

25 November 2021  
Steve / Rebecca,

Please see some points below from the SGN Lawyer regarding 0734 in relation to BR8 GDPR question.

**Subject:** UNC 734 GDPR

- 1 The GDPR issue is raised to ensure the new data flows are GDPR (i.e. legally) compliant – raising it is not a proxy for not supporting the intent of the Proposal or wanting to delay progress.
- 2 The proposal provides for some **new** data flows, for instance (i) in BR1 with data flowing between RECCo, CDSP and Shippers (i.e. industry parties) and (ii) in BR8 with the disclosure by shippers of instances of suspected theft to suppliers where relevant information is obtained by shippers from third parties (e.g. non-industry parties).
- 3 The proposal does not identify the data items that will be disclosed but **assumption** is that the MPRN will be disclosed (at least) between industry parties. The proposal envisages MPRN-level granularity and this likely precludes the possibility of information being provided in an aggregate manner such that no individual could be identified.
- 4 BR8 seems to be a data flow where shippers must ensure there are no GDPR issues arising, as information/evidence obtained from third parties seems potentially wide ranging in nature (and potentially personal data). It may be possible to avoid any delay re BR8 and GDPR by removing BR8 from the Proposal.
- 5 That said, in terms of the Proposal more generally it seems prudent to confirm whether the proposed data flows will involve the sharing of personal data, and a prudent approach is to view the MPRN as personal data where it can be linked to address data.
- 6 Meanwhile, as regards the theft of gas aspect, ICO guidance is that criminal offence data is a broad concept. It will include information about allegations (including unproven allegations) and investigations and not just necessarily details of specific criminal convictions etc. On one hand, if the data will only be used to "smear" the payment arrangements (and not impact on the individual) then there is an argument that could be investigated this would not constitute personal data. But if it cannot be ruled out that it could be used to investigate incidents of theft then this would likely mean it remains criminal offence data. Given the duties of UNC parties to reduce theft, it is perhaps unlikely that the information being leveraged to investigate theft can be ruled out.
- 7 The fact that some of the data flows concern settlement related issues giving rise to missing gas that are not driven by theft of gas is not determinative in GDPR terms. If part of this data could be used in relation to investigations / suspicion of theft then it would still constitute "criminal offence data". However, this may mean that not all this data would be considered "criminal offence data" by default. It could be considered whether each entity

could treat different segments of the data differently, but if a standardised solution is needed this could be challenging.

- 8 To the extent that the data flows are between industry parties then existing arrangements may be adequate, e.g. in accordance with existing data permissions rules in UNC/REC. This should be analysed and confirmed. The entities with oversight of those rules may be able to assist.
- 9 It is expected that industry parties will have a solid understanding of GDPR issues and have policies and procedures in place to mitigate the risks of non-compliance. Their views on GDPR compliance could be usefully sought during the consultation process.
- 10 Suppliers passing information under BR1 would seem to have a potential risk in disclosing personal data – so they will want to be sure they have a sound basis for disclosure and for this to be documented by the applicable data permission rules.
- 11 Similarly shippers will want to know if the information received from suppliers is personal data, what their GDPR obligations are as data controller/processor as a consequence, and for this to be adequately addressed by the applicable data permission rules.