



Making a positive difference  
for energy consumers

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18 December 2018

Dear Kyla,

**Ofgem decision to grant a derogation from Article 49 of the Commission Regulation (EU) 2017/2195**

I am writing to inform you of our<sup>1</sup> decision to accept National Grid Electricity Transmission plc's (NGET) request for a derogation from Article 49 of the Commission Regulation (EU) 2017/2195<sup>2</sup> (hereinafter the EBGL), in accordance with Article 62 of the EBGL. The request was received on 18 June 2018. Article 62 sets out the process applicable for granting a derogation and highlights among others the aspects that National Regulatory Authorities need to consider when assessing a derogation request.

An amendment to the regulatory framework will enter into force on 1 April 2020 to ensure full compliance with this requirement. In the meantime, and having considered the aspects described in Article 62(8) of the EBGL, we have decided to grant a derogation to ensure an economic and efficient implementation of the EBGL.

**Background**

In accordance with Article 49(1) of the EBGL, each Transmission System Operator (TSO) shall calculate an imbalance adjustment to be applied to the concerned balance responsible parties for each activated balancing energy bid. In Great Britain, NGET, as the Electricity System Operator (ESO), and the BSCCo/BSC Clear are responsible for calculating the adjustment. The BSCCo/BSC Clear were assigned by Department of Business, Energy, and Industrial Strategy (BEIS) responsibility for Article 49(1) to calculate imbalance adjustments in accordance with the requirements of the BSC, as amended from time to time. The remaining obligations on Article 49(1), including the calculation of the imbalance adjustment for other market participants which are not active on the BM, and hence not governed by the BSC were allocated to the ESO.<sup>3</sup>

For the avoidance of doubt, there is an existing regulatory process that is legally separating NGET's activities between the activities of the ESO and the activities of transmission owner. In line with our allocation of responsibility, once the separation is completed, the obligation to comply with Article 49(1) of the EBGL and the current derogation request would fall to the ESO.

In Great Britain, the BSCCo/BSC Clearer calculates an imbalance adjustment which is applied to all the balance responsible parties which are active on the Balancing Mechanism (BM) market. This represents roughly 80% of the volume of balancing energy. Such imbalance adjustment is however not calculated for the balance responsible parties which are not active on the BM market. This is because, currently,

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<sup>1</sup> The terms "we", "us", "our", "Ofgem" and "the Authority" are used interchangeably in this document and refer to the Gas and Electricity Markets Authority. Ofgem is the office of the Authority.

<sup>2</sup> Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing. The EBGL Regulation came into force 18 December 2017.

<sup>3</sup> See Ofgem decision on the Our TSO assignment can be found on <https://www.ofgem.gov.uk/publications-and-updates/decision-assignment-transmission-system-operator-obligations-under-guideline-electricity-balancing-regulation-within-gb>.

the ESO, who is responsible for such calculation, does not have access to the metering data for all balancing energy provided outside the BM market.

On 18 June 2018, we approved<sup>4</sup> a proposed code modification P354<sup>5</sup> to the Balancing and Settlement Code (BSC) applicable in Great Britain. This code modification aims at ensuring that imbalance adjustments are calculated by the BSCCo/BSC Clear and applied to all the balance responsible parties, either on the basis of the information directly collected on the market participants active on the BM market or on the basis of the information provided by the ESO for the market participants who are not active on the BM. In addition, we approved on 27 June 2018, an amended Applicable Balancing Services Volume Data (ABSVD) methodology setting the applicable balancing services that the ESO takes into account for the purposes of determining imbalance volumes<sup>6</sup> and thus facilitating the process of calculation of the imbalance adjustments. The implementation date of the approved code modification P354 is set to 1 April 2020. The timetable for implementation of these changes will provide market participants with adequate time to proceed to the necessary contractual and IT system changes ahead of the implementation date. This should also broadly align with the facilitation of wider access to the BM under Project TERRE (code modification P344 to the BSC), which is expected to be implemented by the end of 2019, providing an improved level-playing field for these market participants to compete in balancing markets.

As the ESO considers that full compliance with the requirement of Article 49(1) of the EBGL could be ensured only after the implementation date of the code modification P354, the ESO submitted a derogation request to be exemption from the application of Article 49(1) of the EBGL for a period of 16 months running from 18 December 2018 to 18 April 2020.

In accordance with Article 62 of the EBGL, a regulatory authority may, at the request of a TSO or at its own initiative, grant the relevant TSOs a derogation from Article 49 of the EBGL. The derogation process must be transparent, non-discriminatory, non-biased, well documented and based on a reasoned request. The derogation may be granted only once and for a maximum period of two years.

### **The Authority's Decision**

We have reviewed the derogation request that was submitted to us and we are satisfied that the ESO ensured transparency in its engagement with the relevant stakeholders and, more generally, that the process was non-discriminatory, non-biased, and well documented.

The ESO request was furthermore reasoned, providing an analysis of the current compliance with Article 49 of the EBGL and presenting additional supporting information required by Article 62(5) of the EBGL and supporting information in relation to our assessment against the aspects listed in Article 62(8) of the EBGL.

We assessed the request for derogation and considered the aspects listed in Article 62(8) of the EBGL. Annex 1 summarises our assessment against these aspects.

In light of this assessment, we have decided to grant the ESO with a derogation from the application of Article 49(1) of the EBGL. The derogation shall apply for a period of 16 months from 18 December 2018 until 18 April 2020.

If you or your team have any question about this decision, please contact Jordan Clarke at [Jordan.Clarke@ofgem.gov.uk](mailto:Jordan.Clarke@ofgem.gov.uk).

Yours faithfully

Grendon Thompson  
Head of SO Regulation

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<sup>4</sup> See Ofgem decision of 18 June 2018: <https://www.ofgem.gov.uk/publications-and-updates/p354-use-absvd-non-bm-balancing-services-metered-mpan-level>

<sup>5</sup> <https://www.ofgem.gov.uk/publications-and-updates/p354-use-absvd-non-bm-balancing-services-metered-mpan-level>

<sup>6</sup> See Ofgem decision on 27 March 2018: <https://www.ofgem.gov.uk/publications-and-updates/decision-approve-c16-statement-changes>

**Annex 1: Summary of the Authority’s views on the aspects for consideration under Article 62.**

Aspects for consideration according to Article 62(8) of the EBGL	Authority’s view
<b>a) the difficulties related to the implementation of the concerned provision or provisions</b>	There is sufficient evidence that Great Britain in the minority of cases would not be fully compliant with Article 49(1) of the EBGL. An implementation by 18 December 2018 would not allow sufficient time for the ESO, the BSCCo/BSC Clearer, and market participants to develop the systems required in order to achieve compliance. It would also negatively impact the well-functioning of the balancing market by not aligning with the start of the fiscal year.
<b>b) the risks and the implications of the concerned provision or provisions, in terms of operational security</b>	There is no impact of the derogation on operational security.
<b>c) the actions taken to facilitate the implementation of the concerned provision or provisions</b>	A code modification implementation plan has been developed to ensure the timely delivery of the necessary process and IT system changes required by P354. We have deemed the plan to ensure compliance to be achievable.
<b>d) the impacts of non-implementation of the concerned provision or provisions, in terms of non-discrimination and competition with other European market participants, in particular as regards demand response and renewable energy sources</b>	There is no impact of derogation on other European market participants in terms of non-discrimination and competition as the services currently affected do not occur in pre-balancing gate closure cross-border trade. Also, the first cross-border standard product, replacement reserve under the TERRE project will already have the system tools to deliver the adjustment required in Article 49(1) of the EBGL.
<b>e) the impacts on overall economic efficiency and smart grid infrastructure</b>	<p>There is no negative impact of derogation on overall smart grid infrastructure.</p> <p>The majority of balancing energy bids in Great Britain are already compliant with Article 49(1) of the EBGL. Therefore, there is a lower impact on the overall economic efficiency of granting such a derogation. Nevertheless, we believe that implementation of Article 49(1) of the EBGL should result in the more efficient and economic procurement of balancing energy, which should ultimately be beneficial for consumers.</p> <p>However, compliance with Article 49(1) of the EBGL at this time would not give adequate time for industry to make the necessary contractual and IT system changes. Moreover, it would not potentially align the phasing out of this market distortion with wider access to balancing markets in Great Britain. This would raise costs for industry and impact overall economic efficiency.</p> <p>On balance, we believe that granting this derogation has an overall higher economic efficiency than pursuing compliance at this time.</p>
<b>f) the impacts on other scheduling areas and overall consequences on the European market integration process.</b>	It is our view that granting this derogation would have no or a very low impact on European market integration, as every balancing service traded cross-border would from the start be compliant and there is no expected impact on cross-border trading from the volume in question.