

## P374 'Aligning the BSC with the EB GL change process and derogation approach'

P374 seeks to ensure that the BSC is aligned with the European Electricity Balancing Guideline derogation and change process by ensuring that BSC Modifications are not implemented until the EB GL change process has completed and BSC Derogations cannot be granted for provisions that meet the EB GL balancing terms and conditions



The P374 Proposer recommends P374 is progressed directly to the Report Phase with an initial recommendation to approve



ELEXON recommends consideration of P374 is deferred subject to the provision of further information

This Modification is expected to impact:

- BSC Panel;
- National Grid Electricity System Operator (ESO);
- Ofgem (the Authority); and
- BSC Parties.

## Contents

<b>1</b>	<b>Why Change?</b>	<b>3</b>
<b>2</b>	<b>Solution</b>	<b>8</b>
<b>3</b>	<b>Proposed Progression</b>	<b>11</b>
<b>4</b>	<b>Likely Impacts</b>	<b>14</b>
<b>5</b>	<b>Recommendations</b>	<b>16</b>
	<b>Appendix 1: Glossary &amp; References</b>	<b>17</b>

## About This Document

This document is an Initial Written Assessment (IWA), which ELEXON and the Proposer will present to the Panel on 8 November 2018. The Panel will consider the recommendations and agree how to progress P374.

There are four parts to this document:

- This is the main document. It provides details of the Modification Proposal, an assessment of the potential impacts and a recommendation of how the Modification should progress.
- Attachment A contains the P374 Proposal Form.
- Attachment B contains the draft legal text to deliver P374.
- Attachment C contains ELEXON legal interpretations of the EB GL Change Process.



---

### Contact

**Steven Bradford**

020 7380 4363

Steven.bradford@elexon.co.uk



---

284/14

P374

Initial Written Assessment

---

6 Nov 18

Version 1.0

---

Page 2 of 21

© ELEXON Limited 2018

# 1 Why Change?

This section outlines relevant background information that is important to understand when considering P374.

## Background

The legally-binding European [Electricity Balancing Guideline](#) (EB GL) came into force on 18 December 2017. The regulations for this were published as Articles of Regulation from the European Commission. The EB GL is one of eight European Network Codes and Guidelines. EB GL is the main Network Code impacting the BSC as much of its scope covers Balancing and Settlement. The European Network of Transmission System Operators ([ENTSO-E](#)), was responsible for developing the Network Codes.

## Relevant EB GL Provisions

### Article 18 'Terms and conditions related to balancing'

Article 18 of EB GL describes at a high level what the balancing and imbalance terms and conditions must cover for each Member State of the European Union. Article 18 also requires that the Transmission System Operators (TSOs) of each Member State develop a proposal for those terms and conditions for their scheduling areas no later than six months after EB GL entered into force, i.e. by 18 June 2018.

### Article 4 'Terms and conditions or methodologies of TSOs'

Article 4 requires the TSO of each Member State to develop, amongst other conditions or methodologies, the balancing and imbalance terms and conditions required by Article 18 and to submit them to the relevant Authority. In the case of Great Britain (GB) National Grid ESO is the TSO and Ofgem (as the National Regulatory Authority) is the relevant Authority.

### Article 5 'Approval of terms and conditions or methodologies of TSOs'

Article 5 requires Ofgem to approve (amongst other conditions or methodologies) the balancing terms and conditions specified in Article 18 and required under Article 4. Article 5 also requires the proposal for terms and conditions to include a proposed timescale for their implementation, which shall not be longer than 12 months after the approval by, in the case of GB, Ofgem.

### Article 6 'Amendments to terms and conditions or methodologies of TSOs'

Article 6 gives powers to Ofgem to amend the proposed terms and conditions, where it believes this is needed to allow it to approve the terms and conditions. If this is required, ESO would be required to submit a proposal for amended terms and conditions for approval within two months of the direction from Ofgem. Ofgem would then have two months following the submission of the amended proposal to make its determination.

Article 6 also states that TSOs may develop proposals for amendments to those terms and conditions, in which case the proposals for amendments shall be subject to consultation in accordance with Article 10 and approved in accordance with Articles 4 and 5.

### The EB GL Change Process

Article 10 'Public consultation' requires ESO to consult with stakeholders on the proposals or amendments to the proposals of the terms and conditions for at least one month. It also requires ESO to "duly consider the views of stakeholders resulting from the consultations" and "in all cases, a sound justification for including or not including the views resulting from the consultation shall be provided together with the submission and published in a timely manner before or simultaneously with the publication of the proposal for terms and conditions or methodologies."

### Derogation Provisions

Article 62 of the EB GL allows Ofgem to grant the ESO derogation from specified EB GL provisions. This may be at the request of the ESO or Ofgem's initiative. Article 18 is not listed as a provision that can be derogated.

Modification [P362 'Introducing BSC arrangements to facilitate an electricity market sandbox'](#) was implemented on 28 August 2018 and introduced provisions in the BSC to enable the Panel to grant derogation of certain BSC obligations to participants of ELEXON's BSC sandbox.

### Setting the GB balancing and imbalance terms and conditions

Summary of procedure and status	
Step	Status/key date
1. EB GL published in the Official Journal of the European Union	28 Nov 17
2. EB GL enters into force 20 days after publication	18 Dec 17
3. ESO develops the draft terms and conditions ready for consultation	2 May 18
4. ESO consults on its proposal for at least one month in accordance with Article 10	2 May 18 to 4 Jun 18
5. ESO submits its final proposal to Ofgem	18 Jun 18
6. Ofgem decides whether to agree on the terms and conditions or to require changes (in which case Article 6 would apply)	Pending – discussions on-going between ESO and Ofgem

The ESO proposal and consultation can be found here:

<https://www.nationalgrideso.com/codes/european-network-codes/meetings/consultation-article-18-electricity-balancing-guideline-eb-gl>

284/14

P374

Initial Written Assessment

6 Nov 18

Version 1.0

Page 4 of 21

© ELEXON Limited 2018

## ESO Proposal and consultation responses

The ESO proposed to Ofgem that the Article 18 terms and conditions be held within the existing GB framework. To that end, Annex 1 of the ESO proposal set out those parts of the BSC (and other impacted industry framework documents) to show how the existing GB framework meets the requirements of the EB GL Article 18 terms and conditions.

The ESO's proposal stated that there is "no need for implementation following approval". This was on the basis that the proposed terms and conditions related to balancing and imbalance were already set out within the existing frameworks.

There were two respondents to the ESO consultation: ELEXON and SSE.

ELEXON responded largely agreeing with the intent of the ESO's proposal. SSE responded to the consultation disagreeing with the approach being taken. SSE's views have led to P374 being raised and their views in regards to the BSC considerations are elaborated on below.

## Post consultation views

In considering the responses to its consultation, the ESO requested ELEXON's view. ELEXON provided five possible legal interpretations of EB GL which were shared with the ESO, Ofgem and SSE and can be found in Attachment C.

The primary consideration in these interpretations was how amendments to the balancing and imbalance terms and conditions should be facilitated and what impact this could have on the BSC. For example, if a BSC Modification proposes to amend sections of the BSC that are encompassed in Article 18 terms and conditions, then Article 10 requires at least a one-month consultation carried out by the ESO with a final submission to Ofgem as the Authority for decision. But how does that interact and impact the BSC Modification Procedures?

In broad terms, all but one of the options will lengthen the end to end Modifications process due to an extra or increased consultation period. This is contrary to current market drivers where there is a call for more efficient change processes, and in effect, the EB GL change process may restrict the following types of Modifications, where the BSC legal text is within the scope of the Article 18 terms and conditions:

- Urgent Modifications;
- Fast Track Self-Governance Modifications; and
- Self-Governance Modifications.

Ofgem has not yet made a decision as to whether the proposal put forward by the ESO on 18 June 2018 are the balancing and imbalance terms and conditions to be approved, or whether amendments are needed before approval.

Ofgem has not yet made a decision on interpretation, e.g. whether one of the five different options above; or something else meets the amendment requirements of the EB GL. Further, it is possible that there are other interpretations.

ELEXON has also informed the ESO and Ofgem that should a change to the BSC be required as a result of setting or amending the terms and conditions, an implementation date is required to meet the requirements of EB GL Article 5 and to give time to progress and implement the consequential BSC Modification.

---

284/14

P374  
Initial Written Assessment

---

6 Nov 18

Version 1.0

---

Page 5 of 21

© ELEXON Limited 2018

## Who will operate the EB GL change process?

As it currently stands, the EB GL requires the ESO to operate the EB GL change process and Ofgem to approve the amendments to the Article 18 terms and conditions. We understand that under EB GL Article 13 it would be possible for ESO to delegate the EB GL change process to ELEXON as the BSCCo for the Article 18 terms and conditions that are being met by the BSC. This could have several advantages, such as being able to make use of the existing Modification consultations, such as the Report Phase Consultation, to minimise timescales, and align more closely with existing processes, minimising disruption and inconvenience to market participants.

## What is the issue?

SSE raised Modification P374 as it believes the BSC does not explicitly reflect the changes introduced by the EB GL in respect of derogations (Article 62(2)) and amendments (Articles 4, 5, 6 and 10) to the terms and conditions related to balancing.

SSE believes that without this change the BSC will not be aligned with the EB GL, which could cause confusion or create ambiguity for BSC Parties and the BSC Panel when applying or interpreting the BSC arrangements.

SSE states that the recent P373 'Reversing the changes relating to Approved Modification P297' (and also GC0096 'Energy Storage' Workgroup discussion on 24 October 2018) Report Phase Consultation in its view highlighted the urgency of the issue as SSE believes P373 should be progressed through the EB GL change process. SSE felt it prudent to take immediate action to seek to correct the defect and to ensure that the related defect, in respect of BSC Derogations, was also addressed in a timely way.

## Derogations

BSC Modification P362 introduced the ability to grant BSC Derogations against provisions of the BSC upon application and consideration of the merits of the case. SSE assert that the terms and conditions related to balancing submitted in accordance with Article 18, however, cannot be derogated against, in accordance with Article 62(2), once it has been approved by the National Regulatory Authority (Ofgem).

Consequently, SSE believe a BSC change is necessary to limit any potential misunderstanding; on the part of stakeholders, and especially new entrants, smaller parties and potential innovators etc.; when considering BSC Derogation requests that could result in nugatory work by applicants or an inadvertent breach of European Law; and as such provide increased surety that GB national arrangements comply with European Law when administering BSC Derogation requests that impact upon the Article 18 terms and conditions relating to balancing.

## Amendments

Article 6(3) of EB GL (referring to Articles 4, 5 and 10) sets out a process that will need to be followed in respect of amendments to the terms and conditions related to balancing (as set out in Annex 1 to the 18th June 2018 proposal submitted by the TSO). The BSC does not currently cater for this additional process.

---

284/14

P374

Initial Written Assessment

---

6 Nov 18

Version 1.0

---

Page 6 of 21

© ELEXON Limited 2018

### **What is the impact on in-flight Modifications?**

SSE believes that as the ESO has put forward the draft terms and conditions, any changes to the GB arrangements fulfilling those terms and conditions now require the EB GL change process to be applied in order to amend those provisions.

### Proposed solution

P374 proposes to amend Section H and Section F of the BSC, as set out in the legal text in Attachment B.

The Proposer believes that the EB GL requirements, as applicable EU law, will apply irrespective of this change. As with other EU Network Code and Guideline changes, the Department for Business, Energy & Industrial Strategy (BEIS) and Ofgem have encouraged industry to amend the GB framework documents to bring them into line with the EU Network Guideline and this is what SSE is doing with this Modification.

### Derogations

The Proposer recommends the existing BSC Derogation arrangement, as set out in Section H 'General', will need to be amended to make clear that those parts of the BSC listed in Annex 1 of the National Grid proposal of 18 June 2018 to Ofgem cannot be subject to a BSC Derogation, as this would not be compatible with Article 62(2) of EB GL.

### Amendments

In respect of amendments to the BSC, it is important to note that there is a procedure, set out in Article 6(3) of EB GL and referring to Articles 4, 5 and 10 of EB GL, that will need to be followed in respect of amendments to the terms and conditions related to balancing (which are set out in Annex 1 to the 18th June 2018 proposal). The Proposer has suggested that BSC Modifications cannot take effect until the EB GL change process has completed.

Under P374 the existing change process would remain, but additionally, any BSC changes that seek to amend the sections of the BSC listed in the ESO's proposal of 18 June 2018 (as may be amended from time to time) would require ESO to operate the EB GL change process in parallel. To this end, the Proposer has suggested placing a duty on ELEXON to coordinate with and assist the ESO when the ESO is undertaking their duties under Articles 4, 5, 6 and 10 of EB GL.

Accordingly, the Proposer is recommending that the Modifications procedure of the BSC, as set out in Section F 1.1.3, should be changed to reflect that the changes to consultation timeframes will need to be followed in respect of changes to those parts of the BSC listed in Annex 1 of the 18th June 2018 proposal.

### Legal Text

The Proposer put forward the draft legal text for P374 in their proposal form. ELEXON has since formally drafted the legal text, based on the Proposer's draft, which can be found in Attachment B.



## ELEXON's Legal View

Prior to P374 being raised, ELEXON provided comments on the draft legal text, for consideration by the Proposer. The Proposer decided to keep the legal text substantially the same. Details can be found in appendix 2

Since P374 has been raised we have further considered the draft legal text. We have a number of concerns with the proposed legal text, which we summarise below. Further detail can be found in Appendix 2.

- Differing interpretation of EBGL provisions regarding derogations
- Inadvisable to codify requirements that are yet to be settled
- Unnecessary hard-coding may lead to unintended consequences
- Non- Balance Responsible Parties will be unnecessarily caught
- Drafting may be construed as limiting the Authority
- Reference to Change Proposals in Proposed Legal Text is problematic
- Reference to Project TERRE is problematic

## Derogation

ELEXON does not hold the same view as the Proposer regarding the derogations provisions. ELEXON's view is that the EB GL provisions regarding derogations relate only to derogations to the EB GL itself, and not to any self-contained derogations process (e.g. the BSC Sandbox) provided within terms and conditions approved under Article 18.

Further, we believe existing BSC Sandbox provisions (H10.4.3(d)(iii)) preclude derogations that would be contrary to EU Law and therefore it would not be good legal text drafting practice to include a list of provisions which cannot be derogated. This is because it may lead to unintended interpretations of the more general preclusion, and will unnecessarily "hard-code" requirements which are likely to change in the future.

The proposed legal text may also have the effect of unnecessarily restraining the operation of the BSC Sandbox. Even if SSE's interpretation of the EB GL is correct, there may be prospective BSC Sandbox participants who are not Balance Responsible Parties (BRPs) and therefore not subject to the EB GL. In this case (again, notwithstanding ELEXON's differing interpretation) there would be no barrier to such parties being granted a BSC Derogation.

## Change

It is not clear yet clear how the EB GL change process requirements should be interpreted. We have put forward five options, none of which have been rejected by Ofgem. Indeed, the formal proposal by ESO is that there is no impact on the existing change process. Should this not be the case an amendment to the terms and conditions will be required to set an implementation date.

The BSC provisions that the ESO included in its proposal of 18 June 2018 was intended to demonstrate that the existing arrangements meet the Article 18 terms and conditions. The mapping was not intended to be used as a mapping against which future Modifications would be assessed. Further, the P344 provisions listed in the P374 proposed legal text do not exclusively all relate to EB GL requirements.

We also note that the ESO proposal of 18 June 2018 does not include Section N of the BSC. However, SSE's proposed legal text does include Section N. This highlights the issue with hard-coding sections in the BSC. Conversely, the Proposer believes including the sections of the BSC that cannot be derogated and that are subject to the EB GL change process provides greater clarity to Parties. Overall, until the Terms and Conditions are known there is insufficient information available to assess whether the P374 proposed legal text is appropriate.

## Applicable BSC Objectives

Proposer views against the Applicable BSC Objectives	
Relevant Objective	Identified impact
a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence	<b>Positive</b>
(b) The efficient, economic and coordinated 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	<b>Positive</b>
(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]	<b>Positive</b>
(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	Neutral
(g) Compliance with the Transmission Losses Principle	Neutral

The Proposer believes that P374 will positively impact objective (e) by ensuring BSC compliance with EB GL provisions relating to derogations against and amendments to Authority approved balancing terms and conditions.

The Proposer notes that the changes are also likely to be beneficial to both ESO and ELEXON in providing more clarity and certainty in fulfilling their obligations under EB GL and managing derogation requests and Change Proposals, thereby realising benefits under objectives (a) and (d).

The Proposer believes that P374 is neutral against all other Applicable BSC Objectives (b), (c), (f), and (g).

## Implementation approach

The Proposer has requested that P374 be implemented as soon as possible following Authority decision to minimise the risk of inadvertent non-compliance with EB GL provisions. Should P374 be approved by the Authority, ELEXON would recommend an Implementation Date of **five Working Days (WDs) following Authority decision**.

284/14

P374

Initial Written Assessment

6 Nov 18

Version 1.0

Page 10 of 21

© ELEXON Limited 2018

#### Next steps

This IWA will be presented to the BSC Panel at its meeting on 8 November 2018, where it will decide whether to progress the Modification to the Report Phase as requested by the Proposer.

Whilst the Proposer does not believe there is uncertainty around EB GL interpretation and timelines, ELEXON is not as certain. We, therefore, outline below the three options available to the Panel and believe option 3 to be the most appropriate at this time.

#### ELEXON legal view

ELEXON is of the view that as Ofgem has not approved the terms and conditions, they are not in force and hence not subject to the EB GL change process. This is important as it has implications for Modifications that are still in the Assessment or Report phase. Therefore we don't believe P374 needs to be progressed as hastily as the Proposer is requesting.

ELEXON is also of the view that should the ESO proposal not be accepted, the consequence of which would then be a need to make changes to the existing GB framework in order to comply with EB GL Article 18, then in accordance with EB GL Article 5 an implementation timeline would be required to be specified by ESO and accepted by Ofgem. When setting this timeline, consideration should be given to the time needed to progress and implement a BSC Modification if the BSC was one of the parts required to change.

#### Option 1: Proceed directly to the Report Phase

The Proposer recommends that this Modification is sent directly to Report Phase. This is on the basis that P374 is self-evident as it relates to a legal requirement. The Proposer also notes that this approach has been adopted by the BSC Panel when dealing with similar 'changes to the law' Modifications.

The Proposer believes that the P374 solution is the only workable solution at the current time, as the solution will alleviate industry uncertainty around the implementation of EB GL. It will also minimise the time period for which the BSCCo and ESO are left unable to comply with the EB GL arrangements. Further, the P374 solution is straightforward and therefore does not require assessment by a Workgroup. Industry views on P374 can be sought through the Report Phase Consultation.

The Proposer does not suggest any additional questions to be added to the standard Report Phase questions.

Given the different views the Proposer and ELEXON has regarding the proposed legal text, should the Panel decide to proceed direct to the Report Phase, we would recommend adding an additional consultation question to the effect of "do you agree with the Proposer that the legal text should list the sections of the BSC that cannot be derogated against, noting the concerns raised by ELEXON?"

## Option 2: Proceed to the Assessment Procedure

We have spoken to the Proposer about this option and both the Proposer and ELEXON agree that assessment by a Workgroup is not currently appropriate. The Proposer believes the matter is self-evident and so should proceed directly to the Report Phase. Further ELEXON does not believe a Workgroup could add much value to the interpretation of EB GL at this time. However, a Workgroup could, once a decision and guidance is provided by Ofgem, assess the appropriate changes required to the BSC, particularly around the change process and the approach taken for the legal text.

## Option 3: Request further information

If the Panel considers that there is insufficient information available to enable it to decide whether to submit P374 to the Assessment Procedure or the Report Phase, the Panel may defer its decision in accordance with Section F2.2.5 of the BSC. This should be considered an exceptional circumstance and the Panel should have due regard to the complexity, importance and urgency of P374 (in accordance with F1.2.2).

ELEXON is of the view that there is sufficient uncertainty with how the EB GL change process and derogation process could be interpreted that it would be prudent to seek further information to inform a decision. We do not believe there is a pressing need, as the EB GL change process cannot be in effect for terms and conditions that have not yet been approved.

ELEXON believes the following information from Ofgem would better inform the Panel's decision on whether to proceed to the Assessment procedure or the Report Phase:

Information that would better inform the Panel's decision	
Information	How it would help
1. Whether the balancing terms and conditions proposed by ESO on 18 June 2018, and not yet approved, are already subject to the EB GL change process	It would inform whether 'in-flight' Modifications are currently caught by the EB GL change process and the appropriate P374 timelines
2. Whether EB GL prevents BSC Derogations being granted where the derogated BSC provisions relate to the Article 18 terms and conditions	Provide clarity on the different interpretations of derogations
3. Whether Ofgem is likely to direct changes to the proposed terms and conditions	It will inform the timescales and implementation approach, as if an amendment is needed, it gives ESO two months to amend and Ofgem two months to approve and requires an implementation date to be set.
4. Whether Ofgem is likely to set an implementation date for the terms and conditions, and if so what the lead time might be	It will inform the progression timetable of P374
5. Whether Ofgem is time bound to make a decision on the proposed terms and conditions	It will inform the progression timetable of P374

6. Guidance on the possible interpretations of the EB GL change process and derogation process	It will inform the changes needed to the BSC
7. When a decision on the Article 18 terms and conditions proposed by ESO on 18 June 2018 is likely to be made	It will inform the progression timetable of P374

Additionally, the Network Code on Emergency and Restoration mapping for suspension of markets and imbalance settlement during such periods will need to form part of the Article 18 mapping. ESO hasn't yet submitted its formal proposal to Ofgem on this (due 18 December at the latest).

## Self-Governance

Both the Proposer and ELEXON agree that P374 should not be treated as a Self-Governance Modification as it may have a material effect on Self-Governance criteria (a)(iii) the operation of the national electricity transmission system; and (v) the Code's governance procedures or modification procedures.

## Timetable

The proposed standard progression timetable under the 'Direct to Report Phase' option for P374 is displayed below.

Proposed Standard Progression Timetable for P374	
Event	Date
Present Initial Written Assessment to Panel	8 Nov 2018
Report Phase Consultation (15 WDs)	12 Nov 2018 – 3 Dec 2018
Present Draft Modification Report to Panel	13 Dec 2018
Issue Final Modification Report to Authority	17 Dec 2018
Final Modification Report Published	17 Dec 2018



### What are the Self-Governance Criteria?

A Modification that, if implemented:

(a) 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.

284/14

P374  
Initial Written Assessment

6 Nov 18

Version 1.0

Page 13 of 21

© ELEXON Limited 2018

## 4 Likely Impacts and Costs

### Impact on BSC Parties and Party Agents

Party/Party Agent	Potential Impact
Parties and Party Agents	No implementation impacts expected. Parties seeking a BSC Derogation or seeking to amend provisions of the BSC that form part of the terms and conditions related to balancing will be impacted if P374 is approved.

### Impact on Electricity System Operator

No implementation impacts expected. The ESO will be required to implement the EB GL change process.

### Impact on BSCCo

Area of ELEXON	Potential Impact
The BSC Derogation processes	Changes will be required to working procedures and guidance notes to ensure compliance with EB GL and P374.
The BSC Modification processes	Changes will be required to working procedures and guidance notes to ensure compliance with EB GL and P374.

### Impact on Code

Code Section	Potential Impact
BSC Section H	Changes will be required to implement P374. See Attachment B.
BSC Section F	
BSC Section Annex X-1 'General Glossary'	

### Impact on Code Subsidiary Documents

CSD	Potential Impact
BSCP40 'Change Management'	Changes will be required to implement P374. We are drafting these changes. Should the Panel proceed directly to the Report Phase, we will aim to include the BSCP40 redlined changes in the Report Phase Consultation.

### Impact on Consumers and the environment

No direct impacts on consumers or the environment have been identified.

284/14

P374

Initial Written Assessment

6 Nov 18

Version 1.0

Page 14 of 21

© ELEXON Limited 2018

#### Impact on on-going Significant Code Reviews (SCRs)

Both ELEXON and the Proposer do not believe this Modification impacts any on-going SCR, and ELEXON submitted P374 to the Authority to request SCR exemption on 5 November 2018.

#### **Estimated central implementation costs of P374**

The central implementation costs for P374 will be approximately £2k to implement the document changes and amend the ELEXON processes.

#### **Indicative industry costs of P374**

We do not anticipate any material market participant costs arising as a result of the implementation of the P374 solution.

## 5 Recommendations

The Proposer invites the Panel to:

- **AGREE** that P374 progresses directly to the Report Phase;
- **AGREE** that P374:
  - **DOES** better facilitate Applicable BSC Objective (a); and
  - **DOES** better facilitate Applicable BSC Objective (d); and
  - **DOES** better facilitate Applicable BSC Objective (e); and
- **AGREE** an initial recommendation that P374 should be **approved**;
- **AGREE** an initial Implementation Date of:
  - 5 Working days following authority approval;
- **AGREE** the draft legal text in Attachment B;
- **NOTE** that ELEXON will issue the P374 Draft Modification Report (including the draft BSC legal text and BSCP40 redlining) for a 15 Working Day consultation and will present the results to the Panel on 13 December 2018.

We invite the Panel to:

- **DEFER** consideration of P374, pending the information detailed in option 3; and
- **NOTE** that ELEXON will update the Panel on the status of the required information on 13 December 2018.



## Appendix 1: Glossary & References

### Acronyms

Acronyms used in this document are listed in the table below.

Acronym	
Acronym	Definition
BEIS	Department for Business, Energy & Industrial Strategy
BMRS	Balancing Mechanism Reporting Service
BRP	Balance Responsible Party
BSC	Balancing and Settlement Code
BSCCo	Balancing and Settlement Code Company
BSCP	Balancing and Settlement Code Procedure
CSD	Code Subsidiary Document
EBGL	Electricity Balancing Guideline
ENTSO	European Network of Transmission System Operators
ESO	Electricity System Operator
EU	European Union
GB	Great Britain
GC	Grid Code
IWA	Initial Written Assessment
NETSO	Nation Grid Electricity System Operator
SCR	Significant Code Review
TSO	Transmission System Operator
WD	Working Day

### External links

A summary of all hyperlinks used in this document are listed in the table below.

All external documents and URL links listed are correct as of the date of this document.

External Links		
Page(s)	Description	URL
3	Electricity Balancing Guideline	<a href="https://electricity.network-codes.eu/network_codes/eb/">https://electricity.network-codes.eu/network_codes/eb/</a>
3	ENTSO-E	<a href="https://www.entsoe.eu/about/inside-entsoe/objectives/">https://www.entsoe.eu/about/inside-entsoe/objectives/</a>
4	P362 'Introducing BSC arrangements to facilitate an electricity market sandbox'	<a href="https://www.elexon.co.uk/mod-proposal/p362/">https://www.elexon.co.uk/mod-proposal/p362/</a>

---

284/14

---

P374

---

Initial Written Assessment

---

6 Nov 18

---

Version 1.0

---

Page 17 of 21

---

© ELEXON Limited 2018

External Links		
Page(s)	Description	URL
4	National Grid's 18th June 2018 Article 18 EB GL Terms and Conditions Proposal Letter	<a href="https://www.nationalgrideso.com/codes/european-network-codes/meetings/consultation-article-18-electricity-balancing-guideline-eb-gl">https://www.nationalgrideso.com/codes/european-network-codes/meetings/consultation-article-18-electricity-balancing-guideline-eb-gl</a>
6	P373 'Reversing the changes relating to Approved Modification P297'	<a href="https://www.elexon.co.uk/mod-proposal/p373/">https://www.elexon.co.uk/mod-proposal/p373/</a>
6	GC0096 'Energy Storage'	<a href="https://www.nationalgrideso.com/codes/grid-code/modifications/gc0096-energy-storage">https://www.nationalgrideso.com/codes/grid-code/modifications/gc0096-energy-storage</a>

284/14

P374  
Initial Written Assessment

6 Nov 18

Version 1.0

Page 18 of 21

© ELEXON Limited 2018

## Appendix 2 – ELEXON and Proposer legal text comments

ELEXON and Proposer legal text comments	
ELEXON comment	Proposer comment
<p>The Sandbox is deliberately drafted to include the carve-outs in H10.4.3(d), which provides that certain purported derogations are of no effect, rather than in H10.1 which is the Authority's general power to grant derogations. This is done for reasons regarding the ability of the BSC to bind the Authority.</p>	<p>We would not be intending to impact on the Authority's general powers with our proposal as those powers do not extend to being able to grant a derogation in respect of the terms and conditions related to balancing.</p> <p>We do not see this Mod as being binding or not on the Authority....rather it is EBGL Art 62, in respect of derogations, that applies and we are merely reflecting, in the interest of openness and transparency for all stakeholders (and especially, new parties, small parties, innovators etc.,) right up front, at the start of 'BSC Derogations' that certain Sections of the BSC may not be derogated. In doing so we see that this is complimentary to (and not in conflict with) the wording in H10.4.3(d). From the discussions in P362 and elsewhere we are mindful that parties who may avail themselves of the BSC Derogation approach have criticised situations where things are not set out clearly for them to quickly understand. In our view making the changes to 10.1.1 addressed these stakeholder concerns</p>
<p>H10.4.3(d)(iii) already provides that Derogations shall have no effect to the extent they purport to derogate from any Relevant European Legal Requirement. Accepting for a moment SSE's interpretation of the EBGL, this would seem to have already achieved their desired outcome</p>	<p>We see no detriment in providing this much needed clarification for stakeholders</p>

### ELEXON legal views on the Proposer suggested P374 legal text

#### 1. Differing interpretation of EBGL provisions regarding derogations

The EBGL derogations provisions relate only to derogations to the EBGL itself, and not to any self-contained derogations process (e.g. the BSC Sandbox) provided within Terms and Conditions approved under Article 18.

284/14

P374

Initial Written Assessment

6 Nov 18

Version 1.0

Page 19 of 21

© ELEXON Limited 2018

## 2. Inadvisable to codify requirements that are yet to be settled

The Authority has not yet made a decision regarding the Terms and Conditions; i.e. the Terms and Conditions are currently unknown. It is inadvisable to codify requirements that have not yet been determined.

Three scenarios are possible:

- If the Authority directs that an alternative 'mapping' be used, both the chosen 'mapping' and the coded 'mapping' will apply in parallel. The BSC will unnecessarily restrict the BSC change process;
- If the Authority directs that no 'mapping' is necessary and the current BSC change process suffices for EBGL purposes, the BSC will restrict the BSC change process in a wholly unnecessary manner;
- If the Authority directs that the mapping set out in P374 is correct, the BSC will be not have been unnecessarily restricted, at least until such time as the Terms and Conditions are amended.

Until the Terms and Conditions are known there is insufficient information available to assess whether the P374 proposed legal text is appropriate.

## 3. Unnecessary hard-coding may lead to unintended consequences

The BSC Sandbox provisions already provide that a BSC Derogation 'shall have no effect to the extent that it purports to derogate from ... any Legal Requirement (including for the avoidance of doubt, any Relevant European Legal Requirement).' **H10.4.3(d)(iii)**.

Particularly given that this general preclusion already operates to achieve the Proposer's outcome, it would not be good drafting practice to include a list of provisions which cannot be derogated. This is because:

- It may lead to unintended interpretations of the more general preclusion;
- Any erroneous inclusions or exclusions from the list may affect BSC Parties' compliance with the EBGL;
- Hard-coding requirements which are likely to change in the future will compound any errors; and
- Hard-coding requirements which are likely to change in the future will necessitate further changes that are otherwise avoidable.

Instead – depending on the Authority's decision – ELEXON could maintain a register of EBGL-affected provisions outside of the code, for reference.

For the same reasons, the proposed Section F changes are not advisable. Instead – again, depending on the Authority's decision – ELEXON prefers two alternatives:

- Amending Section F to expressly provide for the additional steps necessary (applicable to all Modifications), without reference to EBGL; or
- Amending Section F to provide that Implementation Dates will be the later of
  - the codified timelines, or

---

284/14

P374

Initial Written Assessment

---

6 Nov 18

Version 1.0

---

Page 20 of 21

© ELEXON Limited 2018

- (if applicable) as provided by a Legal Requirement (including for the avoidance of doubt, any Relevant European Legal Requirement).

The second alternative would also ensure that the BSC is not out of step with any changes to the application or substance of the EBGL.

#### **4. Non- Balance Responsible Parties will be unnecessarily caught**

Even if the Proposer's interpretation of the EBGL is correct, there may be prospective BSC Sandbox participants who are not Balance Responsible Parties under the EBGL and therefore are not subject to the EBGL. In this case (again, notwithstanding SSE's differing interpretation) there would be no barrier to such parties being granted a BSC Derogation.

#### **5. Inclusion of Change Proposals in Proposed Legal Text is problematic**

The Authority has not yet provided guidance as to whether Code Subsidiary Documents will form part of the Terms and Conditions. More information is needed to determine the appropriateness of this part of the Legal Text.

The procedures for modifying Code Subsidiary Documents (provided at F3.2) do not currently provide for an implementation period. Further drafting would be necessary to put this into effect.

Change Proposal is not a defined term in the BSC.

#### **6. Drafting may be construed as limiting the Authority**

As the Authority is not a BSC Party, references to the Authority in the Code must be carefully drafted. The BSC Sandbox process already provides a list of those parts of the Code which cannot be derogated from, however it is expressed in terms that such derogation shall have no effect. In contrast, the proposed drafting purports to limit the Authority's power to make a decision.

#### **7. Reference to Project TERRE is problematic**

The Proposed Legal Text refers to Project TERRE, however this term is not currently defined in the BSC (nor is it included in Modification P344).

It is unclear whether the Proposed Legal Text is intended to include all changes made under Modification P344 in a new definition of Project TERRE.

If not, it is still unclear *which* P344 changes the Proposed Legal Text is intended to capture. Not all of the changes made under P344 relate to European legal requirements. It is not yet settled which of the affected provisions would be part of the Terms and Conditions. Some of the provisions captured by the Proposed Legal Text may be included unnecessarily.

Moreover, referring to a Modification in this way is problematic because it introduces uncertainty with regard to the status of future changes made to any provisions inserted or amended by that Modification.