



NETWORKS

ESB Networks DAC Terms of Reference

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1. Purpose

The purpose of this document is to set out the terms of reference of the Board of ESB Networks DAC.

ESB Networks DAC (the “**Company**”) is a designated activity company, limited by shares, established under the European Communities (Internal Market in Electricity) (Electricity Supply Board) Regulations 2008 (the “2008 Regulations”). It is a wholly owned subsidiary of ESB, a statutory corporation established under the Electricity (Supply) Act 1927.

The objects of the Company, which are set out in the Constitution, include the operation, maintenance and development of a safe, secure, economical and efficient electricity distribution system. The Commission for Regulation of Utilities (“CRU”) has issued the Distribution System Operator Licence (“DSO Licence”) to ESB Networks DAC under Section 14 of the Electricity Regulation Act 1999, as amended. CRU has also approved an arrangement whereby ESB Networks DAC shall manage the discharge of ESB of its functions as Distribution System Owner (“DAO”) and Transmission Asset Owner (“TAO”). A summary of the obligations is set out in Appendix 1.

2. Composition and Membership of the Board

2.1 Appointments to the Board

The Board shall be made up of not less than four and no more than eight members. Members of the Board are appointed by the Board of ESB, subject to the approval of the Minister for the Environment, Climate & Communications with the concurrence of the Minister for Public Expenditure and Reform, in accordance with Regulation 5 of the 2008 Regulations.

There are currently five Board members – the Chairman, the Managing Director and three Directors, who are independent Board members. Non executive board members are normally appointed to serve for a period of up to five years, which may be extended for one further period up to a maximum of eight years.

Board Members may not participate directly or indirectly in the day-to-day operation of the businesses of ESB relating to supply or generation of electricity.

Board members shall be indemnified by the Company with the benefit of Guarantee from ESB.

2.2 Code of Conduct

The Code of Conduct for ESB Networks DAC board members is attached hereto in Appendix 2 and forms part of the Board Terms of Reference.

3. Responsibilities

3.1 Chairman of the Board

3.1.1 The Chairman is responsible for the leadership of the Board and ensuring its effectiveness in all aspects of its role. This includes:

- i. chairing its meetings having agreed a balanced agenda with the Managing Director, and Company Secretary, and ensuring that adequate time is available for discussion of all agenda items;
- ii. facilitating constructive board relations and discussions at the Board which facilitate the effective contribution of all Board members and promote a culture of trust and openness;
- iii. ensuring accurate, timely and clear information is provided to the Board to assist in effective decision making and that time is focussed on the right topics;
- iv. ensuring that the Board applies sufficient challenge to management proposals, particularly on risk and examines and reviews management achievement of agreed performance targets;
- v. ensuring that once a Board decision is reached, there is appropriate delegation of authority to the Managing Director and;
- vi. ensuring good information flows within the Board and its committees and between senior management and Board members;
- vii. leading on governance matters to ensure that there is a clear structure for, and effective running of, the Board;
- viii. leading the annual review of Board and Board member effectiveness;
- ix. facilitating induction, mentoring and assisting with ongoing professional development of Board Members, as required; and
- x. bringing evidence of non-compliance with any statutory obligations to the attention of the ESB Chief Executive indicating (i) the consequences of such non-compliance and (ii) the steps that have been or will be taken to rectify the position.

3.1.2 In the absence of the Chairman for all or part of a duly convened Board meeting the remaining members present shall elect one of the non-executive Board members to chair the meeting (or part thereof) in accordance with the Constitution.

3.1.3 The Board

The Board is responsible for:

- i. establishing, in accordance with the Memorandum of Understanding between ESB and the Company (the “**MOU**”) and reflecting requirements of applicable law and the Company’s DSO Licence and regulatory obligations, the Company’s purpose, values and strategy and ensuring that these are reflected in the strategic plans and culture of the organisation;
- ii. seeking assurance that the Company conducts its affairs in compliance with its legal and regulatory obligations and duties;
- iii. preparing the Company’s Financial Statements and ensuring that they present a fair, balanced and understandable assessment of the Company’s position and prospects in accordance with ESB Group accounting policies and applicable legislation;

- iv. making all decisions in respect of, those matters specifically reserved to it in the MOU and the Delegated Authority Levels. These include the approval of the terms and conditions of regulated contracts and the determination of the charges arising for each contract offer. Matters reserved to ESB, including the approval of the Annual Financial Plan and the submission of Price Control submissions, shall not prevent the Company or its Board from exercising independent operational and management control of the functions necessary to discharge its licence obligations;
- v. delegating operational responsibility for the day-to-day running of the ESB Networks business unit to the Managing Director and the Company's Senior Management Team. The Managing Director shall, on behalf of the Board, report to the Chief Executive of ESB, as shareholder representative of ESB, on all matters relating to compliance with ESB Group policies and procedures and in relation to the protection of ESB's financial interest in the Company.
- vi. seeking assurance that the principles and provisions set out in the Code of Practice for the Governance of State Bodies (the "Code of Practice") (and any other corporate governance codes and/or Government guidance that apply to ESB Networks) are adhered to.
- vii. reviewing on an annual basis and (as deemed necessary) revising and reissuing the Authority Levels;
- viii. overseeing the Managing Director and management's effective execution of strategy, performance and delivery against the Business Plan, achievement of key financial and growth targets and the embedding of an appropriate culture throughout the organisation by providing clear support and constructive challenge;
- ix. reviewing the Company's approach to risk with a view to satisfying itself that the systems of risk management used in the Company are robust and defensible;
- x. reviewing, on an annual basis, the Company's system of internal controls (including financial controls) and monitoring of its effectiveness
- xi. immediately bringing to the attention of the Chairman and their fellow Board members evidence they may have of non-compliance with any statutory obligations that apply to the Company, with a view to having the matter rectified.

The Board shall: -

- i. make all decisions in respect of those matters specifically reserved to it in the Memorandum of Understanding and in the Authority Levels (except to the extent delegated by the Board to a Board sub-committee or to management);
- ii. demonstrate objective judgement;
- iii. act with integrity and fairness in the interests of ESB Networks, asking the right questions and challenging poor behaviours always;
- iv. oversee cultural governance including setting the tone at the top on conduct and ethics;
- v. establish structures and procedures to facilitate the Board's independence from management and to avoid conflicts of interest;
- vi. commit sufficient time and effort keeping up to date and informed about strategic issues and changes affecting ESB Networks and the environment in which it operates;
- vii. keep under review corporate governance developments (including ethics- related matters) relevant to ESB Networks;

- viii. ensure that the Secretary of the Board has the necessary skills to discharge his/her duties; and
- ix. review, on an annual basis, its performance in carrying out their responsibilities (see Part 7 below).

3.1.4 Managing Director is responsible for:

- i. executing the strategy, reporting progress on execution against strategic goals and related performance metrics and ensuring, where appropriate, in light of major developments, that strategy is revised;
- ii. overseeing the day-to-day running of the business and for delivery of profitable business performance in accordance with targets set by the Board; and
- iii. ensuring that appropriate management structures are in place to drive the success of ESB Networks in pursuing the objectives set by the Board; and
- iv. alerting the Chairman to forthcoming complex, contentious or sensitive issues affecting the Company. The Managing Director shall:
 - promote ESB Networks culture, values and behaviours through leading by example and engagement;
 - build and maintain an effective Senior Management Team and effective management structures within the organisation;
 - maintain on-going dialogue and consultation with the Chairman to ensure the information needs of the Board are met and timely decisions are made; and
 - be accountable to the Board for all authority delegated to executive management.

3.1.5 Role of the Company Secretary

- i. The Secretary of the Board shall minute the proceedings and resolutions of all meetings of the Board and minutes shall be provided to all members of the Board.
- ii. All Board members shall have access to the advice of the Secretary, who is responsible for ensuring that Board procedures are complied with and for advising the Board through the Chairman on governance matters generally.
- iii. The Secretary of the Board is also responsible for organising on behalf of the Chairman the formal induction of new members of the Board and also for assisting with ongoing professional development for Board members.

4. Board Meetings

The Chairman and the Managing Director, supported by the Company Secretary, are responsible for the effective management of the Board's agenda.

4.1 Agendas, Minutes and Conflicts of Interest

Board meetings shall be convened, take place, and be conducted in accordance with the Company's Constitution.

a. Notice of Meetings

Board meeting agendas and papers shall be circulated at least one week prior to the Board meeting. Late papers or presentations will be accepted on an exceptional

basis. From time to time, emergency meetings of the Board may be required subject to appropriate notice being given to all Board members.

b. Agenda and Attendance at Meetings

- i. The Chairman and the Managing Director, supported by the Company Secretary, are responsible for the effective management of the Board's agenda.
- ii. Only members of the Board are entitled to be present at Board meetings. However, others (e.g. members of the Senior Management Team and/or external advisers) may be invited by or on behalf of the Chairman to attend for all or part of any Board meeting or Board committee meeting.
- iii. Board members will use their reasonable endeavours to attend all Board meetings.
- iv. The Company Secretary's duties include attendance at Board meetings.

c. Quorum

The quorum for a Board meeting is established by the Constitution.

d. Minutes of Meetings

- i. The Secretary of the Board shall minute the proceedings and resolutions of all meetings of the Board and of its committees including recording the names of those present and in attendance.
- ii. Minutes of the Board meetings shall be filed electronically and provided to all members of the Board.
- iii. The Secretary will maintain a Register of Actions for follow up on behalf of the Board.

e. Frequency of Meetings

Board meetings will be convened approximately six times per year and shall take place on such dates and at such times and place as may be determined by the Chairman or the Board.

The Company Secretary will provide Board members with a schedule of general board meetings and board strategy meetings at the start of each year.

f. Conflicts of Interest

If a member of the Board finds that he or she has a conflict of interest, he or she shall immediately disclose this to the Chairman and the Company Secretary as required by the Board's Code of Conduct. In accordance with the Constitution, a Board member may not vote in respect of any contract, appointment or arrangement in which he or she is interested. The Board Code of Conduct provides further guidance in this regard.

5. Authority and Decision Making

5.1 Information and Advice

- i. The Board is authorised to seek all information it requires in order to perform its duties.
- ii. The Board is authorised to obtain, at the Company's expense, outside legal or other professional advice where the Board judges that this is necessary to allow Board members discharge their responsibilities.

- iii. To the extent that there is any inconsistency between these Terms of Reference and the Company's Constitution, the Constitution will prevail.

5.2 Decision Making

- i. Questions arising at Board meetings shall be decided by a majority of votes. Where there is equality of votes the Chairman will have a second or casting vote.
- ii. Specific matters reserved to the Board are documented in the Authority Levels approved by the Board.
- iii. The Authority Levels document may be amended by resolution of the Board from time to time.
- iv. The Board may decide to delegate authority to a Board sub-committee and to management within limits approved by the Board.

6. Reporting

The Managing Director shall report to the Board at each Board meeting on the Company's operations, performance and key risks, and shall provide insights into matters likely to impact the future prospects of the Company.

7. Effectiveness Reviews and Performance Evaluation

- i. The Board shall, at least once a year, review its own performance to ensure it is operating effectively. An external Board evaluation will take place every third year.
- ii. The Board shall review the results of the evaluation and agree improvements as required.
- iii. The Board shall review the effectiveness of Board committees in fulfilling their responsibilities and duties as set out in their Terms of Reference.
- iv. The Chairman will meet individually with non-executive directors annually to share views and insights and to discuss individual's development needs.

8. Review

The Board will review these Terms of Reference at least annually and will approve such amendments as it deems necessary.

Appendix 1

DSO Licence obligations include:

- Directing the safe, secure, reliable, economical and efficient operation of the distribution system within the specified technical parameters, taking into account exchanges with other interconnected systems
- Identifying the development and maintenance needs of the distribution system to ensure all reasonable demands for electricity are met and having regard to the environment
- Offering terms and entering into agreements, where appropriate, with any person seeking to use the distribution system
- Proposing charges to apply for connection to and use of the distribution system

DAO/TAO Obligations

In 2009 ESB and ESB Networks DAC entered into an Asset Management Agreement whereby ESB Networks DAC shall manage the discharge by ESB of its functions as Distribution System Owner (“DAO”) and Transmission Asset Owner (“TAO”) including the carrying out of the construction and maintenance works required to be performed by ESB in its capacity as DAO and TAO. ESB has agreed to provide ESB Networks DAC with the personnel required to perform those functions.

The legal and regulatory obligations of the DAO include:

- facilitating the development, maintenance and operation of the distribution system in an efficient economical, co-ordinated, safe, secure and reliable manner;
- neither preventing or restricting effective competition in the generation and supply of electricity; and
- promote good industry practice and efficiency in the implementation and administration of matters covered by Operation Agreements.

The legal and regulatory obligations of the TAO include:

- maintaining the transmission system and carrying out construction work in accordance with the Transmission System Operator’s development plan;
- implementing any works required by the Transmission System Operator in accordance with the Infrastructure Agreement; and providing the Transmission System Operator with such information as is required to ensure the secure and efficient operation, development and maintenance of the transmission system.