

BSC modification process and possible impact of EBGL Article 10 and Article 18

For information:

1. The EB GL procedure involves:
 - a. TSO proposes an amendment to the terms and conditions/methodology
 - b. TSO consults on its proposal for at least one month
 - c. TSO submits proposal to the NRA together with its reasoned responses to the consultation (which it also publishes)
 - d. NRA decides whether to agree amendment to the terms and conditions/methodology

2. Broad areas of the BSC that we believe fall within scope of Article 18 terms and conditions
 A, G3, H3, J, K, L, N, O, P, Q, T, U, W, Z, P344 (those BSC sections impacted by P344 that fall within the scope of Art. 18)

Comment [GG1]: I agree that according to Annex 1 of the 18th June 2018 letter these sections of the BSC fall within the scope of Article 18, as they are terms and conditions related to balancing.

Comment [GG2]: I agree that according to Annex 1 of the 18th June 2018 letter those sections of the BSC changed by P344 fall within the scope of Article 18, as they are terms and conditions related to balancing. I've included a list of the P344 related sections, that fall within the scope of Article 18, at the bottom of this document for completeness.

Comment [GG4]: I agree this seems to be the case; although in terms of 'significant amount of time' we should remember that Modifications generally take up to six months to progress (being raised to the FMR submission ...)

Comment [GG5]: I agree this seems to be the case – and it was the intention of the EBGL drafters to have the TSO and, separate, NRA roles in terms of amendments to terms and conditions related to balancing.

Comment [GG3]: If the Article 13 (delegation to a third party) approach were to be adopted two key points come to mind. Firstly, the delegation should be done in accordance with Art 13(4) by the NRA (Ofgem) rather than ...

Comment [GG6]: The precedent of P344 suggests that an Original and an Alternative can both be said, by the TSO, to be terms and conditions relating to balancing and thus proposed as amending those T&Cs. As with ...

Comment [GG7]: I agree this seems to be the case.

	Summary of approach	Issues	Advantages
1	<p>Run BSC and EB GL change processes successively</p> <p>For modifications to the BSC that impact on a part of the BSC that comprises the Article 18 terms and conditions/methodology:</p> <ul style="list-style-type: none"> • BSC modification process operates as normal through to Report Phase • Output of the Report Phase is a TSO proposal to amend the terms and conditions/methodology under Article 10 EB GL • TSO runs the EB GL process (or this could be delegated/assigned to ELEXON) • BSC Modification Report + output of the EB GL process is submitted to Ofgem for decision (Ofgem's decision on GB modification and European amendment) 	<ul style="list-style-type: none"> • Will add a significant amount of time to impacted modifications (at least 6 to 8 weeks) • Not compatible with self-governance / fast track self-governance modifications • Not compatible with modifications that progress straight to the report phase • Not compatible with urgent modifications • Query – does the EB GL process allow for proposed <u>and</u> alternative modifications other than requiring a single BSC modification to be treated as two different EB GL proposals? • Inefficient process which involves three consultations (assessment phase, report phase and EB GL). This also places an additional burden on industry to respond 	<ul style="list-style-type: none"> • Minimises risk of non-compliance under EB GL • If the EB GL process is assigned to BSCCo in respect of BSC changes, then there is no incentive on BSCCo to raise any change that differs from a BSC Modification or its Alternative

	Summary of approach	Issues	Advantages
	taken in parallel)	<p>to a further consultation and adds complexity, at a time when industry and Ofgem are calling for simplification</p> <ul style="list-style-type: none"> • Different consultations on the same change may receive conflicting answers or additional points may be made which could no longer be addressed through the BSC process • Inefficient as requires in-scope modifications to be identified and a separate process to be followed • Currently most modifications are owned by the proposer and developed through industry led processes. Is there scope for the TSO, for example, to take a different view (than the Panel) in respect of a modification following the EB GL consultation? If so, how is this reconciled to the modification procedures? • Would be a barrier to simplifying the BSC modification procedures • May need a BSC modification to recognise additional time between conclusion of report phase and the submission of a report to the authority • May need a BSC modification to require the TSO to propose the same as proposed under the BSC modification 	
2	<p>Run EB GL change process in parallel with BSC modification process</p> <p>For modifications to the BSC that impact on a part of the BSC that comprises the Article 18 terms and conditions/methodology:</p> <ul style="list-style-type: none"> • BSC modification process operates as normal • At some point during the BSC process when 	<ul style="list-style-type: none"> • Same issues as above although running the processes in parallel should reduce the amount of time needed at the end of the process to run and respond to an EB GL consultation. Potentially also less need for a modification to Section F of the BSC • Lack of clarity about the point at which a 	<ul style="list-style-type: none"> • Shorter timescales than (1) although if the EB GL consultation could not commence until the BSC Report Phase then timescales would still be longer than the current process • Lower risk of different issues

Comment [GG8]: But not unprecedented. Three consultation have been issued in the past for BSC Mods, such as the RIA for the zonal losses Mods in the past.

Comment [GG9]: But would then be applied, going forward, to all Mods relating to the relevant sections of the BSC.

Comment [GG10]: The P344 precedent suggests that the TSO is being asked do they agree; if Ofgem were to approve the BSC Mod (as better meeting the applicable objectives / better meets their statutory duties etc.); that the change(s) should form part of the terms and conditions related to balancing (for GB).

Comment [GG11]: But would be compatible with EU law.

Comment [GG12]: This would seem sensible, and could perhaps be linked to Article 8 (as in the TSO may (would?) be considered not to be acting reasonably, efficiently or proportionately if they did not submit the BSC Mod as proposed) so that these costs etc., could not be recovered by the TSO? It may also be sensible to include an additional aspect to any such BSC Modification; namely that the Transmission Company (NG ESO going forward) certifies annually to the BSC(...)

Comment [GG16]: See comments above.

Comment [GG17]: Running in parallel seems the most pragmatic way to proceed.

Comment [GG19]: The extra time would be in the order of an extra five working days (20WD v 15WD) so is hardly substantially longer.

	Summary of approach	Issues	Advantages
	<p>a solution is sufficiently defined to constitute a 'proposal' under EB GL, TSO commences a parallel EB GL process</p> <ul style="list-style-type: none"> The parallel process is timed so as to align with the completion of the BSC modification process TSO runs the parallel EB GL process (or this could be delegated/assigned to ELEXON) The output of the EB GL process is submitted to Ofgem in parallel with the BSC Modification Report (or combined with the BSC process and submitted as a single Modification Report) 	<p>BSC modification is sufficiently well defined to constitute an EB GL 'proposal' (although note that by the time of the assessment consultation there is often a reasonably well defined solution and legal text. There are occasions where ELEXON needs to run multiple Assessment Consultations which may mean that the EBGL consultation could not commence until the Report Phase)</p>	<p>being raised by respondents under the BSC Modification and EB GL consultations as they are run in parallel but also easier to assess if done together. (Can the BSC Panel take account of comments made in time under the EB GL process?)</p> <ul style="list-style-type: none"> Low risk of non-compliance although higher risk than (1) due to lack of clarity about the point at which a BSC modification will constitute an EB GL 'proposal'
3	<p>Existing BSC processes are deemed to meet the EB GL process</p> <ul style="list-style-type: none"> The majority of BSC modifications involve two consultations (assessment phase and report phase) which collectively run for 25 Working Days. The combined modifications could be deemed to constitute the one month consultation required by Article 10 EB GL Article 10 EB GL requires the TSO to consider views of stakeholders resulting from consultations and to provide sound justifications for including/not including those views. Assessment Reports and Modification Reports include consultation responses and a summary of the Workgroup/Panel's consideration of those responses. The TSO would need to delegate its Article 10 duties to ELEXON, the Panel and Modification Workgroups. Our view is that, in this instance, the requirements for 	<p>For modifications to the BSC that impact on a part of the BSC that comprises the Article 18 terms and conditions/methodology:</p> <ul style="list-style-type: none"> Not compatible with self-governance modifications Not compatible with modifications that progress straight to the report phase Not compatible with urgent modifications (i.e. the minimum timescale for an Article 18 modification would be 6-8 weeks) Query – does the EB GL process allow for proposed and alternative modifications other than requiring a single BSC modification to be treated as two different EB GL proposals? Would be a barrier to simplifying the BSC modification procedures May be a higher risk of challenge, particularly for controversial modifications 	<ul style="list-style-type: none"> Limited impact on standard modification procedures (though would exclude certain routes) For those procedures that are impacted (self-governance, straight-to-report and urgency), we would need to analyse impact. Note, however, that there are very few urgent modifications, straight-to-report modifications should be 'self-evident' so limited risk. Also query how many EB GL changes would meet self-governance criteria?)

- Comment [GG13]:** This would be the Workgroup report to Panel stage or the Code Admin stage (if no Workgroup formed) as proposal can change prior to this.
- Comment [GG14]:** See comments above regarding delegation and Article 13.
- Comment [GG18]:** I agree that the conclusion of the Workgroup stage (or if no Workgroup, the start of the Code Admin stage) is the right 'start point' for the EBGL consultation. In practical terms it would make sense to issue t...
- Comment [GG20]:** As noted elsewhere, the Code Admin stage ...
- Comment [GG15]:** To avoid any confusion/regulatory uncertainty, it ...
- Comment [GG21]:** Existing process does not take account of the Article ...
- Comment [GG30]:** I agree, for the reasons set out elsewhere in my ...
- Comment [GG22]:** This is erroneous as the Workgroup consultation often ...
- Comment [GG31]:** For the reasons noted elsewhere, I think that it could ...
- Comment [GG32]:** I agree, for the reasons set out elsewhere in my ...
- Comment [GG33]:** The P344 approach sets the precedent that bot ...
- Comment [GG23]:** As noted above, the Workgroup consultation response ...
- Comment [GG24]:** Currently we don't see the Panel providing detailed ...
- Comment [GG34]:** But would be compatible with EU law.
- Comment [GG25]:** See comments above about delegation.

	Summary of approach	Issues	Advantages
	<p>an Article 13(1) delegation have already been met because the TSO has the power under the BSC Modification Procedures to step-in and perform the Modification procedures itself on the direction of the Authority. It therefore remains ultimately responsible for ensuring compliance with these specific obligations.</p> <ul style="list-style-type: none"> Many BSC modifications are submitted to Ofgem for approval For a standard modification, the existing BSC processes could be deemed to align with the EB GL processes 	<p>where a deemed failure to follow the EB GL procedure may provide a basis for judicial review (n.b. this would principally be an Ofgem risk so we have not analysed here)</p>	
4	<p>Interpret the methodology/terms and conditions referred to in EB GL as the wider framework of documents (not the detailed provisions in, for example, the BSC)</p> <ul style="list-style-type: none"> The EB GL is comprised of a framework of documents. Only structural changes to the framework would be deemed to be a change to the EB GL methodology / terms and conditions. For example, a proposal that Section Q of the BSC be moved to a different industry Code would require the EB GL change process A change to the detailed rules contained in Section Q could be amended through the BSC change process 	<ul style="list-style-type: none"> Compliance with EB GL based on an interpretation that is open to challenge therefore higher risk than (1), (2) and (3). How amenable would the Commission be to an argument that EB GL change processes are only intended to apply in limited circumstances? Consultation on Article 18 methodology refers to methodology being comprised of, inter alia specific BSC sections – is this consistent with this approach? 	<ul style="list-style-type: none"> No impact on existing BSC change processes
5	<p>Interpret the Article 10 process as only applying to changes to the methodology/terms and conditions that the TSO / NRA seek to impose on industry</p> <ul style="list-style-type: none"> On this interpretation, the EB GL is an alternative change process that allows 	<ul style="list-style-type: none"> Compliance with EB GL based on an interpretation that is open to challenge therefore higher risk than (1), (2) and (3). How amenable would the Commission be to an argument that EB GL change processes are only intended to apply in 	<ul style="list-style-type: none"> No impact on existing BSC change processes

Comment [GG26]: As per the comments above, Article 13(4) rather than 13(1) should be used for the delegation in order to give stakeholders confidence in the process given the corporate relationship between National Grid and Elexon.

Comment [GG35]: I agree that if the EBGL procedure is not followed then a challenge to any amendment to the terms and conditions related to ...

Comment [GG27]: This is not the same as the EBGL procedure set out in Article 13 (1), (2) and (3). Any powers that the TSO currently has were ...

Comment [GG28]: For the avoidance of doubt, as per Article 6(3), all BSC Mods relating to those sections of the BSC that fall within the scope of the ...

Comment [GG29]: For the reasons noted above, this would not appear to be the case.

Comment [GG38]: There is a high risk of legal challenge with this approach in terms of compliance and Article 6(3) - this may not manifest ...

Comment [GG36]: That is not what Article 6(3) sets out. Changes to the framework would be separate to (and follow the ACER proposed network c ...

Comment [GG39]: This is being 'economical with the actuality'. Both the May consultation and the June submission refer to 'Terms and ...

Comment [GG37]: For the reasons set out above, I don't see how this would be in compliance with Article 6(3). Notwithstanding that, if this ...

Comment [GG41]: See comments under option 4 above on this point.

	Summary of approach	Issues	Advantages
	<p>National Grid and Ofgem to impose change to those parts of the GB framework that are comprised in the Article 18 methodologies / terms and conditions</p> <ul style="list-style-type: none"> • The EB GL process need only be followed if National Grid/Ofgem want to impose changes and do not wish to follow the BSC modification procedures • Industry led changes to terms and conditions have to follow existing BSC modification procedures but do not need to comply with the EB GL process 	<p>limited circumstances (and consequently that changes to the detailed rules underpinning that methodology do not need to comply with EB GL process)?</p> <ul style="list-style-type: none"> • This interpretation allows for the EB GL process to apply instead of the normal BSC Mod process. In which case we'd need to know that a change would be directed by Ofgem. And we'd need to respond to the EB GL consultation with costs and timescales. 	

Comment [GG42]: See comments under option 4 above on this point.

Comment [GG40]: Industry is free to change any parts of the BSC that are not related to those sections of the BSC that National Grid has identified (in Annex 1 of the 18th June 2018 letter) as being terms and conditions relating to balancing. However, as per Article 6(3) any BSC amendments to those Article 18 terms and conditions would not be valid in respect of balancing – they would be 'orphaned': approved, but could not be implemented/applied as they do not, according to Article 18, 'relate to balancing'.

Recommendation

ELEXON's preference would be to follow one of the no impact approaches (options 4 or 5). However, recognising that Ofgem may perceive some risk in these approaches we believe that option 3 would be the best option for balancing risk mitigation against limiting the impact on the BSC modification procedures.

[My conclusion is that Options 1 or 2 are legally permissible and that, pragmatically, Option 2 is the one to proceed with.]

[P344 related section of BSC

- BSC Section A 'Parties and Participation'
- BSC Section D 'BSC Cost Recovery and Participation Charges'
- BSC Section H 'General'
- BSC Section J 'Party Agents and Qualification Under the Code'
- BSC Section K 'Classification of Registration of Metering Systems and BM Units'
- BSC Section M 'Credit Cover and Credit Default'
- BSC Section N 'Clearing, Invoicing and Payment'
- BSC Section P 'Energy Contract Volumes and Metered Volume Reallocations'
- BSC Section Q 'Balancing Mechanism Activities'
- BSC Section R 'Collection and Aggregation of Meter Data from CVA Metering Systems'
- BSC Section S 'Supplier Volume Allocation'
- BSC Section S Annex S-2 'Supplier Volume Allocation Rules'
- BSC Section T 'Settlement and Trading Charges'
- BSC Section V 'Reporting'
- BSC Section X Annex X-1 'General Glossary'
- BSC Section X Annex X-2 'Technical Glossary'
- BSC Section Z 'Performance Assurance']