Stage 04: Draft Mod Report

What stage is this document in the process?

01 Initial Written Assessment

02 Definition Procedure

03 Assessment Procedure

04 Report Phase

P271: NETSO Consultation in relation to any potential changes to the BSC which takes place in forums other than the BSC Panel

P271 proposes that National Grid is obligated to report any potential or likely BSC impacts as a result of developments of the European Network Codes to the BSC Panel. It is suggested that the Panel establish a European Issues Group for this purpose.

The Panel recommends

Approval of the Alternative Modification

High Impact:
BSC Panel and ELEXON

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About this document:

This document is a Draft Modification Report, which ELEXON is issuing for industry consultation. We invite your views on the Panel's initial recommendations as set out in this report. We will present all responses to the Panel on 08 September 2011, when the Panel will agree a final view on whether or not this change should be made.

This is the **main document**. It outlines the solution, impacts, costs, benefits and implementation approach for the change. It includes the Panel's initial recommendation on whether the change should be approved.

Any questions?

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1 Summary

Why Change?

The development of the European Network Codes and activities of the European Network of Transmission System Operators for Electricity (ENTSO-e) under the EU third package will have potentially large impacts on the BSC. Consequently, both the BSC Panel and BSC signatories should be actively engaged and consulted with by National Grid, who are participating in this work.

Proposed Solution

P271 seeks to place an obligation on National Grid, in its role as the (National Electricity Transmission System Operator) NETSO, to consult with BSC signatories in relation to any potential changes to the BSC which arise from forums other than the BSC Panel. This scope captures **any** forum on **any** topic where National Grid is attending as NETSO.

National Grid would also be obligated to report any potential or likely BSC impacts as a result of developments of the European Network Codes to the BSC Panel.

Alternative solution

The Group has also developed an Alternative solution. It clarifies the scope of what National Grid are obligated to report on such that National Grid, in its role as NETSO, would only be obligated to consult with BSC signatories in relation to any potential changes to the BSC which arise from the European Network Codes and any activities of ENTSO-e.

Impacts & Costs

P271 would impact the information National Grid are obligated to report to the BSC Panel. The cost to implement either the P271 Proposed or Alternative Modification is estimated at £240 equating to 1 man day effort.

Implementation

10 Working Days following an Authority decision

The Case for Change

The majority of the Panel believe that the Alternative Modification would better facilitate **Applicable BSC Objectives (a), (c) and (d)**.

Recommendations

The Panel's initial recommendation is **approval** of P271 **Alternative**.

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2 Why Change?

EU 3rd Package and ENTSO-E

In July 2009, the 3rd Package was adopted by the European Union. The 3rd Package aims at introducing consistency in rules and regulation across Europe. It plans to do this via the establishment and adoption of European network codes.

The preparation of the European network codes will be a two-step process. The Agency for the Cooperation of Energy Regulators (ACER) will develop framework guidelines on specific topics which will be translated into codes by the European Network of Transmission System Operators for Electricity (ENTSO-E).

ENTSO-E consists of 41 Transmission System Operators (TSOs) from 34 countries across Europe. The Group was established to increase cooperation and coordination of TSOs across European borders and to play an active role in the development of the European network codes.

The European network codes will cover a wide range of topics and will have a significant impact on the BSC. These network codes will have priority provision over the BSC, Consequently changes to the BSC will be required to accommodate the European Network Codes. The regulations in the European network codes will impact both embedded and directly connected generation and will apply retrospectively to existing users.

What is a TSO?

Transmission System Operators are responsible for the transmission of electric power on the main high voltage networks. TSOs provide grid access to the electricity market players (i.e. generating companies, traders, suppliers, distributors and directly connected customers) according to non-discriminatory and transparent rules. In order to ensure the security of supply, they also guarantee the safe operation and maintenance of the system.

What is the Issue?

National Grid, as operator of the GB electricity transmission system (NETSO), participate in the ENTSO-E meetings and are actively involved in the drafting process for the European Network Codes.

It is likely that the European network codes will have a significant impact on the BSC and other Core Industry Documents. The Proposer believes that since National Grid are actively involved in these changes at European level, it is appropriate that they are required to consult with GB stakeholders during the process. They feel that National Grid, as NETSO, should be obliged to consult with and engage with those stakeholders who effectively fund their participation in ENTSO-E.

A Pan-Industry Issue

In February 2011, SSE Generation Ltd raised Modification Proposals to both the BSC and the CUSC, as well as a paper to the Grid Code Review Panel. Beyond P271 the other two proposals are:

- "Grid Code Signatories" paper to the February 2011 Grid Code Review Panel;
- CUSC Modification Proposal 191: "NETSO Consultation in relation to any potential changes to the CUSC which takes place in forums other than the CUSC Modifications Panel", raised on 14th February 2011.

Workgroups were established for each of the three proposals, to be run jointly across the BSC, CUSC and Grid Code.

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3 Proposed Solution

Proposed Solution

P271 proposes that National Grid, under their remit of NETSO, should be obligated to consult with signatories to the BSC, and consider their views, in relation to any potential changes to the BSC which arise from forums other than the BSC Panel. This scope captures any forum on any topic where National Grid is attending as NETSO.

This includes:

- Providing details of any draft proposals, in particular those concerning European Network Codes, ahead of their submission to the relevant body (e.g. ENTSO-e), including draft text and impact assessments as appropriate;
- Seeking and taking into consideration views of the Panel on such proposals ahead of their submission to the relevant body; and,
- Providing prior notification of, and subsequent feedback from, meetings and workshops at which National Grid have attended as NETSO, particularly with regard to development of the European Network Codes.

National Grid would also be obligated to report any potential or likely BSC impacts as a result of developments of the European Network Codes to the BSC Panel.

Joint European Standing Group

The BSC Panel have recently established a Joint European Standing Group (JESG) to look at the impact and development of the European Network Codes. P271 proposes that the most efficient way to deliver these obligations would be through the JESG.

It is believed that this would have the advantage of allowing the JESG to look at greater detail the matters presented by National Grid than would be possible during a BSC Panel meeting. It would also provide a forum to allow the consideration of other European issues that may be raised from time to time.

4 Alternative solution

The P271 proposal seeks to place an obligation on National Grid, in its role as NETSO, to consult with BSC signatories in relation to any potential changes to the BSC which arise from forums other than the BSC Panel. This scope captures any forum on any topic where National Grid is attending as NETSO. However, it is not restricted to the work being undertaken as part of the EU Third Package i.e. the development of the European Network Codes and changes emanating from ENTSO-e.

National Grid believes the scope of the original proposals is too broad to be effective and leaves them vulnerable to not being able to meet the requirements under the BSC should they be approved and implemented.

An Alternative Solution was therefore developed which is identical to the Proposed Solution except the scope of what National Grid are expected to consult upon is clearer. The Alternative Proposal refines the scope to work being undertaken as part of the EU Third Package.

P271 Alternative would therefore obligate National Grid to, in its reasonable and prudent opinion as NETSO, consult with BSC signatories in relation to any potential changes to the BSC which arise from the development of the European Network Codes or other activities undertaken by the ENTSO-e.

Recommendation

The majority of the Panel recommends approval of the P271 Alternative Modification.

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5 JESG

As part of the assessment of P271 the workgroup discussed the creation of a cross code European group in order to help National Grid meet its objectives in the most efficient manner. National Grid stated their support for such a group as long as it was workable. The P271 Group therefore discussed how such a group would work and drafted a set of Terms of Reference for the Joint European Standing Group.

Below are the key points on how the JESG will function:

Role of the Group

The Group agreed that the JESG would be created in order to provide a mechanism for National Grid to effectively consult and engage with participants on European matters. The JESG should also have devolved power from the Code Panels, so that National Grid can discharge their Code obligation of reporting to the BSC Panel by reporting to the JESG.

The JESG is not a decision making body, nor does it make recommendations for the Code Panels.

Governance of the JESG

The JESG is established by the BSC, Grid Code and CUSC Panels. These 3 Panels agree the Terms of Reference for the group and any alterations to them.

Administration for the JESG will be delivered by National Grid. This includes providing agendas, headline reports, papers and a webpage for the meetings, with support from ELEXON.

The JESG has the ability to create 'subgroups'. Each subgroup will be formed by the JESG in order to discuss a specific area. For example, there could be a practical benefit in having a sub-group for each individual European Network Code as each may require individual technical skills not shared across the whole range of proposed ENCs. Whilst the subgroups will meet on a frequent basis to discuss a topic and then disband when the topic is finished; the JESG will meet on a quarterly basis to discuss European matters, provide any input or feedback to National Grid and to keep abreast of the work that is happening in the subgroups.

National Grid will provide a high-level headline report for the Code Panels detailing the work of the JESG.

Membership and Attendance

All meetings of the JESG and any subgroup are open meetings in which any participant is able to attend to both receive information from National Grid and provide their feedback, questions and opinions to National Grid.

Membership to the JESG is open to all Parties. The only difference between a member and an attendee is that members have an obligation to actively participate in the JESG and its subgroups. This ensures that National Grid are not setting up a meeting with no audience. Members would also have the responsibility to ensure that relevant information is fed back to any Modification Groups that might require it.

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JESG Chair

The Group agreed that the JESG Chair should be independent of National Grid and appointed by the Code Panels.

The Chair for any subgroup will also be independent of National Grid where practical.

Since P271 was raised and the Terms of Reference discussed at the workgroups, National Grid have requested the Code Panels establish the JESG which will hold its first meeting on the 10th August 2011. The Group believed it sensible for National Grid to request the Code Panels establish the JESG before P271 is determined by the Authority as:

1. The Panels have the ability to establish such a group; and
2. There is a need for discussions on the European Network Cods to begin now.

6 Group Discussions

The following section highlights the Workgroup debates around the P271 Terms of Reference. Further information can be found in attachment A.

Do you need a Modification?

The question was raised that if the Panel have the ability to establish the JESG, as indeed they have, then why do you need a Modification at all?

The Proposer acknowledged that an Issue Group could be established without the requirement for a code change, but explained an obligation on National Grid would have the twin benefits of creating an enduring requirement on National Grid to engage with the industry in a liaison function so that code parties would better prepared to participate in Europe Network Code inspired code changes; and additionally, through liaison, oblige National Grid to take the views of code parties into consideration during any ENTSO-e interactions.

What is 'Comitology'?

Comitology is the name given to the approval process used by the European Commission to make the European Network Codes legally binding on each Member State.

Will it make a difference?

Greater Certainty

The Ofgem representative asked how the Proposer could assert the view that "greater certainty" could be achieved if National Grid is required to consider GB stakeholders' views but not adhere to them.

In response, the Proposer explained that greater certainty would be achieved in a number of ways:

It would inform and educate National Grid on the GB stakeholders' views, comments, concerns and suggested improvements on what was being suggested in the ENCs as they are developed.

The obligation on National Grid to consult the industry would raise the awareness among GB stakeholders of the issues being discussed within Europe and the potential impacts on GB codes and parties arising from the ENCs. It would also give greater certainty as to the overall GB position on issues being discussed at a European level, to allow an understanding of the likely position on an ENC before it enters the ACER and Member States Comitology approval process. As both Ofgem and DECC would be invited to attend the Joint European Standing Group, they could also benefit from this understanding.

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The Ofgem representative noted the Proposer's view that 'greater certainty' therefore related largely to greater transparency and openness of process.

Any Influence?

The Workgroup agreed that a Joint European Standing Group would not be a substitute for individual GB stakeholder requirements and that it should not be seen as a replacement for engagement, within Europe, by GB stakeholders in the ENC development process. Individual stakeholders would need to continue to engage on their own behalf through other channels, as the Joint European Standing Group would only be complementary to European interaction. However, the Workgroup agreed that GB stakeholders would, via the JESG (with its engagement with the NETSO), have an ability to influence the European decision making process that would be an enhancement on those GB stakeholders just engaging with Europe directly. In this respect the Workgroup could not see any harm or detriment that would arise from the approach suggested by the three proposals from the point of view of GB stakeholders.

Are the obligations suitable on National Grid?

Other ENTSO-E members?

ENTSO-E consists of 41 different System Operators from across Europe. Some countries, like the United Kingdom, have more than one member. The members for the UK are:

National Grid Electricity Transmission plc;
System Operation Northern Ireland Ltd;
Scottish and Southern Energy plc; and
Scottish Power Transmission

P271 proposes to place the obligation to report to the Panel on National Grid alone. The Group discussed if the obligation should be extended to the other GB ENSTO-E members as well.

The Group believed that National Grid has a unique position among GB TSOs of being both a Transmission Owner and the NETSO; and that this dual role meant that National Grid would be more involved in the European Network Code development process than the other GB TSOs and also in a better position to feed wider GB stakeholder views into that ENC development process.

The Workgroup agreed that if other GB TSOs begin to have a large role in the drafting of ENCs, then a proposal can be raised to place an obligation on them, although the Workgroup note that this would likely need to be done through a Transmission Licence or STC change.

How practical is the proposed reporting to the Panel and is it legal?

Whilst developing the JESG Terms of Reference National Grid and the Workgroup believed that an obligation for National Grid to report such European issues to the Panel via the JESG is indeed workable; as long as it remains clear that National Grid are making reasonable endeavours to consult on relevant information.

It should however be noted that National Grid believe that the obligations as set out in the P271 Proposed Modification are too vague, too onerous and they do not believe that either they or the industry will be able to resource them.

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When the question was raised as to whether or not it was legal to make such a change, the Group confirmed that as long as the change better facilitated the Applicable BSC Objectives there was no reason why an obligation could not be placed on a BSC Party.

Is there another way to get involved in European matters?

The Workgroup discussed the consultation process that had been used for the Pilot (ENC) Connection Code, agreeing that, compared to the GB industry code governance processes, it was not up to standard. The National Grid representatives agreed that the processes used during the pilot project had not been wholly successful and that improvements had been identified by ENTSO-e as a result of the pilot project.

National Grid, as a member of ENTSO-e, had also identified ways to improve its engagement with GB stakeholders, including providing more regular updates to industry code Panel meetings and other relevant industry forums; holding industry seminars; and meaningfully engaging with the industry on European issues. To this end, the National Grid representatives stated their support for the JESG, as long as it was reasonable and not too onerous.

The National Grid European Policy representative described the proposed ENTSO-e stakeholder engagement and consultation process, noting that this includes publication of meeting minutes and slides from public ENTSO-e meetings and regular stakeholder sessions. He also highlighted to the Workgroup that the European Commission were consulting on its proposed Workplan (consultation now closed) and the governance processes for European Network Code development and that this represented an opportunity for all GB stakeholders to raise concerns directly with the EC.

However, the Proposer and other Workgroup members noted that were apparently in excess of 2,000 sets of consultation comments submitted to the Pilot (ENC) Connection Code (ENTSO-e) consultation and it was not clear how the GB stakeholder (or any other respondents) comments had been (a) considered and (b) addressed. Member felt that engaging with ENTSO-e via National Grid (as NETSO) would complement rather than conflict with the other wider consultations undertaken by ENTSO-e etc., on the ENCs.

The Workgroup concluded that deficiencies exist and that establishment of the proposed Joint European Standing Group could complement engagement by GB stakeholders with European developments.

A letter to Europe

The Workgroup considered whether any or all of the affected code Panels (BSC, CUSC, Grid Code) should write to relevant European organisations to highlight the concerns of this Workgroup. The Workgroup decide to request that the Chairs of the Code Panel's issue a letter to Europe. A suggested draft was sent to the Chairs.

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7 Impacts & Costs

Costs

ELEXON Cost	ELEXON Service Provider cost	**Total Cost**
£240 (1 Man Day)	£0	**£240**

Impacts

Impact on BSC Systems and process
None identified

Impact on BSC Parties and Party Agents
None identified

Impact on Transmission Company
Obligated to report on European Network Code development to the BSC Panel and to consult and engage with the industry through the newly created JESG.

Impact on ELEXON
Change Management to support the BSC Panel and ensuring correct process.

Impact on Code	
Code section	Potential impact
Section F	To allow for the new processes as defined above

8 Implementation

The P271 Group recommend an implementation approach of **10 Working Days** following an Authority decision.

The Group noted that whilst a single implementation dates across all of the Codes would be ideal, having a staggered implementation approach would not preclude the creation of the JESG, the vehicle for National Grid to consult on the relent information.

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9 The Case for Change

Whilst the P271 Group believes that both the Proposed and Alternative Modifications should be approved; the Group's **majority** recommendation is that P271 Alternative **will better** facilitate the achievements of the **Applicable BSC Objectives (a), (c) and (d).**

Is P271 Proposed and Alternative better than the current arrangements?

The majority of the Group believe that P271 is better than the current arrangements. They did so because they felt both the Proposed and Alternative Modification would better facilitate:

Applicable BSC Objective (a) as:

- National Grid efficiently communicating European discussions and issues with the Panel/Parties, and considering concerns of the Panel/Parties, will reduce the likelihood of ENTSO-e developing a set of changes that Parties can either not meet or operate under. Mitigating this risk is most efficient way to deliver the Transmission Licence.

Applicable BSC Objective (c) as:

- It ensures the Transmission Company maintains the existing high standards of openness and transparency; and
- It provides greater certainty over the impact and development of the European network codes, thereby removing a potential barrier to entry.

Applicable BSC Objective (d) as:

- P271 is the most efficient method of National Grid delivering the required information to the Panel and for the industry to engage with National Grid.

A minority of the Group believe that neither the Proposed or Alternative are better than the current arrangements. They believe P271 is neutral against **Applicable BSC Objective (a)** as National Grid will not develop changes to the ENCs, ENTSO-e will, therefore there is no certainty that National Grid's opinion will be taken into consideration. In turn this cannot mean that the Transmission Licence is more efficiently discharged.

They also believed that P271 was detrimental against **Applicable BSC Objective (d)** since the mechanism for implementing P271 (the JESG) is already established, therefore requiring a Code change is not the most efficient method to achieve the aims of P271. Furthermore, adding extra governance into the BSC is not increasing its efficiency.

Proposed vs. Alternative

The majority of the Group **agreed** that P271 **Alternative better facilitated the Applicable Objectives** when compared to the Proposed**.**

Those Group members believed that P271 Alternative would better facilitate **Applicable BSC Objective (d)** as:

- It delivers greater clarity over the information National Grid are expected to provide and consult upon and is therefore more efficient than the Proposed solution as both National Grid and Parties greater understanding of what is expected of them.

Applicable BSC Objectives

The Applicable BSC Objectives are set out in paragraph 3 of Condition C3 of the Transmission Licence and are as follows:

a) The efficient discharge by the licensee of the obligation imposed upon it by this licence;

b) The efficient, economic and co-ordinated operation of the GB 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 and administration of the balancing and settlement arrangements.

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10 Panel's Initial Discussions

The following section reflects the debate that the Panel had when discussing the P271 Assessment Report.

Development of the Alternative

A Panel member clarified that the P271 Workgroup had been privy to discussions between National Grid and their legal team which highlighted why the Proposed Modification would not be workable. They noted that the Alternative had been drafted after negotiation between the Workgroup and National Grid to find a solution which provided the necessary information to the industry and was still practically achievable.

Is P271 efficient and appropriate?

The National Grid representative reiterated their view that, whilst fully supportive of the intention, neither the Proposed nor Alternative Modifications were efficient. They felt that since the JESG had been established there was no need to place further obligations into the BSC. This was driven by a concern that introducing such obligations may remove some of the flexibility about how the JESG works and what information would be discussed there. A question of what would happen in the future was also raised; since once work on the ENCs was completed a new Modification would be required to remove any reference to the JESG and National Grids obligations. They did not believe that this was the most efficient way to progress.

A Panel member was sympathetic to the argument over flexibility. They believed that once obligations became too detailed it would become harder to decide what could or could not be discussed, when meetings took place etc. They felt that National Grid stating its intentions in a letter would be sufficient.

The majority of the Panel believed that the proposed obligation on National Grid would be a sensible step since it would ensure that the JESG mechanism continued to run and that there was some certainty that National Grid would not stop running the meetings in the near future. A Panel member noted that the minimal ELEXON implementation costs was a small price to pay for securing this obligation. The view that National Grid may have their own interests was also raised by a Panel member, who felt that on those grounds National Grid should have the obligation placed upon them.

A Panel member noted that although the obligation may not be popular with National Grid it would be extremely useful for the industry to be able to provide feedback and to gain information. They also took comfort from the fact that the Alternative was workable and provided National Grid the ability to use reasonable judgement on the information shared.

Another Panel member questioned if the Panel had the vires to place such an obligation on National Grid, and even if it did, what sanctions would be placed on them for breaking the obligation.

Panel members believed that such an obligation could be placed on National Grid since they are party to the bilateral contract that is the BSC. They noted that sometimes it was hard to enforce the obligations within the Code, but that doesn't mean they should not exist.

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Flexible implementation

A Panel member noted that if the Authority found making a decision on P271 difficult, they might consider delaying a decision until the JESG had been established for a while. The Panel member noted that the P271 implementation dates were flexible enough to allow this.

Views Against Applicable Objectives

The Proposed

The Panel Unanimously agreed that P271 Proposed Modification should not be made. They did so as they felt that the scope of the proposal was too wide and that it was therefore unworkable for both National Grid and the industry.

Recommendation

The Panel recommends that P271 Alternative should be approved.

The Alternative

The Majority of the Panel believed that the Alternative better facilitated **Applicable BSC Objectives (a), (c) and (d).**

Applicable BSC Objective (a) as:

- National Grid efficiently communicating European discussions and issues with the Panel/Parties, and considering concerns of the Panel/Parties, will reduce the likelihood of ENTSO-e developing a set of changes that Parties can either not meet or operate under. Mitigating this risk is most efficient way to deliver the Transmission Licence.

Applicable BSC Objective (c) as:

- It ensures the Transmission Company maintains the existing high standards of openness and transparency;
- It provides greater certainty over the impact and development of the European network codes, thereby removing a potential barrier to entry; and
- A better understanding of potential impacts on different Parties, and the impacts on other European markets, will assist the knowledge of BSC Parties and increase competition with in the GB market.

Applicable BSC Objective (d) as:

- P271 is the most efficient method of National Grid delivering the required information to the Panel and for the industry to engage with National Grid.

A minority of the Panel believed that P271 Alternative did not better facilitate any of the Applicable BSC Objectives. They believed that the arguments under Objectives (a) and (c) were not relevant and as such they were neutral against these objectives.

They also believed that the Alternative was detrimental to **Applicable BSC Objective (d)** as:

- The mechanism for implementing P271 (the JESG) is already established, therefore requiring a Code change is not the most efficient method to achieve the aims of P271;
- Adding extra governance into the BSC does not increase its efficiency; and
- Implementing the Modification would be inefficient as there would be no effective way to enforce the obligation on National Grid.

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11 Panel's Recommendations

Having considered the P271 Assessment Report, the BSC Panel recommends:

- that P271 Alternative Modification should be made;
- an Implementation approach of 10 Working Days following an Authority Decision;
- the proposed text for modifying the Code, as set out in Attachment B and C.

12 Further Information

More information is available in:

Attachment **A**: Joint Workgroup Report

Attachment **B**: Proposed Modification Legal Text

Attachment **C**: Alternative Modification Legal Text

Attachment **D**: Response Form

All related documents can be downloaded from the P271 page of the ELEXON website.

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