



– Consultation response –

ACER and ENTSOG consultation on EU Gas Balancing Suspected Misconduct

Brussels, 19 October 2020 | Europex fully supports effective implementation of the BAL NC which lays the foundation for market-based balancing. We therefore welcome the process initiated by ACER and ENTSOG to tackle balancing misconduct and mitigate the risk of defaulting network users. We provide below our responses to the consultation questions as contained in the consultation document.

1. Introduction

Do you share the concerns described in this chapter?

Europex does share the concerns outlined in the consultation document. We believe communication is important to effectively tackle misconduct in the gas balancing market i.e. fostering Balancing Operators' (BOs) communication across European jurisdictions. If BOs were able to share information with other BOs about balancing misconduct in their own markets, this would greatly help system operators monitoring and mitigating adverse behaviour of specific Network Users (NU).

Effective monitoring of the Network User's (NU's) balancing position is also vital to prevent balancing misconduct. As a general principle, NRAs, in close cooperation with Balancing Operators (BOs), should be responsible for setting rules (legislative as well as business) to prevent balancing misconduct.

What kind of measures do you consider to be of the highest value? Please explain.

In addition to consistent and frequent information sharing amongst BOs, ex-ante checks performed by BOs are the swiftest avenue to ensure NUs' solvency is monitored on a regular basis. This would in turn allow timely and proper measures to minimise potential loss from balancing misconduct. Also, such due diligence processes should be harmonised across European market areas to 1) Lower market entry and administrative barriers to NUs active in more than one market areas; 2) Further ensure information is understandable to all BOs in real time.

Financial security safeguards (governed by national rules) are also an important measure. We agree they must be adequately robust to prevent balancing misconduct. The amount of the financial security safeguard should be proportionate to the liabilities/ potential exposure that are guaranteed and should also ensure the good functioning of the market. Up to 100 per cent coverage of the NU liability could be considered if appropriate in some circumstances, and feasible within the national framework. Whilst we acknowledge a variety of solutions may be needed to adapt to the specific characteristics of each market, financial securities in the form of a bank guarantee or a cash collateral are the most flexible in terms of timely settlement.

Do you agree with the proposed definition of balancing misconduct? Would you have additional comments for its improvement?

In addition to the proposed aspects, the definition should be extended to recognise repetitive misbehaviour. We propose the following addition: “Balancing Misconduct” means 3. frequent and repetitive significant imbalance of a Network User’s balancing position [...].

Explanation: The NU should balance its portfolio close to zero, meaning that the NU should procure gas for all its customers. Any misuse of balancing system for speculative purposes could be considered as balancing misconduct. However, we acknowledge the challenge in setting a suitable threshold to recognise this type of balancing misconduct. Usually it takes some time to recognise such misconduct, and it is good practice to give some time for the NU to recover.

Do you see any risks of implementing the proposed measures? If so, please describe them.

When implementing ex-ante checks, it is important that these checks do not impede NUs from trading on markets in which they are solvent. For instance, a NU, who may be insolvent in market A according to national legislation, could still be able to trade in market B if compliant with the latter market’s legislation. If indeed the NU is still solvent according to market B’s legislation, the BO in market B should not discriminate such NU on the basis of market A BO’s assessment.

Ensuring a level playing field for market operators and clearing houses is also an important principle. The aim should be to avoid any distortion of competition resulting from the implementation of measures to tackle balancing misconduct, especially when it comes to local market design conditions which may affect trade firmness and liquidity, as well as costs of margining.

Concerning financial safeguards, some liabilities that are not necessarily foreseen could arise, resulting, for example, from consumption of the NU’s portfolio (especially from non-daily metered offtakes) that is not predicted by the BO. Such liabilities should be as limited as far as possible, and the NU should not be allowed to exceed the agreed limit of financial security.

2. Ex ante monitoring checks on balancing positions and creditworthiness

Do you think that measures such as monitoring checks and credit risk management arrangements provide a satisfying level of implementation of Article 31 of the BAL NC and reasoning?

Yes, we believe that monitoring checks and credit risk management arrangements do provide a satisfying level of implementation of Article 31 of the BAL NC and reasoning. If implemented properly, ex-ante checks should not impact the correct functioning of market and system operations. We also understand that daily checks are effective in identifying potential insolvency situations when they occur.

Ex-ante measures should be effective with certain lead time to allow trading venues and market participants to react accordingly. The firmness of transactions concluded before the implementation of such measures should be ensured at all time. Furthermore, NUs with a zero-risk profile like central counterparties should not be affected by ex-ante measures such as the provision of collaterals.

If the BO participates in the financial settlement as the central counterparty to NUs, the BO should take over the responsibility for proper and timely payments of all the NU's receivables. The BO's risks arising from this financial settlement should be covered by proper credit risk management arrangements.

As a general principle, financial security requirements should be applied on an equal treatment basis, and also take into account the credit rating of each NU. Bank guarantees should be issued by a bank that meets the condition of current long-term minimum rating.

3. Channels for cross-border exchange of information

What kind of information should be included in the template developed by ACER/ENTSOG in order to allow timely and effective sharing of information to prevent cases of balancing misconduct? What other major points would you like to share about chapter 3?

We agree that the information shared should be based on objective criteria and guided by the definition of 'balancing misconduct', taking care that it is proportionate in a cross-border context. Intelligence shared between BOs should encompass all information that is useful to system operators to recognise signals of potential balancing misconduct, and then address potential insolvency occurrences among its NUs. It is also necessary to establish clear rules for identification of balancing misconduct to mitigate the risk of incorrect allegations against NUs that would then affect trading in other markets.

Additionally, Chapter 3.3.2 of the Consultation Document deals with recommendations for adjustments to contractual arrangements. Any adjustments need to be made clearly on the legal basis of the amended BAL NC.

4. Reactive measures against balancing misconduct

How would you improve the proposed amendments of Article 31 of the BAL NC that provide improved legal grounds to prevent and address cases of balancing misconduct, (taking into consideration the proportionality principle in terms of the interaction amongst the ex-ante and reactive measures)?

It is important that actions addressing cases of balancing misconduct should not harm the current market model, including market and clearing operations. Ex-post measures should not question trade firmness, especially regarding trades coming from an exchange.

Market operators and clearing houses should be guaranteed the possibility to process payments to NUs according to standard market and clearing procedures. National measures should not lead to distorted competition amongst trading platforms. The same information should be available to all of them and the same process should be applicable.

As outlined in the response to the questions above, ex-ante checks are the least invasive. These can help in both identifying situations of financial distress or potential insolvency threats in the balancing market and also address the latter in a timely manner. Ex-post measures should be considered as well in a proportionate manner with the suspension or termination of contract arrangements as measures of last resort and on exceptional circumstances. Ex-post measures should by no means replace ex-ante checks.

In order to take into account arrangements in which the BO is a different entity from the TSO, in Article 31(3), 'transmission system operator' should be replaced with 'balancing operator', which encompasses also the TSO where relevant.

5. Recovery of losses: neutrality principle for BOs

Do you consider that the current provisions set by the BAL NC are sufficient to ensure the neutrality of the cash flow of balancing operators? If not, what should be improved?

The harmonisation of rules on recovery of losses across jurisdictions is fundamental. It fosters a transparent and efficient balancing market and lowers market access barriers to the Single European Market. Also, communicating best practices in recovery of losses around Europe is important to show BOs' and other stakeholders' solutions to follow. Where needed these should be adapted to specific national contexts and challenges.

In zones in which the BO is a different entity from TSO, the BO usually bears the business risk of a NU's default. The BO is responsible for setting financial security to cover all the risks. In such cases, the neutrality principle is not in place to cover the losses. The same rules should be valid for zones where the BO is the same entity as the TSO. Then there is no need to cover losses arising from the default of any NU via the neutrality mechanism.

As mentioned earlier in the document, NUs with no trading activities and with a zero risk profile like central counterparties should be exempted from loss recovery mechanisms in general.

Additional measures

Are you in favour of establishing an EU wide registry of active network users as a tool to detect and prevent balancing misconduct in the EU gas market? Please provide a reasoning for your answer.

A central platform is a more efficient tool to share information than bilateral communications between BOs. Such a platform would also enable tracking of historical information and the identification of trends important to address future potential threats. It's important that any list is updated without delay by the BOs (see below) and provides always a valid status about active network users.

However, such a system for registry and monitoring purposes should avoid to the extent possible any further administrative burdens placed on BOs and NUs. To this end, use of existing platforms and processes (e.g. REMIT) should be explored.

Which information is needed to establish that the network user is active in a balancing market?

In our view, active means that the NU has all necessary contractual arrangements with the respective BO in place, i.e. the NU is able to register gas nominations or trade notifications, or ready to register gas nominations or trade notifications. For the purposes of registering the NU, similar conditions to those used in REMIT registration could be considered.

Who should have access to the registry? TSO, NRA, network users, market operators, others? Please provide a reasoning for your answer.

The nature of the information to be featured in the registry should determine which stakeholders shall have access to it. For instance, confidential information about NUs should be treated with care and distributed only amongst relevant regulatory authorities and BOs. Non-confidential information should be available to the public. Please also see the above remark on the use of existing systems e.g. REMIT.

How frequent should the updates of the list be, given the nature of the balancing trading and potential misconduct? Please explain.

Given the criticality of the information in case of a NU's financial distress or insolvency and the need to act without undue delay, updates should be made frequently, with potential daily or within-day occurrence.

Are you in favour of establishing an EU wide (balancing) blacklist of network users who have been involved in misconduct? Please provide a reasoning for your answer.

If access to such list is limited to BOs, national regulators and ACER, it could be a useful tool to tackle misconduct. Any such list should however be kept confidential and in line with all existing regulations. Market infrastructure providers like exchanges and their clearing houses should also have access to such a list due to the role they play in securing functioning markets.

About

Europex is a not-for-profit association of European energy exchanges with 29 members. It represents the interests of exchange-based wholesale electricity, gas and environmental markets, focuses on developments of the European regulatory framework for wholesale energy trading and provides a discussion platform at European level.

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