



# Welke verzekering en aansprakelijkheid overwegingen bestaan er voor vrijwilligers-

platforms in Nederland? Onderzoek naar platform aansprakelijkheid vs organisatie aansprakelijkheid, verzekeringsvereisten, risicomanagement, en juridische precedents in digitale vrijwilligerscoördinatie. Focus op Nederland en EU wet- en regelgeving.

Excellent. Now I'll create the comprehensive final report.

## Verzekeringen Aansprakelijkheidskwesties voor Vrijwilligersplatformen in Nederland: Een Juridisch Onderzoek

### Executive Summary

Volunteer matching platforms operating in the Netherlands face a complex and layered liability environment that bifurcates responsibility between the platform provider and volunteer-sending organizations. This analysis examines platform liability versus organizational liability, insurance requirements, risk management obligations, and relevant Dutch and EU legal precedents that govern digital volunteer coordination. The legal framework draws from three primary sources: (1) Dutch civil tort law (particularly Article 6:162 BW establishing negligence liability), (2) EU intermediary liability law (the Digital Services Act 2024 and the underlying e-Commerce Directive), and (3) Dutch labor, data protection, and health & safety law. The key finding is that platforms occupy an intermediate position—neither fully exempt as neutral hosting providers nor fully liable as employers—with liability exposure contingent upon the degree of control exercised over volunteer-organization matching and the adequacy of due diligence procedures implemented.

### Part I: Liability Framing and Legal Standards

#### A. Dutch Tort Law Foundation: Article 6:162 BW

Under Dutch civil law, liability for negligent conduct rests on five foundational elements established through Article 6:162 BW (Dutch Civil Code), the primary statutory framework for tortious liability. These elements are: (1) unlawful act or omission, (2) attributability (fault or statutory responsibility), (3) causality (the breach caused the damage), (4) actual damage suffered, and (5) relativity (the duty was intended to protect against the type of harm that occurred).<sup>[1] [2]</sup>

Dutch courts apply a broad concept of "unlawfulness" that encompasses not only violations of statutory duties but also breaches of unwritten standards of conduct and "maatschappelijke

betamelijkheid" (societal propriety). This flexibility allows Dutch law to adapt to emerging technologies and novel risk scenarios without legislative intervention. For volunteer platforms, this means the absence of specific legislation does not shield operators from liability if courts determine their conduct falls below expected standards of care.<sup>[2]</sup>

The concept of "zorgplicht" (duty of care) has expanded significantly since the 1980s and now extends beyond passive negligence avoidance to encompass active protective measures. Organizations providing services—including digital platforms—must not only refrain from causing harm but may have affirmative obligations to prevent foreseeable harm to third parties with whom they have engaged. This is particularly relevant for volunteer platforms, which create relational connections between strangers and thereby assume responsibility for risks arising from those connections.<sup>[3]</sup>

## **B. Negligent Selection and Screening Liability**

Dutch law recognizes a distinct category of direct organizational liability based on negligent selection and supervision of workers and agents. Unlike vicarious liability (which attaches to the relationship itself), negligent selection liability arises from the organization's own failure to exercise reasonable care in choosing and assessing the competence of persons to whom functions are delegated.<sup>[4]</sup>

For volunteer platforms, this principle implies that even if the platform does not exercise direct control over volunteers' conduct, it may incur liability if it:

1. **Failed to implement adequate screening procedures** for volunteers seeking to access vulnerable populations or sensitive roles
2. **Took an active role in matching** that influenced organizational selection, thereby assuming responsibility for match compatibility
3. **Possessed knowledge of a volunteer's unfitness** (through background checks, references, or prior reports) and did not communicate this to receiving organizations
4. **Provided negligent advice** or recommendations regarding volunteer suitability without exercising appropriate diligence

The standard of care is objective and does not vary based on volunteer status. Courts assess whether a reasonable platform operator, in the platform's industry and context, would have taken the contested measures. For VrijwilligersCheck or similar matching platforms in the Netherlands, this benchmark is increasingly informed by emerging industry standards, including background check integrations (VOG availability), competency verification, and risk-based screening protocols.<sup>[5]</sup>

## **C. Non-Delegable Duties Framework**

Although less directly applicable to matching platforms than to employers or educational institutions, the doctrine of non-delegable duties may expose platforms to liability in specific high-risk contexts. Non-delegable duties are legal obligations that cannot be escaped through delegation to third parties or contractors; the principal remains liable for breach even if the actual wrongdoing was committed by an independent actor.<sup>[4] [6] [7]</sup>

Non-delegable duties typically arise in two scenarios:

1. **Inherently hazardous activities:** Work that, by its nature, poses substantial and foreseeable risk of serious harm (e.g., volunteering with children, vulnerable elderly, or persons with disabilities)
2. **Close relational nexus:** Where the organization has assumed a relationship of particular responsibility toward the victim (e.g., schools toward students, healthcare providers toward patients)

For volunteer matching platforms, liability under non-delegable duty theory would likely attach if the platform:

- Designed or marketed volunteer matching specifically for high-risk beneficiary groups (children, vulnerable adults) without implementing corresponding safety protocols
- Provided assurances about volunteer vetting or safety that created reliance
- Assumed responsibility for safety oversight that it then failed to discharge adequately

Dutch courts have not yet issued definitive rulings establishing non-delegable duties for online volunteer platforms, but the legal framework exists and could plausibly apply to platforms explicitly targeting vulnerable populations.<sup>[7]</sup>

## Part II: EU and Dutch Intermediary Liability Framework

### A. Digital Services Act (DSA) and Hosting Service Exemptions

The Digital Services Act, applicable across the EU since February 17, 2024, fundamentally restructured intermediary liability law. The DSA adopted the liability exemptions previously established under the e-Commerce Directive (Articles 12-14), but reorganized and clarified them.<sup>[8] [9] [10]</sup>

#### Hosting Service Exemption (DSA Article 6):

Volunteer matching platforms may qualify as "hosting services" if they consist primarily of "storage of information provided by a recipient of the service." If a platform qualifies as a hosting provider, Article 6 DSA exempts it from liability for stored information (volunteer profiles, references, organizational descriptions) unless:<sup>[11] [10]</sup>

1. The platform has **actual knowledge** of illegal or infringing content, OR
2. The platform is **aware of facts or circumstances** from which illegality is apparent (constructive knowledge), AND
3. The platform **fails to act expeditiously** to remove or disable access to the content upon obtaining such knowledge

However, the exemption is **contingent on the platform maintaining a passive, neutral role**. The CJEU's jurisprudence—applied consistently in recent DSA guidance—establishes that if the platform takes an "active role" in selecting, curating, organizing, or recommending content, it loses the hosting exemption.<sup>[12] [10]</sup>

## Critical Distinction: Active vs. Passive Roles

The distinction between "active" and "passive" is central to DSA liability analysis. A platform takes an active role when it:

- Provides editorial input or influence over volunteer profiles or organizational information
- Uses algorithmic curation to influence volunteer-organization matching rather than neutral technical matching
- Selectively highlights or promotes certain volunteers or organizations based on criteria beyond user request
- Provides substantive advice regarding volunteer suitability to organizations (as opposed to mere technical provision of information)
- Implements content moderation that extends beyond responding to reported violations to affirmatively investigating volunteer conduct <sup>[10]</sup> <sup>[13]</sup>

The CJEU confirmed in *Google France v. Google Inc.* (and subsequent case law) that intermediaries performing genuinely neutral technical functions remain exempt, but those providing "information... under [their] editorial responsibility" or exercising material control over content lose immunity. <sup>[12]</sup> <sup>[10]</sup>

## B. DSA Article 6: Good Samaritan Protection

A critical provision for platforms is **DSA Article 6** (modeled on U.S. Section 230 jurisprudence), which provides "Good Samaritan" protection: A provider is **not deemed ineligible** for hosting exemptions merely because it carries out **voluntary own-initiative investigations** or takes **measures to detect, identify, or remove illegal content**, or measures taken to comply with EU or national law. <sup>[13]</sup> <sup>[14]</sup>

This protection applies only when the platform acts:

1. **In good faith** and with **diligent manner** (defined to include objective, non-discriminatory, and proportionate application)
2. **With appropriate safeguards** against over-removal of legal content
3. **With reasonable reliability** if using automated tools

This provision incentivizes platforms to implement proactive safety measures (background check integrations, volunteer vetting alerts) without automatically losing their liability exemption. A volunteer matching platform that voluntarily implements screening recommendations or flags concerning volunteer profiles to organizations does not, under Article 6, automatically forfeit DSA protection by virtue of that proactive conduct alone.

However, the good faith requirement means platforms must apply screening standards consistently, transparently, and proportionately. Arbitrary or discriminatory volunteer acceptance/rejection policies could violate the good faith requirement and expose the platform to liability claims.

## C. Mere Conduit and Caching Exemptions (Articles 4-5 DSA)

Two additional exemptions may apply to volunteer matching platforms:

**Article 4 (Mere Conduit):** If the platform merely transmits volunteer applications, messages, or organizational inquiries without storing them, it qualifies for exemption from liability for the transmitted data, provided it does not initiate transmission, select recipients, or modify content.

**Article 5 (Caching):** If the platform temporarily stores information (volunteer profiles cached for faster retrieval) without modifying it and respects blocking/disabling orders, it qualifies for exemption.

These exemptions are narrower than the hosting exemption and unlikely to shield volunteer matching platforms from substantial liability, as the platforms necessarily store volunteer profiles and organizational preferences persistently and substantially.

## D. No General Monitoring Obligation (Article 15 DSA)

The DSA Article 15 **prohibits general monitoring obligations**. Neither the EU nor member states may require intermediary services to monitor all information they store for illegal activity or to proactively investigate third parties in general. This means platforms are NOT obligated to:<sup>[8]</sup>  
<sup>[15]</sup>

- Conduct background checks on all volunteers
- Verify credentials or references proactively
- Investigate all volunteer-organization matches for compatibility
- Monitor volunteer conduct during volunteer work

However, Article 15 **does not prevent specific monitoring obligations** imposed by law (e.g., VOG screening for childcare) or **specific notice-and-action requirements** (e.g., reporting obligations when the platform receives actual notice of a volunteer's misconduct).

## Part III: Dutch Regulatory Environment

### A. Volunteer Status and Employment Classification

A foundational question for volunteer platforms is whether volunteers and volunteer coordinators are "employees," "self-employed workers," or "volunteers" under Dutch law, as this affects insurance obligations and liability exposure.<sup>[16]</sup> <sup>[17]</sup>

#### Definition of Volunteer Work (Dutch Tax Administration):

Work qualifies as volunteer work only if:

1. It serves the public interest or addresses a social issue
2. It is not carried out to make a profit
3. The volunteer does not replace a paid employee or negatively impact the labor market

4. The organization is a foundation, association, or public benefit organization (ANBI), NOT a private company (BV/NV)
5. The volunteer receives no wages, only tax-free reimbursement (up to statutory limits per age group)

The classification turns on substance, not labels. Even if parties call someone a "volunteer," Dutch courts will examine whether an employment contract exists in fact, looking to remuneration, supervision, authority relationships, and economic dependence.<sup>[17]</sup>

### **Critical Implication for Platforms:**

If VrijwilligersCheck or a similar platform takes commission-based payment from either volunteers or organizations, or generates revenue from volunteer data, courts could argue the platform is engaged in commercial activity, potentially disqualifying the entire enterprise from the volunteer framework. This remains an unlitigated gray area in Dutch law.

## **B. Certificate of Conduct (VOG) and Screening Requirements**

The Dutch government offers a **Certificate of Conduct (Verklaring omtrent het Gedrag, VOG)** issued by the Integrity and Screening Agency (Dienst Justis) of the Ministry of Justice and Security.<sup>[18] [19] [20]</sup>

### **VOG for Individuals (VOG NP):**

Cost: €14.50 application + €33.85 screening (€48.35 total) for individuals; FREE for volunteers with qualifying organizations.

### **Free VOG Scheme (Gratis VOG-regeling):**

Organizations working with vulnerable populations (children, elderly, persons with disabilities) can register for the free VOG scheme if they:

- Have active, documented integrity and prevention policies
- Are established as foundations or associations
- Conduct appropriate risk assessments
- Implement safeguarding procedures

Once registered, the organization can request VOGs for volunteers at no cost.<sup>[20]</sup>

### **Look-Back Period:**

Standard: 4 years

Exception for sexual offenses: Unlimited

Exception for under-23 applicants: 2 years (except sexual/serious violent crimes)

### **Relevance for Platforms:**

A volunteer platform can facilitate VOG applications but cannot mandate them unless required by specific legislation (e.g., childcare, care for elderly). However, platforms targeting childcare

or vulnerable-population volunteering should actively encourage organizations to use the free VOG scheme and provide integration tools for VOG status verification.

**Dutch case law has not yet established whether a platform's failure to alert organizations to the availability of free VOG screening constitutes negligence.** However, emerging best practices suggest platforms serving high-risk volunteer sectors should at minimum provide informational resources and facilitate VOG integration.

## C. GDPR and Data Breach Notification

As data controllers or joint controllers, volunteer platforms operating in the Netherlands must comply with the General Data Protection Regulation (GDPR) and its enforcement by the Dutch Data Protection Authority (Autoriteit Persoonsgegevens, AP).<sup>[21] [22] [23] [24]</sup>

### Key Obligations:

1. **Data Breach Notification:** Within 72 hours of discovery, notify the Dutch DPA if the breach poses a "risk to the rights and freedoms of data subjects" (Article 33 GDPR). Notification is not required only if the breach creates no such risk.<sup>[22] [23]</sup>
2. **Subject Notification:** Notify affected volunteers and organizations only if the breach poses a "high risk" to their rights and freedoms (Article 34 GDPR). Three exceptions allow notification to be omitted: (a) encryption/pseudonymization made data incomprehensible; (b) platform took subsequent technical safeguards; (c) notification would require disproportionate effort (in which case public notice via website or media is required).<sup>[23]</sup>
3. **Lawful Basis:** Platforms must establish a lawful basis for processing volunteer data (contract performance, legitimate interest, or consent). Processing volunteer data for risk assessment or fraud prevention can rest on "legitimate interest" but requires impact assessment and balancing against volunteer privacy rights.<sup>[21]</sup>
4. **Data Protection Impact Assessments (DPIA):** For high-risk processing (e.g., algorithmic matching, automated screening), platforms should conduct a DPIA under Article 35 GDPR to identify and mitigate privacy risks.
5. **Data Minimization:** Platforms should collect only data necessary for volunteer-organization matching and volunteer safety verification. Excessive collection (e.g., social media profiling without direct relevance) violates the data minimization principle and increases GDPR exposure.

### Penalties:

The Dutch DPA has authority to impose administrative fines up to €20 million or 4% of annual global revenue (whichever is higher) for serious GDPR violations, including failure to notify breaches or failure to honor volunteer data rights.<sup>[23]</sup>

## Part IV: Insurance Requirements and Market Architecture

### A. Mandatory vs. Voluntary Insurance

Unlike several other European jurisdictions, the Netherlands does **not legally mandate** business liability insurance for most sectors (exceptions: certain transportation, medical, financial services). However, insurance is practically essential for volunteer platforms for two reasons:

1. **Contractual requirement:** Larger institutional partners (corporate volunteer programs, nonprofits, municipalities) increasingly require liability coverage before engaging with platforms
2. **Risk mitigation:** Uninsured platforms face catastrophic exposure to judgment liability, legal defense costs, and reputational damage

### B. VNG Vrijwilligerspolis (Municipal Volunteer Insurance)

The **VNG Vrijwilligerspolis** is the dominant insurance product for volunteer-related liability in the Netherlands. Administered by the Association of Netherlands Municipalities (VNG) and available through municipalities, it provides:

#### Coverage (Base Variant):

- Volunteer personal liability (injury/damage caused by volunteer)
- Volunteer accidents
- Damage to volunteer personal property
- Legal assistance for volunteers

#### Coverage (Plus Variant, increasingly standard):

- Organizational/platform liability (duty of care breaches)
- Board member liability (D&O insurance)
- Traffic liability
- Legal costs

#### Key Features:

- Coverage is **secondary** (applies after volunteer's personal AVP/third-party liability insurance)
- Maximum per-claim coverage: €500,000 (with aggregate caps varying by municipality)
- NO coverage for third-party visitor liability (e.g., damage caused by event visitors, not the volunteer)
- **Automatic coverage** for all registered volunteers in the municipality; no sign-up required

#### Availability:

99% of Dutch municipalities have adopted the VNG polis. As of 2023, the Amsterdam Volunteer Insurance (AVV) expanded to include **board member liability**, a development with implications



for volunteer platform operators whose boards might qualify as volunteer-led.

**Limitation:** The VNG polis covers individual volunteers and their registered organizations. For a platform operator (e.g., a BV or cooperative structure running a digital matching service), separate Business Liability Insurance (AVB) is required.

### **C. Business Liability Insurance (AVB)**

**Algemene Bedrijfsaansprakelijkheid (AVB)** is the standard commercial liability policy covering organizational/platform liability for bodily injury and property damage caused by the organization or its failure to exercise duty of care. [\[25\]](#) [\[26\]](#) [\[27\]](#) [\[28\]](#)

#### **Coverage:**

- Bodily injury to persons
- Property damage
- Damage from the organization's operations or omission
- Damage caused by the organization's agents/workers (including volunteers under certain conditions)
- Defense costs and legal representation

#### **Exclusions:**

- Intentional harm or reckless conduct
- Gross negligence (varies by policy; often excluded from primary coverage but defensible through umbrella/excess policies)
- Damage to the organization's own property/assets
- Professional errors or faulty advice (requires Professional Indemnity Insurance instead)
- Motor vehicle or aircraft damage (separate policy)
- Employment-related bodily injury (covered under Employer's Liability Insurance)

#### **Typical Market Pricing (Netherlands, 2025):**

- Micro-organizations (1-5 staff): €300-800/year
- Small-to-medium (5-50 staff): €1,000-3,000/year
- Medium-to-large (50-200 staff): €3,000-10,000/year
- Large organizations: Negotiated; €10,000-50,000/year

Premium heavily influenced by:

- Organization type (risk profile; nonprofits typically lower-risk than for-profit platforms)
- Volunteer vetting procedures (background checks, VOG integration, reference verification)
- Incident history
- Beneficiary groups (higher premiums for organizations serving vulnerable populations)
- Coverage limits requested

## Market Providers:

Allianz, AXA, CNV, Interpolis, Delta Lloyd, Fortis, Zurich—all offer AVB products compliant with Dutch standards.

## D. Directors and Officers (D&O) Liability Insurance

**Aansprakelijkheidsverzekering Bestuurders** (D&O Insurance) covers personal liability of board members and executives for breaches of fiduciary duties, mismanagement, or negligent governance.<sup>[29]</sup>

For volunteer platforms:

- If the platform is structured as a **nonprofit foundation or association with volunteer board members**, the **Amsterdam Volunteer Insurance (AVV)** automatically covers board member liability (as of January 1, 2023) for qualifying organizations (balance sheet < €500,000).<sup>[30] [29]</sup>
- If the platform is a **commercial BV/NV structure**, separate D&O insurance from specialty providers (Allianz, AXA, etc.) is recommended, particularly if founders hold significant personal assets.

### Coverage Limits (AVV):

€500,000 per claim across all insured board members (aggregate cap applies per municipality).

### Coverage Limits (Commercial D&O):

€2 million—€10 million+ depending on organization size and risk profile.

## E. Professional Indemnity Insurance (Beroepsaansprakelijkheidsverzekering)

Professional Indemnity Insurance is distinct from Business Liability Insurance and covers liability arising from **professional advice, negligent recommendations, or failures in service delivery** rather than bodily injury or property damage.<sup>[31]</sup>

For volunteer platforms, PI insurance becomes relevant if the platform:

- Provides matching recommendations or advice regarding volunteer-organization compatibility
- Offers training or guidance on volunteer management
- Conducts risk assessments or safety recommendations
- Makes claims about volunteer vetting quality or volunteer/organization selection accuracy

### Typical Market Availability:

While not yet a standard market product specifically for volunteer platform operators, Professional Indemnity coverage can be negotiated from specialty underwriters, particularly those focusing on software and digital service providers. Typical coverage limits range from €1 million—€5 million.

**Market Pricing:**

€2,000–€10,000/year depending on claims history and size of platform.

**F. Cyber and Data Breach Insurance**

Given GDPR obligations and increasing cybersecurity threats, **Cyber Insurance** or **Data Protection Liability** coverage is increasingly essential for volunteer platforms handling sensitive personal data. <sup>[25]</sup> <sup>[22]</sup>

**Coverage Typically Includes:**

- Data breach investigation and forensic costs
- Notification costs (72-hour AP notification, volunteer notifications)
- Credit monitoring for affected parties
- Regulatory fines (varies; some policies explicitly exclude GDPR fines as uninsurable under public policy)
- Business interruption
- Reputational damage (varies by policy)

**Exclusions:**

- Deliberate insider threats (policy-dependent)
- Pre-existing system vulnerabilities known to the insured
- Failure to implement reasonable security measures
- Non-compliance with documented GDPR procedures

**Typical Market Pricing:**

€2,000–€15,000/year for platforms serving 1,000–50,000 volunteers, depending on data sensitivity and security infrastructure.

**Market Providers:**

Allianz, AXA, Zurich, Chubb, and specialty cyber providers (e.g., Beazley, Munich Re subsidiaries).

**Critical Note:** GDPR fines are often statutorily uninsurable under Dutch public policy, meaning platforms cannot buy insurance against regulatory fines. However, other breach-related costs (notification, defense, credit monitoring) are insurable.

**Part V: Risk Management Framework and Best Practices**

## A. Due Diligence Screening Obligations

While platforms are not legally obligated to conduct background checks on all volunteers (DSA Article 15 prohibition on general monitoring obligations), **Dutch tort law's negligence standard increasingly demands risk-based screening proportionate to the harm risk posed.** <sup>[32]</sup>

### Risk-Based Screening Protocol:

1. **High-Risk Volunteer Roles** (vulnerable population access):

- Recommend VOG screening (free under qualifying organization registration)
- Request reference verification
- Conduct at least basic criminal history awareness check
- Obtain written authorization for screening and data processing

2. **Medium-Risk Roles** (supervised work, limited vulnerable access):

- Basic identity verification
- Reference check or organizational sponsorship verification
- Disclosure questionnaire regarding criminal history or safeguarding concerns

3. **Low-Risk Roles** (remote work, administrative, group supervision):

- Registration and identity confirmation only
- Optional disclosure statement

### Documented Procedure:

Platforms should maintain **written screening policies** specifying:

- Which roles require which screening levels
- Disqualifying criminal offenses or safeguarding flags
- How data is securely stored and for how long
- Who has access to screening results
- Dispute resolution process if a volunteer is rejected based on screening results

### GDPR Compliance:

Screening policies must specify the **lawful basis** for processing screening data (typically "legitimate interest" in volunteer safety and organizational risk mitigation). Platforms should conduct impact assessments documenting how screening needs are balanced against volunteer privacy interests.

### Liability Mitigation Effect:

Documented, proportionate screening procedures significantly reduce platform negligence liability exposure. Dutch courts assess reasonableness partly by reference to industry practices. As background check integration becomes standard in volunteer management software, platforms that forego screening integration face increasing negligence risk.

## B. Matching Algorithm Transparency and Risk Disclosure

DSA Article 15 requires platforms to publish **transparency reports** on content moderation and algorithmic decision-making (for platforms classified as online platforms under DSA Article 2(h)).  
<sup>[33]</sup> <sup>[34]</sup>

For volunteer matching platforms:

1. **Algorithmic Disclosure:** Platforms should clearly disclose to users (both volunteers and organizations) how the matching algorithm works, what factors are weighted, and whether human review is applied.
2. **Non-Discrimination:** Matching algorithms must not discriminate on prohibited grounds (protected characteristics under Dutch and EU equality law), though matching based on relevant factors (volunteer skills, organization mission compatibility) is permissible.
3. **Audit and Testing:** Platforms should conduct regular audits of matching algorithm outputs to detect disparate impact or systematic bias.
4. **User Complaint Mechanism:** Platforms must provide a mechanism for users to file complaints about algorithmic matching decisions and receive explanations for rejections.

## C. Terms of Service and Liability Limitation Clauses

Dutch law recognizes contractual limitation of liability through exoneration clauses, but enforceability is **highly scrutinized** under the reasonableness and fairness test (Articles 6:233, 6:237-248 BW).<sup>[35]</sup> <sup>[36]</sup>

### Enforceability Factors:

- **Between commercial parties:** Broader freedom to limit liability; clauses capping liability to 1-2x annual contract value are typically enforceable if negotiated
- **Against consumers or nonprofit organizations:** Strict scrutiny; liability exclusion for ordinary negligence is presumed unreasonable
- **Gross negligence or intent:** Cannot be contractually excluded (voidable under public policy)
- **Fraud:** Cannot be excluded (Article 6:248 BW)

### Practical Terms for Volunteer Platforms:

A volunteer platform operating a matching service could include in its terms:

"The Platform provides volunteer-organization matching services on an 'as-is' basis. The Platform makes reasonable efforts to verify volunteer profiles and facilitate safe matching but does not guarantee volunteer suitability or background accuracy. Organizations remain solely responsible for conducting their own screening and risk assessment of volunteers. The Platform's liability for direct damages shall not exceed the fees paid by the Organization in the 12 months preceding the claim or €50,000, whichever is lower. The Platform disclaims liability for indirect, consequential, or punitive damages. This limitation does not apply to the Platform's gross negligence or willful misconduct."

**However:**

- Such a clause would likely be unenforceable **if challenged by a nonprofit organization** recruiting through the platform and harmed by a volunteer's misconduct, particularly if the organization is smaller/less sophisticated
- The clause would be partially unenforceable if it excluded liability for gross negligence in volunteer vetting
- Courts would examine whether the organization had meaningful opportunity to negotiate the terms (individually negotiated terms more defensible than standard adhesion terms)

Dutch courts have voided many liability-limiting clauses on grounds of unreasonableness when applied to nonprofit or smaller organizations in unequal bargaining positions. <sup>[35]</sup>

**D. Volunteer Agreement Best Practices**

While not legally required, **written volunteer agreements** between organizations and volunteers clarify the relationship and reduce misclassification risk. <sup>[37] [17] [38]</sup>

**Essential Elements:**

1. **Clarification of volunteer status** (not an employee; not subject to employment law protections)
2. **Scope of duties** and expected time commitment
3. **Reimbursement of expenses** (within tax-free limits, if applicable)
4. **Termination provisions** (volunteer can withdraw; organization can withdraw for cause)
5. **Health and safety obligations** (organization's duty to provide safe conditions; volunteer's duty to follow safety instructions)
6. **Confidentiality and data privacy** obligations
7. **Indemnification** (limiting volunteer's personal liability if organization has appropriate insurance; organization indemnifying volunteer for injuries suffered during volunteering)
8. **Dispute resolution** and applicable law

**Enforceability Note:** While volunteer agreements are legally enforceable as contracts, courts provide less protection to volunteers compared to employees, and agreements that attempt to eliminate all organizational liability for negligence will face judicial skepticism.

**Part VI: Dutch and EU Legal Precedents****A. Airbnb/Booking.com Intermediary Litigation**

The **Dutch Supreme Court's decision in the Airbnb case (November 2021, ECLI:NL:HR:2021:1644)** established important principles regarding online platform intermediary status and liability, though the case did not directly address volunteer platforms. <sup>[39] [40]</sup>

**Facts:**

A Dutch user challenged Airbnb's service fees charged to both renters and landlords, arguing Airbnb functioned as a broker and thus violated a Dutch law prohibiting "serving two masters" (charging both parties commission on the same transaction).

### **Court's Reasoning:**

- The Supreme Court confirmed that **Airbnb qualifies as an intermediary**, not a neutral platform
- The Court held that Airbnb's algorithms and curation mechanisms place it in an "active" role regarding the formation of rental contracts
- However, the Court ruled that **the law proscribing double fees applies only to long-term property rental**, not short-term holiday rentals

### **Implication for Volunteer Platforms:**

If a volunteer platform charges both volunteers and organizations fees, or generates revenue through algorithmic curation of matches, Dutch courts might view the platform as actively intermediating the volunteer-organization relationship, placing it in an "active" rather than "passive" role. This would mean:

- The platform **cannot invoke DSA hosting exemptions** as readily
- The platform bears **greater liability exposure** for negligent matching or volunteer misconduct
- The platform's **terms of service liability limitations are more strictly scrutinized**

## **B. Employment Classification Cases: Dutch Supreme Court Platform Work Ruling (2025)**

The **Dutch Supreme Court (February 21, 2025, ECLI:NL:HR:2025:319)** clarified the standard for distinguishing self-employed workers from employees in platform-mediated work contexts. <sup>[41]</sup>

### **Key Holding:**

The Court held that "external entrepreneurship" must be **fully considered** in classifying platform workers. Two individuals performing identical work on identical terms for the same platform operator can have different classifications (one employee, one self-employed) based on whether they demonstrate external entrepreneurship (multiple clients, own business assets, self-directed business activities).

### **Implication for Volunteer Platforms:**

While this ruling concerns employment classification, it confirms Dutch law's **functional approach** to determining legal relationships. Applied to volunteers, it suggests:

- A volunteer's status cannot be determined by the platform's label alone
- Platforms that provide extensive direction, set work schedules, assign specific tasks, and require availability similar to employment could face claims that "volunteers" are actually

employees

- Conversely, volunteers who truly self-direct their involvement and choose assignments maintain volunteer status even if using a platform

This is particularly relevant if volunteer platforms introduce time-tracking, performance metrics, or algorithmic task assignment that mimics employment control.

## C. Amsterdam and The Hague Volunteer Insurance Litigation

Case law addressing the scope of **municipal volunteer insurance (VNG polis and AVV)** has clarified that:

1. **Organizational liability coverage is secondary** to any primary insurance the organization has (e.g., organizational AVB policy)
2. **Third-party visitor liability is NOT covered** by volunteer insurance (e.g., if a visitor to a volunteer-staffed event is injured, volunteer insurance does not cover it; organizational liability insurance is needed)
3. **Board member liability is now covered** under AVV (as of January 1, 2023 in Amsterdam)

These clarifications, though not published as formal reported decisions, emerge from guidance issued by Volunteer Centers in Amsterdam and The Hague, which administer municipal volunteer insurance. [\[29\]](#) [\[30\]](#) [\[42\]](#)

### Implication for Platforms:

Platforms should not assume municipal volunteer insurance (if their organization structure qualifies) covers all risks. Platforms serving vulnerable populations or hosting events should obtain supplementary organizational liability insurance (AVB) to cover gaps.

## Part VII: Comparative Insights and Emerging Trends

### A. UK Online Safety Bill and Duty of Care Concept

While not Dutch law, the UK's **Online Safety Bill** (now the Online Safety Act 2023) introduced a "duty of care" concept for online platforms that has influenced emerging Dutch and EU regulatory thinking. [\[43\]](#)

The UK framework imposes **proactive due diligence obligations** on platforms to identify and mitigate risks to users, which is a broader duty than DSA Article 15's prohibition on general monitoring. This trend suggests that Dutch law and enforcement may increasingly expect platforms to implement risk-management measures proportionate to the harms they could facilitate.

For volunteer platforms, this forward-looking trend suggests:

1. **Proactive risk assessment** frameworks (identifying high-risk volunteer-organization pairings) will become expected rather than optional
2. **Algorithmic accountability** measures will increasingly be required



3. **Safety by design** principles—embedding safeguards into platform architecture rather than relying on post-incident remediation—will become standard industry practice

## B. Insurance Market Evolution

The market for volunteer platform insurance is **nascent and rapidly evolving**. As volunteer matching platforms proliferate, specialized insurance products tailored to platform operators (as opposed to traditional nonprofit volunteer programs) are beginning to emerge.

### Emerging Products:

- **Cyber insurance specifically designed for volunteer platforms** (including GDPR breach notification and volunteer data protection)
- **Professional indemnity insurance for matching/recommendation algorithms** (covering liability for negligent matching advice)
- **Umbrella/excess liability policies** (providing coverage above primary AVB limits for platforms serving vulnerable populations)

**Market Trend:** As volunteer platform liability exposure becomes more widely recognized, insurance products will likely become more specialized and, consequently, more expensive for platforms that do not implement robust safety and vetting procedures.

## Part VIII: Recommendations for VrijwilligersCheck and Similar Platforms

Based on this analysis, volunteer platforms operating in the Netherlands should implement the following risk management framework:

### A. Legal Structure and Governance

1. **Structure as a nonprofit foundation (stichting) or cooperative** (if compatible with business model) to qualify for advantageous insurance treatment and potential free VOG scheme access
2. Alternatively, **if commercial structure (BV) is necessary**, establish a separate nonprofit subsidiary or governance entity to manage volunteer safety responsibilities
3. **Document governance procedures** carefully, with written policies on volunteer vetting, matching standards, and incident response

### B. Insurance Portfolio

#### 1. Mandatory:

- Business Liability Insurance (AVB) with minimum €2 million coverage
- Cyber/Data Breach Insurance (€500k minimum, aligned with volunteer data scale)

#### 2. Strongly Recommended:

- Professional Indemnity Insurance (if platform provides matching recommendations or advisory services)

- Umbrella/Excess Liability (if serving vulnerable populations)
- Directors & Officers (D&O) Insurance (if commercial structure with paid leadership)

### 3. **Optional but Valuable:**

- Reputational/Crisis Management Insurance
- Employment Practices Liability (if platform has employees)

## C. Terms of Service and User Agreements

1. **Clarify the platform's role** (facilitating connections vs. endorsing volunteers or organizations)
2. **Define what the platform is not responsible for** (volunteer's conduct during volunteering, organization's internal processes, volunteer-organization compatibility post-matching)
3. **Establish what the platform IS responsible for** (profile data accuracy, secure data handling, response to reported safety concerns)
4. **Include proportionate liability caps** (e.g., limitation to fees paid in preceding 12 months, with carve-outs for gross negligence/fraud)
5. **Require organizations using the platform to represent that they will conduct their own volunteer screening** and maintain appropriate insurance

## D. Screening and Vetting Protocol

1. **Risk-based screening framework** with different procedures for different volunteer role categories
2. **VOG integration and facilitation** (particularly for organizations serving vulnerable populations)
3. **Reference verification** at least for high-risk roles
4. **Written screening policies** documenting disqualifying factors and appeals processes
5. **GDPR-compliant data processing** (documented lawful basis, impact assessments for sensitive screening data)
6. **Regular audits** of screening procedures to ensure non-discrimination and consistency

## E. Algorithmic Accountability

1. **Transparent disclosure** of how the matching algorithm works
2. **Regular audits** for bias and disparate impact (particularly across protected characteristics)
3. **Human review** checkpoints for high-risk or sensitive matches
4. **Complaint mechanism** for users to challenge algorithmic decisions

## F. Data Protection and Security

1. **Data minimization:** Collect only information necessary for matching and safety verification
2. **Data retention policy:** Define how long volunteer/organization data is retained post-relationship
3. **Security infrastructure:** Encryption, access controls, penetration testing
4. **Breach response plan:** Internal procedures for 72-hour AP notification, volunteer notification, forensics
5. **Privacy policy:** Clear, accessible explanation of data use, retention, and user rights

## G. Incident Response and Liability Cooperation

1. **Documented incident response procedure** for reports of volunteer misconduct
2. **Communication protocol** for notifying receiving organizations of safety concerns
3. **Cooperation obligations** with organizational safeguarding investigations (without assuming the investigation responsibility itself)
4. **Legal hold procedures** to preserve evidence if claims arise
5. **Insurance notification procedures** (timely reporting to insurers required under policy conditions)

## H. Governance and Board Oversight

1. **Board-level safeguarding committee** or oversight mechanism
2. **Annual risk assessments** identifying emerging liability exposures
3. **Insurance portfolio review** (annually or biannually) to ensure coverage aligns with platform evolution
4. **Legal audit** of terms of service and policies (every 2-3 years or after significant platform changes)

## Conclusion

Volunteer matching platforms in the Netherlands operate within a **carefully balanced liability regime** that neither fully exempts them as neutral intermediaries nor imposes the full liability burden of volunteer employers. The legal framework rests on three pillars: (1) **Dutch tort law's negligence standard (Article 6:162 BW)**, which imposes a duty of care proportionate to the risks created, (2) **EU intermediary liability law (DSA Articles 4-6)**, which exempts platforms performing passive hosting functions but withdraws exemptions for active matching roles, and (3) **Dutch data protection, labor, and health & safety law**, which impose specific obligations regarding volunteer classification, data handling, and workplace safety.

The insurance landscape is **practical rather than legally mandated**, but adequate coverage—combining Business Liability (AVB), Data Breach, and optionally Professional Indemnity insurance—is essential. Insurance adequacy should scale with platform risk exposure, determined by

factors including the number of volunteers matched, the vulnerability of beneficiary populations, the extent of algorithmic curation, and the platform's engagement in volunteer safety oversight.

**Best-practice risk management** centers on **documented, proportionate screening procedures; transparent algorithmic accountability; robust data protection; and clear liability allocation** through terms of service that account for Dutch law's skepticism of excessive liability limitations. As volunteer platform markets mature and insurance underwriters develop specialized products, the standards of care—particularly regarding background screening and algorithmic transparency—will likely increase, raising the compliance baseline for competitive platforms.

Platforms that proactively implement safeguarding frameworks, maintain comprehensive insurance coverage, and remain attentive to evolving Dutch and EU regulatory standards will minimize liability exposure while facilitating safe, scalable volunteer coordination that serves Dutch civil society.

## Appendix: Key Statutory

- **Dutch Civil Code (Burgerlijk Wetboek), Book 6:** Articles 6:162 (tort liability), 6:228 (mistake), 6:233-248 (terms of service enforceability)
- **Digital Services Act (Regulation (EU) 2022/2065):** Articles 3-6 (liability exemptions for hosting services), 6 (Good Samaritan protection), 15 (transparency reporting), 24 (platform-specific reporting)
- **General Data Protection Regulation (GDPR, Regulation (EU) 2016/679):** Articles 33-34 (breach notification), 82 (damages rights), 88 (employment law data processing)
- **e-Commerce Directive (Directive 2000/31/EC):** Articles 12-14 (predecessor liability exemptions, now superseded by DSA but still relevant for interpretation)
- **Dutch Tax Administration Guidance (Belastingdienst):** Definition of volunteer work and tax-free reimbursement limits
- **Wet Kinderopvang (Dutch Childcare Act):** Screening requirements for childcare volunteers
- **Dutch Labor Code (Arbeidswet):** Safety and health obligations applicable to volunteer work environments

**Report prepared with reference to 100+ authoritative sources including Dutch and EU legislation, case law, insurance market guidance, and regulatory interpretation documents. Intended for strategic planning and legal compliance by Dutch and EU volunteer platform operators.**

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