

Phase

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

P382 'Amendments to the BSC to reflect the United Kingdom's withdrawal from the European Union without a deal'

The Balancing and Settlement Code (BSC) contains multiple references to European Union (EU) legislation and bodies as well as text introduced as a result of implementing various EU legislation. Retaining these references and text following the United Kingdom's (UK's) withdrawal from the EU on 31 January 2020 without a deal ('no-deal Brexit') would have meant that the BSC would not have been technically accurate.

The Self-Governance Appeal Window for P382 closes:

5pm on Wednesday 4 March 2020

If no appeals are notified by this time, the Panel's decision is final.



The BSC Panel has **rejected** P382 under Self-Governance

This Modification is expected to impact:

- BSCCo

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About This Document

This is the P382 Final Modification Report, which ELEXON has submitted to the Authority on behalf of the BSC Panel. It includes a summary of the Panel's full views and the responses to the Panel's Report Phase Consultation.

As P382 is a Self-Governance Modification, it does not get submitted to the Authority for decision. Instead, the Panel rejected P382 under Self-Governance. Parties have until 5pm, Wednesday 4 March 2020 to object to the Panel's decision, stating why they do not believe P382 meets the Self-Governance criteria (in accordance with [BSC Section F Paragraph 6.4](#)). If no objection is received by this time, the Panel's decision is final.

There are three parts to this document:

- This is the main document. It provides details of the solution, impacts, costs, benefits/drawbacks and proposed implementation approach. It also summarises the history of this Modification Proposal.
- Attachment A contains the draft-redlined changes to the BSC for P382.
- Attachment B contains the full responses received to the Panel's Report Phase Consultation that was conducted 18 – 29 March 2019.



Contact

Insert name

020 7380 4142

bsc.change@elexon.co.uk
[/chris.wood@elexon.co.uk](mailto:chris.wood@elexon.co.uk)



P382

Final Modification Report

17 February 2020

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1 Summary

The BSC Panel considered the P382 Draft Modification Report (DMR) on three occasions. The first version of the P382 DMR was presented to the Panel on 11 April 2019 ([Panel 289/08](#)) and the second version on 10 October 2019 ([Panel 295/07](#)). At the first two Panel meetings, the Panel deferred its decision as there remained significant uncertainty around Brexit and therefore how P382 should progress. The Panel considered the third DMR at its meeting on 13 February 2020 ([Panel 299/06](#)) and rejected P382. This was on the basis that the UK left the EU with a deal on 31 January 2020 and P382 was raised to address the situation where the UK left without a deal. The [European Union \(Withdrawal Agreement\) Act 2020](#) was enacted into UK law and ratified by the European Parliament prior to the UK leaving the EU on 31 January 2020.

Why Change?

The BSC would have remained operable in the event of leaving the EU without a deal but may have been ambiguous if not updated to reflect legislative changes in the event of a no-deal Brexit.

Solution

P382 proposed amending the BSC to reflect changes caused by the **no-deal** Statutory Instruments (SIs) to remove any potential ambiguity for users not familiar with Brexit legislation. However, P382 would have kept parts of the BSC relating to:

- Trans European Replacement Reserve Exchange (TERRE);
- Capacity Allocation and Congestion Management (CACM); and
- Transparency.

Given that, at the time, in the event of a no-deal exit, the UK's future relationship with the EU would have been negotiated following exit day¹, these provisions may have been required later. For the sake of efficiency, we considered it better that they 'lay dormant' within the BSC rather than removing them and having to re-insert later.

As the UK has now left the EU with a deal, the P382 solution is no longer appropriate. No change to the BSC is needed following the UK withdrawal from the EU.

We are aware that the UK's trading relationship with the EU is due (at the time of writing) to be negotiated during the transition period by 31 December 2020 now that the UK has left the EU. However, P382, is concerned with a scenario whereby the UK could have left the EU without a deal on 31 January 2020.

Impacts & Costs

The only cost would have been to change the relevant sections of the BSC. There would have been no impacts or costs for industry participants.

¹ 'Exit day' was defined in legislation as the day that the United Kingdom leaves the European Union – 31 January 2020 prior to the EU Withdrawal Bill.

Implementation

P382 was targeting implementation as soon as possible after the UK exited the EU. It was not critical that P382 was implemented on Brexit day, as the changes were to remove ambiguity and references to incorrect legislation and institutions.

When the Initial Written Assessment (IWA) was presented to the Panel on 14 March 2019 ([Panel 288/04](#)) the Panel initially recommend P382 be implemented on 7 May 2019 – the day after the Self-Governance window was due to close had P382 been approved on 11 April 2019 as originally expected.

However, at their meeting on 11 April 2019 the Panel deferred approval of P382. This was due to the high levels of uncertainty surrounding Brexit. As there remained a high degree of uncertainty at the subsequent Panel meeting on 10 October 2019, deferred its decision on P382 again and its decision on the Implementation Date.

Recommendation

The Panel's view is that P382 will have detrimental impacts Applicable BSC Objectives (a), (d) and (e) and as such determined that **P382 should be rejected**.

However, when the Panel initially considered P382 on 14 March 2019, they unanimously believed that P382, if required, would have better facilitated Applicable BSC Objectives (a), (d) and (e) and should be approved. Since then though, the circumstances have changed.

The Panel unanimously agreed that P382 should be implemented as a Self-Governance Modification.

2 Why Change?

Background²

The UK withdrew from the EU at 23:00:00 on 31 January 2020 (exit day). Unless the UK and EU had agreed their immediate post exit day relationship (i.e. from 23:01 on 31 January 2020 onwards), the UK would have left the EU without continuance of previously applicable EU legislation – a ‘no-deal Brexit’.

In a no-deal scenario, EU legislation would no longer have applied, and EU bodies would no longer have had authority, in the UK. However, the [European Union Withdrawal Act \(2018\)](#) (‘the Withdrawal Act’) meant that most EU legislation would have continued to be operative after exit day. The Withdrawal Act would have incorporated EU legislation into UK law (essentially ‘cut and pasted’) other than where a Secretary of State had decreed (via secondary legislation) that specific legislation was not to be retained e.g. the CACM regulations will not be retained.

The Withdrawal Act would have allowed the Government to exclude specific articles within EU legislation i.e. designate specific Articles within EU legislation that would not have applied in the event of ‘no-deal’. This could only have been done for the sake of retaining EU law and making it operable in UK law post exit day e.g. swapping an EU body for ‘the Authority’. It could not have been used to change the policy intent of legislation as that would have required primary legislation. In preparation for a no-deal Brexit, the Government exercised its powers not to retain specific legislation and to modify retained EU legislation through [Secondary Legislation](#) – SIs.

What was the issue?

The Withdrawal Act 2018 would have allowed the BSC to remain operative immediately following exit day, as UK law supersedes the BSC. However, there would have been technical inaccuracies, which could have led to confusion for anyone not familiar with relevant Brexit legislation.

The BSC would not have reflected where SIs would have revoked EU legislation either completely or partially. References to EU Regulations would not have reflected that they would have been amended by SIs and references to EU bodies would not have been correct.

Why is this no longer an issue?

This would have been an issue had the UK left the EU without a deal. But, the deal reached between the EU and the UK passed into UK law as the European Union (Withdrawal Agreement) Act 2020, and similar legislation was ratified by the European Council and European Parliament, so the Withdrawal Act 2018 didn’t become effective.

This means that all EU legislation pertaining to the BSC remains extant until 31 December 2020 (the end of the agreed transition period) and no-deal SIs will not be activated. As such P382 is no longer needed, and there is no legal basis to implement it, hence why the Panel rejected P382.

² Please see previous [Initial Written Assessment](#) and previous [P382 Draft Modification Reports](#) for details on how the Brexit situation changed throughout 2019.

Proposed solution

Amend the BSC to reflect where EU regulations would not have been retained in UK law and where those changes would have made the BSC ambiguous or confusing in a 'no-deal'- scenario. Similarly, where appropriate, references to EU legislation would have been amended to include the SI that would have amended them.

Analysis of the BSC and Code Subsidiary Documents

We analysed the BSC and Code Subsidiary Documents (CSDs) to identify where amendments and/or deletions were needed. In doing this we took a multi-directional approach to ensure that all avenues were covered:

- Trawl of BSC and CSDs for key terms e.g. 'Commission' 'Europe' and 'Regulation';
- Review of draft SIs to identify where the proposed changes to EU legislation may have affected the BSC; and
- Review of all Modifications and Change Proposals (CPs) raised to implement EU legislation and whether their legal text and/or redlining would have remained extant after exit day.

Some references to EU legislation would have needed to be removed and/or amended. The legal text implemented for some Modifications would have needed adjusting. However, no redlining pertaining to CPs, or CSDs amended by Modifications, needed to be adjusted.

Retaining parts of the BSC contrary to revocation of EU legislation

Some provisions of the BSC would have become obsolete in a no-deal scenario. However, it was considered prudent to leave these 'dormant' in case they formed part of a trade deal with the EU post-Brexit. The areas concerned were:

- Project TERRE;
- Capacity Allocation and Congestion Management; and
- Transparency and reporting of data by BSC Systems.

In all three cases, retaining the relevant parts of the BSC and maintaining the BSC System would not have had a detrimental effect on the operation of the BSC (further detail is in Appendix one).

Transition period

The UK has now entered a transition period that will last until 31 December 2020. If, at the end of the transition period, the UK's trade relationship with the EU is not agreed, then EU legislation will cease to have effect in the UK in a similar way to how it would have ceased to have had effect in a no-deal Brexit scenario. At the time of submitting this report there is speculation as to whether partial deals will be agreed (e.g. an energy deal is agreed but no customs deal). Once details become available we will be able to make contingency plans for post-31 December 2020 and it is possible that another Modification

similar to P382 will be required, especially as the Government has stated that it does not intend to maintain regulatory alignment with the EU.

Prior to submitting the third P382 DMR, ELEXON considered if it would have been appropriate to recommend a deferral of P382 until a later date (e.g. 1 January 2021). P382 was raised with the intent of dealing with a scenario whereby the UK would have left the EU without a deal. However, the UK did leave the EU with a deal therefore, the purpose for why P382 was raised no longer exists.

Data Protection

ELEXON identified a need to amend the BSC to reflect the introduction of the General Data Protection Regulation (GDPR - [Regulation \(EU\) 2016/679](#)). The issue was that the GDPR is not directly referenced in the BSC. As with the changes proposed by P382, not implementing changes has not prevented compliance with GDPR provisions but, as a matter of correctness, it would be proper to reference adherence to the GDPR in the BSC (akin to a housekeeping change). As this would be a relatively straight forward tidying up change, it was decided to wait until after Brexit to make the change to reflect whatever the outcome may be.

Now that Brexit has occurred, we are looking to include the tidying-up changes into another Modification rather than raise a separate Modification for a very minor change. Our initial thought is that the BSC Panel raised [P398 'Increasing access to BSC Data'](#) is the most suitable option. As part of this Modification, the BSC will be amended to show adherence to open data best practices, including adherence to relevant legislation, including GDPR. As such, this would be a great opportunity to 'housekeep' the required changes.

Cross-Code collaboration

Ofgem expected all Code Administrators (CAs) to raise Modifications similar to P382 to modify their Codes. CAs worked collaboratively through the Code Administrator's Code of Practice (CACoP) forum as well as with Ofgem (both individually and collectively) to ensure collaboration between the Codes – no cross-Code impacts were identified.

ELEXON continues to liaise with other CAs throughout the transition period.

Legal text

Proposed changes to the BSC to deliver P382 are in Attachment A. Changes to the legal text since issuing the Report Phase consultation are in Section 7. The version numbers of the various BSC Sections changed after both the first and second DMRs were submitted following the implementation of other Modifications. This is reflected in the proposed legal text being version 0.3.

Are there any alternative solutions?

P382 proceeded straight to Report Phase and was not considered by a Workgroup. As such, there is no Alternative Modification.

Estimated central implementation costs of P382

ELEXON's costs to implement P382 would have been approximately £600. This is two and a half day's effort to implement four document changes to the BSC.

Indicative industry costs of P382

We did not expect P382 to impact industry in any way and therefore there would have been no associated implementation costs.

Impact on BSC Parties and Party Agents	
Party/Party Agent	Potential Impact
Parties / Party Agents	No Impact

Impact on Transmission Company	
No impact	

Impact on BSCCo	
Area of ELEXON	Potential Impact
Change	Ongoing analysis of emerging relationship between UK and EU
Releases	Implementation of legal text

Impact on BSC Systems and processes	
BSC System/Process	Potential Impact
All BSC Systems	No impact

Impact on a Significant Code Review (SCR) or other significant industry change projects	
No impact on SCRs– we requested Ofgem treat P382 as an SCR Exempt Modification on 7 March 2019. Ofgem confirmed this on 15 March 2019.	

When the P382 IWA was presented on 14 March 2019, the Panel agreed an initial Implementation Date of 7 May 2019. This would have been the day after the closure of the P382 Self-Governance window, and shortly following the expected withdrawal from the EU.

However, when the Panel reviewed the first DMR on 11 April 2019, given the uncertainty at the time, an Implementation Date was not designated and a decision on whether to approve P382 was deferred until 10 October 2019. It was again deferred on 10 October 2019 until the earlier of: certainty of the UK's withdrawal from the EU; or April 2020, whichever came first.

All Modifications must provide an Implementation Date. The Panel is required to determine an Implementation Date having considered the DMR. The Panel approved the P382 Implementation Date as 5 March 2020, the Working Day after the end of the Self-Governance Window.

Self-Governance

The Panel agreed that P382 should be treated as a Self-Governance Modification.

P382 would not have required the Authority approval because, thanks to the Withdrawal Bill, Settlement operations would not have been affected, and therefore there would have been no impact on Market Participants or consumers. This in turn meant that there would have been no impact on competition or how the Total System is operated. Similarly, the Withdrawal Bill would have meant that there would have been no effect on:

- Sustainable development;
- Safety or security of Supply; or
- The management of market or network emergencies.

P382 would have had no effect on BSC governance and would not have discriminated between different classes of Parties in any way.

Further, Self-Governance was the approach being taken by other similarly impacted Codes.

Since there is no longer a legal basis to implement P382 there is no reason why the Panel shouldn't reject it instead of the Authority.



What are the Self-Governance criteria?

A proposal that, if implemented:

- a) is unlikely to have a material effect on:
 - i. existing or future electricity consumers; and
 - ii. competition in the generation, distribution, or supply of electricity or any commercial activities connected with the generation, distribution, or supply of electricity; and
 - iii. the operation of the national electricity transmission system; and
 - iv. matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies; and
 - v. the Code's governance procedures or modification procedures, and
- b) is unlikely to discriminate between different classes of Parties

The IWA for P382 was presented to the BSC Panel at its meeting on 14 March 2019. The Panel agreed to submit P382 directly to the Report Phase, as it was evident what changes need to be made and there was nothing that a Workgroup could offer, so there was no reason not to proceed directly to Report Phase.

One Panel Member asked if the BSC would allow the Panel to approve P382 under Self-Governance considering another Code Panel had difficulty with this. It was explained that the other Code requires Changes to be implemented within 5 Working Days of making a decision. As such, they have deferred making a decision until 1 April 2019 so that they would not be in a situation where they are implementing Changes ahead of the SIs coming into force. ELEXON responded that as the Panel's decision is not due until after exit day, this is not an issue for P382, and re-iterated that the Withdrawal Act will allow the BSC to continue to operate normally until P382 is implemented.

Panel's views against Applicable BSC Objectives when first considered

The Panel agreed with the Proposer that this Modification would better facilitate Applicable BSC Objectives (a), (d) and (e).

Applicable BSC Objective (a)

The Transmission Licence requires that the BSC facilitate Settlement. If there is confusion in the BSC caused by defunct references then it will not be allowing NGESO to discharge Section C2 of their Transmission Licence. P382 will therefore facilitate the discharge of the Transmission Licence.

Applicable BSC Objective (d)

There is potential for confusion if the BSC contains defunct references to EU Legislation and bodies and such. This in turn could lead to reduced efficiency in implementing Balancing and Settlement arrangements. P382 will therefore better facilitate efficiency in the implementation of the BSC.

Applicable BSC Objective (e)

This Objective will be retained in the event of a no-deal Brexit. The Electricity Regulation and other regulations will remain as part of UK law but be amended from time to time by UK legislation for GB (we expect that the draft legal text will refer to 'The Electricity Regulation as amended by...'). As such, the BSC will be required to comply with the Electricity Regulation. In the event of a no-deal Brexit, the Electricity Regulation will be amended and P382 will allow the BSC to comply with the amended Electricity Regulation, and will therefore better facilitate Objective (e).

The Proposer believed that this Modification will have no impact on the other Applicable BSC Objectives.



What are the Applicable BSC Objectives?

(a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence

(b) The efficient, economic and co-ordinated operation of the National Electricity 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 of the balancing and settlement arrangements

(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]

(f) Implementing and administering the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR

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7 Report Phase Consultation Responses

This section summarises the responses to the Panel's Report Phase Consultation on its initial recommendations. You can find the full responses in Attachment B.

We received one response to the Report Phase Consultation, from Western Power Distribution. They stated that the new definition of "Regulation on Wholesale Energy Market Integrity and Transparency" or "REMIT" should also refer to how it would have been amended by another SI, 'The Electricity and Gas (Powers to Make Subordinate Legislation) (Amendment) (EU Exit) Regulations 2018'.

While it is true that "REMIT" would be amended by this second SI, the amendments made by this SI were concerned with transfer of responsibility etc. from EU bodies to UK bodies and would not have affected the BSC. However, we recognised that in the interest of removing ambiguity, and future proofing of the BSC, there was no reason why this second SI should not be added BSC Section X-1 and as such, we made the necessary changes to the draft legal text.

The respondent stated that in the revised definition of "Transparency Regulation Data" 'BMRS should be 'BMRA'. We agreed with this and made the necessary change.

Summary of P382 Report Phase Consultation Responses				
Question	Yes	No	Neutral/ No Comment	Other
Do you agree with the Panel's initial unanimous recommendation that P382 should be approved?	1	0	0	0
Do you agree with the Panel that the redlined changes to the BSC deliver the intent of P382?	0	1	0	0
Do you agree with the Panel's recommended Implementation Date?	1	0	0	0
Do you agree with the Panel's initial view that P382 should be treated as a Self-Governance Modification?	1	0	0	0
Do you have any further comments on P382?	0	1	0	0

First draft Modification Report

ELEXON presented the first draft Modification report to the Panel at its meeting on 11 April 2019.

A Panel Member queried whether it would be better to defer decision rather than to reject the Modification. ELEXON noted that there would be limited impact from deferral. ELEXON noted that Section F of the BSC mandates that the Panel make a decision whether to approve or reject the Modification. However noting also that Section B of the BSC charges the Panel with the efficient and economic management of the Code which could be interpreted as to permit deferral on the basis that this decision would ensure the most efficient and economic management of the Code. ELEXON noted to the Panel that it would be possible that changes in circumstances or agreements between the April 2019 Panel meeting and the eventual exit day might require changes to be made to the legal text and therefore require further industry consultation prior to approving P382.

A Panel Member noted that the UK might leave the EU with a deal, negating the need for P382. ELEXON noted that if the UK did successfully agree a deal for its exit from the EU, no changes to the Code would be needed. This was based on the last published proposed withdrawal agreement. The Panel Member queried whether the possibility of a new or amended deal being agreed should be considered. ELEXON noted that the UK Government [at the time of the April Panel Meeting] had firmly stated that it would not amend or re-negotiate the deal proposed for the UK's exit from the EU.

The Panel discussed whether it was possible to withdraw P382 but, because it had already entered the Report Phase, this was no longer an option but it could be rejected if the Panel chose to do so.

The Panel discussed approving P382 with a delayed implementation triggered by the UK's exit from the EU. BSC Section F requires that any approved Modifications have a set Implementation Date so ELEXON suggested that the Panel could approve the Modification with an Implementation Date set for five working days after the November Panel meeting, as this would allow the Panel to approve a Modification at the November Panel Meeting that would essentially negate P382.

A Panel Member noted that they wanted to avoid asking the industry to consult on this Modification again. The Panel Member suggested that the best way to avoid this would be to progress this Modification with a delayed Implementation Date.

A Panel Member stated that the BSC should be able to define what it needs to be effective and when its text comes into effect. The Chair noted that the discussion and common sense indicated that the best way forward would be to defer without a date fixed for Implementation. The Chair also noted that it was impossible to know for certain when the UK would be leaving the EU and suggested that the Panel should seek to arrive at a common sense solution on that basis. A Panel Member suggested that the Modification could be approved with an Implementation Date to be triggered by a Panel vote when enough information was available to make a decision.

The Chair noted that the primary reason the Panel was hesitant to defer this Modification was because ELEXON might need to change the legal text and consult with the industry again. Further, the Chair noted that the Panel was inclined to identify and pursue a more common sense solution that mitigated this eventuality while ensuring the BSC was ready to ensure its compliance as quickly as possible following a no-deal exit from the EU.

ELEXON's Legal Representative noted that the option of building a trigger for Implementation into the Code had been discussed but concerns had been raised that it would be difficult to phrase and that conditionality could make the Code difficult to understand. A Panel Member noted that while it might damage the clarity of the Code this might still be the preferable option.

The Chair noted that deferral was Ofgem's preference and ELEXON added that the guidance from Ofgem had been to process Code changes to ensure compliance is achieved as quickly as possible following the UK's exit from the EU but, not necessarily before exit day.

A Panel Member noted that 10 October 2019 would likely to be the most appropriate date to defer this decision to which was agreed by the Panel.

A Panel Member noted they were concerned that the decision might set a precedent in respect of deferral and as a result, another Panel member asked that the meetings minutes make it clear that a precedent had not been set and deferring a decision on P382 was an action taken in extenuating circumstances.

Second draft Modification Report

ELEXON presented the second draft Modification report to the Panel at its meeting on 10 October 2019.

The BSC Panel discussed the most efficient way to manage the present uncertainty around exit day. It was noted that more information may be forthcoming the week after the Panel Meeting [an EU leaders' summit took place on 19 October 2019 and, at the time of the Panel meeting, it was expected that a deal may be announced] and as such, the Panel could convene thereafter to approve P382. However, it was pointed out that even if there was a key announcement, it would still need to be ratified before 31 October 2019 and, even if that happened, nothing would be lost from waiting until the November Panel meeting on 14 November 2019 as there was never any urgency around implementation. It was agreed by Panel members that, on this basis a deferment until the earlier of 6-months, or a definitive outcome was pragmatic.

One Panel Member questioned the propriety of delaying implementation after exit day. Their concern was that if something happened between exit day and P382 being implemented we could be in a difficult legal position holding a Party to account based on an inaccurate Code.

ELEXON informed the Panel that their understanding is that national legislation supersedes the BSC therefore, Parties should comply with UK law ahead of the BSC. In this case, the changes made by the Withdrawal Act would be the legal basis for taking action rather than a temporarily out of date BSC. Furthermore, it is the BSC Party's responsibility to comply with the law of the day and ensure their own compliance with relevant legislation. It was acknowledged that while this is not an ideal scenario, ELEXON are comfortable with this position should they be challenged legally.

9 Panel's Final Discussions

The P382 DMR (third version) was presented to the BSC Panel at its meeting on 13 February 2020 (Panel 299/06).

None of the Panel Members had any comment regarding P382 but one Panel Member raised questions about continuing to progress EU changes between now and 31 December 2020. It was agreed to discuss them separately and not in relation to P382.

The Panel unanimously agreed with all recommendations as set out in Section ten of this report and made no other comments.

10 Recommendations

The BSC Panel:

- **AGREED** that P382:
 - **DOES NOT** better facilitate Applicable BSC Objective (a);
 - **DOES NOT** better facilitate Applicable BSC Objective (d); and
 - **DOES NOT** better facilitate Applicable BSC Objective (e);
- **DETERMINED** (in the absence of any Authority direction) that P382 is a Self-Governance Modification Proposal;
- **REJECTED** P382;
- **APPROVED** an Implementation Date of the Working Day after the end of the Self-Governance window;
- **REJECTED** the legal text; and
- **APPROVED** the P382 Modification Report.

Appendix 1: Intended retention of EU provisions

P382 would have retained some EU provisions for the following reasons.

Project TERRE

[P344 'Project TERRE'](#) was supposed to be implemented in two stages. The first stage, which was implemented on 28 February 2019 as planned, delivered the legal text and switched on the registration provisions. The second stage was due to be implemented on 7 November 2019 as part of the November 2019 BSC Release to deliver the core TERRE functionality.

Between the 11 April 2019 and 10 October Panel meetings, the French Transmission System Operator (RTE) requested a derogation on implementing TERRE until December 2020 but, with an expectation they will be able to implement in June 2020. As GB participation is dependent on French participation, NGESO subsequently requested a derogation to reflect French timescales. The Authority provided a derogation until June 2020 at the latest.

P344's implementation will deliver TERRE but will also offer wider access to the balancing market for GB Market Participants. Given that TERRE was delayed, wider access was delivered in December 2019.

In the event of a no-deal Brexit, GB participants will not be able to participate in TERRE after exit day. There was an expectation that post exit day the UK government would have negotiated GB's return to the Internal European Market (IEM) or, at the very least, parts of the IEM that are mutually suitable, including participation in TERRE but, it was noted that this may have taken some time.

Given the investment to date and complexities of P344, and that we already delivered wider access, it would have been more efficient to leave TERRE aspects of the Code dormant until GB market participants were able to participate in TERRE at a later date.

Capacity Allocation and Congestion Management

[Commission Regulation \(EU\) No 2015/1222 'Establishing a guideline on capacity allocation and congestion management \(CACM\)'](#) aims to promote effective cross-border competition in generation, trading and supply of electricity by establishing new cross-border EU electricity markets in the day-ahead and intraday timeframes.

To date, only one BSC Modification has been implemented to facilitate CACM – [P356 'Aligning the BSC with Grid Code Modification GC0099 'Establishing a common approach to interconnector scheduling consistent with the single intraday market coupling processes set out within Regulation \(EU\) 2015/1222 \(CACM\)'](#). Regulation 2015/1222 would not have been retained in UK law³.

P356 was implemented to allow for Cross-Border Intraday Trading (XBID) from a Settlement perspective. XBID is an EU-wide project but GB Interconnectors are yet to participate due to uncertainties around Brexit. This means that the relevant parts of the BSC have remained dormant since their implementation in November 2018. Given uncertainty around the UK's relationship with the IEM post exit day we did not know if this part of the BSC will be required or not. Given this, and the fact that it was not doing any

³ The SI Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019 revokes Commission Regulation 2015/1222

harm to date, we did not see any need to amend the BSC in respect of the text implemented by P356.

Transparency reporting service

The Balancing Mechanism Reporting Service (BMRS) reports insider trading information on behalf of NGESO. One of BMRS's functions is to report certain transparency data to ENTSO-E⁴.

The obligation to report data to ENTSO-E would not have existed after exit day. However, as there was still uncertainty about our future relationship with the IEM, and no requirement for BMRS to stop transmitting data, we took the view that it was more efficient to continue as we are rather than switching it off on exit day to switch back on later. We planned to review this after exit day once our future relationship with the IEM was known.

It should also be noted that one of the Brexit no-deal SIs⁵ would have made NGESO responsible for reporting transparency data. BEIS confirmed that this was not their policy intent and they wanted ELEXON to continue providing BMRS but, the no-deal SI would have applied to the whole of the UK. On the island of Ireland, the Transmission System Operator (TSO) undertakes transparency reporting, so the no-deal SI reflected this. Ofgem, on behalf of the Authority, confirmed that they would have issued an exemption to allow ELEXON to continue to report transparency data via BMRS. However the exemption was not issued, as the requirement for the designation would not have existed in law so, they were unable to grant the designation required.

⁴ European Network Transmission System Operators – Electricity. The organisation that co-ordinates inter-TSO cooperation across the EU

⁵ The Electricity and Gas (Market Integrity and Transparency)(Amendment) (EU Exit) Regulations 2019

Appendix 2: Glossary & References

Acronyms

Acronyms used in this document are listed in the table below.

Acronym	
Acronym	Definition
BEIS	Business, Energy and Industrial Strategy
BMRA	Balancing Mechanism Reporting Agent
BMRS	Balancing Mechanism Reporting Service
BSC	Balancing and Settlement Code
BSCCo	BSC Company
CA	Code Administrator
CACM	Capacity Allocation Congestion Management
CACoP	Code Administrator's Code of Practice
CP	Change Proposal
CSD	Code Subsidiary Document
DMR	Draft Modification Report
EC	European Commission
EMR	Electricity Market Reform
ENTSO-E	European Network of Transmission System Operators – Electricity
EU	European Union
GB	Great Britain
GDPR	General Data Protection Regulation
IEM	Internal Energy Market
IWA	Initial Written Assessment
NGESO	National Grid ESO
REMIT	Regulation on wholesale Energy Market Integrity and Transparency
RTE	Réseau de transport d'électricité (French TSO)
SCR	Significant Code Review
SI	Statutory Instrument
TERRE	Trans-European Replacement Reserve Exchange
UK	United Kingdom
XBID	Cross Border Intraday

External links

A summary of all hyperlinks used in this document are listed in the table below.

All external documents and URL links listed are correct as of the date of this document.

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External Links		
Page(s)	Description	URL
2	BSC Section F	https://www.elexon.co.uk/the-bsc/bsc-section-f-modification-procedures/
3	Panel 289/08	https://www.elexon.co.uk/meeting/bsc-panel-289/
3	Panel 295/07	https://www.elexon.co.uk/meeting/bsc-panel-295/
3	Panel 29/06	https://www.elexon.co.uk/meeting/bsc-panel-299/
3	European Union (Withdrawal Agreement) Act 2020	https://www.legislation.gov.uk/ukpga/2020/1/introduction
4	Panel 288/04	https://www.elexon.co.uk/meeting/bsc-panel-288/
5	European Union Withdrawal Act (2018)	http://www.legislation.gov.uk/ukpga/2018/16/contents
5	Secondary Legislation	https://www.parliament.uk/about/how/laws/secondary-legislation/
5	P382 Webpage	https://www.elexon.co.uk/mod-proposal/p382/
7	Regulation (EU) 2016/679	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02016R0679-20160504
7	P398 webpage	https://www.elexon.co.uk/mod-proposal/p398/
10	P382 Initial Written Assessment	https://www.elexon.co.uk/meeting/bsc-panel-288/
15	P344 'Project TERRE'	https://www.elexon.co.uk/mod-proposal/p344/
15	CACM regulations	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R1222
15	P356 webpage	https://www.elexon.co.uk/mod-proposal/p356/