

Registered/Confidential

The Minister of Finance

Mr W.B. Hoekstra MBA

PO Box 20201

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Date

December 4, 2018

Topic

Prohibition of processing

1. Summary

Our reference

z2018-16470

Contact

[CONFIDENTIAL]

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The AP has decided to issue a letter to the Minister of Finance with effect from 1 January 2020.

to impose a processing ban on the processing of the citizen service number (BSN) in the VAT identification number. This use of the citizen service number is contrary to the GDPR in conjunction with the GDPR Implementation Act.

Since 2007, the VAT identification number issued by the tax authorities contains the citizen service number of

self-employed. At the moment that is more than 1.1 million people.¹ They are, among other things, legal required to provide the VAT identification number on their website if they provide their services online offer and invoices. The citizen service number (BSN) of data subjects is therefore known to third parties with whom the chance of abuse for identity theft is increasing. The consequences of such identity fraud can stakeholders are far-reaching.

According to the Tax Authorities, a structural solution that will end the violations – and the VAT identification number therefore no longer contains a BSN – at least five years. This is due to the coherence with other necessary ICT adaptations that it must implement. According to the The Tax and Customs Administration can only do this faster if this problem is given political priority and more budget is made available.

¹ <http://statline.cbs.nl/StatWeb/publication/?DM=SLNL&PA=81588ned>.

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2. Course of the procedure

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The AP has officially investigated the use by the Tax Authorities of the BSN in the Netherlands

VAT identification number of self-employed persons with a sole proprietorship. On June 26, 2018, the AP issued the investigation report and sent to the minister. The public version of the report is on 6 July 2018 published on the website of the AP.

In a letter dated 5 July 2018, the AP informed the minister of its intention to impose a processing ban in 2019 and give the minister the opportunity verbally or to express its views in writing. The minister was invited to a hearing.

In this letter, the AP also requested the results of the Tax and Customs Administration's own investigation to the possibilities for a different design of the VAT identification number².

In a letter dated 30 July 2018, the AP sent a request for information to the minister in which he requested to provide information about the state of affairs and possible results of the aforementioned research. No written response has been received.

A hearing was held on 28 August 2018 at which the Tax and Customs Administration was given the opportunity to give its opinion on the intention to impose a processing ban.

3. Investigation Report

The investigation report states that the Tax and Customs Administration is charged with providing VAT identification numbers to companies. The Tax and Customs Administration is preparing the VAT identification number self-employed persons with a sole proprietorship from the citizen service number of the natural person concerned, preceded by 'NL' and the addition of 'B' plus a serial number (e.g. 01) after it.

The Minister of Finance is the controller for this processing of personal data. The Tax and Customs Administration actually implements this processing.

The use of the citizen service number (BSN) in VAT identification numbers of self-employed persons with a sole proprietorship is in the

report in violation of Article 46 of the General Data Protection Regulation Implementation Act

(UAVG) deemed. Furthermore, the report concluded that for the processing under investigation the required there is no basis, as a result of which it is in conflict with Article 6, first paragraph of the General Regulation data protection (GDPR). The processing is also not 'lawful' with regard to the data subjects.

and "decent". This means that the processing is contrary to Article 5, first paragraph, preamble and under a of the GDPR.

2 In response to the question from MPs Van der Molen and Omtzigt (both CDA) and Lodders (VVD) to the State Secretary for Finance and the Minister of the Interior and Kingdom Relations whether it can be ensured that new VAT numbers of self-employed persons no longer contain the citizen service number (BSN), it has been indicated that the possibilities of a different design of the VAT identification number will be investigated and the House of Representatives will be informed about this before the summer of 2018.

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4. Legal framework

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The AP's investigation started in 2017, when the Personal Data Protection Act (Wbp) was still in effect strength. As of May 25, 2018, the GDPR applies, as well as the UAVG. The Wbp is on that date withdrawn, pursuant to Article 51 of the UAVG. The rules applicable under the Wbp for the processing of The content of the citizen service number (BSN) has remained the same under the AVG and the UAVG.³ The conclusions in the AP's investigative report relate to a time-continuing processing, which takes place before 25 May 2018 (when the Wbp was in force) and from 25 May 2018 (since the GDPR and the UAVG are applicable).

Furthermore, the General Provisions Citizen Service Number Act (Wabb) applies, in which general rules on the allocation, management and use of the citizen service number are included.

Article 58(2)(f) of the GDPR reads as follows:

“2. Each supervisory authority shall have all of the following powers to take corrective measures:

(...)

f) impose a temporary or permanent restriction on processing, including a processing ban;

(...)”

Article 87 of the GDPR provides:

“Member States may specify the specific conditions for the processing of a national identification number or any other identifier of a general nature. In that case, the national identification number or any other identifier of a general nature used only with appropriate safeguards for the rights and freedoms of the data subject under this Regulation.”

Article 46 of the UAVG states the following:

“1. A number prescribed by law to identify a person is used during the processing of personal data only used for the implementation of the relevant law or for purposes determined by law.

2. Cases other than those referred to in subsection 1 may be made by order in council: designated in which a number to be designated as referred to in the first paragraph can be used.

Further rules may be given about the use of such a number.”

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Article 10 of the Wabb states the following:

“Government bodies may, when processing personal data in the context of the implementation of

3 Parliamentary Papers II, 2017/18, 34851, no. 3, p. 51.

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make use of the citizen service number in their duties, with due observance of the provisions of or pursuant to this chapter has been determined.”

Article 5 of the GDPR reads, insofar as relevant here, as follows:

“1. Personal data must:

a) processed in a manner that is lawful, fair and transparent to the data subject

is ("lawfulness, fairness and transparency");

(...)”

Article 6 of the GDPR reads, insofar as relevant here, as follows:

“1 Processing is only lawful if and to the extent that at least one of the following

conditions are met:

(...)

(e) the processing is necessary for the performance of a task carried out in the public interest or of a task in the context of the exercise of official authority vested in the controller commissioned;”

20 Article 24 Wbp (in force until 25 May 2018) reads as follows:

“1 A number prescribed by law to identify a person is used in the processing of

personal data is only used for the implementation of the relevant law or for purposes related to the law determined.

2 By order in council, cases other than those referred to in subsection 1 may be

designated in which a number to be designated as referred to in the first paragraph can be used.

Further rules may be given about the use of such a number.”

5. View

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Following the intention of the AP to impose a processing ban, the

The Tax and Customs Administration gave an oral opinion during the hearing of 28 August 2018.

22 The State Secretary of Finance has drawn up the conclusions from the investigation report of 26 June 2018

wholeheartedly endorsed and is strongly committed to solving the problem.⁴

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The Tax and Customs Administration has investigated the possibilities of a 'suitable and permanent'

number system' that offers a solution for these violations. Here are seven alternatives

investigated, one alternative of which involves the introduction of an entirely new number system

where 'meaningless numbers' are used and the use of the citizen service number in the VAT

4 See also the letter of 13 July 2018 from the State Secretary of Finance to the House of Representatives, in which the State

Secretary

from the AP investigation report of June 26, 2018.

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identification number is terminated. Such a new numbering system has, according to the

The tax authorities are preferred, as this offers a 'structural' solution.

24 The consequences and duration of the implementation of the various alternatives are only for one alternative

(which initially seemed to offer a quick solution to the problem in question) extensive

examined by means of an implementation test. The other alternatives, including the introduction of a whole

new numbering system, have only been examined marginally on those points.

25 The Tax and Customs Administration estimates that the implementation of each alternative will take at least five years

to take. The Tax and Customs Administration explained and substantiated this at the hearing as follows. The IT landscape' at the Tax and Customs Administration should be renewed and/or adapted in a general sense, which is a will be a major and extensive operation. Plans ('target architecture') are now being developed that provide insight into the necessary and desired adjustments in the IT landscape. The introduction of a new numbering system can and must, because of the interrelationship between all IT systems and adjustments are included in that target architecture. The According to the Tax and Customs Administration, the implementation period of the new number system is therefore partly depending on the other adjustments in the IT landscape and the planning thereof.

26 The Tax and Customs Administration has explicitly stated that an acceleration of the implementation of all necessary IT measures – and thus also the termination of the detected violations – can only be achieved if it is given political priority and more budget is available is being asked.

27 The Tax and Customs Administration has also explained that in September 2018 a committee of external experts is composed in the field of ICT, governance and privacy. This committee has a twofold assignment, namely:

- 1) assessing the technical and organizational complexity of the researched so far variants as well as the legal aspects, in order to understand the findings of the investigations of the to be able to confirm or falsify the tax authorities, and
- 2) formulating alternatives on the basis of this opinion to to arrive at a structural solution, with flanking measures to bridge this period.

According to the planning in the assignment, this committee will complete its investigation at the end of 2018.

6. Violations

28 The citizen service number (BSN) is a number that serves to identify a person and is legally binding (the Wabb). prescribed, as referred to in Article 46 of the UAVG. Pursuant to Article 46 of the UAVG, the BSN are only used to implement the Wabb or for purposes specified in the Wabb or in a other law. On the basis of Article 10 of the Wabb, the BSN may be used by government bodies

used when processing personal data in the context of the performance of their task.

29 The AP establishes that the Tax and Customs Administration is a government body as referred to in Article 10 of the Wabb and in

in that sense may use the citizen service number in the performance of its task. This use must, pursuant to Article 6, first 5/8

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paragraph e of the GDPR is necessary. The use of the citizen service number in the VAT identification number cannot, however, be regarded as necessary, as a result of which Article 10 of the Wabb cannot provide a basis for this use. Nor does any other provision / purpose in the Wabb or any other law provide

the legal basis required under Article 46 of the UAVG for the independent use of the

BSN in the VAT identification number. Therefore, this use is contrary to article 46 of the UAVG and

Article 6(1) of the GDPR. The Tax and Customs Administration has also acknowledged these violations.

The processing is also in violation of Article 5, first paragraph, under a of the GDPR, because the processing is not is lawful. The processing is also not fair with regard to the data subjects. Their social security number becomes after all, used improperly with the result that this is (mandatory) via the VAT identification number disclosed to third parties. This is at odds with the basic principles regarding the use of the BSN.

7. Seriousness and duration of the violations

The BSN is intended for communication between citizens and government (because of unambiguous identification) and for the exchange of data between government bodies themselves, or between the government and other parties designated by law (for the sake of efficient and reliable processing and

exchange of data). Exchanging them should be treated with restraint, because it

BSN can be misused for identity fraud, with potentially serious consequences for the person concerned. It

the risk of abuse increases as the citizen service number is more widely known and accessible. The BSN is therefore a sensitive personal data that does not belong in the public eye.

However, this has been the case for self-employed persons with a sole proprietorship since 2007, as a result of the processing of the citizen service number in VAT identification numbers.⁵ The VAT identification number is intended to be used frequently are used in business. For example, it has been mandatory for self-employed since 1 July 2004 with a sole proprietor to list this number on their website when providing their services online

⁶ Self-employed persons with sole proprietorships are also obliged to disclose the VAT identification number to (potential) customers by stating it on invoices.⁷ This is how their citizen service number

known and/or publicly available to third parties. This increases the risk of identity fraud, especially in combination with public data from the Trade Register (for example, the private address if this is the same)

to the business address, date of birth, place of birth and official first names of the self-employed person with a proprietorship). With more than 1.1 million self-employed persons with a sole proprietorship very large.⁸

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The AP has established that the violations with regard to the independent processing of the citizen service number in the VAT identification number already exist since the introduction of the citizen service number in the year 2007. The problem if such has also been raised several times in the House of Representatives. In 2013, the House of Representatives – after

⁵ Because the BSN was introduced in 2007, the social security number for natural persons was converted into the BSN, which means that the VAT

identification number since then also contains the citizen service number of the owner of the independent sole proprietorship.

⁶ Pursuant to Article 3:15d, first paragraph, preamble and under f, of the Dutch Civil Code.

⁷ Pursuant to Article 35a, first paragraph, preamble and under c, of the Turnover Tax Act.

⁸ <http://statline.cbs.nl/StatWeb/publication/?DM=SLNL&PA=81588ned>.

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advised against by the State Secretary of Finance – a motion passed to prohibit the use of the BSN in to terminate the VAT identification number.⁹ In 2015, the House of Representatives passed a motion to the vulnerabilities for identity fraud among self-employed persons as a result of the use of the citizen service number in VAT identification number.¹⁰ In 2016 and 2018, questions¹¹ were asked about the subject. The The minister has therefore been aware of the questions and risks associated with the use of the citizen service number in the VAT identification number. However, this has not led to a proactive approach to the problem.¹²

8. Prohibition of processing

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The AP decides, pursuant to Article 58, second paragraph, preamble and under f, of the GDPR with effect from 1 January 2020 to impose a processing ban on the minister to independently register the citizen service number process identification numbers. The AP justifies this as follows.

35 The purpose of the processing ban is to put an end to the aforementioned violations. Due to processing ban, the Tax and Customs Administration will have to implement a solution before 1 January 2020 whereby they no longer use the citizen service number independently in VAT identification numbers. Such a solution would could consist of the introduction of an entirely new numbering system in which 'meaningless' numbers' are used and the use of the citizen service number is terminated.

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In view of the basic duty of enforcement to which the AP is obliged, it must take enforcement action.

After all, it has not become apparent that there are special circumstances that would allow the AP to waive enforcement.

In view of the duration, scope and seriousness of the violations, including the large number of persons involved, the violations must be rectified as soon as possible, but no later than 1 January 2020. the AP has considered it decisive in determining this period that the Tax and Customs Administration estimates that the the introduction of a new numbering system will take five years, but this introduction will be considerable can be accelerated if more budget is made available for this. However, this is undeniably a matter of political priority.

38 For the sake of completeness, the AP points out that failure to comply with the processing ban can be fined pursuant to Article 83(5), preamble and under e, of the GDPR.

9 On 28 November 2013, members of the House of Representatives Oosenbrug and Van der Linde submitted a motion (see: Parliamentary Papers II 2013/14, 33 750 VI, No. 23). It was adopted by the House of Representatives on 3 December 2013.

10 On 25 June 2015, Member of Parliament Verhoeven submitted a motion (see: Parliamentary Papers II 2014/15, 32 637, no. 188 (replaced by no. 194 after amendment of the motion)). It was adopted by the House of Representatives on 1 July 2015.

11 On 10 June 2016, members of the House of Representatives Oosenbrug and Mei Li Vos put questions to the Minister of Security and Justice and the State Secretary for Finance on this subject (see Parliamentary Papers II 2015/16, Question number 2016Z11753) and on 12 March 2018

MPs Van der Molen, Omtzigt and Lodders have put questions to the State Secretary for Finance and the Minister of the Interior and Kingdom Relations on this subject (see: Parliamentary Papers II 2017/18, Question number 2018Z04290).

12 It follows from the letter of 13 July 2018 from the State Secretary of Finance to the House of Representatives that investigations into

present problem have been carried out. No action has been taken to actually solve the problem. In the

A new investigation was started in the spring of 2018.

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9. dictum

39 The AP submits to the Minister of Finance, for violation of article 46 of the UAVG, article 6, first paragraph and Article 5, first paragraph, preamble and under a, of the GDPR, a processing ban with the following content:

- As of January 1, 2020, the Minister of Finance is prohibited from using the citizen service number independently in VAT process identification numbers.

A copy of this decision will also be sent to the tax authorities.

Yours faithfully,

Authority Personal Data,

w.g.

mr. A. Wolfsen

Chair

Remedies

If you do not agree with this decision, you can return it within six weeks of the date of dispatch of the decides to submit a notice of objection to the Dutch Data Protection Authority, PO Box 93374, 2509 AJ The Hague, stating "Awb objection" on the envelope.

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