



**Code of Conduct
for the processing of personal data by Grid Operators
in the context of installation and management
of smart meters with private consumers**

Entered into force May 19, 2012

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1. Recitals

- 1.1. The Electricity Act of 1998, the Gas Act and article 2 and 6 of the Implementation Act regarding EU Directives on energy efficiency (Act of February 26, 2011) contain the obligation for Grid Operators to provide Private Consumers with a Smart Meter.
- 1.2. Grid Operators may process Personal Data in the context of installation and the management of Smart Meters or to in order to facilitate services or activities to Private Consumers. They recognise the need to careful processing of Personal Data and the confidential treatment of such data.
- 1.3. The Dutch Personal Data Protection Act (*Wet bescherming persoonsgegevens*), hereinafter referred to as '**Wbp**', provides the requirements for the processing of privacy-sensitive information. In addition, the Electricity Act of 1998, the Gas Act, the Metering Code Electricity, the Metering Terms and Conditions Gas - RNB and the Information Code Electricity and Gas apply.
- 1.4. In view of article 25, paragraph 1, Wbp, Netbeheer Nederland has drafted this *Code of Conduct for the Processing of Personal Data by Grid Operators in the context of installation and management of Smart Meters with Private Consumers*, hereinafter referred to as '**Code**'. This Code is binding on all Grid Operators, which are a member of Netbeheer Nederland. This Code should always be read in connection with the requirements of the Wbp and other relevant legislation.
- 1.5. The purpose of this Code is to:
 - (a) provide rules to Grid Operator for the processing of Smart Meter Data in the context of installation and management of Smart Meters;
 - (b) provide information to Private Consumers whose Smart Meters Data will be processed by Grid Operators in connection with installation and management of Smart Meters;
 - (c) contribute to the transparency with regard to the processing of Personal Data associated with installation and management of Smart Meters.
- 1.6. The Dutch Data Protection Authority (*College Bescherming Persoonsgegevens*), hereinafter referred to as '**CBP**', has issued an approval for this Code on May 9, 2012. This approval has been published in the State Newspaper (*Staatscourant*), nr. 9616, on May 18, 2012. The CBP has declared that this Code, considering the particular characteristics of the sector, provides a correct implementation of the Wbp and other legal requirements related to the processing of Personal Data. The approval is valid

for a period of five years.

- 1.7.** This Code enters into force on the first day following the date of publication of the CBP's approval in the State Newspaper mentioned in article 1.6.

2. Definitions

2.1. For the purposes of this Code:

- (a) **Registry of connections** shall mean the registry in which the Grid Operator keeps all relevant data concerning the connections in his area;
- (b) **Terms and Conditions** shall mean the terms and conditions used by the Grid Operator for the connection and transport of electricity and/or gas to Private Consumers;
- (c) **Processor** shall mean a natural or legal person who processes Personal Data for the purpose of the Controller, without being subject to his direct supervision, as referred to in article 1, paragraph (e) Wbp;
- (d) **CBP** shall mean the Dutch Data Protection Authority (*College Bescherming Persoonsgegevens*) as referred to in article 51 Wbp;
- (e) **Third Party** shall mean anyone, other than the Private Consumer, the Grid Operator, the Processor, or any other individual who is authorized to process Personal Data under the direct supervision of the Grid Operator or the Processor for the purposes referred to in article 5.1.1;
- (f) **Energy Supplier** shall mean the license-holder as referred to in article 1, section (l), of the Electricity Act of 1998 or as referred to in article 1, section (p), of the Gas Act. (For purpose of clarity, this does not include the Grid Operator);
- (g) **Data Protection Officer (or DPO)** shall mean the person as referred to in article 62 Wbp (*Functionaris voor de Gegevensbescherming* or *FG*), insofar as the Grid Operator has appointed such a person;
- (h) **Code** shall mean this Code of Conduct for the processing of Personal Data by Grid Operators in the context of installation and management of Smart Meters with Private Consumers;
- (i) **Interval Readings** shall mean the Meter Readings, which have been registered with a frequency of more than once a day;
- (j) **Private Consumer** shall mean the customer who buys electricity and/or gas via a gas connection with a capacity smaller or equal to 40m³(n) per hour or an electricity connection with a pass-through capacity smaller or equal to 3x80A for low voltage, as referred to in article 95a of the Electricity Act of 1998 and article 43 of the Gas Act, insofar as such customer is a data subject as referred to in article 1 section (f) Wbp;
- (k) **Market Facilitation** shall mean the activities of the Grid Operator, which facilitate the services provided by Third Parties in the electricity or gas market;
- (l) **Meter Readings** shall mean Smart Meter Data, which relate to the consumption and production of electricity or gas via a connection of the Grid Operator;

- (m) **Smart Meter** shall mean a remotely-readable meter, which complies with the requirements of the Royal Decree for Remotely-Readable Meters (*Besluit op afstand uitleesbare meters*);
- (n) **Smart Meter Data** shall mean the data, which can be remotely read by the Grid Operator from Smart Meters;
- (o) **Grid** shall mean the electricity or gas grid;
- (p) **Grid Operator** shall mean the legal entity as referred to in article 1, section (k) of the Electricity Act of 1998 or as referred to in article 1, section (e), of the Gas Act;
- (q) **Netbeheer Nederland** shall mean the trade organization for regional and national Grid Operators for electricity and gas in The Netherlands;
- (r) **Independent Service Provider (or ISP)** shall mean any organization or person, which provides energy-related services to Private Consumer independently of a Grid Operator or Energy Supplier;
- (s) **Other Service** shall mean any service provided by a Grid Operator to the Private Consumer related to the Smart Meter other than an activity in the context of the connection to the electricity or gas grid or the transportation of electricity or gas, which the Grid Operator may perform on the basis of the Electricity Act of 1998 or the Gas Act;
- (t) **Personal Data** shall mean any information related to an identified or identifiable Private Consumer;
- (u) **Toegankelijk Meetregister (TMR or Accessible Readings Registry)** shall mean the registry, which contains the meter readings and consumption in connection to the electricity and gas connections, and which, under certain conditions, is accessible by Energy Suppliers for consultation;
- (v) **Controller** shall mean the natural or legal person, public authority, agency or any other, which alone or jointly with others determines the purposes and means of the processing of Personal Data;
- (w) **Processing of Personal Data** shall mean any operation or set of operations which is performed upon Personal Data, included collection, documenting, arranging, storage, adaptation, alteration, retrieval, consultation, use, disclosure by transmission, distribution or otherwise making available, alignment or combination, blocking, erasure or destruction of Personal Data;
- (x) **Wbp** shall mean the Dutch Personal Data Protection Act (*Wet bescherming persoonsgegevens*).

3. Scope

3.1. The sector

3.1.1. This Code applies to Grid Operators, which are member of Netbeheer Nederland.

3.2. Smart Meter chain

3.2.1. The scope of the Code covers:

- (a) the processing of Smart Meter Data by or on behalf of the Grid Operator in the context of installation and management of Smart Meters and Smart Meter Data in the context of technical management of the Grid;
- (b) the processing of Meter Readings by or on behalf of the Grid Operator, insofar necessary for facilitating a service provided by an Energy Supplier or ISP to the Private Consumer;
- (c) the processing of Meter Readings by or on behalf of the Grid Operator, insofar as necessary for the performance of Other Services provided by the Grid Operator to the Private Consumer.

3.3. Exclusions

3.3.1. The following processing of Personal Data fall outside the scope of this Code:

- (a) Personal Data obtained from conventional meters, which are not remotely readable;
- (b) Personal Data registered in the Toegankelijk Meetregister (TMR) and the Registry of Connections of Grid Operators;
- (c) Other customer data of Private Consumers insofar they are not directly or indirectly created by installation or management of the Smart Meter or insofar they do not directly relate to the Smart Meter.

3.3.2. The following Third Parties are not subject to the Code:

- (a) Energy Suppliers;
- (b) Independent Service Providers (ISPs);
- (c) The (national) operators of the high voltage grid and the high pressure transport grid

4. Personal Data processing principles

- 4.1. The Grid Operator shall process Personal Data in accordance with the law and in a fair manner.
- 4.2. The Grid Operator shall collect Personal Data only for the purposes described in Chapter 5 of this Code.
- 4.3. The Grid Operator shall process the Personal Data only if and insofar at least one of the following grounds for the processing apply:
 - (a) the Private Consumer has unambiguously given his consent for the processing of the Personal Data;
 - (b) the processing is necessary for the performance of a contract to which the Private Consumer is party or in order to take steps at the request of the Private Consumer prior to entering into a contract;
 - (c) the processing is necessary for compliance with a legal obligation to which the Grid Operator is subject;
 - (d) the processing is necessary in order to protect the vital interests of the Private Consumer;
 - (e) the processing is necessary for the proper performance of a public interest task carried out by an administrative body to whom the data are disclosed; or
 - (f) the processing is necessary for the purposes of the legitimate interests pursued by the Grid Operator or by a Third Party to whom the data are disclosed, except where such interests are overridden by the interests for fundamental rights and freedoms of the Private Consumer, in particular his right to privacy.
- 4.4. The Grid Operator shall process Personal Data only for other purposes insofar such processing is not incompatible with the purposes for which the Grid Operator has originally obtained the Personal Data ("**Further Processing**"). Where the Personal Data are Further Processed, the Grid Operator shall ensure that appropriate safeguards for the protection of the privacy of the Private Consumer are taken in view of the relationship between the envisaged purpose and the purpose for which the data were originally obtained, the nature of the Personal Data, the expected consequences of the Further Processing for the Private Consumer and the way in which the data were obtained.
- 4.5. The Grid Operator shall only provide access to the Personal Data to staff, including staff of the Processor, insofar as such staff reasonably needs the Personal Data for

the performance of their task.

- 4.6.** The Grid Operator shall implement appropriate technical and organisational measures in accordance with article 7.3.1 to protect personal data against loss or any unlawful forms of processing. In doing so, the Grid Operator shall take due notice of the requirements laid down in the document *Privacy and Security Smart Meter Infrastructure*.¹
- 4.7.** The Grid Operator shall implement measures to ensure that Personal Data, given the purposes for which the Grid Operator processes the data, are accurate, sufficient, relevant and not excessive.
- 4.8.** The Grid Operator shall not retain Personal Data longer than necessary for the purposes as referred to in Chapter 5 of this Code.
- 4.9.** Where Personal Data are collected from the Private Consumer, the Grid Operator shall inform the Private Consumer of his identity and the purposes of the processing of the Personal Data. Furthermore, the Grid Operator shall provide information to ensure a fair processing with respect to the Private Consumer, given the nature of the data, the circumstances in which the data were obtained or the use of the data. Where the Grid Operator collects Personal Data on the basis of the Private Consumer's unambiguous consent as referred to in article 5.4.2, the Grid Operator shall inform the Private Consumer also of the consequences of his consent as well as of the fact that consent may be withdrawn at any time. The obligation to inform the Private Consumer needs to be complied with prior to the collection of Personal Data via the Smart Meter. The information does not need to be provided where the Grid Operator may reasonably assume that the Private Consumer already has such information or where the data are processed on behalf of an Energy Supplier or ISP with which the Private Consumer has entered into a contract. In such case, the Grid Operator may assume that the Private Consumer already has been informed by the Energy Supplier or the ISP.
- 4.10.** The Grid Operator shall notify the CBP, or alternatively his own DPO, of the processing of Personal Data in the context of the Smart Meter infrastructure, insofar as required by the Wbp.
- 4.11.** In exceptional circumstances, provided due consideration is given to all relevant facts and circumstances, articles 4.4., 4.9 and 6.2.1 of this Code may be set aside if a

¹ Available from Netbeheer Nederland.

pressing need to do so exists, and provided such need outweighs the rights and freedoms of the Private Consumer, including:

- (a) the prevention, detection, investigation, and prosecution of a violation of laws and regulations, or the corporate policy of the Grid Operator, including the cooperation with (supervisory) authorities;
- (b) the protection and defence of the rights and freedoms of the Grid Operator, of his staff or of other persons (the Private Consumer and Third Parties included), including:
 - the protection of the safety and security of Grid Operator staff, the Private Consumer and others;
 - the protection of the Grid Operator's trade secrets, reputation or business continuity;
 - the safeguarding of the continuity of the distribution of electricity and/or gas as well as the protection and the security of the Grid.

4.12. The Private Consumer has the right to ask the Grid Operator with reasonable intervals for an overview of specific Personal Data related to him, which are processed by the Grid Operator ('right of access'). With the exception of cases referred to in article 4.11, the Grid Operator shall provide the Private Consumer with a full overview of the Personal Data within four (4) weeks after receipt of the request. Furthermore, where the Grid Operator does not process Personal Data related to the Private Consumer, the Grid Operator shall inform the Private Consumer within four (4) weeks of this fact.

The overview contains in intelligible form:

- a) the description of the purpose or purposes for which the Personal Data are processed;
- b) the categories of Personal Data to which the processing relates;
- c) the recipients or categories of recipients of the Personal Data, and
- d) the available information as to the origin of the Personal Data.

The Grid Operator shall ensure the adequate identification of the person making the request.

4.13. The Private Consumer has the right to request correction, completion, erasure or blocking of the Personal Data related to him if the overview referred to in article 4.12 indicates that the Personal Data are factually incorrect, incomplete or irrelevant as to the purposes or otherwise infringes this Code or the Wbp. The Grid Operator shall inform the Private Consumer in writing within four (4) weeks after receipt of the request whether and, if so, to what extent the request has been complied with. Where a request of the Private Consumer is not or not entirely complied with, the

Grid Operator shall explain the reasons for the refusal.

- 4.14.** Where the processing of the Personal Data is based on the grounds referred to in article 4.3 sub (e) or (f), the Private Consumer has the right to object to the processing of his Personal Data in connection with his particular circumstances. The Grid Operator shall review the legitimacy of the request within four (4) weeks. Where such is the case, the processing of the Personal Data of the Private Consumer shall be terminated immediately.
- 4.15.** The Grid Operator may charge compensation for a request of the Private Consumer as referred to in articles 4.12 and 4.14. Such compensation shall not exceed the maximum sum allowed by the Royal Decree Compensation Execution of Rights Data Subjects Wbp (*Besluit Kostenvergoeding Rechten Betrokkenen Wbp*). Where the Personal Data have been corrected, altered or erased as referred to in article 4.13 or where the objection as referred to in article 4.14 is valid, the sum shall be refunded.

5. Purposes of processing of Smart Meter Data

5.1. General

- 5.1.1. The Grid Operator shall process Smart Meter Data only for the purposes in accordance with the Electricity Act of 1998 and the Gas Act. These purposes are:
- (a) Managing the electricity and gas grids, the Smart Meter and related activities;
 - (b) Facilitating the services of an Energy Supplier or ISP to the Private Consumer;
 - (c) Providing Other Services to Private Consumers, and
 - (d) Complying with any other legal obligation of the Grid Operator insofar this is not a part of sections (a) or (b) of this article.
- 5.1.2. The Smart Meter Data may contain Personal Data. The Grid Operator processes the Smart Meter Data, which are also Personal Data only in accordance with the provisions of Chapter 4.
- 5.1.3. Smart Meter Data shall not be used for marketing activities of the Grid Operator, except where the Private Consumer has provided his prior consent.

5.2. Processing for the purpose of the management of electricity and gas grids, the Smart Meter and related activities

- 5.2.1. The Grid Operator processes Smart Meter Data for the purpose of the management of the electricity and gas grid, the Smart Meter, and related activities. This category of processing covers especially the following activities:
- (a) The technical control of the Grid;
 - (b) Meter management;
 - (c) Analytics and statistics.

5.2.2. *Technical control of the Grid*

- 5.2.2.1. The Grid Operator may process Smart Meter Data in connection with the technical control of the Grid. This covers at least the following activities:
- (a) Locating and solving voltage interruptions ;
 - (b) Executing control orders;
 - (c) Improving business operations and functional control;
 - (d) Reducing grid loss;
 - (e) Facilitating energy transition.

- 5.2.2.2. Where necessary, monitoring information may be collected and processed via the Smart Meter for the purpose of technical control of the Grid. The Grid Operator shall only use such Smart Meter Data for the monitoring of power quality, locating interruptions and compensation in case of outages.
- 5.2.2.3. Where Smart Meter is switched to 'remote read out opt-out' following the Private Consumer's request in accordance with article 6.1.3.1, it is not allowed to remotely read the Smart Meter for the purposes of technical control of the Grid as referred to in article 5.2.2.1.

5.2.3. ***Meter management***

- 5.2.3.1. The Grid Operator may process Smart Meter Data in connection with the management of the Smart Meter. This includes at least the following activities:
- (a) Synchronising the clock and calendar embedded in the Smart Meter;
 - (b) Checking the battery status of the Smart Meter;
 - (c) Maintaining the Smart Meter, such as updating the firmware;
 - (d) Detecting failures;
 - (e) Acting on the basis of status information of the Smart Meter (such as indicators, alarms and failure notifications); and
 - (f) Testing the correct functioning of the Smart Meter.
- 5.2.3.2. The Grid Operator shall use the Smart Meter Data, which have been collected for the purpose of meter management, only for the management of the Smart Meter.
- 5.2.3.3. Contrary to the choices made by the Private Consumer as referred to in articles 6.1.3 and 6.1.4, interval readings may be collected and processed during a reasonable and short period after the Smart Meter has been installed or after a failure has been solved in order to check the correct functioning of the Smart Meter.
- 5.2.3.4. Contrary to the choices made by the Private Consumer as referred to in articles 6.1.3 and 6.1.4, Smart Meter Data, other than Meter Readings, may be collected from or transmitted to the Smart Meter as often as necessary for the purpose of meter management.

5.2.4. ***Processing of Smart Meter Data for the purpose of analysis***

- 5.2.4.1. The Grid Operator may process Smart Meter Data for the purpose of analytics and statistics, including the creation of group profiles. The Grid Operator shall

take the necessary protection measures to ensure that Smart Meter Data are only processed for the purposes mentioned in the first sentence. In principle, Smart Meter Data, which also qualify as Personal Data, shall be anonymised.

- 5.2.4.2. The Grid Operator may make the Smart Meter Data available for scientific research. Where the research is conducted by a Third Party, the measures referred to in article 5.2.4.1, shall be, insofar relevant, described in a contract entered into between the Grid Operator and the Third Party.
- 5.2.4.3. Where the Private Consumer has indicated that the Smart Meter should be to switch to “remote read out opt-out” in accordance with article 6.1.3.1, it is not allowed to remotely read the Smart Meter for the analytics as referred to in article 5.2.4.1.

5.3. Processing for the purpose of Market Facilitation

- 5.3.1. The Grid Operator may process Smart Meter Data for the purpose of Market Facilitation, which includes at least the following activities:
 - (a) Facilitating the activities of Third Parties related to energy-saving;
 - (b) Other Market Facilitation activities.
- 5.3.2. The processing of Smart Meter Data for the purpose of Market Facilitation is only allowed at the request of an Energy Supplier or ISP, or in connection with the Grid Operator’s statutory duties.
- 5.3.3. Where the Private Consumer has indicated that the Smart Meter should be to switch to “remote read out opt-out” in accordance with article 6.1.3.1, it is not allowed to remotely read the Smart Meter for the activities referred to in article 5.3.1 (a) and (b).

5.3.4. *Energy-saving activities of Energy Suppliers and ISP’s*

- 5.3.4.1. The Grid Operator may make the Interval Reading or the Meter Readings available to Energy Suppliers and ISP’s in connection with their services related to energy-saving or the more efficient use of energy.
- 5.3.4.2. Six (6) times a year, the Grid Operator shall make the Meter Readings available to Energy Suppliers for the purpose of preparation of the consumption statement, unless the Private Consumer, has indicated that the Smart Meter should be

switched to “remote read out opt-out” in accordance with article 6.1.3.1.

5.3.4.3. The transmission of the Interval Readings to the Energy Supplier or ISP is only allowed with the unambiguous prior consent given by the Private Consumer to the Controller in accordance with article 8 Wbp.

5.3.5. **Other Market Facilitation**

5.3.5.1. The Grid Operator may collect and further process Smart Meter Data for the purpose of other Market Facilitation activities. This includes at least:

- (a) Making the Meter Readings available to the Energy Supplier for the purpose of billing;
- (b) Activities in the context of variable pricing;
- (c) Sending control commands to the Smart Meter.

5.3.5.2. The Grid Operator makes the Smart Meter Data available to the Energy Supplier as often as necessary for the purpose of billing, at least once a year and in the case of changes at the side of the Private Consumer, such as change of address, change of Energy Supplier, transition of Private Consumer to a large capacity consumer, or termination of the connection or contract (such as in case of death of the only Private Consumer at an address).

5.3.5.3. The Grid Operator shall disclose the Smart Meter Data only to the Energy Supplier, which has a contract with the Private Consumer concerning the supply of electricity or gas. Smart Meter Data shall not be collected with intervals shorter than as agreed with the Private Consumer in accordance with article 6.1.4.

5.4. **Processing for the purpose of Other Services**

5.4.1. The Grid Operator may collect and process Smart Meter Data for the purpose of offering Other Services.

5.4.2. Processing Smart Meter Data for the purpose of Other Services is only allowed insofar necessary for the performance of a contract for Other Services to which the Private Consumer is party or with his unambiguous prior consent.

5.4.3. If Smart Meter Data, which have been collected by the Grid Operator for the purpose of activities referred to in article 5.3.1, are needed for Other Services, the Grid Operator shall specifically inform the Private Consumer about such use when

requesting consent for the collection and use of Smart Meter Data for the purpose of the Other Service, or at the time the contract for the Other Service is entered into.

- 5.4.4. Where the Private Consumer, in accordance with article 6.1.3.1, has indicated that the Smart Meter should be to switch to “remote read out opt-out”, it is not allowed to remotely read the Smart Meter for the Other Services referred to in article 5.4.1.

6. Rights of Private Consumers

6.1. Rights related to the Smart Meter

6.1.1. Within a reasonable time prior to the installation of the Smart Meter, the Private Consumer must be informed about the various choices with respect to the processing of Smart Meter Data. These choices concern:

- (a) The installation of the Smart Meter;
- (b) The remote readability of the Smart Meter;
- (c) The frequency with which the Smart Meter is remotely read.

6.1.2. *Installation of the Smart Meter*

6.1.2.1. Where the Private Consumer prior the installation of the Smart Meter has informed the Grid Operator of his objection to the installation of the Smart Meter, the Smart Meter shall not be installed.

6.1.2.2. The Private Consumer cannot request a Smart Meter, which already has been installed, to be replaced by a meter, which is not remotely readable.

6.1.3. *Readability of the Smart Meter*

6.1.3.1. The Private Consumer has the right to request the Grid Operator at any time to change the remote readability of the Smart Meter.

6.1.3.2. The remote readability of the Smart Meter can be switched on (“administratively up”) or off (“remote read out opt-out”).

6.1.3.3. The Grid Operator shall carry out the request as referred to in article 6.1.3.1 as soon as possible.

6.1.4. *Frequency with which the Smart Meter is remotely read*

6.1.4.1. Where the Private Consumer has not made a choice with regard to the frequency, with which the Smart Meter may be remotely read, the Grid Operator shall remotely read the Smart Meter in accordance with the following schedule:

- (a) Once per year for the purpose of preparing the bill by the Energy Supplier;
- (b) Once every two (2) months for the purpose of awareness about the energy consumption;

(c) Ad hoc insofar necessary for the change of Energy Supplier, change of address, termination of the connection, technical control of the Grid, or management of the Smart Meter.

6.1.4.2. Reading the Smart Meter with a higher frequency than referred to in article 6.1.4.1 requires the unambiguous prior consent of the Private Consumer given to the Energy Supplier or ISP, or a contract between the Private Consumer and the Energy Supplier or ISP.

6.1.4.3. The Private Consumer has the right to withdraw his consent as referred to in article 6.1.4.2 at any time via the Energy Supplier or ISP.

6.2. Rights related to Smart Meter Data

6.2.1. Without prejudice to the Electricity Act of 1998, the Gas Act and the Terms & Conditions and articles 4.12 to 4.15 of this Code, the Private Consumer has the right of access to and correction of the Smart Meter Data, as well as the right to object to the processing of Smart Meter Data by the Grid Operator.

6.2.2. With respect to the exercise of the rights stated in article 6.2.1, the Private Consumer should address the Grid Operator with which he has a contract related to the connection to the electricity or gas grid or the transport of electricity or gas.

6.2.3. The Grid Operator may deny a Private Consumer's request for correction of the Personal Data or the Smart Meter Data, as referred to in article 4.13 and 6.2.1, if the Private Consumer did not comply with the terms of the Terms & Conditions related to the correct determination of the Metering Data and dispute resolution.

7. Organizational Controls

7.1. Roles and responsibilities

- 7.1.1. The board of management of the Grid Operator shall ensure compliance with this Code.
- 7.1.2. Every Grid Operator shall appoint an employee, who is tasked by the board of management to ensure compliance with this Code.

7.2. Privacy policy

- 7.2.1. Without prejudice to this Code, the Grid Operator may publish a privacy policy, which specifies in more detail the policy of the Grid Operator with respect to the processing of Personal Data.

7.3. Security of Personal Data

- 7.3.1. The Grid Operator, who processes Personal Data, shall, in view of
 - (a) the state of the art;
 - (b) the costs of implementation;
 - (c) the risks related to the processing of the Personal Data; and
 - (d) the nature of the Personal Datatake appropriate technical and organisational measures to protect the Personal Data against (intentional) destruction, loss, alteration, unwanted dissemination or access, as well as any other form of illegal processing of Personal Data. When doing so, the Grid Operator shall comply with the requirements laid down in the document *Privacy and Security Smart Meter Infrastructure*.
- 7.3.2. The Grid Operator may use the services of a Processor to process of the Personal Data. In such case, the Grid Operator shall specify the technical and organizational measures to protect the Personal Data in an agreement of other legal act, which creates an obligation for the Processor.

7.4. Audit

- 7.4.1. Every two (2) years, each Grid Operator shall establish an audit plan in order to verify compliance with this Code. Netbeheer Nederland may, in consultation with its

member, suggest specific point of interest for audits.

7.5. Incident Management

7.5.1. As soon as the Grid Operator is or has been made aware of an incident or vulnerability with regard of the processing of Personal Data, including, but not limited to, the loss of Personal Data, unauthorised access to Personal Data, or a deficiency in the security measures relating to the processing of Personal Data, the Grid Operator shall take all reasonable measures to effectively control, limit or correct the incident or vulnerability.

7.6. Staff

7.6.1. Every Grid Operator shall ensure that his staff, which is involved in the processing of the Personal Data, is aware of the importance of the fair processing of Personal Data and of the obligations of the Grid Operator imposed by this Code.

8. Dispute resolution

- 8.1.** Subject to first having completed the internal dispute resolution procedure of the Grid Operator, the Private Consumer, who believes that the Grid Operator violates this Code or the Wbp, has the right to address the Arbitration Board for Energy and Water. The Private Consumer may also directly address the CBP or the competent court. In any case, he is required to comply with the terms stated in articles 46 and 47 Wbp as well as with the provisions of the Terms & Conditions.
- 8.2.** Every Grid Operator keeps a registry of the disputes and their outcomes of the disputes referred to in article 8.1.1.

Explanations² of the Code of Conduct for the processing of personal data by Grid Operators in the context of installation and management of smart meters with private consumers

1. Recitals

The energy sector is rapidly changing. An example of such change is the implementation of a smart meter infrastructure for Private Consumers as a consequence of European regulation (article 2 and 6 of the Implementation Act regarding EU Directives on energy efficiency (*Staatsblad 2011, 114*)). Within the Smart Meter Infrastructure data is being processed, which may be classified as privacy-sensitive. Debates in the Dutch Senate have made clear that Dutch society attaches great importance to adequate privacy protection in the operation of Smart Meters.

Grid Operators may process Meter Readings for multiple reasons, such as operation and management of the Grid and the Smart Meter, Market Facilitation, the execution of their statutory duties and the offering Other Services. In order to ensure that Personal Data obtained from remotely-readable Smart Meters are processed carefully (including the documenting, archiving and destruction of Personal Data), Grid Operators are required to comply with the Dutch Personal Data Protection Act (Wbp). The Wbp offers trade organizations and sectors the possibility to draft a code of conduct, which specifies the rules tailored to the trade organizations or sector. Furthermore, the Grid Operators are required to comply with sector laws and regulations, such as the Gas Act, the Electricity Act of 1998, the Metering Code Electricity, the Metering Terms and Conditions Gas - RNB and the Information Code Electricity and Gas.

The Grid Operators, which are member of Netbeheer Nederland, have opted for the Code in order to contribute to transparency and accountability, and to have the Code approved by the Dutch Data Protection Authority (CBP). This Code is an implementation of the Wbp, specified for installation and management of Smart Meters with Private Consumers. All relevant (sector) law and regulations continues to apply. The CBP has declared that this Code provides a correct implementation of the Wbp. Code is valid for a period of five (5) years.

2. Definitions

² **Note for the Editor:** Capitalised terms in the Explanation, except names, have the meaning as defined in Chapter 2.

The terminology used in this Code link primarily to the terminology used in the Wbp. Some sector-specific terms link to the Electricity Act of 1998 and the Gas Act.

With respect to the term ‘Smart Meter’, the Royal Decree for Remotely-readable Meters (*Besluit op afstand uitleesbare meters*) of the Minister for Economic Affairs, Agriculture and Innovation is leading. The Royal Decree contains the requirements for Smart Meters. The requirements are further specified in the *Dutch Smart Metering Requirements (DSMR)*.

The Smart Meter can be read in various ways. First of all, the data can be sent remotely to the Grid Operator via the so-called “P3 port”. A second important way to read data from the Smart Meter is via the so-called “P1 port”. Via this port the Private Consumer is able to inform themselves of their energy consumption and it allows Independent Service Providers (ISPs) to assist the Private Consumers to monitor and optimise energy consumption. The Smart Meter contains Smart Meter Data, which may be comprised of data related to the maintenance of the Smart Meter (technical data) and Meter Readings. Meter Readings concern the readings read from the Smart Meter. With respect to readings, which can be read from Smart Meters, one should differentiate between Interval Readings and other readings, such as daily readings, monthly readings, etc. Interval Readings are readings, which are read with a frequency of more than once a day.

The most important roles mentioned in the Wbp are: the Controller, the Data Subject (i.e. the Private Consumer), and the Processor. The Grid Operator is a Controller with respect to the processing of Personal Data as referred to in paragraphs 5.2 and 5.4 and a Processor for the processing of Personal Data as referred to in paragraph 5.3. In order to make this Code understandable, we have opted to use the terms ‘Grid Operator’ and ‘Private Consumer’. Below you will find a more detailed explanation of these important terms used in the context of this Code.

The Electricity Act of 1998 and the Gas Act, tasks the Grid Operators with reading the Smart Meter Data from the Smart Meter. Depending on the purpose for which the data are read, the Grid Operators perform such readings for the performance of their (statutory) task, to offer Other Services to the Private Consumer, or to facilitate the activities and services of Energy Suppliers and Independent Service Providers.

The data subject is the person to whom the processing of Personal Data relates. In the context of this Code, this is the Private Consumer with whom a Smart Meter is installed. It’s his Personal Data, including Meter Readings, which are collected and processed by Grid Operators. The Processor is the party, which processes Personal Data under the authority of the Controller. In the context of this Code, Grid Operators may decide to have the processing performed by a third party. Such third party is called the Processor.

Where this Code use the term 'Third Party', none of the roles Grid Operator, Private Consumer or Processor is meant. The definition of Third Parties also excludes persons, which have been authorised by the Grid Operator or the Processor to Process Personal Data. A good example of Third Parties in the context of this Code are Independent Service Providers.

Another term, which is important in the context of this Code, is the term 'Personal Data'. For the purposes of this Code, this includes the Private Consumer's name, address, city and EAN Code. When such data are associated with Meter Readings obtained from the Smart Meter, also (detailed) Meter Readings may under certain circumstances be regarded as Personal Data.

This Code presents three types of data, all of which should be regarded as Personal Data in most cases:

- a) The largest category of data are the Smart Meter Data. This covers all data, which can be remotely read by a Grid Operator from a Smart Meter, including technical data related to the Smart Meter, such as its status (up/down), the settings of the embedded clock and calendar, information related to the software and firmware, etc., but also the information as mentioned under b) and c) below;
- b) The second category of data are the Meter Readings. This refers to the data which relate to the energy consumption of the Private Consumer. The law also uses this term for this category of data ("*meetgegevens*"). In The Netherlands, such data are usually referred to as "*meterstanden*". The Meter Readings are a subset of the Smart Meter Data mentioned above; and
- c) The third category of data used in this Code is the Interval Readings. This refers to Meter Readings, which are read by the Grid Operator from the Smart Meter on the basis of a specified time interval. For electricity, the interval is 15 minutes; for gas the interval is 1 hour. Interval Readings are both a subset of Meter Readings and Smart Meter Data.

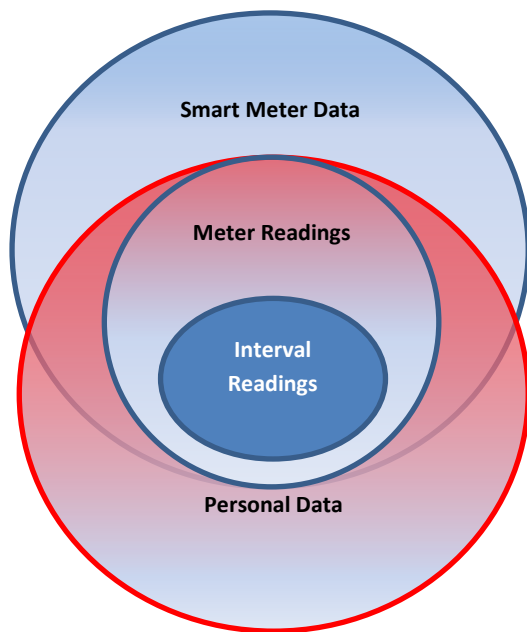


Figure: Overview of various types of data. Please note that Smart Meter Data not always qualify as Personal Data, because they could also be anonymous technical data. An example of anonymous Smart Meter Data is time synching. Furthermore, Smart Meters could be stored in logistic warehouses before they are installed. In such case, the Smart Meter Data has to be considered anonymous.

3. Scope

The sector (article 3.1)

This Code applies to all regional Grid Operators, which are member of the Dutch Association of Grid Operators (*Netbeheer Nederland*) and which manage the connection of the Private Consumer to the electricity or gas grid.

Exclusions (article 3.3)

For sake of clarity it is stated that the (national) operator of the high voltage grid (Tennet) and the (national) operator of the high pressure transport net (Gas Transport Services) are not covered by this Code, because these operators do not install Smart Meters with Private Consumers and therefore do not collect and process Personal Data.

Also Energy Suppliers with which the Private Consumer has a contract for the supply of electricity and gas as well as the Independent Service Providers (ISPs) are not covered by this Code. Those parties are themselves responsible for compliance with privacy legislation. This means that the scope of this Code and the responsibility of the Grid Operators end as soon as the Meter Readings have been forwarded to those parties.

This Code only applies to the collection and further processing of Personal Data in the context of the Smart Meter infrastructure. Other types of collection and processing of Personal Data are not covered by this Code, such as Meter Readings from analogue meters. Data processing, which is covered by this Code, therefore only concern the information related to the Smart Meter, personal information related to the contact (such as name and address, and EAN code of the customer), maintenance data (such as voltage, pressure, and temperature) and the Meter Readings / Interval Readings.

This Code does not apply to the Accessible Readings Register (*Toegankelijk Meetregister*), because this register by its very nature falls outside the scope of remotely readable Smart Meters. The reason is that the Toegankelijk Meetregister also contains data from analogue meters. Furthermore, the Toegankelijk Meetregister also serves the purposes of the Energy Suppliers.

4. Personal Data processing principles

The main rules related to the processing of data originating from the Smart Meter are stated in chapters 5 and 6 of this Code. Insofar such data also contain Personal Data, the provisions of chapter 4 also apply. In other words, chapters 5 and 6 also apply if the data do not qualify as Personal Data.

Chapter 4 defines the principles, with which the Grid Operator must comply when processing Personal Data. The principles are based on the Dutch Personal Data Protection Act (*Wet bescherming persoonsgegevens, Wbp*). The processing of Smart Meter Data also must comply with these principles insofar as the Smart Meter Data also qualify as Personal Data within the meaning of article 1 sub a Wbp.

The term 'processing of Personal Data' covers all actions performed on Personal Data. I.e., from the collection of the Personal Data down to the destruction of Personal Data, including all intermediate actions.

Purposes of the processing of Personal Data (article 4.2)

Personal Data may only be collected for specified, explicit and legitimate purposes. Such purposes must be described or changed prior to the start of the (changed) processing of Personal Data. 'Explicit' means that the description of the purposes should be clear. The purposes for the processing of Smart Meter Data by Grid Operators are described in chapter 5 of this Code. As mentioned above, the processing of Smart Meter Data must comply with the principles described in chapter 4, insofar as such Smart Meter Data also qualify as Personal Data. The purpose for which Personal Data are collected serves as the test for various other provisions, such further use, the retention period, and the requirement that Personal Data may not be collected in excess than necessary for that purpose. For a more elaborate explanation with regard to the purposes of the processing of Smart Meter Data, please refer to the explanation of chapter 5.

Grounds for the processing of Personal Data (article 4.3)

The processing of Personal Data must be based on at least one of the grounds mentioned in article 8 Wbp. Therefore, those grounds are incorporated in the Code. Where none of the grounds exist, the processing of Personal Data is not allowed. Multiple grounds may also exist. Such situation may occur where Personal Data are collected for multiple purposes at the same time. Please refer to the purposes described in chapter:

- By its nature, article 4.3 sub (a) corresponds with articles 6.1.4.2 and 5.4.2 of this Code;
- Article 4.3 sub (b) will be especially relevant for the processing of data in connection with the performance of the contract between the Private Consumer and the Grid Operator and between the Private Consumer and the Energy Supplier;
- Article 4.3 sub (c) concerns especially the processing in the context of the statutory duty of the Grid Operator as described in articles 5.1.1 sub (a), 5.1.1 sub (b) and 5.1.1 sub (d) of the Code;
- Article 4.3 sub (d) has been included for the sake of completeness, so the Grid Operator has the authority to process data in emergency situations;

- Article 4.3 sub (e) concerns especially the use of Personal Data for the purpose of the provision of services to local authorities and other government agencies. Typically, the data would be anonymised prior to disclosure, but it could also cover the cooperation of the Grid Operator in case of enforcement actions by public authorities;
- Article 4.3 sub (f) concerns especially the processing of data for the Grid Operator's own interests, such as internal management and control.

Compatible use (article 4.4)

Chapter 5 of the Code lists the purposes for which the Grid Operators may collect Personal Data within the framework of this Code. In case of compatible use, the question should always be answered whether, and to what extent, Personal Data, which have been collected for a specific purpose may be used for other purposes. To this end, one should consider whether the purpose of the intended activity is compatible with the activity or activities for which the data originally were obtained.

Several factors play a role in the answer to that question. A number of them are listed – non exhaustively – in article 9.2 Wbp, such as the relationship between the purpose or products for which the Personal Data were collected and the purpose for which they will be used, the nature of the data, the consequences of the processing for the Private Consumer, and the extent to which appropriate safeguards have been taken to protect the interests of the Private Consumer. The latter may include anonymising the data, the use of data on an aggregated level (e.g., district level), or taking specific security measures.

Quantity and quality of the Personal Data (art. 4.7)

Personal data may not be processed in excess of what is necessary. The purpose of the processing defines the quantity and the type of Personal Data, which may be processed. Furthermore, the Personal Data need to be accurate. The Controller must take measures, which are reasonable necessary to ensure that Personal Data are correct and accurate. In the document *Privacy and Security Smart Meter Infrastructure*³ elaborates the measures which should ensure the reliability of Personal Data.

Retention period (article 4.8)

After the contract with the Private Consumer has expired, the Personal Data must be destroyed, anonymised, or transferred to an archive as referred to in article 29 of the Royal Exemption Decree Personal Data Protection Act (*Vrijstellingsbesluit Wbp*). Any applicable statutory retention schedules should be taken into account.

A contract expires in the following situations:

³ Available from Netbeheer Nederland.

- (a) Change of address: The Private Consumer changes address, so the contract with the Grid Operator for the connection concerned is terminated. Change of address concerns moving within the distribution area of the Grid Operator as well as moving abroad;
- (b) Termination of the contract, such as the death of the only Private Consumer on a particular address;
- (c) Upgrading of the connection: The Private Consumer will consume so more energy that he should change type of connection. From that moment on, he is considered a large capacity consumer. Please note that in such case the applicability of the Code also ends.
- (d) Dismantling: The connection is dismantled. This terminates the contract with the Grid Operator for the connection concerned.

The Grid Operator should examine whether there are reasons to retain the Personal Data. Such reasons may arise from the legal obligations to which the Grid Operator is subject or from other interests, such as conducting an effective business). Where there are sufficient reasons to retain the data, the Grid Operator may establish specific retention periods for the Personal Data. Article 10 section 1 Wbp should be used as reference: Personal Data may not be retained longer than necessary for the realisation of the purposes for which the data were collected and further processed.

A Grid Operator establishes a policy with regard to the retention of Personal Data, their erasure or anonymisation, and the possible transfer of the Personal Data to an archive. When archived, the Personal Data shall only be used for the purpose of archive management, dispute resolution, or conducting scientific or historical research or statistics.

Informing the Private Consumer (art. 4.9)

The reason behind the obligation to inform the Private Consumer is to ensure that the Controller can be held accountable by the Private Consumer. According to the law, the Private Consumer must be informed, unless he already has the information. Depending on the circumstances, the Controller may assume that the Private Consumer already knows the information, for instance when the Private Consumer has been given the relevant information, when such information has been mailed to the Private Consumer, or when the Controller may conclude from the Private Consumer's actions or behaviour that he already has the information. When establishing the relationship with an Energy Supplier (and therefore with a Grid Operator), the contract will show for what purposes the Personal Data will be collected. Grid Operators may additionally inform the Private Consumer about the processing of their Personal Data via their Terms & Conditions, this Code and relevant websites.

Urgent reasons (art. 4.11)

The use limitation principle, the transparency principle and the rights of Private Consumers as stated in articles 4.4, 4.9 and 6.2.1 of this Code can be set aside in exceptional circumstances, which establish a pressing need outweighing the rights and freedoms of the Private Consumer. This could for example be the case when a Grid Operator is subjected to an investigation by a supervisory authority or the tax authorities. Also, it may be justified not to inform Private Consumers in case of a fraud investigation conducted by the Grid Operator or in case of a legal procedure, as this could harm the investigation. Where such pressing need initially existed, but then has disappeared, the possibility to invoke article 4.11 also ceases to exist.

Rights of Private Consumers (articles 4.12 – 4.14)

A Private Consumer has the right to obtain from the Grid Operator, with reasonable intervals, a written overview of the Personal Data, which are processed by the Grid Operator ('data subject access'). Such overview should contain: a description of the purpose of the processing, the categories of Personal Data to which the processing relate, the recipients or categories of recipients, and the available information as to the origin of the Personal Data. The origin of the Personal Data in the context of this Code is always related to the Smart Meter. The Grid Operator is required to provide the overview within four weeks after the date of receipt of the Private Consumer's request.

A Grid Operator is not required to answer a request for access in case article 4.11 applies. For example, access may be denied if it would threaten the security of the Grid Operator or in case of prevention, detection and prosecution of criminal acts.

Depending on the circumstances, it could be necessary to provide copies of documents or copies or transcriptions of data storage devices, on which Personal Data have been stored. Exceptions may exist:

- a) Documents, which are already in the possession of the Private Consumer (e.g., because a copy has been provided earlier), so he could already have formed an opinion;
- b) Any personal remarks of staff, which are intended to be used for internal discussion and consideration.

The request may be denied, if it qualifies as abuse of right or leads to an disproportional burden on the Grid Operator.

With regard to the right of access, an additional provision applies. The Grid Operator is required to properly identify the person making the request to ensure the access of Private Consumer to their own data only. When a request is made in writing, appropriate measures

have to be taken in this regard.

The right of correction, as referred to in article 4.13, cannot be exercised in an unrestricted manner. The provisions of the Electricity Act of 1998, the Gas Act and the Terms & Conditions for the connection and transport of electricity and/or gas to Private Consumers, which the Netbeheer Nederland has agreed with the Consumer Union, also apply to it. See also article 6.2.1 and its explanation.

The Grid Operator may charge a fee for an access request in one's own data or for the exercise of the right to objection as referred to in article 4.14 to cover expenses. The fee may not be in excess of the amount laid down in the Royal Decree Fees Rights Data Subjects Wbp (*Besluit kostenvergoeding rechten betrokkenen Wbp*).⁴

5. Purposes of the processing Smart Meter Data

General (article 5.1)

The purposes for which a Grid Operator processes Smart Meter Data relate to all activities of a Grid Operator in connection with the Smart Meter infrastructure. The Grid Operators have specified such purposes in various activities, which have been listed in article 5.1 and further specified in articles 5.2, 5.3 and 5.4.

Those articles concern the activities of a Grid Operator in connection with the installation of the Smart Meter, the management thereof, and the statutory duties of the Grid Operator. The activities form a coherent set of activities. They concern the entire relationship with the Private Consumer, including making Private Consumers aware of their energy consumption, and allowing flexible billing. However, 'coherence' does not mean that all activities are 'compatible'. This needs to be determined on a case-by-case basis. Use of Smart Meter Data for the various activities of the Grid Operator should always be checked against the principles of the processing of Personal Data as described in chapter 4, provided such data qualify as Personal Data.

Processing for the purpose of managing electricity and gas grids, the Smart Meter and related activities (article 5.2)

Grid Operators are need to process Smart Meter Data as part of the exercise of their statutory duties. Their role is described in the market model for the electricity and gas sector, as laid down in the Electricity Act of 1998 and the Gas Act. In the context of article 5.2, it concerns a number of activities of a technical nature, such as the technical control of

⁴ Staatsblad 2001, 305, amended by Staatsblad 2012, 90. See also CBP-case z2006-00052.

the Grid, the management and maintenance of the Smart Meter, and analytics and statistics.

Technical control of the Grid (article 5.2.2)

Examples of technical control of the Grid are: the registration and dissemination of electricity distribution quality, the registration, display and dissemination of the status of the meter, and the registration of fraud and misuse of and intrusion on the meter, attempts to do so and the unauthorized remote reading of the information.

With regard to the efficient control of the grid, the improvement of business operations and to research how things can be done better, Grid Operators may need to read certain information from the Smart Meter. This involves monitoring information, which is sent from the Smart Meter to the Grid Operator. This may include information about voltage and 'last gasp', current, pressure temperature, etc. However, Grid Operators may not collect this information, if the Private Consumer has indicated that the Smart Meter should be switched to 'remote read out opt-out' (see also the explanation to article 6.1.3).

The Grid Operator may (partially) disconnect the supply of electricity or gas via the Smart Meter, for example in case of non-payment. When do so, the Grid Operator shall act in accordance with the Ministerial Decree Disconnection Policy regarding Private Consumers of Electricity and Gas (*Ministeriële Regeling Afsluitbeleid voor kleinverbruikers van electriciteit en gas*).

Grid Operators may process data concerning the technical management of the Grid in an aggregated as well as a non-aggregated manner.

Meter management (article 5.2.3)

With regard to the (technical) management of the Smart Meter, Grid Operators may receive Interval Readings and monitoring information from the Smart Meter. However, the Interval Readings are only read for a limited period of time after the installation of the Smart Meter as well as after solving a failure in order to test the correct functioning of the Smart Meter. In normal circumstances, such period of time does not exceed five workdays.

The technical information is important for the maintenance of the Smart Meter and for the detection of failures in the Smart Meter. The transmission of data to the Smart Meter or collecting the data for the purpose of meter management may take place as often as necessary. This concerns data such as:

- a) the clock and the calendar;
- b) battery status;
- c) firmware updates (meaning updates of software embedded in the meter);

- d) status information related to meter configuration, such as indicators, alarms and failure notifications.

Processing for the purpose of Market Facilitation (article 5.3)

Stimulating energy saving (article 5.3.4)

Saving energy by providing insight in the real-time electricity and gas consumption is an important objective for the introduction of the Smart Meter. This objective has also been laid down in the European Directive 2006/32/EC.

In order to inform Private Consumers about their energy consumption, the Smart Meter may transmit Interval Readings to the Grid Operator, who in turn can provide such information to the Energy Supplier or ISP. This allows the Energy Supplier or ISP to conduct a consumption analysis and to advise the Private Consumer about energy-saving. However, such data may only be disclosed to the Energy Supplier or ISP on the basis of the unambiguous consent of the Private Consumer.⁵

Other Market Facilitation (article 5.3.5)

Other Market Facilitation may include supporting variable pricing and regular billing by Energy Suppliers. For this purpose, the Grid Operator may read meter readings from the Smart Meter at various moments and at various intervals and disclose them to the Energy Supplier. This includes providing the data for the purpose of the annual billing, but also special events, such as change of address, change of Energy Supplier, or contract termination (such as in case of death of the sole Private Consumer on a particular address). Other examples are the situation where the Private Consumer consumes so much energy that he changes categories and is regarded large capacity consumer from that moment on, and when the connection is terminated.

Whether the Grid Operator is allowed to remotely read the meter readings and with which frequency depends on the choices made by the Private Consumer (see article 6.1).

Processing for the purpose of Other Services (article 5.4)

The Grid Operator may offer services, whether or not in cooperation with others, to the Private Consumer insofar as allowed by the Electricity Act of 1998 or the Gas Act. This includes taking into account any measures concerning sustainable energy, energy-saving and

⁵ **Note from the editor:** Please note that the consent requirement is an anomaly of Dutch law. The Electricity Act of 1998 and the Gas Act require unambiguous consent for the disclosure of smart meter data to energy suppliers and ISPs. However, on the basis of the Data Protection Act, a contract between the private consumer and the energy supplier/ISP to provide energy-saving services would already suffice. See also article 7 sub (b) of the European Data Protection Directive 95/46/EC.

demand management, in accordance with the Electricity Act of 1998. Insofar as Smart Meter Data are needed for such services, the Grid Operator is required to comply with the same rules, which apply to the disclosure of data to the Energy Supplier and the ISP.

Special consideration should be given to the situation where the Grid Operator offers a service for which Personal Data are needed, which the Grid Operator already holds in the context of another activity. The Grid Operator must specifically inform the Private Consumer about such activities and should obtain his consent, where necessary.

6. Rights of Private Consumers

The Wbp grants rights to the Private Consumer: the right of access to his Personal Data, and the right to have such Personal Data corrected, supplemented, erased or blocked.

Furthermore, the Private Consumer has the right to object to the processing and not to be subjected to decisions based solely on automated processing of Personal Data.

Rights related to the Smart Meter (article 6.1)

The Private Consumer can make the following type of choices with regard to the Smart Meter:

- (a) He may object to the installation of the Smart Meter ('opt-out');
- (b) He may object to the remote reading of the Smart Meter by the Grid Operator ('opt-out'); and
- (c) He can choose to allow the Grid Operator to read the Meter Readings from the Smart Meter with a higher frequency than the default settings ('opt-in').

Before a Grid Operator installs a Smart Meter with a Private Consumer, he must inform such Private Consumer of his options. In principle, the Private Consumer should be informed in advance, so he has a reasonable period of time to opt-out. It may be necessary that the Private Consumer needs to opt-out on the spot when a failing traditional meter is about to be replaced with a Smart Meter. In case of a new building, the Smart Meter may have been installed before the new owner of the building is known.

Where the Private Consumer has not informed the Grid Operator of his objection, the default settings of the Smart Meter must be used. This means that the Meter Readings will be collected once every two months from the Smart Meter.

Installation of the Smart Meter (art. 6.1.2)

The default setting of a Smart Meter is 'administratively up'. This means that the Smart Meter can be remotely read. The Private Consumer has the right to request the Grid Operator to switch the Smart Meter to 'remote read out opt-out' ('opt-out'). The Grid Operator is then required to take (technical) measures to ensure that the Smart Meter

cannot be read remotely. The Smart Meter will then act as if it is a traditional meter. Of course, the Private Consumer may request to have the Smart Meter switched back to 'administratively up', so the data can be read remotely.

When the Smart Meter is switched to 'remote read out opt-out', the Private Consumer will have to provide the meter readings himself to the Grid Operator and a meter reader will have to come by periodically to verify the readings. In such situation communication with the Smart Meter also does not occur in connection with the technical management of the Grid. However, remote meter management is still possible, such as clock synchronisation, updating firmware and collecting status information about the configuration of the meter. However, in case the Private Consumer has opted for 'remote read out opt-out', Meter Readings will be read remotely for a period of one week after installation of the Smart Meter in order to check whether the Smart Meter operates properly (see article 5.2.3.3).

Frequency with which the Smart Meter is remotely read (article 6.1.4)

By default, the Meter Readings are read once every two months for the purpose of providing the Private Consumer insight in his energy consumption. Only if the Private Consumer has given his consent, the data may be read more frequently. Such data are called 'Interval Readings'. In case of electricity, an interval is 15 minutes; in case of gas, it's 1 hour.

The Grid Operator only provides the Meter Readings to the Energy Supplier or the ISP at their request. A request for Interval Readings can only be based on the consent of the Private Consumer given to his Energy Supplier or ISP. At all times, the Private Consumer has the right to withdraw his consent via his Energy Supplier or ISP. Where the Private Consumer has withdrawn his consent, the authority of the Energy Supplier or ISP to request Interval Readings no longer exists.

Meter Readings are also collected once a year in order to enable the Energy Supplier to send the bill to the Private Consumer. Furthermore, the Meter Readings are collected in order to settle the account between the Energy Supplier and the Private Consumer in case the Private Consumer changes address, switches Energy Supplier or terminates the contract. In the default settings, the Grid Operator can also communicate remotely with the Smart Meter for the purpose of technical management of the Grid or meter management.

The table below shows the various possibilities for reading the data remotely from the Smart Meter.

Opt-out, Keep Traditional Meter	Smart Meter Remote read out opt-out	Smart Meter Default settings	Smart Meter Consent
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Remote collection of Meter Readings by Grid Operator with consent	Meter Readings are read more frequently at request of Private Consumer. This includes the Interval Readings, which are made available to other parties in the market (Energy Suppliers, ISPs)	No	No	No	Yes
Remote collection of Meter Readings by Grid Operator (default settings)	<ul style="list-style-type: none"> - 6x/year to enable the consumer's insight in energy consumption. - 1x/year for billing - Ad hoc: changes of address, switching supplier, and termination contract 	No	No	Yes	Yes
Remote collection of Smart Meter Data by Grid Operator for purpose of Technical Control of the Grid	As often as necessary: <ul style="list-style-type: none"> - Last Gasp (from failure register/log) - Control commands - Improvement business operation/effective Grid management (aggregated/non-aggregated data) - Facilitating energy transition (aggregated / non-aggregated data) 	No	No	Yes	Yes
Remote collection of Smart Meter Data by Grid Operator for purpose of Meter Management	As often as necessary: <ul style="list-style-type: none"> - Synchronize clock / calendar - Testing battery status - Firmware updates - Status information (indicators, alarms, failure notifications) 	No	Yes	Yes	Yes

Rights related to Smart Meter Data (article 6.2)

The Private Consumer has a right of access, correction and objection with respect to the Smart Meter Data. However, the Private Consumer may not exercise those rights unrestrictedly. First of all, the conditions and restrictions mentioned in articles 4.12 to 4.15 also apply to the exercise of the rights mentioned in article 6.2.1. Secondly, such rights should be exercised within the boundaries of the Electricity Act of 1998, the Gas Act and the Terms and Conditions for the connection and transport of electricity and/or gas to Private Consumers, which Netbeheer Nederland has agreed with the Consumer Union. This means that also the complaint procedures and the dispute resolution procedures as referred to in the Terms and Conditions apply to the exercise of said rights. For that reason, article 6.2.3 explicitly states that the Grid Operator may deny a request for correction of data if the Private Consumer has not complied with the terms of the Terms and Conditions. For instance, if the Private Consumer has doubts whether the Smart Meter operates properly, he may request the Meter to be recalibrated in order to determine objectively whether the Smart Meter registers the correct data, but may be charged the costs of such calibration in

case it turns out that the Smart Meter was operating properly.

7. Organisational controls

Roles and responsibilities (art. 7.1)

Each Grid Operator should supervise and coordinate compliance with this Code. By appointing an employee with sufficient authority, the Grid Operator provides for a coordinating and supervising function in his organisation, which can also serve as a contact for privacy matters. The Code does not require the appointment of a Data Protection Officer (DPO or FG), as defined in the Wbp, although the Grid Operator may opt for such a position. A Grid Operator may for instance also choose to task a compliance officer or security officer with this responsibility.

Privacy policy (article 7.2)

This Code provides the minimum requirements for the processing of data when operating Smart Meters. Grid Operators may choose to further detail or complement this Code in a privacy policy and to publish such policy.

Security of Personal Data (article 7.3)

Grid Operators consider information security of the utmost importance and will take appropriate measures with regard to the electronic exchange of Personal Data. The measures have been laid down in the document *Privacy and Security Smart Meter Infrastructure*. This lists the required organisational and technical measures to protect the Personal Data against theft and authorised access. When determining the appropriate security level, the Grid Operator may take into account the state-of-art, the costs of implementation, the risks of the processing, and the nature of the Personal Data.

Where the Personal Data are processed by a Processor, the Grid Operator must ensure that such Processor agrees to an obligation to adequately protect the Personal Data. The Grid Operator must supervise compliance with such agreement. This prevents that a situation may occur where the Personal Data enjoy less protection with the Processor than with the Grid Operator.

Audit (article 7.4)

The Grid Operators believe that it is important that this Code is complied with by all parties involved. In order to check such compliance, Grid Operator must establish an audit plan every two years, on the basis of which compliance with the Wbp and this Code is audited. Although such plan is established by each Grid Operator, specific points of attention may be identified in consultation between the Grid Operator and Netbeheer Nederland. The audit plan may be executed by an internal or external auditor.

Incident management (art. 7.5)

The security of Personal Data may be in jeopardy as a consequence of (security) incidents. Incidents may cause files to be deleted, (irrecoverably) damaged, or disclosed to unauthorized parties. To minimise the damage caused by such incidents, Grid Operators are required to have implemented procedures to address such incidents.

Staff (article 7.6)

In order to ensure a fair processing of the Personal Data, it is essential that all members of staff, which have access to the data are well aware of this Code, the requirements of the *Privacy and Security Smart Meter Infrastructure* and any additional procedures, which the Grid Operator has prescribed with regard to the processing of data. To this end, the Grid Operators may establish an awareness programme.

8. Dispute resolution

In case disputes arise about compliance with this Code by the Grid Operator, the Private Consumer may address the Arbitration Board for Energy and Water (*Geschillencommissie Energie en Water*). This Arbitration Board will hear the complaint. However, the Private Consumer is required to complete the internal dispute resolution procedure of the Grid Operator first. Furthermore, the relevant provisions of the Terms and Conditions about dispute resolution apply.

Grid Operators are required to keep an overview of all disputes and their outcomes. Not only does this enable the Grid Operators to audit compliance with this Code, it allows for the complaints to be used in case of a revision of this Code.