

**Data protection and smart
metering under German law and
French Law**

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Building a better
working world

Legal Challenges of Smart Metering

Data Security

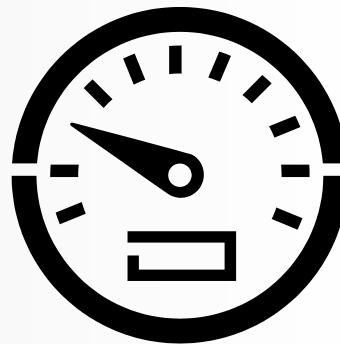
- With an increasing interconnection of the energy supply network, the vulnerability for unauthorized access rises
- As a critical infrastructure, the power grid must be protected against cyber attacks etc.

Big Data Analytics

- Smart data applications are essentially big data applications
- General conflict with the principles of data protection
- Consumption data allows for conclusions about the customer's life habits, daily routines, number of persons in a household, etc.
- Risk of profiling and scoring when data is linked to other information

New role of distribution system operators

Operators of distribution systems will prospectively act as data managers and collect and transfer energy data for themselves and third parties



Cross-border transfers

In case energy data is transferred across borders, the provisions of different legislations apply

Multitude of stakeholders

- In the smart grid, data is (potentially) processed by a multitude of actors
- Transparency towards the customer thus gains importance

Article 29 Working Party: Opinion on smart metering

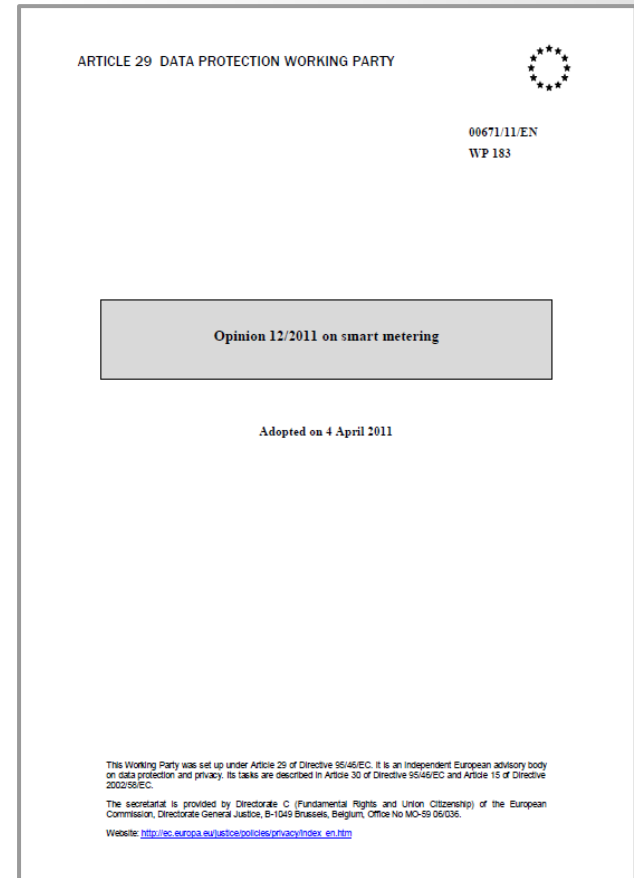
(Stellungnahme zur intelligenten Verbrauchsmessung)

(...)

- ▶ Necessity to clearly identify data processor

- ▶ 5 legitimate grounds for processing
 - Consent
 - Contract
 - Task in the public interest
 - Legal obligation
 - Legitimate interest

- ▶ Recommendations
 - Privacy by design & by default
 - New rules for data retention
 - Exclusion of unauthorized 3rd party processing
 - Security and privacy risk assessments
 - Technical and organisational safeguards
 - Respect for rights of data subjects
 - information to data subjects





Guide on Smart Metering

(Orientierungshilfe datenschutzgerechtes Smart Metering)

- ▶ Recognition of **smart metering** as **basis** for **environmentally friendly** and **sustainable** production, distribution and usage of **energy**
- ▶ **All data collected by smart meter**, including technical data, is **personal data**
 - e.g. customer data, invoice data, storage amount, consumption data
- ▶ **Sensitivity** of such data and hence **need for data protection** varies
- ▶ **General recommendations**
 - Earmarking, Data minimization and proportionality, Transparency, Information self-determination, Data security, Privacy by design
- ▶ **Recommended measures**
 - Gateway administrators should implement a **data protection management system**
 - **Certification** of gateway administrators, periodic **re-certification**, random sample **audits**
 - **Single point of contact** for ultimate consumer
 - **Granularity** of data **to the extent necessary**
 - Usage of different pseudonyms for different purposes to **avoid linkage of data** (avoid profiling)
 - Possibility for the ultimate consumer to **check how and by whom data is processed**
 - **Information** of the ultimate consumer **about disturbances**
 - Option to **interrupt communication** in pre-defined incidents

Act on the Digitization of the Energy Transition

(Gesetz zur Digitalisierung der Energiewende)



Data protection and data security guidelines

- ❖ Definitive list of actors entitled to access and process personal data
- ❖ Permissions to use data for those actors, aligned to their functions and the principle of data minimization
- ❖ Anonymization and pseudonymization whenever possible
- ❖ Technical standard for privacy by design
- ❖ Transmission of meter readings not more often than every 15 minutes; yearly transmission for small-scale consumers
- ❖ Assignment of new role as “Gateway Administrator” for meter operators
- ❖ Smart meter must be state of the art (implied when certified by the Federal Office for Information Security)

- ▶ Purposes of the Act
 - Integration of renewable energies into the market
 - Alignment of energy supply and demand
 - Reduction of energy consumption
 - Transparency for customers
- ▶ The Act heralds the launch of the smart grid and smart meter
- ▶ Obligatory gradual introduction of smart meters on producers and consumers side
- ▶ New, binding protection profiles and technical guidelines for measuring systems to ensure data protection, data security and interoperability

CNIL Opinion on smart metering

CNIL recommendation on Smart Metering

(Délibération n°2012-404 du 15 novembre 2012 portant recommandation relative aux traitements des données de consommation détaillées collectées par les compteurs communicants)

- ▶ **General recommendations** : Intended purposes (grid maintenance, providing of specific services or better tariffs), categories of data collected, retention period, security measures, data recipients
- ▶ Collection of meters-reading (“courbe de charge”) only if required for the grid maintenance or with the prior consent and transmission of meters reading not more often than every 10 minutes

LINKY Program

- ▶ ERDF plans to install **35 million smart meters (Linky)** in France by 2020
 - Collection of a local meter readings by default based on hourly frequency
 - Upon request, customers will have access to their meter-readings
 - Customer has the right to object and may at any time disable this collection and erase the collected data
 - Consent of data subject is required to transmit meter-readings to ERDF or third parties
- ▶ According to CNIL, the collection of the meter-reading in this conditions is compliant with its recommendation

Compliance package on smart meters

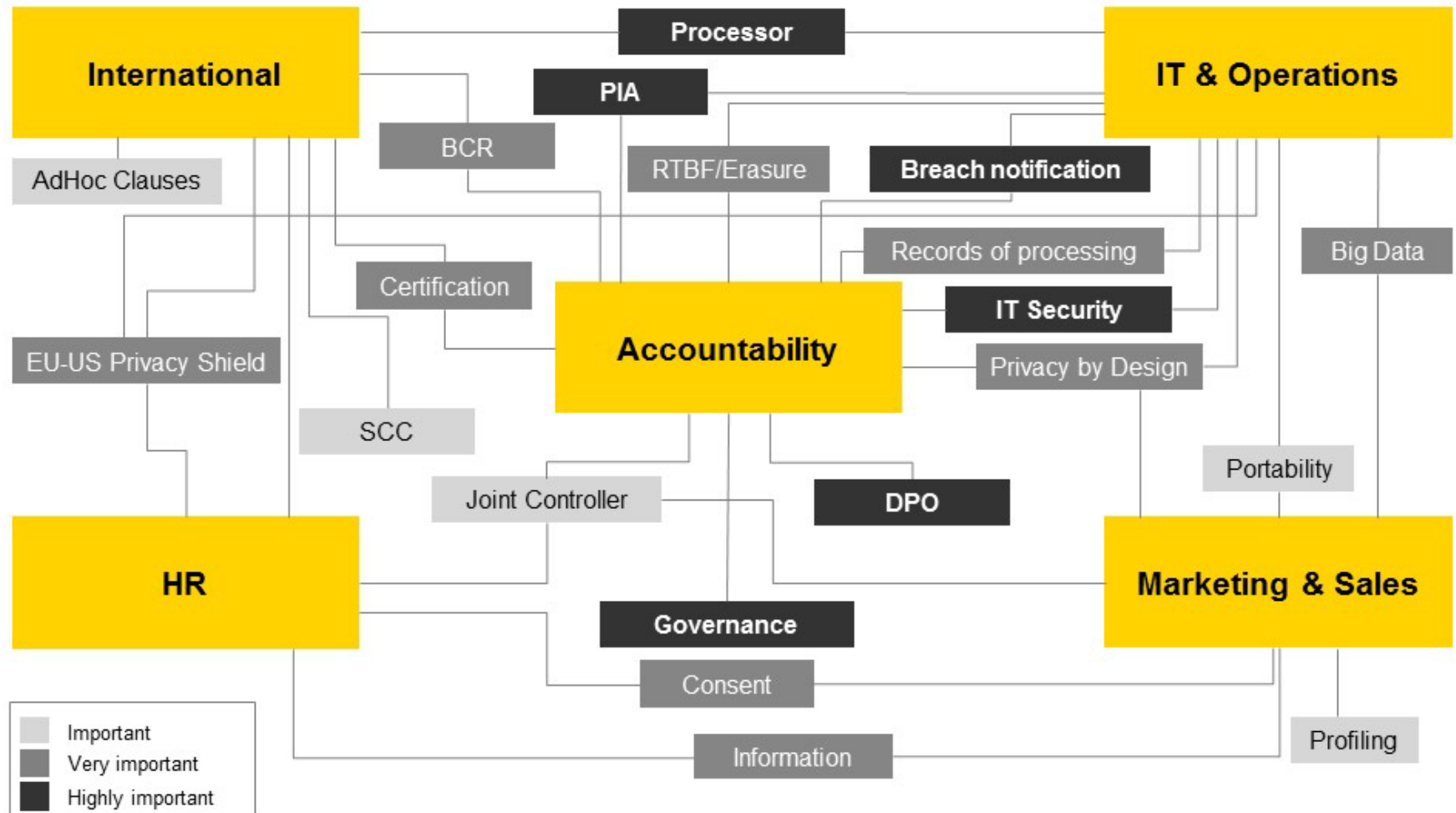
(Pack de conformité pour les compteurs communicants)

Best practices on “downstream electric meters”

- ❖ Creation of a working group “**Smart grids and personal data**” as part of a partnership between the **CNIL** and the Federation of Electrical, Electronic and Communication Industries (**FIEEC**)
- ❖ **Objective** : define best practices related to the processing of data collected through devices or software installed :
 - Outside the meter infrastructure, i.e., downstream electric meter
 - Upon the request and under the control of individuals in order to provide them specific services
- ❖ Designed to be **extended to the European level** both by the FIEEC and by the CNIL

- ▶ **3 working assumptions were identified:**
 - Scenario n°1 “**IN > □N**”: management of data collected in the home without communication to the outside. data collected in the home are under the sole control of the user
 - Scenario N°2 “**IN > OUT**”: management of data collected in the home and transmitted outside.
 - Scenario No°3 “**IN > OUT > IN**”: management of data collected in the home and transmitted outside to allow the remote control of certain appliances within the home.
- ▶ The guidelines specify for each type of processing: the intended purposes, the categories of data collected, the retention period of such data, the rights of data subjects, the security measures to be implemented, and the recipients of the information

The EU General Data Protection Regulation as of May 2018 - with fines of up to 4 % of the global turnover



Questions?



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