

Data access in the energy sector

Data Access: A crucial issue for the energy sector

The generation, transmission, supply and utilisation of energy produce enormous amounts of data. Access to this data is governed by specific rights and obligations that define the conditions under which information must be provided. Beyond these regulatory requirements, access to data also creates new business opportunities by promoting innovation and efficiency gains. As part of the EU strategy for a digitalised energy system, the secure and transparent exchange of data plays a crucial role in shaping the future of the energy market.

How we can support your business

1. Overview of the legal landscape

- Provide an overview of the existing legal framework, upcoming legislation, and developments in the relevant area.

2. Scoping exercise

- Determine the applicability of the respective legislation to your products and data

3. Impact analysis

- Identify which (new) rules apply to your organisation

4. Support and advice on implementing the Data Act

- **Project assistance:** Advise on changes to product design, manufacturing and information requirements to comply with 'data access by default' obligations and protect against unlawful use or disclosure of data
- **Contractual drafting and revision:** Draft and revise contractual terms and terms of use for connected products & services, including confidentiality or non-disclosure agreements
- **Guidance on FRAND disputes:** Provide advice on potential disputes related to FRAND (fair, reasonable, and non-discriminatory) terms for data access & licensing agreements
- **Exploring potential benefits:** Advise on the potential benefits of the Data Act (e.g. access to third-party data)
- **Compliance with existing obligations:** Ensure compliance with existing obligations (especially GDPR) while implementing the Data Act

5. Support and advice on implementing sector-specific legislation



Our track record

- Advising **an American multinational telecommunications conglomerate** on the applicability of the Data Act on its services, with a focus on data processing services and switching
- Advising **a European national regulatory body** on implementation of European smart meter regulations including compliance with Data Act and GDPR
- Advising **a mobility company** on the impact of the Data Act. We carried out an initial impact assessment of the potential applicability of the proposed EU Data Act on the connected products and services offered by a leading European company in the mobility sector. A presentation of key points in the incoming Act was also prepared for the company's Board
- Advising **an energy company** on reporting obligations under German data protection and cybersecurity laws
- Advising **a new energy vehicle market leader** on data protection issues, in particular data protection declarations, international data transfers, Schrems II
- Advising **a global leader** in solar innovation on various data protection issues



Overview of data access rights and obligations

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| Horizontal legislation | Data Act* <i>Regulation (EU) 2023/2854</i> *Most rights and obligations will apply from 12 September 2025 | B2B, B2C and B2G access to data generated by the use of a connected product (= IoT devices) and a related service by the user; must also be provided to third parties at the user's request <ul style="list-style-type: none"> – Relationship to sector-specific data access rules? – What is covered by the term 'connected product' in the energy sector? – What about trade secrets? Also: interoperability requirements for participants in data spaces which will be relevant for the planned Common European Energy Data Space |
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| Sector-specific legislation | Electricity Regulation <i>Regulation (EU) 2019/943</i> | Enhancing B2C access to data: transmission operators must contribute to transparent procedures for final customers to access data (consumption, metering) |
| | Electricity Directive <i>Directive (EU) 2019/944</i> | Member States must ensure: <ul style="list-style-type: none"> – Access to data as a factor in levelling the playing field – Access to data and possibility to transmit (at no cost): final customer entitled to smart metering data, on consumption etc., upon request on feed-in volumes – Access to customer data by eligible parties: – efficient and secure Data Management required – Also: full interoperability required for energy services |
| | Implementing regulations <i>Implementing Reg. on access to metering and consumption data, (EU) 2023/1162</i> | <ul style="list-style-type: none"> – Interoperability: reference model incl. mandatory rules/procedures – Access to data: Different market roles & their responsibilities regarding data access to diff. market actors and/or consumers defined |
| | Country specific legislation | e.g., Smart Meter Data Access Code in Ireland, Messstellenbetriebsgesetz in Germany |