EFET European Federation of Energy Traders
SO YOU CAN RELY ON THE MARKET

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ACER & ENTSOG Consultation Document
EFET response (original response submitted via an online form).

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 considered 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.

Chapter 1
Questions for public consultation - General: - Do you share the concerns described in this chapter? - What kind of measures do you consider to be of the highest value? Please explain. - Do you agree with the proposed definition of balancing misconduct? Would you have additional comments for its improvement? - Do you see any risks of implementing the proposed measures? If so, please describe them. - Do you have any other remarks?
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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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.
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.

Chapter 2
Questions for public consultation: - 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? - What kind of other measures would you consider relevant? Please explain.
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.

Chapter 3
Questions for public consultation: - What kind of information should be included in the template developed by ACER/ENTSOG in order to allow timely and effective sharing of information to prevent cases of balancing misconduct? What other major points would you like to share about chapter 3?
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 on merely acting in concert.
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

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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.

Chapter 4
Questions for public consultation: - 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)? - What kind of other measures would you consider relevant? Please explain. Do you have any other remarks?
As discussed above, where safety is potentially compromised, then prosecution under primary legislation is an option for disincentive.

Chapter 5
Questions for public consultation: - 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?
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.

On additional measures:
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.