



## **Comments from BRPs to Imbalance Settlement Agreement**

3 February 2015

# eSetts aväkningsavtal

- Avtalet har varit på remiss 15/12 -23/1
- Svar har inkommit från aktörer i Finland, Sverige och Norge.
- Svaren kommer att diskuteras mer ingående på NBS referensgruppsmöte den 12 februari i Helsingfors
- Kortare svensk sammanfattning av svaren följer. Mer detaljerade kommentarer finns längs bak i presentationen

## Sammanfattning av synpunkter: Huvudavtal

- Önskar få kommentera avtalet senare då andra relevanta regelverk finns på plats
- Tydligöra relationen mellan eSett och Nätägare. Mandatet för eSett att begära in data.
- Tydligöra BA:s ansvar, hur långt sträcker sig ansvaret? (Ba vill inte ansvara för när andra parter inte sköter sin rapportering)
- Tydliggöra vad eSett ska publicera
- Tydligöra varför eSett behöver viss data för finansiell bedömning av bolag
- Önskemål om förändrad modell: kunna netta balanskraft i områden som har samma priser
- Ensidigt avtal, föreslås justering
- Önskemål om tydlig process gällande förändringar i avtal och handbok
- Ska inte reglermyndigheterna godkänna avtalet och dess innehåll?
- Hur långt i förväg kommer avgift aviseras? 1 månad för kort tid.
- Allmänt om definitioner och förtydliganden

## Sammanfattning synpunkter: Bilagor

- Information om att olika valuta kan väljas saknas
- När kommer avgiftsnivåerna att läggas in i avtalet?
- Önskemål att ett företag kan agera Avräkningsansvarig för flera balansansvariga
- Önskar även få villkor för pantsatta konton för synpunkter
- Avtalet anger att standardformeln för beräkning av säkerhet kan frångås i vissa tillfällen. Synpunkter på att detta bör aviseras i god tid.
- Hur ser formeln ut vid de ovan nämnda tillfällena?
- Förslag på förändring av paragraf för att förtydliga hur balansansvarig kan återfå lämnad säkerhet
- Vill inte ha två olika dagar för debet och kreditfakturor
- Allmänna förtydliganden av definitioner

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3. Comments to Appendix 2 – Collaterals
4. Comments to Appenodix 3 – NBS Handbook

# Comments to Main Agreement (1/8)

Concerning	Doc.	§	Comment
General	Main agr.		As a general comment, the relevant legal provisions related to balance settlement are still in preparation as are the national draft Balancing Agreements. As all these instruments are inherently connected to the current Imbalance Settlement Agreement, we request that the Balance Responsible Parties be given another possibility to comment on the Imbalance Settlement Agreement once all the other instruments are also available for Balance Responsible Parties.
Background and purpose / Definition of BRP	Main agr.		The abbreviation BRP is used throughout the document. The abbreviation should be listed together with the definition. We also suggest that the definition is clarified to specify that a company can have several balance agreements with one or several TSOs and that those are covered by one imbalance settlement agreement with eSett. Thus we suggest the following definition: <i>Balance Responsible Party (BRP): A company that has a valid Imbalance Settlement Agreement with eSett, directly or via a third party, and one or several valid Balance Agreements with one or several TSOs, and manages a Balance Obligation on its own behalf or as a producer, consumer or trader of electricity or on the behalf of other producers, consumers or traders of electricity.</i>
Background and purpose / Definition of BRP	Main agr.	4.2	In line with our suggested definition on BRPs we suggest that the paragraph is changed so that it explicitly states that the BRP only needs one agreement with eSett Thus we suggest the paragraph to be changed to: <i>The BRP wishes to act as a Balance Responsible Party in one or several of the Market Balance Areas in the NBS countries. This imbalance settlement agreement covers all Balance Agreements the BRP signs with TSOs in the NBS countries.</i>
Background and purpose / Definition of BRP	Main agr.	4.4	The paragraph is closely related to the definition of the BRP. We suggest a BRP be allowed also to contract the Imbalance Settlement via a third party. This approach is comparable to current possibilities for balance responsibility i.e. either an actor signs a balance agreement with the TSO or contract the service from another BRP.
Relationship between eSett, BRP and DSO	Main agr.		The relationship between eSett and DSOs concerning data and reporting requirement is insufficiently described and a source of confusion and uncertainty. We encourage eSett to describe how they intend to manage that relation.

# Comments to Main Agreement (2/8)

Concerning	Doc.	§	Comment
Relationship between eSett, BRP and DSO	Main agr.		It is not clear in the draft Agreement what is to be required by DSO. Thus it needs to be clarified what mandate eSett has to require that the DSO communicate electronically via XML with eSett.
Settlement model	Main agr.		In case the prices in two or more Market Balance Areas (MBA) are the same we suggest they are settled together and imbalance in the two areas may net each other. This would decrease costs for the Balance Responsibility Party which in the end would benefit customers.
Swedish energy tax	Main agr.	5.1	Clarification how are the other countries treated?
Responsibility for reported Settlement Information	Main agr.	5.2	A: BRPs' responsibilities regarding the quality of the Settlement Information shall only cover that part of the said information that originates from the BRP (please note that part of the Settlement Information is to be provided by the DSO).
			B: The third party obligations concerning settlement information needed to conduct the Imbalance Settlement is not clear. The Imbalance agreement should stipulate that the BRP is not to be held financially responsible for the obligations of DSOs and TSOs or other third parties. In case DSOs, TSOs or other third parties for any reason fail to report correct information needed for settlement of imbalances the BRP should financially unaffected. Those failures should be handled between the failing part and eSett.
			C: The paragraph 5.2 should be revised so it clearly states that the BRP is only responsible for the Settlement Information the BRP is obliged to report to eSett. We suggest that the second sentence is changed to: <i>The BRP shall exercise due care to ensure that the Settlement Information that according to the NBS handbook is to be reported to eSett by the BRP is correct and complete and made available in accordance with the schedules in the NBS Handbook in order for eSett to be able to settle the BRPs deliveries in an efficient and timely manner.</i>

# Comments to Main Agreement (3/8)

Concerning	Doc.	§	Comment
Responsibility for reported Settlement Information	Main agr.	5.2	What does the "due care" standard mean? Could the term perhaps be defined in more detail in the Agreement?
Responsibility for external market participants	Main agr.	5.3	<p>A: The Imbalance Settlement Agreement section 5.3 states that the BRP shall ensure that any external market participants within its Balance Obligation are aware of and follow the rules and instructions in the NSB handbook to the extent these rules and instructions apply to these parties. It is however unclear how this obligation can and should be fulfilled in practice, as it seems to require that the BRPs undertake a responsibility to inform and follow up their counterparties in terms of fulfilment of the NSB handbook requirements. It does not seem reasonable that the BRPs may face sanctions by eSett in case any of the BRP's counterparties fail to comply with the requirements, even if the BRP is in compliance towards eSett. To the extent eSett deems it necessary to include such a requirement it should thus be clarified what this requirement will imply in practice. The term "external market participants" should also be defined.</p> <p>B: A BRP should not be held financially responsible for anything outside the scope of imbalance settlement. Thus, first sentence should be changed to: The BRP shall have the full responsibility for the Balance Obligation related to the electricity supply and withdrawal of any external market participants within the scope of its Balance Obligation.</p>
Publishing of structure information	Main agr.	5.4	eSett must specify which information they intend to publish/visualize on the website. Paragraph should be amended accordingly.
Correction of settlement information	Main agr.	5.5	<p>The BRP must not to be held financially responsible for the obligations of DSOs and TSOs or other relevant third parties. In case DSOs, TSOs or other third parties for any reason fail to report correct information needed for settlement of imbalances the BRP should be financially unaffected. Those failures should be handled between the failing party and eSett. Paragraph should be extended at the end with:</p> <p><i>The financial responsibility is with eSett and eSett should correct any verified deficiencies or discrepancies.</i></p>



# Comments to Main Agreement (4/8)

Concerning	Doc.	§	Comment
Confidentiality of information provided to eSett	Main agr.	5.8	In addition, any and all of the reporting requirements posed on the BRP towards eSett in this Article 5.8 logically need to be guaranteed to be kept confidential between the Parties, and the question is if and where that is secured in the Agreement?
Information for assessing the BRP's financial position	Main agr.	5.8	What means .. any material changes affecting the assessment of its financial position?
Information for assessing the BRP's financial position	Main agr.	5.8	Requirement to give information concerning important customers, suppliers etc. must be removed. What is the benefit for eSett to receive information of our suppliers and end customers?
Information for assessing the BRP's financial position	Main agr.	5.8	It shall be provided explicitly that in case of a listed company, no obligation to actively supply information to eSett Oy exists (as all the relevant information is to be found by eSett Oy from public sources).
Information for assessing the BRP's financial position	Main agr.	5.8	The draft text is far too broad and open for interpretation. Thus we suggest clarifying what kind of information that can be required from the BRP: The paragraph should be changed to: The BRP shall without delay deliver any information required by eSett for assessing the BRP's financial position. This information shall be delivered in writing and shall not be more extensive than the obligations prescribed in Securities Market Act or similar legislation applicable for publicly listed companies.
Rights and obligations of eSett	Main agr.	6	Whole contract is one-sided and does not have any obligations to eSett – same obligations should apply to eSett than to BRP! e.g. in chapter six

# Comments to Main Agreement (5/8)

Concerning	Doc.	§	Comment
Rights and obligations of eSett	Main agr.	6	<p>The eSett rights and obligations concerning settlement information needed from other parties, the TSOs, DSOs and other BRPs needs to be specified in the agreement. Thus we propose that an article 6.X is added covering further obligations for eSett including at least the obligation to:</p> <ul style="list-style-type: none"> <li>* Secure that the invoicing matches the data from DSO.</li> <li>* Accessibility of the online tool, web services etc. shall be 07—20 without any delays.</li> <li>* Registration and execution of information and data shall able to do without any delays.</li> <li>* We want to have a description on eSett’s obligation regarding invoicing and the timeframes. What happens if they don’t keep to the timeline?</li> </ul>
Rights and obligations of eSett	Main agr.	6	In line with what has been stated above, we propose to add an article 6.9 specifying that before the settlement E-Sett should request any missing or corrupt data from DSOs.
Rights and obligations of eSett	Main agr.	6	We suggest a new paragraph specifying eSett obligations as including key performance indicators, availability and include options to manage all communications with eSett electronically.
Publishing of settlement information	Main agr.	6.5	Production, Consumption nor RE sales information by consumer or producer must not be published. It gives too detailed competitor information e.g. from industrial customers.
Publishing of settlement information	Main agr.	6.5	eSett should specify which information they intend to distribute. The phrase ”not limited to” should thus be replaced with a specified description. Any distribution must be anonymised unless not specifically agreed with the concerned BRP.
Changes in fees	Main agr.	7.1	<p>A: Changes in fees need to be informed and consulted upon before becoming effective. It is not acceptable that fees and fee rates can be amended with just one month’s notice. We regard 3 months as the minimum time to implement a change of fees.</p> <p>B: The TSOs stipulate national fees, which are to be paid by the BRP and invoiced by eSett. The fee rates are set forth in Appendix 1. The fees and rates may be amended with three (3) months’ notice period.</p>

# Comments to Main Agreement (6/8)

Concerning	Doc.	§	Comment
Invoicing and payments	Main agr.	8	It should be clearly stated in the Section what is the process for eSett Oy paying to BRP its receivables.
Settlement Account	Main agr.	8.2	The requirement that BRP shall establish an account in a bank approved by eSett, and provide eSett with full access to this account is regarded as too far reaching and one sided in favour of eSett. Paragraph should be change to a more balanced requirement.
Settlement Banks	Main agr.	8.2	In Article 8.2 it is stated that the settlement bank used by the BRP must be approved by eSett, and while that is understandable the accepted banks should in our view include all the banks that at any given time are accepted for settlement/clearing by involved TSOs and Nord Pool Spot, whom operates the Nordic-Baltic organized Day Ahead and Intra Day Markets and performs clearing and settlement in relation to those markets towards its' market participants (of which a subset are BRPs) and relevant TSOs.
Liability	Main agr.	10.3	A: eSett Oy's liability shall not be limited concerning its own telecommunication systems or its own components of the infrastructure. The limitation of liability shall only apply in case of third-party systems and components. B: In case of failing telecommunication systems the eSett should be responsible for all failures within the eSett systems occurring at the premises of eSett and preventing a correct imbalance settlement.
Liability	Main agr.	10.3	The paragraph put risks on the BRP which are out of control of the concerned BRP. The BRP should not be financially affected by third party errors or deficiencies when other BRPs, any DSO or TSO fail to submit correct Settlement Information to eSett.
Breach of agreement	Main agr.	11.1	What about if there are material breaches of the contract by eSett what are the liabilities by eSett? what about if eSett is not able to pay? Contract is too one-sided and eSett liabilities should be also added.
Breach of agreement	Main agr.	11.1	This clause shall be made mutual. Also eSett Oy shall at any and all time comply with the terms and conditions in the Agreement.

# Comments to Main Agreement (7/8)

Concerning	Doc.	§	Comment
Breach of agreement	Main agr.	11.1	We are strongly opposing that certain events are considered material breaches of the Agreement. Every failure or event shall be subject to an individual legal assessment including an evaluation of wheatear or not it should be considered a material breach. Furthermore, we find it very problematic that any deviations from the TSO specific obligations in the national agreement are considered as material breach according to the current formulation. The paragraphs in chapter 11 should be revised accordingly.
Assignment	Main agr.	13	Why is this clause not mutual?
Amendments and additions	Main agr.	14.1	Doesn't these amendments require to be provided by national authority. Amendments must not be allowed without official procedure e.g. like currently with Fingrid has with EV.
Amendments and additions	Main agr.	4.3	We suggest that the paragraph "...the BRP hereby accepts to be bound by the NBS Handbook valid at any given time" is extended with: <i>Any changes proposed to the Handbook should be consulted with BRPs. The consultation process should be finalised at least three (3) months before the proposed changes enter into force.</i>
Amendments and additions	Main agr.	11.1	A: Contract refers just to valid NBS handbook; the handbook should updated as current terms, meaning that changes to handbook are confirm by regulators after commenting round, and only after that changes are binding through this contract.  B: We request that eSett Oy adopts a procedure whereby BRPs are granted a fair right to be heard about the changes to the NBS Handbook before they are being implemented. We also consider that given the significance of the document for the legal rights and obligations of the BRPs, the document should also be approved by the relevant authorities.  C: The agreement as such is referring extensively to the NB handbook. This is a complicating factor and adds uncertainties since the handbook is not final. We request a clarification on the process for updating and amending the handbook and how this process will relate to the process of reviewing and updating for example the net codes ("mätföreskrifter").

# Comments to Main Agreement (8/8)

Concerning	Doc.	§	Comment
Amendments and additions	Main agr.	14.2	<p>According to the proposed agreement changes should be adapted within in one month notice. We question this short notice for changes and ask the regulators to propose a suitable time period for changes. We suggest 3 months to be a minimum time for implementing changes. Thus we propose the paragraph 14.2 is changed accordingly to:</p> <p><i>eSett may adopt amendments in the Appendices, by giving a notice at least three (3) months beforehand. It is acknowledged, that each TSO has the right to amend their national Balance Agreement (Appendix 4a-c) as specified in the respective Balance Agreement.</i></p>
Term and Termination	Main agr.	15.3	<p>As eSett Oy is a mandatory trading partner for BRPs, eSett Oy shall not have the right to terminate the Agreement except in situations of material breach by BRP.</p>
Breach of agreement	Main agr.	15.4	<p>A: The consequences of breach of the agreement are set in section 15.4. This clause gives eSett the right to terminate the agreement with immediate effect in case of material breach of the agreement. In order to avoid unnecessary terminations and allow the BRP a possibility to correct the breach, a notice requirement should be included; i.e. that eSett may only terminate the agreement after having given the BRP a notice of the deemed breach and a reasonable deadline to correct the breach in order to avoid termination.</p> <p>B: There must be short notification period e.g. three days during with the reason of material breach can be straighten out.</p> <p>C: We propose that an appropriate, short grace period is introduced for situations of material breach of contract.</p>
Term and Termination	Main agr.	15.4 15.6	<p>These provisions shall be made mutual.</p>
Dispute resolution	Main agr.	17.1	<p>Where we recommend that all arbitration proceedings are made official to the Market.</p>

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# Comments to Appendix 1 - Fees

Concerning	Doc.	Comment
Fee levels	Appendix 1	There are no fee quotes in Appendix 1. When will BRPs receive an indication on the fees?
Fees	Appendix 1	“Appendix 1 Fees” should contain information that it is possible to select different currencies (according to NBS_handbook_v2.0).

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## Comments to Appendix 2 – Collaterals (1/3)

Concerning	Doc.	§	Comment
Collateral requirement for Groups	Appendix 2		<p>A: If the same group of companies had several BRPs, would one collateral be sufficient, calculated based on total volumes?</p> <p>B: It is not clear if a Group Company has the possibility to have one settlement agreement, or to have a netted position as the base for the collateral. We propose that it is explicitly prescribes that one company with an Imbalance Settlement Agreement is allowed to serve as counterpart to eSett and take on the obligations for several BRPs. Thus it should be possible to for example to have one Balance Agreement with Fingrid and two with Svenska kraftnät and fulfil the obligations towards eSett with only one Imbalance Settlement Agreement. Also collateral should be calculated as one portfolio within the Imbalance Settlement Agreement.</p>
Forms of Collateral	Appendix 2	1.2	<p>A: It should be possible to have bank guarantee for whole collateral and then have the cash settlement account separately.</p> <p>B: Appendix 2 does not state any conditions for the choice between cash collateral or an on-demand bank guarantee. Will the BRP be able to choose freely between these?</p>
Collateral	Appendix 2	1.3	Why can the issuer of Bank Guarantee only be a Settlement Bank where the BRP holds its Settlement Account?
Pledged Cash Account Agreement	Appendix 2	1.3	Pledged Cash Account Agreement terms must be also distributed for commenting
Settlement Account	Appendix 2	1.3	A general note is that a requirement to post the collateral to the same bank account as the funds for the settlement could be somewhat confusing from a practical point of view and may need to be clarified further.

## Comments to Appendix 2 – Collaterals (2/3)

Concerning	Doc.	§	Comment
Collateral formula	Appendix 2	3.2	With current formula presented for collateral will more than double required collateral for companies like us, this is seen unreasonable.
Collateral formula	Appendix 2	3.2	Using absolute amounts makes the collateral requirement unfair when BRP is selling balance energy. And also adding the consumption volume rises the amount too large for big consumers like us. How does this take into consideration that one is selling and purchasing all of it energy in Nord Pool, not just net amount? If those are both added up it increases the collateral amount even more.
Alternatice collateral formulas	Appendix 2	3.2, 3.4 & 3.5	A: Section 3.2 describes the calculation of the collateral requirement under normal conditions while section 3.3 and 3.4 provides for differing calculation methods under certain circumstances. These methods are however not described in detail.  B: What is the formula? it cannot be one-sidedly and randomly decided and applied by eSett.
Alternatice collateral formulas	Appendix 2	3.5	The term "financial distress" in section 3.5 e) is unclear and should be specified.
Alternatice collateral formulas	Appendix 2	3.5	We question that it is necessary to include subjective Material Adverse Change in the appendix.
Alternatice collateral formulas	Appendix 2	3.6	We are of the opinion that section 3.6 should specify a notice period for using such specific calculation methods, that allows the BRP reasonable time to assess whether the calculation method and the result it leads to is in line with the requirement as to "adequate funds", of the
Collateral requirement	Appendix 2	4.2	A: eSett should notify BPR if collateral requirement is changed during the week.  B: eSett should be responsible to continuously inform the BRP on the collateral requirements.

## Comments to Appendix 2 – Collaterals (3/3)

Concerning	Doc.	§	Comment
Consequence of insufficient collateral	Appendix 2	5.2	The paragraph is too far reaching, it is not reasonable that for example an administrative failure lead to a material breach of the Agreement.
Release of collateral	Appendix 2	7.1	This term is unacceptable, according it eSett can hold our account receivables e.g. regulation and imbalance power sales forever. It is not acceptable that we cannot withdraw our cash (without permission from eSett) exceeding the required collateral. Taking into consideration that in most of the time we are on the selling side (regulation and balance energy) and the account surplus increases weekly. It must be possible for BRP to receive payment from its sold balance energy when the energy is sold not when eSett want to release money.

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# Comments to Appendix 3 – NBS Handbook

Concerning	Doc.	§	Comment
Invoicing and payments	Handbook	8.4	We don't think it is relevant to have two different timeframes for invoicing of debit and credit. They should be the same.

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