Response by Energia to Commission for Regulation of Utilities

Consultation on the draft version of the Smart Meter Data Access Code CRU/202265

21 September 2022

1 Introduction

Energia welcome the opportunity to respond to Commission for Regulation of Utilities' Consultation on the draft version of the Smart Meter Data Access Code. It is vital to the overall success of the National Smart Metering Project that Suppliers are provided with a means by which we can receive and access more consumption data. Depending on the level and type of data that is available, having a robust Code and governance model will be extremely important to all stakeholders to manage the data and how it is accessed.

2 Case for a Smart Meter Code

Energia's understanding was that a Smart Data Code would achieve the following objectives:

1. Define the data ESBN was collecting (i.e., the data available for market participants to access).
2. Define the parties eligible to access the data, based on their role in the market and their relationship to the data subject (customer)
3. Standardise the procedures for accessing and sharing this data.

However, it is unclear from this consultation what level of data Suppliers will be granted access to. In order to develop an appropriate code, it is necessary to understand what level of data we will get access to. It is essential that Suppliers have access to granular data to allow the Smart Metering Programme policy objectives to be achieved. Suppliers must rely on one or more of the following six alternative lawful bases available under Article 6(1) GDPR: (i) consent; (ii) contractual necessity; (iii) legal obligation; (iv) vital interests; (v) public interest; or (vi) legitimate interests. Nothing in this Code should work to preclude or pre-empt the lawful legal basis that a supplier or other entity is permitted to rely on under the GDPR legislation. For reference we have included a sample of some of our own use cases in the Section 4 the Appendix to this response.

Energia believe it would have been useful to get an overview of the different types of data based on the various legal requirements as part of this consultation process. Having this information would have helped to better inform the scope of the Code and what should be included to govern the use and access to the data. We therefore welcome CRU's approach to publishing a proposed decision following this consultation, enabling further consultation and stakeholder engagement on sections and schedules of the draft Smart Meter Data Access Code that are currently undrafted and dependent on consultation responses.

3 Consultation Response

3.1 Question 1: The CRU would welcome any views from interested parties on the most suitable way to access smart meter data in relation to their data requirements?

Views on what type of data you would expect to have access to would also be welcomed

In relation to the best way to be able to access the information, while there are technical considerations, it ultimately depends on what data is going to be provided to the parties and whether different levels of data will be accessible dependent on whom the parties are. Will some parties only be able to access anonymised data while others will have access to a full range of customer data? The type and amount of data that will be provided will help to determine the best means by which the data can be provided. As stated in section 6(4) S.I. No. 37/2022 - European Union (Internal Market in Electricity) (No. 2) Regulations 2022 parties must have access to the data in a "non-discriminatory manner and simultaneously."

As stated in the S.I. No. 37/2022 - European Union (Internal Market in Electricity) (No. 2) Regulations 2022 the Commission shall develop the Code covering "access to the data, including smart data, of final customers by eligible parties" (section 6(1)(b). If a party has the legal basis on which to access the customer smart data, then all the data to which they have the right to access should be provided.

Energia believe that an anonymised data should be provided to cover research and statistical requirements. Energia has looked at other jurisdictions and there are vast amounts of data available to the public. The Danish DataHub provided by Energinet[1], provides extensive opensource data. They welcome feedback on the DataHub and also have a commitment to continuously expand the data that is available. A roadmap or development plan would be useful to detail the longer-term plan to provide open-source data to all in tandem with other types of data that will be governed by the Data Code.

3.2 Question 2: The CRU would welcome any views on the annual compliance and assurance assessments placed on Users to the Code.

The Code must clearly outline the specific compliance requirements that parties must meet in order to have access to the data in compliance with agreed GDPR requirements. There should be clear and specific legislative requirements in place so that parties are fully aware of how the data can be accessed and processed. An agreed code of conduct as outlined under Article 40 GDPR could provide clear guidance for all parties involved.

3.3 Question 3: CRU would welcome any views on each of the options described for the governance and enforcement of the Smart Meter Data Access Code?

The Code must be overseen by a competent body which clearly understands the legislative requirements and data in detail. The body must be able to provide expert guidance and oversight on the management and access to the data and its use and ensure that parties are clear as to their compliance requirements especially in relation to data protection. It is a necessity that the governing body employs resources which

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are expert in data and the data protection, in order to be clear and specific to users and other parties to the code.

3.4 Question 4: The CRU would welcome any views from interested parties on the remediation steps outlined above when a breach of smart meter data has occurred.

The Code should clearly outline the process for investigation, submissions, findings and appeals so that all parties are clear in the event of a potential breach of the code. The code should also clearly outline the possible sanctions that may be levied dependent on the type and level of incident.

It is vital that the code is crystal clear as to what parties can and cannot do with the data to ensure that there are no inadvertent breaches of the code by parties. This process should only cover the code and any actual personal data breach would fall under the GDPR requirements and Data Protection Commission's remit. It is critical that any risk of double remediation or penalty is mitigated through the Code drafting.

3.5 Question 5: The CRU would welcome any views on Users' data security assessments required to access smart meter data. CRU would also welcome views from Parties of the Code who will be Users in relation to the provisions in place to access the data.

The data types to be held and conveyed to eligible parties should a have lawful basis in line with data protection legislation, this will inform the data transfer method.

Any User data security assessment must clearly specify the exact requirements a party must have in place in order to be provided with access. Detail must be provided on what constitutes a compliant information security policy, procedures and any other documentation that is required. The provision of templates to Users as an annex to the code would be useful.

Any annual assessment should also be based on these requirements.

3.6 Question 6: CRU would welcome any views on the data privacy obligations for data controllers and processors set out in this section and their adequacy in ensuring security of customers personal data.

The relationships and responsibilities of all parties accessing the data must be outlined in detail to ensure that everyone is clear as to their requirements under the Code and in relation to their data protection obligations. Suppliers already have procedures in place to ensure that their processes are GDPR compliant and that consumers can have confidence in obtaining their data from suppliers.

Each Party to the Code will have their own responsibilities under the GDPR as Controllers and Processors but any requirements under the Code should be clearly outlined so they are clearly understood and managed appropriately.

3.7 Question 7: CRU welcome any views on the steps outlined above in the event of a breach of smart meter data.

The code should clearly outline the process for investigation, submissions, findings and appeals so that all parties are clear in the event of a potential breach of the code. The code should also clearly outline the possible sanctions that may be levied dependent on the type and level of incident.

For the CRU preferred option proposed in the consultation, it would appear that CRU would adjudicate on compliance actions but also appeals. It is a necessity that the appeals process employs resources which are expert in data and the data protection. Further consideration to an appeals process is needed for example an independent external panel could be considered. The treatment of non-licensed users' needs to be clarified too as to how breaches from by these parties will be overseen.

It is therefore vital that the code is crystal clear as to what parties can and cannot do with the data to ensure that there are no inadvertent breaches of the code by parties. This process should only cover the Code and any actual personal data breach would fall under the GDPR requirements and Data Protection Commission's remit. It is critical that any risk of double remediation or penalty is mitigated through the Code drafting.

3.8 Question 8: CRU would welcome any views on Ceasing to be a Party of the Code.

Clear guidance should be provided on any retention or disposal requirements in relation to the data at the end of any relationship.

3.9 Question 9: Do respondents have any other comments on other aspects of the draft code or its proposed governance?

There should be clear legislative requirements in place outlining what the parties can do with the data and the legal basis on which they are processing the data.

The code needs to go into much more detail on what data is accessible to which parties and on which legal basis they can access and process the data.

The code must outline the specific data that will be accessible and the different levels of data that will be accessible from all customer data to anonymised data sets.

Parties should have clear legislative requirements for the access to and use of the smart data outlined within the code.

4 Appendix

	Headline category	Use Case	Legal Basis
Energia Customers (or prospective customers)	Settlement and Payment	Energy and billing data in respect of settlement, payment and accurate billing • MCC-12 data for MCC-12 customers • MCC-16 data for MCC-16 customers • Microgen data for all microgen customers	Performance of a contract
		Disputed invoices (Retention of data for a period of time) • All data above, for the duration a dispute can be raised	Legitimate Interest
	Forecasting	• Half hourly consumption/export data of all Energia customers (anonymised) for the purposes of improving demand forecasting accuracy	Legitimate Interest
	Analytics/Modelling	• Understanding consumer behaviour, modelling behavioural change (Anonymised data)	Legitimate Interest
	Pricing	• Providing bespoke quotes to customers based on their prior usage patterns	Legitimate Interest
Non Energia Customers	Analytics	• Analysing data to understand energy usage across the population (Anonymised data)	legitimate Interest
	Pricing	• Modelling customer archetypes and creating bespoke tariffs for specific archetypes (Anonymised data)	Legitimate Interest