

Full title of law

Netherlands – The Telecommunications Act

*Telecommunicatiewet*. Act of 19 October 1998 laying down rules for telecommunications (Staatsblad 1998, no. 610). Entry into force 15/12/1998. For our purposes, the act transposes the e-Privacy Directive [2002/58/EC](#) amended by Directive 2009/136/EU, sometimes known as the cookie clause, and therefore addresses unsolicited communications and consent requirements, without prejudice to GDPR. This version of the act applicable July 2021.

<https://wetten.overheid.nl/BWBR0009950/2021-07-01>

This is an unofficial & non-binding GRS translation. Only the original Dutch has force in law.

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Title of section

Chapter 11: Protection of Personal Data and Personal Privacy

Articles 11.7 and Article 11.7a (Cookie Rules)

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Article 11.7

1. The use of automated calling and communication systems without human intervention, facsimile machines, or electronic mail for the transmission of unsolicited communications for commercial, non-profit, or charitable purposes to subscribers or users is prohibited unless the sender can demonstrate that the end user concerned has given prior consent.
2. The first paragraph shall apply mutatis mutandis to the use of means other than those referenced in the first paragraph for the transmission of unsolicited communications for commercial, non-profit or charitable purposes to natural persons. When using means other than those referenced in the first paragraph for transmitting this unsolicited communication to natural persons with their consent, the sender clearly and explicitly gives the relevant natural person the opportunity to object to each message, free of charge and in a simple manner, to the use of their contact details.
3. Notwithstanding the first and second paragraph, no prior consent shall be required for the transmission of unsolicited communications for commercial, non-profit, or charitable purposes to a legal person or a natural person acting in the course of his profession or business, if:
  - a. the sender makes use of electronic contact details provided by the end-user concerned for the purpose of receiving unsolicited communications for commercial, idealistic or charitable purposes and these have been used in accordance with the user's purposes for such contact details; or
  - b. the user concerned is based outside the European Economic Area and the rules regarding the sending of unsolicited communications for commercial, non-profit or charitable purposes in the country concerned have been observed.
4. Notwithstanding the first and second paragraph, a sender who can demonstrate the use of electronic contact details obtained from his/ her customers in the context of the sale of a product or service, may use those electronic contact details for the transmission of unsolicited communication for commercial purposes for its own similar products or services, provided that the sender has clearly and explicitly offered the end user concerned the opportunity to object, free of charge and in a simple manner, to the use of those electronic contact details:
  - a. at the time that they are collected, and
  - b. on the occasion of each message, provided that the subscriber or user has not objected to use at the time of collection.
5. The fourth paragraph applies mutatis mutandis to:
  - a. contact details obtained by philanthropic or charitable organizations in the context of a donation to that philanthropic or charitable organisation; or
  - b. insofar as there is use of means other than those referred to in the first paragraph, on contact details obtained from the end user by charities or charitable

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organisations in the context of:

- 1) volunteering with that organisation;
  - 2) attending events of that organisation.
6. The use of electronic messages for the purposes within the meaning of paragraph 1 shall be subject mutatis mutandis to [the requirements of Article 3:15 \(e\) \(1\) \(a\) to \(c\) of Book 3 of the Civil Code](#)<sup>1</sup> and said use shall not contain any encouragement to consult information on the Internet that is contrary to said article. The following information must be stated at all times during such use:
- a. the true identity of the party on whose behalf the communication is being conveyed, and
  - b. a valid correspondence address or number to which the recipient can direct a request for such communication to cease.
7. When transmitting unsolicited communications for commercial, non-profit or charitable purposes using a public telephone service, the sender shall not make use of the blocking options referenced in [Article 11.9\(1\)\(a\)](#).
8. Further rules may be laid down by or pursuant to an order in council regarding the use of contact details and offering the opportunity to object to that use, as referenced in the second, fourth and fifth paragraph.
9. A period may be set by order in council during which the contact details referenced in the fourth and fifth paragraphs can at most be used for the transfer of unsolicited communications for commercial, non-profit or charitable purposes to natural persons using persons other than the resources referred to in the first paragraph. A distinction can be made here between different types of unsolicited communication and means for transmitting that unsolicited communication.
10. The nomination for an order in council to be adopted pursuant to subsection 9 shall not be made earlier than four weeks after the draft has been submitted to both chambers of the Dutch parliament.

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Article 11.7a

1. Without prejudice to the General Data Protection Regulation, storing or accessing information on a user's terminal equipment via electronic communication networks is only permitted when the user concerned:
  - a. is provided with clear and complete information in accordance with the General Data Protection Regulation, at least about the purposes for which they wish to access or store the relevant data, and
  - b. has given consent to do so.
2. The requirements referenced in the first paragraph, under a and b, shall also apply when data are stored or when data stored on terminal equipment is accessed in any other way than by means of an electronic communication network.
3. The provisions of the first paragraph shall not apply if the storage or access:
  - a. Is done for the sole purpose of facilitating communication over an electronic communications network
  - b. Is strictly necessary in order to provide the subscriber or user the requested information society service or – provided that there is little or no impact on the

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<sup>1</sup> Art 3:15 (e): Obligations when using commercial communication: Where commercial communication forms a part of a service of the information society or makes out such a service itself, the one who has instructed to use this way of communication has to ensure:

- a. that the commercial communication is clearly recognisable as such;
- b. that his identity can be deduced from the commercial communication;
- c. that the commercial communication, as far as it encloses promotional offers, competitions or games, contains a clear and unambiguous indication of the nature and the conditions which have to be met to qualify for them.

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privacy of the subscriber or user in question – to obtain information about the quality or effectiveness of the information society service provided.

4. An activity referred to in the first paragraph that seeks to collect, combine or analyse data on the use of different information society services by the user or subscriber so that the affected user or subscriber can be treated differently, is assumed to be the processing of personal data as referred to in article 1b of the General Data Protection Regulation
  5. Access by the user to an information society service that is provided by or on behalf of a legal entity established under public law shall not be made dependent on the granting of consent as referred to in the first paragraph.
  6. Under or pursuant to an order in council, more detailed rules with regard to the requirements mentioned in the first paragraph under a and b and the exceptions referred to in the third paragraph, may be issued as agreed upon with the Dutch Minister of Security and Justice.
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