

UNOFFICIAL TRANSLATION

Personal Data Protection Act

UPPER HOUSE OF THE DUTCH PARLIAMENT

Session 1999-2000 Nr. 92

25 892 - Rules for the protection of personal data (Personal Data Protection Act) (Wet bescherming persoonsgegevens)

REVISED BILL (as approved by the Lower House on 23 November 1999)

We, Beatrix, by the grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc. etc. etc.

To all those who read or hear this, We greet you and hereby proclaim as follows:

Whereas it is necessary to implement Directive 95/46/EC of the European Parliament and of the Council of the European Union of 23 November 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of that data (OJ L 28 1);

Having regard to Article 10(2) and (3) of the Constitution;

We, having consulted the State Council, and in joint consultation with Parliament, have approved and understood, as We approve and understand, the following:

CHAPTER 1. GENERAL PROVISIONS

Article 1

For the purposes of this Act and the provisions based upon it:

- a. "personal data" shall mean: any information relating to an identified or identifiable natural person;
- b. "processing of personal data" shall mean: any operation or any set of operations concerning personal data, including in any case the collection, recording, organization, storage, updating or modification, retrieval, consultation, use, dissemination by means of transmission, distribution or making available in any other form, merging, linking, as well as blocking, erasure or destruction of data;
- c. "file" shall mean: any structured set of personal data, regardless of whether or not this data set is centralised or dispersed along functional or geographical lines, that is accessible according to specific criteria and relates to different persons;
- d. "responsible party" shall mean: the natural person, legal person, administrative body or any other entity which, alone or in conjunction with others, determines the purpose of and means for processing personal data;
- e. "processor" shall mean: the person or body which processes personal data for the responsible party, without coming under the direct authority of that party;
- f. "data subject" shall mean: the person to whom personal data relate;
- g. "third party" shall mean: any party other than the data subject, the responsible party, the processor, or any person under the direct authority of the responsible party or the processor, who is authorised to process personal data;
- h. "recipient" shall mean: the party to whom the personal data are provided;
- i. consent of the data subject: any freely-given, specific and informed expression of will whereby data subjects agree to the processing of personal data relating to them;
- j. "Our Minister" shall mean: Our Minister of Justice;
- k. "Data Protection Commission" or "Commission" shall mean: the body referred to in Article 51;
- 1. "officer" shall mean: the data protection officer referred to in Article 62;
- m. "prior investigation" shall mean: an investigation as referred to in Article 31;
- n. "provision of personal data" shall mean: the disclosure or making available of personal data;
- o. "collection of personal data" shall mean: the obtaining of personal data.

Article 2

1. This Act applies to the fully or partly automated processing of personal data, and the non-automated processing of personal data entered in a file or intended to be entered therein.

2. This Act does not apply to the processing of personal data:

- a. in the course of a purely personal or household activity;
- b. by or on behalf of the intelligence or security services referred to in the Intelligence and Security Services Act (Wet op de inlichtingen- en veiligheidsdiensten);
- c. for the purposes of implementing the police tasks defined in Article 2 of the Police Act 1993 (Politiewet 1993);
- d. governed by or under the Municipal Database (Personal Records) Act (Wet gemeentelijke basisadministratie persoonsgegevens);
- e. for the purposes of implementing the Judicial Documentation Act (Wet justitiële documentatie) and
- f. for the purposes of implementing the Electoral Provisions Act (Kieswet).

3. This Act does not apply to the processing of personal data by the armed forces where Our Defence Minister so decides with a view to deploying or making available the armed forces to maintain or promote the international legal order. Such a decision shall be communicated to the Data Protection Commission as quickly as possible.

Article 3

1. This Act does not apply to the processing of personal data for exclusively journalistic, artistic or literary purposes, except where otherwise provided in this Chapter and in Articles 6 to 11, 13 to 15, 25 and 49.

2. The prohibition on processing personal data referred to in Article 16 does not apply where this is necessary for the purposes referred to under (1).

Article 4

1. This Act applies to the processing of personal data carried out in the context of the activities of an establishment of a responsible party in the Netherlands.

2. This Act applies to the processing of personal data by or for responsible parties who are not established in the European Union, whereby use is made of automated or non-automated means situated in the Netherlands, unless these means are used only for forwarding personal data.

3. The responsible parties referred to under (2) are prohibited from processing personal data, unless they designate a person or body in the Netherlands to act on their behalf in accordance with the provisions of this Act. For the purposes of application of this Act and the provisions based upon it, the said person or body shall be deemed to be the responsible party.

Article 5

1. In the case that the data subjects are minors and have not yet reached the age of sixteen, or have been placed under legal restraint or the care of a mentor, instead of the consent of the data subjects, that of their legal representative is required.

The data subjects or their legal representative may withdraw consent at any time.

CHAPTER 2. CONDITIONS FOR THE LAWFUL PROCESSING OF PERSONAL DATA

Section 1. Processing of personal data in general

Article 6

Personal data shall be processed in accordance with the law and in a proper and careful manner.

Article 7

Personal data shall be collected for specific, explicitly defined and legitimate purposes.

Article 8

Personal data may only be processed where:

- a. the data subject has unambiguously given his consent for the processing;
- b. the processing is necessary for the performance of a contract to which the data subject is party, or for actions to be carried out at the request of the data subject and which are necessary for the conclusion of a contract;
- c. the processing is necessary in order to comply with a legal obligation to which the responsible party is subject;
- d. the processing is necessary in order to protect a vital interest of the data subject;

e. the processing is necessary for the proper performance of a public law duty by the administrative body concerned or by the administrative body to which the data are provided, or

f. the processing is necessary for upholding the legitimate interests of the responsible party or of a third party to whom the data are supplied, except where the interests or fundamental rights and freedoms of the data subject, in particular the right to protection of individual privacy, prevail.

Article 9

1. Personal data shall not be further processed in a way incompatible with the purposes for which they have been obtained.

2. For the purposes of assessing whether processing is incompatible, as referred to under (1), the responsible party shall in any case take account of the following:

a. the relationship between the purpose of the intended processing and the purpose for which the data have been obtained;

b. the nature of the data concerned;

c. the consequences of the intended processing for the data subject;

d. the manner in which the data have been obtained, and

e. the extent to which appropriate guarantees have been put in place with respect to the data subject.

3. The further processing of personal data for historical, statistical or scientific purposes shall not be regarded as incompatible where the responsible party has made the necessary arrangements to ensure that the further processing is carried out solely for these specific purposes.

4. The processing of personal data shall not take place where this is precluded by an obligation of confidentiality by virtue of office, profession or legal provision.

Article 10

1. Personal data shall not be kept in a form which allows the data subject to be identified for any longer than is necessary for achieving the purposes for which they were collected or subsequently processed.

2. Personal data may be kept for longer than provided under (1), where this is for historical, statistical or scientific purposes, and where the responsible party has made the necessary arrangements to ensure that the data concerned are used solely for these specific purposes.

Article 11

1. Personal data shall only be processed where, given the purposes for which they are collected or subsequently processed, they are adequate, relevant and not excessive.

2. The responsible party shall take the necessary steps to ensure that personal data, given the purposes for which they are collected or subsequently processed, are correct and accurate.

Article 12

1. Anyone acting under the authority of the responsible party or the processor, as well as the processor himself, where they have access to personal data, shall only process such data on the orders of the responsible party, except where otherwise required by law.

2. The persons referred to under (1), who are not subject to an obligation of confidentiality by virtue of office, profession or legal provision, are required to treat as confidential the personal data which comes to their knowledge, except where the communication of such data is required by a legal provision or the proper performance of their duties. Article 272(2) of the Penal Code is not applicable.

Article 13

The responsible party shall implement appropriate technical and organizational measures to secure personal data against loss or against any form of unlawful processing. These measures shall guarantee an appropriate level of security, taking into account the state of the art and the costs of implementation, and having regard to the risks associated with the processing and the nature of the data to be protected. These measures shall also aim at preventing unnecessary collection and further processing of personal data.

Article 14

1. Where responsible parties have personal data processed for their purposes by a processor, these responsible parties shall make sure that the processor provides adequate guarantees concerning the technical and organizational security measures for the processing to be carried out. The responsible parties shall make sure that these measures are complied with.

2. The carrying out of processing by a processor shall be governed by an agreement or another legal act whereby an obligation is created between the processor and the responsible party.

3. The responsible party shall make sure that the processor:

- a. processes the personal data in accordance with Article 12(l) and
- b. complies with the obligations incumbent upon the responsible party under Article 13.

4. Where the processor is established in another country of the European Union, the responsible party shall make sure that the processor complies with the laws of that other country, notwithstanding the provisions of (3)(b).

5. With a view to the keeping of proof, the parts of the agreement or legal act relating to personal data protection and the security measures referred to in Article 13, shall be set down in writing or in another equivalent form.

Article 15

The responsible party shall make sure that the obligations referred to in Articles 6 to 12 and 14(2) and (5) of this Chapter are complied with.

Section 2. Processing of special personal data

Article 16

It is prohibited to process personal data concerning a person's religion or philosophy of life, race, political persuasion, health and sexual life, or personal data concerning trade union membership, except as otherwise provided in this Section. This prohibition also applies to personal data concerning a person's criminal behaviour, or unlawful or objectionable conduct connected with a ban imposed with regard to such conduct.

Article 17

1. The prohibition on processing personal data concerning a person's religion or philosophy of life, as referred to in Article 16, does not apply where the processing is carried out by:

- a. church associations, independent sections thereof or other associations founded on spiritual principles, provided that the data concerns persons belonging thereto;
- b. institutions founded on religious or philosophical principles, provided that this is necessary to the aims of the institutions and for the achievement of their principles, or
- c. other institutions provided that this is necessary to the spiritual welfare of the data subjects, unless they have indicated their objection thereto in writing.

2. In the cases referred to under (1)(a), the prohibition also does not apply to personal data concerning the religion or philosophy of life of family members of the data subjects, provided that:

- a. the association concerned maintains regular contacts with these family members in connection with its aims, and
- b. the family members have not indicated any objection thereto in writing.

3. In the cases referred to under (1) and (2), no personal data may be supplied to third parties without the consent of the data subject.

Article 18

1. The prohibition on processing personal data concerning a person's race, as referred to in Article 16, does not apply where the processing is carried out:

- a. with a view to identifying data subjects and only where this is essential for that purpose;
- b. for the purpose of assigning a preferential status to persons from a particular ethnic or cultural minority group with a view to eradicating or reducing actual inequalities, provided that:
 - 1º. this is necessary for that purpose;
 - 2º. the data only relate to the country of birth of the data subjects, their parents or grandparents, or to other criteria laid down by law, allowing an objective determination whether a person belongs to a minority group as referred to under (b), and
 - 3º. the data subjects have not indicated any objection thereto in writing.

Article 19

1. The prohibition on processing personal data concerning a person's political persuasion, as referred to in Article 16, does not apply where the processing is carried out:

- a. by institutions founded on political principles with respect to their members or employees or other persons belonging to the institution, provided that this is necessary to the aims of the institutions and for the achievement of their principles, or

b. with a view to the requirements concerning political persuasion which can reasonably be applied in connection with the performance of duties in administrative and advisory bodies.

2. In the cases referred to under (1)(a), no personal data may be supplied to third parties without the consent of the data subject.

Article 20

1. The prohibition on processing personal data concerning a person's trade union membership, as referred to in Article 16, does not apply where the processing is carried out by the trade union concerned or the trade union federation to which this trade union belongs, provided that this is necessary to the aims of the trade union or trade union federation;

2. In the cases referred to under (1), no personal data may be supplied to third parties without the consent of the data subject.

Article 21

1. The prohibition on processing personal data concerning a person's health, as referred to in Article 16, does not apply where the processing is carried out by:

a. medical professionals, healthcare institutions or facilities or social services, provided that this is necessary for the proper treatment and care of the data subject, or for the administration of the institution or professional practice concerned;

b. insurance companies as referred to in Article 1(1)(h) of the Insurance Supervision Act 1993 (Wet toezicht verzekeringsbedrijf 1993), insurance companies as referred to in Article 1(c) of the Funeral Insurance Supervision Act (Wet toezicht natura-uitvaartverzekeringsbedrijf), and intermediaries and sub-agents as referred to in Article 1(b) and (c) of the Insurance Mediation Act (Wet assurantiebemiddelingsbedrijf), provided that this is necessary for:

1^o. assessing the risk to be insured by the insurance company and the data subject has not indicated any objection thereto, or

2^o. the performance of the insurance agreement;

c. schools, provided that this is necessary with a view to providing special support for pupils or making special arrangements in connection with their state of health;

d. institutions for probation, child protection or guardianship, provided that this is necessary for the performance of their legal duties;

e. Our Minister of Justice, provided that this is necessary in connection with the implementation of prison sentences or detention measures, or

f. administrative bodies, pension funds, employers or institutions working for them, provided that this is necessary for:

1^o. the proper implementation of the provisions of laws, pension regulations or collective agreements which create rights dependent on the state of health of the data subject, or

2^o. the reintegration of or support for workers or persons entitled to benefit in connection with sickness or work incapacity.

2. In the cases referred to under (1), the data may only be processed by persons subject to an obligation of confidentiality by virtue of office, profession or legal provision, or under an agreement. Where responsible parties personally process data and are not already subject to an obligation of confidentiality by virtue of office, profession or legal provision, they are required to treat the data as confidential, except where they are required by law or in connection with their duties to communicate such data to other parties who are authorised to process such data in accordance with (1).

3. The prohibition on processing other personal data, as referred to in Article 16, does not apply where this is necessary to supplement the processing of personal data concerning a person's health, as referred to under (1)(a), with a view to the proper treatment or care of the data subject.

4. Personal data concerning inherited characteristics may only be processed, where this processing takes place with respect to the data subject from whom the data concerned have been obtained, unless:

a. a serious medical interest prevails, or

b. the processing is necessary for the purpose of scientific research or statistics.

In the case referred to under (b), Article 23(1)(a) and (2) shall likewise be applicable.

5. More detailed rules may be issued by general administrative regulation concerning the application of (1)(b) and (e).

Article 22

1. The prohibition on processing personal data concerning a person's criminal behaviour, as referred to in Article 16, does not apply where the processing is carried out by bodies, charged by law with applying criminal law and by responsible parties who have obtained these

data in accordance with the Police Registers Act (Wet politieregisters) or the Judicial Documentation Act (Wet justitiële documentatie) .

2. The prohibition does not apply to responsible parties who process these data for their own purposes with a view to:

- a. assessing an application by data subjects in order to take a decision about them or provide a service to them, or
- b. protecting their interests, provided that this concerns criminal offences which have been or, as indicated by certain facts and circumstances, can be expected to be committed against them or against persons in their service.

3. The processing of these data concerning personnel in the service of the responsible party shall take place in accordance with the rules established in compliance with the procedure referred to in the Works Councils Act (Wet op de ondernemingsraden).

4. The prohibition does not apply where these data are processed for the account of third parties:

- a. by responsible parties acting in accordance with a licence issued under the Private Security Organisations and Investigation Bureaus Act (Wet particuliere beveiligingsorganisaties en recherchebureaus) ;
- b. where these third parties are legal persons forming part of the same group, as referred to in Article 2:24(b) of the Civil Code, or
- c. where appropriate and specific guarantees have been provided and the procedure referred to in Article 31 has been followed.

5. The prohibition on processing other personal data, as referred to in Article 16, does not apply where this is necessary to supplement the processing of data on criminal behaviour, for the purposes for which these data are being processed.

6. The provisions of (2) to (5) are likewise applicable to personal data relating to a ban imposed by a court concerning unlawful or objectionable conduct.

7. Rules may be issued by general administrative regulation concerning the appropriate and specific guarantees referred to under (4)(c).

Article 23

1. Without prejudice to Articles 17 to 22, the prohibition on processing personal data referred to in Article 16 does not apply where:

- a. this is carried out with the express consent of the data subject;
- b. the data have manifestly been made public by the data subject;
- c. this is necessary for the establishment, exercise or defence of a right in law;
- d. this is necessary to comply with an obligation of international public law, or
- e. this is necessary with a view to an important public interest, where appropriate guarantees have been put in place to protect individual privacy and this is provided for by law or else the Data Protection Commission has granted an exemption. When granting an exemption, the Commission can impose rules and restrictions.

2. The prohibition on the processing of personal data referred to in Article 16 for the purpose of scientific research or statistics does not apply where:

- a. the research serves a public interest,
- b. the processing is necessary for the research or statistics concerned,
- c. it appears to be impossible or would involve a disproportionate effort to ask for express consent, and
- d. sufficient guarantees are provided to ensure that the processing does not adversely affect the individual privacy of the data subject to a disproportionate extent.

3. Processing referred to under (1)(e) must be notified to the European Commission. This notification shall be made by Our Minister concerned where the processing is provided for by law. The Data Protection Commission shall make the notification in the case that it has granted an exemption for the processing.

Article 24

1. A number that is required by law for the purposes of identifying a person may only be used for the processing of personal data in execution of the said law or for purposes stipulated by the law.

2. Cases other than those referred to under (1) can be designated by general administrative regulation in which a number to be indicated in this connection, as referred to under (1), can be used. More detailed rules may be laid down in this connection concerning the use of such a number.

CHAPTER 3. CODES OF CONDUCT

Article 25

1. An organisation or organisations planning to draw up a code of conduct may request the Data Protection Commission to declare that, given the particular features of the sector or sectors of society in which these organisations are operating, the rules contained in the said code properly implement this Act or other legal provisions on the processing of personal data. Where a code of conduct provides for the arrangement of disputes about its observance, the Commission may only issue a declaration, if guarantees have been provided for its independent character.

2. The provisions of (1) are likewise applicable to amendments or extensions to existing codes of conduct.

3. The Commission shall only consider requests where, in its opinion, the requester or requesters are sufficiently representative and the sector or sectors concerned are sufficiently precisely defined in the code.

4. A decision on a request referred to under (1) shall be deemed to be equivalent to a decision within the meaning of the General Administrative Regulations Act (Algemene wet bestuursrecht). This decision shall be arrived at in accordance with the procedure laid down by Section 3.4 of that Act. The decision must be taken within a reasonable period of time, it being understood that this period must be no longer than thirteen weeks.

5. The declaration shall apply for the duration of the code of conduct, while not exceeding five years from the date on which the declaration is announced. Where a declaration is requested for an amendment to a code of conduct for which a declaration has already been issued previously, the declaration shall apply for the duration of the declaration issued previously.

6. The Commission is responsible for publishing the declaration, together with the associated code, in the Official Gazette (Staatscourant).

Article 26

1. More detailed rules may be issued by general administrative regulation with regard to a particular sector concerning the matters covered in Articles 6 to 11 and 13.

2. The Data Protection Commission shall indicate in its annual report the extent to which, in its opinion, the provisions of (1) should be applied.

CHAPTER 4. NOTIFICATION AND PRIOR INVESTIGATION

Section 1. Notification

Article 27

1. The fully or partly automated processing of personal data intended to serve a single purpose or different related purposes, must be notified to the Data Protection Commission or the officer before the processing is started.

2. The non-automated processing of personal data intended to serve a single purpose or different related purposes, must be notified where this is subject to a prior investigation.

Article 28

1. The notification shall contain the following particulars:

- a. the name and address of the responsible party;
- b. the purpose or purposes of the processing;
- c. a description of the categories of data subjects and of the data or categories of data relating thereto;
- d. the recipients or categories of recipients to whom the data may be supplied;
- e. the planned transfers of data to countries outside the European Union;
- f. a general description allowing a preliminary assessment of the suitability of the planned measures to guarantee the security of the processing, in application of Articles 13 and 14.

2. The notification shall include the purpose or purposes for which the data or categories of data have been or are being collected.

3. Changes in the name or address of the responsible party must be notified within one week. Changes to the notification which concern (1)(b) to (f) shall be notified in each case within one year of the previous notification, where they appear to be of more than incidental importance.

4. Any processing which departs from that which has been notified in accordance with the provisions of (1)(b) to (f) shall be recorded and kept for at least three years.

5. More detailed rules can be issued by or under general administrative regulation concerning the procedure for submitting notifications.

Article 29

1. It may be laid down by general administrative regulation that certain categories of data processing which are unlikely to infringe the

fundamental rights and freedoms of the data subject, are exempted from the notification requirement referred to in Article 27.

2. In this case, the following particulars shall be stated:

- the purposes of the processing,
- the processed data or categories of processed data,
- the categories of data subjects,
- the recipients or categories of recipients to whom the data is to be supplied, and
- the period during which the data are to be stored.

3. Where this is necessary in order to detect criminal offences in a particular case, it may be laid down by general administrative regulation that certain categories of processing by responsible parties who are vested with investigating powers by law shall be exempt from notification. Compensatory guarantees to protect personal data can be provided in this connection. The processed data may only be used for the purposes expressly stated in the said general administrative regulation.

4. The notification requirement does not apply to public registers set up by law or to data supplied to an administrative body pursuant to a legal obligation.

Article 30

1. Both the Data Protection Commission and the officer shall maintain an up-to-date register of the data processing notified to them. The register shall contain as a minimum the information provided in accordance with Article 28(l)(a) to (e).

2. The register may be consulted by any person free of charge.

3. The responsible party shall provide any person who so requests with the information referred to in Article 28(l)(a) to (e) concerning data processing exempted from the notification requirement.

4. The provisions of (3) do not apply to:

- a. data processing which is covered by an exemption under Article 29(3).
- b. public registers set up by law.

Section 2. Prior investigation

Article 31

1. The Data Protection Commission shall initiate an investigation prior to any processing for which responsible parties:

- a. plan to process a number identifying persons for a purpose other than the one for which the number is specifically intended with the aim of linking the data together with data processed by other responsible parties, unless the number is used for the cases defined in Article 24;
- b. plan to record data on the basis of their own observations without informing the data subjects thereof, or
- c. plan to process data on criminal behaviour or on unlawful or objectionable conduct for third parties other than under the terms of a licence issued under the Private Security Organisations and Investigation Bureaus Act.

2. The provisions of (1)(b) do not apply to public registers set up by law.

3. The provisions of (1) may be rendered applicable to other types of data processing by law or general administrative regulation where such processing carries a particular risk for the individual rights and freedoms of the data subject. The Data Protection Commission shall indicate in its annual report the extent to which, in its opinion, the said provisions should be rendered applicable to such data.

4. The Data Protection Commission shall notify processing referred to under (1)(c) to the European Commission.

Article 32

1. Data processing to which Article 31(1) is applicable shall be notified as such by the responsible party to the Data Protection Commission.

2. The notification of such data processing requires responsible parties to suspend the processing they are planning to carry out until the Commission has completed its investigation or until they have received notice that a more detailed investigation will not be conducted.

3. In the case of the notification of data processing to which Article 31(1) is applicable, the Commission shall communicate its decision in writing within four weeks of the notification as to whether or not it will conduct a more detailed investigation.

4. In the event that the Commission decides to conduct a more detailed investigation, it shall indicate the period of time within which it plans to conduct this investigation. This period must not exceed thirteen weeks.

5 . The more detailed investigation referred to under (4) leads to a statement concerning the lawfulness of the data processing.

6. The statement by the Commission is deemed to be equivalent to a decision within the meaning of the General Administrative Regulations Act. This statement shall be prepared in accordance with the procedure laid down by Section 3.4 of that Act.

CHAPTER 5. INFORMATION PROVIDED TO THE DATA SUBJECT

Article 33

1. Where personal data are to be obtained from a data subject, the responsible party shall provide the data subject with the information referred to under (2) and (3) prior to obtaining the said personal data, unless the data subject is already acquainted with this information.

2. The responsible party shall inform the data subject of its identity and the purposes of the processing for which the data are intended.

3. The responsible party shall provide more detailed information, where given the type of data, the circumstances in which they are to be obtained or the use to be made thereof, this is necessary in order to guarantee with respect to the data subject that the processing is carried out in a proper and careful manner.

Article 34

1. Where personal data are obtained in a manner other than that referred to in Article 33, the responsible party shall provide the data subject with the information referred to under (2) and (3), unless the data subject is already acquainted with this information:

a. at the time that the data relating to him is recorded; or

b. when it is intended to supply the data to a third party, at the latest on the first occasion that the said data are so supplied.

2. The responsible party shall inform the data subject of its identity and the purposes of the processing.

3. The responsible party shall provide more detailed information, where given the type of data, the circumstances in which they have been obtained or the use to be made thereof, this is necessary in order to guarantee with respect to the data subject that the processing is carried out in a proper and careful manner.

4. The provisions of (1) do not apply if it appears to be impossible or would involve a disproportionate effort to provide the said information to the data subject. In that case, the responsible party shall record the origin of the data.

5. The provisions of (1) likewise do not apply if the recording or provision of the data is required by or under the law. In that case, the responsible party must inform the data subject, upon his request, about the legal provision which led to the recording or supply of data relating to the data subject.

CHAPTER 6. RIGHTS OF THE DATA SUBJECT

Article 35

1. A data subject has the right, freely and at reasonable intervals, to request the responsible party to inform him as to whether personal data relating to him are being processed. The responsible party shall inform the data subject in writing within four weeks as to whether personal data relating to him are being processed.

2. In the event that such data are being processed, the information provided shall contain a full and clear summary thereof, a definition of the purpose or purposes of the processing, the data categories to which the processing relates and the recipients or categories of recipients, as well as the available information about the origin of the data.

3. Prior to the providing of information referred to under (1) to which a third party may be expected to object, the responsible party shall give the third party an opportunity to express its views where such information contains data concerning that third party unless this appears to be impossible or would involve a disproportionate effort.

4. Upon request, the responsible party shall provide information concerning the underlying logic of the automated processing of data relating to the data subject.

Article 36

1. A person who has been informed about personal data relating to him in accordance with Article 35 may request the responsible party to correct, supplement, delete or block the said data in the event that it is factually inaccurate, incomplete or irrelevant to the purpose or purposes of the processing, or is being processed in any other way which infringes a legal provision. The request shall contain the modifications to be made.

2. The responsible party shall inform the requester in writing within four weeks of receiving the request as to whether and, if so, to what extent, it is complying therewith. A refusal to do so must be accompanied by the reasons.

3. The responsible party must make sure that a decision to correct, supplement, delete or block data is implemented as quickly as possible.

4. Where personal data have been recorded on a data carrier to which no modifications can be made, the responsible party must take the

necessary steps to inform the data user that it is impossible to correct, supplement, delete or block the data, even where there are grounds under this article for modifying the data.

5. The provisions of (1) to (4) do not apply to public registers set up by law where this law provides for a special procedure for correcting, supplementing, deleting or blocking data.

Article 37

1. Where an important interest of the requester so requires, the responsible party shall reply to the request referred to in Articles 35 and 36 in a form, other than in writing, which takes due account of this interest.

2. The responsible party shall make sure that the identity of the requester is properly established.

3. In the case of minors who have not yet reached the age of sixteen, and of persons placed under legal restraint, the requests referred to in Articles 35 and 36 shall be made by their legal representatives. The information concerned shall also be provided to the legal representatives.

Article 38

1. The responsible party who has corrected, supplemented, deleted or blocked personal data in response to a request under Article 36, has an obligation as soon as possible to inform third parties to whom the data has previously been supplied about the correction, addition, deletion or blocking, unless this appears to be impossible or would involve a disproportionate effort.

2. Upon request, the responsible party shall notify the requester referred to in Article 36 of those parties to whom it has provided such information.

Article 39

1. The responsible party may require a payment for expenses incurred in providing the information referred to in Article 35, the amount of which shall be laid down by or under general administrative regulation and may not exceed ten Dutch guilder.

2. The payment shall be refunded in the event that the responsible party corrects, supplements, deletes or blocks data at the request of the data subject, on the recommendation of the Data Protection Commission or by order of a court.

3. The amount referred to under (1) may be modified in special cases by general administrative regulation.

Article 40

1. Where data are undergoing the processing referred to in Article 8(e) and (f), the data subject may at any time register an objection with the responsible party in connection with his particular personal circumstances.

2. The responsible party shall take a decision within four weeks of receiving a notice of objection as to whether the objection is justified. In the event that the objection is justified, the responsible party shall stop the processing with immediate effect.

3. The responsible party may require a payment for expenses incurred in dealing with an objection, which payment may not exceed an amount to be laid down by or under a general administrative regulation. The payment shall be refunded in the event that the objection is found to be justified.

4. This article does not apply to public registers set up by law.

Article 41

1. Where data are being processed in connection with the creation or maintenance of a direct relationship between the responsible party or a third party and the data subject with a view to recruitment for commercial or charitable purposes, the data subject may register an objection to such processing with the responsible party at any time and at no cost to himself.

2. In the case of an objection, the responsible party shall take the steps required to stop this form of processing with immediate effect.

3. Responsible parties, who are planning to provide personal data to third parties or to use such data at their account for the purposes referred to under (1), shall take appropriate steps to notify the data subjects of the possibility of registering objections. This notification shall be made via one or more newspapers or free-sheets, or in some other suitable way. In the case of regular provision to or use at the account of third parties, the notification shall take place at least once a year.

4. Responsible parties processing personal data for the purposes referred to under (1), shall make sure that data subjects are notified of the possibility of registering objections, whenever a direct message is sent to them for the said purposes.

Article 42

1. No one may be subject to a decision to which are attached legal consequences for them, or which affects them to a substantial degree, where this decision has been taken solely on the basis of the automated processing of personal data intended to provide a picture of certain aspects of their personality.

2. The provisions of (1) do not apply where the decision referred to therein:

a. has been taken in connection with the conclusion or execution of a contract, and

1^o the request of the data subjects has been met, or

2^o appropriate measures have been taken to protect their legitimate interests; or

b. is based on a law in which measures are laid down for protecting the legitimate interests of data subjects.

3. Appropriate measures, as referred to under (2)(a), shall be considered as taken where the data subjects have been given the opportunity to put forward their views on the decisions as referred to under (1).

4. In the case referred to under (2), the responsible party shall inform the data subjects about the underlying logic of the automated processing of the data relating to them.

CHAPTER 7. EXCEPTIONS AND RESTRICTIONS

Article 43

Responsible parties are not required to apply Articles 9(1), 30(3), 33, 34 and 35, where this is necessary in the interests of:

a. State security;

b. the prevention, detection and prosecution of criminal offences;

c. important economic and financial interests of the State and other public bodies;

d. supervising compliance with legal provisions established in the interests referred to under (b) and (c), or

e. protecting the data subject or the rights and freedoms of other persons.

Article 44

1. Where processing is carried out by institutions or services for the purposes of scientific research or statistics, and the necessary arrangements have been made to ensure that the personal data can only be used for statistical or scientific purposes, the responsible party shall not be required to provide the information referred to in Article 34 and may refuse to comply with the requests referred to in Article 35.

2. Where personal data are being processed which form part of archive records transferred to an archive storage place under Articles 12 or 13 of the Archives Act 1995 (Archiefwet 1995), the responsible party shall not be required to provide the information referred to in Article 34.

CHAPTER 8. LEGAL PROTECTION

Article 45

A decision taken in response to a request referred to in Articles 30(3), 35, 36 and 38(2), and a decision taken in response to the registering of an objection referred to in Articles 40 or 41, shall be equivalent to a decision within the meaning of the General Administrative Regulations Act, where this decision has been taken by an administrative body.

Article 46

1. Where a decision referred to in Article 45 has been taken by a body other than an administrative body, the party concerned can apply to the district court with a written request to order the responsible party to grant or reject a request referred to in Articles 30(3), 35, 36 or 38(2), or to recognise or reject an objection referred to in Articles 40 or 41.

2. The application must be submitted within six weeks of receiving the reply from the responsible party. In the event that the responsible party does not reply within the time limit, the application must be submitted within six weeks of the expiry of this time limit.

3. The court shall find in favour of the request where it is ruled to be well-founded. Before handing down a ruling, the court shall, where necessary, give the parties concerned an opportunity to put forward their views.

4. The twelfth title of the First Book of the Code of Civil Procedure, with the exception of Article 429d(3), applies. Article 345 of the said Code does not apply.

5. The third section of the fifth title of the Second Book of the Code of Civil Procedure is likewise applicable.

Article 47

1. Within the time limit provided for an appeal based on the General Administrative Regulations Act or referred to in Article 46(2), the party concerned may apply to the Data Protection Commission with a request to mediate or give its opinion in the dispute with the responsible party, or make use of the provisions concerning the arrangement of disputes in a code of conduct which has been the subject of a declaration as referred to in Article 25(1). In that case, notwithstanding Article 6:7 of the General Administrative Regulations Act, the appeal may still be lodged or the court proceedings provided for in Article 46 still initiated after the party concerned has received notice from the Data Protection Commission, or further to the provisions concerning the arrangement of disputes in a code of conduct

which has been the subject of a declaration as referred to in Article 25(1), that the case has been dealt with, but at the latest six weeks after that moment.

2. During the period when the appeal and the proceedings referred to under (1) are being dealt with, the bodies responsible for dealing with the dispute may obtain the opinion of the Data Protection Commission.

Article 48

The bodies responsible for dealing with the dispute shall send a copy of their verdict to the Data Protection Commission.

Article 49

1. Where any person suffers harm as a consequence of acts concerning him which infringe the provisions laid down by or under this Act, the following paragraphs shall apply, without prejudice to other legal provisions.

2. For harm that does not comprise damage to property, the injured party has the right to fair compensation.

3. Responsible parties are liable for harm resulting from non-compliance with the provisions referred to under (1). Processors are liable for this harm where this was incurred as a result of their actions.

4. Responsible parties or processors may be exempted wholly or partially from this liability where they can prove that the harm cannot be attributed to them.

Article 50

1. Where responsible parties or processors act in contravention of the provisions laid down by or under this Act and other parties sustain, or may sustain, harm as a consequence thereof, the courts may, at the petition of the other parties, impose a ban on such conduct and order them to take measures to remedy the consequences of that conduct.

2. Processing cannot form the basis for a claim by a legal person referred to in Article 1:2(3) of the General Administrative Regulations Act or Article 3:305a of the Civil Code, where the persons affected by this processing object thereto.

CHAPTER 9. SUPERVISION

Section 1. The Data Protection Commission

Article 51

1. An Office of the Data Protection Commission has been established with the task to oversee the processing of personal data in accordance with the provisions laid down by and under the Act. The Commission shall also oversee the processing of personal data in the Netherlands, where the processing takes place in accordance with the laws of another country of the European Union.

2. The Commission shall be asked to issue an opinion on bills and draft texts of general administrative regulations relating entirely or substantially to the processing of personal data.

Article 52

1. The Commission shall perform the other tasks vested in it by law and treaty.

2. The Commission is independent in the performance of its tasks.

Article 53

1. The Commission comprises a chairperson and two other members. In addition, special members may be appointed to the Commission. In the appointment of special members, all efforts shall be made to reflect the various sectors of society.

2. The chairperson must fulfil the requirements governing the appointment of district court judges, as laid down in Article 48(l) of the Judicature Act (Wet op de rechterlijke organisatie).

3. The chairperson shall be appointed by royal decree, on the proposal of Our Minister, for a six-year term. The other two members and the special members shall be appointed by royal decree, on the proposal of Our Minister, for a four-year term. The members may be reappointed immediately thereafter. At their own request, they are discharged by the Minister of Justice.

4. An advisory board has been established with the task to advise the Commission on general aspects of the protection of personal data. The members shall be drawn from the various sectors of society and shall be appointed by Our Minister, on the proposal of the Commission.

The term of office and payment of expenses shall be laid down by general administrative regulation.

Article 54

1. Members shall be discharged by royal decree, on the proposal of Our Minister, with effect from the first month following that in which they reach the age of sixty-five.

2. Article 11, with the exception of (d)(3^o), and Articles 12, 12a, 13, 13a with the exception of (5), and 13b of the Judicature Act are

likewise applicable.

Article 55

1. The chairperson and the two other members shall receive remuneration for their work. The special members shall receive a session fee. In all other matters, their legal position shall be governed by general administrative regulation.
2. The chairperson and the two other members may not carry out any other remunerated work where the nature or scale of this work is incompatible with the work for the Commission, without the authorisation of Our Minister.

Article 56

1. The Commission has a secretariat, of which the officials are appointed, suspended and discharged by Our Minister, on the proposal of the chairperson.
2. The chairperson shall direct the work of the Commission and the secretariat.
3. The Commission shall adopt rules of procedure. These rules shall in any case include provisions relating to the financial management and administrative organisation of the Commission, as well as to working methods and procedures with a view to a proper and careful discharge of its various tasks. The rules shall provide guarantees against the mixing of the supervisory, advisory and enforcement tasks of the Commission. They may also give more detailed provisions for the advisory board referred to in Article 53(4).
4. The rules and any modifications thereto shall be sent to Our Minister as quickly as possible and require his or her approval.

Article 57

1. The Commission is represented by the chairperson and the two other members or by one of these persons.
2. The members shall allocate responsibilities among them and involve the special members therein as much as possible.

Article 58

The Commission shall produce an annual report before September on the activities, policy pursued in general and the effectiveness and efficiency of its mode of operation in particular during the preceding calendar year. The report shall be sent to Our Minister and to the data protection officers referred to in Article 62 and made available to the general public.

Article 59

1. The Commission shall provide to Our Minister, upon request, the information necessary to the performance of his or her duties. Our Minister may require business data and records for inspection, where this is necessary to the performance of his or her duties.
2. The provisions of (1) do not apply where the Commission has obtained the information from third parties on condition that it is kept confidential.

Article 60

1. The Commission, acting in an official capacity or at the request of an interested party, may initiate an investigation into the manner in which the provisions laid down by or under the Act are being applied with respect to the processing of data.
2. The Commission shall present its provisional findings to the responsible party or the group of responsible parties concerned, and allow them to give their views. The Commission shall present these findings also to Our Minister concerned, where they relate to the implementation of any law.
3. In the case of an investigation initiated at the request of an interested party, the Commission shall inform the said party of its findings, unless providing such information would be incompatible with the purpose of the data processing or the nature of the personal data, or unless important interests of parties other than the requester, including the responsible party, would sustain disproportionate harm as a consequence. In the event that the Commission does not inform the interested party of its findings, it shall send the said party such information as it deems appropriate.

Article 61

1. Responsibility for the supervision of compliance referred to in Article 51(1) lies with the members and special members of the Commission, the officials of the Commission secretariat and the persons designated by decision of the Commission.
2. The persons referred to under (1) are authorised to enter a residence without the consent of the resident.
3. The persons referred to under (1) require the express and special authority of the Commission for the purposes of exercising the powers defined under (2), without prejudice to Article 2 of the General Entry Act (Algemene wet op het binnentreden).
4. The Commission is authorised to apply administrative measures of constraint pursuant to Article 5:20(l) of the General Administrative Regulations Act, provided that this concerns the obligation to provide assistance to an official designated by or under (1).
5. No appeal is possible on the grounds of a confidentiality obligation, where information or assistance is required in connection with the involvement of the person concerned in the processing of personal data.

6. Upon request, the Commission shall provide every assistance to the supervisory authorities of the other member states of the European Union, where this is necessary for the performance of their work.

Section 2. The data protection officer

Article 62

A responsible party or an organisation to which responsible parties are affiliated may appoint its own data protection officer, without prejudice to the responsibilities of the Commission under Chapters 9 and 10 of this Act.

Article 63

1. The only persons who may be appointed as officers are natural persons who possess adequate knowledge for performing their duties and can be regarded as sufficiently reliable.
2. With respect to the performances of their duties, officers may not receive any instructions from the responsible party or organisation which appointed them. They shall sustain no disadvantage as a consequence of performing their duties. Responsible parties shall give officers the opportunity to perform their duties properly.
3. Officers shall take up their duties only after the responsible party or organisation which appointed them has registered them with the Commission. The Commission shall maintain an up-to-date list of registered officers.
4. Officers have an obligation to treat as confidential any information disclosed to them in connection with a complaint or request by data subjects, unless the said data subjects have given their consent thereto.
5. Officers shall produce an annual report on their activities and findings.

Article 64

1. Officers shall supervise the processing of personal data in accordance with the provisions laid down by and under the Act. This supervision shall cover the processing of personal data by the responsible party who has appointed them or by the responsible parties affiliated to the organisation which appointed them.
2. Where a code of conduct drawn up under Article 25 applies to the processing, the supervision also covers compliance with this code.
3. The responsible party or organisation referred to under (1) shall make sure that officers have the authority to perform their duties which is equivalent to that provided for in Section 5.2 of the General Administrative Regulations Act.
4. Officers may submit recommendations to the responsible party with a view to improving the protection of the data being processed. In case of doubt, they shall consult the Commission.

CHAPTER 10. SANCTIONS

Section 1. Administrative measures of constraint

Article 65

The Commission is authorised to apply administrative measures of constraint pursuant to the obligations laid down by or under this Act.

Section 2. Administrative fines

Article 66

1. In the event that responsible parties act in contravention of the provisions laid down by or under Article 27 or 28, the Commission may require them to pay an administrative fine of a maximum amount of ten thousand Dutch guilder.
2. The Commission shall not impose a fine where responsible parties give a reasonable explanation as to why they cannot be regarded as responsible for the infringement.
3. When deciding the amount of the fine, the Commission shall in any case take into account the seriousness and duration of the infringement.
4. The work carried out pursuant to Articles 69 and 70 shall be performed by persons who were not involved in drafting the report and associated prior investigation referred to in Article 67(1).
5. The authority to impose fines lapses in the event that, with respect to the infringement on which basis the fine can be imposed, criminal proceedings have been initiated against the infringing party and the investigation by the court has been commenced or the right to pursue criminal proceedings has lapsed under Article 74 of the Code of Criminal Procedure.

Article 67

1. In the event that the Commission establishes that an infringement referred to in Article 66(1) has been committed and that a fine needs to be imposed for this reason, the Commission shall draw up a report.
2. The report shall in any case state the following particulars:

- a. the infringement, with reference to the corresponding legal provision;
- b. the designation of the place and time at which the infringement was committed;
- c. the facts and circumstances on which basis it was established that an infringement has been committed.

3. A copy of the report shall be sent to the responsible party referred to in Article 66(1).

4. At the request of responsible parties who have not understood this report sufficiently owing to an imperfect knowledge of the Dutch language, the Commission shall make every possible effort to ensure that the content of the report is communicated to the said parties in a language which they understand.

Article 68

Responsible parties in respect of whom acts have been carried out for which they can reasonably conclude that a fine will be imposed on them for an infringement, shall not be required to make any statement in relation thereto. The responsible parties shall be informed thereof prior to an oral request for information being submitted to them.

Article 69

1. Notwithstanding Section 4.1.2 of the General Administrative Regulations Act, the Commission shall give the responsible parties referred to in Article 66(l) the opportunity to put forward their views in writing or orally, at their choice, within a reasonable period of time.

2. In the case that responsible parties referred to in Article 66(l) wish to put forward their views and do not have sufficient understanding of the Dutch language, upon the request of the responsible parties, the Commission shall see to it that an interpreter is appointed who can assist the said parties, unless it can reasonably be assumed that this is not necessary.

Article 70

1. Fines shall be imposed by decision of the Commission.

2. The decision shall in all cases state the following:

- a. the sum of money to be paid;
- b. the infringement for which the fine has been imposed, with reference to the corresponding legal provision;
- c. the particulars referred to in Article 67(2)(b) and (c).

3. At the request of responsible parties who have not understood the decision sufficiently owing to an imperfect knowledge of the Dutch language, the Commission shall make every possible effort to ensure that the content of the decision is communicated to the said parties in a language which they understand.

Article 71

Decisions taken under Article 70 shall be inoperative until the deadline for making objections has expired or, where an objection has been made, until a decision has been taken on the objection.

Article 72

The authority to impose a fine lapses five years after the infringement has been committed.

Article 73

1. A fine shall be payable within six weeks of the decision imposing the fine entering into force.

2. Where fines have not been paid within the time limit stipulated under (1), the parties owing the fines shall be sent notice in writing to pay the amount of the fine, plus the costs of the notice to pay, within two weeks.

3. Where payment is not made within the time limit stipulated under (2), the Commission can issue an order to pay the fine owing, plus the costs of the notice to pay and order to pay.

4. Orders to pay shall be served by bailiff's writ, at the expense of the persons owing the fines, and shall be enforceable within the meaning of the Second Book of the Code of Civil Procedure.

5. For six weeks following the day on which the writ is served, objections to the order to pay may be made by a writ against the State.

6. The objection has the effect of suspending execution. At the request of the State, the courts may cancel the suspension of execution.

Article 74

Our Minister may decide on policy provisions governing the execution of the powers of the Commission to impose fines.

Section 3. Penal sanctions

Article 75

1. Responsible parties who act in contravention of the provisions laid down by or under Articles 4(3), 27, 28 or 78(2)(a), shall be punished with a fine coming under the second category.
2. Responsible parties who deliberately commit an offence referred to under (1) shall be punished with a prison sentence for a maximum of six months or a fine coming under the third category.
3. The punishable offences under (1) are petty offences. The punishable offences under (2) are indictable offences.
4. Besides the officials designated by or under Article 141 of the Code of Criminal Procedure, the officials from the secretariat of the Commission designated for this purpose by Our Minister are also responsible for detecting the offences defined in this article.
5. The right to pursue criminal proceedings lapses where the Commission has already imposed a fine.

CHAPTER 11. TRANSFER OF DATA TO COUNTRIES OUTSIDE THE EUROPEAN UNION

Article 76

1. Personal data which are subject to processing or intended for processing after they have been transferred, shall only be transferred to a country outside the European Union in the case that, without prejudice to compliance with the provisions of this Act, that country guarantees an adequate level of protection.
2. An assessment of the adequacy of the level of protection shall take account of the circumstances affecting a data transfer operation or a category of data transfer operations. Account shall be taken in particular of the type of data, the purpose or purposes and the duration of the planned processing or processing operations, the country of origin and country of final destination, the general and sectoral legal provisions applying in the non-member country concerned, as well as the rules governing the business sector and security rules applying in these countries.

Article 77

1. Notwithstanding Article 76, an operation or category of operations to transfer personal data to a non-member country which does not provide guarantees for an adequate level of protection may take place, provided that:

- a. the data subjects have unambiguously given their consent thereto,
- b. the transfer is necessary for the performance of a contract between the data subjects and the responsible parties, or for actions to be carried out at the request of the data subjects and which are necessary for the conclusion of a contract;
- c. the transfer is necessary for the conclusion or performance of a contract concluded or to be concluded between responsible parties and third parties in the interests of data subjects;
- d. the transfer is necessary on account of an important public interest, or for the establishment, exercise or defence in law of any right;
- e. the transfer is necessary to protect a vital interest of data subjects, or
- f. the transfer is carried out from a public register set up by law or from a register which can be consulted by anyone or by any persons who can invoke a legitimate interest, provided that in the case concerned the legal requirements for consultation are met.

2. Notwithstanding the provisions under (1), Our Minister, after consulting the Data Protection Commission, may issue a permit for a personal data transfer or category of transfers to a non-member country that does not provide guarantees for an adequate level of protection. Attaching to this permit are the more detailed rules required to protect the individual privacy and fundamental rights and freedoms of persons and to guarantee implementation of the associated rights.

Article 78

1. Our Minister shall notify the Commission of the European Communities of:

- a. the cases in which, in his or her opinion, a non-member country does not provide guarantees for an adequate level of protection within the meaning of Article 76(1), and
- b. a permit, as referred to in Article 77(2).

2. Where this follows from a decision of the Commission of the European Communities or the Council of the European Union, Our Minister shall lay down by ministerial ruling or by decision that:

- the transfer to a country outside the European Union is prohibited;
- a country outside the Union is considered to guarantee an adequate level of protection, or
- a permit issued under Article 77(2) is withdrawn or modified.

3. The notifications referred to under (1)(a) and (b) shall be published in the Official Gazette.

CHAPTER 12. TRANSITIONAL AND FINAL PROVISIONS

Article 79

1. Within one year of the entry into force of this Act, processing which was already taking place at that moment shall be brought into conformity with this Act and shall be notified to the Commission or officer as referred to in Article 27. The time limit referred to in the first sentence may be extended by general administrative regulation to a maximum of three years with respect to the notification requirement.

2. A time limit of three years shall apply to the modification of processing of special data to comply with Section 2 of Chapter 2, it being understood that it is not necessary to make another request for the consent referred to in Article 23(1)(a) with respect to processing which has already taken place and which is necessary for the performance of contracts made prior to the date of entry into force of this Act.

3. Article 32(2) shall not apply to processing referred to in Article 31(1) and (3), which was already taking place at the moment of the entry into force of the Act, or as the case may be, of the Act or the general administrative regulation applying to such processing.

Article 80

Within five years of the entry into force of this Act, Our Ministers of Justice and of the Interior and Kingdom Relations shall send a report to Parliament on the effectiveness and effects of this Act in practice.

Article 81

The Registration of Persons Act (Wet persoonsregistraties) is repealed.

Article 82

This Act shall enter into force on a date to be laid down by royal decree.

Article 83

This Act shall be designated: Personal Data Protection Act (Wet bescherming persoonsgegevens)

It is hereby ordered that this Act shall be published in the Official Gazette and that all ministries, authorities, bodies and officials whom it may concern shall ensure that it is implemented scrupulously.

Done

The Minister of Justice,

The Minister for the Major Cities and Integration Policy

Updated 15.12.2005