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Modification Decision

SECMP0045:

Incorporation of the requirements of the General Data Protection Regulations

What stage is this document in the process?

01	Initial Assessment
02	Refinement Process
03	Modification Report
04	Decision

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Summary

This modification proposes to introduce the necessary changes required to the Smart Energy Code (SEC) to implement the requirements of the General Data Protection Regulation (GDPR).

Change Board Recommendation



- The Change Board believes **unanimously** that SECMP0045 does better facilitate the SEC Objectives.
- The Change Board believes that the alternative solution is better than the proposed solution and therefore believes that the alternative solution should be **approved**.

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About this Document

This is the Modification Decision document for SECMP0045. This document provides a summary of the Change Board discussions and conclusions and its recommendation to the Authority.

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1. Change Board discussions

The **unanimous** view of the Change Board is that SECMP0045 does facilitate General SEC Objectives (b) and (f).

The Change Board believes that the alternative solution is better than the proposed solution and therefore believes that the **alternative solution should be approved**.

Change Board discussions

The Change Board noted that respondents to the Modification Report Consultation (MRC) had shown a clear preference for the alternative solution. It asked the DCC representative if DCC's position on the proposed and alternative versions of the legal text had changed. The DCC representative noted that it still believes the proposed version is the more appropriate of the two sets of legal text, for the reasons given in the Final Modification Report (FMR), but acknowledged the support from Users for the alternative solution. In either case, it believes that further clarity will need to be provided under a further modification.

The Change Board noted the views from MRC respondents that while the modification should be approved, there is still a lot of work that needs to be completed. Notably, there were several views that further work was needed around Section I1.9. Respondents felt that the wording put forward was not sufficiently robust enough to meet the requirements of GDPR Article 28(2). The BEIS representative also believed that further work will be needed on this section. SECAS agreed with the comments, but noted that their inclusion into the legal text would be a material change and could not happen unless the industry was re-consulted.

One Change Board member noted that the Large Suppliers who had responded to the MRC were supportive of the modification in principle, but they had raised a lot of comments on the legal text. They were therefore of the mind that SECMP0045 should be rejected and an alternative raised to resolve these issues.

The DCC representative highlighted that there are limitations to what DCC, as a Data Processor, can achieve in isolation. DCC considers that further work is needed across the energy industry in order to reach a consensus amongst Data Controllers as to what constitutes Personal Data under the SEC. It believes that SEC Parties would also benefit from an industry-wide consensus on how other aspects of the GDPR should be implemented, particularly where DCC will be required to undertake actions at the request of Data Controllers. For example, what operational processes should be used when a consumer exercises their right to be forgotten?

Members asked how feasible it would be to raise and progress an Urgent Modification in time for the GDPR go-live date of 25th May 2018, in order to resolve all of the outstanding questions. The BEIS representative responded that discussions around GDPR have been on-going for a long time now across various industry forums, and conclusions on many

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points are still to be reached. They did not believe that agreement would be reached and an alternative modification subsequently concluded within two months, even if it was raised as Urgent.

SECAS highlighted that while there were a number of issues still to be addressed, the legal text proposed under SECMP0045 had been agreed by both SECAS's and DCC's lawyers as ensuring compliance with the GDPR. It suggested that SECMP0045 should be implemented now, with all other areas identified as needing further work being developed and progressed under a separate modification. The Change Board acknowledged this as the most pragmatic approach to the situation.

BEIS sought clarification from SECAS as to why SECCo had been included in new Section I1.12. SECAS notes that SECCo is a vehicle that was established to 'govern' the SEC. This, in turn, has been delegated to SECAS, which has its policies and procedures in place to comply with GDPR. However, SECAS believes that there is currently no clear confirmation that SECCo complies with, or should comply with, the GDPR. The reference to SECCo in Section I1.12 is intended to remedy this situation. SECAS is open to advice and feedback from the Authority on how best to address this matter.

Views against the General SEC Objectives

Objective (b)¹

The unanimous view of the Change Board is that SECMP0045 will better facilitate SEC Objective (b) as the incorporation of the requirements of the GDPR into the SEC will support the efficient discharge of the obligations imposed upon DCC by Condition 10 of the DCC Licence (Protection of Confidential Information).

Objective (f)²

The unanimous view of the Change Board is that SECMP0045 will better facilitate SEC Objective (f) as the GDPR is intended to protect Personal Data and incorporating its requirements into the SEC will contribute to the overall protection of Data under the Code.

For the avoidance of doubt, the Change Board believe that SECMP0045 is neutral against the other Objectives.

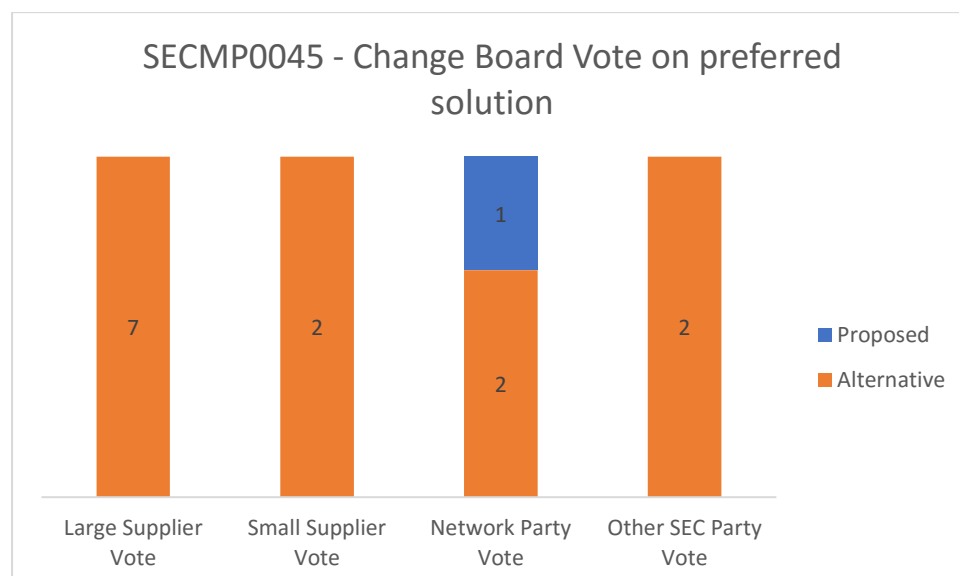
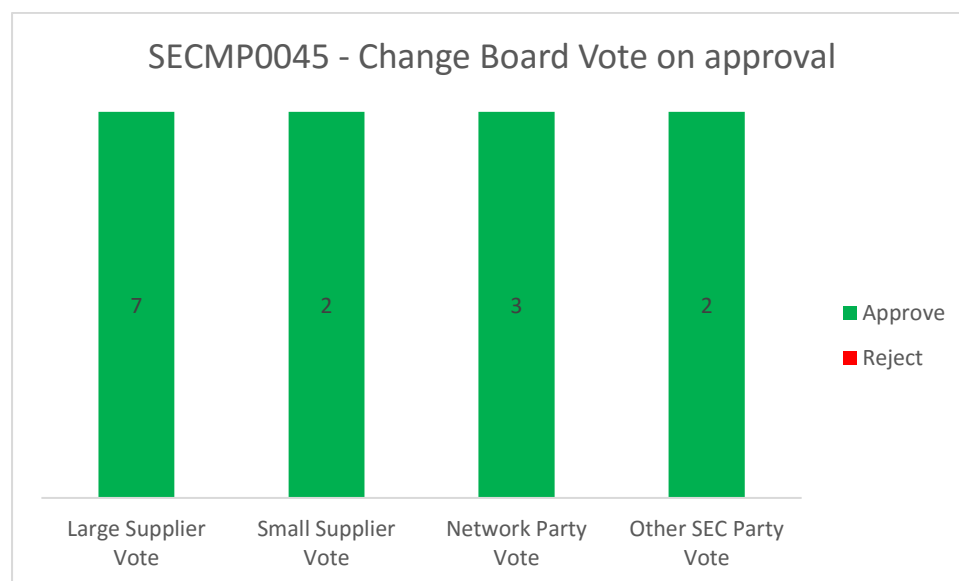
¹ Enable the DCC to comply at all times with the General Objectives of the DCC (as defined in the DCC Licence), and to efficiently discharge the other obligations imposed upon it by the DCC Licence

² Ensure the protection of Data and the security of Data and Systems in the operation of this Code

2. Change Board Vote

This section sets out the breakdown of the Change Board's vote.

The Change Board unanimously voted to approve SECMP0045. The Change Board also determined that the alternative solution will be better than the proposed solution.



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3. Change Board recommendation

The Change Board:

- **CONSIDERED** the FMR and MRC responses for SECMP0045;
- **AGREED** not to send the FMR back to the Panel for further clarification;
- **RECOMMENDED** the SECMP0045 Alternative Solution for implementation on 25th May 2018; and
- **PROVIDED** rationale as to why SECMP0045 better facilitates the General SEC Objectives.