

‘Replace the Electricity Arbitration Association with the London Court of International Arbitration’

To remove the Electricity Arbitration Association (EAA) from the BSC and replace with the London Court of International Arbitration (LCIA) to deliver better value for money and service.



Elexon recommends the Panel raises the attached Modification Proposal in accordance with the provisions of Section F - Modification Procedures F2.1.1 (d) (i)



Elexon recommends this Modification is progressed directly to the Report Phase with an initial recommendation to approve



Elexon does consider that this Modification impacts the European Electricity Balancing Guideline (EBGL) Article 18 terms and conditions held within the BSC

This Modification is expected to impact:

- All BSC Parties

Phase

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

XXX/XX

Initial Written Assessment

13 July 2023

Version 1.0

Page 1 of 14

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Contents

1	Summary	3
2	Why Change?	5
3	Solution	7
4	Likely Impacts and costs	9
5	Proposed Progression	13
6	Recommendations	14

About This Document

You can find the definitions of the terms and acronyms used in this document in the [BSC Glossary](#)¹.

This document is a recommendation to the BSC Panel to raise a Modification Proposal (Attachment A) in accordance with BSC Section F2.1.1 (d) (i). Elexon will present this paper to the BSC Panel at its meeting on 13 July 2023. If the BSC Panel agrees to raise the Modification Proposal, this document will form its Initial Written Assessment (IWA), and the Proposal Form will be updated and published on the Elexon website accordingly.

There are 3 parts to this document:

- This is the main document. It provides details of the Modification Proposal, the solution, impacts, costs, benefits/drawbacks, proposed implementation approach, and a recommendation of how the Modification should progress.
- Attachment A contains the Proposal Form.
- Attachment B contains the draft redlined changes to the BSC for this Modification Proposal.



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Not sure where to start?

We suggest reading the following sections:

- Have 5 minutes? Read section 1
- Have 30 minutes? Read all sections
- Have longer? Read all sections and attachments.

XXX/XX03

Initial Written Assessment

13 July 2023

Version 1.0

Page 2 of 14

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¹ <https://www.elexon.co.uk/glossary/?show=all>

Why change?

[BSC Section H 'General'²](#) sets out dispute resolution procedures that allows Market Participants to undertake arbitration pursuant to the arbitration rules of the [Electricity Arbitration Association³](#), if required. However, the EAA has not been used by a Market Participant since its inception in 1993. Moreover, the EAA is rarely used in commercial agreements, does not maintain its website and requires monthly payment, irrespective of whether their services are used. This therefore does not offer good value for money for BSC Parties.

Solution

This Modification proposes to replace the EAA within the BSC with the LCIA where applicable, including the removal of Elexon obligations to fund EAA overheads.

Impacts and costs

We expect costs to implement this Modification to be low (<£1k) as it is a document only change. We also do not anticipate any costs or impacts for BSC Parties. Any possible further costs and impacts will be evaluated as part of the Report Phase Consultation Procedure.

Elexon stopped making payments to the EAA in 2020, under the Panel's instruction to do so. This Modification will therefore bring the Code in line with the operational practice. The Modification will therefore not bring cost savings for BSC Parties, as these have already been realised, but the Proposal will ensure clarity on which arbitration body would be used, were there to be a dispute.

Due to the proposed changes to BSC Section H 4.2 there is an impact on the provisions in the BSC that constitute EBGL Article 18 balancing terms and conditions. As a result of this a one month consultation period has been factored into the Modification timetable.

Implementation

This Modification is anticipated to be a document only change and not incur any system or process changes for Elexon or Market Participants. As such it is recommended the Modification is implemented as soon as reasonably practical to provide clarity to all Market Participants on the chosen Arbitration service. Therefore, an Implementation Date of **5 Working Days following Authority decision** is recommended.

Recommendation

Elexon invite the BSC Panel to raise this Modification Proposal in accordance with BSC Section F 'Modification Procedures' 3 2.1.1 (d) (i), as we believe it better facilitates Applicable BSC Objective (d) - 'promoting efficiency in the implementation and administration of the balancing and settlement arrangements' by introducing a number of efficiencies as outlined in the benefits section of this document.

XXX/XX03

Initial Written Assessment

13 July 2023

Version 1.0

Page 3 of 14

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² <https://bscdocs.elexon.co.uk/bsc/bsc-section-h-general>

³ <https://www.electricityarbitrationassociation.co.uk/>

If the Panel agree this proposal should be raised, we recommend this Modification is progressed straight to a Report Phase Consultation with a one month EBGL consultation period. It will then be submitted to Ofgem for decision, as it impacts EBGL.



BSC Section W 3.6 Arbitration

3.6.1 Subject to paragraph 3.6.2, a Party may refer a matter that is the subject of a Trading Dispute to arbitration in accordance with the provisions of Section H7: (a) where it disagrees with a decision of the Panel made under paragraph 3.5; (b) after a decision has been made under paragraph 3.5.3 that the Trading Dispute should not be referred to the Panel.

3.6.2 The reference of any matter to arbitration pursuant to this paragraph 3.6 shall be made no later than thirty days after the relevant decision referred to in paragraph 3.6.1(a) or (b) was notified to Parties, failing which the decision of the Trading Disputes Committee or the Panel (as the case may be) shall be final and binding on all Parties.

3.6.3 Not used.

3.6.4 The provisions of this paragraph 3.6 shall not apply to a decision of the Trading Disputes Committee (or the Panel, if applicable) pursuant to paragraph 3.2.4.

XXX/XX03

Initial Written Assessment

13 July 2023

Version 1.0

Page 5 of 14

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What is the issue?

BSC Section H 'General' sets out dispute resolution procedures that allows Market Participants to undertake arbitration pursuant to the arbitration rules of the Electricity Arbitration Association if required. However, the EAA has not been used by a Market Participant since its inception in 1993 and does not provide good value for money for BSC Parties as monthly payments are required, irrespective of whether there are any disputes to consider.

Background

Elexon reviewed the EAA service in quarter four 2019 finding (at the time):

- EAA are paid £5833.33 every month for Arbitration Services;
- [Energy UK](https://www.energy-uk.org.uk/)⁴ are paid £10k per year (in a lump sum) for secretarial costs for EAA;
- The EAA website is not maintained and the details contained within it are inaccurate and out of date;
- Legal advice was sought from [Dentons](https://www.dentons.com/en/)⁵ who advised:
 - References to the EAA are rarely made in commercial agreements; and
 - They could not find any reference to that effect in any recent contracts they have been involved in.

Following this review the BSC Panel instructed Elexon to stop paying the EAA in early 2020 and therefore any references to them in the BSC are currently redundant.

Arbitration

Arbitration can be used in the BSC for General Disputes as well as Trading Disputes under [BSC Section W 'Trading Disputes'](#)⁶.

Dispute Resolution

Unless explicitly stated in the BSC or unless there is a contrary provision in the Act, any Licence, or any EMR Legal Requirement, any dispute arising under the BSC can be referred to arbitration. This does not apply, however, to any dispute with the Panel, any Panel Committee or any Workgroup. English law applies to the resolution of such disputes and in particular, the provisions of the Arbitration Act 1996 apply to any arbitration of the dispute.

Where a dispute is referred to arbitration, the BSC Panel can instruct Elexon to participate in any arbitration proceedings for the purpose of representing the interests of any Party which is not participating in the proceedings.

A Party must notify Elexon promptly if it refers a dispute or difference to arbitration. The decision of the arbitrator is final and binding on all Parties but the arbitrator does not have the power to modify the BSC.

The arbitration provisions in Section H are subject to Section W.

⁴ <https://www.energy-uk.org.uk/>

⁵ <https://www.dentons.com/en/>

⁶ <https://bscdocs.elexon.co.uk/bsc/bsc-section-w-trading-disputes>

Desired outcomes

To replace the EAA with an arbitration body that is only paid when used, has a good reputation and experience with the energy industry.

XXX/XX03

Initial Written Assessment

13 July 2023

Version 1.0

Page 6 of 14

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Proposed solution

This Modification proposes to replace the EAA within the BSC with the LCIA where applicable, including the removal of Elexon obligations to fund EAA overheads.

To replace the EAA with the LCIA, [BSC Section D 'BSC Cost Recovery and Participation Charges'](#)⁷, BSC Section H, [BSC Section X-1 'General Glossary'](#)⁸ and [BSC Section Z 'Performance Assurance'](#)⁹ will need updating.

Why London Court of International Arbitration?

- LCIA has a global reputation;
- Payment is only required if there is a dispute that requires arbitration; and
- LCIA have experience in UK Energy Code arbitration as they are used in the Retail Energy Code (REC).

Benefits

The following benefits should be realised by implementing this Modification:

- **Cost Efficiency:** By removing Elexon's obligation to fund the EAA, this change would eliminate unnecessary costs associated with the upkeep of an unused service. This aligns with the principle of efficiency in administration. We note that this benefit has already been realised following the Panel's instruction to stop paying the EAA, so this Modification will align the BSC to current operations;
- **Operational Efficiency:** The LCIA, with its global reputation and experience in energy code arbitration, is likely to offer more effective and efficient services than the EAA. This could simplify and streamline the arbitration process when necessary, thus enhancing the implementation of the balancing and Settlement arrangements;
- **Resource Efficiency:** Payment to the LCIA is required only if there's a dispute requiring arbitration. This implies a more efficient use of resources compared to the current system, where payments are made to the EAA irrespective of their services being utilized or not; and
- **Increased Relevance:** As the LCIA is also used in the REC, this change might bring more coherence and relevance to the arbitration process across different parts of the energy sector, further promoting efficiency.

Applicable BSC Objectives

This modification should better facilitate Applicable BSC Objective (d) 'promoting efficiency in the implementation and administration of the balancing and settlement arrangements' by introducing a number of efficiencies as outlined in the benefits section of this document.

What are the Applicable BSC Objectives?

- (a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence
- (b) The efficient, economic and co-ordinated operation of the National Electricity Transmission System
- (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
- (d) Promoting efficiency in the implementation of the balancing and settlement arrangements
- (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]
- (f) Implementing and administering the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation
- (g) Compliance with the Transmission Losses Principle

XXX/XX03

Initial Written Assessment

13 July 2023

Version 1.0

Page 7 of 14

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⁷ <https://bscdocs.elexon.co.uk/bsc/bsc-section-d-bsc-cost-recovery-and-participation-charges>

⁸ <https://bscdocs.elexon.co.uk/bsc/bsc-section-x-1-general-glossary>

⁹ <https://bscdocs.elexon.co.uk/bsc/bsc-section-z-performance-assurance>

Implementation approach

Elexon recommends an Implementation Date for this Modification Proposal of:

- **5 Working Days after Authority decision**, as part of a special BSC Release.

This Modification is anticipated to be document only change and not incur any system or process changes for Elexon or Market Participants. As such it is recommended the Modification is implemented as soon as reasonably practical to provide clarity to all Market Participants on the chosen Arbitration service. Therefore, an initial Implementation Date of 5 Working Days following Authority decision is recommended.

XXX/XX03

Initial Written Assessment

13 July 2023

Version 1.0

Page 8 of 14

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4 Likely Impacts and costs

Estimated costs

Costs will be confirmed during the Report Phase Consultation. However, for those roles we believe will be impacted, we have indicated in the impacts section whether we believe the costs are likely to be high, medium or low based on the following categories:

- High: >£1 million
- Medium: £100-1000k
- Low: <£100k

Implementation costs estimates			
Organisation	Item	Implementation costs (£)	Comment
Elexon	Systems	0	
	Documents	<1k	Document only change to BSC Sections
	Other	0	
NGESO	Systems	0	
	Other	0	
Industry	Systems & processes	0	
	Total	<1k	

On-going costs estimates		
Organisation	On-going costs (£)	Comment
Elexon	-	
NGESO	-	
Industry	-	
	Total	- No ongoing costs anticipated, rather we expect confirmation of cost savings.

Estimated Impacts

Impact on BSC Parties and Party Agents		
Party/Party Agent	Potential Impact	Potential cost
All BSC Parties	No implementation or on-going costs are anticipated for any Parties. It is anticipated this Modification will have a minor positive impact on all BSC Parties by clarifying the Arbitration service they can use if required.	N/A

Impact on the NETSO	
Potential Impact	Potential cost
No impacts anticipated	N/A

Impact on BSCCo		
Area of Elexon	Potential Impact	Potential cost
Elexon	Allow Elexon to use LCIA as an arbitrator in the event there is a dispute that requires arbitration	N/A

Impact on BSC Settlement Risks
No impacts on Settlement Risks are anticipated or identified. However, this will be confirmed through the Report Phase Consultation.

Impact on BSC Systems and processes	
BSC System/Process	Potential Impact
None	N/A

Impact on BSC Agent/service provider contractual arrangements	
BSC Agent/service provider contract	Potential Impact
None	N/A

Impact on Code	
Code Section	Potential Impact
Section D	Remove the obligation for the NETSO to pay BSCCo 10% of the amounts from time to time borne by BSCCo in respect of the overhead costs of the Electricity Arbitration Association

XXX/XX03

Initial Written Assessment

13 July 2023

Version 1.0

Page 10 of 14

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Impact on Code	
Code Section	Potential Impact
Section H	Remove EAA from Clauses 4.2.3 (f) (iv) and 4.4.2 (c) (v) and replace with LCIA. Update sub-clauses in 7.1 to reflect replacement of EAA with LCIA and removal of annual costs to EAA.
Section X-1	Remove EAA from the General Glossary and add LCIA.
Section Z	Remove EAA from Clause 2.3.3 (a) and replace with LCIA.

Impact on MHHS
No impacts on MHHS have been identified.

Impact on EBGL Article 18 terms and conditions
Due to the proposed changes to BSC Section H 4.2 there is an impact on the provisions in the BSC that constitute EBGL Article 18 balancing terms and conditions. As a result of this a one month consultation period has been factored into the Modification timetable. However, we do not believe this proposal has a direct or material impact on the EBGL provisions and is therefore neutral against the EBGL objectives. The proposal is replacing one arbitration body with another and therefore does not directly impact balancing or the governance arrangements.

Impact on Code Subsidiary Documents	
CSD	Potential Impact
None	N/A

Impact on other Configurable Items	
Configurable Item	Potential Impact
None	N/A

Impact on Core Industry Documents and other documents	
Document	Potential Impact
Ancillary Services Agreements	No Impact
Connection and Use of System Code	
Data Transfer Services Agreement	
Distribution Code	
Grid Code	
Retail Energy Code	



Impact on Core Industry Documents and other documents

Document	Potential Impact
Supplemental Agreements	
System Operator-Transmission Owner Code	
Transmission Licence	
Use of Interconnector Agreement	

Impact on a Significant Code Review (SCR) or other significant industry change projects

None

Impact of the Modification on the environment and consumer benefit areas:

Consumer benefit area	Identified impact
1) Improved safety and reliability None identified	Neutral
2) Lower bills than would otherwise be the case None identified	Neutral
3) Reduced environmental damage None identified	Neutral
4) Improved quality of service None identified	Neutral
5) Benefits for society as a whole None identified	Neutral

Other Impacts

Item impacted	Potential Impact
N/A	N/A

What are the consumer benefit areas?

- 1) Will this change mean that the energy system can operate more safely and reliably now and in the future in a way that benefits end consumers?
- 2) Will this change lower consumers' bills by controlling, reducing, and optimising spend, for example on balancing and operating the system?
- 3) Will this proposal support:
 - i) new providers and technologies?
 - ii) a move to hydrogen or lower greenhouse gases?
 - iii) the journey toward statutory net-zero targets?
 - iv) decarbonisation?
- 4) Will this change improve the quality of service for some or all end consumers. Improved service quality ultimately benefits the end consumer due to interactions in the value chains across the industry being more seamless, efficient and effective.
- 5) Are there any other identified changes to society, such as jobs or the economy.

XXX/XX03

Initial Written Assessment

13 July 2023

Version 1.0

Page 12 of 14

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Next steps

Should the Panel agree to raise this Modification Proposal, we believe it should progress straight to Report Phase with a one month EBGL consultation period.

Given the EAA has not been used by a Market Participant since its inception in 1993 and Elexon no longer pay for their services the solution to remove references to them in the BSC is self-evident. This is supported by replacing them with LCIA to align arbitration services with the REC. Furthermore, BSC Parties will get a chance to comment on the suitability of the LCIA via the Report Phase Consultation.

Due to the impact on the EBGL Article 18 Terms and Conditions this Modification is not a candidate for Self-Governance. In the absence of EBGL impacts, we believe this could have been treated as Self-Governance, as it does not materially impact any of the other Self-Governance criteria as the proposal is to replace one arbitration body with another.

Timetable

Proposed Progression Timetable	
Event	Date
Present Initial Written Assessment to Panel	13 July 2023
EBGL Report Phase Consultation	20 July 2023 – 21 August 2023
Present Draft Modification Report to Panel	14 September 2023
Issue Final Modification Report to Authority	20 September 2023

What is the Self-Governance Criteria?

A Modification that, if implemented:

(a) does not involve any amendments whether in whole or in part to the EBGL Article 18 terms and conditions; except to the extent required to correct an error in the EBGL Article 18 terms and conditions or as a result of a factual change, including but not limited to:

- (i) correcting minor typographical errors;
 - (ii) correcting formatting and consistency errors, such as paragraph numbering; or
 - (iii) updating out of date references to other documents or paragraphs;
- (b) is unlikely to have a material effect on:
- (i) existing or future electricity consumers; and
 - (ii) competition in the generation, distribution, or supply of electricity or any commercial activities connected with the generation, distribution, or supply of electricity; and
 - (iii) the operation of the national electricity transmission system; and
 - (iv) matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies; and
 - (v) the Code's governance procedures or modification procedures; and

(b) is unlikely to discriminate between different classes of Parties.

XXX/XX03

Initial Written Assessment

13 July 2023

Version 1.0

Page 13 of 14

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6 Recommendations

We invite the Panel to:

- **RAISE** this Modification Proposal in accordance with Section F2.1.1(d)(i);
- **AGREE** that this Modification progresses directly to the Report Phase;
- **AGREE** that this Modification:
 - **DOES** better facilitate Applicable BSC Objective (d);
- **AGREE** that this Modification **DOES** impact the EBGL Article 18 terms and conditions held within the BSC;
- **AGREE** the impact on the EBGL objectives;
- **AGREE** an initial view that this Modification **should not** be treated as a Self-Governance Modification;
- **AGREE** an initial recommendation to the Authority that this Modification should be **approved**;
- **AGREE** an initial Implementation Date of:
 - **5 Working Days** following Authority decision;
- **AGREE** the draft Legal Text; and
- **NOTE** that Elexon will issue the Draft Modification Report (including the draft Legal Text) for a one month consultation and will present the results to the Panel at its meeting on 14 September 2023.

XXX/XX03

Initial Written Assessment

13 July 2023

Version 1.0

Page 14 of 14

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