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# **GENERAL DATA PROTECTION REGULATION IMPLEMENTATION ACT**

Including references to the corresponding articles of the GDPR

This publication contains the original text of the Dutch General Data Protection Regulation Implementation Act (“the Implementation Act”) in force as of 25 May 2018, as well as the English translation of it.

References to articles of the General Data Protection Regulation have been added by Eliëtte Vaal of AKD, a law firm that specialises in privacy law and other areas of the law. The translation has been provided by Hendriks & James Legal Translations, an agency whose areas of specialisation include texts on privacy law.

Hendriks & James has produced a clear, readable and accurate translation, drafted in line with the terminology used in the General Data Protection Regulation. The translation of the Implementation Act is not an official translation, nor may any rights be exercised under it.

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## Explanation of references

**Article 54(1)  
(a) GDPR**



elaborated in this entire section of the Implementation Act

**Article 54(1)(b)  
GDPR**



elaborated in this specific subsection of the Implementation Act

# **General Data Protection Regulation Implementation Act**

**Act of 16 May 2018, containing rules on the implementation of 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) (OJEU 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.

To all who shall see or hear these presents, greetings! Whereas:

We have considered it necessary to provide statutory rules 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) (OJEU 2016, L 119);

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

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

## **Part 1**

### **General provisions**

#### **Section 1 Definitions**

In this Act and the provisions based upon it:

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

*the Minister means:* the Minister for Legal Protection;

*personal data concerning criminal law matters means:* personal data concerning criminal convictions and offences or related security measures as referred to in Article 10 of the Regulation, as well as personal data relating to a prohibition imposed by the courts for unlawful or objectionable conduct;

*Regulation means:* 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) (OJEU 2016, L 119).

#### **Section 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 other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.
2. By derogation from subsection 1, this Act does not apply to the processing of personal data in so far as such processing is subject to the Personal Records Database Act, the Elections Act or the Advisory Referendum Act.
3. Subject to the provisions of Section 3, this Act does not apply to the processing of personal data referred to in Article 2(2) of the Regulation.

#### **Section 2a Taking account of the needs of micro, small and medium-sized enterprises**

The Dutch Data Protection Authority takes account of the specific needs of micro, small and medium-sized enterprises as referred to in Article 2 of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJEU 2003 L 124) in the application of the Regulation.

### **Section 3 Mutatis mutandis provision on processing operations outside the scope of the Regulation**

1. This Act and the provisions based upon it also apply to the processing of personal data:
  - a. in the course of an activity which falls outside the scope of Union law;
  - b. by the armed forces when performing activities that fall within the scope of Chapter 2 of Title V of the Treaty on the Functioning of the European Union.
2. The Regulation applies equally to the processing of personal data referred to in subsection 1.
3. The first and second subsections do not apply to:
  - a. the processing of personal data by the armed forces, in so far as the Minister of Defence decides on this for purposes of deploying the armed forces or making them available to carry out the tasks described in Article 97 of the Constitution;
  - b. the processing of personal data in so far as it is subject to the Intelligence and Security Services Act 2002.
4. The Dutch Data Protection Authority will be notified as soon as possible of a decision as referred to in subsection 3(a).

### **Section 4 Territorial scope**

1. This Act and the provisions based upon it apply to the processing of personal data in the context of the activities of 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 established in the European Union, where the processing activities are related to:
  - a. offering goods or services to such data subjects in the Netherlands, irrespective of whether payment is required from them; or
  - b. the monitoring of their behaviour in so far as this behaviour takes place within the Netherlands.

### **Section 5 Consent of legal representative**

1. If Article 8 of the Regulation does not apply and if the data subject has not yet reached the age of sixteen, the consent of his or her legal representative is required instead of his or her consent.
2. If the data subject has been placed under guardianship or is subject to protective administration or a protection order, the consent of his or her legal representative is required instead of his or her consent in situations where the data subject has no legal capacity or authority.

3. Such consent may be withdrawn by the data subject's legal representative at any time.
4. In situations where the data subject has no legal capacity or authority, the rights referred to in Chapter III of the Regulation are exercised by the legal representatives of data subjects who have not yet reached the age of sixteen, data subjects who have been placed under guardianship and data subjects who are subject to protective administration or a protection order.
5. This section does not apply to assistance or counselling services offered directly and free of charge to a minor or a person who has been placed under guardianship.

## Part 2

### The Dutch Data Protection Authority

#### *Division 2.1 Establishment and organisation of the Dutch Data Protection Authority*

#### Section 6 Establishment and appointment as supervisory authority

Article 54(1)  
(a) GDPR ✓

Article 51  
GDPR /  
recitals 117,  
123 >

1. There is a Dutch Data Protection Authority.
2. The Dutch Data Protection Authority is the supervisory authority referred to in Article 51(1) of the Regulation.
3. Without prejudice to Article 57 of the Regulation, the Dutch Data Protection Authority is charged with the supervision of the processing of personal data in accordance with the provisions laid down by and pursuant to the Regulation or the law.
4. To implement a binding EU legal act, tasks may be assigned to the Dutch Data Protection Authority pursuant to a regulation by the Minister after the Dutch Data Protection Authority has been consulted.

#### Section 7 Composition

Article 52(1)  
to (3) GDPR /  
recitals 118,  
120 ✓

Article 54(1)(b)  
GDPR >

1. The Dutch Data Protection Authority comprises a Chair and two other members.
2. Extraordinary members may also be appointed to the Dutch Data Protection Authority. In the appointment of extraordinary members, efforts will be made to reflect the diversity of the different sectors of society.

3. The Chair, the other members and the extraordinary members of the Dutch Data Protection Authority are appointed by royal decree on the nomination of the Minister. < Article 53 GDPR / recital 121
4. The Chair satisfies the requirements for appointment as a judge to a court by or pursuant to Section 5 of the Judicial Officers (Legal Status) Act. < Article 54(1)(c) GDPR
5. The appointment referred to in subsection 3 is for a term of five years. < Article 54(1)(d) GDPR
6. The Chair, the other members and the extraordinary members of the Dutch Data Protection Authority may be reappointed for one more term of five years. < Article 54(1)(e) GDPR
7. The Chair, the other members and the extraordinary members of the Dutch Data Protection Authority are dismissed by the Minister at their own request.
8. Section 12 of the Non-Departmental Administrative Bodies Framework Act does not apply.
9. An advisory board advises the Dutch Data Protection Authority on general aspects of the protection of personal data. Its members come from different sectors of society and are appointed by the Minister on the nomination of the Dutch Data Protection Authority's Chair. 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 costs to the members of the advisory board is laid down by ministerial regulations.

### Section 8 Disciplinary measures imposed on Chair and other members

Sections 46c, 46d(2), 46f, 46g, 46i, except for subsection 1(c), 46j, 46l(1) and (3), 46m, 46n, 46o and 46p of the Judicial Officers (Legal Status) Act apply equally to the Chair and the other members of the Dutch Data Protection Authority, on the understanding that:

- a. the disciplinary measure referred to in Section 46c(1) is imposed on the other members of the Dutch Data Protection Authority by the Chair of the Dutch Data Protection Authority;
- b. the prohibition referred to in Section 46c(1)(b) on engaging with parties or their lawyers or representatives in an interview or a meeting or accepting special information or written documents from them does not apply to the Chair and the other members of the Dutch Data Protection Authority;

✓ Article 52(1) to (3) GDPR / recitals 118, 120

✓ Article 54(1) (f) GDPR



- c. the disciplinary measure referred to in Section 46c(1) is imposed on the Chair of the Dutch Data Protection Authority by the president of the Court of Appeal in The Hague.

### **Section 9 Legal positions of the Chair, other members and extraordinary members**

Article 52(1)  
to (3) GDPR /  
recitals 118,  
120



The legal positions of the Chair, the other members and the extraordinary members are laid down by or pursuant to an order in council.

### **Section 10 Secretariat**

Article 52(1)  
to (3) GDPR /  
recitals 118,  
120



1. The Dutch Data Protection Authority has a secretariat whose officials are appointed, promoted, disciplined, suspended and dismissed by the Dutch Data Protection Authority.

2. The powers over the secretariat's officials conferred on the competent authority by or pursuant to the Central and Local Government Personnel Act, with the exception of the power to set rules or more specific rules, are exercised by the Dutch Data Protection Authority.

Article 52(4)  
+ (5) GDPR /  
recitals 120,  
121



### **Section 11 Budget, accounting and authority to represent**

Article 52(1)  
to (3) GDPR /  
recitals 118,  
120



1. Every year, without prejudice to Section 25 of the Non-Departmental Administrative Bodies Framework Act, the Dutch Data Protection Authority prepares a draft budget before the start of the financial year concerned.

2. Every year, the Minister allocates a budget in the departmental budget as referred to in Section 2.1(6) of the Government Accounts Act 2016 to the Dutch Data Protection Authority which is charged to the state budget.

3. The Dutch Data Protection Authority adopts the departmental budget in accordance with the budget referred to in the second subsection.

4. The Dutch Data Protection Authority is represented in or out of court by the Chair and the other members, or by one of them.

5. The members set out the division of duties and thereby involve the extraordinary members in so far as possible.

### **Section 12 Limitation of obligation to provide information to the Minister**

Article 52(1)  
to (3) GDPR /  
recitals 118,  
120



Section 20 of the Framework Act does not apply if the Dutch Data Protection Authority has collected the information from third parties on condition that its confidential nature be maintained.

### Section 13 Exceptions to powers on policy rules, annulment and neglect of duties

1. Sections 21 and 22 of the Framework Act do not apply to the Dutch Data Protection Authority.
2. Section 23 of the Framework Act applies solely to the financial management and administrative organisation of the Dutch Data Protection Authority.

✓ Article 52(1) to (3) GDPR / recitals 118, 120

#### *Division 2.2 Exercise of the Dutch Data Protection Authority's tasks and powers*

### Section 14 Tasks and powers

1. The Dutch Data Protection Authority is competent to perform the tasks and exercise the powers that are conferred on the supervisory authority by or pursuant to the Regulation.

< Article 57 GDPR / recital 129

< Article 58(1) to (3) GDPR / recitals 122, 129

2. Division 3.4 of the General Administrative Law Act applies to the preparation, amendment or extension of a decision regarding the approval of a code of conduct, as referred to in Article 40(5) of the Regulation.

< Article 40(5) GDPR / recitals 98-99

3. The Dutch Data Protection Authority may impose an administrative fine not exceeding the amounts referred to in these subsections for violation of any of the provisions of Article 83(4), (5) or (6) of the Regulation.

< Article 83(1) to (6), (9) GDPR / recitals 148 to 152

4. Sections 5:4 to 5:10a of the General Administrative Law Act apply equally to the corrective powers referred to in Article 58(2)(b) to (j) of the Regulation.

< Article 58(4) GDPR

5. Without prejudice to Section 4:15 of the General Administrative Law Act, the Dutch Data Protection Authority may suspend the time limit for issuing a decision in so far as this is required in connection with the Dutch Data Protection Authority's performance of its obligations pursuant to Articles 60 to 66 of the Regulation. Section 4:15 subsections (3) and (4) of the General Administrative Law Act apply equally to this suspension.

### Section 15 Supervision of compliance

Article 58(6)  
GDPR ✓

Article 51  
GDPR / recitals  
117, 123 >

Article 58(1) to  
(3) GDPR /  
recitals 122,  
129 >

Article 90  
GDPR /  
recital 164 >

1. The members and extraordinary members of the Dutch Data Protection Authority, the officials of the Dutch Data Protection Authority's secretariat as well as the persons designated by order of the Dutch Data Protection Authority are responsible for monitoring compliance with the Regulation and the processing of personal data in accordance with provisions laid down by or pursuant to the law.
2. The persons referred to in subsection 1 may enter a dwelling without the occupant's permission.
3. The persons referred to in subsection 1 require the explicit and special authorisation of the Dutch Data Protection Authority for the purpose of exercising the power set out in subsection 2, without prejudice to Section 2 of the General Act on Entry into Dwellings.
4. No obligation of secrecy may be invoked in so far as information or cooperation is requested in connection with the data subject's own involvement with the processing of personal data.
5. This section and Title 5.2 of the General Administrative Law Act apply equally in so far as this is required for the proper performance of the Dutch Data Protection Authority's tasks in the context of Chapter VII of the Regulation.

### Section 16 Administrative enforcement order

Article 58(6)  
GDPR ✓

1. The Dutch Data Protection Authority may impose an administrative enforcement order to enforce obligations laid down by or pursuant to this Act.
2. The Dutch Data Protection Authority may impose an administrative enforcement order to enforce Section 5:20(1) of the General Administrative Law Act in so far as it concerns the obligation to cooperate with a request by an official designated by or pursuant to Section 15(1).

### Section 17 Fine in the event of unlawful processing of personal data relating to criminal matters

Article 10  
GDPR ✓

Article 84  
GDPR ✓

1. The Dutch Data Protection Authority may impose an administrative fine of up to EUR 20,000,000 or, in the case of an undertaking, up to 4% of the total worldwide annual turnover generated in the preceding financial year, whichever is higher, for a violation of any of the provisions of Article 10 of the Regulation or Section 31 of this Act.
2. Article 83 paragraphs (1) to (3) of the Regulation apply equally.

### Section 18 Administrative fines for public authorities

1. If a public authority or public body violates the provisions of Article 83(4), (5) or (6) of the Regulation, the Dutch Data Protection Authority may impose an administrative fine not exceeding the amounts referred to in these paragraphs.
2. Article 83 paragraphs (1) to (3) of the Regulation are applicable.

✓ Article 83(7)  
GDPR

### Section 19 Cooperation with other supervisory authorities

1. The Dutch Data Protection Authority may make arrangements with other supervisory authorities in the interest of efficient and effective supervision of the processing of personal data and draw up cooperation protocols for that purpose with those supervisory authorities. Any cooperation protocol is published in the Government Gazette.
2. The Dutch Data Protection Authority and the supervisory authorities referred to in subsection 1 may on their own initiative and must on request disclose to one another the data relating to the processing of personal data that are necessary for the performance of their tasks or in order to comply with an official authority vested in them.

### Section 20 Taking legal action against infringements of the Regulation regarding transfer to a third country

1. If, during an investigation into the transfer of personal data to a country outside the European Union or to an international organisation, which investigation is conducted at the request of an interested party, the Dutch Data Protection Authority has well-founded reasons to assume that an adequacy decision as referred to in Article 45(1) of the Regulation, taken by the European Commission with respect to the relevant country or international organisation, or a decision regarding the adoption or approval of standard data protection clauses as referred to in Article 46(2)(c) and (d) of the Regulation does not provide sufficient safeguards for an adequate level of data protection, the Dutch Data Protection Authority may file an application with the Administrative Law Division of the Council of State for a declaratory decision that the relevant decision is valid.
2. The application must be signed and must at least include:
  - a. the date;
  - b. the grounds for the application;
  - c. the names of the interested party and the party that is the subject of the investigation referred to in subsection 1.
3. The application will include a copy of the interested party's request for the enforcement of rules on the protection of personal data provided by or pursuant to the law, to which the Dutch Data Protection Authority's application

✓ Article 58(5)  
GDPR /  
recital 129

referred to in subsection 2 relates, as well as other documents that are relevant to the matter.

4. Without prejudice to Section 4:15 of the General Administrative Law Act, the time limit for issuing a decision on the enforcement request will be suspended from the day after the Dutch Data Protection Authority notifies the party making the request that subsection 1 has been applied to the day on which the Administrative Law Division of the Council of State issues a decision as referred to in subsection 6.

5. Titles 8.1 and 8.2 of the General Administrative Law Act, with the exception of Sections 8:1 to 8:10, 8:41, Divisions 8.2.2a and 8.2.4a and Sections 8:70, 8:72 and 8:74, apply equally to the handling of the request. The parties referred to in subsection 2(c) will be regarded as parties to the proceedings.

6. If the Administrative Law Division of the Council of State finds, whether or not following a reference for a preliminary ruling pursuant to Article 267 of the Treaty on the Functioning of the European Union to the Court of Justice of the European Union, that the European Commission's decision that has been submitted to it is valid, it will issue a declaratory decision to that effect. If it finds, following a reference for a preliminary ruling to the Court of Justice of the European Union, that the decision that has been submitted to it is invalid, it will dismiss the application.

7. The Administrative Law Division of the Council of State may decide to stay the application if a question regarding the validity of the relevant decision has already been referred for a preliminary ruling and is pending before the Court of Justice of the European Union.

8. The stay of the application by the Administrative Law Division of the Council of State cannot be appealed.

### **Section 21 Designation of accreditation body**

Either the Dutch Data Protection Authority or the Accreditation Council or both of them are designated by ministerial regulations as accreditation bodies as referred to in Article 43 of the Regulation.

Article 43  
GDPR



**Part 3****Provisions implementing the Regulation***Division 3.1 Special categories of personal data***Section 22 Prohibition on processing special categories of personal data and general exemptions under the Regulation**

1. In accordance with Article 9(1) of the Regulation, the 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, or data concerning health or data concerning a natural person's sex life or sexual orientation is prohibited. < Article 9(1) GDPR / recitals 34, 35, 51
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: < Article 9(2)(a) GDPR / recital 33
- a. the data subject has given explicit consent to the processing of those personal data for one or more specified purposes;
- b. processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent; < Article 9(2)(c) GDPR
- c. processing is carried out by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim in the course of its legitimate activities and with appropriate safeguards, 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 are not disclosed outside that body without the consent of the data subjects; < Article 9(2)(d) GDPR / recitals 55, 56
- d. processing relates to personal data which are manifestly made public by the data subject; or < Article 9(2)(e) GDPR
- e. processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity. < Article 9(2)(f) GDPR / recital 52

**Section 23 General exceptions under national law**

Having regard to Article 9(2)(g) of the Regulation, the prohibition on processing special categories of personal data does not apply if: < Article 9(2)(g) GDPR

- a. processing is necessary to comply with an obligation under international law;
- b. the data are processed by the Dutch Data Protection Authority or an ombudsman as referred to in Section 9:17 of the General Administrative Law Act, and in so far as processing is necessary for the performance of the

tasks entrusted to them by law, provided that safeguards have been put in place for that performance such that the data subject's privacy is not disproportionately compromised; or

- c. processing is necessary in addition to the processing of personal data relating to criminal law matters for the purposes for which such data are processed.

#### **Section 24 Exceptions for scientific or historical research or statistical purposes**

Article 9(2)(j)  
GDPR



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

- a. processing is necessary for scientific or historical research purposes or statistical purposes in accordance with Article 89(1) of the Regulation;
- b. the research referred to in a. serves a public interest;
- c. it is impossible or would involve a disproportionate effort to request express consent; and
- d. safeguards have been put in place for the processing such that the data subject's privacy is not disproportionately compromised.

#### **Section 25 Exceptions for the processing of personal data revealing racial or ethnic origin**

Article 9(2)  
(g) GDPR



Having regard to Article 9(2)(g) of the Regulation, the prohibition on processing personal data revealing racial or ethnic origin does not apply if such processing is carried out:

- a. to identify the data subject and only in so far as such processing is unavoidable for that purpose; or
- b. with the purpose of conferring a preferential position on persons of a certain ethnic or cultural minority group in order to eliminate or reduce the actual disadvantages connected with race or ethnicity, and only in so far as:
  - 1°. processing is necessary for that purpose;
  - 2°. the data relate to the country of birth of the data subject, his or her parents or grandparents, or to other criteria set by law on the basis of which it can objectively be determined whether a person belongs to a certain ethnic or cultural minority group; and
  - 3°. the data subject has not objected to the processing in writing.

### **Section 26 Exceptions for the processing of personal data revealing political opinions for the performance of public duties**

Having regard to 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 with a view to requirements on political opinions that may reasonably be imposed in connection with the performance of duties in administrative bodies and on advisory boards.

✓ Article 9(2)  
(g) GDPR

### **Section 27 Exceptions for the processing of personal data revealing religious or philosophical beliefs for spiritual care**

1. Having regard to 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 institutions as referred to in Section 22(2)(c), and in so far as the processing is necessary for the purpose of providing spiritual care to the data subject, unless he or she has objected to this in writing.

✓ Article 9(2)  
(g) GDPR

2. In the cases referred to in subsection 1, no personal data may be disclosed to third parties without the data subject's consent.

### **Section 28 Exceptions for genetic data**

1. Having regard to Article 9(2)(g) of the Regulation, the prohibition on processing genetic data does not apply if such processing is carried out in relation to the data subject from whom the data concerned have been collected.

✓ Article 9(2)  
(g) GDPR

2. In cases other than those referred to in subsection 1, the prohibition on processing genetic data does not apply if:

✓ Article 9(4)  
GDPR /  
recital 53

a. a substantial medical interest prevails; or

b. the processing is needed for scientific research that serves a public interest or for statistical purposes if:

1°. the data subject has given his or her express consent; and

2°. safeguards have been put in place for the processing such that the data subject's privacy is not disproportionately compromised.

3. Consent as referred to in subsection 2(b) is not required if it proves impossible or would involve a disproportionate effort to request express consent.



### Section 29 Exceptions for biometric data

Article 9(2)  
(g) GDPR



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

### Section 30 Exceptions for data concerning health

Article 9(2)(b)  
GDPR /  
recital 52



1. Having regard to Article 9(2)(b) of the Regulation, the prohibition on processing data concerning health does not apply if the processing is carried out by administrative bodies, pension funds, employers or institutions that perform activities on their behalf in so far as this is necessary for:

- a. proper compliance with legal requirements, pension schemes or collective employment contracts that provide entitlements which depend on the data subject's health status; or
- b. the reintegration or support of employees or recipients of welfare benefits in connection with illness or disability.

Article 9(2)(g)  
GDPR



2. Having regard to Article 9(2)(g) of the Regulation, the prohibition on processing data concerning health does not apply if the processing is carried out by:

- a. schools in so far as the processing is necessary with a view to special support for pupils or making special arrangements in connection with their health status;
- b. an institution of rehabilitation, a special probation officer, the Child Care and Protection Board, the certified body referred to in Section 1.1 of the Youth Act, or the legal person referred to in Article 256(1) or Article 302(2) of Book 1 of the Civil Code, in so far as the processing is necessary for the performance of the statutory duties assigned to them; or
- c. the Minister and the Minister of Justice and Security in so far as the processing is necessary for the enforcement of measures involving the deprivation of liberty.

Article 9(2)(h)  
GDPR /  
recitals 52-53



3. Having regard to Article 9(2)(h) of the Regulation, the prohibition on processing data concerning health does not apply if the processing is carried out by:

- a. healthcare providers, institutions or health care or social services facilities in so far as the processing is necessary for the proper treatment or care of the data subject or for the management of the institution or professional practice concerned; or
- b. insurers as referred to in Section 1:1 of the Financial Supervision Act or financial service providers who provide insurance brokerage services as referred to in Section 1:1 of that act, in so far as the processing is necessary to:

- 1°. assess the risk to be insured by the insurer and the data subject has not made any objection; or
  - 2°. perform the insurance agreement or to assist in the management and implementation of the insurance.
4. If subsection 1, 2 or 3 applies, the data are only processed by persons who have an obligation of secrecy by virtue of an office, profession or legal requirement or pursuant to a contract. If the controller processes data personally and he or she is not already subject to an obligation of secrecy by virtue of an office, profession or legal requirement, he or she is obliged to maintain secrecy with regard to the data, save in so far as he or she is obliged to disclose them by law or his or her responsibilities require that they be disclosed to others who are authorised to process them pursuant to subsection 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 personal data concerning health referred to in subsection 3, opening lines and (a), for the proper treatment or care of the data subject.
6. Further rules may be issued regarding the application of subsections 1 and 3, opening lines and (b), by order in council.

◀ Article 9(3)  
GDPR

### *Division 3.2 Personal data relating to criminal law matters*

#### **Section 31 Exemptions from the obligation to carry out processing operations under government control**

Without prejudice to Article 10 of the Regulation, personal data relating to criminal law matters may only be processed in so far as it is authorised pursuant to Sections 32 and 33.

▼ Article 10  
GDPR

#### **Section 32 General grounds for exemption for data relating to criminal law matters**

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

- a. the data subject has given explicit consent to the processing of those personal data for one or more specified purposes;
- b. processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;
- c. processing relates to personal data which are manifestly made public by the data subject;
- d. processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity;
- e. processing is necessary for reasons of substantial public interest as referred to in Section 23(a) and (b); or

▼ Article 10  
GDPR

- f. processing is necessary for scientific or historical research purposes or statistical purposes in accordance with Article 89(1) of the Regulation, and the conditions referred to in Section 24(b) to (d) have been met.

### Section 33 Other grounds for exceptions for data relating to criminal law matters

**Article 10**  
**GDPR**



1. Personal data relating to criminal law matters may be processed if:
  - a. processing is carried out by bodies that are responsible pursuant to the law for applying criminal law or by controllers who have acquired this responsibility pursuant to the Police Data Act or the Judicial Data and Criminal Records Act;
  - b. processing is carried out by and on behalf of alliances of controllers or groups of controllers governed by public law if:
    - 1°. processing is necessary for the performance of the tasks of these controllers or groups of controllers; and
    - 2°. safeguards have been put in place for the processing such that the data subject's privacy is not disproportionately compromised; or
  - c. processing is necessary in addition to the processing of personal data concerning health referred to in Section 30(3), opening lines and (a), for the proper treatment or care of the data subject.
2. Personal data relating to criminal law matters may be processed by the controller that processes these data for its own purposes in order to:
  - a. assess a request from the data subject to take a decision on him or her or to provide a service to him or her; or
  - b. protect its interests in cases of criminal offences committed against it or which, based on facts and circumstances, can be expected to be committed against it or persons employed by it.
3. Personal data relating to criminal law matters on staff employed by the controller may only be processed if such processing is carried out in accordance with rules adopted in line with the procedure referred to in the Works Councils Act.
4. Personal data relating to criminal law matters may be processed on behalf of third parties:
  - a. by controllers acting pursuant to a licence under the Private Security Organisations and Detective Agencies Act;
  - b. if such third party is a legal person who is part of the same group as that referred to in Article 24b of Book 2 of the Civil Code; or
  - c. if the Dutch Data Protection Authority has granted a licence for such processing, with due observance of subsection 5.

5. A licence as referred to in subsection 4(c) may only be granted if the processing is necessary for reasons of a substantial interest on the part of third parties, and if safeguards have been put in place for the processing such that the data subject's privacy is not disproportionately compromised. The licence may be subject to requirements.

### *Division 3.3 Legal protection*

#### **Section 34 Applicability of General Administrative Law Act in decisions of administrative bodies**

A written decision on a request as referred to in Articles 15 to 22 of the Regulation is taken within the time limits referred to in Article 12(3) of the Regulation and will be considered to be a decision within the meaning of the General Administrative Law Act in so far as the decision was taken by an administrative body.

✓ Article 79  
GDPR /  
recital 145

#### **Section 35 Applicability of civil law in decisions of non-administrative bodies**

1. Where a decision on a request as referred to in Section 34 is taken by a body other than an administrative body, the interested party may file a written application with the court to order the controller to grant or refuse the request referred to in Articles 15 to 22 of the Regulation.

2. The application must be filed within six weeks of receipt of the controller's answer. If the controller has not answered within the time limits referred to in Article 12(3) of the Regulation, the filing of the application will not be subject to a time limit.

3. The court will grant the application in so far as it deems it well-founded. Before the court issues a decision it will, where necessary, give the interested parties the opportunity to put forward their points of view.

4. The application does not have to be filed by a lawyer.

5. Division 3 of Title 5 of Book 2 of the Code of Civil Procedure applies equally.

6. The court may request parties and others to submit written information and documents they hold, within a time limit set by the court. The controller and the interested party must comply with this request. Section 8:45(2) and (3) and Section 8:29 of the General Administrative Law Act apply equally.

✓ Article 79  
GDPR /  
recital 145

### Section 36 Dispute resolution by Dutch Data Protection Authority or through code of conduct

Article 58(6)  
GDPR



1. The interested party may also file a request with the Dutch Data Protection Authority, within the time limit set for the appeal under the General Administrative Law Act or within the time limit referred to in Section 35(2), to mediate in or advise on his or her dispute with the controller or to use a dispute resolution scheme as referred to in Article 40(2)(k) of the Regulation under an approved code of conduct as referred to in Article 40(5) of the Regulation. In that case, in derogation from Section 6:7 of the General Administrative Law Act, the appeal may still be filed or the proceedings referred to in Section 35 may still be issued after the interested party has been notified – either by the Dutch Data Protection Authority or pursuant to the dispute resolution scheme – that the case has been closed, but not more than six weeks after such date.

Article 79  
GDPR /  
recital 145



2. During the appeal hearing and the proceedings referred to in subsection 1, the bodies charged with resolving the dispute may request the Dutch Data Protection Authority to issue an opinion.

### Section 37 Representation of data subjects

Article 80  
GDPR /  
recital 142



A claim as referred to in Article 305a of Book 3 of the Civil Code or an appeal lodged in administrative law proceedings by an interested party within the meaning of Section 1:2(3) of the General Administrative Law Act may not be based on data processing in so far as the person affected by such processing objects to it.

### Section 38 Suspensive effect of objection or appeal

The operation of a decision to impose an administrative fine will be suspended until the period for objecting or appealing has expired or, if an objection or an appeal has been lodged, until a decision has been taken regarding the objection or the appeal.

#### *Division 3.4 The data protection officer*

### Section 39 Obligation of secrecy

Article 38(5)  
GDPR



The data protection officer referred to in Articles 37 to 39 of the Regulation must maintain the secrecy of any information that becomes known to him or her pursuant to a complaint by or request from a data subject, unless the data subject agrees to disclosure.

## Part 4

### Exemptions and restrictions

#### Section 40 Exceptions from 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 provision, other than based on profiling, is necessary for compliance with a legal obligation to which the controller is subject or for the performance of a task carried out for reasons of public interest.
2. In the case of the automated individual decision-making referred to in subsection 1, the controller will take suitable measures to safeguard the data subject's rights, freedoms and legitimate interests.
3. If the controller is not an administrative body, the suitable measures referred to in subsection 2 will in any case have been taken if the right to obtain human intervention, the data subject's right to express his or her point of view and the right to contest the decision, have been safeguarded.

✓ Article 22  
GDPR /  
recitals  
71-72

#### Section 41 Exceptions to data subject's rights and controller's obligations

1. The controller may refrain from applying the rights and obligations referred to in Articles 12 to 21 and 34 of the Regulation in so far as this is necessary and proportionate to safeguard:
  - a. national security;
  - b. defence;
  - c. public security;
  - d. the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including safeguarding against and preventing threats to public security;
  - e. other important objectives of general public interest of the European Union or of the Netherlands, in particular an important economic or financial interest of the European Union or of the Netherlands, including monetary, budgetary and taxation matters, public health and social security;
  - f. the protection of judicial independence and judicial proceedings;
  - g. the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;
  - h. a monitoring, inspection or regulatory function connected, even occasionally, to the exercise of official authority in the cases referred to in a, b, c, d, e and g;
  - i. the protection of the data subject or the rights and freedoms of others; or
  - j. the enforcement of civil law claims.

✓ Article 23  
GDPR /  
recital 73

2. In applying subsection 1, the controller will in any case take into account, in so far as applicable:
  - a. the purposes of the processing or the categories of processing;
  - b. the categories of personal data;
  - c. the scope of the restrictions introduced;
  - d. the safeguards to prevent abuse or unlawful access or transfer;
  - e. the specification of the controller or categories of controllers;
  - f. the storage periods and the applicable safeguards taking into account the nature, scope and purposes of the processing or categories of processing;
  - g. the risks to the rights and freedoms of data subjects; and
  - h. the right of data subjects to be informed about any restriction, unless that may be prejudicial to the purpose of such restriction.

#### **Section 42 Exemption from the obligation to notify data subject about data breaches**

Article 23  
GDPR /  
recital 73



Article 34 does not apply to financial enterprises within the meaning of the Financial Supervision Act.

#### **Section 43 Exceptions for journalistic purposes or purposes of academic, artistic or literary expression**

Article 85  
GDPR /  
recital 153



1. This Act, with the exception of Sections 1 to 4 and 5(1) and (2), does not apply to the processing of personal data solely for journalistic purposes and for purposes solely of academic, artistic or literary expression.
2. The following chapters and articles of the Regulation do not apply to the processing of personal data solely for journalistic purposes and for purposes of academic, artistic or literary 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 in so far as the processing of the data referred to in those articles is necessary for journalistic purposes or for purposes of academic, artistic or literary expression.

**Section 44 Exceptions for scientific research and statistical purposes**

Where processing is carried out by institutions or services for purposes of scientific research or statistics, and the necessary steps have been taken to ensure that the personal data can be used solely for statistical or scientific purposes, the controller may refrain from applying Articles 15, 16 and 18 of the Regulation.

✓ Article 89  
GDPR /  
recitals  
156-163

**Section 45 Exceptions for archiving in the public interest**

1. Articles 15, 16, 18(1)(a) and 20 of the Regulation do not apply to the processing of personal data that are part of records as referred to in Section 1(c) of the Public Records Act 1995 that are kept in a repository as referred to in Section 1(f) of that Act.
2. The data subject may obtain access to the records, unless requests for access are so vague that they cannot reasonably be granted.
3. If personal data are inaccurate, the data subject may add his or her own words to the records concerned.

✓ Article 89  
GDPR /  
recitals  
156-163

**Section 46 Processing of national identification number**

1. A number prescribed by law for the identification of a person may only be used when processing personal data for the implementation of the law concerned or for purposes provided for by law.
2. Cases other than those referred to in subsection 1 may be designated by order in council in which a number as referred to in subsection 1 may be used. Further rules may be issued about the use of such number.

✓ Article 87  
GDPR

**Section 47 Exemptions to data subject's rights for 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 to correct, add, remove or restrict data is provided by or pursuant to such legislation.
2. Article 21 of the Regulation does not apply to public registers which have been established by law.

✓ Article 23  
GDPR /  
recital 73



## **Part 5**

### **Transitional and final provisions**

#### **Section 48 Transitional law**

1. Any person who had been appointed as a member of the former Data Protection Authority (*College Bescherming Persoonsgegevens*) 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 who had been appointed as the Chair of the former Data Protection Authority prior to the entry into force of this Act will automatically be appointed as the Chair of the Dutch Data Protection Authority.
3. To determine the appointment term referred to in Section 7(5), the term spent as the Chair of the former Data Protection Authority prior to the entry into force of this Act will be considered to be a term spent as the Chair of the Dutch Data Protection Authority.
4. Members of the former Data Protection Authority who had been appointed or reappointed before 1 January 2014 remain subject to Section 53(3) first, second and third sentences of the Personal Data Protection Act, as it read before that time.
5. Any official who had been appointed to the former Data Protection Authority's secretariat prior to the entry into force of this Act, will automatically be appointed as an official of the Dutch Data Protection Authority's secretariat.
6. Any decision the former Data Protection Authority took prior to the entry into force of this Act is automatically regarded as a decision of the Dutch Data Protection Authority.
7. The Dutch Data Protection Authority will automatically replace the former Data Protection Authority in legal proceedings and actions in which the latter was involved prior to the entry into force of this Act.
8. Any legal proceedings and actions in which the former Data Protection Authority was involved prior to the entry into force of this Act will be subject to the law that applied prior to the entry into force of this Act.
9. When this Act enters into force, the Dutch Data Protection Authority will automatically replace the former Data Protection Authority in any cooperation protocols.
10. Written applications as referred to in Section 46 of the Personal Data Protection Act, legal proceedings based on Section 49 of the Personal Data Protection Act and requests based on Section 50 of the Personal Data Protection Act that are pending before the court when this Act enters into force will be subject to the law that applied prior to the entry into force of this Act.

11. A declaration of the lawfulness of data processing issued prior to the entry into force of this Act, based on Section 32(5) in conjunction with Section 22(4) (c) of the Personal Data Protection Act, is automatically regarded as a licence within the meaning of Section 33(4)(c) of this Act.

12. In so far as not provided by this Act, rules or more specific rules may be issued regarding the introduction of the Regulation or this Act by order in council.

#### **Section 48a Transitional law II**

1. «The Dutch Data Protection Authority has legal personality» is added to the end of Section 6(1).

2. In Section 11(1), «Without prejudice to Section 25 of the Non-Departmental Administrative Bodies Framework Act, the Dutch Data Protection Authority prepares» is replaced by «The Dutch Data Protection Authority prepares».

3. Upon the entry into force of this Section, the officials of the secretariat referred to in Section 10(1), whose names and positions are stated on a list adopted by the Minister in consultation with the Dutch Data Protection Authority, will be automatically dismissed and appointed as officials in the employment of the Dutch Data Protection Authority.

4. In agreement with the Minister of Finance, the Minister determines which state assets are allocated to the Dutch Data Protection Authority.

5. Upon the entry into force of this Section, the assets referred to in the fourth subsection will be transferred by universal title at a value to be determined by the Minister in agreement with the Minister of Finance.

6. If any registered property is transferred pursuant to the fourth and fifth subsections, the Minister of Finance will promptly register the transfer of such property in the public registers referred to in Division 2 of Title 1 of Book 3 of the Civil Code. Article 24(1) of Book 3 of the Civil Code does not apply.

7. In legal proceedings and actions in which the Dutch Data Protection Authority is involved, the Dutch Data Protection Authority will replace the State or the Minister upon the entry into force of this Section.

8. In matters in which the National Ombudsman was requested to carry out an inquiry into conduct that may be attributed to the Dutch Personal Data Authority before the entry into force of this Section, or in which the National Ombudsman had instituted such inquiry, the Dutch Personal Data Authority will at that time act as an administrative body within the meaning of the National Ombudsman Act instead of the Minister.

**Section 49 Concurrence**

1. If Section 168 of the Intelligence and Security Services Act 2017 enters into force before this Act enters into force, the phrase »the Intelligence and Security Services Act 2002« used in Section 3(3)(b) of this Act will be replaced by «the Intelligence and Security Services Act 2017».
2. If Section 168 of the Intelligence and Security Services Act 2017 enters into force on or after the date on which this Act enters into force, the phrase «the Intelligence and Security Services Act 2002» used in Section 3(3)(b) of this Act will be replaced by «the Intelligence and Security Services Act 2017» as soon as Section 168 of the Intelligence and Security Services Act 2017 enters into force.

**Section 50 Evaluation**

The Minister will send a report on the actual effects and implementation of this Act to the States General within three years of the entry into force of this Act, and once every four years after that.

**Section 51 Repeal of the Personal Data Protection Act**

The Personal Data Protection Act is repealed.

**Section 52 Short title of the Regulation**

In other legislation, 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) (OJEU 2016, L 119) is cited as the General Data Protection Regulation.

**Section 53 Entry into force**

The sections of this Act will enter into force on a date to be determined by royal decree, which date may differ for the individual sections or subsections.

**Section 54 Short title of the Act**

This Act may be cited as the General Data Protection Regulation Implementation Act.

Mandate and order that this will be published in the Bulletin of Acts and Decrees and that all ministerial departments, authorities, councils and government officials concerned will ensure its precise implementation.

Done at Wassenaar, 16 May 2018

Willem-Alexander

The Minister for Legal Protection,  
S. Dekker

The Minister of the Interior and Kingdom Relations,  
K.H. Ollongren

The State Secretary of the Interior and Kingdom Relations,  
R.W. Knops

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The Minister of Justice and Security,  
F.B.J. Grapperhaus

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