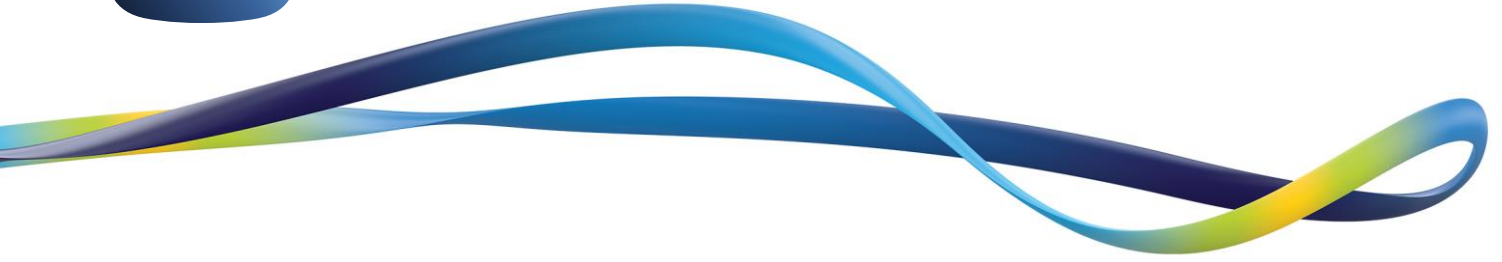




NETWORKS



CONSULTATION ON THE SMART METER DATA ACCESS CODE

ESB Networks DAC's Response on CRU's
Consultation on Proposed Decision on the Smart
Meter Data Access Code 365806 (CRU202387)

13 October 2023

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1 Background and Context

Smart meter data is a key enabler of the European Union's Clean Energy Package which aims to provide final customers with safe, secure, sustainable, competitive and affordable energy. The legislative package seeks to enhance consumer participation by empowering them to manage their energy consumption on an equal basis with other market participants. It also requires the future electricity system to make use of all sources of flexibility, particularly demand side solutions and energy storage, and through digitalisation, integrate new technologies and services.

Smart meter data is fundamental to meeting these objectives.

In its capacity as DSO and the manager of ESB's Distribution Asset Owner (DAO) and Transmission Asset Owner (TAO) functions, ESB Networks works to meet the needs of all Irish electricity customers, providing universal access to the electricity system, and delivering and managing the performance of the electricity distribution network.

The transition from an energy market which has traditionally operated on the basis of just 6 customer meter readings per year to one that has over 17,500 readings per year must be managed. It is right that this consumption data is protected by legislative and regulatory controls to ensure it is protected and used purely for legitimate purposes.

The interoperability requirements and rules for non-discriminatory and transparent procedures for access to electricity metering and consumption data by final customers and eligible parties set out in the Commission Implementing Regulation (EU) 2023/1162 of 6 June 2023 (the “**Implementing Regulation**”) must be incorporated into Irish law. The rules and procedures in the reference model must be applied by member states to enable interoperability and CRU has indicated in the Proposed Decision that it intends to use the governance model set out in the Code to do this.

CRU has indicated that the Code will not only implement the provisions set out under SI 37/2022 but is intended to enable the Implementing Regulation's conditions for providing access to metering and consumption data. ESB Networks recommends that there be a focus on delivering these requirements within the timelines specified in the Implementing Regulation.

ESB Networks raised a significant number of issues on the first edition of the proposed Code, issued with CRU/202265/a, in its response to that Consultation, dated 21st September 2022. Although some changes have been made to the Code, ESB Networks is concerned that there remain fundamental issues with the proposed governance model, and, in particular, the proposed allocation of roles and responsibilities to the Code Panel, the Code Compliance Officer, and the Security Sub-Committee, and the proposed interaction with the Data Protection Commission. Furthermore, ESB Networks recommends that consideration be given to more accurately aligning the proposed governance model to the roles prescribed in the Implementing Regulation. In addition, it is essential that the governance model reflects the specific structure of the electricity market in Ireland and ensures efficient and effective operation and regulatory oversight of access to smart meter data under the Code.

2 Executive Summary

ESB Networks DAC¹, in its capacity as the licensed distribution system operator for Ireland (“DSO”) welcomes the opportunity to respond to the CRU Consultation and Proposed Decision (Reference CRU/202837) on the Draft Smart Meter Data Access Code (the “Code”).

ESB Networks submits that amendments to the Code are necessary to ensure that it meets its objectives in an efficient, timely, non-discriminatory, cost effective and transparent manner and in a manner which reflects the underlying legislative requirements in Ireland. ESB Networks’ primary concerns are that:

- (1) the scope of the Code needs adjustment to better reflect the legislative framework in Ireland,
- (2) the relationship with other regulatory regimes, in particular GDPR², must be appropriately managed;
- (3) the governance model requires to be fit for purpose in the context of the particular structure of the electricity market in Ireland;
- (4) the requirement for legislative and/or licence changes needs to be more fully analysed and addressed; and
- (5) there is a pressing need for the Code to be adopted and operational quickly in order to meet the needs of customers and the industry in general.

ESB Networks’ submissions, which are considered in more detail in the responses to CRU’s questions in the following sections, are summarised as follows:

1. Scope of the Code as required under SI 37/2022 and the Implementing Regulation:

- The interoperability requirements and rules for non-discriminatory and transparent procedures for access to electricity metering and consumption data by final customers and eligible parties set out in the Commission Implementing Regulation (EU) 2023/1162 of 6 June 2023 (the “**Implementing Regulation**”) must be incorporated into Irish law and reflected in the Code. ESB Networks is of the view that the Code has not been sufficiently developed to meet the requirements of SI 37/2022³ and the Implementing Regulation, and that the Code will need to be implemented alongside legislative amendments and/or licence updates in order to properly implement the Implementing Regulation. In light of these requirements, ESB Networks is of the view that a comprehensive proposal is required that pulls together the various strands to create an Implementing Regulation compliant Code and underlying legislative/licence framework to support its operation.
- ESB Networks is of the view that this can be achieved with a simplified approach to the Code, supported by amendments to the underlying legislative/licence framework.

2. Code responsibilities with respect to GDPR:

- There is significant overlap between the provisions of the Code on the one hand and the GDPR and Data Protection Act 2018 on the other. Schedule 5 (Data Privacy) of the Code re-states a number of the obligations placed on controllers and processors under the GDPR but in many cases these are incomplete or have not been reflected correctly. This will lead to uncertainty as to how those provisions are to be interpreted, applied, and regulated. Clarity on how the provisions of the Code are to be enacted and implemented with respect to the GDPR is

¹ Referred to in this document as ESB Networks

² Regulation (EU) 2016/679 (General Data Protection Regulation).

³ European Union (Internal Market in Electricity) (No. 2) Regulations 2022.

required. ESB Networks' view is that a simple requirement to comply with applicable data protection law coupled with provisions focussed on the sharing and transferring of data under the Code would be sufficient.

- ESB Networks understands that CRU has sought under its proposed model to delegate much of its decision-making and oversight functions under the Code relating to personal smart meter data in an effort to ensure that it is not considered to be the controller of this personal data within the definition of controller under Article 4(7) of the GDPR. ESB Networks is of the view that this is an unfounded concern, and that even if CRU retained its decision-making and oversight functions with respect to all smart meter data, this would not result in its being considered a data controller of any personal data contained in the smart meter data.
- ESB Networks also notes that if the Code Panel were in theory to be regarded as a controller of personal data contained within smart meter data (which ESB Networks does not consider that it would), the Code Panel does not have a separate legal personality, which would likely mean in these circumstances that the individual members of the Code Panel would be regarded as joint controllers of personal data. Given the responsibilities of a controller under the GDPR, it is questionable whether members of the Code Panel would have the necessary skills or resources to take on this role.

3. Governance and Delegation of CRU decision-making functions:

- Efficient, agile and proportionate governance arrangements should be put in place which are appropriate for the size and particular structure of the Irish electricity market, and which are reflective of existing, familiar and proven governance arrangements. ESB Networks considers that there are fundamental issues with the proposed governance model, and in particular the allocation of roles and decision-making authority across the Code Panel, the Code Compliance Officer, the Security Sub-Committee, and the proposed interaction with the Data Protection Commission.
- ESB Networks is of the view that the legal authority of CRU to delegate its functions, in particularly decision-making authority to third parties, is limited, particularly in view of the statutory functions assigned to CRU under the legislative framework. In ESB Networks' view, the Code purports to delegate too much decision-making power to the Code Panel and that, in so doing, the CRU may exceed its legal authority to so delegate, leading in turn to a potential challenge to the overall governance structure. This issue is further complicated by the proposed ability of the Code Panel to further delegate its decision-making powers to Sub-Committees.
- The delegation of significant decision-making power to the Code Panel may also be problematic in circumstances where the Code is used to implement the Implementing Regulation and the CRU has statutory responsibility for facilitating interoperability (as per Regulation 7 of SI 37/2022).
- ESB Networks is of the view that the proposed composition of the Code Panel is not practical. The number and diversity of panel members, those members' other commitments, the potential for conflicts of interest and the extensive list of powers proposed to be granted to the Panel will inevitably lead to delays in, inconsistencies in, or even a complete failure of, decision-making. This in turn will lead to failures in the overall management and operation of the Code.
- Finally, the fact that the Code Panel does not have a separate legal personality raises issues of accountability.
- ESB Networks strongly believes that the role of the Code Panel should be advisory only. This will allow the bodies represented on the panel to have a voice in the operation of the Code, without having to manage potential conflicts. The decision-making roles allocated under the Code to the Code Panel should in ESB Networks' view either be allocated to the Code Manager

or the DSP, in line with the allocation of roles envisaged under the Implementing Regulation, or, in relation to those functions which cannot lawfully be delegated, retained by the CRU.

- ESB Networks further believes that the role of the Code Compliance Officer (CCO) should also be advisory only. In relation to entry and access assurance, it is envisaged that the CCO would make a recommendation to the Code Manager, but that the final decision would rest with the latter. Apart from being consistent with the decision-making role of the Code Manager this structure supports the position of the Code Manager as data controller. Furthermore, in line with ESB Networks' views on the interaction between the Code and GDPR, ESB Networks believes that any role for the CCO in relation to compliance with data protection law (including in relation to data breaches and DPIAs etc.) should be advisory only, in order to ensure that the CCO is not seen as superseding the role of other Parties to the Code, as data controllers.

4. Legislative and/or Licence Amendments:

- ESB Networks is of the view that legislative changes and/or licence amendments will need to be in place before the Code is operational.
- It is self-evident that for any processing of personal data a lawful basis under Article 6 of the GDPR will be required. In ESB Networks' view, legislative amendments and/or licence modifications will first be required to allow ESB Networks (as DSO) to undertake processing relating to the Code Manager role (i.e. the ringfenced MRSO function of the DSO only) and the data system provider ("**DSP**") role. This would provide a legislative basis for reliance on Articles 6(1)(c) (processing which is necessary for compliance with a legal obligation to which the controller is subject) and/ or 6(1)(e) (processing which is necessary for the performance of a task carried out in the public interest or in exercise of official authority vested in the controller) of the GDPR. ESB Networks is of the view that although the Implementing Regulation could provide a legislative basis to rely on Articles 6(1)(c) and/or 6(1)(e), ESB Networks would first need to be formally designated as having the relevant role(s) under Irish law in order to be able to rely on the Implementing Regulation for this purpose. This would require a legislative change, most likely to SI 37/2022.
- ESB Networks also agrees with CRU that a review of SI 37/2022 is necessary in light of the Implementing Regulation's entry into force, *i.e.* to align the provisions of SI 37/2022 with those of the Implementing Regulation. SI 37/2022 should be amended to include the designations of roles set out under the Implementing Regulation to the relevant entities and to align the definition of "eligible parties" under SI 37/2022 (which differs from the equivalent definition under the Implementing Regulation). ESB Networks is of the view that amendments required to implement the Implementing Regulation will need to be clarified ahead of the Code being finalised.
- ESB Networks is also of the view that in order to legitimise the use cases for smart meter data to allow the MRSO to process personal data as Code Manager during the interim period and afterwards (or which would allow the DSP to share smart meter data), legislative changes and/or licence amendments will be required. These amendments will be required to provide a legislative basis for the MRSO, and the DSP, to process the data on the basis of Article 6(1)(c) (compliance with a legal obligation) and Article 6(1)(e) (performance of a task carried out in the public interest) of the GDPR. These legislative changes and/or licence amendments would need to be in place before the Code is operational.

5. Mobilisation to address the provisions of the Implementing Regulation by end 2024:

- There is a pressing need to leverage the consumption data from smart meters to educate electricity consumers on how changes in their behaviour can lead to cost benefits and support the ongoing electricity security of supply crisis. In addition, the Implementing Regulation is required to be operational by, at latest, the end of 2024.

- ESB Networks is of the view that these timescales can be achieved only with a simplified approach to the Code, supported by amendments to the underlying legislative/licence framework.
- ESB Networks recommends, that as a priority, resources should be focused on delivering the specific requirements of the Implementing Regulation through four key actions, as follows:
 1. A designation or direction from CRU which confirms ESB Networks DAC as the entity responsible for the new roles under the Implementing Regulation as proposed in section 2.4.4 of the Proposed Decision.
 2. Once designated, ESB Networks to progress IT system and organisational readiness to enable the requirements of the Implementing Regulation.
 3. The establishment of a “Code Development Working Group” to fast-track development of a code focused purely on enabling the requirements of the Implementing Regulation.
 4. Assessment of the legislative and regulatory framework to support the lawful processing of smart meter data for purposes including MCR1208, grid development, network operation and system flexibility services.

In conclusion, ESB Networks believes that clear rules and governance processes are necessary to enable access to smart meter data and that a structured and focussed approach is now necessary to provide clarity to industry stakeholders.

It is imperative that the momentum of the National Smart Metering Programme is maintained and that the benefits of smart meter data are realised in order to enable the delivery of national and EU policy on climate action and to provide tangible benefits for energy consumers.

ESB Networks believes that the proposed approach outlined in this response would provide certainty for industry participants whilst also providing confidence to end consumers that the benefits of Smart Metering can be realised whilst ensuring data protection is maintained.

ESB Networks has included in the appendix to this submission a framework for a Smart Meter Data Access Code which it believes meets the foregoing objectives and reflects the requirements of SI 37/2022 and the Implementing Regulation.

3 Introduction

ESB Networks welcomes the opportunity to respond to the Commission for Regulations of Utilities' (CRU) consultation on the 'Draft Version of the Smart Meter Data Access Code'.

ESB Networks' primary function is the provision of universal, affordable access to electricity, providing capacity and reliability, via the electricity distribution system, to support social and economic development across Ireland.

ESB Networks is committed to protecting the rights and freedoms of individuals in the electricity retail market and is committed to keeping stakeholders informed as the National Smart Metering Programme (NSMP) delivers on its CRU mandate. ESB Networks, therefore, fulfils a number of roles within the industry and also within the scope of the Code. As such, this response is structured to emphasise the impacts on specific roles of ESB Networks.

ESB Networks has responded to each of the consultation questions and has included wider concepts to illustrate some areas where the Code may impact existing operations and compliance activities. This submission is made on behalf of ESB Networks DAC in its capacity as the distribution system operator (DSO) for Ireland.

ESB Networks continues to engage extensively with the CRU and retail market participants (MPs) with a view to agreeing the steps and actions necessary to implement the Smart Meter Data Access Code (Code) in the electricity retail market.

ESB Networks appreciates the opportunity to respond to CRU's consultation and remains available to engage further with CRU regarding any elements of our consultation response at any time.

3.1 Role of ESB Networks

In its capacity as DSO and the manager of ESB's Distribution Asset Owner (DAO) and Transmission Asset Owner (TAO) functions, ESB Networks works to meet the needs of all Irish electricity customers, providing universal access to the electricity system, and delivering and managing the performance of a system of almost 151,000 km of overhead networks; 27,000 km of underground cables; 640 high voltage substations; significant amounts of connected generation, including 5.38 GW of renewable generation connected to the Distribution and Transmission systems; 2.5 million demand customers; and now several thousand "active customers" – including but not limited to domestic premises with microgeneration (a rapidly increasing number), demand side management, houses with battery storage, etc.

ESB Networks is also a key party to the delivery of CRU's National Smart Metering Programme (NSMP). To date, ESB Networks has installed over 1.4 million smart meters in homes and small business throughout Ireland.

ESB Networks also delivers a range of services to the Irish retail electricity market serving over 2.5 million customers. It manages relationships with market participants and provides data in a timely and accurate fashion on a daily basis. It supports the wider market through the ringfenced Meter Registration System Operator (MRSO) and Retail Market Design Service (RMDS) and supports the wholesale Single Electricity Market through the provision of aggregated meter data.

ESB Networks' role in Ireland's move to net zero is pivotal and its role in the National Smart Metering Programme will enable and support visibility of consumption and power across the electricity network. The Smart Meter Data Access Code is a key enabler to support new services and insights to be created by existing and new stakeholders/market participants on the electricity system.

Smart meters play a key role within the Clean Energy Package, particularly around the modernisation of the electricity market design and its focus on distribution network digitalisation to support the development of demand side services. As such, new obligations are set out for the DSO in the Clean Energy Package relating to:

- its role to enable more efficient wholesale market operation, as a result of distribution connected customers' active participation in wholesale markets and ancillary services;
- its role with respect to the integration of renewables; and
- its role with respect to enabling the activities of individual customers, and communities, in their interaction with the electricity system.

These obligations cannot be met without access to high quality, location and time-specific data, in near real time as well as ex-post, which is not available to the DSO today.

Directive (EU) 2019/944 on common rules for the internal market for electricity sets out in Article 23 requirements for data management. Specifically, Article 23(2) provides that *“Member States shall organise the management of data in order to ensure efficient and secure data access and exchange, as well as data protection and security.”* ESB Networks looks forward to working with CRU and its advisors to meet this requirement through the development and implementation of the Code.

4 ESB Networks' response to consultation questions

There are still a number of open considerations relating to the Code and accompanying Proposed Decision paper; accordingly ESB Networks may have additional comments on some aspects of the Code when the full details are available.

4.1 Response to Question 1

Question 1: The CRU would welcome any views on the proposal on access to smart meter data ahead of the Code going live.

Under the current legislative and licence provisions, ESB Networks is authorised to process meter data, including smart meter data, for a very limited set of purposes. ESB Networks is of the view that those purposes will need to be widened in advance of the adoption of the Code, for example to allow the sharing of smart meter data with third parties otherwise than for settlement and billing purposes. This will require legislative change in order to establish a lawful basis for that processing under Article 6 of the GDPR.

ESB Networks is also of the view that in order to legitimise the use cases for smart meter data which would allow the MRSO to process personal data as Code Manager during the interim period and afterwards (or which would allow the DSP to share smart meter data with third parties), legislative changes and/or licence amendments will be required. These amendments would provide a legislative basis for the Code Manager, and the DSP, to process the data on the basis of Article 6(1)(c) (compliance with a legal obligation) and/or Article 6(1)(e) (performance of a task carried out in the public interest) of the GDPR. These legislative changes and/or licence amendments will need to be in place before the Code is operational.

ESB Networks is of the view that although the Implementing Regulation could also provide a basis for reliance on Articles 6(1)(c) and/or 6(1)(e), ESB Networks would first need to be formally designated as having the relevant role(s) under Irish law in order to be able to rely on the Implementing Regulation for this purpose. This would require a legislative change, most likely to SI 37/2022.

4.2 Response to Question 2 Schedule 6 (Assessments) is also relevant to this function

Question 2: The CRU would welcome any views on the proposed entry, annual and ad-hoc assessments placed on all Code entities. [Code Compliance Officer]

CRU proposes that the Code Compliance Officer will carry out all privacy and security assessments on entry to the Code, on an annual basis, and on an ad hoc basis. It proposes that the Code Compliance Officer would define the requirements of the assessments, which the Security Sub-Committee would then approve. It notes the assessment procedures shall be 'further defined' in schedules 2, 4, and 5 of the Code. Schedule 6 (Assessments) is also relevant to this function.

ESB Networks view is that while an independent Code Compliance Officer could carry out assessments regarding, in particular, entry to the Code, these assessments should be advisory only, and that it is the Code Manager that should ultimately make the decision as to whether to admit an Applicant as a party to the Code, or to grant a user access to smart meter data. This would better align with the Code Manager's status as a data controller, and should, in ESB Networks' view, be clarified further in the Code in Schedule 2 (Access Arrangements) and Schedule 3 (Accession).

In the Proposed Decision, CRU indicates that access to smart meter data must be seen to be as permissive as possible. ESB Networks is of the view that the Code should set out the criteria that should be applied to determine the entitlement to access smart meter data, and that the Code Manager should then assess any application against these criteria. Whilst it may be assisted in this regard by an assessment report from the Code Compliance Officer and an Assurance Status opinion from the Security Sub-Committee, ESB Networks is of the view that decisions regarding entry to the Code should ultimately be made by the Code Manager (as data controller), that being a role undertaken by the ringfenced MRSO within the DSP.

Further, it is ESB Networks' view that the Code Panel should be an advisory body only, and that any decisions in relation to admission of Applicants as New Parties to the Code and/or complex requests for access to smart meter data should be made by the Code Manager (in consultation with others) rather than by the Code Panel, particularly given (i) the fact that the Code Panel will not have a separate legal personality and (ii) the potential for conflicts of interest arising for Code Panel members.

4.3 Response to Question 3

Question 3: CRU welcomes views on the minded to model for the governance and enforcement of the Smart Meter Data Access Code.

ESB Networks favours a governance model that:

- reflects the legal requirements as set out in S.I. No. 37 of 2022 and the Implementing Regulation;
- allocates clear responsibilities and accountability to market participants;
- can be implemented quickly, so that the benefits of smart meter data can be realised swiftly;
- will facilitate agility and flexibility to meet security of supply concerns;
- is operationally economic and efficient; and
- leverages familiar proven governance arrangements.

In this context, ESB Networks has concerns with the proposed governance arrangements as explained further below:

Governance and Delegation of Powers

- Regulation 6 of SI 37/2022 is generally silent as to how the Code is to operate in practice and only requires CRU to develop and publish a Code in consultation with the DPC, subject to regulations 6(3), 6(4), and 6(5). While ESB Networks is of the view that regulation 6 of SI 37/2022 could be interpreted to provide CRU with an implied authorisation to delegate to other parties as part of its function under this regulation, ESB Networks does not believe that CRU has been provided with an implied authorisation to delegate functions in all instances. ESB Networks is of the view that the proposed Code delegates too much decision-making power to the Code Panel. This could lead to a challenge that the CRU has exceeded its authority in delegating its (statutory) functions to third parties.
- The delegation of significant decision-making power to the Code Panel may also be problematic in circumstances where the Code is used to implement the Implementing Regulation and the CRU has statutory responsibility for facilitating interoperability (as per Regulation 7 of SI 37/2022).
- These issues relating to the delegation of powers to the Code Panel are further complicated by the proposed ability of the Code Panel to further sub-delegate to committees or other persons.
- ESB Networks is of the view that the proposed composition of the Code Panel is not practical. Each Panel Member is likely to have other full-time commitments to the entity they are representing, and some will have private business interests. In the Proposed Decision, CRU has also expressed the view that it wishes to further expand the membership of the Code Panel. ESB Networks is of the view that this would further exacerbate the governance issues and conflicts of interest issues. Panel Members who represent electricity suppliers – in particular - are likely to have business interests as a source of conflict. Sufficient safeguards have not been put in place in the Code to avoid conflicts of interests arising on the Code Panel. Two members of the proposed Code Panel would be electricity suppliers under the Code. The Code, at section 8.11, states that a person appointed as Panel Member, when acting in that capacity, shall "act independently" and "without undue regard to the interests, of any Related Person". However, this is not sufficient to prevent a conflict of interest arising. These Panel Members will likely be employed by electricity suppliers and will have an interest in any decisions which affect these parties in particular. Although Schedule 7 also includes provision for a Panel Member to abstain from votes of the Code Panel in circumstances where they are conflicted, this is not a sufficient safeguard to prevent conflicts of interest either; in fact, it

creates the anomalous scenario where a Party is effectively debarred in participating in an issue that directly affects it.

- ESB Networks is of the view that the Code Panel is not an appropriate body to have substantial decision making-authority. The number and diversity of panel members, those members' other commitments, conflicts of interest and the extensive list of powers proposed to be granted to the Panel will inevitably lead to delays in, inconsistencies in, or even a complete failure of, decision-making, and this in turn will lead to failures in the overall management and operation of the Code.
- ESB Networks also notes that the Code Manager is obliged to indemnify the Code Panel Members, alternates, members of sub-committees and working groups, and even their employers, against liabilities arising from the exercise of the Code Panel's powers, even where those powers are exercised negligently. Given that, as proposed, the Code Panel has powers to make decisions which are binding on the Code Manager, it is entirely inappropriate in ESB Networks' view, that the Code Manager should be required to give such an indemnity.
- In summary, the constitution of a Code Panel with extensive decision-making powers and no individual or collective responsibility is extremely problematic. ESB Networks believes that there is a place in the Code for a Code Panel, as a forum for market participants and others (including customers) to input into the operation of the Code. However, such a Code Panel should be advisory only, and the decision-making function should either be allocated to the appropriate bodies, such as the Code Manager and the DSP, in line with the allocation of roles under the Implementing Regulation or, in relation to those functions which cannot lawfully be delegated, retained by the CRU.

The Interaction between the Code and the GDPR

- ESB Networks notes that CRU has sought under the proposed model to delegate much of its decision-making and oversight functions under the Code relating to personal smart meter data in an effort to ensure that it is not considered to be the controller of this personal data within the definition of controller under Article 4(7) of the GDPR. ESB Networks is of the view that this is an unfounded concern and that even if CRU retained its decision-making and oversight functions with respect to all smart meter data, this would not result in its being considered a controller of any personal data contained in the smart meter data.
- Schedule 5 (Data Privacy) of the Code re-states a number of the obligations placed on controllers and processors under the GDPR but in many cases these are incomplete or have not been reflected correctly. This will lead to confusion with Parties and Other Users bound by the Code as to the extent of their data protection obligations. In ESB Network's view, much of this Schedule is not necessary and could be reduced to a requirement to comply with applicable obligations under data protection law.
- ESB Networks believes that the Code should not be concerned with regulating the processing of personal data, which is the purview of the GDPR and the Data Protection Commission. Rather, the Code should take the simpler approach of requiring Parties to be compliant with data protection law and focus on the obligations around the sharing and transferring of smart meter data within that context.
- ESB Networks would also like to bring CRU's attention to equivalent codes of practice that have been issued by other bodies, such as the Department of Public Expenditure, NDP Delivery and Reform and the Workplace Relations Commission. The issuing and supervision of such codes by these bodies does not result in a controllership role. As noted in the Proposed Decision, a number of respondents suggested that the Code be approved by the Data Protection Commission as a "Code of Conduct". Whilst we do not think that this approach is necessary, we note that under Article 40(2) of the GDPR Codes of Conduct can address a number of matters that are addressed in the draft (e.g., fair processing, transparency obligations, security of processing etc.). There is nothing in the GDPR that implies that the

creators of a Code of Conduct would be regarded as controllers of personal data processed by controllers who adhere to the Code of Conduct.

- ESB Networks would point out also that constituting the Code Panel in an advisory role would not only mitigate the difficulties in the decision making processes as described above, but also would avoid the risk of the Code Panel issuing instructions to the Code Manager or the DSP which could conflict with their duties as controllers under GDPR.

4.4 Response to Question 4

Question 4: The CRU would welcome any views from industry and interested parties on the most suitable governance framework to implement the rules and procedures of the implementing regulation.

Implementing Regulation

- As noted above, the interoperability requirements and rules for non-discriminatory and transparent procedures for access to electricity metering and consumption data by final customers and eligible parties set out in the Implementing Regulation must be incorporated into Irish law and reflected in the Code. The rules and procedures in the reference model must be applied by member states to enable interoperability and CRU has indicated in the Proposed Decision that it intends to use the governance model set out in the Code to do this. ESB Networks is of the view that the Code has not been sufficiently developed to adequately reflect the requirements of SI 37/2022 and the Implementing Regulation. The Code will need to be updated to properly implement the Implementing Regulation, alongside legislative amendments and/or licence updates which designate the roles set out under the Implementing Regulation. In light of these requirements, ESB Networks is of the view that a comprehensive proposal is required from CRU that pulls together the various strands to create an Implementing Regulation compliant Code and underlying legislative/licence framework to support its operation.
- ESB Networks is of the view that this can be achieved with a simplified approach to the Code, supported by amendments to the underlying legislative/licence framework.

Legislative Updates and Interim Measures

- ESB Networks is of the view that for any interim measures which are put in place prior to the adoption of the Code to be effective, a lawful basis under Article 6 of the GDPR will be required for it to process personal smart meter data during that time. Legislative amendments and/or licence modifications would first be required to allow ESB Networks (as DSO) to undertake processing relating to the Code Manager role (*i.e.* the ringfenced MRSO function of the DSO only) and the DSP role. This would provide a legislative basis for reliance on Articles 6(1)(c) (processing which is necessary for compliance with a legal obligation to which the controller is subject) and/or 6(1)(e) (processing which is necessary for the performance of a task carried out in the public interest or in exercise of official authority vested in the controller) of the GDPR. These legislative changes and/or licence amendments would need to be in place before the Code is operational. ESB Networks is of the view that although the Implementing Regulation could provide a legislative basis to rely on Articles 6(1)(c) and/or 6(1)(e), ESB Networks would first need to be formally designated as having the relevant role(s) under Irish law in order to be able to rely on the Implementing Regulation as a legislative basis. This would require a legislative change, most likely to SI 37/2022.



- ESB Networks also agrees with CRU that a review of SI 37/2022 is necessary in light of the Implementing Regulation's entry into force, *i.e.* to align the provisions of SI 37/2022 with those of the Implementing Regulation. SI 37/2022 should be amended to include the designations of roles set out under the Implementing Regulation to the relevant entities and to align the definition of "eligible parties" under SI 37/2022 (which differs from the equivalent definition under the Implementing Regulation). ESB Networks is of the view that amendments required to implement the Implementing Regulation will need to be clarified ahead of the Code being finalised.
- In our response to Q8, we have set out ESB Networks' views on the steps required to meet the objectives targeted by CRU and to meet the requirements of the Implementing Regulation.

4.5 Response to Question 5

Question 5: The CRU would welcome any views on the proposed onboarding and access processes required for both Code Parties / Other Users to gain entry to the Code and to access smart meter data.

ESB Networks is of the view that CRU (or the Code Compliance Officer acting on its behalf) could assess Code Parties without this being considered that CRU was acting as a data controller of the smart meter data. ESB Networks, as Code Manager, could reference approved Code Parties and prioritise, if required, data access requests from Code Parties. However, as set out in the response to Question 2 above, ESB Networks is of the view that the Code Manager should determine accession to the Code (by reference to criteria set by the Code), and whether Other Users should have access to smart meter data (again by reference to criteria set by the Code).

ESB Networks supports and is fully committed to working with the CRU and interested parties on the most suitable onboarding and access to the smart meter data.

4.6 Response to Question 6

Question 6: CRU welcome any views on the proposed security incident management and breach processes in the event of an incident or breach of smart meter data.

The governance model states that the Code Panel will act as the responsible body for enforcement of non-personal data breaches and will assist the DPC in personal data breaches. The proposed governance model also introduces the Security Sub-Committee which will report to the Code Panel on technical matters including breach management. ESB Networks considers that assignment of the Code Panel to act as the responsible body for enforcement regarding data breaches introduces unnecessary complexity and additional risks to effective breach management. As previously stated, ESB Networks is of the view that the Code Panel should act as an advisory body only, with the Code Manager or CRU undertaking any essential functions currently conferred on the Code Panel under the Code.

ESB Networks notes that such governance arrangements have been employed in other jurisdictions, but it is not clear that the proposed model would effectively operate within the context of the Irish electricity sector, which is different to that in Great Britain (for example). The governance and responsibilities of the key actors in the data breach management process will need to be clearly defined to ensure effective implementation of enforcing data breach management under the code.

ESB Networks is of the view that in the event of a personal data breach, the obligations of the entity affected by that breach under the Code should be such that it is aware of and complies with its own obligations under the GDPR relating to personal data breaches separate to the Code.

In the event of a reportable personal data breach, the data controller (e.g. ESB Networks as the disclosing party) must notify the Data Protection Commission under GDPR Article 33. As suggested in Schedule 5 (Data Privacy), the data controller could be obliged to notify the CRU (via the Code Compliance Officer) under the Code, but this would be a separate notification which would not replace or impact the notifications to the DPC. The GDPR and any advice from the DPC should inform the data controllers' decisions on the response to a Personal Data Breach rather than the Code. A personal data breach by a Party or Other User of smart meter data should only be relevant to CRU and/ or the DSP, to the extent that this may indicate a security issue which requires mitigation or a breach of compliance with the Code itself, which CRU may wish to enforce. It is for the data controller to comply with its obligations under data protection law with respect to breaches, and for the DPC to investigate and employ enforcement measures as it sees fit regarding any such breach. The CRU (or any of the other functions created by the Code) should not play any role in the investigation of the personal data breach undertaken by the DPC.

Information security policy, industry standards, and the relevant cybersecurity reporting requirements (e.g. ESB Networks has reporting obligations as an Operator of Essential Services) should inform the data controllers' response to an information security incident. Again, the data controller could be obliged to notify CRU in the event an information security incident (the incident would likely also be a reportable Personal Data Breach) but the data controller's response and cybersecurity reporting requirements should not be determined by CRU under the Code.

4.7 Response to Question 7

Question 7: CRU welcome any views on the proposed schedule relating to Code Parties exiting the Code.

ESB Networks is of the view that CRU (or the Code Compliance Officer acting on its behalf) could lead a procedure for a Code Party to exit the Code.

Schedule 8 (Party Exit) should also incorporate the relevant procedures from the Annex of the Implementing Regulation reference model, Table III.3 – Procedure 3 (Termination of service by an eligible party) and Table III.4 – Procedure 4 (Revocation of an active permission by the final customer) of the Annex to Implementing Regulation” as appropriate.

ESB Networks welcomes the opportunity to support the development of and provide further views on party exit schedule.

4.8 Response to Question 8

Question 8: Do respondents have any other comments on other aspects of the updated version of the Code and the proposals discussed in this paper?

There is a pressing need to leverage the consumption data from smart meters to educate the customer on how changes in their behaviour can lead to cost benefits and support the ongoing electricity security of supply crisis. ESB Networks is of the view that this can be achieved promptly with a simplified approach to the Code, supported by amendments to the underlying legislative/licence framework.

To that end, ESB Networks recommends that, as a priority, resources should be focused on delivering the specific requirements of the Implementing Regulation which is to be operational by the end of 2024. In ESB Networks' view this requires four key actions:

1. A designation or direction from CRU which confirms ESB Networks DAC as the entity responsible for the new roles under the Implementing Regulation as proposed in section 2.4.4 of the Proposed Decision.
2. Once designated, ESB Networks to progress IT system and organisational readiness to enable the requirements of the Implementing Regulation.
3. Establishment of a "Code Development Working Group" to fast-track the development of an interim code focused purely on enabling the requirements of the Implementing Regulation.
4. Assessment of the Legislative & Regulatory framework to support the lawful processing of smart meter data for purposes including MCR1208, grid development, network operation and system flexibility services.

Each of these steps is outlined further below.

Designation or Direction from CRU

ESB Networks agrees with CRU's proposed decision, set out in section 2.4.4 (p.57), designating ESB Networks DAC as the assigned entity responsible for the role of Meter Data Administrator, Metering Point Administrator, Data Access Provider, Permission Administrator, and Identity Service Provider.

ESB Networks requests that this decision is confirmed quickly by CRU through a designation or direction as this will allow ESB Networks to progress the design and development of IT solutions and its organisational design to support a prompt implementation.

IT System and Organisational Readiness

Significant effort will be required to ensure that systems and processes are in place that facilitate the requirements of the Implementing Regulation. It is essential that ESB Networks is able to progress these issues quickly so that it, and eligible parties, will be able to access smart meter data in a timely manner. This workstream would also facilitate a technical working group between ESB Networks and eligible parties.

Fast-track Code Development

ESB Networks has provided its feedback on the updated version of the Code and suggests that a fresh focus purely on the requirements of the Implementing Regulation is required.

Consistent with the approach taken in Ireland to the drafting of other industry codes, ESB Networks recommends that a Code Development Working Group is established to support the preparation of a code which narrowly focuses on enabling the requirements of the Implementing Regulation. ESB Networks view is that this group should be chaired by CRU or its advisors and comprised of representatives of eligible parties. The group should be established as soon as practicable.

To support the work of this group, ESB Networks has included a draft “Smart Meter Data Code Framework” as an Appendix to this submission. ESB Networks consider that this framework provides the basis for a simplified approach to the Code which can be finalised by mid 2024.

Amendments to the Legislative & Regulatory Framework

As explained in the Proposed Decision, a review of legislation and the licensing framework of the DSO and Suppliers is required to provide a legitimate basis for the processing of smart meter data, including:

- Legislative changes and/or licence amendments will be necessary to provide a basis for ESB Networks, as DSP, to process smart meter data for certain purposes.
- Legislative changes and/or licence amendments will be necessary to provide a lawful basis for specific use cases that are not yet covered by legislation or included in licence conditions, in particular to allow:
 - Supplier access to smart meter data as set out in MCR1208, and
 - DSO access to smart meter data for purposes such as grid development, network operations and system flexibility services.

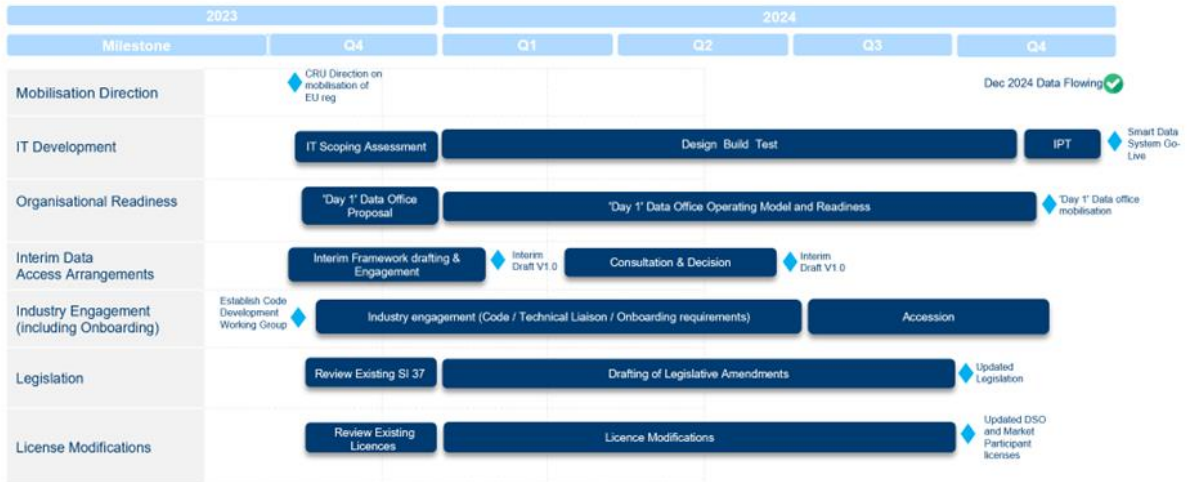
Conclusion

In order for the processing of smart meter data to commence as in line with the required timelines of the Implementing Regulation, ESB Networks recommends a number of activities are undertaken and this element of the NSMP reset with an agreed programme of work.

A draft timeline and workplan is shown below for consideration by CRU. This timeline highlights the long lead times required to deliver the IT system and the dependency on a decision to assigned ESB Networks as the entity responsible the new roles set out in the Implementing Regulation.

ESB Networks also recommends that an interim code is developed in collaboration with industry stakeholders and that a review of legislative and licensing amendments commences in parallel.

Day 1: EU Requirements - Implementation Plan



5 Conclusion

The electricity sector is undergoing transformative change under the Clean Energy Package, Climate Action Plan and changing consumer preferences. Data Privacy and Security will play a part in customer access to quality information derived from their smart meter data, empowering customers to make changes to manage their energy usage as per the provisions of SI No. 37 of 2022 and the Implementing Regulation on interoperability requirements and non-discriminatory and transparent procedures for access to metering and consumption data.

ESB Networks has a central role to play in facilitating this transformation. We aim to support customers in the transition towards being active participants in the energy system.

ESB Networks welcomes the consultation from CRU regarding the Smart Meter Data Access Code, which is a key enabler of facilitating the benefits of the wider NSMP. ESB Networks acknowledges the proposals put forward by CRU in this consultation. In particular, ESB Networks considers CRU's proposed requirements regarding leveraging of smart meter data and centrality of smart meter data, eligibility criteria and data access management as a sensible suite of proposals to facilitate introduction of the Smart Meter Data Access Code.

ESB Networks considers that implementation of the Smart Meter Data Access Code should remain the primary focus for the retail electricity market in the near-term and we support CRU's position outlined in its consultation paper that an overarching requirement of the Smart Meter Data Access Code should be a straightforward and practical framework which can be implemented quickly and easily.

ESB Networks is of the view that the Code must meet its objectives in an efficient, timely, non-discriminatory, cost effective and transparent manner and in a manner which reflects the underlying legislative requirements in Ireland.

ESB Networks looks forward to working closely with both CRU and Market Participants to ensure the successful implementation of the 'Smart Meter Data Access Code' in the retail electricity market.

ESB Networks appreciates the opportunity to respond to this consultation and we remain available to discuss any element of our response with CRU at any time.

6 Appendix

ESB Networks Proposed Framework For The Smart Meter Data Access Code

1. Introduction

Introduction to the Smart Meter Data Access Code (the Code), referring to the relevant legislation⁴.

2. Code Objectives

This section will set out the objectives of the Code, to (i) facilitate access to data, including Smart Meter Data by Eligible Parties and Other Users (together the Users) in a non-discriminatory manner and simultaneously; (ii) facilitate the management and exchange of such data in an efficient and secure manner and in accordance with Article 23 of Directive 2019/944 and the GDPR; and (iii) ensure compliance with the legal requirements for a Code as set out in Directive 2019/944, in the 2022 Regulations and in the Implementing Regulation.

3. Categories of Parties and Data Access

This section will:

- specify the Eligible Parties to become Smart Meter Data System Users, in accordance with the definition in the Implementing Regulation, and who shall be provided with access to the Smart Meter Data System in line with the reference model⁵.
- specify that other parties who are not Eligible Parties may apply to become a Smart Meter Data System User and/or to access Smart Meter Data by making an application to the Commission.
- state that Final Customers may not become Users under this Code, but may access their own Smart Meter Data from the Distribution System Operator (DSO) or from their Electricity Supplier⁶.

4. Eligible Parties – Purpose and Basis for Access

This section will:

- state the basis on which the DSO collects and processes Smart Meter Data⁷ in accordance with its statutory and licence obligations, for the purposes of:
- managing the distribution network, the Smart Meters and related activities;
- facilitating the services of an Eligible Party to the Final Customer (Market Facilitation); and
- providing other services to Final Customers (other Market Facilitation activities).

⁴ EU Directive 2019/944 on common rules for the internal market for electricity and amending Directive 2012/27/EU (“Directive 2019/944”), the European Union (Internal Market in Electricity) (No. 2) Regulations 2022 (the “2022 Regulations”), the European Union (Energy Efficiency) Regulations 2014 (S.I. 426/2014) and the EU Commission Implementing Regulation 2023/1162 on interoperability requirements and non-discriminatory and transparent procedures for access to Metering and Consumption Data (the “Implementing Regulation”).

⁵ Required by Article 3 of the Implementing Regulation.

⁶ Required by regulation 6(3)(d) of the 2022 Regulations.

⁷ Required by regulation 6(3)(c) of the 2022 Regulations.

- state the purpose and basis for collecting and processing Smart Meter Data by:
 - Electricity Suppliers, the TSO and SMO⁸; and
 - Aggregators, energy service companies, Energy Communities and Balancing Service Providers⁹.

5. Becoming a User

This section will:

- specify how the following Eligible Parties may become Users by making a request to the DSP to access the Smart Meter Data:
 - the Commission;
 - the DSO;
 - Electricity Suppliers;
 - the Transmission System Operator (TSO); and
 - the Single Market Operator (SMO).
- specify that any other parties (including the other Eligible Users) who are not listed above may apply to become a User by making an application to the Commission. This application shall specify the categories of Smart Meter Data the party wishes to access and the use cases for the access¹⁰. This shall be with reference to Schedule 5 (Smart Meter Data Categories and Users) of this Code.

6. Data System Provider

This section will designate the DSO as the Data System Provider (DSP) and specify that the DSP shall operate, maintain and administer the Smart Meter Data System. In connection with these functions, this section will also specify the roles the DSP undertakes with respect to the Implementing Regulation as follows:

Management and Administration of Smart Meter Data

This sub-section will:

- set out details of DSP's management and administration of Smart Meter Data, such as collection, validation, transfer and storage.
- identify DSP as Metered Data Administrator for the purposes of the Implementing Regulation, responsible for storing Validated Historical Metering and Consumption Data and distributing these data to Final Customers and/or Eligible Parties¹¹.

⁸ Required by regulation 6(3)(e) of the 2022 Regulations.

⁹ **Note to CRU:** Although the 2022 Regulations do not specify the basis for the provision of access to smart meter data to these parties, we have provisionally included here. These parties are listed as eligible parties for the purposes of the Implementing Regulation and for completeness we think it would be worthwhile to include..

¹⁰ Manner of access is required by regulation 6(3)(i) of the 2022 Regulations.

¹¹ Required by Article 2(7) and Article 5 of the Implementing Regulation.

- identify the DSP as Data Access Provider for the purposes of the Implementing Regulation and its responsibilities in that capacity¹²; and
- require that the DSP must make the Smart Meter Data available to Eligible Parties in a non-discriminatory manner and simultaneously¹³.

*Permission Administration*¹⁴

This sub-section will:

- identify the DSP as the Permission Administrator for the purposes of the Implementing Regulation and its responsibilities in that capacity; and
- specify that the DSO as Metering Point Administrator must inform the DSP as Permission Administrator, and where relevant as Metered Data Administrator, without undue delay, of any changes in the assignment of Final Customers to metering points, and of any other external occurrences that invalidate active permissions granted in their area of responsibility.

Security of Smart Meter Data

This sub-section will specify that the DSP is responsible for the confidentiality, integrity and availability of the Smart Meter Data and ensures the security of the Smart Meter Data and any other data by implementing the information security controls as set out in Schedule 3 (Data Security).

Cost recovery

This sub-section will set out a cost recovery mechanism for DSP in the event that security breach investigations and remediation actions are required due to User fault and where no User is at fault.

Suspension of Access

This sub-section will provide for the suspension of Access to Smart Meter Data System in the event of a significant security risk or threat.

7. Smart Meter Data System¹⁵

This section will specify that the Smart Meter Data System:

- shall meet the requirements for a Smart Meter Data System as published by the Commission;
- will be operated by the DSP and includes the data platform and the interfaces that enable Final Customers and Eligible Parties to access Smart Meter Data in a transparent, non-discriminatory and simultaneous way and without undue delay¹⁶;
- will ensure that Final Customers (i) can access their validated Metering and Consumption Data; (ii) can make it available to Eligible Parties and Other Users; and (iii) receive it in a structured, commonly used, machine-readable and interoperable format¹⁷;

¹² Required by Articles 7(1)(a) and (b) and Article 7(2) of the Implementing Regulation.

¹³ Required by regulation 6(4) of the 2022 Regulations, Article 23(2) of Directive 2019/944, Article 5(1)(a) of Implementing Regulation (Metered Data Administrator obligation to make data available in a non-discriminatory way).

¹⁴ Required by Article 8 of the Implementing Regulation.

¹⁵ Required by regulation 6(3)(i) of the 2022 Regulations and Article 23(2) of Directive 2019/944.

¹⁶ Required by Article 5(1)(a) of the Implementing Regulation.

¹⁷ Required by Article 5(1)(b) of the Implementing Regulation.

- will enable the DSP to keep a permission provision log up to date and make this available to Final Customers through an online interface¹⁸;
- will enable the DSP to keep a data access log up-to-date and make this available to Final Customers through an online interface or another appropriate interface, which shall be free of charge and without unnecessary delay upon request of the Final Customer¹⁹; and
- when transferring data to the Eligible Parties and Other Users will ensure that there is an active permission or another legal basis for the Smart Meter Data to be lawfully transmitted or processed, in accordance with applicable Data Protection Legislation²⁰.

This section will also specify that:

- the DSP shall give Eligible Parties access to testing facilities where the Eligible Party can test the compatibility of their systems with the Smart Meter Data System²¹; and
- the Users shall use the Smart Meter Data System only in accordance with the technical specifications and access documentation provided to them by the DSP.

8. Smart Meter Data²²

This section will

- specify that the Smart Meter Data System will store validated Metering and Consumption Data and will enable it to be accessed in a transparent, non-discriminatory and simultaneous way, and without undue delay²³;
- specify what data comprises the Smart Meter Data;
- specify that the DSP as Metered Data Administrator shall also keep complementary information on historical Metering and Consumption Data, in accordance with Annex I.4 of Directive 2019/944²⁴; and
- note that Event and Instrumentation Data will also be collected by the DSO from the Smart Meters for the purpose of systems planning, facilitating flexibility services and network operations and will not be stored on the Smart Meter Data System.

9. Non-Personal Data²⁵

This section will define Non-Personal data and will specify that Event and Instrumentation Data which is collected from the Smart Meters is Non-Personal Data.

10. Storage of Smart Meter Data by Users²⁶

¹⁸ Required by Article 8(1)(e) of the Implementing Regulation.

¹⁹ Required by Article 5(1)(c) of the Implementing Regulation.

²⁰ Required by Article 5(1)(d) of the Implementing Regulation.

²¹ Required by Article 5(3) of the Implementing Regulation.

²² Required by regulation 6(3)(f) of the 2022 Regulations.

²³ Required by Article 5(1)(a) of the Implementing Regulation.

²⁴ Required by Article 5(2) of the Implementing Regulation.

²⁵ **Note to CRU:** This section is intended to fulfil the requirements under Regulation 6(3)(a) and (b) of the 2022 Regulations. However, we do not think that it is appropriate for these to be set out in the 2022 Regulations as it is for data protection law and the DPC to determine what constitutes non-personal data, not the Code. An amendment to the 2022 Regulations to remove these requirements would be more appropriate.

²⁶ Required by regulation 6(3)(f) of the 2022 Regulations.

This section will specify that Smart Meter Data should be stored by Users in accordance with the requirements set out in Schedule 3 (Data Security), the User's obligations under Data Protection Legislation and, where applicable, the User's obligations under the Network and Information Security Directive and any subsequent amending legislation.

11. DSO Usage of Data²⁷

This section will specify that the DSO:

- shall use the Smart Meter Data as reasonably necessary to comply with its licence requirements; and
- shall inform the DSP without undue delay, of any changes in the assignment of Final Customers to metering points, and of any other external occurrences that invalidate active permissions granted in their area of responsibility²⁸.

12. Dynamic Electricity Price Contracts²⁹

This section will specify that:

- Electricity Suppliers must obtain each Final Customer's consent before that customer is switched to a dynamic electricity price contract in accordance with Article 11(3) of Directive 2019/944.
- Electricity Suppliers must ensure that as a condition of the dynamic electricity price contracts, permission of the Final Customer must be provided for access by the relevant Electricity Supplier to their Smart Meter Data.
- This section will also make reference to Table III.3 – Procedure 3 (Termination of service by an eligible party) and Table III.4 – Procedure 4 (Revocation of an active permission by the final customer) of the Annex to Implementing Regulation" as appropriate.

13. Code Administration³⁰

This section will specify that:

- the DSP shall administer the Code on behalf of the Commission and shall undertake such administration, governance and maintenance functions as the Commission specifies relating to the operation of the Code; and

²⁷ Required by regulation 6(3)(h) of the 2022 Regulations.

²⁸ Required by Article 6 of the Implementing Regulation.

²⁹ **Note to CRU:** We have included this section as it is required by Regulation 6(3)(g) of the 2022 Regulations. However, we don't think that this should be dealt with in the 2022 Regulations and the Regulations should be amended to remove. We don't intend the Smart Meter Data System to be implementing this; consent will be via central market systems (EBN SAP-ISU) and supplier systems. All the DSO will be doing is providing the appropriate meter data in register/interval format.

³⁰ **Note to CRU:** In this proposed framework for the Code, we have not included the role of a code manager as this is more appropriate for a jurisdiction with multiple DSOs. Therefore, we have proposed instead a Code administration role which would be undertaken by the DSO (with CRU retaining ultimate authority regarding any decisions undertaken with respect to the Code).

- the Commission retains final authority over any decisions with respect to the Code, in particular regarding compliance with and enforcement of the Code and shall ensure oversight of the DSP's administration of the Code³¹.

14. Code Panel and Sub Committees³²

This section will specify that at the discretion of the Commission a panel consisting of industry participants may be put in place (the Code Panel) which (i) shall assist the Commission by providing consultation and advisory support on the implementation of the Code; (ii) shall be chaired by the DSO; and may by direction of the Commission, establish sub-committees for the purpose of reporting on particular issues.

15. Usage Charges³³

This section will:

- provide that Eligible Parties shall not be liable to pay charges to access the Smart Meter Data (and that the DSP shall be entitled to recover the costs relating to an Eligible Party's access to the Smart Meter Data System via the price review process conducted by the Commission); and
- state that the DSP shall be entitled to charge Other Users who are not Eligible Parties reasonable costs for maintaining and facilitating access to the Smart Meter Data System.³⁴

16. Breaches of the Code and Consequences of a Breach

This section will:

- specify that a failure by any Users to comply with the requirements under this Code will constitute a breach of the Code and on becoming aware of any breach of the Code, the User shall report this breach to the Commission without delay. If this breach is a security breach, this must also be reported to the DSP without delay; and
- provide that the Commission may audit Users on their compliance with the Code and set out any other actions the Commission may take on becoming aware of a breach.

17. Enforcement of Code³⁵

The Commission shall enforce the Code in the manner set out in Schedule 4 (Enforcement of the Code).

18. Ceasing to be a User

This section will set out the measures to be taken when a party ceases to be a User, such as revocation of access to API, destruction of security credentials and operational data, conditions for retention or erasure of

³¹ **Note to CRU:** We note that in the absence of a code manager in this proposed framework to whom CRU would have delegated certain duties, as is envisaged in the draft Code, CRU may wish to engage a third party to outsource some of its duties under the Code, or to provide it with consultancy and advisory services relating to the performance of CRU's functions under the Code which could be included here.

³² **Note to CRU:** We are of the view that a Code Panel is not necessary to enshrine in the Code and could be a consulting body which is established to provide advisory and consulting functions for the CRU outside of the Code. However, if the CRU wishes to include a Code Panel in the Code, ESB is of the view that it should consist of industry participants only.

³³ Required by regulation 6(3)(i) the 2022 Regulations.

³⁴ **Note to CRU:** While we do not envisage with this proposal that Eligible Parties would be charged directly to access Smart Meter Data, we are of the view that the DSP should be able to recover costs for maintaining the System and facilitating access via the price review conducted by the CRU. Further, we think it would be appropriate to include a charge for Other Users, to discourage misuse or abuse of the Smart Meter Data System.

³⁵ Required by regulation 6(5) the 2022 Regulations.

Smart Meter Data accessed by the former User, any confidentiality obligations imposed on former Users and the procedure in Table III.3 – Procedure 3 (Termination of service by an eligible party) of the Annex to Implementing Regulation.

19. Code Audit

This section will provide that the Commission may undertake/commission an audit of the Code, associated Code procedures and processes, Code operation and governance of the Code once every [e.g. 12 months].

20. Schedule 1 (Definitions)

21. Schedule 2 (Access and Access Rights)

This schedule will set out the access arrangements for Users and access rights of Users in addition to Table III.2 – Procedure 2 (Access to validated historical metering and consumption data by an eligible party), Table III.3 – Procedure 3 (Termination of service by an eligible party) and Table III.4 – Procedure 4 (Revocation of an active permission by the final customer) of the Annex to the Implementing Regulation. This schedule will also include a Template Form of Access Rights and Terms of Use which can be issued to Other Users by the Commission.

22. Schedule 3 (Data Security)

This schedule will set out the information security controls which will be in place for the Smart Meter Data and Smart Meter Data System.

23. Schedule 4 (Enforcement of the Code)³⁶

This schedule will set out how the Code will be enforced by the Commission.

24. Schedule 5 (Smart Meter Data Categories and Users)

³⁶ Required by regulation 6(5) the 2022 Regulations.