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Netherlands – Telecommunications Act



Full title:	Act of 19 October 1998 laying down rules for telecommunications (Telecommunications Act) (Staatsblad 1998, n. 610) Entry into force: 15/12/1998.
Relevant Amendments	<ul style="list-style-type: none">Act of 22 April 2004 (Staatsblad 2004, n. 189) amending the Telecommunications Act and other laws in connection with the implementation of a new European harmonized regulatory framework for electronic communications networks and services and the new Services of the Commission of the European Communities. Entry into force: 19/05/2004. https://zoek.officielebekendmakingen.nl/stb-2004-189.html Article 1 (Av) replaces previous Art 11.7 in Telecommunications Act – which specifically implemented Art 13 of E-Privacy Directive.Law of 13 November 2008 amending the Telecommunications Act relating to the establishment of an antenna register, the extension of the ban on the sending of unsolicited electronic communications and arrangement of various other subjects (Staatsblad 2008, n. 525) Entry into force: 01/10/2009. https://zoek.officielebekendmakingen.nl/stb-2008-525.html Article 1F inserted Section 11.7 (2) on B2B unsolicited commercial communications by electronic mail.Law of 10 May 2012 (Staatsblad 2012, n.235) amending the Telecommunications Act to implement the revised telecommunications Directives. Entry into force 05/06/2012 https://zoek.officielebekendmakingen.nl/stb-2012-235.html This Law implemented the Telecoms Package – Directives 2009/136 and 2009/140, which amended the previous Regulatory Framework. Article 1AV inserted Article 11.7a, which relates to the Cookies, implementing Art 2(5) of Directive 2009/136.Concerning cookies, Article 11.7a TA implements Article 5.3 of the e-Privacy Directive (Directive 2002/58/EC, amended by Directive 2009/136/EU), sometimes called the cookie clause. This was introduced via Art. 1(AV) of Act of 10th May 2012¹ - further amended by the Law of February 4, 2015² - which came into force in March 2015. This Law included an additional exception to the prior informed consent rule; cookies that have “little or no” impact on the privacy of an end-user do not require prior informed consent (11.7a(3b) TA). In addition, it also adds a ban on the use of cookie walls by public agencies (11.7a(5) TA). http://www.g-regs.com/downloads/NLActFeb2015cookies.pdf
Chapter	Chapter 11: Protection of Personal Data and Personal Privacy Article 11.7 and Article 11.7a (Cookie Rules)
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

¹ <https://zoek.officielebekendmakingen.nl/stb-2012-235.html>

² <https://zoek.officielebekendmakingen.nl/stb-2015-100.html>

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- communications for commercial, idealistic, or charitable purposes to subscribers or users shall be submitted solely if the sender can demonstrate that the subscriber or user concerned has given prior consent for such to be done, without prejudice to the provisions of paragraphs 2 and 3.
2. If the user within the meaning of paragraph 1 is a legal entity or a natural person acting in the exercise of its/his profession or business, no prior consent shall be required for the transmission by means of electronic mail of unsolicited communications for commercial, idealistic, or charitable purposes:
 - a. if the sender when transmitting the communication makes use of electronic contact details intended and provided by the user and these have been used in accordance with the purposes attached to said contact details by the user; or
 - b. if the user is based outside the European Economic Area and the rules regarding the sending of unsolicited communications in the country concerned have been complied with.
 3. A party that has acquired electronic contact details for electronic messages in the context of the sale of its product or service may use said data to transmit communications for commercial, idealistic, or charitable purposes with regard to its own similar products or services if, when the contact details were acquired, the customer was clearly and explicitly given the opportunity to object, free of charge and in a simple manner, to the use of said electronic contact details and, if the customer did not avail himself of said opportunity, he is offered the opportunity during every instance of communication, to object, on the same conditions, to the further use of his electronic contact data. The provisions of Article 41(2)³ of the Personal Data Registration Act [*Wet bescherming persoonsgegevens*] shall apply mutatis mutandis.
 4. 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 Code⁴ and said use shall not contain any encouragement to consult information on the Internet that is contrary to said article. The following data shall at all times be provided during said use:
 - a. The true identity of the party on whose behalf the communication is made; and
 - b. a valid correspondence address or number to which the recipient can direct a request for such communication to cease.
 5. The use of means other than those within the meaning of paragraph 1 for the transmission of unsolicited communications for commercial, idealistic, or charitable purposes shall be permitted, with due observance of the provisions of paragraphs 6 to 12, unless the subscriber has indicated in the manner within the meaning of paragraph 6 or in some other manner that he does not wish to receive unsolicited communications.
 6. There shall be a register of the contact details of any subscriber who has thereby indicated that he does not wish to receive unsolicited communications within the meaning of paragraph 5. Inclusion in said register shall be for an indefinite period of time until the subscriber has indicated that his contact details can be removed from said register. Said register shall be kept by an administrator designated by Our Minister. Said administrator shall be responsible within the meaning of Article 1(d)⁵
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³ DPA Art 41 (2): In the case of an objection, the responsible party shall take the steps required to stop this form of processing with immediate effect.

⁴ 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.

⁵ 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;

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of the Personal Data Protection Act.

7. The purpose of said register shall be to protect the subscriber from unsolicited communications which he has indicated he does not wish to receive. The subscriber's contact details included in said register shall not be used for any other purpose.
8. At the request of a party that wishes to transfer communications within the meaning of paragraph 5, the administrator shall block or remove contact details of subscribers who are included in the register from files of subscriber contact details that are offered to it, or shall make the contact details of subscribers available from the register, on request, for that purpose to a party that wishes to transfer unsolicited communications within the meaning of paragraph 5.
9. Communications within the meaning of paragraph 5 shall not be transmitted to a subscriber who has indicated by inclusion of his contact details in the register that he does not wish to receive such unsolicited communications.
10. A party that transmits communications within the meaning of paragraph 5 shall only use files for the transmission of unsolicited communications from which the contact details that are included in the register have been blocked or removed.
11. Paragraphs 9 and 10 shall not apply to the transmission of communications within the meaning of paragraph 5 if said contact details have been acquired in the context of the sale of a product or service or in the context of a donation to an idealistic or charitable organisation and said contact details are used for the transmission of communications within the meaning of paragraph 5 regarding similar products or services of the organisation concerned or donations to the idealistic or charitable organisation concerned.
12. Reference shall be made to the register in every communication transmitted and to the option for a subscriber to object to the further use of his electronic contact details; the subscriber shall also be offered the option for immediate inclusion in the register within the meaning of paragraph 6. In such case, the subscriber shall not be charged for facilities to prevent unsolicited communications being transmitted to him. The provisions of Article 41(2) of the Personal Data Registration Act [*Wet bescherming persoonsgegevens*] shall apply mutatis mutandis.
13. Specific rules may be set by or pursuant to a general administrative order regarding:
 - a. the blocking or removal of subscribers' contact details from files used to transmit communications within the meaning of paragraph 5, the provision of subscribers' contact details from the register, and the period during which the files can be retained and used;
 - b. the tasks, organisation, and responsibility of the administrator of the register;
 - c. the access to the register and the organisation and use of the register;
 - d. the option of objection within the meaning of paragraph 12;
 - e. the option of immediate inclusion in the register within the meaning of paragraph 12.

Article 11.7a

1. Without prejudice to the Dutch Personal Data Protection Act, anyone who wishes to gain access to data that has been stored on a user's terminal equipment or who wishes to store data on a user's terminal equipment using electronic communication networks shall be required to:
 - a. give the user clear and complete information in accordance with the Dutch Data Protection Act, at least about the purposes for which they wish to access or store the relevant data, and
 - b. have received the user's consent to do so.
2. The requirements mentioned 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:

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- 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 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 1, subsection b of the Dutch Personal Data Protection Act⁶.
 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.⁷
 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 may be issued as agreed upon with the Dutch Minister of Security and Justice. An advisory opinion regarding any draft version of such an order in council shall be sought from the Dutch Data Protection Authority (CBP).
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⁶ Art. 1b: processing of personal data means: any operation or set of operations which is/are performed upon personal data, including in any case the collection, recording, organisation, storage, adaptation, alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction of data;

⁷ This provision prohibits government websites from using a cookie wall

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