



GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Mr Günther H. OETTINGER
Commissioner for Energy
European Commission
BRU-BERL 09/024
B-1049 Brussels

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GB/ZB/kd D(2011)1873 C 2011-0757

Subject: Proposal for a Directive of the European Parliament and of the Council on energy efficiency and repealing Directives 2004/8/EC and 2006/32/EC

Dear Mr Oettinger,

I am writing with reference to the proposal for a Directive of the European Parliament and of the Council on energy efficiency and repealing Directives 2004/8/EC and 2006/32/EC.¹

The EDPS has not issued an Opinion on this proposal, in view of its main substance which has no direct impact on data protection. Nevertheless, we find it appropriate and useful to draw your attention to some aspects relating to the proposal, taking into account that some of its provisions raise issues relevant to smart metering and smart grids. Smart metering (and the related, broader issues of the smart grid) have particular importance for the rights to privacy and the protection of personal data and may require further reflection in the longer term.²

The preliminary comments provided in this letter are limited to the text of the proposal only. The EDPS may consider providing further comments with respect to broader issues of smart metering and smart grids at a later stage, taking into account further developments in this area, including the final report of Expert Group 2 of the Commission's Task Force on Smart Grids³, and the outcome of the 8 November 2011 meeting scheduled by the Commission to discuss with stakeholders whether there is a need for additional legislative action to regulate smart metering and smart grids.

¹COM(2011) 370 final.

² As also pointed out in the 4 April 2011 Opinion of the Article 29 Data Protection Working Party on smart metering (WP 183), available at http://idpc.gov.mt/dbfile.aspx/WP_183.pdf.

³The Commission established a Task Force to give expert advice on smart grid issues. One of its subgroups, Expert Group 2 deals with security and data protection aspects. The final report is expected to be issued before the 8 November 2011 meeting. A first report, dated 16 February 2011 and a draft of the 'second deliverable' dated 6 June 2011 is available at the website of the Task Force at http://ec.europa.eu/energy/gas_electricity/smartgrids/taskforce_en.htm.

The relevant provisions of the proposal from our perspective are (i) Article 8 of the Proposal on 'metering and informative billing' and (ii) Annex VI on 'Minimum requirements for metering of individual energy consumption and the frequency of billing based on actual consumption'. These provisions specifically refer to 'smart metering', which is already foreseen to be rolled out Europe-wide in prior legislation.⁴

Annex VI requires Member States to ensure that smart meters will be rolled-out in such a manner that final customers will have access to their own energy consumption data. In particular, paragraph 1 requires that meters would be enabled to 'export private metrological data to the final customer or a third party designated by the final customer'; and paragraph 2 requires that interfaces should 'provide private information enabling final customers to better control their energy consumption', with paragraphs 4 and 6 providing more detail as to the minimum amount of information to be made available to the customers. Paragraph 3, in turn, requires that the interface should also provide 'public data that allows the final customer to consult and use the applicable time-of-use tariffs with real-time pricing, peak-time pricing and peak time rebates'.

We welcome this intention and take this occasion to emphasize the synergies between consumer protection, data protection, and environmental protection in this area: by having access to their energy consumption data, energy users will be able to make better-informed decisions about their energy use. Full and transparent access to energy users to their own consumption data (a key data protection principle) will thus, help

- reduce the information imbalance between energy suppliers and their retail customers (thus meeting key consumer protection objectives), and will
- also help raise awareness of the possibility of energy savings, and thus, will help change consumption patterns (thus meeting a key environmental objective).

While, and precisely because, we are sharing the objectives of the provisions in Annex VI, we recommend that the text would be further clarified with respect to the information that is to be made available to the consumers.

In our view, the proposal should be clearer on what constitutes 'public information' and 'private information'. It should be avoided, in particular, that the categories of 'private information' and 'public information', as used in the proposal, would be confused with the categories and definitions already existing in applicable data protection laws, namely the category of 'personal data' as defined in Article 2 (a) of Directive 95/46/EC⁵.

We also emphasize that the cited provisions should not, in any event, be read to prejudice the general obligation, under Articles 11 and 12 of Directive 95/46/EC to provide access to data subjects to their personal data. In this perspective, in principle, and from the data protection point of view, a solution would be desirable where all data collected by the smart meters would be made available to the final consumers, in a user-friendly fashion.

⁴Directive 2006/32/EC (on energy end-use efficiency and energy services; to be repealed by the Proposal); Directive 2009/72/EC (on common rules for the internal market in electricity); and Directive 2009/73/EC (on common rules for the internal market in natural gas).

⁵Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31.

Finally, we would like to reiterate, as we noted above, that it cannot be excluded that further legislative action at the European level may be necessary in the future to further regulate the data protection issues related to smart metering or smart grids.

Hope you will find our preliminary comments helpful. As discussed above, we look forward to further developments in this area and remain available to provide any further advice you may need.

I have sent these comments to the European Parliament and to the Council as well.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Ms Françoise Le Bail, Director General – DG JUST
Mr Philip Lowe, Director General – DG ENERGY
Mr Paul Nemitz, Director – DG JUST Fundamental Rights and Citizenship
Mr Paul Hodson, Head of Unit - DG ENERGY Energy Efficiency
Mr Jan Panek, Head of Unit – DG ENERGY Internal Market III
Ms Marie-Hélène Boulanger, Head of Unit – DG JUST Data Protection
Mr Philippe Renaudière, Data Protection Officer