

**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. Additionally, it also contains 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 without a deal ('no-deal Brexit') will mean that the BSC is no longer technically accurate.



The BSC Panel initially recommends **approval** of P382

This Modification is expected to impact:

- BSCCo

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## About This Document

This is the P382 Draft Modification Report, which ELEXON will present to the Panel at its meeting on 10 October 2019. It includes the responses received to the Report Phase Consultation on the Panel's initial recommendations as well as the Panel's views from when they reviewed the first draft Modification Report on 11 April 2019. The Panel will consider all responses, and will either: agree a final recommendation to the Authority on whether the change should be made; or may defer such decision to a later date (see below).

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.



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This is the second version of the P382 Draft Modification Report (DMR). The first version of the P382 DMR was presented to the Panel on 11 April 2019 ([Panel 289/08](#)). At this meeting, the Panel deferred its decision. This was due to the high levels of uncertainty surrounding Brexit. As there remains a high degree of uncertainty as to whether P382 is needed (only needed for a 'no-deal Brexit'), we recommend that the Panel **defer its decision** again. We recommend deferral until there is sufficient certainty that the UK will exit the EU without a deal. Alternatively, the Panel may wish to reject P382. A new Modification proposal could then be brought forward for a 'no-deal' Brexit if required.

### Why Change?

The BSC will remain operable in the event of leaving the EU without a deal but may be ambiguous if not updated to reflect legislative changes in the event of a no-deal Brexit.

### Solution

Amend 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, we will keep parts of the BSC relating to:

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

As the UK's future relationship will be re-negotiated following exit day<sup>1</sup>, these provisions may be required later. For the sake of efficiency, we consider it better that they 'lay dormant' within the BSC for now rather than removing them and having to re-insert later.

### Impacts & Costs

The only cost will be to change the relevant sections of the BSC. There will be no impacts or costs for industry participants.

### Implementation

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 remains a high degree of uncertainty at this time, we recommend that **Implementation be deferred** again to a time to be specified by the Panel.

<sup>1</sup> 'exit day' is defined in legislation as the day that the United Kingdom leaves the European Union – 31 October 2019 at the time of presenting this draft Modification Report.

## Recommendation

The Panel initially unanimously believes that P382 better facilitates Applicable BSC Objectives (a), (d) and (e) and so should be **approved**. Their initial recommendation is that P382 should be implemented as a Self-Governance Modification.

## 2 Why Change?

### Background

**All statements of fact in this document are considered true at the time of submitting this draft Modification Report on 3 October 2019.**

The UK is due to withdraw from the EU at 23:00:00 on 31 October 2019 (exit day) and the UK and EU have not agreed their post exit day relationship. This means that the UK will leave the EU without continuance of previously applicable EU legislation – a ‘no-deal Brexit’.

In this situation, from 23:00:01 on 31 October 2019 EU legislation will no longer apply, and EU bodies will no longer have authority, in the UK. However, the [European Union Withdrawal Act \(2018\)](#) (‘the Withdrawal Act’) means that most EU legislation will continue to be operative after exit day. The Withdrawal Act incorporates EU legislation into UK law (essentially ‘cut and pasted’) other than where a Secretary of State has decreed via secondary legislation that specific legislation will not be retained, for example, the Capacity Allocation Congestion Management (CACM) regulations will not be retained. The Withdrawal Act also allows the government to exclude specific articles within EU legislation i.e. designate specific Articles within EU legislation that will not apply in the event of ‘no-deal’. This can only be one or 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 cannot be used to change the policy intent of legislation as that would require primary legislation. The government is exercising its powers not to retain specific legislation and to modify retained EU legislation through Secondary Legislation: Statutory Instruments<sup>2</sup> (SIs).

### Retention of EU legislation

The Secretary of State for Business, Energy and Industrial Strategy (BEIS) laid five SIs before Parliament, each of which has since been made, that apply to the Electricity Industry (and impact the Balancing and Settlement Code (BSC)):

- [Electricity and Gas \(Powers to Make Subordinate Legislation\) \(Amendment\) \(EU Exit\) Regulations 2018](#)
- [Electricity and Gas etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019](#)
- [Electricity and Gas \(Market Integrity and Transparency\) \(Amendment\) \(EU Exit\) Regulations 2019](#)
- [Electricity Network Codes and Guidelines \(Markets and Trading\) \(Amendment\) \(EU Exit\) Regulations 2019](#)
- [Electricity Network Codes and Guidelines \(System Operation and Connection\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#)

The Electricity and Gas (amendments) SI (bullet two) will amend the Electricity Act whereas the others will amend or revoke (not retain) EU legislation.

The Treasury has also laid several SIs before Parliament that have been made. The one that impacts the BSC is the [‘Value Added Tax \(Miscellaneous Amendments and Revocations\) \(EU Exit\) Regulations 2019’](#).

<sup>2</sup> <https://www.parliament.uk/about/how/laws/secondary-legislation/>

Unless referred to in any of the above SIs, any retained EU legislation affecting the BSC will be retained and essentially 'cut and paste' into UK law.

Changes to legislation impacting the BSC – i.e. where legislation is not retained		
Statutory Instrument	EU Regulation	Name used to cite EU Regulation within the SI
Electricity and Gas (Powers to Make Subordinate Legislation) (Amendment) (EU Exit) Regulations 2018	Regulation (EC) No 714/2009	the Electricity Regulation
	Regulation (EU) No 1227/2011	REMIT
The Electricity and Gas (Market Integrity and Transparency)(Amendment) (EU Exit) Regulations 2019	Regulation (EU) No 1227/2011	REMIT
	Regulation (EU) No 543/2013	the Transparency Regulation

The 'Value Added Tax (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019' amends an existing UK Order; [The Value Added Tax \(Place of Supply of Goods\) Order 2004](#) (which has been amended), by replacing 'situated within the territory of a member State' with 'in the United Kingdom' in relation to the place of Supply of Electricity for Value Added Tax purposes.

All SIs that will impact the BSC have been made and will become UK law on exit day.

## What is the issue?

The Withdrawal Act will allow the BSC to remain operative immediately following exit day. However, there will be technical inaccuracies, which may lead to confusion for anyone not familiar with the relevant Brexit legislation and will need updating as soon as possible.

The BSC will not reflect where SIs have revoked EU legislation either completely or partially. References to EU Regulations will not reflect that they may have been amended by SIs and references to EU bodies will not be correct. However, it may be appropriate to retain EU legislation that is revoked for the sake of efficiency where it is 'dormant' now but may become 'active later,' dependant on the relationship agreed between the EU and UK following exit day. This is discussed further below.

This is only an issue should the UK leave the EU without a deal. Should a deal be reached between the EU and the UK before exit day, whereby all EU legislation pertaining to the BSC remains extant, then P382 will no longer be needed and we will recommend that it is not approved. Similarly, if Article 50 is revoked and the UK does not leave the EU, P382 we will recommend that P382 is not approved.

### Proposed solution

The BSC will be amended to reflect where EU regulations will not be retained in UK law and where those changes will make the BSC ambiguous or confusing. Similarly, where appropriate, references to EU legislation will be amended to include the SI that has amended them.

### Analysis of the BSC and Code Subsidiary Documents

We have analysed the BSC and Code Subsidiary Documents (CSDs) to identify where amendments and/or deletions are needed. In doing this we have taken a multi-directional approach to ensure that all avenues have been 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 affect the BSC; and
- Review of all Modifications and Change Proposals (CPs) raised to implement EU legislation and whether the legal text and redlining implemented as part of those Modifications and CPs will remain extant after exit day.

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

Since presenting the first draft Modification Report in April, we have continued to monitor any [energy](#) or [VAT](#) SIs that have been made via multiple sources. No additional changes to the BSC or CSDs has arisen since April 2019.

### Retaining parts of the BSC contrary to revocation of EU legislation

Some revocations of EU legislation require the BSC to be amended but we will not be doing so. The areas concerned are:

- Project TERRE and wider access;
- 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 will not have a detrimental effect on the operation of the BSC.

### 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.

Since the 11 April 2019 Panel meeting, the French Transmission System Operator (RTE) has 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 have subsequently requested a derogation to reflect French timescales. The Authority's decision on NGESO's derogation request is due late November/early December 2019.

P344's implementation will deliver TERRE but will also offer wider access to the balancing market for GB Market Participants. Given that TERRE is expected to be delayed, wider access is still expected to be 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 is an expectation that post exit day the UK government will negotiate 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 should be noted, this may take some time.

Given the investment to date and complexities of P344, and that we will still be delivering wider access, it would be more efficient to leave TERRE aspects of the Code dormant until GB market participants are 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 will not be retained in UK law<sup>3</sup>.

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 do not know if this part of the BSC will be required or not. Given this, and the fact that it is not doing any harm now, we do 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-E<sup>4</sup>.

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

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



The obligation to report data to ENTSO-E will no longer exist after exit day. However, as there is still uncertainty about our future relationship with the IEM, and no requirement for BMRS to stop transmitting data, we have taken the view that it is more efficient to continue as we are rather than switching it off now to switch back on later. We will review this after exit day once our future relationship with the IEM becomes known.

It should also be noted that one of the Brexit no-deal SIs<sup>5</sup> will make NGESO responsible for reporting transparency data. BEIS have confirmed that this is not their policy intent and they want ELEXON to continue providing BMRS but the no-deal SI applies to the whole of the UK. On the island of Ireland, the Transmission System Operator (TSO) undertakes transparency reporting, so the no-deal SI reflects this. Ofgem, on behalf of the Authority, has confirmed that they will issue an exemption to allow ELEXON to continue to report transparency data via BMRS. However, as the requirement for the designation does not yet exist in law, they are not yet able to grant the designation required.

## 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 is 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. 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.

Since March 2019 we have received several requests from European companies and organisations with whom we share data (either 'pushing' or 'pulling' or a combination of both) to enter into agreements in preparation for no-deal Brexit. These agreements are indemnifications in the event of breach of data once the UK is no longer an EU member. We have created a standard template on our website and will seek, in due course, for this to become a controlled document. The priority of creating the controlled document is still being assessed against other proposed changes; it will be created as part of the aforementioned GDPR Modification post-Brexit. It will be a 'tidying-up' Modification that has not been needed to date and is not an operational necessity as the template already exists and agreements are being entered into.

## Cross-Code collaboration

Ofgem's expectation is that all Code Administrators (CAs) will have Modifications raised similar to this Proposal to modify their respective Codes. Every effort (at both CA meetings and Ofgem arranged meetings) has been made by CAs to ensure collaboration between the Codes and as such, no cross-Code impacts have been identified.

ELEXON continues to liaise with other CAs to ensure that this remains the case. If conflicts do arise, we will make the Panel aware and recommend an appropriate cause of action to resolve the matter.

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<sup>5</sup> The Electricity and Gas (Market Integrity and Transparency)(Amendment) (EU Exit) Regulations 2019

## 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 has changed since the first DMR and some changes have been implemented. This is reflected in the proposed legal text being version 0.2.

## 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 are approximately £600. This cost is two and a half day's effort to implement four document changes to the BSC.

### Indicative industry costs of P382

We do not expect P382 to impact industry in any way and therefore there will be 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 expected – 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 based.

However, when the Panel reviewed the first draft Modification Report 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.

### Recommended Implementation Date

There are still three potential scenarios that that may determine the resolution of P382:

- Withdrawn as there is a deal that does not require changes to the BSC;
- Implemented once the UK leaves the EU without a deal; or
- Exit day is deferred repeatedly and there is no certainty around whether P382 will be required.

Given the continued uncertainty and fluid situation around Brexit, ELEXON's recommendation is that the Panel **defers setting an Implementation Date** until after exit day. The Implementation Date would then be set as either the day after the Self-Governance window closes or the next available standard Release date. Our recommendation on what the Implementation Date should be after exit day would be dependant on practicality and other resource requirements.

### Why would P382 no longer be required?

If, either at the European Council Meeting on 17-18 October, or a later time:

- A deal that won't affect the BSC is agreed by the EU and the UK; or
- Parliament vote to revoke Article 50 (i.e. the UK will remain an EU member).

P382 will have no legal basis for progressing and our recommendation will be that P382 is rejected at the first Panel meeting once either of the above is announced.

Should a deal be agreed between the EU and the UK that is different from the current withdrawal agreement and means that the BSC will need to change in a way not envisaged by P382, then we would also recommend that P382 is rejected and a new Modification will be raised to reflect the new arrangements.

### Exit day extension

If the Panel sets an Implementation Date based on the legal exit day (i.e. 31 October 2019) at the time of their meeting on 10 October 2019, and exit day is extended after the Panel meets, then the Panel will need to either:

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- Determine a new Implementation Date after the revised exit day<sup>6</sup>; or
- Reject P382 and a new Modification will be raised recommending an Implementation Date once the new exit day is set.

It should be noted that the [European Union \(Withdrawal\) \(No. 2\) Act 2019](#), which came into force on 9 September 2019 (the 'Benn Act'), requires the Prime Minister to request an extension to exit day to 31 January 2020 if neither of the following has occurred:

- An agreement between the UK and EU has been agreed by the House of Commons; or
- A no-deal Brexit has been agreed by the House of Commons.

There is no guarantee however, that the European Council will agree to an extension, or they may set their own extension date – which the Prime Minister will be bound to accept. If an extension is not given, then the UK may still end-up leaving the EU on 31 October without a deal, as the clock will have run down.

## No deal Brexit

If parliament votes for a no-deal Brexit, then we will have almost complete certainty about needing P382 but there may still be a chance that this is overturned and another exit day may be set.

## Implementation date if P382 is approved

Should the Panel choose to approve P382 for implementation, then we would recommend an **Implementation Date of 5 December 2019**.

If the Panel chooses to approve P382 at this time, and it subsequently turns out that P382 should not be implemented, then an Urgent Modification (subject to Authority approval) can be raised to 'cancel-out' P382 so that the Panel will be able make a determination at its meeting on 14 November 2019. It is envisaged that such Modification would be Self-Governance and the appeal window would close on 4 December 2019. Setting the Implementation Date of 5 December allows for P382 to be cancelled-out if required and is the first Working Day on which the cancelling out Modification will be able to 'cancel' P382.

## Self-Governance

The Panel initially recommended P382 be treated as a Self-Governance Modification for the reasons detailed below.

P382 will not require the Gas and Electricity Market Authority (GEMA) approval because, thanks to the Withdrawal Bill, Settlement operations will not be affected, and therefore there will be no impact on Market Participants or consumers. This in turn means that there will be no impact on competition or how the Total System is operated. Similarly, the Withdrawal Bill will mean that there will be no effect on:

- Sustainable development;

<sup>6</sup> If the panel select an Implementation Date between their planned October and November meeting dates, an extra Panel meeting may be required to amend the Implementation Date. As per BSC Section F, this would likely have to be an 'in-person' meeting.

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

P382 will have no effect on BSC governance and will not discriminate between different classes of Parties in any way.

P382 meets the Self-Governance Criteria and should be progressed as a Self-Governance Modification. Further, this is the approach being taken by other similarly impacted Codes.

The Initial Written Assessment (IWA) for P382 was presented to the BSC Panel at its meeting on 14 March 2019 (Panel 288/04). 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.

The Panel agreed with all recommendations unanimously as set out in Section 7 of this paper below and made no further comments.

### Panel's views against Applicable BSC Objectives

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).



#### 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

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



## 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 has 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" has been amended by this second SI, the amendments made by this SI are concerned with transfer of responsibility etc. from EU bodies to UK bodies and does not affect the BSC. However, we recognise that in the interest of removing ambiguity, and future proofing of the BSC, there is no reason why this second SI should not be added BSC Section X-1 and as such, we have 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

ELEXON presented a 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

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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.

## 9 Recommendations

We invite the Panel to **DEFER** all decisions on P382 until:

- There is certainty over the manner in which the UK will leave the EU or;
- The April 2020 Panel meeting (6 months time), whichever is earliest.

Should the Panel wish to reject P382, we invite the Panel to:

- **AGREE** that P382:
  - **DOES** better facilitate Applicable BSC Objective (a);
  - **DOES NOT** better facilitate Applicable BSC Objective (d); and
  - **DOES NOT** better facilitate Applicable BSC Objective (e);
- **DETERMINE** (in the absence of any Authority direction) that P382 is a Self-Governance Modification Proposal;
- **REJECT** P382
- **APPROVE** an Implementation Date of:
  - 5 December 2019 if the Authority upholds an appeal against the Panel's Self-Governance determination before 29 November 2019; or
  - Five Working Days after the Authority upholds an appeal against the Panel's Self-Governance determination if such determination is after 29 November 2019;
- **APPROVE** the draft legal text; and
- **APPROVE** the P382 Modification Report.

Should the Panel wish to approve P382, we invite the Panel to:

- **AGREE** that P382:
  - **DOES** better facilitate Applicable BSC Objective (a);
  - **DOES** better facilitate Applicable BSC Objective (d); and
  - **DOES** better facilitate Applicable BSC Objective (e);
- **DETERMINE** (in the absence of any Authority direction) that P382 is a Self-Governance Modification Proposal;
- **APPROVE** P382;
- **APPROVE** an Implementation Date of:
  - 5 December 2019; or
  - Five Working Days after the Authority upholds an appeal against the Panel's Self-Governance determination if such determination is after 29 November 2019;

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- **APPROVE** the draft legal text; and
- **APPROVE** the P382 Modification Report.

## Appendix 1: Glossary & References

### Acronyms

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

Acronym	
Acronym	Definition
BEIS	Business, Energy and Industrial Strategy
BMRS	Balancing Mechanism Reporting Service
BSC	Balancing and Settlement Code
BSCCo	BSC Company
BST	British Summer Time
CA	Code Administrator
CACM	Capacity Allocation Congestion Management
CACoP	Code Administrator's Code of Practice
CP	Change Proposal
CSD	Code Subsidiary Document
EC	European Commission
ENTSO-E	European Network of Transmission System Operators – Electricity
ESO	Electricity System Operator
EU	European Union
GB	Great Britain
GDPR	General Data Protection Regulation
GEMA	Gas and Electricity Markets Authority
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
VAT	Value-added tax
XBID	Cross Border Intraday

### External links

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

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

External Links		
Page(s)	Description	URL
3	March Panel webpage	<a href="https://www.elexon.co.uk/meeting/bsc-panel-288/">https://www.elexon.co.uk/meeting/bsc-panel-288/</a>
3	April Panel webpage	<a href="https://www.elexon.co.uk/meeting/bsc-panel-289/">https://www.elexon.co.uk/meeting/bsc-panel-289/</a>
4	Electricity and Gas (Market Integrity and Transparency) (Amendment) (EU Exit) Regulations 2019	<a href="https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-electricity-and-gas-market-integrity-and-transparency-amendment-eu-exit-regulations-2019">https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-electricity-and-gas-market-integrity-and-transparency-amendment-eu-exit-regulations-2019</a>
4	Electricity and Gas (Powers to Make Subordinate Legislation) (Amendment) (EU Exit) Regulations 2018.	<a href="http://www.legislation.gov.uk/ukxi/2018/1286/contents/made">http://www.legislation.gov.uk/ukxi/2018/1286/contents/made</a>
4	Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019	<a href="https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-electricity-and-gas-etc-amendment-etc-eu-exit-regulations-2019">https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-electricity-and-gas-etc-amendment-etc-eu-exit-regulations-2019</a>
4	Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019	<a href="https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-electricity-network-codes-and-guidelines-markets-and-trading-amendment-eu-exit-regulations-2019">https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-electricity-network-codes-and-guidelines-markets-and-trading-amendment-eu-exit-regulations-2019</a>
4	Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) Regulations 2019	<a href="https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-electricity-network-codes-and-guidelines-system-operation-and-connection-amendment-etc-eu-exit-regulations-2019">https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-electricity-network-codes-and-guidelines-system-operation-and-connection-amendment-etc-eu-exit-regulations-2019</a>
4	European Union Withdrawal Act (2018)	<a href="http://www.legislation.gov.uk/ukpga/2018/16/contents">http://www.legislation.gov.uk/ukpga/2018/16/contents</a>
4	Parliamentary webpage explaining Secondary Legislation	<a href="https://www.parliament.uk/about/how/laws/secondary-legislation/">https://www.parliament.uk/about/how/laws/secondary-legislation/</a>
5	'Value Added Tax (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019'	<a href="https://www.gov.uk/government/publications/statutory-instruments-relating-to-eu-exit/vat-statutory-instruments">https://www.gov.uk/government/publications/statutory-instruments-relating-to-eu-exit/vat-statutory-instruments</a>
5	The Value Added Tax (Place of Supply of Goods) Order 2004	<a href="http://www.legislation.gov.uk/ukxi/2004/3148/contents/made">http://www.legislation.gov.uk/ukxi/2004/3148/contents/made</a>
6	Brexit no-deal SIs	<a href="https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments?parent=&amp;keywords=&amp;laid_date%5Bfrom%5D=&amp;laid_date%5Bto%5D=">https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments?parent=&amp;keywords=&amp;laid_date%5Bfrom%5D=&amp;laid_date%5Bto%5D=</a>
6	VAT no-deal legislation	<a href="https://www.gov.uk/government/publications/statutory-instruments-relating-to-eu-exit/vat-statutory-instruments">https://www.gov.uk/government/publications/statutory-instruments-relating-to-eu-exit/vat-statutory-instruments</a>
6	P344 'Project TERRE'	<a href="https://www.elexon.co.uk/mod-proposal/p344/">https://www.elexon.co.uk/mod-proposal/p344/</a>

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Page(s)	Description	URL
7	Commission Regulation (EU) No 2015/1222 'Establishing a guideline on capacity allocation and congestion management (CACM)'	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R1222">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R1222</a>
10	BSC Section B	<a href="https://www.elexon.co.uk/bsc-and-codes/balancing-settlement-code/">https://www.elexon.co.uk/bsc-and-codes/balancing-settlement-code/</a>
11	European Union (Withdrawal) (No. 2) Act 2019	<a href="https://www.legislation.gov.uk/ukpga/2019/26/contents/enacted">https://www.legislation.gov.uk/ukpga/2019/26/contents/enacted</a>