










BSC Modification Proposal Form		At what stage is this document in the process?
<h1>P438</h1> <p>Mod Title: Amending the BSC to address sanction orders</p>		<div>01 Modification</div> <div>02 Workgroup Report</div> <div>03 Draft Modification Report</div> <div>04 Final Modification Report</div>
<p>Purpose of Modification:</p> <p>The current wording of the BSC includes no reference to sanctions and has no concept of force majeure type arrangements. Given this, there is a risk that implementing sanctions or complying with a sanctions order could put BSCCo in breach of the BSC and open BSCCo up to potential claims from the designated entity subject to any sanctions, or from other BSC Parties if steps were taken that were not authorised by the BSC. This Modification seeks to mitigate this risk by introducing the concept of sanctions into the BSC.</p>		
<p>Is this Modification likely to/Does this Modification impact any of the European Electricity Balancing Guideline (EBGL) Article 18 Terms and Conditions held within the BSC?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>		
	<p>The Proposer recommends that this Modification should:</p> <ul style="list-style-type: none"> not be a Self-Governance Modification Proposal be treated as urgent and progressed under a timetable agreed by the Authority <p>This Modification will be presented by the Proposer to the BSC Panel on 29 March 2022. The Panel will consider the Proposer's recommendation and determine how best to progress the Modification.</p>	
	<p>High Impact:</p> <p>N/A</p>	
	<p>Medium Impact:</p> <p>N/A</p>	
	<p>Low Impact:</p> <p>All BSC Parties (including BSCCo)</p>	

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Timetable		 <i>Karen.Thompson-Lilley@nationalgrideso.com</i>
The Proposer recommends the following timetable:		 <i>07989 147584</i>
Modification presented to Panel	29 March 2022	
Submitted to Authority for decision on urgency	1WD following Panel presentation	
Urgent Modification Consultation	One calendar month, beginning the day after Authority decision	
Draft Modification Report presented to Panel	2WD following consultation closure	
Final Modification Report submitted to Authority	1WD following presentation to Panel	

1 Why Change?

What is the issue?

The current wording of the BSC includes no reference to sanctions. Given this, if sanctions were applied to a BSC Party and BSCCo was required to comply with a sanctions order, there is no clear mechanism within the BSC to allow it to do so seamlessly.

This introduces the risk that actions taken by BSCCo to comply with any sanctions could put BSCCo in breach of contract, whereby those actions taken would be in contravention of its obligations under the BSC. This in turn could leave BSCCo open to a potential legal claim from the designated entity subject to the sanctions, or from any counterparty to the BSC if steps were taken that were not authorised by the BSC.

In addition, the wording of sanction orders can be inherently vague, so it may not always be obvious what steps need to be taken to comply with them. As a result, even if a sanctions order included caveats to limit claims for breach of contract, there would be a risk that BSCCo could take a step that went beyond the scope of the sanctions order. This is a particular risk as sanctions are unlikely to be designed to fully align with BSC concepts.

There are no other provisions in the BSC that address this risk, for example there are no generic force majeure provisions such as those referenced within the Connection and Use of System Code (CUSC) and other industry codes, whereby contractual rights and obligations could be suspended should a party be subject to a sanctions order.

Desired outcomes

This Modification seeks to mitigate the risk to BSCCo in complying with any sanctions order by introducing the concept of sanctions into the BSC party default arrangements. It will include the steps that could flow from a sanctions order, including, for example, suspension of payments, suspension of notifications, suspension of registrations and any associated governance to enable such suspensions.

By using the existing Event of Default mechanism, the process for dealing with sanctions uses an established process that is well understood by BSC Parties, is transparent (in that the outcomes of Panel decisions around Events of Default are communicated to all BSC Parties) and provides a degree of flexibility in how the BSC could deal with this scenario.

The default process would allow the BSC to react quickly to sanctions through the well tested mechanism of holding an urgent Panel meeting. As with other defaults, the BSC Panel would have discretion as to which steps to take. However, all steps would have a contractual basis under the BSC so there would be no risk of taking a step that was not authorised by the Code.

Introducing an Event of Default also allows for a targeted approach. Whilst other industry codes have generic force majeure provisions, introducing something similar to the BSC would be a very significant change as it would need an assessment of what obligations Parties would be relieved on in the event of a force majeure and what the impact of this would be on Settlement. In addition, force majeure provisions will generally relieve parties from obligations only to the extent of that they are impacted by a force majeure event. This would mean that Elexon and each BSC Party would need to undertake its own analysis of the extent to which its obligations under the BSC were impacted by a force majeure event.

2 Solution

Proposed Solution

This Modification would introduce an Event of Default under [Section H 'General'](#) which would arise if a BSC Party became a designated person under the Sanctions and Anti-Money Laundering Act 2018 or Regulations made under that Act and where compliance with the BSC would result in a breach of any sanctions. This would introduce a contractual right and codified route under the BSC to facilitate compliance with any sanction orders. This would include the governance as already exists with any Event of Default required to deal with the application of sanctions.

It should also clarify the requirements of any BSC Party, with regards to BSC processes, in dealing with a designated entity subject to sanctions.

Benefits

This Modification will primarily ensure that BSCCo is able to comply with a sanctions order without being in breach of the BSC. It will additionally use the opportunity to provide certainty in terms of BSC requirements and governance for any counterparties of an entity subject to sanctions.

The compliance risk in the context of the BSC will primarily rest with BSCCo as most of the obligations and activities that are likely to be impacted by sanctions are BSCCo (or the BSC Clearer's) obligations. However, this modification will benefit BSC Parties by:

- Providing a transparent process for ensuring that the BSC arrangements can comply with legal requirements;
- Utilising an existing process that will be well understood by BSC Parties; and
- Some of the steps open to the BSC Panel may help some Parties from themselves inadvertently breaching sanctions e.g. the suspension/cancellation of Energy Contract Volume Notifications (ECVNs) and Meter Volume Reallocation Notifications (MVRNs) may provide some protection in certain circumstances

3 Relevant Objectives

Impact of the Modification on the Relevant Objectives:	
Relevant Objective	Identified impact
a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence	Neutral
(b) The efficient, economic and co-ordinated operation of the National Electricity Transmission System	Neutral
(c) Promoting effective competition in the generation and supply of electricity and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity	Neutral
(d) Promoting efficiency in the implementation of the balancing and settlement arrangements	Positive
(e) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency [for the Co-operation of Energy Regulators]	Neutral
(f) Implementing and administrating the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation	Neutral
(g) Compliance with the Transmission Losses Principle	Neutral

This Modification will positively impact Applicable BSC Objective (d) as it will remove any ambiguity around how the BSC should treat sanctions orders and provide a compliant mechanism for the BSCCo and BSC Parties to enforce any sanctions imposed upon any other BSC Party.

4 Potential Impacts

Impacts on Core Industry Documents

Impacted Core Industry Documents			
<input type="checkbox"/> Ancillary Services Document	<input type="checkbox"/> Connection and Use of System Code	<input type="checkbox"/> Data Transfer Services Agreement	<input type="checkbox"/> Use of Interconnector Agreement
<input type="checkbox"/> Retail Energy Code	<input type="checkbox"/> Transmission License	<input type="checkbox"/> System Operator Transmission Owner Code	<input type="checkbox"/> Supplemental Agreements
<input type="checkbox"/> Distribution Code	<input type="checkbox"/> Grid Code	<input checked="" type="checkbox"/> None	

No impacts on Core Industry Documents identified.

Impacts on BSC Systems

Impacted Systems				
<input type="checkbox"/> CRA	<input type="checkbox"/> CDCA	<input type="checkbox"/> PARMS	<input type="checkbox"/> SAA	<input type="checkbox"/> BMRS
<input type="checkbox"/> EAC/AA	<input type="checkbox"/> FAA	<input type="checkbox"/> TAAMT	<input type="checkbox"/> NHHDA	<input type="checkbox"/> SVAA
<input type="checkbox"/> ECVA	<input type="checkbox"/> ECVA Web Service	<input type="checkbox"/> Elexon Portal	<input checked="" type="checkbox"/> None	

No impacts on BSC Systems identified.

Impacts on BSC Parties

Impacted Parties			
<input checked="" type="checkbox"/> Supplier	<input checked="" type="checkbox"/> Interconnector User	<input checked="" type="checkbox"/> Non Physical Trader	<input checked="" type="checkbox"/> Generator
<input checked="" type="checkbox"/> Licensed Distribution System Operator	<input checked="" type="checkbox"/> National Electricity Transmission System Operator	<input checked="" type="checkbox"/> Virtual Lead Party	<input type="checkbox"/> Other (Please specify)

This Modification will impact all BSC Parties by ensuring that any actions required as a consequence of sanctions can be implemented without risking contravention of the BSC, therefore reducing the risk of any material impacts of a breach of contract being funded by BSCCo (and therefore BSC Parties). However, its impact would only be apparent if circumstances arose where the BSCCo was required to undertake actions to comply with government sanctions.

Impacts on consumers and the environment

Impact of the Modification on consumer benefit areas:	
Consumer benefit area	Identified impact
Improved safety and reliability <i>Clarity for BSC Parties on actions and processes required should a sanctions order be applied to a BSC Party will provide increased certainty around the operation of the energy system.</i>	Positive
Lower bills than would otherwise be the case N/A	Neutral
Reduced environmental damage N/A	Neutral
Improved quality of service N/A	Neutral
Benefits for society as a whole N/A	Neutral

Legal Text Changes

To give effect to this Modification, amendments are required in:

- [BSC Section D 'BSC Cost Recovery and Participation Charges'](#)
- [BSC Section H 'General'](#)
- [BSC Section N 'Clearing, Invoicing and Payment'](#)

5 Governance

Self-Governance

<input checked="" type="checkbox"/> Not Self-Governance – A Modification that, if implemented:	
<input checked="" type="checkbox"/> materially impacts the Code's governance or modification procedures	<input type="checkbox"/> materially impacts sustainable development, safety or security of supply, or management of market or network emergencies
<input type="checkbox"/> materially impacts competition	<input type="checkbox"/> materially impacts existing or future electricity consumers
<input type="checkbox"/> materially impacts the operation of national electricity Transmission System	<input type="checkbox"/> is likely to discriminate between different classes of Parties
<input type="checkbox"/> involves any amendments to the EBGL Article 18 Terms and Conditions related to Balancing; except to the extent required to correct an error or as a result of a factual change	
<input type="checkbox"/> Self-Governance – A Modification that, if implemented:	
Does not materially impact on any of the Self-Governance criteria provided above	

This Modification should not be treated as Self-Governance as it will update the existing Event of Default processes to include an instance referencing sanction orders.

Progression route

<input type="checkbox"/> Submit to assessment by a Workgroup – A Modification Proposal which:	
does not meet any criteria to progress via any other route.	
<input type="checkbox"/> Direct to Report Phase – A Modification Proposal whose solution is typically:	
<input type="checkbox"/> of a minor or inconsequential nature	<input type="checkbox"/> deemed self-evident
<input type="checkbox"/> Fast Track Self-Governance – A Modification Proposal which meets the Self-Governance Criteria and:	
is required to correct an error in the Code as a result of a factual change including but not limited to:	
<input type="checkbox"/> updating names or addresses listed in the Code	<input type="checkbox"/> correcting minor typographical errors
<input type="checkbox"/> correcting formatting and consistency errors, such as paragraph numbering	<input type="checkbox"/> updating out of date references to other documents or paragraphs
<input checked="" type="checkbox"/> Urgent – A Modification Proposal which is linked to an imminent issue or current issue that if not urgently addressed may cause:	
<input type="checkbox"/> a significant commercial impact on Parties, Consumers or stakeholder(s)	<input checked="" type="checkbox"/> a Party to be in breach of any relevant legal requirements.
<input type="checkbox"/> a significant impact on the safety and security of the electricity and/or gas systems	

This Modification is seeking to address a defect in the Code that could put the BSCCo or other BSC Parties in breach of the Code should the defect not be rectified. Due to the current situation the risk of a breach of the BSC from the need to apply sanctions is particularly high and should be addressed urgently.

Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

It is not believed that this Modification impacts an active SCR and so it is requested that it be treated as an SCR-exempt Modification Proposal.

Does this Modification impact any of the EBGL Article 18 Terms and Conditions held within the BSC?

This Modification proposes amendments to Sections H and N3, which constitute EBGL Article 18 terms and conditions related to Balancing, as defined in [Section F, Annex F-2](#). The Modification must therefore be circulated for a consultation period of one calendar month, as required under the EBGL change process.

Implementation approach

Given the risks and uncertainty around any potential sanctions, it is proposed that this Modification is implemented 1WD following Authority approval.