

## 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)

|          | Summary of approach  | Issues  | Advantages   |
|----------|--|---|--|
| <b>1</b> | <p><b>Run BSC and EB GL change processes successively</b></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"> <li>• BSC modification process operates as normal through to Report Phase</li> <li>• Output of the Report Phase is a TSO proposal to amend the terms and conditions/methodology under Article 10 EB GL</li> <li>• TSO runs the EB GL process (or this could be delegated/assigned to ELEXON)</li> <li>• BSC Modification Report + output of the EB GL process is submitted to Ofgem for decision (Ofgem’s decision on GB modification and European amendment)</li> </ul> | <ul style="list-style-type: none"> <li>• Will add a significant amount of time to impacted modifications (at least 6 to 8 weeks)</li> <li>• Not compatible with self-governance / fast track self-governance modifications</li> <li>• Not compatible with modifications that progress straight to the report phase</li> <li>• Not compatible with urgent modifications</li> <li>• 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?</li> <li>• Inefficient process which involves three consultations (assessment phase, report phase and EB GL). This also places an additional burden on industry to respond</li> </ul> | <ul style="list-style-type: none"> <li>• Minimises risk of non-compliance under EB GL</li> <li>• 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</li> </ul> |

|          | <b>Summary of approach</b>   | <b>Issues</b>   | <b>Advantages</b>   |
|----------|--|---|---|
|          | 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"> <li>• 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</li> <li>• Inefficient as requires in-scope modifications to be identified and a separate process to be followed</li> <li>• 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?</li> <li>• Would be a barrier to simplifying the BSC modification procedures</li> <li>• May need a BSC modification to recognise additional time between conclusion of report phase and the submission of a report to the authority</li> <li>• May need a BSC modification to require the TSO to propose the same as proposed under the BSC modification</li> </ul> |   |
| <b>2</b> | <p><b>Run EB GL change process in parallel with BSC modification process</b></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"> <li>• BSC modification process operates as normal</li> <li>• At some point during the BSC process when</li> </ul> | <ul style="list-style-type: none"> <li>• 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</li> <li>• Lack of clarity about the point at which a</li> </ul>  | <ul style="list-style-type: none"> <li>• 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</li> <li>• Lower risk of different issues</li> </ul> |

|   | 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"> <li>The parallel process is timed so as to align with the completion of the BSC modification process</li> <li>TSO runs the parallel EB GL process (or this could be delegated/assigned to ELEXON)</li> <li>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)</li> </ul>   | <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"> <li>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'</li> </ul>                            |
| 3 | <p><b>Existing BSC processes are deemed to meet the EB GL process</b></p> <ul style="list-style-type: none"> <li>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</li> <li>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</li> </ul> | <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"> <li>Not compatible with self-governance modifications</li> <li>Not compatible with modifications that progress straight to the report phase</li> <li>Not compatible with urgent modifications (i.e. the minimum timescale for an Article 18 modification would be 6-8 weeks)</li> <li>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?</li> <li>Would be a barrier to simplifying the BSC modification procedures</li> <li>May be a higher risk of challenge, particularly for controversial modifications</li> </ul> | <ul style="list-style-type: none"> <li>Limited impact on standard modification procedures (though would exclude certain routes)</li> <li>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?)</li> </ul> |

|          | <b>Summary of approach</b>  | <b>Issues</b>   | <b>Advantages</b>  |
|----------|---|---|--|
|          | <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"> <li>• Many BSC modifications are submitted to Ofgem for approval</li> <li>• For a standard modification, the existing BSC processes could be deemed to align with the EB GL processes</li> </ul>  | <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>   |  |
| <b>4</b> | <p><b>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)</b></p> <ul style="list-style-type: none"> <li>• The EB GL is comprised of a framework of documents.</li> <li>• Only structural changes to the framework would be deemed to be a change to the EB GL methodology / terms and conditions.</li> <li>• For example, a proposal that Section Q of the BSC be moved to a different industry Code would require the EB GL change process</li> <li>• A change to the detailed rules contained in Section Q could be amended through the BSC change process</li> </ul> | <ul style="list-style-type: none"> <li>• Compliance with EB GL based on an interpretation that is open to challenge therefore higher risk than (1), (2) and (3).</li> <li>• How amenable would the Commission be to an argument that EB GL change processes are only intended to apply in limited circumstances?</li> <li>• Consultation on Article 18 methodology refers to methodology being comprised of, inter alia specific BSC sections – is this consistent with this approach?</li> </ul> | <ul style="list-style-type: none"> <li>• No impact on existing BSC change processes</li> </ul> |
| <b>5</b> | <p><b>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</b></p> <ul style="list-style-type: none"> <li>• On this interpretation, the EB GL is an alternative change process that allows</li> </ul>   | <ul style="list-style-type: none"> <li>• Compliance with EB GL based on an interpretation that is open to challenge therefore higher risk than (1), (2) and (3).</li> <li>• How amenable would the Commission be to an argument that EB GL change processes are only intended to apply in</li> </ul>  | <ul style="list-style-type: none"> <li>• No impact on existing BSC change processes</li> </ul> |

|  | <b>Summary of approach</b>  | <b>Issues</b>   | <b>Advantages</b> |
|--|---|---|-------------------|
|  | <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"> <li>• 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</li> <li>• 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</li> </ul> | <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"> <li>• 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.</li> </ul> |                   |

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.