

Registered/Confidential

The Minister of Finance

Mr W.B. Hoekstra MBA

PO Box 20201

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Date

December 4, 2018

Subject

Processing ban

1. Summary

Our reference

z2018-16470

Contact

[CONFIDENTIAL]

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The AP has decided to provide the Minister of Finance with effect from 1 January 2020

to impose a ban on processing the BSN in the VAT identification number. This

use of the BSN is in conflict with the AVG, viewed in conjunction with the AVG Implementation Act.

Since 2007, the VAT identification number issued by the Tax and Customs Administration contains the BSN of

self-employed. At the moment that is more than 1.1 million people.<sup>1</sup> Among other things, they are legal required to state the VAT identification number on their website if they offer their services online offer and on invoices. The BSN of those involved is therefore known to third parties, which increases the chance of abuse for identity fraud is increasing. The consequences of such identity fraud can be significant stakeholders are far-reaching.

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

<sup>1</sup> <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 conducted an official investigation into the use by the Tax and Customs Administration of the BSN in the VAT identification number of self-employed persons with a sole proprietorship. On June 26, 2018, the AP

investigation report adopted and sent to the minister. The public version of the report is on 6

July 2018 published on the website of the AP.

The AP informed the Minister by letter dated 5 July 2018 of its intention to impose a processing ban in 2019 and to give the Minister the opportunity to make an oral or express his views in writing. The minister has been invited to a hearing.

In this letter, the AP also requested the results of the Tax and Customs Administration's own investigation about the possibilities for a different design of the VAT identification number<sup>2</sup>.

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

On August 28, 2018, a hearing took place at which the Tax and Customs Administration has the opportunity to give its opinion on the intention to impose a processing ban.

### 3. Research 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 prepares the VAT identification number self-employed persons with a sole proprietorship from the BSN of the relevant natural person, preceded by 'NL' and the addition '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 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. The report also concludes that the processing required for the investigated processing basis is missing, as a result of which it is in conflict with Article 6, paragraph 1 of the General Regulation data protection (GDPR). The processing is also not 'lawful' with regard to the data subjects

and 'decent'. The processing is therefore in violation of Article 5, first paragraph, preamble and under a of the GDPR.

<sup>2</sup> In response to a 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 BSN, it has been indicated that possibilities for 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 force power was. 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 BSN has remained the same under the AVG and the UAVG.<sup>3</sup>

The conclusions in the AP's research report relate to a continuous trend over time processing, which takes place both 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 BSN are included.

Article 58, second paragraph, under f, of the GDPR reads as follows:

“2. Each supervisory authority has all of the following corrective powers

measures:

(...)

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

(...)”

Article 87 of the GDPR stipulates that:

“Member States can specify the specific processing conditions 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 stipulates the following:

“1. A number that is prescribed by law to identify a person is used during 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 decided by order in council

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

In addition, further rules can be given about the use of such a number.”

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Article 10 of the Wabb stipulates the following:

“Government bodies can process personal data in the context of the implementation of

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

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

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

“1. Personal data must:

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

is (“lawfulness, fairness and transparency”);

(...)”

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

“1 The processing is only lawful if and to the extent that it meets 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 for a task in

in the exercise of public authority vested in the controller

instructed;”

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

“1 A number prescribed by law to identify a person is used when processing

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

law determined.

2 Other cases than those referred to in subsection 1 may be decided by order in council

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

In addition, further rules can be given about the use of such a number.”

5. View

In response to the AP's intention to impose a processing ban, the

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

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

fully endorsed and is strongly committed to solving the problem.<sup>4</sup>

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

numbering system' that offers a solution to these violations. Here are seven alternatives

investigated, one of which is the introduction of an entirely new numbering system

where 'meaningless numbers' are used and the use of the BSN 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 research report of the AP of 26 June 2018.

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

The Tax and Customs Administration is preferred, as this offers a 'structural' solution.

24 The consequences and the 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) was expanded

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

new numbering system, have only been marginally investigated 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 as follows at the hearing. The IT

landscape' at the Tax and Customs Administration must be renewed and/or adjusted in a general sense, which means 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 is possible and necessary, because of the interdependence 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 also depending on the other adjustments in the IT landscape and their planning.

26 The Tax and Customs Administration has explicitly stated that an acceleration of the implementation of all necessary IT measures – and thus also of 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 also explained that in September 2018 a committee of external experts in the field of ICT, governance and privacy. This committee has a received a twofold assignment, namely:

- 1) Assess the technical and organizational complexity of the researched so far variants as well as the legal aspects, in order to reflect the findings of the investigations of the to be able to confirm or falsify the Tax and Customs Administration, and
- 2) formulating alternatives based on this opinion within a maximum period of five years to arrive at a structural solution, with flanking measures to bridge this period.

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

## 6. Violations

28 The BSN is a number that serves to identify a person and is required by law (the Wabb). prescribed, as referred to in Article 46 of the UAVG. It is allowed under Article 46 of the UAVG BSN may only be used for the implementation of the Wabb or for purposes specified in the Wabb or in a other law are stipulated. Based on Article 10 of the Wabb, the BSN may be issued by government bodies used when processing personal data in the context of the performance of their task.

29 The AP notes 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 BSN in the performance of its duties. This use is required under Article 6, first

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paragraph, under e, of the GDPR to be necessary. The use of the BSN 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 / other purpose in the Wabb or any other law provide

the legal basis for the independent use of the

BSN in the VAT identification number. Therefore, this use is in violation of Article 46 of the UAVG and

Article 6, first paragraph, of the GDPR. The Tax and Customs Administration has also acknowledged these violations.

The processing is also contrary to Article 5, first paragraph, under a of the GDPR, because the processing does not

is lawful. The processing is also not fair with regard to the data subjects. Their BSN will be

after all, it is 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. Severity 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, or between the government

and other parties designated by law (for the sake of efficient and reliable processing and

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

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

risk of abuse increases as the BSN is more widely known and accessible. The BSN is therefore one

sensitive personal data that does not belong in the public domain.

However, this has been the case for self-employed persons with a sole proprietorship since 2007, due to the processing of the BSN in VAT identification numbers.<sup>5</sup> The VAT identification number is intended to be used frequently used in business traffic. For example, since July 1, 2004, it is mandatory for the self-employed with a sole trader to list this number on their website if they offer their services online offering.<sup>6</sup> Self-employed persons with sole proprietorships are also obliged to provide the VAT identification number make to (potential) customers by stating it on invoices.<sup>7</sup> In this way, their BSN known and/or public 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). The number of affected affected is more than 1.1 million self-employed with a sole proprietorship very large.<sup>8</sup>

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

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 self-employed sole proprietorship.

6 Pursuant to section 3:15d, subsection 1, preamble and under f, of the 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 the Secretary of State for Finance – passed a motion to allow the use of the BSN in to terminate the VAT identification number.<sup>9</sup> In 2015, the House of Representatives passed a motion to the vulnerabilities to identity fraud among self-employed persons as a result of the use of the citizen service number in the VAT identification number.<sup>10</sup> In 2016 and 2018, questions<sup>11</sup> were asked about the subject. The The minister has therefore been aware of the questions and risks associated with it for a long time use of the BSN in the VAT identification number. Nevertheless, this has not led to one energetic approach to the problem.<sup>12</sup>

#### 8. Prohibition of Processing

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Pursuant to Article 58, second paragraph, preamble and under f, of the GDPR, the AP decides to take effect from 1 January 2020 to impose a processing ban on the minister to independently enter the BSN in VAT processing identification numbers. The AP motivates this as follows.

35 The prohibition on processing is intended to end 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 BSN independently in VAT identification numbers. Such a solution would could consist of the introduction of a completely new numbering system in which 'meaningless numbers' are used and the use of the BSN is terminated.

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In view of the principle duty of enforcement to which the AP is obliged, it must act in enforcement.

After all, there has been no evidence of special circumstances that would allow the AP to refrain from doing so enforcement.

In view of the duration, scope and seriousness of the violations, including the large number of people involved, the violations must be rectified as soon as possible, but no later than 1 January 2020. The AP

In determining this period, it has deemed decisive that the Tax and Customs Administration estimates that 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 purpose. However, this is undeniably one  
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, paragraph 5, opening words and under e, of the AVG.

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

10 On 25 June 2015, Member of the House of Representatives Verhoeven tabled a motion (see: Parliamentary Documents 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 of 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 put questions to the State Secretary of Finance and the Minister  
of the Ministry of the Interior and Kingdom Relations on this subject (see: Parliamentary Documents 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 in 2014  
and 2017 investigations into  
problem have been performed. No action has been taken to actually solve the problem. In the  
A new study was launched in spring 2018.

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9. Operative part

39 The AP will inform the Minister of Finance, due to violation of Article 46 of the UAVG, Article 6, first paragraph and Article 5, first paragraph, opening words and under a, of the GDPR, a processing ban with the following contents:

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

A copy of this decision will also be sent to the Tax and Customs Administration.

Yours faithfully,

Authority for Personal Data,

e.g.

Mr. A. Wolfsen

Chair

Remedies

If you do not agree with this decision, you can within six weeks of the date of sending it decision 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.