Westfälische
Wilhelms-Universität
Münster

Legal Aspects of the MonIKA-project

Proof of concept and design of contracts

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14:30 - 15:30: Privacy & Cyber Security: A Mismatch?

Franziska Boehm:
“Legal Aspects of the MonIKA-Project – Proof-of-Concept and Design of Contracts”

Sebastian Meissner:
"Legal Aspects of the MonIKA-Project - Privacy meets Cyber Security"

Arnold Sykosch:
“The MonIKA-Framework – A Trail Ballon of a Cooperative Monitoring Framework for Anomaly Detection"

MonIKA-project

- Main intention: improved protection of IT-infrastructures
- Monitoring through fusion of accumulated information
- Classification of the collected data to detect anomalies
- Project of four partners (legal and technical)
  - Fraunhofer FKIE
  - Cassidian Cybersecurity (EADS)
  - ULD
  - ITM

MonIKA

Why improving the protection of internet-infrastructure?

- Cyber crime grows continuously: 71, 2 Mil. € damage in 2011 (+ 16 %) in Germany

- Security and availability of the cyberspace is important for the economic developement, in particular for countries poor in natural ressources as Germany

- Cyber crime targets different relevant parties: state, economic actors and society

- Cooperation between the potential victims of cyber crime to detect and classify anomalies is therefore neccessary

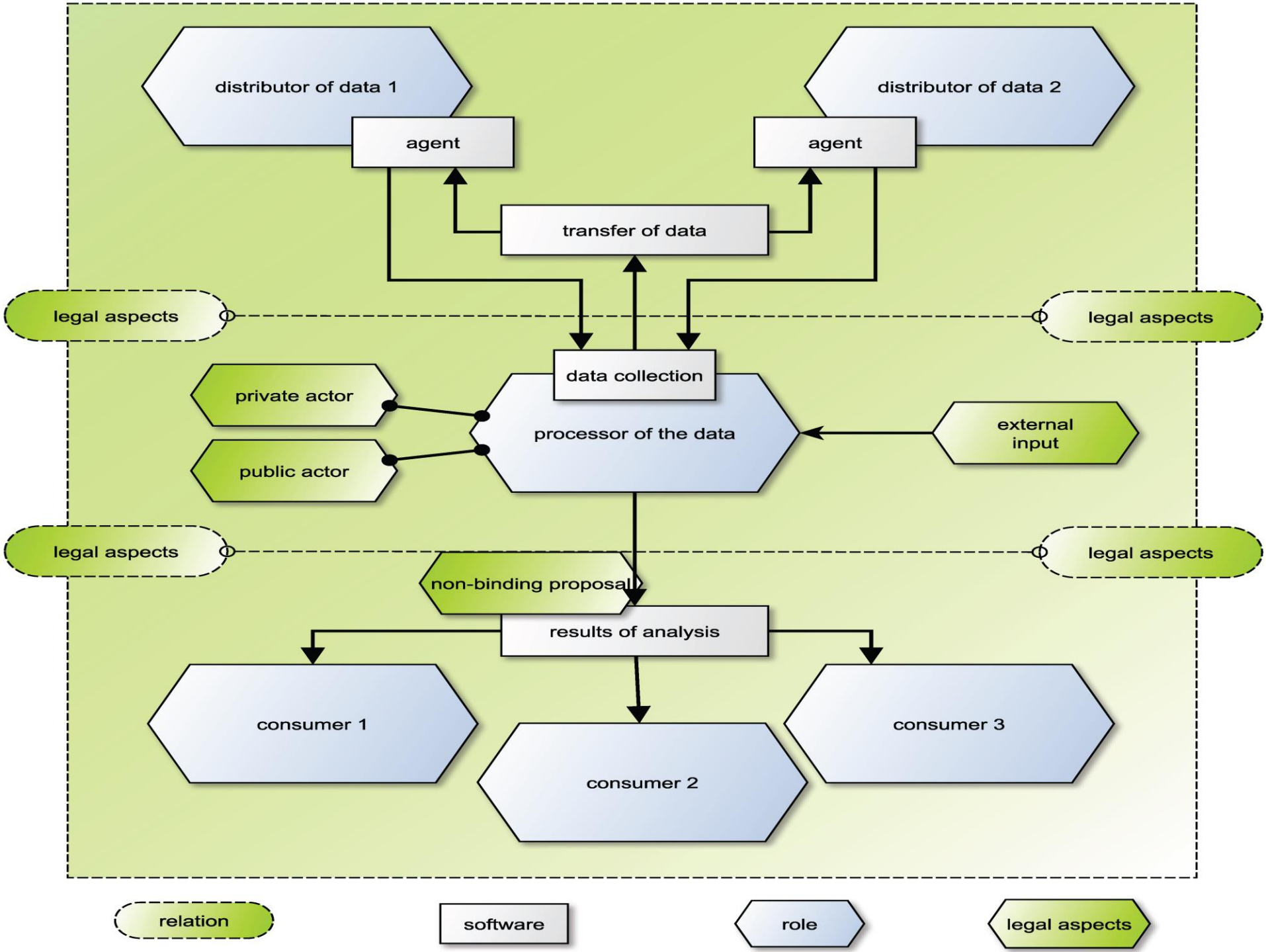
The MonIKA approach

- Development of an software to combine and classify information while at the same time respecting legal requirements

- Goal: improved risk and security situation without losing sensitive information (e.g. trade secrets)

- Comprehensive approach through the respect of different interests (technical, legal and service-orientated aspects)

- What is the intention of the MonIKA software? Three examples:
  - Protection and monitoring of the Border Gateway Protocol
  - Cooperative monitoring of botnet activities and attacks
  - Enterprise-monitoring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public actor
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legal aspects
non-binding proposal
results of analysis
consumer 1
consumer 2
consumer 3
relation
software
role
legal aspects

MonIKA company

- Creates the agent for the different MonIKA use cases

- Software-engineers = owner of IP rights (software)

  → important for contract between company – software-engineers (right to use the software has to be given/granted to the company)

- Next step: distribution

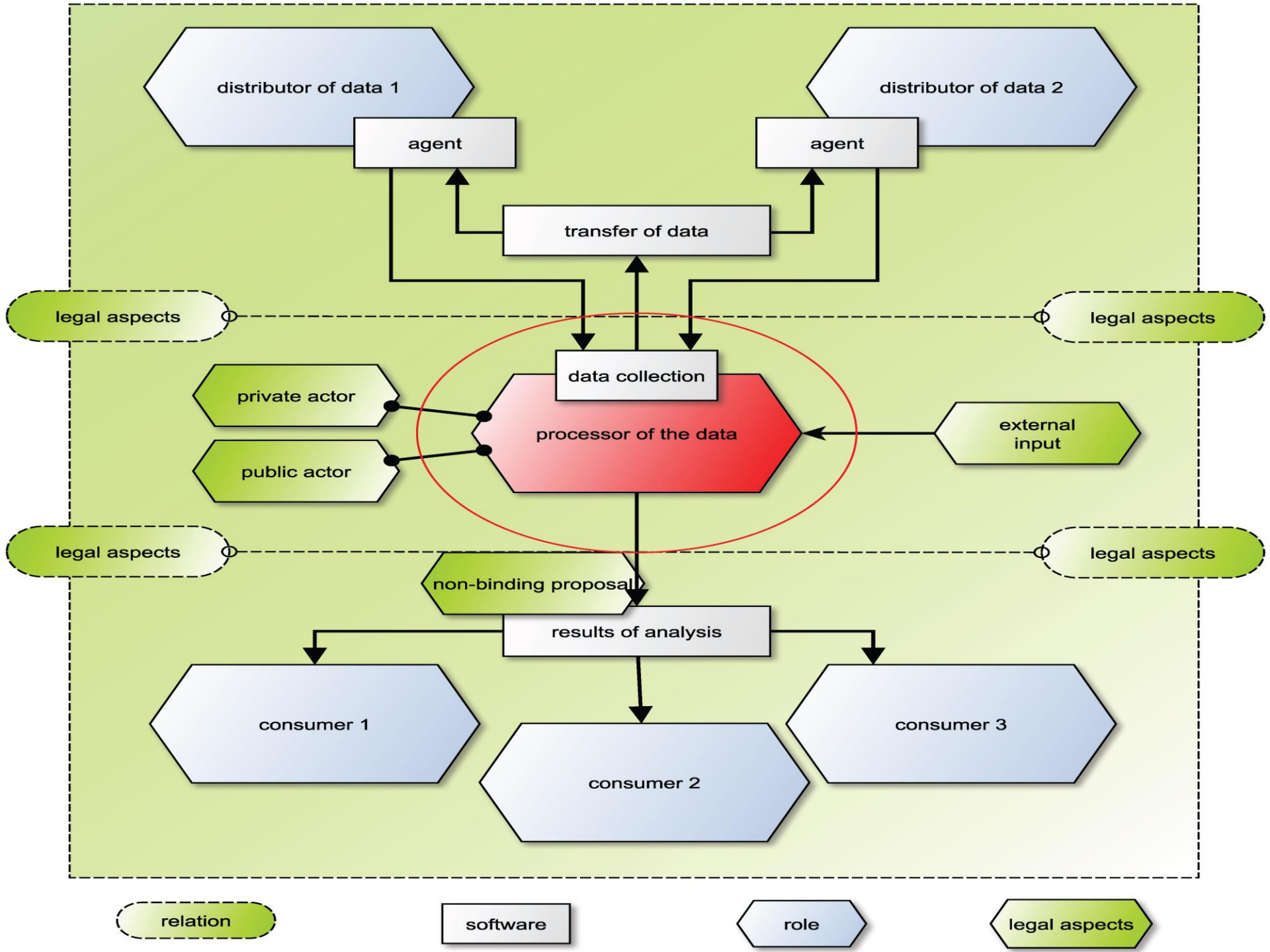
- Possible actors:
  - Software- and IT-security companies
  - German federal office for information technology (BSI)

Data processor

- Plays a central role in the MonIKA framework

- Potential actors:
  - Private sector actor (e.g. IT-security company)
  - Consortium of companies using MonIKA
  - German Federal Office for Information Technology (BSI)

BSI is the main actor according to the new German Law IT-security act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Excursus: New German IT-Security Act

- Plan: **Notification duty** for companies concerned in case of a security incident

- The German Federal Office for Information Technology (BSI) would be the key authority for receiving the notification from the companies as well as for publishing warnings

- Harsh critism from companies concerned that fear
  - negative effects on their reputation
  - over-regulation
  - non coordinated rule making (EU-GER)

- Ministery of Interior ≠ Ministery of Economics

Design of contracts = depends on who runs the MonIKA agent

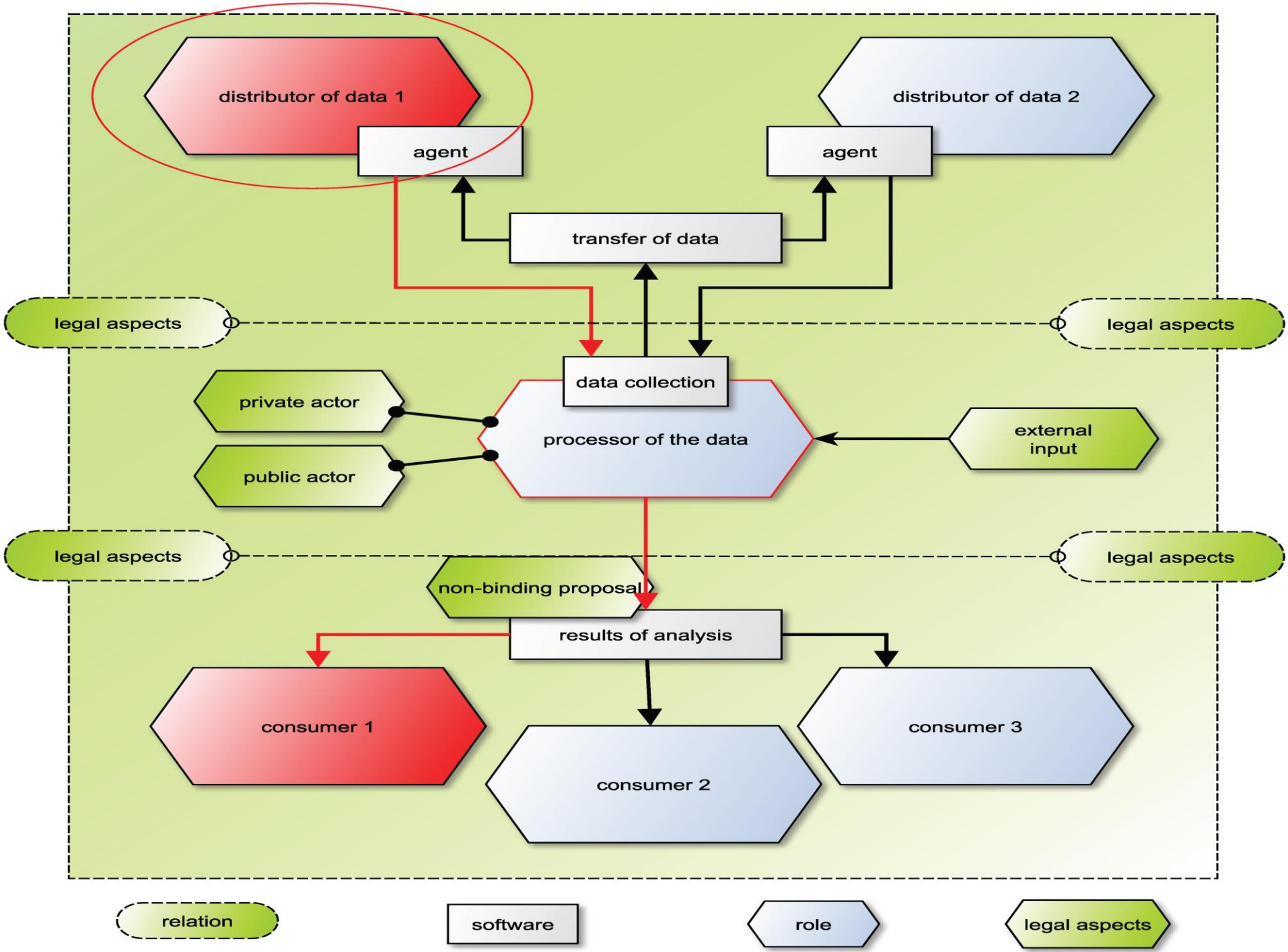
Possible operators

Private actor

→ Contracts between all participiants

Public actor

→ Requires legal basis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Contract: distributer-processor relationship I

- Disstributer/Provider of the data = consumer

- Content of the contract between distributor/consumer and data processor:
  - Permission to collect and process data
  - Duty to provide data and obligation to use the MonIKA agent

- Main risk: loss of data (in particular confidential information such as business secrets, internal analyses etc.)

- Responsibility must be regulated, who is responsible in which case
  ➡ possible solution: an exact description of the security measures to be respected

Contract: distributor-processor relationship II

- Protection against incorrect results of the analysis
- Advice:
- Result as a non-binding offer → this influences the type of contract (service-contract)
- Processor: limitation of liability for possible damages