

## **TRANSLATION OF THE OFFICIAL PUBLICATION OF SINT MAARTEN**

### **National ordinance police data**

#### **§1 General provisions**

##### Article 1

The following definitions apply for the purposes of this national ordinance and the provisions based on it:

- police officer: a police officer as referred to in Article 3(a) and 3(b) of the Kingdom Act;
- file: every structured set of police data, regardless of whether this set of data is centralised or spread in a functional or geographical manner, that, according to certain criteria, is accessible and relates to different persons;
- person concerned: the person to whom police data relates;
- processor: the person who processes police data for the person responsible, without being subject to the direct authority of the person responsible;
- related data: the police data that are consistent in the comparison of data as referred to in Articles 11(2), 14(1), 14(2) and 15(4), the accompanying data and the police data with which a relationship proves to exist in the combined processing of police data as referred to in Articles 11(3) and 14(4), to the extent that further processing of the data is necessary for the purpose concerned;
- recipient: person responsible to whom police data are provided;
- Minister: the Minister of Justice;
- item of police data: each item of data concerning an identified or identifiable natural person which is processed as part of the performance of the police task;
- police task: the task as referred to in Article 5 of the Kingdom Act;
- provision of police data: the provision of police data to persons who are authorised to process police data pursuant to this national ordinance;
- Law Enforcement Council: the Law Enforcement Council as referred to in Article 2(1) of the Law Enforcement Council Kingdom Act;
- Kingdom Act: the Police Kingdom Act of Curaçao, of Sint Maarten, and of Bonaire, Sint Eustatius and Saba;
- person responsible in the police force of Curaçao and among special police agents: the Minister;
- provision of police data: the provision of police data by the provider to the recipient;
- provider: person responsible who provides police data;
- processing of police data: every action of set of actions concerning police data, in any event including the gathering, recording, ordering, saving, updating, altering, retrieval, viewing, use, comparison, provision through passing on, circulation or any other form of provision, combination, relating and the protection, deletion or destruction of police data.

##### Article 2

1. This national ordinance applies to the processing of police data that is included in a file or is intended for inclusion therein.
2. This national ordinance does not apply to the processing of police data:
  - a. for activities with a purely personal purpose;
  - b. for the internal operations.

##### Article 3

1. Police data are processed only to the extent that this is necessary for the purposes formulated by or pursuant to this national ordinance.
2. Police data are processed only to the extent that they are obtained lawfully and, in relation to the purposes for which they are processed, are adequate, relevant and not excessive.
3. Police data are processed for a purpose other than that for which it was obtained only to the extent that this national ordinance explicitly provides for this.
4. In the processing of police data pursuant to Articles 12, 13 and 15, the sources of the data and the method of acquisition are reported.

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#### Article 4

1. The person responsible shall take the measures necessary to ensure that police data are correct and accurate, in view of the purposes for which it is processed. He shall correct, destroy or supplement police data if he detects that these are incorrect or incomplete.
2. The person responsible shall take the measures necessary to ensure that police data are deleted or destroyed as soon as it is no longer necessary for the purpose for which it is processed or this is required by any statutory provision.
3. The person responsible shall take appropriate technical and organisational measures to secure police data against loss or any form of unlawful processing. These measures, taking account of the state of the art and the costs of their execution, shall guarantee an appropriate level of security, in view of the risks that processing and the nature of the police data entail.
4. The person responsible has access to the police data processed under his management for supervision of compliance with the provisions of or pursuant to this national ordinance.
5. The person responsible shall grant access to the police data processed under his management to the persons responsible for control and supervision, as referred to in Articles 31, 32 and 33, and to persons who perform technical work on his instructions, to the extent that they need this for the performance of their tasks.

#### Article 5

1. The following paragraphs apply if anyone suffers damages because action is taken against them in contravention of the provisions of or pursuant to this national ordinance, without prejudice to the claims pursuant to other statutory rules.
2. The injured party is entitled to fairly-determined compensation for damages, not consisting of financial losses.
3. The person responsible is liable for the damages or injury arising through non-compliance with the provisions referred to in paragraph 1. The processor is liable for such damages or injury, to the extent that they arise through his work.
4. The person responsible or the processor may be indemnified against such liability, partially or in full, if they prove that the damages are not attributable to them.

#### Article 6

1. If the person responsible or the processor acts in contravention of the provisions of or pursuant to this national ordinance and another party suffers or threatens to suffer damages as a result, the courts may, at the request of that other party, forbid them to take such action and order them to take measures to correct the consequences of such action.
2. A claim by a legal entity that, pursuant to its objectives and as shown by its actual work, specifically represents general and collective interests, or by a legal entity as referred to in Article 3:305a of the Civil Code, may not be based on any processing, to the extent that the party affected by such processing objects to this.

#### Article 7

1. If the person responsible provides for a processor to process personal data on his behalf, he shall ensure that the processor offers sufficient assurances regarding the technical and organisational security measures relating to the processing to be performed. The person responsible shall supervise compliance with those measures.
2. Police data may be processed by a processor only on the grounds of a legal regulation or a written agreement.
3. Everyone acting under the authority of the person responsible or of the processor, as well as the processor himself, to the extent that they have access to personal data, shall process these only on the instructions of the person responsible, subject to differing legal obligations.
4. The person responsible shall ensure that the processor processes the personal data in compliance with paragraph 1 and complies with the obligations imposed on the person responsible by Article 4(3).
5. With a view to keeping evidence, the parts of the agreement or legal act relating to the protection of police data and the security measures referred to in Article 4(3) shall be recorded in writing or in another equivalent form.

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#### Article 8

The processing of police data concerning a person's religion or faith, race, political views, health, sexual life and personal data concerning membership of a trade union shall take place only as a supplement to the processing of other police data and to the extent that this is unavoidable for the purpose of the processing.

#### Article 9

1. The person responsible shall maintain a system of authorisations that complies with the requirements of due care and proportionality.
2. Police data shall be processed only by police officers authorised to do so by the person responsible and to the extent of such authorisation.
3. The person responsible shall authorise the police officers under his management to process police data for the execution of the parts of the police task with which they are charged. The authorisation shall contain a clear description of the processes for which the relevant officer is authorised and the parts of the police task for the execution of which the processing is performed.
4. In exceptional cases, the person responsible may authorise persons under his management who are not police officers to process police data for the execution of the police task with which they are charged.
5. By or pursuant to national decree containing general measures, further rules will be imposed regarding the categories of persons who can be authorised for particular forms of data processing and the expertise requirements that can be imposed for them.
6. The person responsible shall appoint the official referred to in Article 12(3), 13(5), 14(1), 14(2), 14(4) and 16(3). By national decree containing general measures, rules may be laid down concerning the police officers who can be appointed as the official.

#### Article 10

1. The police officer or the person to whom police data is provided is required to protect the confidentiality of that data, except to the extent that its provision is required by a regulation laid down by or pursuant to national ordinance, the provisions of paragraph 3 permit its provision or the police task requires provision in exceptional cases.
2. The person to whom police data are provided is required to protect its confidentiality, except to the extent that its provision is required by a regulation laid down by or pursuant to national ordinance or this is necessitated by his task.
3. Article 439(2) of the Criminal Code does not apply.

### **§2 Processing with a view to execution of the police task**

#### Article 11

1. Police data may be processed with a view to execution of the day-to-day police tasks for a period of one year following the date on which it is first processed.
2. To the extent necessary with a view to execution of the day-to-day police tasks, automated comparison of police data for which the term referred to in paragraph 1 has expired can take place with police data processed pursuant to paragraph 1, in order to determine whether there are links between the data in question. Related data may be further processed with a view to the execution of the day-to-day police tasks.
3. To the extent necessary for the execution of the day-to-day police task, police data for which the term referred to in paragraph 1 has expired may be processed in combination in order to determine whether links exist between the relevant items of data. If such links exist, the related data may be further processed with a view to the execution of the day-to-day police task.
4. Police data that is processed pursuant to paragraphs 1, 2 or 3 may be provided for further processing pursuant to Articles 12, 13 and 15.
5. Police data that has been processed pursuant to paragraphs 1, 2 and 3 shall be destroyed as soon as it is no longer necessary for the execution of the day-to-day police tasks and shall in any event be deleted no later than five years after the date on which it is first processed.

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#### Article 12

1. Police data may be specifically processed for an investigation with a view to enforcement of the legal order in a particular case.
2. The purpose of the investigation shall be recorded in writing within one week of the start of processing, as referred to in paragraph 1.
3. Police data processed in accordance with paragraph 1 may, with the consent of the official authorised to that end, be provided for further processing to the extent necessary for another investigation, as referred to in paragraph 1, processing, as referred to in the Articles 13 and 15, or the execution of the day-to-day police tasks, as referred to in Article 11.
4. The police data processed pursuant to paragraph 1 that is no longer necessary for the purpose of the investigation shall be deleted or shall be processed for a maximum term of six months in order to determine whether it gives cause for a new investigation as referred to in paragraph 1 or new processing as referred to in Article 13, and shall be deleted on the expiration of this term.

#### Article 13

1. Police data may be processed specifically with a view to obtaining an insight into the involvement of persons in:
  - a. the plotting or committing of criminal offences:
    - 1°. as described in Article 100(1) of the Code of Criminal Procedure, plotted or committed in an organised association and that, in view of their nature or their relationship to other criminal offences plotted or committed in an organised association, can give rise to a serious violation of the legal order, or
    - 2°. for which a prison sentence of eight years or more is prescribed in the legal description, or
    - 3°. as described in Article 100(1) of the Code of Criminal Procedure, designated by national decree containing general measures, and that, in view of their nature or their relationship to other criminal offences committed by the person concerned, give rise to a serious violation of the legal order;
  - b. actions that can indicate the plotting or committing of categories of criminal offences to be designated by national decree containing general measures, which, in view of their scale or severity, or their relationship with other criminal offences, give rise to a serious risk to the legal order;
  - c. actions that, in view of their nature or frequency, or the organised association in which they are committed, constitute a serious violation of public order.
2. The processing of police data, referred to in paragraph 1(a), shall take place only with regard to:
  - a. suspects of the criminal offences referred to in paragraph 1(a);
  - b. persons concerning whom there are reasonable suspicions that they are involved in plotting or committing the criminal offences referred to in paragraph 1(a);
  - c. persons who are in a certain relationship to the persons, referred to in sub-paragraphs a and b;
  - d. police officers or special police agents as referred to in Article 184(1) of the Code of Criminal Procedure.
3. The processing of police data, as referred to in paragraph 1(b), shall take place only with regard to:
  - a. persons involved in the actions, referred to in paragraph 1(b);
  - b. persons in a certain relationship to the persons, referred to in sub-paragraph a;
  - c. police officers or special police agents as referred to in Article 184(1) of the Code of Criminal Procedure.
4. The processing of police data referred to in paragraph 1(c), shall take place only with regard to:
  - a. persons concerning whom a reasonable suspicion exists that they are involved in serious violations of public order;
  - b. persons in a particular relationship to the persons referred to in sub-paragraph a;
  - c. police officers or special police agents, as referred to in Article 184(1) of the Code of Criminal Procedure.
5. The police data referred to in paragraph 1 may be provided for further processing, with the consent of an official authorised for that purpose, to the extent necessary for other processing,

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as referred to in paragraph 1, an investigation, as referred to in Article 12, processing, as referred to in Article 15 or the execution of the day-to-day police tasks, as referred to in Article 11.

6. The police data referred to in paragraph 1 shall be deleted as soon as it is no longer necessary for the purpose of the processing. To that end, the data will be regularly monitored. The data shall be deleted no later than five years after the date of the last processing of data showing the need for processing of the police data on the person concerned on the basis of the objective described in paragraph 1.

#### Article 14

1. To the extent necessary for an investigation, as referred to in Article 12(1), police data processed for that investigation may undergo automated comparison with other police data processed pursuant to Article 11 or 12 in order to determine whether links exist between the items of data in question. The related data may be further processed for that investigation with the consent of an official authorised for that purpose.
2. To the extent necessary for processing as referred to in Article 13(1), police data processed for that purpose may undergo automated comparison with other police data processed pursuant to Article 11, 12 or 13 in order to determine whether links exist between the items of data in question. The related data may be further processed for that processing with the consent of an official authorised for that purpose.
3. By or pursuant to national decree containing general measures, rules shall be laid down concerning the performance of the comparison of data. These rules may relate to:
  - a. the categories of data on the basis of which police data may be compared;
  - b. the encoding of police data by providing it with an indication of reliability and confidentiality and the possibility of processing this further for an investigation, as referred to in Article 10 or for processing, as referred to in Article 13;
  - c. the way in which the links are made visible.
4. To the extent necessary for an investigation, as referred to in Article 12(1) or for processing as described in Article 13(1), police data processed pursuant to Article 11, 12 or 13 may be processed in combination in exceptional cases, on the instructions of the competent authority pursuant to the Kingdom Act, in order to determine whether links exist between the items of data. If such links exist, the related data may be further processed for that investigation or processing, with the consent of an official authorised for that purpose.
5. To the extent necessary for an investigation, as referred to in Article 12(1) or for processing as described in Article 13(1), police data processed pursuant to Article 11, 12 or 13 may undergo automated comparison with data other than police data.

#### Article 15

1. Police data may be processed with a view to the control and management of an informant and for the assessment of and accounting for the use of data from informants.
2. The police data referred to in paragraph 1 may be provided for further processing pursuant to Article 11, 12 or 13 for a maximum term of four months following the date of the initial processing.
3. The processing of police data, as referred to in paragraph 1, shall take place only with regard to:
  - a. informants;
  - b. persons concerning whom informants provide data or with whom informants maintain contacts;
  - c. police officers or special police agents, as referred to in Article 184(1) of the Code of Criminal Procedure.
4. To the extent necessary for the control and management of an informant, police data processed for that purpose may undergo automated comparison with police data processed pursuant to Article 11, 12 or 13 in order to determine whether links exist between the items of data concerned. The related data may be processed further for that purpose.
5. By national decree containing general measures, categories of persons may be designated to whom paragraphs 1, 4 and 6 are likewise applicable if the disclosure of police data gives rise to risks for those categories of persons. The categories of persons concerning whom police data are processed shall be designated here.

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6. The police data processed pursuant to paragraphs 1 and 5 shall be destroyed as soon as it is no longer necessary for the purpose of the processing. To that end, the data will be monitored every six months. The data shall be destroyed no later than ten years after the date of the latest processing of data showing the need to process police data on the person concerned for the objective referred to in paragraphs 1 and 5.
7. For the purposes of this Article, informant is deemed to refer to: a person who provides data secretly to a detective regarding criminal offences or serious violations of public order (to be) committed or performed by other parties, which provision gives rise to risks for such persons or for third parties.

#### Article 16

1. The police data processed in accordance with Articles 11, 12 and 13 may be further processed in order to support the police task, to the extent that this is relevant for:
  - a. the establishment of earlier processing regarding the same person or case, partly to determine previous involvement in criminal offences;
  - b. the clarification of criminal offences that could not yet be attributed to a suspect;
  - c. identification of persons or objects;
  - d. drawing attention to persons or objects with a view to performing a requested action or with a view to correct treatment of persons;
  - e. the execution of tasks for the judicial authorities.The relevant data shall be made nationally accessible to persons who are authorised by the person responsible in accordance with Article 9(2) or shall be provided to persons authorised by the person responsible, to the extent that they need this data for the execution of the police task.
2. In order to support the police task, police data processed in accordance with Article 11, 12 or 13 may be further processed centrally by the person responsible, to the extent that this is relevant for obtaining a national insight into specialist matters. The data processed further shall be provided to persons authorised by the person responsible, to the extent that they require the data for the execution of the police task.
3. In order to support the police task, police data processed in accordance with Articles 11, 12 and 13, to the extent that this is relevant to automated comparison with a view to reporting different processing concerning the same person, may be provided and processed further. The related data may be processed further pursuant to Article 11, 12 or 13, with the consent of an official authorised for that purpose.
4. By national decree containing general measures, rules shall be laid down concerning what is recorded in writing and made available for inspection in advance with a view to the processing referred to in paragraphs 1, 2 and 3. In any event, rules concerning written records of the following shall be laid down:
  - a. the specific objective for which the data are processed further in order to support the police task;
  - b. the categories of persons concerning whom data are processed further for the relevant objective and the types of data concerning them to be recorded;
  - c. the cases in which or the terms within which further processing of the relevant data will be terminated.

#### Article 17

1. The police data deleted pursuant to Articles 11(5), 12(4), and Article 13(6) shall be kept for a term of five years for processing with a view to the settlement of complaints and accounting for actions and shall then be destroyed.
2. Articles 19 up to and including 23 and Article 26 do not apply to the police data kept pursuant to paragraph 1.
3. In exceptional cases, and to the extent necessary for an objective, as referred to in Article 12 or 13, police data kept in accordance with paragraph 1 may be made available for renewed processing pursuant to Article 12 or 13 on the instructions of the competent authority on the basis of the Kingdom Act.
4. The destruction referred to in paragraph 1 shall not take place to the extent that this is detrimental to the value of the archive documents as an element of the cultural heritage or for historical research. The relevant data shall be transferred to an archiving location at the earliest opportunity. Restrictions shall be imposed on its disclosure, applying Article 20 of the

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2007 National Archives Ordinance. The Minister may impose policy rules with regard to the provisions of the first and third sentences.

#### Article 18

1. The person responsible shall provide police data to persons authorised for the processing of police data in accordance with Article 9(2), to the extent that they require this for the performance of their tasks.
2. In exceptional cases, if this is necessary for proper performance of the police task, the person responsible may refuse to provide police data or may impose restrictive conditions for its further processing. By national ordinance, containing general measures, further rules may be laid down concerning the grounds on which provision may be refused and concerning the restrictive conditions that may be imposed.

### **§3 The provision of police data to parties other than the police**

#### Article 19

The person responsible shall provide police data to members of the Department of Public Prosecutions, to the extent that they need this in connection with their authority or control over the police or over other persons or institutions responsible for detection of criminal offences, and for the performance of other tasks assigned to them by or pursuant to national ordinance.

#### Article 20

1. Police data may be provided, to the extent that this arises from legal provisions concerning the intelligence service.
2. Police data may be provided, to the extent that this arises from legal provisions concerning cooperation with and support for an international criminal court.
3. Police data may be provided to authorities in a country within the Kingdom or in another country that are responsible for the performance of police tasks, or parts thereof, to the extent that this is necessary for proper performance of police tasks in Sint Maarten or the police tasks in the country concerned.
4. Police data shall be provided pursuant to paragraph 2 or 3 only if sufficient assurances are present at the recipient institution for proper use of the data provided and for protection of personal privacy.
5. By or pursuant to national decree containing general measures, further rules will be laid down concerning the provision of police data referred to in paragraphs 3 and 4, and concerning the conditions to be imposed for its use by police authorities authorised for its receipt.

#### Article 21

1. By or pursuant to national decree containing general measures, persons and institutions may be designated to whom or to which police data are or may be provided, in view of a serious general interest, for the performance of the tasks to be laid down by or pursuant to national decree containing general measures.
2. In exceptional cases, the Minister of Justice may grant consent for or order the provision of police data that he describes with such consent or order, to the extent necessary in the interests of a serious general interest. The Law Enforcement Council shall be notified of the relevant decision.

#### Article 22

In exceptional cases, to the extent necessary in view of a serious general interest, the person responsible may decide to provide police data to persons or institutions for the following purposes:

- o a. the prevention and detection of criminal offences;
- o b. the maintenance of public order;
- o c. the provision of assistance to those in need of this;
- o d. the supervision of compliance with regulations.

#### Article 23

1. The person responsible may, to the extent necessary, in view of a serious general interest, for an alliance of the police with persons or institutions, decide to provide police data to those persons or institutions for the following purposes:

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- a. the prevention and detection of criminal offences;
  - b. the maintenance of public order;
  - c. the provision of assistance to those in need of this;
  - d. the supervision of compliance with regulations.
2. The decision referred in paragraph 1 shall record the serious general interest for which the provision is necessary, the alliance for which the police data are provided and the purpose for which this was formed, which data are to be provided, the conditions under which the data are provided and the persons to whom or institutions to which the data are provided.

#### Article 24

By national decree containing general measures, further rules may be laid down concerning the categories of police data that are or may be provided pursuant to Article 21, 22 or 23.

#### Article 25

1. Police data may be provided for the purpose of policy data and for scientific research and statistics, on condition that the results of this contain no personal data.
2. By national decree containing general measures, further rules shall be laid down concerning the provision of police data referred to in paragraph 1.

#### Article 26

1. The provision of police data to members of the Department of Public Prosecutions, as referred to in Article 19, may take place directly, to the extent necessary in the interests of:
  - a. criminal prosecution decisions concerning the detection and prosecution of criminal offences and aid to victims of such offences;
  - b. decisions to be designated by national decree containing general measures.
2. Provision of police data, as referred to in Article 21 shall take place directly only to persons or institutions with a public law task, designated by national decree containing general measures, by means of automated comparison of personal data with categories of police data to be designated by national decree containing general measures.
3. The person responsible shall take appropriate technical and organisational measures in order to ensure that direct provision takes place only to the extent necessary, on the grounds of the provisions of or pursuant to paragraphs 1 and 2. By national decree containing general measures, further rules may be laid down on this .

### **§ 4. Rights of the person concerned**

#### Article 27

1. At the written request of any person, the person responsible shall inform that person, within six weeks, whether and if so, which police data are recorded with regard to that person. The person responsible may postpone his decision for a maximum of four weeks. Written notice of such a postponement shall be issued.
2. Further rules concerning the request and the method of access may be laid down by ministerial decision with general effect.

#### Article 28

1. In handling requests, as referred to in Article 27(1), the person responsible shall provide for proper confirmation of the applicant's identity.
2. Requests concerning minors who have not yet reached the age of 16 and concerning persons under tutelage shall be submitted by their legal representatives. The relevant notice shall also be sent to the legal representatives.
3. The request may also be submitted by an attorney to whom the person concerned has granted special authorisation with regard to the exercise of his rights pursuant to this national ordinance and who submits the request solely with the intention of representing his client's interests. The notice in question shall be sent to the attorney. The person responsible may impose requirements for the special authorisation.

#### Article 29

1. A request, as referred to in Article 27(1), shall be rejected to the extent that the withholding of access is necessary in the interests of:

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- a. proper performance of police tasks;
  - b. serious third party interests;
  - c. national security.
2. Full or partial rejection shall take place in writing, stating the reasons.

#### Article 30

1. A party that is notified of police data concerning them, in accordance with Article 27, may request the persons responsible in writing to correct, supplement, delete or protect this, if it is factually incorrect, is not sufficient or relevant for the purpose of the processing or if it is processed in breach of any legal regulation. The request shall contain the changes to be made.
2. The person responsible shall notify the applicant within four weeks of receipt of the request, in writing, of whether or to what extent he will meet the request. If required by a serious interest of the applicant, the person responsible will comply with a request in a form other than in writing, which is adapted to that interest. A rejection of the request shall state the reasons.
3. The person responsible shall ensure that a decision concerning correction, supplementation, removal or hiding is implemented at the earliest opportunity.

#### Article 31

An administrative decision concerning a request, as referred to in Article 27 or 30, shall be deemed to be an administrative decision within the meaning of the National ordinance administrative justice.

#### Article 32

1. If the person responsible has corrected, supplemented, deleted or shielded police data, he shall notify the persons or institutions to which the relevant police data was provided in the year prior to the investigation, and in the period since that request, of that correction, supplementation, removal or shielding at the earliest opportunity, unless this proves to be impossible or requires an unreasonable effort.
2. The person responsible shall, on request, inform the applicant and, where applicable, the legal representative, of the parties that he has notified.

#### Article 33

1. The person responsible may make a charge for the costs of notification, as referred to in Article 27(1), which does not exceed a sum to be laid down by or pursuant to national decree containing general measures. The method of payment shall also be laid down there.
2. The charge shall be refunded if:
  - a. the person responsible has carried out the correction, supplementation, removal or shielding of the data at the request of the person concerned or on the orders of a court, or
  - b. the notice was not issued, pursuant to Article 28.

### **§ 5. Supervision**

#### Article 34

1. The person responsible shall provide for written recording of:
  - a. the assignment of authorisation referred to in Article 9;
  - b. the objectives of the investigations referred to in Article 12(2);
  - c. the data recorded on the basis of the provisions of or pursuant to Article 16(4);
  - d. the automated comparison or processing in combination of police data referred to in Articles 11(3), 14(1), 14(2) and 14(4);
  - e. the renewed processing of police data pursuant to Article 12 or 13, referred to in Article 17(3);
  - f. an automated comparison of data as referred to in Article 14(5).
  - g. the provision of police data pursuant to paragraph 3, with the exception of provision as referred to in Article 20(1), if this is not consistent with the interests of national security;
  - h. processing regarding which there are indications that they were performed by unauthorised persons or in another unlawful manner.
2. The police data referred to in paragraph 1, shall be kept at least until the date on which the last audit, as referred to in Article 35, has been performed or, with regard to sub-paragraph d,

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for as long as necessary thereafter for compliance with the obligations of the person responsible, as referred to in Article 32(1).

3. By or pursuant to national decree containing general measures, further rules may be imposed on the recording method.

#### Article 35

1. The person responsible shall provide for control of the implementation of the rules laid down by or pursuant to this national ordinance by means of the regular performance of privacy audits.
2. The person responsible shall send a copy of the privacy audit results to the Law Enforcement Council.
3. If the audit results show non-compliance with the provisions laid down by or pursuant to this national ordinance, the person responsible shall provide, within one year, for a new audit of the elements that did not comply with the conditions imposed. Paragraph 2 is likewise applicable.
4. Any person involved in an audit, as referred to in paragraph 1 or 3, is required to protect the confidentiality of the personal data to which he obtains access, except to the extent that he is required to disclose this pursuant to any legal regulation, or this is necessitated by his task.
5. By or pursuant to national decree containing general measures, further rules shall be laid down concerning the content and the implementing method for the audits referred to in paragraphs 1 and 3.

#### Article 36

1. The person responsible shall appoint a privacy officer. The privacy officer, on behalf of the person responsible, shall ensure that police data are processed in accordance with the provisions laid down by or pursuant to the national ordinance and provides the person responsible with advice.
2. The privacy officer shall maintain a review of the written records of the data referred to in Article 31(1).
3. The privacy officer shall draw up a report on his findings each year.
4. The person responsible shall register the privacy officer with the Law Enforcement Council.

#### Article 37

1. The Law Enforcement Council supervises the processing of police data in accordance with the provisions of and pursuant to this national ordinance.
2. The advice of the Law Enforcement Council is requested on proposed national ordinances and draft national decrees, containing general measures, that relate entirely or to a significant extent to the processing of police data.
3. The Law Enforcement Council may, officially or at the request of an interested party, institute an investigation into the manner in which the provisions of or pursuant to the national ordinance are applied with regard to the processing of data.
4. The Law Enforcement Council shall notify the person responsible of its provisional findings and shall give him an opportunity to present his views on this.
5. In the case of an investigation instituted at the request of an interested party, the Law Enforcement Council shall notify that party of its findings unless such notification is inconsistent with the objective of the processing of the data or the nature of the personal data, or if this would cause disproportionate harm to serious interests of parties other than the applicant, including the person responsible. If the Council does not report its findings, it shall send the interested party such notice as it sees fit.
6. Articles 22, 23, 24, 25, 26, 28 and 29 of the Kingdom Act concerning the Law Enforcement Council are likewise applicable.
7. The Law Enforcement Council is authorised to impose administrative enforcement action for the enforcement of the obligations laid down by or pursuant to this national ordinance.

## § 6. Final provisions

#### Article 38

Within five years of the date on which this national ordinance enters into force, and every four years thereafter, the minister, having consulted the Law Enforcement Council, shall send a report to Parliament concerning the effectiveness and the effects of this national ordinance in practice.

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*This is an English translation of the Dutch source text.*

*In the event of any discrepancy between the Dutch language version and the translation, and in case of any disputes, the Dutch version prevails. No rights can be derived from the English translation.*

*October 2013*

Article 39

This national ordinance shall enter into force on a date to be laid down by national decree and different dates may be fixed for the different Articles of this national ordinance, or parts thereof.

Article 40

This national ordinance shall be referred to as the National ordinance police data.