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DP234

‘Addition of GDPR Principles of Public Task and Legitimate Interests into the SEC’

Modification Report

Version 0.1

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Managed by



About this document

This document is a draft Modification Report. It currently sets out the background, issue, and progression timetable for this modification, along with any relevant discussions, views and conclusions. This document will be updated as this modification progresses.

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1. Summary

This proposal has been raised by Matt Roderick of n3rgy.

Currently, the Smart Energy Code (SEC) does not support the collection of Consumption Data from Smart Meters without the explicit consent of the Energy Consumer. This proposal seeks to add the General Data Protection Regulation (GDPR) principles of Public Task and Legitimate Interests into the SEC.

The Proposer believes this would help public authorities to fulfil their regulatory obligations to tackle fuel poverty, protect vulnerable households and uphold minimum standards of housing by identifying at-risk Energy Consumers. Without making this change, Energy Consumers standard of housing, health and economic security could be negatively impacted.

2. Issue

What are the current arrangements?

At present the SEC does not support Users obtaining Consumption Data without the explicit consent of the Energy Consumer. SEC Section I1.2 prevents Users from obtaining Consumption Data without Appropriate Permission. The current definition of Appropriate Permission in SEC Section A only allows for two scenarios as follows:

In respect of a Communication Service or Local Command Service to be provided to a User in respect of a Smart Metering System at a premises that will result in the User obtaining Consumption Data, either:

- (a) (Where that User is the Import Supplier, Export Supplier, Gas Supplier, Electricity Distributor or Gas Transporter for that Smart Metering System) that the User does not need consent to access that Consumption Data in accordance with its Energy Licence, or that the User has consent (whether explicit or implicit) in accordance with the requirements of its Energy Licence.*
- (b) (Where that User is not the Import Supplier, Export Supplier, Gas Supplier, Electricity Distributor or Gas Transporter for that Smart Metering System) that the Energy Consumer has given the User Unambiguous Consent to obtain that Consumption Data and such consent has not been withdrawn.*

SEC Section I1.2 states:

“Each User undertakes that it will not request, in respect of a Smart Metering System, a Communication Service or Local Command Service that will result in it obtaining Consumption Data, unless:

- (a) the User has the Appropriate Permission in respect of that Smart Metering System; and*
- (b) where that User is not the Import Supplier, Export Supplier, Gas Supplier, Electricity Distributor or Gas Transporter for that Smart Metering System the User has, at the point of obtaining Appropriate Permission and at such intervals as are reasonably*

determined appropriate by the User for the purposes of ensuring that the Energy Consumer is regularly updated of such matters, notified the Energy Consumer in writing of:

- (i) the time periods (by reference to length) in respect of which the User obtains or may obtain Consumption Data.*
- (ii) the purposes for which that Consumption Data is, or may be, used by the User.*
- (iii) the Energy Consumer's right to object or withdraw consent (as the case may be) to the User obtaining or using that Consumption Data, and the process by which the Energy Consumer may object or withdraw consent".*

What are the GDPR Principles of Public Task and Legitimate Interests?

Both the definitions of 'Public Task' and 'Legitimate Interests' and information about them have been taken from the GDPR from the Information Commissioner's Office (ICO) website which can be viewed [here](#).

Public Task

Article 6(1)(e) of the GDPR gives a lawful basis for processing where:

"Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller."

This can apply if you are:

- Carrying out a specific task in the public interest which is laid down by law; or
- Exercising official authority (for example, a public body's tasks, functions, duties or powers) which is laid down by law.

Legitimate Interests

Article 6(1)(f) of the GDPR gives a lawful basis for processing where:

"Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interest or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child."

Legitimate Interests is unlike other lawful bases for collecting information as it is not centred around a particular purpose and it is not processing that the individual has specifically agreed to. Legitimate Interests is more flexible and could in principle apply to any type of processing for any reasonable purpose. Because of this, the onus is placed on the party seeking to collect the data to balance their legitimate interests and the necessity of processing the personal data against the interests, rights and freedoms of the individual considering the particular circumstances.

What is the issue?

There is no facility within the SEC to support the GDPR principles of Public Task or Legitimate Interest. This means that public authorities, such as Registered Social Landlords and Local Authorities, find it difficult to obtain Consumption Data from those Energy Consumers which they have a duty to protect.

What is the impact this is having?

Without the introduction of the concepts of Public Task and Legitimate Interest into the SEC, public authorities (e.g. Registered Social Landlords, Local Authorities) are at risk of failing to fulfil their regulatory obligations to tackle fuel poverty, identify and protect vulnerable households as well as maintaining their property portfolio in compliance with the minimum standard on housing.

Impact on consumers

If the public authorities mentioned above fail to fulfil their regulatory obligations this can impact the consumers standard of housing, health and economic security.

3. Assessment of the proposal

Areas for assessment

The Smart Energy Code Administrator and Secretariat (SECAS) believes further clarity is needed regarding how the GDPR principles will be applied by SEC Parties. In particular, when a SEC Party is acting on behalf of a non-SEC Party to collect Consumption Data, how will the GDPR Principle which the SEC Party is operating under be verified to ensure its Appropriateness. SECAS will also investigate whether there could be any unintended consequences from this change.

Sub-Committee input

SECAS will engage with the Chairs from the Operations Group (OPSG), the Technical Architecture and Business Architecture Sub-Committee (TABASC), the Security Sub-Committee (SSC) and the Smart Metering Key Infrastructure Policy Management Authority (SMKI PMA) to confirm what input is required from these forums. SECAS believes the following Sub-Committees will need to provide the following input to this modification:

Sub-Committee input	
Sub-Committee	Input sought
OPSG	No input sought.
SMKI PMA	No input sought.
SSC	Will this impact the current security arrangements in any way?
TABASC	No input sought.

Appendix 1: Progression timetable

This modification will be presented to the Change Sub-Committee (CSC) on 21 February 2023 for initial comment. SECAS will discuss this modification with representatives from OFGEM, SECAS internal Data Privacy Team and the DCC to gain further feedback, before presenting this to the CSC.

Timetable	
Event/Action	Date
Draft Proposal raised	14 Feb 2023
Presented to CSC for initial comment	21 Feb 2023
<i>CSC converts Draft Proposal to Modification Proposal</i>	<i>21 Mar 2023</i>

Italics denote planned events that could be subject to change.

Appendix 2: Glossary

This table lists all the acronyms used in this document and the full term they are an abbreviation for.

Glossary	
Acronym	Full term
CSC	Change Sub-Committee
GDPR	General Data Protection Regulation
ICO	Information Commissioner's Office
OPSG	Operations Group
SEC	Smart Energy Code
SECAS	Smart Energy Code Administrator and Secretariat
SMKI PMA	Smart Metering Key Infrastructure Policy Management Authority
SSC	Security Sub-Committee
TABASC	Technical Architecture and Business Architecture Sub-Committee