EU General Data Protection Regulation: Implications for Smart Metering

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Introduction

- EU General Data Protection (GDPR) will be passed in 2015.
- Smart Meters are currently being rolled out across the EU.
- The GDPR will effect how smart meters process and control personal data.
- Compliance with EU regulation will necessarily be at the core of every business model.

The change over from Member States rules to the new EU wide applicable data protection regulation requires business to be ready.
Dr. Niclas Krohm, Editor of Privacy in Germany magazine (PinG):

“At the moment, companies are not able to gage the consequences of the Data Protection Regulation.”
Smart Metering and EU General Data Protection Regulation (GDPR): Timeline

- **2009**: Jan 2009 - Jan 2012
  - EU Third Energy Packet announced including Smart Grid requirement

- **2012**: Jan - March
  - European Commission proposes General Data Protection Regulation

- **2013**: Oct
  - European Parliament LIBE Committee issues opinion on GDPR

- **2014**: March
  - European Parliament adopts draft text of GDPR

- **2014**: June
  - European Council will determine its position and either accept or amend GDPR

- **2014**: December
  - European Council will determine its position and either accept or amend GDPR

- **2015**: Jan 2015 - Dec 2015
  - GDPR is passed in Early 2015 by EU Parliament

- **2016**: GDPR comes into force and is legally binding
Historical Background

- Directive means indirect implementation by way of national legislation.
- There are 28 different set of interpretations. This is described as a „Patchwork“ of laws.
- This is bad for business in Europe because they must deal with the data protection authority in each Member State.
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Overview of Stakeholders

- Consumers and citizens
- Business

Public Sector
Key Political Players – EU Commission

Smart Metering

Digital Agenda – Neelie Kroes

• Current Digital Agenda Commissioner since 2010.
• Sees smart metering rollout as high priority for the EU as this allows for the development of a smarter energy grid.

Energy – Günther Oettinger

• Current Energy Commissioner since 2010.
• “Smart meters can make energy supply smarter, flexible and more efficient.”
Key Political Players – EU Parliament

Data Protection

Viviane Reding

Jan Philipp Albrecht

Reding now sits on the EU Parliament’s International Trade Committee (INTA).

Albrecht is now Vice-President of the Civil Liberties, Justice and Home Affairs Committee (LIBE).
EU Stakeholders

Who are the relevant stakeholders in the debate?

- **EU Data Protection Supervisor**
  
  The EDPS advises the EU institutions and bodies on data protection issues. He also monitors **new technologies** that may have an impact on data protection.

- **Article 29 Working Party**
  
  The Article 29 Working Party is the expert group on data protection who advises the EU on development and interpretation of legislation.

- **Council of European Energy Regulators**
  
  The CEER represents the Member States’ energy regulators. It focuses on the relationship between smart metering and data protection.
Art 29 Working Group – Smart Metering

What is the Article 29 Working Party?

The Article 29 Working Party is an expert advice group made up of representatives from each EU Member States’ data protection authority. The group was founded as per Article 29 of the EU Data Protection Directive of 1995. The purpose of this working group is the “protection of individuals with regard to processing of personal data and on the free movement of such data”. The Chairman is French Data Protection Commissioner Isabelle Falque-Pierrotin.
EU: Political Agendas are interplaying

- Digital Agenda
- Energy Efficiency
- Smart Metering

Data Protection
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EU Member State Interests – Germany and Ireland

• Currently on either ends of the data protection spectrum, Germany has arguably one of the highest levels of protection. For instance, it requires to use the so called BSI-Gateway to protect data flows in the smart grid.

• Ireland has no detailed regulation on data protection for smart metering. This reflects the relatively low level of data protection.

• The Irish Data Protection Officer, Billy Hawkes, and his 30 members of staff are responsible for the European headquarters of Google, Microsoft, Paypal, Twitter and Yahoo, as well as the data protection of over one billion Facebook members.
The new regulation means ‘goodbye’ to the old patchwork of data protection laws across EU

Germany

Ireland

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Legislative Process: key areas

• Roll-out

According to the EU Electricity Directive 2009 at least 80 per cent of consumers have to be equipped with smart meters by 2020 subject to positive economic assessment of all the long-term cost and benefits, to be carried out by each Member State.

• Costs

The price of a smart meter varies between 50 to 200 EUR per unit. The expense will be passed to the consumer via regulated costs in the tariff.

• Data Protection – Cyber Security

The European Commission’s communication, “Smart Grids: from innovation to deployment“, defines smart grids as a ‘critical infrastructure’, which should operate securely and respect privacy of the end user.
Legislative Process: Where are we now?

• The Trialogue decision making process is completed. These are informal tripartite meetings attended by representatives of the European Parliament, the Council and the Commission. Owing to the ad-hoc nature of such contacts, no “standard” format of representation has been laid down.

• EU Parliament has passed the regulation.

• To become law the proposed Regulation has to be adopted by the Council of Ministers using the "ordinary legislative procedure" (co-decision).

• Results awaited Christmas 2014.

• Implementation is likely from 2015.
Legislative Process: EU Decision-Making Process
How does the GDPR legislation effect business?

Key questions:
What are the new provisions of the GDPR and how will the current law change?
What new instruments are being introduced?

Strategic answers:
The new provisions will impact smart metering industry in Europe!
Energy utilities can use the regulation to their advantage!
How does the GDPR legislation effect business?

Right to data portability

What does it mean?
Data portability means a user can request a copy of their personal data being processed and be able to transmit it electronically to another processing system.

How does it impact your business?
For utilities this means they have systems in place that can quickly and efficiently transfer a customer’s data in a readable and usable format to other data processors. This means that the customer wants to switch utilities, the two companies must have compatible data processing systems in order to ensure the right to data portability.
How does the GDPR legislation effect business?

Breach notification

What does it mean?
The GDPR contains a mandatory obligation for all utilities to notify the data protection authority of personal data breaches. These notifications are to be made to the relevant data protection authority and to the data subjects themselves where the breach is likely to adversely affect the protection of their personal data or privacy.

How does it impact your business?
It can sometimes be difficult for utilities to identify if they should notify the breach. The cost of notification could be huge.
How does the GDPR legislation effect business?

Transparency

What does it mean?
A main pillar of the GDPR is accountability and transparency in the way utilities process and control data. To do this the GDPR includes the principles “Privacy by Design” and “Privacy by Default”. The aim is to afford as much privacy as possible to the consumer and this should be automatic.

How does it impact your business?
This accountability aspect to data processing is now mandatory and the fines for non-compliance have been increased massively. Businesses found to have breached the GDPR can be fined up to one billion Euro or 5 per cent of the companies’ global annual turnover, whatever is the greatest sum.
How does the GDPR legislation effect business?

Data Protection Impact Assessment

What does it mean?
A data protection impact assessment (DPIA) is defined as a process whereby a conscious and systematic effort is made to assess privacy risks to individuals in the collection, use and disclosure of their personal data.

How does it impact your business?
Carrying out an impact assessment will be a means to comply with the new rules. The Commission along with the Article 29 Working Group on data protection has produced a template for such an assessment. It is advisable for energy providers using smart meter to take apply the DPIA template when designing their data processing systems.
How does the GDPR legislation effect business?

Data Anonymisation

What does it mean?
Data anonymisation is the process of removing any traces to the data subject. Anonymous data is not defined as ‘personal data’ and therefore is not subject to the provisions of the regulation.

How does it impact your business?
The only way utilities can avoid having to deal with the regulation is if they collect the data from smart meters in an anonymous way. Anonymous data is not subject to the new data protection rules. This is important for companies who collect data as part of their operations but who do not wish to utilise the data.
How does the GDPR legislation effect business?

Data Pseudonymisation

What does it mean?
The concept of pseudonymisation means replacing the individual's name and other identifying features with an alias in order to make it difficult to identify the original individual.

How does it impact your business?
Companies processing pseudonymised data are not under the same duty to consumers as companies processing data that has not been pseudonymised. EU Commissioner for Digital Agenda Neelie Kroes said that explicit consent is not needed when dealing with pseudonymised data. This is significant for the smart metering industry. If data from smart meters is encrypted in such a way so that is cannot be easily linked to a particular household then both the energy efficiency and data protection aims are met.
How does the GDPR legislation effect business?

Privacy-by-Design

What does it mean?
Privacy-by-Design is an approach which takes privacy into account throughout the whole engineering process.

How does it impact your business?
This requires companies to build data protection into the development of business processes for products and services.
How does the GDPR legislation effect business?

Privacy-by-Default

What does it mean?
Privacy-by-Default in most cases would prohibit the collection, processing, or sharing of any personal data without explicit consent from the customer.

How does it impact your business?
This requires companies to build data protection into the development of business processes for products and services.
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Benefit for energy utilities

- **Consumer loyalty:** Smart meter data enables the utilities to construct online consumer engagement sites and apps where information on billing and usage can be viewed. This engages consumers and is said to reduce ‘churn’ i.e. the rate at which consumers change utility.

- **Consumer trust:** By complying with the EU’s data protection standards and the EU cyber security policy, utilities could build trust among their customers. This will enable utilities to maintain their existing customer base and attract new customers.
Benefit for energy utilities

- Competitive Market
- Smart Metering
- Data Protection Compliance
- CRM Approach
- Consumer Trust
What do consumers think?

Unlike the energy utilities, consumers are not agreed on the question of smart meters. There are pro and contra arguments.

**Pro:**
- Smart metering is said to result in an overall reduction in energy bills.
- Smart meters allow customers to view up to date information on their energy consumption.

**Contra:**
- Customers are worried about how their data will be used.
- There are resistance campaigns, for instance in the US and Netherlands.
- Cyber Security risk – smart metering data could be compromised by hackers.
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How does the new EU Data Protection Regulation impact your business?

Uncertainty for business is at the moment the defining factor.

This means companies need to prepare and be ready for implementation in 2015.

Communication between business and politics on both the EU and national level will be essential.
Outlook: Who is taking action?

Baden-Württemburg – “Smart Grid Plattform”

- The platform aims to link the stakeholders from industry, energy, science and politics and promote exchange among them to set priorities in the development of smart grids and develop extensive, market-oriented solutions.

- Autumn 2013 – Report published

- Smart Grids-Plattform Baden-Württemberg e.V. was founded to continue the cooperation and implement the conclusions.

- The group meets next on 30 September 2014.
Outlook: Who is taking action?

USA and Europe: Safe Harbor Agreement – New Data Protection Relationship

• Brussels wants to renegotiate with Washington the Safe Harbor Agreement to reflect the new standard of protection in the EU following the GDPR.

• According to Reding, the EU decided not to include data protection issues in the Transatlantic Trade and Investment Partnership (TTIP) so that the EU’s data protection standards could be protected.
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