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| Modification proposal: | <b>Balancing and Settlement Code (BSC) P458: Introducing Data Controller and Processor Obligations in the BSC for Market-wide Half Hourly Settlement Testing (P458)</b> |                      |   |
| Decision:              | The Authority <sup>1</sup> directs that this modification be made <sup>2</sup>  |                      |   |
| Target audience:       | National Grid Electricity System Operator (NGESO), Parties to the BSC, the BSC Panel and other interested parties   |                      |   |
| Date of publication:   | 3 October 2023  | Implementation date: | Five working days after Authority decision date |

## Background

Currently, the UK General Data Protection Regulation (GDPR) and data protection provisions of the BSC are not designed to facilitate the transfer of consumer level personal information for BSC purposes. On 8 June 2023, the BSC Panel highlighted the requirement for a more flexible and comprehensive approach to data handling in the BSC for the purposes of Market-wide Half Hourly (MHHS) testing.

Data currently processed under the BSC is aggregated and is therefore not personal data. However, with the advent of MHHS testing, personal information sharing, specifically meter-level data, is now required. This therefore necessitates changes to the BSC in order to allow the data sharing required for MHHS testing.

The P458 modification proposes to bring the BSC in line with current data handling practices by introducing specific data processor and controller obligations that are similar to that found in the Retail Energy Code (REC).

<sup>1</sup> References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

<sup>2</sup> This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

## The modification proposal

On 13 July 2023, BSC modification proposal P458 (the proposal) was raised by the BSC Panel (the proposer) following the Panel's discussion and subsequent recommendation on 8 June 2023. The proposal was followed by a draft modification report, which was presented to the BSC Panel on 10 August 2023.

The proposal aims to update BSC Section C to include the additional obligations of data controller and data processor. BSC Section X-1 'General Glossary' will also be updated.

- The responsibilities of a data processor include maintaining records of personal data and processing activities, implementing security measures, and notifying the controller of any data breaches. The data processor is responsible for appropriately destroying this data when the arrangements expire, as outlined in BSC Section C 12.20.
- A data controller is responsible for ensuring that data processing is compliant with the GDPR, providing information to data subjects about their processing activities, and implementing measures to protect the rights of data subjects.

These obligations are crucial as they establish a framework for how personal data is to be handled, protected, and shared among the parties involved in MHHS testing.

The proposer considered that the proposal better facilitates Applicable BSC Objective (d)<sup>3</sup> and is neutral against all other objectives. The proposer considered that this change will provide clearer guidelines and better protections for the parties involved in the BSC and Elexon, therefore, making it easier for them to comply with their legal obligations related to data handling and sharing. The proposer notes that P458 would have a positive impact on Objective (d) as this change will promote efficiency in balancing and settlement arrangements by standardising data sharing, minimising legal risks, and streamlining data management, thereby reducing complexity and time requirements.

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<sup>3</sup> Applicable BSC Objective (d) is "promoting efficiency in the implementation and administration of the balancing and settlement arrangements".

## **BSC Panel<sup>4</sup> recommendation**

At the BSC Panel meeting on 10 August 2023, the BSC Panel unanimously considered that P458 would better facilitate BSC objective (d) and the Panel therefore recommended its approval.

## **Our decision**

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 11 August 2023. We have considered the responses to the industry consultation(s) which are attached to the FMR.<sup>5</sup> We have concluded that:

- implementation of the modification proposal will better facilitate the achievement of the applicable objectives of the BSC;<sup>6</sup> and
- directing that the modification be made is consistent with our principal objective and statutory duties.<sup>7</sup>

## **Reasons for our decision**

We consider this modification proposal will better facilitate BSC objective (d) and has a neutral impact on the other applicable objectives.

### ***(d) promoting efficiency in the implementation and administration of the balancing and settlement arrangements***

This modification proposal will better facilitate the achievement of Applicable BSC Objective (d) as the addition of data processor and data controller obligations will promote both clarity

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<sup>4</sup> The BSC Panel is established and constituted pursuant to and in accordance with Section B of the BSC and [Standard Special Licence Condition C3 of the Electricity Transmission Licence](#).

<sup>5</sup> BSC modification proposals, modification reports and representations can be viewed on the [Flexon website](#).

<sup>6</sup> As set out in [Standard Condition C3\(3\) of the Electricity Transmission Licence](#).

<sup>7</sup> The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989.

and compliance by providing a robust data handling and data sharing framework. The increased efficiency in the data sharing process will also negate the need for MHHS Programme to agree on separate data sharing agreements with all relevant participants. The process for secure data sharing is outlined in the 'Data Protection Impact Assessment (DPIA) for MHHS System Integration Testing, Qualification and Migration/Transition' which has been shared with System Integration Testing (SIT) participants.

The consultation received five responses, two of which did not agree with the Panel's initial unanimous recommendation that P458 be approved. These responses both included suggestions that could be made to the legal text to satisfy the concerns raised. Following the consultation responses, Elexon adopted several of the suggested changes into the legal text.

Where concerns were raised regarding the identity of the Data Controller and the responsibilities of the Data Processor within the context of MHHS testing, Elexon addressed these concerns with their general counsel. Elexon made clarifications directly to the respondent. Their response is reflected in amendments that were made to the legal text.

Further concerns shared by this respondent surrounded the need for comprehensive controls before sharing data, the inclusion of agreed time limits for reporting data breaches, the requirement for Data Processors to notify Data Controllers prior to the engagement of sub-processors, and the need to assist in carrying out necessary Transfer Impact Assessments. Elexon did not believe that all of these suggestions were either compliant with GDPR or would reflect the multilateral position of the BSC. Elexon did however accept a number of suggestions from this respondent to improve the legal text. These suggestions sought to mirror GDPR wording and avoid any risk of non-compliance e.g., clarification of when the Processor is made aware of any data breaches.

Elexon further consulted their general counsel and are reassured that the language used in the Code echoes obligations under GDPR. The legal text was further amended to improve clarity, to include 'without undue delay,' which reflects the language in Article 33 of GDPR, ensuring a swift response to data breaches.

Following the amendments to the legal text, we are satisfied that Elexon appropriately addressed the concerns of these respondents. It is important to note that Ofgem is not the regulator responsible for upholding information rights in the UK. The Information Commissioner's Office (ICO) is the information rights regulator. All BSC Parties, BSC Service Providers and BSC Service Users ultimately remain responsible for ensuring that they are compliant with UK GDPR and any other relevant data protection rules, irrespective of whether they are compliant with BSC provisions on personal data. The proposer believes this modification also facilitates the efficient execution of the MHHS testing which requires the transfer and storage of meter-level data. By updating the BSC to accommodate these needs, the modification ensures that this crucial testing can take place without data-related legal issues. We agree with the view of the proposer and BSC Panel that P458 will better facilitate BSC Objective (d).

**Decision notice**

In accordance with Standard Condition C3 of the Transmission Licence, the Authority hereby directs that modification proposal BSC P458: 'Introducing Data Controller and Processor Obligations in the BSC for Market-wide Half Hourly Settlement Testing' be made.

**Melissa Giordano****Deputy Director Retail**

Signed on behalf of the Authority and authorised for that purpose.