

## Unofficial translation

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## GENERAL DATA PROTECTION REGULATION IMPLEMENTATION ACT

Act dated May 16, 2018 containing rules for implementing Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (PbEU 2016, L 119) (General Data Protection Regulation Implementation Act

We Willem-Alexander, by the Grace of God, King of the Netherlands, Prince of Oranje-Nassau, etc., etc., etc.

Greetings to all those who shall see or hear these presents! Be it known:

Whereas We consider it to be necessary to lay down legal rules for implementing Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing [Directive 95/46/EC](#) (General Data Protection Regulation) (PbEU 2016, L 119);

In view of [Article 10\(2\) and \(3\) of the Constitution](#);

We, therefore, having heard the Advising Division of the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

## Chapter 1. General Provisions

### Article 1. Definitions

The following terms will be defined as follows in this Act and in provisions based upon it:

*Special categories of personal data:* The categories of personal data referred to in Article 9(1) of the Regulation;

*Our Minister:* Our Minister for Legal Protection;

*Personal data relating to matters of criminal law:* Personal data relating to criminal convictions and offenses or related security measures as referred to in Article 10 of the Regulation as well as personal data regarding a court-ordered injunction due to unlawful or objectionable conduct;

*Regulation:* Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing [Directive 95/46/EC](#) (General Data Protection Regulation) (PbEU 2016, L 119).

### Article 2. Material Scope

1. This Act and the provisions based upon it apply to the processing of personal data wholly or partly by automated means and to the processing of personal data that forms part of a filing system or is intended to form part of a filing system.
2. Contrary to Paragraph 1, this Act does not apply to the processing of personal data insofar as the [Dutch Personal Records Database Act](#), the [Dutch Elections Act](#) or the [Wet raadgevend referendum \(Dutch advisory referendum act\)](#) apply.
3. With the exception of the provisions set out in [Article 3](#), this Act does not apply to the processing of personal data as referred to in Article 2(2) of the Regulation.

## **Article 2a. Taking Account of the Needs of Micro, Small and Medium-Sized Enterprises**

The Data Protection Authority must take into account the specific needs of micro, small and medium-sized enterprises as referred to in Article 2 of the annex to the Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (PbEU 2003 L124).

## **Article 3. *Mutatis Mutandis* Provision on Processing Outside of the Scope of Application of the Regulation**

1. This Act and the provisions based upon it also apply to the processing of personal data:
  - a. in the context of activities falling outside of the scope of application of Union law;
  - b. by the armed forces in the performance of activities that fall within the scope of application of Title V, Chapter 2 of the Treaty on European Union.
2. The Regulation applies *mutatis mutandis* to the processing of personal data as referred to in Paragraph 1.
3. Paragraphs 1 and 2 do not apply to:
  - a. the processing of personal data by the armed forces insofar as Our Minister of Defense so decides with a view to the deployment or provision of the armed forces in the performance of the tasks described in [Article 97 of the Constitution](#);
  - b. the processing of personal data insofar as the [Wet op de inlichtingen- en veiligheidsdiensten 2017 \(Dutch intelligence and security services act of 2017\)](#) applies.
4. The Data Protection Authority must be notified as quickly as possible of a decision as referred to in Paragraph 3(a).

#### **Article 4. Territorial Scope**

1. This Act and the provisions based upon it apply to the processing of personal data in the context of activities by an establishment of a controller or a processor in the Netherlands.
2. This Act and the provisions based upon it apply to the processing of personal data of data subjects in the Netherlands by a controller or processor not based in the European Union when such processing is related to:
  - a. the offering of goods or services to these data subjects in the Netherlands, irrespective of whether or not payment by the data subjects is required; or
  - b. the monitoring of their behavior if this behavior takes place within the Netherlands.

#### **Article 5. Permission of Legal Representative**

1. If Article 8 of the Regulation does not apply and the data subject is under sixteen years of age, the consent of the data subject's legal representative is required instead of the consent of the data subject.
2. If the data subject has been placed under guardianship or is the subject of an administration or protection order, the consent of the legal representative is required instead of the consent of the data subject insofar as the data subject has no legal capacity or authorization to act in the matter in question.
3. The legal representative of the data subject may revoke consent at any time.
4. The data subject's rights as referred to in Chapter III of the Regulation are to be exercised by the data subject's legal representatives if the data subject is under sixteen years of age, has been placed under guardianship or is the subject of an administration or protection order and insofar as the data subject has no legal capacity or authorization to act in the matter in question.

5. This article does not apply to assistance and advisory services offered directly and free-of-charge to a minor or a person placed under guardianship.

## **Chapter 2. The Data Protection Authority**

### **Subsection 2.1. Establishment and Structure of the Data Protection Authority**

#### **Article 6. Establishment and Designation As a Supervisory Authority**

1. A Data Protection Authority must be established.
2. The Data Protection Authority is the supervisory authority to which Article 51(1) of the Regulation refers.
3. Without prejudice to Article 57 of the Regulation, the Data Protection Authority is responsible for supervising the processing of personal data in accordance with the provisions under and pursuant to the Regulation or Act.
4. Our Minister may assign tasks to the Data Protection Authority in consultation with the Data Protection Authority for the purpose of implementing a binding EU legal act.

#### **Article 7. Composition**

1. The Data Protection Authority consists of a chair and two other members.
2. Extraordinary members may also be appointed to the Data Protection Authority. When appointing extraordinary members, efforts will be made to include a cross-section of society.
3. The chair, other members and extraordinary members of the Data Protection Authority are appointed by royal decree upon nomination by Our Minister.
4. The chair must meet the requirements for appointment as a court judge under or pursuant to [Article 5 of the Wet rechtspositie rechterlijke ambtenaren \(Dutch judicial officers \(legal status\) act\)](#).
5. The appointment referred to in Paragraph 3 is for a five-year term.

6. The chair, other members and extraordinary members of the Data Protection Authority may be reappointed once for another five-year term.
7. Our Minister will discharge the chair, other members and extraordinary members of the Data Protection Authority at their own request.
8. [Article 12 of the Kaderwet zelfstandige bestuursorganen \(Dutch non-departmental public bodies framework act\)](#) does not apply.
9. An Advisory Council advises the Data Protection Authority on general aspects of the protection of personal data. The members come from different sectors of society and are appointed by Our Minister upon nomination by the chair of the Data Protection Authority. The members are appointed for a maximum term of four years. They may be reappointed twice, each time for a maximum term of four years. The reimbursement of expenses incurred by the members of the Advisory Council is determined by a ministerial order.

## **Article 8. Disciplinary Measures for the Chair and Other Members**

[Articles 46c, 46d\(2\), 46f, 46g, 46i, with the exception of \(1\)\(c\), 46j 46l, \(1\) and \(3\), 46m, 46n, 46o and 46p of the Dutch judicial officers \(legal status\) act](#) apply *mutatis mutandis* to the chair and other members of the Data Protection Authority, on the understanding that:

- a. the disciplinary measures referred to in [Article 46c\(1\)](#) regarding other members of the Data Protection Authority are to be imposed by the chair of the Data Protection Authority;
- b. the prohibition stated in [Article 46c\(1\)\(b\)](#) against engaging in a meeting or conversation with parties or their lawyers or authorized agents, or accepting special information or written documents from them, does not apply to the chair and other members of the Data Protection Authority;
- a. the disciplinary measure referred to in [Article 46c\(1\)](#) is imposed by the president of The Hague Court of Appeal on the chair of the Data Protection Authority.

## **Article 9. Legal Status of Chair, Other Members and Extraordinary Members**

The legal status of the chair, other members and extraordinary members is governed by or pursuant to an order in council.

## **Article 10. Secretariat**

1. The Data Protection Authority has a secretariat staffed by officials who are appointed, promoted, disciplined, suspended and discharged by the Data Protection Authority.
2. With regard to the secretariat's officials, the authorities assigned to the competent authority under or pursuant to the [Dutch Central and Local Government Personnel Act](#), are to be exercised by the Data Protection Authority, with the exception of the authority to make rules, or more-specific rules.

## **Article 11. Budget, Justification and Representative Authority**

1. Without prejudice to [Article 25 of the Dutch non-departmental public bodies framework act](#), the Data Protection Authority draws up a draft budget annually prior to the budget year.
2. In the departmental budget referred to in [Article 2.1\(6\) of the Comptabiliteitswet 2016 \(Dutch government accounts act of 2016\)](#), Our Minister allocates the Data Protection Authority a budget from the national budget annually.
3. The Data Protection Authority adopts the budget in accordance with the budget referred to in Paragraph 2.
4. The Data Protection Authority is represented judicially and extrajudicially by the chair and other members, or one of them.
5. The members determine the division of duties, involving the extraordinary members insofar as is possible.

## **Article 12. Restriction of the Obligation to Provide Information to the Minister**

[Article 20 of the Dutch non-departmental public bodies framework act](#) does not apply if the Data Protection Authority received the information from third parties subject to the condition that the confidential nature thereof is maintained.

### **Article 13. Exceptions to Authorities Relating to Policy Rules, Destruction and Neglect of Duties**

1. [Articles 21](#) and [22 of the Dutch non-departmental public bodies framework act](#) do not apply to the Data Protection Authority.
2. [Article 23 of the Dutch non-departmental public bodies framework act](#) only applies in respect of the financial management activities and administrative organization of the Data Protection Authority.

### **Subsection 2.2 The Exercise of Duties and Authorities of the Data Protection Authority**

#### **Article 14. Tasks and Authorities**

1. The Data Protection Authority is authorized to perform the duties and exercise the authorities granted to the supervisory authority under or pursuant to the Regulation.
2. [Section 3.4 of the Algemene wet bestuursrecht \(Dutch general administrative law act\)](#) applies to the preparation of a decision regarding approval of a code of conduct or the amendment or extension thereof, as referred to in Article 40(5) of the Regulation.
3. If the provisions of Article 83(4), (5) and (6) of the Regulation are violated, the Data Protection Authority may impose an administrative fine not to exceed the amounts stated in said paragraphs.
4. [Articles 5:4 through 5:10a of the Dutch general administrative law act](#) apply *mutatis mutandis* to the corrective powers referred to in Article 58(2)(b) through (j) of the Regulation.
5. Without prejudice to [Article 4:15 of the Dutch general administrative law act](#), the Data Protection Authority may suspend the time limit for issuing a decision insofar as this is necessary for compliance with



the Data Protection Authority's obligations under Articles 60 through 66 of the Regulation. Paragraphs 3 and 4 of Article 4:15 of the Dutch general administrative law act apply *mutatis mutandis* to said suspension.

### **Article 15. Monitoring of Compliance**

1. The members and extraordinary members of the Data Protection Authority, the officials of the secretariat of the Data Protection Authority and the persons designated by a resolution of the Data Protection Authority are responsible for monitoring compliance with the Regulation and with the processing of personal data in accordance with the provisions under or pursuant to the law.
2. The persons referred to in Paragraph 1 are authorized to enter a dwelling without the resident's permission.
3. The persons referred to in Paragraph 1 require an explicit, special authorization from the Data Protection Authority in order to exercise the authority stated in Paragraph 2, without prejudice to the provisions of [Article 2 of the Algemene wet op het binnentreden \(Dutch general act on entry of a dwelling\)](#).
4. No obligation to maintain confidentiality may be invoked insofar as information or cooperation is requested in connection with the data subject's own involvement in the processing of personal data.
5. This article and [Title 5.2 of the Dutch general administrative law act](#) apply *mutatis mutandis* insofar as this is necessary for the proper performance of the Data Protection Authority's duties in the context of Chapter VII of the Regulation.

### **Article 16. Administrative Enforcement Order**

1. The Data Protection Authority may impose an administrative enforcement order to enforce the obligations under or pursuant to the Regulation or this Act.
2. The Data Protection Authority may impose an administrative

enforcement order to enforce [Article 5:20\(1\) of the Dutch general administrative law act](#) insofar as such action concerns the obligation to assist with a claim by a person designated under or pursuant to [Article 15\(1\)](#).

### **Article 17. Fine for Unlawful Processing of Personal Data Relating to Matters of Criminal Law**

1. In the event of violation of the provisions in Article 10 of the Regulation or [Article 31](#) of this Act, the Data Protection Authority may impose an administrative fine of not more than EUR 20,000,000 or, for an enterprise, not more than 4% of the total annual global sales for the previous financial year, whichever is greater.
2. Article 83, Paragraphs (1) through (3) of the Regulation apply *mutatis mutandis*.

### **Article 18. Administrative Fine for Public Authorities**

1. If a public agency or public body violates the provisions of Article 83, Paragraphs (4), (5) or (6) of the Regulation, the Data Protection Authority may impose an administrative fine not to exceed the amounts stated in said paragraphs.
2. Article 83, Paragraphs (1) through (3) of the Regulation apply.

### **Article 19. Cooperation with Other Supervisory Authorities**

1. The Data Protection Authority is authorized to make agreements with other supervisory authorities in the interests of efficient, effective monitoring of the processing of personal data and to adopt cooperation protocols with these supervisory authorities for this purpose. Any cooperation protocol is to be announced in the Dutch government gazette.
2. The Data Protection Authority and the supervisory authorities referred to in Paragraph 1 are authorized, on their own initiative and if requested to do so, to share data regarding the processing of

personal data if such data is needed for the performance of their duties or in order to satisfy a legal obligation incumbent upon them.

## **Article 20. Legal Action against Infringements of the Regulation Regarding Transfer to a Third Country**

1. If an investigation regarding the transfer of personal data to a country outside of the European Union or to an international organization, initiated at the request of an interested party, gives the Data Protection Authority good cause to assume that an adequacy decision as referred to in Article 45(1) of the Regulation in relation to the relevant country or international organization or a decision made by the European Commission regarding the adoption or approval of standard clauses as referred to in Article 46(2)(c) and (d) of the Regulation offers inadequate safeguards for a suitable level of data protection, the Data Protection Authority may submit a request to the Administrative Jurisdiction Division of the Council of State to issue a declaratory decision that the relevant decision is valid.
2. The request must be signed and must include as a minimum:
  - a. the date;
  - b. the grounds for the request;
  - c. the names of the interested party and the party who is the subject of the investigation referred to in Paragraph 1.
3. A copy of the interested party's request to which the application by the Data Protection Authority referred to in Paragraph 2 pertains, for the enforcement of rules under or pursuant to the law regarding the protection of personal data, is to be submitted with the application along with other documents pertinent to the matter.
4. Without prejudice to [Article 4:15 of the Dutch general administrative law act](#), the time limit for issuing a decision on the request for enforcement is suspended from the day after the day on which the Data Protection Authority notified the requester that Paragraph 1 is being applied until the day on which the Administrative Jurisdiction Division of the Council of State has made a pronouncement as referred to in Paragraph 6.

5. [Titles 8.1](#) and [8.2 of the Dutch general administrative law act](#) apply *mutatis mutandis* to the handling of the request, with the exception of [Articles 8:1 through 8:10](#), [8:41](#), [Sections 8.2.2a](#) and [8.2.4a](#) and [Articles 8:70](#), [8:72](#) and [8:74](#). The parties referred to in Paragraph 2(c) are considered parties to the legal action.
6. If the Administrative Jurisdiction Division of the Council of State decides that the European Commission's decision brought before it is valid, regardless of whether or not this occurs after a reference for a preliminary ruling to the Court of Justice of the European Union on the basis of Article 267 of the Treaty on the Functioning of the European Union, it will issue a declaratory decision to that effect. If, after reference for a preliminary ruling to the Court of Justice of the European Union, it decides that the decision brought before it is invalid, it will reject the request.
7. The Administrative Jurisdiction Division of the Council of State may decide to stay the request if a request for a preliminary ruling regarding the validity of the decision in question is pending with the Court of Justice of the European Union.
8. There is no recourse against the stay of the request by the Jurisdiction Division of the Council of State.

## **Article 21. Designation of Certification Body**

By ministerial order, either the Data Protection Authority or the Raad voor Accreditatie (Dutch Accreditation Council) or both of them will be designated as the certification body as referred to in Article 43 of the Regulation.

## **Chapter 3. Clauses for the Implementation of the Regulation**

### **Subsection 3.1 Special Categories of Personal Data**

#### **Article 22. Prohibition on Processing Special Categories of Personal Data and General Exceptions to the Regulation**

1. In accordance with Article 9(1) of the Regulation, processing of

personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation is prohibited.

2. In accordance with Article 9(2)(a), (c), (d), (e) and (f) of the Regulation, the prohibition on processing special categories of personal data does not apply if:
  - a. the data subject has given explicit consent for the personal data in question to be processed for one or more clearly defined purposes;
  - b. the processing is necessary in order to protect the vital interests of the data subject or of another natural person where the data subject is not physically or legally capable of giving consent;
  - c. the processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data is not disclosed outside that body without the consent of the data subjects;
  - d. the processing relates to personal data that is manifestly made public by the data subject; or
  - e. the processing is necessary for the establishment, exercise or defense of legal claims or whenever courts are acting in their judicial capacity.

### **Article 23. General Exceptions under National Law**

In view of Article 9(2)(g) of the Regulation, the prohibition on processing special categories of personal data does not apply if:

- a. the processing is necessary in order to satisfy an obligation under international law;
- b. the data is processed by the Data Protection Authority or an ombudsman as referred to in [Article 9:17 of the Dutch general administrative law act](#), and if processing is necessary for the performance of their legal duties, on the condition that adequate safeguards are provided to prevent disproportionate infringement of the data subject's privacy; or
- c. the processing is necessary in addition to the processing of personal data relating to matters of criminal law for the purposes for which this data is processed.

#### **Article 24. Exceptions for Scientific or Historical Research or Statistical Purposes**

In view of Article 9(2)(j) of the Regulation, the prohibition on processing special categories of personal data does not apply if:

- a. the processing is necessary for scientific or historical research purposes or for statistical purposes in accordance with Article 89(1) of the Regulation;
- b. the research referred to in point (a) serves a public interest;
- c. requesting explicit consent proves to be impossible or requires disproportionate effort; and
- d. adequate safeguards are provided to prevent disproportionate infringement of the data subject's privacy.

#### **Article 25. Exceptions for Processing Personal Data Revealing Race or Ethnic Origin**

In view of Article 9(2)(g) of the Regulation, the prohibition on processing personal data revealing race or ethnic origin does not apply if the processing occurs:

- a. for the purpose of identifying the data subject, and only insofar as processing for that purpose is unavoidable; or

- b. for the purpose of giving a certain ethnic or cultural minority group a preferential position with the aim of eliminating or reducing actual disadvantages experienced on the grounds of race or ethnic origin, and only if:
  1. the processing is necessary to that aim;
  2. the data pertains to the country of birth of the data subject or the data subject's parents or grandparents, or to other legally defined criteria allowing for the objective determination of whether or not a natural person belongs to a certain ethnic or cultural minority group; and
  3. the data subject has not objected in writing to the processing.

### **Article 26. Exceptions for Processing Personal Data Revealing Political Opinions to Fulfill Public Functions**

In view of Article 9(2)(g) of the Regulation, the prohibition on processing personal data revealing political opinions does not apply if the processing is carried out in connection with reasonable requirements regarding political opinions imposed with a view to filling openings in administrative and advisory bodies.

### **Article 27. Exceptions for Processing Personal Data Revealing Religious or Philosophical Beliefs for Spiritual Counseling**

1. In view of Article 9(2)(g) of the Regulation, the prohibition on processing personal data revealing religious or philosophical beliefs does not apply if the processing is carried out by institutions other than the institutions referred to in [Article 22\(2\)\(c\)](#), and insofar as the processing is necessary with a view to the spiritual counseling of the data subject unless the data subject has objected in writing.
2. In the cases referred to in Paragraph 1, no personal data is to be shared with third parties without the data subject's consent.

### **Article 28. Exceptions for Genetic Data**

1. In view of Article 9(2)(g) of the Regulation, the prohibition on processing genetic data does not apply if this processing occurs in relation to the data subject from whom said data has been received.
2. In cases other than those referred to in Paragraph 1, the prohibition on processing genetic data does not apply only if:
  - a. a serious medical interest prevails; or
  - b. the processing is necessary for scientific research serving a public interest or for statistical purposes if:
    1. the data subject has given explicit consent; and
    2. adequate safeguards are provided to prevent disproportionate infringement of the data subject's privacy.
3. Consent as referred to in Paragraph 2(b) is not required if requesting explicit consent proves to be impossible or requires disproportionate effort.

### **Article 29. Exceptions for Biometric Data**

In view of Article 9(2)(g) of the Regulation, the prohibition on processing biometric data for the purposes of uniquely identifying a natural person does not apply if the processing is necessary for authentication or security purposes.

### **Article 30. Exceptions for Health Data**

1. In view of Article 9(2)(b) of the Regulation, the prohibition on processing health data does not apply if the processing is carried out by administrative bodies, pension funds, employers or agencies working for the benefit of the data subjects and insofar as the processing is necessary for:
  - a. proper execution of statutory regulations, pension schemes or collective employment contracts providing benefits that are contingent on the health of the data subject; or



- b. the reintegration or assistance of employees or individuals entitled to government assistance in connection with illness or work disability.
2. In view of Article 9(2)(g) of the Regulation, the prohibition on processing health data does not apply if the processing is carried out by:
  - a. schools, insofar as the processing is necessary with a view to providing special assistance to students or special accommodations related to their health;
  - b. a probation institution, a special probation officer, the Raad voor de Kinderbescherming (Dutch council for child protection), the certified agency referred to in [Article 1.1 of the Jeugdwet \(Dutch youth act\)](#) or the legal entity referred to in [Article 256\(1\) or Article 302\(2\) of Book 2 of the Burgerlijk Wetboek \(Dutch civil code\)](#), insofar as the processing is necessary for the performance of the legal duties for which they are responsible; or
  - c. Our Minister and Our Minister of Justice and Security, insofar as the processing is necessary for the implementation of measures entailing the deprivation of liberty.
3. In view of Article 9(2)(h) of the Regulation, the prohibition on processing health data does not apply if the processing is carried out by:
  - a. professionals, agencies or facilities for health care or social services, insofar as the processing is necessary for the data subject's proper treatment or care or the management of the agency or professional practice; or
  - b. insurers as referred to in [Article 1:1 of the Wet op het financieel toezicht \(Dutch financial supervision act\)](#) or financial service providers who act as insurance agents as referred to in Article 1:1 of said act, insofar as the processing is necessary for:
    1. the evaluation of the risk to be insured by the insurer and the data subject has no objections; or
    2. the implementation of the insurance contract or

assistance with the management and implementation of the insurance.

4. If Paragraphs 1, 2 or 3 are applied, the data is to be processed solely by persons required to observe confidentiality by virtue of their office, profession or a statutory regulation or pursuant to an agreement. If the controller processes personal data and is not already bound to observe confidentiality by virtue of office, profession or a statutory regulation, the controller is required to observe confidentiality in respect of the data, except insofar as the law requires the controller to disclose the data or the task entails the need to disclose the data to others who are authorized to process the data pursuant to Paragraphs 1, 2 or 3.
5. The prohibition on processing other special categories of personal data does not apply if the processing is necessary in addition to the processing of data regarding health as referred to in Paragraph 3, opening words and point (a), for the data subject's proper treatment or care.
6. Further rules regarding the application of Paragraph 1 and Paragraph 3, opening words and point (b), may be made by an order in council.

### **Subsection 3.2. Personal Data Relating to Matters of Criminal Law**

#### **Article 31. Exceptions to the Obligation to Observe Government-Supervised Processing**

Without prejudice to Article 10 of the Regulation, personal data relating to matters of criminal law may only be processed insofar as such processing is permitted pursuant to [Articles 32](#) and [33](#).

#### **Article 32. General Grounds for Exception Concerning Data Relating to Matters of Criminal Law**

Personal data relating to matters of criminal law may be processed if:

- a. the data subject has given explicit consent for the personal data in question to be processed for one or more clearly defined

- purposes;
- b. the processing is necessary in order to protect the vital interests of the data subject or of another natural person where the data subject is not physically or legally capable of giving consent;
  - c. the processing relates to personal data that is manifestly made public by the data subject;
  - d. the processing is necessary for the establishment, exercise or defense of legal claims or whenever courts are acting in their judicial capacity.
  - e. the processing is necessary for compelling reasons of public interest as referred to in [Article 23\(a\) and \(b\)](#); or
  - f. the processing is necessary for scientific or historical research or for statistical purposes in accordance with Article 89(1) of the Regulation, and the conditions referred to in [Article 24\(b\) through \(d\)](#) have been met.

### **Article 33. Other Grounds for Exception Concerning Data Relating to Matters of Criminal Law**

1. Personal data relating to matters of criminal law may be processed if:
  - a. the processing is carried out by agencies responsible by law for enforcing criminal law or by controllers who have received the data pursuant to the [Dutch Police Data Act](#) or the [Dutch Judicial Data and Criminal Records Act](#);
  - b. the processing is carried out by and for the benefit of public-law joint ventures of controllers or groups of controllers, if:
    1. the processing is necessary for these controllers or groups of controllers to carry out their duties; and
    2. adequate safeguards are provided to prevent disproportionate infringement of the data subject's privacy; or
  - c. the processing is necessary in addition to the processing of data regarding health as referred to in [Article 30\(3\), opening words and point \(a\)](#), for the data subject's proper treatment or

- care.
2. Personal data relating to matters of criminal law may be processed by a controller who is processing the data for personal benefit:
    - a. in order to evaluate a request by the data subject for a decision regarding the data subject or to provide the data subject with a service; or
    - b. in order to protect the controller's own interests, insofar as the data concerns criminal offenses that have been committed or are expected, based on facts and circumstances, to be committed against the controller or against individuals in the controller's employ.
  3. Personal data relating to matters of criminal law regarding staff in the employ of the controller may only be processed if such processing occurs in accordance with rules that have been set in accordance with the procedure referred to in the [Wet op de ondernemingsraden \(Dutch works councils act\)](#).
  4. Personal data relating to matters of criminal law may be processed on behalf of third parties:
    - a. by controllers who are acting by virtue of a permit under the [Wet particuliere beveiligingsorganisaties en recherchebureaus \(Dutch private security organizations and detective agencies act\)](#);
    - b. if said third party is a legal entity connected to the same group referred to in [Article 24b of Book 2 of the Dutch civil code](#); or
    - c. if the Data Protection Authority has granted a permit for the processing with due observance of Paragraph 5.
  5. A permit as referred to in Paragraph 4(c) may only be granted if the processing is necessary with a view to the compelling interests of third parties and adequate safeguards are provided to prevent disproportionate infringement of the data subject's privacy. Conditions may be attached to the permit.

### **Subsection 3.3 Legal Protection**

## **Article 34. Applicability of the Dutch General Administrative Law Act to Decisions by Administrative Bodies**

A written decision on a request as referred to in Articles 15 through 22 of the Regulation is to be made within the time limit stated in Article 12(3) of the Regulation and, insofar as made by an administrative body, qualifies as a decision within the meaning of the [Dutch general administrative law act](#).

## **Article 35. Applicability of Civil Law to Decisions by Non-Administrative Bodies**

1. If a party other than an administrative body makes the decision on a request as referred to in [Article 34](#), the interested party may file a written request to the court to order the controller to grant or reject the request as referred to in Articles 15 through 22 of the Regulation.
2. The request must be submitted within six weeks of receipt of the controller's answer. If the controller has not answered within the time limits stated in Article 12(3) of the Regulation, the submission of the request is not subject to a time limit.
3. The district court will grant the request if it deems there are grounds to do so. Prior to making a decision, the district court will give the interested parties the opportunity to put forward their point of view if necessary.
4. The request does not need to be submitted by a lawyer.
5. [Section Three of Title Five of Book Two of the Wetboek van Burgerlijke Rechtsvordering \(Dutch code of civil procedure\)](#) applies *mutatis mutandis*.
6. The district court may request that parties and others provide written information and submit documents in their possession within a time limit to be determined by the court. The controller and the interested party must comply with said request. [Articles 8:45\(2\) and \(3\) and 8:29 of the Dutch general administrative law act](#) apply *mutatis mutandis*.

## **Article 36. Dispute Resolution by the Data Protection Authority or through a Code of Conduct**

1. The interested party may also submit a request to the Data Protection Authority for mediation or advice regarding a dispute with the controller, or utilize a dispute-resolution procedure as referred to in Article 40(2)(k) of the Regulation on the basis of an approved code of conduct as referred to in Article 40(5) of the regulation, and must do so within the time limit specified for filing an objection on the basis of the [Dutch general administrative law act](#) or within the time limit referred to in [Article 35\(2\)](#). In such a case, the objection may still be filed, in derogation of [Article 6:7 of the Dutch general administrative law act](#), or the procedure referred to in Article 35 may still be initiated after the interested party has received notice from the Data Protection Authority that the handling of the case has ended or after the interested party has received notice pursuant to the dispute-resolution procedure that the handling of the case has ended, but not more than six weeks after that time.
2. During the handling of the appeal and the procedure referred to in Paragraph 1, the agencies responsible for handling the dispute may seek advice from the Data Protection Authority.

## **Article 37. Representation of Data Subjects**

Processing may not form the basis for a claim as referred to in [Article 305a of Book 3 of the Dutch civil code](#) or an appeal filed by the interested party in proceedings under administrative law within the meaning of [Article 1:2\(3\) of the Dutch general administrative law act](#) insofar as the person who is affected by said processing objects to the claim.

## **Article 38. Suspensive Effect of Objections and Appeals**

The effect of the order to impose the administrative fine is to be suspended until the time limit for objections or appeals has expired or, if an objection or appeal has been filed, until a decision is made on the objection or appeal.

## **Subsection 3.4. The Data Protection Officer**

### **Article 39. Obligation to Observe Confidentiality**

The data protection officer referred to in Articles 37 through 39 of the Regulation is required to observe confidentiality regarding anything revealed to said data protection officer on the basis of a complaint or request by the data subject unless the data subject consents to disclosure.

## **Chapter 4. Exceptions and Restrictions**

### **Article 40. Exceptions to the Prohibition on Automated Individual Decision-Making**

1. Article 22(1) of the Regulation does not apply if the automated individual decision-making referred to in that clause, other than that based on profiling, is necessary for the satisfaction of a statutory obligation to which the controller is subject or is necessary for the performance of a duty in the public interest.
2. The controller is to take suitable measures to protect the rights, freedoms and justified interests of the data subject during automated individual decision-making as referred to in Paragraph 1.
3. If the controller is not an administrative body, the suitable measures as referred to in Paragraph 2 will in any event have been provided if the right to obtain human intervention, the data subject's right to state an opinion and the right to contest the decision have been guaranteed.

### **Article 41. Exceptions to the Data Subject's Rights and the Controller's Obligations**

1. The controller may render the obligations and rights referred to in Articles 12 through 21 and Article 34 of the Regulation inapplicable if necessary and proportionate, for the purpose of:
  - a. national security;
  - b. national defense;



- c. public safety;
  - d. prevention, investigation, detection and prosecution of criminal offenses or enforcement of punishments, including protection against and prevention of public safety hazards;
  - e. other significant objectives of public interest of the European Union or of the Netherlands, in particular any significant economic or financial interest of the European Union or the Netherlands, including monetary, budgetary and fiscal matters, public health and social security;
  - f. protection of the independence of the judiciary and judicial proceedings;
  - g. prevention, investigation, detection and prosecution of violations of the professional codes for regulated professions;
  - h. a monitoring, inspection or legislation duty that is associated, even incidentally, with the exercise of public authority in the cases referred to in points (a), (b), (c), (d), (e) and (g);
  - i. protection of the data subject or of the rights and freedoms of others; or
  - j. enforcement of claims under civil law.
2. When applying Paragraph 1, the controller is to take at least the following into consideration, insofar as applicable:
- a. the objectives of the processing or of the categories of processing;
  - b. the categories of personal data;
  - c. the scope of application of the implemented restrictions;
  - d. safeguards to prevent misuse or unlawful access or transfer;
  - e. the specification of the controller or of the categories of controller;
  - f. the archiving periods and applicable safeguards, considering the nature, scope and objectives of the processing or of the categories of processing;
  - g. the risks to the data subject's rights and freedoms; and
  - h. the data subject's right to be notified of any restriction, unless



such notification could be prejudicial to the purpose of the restriction.

### **Article 42. Exception to the Duty to Notify Data Subjects of Data Breaches**

Article 34 of the Regulation does not apply to financial enterprises as referred to in the [Dutch financial supervision act](#).

### **Article 43. Exceptions for Journalistic Purposes or for Academic, Artistic or Literary Forms of Expression**

1. With the exception of [Articles 1 through 4](#) and [5\(1\) and \(2\)](#), this Act does not apply to the processing of personal data exclusively for journalistic purposes or exclusively for the purposes of academic, artistic or literary forms of expression.
2. The following chapters and articles of the Regulation do not apply to the processing of personal data exclusively for journalistic purposes or exclusively for academic, artistic or literary forms of expression:
  - a. Article 7(3) and Article 11(2);
  - b. Chapter III;
  - c. Chapter IV, with the exception of Articles 24, 25, 28, 29 and 32;
  - d. Chapter V;
  - e. Chapter VI; and
  - f. Chapter VII.
3. Articles 9 and 10 of the Regulation do not apply if the processing of the data referred to in those articles is necessary for journalistic purposes or for academic, artistic or literary forms of expression.

### **Article 44. Exceptions for Scientific Research and Statistical Purposes**

The controller may refrain from observing Articles 15, 16 and 18 of the Regulation when processing is carried out by agencies or services for scientific research or statistical purposes and the necessary measures have

been taken to ensure that personal data can only be used for statistical or scientific purposes.

### **Article 45. Exceptions for Archiving in the Public Interest**

Articles 15, 16, 18(1)(a) and 20 of the Regulation do not apply to the processing of personal data comprising part of an archive of documents as referred to in [Article 1\(c\) of the Archiefwet 1995 \(Dutch public records act of 1995\)](#) and kept in an archive repository as referred to in Article 1(f) of that act.

2. The data subject is entitled to access the archived documents unless requests for access are so broad that they cannot reasonably be granted.
3. The data subject is entitled to annotate the relevant archived documents if the personal data is incorrect.

### **Article 46. Processing of National Identification Number**

1. A number required by law for the identification of a natural person is to be used in the processing of personal data exclusively for the implementation of the relevant law or for purposes stipulated in the law.
2. Cases other than those referred to in Paragraph 1 may be designated by an order in council, in which case a number as referred to in Paragraph 1 may be used. Further rules may apply to the use of such a number.

### **Article 47. Exceptions to Data Subjects' Rights Regarding Public Registers**

1. Articles 15, 16, 18 and 19 of the Regulation do not apply to public registers established by law if a special procedure for the correction, addition, removal or protection of data is stipulated under or pursuant to such legislation.
2. Article 21 of the Regulation does not apply to public registers established by law.

## Chapter 5. Transitional and Final Provisions

### Article 48. Transitional Law

1. Any person appointed to the *College bescherming persoonsgegevens* (former Dutch data protection authority) prior to the entry into force of this Act will automatically be appointed as a member of the Dutch Data Protection Authority.
2. Any person appointed Chair of the *College bescherming persoonsgegevens* prior to the entry into force of this Act will automatically be appointed Chair of the Dutch Data Protection Authority.
3. When determining the term of the appointment referred to in [Article 7\(5\)](#), the term served as Chair of the *College bescherming persoonsgegevens* prior to the entry into force of this Act will be considered a term served as Chair of the Dutch Data Protection Authority.
4. [Article 53\(3\), first, second and third sentence of the Wet bescherming persoonsgegevens \(Dutch personal data protection act\)](#) remains applicable to members of the *College bescherming persoonsgegevens* who were appointed or reappointed prior to January 1, 2014, as the Act in question read prior to that time.
5. Any official appointed to the secretariat of the *College bescherming persoonsgegevens* prior to the entry into force of this Act will automatically be appointed as an official in the secretariat of the Dutch Data Protection Authority.
6. Decisions taken by the *College bescherming persoonsgegevens* prior to the entry into force of this Act will be automatically be considered decisions taken by the Dutch Data Protection Authority.
7. The Dutch Data Protection Authority will automatically take the place of the *College bescherming persoonsgegevens* in statutory procedures and lawsuits in which the *College bescherming persoonsgegevens* was involved prior to the entry into force of this Act.
8. The law as it applied prior to the entry into force of this Act will apply to statutory procedures and lawsuits in which the *College*

*bescherming persoonsgegevens* was involved prior to the entry into force of this Act.

9. The Dutch Data Protection Authority will automatically take the place of the *College bescherming persoonsgegevens* in any cooperation protocols at the time of entry into force of this Act.
10. The law as it applied prior to the entry into force of this Act will apply to written requests as referred to in [Article 46 of the Dutch personal data protection act](#), lawsuits based on [Article 49 of the Dutch personal data protection act](#) and claims based on [Article 50 of the Dutch personal data protection act](#) that were already pending before the court at the time of entry into force of this Act.
11. Any declaration of the legality of data processing issued prior to the entry into force of this Act on the basis of [Article 32\(5\)](#), in conjunction with [Article 22\(4\)\(c\) of the Dutch personal data protection act](#) will automatically be considered a permit within the meaning of [Article 33\(4\)\(c\) of this Act](#).
12. Insofar as this Act does not provide for them, rules or more-specific rules may be designated by an order in council for the implementation of the Regulation or this Act.

### **Article 48a. Transitional Law II**

[Will enter into force at a time to be determined]

This part has not yet entered into force; see the [list of amendments](#)

### **Article 49. Concurrence**

[Editor: Amends this Act.]

### **Article 50. Evaluation**

Our Minister will send to the States General a report on the practical effects of and practical implementation of this Act within three years of the entry into force of this Act and every four years thereafter.

## **Article 51. Repeal of the Dutch personal data protection act**

The [Dutch personal data protection act](#) is repealed.

## **Article 52. Short Title of the Regulation**

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing [Directive 95/46/EC](#) (General Data Protection Regulation) (PbEU 2016, L 119) is cited in other legislation as: General Data Protection Regulation

## **Article 53. Entry into Force**

The articles of this Act will enter into force on a date to be determined by royal decree, which date may vary for different articles or parts thereof.

## **Article 54. Short Title of the Act**

This Act is cited as: General Data Protection Regulation Implementation Act  
We order and command that this Act be published in the Bulletin of Acts and Decrees, and that it be diligently implemented by all ministries, authorities, bodies and officials it may concern.

Issued in

Wassenaar, May 16, 2018

Willem-Alexander

Minister for Legal Protection,

S. Dekker

Minister of the Interior and Kingdom Relations,

K.H. Ollongren

State Secretary for the Interior and Kingdom Relations,

R.W. Knops

Issued on the twenty-second of May, 2018

Minister of Justice and Security,

F.B.J. Grapperhaus

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