

By email to: EUExit@ofgem.gov.uk

Ryan McLaughlin  
Head of European Wholesale Markets  
Ofgem  
9 Millbank London  
SW1P 3GE

9 March 2018

Dear Ryan,

### **Preparing for EU exit: licence and industry code modifications**

We welcome the opportunity to comment on your analysis of the amendments that may be required as we prepare to exit the European Union (EU).

As you are aware, ELEXON (as 'BSCCO') is the Code Administrator for the Balancing and Settlement Code (BSC). We are responsible for managing and delivering the end-to-end services set out in the BSC. This includes responsibility for the delivery of balancing and imbalance settlement.

This response is based on ELEXON's analysis of the impacts of the UK's exit from the EU on the BSC which we have previously shared with you.

The views expressed in this letter are those of ELEXON Limited alone, and do not seek to represent those of the BSC Panel or Parties to the BSC.

### **Detailed Comments**

Below are the ELEXON responses to your specific questions. This response is based on our analysis of the BSC and Licence Condition C3. We have not reviewed the interactions in other industry codes or the licence conditions that relate to those codes. And we have not yet reviewed the impacts on BSC subsidiary documents, some of which may also reference EU law and institutions.

*1. Have we identified all the interactions between EU law and licences and industry codes' provisions which may be impacted by EU law?*

We have reviewed the BSC impacts and Licence Condition C3 of the Transmission Licence. Subject to our response to question two below, we agree that, for the BSC and Licence Condition C3, all of the interactions have been identified.

*2. Do you agree with our analysis?*

We have the following comments on your Transmission Licence analysis:

- C3 4H(a) – the linked BSC provisions should refer to F8.2.2 rather than F2.2.2
- You have identified an impact on Section X-1 of the BSC which is consequential to Electricity Transmission Special Condition 1A. We are unable to identify this impact.

We have the following comments on your BSC analysis (which was based on the detailed analysis provided to you by ELEXON):

- Row 4 of your BSC analysis – the analysis is not completely correct. As per our detailed analysis, the BSC defined term "Directive" is a generic reference to any directive by a

competent authority (including GB institutions). The defined term does not therefore refer specifically to an EU directive. However, the BSC definition of "Directive" refers to a further defined term: "Competent Authority". A Competent Authority refers, inter alia, to the EU. This interaction can be resolved by removing the reference to the EU from the definition of "Competent Authority". Consequently, the theme column should refer to "1" (reference to EU entity).

- Row 5 of your BSC analysis – to clarify, there is only one definition in X-1 for "Business Day", but the term is then used throughout the BSC.
- Row 13 of your analysis – to clarify our previous analysis, Section N5.4.3(i) is not currently in use because of HMRC's position on reverse charging. This means that ELEXON is not currently required to include VAT on Trading Charges. We do agree that there is an interaction here (and we note that the reference to an EU directive is, in any event, now out of date) but it is not currently a 'live' interaction.
- Your analysis makes several references to impacts on Annex X-1 and we note that our detailed analysis identifies all of the specific interactions.

### *3. Do you agree with our proposed action?*

We agree that modifications to Licence Condition C3 and to the BSC will be necessary. We look forward to working with you on the timing and scope of those modifications.

### *4. Are there any other areas of concern you wish to raise?*

We don't have any concerns but wished to raise the following further points:

- The majority of the changes that will be needed to the BSC will update cross references to EU legislation or institutions. As you are aware, the BSC also contains provisions that are derived from EU Regulations, notably REMIT and the Transparency Regulation. The precise scope of these modifications will depend on the outcome of negotiations between the UK and the EU.
- The BSC is supported by a number of subsidiary documents ("Code Subsidiary Documents" or "CSD"). We now plan to undertake a detailed review of CSDs to identify any amendments that may be necessary to these documents and a consequence of the UK's exit from the EU or as a result of the potential changes to the BSC identified in the analysis.
- As you know, certain BSC modifications are currently being progressed that are based on, or are a requirement of, EU legislation, for example P344 (Project TERRE Implementation into GB Markets). As you also know, we are continuing to progress any such modifications on the same basis.
- We would welcome Ofgem's support in:
  - facilitating cross-code co-ordination with a view to adopting a consistent approach that will enable us to manage the impact for industry;
  - ensuring that code administrators are able to adopt a consistent approach to communicating with industry.

If you would like to discuss any aspects of our response, please don't hesitate to contact me at [nicholas.brown@elexon.co.uk](mailto:nicholas.brown@elexon.co.uk).

Yours sincerely,

A handwritten signature in black ink, appearing to read "N. C. Brown".

Nick Brown

General Counsel and Company Secretary