

# Responses received to ACER-ENTSOG Public Consultation on joint recommendations to mitigate potential misconduct in EU gas balancing markets

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This paper incorporates feedback received as part of the public consultation held  
between 21 September 2020 and 3 November 2020.

This file contains only the completed responses.

**#1**

**Caffese&Partners**

Last Modified: Thursday, September 24, 2020 9:28:46 AM

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**1. Do you share the concerns described in chapter 1?**

I introduce phs in EU-27 and passage to TWh electric power to R.gas-R.hydrogen-R.fuels.

I introduce plasma waste to produce syngas and passage syngas to R.gas-R.hydrogen-solar plasma fuels

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

I project 10.000 TWh phs to EU-27 and 3.000 TWh phs in Italy,investing 250 billion euro in EU-27 and 45 billion in Italy I project in Italy 20 plant waste plasma to 60.000 t/every day.Invest 10 billion

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

Phs Europe and Italy balancing all the system renewable(solar-wind-biomass-marine) power 3 time.EU-27 arrive 30.000 TWh and Italy 9.000 TWh

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**4. Do you see any risks in implementing the proposed measures? If so, please describe them in the comment field**

No risks

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**5. Do you have any other remarks?**

Production green hydrogen by phs,seawater,plasmawaste.Important passage phs and directly seawater.Prevention high water with phs pumped see my project Genoa and Venice

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**6. 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?see chapter 2**

Phs and green hydrogen via phs,dictly seawater and plasma waste are secure risks.

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**7. What kind of other measures do you consider relevant? Please explain.**

Eu-27 connected 45 bacine river via waterway and produce every 1040 TWh 100 m.3 R.gas

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**8. 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? See chapter 3**

Time: 10 year

Balancing Eu-27 30.000 TWh renewables; Italy 9.000 TWh renewables

Passage via phs electric to green chemical (see German plan and Italian Caffese Plan passage to green chemical)

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**9. What other major points would you like to share about chapter 3?**

Respondent skipped this question.

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**10. 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)? see chapter 4**

Propose amendments of articles 31 of BAL NC

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**11. What kind of other measures do you consider relevant? Please explain.**

Respondent skipped this question

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**12. Do you have any other remarks?**

Respondent skipped this question

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**13. 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? see chapter 5**

no

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**14. 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.**

Changing the EU fossil gas market via r.gas and green hydrogen via phs,seawater and plasma waste.No reforming hydrogen using fossil gas,no clean gas via CCS geo,no blu Hydrogen

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

Plan every countries renewables

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

No

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

Respondent skipped this question

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**18.Do you have any other remarks?**

Respondent skipped this question

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**19.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.**

Respondent skipped this question

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**20.Please, state any other comments.**

Change fossil gas to R.gas-R.hydrogen Change production green hydrogen limit blu hydrogen  
Passage plasma waste to syngas  
Passage green chemical by electric TWh contre oil-gas(fossil) Reduction smog and emission Co2 and fossil methane  
Reduction cancer dioxine and Vocs by inceneritor.No landfill methane without plasma

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#2

**EFET**

Last Modified: Wednesday, October 14, 2020 8:57:44 AM

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**1. Do you share the concerns described in chapter 1?**

EFET shares the general concerns that default (whether deliberate or otherwise) is a risk both to TSOs and to non-defaulting shippers and that clearer guidelines would help all parties better understand how to improve prevention and mitigate negative effects.

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

We do not agree that debts arising from balancing misconduct should necessarily be treated separately from debts arising from non-payment of capacity charges or other services. When credit arrangements are initially determined, they should be calculated based on the total exposure and not with separate values for different services. Consideration should be given to other forms of legislation. Elsewhere, in primary legislation and in licences (where they are used), there are often obligations on the market participant to behave in such a way that does not endanger the system, and to give proper notice to system operators not least surrounding intended gas flows. As an additional deterrent, this may expose officers of defaulting firms to criminal prosecution.

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

Respondent skipped this question

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**4. Do you see any risks in implementing the proposed measures? If so, please describe them in the comment field**

Respondent skipped this question

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**5. Do you have any other remarks?**

Delinquency and credit default are commonplace in other industries and a range of techniques to prevent and address incidences are in common practice. These range from types of credit and collateral to techniques for recovery and even sales of defaulting debt to specialist collections agencies. We consider it a flaw in the Balancing network code, that such techniques are not explicitly mentioned as an obligation on the TSO to minimise the amount to be recovered from network users rather than be

protected by a straight pass-through via the neutrality charge. At worst remedies should be the result of both.

**6. 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? see chapter 2**

EFET considers that ex ante and ongoing assessments are essential parts of contemporary credit management. Greater emphasis on identification of companies and officers likely to default through “know your customer” checks would be welcome. These are regularly practised by market participants in this and other industries, and active management of credit by network operators is essential. As this affects all parts of the value chain, TSOs must additionally seek to ensure that their practices remain up to date.

It should be noted that non-defaulting shippers, although they are the ones who are exposed to defaulting parties if TSOs are deemed capable of passing through all risks via transportation charges, have no say in whether a TSO accepts a party as shipper yet they bear the risk. Under such arrangements the incentive on a TSO to identify parties likely to engage in misconduct is reduced.

**7. What kind of other measures do you consider relevant? Please explain.**

Respondent skipped this question

**8. 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? See chapter 3**

One immediate concern arises where different legal entities are engaged in misconduct in different jurisdictions. Sometimes these are required in national law to have local entities present, elsewhere this may be commonplace for taxation reasons or compliance purposes. Consideration should be given to confidentiality arrangements and the role of multiple parties whether affiliated or merely acting in concert.

**9. What other major points would you like to share about chapter 3?**

Consideration should also be given to the capability of companies to safeguard information that has been shared with them – especially where there is a risk that information has been shared incorrectly, inappropriately or erroneously, for example related to companies which are not engaged in misconduct. In any case, information on misconduct should only become public when this has been proven and confirmed.

**10. 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)?see chapter 4**

As discussed above, where safety is potentially compromised, then prosecution under primary legislation is an option for disincentive.

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**11.What kind of other measures do you consider relevant? Please explain.**

Respondent skipped this question

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**12.Do you have any other remarks**

Respondent skipped this question

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**13.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?see chapter 5**

EFET considers that the BAL NC goes beyond what is reasonable in protecting balancing operators to the expense of the market by relieving them of obligations with regard to prudent credit management and requiring network users to underwrite inadequate performance in this area. The only protection of the industry would appear to be in the right of national regulatory authorities to set or approve the methodology for calculation of neutrality charges. In this regard we would suggest to amend article 30(2) to also allow the NRA to actually approve the yearly neutrality charge instead of only allowing the NRA to set or approve the methodology, as the application of the methodology by TSO in some cases has appeared to deviate from the expectations on the application by the NUs.

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**14.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.**

An effective system of black listing (as proposed under 31(4-7)) can only exist when the safe and legally sound exchange of confidential, personal and correct, up to date information among BOs is warranted through for instance appointment of a separate office (which already exist in commercial sector) to safeguard the actuality and confidentiality of the information and not to burden bona fide NUs with outdated or incorrect information, preventing them from being active in the market.

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

**18. Do you have any other remarks?**

Respondent skipped this question

**19. 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.**

Respondent skipped this question

**20. Please, state any other comments**

EFET welcomes this initiative by ACER and ENTSOG which recognises the risks to the industry from parties engaged in balancing misconduct and considers how this should be addressed. We make some general comments prior to answering the specific questions.

- The principle source of managing such exposure should be via the the initial vetting of shippers through use of “know your customer” practices, the setting of appropriate credit arrangements and the proper policing and management of them.
  - The amount of credit required under network access arrangements should be sufficient to protect the TSO from most reasonable circumstances but should not be set so high as to form a barrier to entry or excessive cost for market participants. Any additional costs imposed on NUs should be considered in combination with the introduction of netting mechanisms across different positions across BOs (Balancing Operators).
  - The TSO should be properly incentivised to set credit levels appropriately, to manage exposure carefully and to take all reasonable steps to recover moneys owed. There should not be presumed automatic compensation through the neutrality or other mechanism for failure to do this.
1. In any event, the neutrality account should primarily be used to ensure that the system balancer does not profit from activities in the balancing market; it is not appropriate as a tool that relieves TSOs from behaving reasonably and prudently with respect to their credit management in general. Should the TSO be consid-

ered to merit a level of compensation for delinquent debt in general, then an alternative measure should be considered. More explicitly, Art 31(3) should be amended such that only in exceptional circumstances the BO (Balancing Operator) can entirely be kept neutral from default expenses in order for the BO to have some form of incentive to apply appropriate credit risk management. Ideally, the BO should bear the credit risk entirely, since they are the principal allowing the agents the credit and only by incentivising the BOs to prevent credit risk, will default expenses be avoided.

- Any ex-ante intervention triggered by a suspicion of misconduct should nonetheless require the TSO to seek clarification from the relevant NU before any action is taken.
  - In general, interventions on nomination as ex-ante remedies should be carefully evaluated if at all considered.
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### #3

## European Energy Exchange

Last Modified: Friday, October 16, 2020 10:13:16 AM

### 1. Do you share the concerns described in chapter 1?

Communication is key. EEX does share the concerns outlined in the consultation. We believe that fostering Balancing Operators' (BOs) communication across European jurisdictions is of paramount importance to effectively address potential misconduct in the gas balancing market. 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 potential critical behaviours of specific Network Users (NUs).

The German experience. EEX and ECC remark that similar concerns underpinning this consultation were already addressed in 2019 in the German gas market. German Market Area Managers (MAMs) were asked by trader associations (e.g. EFET, BDEW) and in coordination with the German regulator (BNetzA) to improve their Know-Your-Customer processes, introduce guarantees against potential balancing market misconducts but avoid requiring unnecessarily high pre-instalements.

The possibility that tightened termination rights could be applied by MAMs, without contacting the responsible balancing group operator (BGRP) first, should issues be encountered with renominations or other aspects of the process, was perceived to constitute a risk.

It was eventually agreed that German MAMs should first contact the relevant BGRP before forbidding short selling or terminating balancing contracts. In addition, German Transmission System Operators (TSOs) changed their standard contract to avoid fraud in their systems by, for instance, interrupting overnomination if it were to exceed guarantees.

Finally, German MAMs and TSOs were given the right to breach their confidentiality obligation in case of reasonable suspicion of a fraud being operated. They should also warn MAMs and TSOs in other affected markets.

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

Ex-ante checks. In addition to consistent and frequent information sharing amongst BOs, EEX and ECC believe 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 appropriate measures to minimise potential losses 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.

Due diligence should not affect market operations. 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 based on market A BO's assessment.

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

Respondent skipped this question

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**4. Do you see any risks in implementing the proposed measures? If so, please describe them in the comment field**

Avoid distressing the market. EEX and ECC do not see any particular risk in implementing ACER and ENTSG's proposed measures. As outlined in the answers above, however, it is critical that ex-ante checks do not distress the correct functioning of the market by, for instance, impeding NUs to trade on markets they are solvent in.

Ensure a level playing field across market operators. Market operators and clearing houses, including EEX and ECC, face complex market design situations in particular in Spain and Italy. These might lead to trade firmness, liquidity and cost of margining being affected.

In such cases, there is room for potentially unfair competition as local exchanges often happen to manage specific TSO services (management of bank guarantees or nomination limits) and as such, can potentially benefit from misconduct-related measures compared to other market operators.

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**5. Do you have any other remarks?**

Respondent skipped this question

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**6. 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? see chapter 2**

EEX and ECC believe monitoring checks and credit risk management arrangements provide a satisfying level of implementation of Article 31 of the BAL NC and reasoning. Feedback we collected from BOs across Europe shows that ex-ante checks do 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.

## 7. What kind of other measures do you consider relevant? Please explain.

In addition to the measures mentioned above, ECC as a European clearing house has vast experience in the application of complementary risk management measures and could, in coordination with BOs and regulators, act as a service provider for BOs. Such activity would in this case be kept separate from ECC's other market activities and would present the following advantages:

- ☐ High level of security provided by ECC's status as EMIR-regulated central counterparty
- ☐ Reduction of exposures by netting of positions and payments across different geographic markets, products and asset classes
- ☐ Netting of margin requirements and usage of a single collateral pool to cover risk across different BOs instead of on individual BO level
- ☐ State of the art risk management services available 24/7
- ☐ Acceptance and maintenance of a variety of collateral types
- ☐ Option to implement further lines of defense in addition to the collaterals provided, such as maintaining the mutual default fund of the NUs to cover potential losses
- ☐ Efficiency in KYC process, due to synergies achieved compared to each single BO managing their own processes
- ☐ Ensure insolvency proof payments by ECC's status as Payment System under the European Payment Finality Directive .

## 8. 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? See chapter 3

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.

## 9. What other major points would you like to share about chapter 3?

Respondent skipped this question

## 10. 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)? see chapter 4

Market and clearing operations support economic recovery and should not be affected. EEX and ECC believe it is important that actions addressing cases of balancing misconduct should not harm the current market model. Ex-post measures should not question trade firmness, especially regarding trades coming from an exchange. Market operators and clearing houses such as EEX and ECC should be guaranteed the possibility to process payments to NUs according to standard market and clearing procedures. Any regulatory or administrative intervention leading to withholding payments to NUs is bound to deteriorate the added value markets can contribute to economic activities. Withholding payments to market participants for several days can also lead to solvency problems for certain parties, specifically if their liquidity is affected by the current pandemic-led economic downturn.

Also, any such measure should in any case 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.

EEX and ECC have a long history of cooperating with system operators to ensure markets support the correct functioning of the gas transmission grid. As such, we have been open to support BOs in executing measures addressing misconduct in the balancing market. We are also open to share our experience as a CCP and provide services to BOs under Article 31 of the BAL NC.

Ex-ante checks as the best way forward. As outlined in the response to the questions above, ex-ante checks are the least invasive option. They can help with 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 in a proportionate manner, with the suspension or termination of contract arrangements as measures of last resort and only under exceptional circumstances. Ex-post measures should by no means replace ex-ante checks.

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**11.What kind of other measures do you consider relevant? Please explain.**

Respondent skipped this question

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**12.Do you have any other remarks**

Respondent skipped this question

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**13.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?see chapter 5**

Harmonisation of rules is paramount. 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.

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

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**14. 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 platform would also enable tracking of historical information and the identification of trends important to address future potential threats. It's important that such list is updated without delay by the BOs (see below) and provides always a valid status about active network users.

EEX and ECC would be happy to offer their services and experience as technology platform operators to develop and administer such platform for BOs, naturally according to our high confidentiality standards. Such registry could be complemented by the risk management activities we have outlined further above. These two missions would be working fully independently from our market activities: Chinese walls will be implemented, as it is already the case in our day-to-day operation between the different markets cleared by ECC.

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

Respondent skipped this question

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**16. 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.

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**17. 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.

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**18. Do you have any other remarks?**

Respondent skipped this question

**19. 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 list due to the role they play in securing functioning markets.

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**20. Please, state any other comments**

The European Energy Exchange (EEX) and the European Commodity Clearing (ECC) appreciate the opportunity to respond to ACER and ENTSOG's EU Balancing Suspected Misconduct consultation and share the experience we have accumulated in operating European energy and commodity markets for 20 years.

EEX and ECC share balancing operators' and regulators' concerns around potential misconduct in the gas balancing markets and offer four concrete recommendations to ACER and ENTSOG:

1. Measures addressing misconduct should not affect the correct functioning of the market. Such measures should also be harmonised across Europe, avoid introducing greater complexity in the market and distorting competition between market operators and clearing houses.
  2. Ex-ante measures are the optimal way to address the issue. They 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. Ex-post measures are to be used only in a proportionate manner and the suspension or termination of contract arrangements should be considered as measure of last resort.
  3. Intelligence sharing across regulators and system operators is key to allow national stakeholders to build on expertise across all EU countries, and tackle issues assertively and in a timely manner.
  4. EEX and ECC as market operator and clearing house with pan-European reach are willing to support balancing operators and regulators with their expertise in risk management – be it through assisting with ex-ante measures, risk and collateral management services, as well as with the setup of an EU-wide registry of active network users.
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#4

**Anonymous Company 1**

Last Modified: Friday, October 16, 2020 6:19:19 PM

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**1. Do you share the concerns described in chapter 1?**

I understand the concerns, but believe sufficient measures are in place in the markets that we participate in (e.g. credit worthiness checks / posting credit to TSOs)

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

Ex-ante checks and transparency

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

I am interested to see the definition refers only to payment and credit, and not to any improper behaviours in relation to (consistent or significant) imbalances. I understand the definition is being used to address the risk of payment default only, and perhaps the quantum of the payment, or relative quantum for the party, could be considered in the risk of default. However, 'misconduct' could be perceived as meaning bad behaviour, where the definition could more mean credit breach or payment default.

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**4. Do you see any risks in implementing the proposed measures? If so, please describe them in the comment field**

Risk of over-complication in the ex-ante checks and requirements on Shippers. Specifically issues can occur where conditions have been set that are not realistic for all Shippers to achieve (e.g. size of turnover, company registration in or according to x country's standards). Administrative burden for small Shippers in small markets needs to be considered, with local conditions allowed.

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**5. Do you have any other remarks?**

No

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**6. 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? see chapter 2**

Yes

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**7. What kind of other measures do you consider relevant? Please explain.**

None

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**8. 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? See chapter 3**

Identifier for the party in breach and market location/TSO/BO where the breach occurred  
Date occurred

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**9. What other major points would you like to share about chapter 3?**

It is a concern that BOs notify ENTSG simultaneously as the NRA. While timeliness is important, correctness and accuracy of the need for notification and the notification itself may be critical for the party involved. It is a preference for the NRA to check and authorise the sharing of this data. Consider a party going into default by accident (e.g. change of bank details) and not representative of their financial strength. A notification could be issued unnecessarily and to their detriment. Automated systems in BOs could trigger notifications across all markets via ENTSG which could be damaging.

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**10. 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)? See chapter 4**

No comment

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**11. What kind of other measures do you consider relevant? Please explain.**

None

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**12. Do you have any other remarks**

None

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**13. 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? see chapter 5**

Yes

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**14. 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.**

No - seems to be unnecessary level of bureaucracy when individual BOs should have the records and the proposed measures would provide additional tools for enforcement and info sharing

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

N/A

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

N/A

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

This is the administrative issue that defeats the purpose of having a registry

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**18. Do you have any other remarks?**

None

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**19. 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.**

Yes - so long as the misconduct is real and proven, with circumstances recorded. It could be held by ACER preferably

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**20. Please, state any other comments**

None

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#5

## **GASPOOL Balancing Services GmbH**

Last Modified: Monday, October 19, 2020 8:57:14 AM

### **1. Do you share the concerns described in chapter 1?**

The German Market Area Managers totally share the concerns expressed in chapter 1. Both NCG and Gaspool Market are among of the gas markets where fraudulent behaviour occurred and whose neighbouring market areas have been subject to fraud as well. Fortunately, the national legal framework allowed for an adaptation with regard to ex ante monitoring checks on balancing positions, creditworthiness and reactive measures. However, the German Market Area Managers deem it very helpful to facilitate the cross-border information exchange and the possibility of preventive measures based on the information received from an affected BO.

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

The German Market Area Managers' experience has shown that reactive measures with immediate effect provide for the highest value. First, they provide for a deterring effect with regard to the measures the BO can apply. Second, in the event they have to be performed they are very effective with regard to limiting the potential damage. A national and cross-border information exchange mechanism would provide additionally support.

### **3. Do you agree with the proposed definition of balancing misconduct? Do you have additional comments for its improvement?**

The German Market Area Managers do not completely agree with the proposed definition of balancing misconduct for the current note and do propose the following amendment in bold letters:

"Balancing Misconduct", means: 1. default in payment of charges related to balancing (according to Article 31(3) of BAL NC) and/or 2. an increased risk that the network user will get into a situation of default in payment. Such increased risk can be considered as established in the case that the network user is exposed in terms of credit limit (meaning its creditworthiness safeguards are non-sufficient to cover potential or actual liabilities related to imbalances based on BOs internal assessments) and risk for non-payment is identified in an objective and non-discriminatory manner according to BOs policies, such as "know your customer policy. Such objective and non-discriminatory policy measures include: transparency about the situations occurred and corrective measures taken as a response, which are proportionate to the risk exposure created."

In our opinion it is already sufficient if only one of the conditions is met. This amendment allows for a quick reaction with regard to the increased risk, since the confirmation of a default of payment usually is made when the invoice is issued. This might take up to several weeks. There would be no possibility for mitigation if balancing misconduct were defined as proposed initially.

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**4. Do you see any risks in implementing the proposed measures? If so, please describe them in the comment field**

The German Market Area Managers do not see any risks implementing the proposed measures.

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**5. Do you have any other remarks?**

The German Market Area Managers do not have any further remarks.

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**6. 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?see chapter 2**

The German Market Area Managers are of the opinion that the proposed measures such as ex ante monitoring checks and credit risk management arrangements do provide a satisfying level of implementation of Article 31 of the BAL NC.

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**7. What kind of other measures do you consider relevant? Please explain.**

The German Market Area Managers do not consider any other measures relevant at the moment.

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**8. 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?See chapter 3**

With regard to a timely and effective sharing of information and our experienced balancing misconduct we deem the following information as crucial:

- Company name
- acting persons (i.e. persons registered with the BO)
- balancing area
- counterparties involved
- short description of suspicious behaviour and its dimension

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**9. What other major points would you like to share about chapter 3?**

n.a.

**10. 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)? see chapter 4**

The German Market Area Managers welcome the proposed amendments of Article 31 of the BAL NC and see no need for further improvements.

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**11. What kind of other measures do you consider relevant? Please explain.**

n.a.

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**12. Do you have any other remarks**

The German Market Area Managers do not have any other remarks.

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**13. 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? see chapter 5**

The German Market Area Managers do consider the current provisions as sufficient.

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**14. 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.**

The German Market Area Managers are in favour of establishing an EU wide registry of active network users. We consider it is a good additional tool to detect and prevent balancing misconduct as our experience has shown.

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

The German Market Area Managers would suppose that a network user could be called “active” when a NU entered at least into one balancing portfolio contract with the TSO/MAM. A NU is “inactive” when all its balancing portfolio contracts are terminated.

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

The German Market Area Managers consider the following parties as relevant to have access to the registry: TSOs, ACER, NRA and BO as they are concerned. There is no need for others to have access to the registry.

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

The German Market Area Managers consider it is necessary, that updates are provided on an ad-hoc basis once changes have been made (daily base).

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**18. Do you have any other remarks?**

The German Market Area Managers have no other remarks.

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**19. 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.**

The German Market Area Managers acknowledge the benefits of a black list as used in other industries (e.g. aviation). However as too many prerequisites are not yet clarified such as who manages the blacklist and which are the criteria that lead to a black-listing the topic currently is at a too early stage to be consulted. Moreover, there are high risks involved in this list, regarding the liability of the TSO that puts a network user on the list. Only the ruling of a court allows stating clearly, that a misconduct actually happened. This also means, that a lot of time (years) will pass, until a network user can show up on the list with no risk to the TSO that names the user."

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**20. Please, state any other comments**

Respondent skipped this question

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#6

IOGP

Last Modified: Monday, October 19, 2020 10:05:09 AM

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**1. Do you share the concerns described in chapter 1?**

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

**4. Do you see any risks in implementing the proposed measures? If so, please describe them in the comment field**

Respondent skipped this question

**5. Do you have any other remarks?**

Respondent skipped this question

**6. 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?see chapter 2**

Respondent skipped this question

**7. What kind of other measures do you consider relevant? Please explain.**

Respondent skipped this question

**8. 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?See chapter 3**

Respondent skipped this question

**9. What other major points would you like to share about chapter 3?**

Respondent skipped this question

**10.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)?see chapter 4**

Respondent skipped this question

**11.What kind of other measures do you consider relevant?  
Please explain.**

Respondent skipped this question

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**12. Do you have any other remarks**

Respondent skipped this question

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**13. 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? see chapter 5**

Respondent skipped this question

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**14. 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.**

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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**18. Do you have any other remarks?**

Respondent skipped this question

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**19. 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.**

Respondent skipped this question

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**20. Please, state any other comments**

IOGP welcomes the opportunity to respond to the ACER & ENTSOG joint recommendations to mitigate potential misconduct in EU balancing markets. We would like to stress that we share the objective to minimise the risk of non-payment on the industry. This relates to all payment obligations of market participants. Misconduct and fraud, unfortunately, occur in all sectors of the economy and is being addressed with various national measures.

With respect to gas transmission charges in general, article 14.3 of the Gas Regulation (EC) No 715/2009 provides the basis for TSOs to put appropriate credit management procedures in place because access to the network may be granted 'subject to appropriate guarantees from network users with respect to the creditworthiness of such users'.

Since balancing charges may be significant, specific additional provisions on credit risk management arrangements have been included in article 31 of the Gas Balancing Network Code :

1. The transmission system operator shall be entitled to take necessary measures and impose relevant contractual requirements, including financial security safeguards, on network users to mitigate their default in payment regarding any payment due for the charges referred to in Article 29 and 30.

2. The contractual requirements shall be on a transparent and equal treatment basis, proportionate to the purpose and defined in the methodology referred to in Article 30(2).

3. In case of a default attributable to a network user, the transmission system operator shall not be liable to bear any loss incurred provided the measures and requirements referred to paragraphs 1 and 2 were duly implemented and such loss shall be recovered in accordance with the methodology referred to in Article 30(2).

In order for TSOs to pass on any loss incurred in case of a default in payment, they must have duly implemented the measures and requirements referred to in paragraphs 1 and 2 of this article 31. NRAs should make sure that those measures and requirements are duly implemented by TSOs to minimise the potential financial loss for TSOs, and avoid discussions later about cost recovery. Proper credit management procedures are essential for all businesses and the possibility for TSOs to pass on financial losses to network users should not reduce the efforts by TSOs to recover payments from any defaulting parties.

We would welcome further information sharing about credit management arrangements across TSOs, NRAs, ENTSOG and ACER in the context of network code implementation. Best practice implementation should help to avoid that insufficient measures are put in place to avoid misconduct. Practices adopted on stock markets and exchanges to avoid misconduct might also be considered for adoption by TSOs. Examples of credit management arrangements include:

- creditworthiness criteria are set and monitored;
- credit limits are set and periodically checked;
- checks are performed on company officers, financial strength is assessed and third party ratings are monitored under a "know your customer policy";
- credit risk categories are identified;
- appropriate financial securities are requested such as letter of credit, cash deposit, bank guarantee, parent company guarantee and collateral.

We believe that the provisions in the network code are sufficient to enable TSOs to put in place effective and proportionate credit management arrangements, and do not require modification.

In addition, we have the following remarks with respect to the ACER & ENTSOG paper:

- Actions, within the existing network code, should be more on prevention and continuous monitoring of credit limits/creditworthiness rather than on ex-post information sharing, reaction and (TSO) loss recovery.
  - The neutrality principles should be used as an incentive for TSOs to prevent misconduct and if it happens to minimise the financial loss because TSOs are dealing with money that in the end belongs to the non-defaulting network users, that are not in a position to check or reject misconducting parties.
  - A “Balancing Operator” is not defined in the Regulation and should not be introduced. The Gas Balancing Network Code shall apply to TSOs and, in a balancing zone where more than one TSO is active it shall apply to all TSOs within that balancing zone. In case the responsibility of keeping their transmission networks in balance has been transferred to an entity, the Regulation shall apply to that entity to the extent defined under the applicable national rules. By introducing a Balancing Operator, the role and responsibility of TSOs would become less clear.
  - EU-wide registration of network users and/or a blacklist does not seem to be an effective preventive measure.
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#7

**Anonymous Company 2**

Last Modified: Monday, October 19, 2020 10:16:17 AM

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**1. Do you share the concerns described in chapter 1?**

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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**4. Do you see any risks in implementing the proposed measures? If so, please describe them in the comment field**

Respondent skipped this question

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**5. Do you have any other remarks?**

Respondent skipped this question

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**6. 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?see chapter 2**

Respondent skipped this question

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**7. What kind of other measures do you consider relevant? Please explain.**

Respondent skipped this question

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**8. 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?See chapter 3**

Respondent skipped this question

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**9. What other major points would you like to share about chapter 3?**

Respondent skipped this question

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**10. 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)? see chapter 4**

Respondent skipped this question

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**11. What kind of other measures do you consider relevant?  
Please explain.**

Respondent skipped this question

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**12. Do you have any other remarks**

Respondent skipped this question

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**13. 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? see chapter 5**

Respondent skipped this question

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**14. 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.**

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

**18. Do you have any other remarks?**

Respondent skipped this question

**19. 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.**

Respondent skipped this question

**20. Please, state any other comments**

Our company corroborates the initiative of ACER and ENTSG for improvements of the European regulatory framework and recommendations on implementation of the current framework.

We would like to share different case of balancing misconduct that can take a place for improvement of the current framework of in the Balancing Network Code.

In March 2020 in line with the retroactive gas price reduction negotiated between the Bulgarian public supplier, Bulgargaz EAD and its gas supplier OOO Gazprom Export, the Bulgarian energy commission of the Bulgarian Parliament initiated legislation changes, proposed by Bulgargaz EAD, regarding the price of natural gas retroactively decrease and which changes were subsequently adopted by the Bulgarian authorities.

The proposed amendments for the Bulgarian energy law were to allow the local regulator - Energy and Water Regulatory Commission to decrease the regulated price of natural gas to end consumers retroactively (in this case - to 5 August 2019) and also to allow the Bulgarian transmission system operator Bulgartransgaz to retroactively impact the daily balancing price to the same date. Under the existing methodology in Bulgaria, the balancing gas price is indexed to the regulated tariff. Consequently, changes in the latter trigger similar adjustments in the former.

Due to the specifics of the local gas market and due to a compromise by the European Commission, the regulated market in Bulgaria and the price for sale of natural gas approved by the Energy and Water Regulatory Commission by the Public Supplier (for short "Regulated Price of Bulgargaz"), were preserved and partially valid to this day. Due to this exception, the suppliers on the free market in Bulgaria have no choice but to comply with the terms of their contracts with the requirements of customers and the prices under these contracts to be determined as a trade discount from the Regulated price of Bulgargaz.

Since Bulgaria has only partially free gas market, the Regulated price of Bulgargaz acts as an unofficial index. This means that in order to capture end consumers, private companies need to sell at a discount to that price. If there were no legal requirements for regulating the prices on the wholesale natural gas market and if Bulgargaz EAD was not a state-owned company with a dominant position on the natural gas market, as repeatedly stated by the European Commission regarding the opening of

the natural gas market in Bulgaria, such changes in fixed prices for already completed periods, with fulfilled contractual commitments, would not be possible.

Because on one hand, the retroactive changes in the legislation, especially in the regulated segments of the market, typically entail risks of violating the principles of legal certainty, legitimate expectations and non-discrimination among market participants. On other hand, the balancing price is an essential factor in determining the spot prices of a free market. The decision to buy or sell balancing gas by traders is made intra day, depending on market conditions and the price of balancing gas. It is no coincidence that under current European energy legislation, the Methodology for determining the price of balancing gas is required to be fixed, clear and public, so as to enable market participants to anticipate it and make market decisions.

Most of the traders with activities on the Bulgarian gas market warned the Bulgarian authorities that the measures would wipe out competition and court cases and set a dangerous precedent for the region.

However, despite attempts by market participants and the European Commission to dissuade the government from taking the measures, these amendments in the balancing price were approved retroactively by the Bulgarian authorities. And no matter that the imbalance charge calculation is based on a daily period described in Chapter V of Commission Regulation (EU) 312/2014 (NC BAL). The NC BAL does not contain provisions for an ex-post correction of the daily imbalance charge. Retroactively changing the balancing price is also against the objective and purpose of the NC.

The changes were introduced and that costed different amounts to be paid from the private gas companies to the Bulgarian transmission system operator Bulgartransgaz, because the application of recalculation of the imbalance charge lead to considerable repayment obligations for those network users that had more gas than off-take and thus sold gas to Bulgartransgaz in the balancing process which sales were remunerated on the basis of the weighted average price which reflected the regulated price. As a result, many companies were required to reimburse the TSO for the past imbalance settlements recalculated with the new reference price.

Based on the aforementioned and the existing risk the happened in Bulgaria retroactive change of the natural gas balancing prices to become a precedent, we would like to include the situation in the public discussion and to initiate the necessary changes in the Balancing Network Code which changes unambiguously to forbidden amendments in the balancing prices retroactively. We believe that this change is significant and will improve legislation and would be useful for all gas market competitors.

## #8

### Vereinigung der Fernleitungsnetzbetreiber Gas e.V

Last Modified: Monday, October 19, 2020 10:20:39 AM

#### 1. Do you share the concerns described in chapter 1?

The German TSOs totally share the concerns expressed in chapter 1. Both NCG and Gaspool Market are among of the gas markets where fraudulent behaviour occurred and whose neighbouring market areas have been subject to fraud as well.

Fortunately, the national legal framework allowed for an adaptation with regard to ex ante monitoring checks on balancing positions, creditworthiness and reactive measures. However, the German TSOs deem it very helpful to facilitate the cross-border information exchange and the possibility of preventive measures based on the information received from an affected BO.

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

The German TSOs experience has shown that reactive measures with immediate effect provide for the highest value. First, they provide for a deterring effect with regard to the measures the BO can apply. Second, in the event they have to be performed they are very effective with regard to limiting the potential damage. A national and cross-border information exchange mechanism would provide additionally support.

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

The German TSOs do not completely agree with the proposed definition of balancing misconduct for the current note and do propose the following amendment in bold letters:

“Balancing Misconduct”, means: 1. default in payment of charges related to balancing (according to Article 31(3) of BAL NC) and/or 2. an increased risk that the network user will get into a situation of default in payment. Such increased risk can be considered as established in the case that the network user is exposed in terms of credit limit (meaning its creditworthiness safeguards are non-sufficient to cover potential or actual liabilities related to imbalances based on BOs internal assessments) and risk for non-payment is identified in an objective and non-discriminatory manner according to BOs policies, such as “know your customer policy. Such objective and non-discriminatory policy measures include: transparency about the situations occurred and corrective measures taken as a response, which are proportionate to the risk exposure created.”

In our opinion it is already sufficient if only one of the conditions is met. This amendment allows for a quick reaction with regard to the increased risk, since the confirmation of a default of payment usually is made when the invoice is issued. This might take up to several weeks. There would be no possibility for mitigation if balancing misconduct were defined as proposed initially.

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**4. Do you see any risks in implementing the proposed measures? If so, please describe them in the comment field**

The German TSOs do not see any risks implementing the proposed measures.

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**5. Do you have any other remarks?**

The German TSOs do not have any further remarks.

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**6. 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? see chapter 2**

The German TSOs are of the opinion that the proposed measures such as ex ante monitoring checks and credit risk management arrangements do provide a satisfying level of implementation of Article 31 of the BAL NC.

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**7. What kind of other measures do you consider relevant? Please explain.**

The German TSOs do not consider any other measures relevant at the moment.

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**8. 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? See chapter 3**

With regard to a timely and effective sharing of information and our experienced balancing misconduct we deem the following information as crucial:

- Company name
  - acting persons (i.e. persons registered with the BO)
  - balancing area
  - counterparties involved
  - short description of suspicious behaviour and its dimension
- 

**9. What other major points would you like to share about chapter 3?**

The German TSOs do not have any further remarks.

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**10. 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)? see chapter 4**

The German TSOs welcome the proposed amendments of Article 31 of the BAL NC and see no need for further improvements.

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**11. What kind of other measures do you consider relevant? Please explain.**

The German TSOs do not have any other remarks.

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**12. Do you have any other remarks**

The German TSOs do not have any other remarks.

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**13. 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? see chapter 5**

The German TSOs do consider the current provisions as sufficient.

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**14. 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.**

The German TSOs are in favour of establishing an EU wide registry of active network users. We consider it is a good additional tool to detect and prevent balancing misconduct as our experience has shown. We would suppose that a network user could be called “active” when a NU entered at least into one balancing portfolio contract with the TSO/MAM. A NU is “inactive” when all its balancing portfolio contracts are terminated.

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

Respondent skipped this question

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

The German TSOs consider the following parties as relevant to have access to the registry: TSOs, ACER, NRA and BO as they are concerned. There is no need for others to have access to the registry.

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

The German TSOs consider it is necessary, that updates are provided on an ad-hoc basis once changes have been made (daily base).

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**18. Do you have any other remarks?**

The German TSOs have no other remarks.

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**19. 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.**

The German TSOs acknowledge the benefits of a blacklist as used in other industries (e.g. aviation). However as too many prerequisites are not yet clarified such as who manages the blacklist, and which are the criteria that lead to a black-listing the topic currently is at a too early stage to be consulted. Moreover, there are high risks involved in this list, regarding the liability of the TSO that puts a network user on the list. Only the ruling of a court allows stating clearly, that a misconduct actually happened.

This also means, that a lot of time (years) will pass, until a network user can show up on the list with no risk to the TSO that names the user."

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**20. Please, state any other comments**

Respondent skipped this question

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## #9

### **BDEW German Association of Energy and Water Industries**

Last Modified: Monday, October 19, 2020 12:48:13 PM

#### **1. Do you share the concerns described in chapter 1?**

BDEW agrees with the concerns expressed in chapter 1. Both German Market Area Managers NCG and Gaspool were affected by fraudulent behaviour. Fortunately, the markets parties developed a quick solution and the national legal framework allowed for an adaptation with regard to ex ante monitoring checks on balancing positions, creditworthiness and reactive measures. However, since also neighbouring markets were affected by balancing misconduct it seems helpful to facilitate cross-border information exchange.

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

The German Market Area Managers' experience has shown that reactive measures with immediate effect provide for the highest value. First, they provide for a deterring effect with regard to the measures the balancing operator (BO) can apply. Second, in the event they have to be performed they are very effective with regard to limiting the potential damage. A national and harmonised cross-border information exchange mechanism between BOs would provide additional support. This checks should be accompanied by ex-ante monitoring checks on balancing positions because they reduce possible losses from misconduct.

It is important that those measures do not negatively affect the correct functioning of the market and respect the relevant market's rules and legislations or question trade firmness.

#### **3. Do you agree with the proposed definition of balancing misconduct? Do you have additional comments for its improvement?**

BDEW proposes the following amendment in bold letters:

"Balancing Misconduct", means: 1. default in payment of charges related to balancing (according to Article 31(3) of BAL NC) and/or 2. an increased risk that the network user will get into a situation of default in payment. Such increased risk can be considered as established in the case that the network user is exposed in terms of credit limit (meaning its creditworthiness safeguards are non-sufficient to cover potential or actual liabilities related to imbalances based on BOs internal assessments) and risk for non-payment is identified in an objective and non-discriminatory manner according to BOs policies, such as "know your customer policy. Such objective and non-discriminatory policy measures include: transparency about the situations occurred and corrective measures taken as a response, which are proportionate to the risk exposure created."

It is already sufficient, if only one of the conditions is met. The proposed amendment allows for a quick reaction with regard to the increased risk, since the confirmation of a default of payment usually is made when the invoice is issued. This could take up to several weeks. There would be no possibility for mitigation if balancing misconduct were defined as proposed initially.

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**4. Do you see any risks in implementing the proposed measures? If so, please describe them in the comment field**

BDEW does not see any risks implementing the proposed measures, except the proposed definition of balancing misconduct (rational see our answer above). However, it is critical that the measures taken do not distress the correct functioning of the market by, for instance, impeding Networks Users (NUs) to trade on markets they are solvent in.

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**5. Do you have any other remarks?**

Respondent skipped this question

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**6. 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? see chapter 2**

The proposed measures such as ex ante monitoring checks and credit risk management arrangements do provide a satisfying level of implementation of Article 31 of the BAL NC.

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**7. What kind of other measures do you consider relevant? Please explain.**

Respondent skipped this question

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**8. 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? See chapter 3**

With regard to a timely and effective sharing of information and the experience in the German gas market, BDEW proposes the following information as crucial:

- Company name,
- acting persons (i.e. persons registered with the BO)
- counterparties
- short description of suspicious behaviour and its dimension

However, any information about misconduct should not be made public until it has been proven and confirmed.

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**9. What other major points would you like to share about chapter 3?**

Respondent skipped this question

**10. 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)? see chapter 4**

BDEW welcomes the proposed amendments of Article 31 of the BAL NC and sees no need for further improvements.

**11. What kind of other measures do you consider relevant? Please explain.**

Measures, specifically ex-post measures should not question trade firmness to not undermine the correct functioning of markets.

**12. Do you have any other remarks**

Respondent skipped this question

**13. 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? see chapter 5**

BDEW considers the current provisions as sufficient.

It should be noted that non-defaulting shippers, although they are the ones who are exposed to defaulting parties, if TSOs/BO are deemed able to pass all risks on via balancing neutrality charges, have no influence on whether a TSO/BO accepts a party as a shipper, although they bear the risk. Such agreements might reduce the incentive for a TSO/BO to identify parties where misconduct is likely.

Also, it needs to be ensured that rules are harmonised to foster transparent and efficient balancing markets.

**14. 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.**

Establishing an EU wide registry of active network users could be helpful for transparency reasons. However, caution should be exercised that no market entry barrier is created, as the consultation document does not specify what data will be requested for the registry

We would suppose that a network user could be called “active” when a NU entered at least into one balancing portfolio contract with the TSO/MAM. A NU is “inactive” when all its balancing portfolio contracts are terminated.

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

Respondent skipped this question

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

The following parties are relevant to have access to the registry: TSOs; NRA and BO as they are concerned. However, to prevent balancing misconduct also the network users may be interested in the information.

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

It is necessary, that updates are provided on an ad-hoc basis once changes have been made (daily base).

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**18. Do you have any other remarks?**

Respondent skipped this question

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**19. 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.**

BDEW is not in favour of a blacklist. Since the consultation paper did not clarify the details of such a blacklist, too many prerequisites are unclear. Moreover, there are high risks involved in this list, regarding the liability of the TSO that puts a network user on the list as well as for the network user who is falsely accused of any misconduct. Only the ruling of a court allows stating clearly, that a misconduct actually happened.

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**20. Please, state any other comments**

Respondent skipped this question

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## #10

### NetConnect Germany GmbH & Co. KG

Last Modified: Monday, October 19, 2020 12:55:32 PM

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#### 1. Do you share the concerns described in chapter 1?

The German Market Area Managers totally share the concerns expressed in chapter 1. Both NCG and Gaspool Market are among of the gas markets where fraudulent behaviour occurred and whose neighbouring market areas have been subject to fraud as well. Fortunately, the national legal framework allowed for an adaptation with regard to ex ante monitoring checks on balancing positions, creditworthiness and reactive measures. However, the German Market Area Managers deem it very helpful to facilitate the cross-border information exchange and the possibility of preventive measures based on the information received from an affected BO.

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

The German Market Area Managers' experience has shown that reactive measures with immediate effect provide for the highest value. First, they provide for a deterring effect with regard to the measures the BO can apply. Second, in the event they have to be performed they are very effective with regard to limiting the potential damage. A national and cross-border information exchange mechanism would provide additionally support.

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

The German Market Area Managers do not completely agree with the proposed definition of balancing misconduct for the current note and do propose the following amendment in bold letters:

"Balancing Misconduct", means: 1. default in payment of charges related to balancing (according to Article 31(3) of BAL NC) and/or 2. an increased risk that the network user will get into a situation of default in payment. Such increased risk can be considered as established in the case that the network user is exposed in terms of credit limit (meaning its creditworthiness safeguards are non-sufficient to cover potential or actual liabilities related to imbalances based on BOs internal assessments) and risk for non-payment is identified in an objective and non-discriminatory manner according to BOs policies, such as "know your customer policy. Such objective and non-discriminatory policy measures include: transparency about the situations occurred and corrective measures taken as a response, which are proportionate to the risk exposure created."

In our opinion it is already sufficient if only one of the conditions is met. This amendment allows for a quick reaction with regard to the increased risk, since the confirmation of a default of payment usually is made when the invoice is issued. This might

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take up to several weeks. There would be no possibility for mitigation if balancing misconduct were defined as proposed initially.

**4. Do you see any risks in implementing the proposed measures? If so, please describe them in the comment field**

The German Market Area Managers do not see any risks implementing the proposed measures.

**5. Do you have any other remarks?**

The German Market Area Managers do not have any further remarks.

**6. 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? see chapter 2**

The German Market Area Managers are of the opinion that the proposed measures such as ex ante monitoring checks and credit risk management arrangements do provide a satisfying level of implementation of Article 31 of the BAL NC.

**7. What kind of other measures do you consider relevant? Please explain.**

The German Market Area Managers do not consider any other measures relevant at the moment.

**8. What kind of information should be included in the template developed by ACER/ENTSO in order to allow timely and effective sharing of information to prevent cases of balancing misconduct? See chapter 3**

With regard to a timely and effective sharing of information and our experienced balancing misconduct we deem the following information as crucial:

- Company name
- acting persons (i.e. persons registered with the BO)
- balancing area
- counterparties involved
- short description of suspicious behaviour and its dimension

**9. What other major points would you like to share about chapter 3?**

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**10. 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)?see chapter 4**

The German Market Area Managers welcome the proposed amendments of Article 31 of the BAL NC and see no need for further improvements.

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**11.What kind of other measures do you consider relevant? Please explain.**

The German Market Area Managers do not have any other remarks.

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**12.Do you have any other remarks**

The German Market Area Managers do not have any other remarks.

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**13.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?see chapter 5**

The German Market Area Managers do consider the current provisions as sufficient.

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**14.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.**

The German Market Area Managers are in favour of establishing an EU wide registry of active network users. We consider it is a good additional tool to detect and prevent balancing misconduct as our experience has shown.

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

We would suppose that a network user could be called “active” when a NU entered at least into one balancing portfolio contract with the TSO/MAM. A NU is “inactive” when all its balancing portfolio contracts are terminated.

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

The German Market Area Managers consider the following parties as relevant to have access to the registry: TSOs, ACER, NRA and BO as they are concerned. There is no need for others to have access to the registry.

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

The German Market Area Managers consider it is necessary, that updates are provided on an ad-hoc basis once changes have been made (daily base).

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**18. Do you have any other remarks?**

The German Market Area Managers have no other remarks.

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**19. 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.**

The German Market Area Managers acknowledge the benefits of a black list as used in other industries (e.g. aviation). However as too many prerequisites are not yet clarified such as who manages the blacklist and which are the criteria that lead to a black-listing the topic currently is at a too early stage to be consulted. Moreover, there are high risks involved in this list, regarding the liability of the TSO that puts a network user on the list. Only the ruling of a court allows stating clearly, that a misconduct actually happened. This also means, that a lot of time (years) will pass, until a network user can show up on the list with no risk to the TSO that names the user."

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**20. Please, state any other comments**

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**#11**

**OTE**

Last Modified: Monday, October 19, 2020 2:35:17 PM

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**1. Do you share the concerns described in chapter 1?**

Yes, but NRAs in close cooperation with Balancing Operators (BOs) shall be responsible for setting rules (legislative as well as business) to prevent the balancing misconduct. In most cases, balancing misconduct is caused by lack of effective monitoring of NU's balancing position.

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

In our opinion, principle of 100% liability hedging of current and future liabilities through financial security has the highest value to mitigate the risk of balancing misconduct and default in payment of Network User (NU). This financial security shall comprise the bank guarantee or/and cash collateral. Other tools of financial security shall not be avoided, but currently they are not so flexible in terms of timely settlement.

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

NU should balance its portfolio close to zero. It means that NU should procure gas for all the customers. Any misuse of balancing system for speculative purposes could be considered as balancing misconduct. However, it is hard to set the threshold to recognize the balancing misconduct. Usually it takes some time to recognize it, there is a good practice to give some time to NU to recover. Therefore, the definition should be extended by "Balancing Misconduct" means ... (3.) frequent and repetitive significant disbalance of network user's balancing position ....

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**4. Do you see any risks in implementing the proposed measures? If so, please describe them in the comment field**

Even if there is 100% liability hedging in place, some uncovered liabilities could arise, resulting e.g. from consumption of the NU's portfolio (especially from non daily metered offtakes) that is not well predicted by BO. These uncovered liabilities have to be as little as possible. NU shall not be allowed to exceed its limit of actual financial security.

**5. Do you have any other remarks?**

Respondent skipped this question

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**6. 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?see chapter 2**

Definitely yes. If BO participates in the financial settlement as the central counterparty to NUs, BO shall take over the responsibility for proper and timely payments of all NU's receivables. BO's risks arising from this financial settlement should be covered by proper credit risk management arrangements, such as irrevocable bank guarantees and cash deposits of NU for the benefit of BO.

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**7. What kind of other measures do you consider relevant? Please explain.**

Bank guarantee should be issued by bank that meets the condition of current long-term minimum rating.

Generally, all NUs should be treated equally in terms of financial security, taking into account the credit rating of NU.

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**8. 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?See chapter 3**

Once balancing misconduct is discovered and validated by ACER/NRA, the name of respective NU shall be made publicly available in order not only other BOs, but also other NUs can benefit from such information. If BAL NC will be amended as proposed, every NU will be familiar with the rules regarding balancing misconduct. This could contribute to the more transparent gas market environment.

It is necessary to set clear rules for identification of balancing misconduct of any NU to avoid incorrect allegation of such NU that could have negative impact for trading of respective NU.

Additionally, Chapter 3.3.2 of the Consultation Document deals with recommendation for contractual arrangements adjustments. These adjustments should result from proposed amendment of BAL NC as a legal basis.

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**9. What other major points would you like to share about chapter 3?**

Respondent skipped this question

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**10. 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)?see chapter 4**

We see the proposed amendments of Article 31 of BAL NC as fair and adequate, but in Article 31(3) the TSO shall be replaced by BO. BO includes also TSO.

If NU will have obligation to meet the financial security of every relevant BO that is balancing the zone that such NU is using, default of any NU in terms of one BO will have no negative impact to other BOs.

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**11.What kind of other measures do you consider relevant? Please explain.**

Respondent skipped this question

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**12.Do you have any other remarks**

Respondent skipped this question

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**13.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?see chapter 5**

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

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**14.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.**

As REMIT is already operated by ACER, this system should be used for this registry and monitoring purposes as much as possible to avoid further administrative burden on BOs and NUs.

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

In our perception, active means that the NU has all necessary contractual arrangements with respective BO in place, i.e. such NU is able to register gas nominations or trade notifications, or ready to register gas nominations or trade notifications. The similar conditions for registration of NU could be used as in case of REMIT registration.

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

See the remark on the REMIT system above.

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

Updates should be made immediately in order to give proper and timely information for all market participants including customers.

**18. Do you have any other remarks?**

Respondent skipped this question

**19. 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.**

Yes, such a black list could serve not only for BOs but also for other NUs and market participants.

**20. Please, state any other comments**

In terms of EU Balancing Suspected Misconduct ACER & ENTSOG Consultation, OTE is a balancing operator (BO) for the Czech territory.

In more detail, OTE, a.s., the Czech electricity and gas market operator, (OTE) is a joint-stock company established in 2001. OTE provides comprehensive services to individual electricity and gas market players. OTE commenced organizing trading in the day-ahead electricity market in 2002 and the intra-day and block electricity markets in later years. OTE has been the market operator on the gas market since 2010 including operation of the day-ahead gas market and intraday gas market. Continuous data processing and exchange required for the accounting and settlement of imbalance between the contractual and actual volumes of electricity and gas supplied and received are among services offered by the OTE to players in the Czech electricity and gas markets, as well as administrative procedures associated with a switch of the supplier. The OTE also administers the National Register of Greenhouse Gas Emissions. OTE is the holder of the license for market operator's activities, which includes activities in the electricity and gas market in the Czech Republic. For more information, please visit [www.ote-cr.cz](http://www.ote-cr.cz).

## #12

### **SEDIGAS (Spanish Gas Association)**

Last Modified: Monday, October 19, 2020 3:51:46 PM

#### **1. Do you share the concerns described in chapter 1?**

Yes. Absolutely. Network users operating in Spain, we are really concerned with this type of misconduct, which has created relevant economic damages in the past for the entire gas sector.

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

From our point of view, there are several effective measures to prevent and tackle this kind of situations:

- Ex-ante measures: sufficient financial guarantees and information exchange among BOs & NRAs about track record of users' improper practices in the past (in other Member States and markets).
- Ex-post measures: Agile administrative and economic actions, such as: operating licence suspension (forbidding additional transactions that could make the damage even worse), and consequent takeover of user's customers portfolio by last resort supplier (since its clients will continue demanding and consuming gas); and immediate execution of financial guarantees, takeover of user's NG / LNG inventories by BO, and freeze and take over economic incomes rights entitled by the defaulter user.

#### **3. Do you agree with the proposed definition of balancing misconduct? Do you have additional comments for its improvement?**

We agree with the proposed definition, in the understanding that increased risk to default payments of charges also refers to not constitute or keep enough financial guarantees to cover potential failures to pay.

#### **4. Do you see any risks in implementing the proposed measures? If so, please describe them in the comment field**

Regarding the potential information exchange about past misconducts by a network user, it should be carefully regulated to avoid any breach of confidentiality rights.

#### **5. Do you have any other remarks?**

Although some of these proposed measures can be seen as potential barriers of entrance (for small size companies for instance), and therefore as virtual competence

obstacle, economic sustainability of gas systems and markets is clearly crucial for the benefit of the natural gas sector as a whole, at national and European internal market level.

**6. 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?see chapter 2**

Yes, we agree with the suggested ex ante measures, conceptually. But we also think that the detailed procedure and its nuances (in terms of risk level calculation, updating and adjustment, or behaviour monitoring and information exchange frequency, for example) are paramount to make them really useful.

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**7. What kind of other measures do you consider relevant? Please explain.**

As stated above, the before mentioned measures should be enough, as long as they are properly developed in the regulation and implemented, jointly with the corresponding reactive measures, to be applied in case of eventual defaults.

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**8. 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?See chapter 3**

We fully agree with the reasoning and legal amendments exposed in chapter 3 to allow balancing misconduct information exchange, especially at cross border level. We think such template should be carefully designed to provide sufficient and useful information in due time to avoid repetitive improper conducts by defaulting users, but prudent enough in such a way that the particular default informed is properly described in the legal frame of the MS / market where it has taken place. Specific balancing rules that can be breached by the users are not necessary the same in different countries or balancing areas. Therefore, as a not exhaustive list, we suggest some data or pieces of information to be fulfilled in this kind of communication: defaulter, counterparties or agents involved, specific dates of misconduct, type of default in the context of balancing rules, warnings submitted, economic amounts unpaid, defaulter user's reaction, reactive measures adopted, etc.

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**9. What other major points would you like to share about chapter 3?**

Respondent skipped this question

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**10. 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)?see chapter 4**

In our opinion, amendment for Art 31 of BAL NC doesn't have to be exhaustive in the list of measures a BO can take, but enable Member States to establish proper and detailed rules in this regard consistently within the European legal frame (BAL NC for this particular subject). Thus, from our perspective, the proposed amendment fits this purpose.

Alternatively, it could refer to legal, commercial or economic measures the ones a BO can take in order to mitigate potential defaults, so as to give a wide range of options to be further detailed at regulatory national level.

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#### **11.What kind of other measures do you consider relevant? Please explain.**

As previously stated, in our view, some useful reactive measures are: Agile administrative and economic actions, such as: operating licence suspension (forbidding additional transactions that could make the damage worse) and consequent takeover of user's customers portfolio by last resort supplier (since its clients will continue demanding and consuming gas); and immediate execution of financial guarantees, takeover of user's NG / LNG inventories by BO, and freeze and take over economic incomes rights entitled by the defaulter user.

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#### **12.Do you have any other remarks**

Additionally, we would only remark the necessity of agility to adopt and put in place the defined measures, taking into account the cumulative economic damage a balancing misconduct can create in a very short period of time (since it starts producing), and the timing in force to invoice charges, settlement, claiming, etc., until an improper behaviour is proved.

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#### **13.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?see chapter 5**

We consider the current provisions set by the BAL NC are sufficient to ensure economic neutrality for BOs. The problem arises when unpaid charges are not fully covered by defaulter's financial guarantees (and when after further legal steps, they remain unpaid). In this regard, we suggest the BAL NC be amended to guarantee the same neutrality principle for the rest of users (and not only for BOs) taking part in the same market where the misconduct takes place, in case of payment default. The rest of users should never have to bear the balancing misconduct cost of a defaulting agent.

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#### **14.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.**

Yes. We find it is a useful tool to prevent repetitive balancing misconduct in different EU markets, as it would help to monitor users track record activity and behaviour in the EU internal market. It would also help BOs and NRAs to better know a new agent who applies for starting operating in their corresponding market / balancing area.

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

The corresponding agreements in place to operate in a balancing market could be a minimum condition

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

Although, in our view, the main target of such registry is to help NRAs and BOs to get a deeper knowledge about users, in order to guarantee a good performance of their respective markets, we would also find very useful that the registry could be accessible to other network users, because that would make deals in the OTC market more reliable, having in mind that bilateral transactions may have consequences in the balancing situation too.

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

We think it should be a live list, being updated every time a network user starts or finishes operating in any market.

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**18. Do you have any other remarks?**

Information about parent company and / or ultimate controller of each user would be very useful to prevent creation / authorisation by NRAs/BOs of new vehicles under new legal name / brand after having been suspended or left unpaid charges in other markets.

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**19. 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.**

Yes. As said before, we think it would be a useful tool to prevent repetitive balancing misconduct in different EU markets (as regretfully it has happened in the past). It would help BOs and NRAs a lot to better know a new agent who applies for starting operating in their corresponding market / balancing area. It would also be very helpful

for other network users before entering into bilateral negotiations with potential defaulters.

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**20. Please, state any other comments**

Respondent skipped this question

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**#13**

**Anonymous Company 3**

Last Modified: Monday, October 19, 2020 5:12:37 PM

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**1. Do you share the concerns described in chapter 1?**

Yes. Given the increase in the number of network users, which will increase the risk of new cases of misconduct, we understand that it makes sense to include more measures to mitigate such situations, ensuring regulatory support.

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

The improvement in the exchange of information between TSO/BO may help other TSOs to preview and prepare for cases of fraudulent behaviour in their market areas. From the moment the TSO is notified, it can adapt the financial security safeguards accordingly. The clarification on the recovery of losses related to fraud through the neutrality mechanism is also very positive. However, we suggest that the associated rules be clarified, eventually harmonised at European wide level.

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

We agree with the proposed definition.

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**4. Do you see any risks in implementing the proposed measures? If so, please describe them in the comment field**

Apart from the sensitive matters on confidentiality regarding the cross-border exchange of information, the market can perceive the exchange of information between TSO/BO and other involved entities as a limitation on the user's activity, causing loss of credibility and conditioning their trade activities. Ultimately, this could affect market liquidity. Caution should be taken when determining the type and content of the information disclosed and it should be validated by the respective NRA.

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**5. Do you have any other remarks?**

No.

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**6. 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?see chapter 2**

Yes, measures related to monitoring checks and credit risk assessments are preventive measures, which will mitigate default in payment, as currently established in the article.

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**7. What kind of other measures do you consider relevant? Please explain.**

Within the topics discussed, there are other measures that can be applied and each TSO will develop and implement, considering the specific situation of each system as well as its national regulations.

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**8. 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?See chapter 3**

The template should include:

- o Identification of the network user, such as EIC
- o Balancing operator affected
- o Type of misconduct – (e.g. default in payment)
- o Defaulting Value - The defaulting volume (e.g. % collateral) in case of default in payment
- o Number of notifications – Notifications associated with the network user and related with any kind of misconduct perpetrated by the network user

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**9. What other major points would you like to share about chapter 3?**

The implementation of this mechanism is strongly conditioned by the mitigation of confidentiality barriers, hence the importance of the changes recommended to art 31 and the confidentiality clause.

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**10.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)?see chapter 4**

The proposed amendments of article 31 establish the basis for the exchange of information, enabling the TSO to issue warnings on misconduct, maintaining and reinforcing the TSO's competences to take necessary measures to ensure any due payment. Due to the specificities of each country and market area, specific legal and regulatory procedures will have to be addressed at national level to ensure the presented mechanism application.

**11. What kind of other measures do you consider relevant? Please explain.**

None.

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**12. Do you have any other remarks**

No.

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**13. 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? see chapter 5**

Article 31(3) foresees that defaults by NU are covered by the neutrality arrangements, which in turn are subject to specific rules set by the NRA, at MS level (as per Article 30(2)). Since neutrality costs are invoiced together with imbalance charges, a default in payment by one NU can result in a loss for the BO, as he will not be compensated for the payments he is due through neutrality. The way in which these losses could be overcome through the neutrality charges should be clearly set at national level and, eventually, as a common European wide rule. This would also avoid entering later in further litigation with defaulting NUs.

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**14. 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.**

Yes, it can become a useful tool, as long as it can provide information on misconduct of NU and serve as an alerting mechanism. This list could allow for obtaining close to real-time information, provided the necessary validation measures and authorizations are met, thus promoting a more efficient communication and providing useful knowledge to the TSO in protecting the system against misconduct (increasing its ex-ante checks as well as improving its default risk analysis).

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

Given that this list should have minimum criteria defined and established for all the TSO/BO, we find that a network user is “active” in a market area if it has a valid contract that allows it to participate and be active in that market. This would include network users whose rights have been limited (e.g. in terms of nomination or market trading) due to default in payment, but whose contracts have not yet been suspended. Considering a network user in such a condition still as an “active” network user would allow for the respective TSO to still get information on the network user’s conducts and potential defaults in any other MS.

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

Since this list creation is associated with the detection and prevention of misconduct, it should be disclosed among TSOs, NRAs and market operators, who would have an active part in the disclosure process. Network users should only be given access to the registry, not to any default information as this may be considered commercial sensitive information.

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

TSOs should review the information as soon as there is a change of any network users' situation regarding the requirements to be active.

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**18. Do you have any other remarks?**

Given that some shippers operate in both the gas and the electricity market, sharing information among both sectors could be envisaged, as many of the rationales apply to both markets.

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**19. 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.**

Yes, we are in favour. Nevertheless, this European blacklist shouldn't be a punishing tool, but should aim to discourage network users to misconduct. The list should be built upon the European wide registry and identify network users with default in payment, based on defined, transparent and non-discriminatory criteria, accepted and validated by the NRA, and should be common to all TSO/BO. To make this mechanism more transparent, the network user should be notified whenever its name is identified in the list.

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**20. Please, state any other comments**

Concerning the implementation of a blacklist, it should be set clear to whom this list shall be disclosed, as well as determined how far reaching are the actions that other TSOs are entitled to take in case a network user appears in this blacklist.

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## #14

### Energie-Nederland

Last Modified: Monday, October 19, 2020 6:58:34 PM

#### 1. Do you share the concerns described in chapter 1?

Yes, we do share the concerns. The Dutch market was impacted by a fraud case twice now and therefore we share the opinion of ACER that these fraud cases should be avoided. It appeared that parts of the NC BAL have not been clear enough on how to deal with the costs of a default situation these cases. This has resulted in inconsistent handling of fraud cases by the TSO in the Netherlands. Energie-Nederland (together with other representative organisations of network users) has submitted a request to enforce to the regulator to address these issues.

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

The monitoring is of the highest value to us. If this monitoring is done right, there will be less cases of fraud.

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

Energie-Nederland agrees with the proposed definition.

#### 4. Do you see any risks in implementing the proposed measures? If so, please describe them in the comment field

No

#### 5. Do you have any other remarks?

No

#### 6. 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? see chapter 2

The monitoring checks and credit risk management only provide a satisfying level if the monitoring frequency is set small enough to prevent the recorded cases from reoccurring. If the procedures that the BO will establish are sufficiently strict this is not an issue.

It should be noted that non-defaulting shippers have no say in whether a TSO accepts a party as shipper. However, these non-defaulting shippers are the ones who are exposed to defaulting parties if TSOs are able to pass through all risks via transportation charges.

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**7. What kind of other measures do you consider relevant? Please explain.**

Based on the issues mentioned above strict and clear rules are needed that are monitored and approved by the NRA to prevent excessive (neutrality) charges.

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**8. 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? See chapter 3**

Energie-Nederland has no clear answer to this question. This should be further elaborated with the market.

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**9. What other major points would you like to share about chapter 3?**

Respondent skipped this question

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**10. 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)? See chapter 4**

The amendment states that: The BO shall establish effective procedures to regularly monitor network user's balancing positions and be entitled to take necessary measures. We support the effective procedures that have to be established by the BO. On the other hand, we would suggest to change entitled into obliged.

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**11. What kind of other measures do you consider relevant? Please explain.**

Respondent skipped this question

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**12. Do you have any other remarks**

Respondent skipped this question

**13. 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? see chapter 5**

The neutrality account should primarily be used to ensure that the BO does not profit from activities in the balancing market and should not be used to relieve the BO from behaving prudently with respect to their credit management in general.

The neutrality principle leads to a disincentive for the BO to recover as much costs as possible. The NC BAL should include a clause obliging the BO to proof to the NRA that it has done the utmost to minimize costs and maximize attempts to recover the cost and not allocate avoidable costs to market players.

**14. 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.**

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

**17. Do you have any other remarks?**

Respondent skipped this question

**18. 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.**

Respondent skipped this question

**19. Please, state any other comments**

Respondent skipped this question

**#15**

**Europex**

Last Modified: Thursday, October 22, 2020 9:37:12 AM

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### **1. Do you share the concerns described in chapter 1?**

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.

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### **2. 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.

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### **3. Do you agree with the proposed definition of balancing misconduct? Do 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.

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**4. Do you see any risks in implementing the proposed measures? If so, please describe them in the comment field**

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.

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**5. Do you have any other remarks?**

Respondent skipped this question

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**6. 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? see chapter 2**

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.

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**7. What kind of other measures do you consider relevant? Please explain.**

Respondent skipped this question

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**8. 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? See 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.

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**9. What other major points would you like to share about chapter 3?**

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.

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**10. 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)? see chapter 4**

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.

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**11.What kind of other measures do you consider relevant? Please explain.**

Respondent skipped this question

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**12.Do you have any other remarks**

Respondent skipped this question

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**13.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?see chapter 5**

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.

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**14. 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.

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**15. 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.

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**16. 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.

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**17. 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.

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**18. Do you have any other remarks?**

Respondent skipped this question

**19. 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.

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**20. Please, state any other comments**

Respondent skipped this question

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**#16**

**Anonymous Company 4**

Last Modified: Monday, November 02, 2020 4:48:30 PM

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**1. Do you share the concerns described in chapter 1?**

Yes. Unpaid imbalance costs cause costs and damages to the balancing markets and must be paid by all network users in the end.

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

Limitation of network user's rights related to nominations or financial security safeguards as this directly affects their business.

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

No, we don't agree. We recommend that the definition is also covering situations in which network users are causing significant imbalances to optimize their overall business (e.g. suppliers causing imbalances in their customer portfolio and instead selling balancing energy to the BO).

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**4. Do you see any risks in implementing the proposed measures? If so, please describe them in the comment field**

No

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**5. Do you have any other remarks?**

No

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**6. 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? see chapter 2**

No. In case of misconduct, the network user's rights with regards to nominations etc. must be limited, therefore.

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**7. What kind of other measures do you consider relevant? Please explain.**

See previous answer.

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**8. 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? See chapter 3**

To be provided by the BOs.

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**9. What other major points would you like to share about chapter 3?**

No other points to be shared.

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**10. 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)? see chapter 4**

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**11. What kind of other measures do you consider relevant? Please explain.**

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**12. Do you have any other remarks**

No.

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**13. 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? see chapter 5**

Yes.

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**14. 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.**

Yes, we are in favor of an EU wide registry as this could help BOs, especially if network users (also via their local daughter companies) are active in several MS.

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

To be provided by the BOs.

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

In our opinion all market participants should have access to such a registry, including end-users.

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

Updates should be provided twice per year to keep a balance between the efforts and advantages.

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**18. Do you have any other remarks?**

No.

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**19. 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.**

Yes, as this could protect end-users in choosing a supplier that has been involved in such a misconduct.

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**20. Please, state any other comments**

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