest is agreed upon.

### **2. Representation principles**

The Drafting Committee rules for membership and management are an important factor for its success and should be designed to enhance efficient discussions. These rules must ensure proper representation of all relevant parties directly or indirectly impacted by the network code or guideline to be developed.

The membership of the Drafting Committee should be balanced and on equal footing.

The application of the abovementioned representation principles leads to the following rules:

- ENTSO-E and EU DSO Entity will co-chair all Drafting Committee meetings and will be accompanied by a number of TSO- and DSO-experts;
- The co-chairs shall facilitate and lead the discussions, allow the expression and active participation of all parties and ensure that these ToR are being complied with;
- Membership shall aim to participate in person. The Drafting Committee members commit to only substitute their representatives under exceptional circumstances;
- Where appropriate, members are nominated through a formal call for interest open to relevant stakeholders. ACER will be member without nomination;
- The number of representatives per association/stakeholder is limited to keep the total number of members below 20, but a balanced representation of all involved parties will be strived for;
- Only one member per industrial group will be allowed to participate in a Drafting Committee to avoid over-representation;
- If the member or association repeatedly fail in being represented in the Drafting Committee meetings, the co-chairs can withdraw its membership to the Drafting Committee completely;
- External experts can be invited by the co-chairs when relevant to the meetings of the Drafting Committee.

### **3. Roles, responsibilities and working arrangements**

All Drafting Committee members commit to:

- ensure high quality and consistency of the Drafting Committee through regular and active participation;
- liaise with their members and stakeholders to update on relevant information about the development of the network code or guideline and represent their views and concerns;
- share issues and concerns early on;
- provide any deliverable ideally 2 weeks or at least 5 working days before any meeting;
- provide solutions to facilitate the work within the Drafting Committee when risks and issues arise;
- contribute to the deliverables assigned to the Drafting Committee;
- dissolve the Drafting Committee when a draft network code or guideline has been delivered.

ENTSO-E and EU DSO Entity shall:

- periodically review and assess the Drafting Committee structure and its functioning;

- provide the Drafting Committee with initial scope, content proposals for the new network code or guideline;
- commit to act in close collaboration with the Drafting Committee members in an open and transparent manner to:
  - provide relevant information to facilitate participants' understanding;
  - initiate and provide information on aspects where participants input is expected;
- be the providers of secretarial services, they organise the meetings and the dedicated documentation website:
  - preparation of all meetings documents (such as agenda, deliverables, attendance lists, minutes);
  - setting up and maintaining a dedicated documentation website to ensure transparency;
- shall organise the public consultation of the draft network code or guideline;
- shall officially submit the draft network code or guideline to ACER.

#### **4. Organisation of meetings**

The Drafting Committee meets indicatively once per fortnight but can decrease this number according to its needs. The physical meetings will be held in Brussels in ENTSO-E or EU DSO Entity offices, web meetings will be held through MS Teams or similar.

The co-chairs draft the meeting agendas, while duly taking into consideration the input provided by the members. Members can request within a reasonable time period, the co-chairs to include a specific topic on the agenda.

Minutes of each meeting, which only contain the conclusions and action points, will be produced and shall be circulated to members within a reasonable time following the meeting. Members shall be provided with a reasonable time period in which to comment on the minutes.

#### **5. Dedicated documentation website**

ENTSO-E and EU DSO Entity shall put in place a dedicated documentation website for the Drafting Committee. All relevant documents, deliverables, minutes, lists of participants and agendas will be published on this website. The website will also allow stakeholders, members of the Drafting Committee, to express comments on the main deliverables and will allow members to register for meetings.

----- | -----