

GHR Energy Law Quarterly - October 2023

## Data protection in connection with the use of smart metering systems in Switzerland

### Introduction

The classic electricity meter is considered to be a discontinued model in Switzerland, because within the framework of the energy strategy it was stipulated that 80 % of the measuring devices in a grid area must be intelligent measuring systems by 2027. Such intelligent measuring systems, so-called smart meters, are installed at the end consumer's site. Compared to the classic electricity meter, smart meters are fundamentally capable of recording and documenting the electricity use of the end consumer at precise times, which raises a number of questions on the subject of data protection. This topic is also very up-to-date precisely because the duties for data processors have been expanded with the entry into force of the revised Federal Data Protection Act (DPA) on 1 September 2023. When using smart meters, network operators must therefore take into account various aspects from the perspective of data protection law. Reserved and not taken into account in this ELQ are specific requirements for federal bodies and any cantonal data protection laws applicable to network operators.

### Use of smart meters according to law

The Federal Electricity Supply Act (StromVG) states in Art. 17 para. 1 regarding the processing of personal data in connection with smart metering systems that the DPA is applicable. Specific provisions on data processing can also be found in the Electricity Supply Ordinance (StromVV). According to Art. 8b Para. 1 StromVV, only smart metering systems whose elements have been successfully tested for data security may be used by network operators. However, without the consent of the persons concerned, the data from the use of smart meters may only be processed as follows in accordance with Art. 8d StromVV:

- in pseudonymized form (including load profile values of fifteen minutes and more) for metering, control and regulation, for the use of tariff systems as well as

for secure, powerful and efficient grid operation, grid balancing and grid planning;

- in non-pseudonymized form (including load profile values of fifteen minutes and more) for the billing of the energy supply, the grid usage charge and the remuneration for the use of control and regulation systems.

Pseudonymized personal data continue to fall within the scope of the DPA, as the reference to the individually identifiable natural person (data subject) can be restored at any time by the controller who has the reference key. The scope of application of the DPA is only left when the personal data is anonymized - this is the case, for example, when the pseudonymized data is passed on to a third party without a reference key, as this third party can no longer establish the reference to the data subject. In the context of the legally intended use of smart meter data, however, consent is not required even based on the DPA, as this is a processing of personal data justified by law (Art. 31 para. 1 DPA). Furthermore, due to the processing provided for by law, no separate information of the data subject is required (Art. 20 para. 1 lit. b DPA), although for reasons of transparency and to increase the acceptance of smart meters by the end customer, it remains advisable to provide information about the processing of personal data (e.g. in the general data protection declaration).

### Further use of smart meter data

Smart meters have a potential use that goes beyond the legally intended uses explained above. For example, load profile measurements can be carried out within 15 minutes, which enables real-time reading of electricity consumption. Depending on the equipment and in combination with smart home systems, it is also conceivable to measure the electricity consumption of individual devices using smart meters.

If further analyses of smart meter personal data are carried out anonymously, the restrictions of the DPA do not apply. However, this requires that these further processing operations are separated technically and in terms of organization in such a way that it is impossible for the persons or systems that carry out such further processing operations to access the reference key and thus restore the reference to the data subject.

A personal, more extensive evaluation of smart meter data (pseudonymized or disclosed) should regularly require the consent of the data subject, as the legitimate interests of the operators are unlikely to outweigh the data subject's interest in privacy. Thus, in Art. 8d StromVV, the legislator has already anticipated the weighing of interests and has deliberately not mentioned further data processing. If it is not possible to prove both an overriding interest in processing and a legal right to process data, the only way to justify processing is to obtain the consent of the data subject (Art. 31 para. 1 DPA). Consent, in turn, is only valid if it is given voluntarily and appropriately informed with regard to the intended processing (Art. 6 para. 6 DPA).

### Further data protection aspects

The introduction of smart meters entails further obligations for the grid operators with regard to the collected data. For example, the load profile values recorded at 15-minute intervals must be made available to the end consumers electronically in a comprehensible form (Art. 8a Para. 2 lit. c StromVV), which is usually done via the customer portal. The obligation to draw up processing regulations (Art. 5 and 6 of the Data Protection Ordinance DSV) must be examined. Under Art. 12 DPA network operators are also obliged to keep a register of processing activities with the legally required content (i.e. identity of the processor, purpose of processing, categories of data subjects and personal data, categories of recipients, retention period, data security measures taken, recipient state in the case of disclosures abroad). This applies in particular if they have more than 250 employees, process particularly sensitive personal data on a large scale or carry out high-risk profiling (which may then also require a data protection impact assessment to be carried out, Art. 22 DPA).

### Conclusion

When smart meters are used by grid operators in Switzerland, the data processing requirements of the StromVG, StromVV and now also the revised DSG must be complied with at all times. If the use of smart meters goes beyond the legally intended use, it is mandatory to obtain the consent of the end consumer. To avoid data protection risks, it is worth involving a specialist at an early stage.

### GHR Energy and Natural Resources

Marc Grüninger ([marcgrueninger@ghr.ch](mailto:marcgrueninger@ghr.ch))

Stephan Hofer ([stephanhofer@ghr.ch](mailto:stephanhofer@ghr.ch))

Patrizia Lorenzi ([patrizialorenzi@ghr.ch](mailto:patrizialorenzi@ghr.ch))

Nick Wälti ([nickwaelti@ghr.ch](mailto:nickwaelti@ghr.ch))

### GHR Rechtsanwälte AG

Seidengasse 13  
Postfach  
CH-8021 Zürich  
T +41 58 356 50 00  
F +41 58 356 50 50  
[www.ghr.ch](http://www.ghr.ch)

Tavelweg 2  
Postfach  
CH-3074 Bern Muri  
T +41 58 356 50 50  
F +41 58 356 50 09

**GHR Rechtsanwälte AG** is the Swiss member of the Energy Law Group (ELG), the most extensive network of experts in energy and natural resources law. Founded in 1993, 35 independent premier law firms. The top 800 lawyers with special expertise in the energy, mining, projects and natural resources sectors. More than 1,000 major transactions and landmark cases in the last five years. Multiple rankings in Chambers and Partners, Legal500, IFLR, WWL and other international legal directories. For more information on the Energy Law Group and its members, see [www.energylawgroup.eu](http://www.energylawgroup.eu)

This newsletter does not contain legal advice. It contains only the views of the authors.



**ENERGY LAW GROUP**