

# Report Phase Consultation Responses



## P361 'Revised treatment of BSC Charges for Lead Parties of Interconnector BM Units'

This Report Phase Consultation was issued on 20 June 2018, with responses invited by 3 July 2018.

### Phase

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

### Consultation Respondents

Respondent	No. of Parties/Non-Parties Represented	Role(s) Represented
National Grid Interconnectors Ltd	2/0	Interconnector Administrator, Interconnector Error Administrator.
Drax Group PLC	2/0	Generator, Supplier
RWE Supply & Trading GmbH	2/2	Generator, Interconnector User, Non Physical Trader , ECVNA, MVRNA
ElecLink Limited	1/0	Interconnector Administrator
Nord Pool A/S	1/0	Interconnector User
BritNed Development Limited	2/0	Interconnector Administrator, Interconnector Error Administrator
SSE plc	7/0	Generator, Supplier, Interconnector User

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Question 1: Do you agree with the Panel's initial majority view that the P361 Proposed Modification does not better facilitate the Applicable BSC Objectives than the current baseline?

## Summary

Yes	No	Neutral/No Comment	Other
3	4	0	0

## Responses

Respondent	Response	Rationale
National Grid Interconnectors Ltd	No	Both the internal and external legal opinions clearly state that compliance with the 3rd Energy Package would be better facilitated as a result of the approval of P361. The legal opinions in this case have demonstrated that BSC Objective (e) would be better facilitated.
Drax Group PLC	Yes	<p>We agree with the panel's majority view that the P361 Proposed Modification does not better facilitate the Applicable BSC Objectives than the current baseline.</p> <p>Applicable BSC Objective (c) – Negative</p> <p>We do not consider that BSC charges are a barrier to entry into the UK market and are not convinced that they materially distort cross-border trading, as such, removal of these charges would not promote effective competition. There is insufficient analysis illustrating any distortion caused by these BSC charges and do not believe that P361 is justified without this evidence.</p> <p>In fact, we believe re-distributing BSC charges in this manner will have a negative impact on Applicable BSC Objective (c). Levying these costs only on Non-interconnector BM Units will distort allocation of BSC costs and would not ensure that there is a level playing field for all market participants. We are concerned that the removal of these charges from interconnector users further disadvantages GB generation relative to continental generation, and may result in a greater cost being passed through to GB consumers.</p> <p>Applicable BSC Objective (e) – Neutral</p> <p>We have the opinion that BSC charges are a service charge and recover the cost to ELEXON in administering the BSC arrangements, as prescribed</p>

Respondent	Response	Rationale
		<p>in ELEXON's Legal guidance, however we do not agree that the Relevant BSC Charges would likely be considered a charge for access to the network by the EU institutions. BSC charges are not network charges, the costs of maintaining the Transmission infrastructure and operating the electricity system are recovered by the Transmission Owner and the System Operator through TNUoS and BSUoS respectively, both of which Interconnector BM Units are already exempt from paying.</p> <p>We appreciate the detail provided on the charging arrangements from other TSOs and note that most other countries do not have an independent Market Operator (i.e. equivalent to ELEXON). Consequently, Drax does not believe that these charges should be classified as network charges and do not consider there is evidence to suggest such charges levied by ELEXON distort cross border trade.</p>
RWE Generation plc, RWE Supply 7 Trading GmbH	Yes	<p>We agree with the Panel's initial majority view that the P361 Proposed Modification does not better facilitate the Applicable BSC Objectives when compared with the current baseline. It is our view that the P361 Proposed Modification introduces discriminatory treatment of interconnectors and therefore does not better meet Objective C in relation to promoting effective competition. Further we foresee that the differential treatment of interconnectors, with regard to BSC charges, will have a detrimental impact on power prices.</p>
ElecLink Limited	No	<p>ElecLink Limited believes that the initial Proposed Modification better facilitates two of the applicable BSC objectives compared to the status quo. ElecLink's main comment on this consultation, given the phase of the process, is to request clarification of the basis on which the Panel decided to override the legal opinion provided during the earlier phases of the process which led the working groups to propose the modification be adopted. We understand that the view to adopt is supported by internal legal opinion and an independent external legal opinion obtained by Elexon. The legal opinion concluded that the GB framework would best align with the European framework if the identified charges for interconnector BMUs were removed as proposed. We therefore believe the proposed modification (and alternative) better facilitates Objective E. In addition to the legal basis for adoption, ElecLink believes that removing charges</p>

Respondent	Response	Rationale
		from interconnector BMUs will mean a more efficient and competitive market at the European level due to the harmonisation between countries this change would represent, and an improved trading arrangement. We therefore believe the proposed modification (and alternative) better facilitates Objective C.
Nord Pool A/S	No	<p>As part of the work group assessment of the modification, the work group sought a legal opinion as to whether the current BSC Charging Methodology was in line with the 3rd Energy Package objectives and whether the proposal would better facilitate the BSC Objective (e). The outcome of this assessment allowed the work group to make an informed decision in support of the implementation of P361 on the basis that the BSC would be better aligned with EU regulation.</p> <p>Its not clear in the panels response why or how they have concluded, without additional legal input, that the modification does not better facilitate the Applicable BSC Objectives.</p>
BritNed Development Limited	No	<p>We note that external independent legal advice has been sought on P361. It is therefore appropriate to conclude on the basis of this legal advice that BSC Objective(e) is better facilitated by P361 and agree with the original view of the Workgroup. In the absence of any alternative legal opinion presented by the Panel, we are unable to agree with their assessment that BSC Objective (e) is not better facilitated by P361.</p> <p>With regard to BSC Objective (c), removing the potential exposure of interconnector users (either those purchasing capacity explicitly or implicitly via a power exchange/NEMO) to BSC Charges may reduce their costs to trade across borders and may promote cross-border trade and competition in the generation and supply of electricity.</p>
SSE plc	Yes	<p>SSE supports the Panel conclusions that BSC charges do not represent a Network Access charge and are therefore appropriate to charge to Interconnector Users. SSE agrees with the Panel that BSC charges represent a fair share membership fee for use of key central services essential to the efficient administration of the GB balancing market.</p> <p>SSE agrees with the Panel that the proposed change will not better facilitate competition in the GB market, to the detriment of GB consumers who will</p>

Respondent	Response	Rationale
		be required to pay the difference.

Question 2: Do you agree with the Panel's initial majority view that the P361 Alternative Modification does not better facilitate the Applicable BSC Objectives than the current baseline?

## Summary

Yes	No	Neutral/No Comment	Other
3	4	0	0

## Responses

Respondent	Response	Rationale
National Grid Interconnectors Ltd	No	The spirit of the alternative modification has not fundamentally changed; it applies solely to when the reconciliation of the BSC charges in question will take place. On this basis, the same rationale to question 1 applies; the legal opinions state that the approval of P361 would better facilitate compliance of the 3rd Energy Package.
Drax Group PLC	Yes	As per the rationale given in Question 1, we agree with the panel's majority view that the P361 Alternative Modification does not better facilitate the Applicable BSC Objectives than the current baseline.
RWE Generation plc, RWE Supply 7 Trading GmbH	Yes	We agree with the Panel's initial majority view that the P361 Alternative Modification does not better facilitate the Applicable BSC Objectives when compared with the current baseline. It is our view that the P361 Alternative Modification introduces discriminatory treatment of interconnectors and therefore does not better meet Objective C in relation to promoting effective competition.
ElecLink Limited	No	<p>ElecLink Limited believes that the Alternative Modification better facilitates two of the applicable BSC objectives compared to the status quo.</p> <p>ElecLink's main comment on this consultation, given the phase of the process, is to request clarification of the basis on which the Panel decided to override the legal opinion provided during the earlier phases of the process which led the working groups to propose the modification be adopted. We understand that the view to adopt is supported by internal legal opinion and an independent external legal opinion obtained by Elexon. The legal opinion concluded that the GB framework would best align with the European framework if the identified charges for interconnector BMUs were removed as proposed. We therefore believe the proposed</p>

Respondent	Response	Rationale
		modification (and alternative) better facilitates Objective E. In addition to the legal basis for adoption, ElecLink believes that removing charges from interconnector BMUs will mean a more efficient and competitive market at the European level due to the harmonisation between countries this change would represent, and an improved trading arrangement. We therefore believe the proposed modification (and alternative) better facilitates Objective C. ElecLink would support the adoption of either of the proposed modifications though the preference is for the alternative modification for reasons relating to the timing and the avoidance of retrospective application.
Nord Pool A/S	No	The Alternative Modification seeks to meet the same objective as the Proposed Modification, which is to better align the BSC Objectives with the EU Regulation on Cross Border Flows, the difference being on when the change would take effect and the financial impact this would have on the BSC parties.
BritNed Development Limited	No	We do not believe there is any material difference between the Proposed Modification and the Alternative Modification in respect of the facilitation of the Applicable BSC Objectives. Our view in respect of Question 1 also applies in respect of this question.
SSE plc	Yes	For the same reasons as stated in response to Q1.

Question 3: Do you agree with the Panel's initial majority view that the P361 Proposed Modification and the P361 Alternative Modification should be rejected?

## Summary

Yes	No	Neutral/No Comment	Other
3	4	0	0

## Responses

Respondent	Response	Rationale
National Grid Interconnectors Ltd	No	We strongly disagree. The legal advice clearly states that approval of P361 would better facilitate compliance with the EU 3rd Energy Package. Furthermore, this is consistent with previous modifications in relation to the removal of applicable charges for Interconnectors.
Drax Group PLC	Yes	<p>Yes, we agree with the Panel's initial majority view that the P361 Proposed Modification and the P361 Alternative Modification should be rejected.</p> <p>In particular, Drax believes this modification will have a negative impact on promoting competition by distorting the allocation of BSC charges and does not promote a level playing field between GB and continental generation.</p> <p>Drax welcomes the analysis from ELEXON and note that ELEXON foresee that the cross-subsidisation of BSC costs will increase in the coming years as more interconnectors are commissioned and utilised. The histogram of Change in Total Funding Share illustrates that some Parties would experience a significant financial impact as a result of this modification. This will be heightened in future years.</p>
RWE Generation plc, RWE Supply 7 Trading GmbH	Yes	No rationale provided.
ElecLink Limited	No	For the reasons stated above, we believe that either Modification raised would better facilitate Objectives C and E relative to the status quo.
Nord Pool A/S	No	In view of Objective (e) we disagree with the Panels view that the Proposed and the Alternative Modification should be rejected. As part of one of the key objectives within the EU Regulation, Energy is deemed to be allowed to flow freely across the European Union and that it should be considered



Respondent	Response	Rationale
		<p>part of the overall transmission infrastructure and not characterised as Production or Consumption. Both Elexon and the external legal opinion highlight that the current methodology brings into doubt whether Elexon is in line with the 3rd Energy Package</p> <p>Under the current charging methodology we agree with the legal opinion in so much as they suggest that these costs could be considered Network Access Charge and the current charging methodology characterises interconnector flows contrary to the EU regulation. On this basis we maintain that P361 would better facilitate BSC objective (e) to be more in line with the EU regulation.</p> <p>We would also highlight that the legal opinion also referred to Ofgem’s approval of modification CMP202, which excluded BUSUos from Lead interconnector users on the basis that they constituted an additional charge for the Import and Export of electricity from GB, which was considered a barrier to cross border trade. We currently see very little difference between the BUSUos charges which are now excluded from Interconnector users and the BSC Charges as both seem to add an additional charge for the import and export of electricity from GB</p> <p>The exclusion of BSC charges for Lead Interconnector Users would be consistent with Ofgems decision behind the implementation CMP202 as these charges would continue to have a negative impact on competition between Interconnector Operators, NEMOs and Market Participants, which in turn would undermine Objective (c) of the BSC. This impact is borne out of the additional cost being levied on interconnector users, since the implementation of the CACM Guidelines, for flows of energy across the interconnectors.</p> <p>Under CACM NEMOs are required to act as a “shipper” to facilitate the transfer of Energy between One bidding zone and another. Under the</p>

Respondent	Response	Rationale
		<p>current BSC arrangements the NEMO is required to be treated as an Interconnector user and as such is exposed to the BSC Charging Methodology. The possible effect of seeking recovery of these charges could have a major impact on the future liquidity of the day ahead market and subsequently GB's ability to participate in the Market Coupling arrangements as the increase in costs to market participants operating in the Day Ahead Market would be significant, resulting in liquidity from the Day Ahead Market moving into the OTC market, where the cost of transaction would be considered much cheaper. Equally as NEMOs are structured differently there currently exists a distortion in the competitive landscape between NEMOs from those NEMOs who outsource their shipping obligations to those who manage the obligation in house.</p> <p>In addition, should the interconnector operators be required to pick up these charges, then they too would potentially seek to pass these costs on to their customers, which would constitute an additional fee for cross border flows and therefore would be deemed a barrier to cross border trade, much in the same way BUSUOs charges were.</p>
BritNed Development Limited	No	<p>We note the Panel's rationale for rejection but in the absence of any further independent legal advice, we continue conclude that both the Proposed Modification and Alternative Modification better facilitate compliance with European Legislation and deliver its wider intentions.</p> <p>We also note that the rationale for P361 is consistent with that presented for the previously approved for CUSC Modification – "Revised treatment of BSUoS charges for lead parties of Interconnector BM Units (CMP202)", specifically alignment with the provisions of the EU Third Package legislation. Our view is that BSC Charges and BSUoS charges both seek to recover network costs within the broad activity of the operation and balancing of the GB system. We do not see a material difference in these charge types.</p> <p>Implementation of P361 will ensure consistency in that interconnector parties will be excluded from the scope of these broadly related charging methodologies.</p>
SSE plc	Yes	As per Q1.

Question 4: Do you agree with the Panel's initial unanimous view that the redlined changes to the BSC deliver the intention of the P361 Proposed and Alternative solutions?

## Summary

Yes	No	Neutral/No Comment	Other
7	0	0	0

## Responses

Respondent	Response	Rationale
National Grid Interconnectors Ltd	Yes	The text and the amended equations satisfies the removal of Interconnector BMUs from the cost calculations therefore the intention is delivered for both the proposed and alternative solutions.
Drax Group PLC	Yes	The Legal text delivers the solution of P361.
RWE Generation plc, RWE Supply 7 Trading GmbH	Yes	No rationale provided.
ElecLink Limited	Yes	No rationale provided.
Nord Pool A/S	Yes	No rationale provided.
BritNed Development Limited	Yes	The proposed drafting appears sufficient to deliver the intention of P361.
SSE plc	Yes	No rationale provided.

## Question 5: Do you agree with the Panel's recommended Implementation Date?

### Summary

Yes	No	Neutral/No Comment	Other
7	0	0	0

### Responses

Respondent	Response	Rationale
National Grid Interconnectors Ltd	Yes	The implementation date is acceptable given the changes required to current Elexon administration of the BSC.
Drax Group PLC	Yes	The implementation date seems sensible.
RWE Generation plc, RWE Supply 7 Trading GmbH	Yes	No rationale provided.
ElecLink Limited	Yes	No rationale provided.
Nord Pool A/S	Yes	No rationale provided.
BritNed Development Limited	Yes	We agree with the recommended implementation date of 28 February 2019 as part of the February 2019 BSC Release.
SSE plc	Yes	No rationale provided.

Question 6: Do you agree with the Panel's initial unanimous view that P361 should not be treated as a Self-Governance Modification?

### Summary

Yes	No	Neutral/No Comment	Other
7	0	0	0

### Responses

Respondent	Response	Rationale
National Grid Interconnectors Ltd	Yes	The scope of the change and the potential impact to other BSC parties does not satisfy the self-governance criteria.
Drax Group PLC	Yes	This modification does not meet Self-Governance Criteria (a)i, (a)ii, (a)v and (b). It has a material effect on consumers, competition, governance of the BSC and discriminates against different classes of BSC Parties.
RWE Generation plc, RWE Supply 7 Trading GmbH	Yes	No rationale provided.
ElecLink Limited	Yes	No rationale provided.
Nord Pool A/S	Yes	No rationale provided.
BritNed Development Limited	Yes	We agree with the Workgroup's and Panel's assessment that the proposal does not meet the defined self-governance criteria.
SSE plc	Yes	No rationale provided.

## Question 7: Do you have any further comments on P361?

### Summary

Yes	No
1	6

### Responses

Respondent	Response	Rationale
National Grid Interconnectors Ltd	No	No rationale provided.
Drax Group PLC	No	No rationale provided.
RWE Generation plc, RWE Supply 7 Trading GmbH	Yes	<p>Ofgem have recently published their 'minded-to position' on cost sharing and cost recovery under the capacity Allocation and congestion management (CACM) Regulation in which they state 'We consider that the appropriate mechanism for NEMOs to recover costs related to the clearing and settlement service they provide should be through fees charged by NEMOs to users of that service (i.e. traders).'</p> <p>In Ofgem's view 'competition between NEMOs over the provision of services such as clearing and settlement is essential to keep the relevant costs at efficient levels. This is a central reason for opting for a competitive instead of a monopoly NEMO regime in GB.'</p> <p>As the ELEXON costs are related to operation of the BSC which governs clearing and settlement We would contend that Ofgem are making a clear statement, which effectively overturns Modification P361 and any alternative.</p>
ElecLink Limited	No	No rationale provided.
Nord Pool A/S	No	No rationale provided.
BritNed Development Limited	No	No rationale provided.
SSE plc	No	No rationale provided.