

BSC Modification Proposal Form		At what stage is this document in the process?
<p><b>Mod Title:</b> Replace the Electricity Arbitration Association with the London Court of International Arbitration</p>		<div style="display: flex; flex-direction: column; gap: 5px;"> <div style="border: 1px solid green; background-color: #28a745; color: white; padding: 2px; display: flex; align-items: center; justify-content: center;">01 Modification</div> <div style="border: 1px solid #17a2b8; padding: 2px; display: flex; align-items: center; justify-content: center;">02 Workgroup Report</div> <div style="border: 1px solid #6f42c1; padding: 2px; display: flex; align-items: center; justify-content: center;">03 Draft Modification Report</div> <div style="border: 1px solid #fd7e14; padding: 2px; display: flex; align-items: center; justify-content: center;">04 Final Modification Report</div> </div>
<p><b>Purpose of Modification:</b></p> <p>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.</p>		
<p><b>Does this Modification impact any of the European Electricity Balancing Guideline (EBGL) Article 18 Terms and Conditions held within the BSC?</b></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"> <li>be raised by the Panel in accordance with the provisions of Section F2.1.1(d) (i);</li> <li>not be a Self-Governance Modification Proposal; and</li> <li>be sent directly into the Report Phase.</li> </ul> <p>This draft Modification Proposal will be presented to the BSC Panel on 13 July 2023. The Panel will determine whether to raise this proposal, and if so, how best to progress it.</p>	
	<p>High Impact:</p> <ul style="list-style-type: none"> <li>None</li> </ul>	
	<p>Medium Impact:</p> <ul style="list-style-type: none"> <li>None</li> </ul>	
	<p>Low Impact:</p> <ul style="list-style-type: none"> <li>All BSC Parties</li> </ul>	

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Timetable		 <i>andrew.grace@elexon.co.uk</i>
<b>The Proposer recommends the following timetable:</b>		 020 7380 4100
Initial Written Assessment	13 July 2023	Proposer: <i>BSC Panel</i>
EBGL Report Phase Consultation	20 July 2023 - 21 August 2023	Proposer's representative: <i>Lawrence Jones</i>
Draft Modification Report presented to Panel	14 September 2023	 <i>lawrence.jones@elexon.co.uk</i>
Final Modification Report submitted to Authority	20 September 2023	 020 7380 4118

# 1 Why Change?

## 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.

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.

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

- EAA are paid £5833.33 every month for Arbitration Services;
- [Energy UK](#) 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](#) 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 Elxon to stop paying the EAA in early 2020 and therefore any references to them in the BSC are currently redundant.

## 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.

# 2 Solution

## Proposed Solution

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

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

### 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	<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]	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 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.

## 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 type="checkbox"/> Other (please specify)	<input checked="" type="checkbox"/> None

This Modification is not anticipated to impact any other industry codes.

### 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"/> ECVAA	<input type="checkbox"/> ECVAA Web Service	<input type="checkbox"/> Elexon Portal	<input type="checkbox"/> Other (Please specify)	<input checked="" type="checkbox"/> None

This Modification is not anticipated to impact any BSC systems.

### 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)

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.

## Impacts on consumers and the environment

Impact of the Modification on consumer benefit areas:	
Consumer benefit area	Identified impact
Improved safety and reliability	Neutral
None identified	
Lower bills than would otherwise be the case	Neutral
None identified	
Reduced environmental damage	Neutral
None identified	
Improved quality of service	Neutral
None identified	
Benefits for society as a whole	Neutral
None identified	

## Legal Text Changes

This Modification proposes to update BSC Section D, BSC Section H, BSC Section X-1 and BSC Section Z in order to remove all references to the EAA and replace with the LCIA where appropriate. Full Legal Text amendments can be found in Attachment A.

### BSC 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

### BSC 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.

### BSC Section X-1

- Remove EAA from the General Glossary and add LCIA.

### BSC Section Z

- Remove EAA from Clause 2.3.3 (a) and replace with LCIA.

## 5 Governance

### Self-Governance

<input checked="" type="checkbox"/> <b>Not Self-Governance</b> – A Modification that, if implemented:	
<input 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 checked="" 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"/> <b>Self-Governance</b> – A Modification that, if implemented:	
Does not materially impact on any of the Self-Governance criteria provided above	

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.

### Progression route

<input type="checkbox"/> <b>Submit to assessment by a Workgroup</b> – A Modification Proposal which:	
does not meet any criteria to progress via any other route.	
<input checked="" type="checkbox"/> <b>Direct to Report Phase</b> – A Modification Proposal whose solution is typically:	
<input type="checkbox"/> of a minor or inconsequential nature	<input checked="" type="checkbox"/> deemed self-evident
<input type="checkbox"/> <b>Fast Track Self-Governance</b> – 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 type="checkbox"/> <b>Urgent</b> – 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 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	

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. This Modification does not meet the criteria for Fast Track Self-Governance or Urgency.

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

No. We do not believe this Proposal impacts any open SCRs and believe it should be treated as a SCR Exempt Modification Proposal.

**Does this modification impact the code drafting and system development for Market wide Half Hourly Settlement (MHHS), if so, how?**

No, we do not believe this impacts the code drafting or MHHS design.

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

Yes. 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 1 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.

<b>EBGL Article 18 Terms and Conditions</b>	<b>BSC Section Updated by Modification</b>
<b>18.4.a</b> define reasonable and justified requirements for the provisions of balancing services;	H 4.2
<b>18.6.b</b> the requirements for becoming a balance responsible party;	H 4.2

**Implementation approach**

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.