Rechtlicher Rahmen für IT-Sicherheit in der Wirtschaft in Deutschland

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German and European Regulatory Framework for Cybersecurity

EU Law: Primary and secondary EU Law (in particular regulations and directives)

German Federal Law: Grundgesetz (constitution), Federal Laws, Legal Ordinances, Statutes

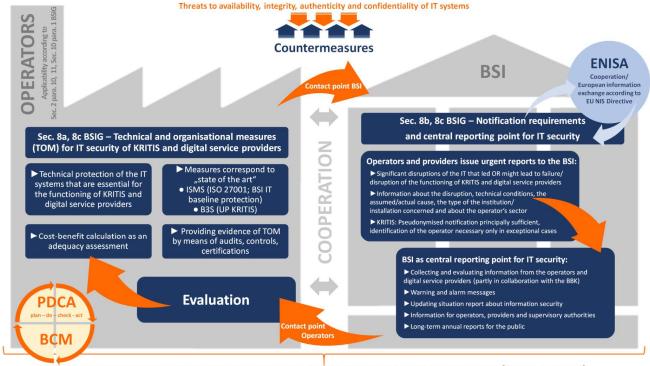**Federal State Law:** State Law, Legal Ordinances, Statutes

- **EU Network and Information Security Directive** (2016)
- **EU Data Protection Regulation** (2016, 2018, containing special data security regulations as well, Art. 32, in the case of affected personal data)
- **EU Cybersecurity Regulation („Act")** (draft, 2019)
  - Protection of the digital single interior market of the EU as main regulatory goal, consumer protection, facilitation of market access and compliance thoughout the whole EU
- **EU Regulation for a European Cybersecurity Competence Network and Centre** (draft, 2018)

- **1st IT Security Law of Germany** (2015)
  - BSI KRITIS Regulation (2016, 2017)
- **2nd IT Security Law of Germany** (draft, 2019)
- **2nd Implementing Data Protection Law** (draft, 2018, will change German BSI Law, including extended use of personal data for reasons of IT security)

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INFORMATION FLOWS AND PROTECTION PROCESSES
IN THE IT SECURITY OF CRITICAL INFRASTRUCTURES
AND DIGITAL SERVICE PROVIDERS

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OPERATORS
Applicability according to
Sec. 2 para. 10, 11, Sec. 10 para. 1 BSIG

Threats to availability, integrity, authenticity and confidentiality of IT systems

Countermeasures

Contact point BSI

BSI

ENISA
Cooperation/
European information
exchange according to
EU NIS Directive

Sec. 8a, 8c BSIG – Technical and organisational measures (TOM) for IT security of KRITIS and digital service providers

► Technical protection of the IT systems that are essential for the functioning of KRITIS and digital service providers

► Measures correspond to „state of the art"
● ISMS (ISO 27001; BSI IT baseline protection)
● B3S (UP KRITIS)

► Cost-benefit calculation as an adequacy assessment

► Providing evidence of TOM by means of audits, controls, certifications

COOPERATION

Sec. 8b, 8c BSIG – Notification requirements and central reporting point for IT security

Operators and providers issue urgent reports to the BSI:

► Significant disruptions of the IT that led OR might lead to failure/ disruption of the functioning of KRITIS and digital service providers

► Information about the disruption, technical conditions, the assumed/actual cause, the type of the institution/ installation concerned and about the operator's sector

► KRITIS: Pseudonymised notification principally sufficient, identification of the operator necessary only in exceptional cases

BSI as central reporting point for IT security:

► Collecting and evaluating information from the operators and digital service providers (partly in collaboration with the BBK)

► Warning and alarm messages

► Updating situation report about information security

► Information for operators, providers and supervisory authorities

► Long-term annual reports for the public

PDCA
plan – do – check - act

BCM

Evaluation

Contact point
Operators

CYBERSECURITY STRATEGY OF THE GERMAN FEDERAL GOVERNMENT (2011 + 2016)
(BSIG amended with specific regulations such as Sec. 109 TKG, Sec. 11 EnWG, Sec. 44b AtG; Opening clause in Sec. 8d para. 2 no. 5, para. 3 no. 5 BSIG, e. g. for health telematics)

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IT Security Certification according to EU Cybersecurity Act

Assurance levels will correspond to the level of the risk associated with the intended use of the ICT product, service or process, the probability and impact of an incident

"Rolling work programme" of EU-COM will define list of relevant ICT products/services up to one year after the EU Cybersecurity Act came into force

In case of a certification (or statement of conformity after self-assessment), supplementary cybersecurity information has to be made publicly available by the manufacturer/provider in electronic form

Basic: Assures that the ICT product, service and process meets the corresponding security requirements and that they have been evaluated at a level intended to minimize the known basic risks of incidents and cyberattacks

Substantial: Assures that the ICT product, service and process meets the corresponding security requirements and that they have been evaluated at a level intended to minimize the known cybersecurity risks, and the risk of incidents and cyberattacks carried out by actors with limited skills and resources

High: Assures that the ICT product, service and process meets the corresponding security requirements and that they have been evaluated at a level intended to minimize the risk of state-of-the-art cyberattacks carried out by actors with significant skills and resources

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2nd IT Security Law of Germany (draft, 2019)

- **Main intention:** Further development of cybersecurity for the society as a whole

- Not only protection of Critical Infrastructures, but for all relevant companies and the state, as well as for consumers, **including IoT products**

- Co-regulation of EU Cybersecurity Act and German IT Security Law 2.0 in certain fields of interest (it can be assumed that the German regulator influenced the European cyber legislation)

- **Core elements of the new regulatory approach include:**

  - Protection of citizens: Unified IT security mark, so that a higher visibility for IT security can be reached especially for consumer products/applications

  - Extensions of the legal power of the German BSI, as well as for criminal prosecution authorities to fight against cybercrime

  - Extensions in the German Criminal Code and the German Criminal Prosecution Code

  - New cybersecurity duties especially for providers, e.g. concerning the deletion, reporting, and the provision of information regarding cybercrime issues

  - More and effective cooperation among authorities to deal with cybercrime

  - Amended regulations for operators of Critical Infrastructures

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Impact of the current IT Security Legislation for Businesses and Consumers

- **Businesses:**

  - New resources have to be developed to be compliant with the upcoming cybersecurity regulation in Germany and Europe

  - Consumer trust is one of the key elements of EU cyber politics in the next years

  - Certifications will be valid in all EU Member States, which is supposed to make certification efforts more manageable for manufacturers

  - Certificates can be used for marketing purposes

  - Companies should start as soon as possible with the political as well as the technical/organizational follow-up

- **Consumers:**

  - Consumers can choose between products knowing their security level

  - The certification thereby will allow consumers the valuation of security efforts and enable them to make informed choices

  - Transparency as one of the key requirements for future products and services

  - (Informed) self determination of the end user not only with regard to data protection, but IT security as well

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Vielen Dank für Ihre Aufmerksamkeit!

Wir gestalten die e-diale Zukunft.
Machen Sie mit.

Ihr Ansprechpartner:

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