

## **DRAFT LEGAL TEXT FOR PROPOSED MODIFICATION P382**

### **SECTION F: MODIFICATION PROCEDURES (VERSION 28.0)**

#### **2. CODE MODIFICATION PROCEDURES**

##### **2.1 Modification Proposals**

*Amend paragraph 2.1.1. as follows:*

2.1.1 A proposal to modify the Code may be made by any of the following:

- (a) a Party (other than BSCCo or the BSC Clearer);
- (b) Citizens Advice and Citizens Advice Scotland;
- (c) such other bodies representative of interested third parties as may be designated in writing for this purpose by the Authority from time to time;
- (d) the Panel:
  - (i) on the recommendation of BSCCo in accordance with Section C3.8.8 or Section H9.8;
  - (ii) on the recommendation of BSCCo following receipt by BSCCo of a change request proposing a change to a Core Industry Document and/or the System Operator-Transmission Owner Code which would, if made, have an impact on the Code;
  - (iii) on the recommendation of BSCCo where BSCCo becomes aware of a change in circumstances, since approval of a Proposed Modification, which would make the implementation of that Approved Modification impossible or significantly more costly than anticipated at the time such Modification was approved or no longer relevant;
  - (iv) on the recommendation of BSCCo to rectify manifest errors in or to correct minor inconsistencies (or make other minor consequential changes) to the Code;
  - (v) on the recommendation of the Trading Disputes Committee in consequence of a Trading Dispute;
  - (vi) on the recommendation of the Performance Assurance Board in accordance with Section Z8.2;
  - (vii) on the recommendation of a report in relation to a VoLL Review in accordance with Section T1.12; or
  - (viii) on the recommendation of a report in accordance with paragraph 3.1.7 of Annex C-2,

provided that, where the Panel decides to make a proposal in any of the circumstances set out in paragraphs (i) to (viii), such proposal shall be without

prejudice to the Panel's decision, pursuant to paragraph 2.7, as to whether or not to recommend to the Authority that such modification should be made;

- (e) a CfD Counterparty to reflect a proposed change to the CFD Arrangements which would, if made, have an impact on the Code;
- (f) the CM Settlement Body to reflect a proposed change to the CM Arrangements which would, if made, have an impact on the Code;
- (g) the Authority in relation to modifications which it reasonably considers are necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency, but a binding decision does not include a decision that is not, or so much of a decision that is not, Retained EU Law; and
- (h) the Authority in relation to a Modification Proposal that is in respect of a Significant Code Review.

*Amend paragraph 2.1.10A as follows:*

2.1.10A Where a Modification Proposal is raised by the NETSO in accordance with paragraph 2.1.1 which subsequently the Authority reasonably considers is necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decision of the European Commission and/or the Agency, the Authority shall inform the Panel accordingly. A binding decision in this paragraph 2.1.10A however does not include a decision that is not, or so much of a decision that is not, Retained EU Law. Such Modification Proposals shall:

- (a) be processed by the Panel in accordance with the provisions of the Code;
- (b) not be withdrawn by the NETSO and/or the Panel pursuant to paragraph 2.1.12 or 2.1.12A without the Authority's prior consent and in the event that such consent is granted shall fall under paragraph 2.1.12B;
- (c) not be amalgamated with any other Modification Proposal in accordance with paragraph 2.3 or otherwise without the Authority's prior consent; and
- (d) proceed in accordance with any timetable(s) directed or amended by the Authority for the:
  - (i) completion of each stage of the Modification Procedure; and/or
  - (ii) implementation of a modification.

## **8.2 Authority Directed Modification Proposals**

*Amend paragraph 8.2.1 to read as follows:*

8.2.1 Subject to paragraph 5.3, the Authority may direct the NETSO to raise a Modification Proposal only in relation to modifications which the Authority reasonably considers are necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency, but a binding decision does not include a decision that is not, or so much of a decision that is not, Retained EU Law.

## SECTION N: CLEARING, INVOICING & PAYMENT (Version 14.0)

### 5. TAXATION

#### 5.4 Value Added Tax

*Amend paragraph 5.4.3 to read as follows:*

5.4.3 The BSC Clearer, BSCCo and the Parties shall and shall be entitled to charge amounts in respect of VAT in accordance with any agreement referred to in paragraph 5.1.1, on the following basis, subject to paragraph 5.4.4:

- (i) if a Party has not notified BSCCo to the contrary in accordance with paragraphs 5.4.1 or 5.4.2, that the address (the "**Relevant VAT Address**") of such Party's relevant business or fixed establishment (within the meaning of ~~Part 3 Article 108(1)(d) of The Value Added Tax (Place of Supply of Goods) Order 2004 as amended by The Value Added Tax (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019~~ Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes — common system of value added tax; uniform basis of assessment) is in the United Kingdom;
- (ii) if a Party has not notified BSCCo to the contrary in accordance with paragraphs 5.4.1 or 5.4.2, that such Party has not been issued with an individual identification number by the Member State where its Relevant VAT Address is located; and
- (iii) if a Party has notified BSCCo in accordance with either paragraphs 5.4.1 and 5.4.2, that the information contained in the latest such notification is correct.

### 10. CONFIRMATION NOTICES IN RESPECT OF A PAYMENT DATE

#### 10.1 Despatch of Confirmation Notices

*Amend paragraph 10.1.1 to read as follows:*

10.1.1 Within two Business Days after each Payment Date the FAA shall, on behalf of the BSC Clearer, issue a Confirmation Notice to each Payment Party in respect of that Payment Date setting out the information required in paragraphs 10.2 and 10.3 and any other information, if any, required for the purposes of any VAT and relevant ~~European~~ legislation.

## SECTION Q: BALANCING SERVICES ACTIVITIES (VERSION 30.0)

### 6. SUBMISSION OF DATA BY THE TRANSMISSION COMPANY

#### 6.1 Submission of data to the BMRA

*Amend paragraph 6.1B to read as follows:*

#### 6.1B Submission of Transparency Regulation Data to the BMRA

- 6.1B.1 The Transmission Company shall submit to the BMRA ~~such~~the data ~~as is required~~that the Transmission Company is required to submit to the ENTSO-E under the Transparency Regulation, except for any such data that is already held by the BMRA.
- 6.1B.2 The Transmission Company shall submit the data referred to in paragraph 6.1B.1 to the BMRA in accordance with any requirements specified in the Transparency Regulation ~~and any procedures specified by the ENTSO-E (including timeframes for submission of data and the format of data)~~. For the purpose of this paragraph 6.1B.2, any timeframes for submission of data to the BMRA are target times, which the Transmission Company is expected to meet unless exceptional circumstances prevent it from doing so.

## SECTION V: REPORTING (VERSION 38.0)

*Amend paragraph 6.1 to read as follows:*

### **6. ~~NOT USED~~SUBMISSION OF TRANSPARENCY REGULATION DATA BY THE BMRA**

#### **~~6.1 Submission of Transparency Regulation Data to the ENTSO-E~~**

~~6.1.1 As soon as reasonably possible following receipt by the BMRA of the data submitted by the Transmission Company under Section Q6.1B.1, the BMRA shall submit that data to the ENTSO-E.~~

~~6.1.2 The BMRA shall submit any Transparency Regulation Data that is already held by the BMRA to ENTSO-E in accordance with any requirements specified in the Transparency Regulation and any procedures specified by the ENTSO-E (including timeframes for submission of data and the format of data). For the purpose of this paragraph 6.1.2, any timeframes for submission of data to ENTSO-E are target times, which the BMRA is expected to meet unless exceptional circumstances prevent it from doing so.~~

## SECTION X: DEFINITIONS AND INTERPRETATION

### ANNEX X-1: GENERAL GLOSSARY (V84.0)

*Remove the following definition:*

**~~"ENTSO-E":~~** ~~means the European Network of Transmission System Operators for Electricity;~~

*Amend the following definitions to read as follows:*

<b>"Competent Authority":</b>	means the Secretary of State, the Authority and any local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom <del>or the European Union;</del>
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<b>"Electricity Regulation":</b>	means the Regulation <del>(EU) 714/2009</del> <u>(EU) 2009/714/EC</u> of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity <u>as amended by the Electricity and Gas (Powers to Make Subordinate Legislation) (Amendment) (EU Exit) Regulations 2018</u> <del>and repealing Regulation 2003/1228/EC as amended from time to time;</del>
<b>"Regulation on Wholesale Energy Market Integrity and Transparency" or "REMIT":</b>	means Regulation (EU) 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency <u>as amended by the Electricity and Gas (Market Integrity and Transparency)(Amendment)(EU Exit) Regulations 2019;</u>
<b>"Transparency Regulation Data":</b>	means the data that the Transmission Company is required to submit to <del>the BMR</del> <u>ENTSO-E</u> under the Transparency Regulation;
<b>"Transparency Regulation":</b>	means Regulation (EU) 543/2013 of the European Parliament and of the Council of 14 June 2013 on submission and publication of data in electricity markets <u>as amended by the Electricity and Gas (Market Integrity and Transparency)(Amendment)(EU Exit) Regulations 2019;</u>

*Insert the following definitions to read as follows:*

<b><u>"Retained EU Law":</u></b>	<u>has the meaning given to the term in section 6(7) of the Withdrawal Act 2018;</u>
<b><u>"Withdrawal Act":</u></b>	<u>means the European Union (Withdrawal) Act 2018;</u>