Draft Modification Report

P458 ‘Introducing Data Controller and Processor Obligations in the BSC for Market-wide Half Hourly Settlement Testing’

The purpose of this Modification is to address the need for personal information sharing in the Balancing and Settlement Code (BSC), specifically in the context of the Market-wide Half Hourly Settlement (MHHS) testing. The current BSC General Data Protection Regulation (GDPR) and data protection provisions were not designed to allow the sharing of personal information, which has now become necessary for the planned MHHS testing.

The BSC Panel initially recommends **approval** of P458

The BSC Panel **does not** believe P458 impacts the European Electricity Balancing Guideline (EBGL) Article 18 terms and conditions held within the BSC

This Modification is expected to impact:

- Any BSC Party that will be a part of MHHS Testing

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Phase

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

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About This Document

This is the P458 Draft Modification Report, which Elexon will present to the Panel at its meeting on 10 August 2023. It includes the responses received to the Report Phase Consultation on the Panel's initial recommendations. The Panel will consider all responses, and will agree a final recommendation to the Authority on whether the change should be made.

There are four parts to this document:

- This is the main document. It provides details of the solution, impacts, costs, benefits/drawbacks and proposed implementation approach.
- Attachment A contains the P458 Proposal Form.
- Attachment B contains the draft redlined changes to the BSC for P458.
- Attachment C contains the full responses received to the Panel's Report Phase Consultation.

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Not sure where to start?

We suggest reading the following sections:

- Have 5 minutes? Read section 1
- Have 15 minutes? Read sections 1, 7 and 8
- Have 30 minutes? Read all except section 6
- Have longer? Read all sections and the annexes and attachments.
- *You can find the definitions of the terms and acronyms used in this document in the BSC Glossary*[1]

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1 Summary

Why Change?

The upcoming MHHS systems integration testing requires the sharing of persona data. Consequently, more robust provisions in the BSC for sharing personal data, so as to enable all testing participants to share personal data within a consistent legal framework that complies with UK data protection laws, is required.

Currently, data processed under the BSC is not personal data as it is aggregated. Therefore, the BSC's GDPR and data protection provisions are high level and lack the comprehensive guidelines required for handling and sharing personal data, including meter-level data. Failure to address this gap could lead to legal complications, delays in testing, potential penalties, and an inefficient and potentially impracticable process requiring individual data sharing agreements between MHHS and its participants. Thus, a Modification to the BSC is essential to ensure a smooth MHHS testing process and maintain legal compliance.

Solution

This Modification suggests amending BSC Section C 'BSCCo and its Subsidiaries'[1] to add data processor and controller obligations to the BSC to provide a framework for handling, protecting, and sharing personal data, ensuring that the BSC aligns with current data handling practices. This includes maintaining and securing data records, reporting data breaches, and guaranteeing GDPR compliance, along with safeguarding data subjects' rights.

Elexon believes the Modification Proposal would better facilitate Applicable BSC Objective (d) as it would provide clarity and protection for BSC Parties and Elexon to comply with legal obligations and avoid the need for MHHS to agree data sharing agreements individually with all relevant MHHS Participants.

Impacts & Costs

We expect costs to implement this Modification to be low (<£1k) as a document only change. There will be no direct impact on any BSC Party. Under this Modification, Parties will be able to share data as part of MHHS testing.

Costs Estimates			
Organisation	Implementation (£)	On-going (£)	Impacts
Elexon	<1k	0	Low implementation costs associated with updating the impacted documents. No ongoing costs.
NGESO	0	0	NGESO are not expected to incur any implementation or on-going costs.
Industry	0	0	No additional costs to industry were highlighted in the Report Phase Consultation
Total	<1k	0	

[1] https://bscdocs.elexon.co.uk/bsc/bsc-section-c-bscco-and-its-subsidiaries

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Implementation

Elexon recommends (and the BSC Panel initially agreed) this Modification be implemented at an appropriate time to facilitate the testing of MHHS. We understand the MHHS testing is due to start in Quarter 4 2023. Implementation is therefore proposed **a special release, five Working Days after the final Authority decision is made (+5WDs).**

Panel's Initial Recommendation

The Panel initially recommended that P458 should be **approved**.

The Panel agreed unanimously that P458 better facilitates Applicable BSC Objective (d).

The Panel **do not** believe P458 impact or extends the EBGL Article 18 balancing terms and conditions.

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2 Why Change?

What is the issue?

Currently, data processed under the BSC is aggregated and is therefore not personal data. The GDPR and data protection provisions of the BSC were not designed to facilitate the transfer of consumer level personal information for BSC purposes.

However, with the advent of the MHHS testing, personal information sharing, specifically meter-level data, is now needed. This necessitates changes to the BSC in order to allow the required data sharing for MHHS testing. For completeness, the current modification is intended to cover the Systems Integration Testing, Qualification and Migration/Transition. Further changes to the BSC, which will be developed as part of the MHHS Code Workstream[2], will be needed in due course in order to implement the MHHS Target Operating Model.

BSC Section H 'General'[3] of the BSC outlines the data privacy, confidentiality, and sharing requirements among BSC Parties. However, as it stands, it does not provide comprehensive guidelines on the handling and sharing of personal data, particularly in line with the MHHS testing requirements.

Since this change will relate specifically to MHHS testing, and are therefore interim provisions, they will be included in paragraph 12 within BSC Section C 'BSCCo and its Subsidiaries'[4]. Ultimately, the data privacy provisions in Section H will need to be updated.

The UK GDPR imposes a legal obligation on controllers and processors to formalise their working relationship. In order to facilitate MHHS testing, which requires sharing of meter level personal data for BSC purposes, new data controller and data processor obligations need to be included in the BSC.

Without this Modification, BSC Parties and Elexon could face legal challenges related to GDPR and data protection, leading to delays in testing and potential penalties. Additionally, the absence of such a Modification could necessitate individual data sharing agreements between MHHS and its participants, an impractical and resource-intensive process.

Background

The need for a more flexible and comprehensive approach to data handling in the BSC has been highlighted by the upcoming MHHS testing, and was noted by the BSC Panel at their meeting on 8 June 2023[5] (see slide 24). The testing approach, rather than using only dummy data, will also use real data, which includes personal information.

This Modification would allow for this necessary data sharing and bring the BSC in line with modern data handling practices. The proposed Modification would involve introducing specific data processor and controller obligations that are similar to those found in the Retail Energy Code (REC). This change would provide clearer guidelines and better

What is a Systems Connection Point?

The UK data protection regime is comprised of the UK General Data Protection Regulation (GDPR) (The retained UK version of the EU GDPR) and the Data Protection Act 2018. The regime ensures the privacy and control of individuals over their personal data. In this context, the proposed Balancing and Settlement Code (BSC) Modification seeks to ensure data sharing under the BSC complies with UK GDPR, introducing responsibilities for data processors and controllers to safeguard individuals' data rights, maintain GDPR compliance, and uphold the trust of BSC parties.

[2] https://www.mhhsprogramme.co.uk/code/code-governance
[3] https://bscdocs.elexon.co.uk/bsc/bsc-section-h-general
[4] https://bscdocs.elexon.co.uk/bsc/bsc-section-c-bscco-and-its-subsidiaries
[5] https://www.elexon.co.uk/documents/groups/panel/2023-meetings-panel/339-june/bsc-panel-339-public-slides/

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protections for the parties involved in the BSC and Elexon, making it easier for them to comply with their legal obligations related to data handling and sharing.

Market-wide Half Hourly Settlement (MHHS)

MHHS is a reform initiative in the Great Britain (GB) electricity sector that aims to make the process of electricity Settlement more precise by leveraging the capabilities of smart meters. Unlike the current system for retail consumers, where energy usage is estimated based on consumer profiles, smart meters record exact energy usage or export every Half Hour, enabling a more accurate and timely Settlement process. This accuracy is expected to lead to the development of new products and services and deliver significant benefits to consumers, ranging from £1.6bn to £4.5bn between 2021 and 2045. The MHHS programme is overseen by the Office of Gas and Electricity Markets (Ofgem) and managed by Elexon.

Desired outcomes

1. **Data Sharing Accommodation**: The key goal is to revise the BSC to allow for the necessary sharing of personal data. This is primarily for the MHHS testing, which will involve transferring and storing meter-level data.
2. **Clearer Guidelines and Protections**: The Modification aims to introduce data processor and controller obligations. This will provide clearer guidelines, allowing BSC Parties and Elexon to comply with legal obligations surrounding data handling and sharing more effectively.
3. **Streamlined Processes**: By implementing these changes, the need for MHHS to agree on separate data sharing agreements with all relevant participants would be eliminated. This streamlining makes the process more practical and efficient, saving resources and reducing complexity.
4. **Legal Compliance**: With these changes, the BSC will be better aligned with GDPR and data protection requirements, thereby minimising the risk of legal issues, penalties, and reputational damage.

Overall, this Modification would enhance the BSC's effectiveness and compliance in the context of data sharing and handling, ensuring it can serve the needs of its parties efficiently and legally.

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3 Solution

Proposed solution

This Modification proposes the introduction of data processor and data controller obligations. These obligations are crucial as they would establish a framework for how personal data is to be handled, protected, and shared among the parties involved in MHHS testing. A Modification is necessary to ensure a multilateral framework for data protection compliance and effective operation.

BSC Section C will need to be updated to include the additions of data controller and data processor obligations.

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. 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.

Benefits

One of the main advantages of this Modification is the clarity and compliance it promotes. The addition of data processor and controller obligations offers a robust framework for handling and sharing data. This clarity allows participants in MHHS Systems Integration Testing to better undertake their responsibilities in relation to GDPR and data protection regulations.

In addition, the proposed Modification introduces a higher degree of efficiency to the data sharing process. Without this change, individual data sharing agreements would have to be agreed between MHHS and its participants, a process that would be not only time-consuming but also resource-intensive and likely impractical. By providing a uniform set of rules for data sharing, the Modification streamlines this process, saving both time and resources for all involved parties. In addition, this approach is consistent with that taken under other industry codes, such as the REC.

Risk mitigation is another benefit. Non-compliance with legal obligations can lead to penalties, legal challenges, and reputational damage. The Modification ensures that all parties are able to adhere to the law, thereby reducing these risks significantly.

From a broader perspective, this Modification also facilitates the smooth 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.

Importantly, the Modification also serves to protect consumers' personal data. By enforcing robust data handling practices, consumers can be reassured that their personal information is being managed and protected appropriately, in line with GDPR requirements.

Applicable BSC Objectives

The Proposer believes the Modification Proposal will better facilitate the achievement of Applicable BSC Objective (d):

What are the Applicable BSC Objectives?

(a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence

(b) The efficient, economic and co-ordinated operation of the National Electricity Transmission System

(c) Promoting effective competition in the generation and supply of electricity and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity

(d) Promoting efficiency in the implementation of the balancing and settlement arrangements

(e) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency [for the Co-operation of Energy Regulators]

(f) Implementing and administrating the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation

(g) Compliance with the Transmission Losses Principle

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Applicable BSC Objective (d)

This Modification 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.

Legal text

The redlined changes to the BSC can be found in Attachment B. Changes will be made to BSC Section C 'BSCCo and its Subsidiaries'[6] and BSC Section X-1 'General Glossary'[7].

Additionally, Elexon have taken this opportunity to apply some housekeeping to BSC Section X-1. The term "Monthly NETA Recovery Amount" has been removed as it was defined within a part of the BSC which no longer exists as it was removed as part of P394 'Removal of Unused BSC Provisions'[8]. The term is also not present anywhere else within the BSC.

Implementation approach

This Modification has been progressed in order to allow the testing of MHHS, which is due to begin towards the latter part of 2023. In order for impacted participants to prepare for this, this Modification should be implemented as soon as possible. Elexon recommended (and the BSC Panel initially agreed) that implementation should be facilitated in a special release, +5WD after the final Authority decision is made.

This approach is to ensure the solution from the Modification is implemented at the earliest opportunity.

[6] https://bscdocs.elexon.co.uk/bsc/bsc-section-c-bscco-and-its-subsidiaries
[7] https://bscdocs.elexon.co.uk/bsc/bsc-section-x-1-general-glossary
[8] https://www.elexon.co.uk/mod-proposal/p394-removal-of-unused-bsc-provisions/

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4 Impacts & Costs

We are seeking industry views on impact and costs as part of this consultation. However, for the roles that the Proposer and Elexon believe will be impacted, we have indicated whether we believe the costs are likely to be high, medium or low based on the following categories:

- High: >£1 million
- Medium: £100-1000k
- Low: <£100k

We invite you to validate and refine these estimates via the consultation.

Estimated costs of P453

Implementation cost estimates			
Organisation	Item	Implementation (£)	Comment
Elexon	Documents	<1k	Costs required to update the relevant BSC Sections and CSDs to facilitate the proposed solution.
Industry	Systems & processes	0	No expected costs for P458. No additional impacts to industry were highlighted in the Report Phase Consultation
	Total	<1k	

On-going cost estimates		
Organisation	Implementation (£)	Comment
Elexon	0k	No on-going costs expected.
Industry	0k	No on-going costs expected. No additional costs to industry were highlighted in the Report Phase Consultation
Total	0	

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P458 impacts

Impact on BSC Parties and Party Agents		
Party/Party Agent	Impact	Estimated cost
MHHS Programme	P458 is required to allow parties to share data to complete MHHS testing. Without this then individual multi-lateral data sharing agreements would be required to allow parties to test and qualify for MHHS, which increases the delivery risk for the Programme significantly.	H
All other Parties	No other impacts were highlighted in the Report Phase for other parties.	M/L

Impact on the NETSO	
Impact	Estimated cost
None	L

Impact on BSCCo		
Area of Elexon	Impact	Estimated cost
MHHS	Can now share Meter-level data and remain compliant with data protection provisions.	L

Impact on BSC Settlement Risks
No impacts on the BSC Settlement Risks are expected, nor were any identified in the Report Phase Consultation responses

Impact on BSC Systems and process	
BSC System/Process	Impact
N/A	No impacts BSC Systems or Processes.

Impact on BSC Agent/service provider contractual arrangements	
BSC Agent/service provider contract	Impact
N/A	No Modification impacts on BSC Agents/service providers expected.

Impact on Code	
Code Section	Impact
BSC Section C 'BSCCo and its Subsidiaries'	Section 12.19 MHHS Implementation: Additional Budget Requirements

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Impact on Code	
Code Section	Impact
BSC Section X-1 'General Glossary'	Section Data Protection Legislation added

Impact on MHHS
No impacts the code drafting or MHHS design expected. Rather it should be noted that this Modification is an interim solution for the eventual enduring MHHS code drafting.

Impact on EBGL Article 18 terms and conditions
The change proposed in this Modification will have no impacts on the EBGL arrangements. The draft legal text does not make any change to any BSC paragraphs that constitute EBGL Article 18 Terms and Condition as detailed in the Annex F-2 of the BSC, not does it extend them. No impacts on the EGBL arrangements were identified as part of the RPC responses.

Impact on Code Subsidiary Documents	
CSD	Impact
None	N/A

Impact on other Configurable Items	
Configurable Item	Impact
No impacts.	

Impact on Core Industry Documents and other documents	
Document	Impact
Ancillary Services Agreements	No impacts.
Connection and Use of System Code	
Data Transfer Services Agreement	
Distribution Code	
Grid Code	
Retail Energy Code	
Supplemental Agreements	
System Operator-Transmission Owner Code	
Transmission Licence	

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Impact on Core Industry Documents and other documents	
Document	Impact
Use of Interconnector Agreement	

Impact on a Significant Code Review (SCR) or other significant industry change projects
Ofgem confirmed on Wednesday 13 July 2023 that P453 is SCR exempt.

Impact of the Modification on the environment and consumer benefit areas:	
Consumer benefit area	Identified impact
1) Improved safety and reliability The Proposer believes that this Modification is neutral against this consumer benefit area.	Neutral
2) Lower bills than would otherwise be the case The Proposer believes that this Modification is neutral against this consumer benefit area.	Neutral
3) Reduced environmental damage The Proposer believes that this Modification is neutral against this consumer benefit area.	Neutral
4) Improved quality of service In relation to this Modification, the value achieved is a successful Metering Dispensation application to ensure compliance at the relevant metering site. Streamlining the Metering Dispensation arrangements makes the process of realising that value more efficiently. This in turn promotes a better quality of service to the end consumer.	**Positive**
5) Benefits for society as a whole The Proposer believes that this Modification is neutral against this consumer benefit area.	Neutral

What are the consumer benefit areas?

1) Will this change mean that the energy system can operate more safely and reliably now and in the future in a way that benefits end consumers?

2) Will this change lower consumers' bills by controlling, reducing, and optimising spend, for example on balancing and operating the system?

3) Will this proposal support:
i) new providers and technologies?
ii) a move to hydrogen or lower greenhouse gases?
iii) the journey toward statutory net-zero targets?
iv) decarbonisation?

4) Will this change improve the quality of service for some or all end consumers. Improved service quality ultimately benefits the end consumer due to interactions in the value chains across the industry being more seamless, efficient and effective.

5) Are there any other identified changes to society, such as jobs or the economy.

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5 Implementation

Recommended Implementation Date

The Panel recommends an Implementation Date for P458 of:

- 5 Working Days after Authority decision, as part of a special BSC Release

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6 Panel's Initial Discussions

P458 was presented to the BSC Panel at its meeting on Thursday 13 July 2023.

The Panel discussed the proposed change, primarily focusing on the obligations imposed onto Parties and the proposition to advance the Modification directly to the Report Phase without Workgroup discussions. Initial reservations around these imposed obligations were addressed, with reassurances that Parties are indeed familiar with these obligations, given their presence in existing bilateral agreements and the Panel were satisfied with the Modification's intent—to supersede the need for individual bilateral agreements. Consequently, the Panel recognised the efficiency and clarity the Modification could bring to the process. On this positive note, the Panel concluded that they were comfortable and supportive of the Modification proceeding directly to the Report Phase.

At the meeting, the Panel agreed unanimously that P458 better facilitates Applicable objective (d), and agreed with the proposed implementation approach.

What are the Self-Governance Criteria?

A Modification that, if implemented:
(a) does not involve any amendments whether in whole or in part to the EBGL Article 18 terms and conditions; except to the extent required to correct an error in the EBGL Article 18 terms and conditions or as a result of a factual change, including but not limited to:
(i) correcting minor typographical errors;
(ii) correcting formatting and consistency errors, such as paragraph numbering; or
(iii) updating out of date references to other documents or paragraphs;
(b) is unlikely to have a material effect on:
(i) existing or future electricity consumers; and
(ii) competition in the generation, distribution, or supply of electricity or any commercial activities connected with the generation, distribution, or supply of electricity; and
(iii) the operation of the national electricity transmission system; and
(iv) matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies; and
(v) the Code's governance procedures or modification procedures; and

(b) is unlikely to discriminate between different classes of Parties.

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7 Report Phase Consultation Responses

This section summarises the responses to the Panel's Report Phase Consultation on its initial recommendations. You can find the full responses in Attachment C.

Summary of P458 Report Phase Consultation Responses				
Question	Yes	No	Neutral/ No Comment	Other
Do you agree with the Panel's initial unanimous recommendation that P458 should be approved?	3	2	0	0
Do you agree with the Panel that the redlined changes to the BSC deliver the intent of P458?	2	3	0	0
Do you agree with the Panel's recommended Implementation Date?	4	1	0	0
Do you agree with the Panel's initial view that P458 does not impact the EBGL Article 18 terms and conditions related to balancing held within the BSC?	5	0	0	0
Do you have any comments on the impact of P458 on the EBGL objectives?	0	0	5	0
Do you agree with the Panel's initial view that P458 should not be treated as a Self-Governance Modification?	5	0	0	0
Do you have any further comments on P458?	0	5	0	0

There were 5 respondents to the consultation, of which the majority agreed. Additionally, two respondents agreed to the change overall but declined to give any further views via a formal consultation response.

Some respondents who initially said "no" to whether they agreed with the redlined changes, provided suggested changes to the legal text, of which several were adopted and reflected in the updated versions of the redlining.

A respondent commented on the fact that within the redlining, the definition of MHHS Test Data Subjects excluded non-domestic consumers. This was addressed and has since been amended within the redlining.

A respondent raised concerns about the clarity of roles and responsibilities under data protection legislation. Specifically, they questioned the identity of the data controller and the responsibilities of the data processor within the context of MHHS testing. They also pointed out 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.

In response, our general counsel addressed each concern. They clarified that BSCCo is the data controller for MHHS testing, as specified in 12.19A.3, and any other instances

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where a Party may be a data controller are unaffected. The audit rights for these data controllers also remain unaffected.

Our counsel further highlighted that the controls set out in the Code closely follow established industry practices and are designed to meet GDPR requirements. It was emphasised that for the purposes of this processing, the Party is considered a data processor and the Code should be viewed within that context.

Notably, the concern regarding timely notifications was addressed. The counsel reassured that the language used in the Code echoes obligations under GDPR. The text has been amended to include 'without undue delay,' which reflects the language in Article 33 of GDPR, ensuring a swift response to data breaches.

Our counsel also reassured the Party that the Code's provisions regarding the engagement of sub-processors balances the need for control and recognises the complexities of multilateral relationships.

Finally, the counsel affirmed that changes have been made to 12.19C.2(i) to include the necessity for comprehensive impact assessments, not just Data Protection Impact Assessments (DPIAs), addressing the Party's final concern.

Elexon recognise that changes to the legal text resulted from the seeking of input via the RPC. For the avoidance of doubt, we believe the Panel has the authority to make significant changes to the legal text at the Report stage because:

- The Code only requires that legal text is developed at the Report stage (there is no requirement to develop legal text at the Assessment phase, although the Code recognises that this might be part of that phase); and
- Consequently, the Code also allows the Panel to make changes to the legal text in response to the Report phase consultation (see Section F2.7.5):

The Panel shall consider the draft Modification Report submitted under paragraph 2.7.4 or paragraph 2.7.4A at the next following Panel meeting and, having taken due account of the representations contained in the summary referred to in paragraph 2.7.4(e) and 2.7.4A(c), the Panel shall determine…(if applicable) whether to approve the proposed text for modifying the Code in order to give effect to any Proposed Modification or Alternative Modification which it is recommending or to instruct the Modification Secretary to make such changes to the text as may be specified by the Panel.

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8 Recommendations

We invite the Panel to:

- **AGREE** that P458 **DOES** better facilitate Applicable BSC Objective (d);
- **AGREE** that P458 should not be treated as a Self-Governance Modification;
- **AGREE** that P458 **DOES NOT** impact the EBGL Article 18 terms and conditions held within the BSC;
- **AGREE** a recommendation that the P458 should be approved;
- **APPROVE** an Implementation Date of:
    - 5 Working Days after Authority Decision;
- **AGREE** the amendments to the legal text;
- **APPROVE** the legal text; and
- **APPROVE** the P458 Modification Report.

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