



AUTORITEIT
PERSOONSGEGEVENS

Dutch Data Protection Authority

Postbus 93374, 2509 AJ Den Haag
Hoge Nieuwstraat 8, 2514 EL Den Haag
T 070 8888 500 - F 088 0712140
autoriteitpersoonsgegevens.nl

Confidential/Registered

Netflix International B.V.
Attn: Board of Directors
Karperstraat 10
1075 KZ Amsterdam

Date

26 November 2024

Our reference

[Confidential]

Contact

[Confidential]

Subject

Decision to impose an administrative fine for violation of the GDPR

Dear members of the Board,

The Dutch Data Protection Authority (hereinafter: the Dutch DPA) has decided to impose an administrative fine of **€4,750,000** (in words: four million seven hundred and fifty thousand euro) on Netflix International B.V. (hereinafter: Netflix), because Netflix has failed to inform its customers clearly enough; firstly in its privacy statement and secondly in its response to requests for access concerning 1) purposes of and legal bases for personal data processing; 2) recipients of personal data; 3) retention periods; and 4) international transfers. This results in a violation of Article 5, first paragraph, point a of the General Data Protection Regulation (hereinafter: the GDPR) in conjunction with Article 12, first paragraph, Article 13, first paragraph, points c, e and f and second paragraph, point a, and Article 15, opening words and first paragraph, points a, c and d and second paragraph, GDPR.

The administrative fine is explained in this decision. To this end, the reason, the established facts, the course of the procedure and the amount of the fine are discussed. The last part of the decision is the operative part.



Date
26 November 2024

Our reference
[Confidential]

1. Basis of the investigation

1. Netflix is a streaming service that supplies digital entertainment such as series, films and games. Customers of Netflix can watch Netflix series and films (through an internet browser) on their television, tablet, smartphone, and computer. To make use of these services, customers of Netflix have to register and create an account in return for payment. For this registration, they provide Netflix with personal data, such as their (first) name, birthdate, email address, telephone number, and a bank account number. After registration, the customer can watch Netflix series and films. This viewing behaviour is relevant to Netflix, because it enables Netflix to serve its customers with films and series they find interesting. This is why Netflix also processes data about its customers' viewing behaviour.
2. Netflix has drawn up a privacy statement to give customers insight into the way personal data are processed. Netflix has also set up a 'help center' where customers can ask questions and make requests, including to obtain access to their personal data.
3. Such a request for access was made by None of Your Business (hereinafter: NOYB¹) on behalf of two data subjects. Netflix's response to this request was reason for NOYB to file complaints² against Netflix with the Austrian data protection authority (the *Datenschutzbehörde*) on behalf of the two data subjects. NOYB complains that Netflix fails to provide customers who have made a request for access with sufficient information about the processing of their personal data. The *Datenschutzbehörde* forwarded the complaint to the Dutch DPA, after which the International Investigations Department of the Dutch DPA started an investigation and compiled a report³. The Dutch DPA regrets that this investigation took a long time and apologises for this to both the complainants and Netflix.

2. Findings and proceedings

4. It must be stated first and foremost that conclusions drawn in the investigation report that are not part of the assessment framework of this decision (obviously) fall outside the scope of this decision. This means that no judgment is given on the extent of accuracy of those conclusions in this decision.
5. With regard to the privacy statement, the investigation report shows that Netflix has failed to comply with its information obligation, because Netflix has provided insufficient information about:
 - a. the purposes of and legal basis for the processing of personal data;
 - b. parties that receive personal data of data subjects;
 - c. the retention period of personal data; and
 - d. safeguards in the event of transfers of personal data to third countries.

¹ NOYB is an organisation that stands up for the privacy of citizens.

² File documents 2.1 and 2.5 to the investigation report.

³ File document 1 to the investigation report.



Date
26 November 2024

Our reference
[Confidential]

6. With regard to the requests for access, the investigation shows that Netflix has failed to comply with its information obligations, because Netflix:
 - a. does not provide sufficiently specific information for each separate purpose about the legal basis for processing, the purposes and processing of personal data;
 - b. does not specify which personal data of data subjects are used for which purposes and have been provided to which recipients;
 - c. provides insufficient information about the retention period of personal data; and
 - d. provides insufficient information about safeguards in the event of transfers of personal data to third countries.
7. In the investigation report, the International Investigations Department has concluded that Netflix has provided insufficient information in its privacy statement and in doing so, has violated Article 12, first paragraph, in conjunction with Article 13, first and second paragraphs, GDPR, during the period from 25 May 2018 up to and including 30 July 2020. In the investigation report, the International Investigations Department has also concluded that Netflix's response to requests for access was not specific enough, thus violating Article 12, first paragraph, GDPR, in conjunction with Article 15, first and second paragraphs, GDPR, during the period from 25 October 2018 up to and including 19 November 2019.
8. By letter of 24 March 2022, the investigation report was sent to Netflix. By letter of 17 May 2022, Netflix gave its view on the investigation report. On 7 July 2022, Netflix gave an oral explanation to its view. A report was made of this.

3. Legal framework

9. The Dutch DPA refers to the appendix to this decision, in which the legal framework has been included.

4. Netflix's position

10. Netflix gave the following view on the report.
11. Netflix argues that the transparency obligations arising from the GDPR contain open norms. However, according to Netflix, the Dutch DPA seems to use a more stringent interpretation of those obligations. Although these obligations have been set out in more detail in the Guidelines of the European Data Protection Board⁴ (hereinafter: EDPB Guidelines), a controller has, according to Netflix, a certain degree of latitude to communicate personal data processing and the information to be provided for this purpose at an appropriate level of transparency.

⁴ EDPB Guidelines on Transparency under Regulation 2016/679 (wp260rev.01).



Date
26 November 2024

Our reference
[Confidential]

12. Netflix is of the opinion that it has aligned its way of working with those obligations and (therefore) complies with the aforementioned four information obligations. The (stringent) approach of the Dutch DPA leads to legal uncertainty for Netflix, because it is left in the dark with regard to the way it should act.
13. To substantiate the position that Netflix complies with the information obligations, Netflix argues as follows.
14. Netflix disagrees with the Dutch DPA that, at the start of its subscription service, there would be 'complex, technical or unexpected data processing' as described in the EDPB Guidelines. Netflix has a business model that is straightforward; it concerns a subscription service that gives personalised access to series, among other things. According to Netflix, there is, therefore, no obligation to describe the most important consequences of the processing of personal data. Besides, the personalised nature of the Netflix services is already emphasised during the registration process. This process consists of the registration for the services offered by Netflix. The customer has to provide personal data and payment details and agree to the terms and conditions that Netflix applies for its services.
15. Netflix also argues that since May 2018, it has provided, through its 'help center', a comprehensive and understandable explanation of, for example, the way in which Netflix's so-called recommendation system works. According to Netflix, the use of personal data in connection with recommendations is uncomplicated and consistent. Also from this it follows, according to Netflix, that it complies with the information obligations.
16. With regard to its privacy statement, Netflix argues that it has tailored that statement to the TV User Interface (hereinafter: TV UI), because most customers use their television as a platform for watching films and series. For reasons of uniformity and transparency of information, Netflix uses the information on TV UI on other platforms (mobile, tablet, internet browser) as well. Although the TV UI has a more restricted functionality than an internet browser on that point, this does not affect its privacy statement. Netflix is of the opinion that its privacy statement has been drawn up in such a way that it is detailed without being too long or too complicated. Besides, Netflix points out that it makes references in the text of the privacy statement to paragraphs with more specific information about a given subject. With this way of working, Netflix has provided, in a layered manner (as prescribed by the EDPB Guidelines), sufficient information in its privacy statement and has, therefore, complied with the information obligations.
17. Netflix furthermore argues that it is not obliged to include an exhaustive list of processing operations in its privacy statement. Article 23, first paragraph GDPR in conjunction with Article 41 GDPR Implementation Act offers that scope if including such information could lead to circumventing the security measures or fraud prevention measures.
18. Netflix is also of the opinion that an obligation to mention recipients of personal data by name in the privacy statement does not follow from Article 13, first paragraph, GDPR. That is why Netflix thinks that naming only the categories of recipients is sufficient.



Date
26 November 2024

Our reference
[Confidential]

19. Finally, Netflix refers to its privacy statement, in which customers are advised to contact Netflix's Privacy Team if they have any questions about the use of personal data, cookies or similar technologies. According to Netflix, limited use is made of the option to obtain information about international transfers, but in cases where this information was requested, Netflix complied with its transparency obligation.

5. Assessment

5.1. Controller and competence of the Dutch DPA

20. Netflix is a controller (Article 4, opening words and point 7, GDPR). Netflix has its main establishment in Amsterdam⁵, while it follows from its privacy statement that it is the controller for all enterprises within the Netflix group of companies for the processing of personal data in the European Union (hereinafter: EU).⁶ Netflix offers its services in several EU Member States and processes personal data of data subjects for these services. This means that the processing of personal data by Netflix materially affects data subjects in more than one Member State, making this cross-border processing (Article 4, opening words and point 23(b), GDPR).
21. Given where Netflix has its main establishment and given its role as controller, the Dutch DPA is competent to act as the lead supervisory authority (Article 56, first paragraph, GDPR).

5.2 Information obligation and the right of access

22. In this case, the subjects of 'information obligation' and 'the right of access' relate to the following four sub-strands, namely: 1) legal bases for and purposes of personal data processing, 2) recipients of personal data, 3) retention periods, and 4) international transfers. The other eight sub-strands, as contained in Articles 13 and 15 GDPR, remain outside the scope of this investigation. This case limits itself to the four sub-strands specified above. Below, Netflix's privacy statement is set out in a generic sense and in summary. This is followed by an assessment for each sub-strand on both the right of data subjects to receive information when personal data are collected from them (Article 13 GDPR) and the right of access (Article 15 GDPR).

5.2.1 Assessment of the legal bases for and purposes of personal data processing

23. The Dutch DPA has established that Netflix's privacy statement contains an enumeration of personal data and the way in which Netflix collects these personal data. It concerns: data that are provided by the data subjects themselves, data that are automatically collected by Netflix, data of other companies with which data subjects have a relationship, and data from other sources. Netflix then lists the purposes for which it uses the collected data. In doing so, Netflix uses a number of examples to make these purposes more

⁵ File document 14 to the investigation report.

⁶ Investigation report, par. 3.1.



Date
26 November 2024

Our reference
[Confidential]

concrete. One of them is communicating about Netflix's services with regard to special offers, promotional communications, and new content, among other things. Netflix concludes this part with an enumeration of the legal bases for collecting personal data and some references to purposes named more specifically. It has been established that Netflix names four legal bases from Article 6, first paragraph, GDPR for processing of personal data, namely: 'consent', 'contract', 'legal obligation', and 'legitimate interest'.

24. Netflix has submitted documents that show that it has categorised eight purposes, each of which consists of several sub-strands.⁷ These purposes are more detailed than the purposes included by Netflix in its privacy statement. On request, Netflix has made clear which personal data have been processed for which purposes and on which legal basis or bases.⁸ In this context, data subjects must be informed about both the fact that a processing operation takes place and the purposes of this processing operation.⁹ This means that in its privacy statement, Netflix must in any case show, in a transparent and understandable manner, the connection between the processing of personal data and the purpose for which the personal data are processed. The Dutch DPA acknowledges that the information provision based on a TV UI entails limitations. Usually, the information to be provided will be visualised in the form of plain text, and the options to use links to subpages was limited, in any case at the relevant time. In addition, operating the TV UI with a remote control has limitations compared to other devices such as a computer, tablet or smartphone. Although the Dutch DPA takes the above-mentioned circumstances into account, the Dutch DPA establishes that Netflix did not provide certain information in full or as the case may be in a well-organised manner. In this case Netflix omitted, among other things, to make clear which data it uses for recommending services offered, analysing target groups, and preventing fraud. Furthermore, Netflix did not make clear which personal data it receives from third parties (referred to as 'partners' in the privacy statement) to determine the geographic location of data subjects. Although Netflix has used the latitude for consideration that a controller has by including the relevant information in the privacy statement in a narrative manner, it should have realised that as a result of disconnecting personal data from the purposes for which these personal data are processed, the information provided is not in line with the provision of information in a concise, transparent, intelligible and easily accessible form, using clear and plain language (Article 12 GDPR). Given the privacy statement and the way in which information has been provided about the required information, Netflix has violated Article 13, first paragraph, point c and Article 15, first paragraph, point a, GDPR. This means that the complaint of NOYB is well-founded on this point.

⁷ File document 6.1, pp. 2-3, to the investigation report.

⁸ File document 8.1, pp. 1-13, to the investigation report.

⁹ Recital 60 to the GDPR.



Date
26 November 2024

Our reference
[Confidential]

5.2.2. Assessment of recipients of personal data

25. The Dutch DPA establishes that it follows from Netflix's privacy statement that it uses service providers (that are active on the advertising market, among other things) and that these service providers may use and publish personal data of Netflix's customers.
26. Netflix's privacy statement does not give names of those recipients, while data provided by Netflix to the Dutch DPA show that, with regard to online advertising services, Netflix does have these data at its disposal.¹⁰
27. Article 13, opening words and first paragraph, point e, GDPR indicates that as and when applicable, the controller provides information to data subjects about what the recipients or the categories of personal data are. It has been stated in the GDPR (recital 58) that it is difficult to understand for a data subject by whom and for what purposes their personal data are collected when it concerns information such as that of online advertising services. In accordance with the principle of fairness, Netflix has to provide information about the recipients that is most meaningful to the data subjects. In view of this, the Dutch DPA cannot see why Netflix has not stated the names of recipients – who, by the way, are limited in number – in its privacy statement. The Dutch DPA is of the opinion that Netflix should have done this and should have provided this information in the event of a request for information. Netflix has wrongly omitted to do so, and in this way violated the GDPR (Article 13, first paragraph, point e, and Article 15, first paragraph, point c). On this point, the complaint of NOYB is, therefore, well-founded.
28. The Dutch DPA establishes that Netflix adjusted its privacy statement on 7 July 2022 by adding a link to a 'help article' containing a list of recipients. In doing so, Netflix ended the violation of the GDPR on the point 'recipients of personal data'.

5.2.3 Assessment of retention periods

29. Netflix's privacy statement states that the personal data of data subjects are retained as required or permitted by legislation and regulations. Here, Netflix names some examples such as retaining personal data in order to comply with the choices of data subjects and for purposes of invoicing and record-keeping. No specific retention periods are stated in the privacy statement.
30. On request, Netflix has provided the Dutch DPA with a table that contains a specification of the personal data that are retained and the retention periods that specifically apply to them.¹¹ The Dutch DPA establishes that Netflix has omitted to include these periods in its privacy statement. It has not become apparent to the Dutch DPA that Netflix would have had to take a disproportionate number of measures to do so.

¹⁰ File document 8.4, p. 4, to the investigation report.

¹¹ File document 6.1, pp. 11-13, to the investigation report.



Date
26 November 2024

Our reference
[Confidential]

31. The Dutch DPA is of the opinion that Netflix has failed to provide the periods during which personal data are retained – both in its privacy statement and in response to requests for access – to data subjects in a fair and transparent manner. In doing so, Netflix has acted in violation of the GDPR (Article 13, second paragraph, point a and Article 15, first paragraph, point d). On this point, too, the complaint of NOYB is well-founded.
32. Netflix's argument that the privacy statement of the Dutch DPA itself on this point also only states that personal data are retained in accordance with the applicable laws and regulations does not alter this. The processing register of the Dutch DPA, which contains a specification of the retention periods, can be consulted on the website of the Dutch DPA. Besides, the privacy statement of the Dutch DPA has been brought in line with the GDPR.

5.2.4. Assessment of international transfers of personal data

33. The Dutch DPA establishes that it follows from Netflix's privacy statement that when transferring personal data to countries outside the European Economic Area (EEA), it acts in accordance with the applicable privacy laws of those countries. The Dutch DPA furthermore establishes that it follows from information provided by Netflix to the Dutch DPA on request that Netflix may process personal data in twelve countries outside the EU for making payments, providing customer service, and scaling up and improving the availability of its services.
34. In the opinion of the Dutch DPA, Netflix has omitted to record in its privacy statement which rights data subjects have when their personal data are processed outside the EEA. Netflix has also failed to specify in its privacy statement to which countries outside the EEA personal data of data subjects are transferred. Netflix has also omitted to make a reference to any adequacy decisions or to indicate if (in the relevant case) there are suitable or appropriate safeguards and how data subjects can consult those safeguards.
35. Taking this into account, the Dutch DPA is of the opinion that the information included by Netflix in its privacy statement in any case until 31 July 2020 does not meet the requirements of the GDPR (Article 13, first paragraph, point f). The Dutch DPA adds to this that with regard to requests for access made during the period between 25 October 2018 and 19 November 2019, Netflix has omitted to provide sufficient information about safeguards for transfers of personal data to third countries. In doing so, Netflix has also acted in violation of the GDPR (Article 15, second paragraph). On this point, the complaint of NOYB is, therefore, well-founded to this extent.
36. The Dutch DPA establishes that as from 7 July 2022, Netflix adjusted its privacy statement on this point by including a link to the internet page of the European Commission. Visitors of that website are directed to a FAQ document containing the rights of data subjects and when there is an international transfer of personal data. As from 7 July 2022, Netflix also included a link to a 'help article', containing a list of the countries to which personal data are transferred, in its privacy statement. Although Netflix has included a list of countries to which personal data may be sent, this does not result in Netflix meeting the



Date
26 November 2024

Our reference
[Confidential]

requirements of Article 13, first paragraph, point f, GDPR and Article 15, second paragraph, GDPR, because it is not clear which suitable or appropriate safeguards have been implemented for the transfers in question.

5.3. Principle of due care

37. Netflix argues that the Dutch DPA has acted in contravention of the principle of due care by not offering Netflix the opportunity to respond to the draft investigation report.
38. The Dutch DPA establishes that the investigation report was sent to Netflix on 24 March 2022. Netflix was then given the opportunity to give its view on that report. Netflix used this opportunity by both submitting a written view and explaining this view orally to the Dutch DPA. In the opinion of the Dutch DPA, there is, therefore, no contravention of the principle of due care.

5.4 Conclusion

39. The Dutch DPA concludes that Netflix has informed its customers not clearly enough; firstly in its privacy statement and secondly in its response to requests for access concerning 1) purposes of and legal bases for personal data processing; 2) recipients of personal data; 3) retention periods; and 4) international transfers. As a result of this omission, Netflix acted in violation of Article 12, first paragraph, GDPR, and Article 13, first paragraph, points c, e and f, and second paragraph, opening words and point a, GDPR during the period from 25 May 2018 up to and including 30 July 2020. Netflix also violated Article 5, first paragraph, point a, in conjunction with Article 12, first paragraph, GDPR, and Article 15, first paragraph, opening words and points a, c and d, and second paragraph, GDPR during the period from 25 October 2018 up to and including 19 November 2019. The Dutch DPA will impose a fine on Netflix for these violations. The amount of the fine will be determined below.

6. Administrative fine

6.1 Power to impose fines

40. Pursuant to Article 58, second paragraph, opening words and point i, in conjunction with Article 83 GDPR and read in conjunction with Article 14, third paragraph, GDPR Implementation Act, the Dutch DPA has the power to impose an administrative fine. As evidenced by case law of the Court of Justice of the European Union (hereinafter: CJEU), it follows from the terms of Article 83, second paragraph, GDPR, that infringements of the provisions of the GDPR that have been committed by the controller in a culpable manner – meaning, infringements resulting from intent or negligence – may result in the imposition of an administrative fine on the controller pursuant to that article.¹²

¹² CJEU 5 December 2023, C-683/21, ECLI:EU:C:2023:949 (NVSC) pars. 73 and 83; CJEU 5 December 2023, C-807/21, ECLI:EU:C:2023:950 (*Deutsche Wohnen*) pars. 68 and 76.



Date
26 November 2024

Our reference
[Confidential]

6.2 Methodology for determining the amount of the fine

41. At the plenary session of 24 May 2023, the EDPB consented to the definitive text of the Guidelines 04/2022 for the calculation of administrative fines under the GDPR (hereinafter: the Guidelines).¹³ The Dutch DPA will apply these Guidelines to this case.¹⁴
42. The Guidelines describe the following method for the calculation of administrative fines for infringements of the GDPR:
 1. identifying the processing operations in the case and evaluating the application of Article 83(3) GDPR;
 2. finding the starting point for further calculation of the fine;
 3. evaluating aggravating and mitigating circumstances related to past or present behaviour of the controller/processor and increasing or decreasing the fine accordingly;
 4. identifying the relevant legal maximums for the different processing operations. Increases applied in previous or next steps cannot exceed this amount;
 5. analysing whether the final amount of the calculated fine meets the requirements of effectiveness, dissuasiveness and proportionality, as required by Article 83(1) GDPR, and increasing or decreasing the fine accordingly.
43. These steps are discussed in consecutive order below.

6.3 Calculation of the amount of the fine

6.3.1. Step 1: Identifying actions and infringements

44. First of all, it must be established if there are one or more actions that have to be sanctioned. Above in 5.4, it was found that Netflix has failed to inform its customers sufficiently clearly, both in its privacy statement and in its response to requests for access, about 1) purposes of and legal bases for personal data processing; 2) recipients of personal data; 3) retention periods; and 4) international transfers. In view of this, Netflix has committed two distinct sanctionable actions. The actions consist of not informing customers clearly enough; firstly in its privacy statement and secondly in its response to requests for access. This means that in this case there are two culpable actions for which the Dutch DPA may impose fines.

6.3.2. Step 2: Determining the starting amount

¹³ See also Guidelines 04/2022 for the calculation of administrative fines under the GDPR.

¹⁴ See also <https://www.autoriteitpersoonsgegevens.nl/actueel/nieuw-boetebeleid-voor-overtredingen-avg>



Date
26 November 2024

Our reference
[Confidential]

45. Next, the starting amount of the fine must be established. This amount will be the starting point for further calculation in later steps, taking into account all relevant facts and circumstances. The starting amount is determined on the basis of three elements:

- i) the categorisation of the infringements under Article 83, paragraphs 4 through 6, GDPR;
- ii) the gravity of the infringement; and
- iii) the turnover of the undertaking.

Re i) categorisation of the infringements under Article 83, fourth through sixth paragraphs, GDPR.

46. As stated in the Guidelines on the calculation of administrative fines, nearly all obligations of the controller have been categorised in the provisions of Article 83, fourth through sixth paragraphs, GDPR. The GDPR distinguishes between two types of infringements. On the one hand, the infringements that are sanctionable under Article 83, fourth paragraph, GDPR and for which a maximum fine of €10 million applies (or in the case of an undertaking, up to 2 % of the total worldwide annual turnover of the preceding financial year, whichever is higher), on the other hand, the infringements that are sanctionable under Article 83, fifth and sixth paragraphs, GDPR and for which a maximum fine of €20 million applies (or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher). With this distinction, the legislator has provided for a first indication *in abstracto* of the gravity of the infringement: the graver the infringement, the higher the fine.

47. In this case, an administrative fine of no more than €20 million (or in the case of an undertaking, up to 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher) may be imposed for violation of Article 5, first paragraph, point a, in conjunction with Article 12, first paragraph, GDPR, and Article 15, first paragraph, opening words and points c and d, and second paragraph, GDPR. It follows from this categorisation that the infringements of these provisions are regarded by the legislator as grave.

Re ii) gravity of the infringement

48. When determining the gravity of the infringement, the nature, gravity and duration of the violation as well as the intentional or negligent nature of the infringement and the categories of personal data involved must be taken into account.

49. In this case, the nature of the violation is the obligation of the controller to provide data subjects with the information necessary to ensure that their data are processed in a fair and transparent manner, taking into account the specific circumstances and the context in which the personal data are processed.¹⁵ For the second violation, i.e. limiting the right of access, just like the right to receive understandable and easily accessible information, it is necessary to enable data subjects to exercise their other rights under the

¹⁵ Recital 60 to the GDPR.



Date
26 November 2024

Our reference
[Confidential]

GDPR. For that reason alone, providing transparent information within the meaning of Article 12, first paragraph, GDPR, is very important. If the rights of data subjects are not complied with, this affects the right that data subjects have to respect of privacy and the protection of their personal data.

50. For the assessment of the gravity of the violations, the number of customers of Netflix that may be affected by these violations is taken into account. At the end of 2022, Netflix had around 231 million paying customers worldwide, a substantial part of which in the European Union. This means that the processing of personal data has a broad scope and potentially affects a large number of data subjects. Although Netflix provides relevant information in its privacy statement about the collection of personal data from data subjects, the purposes of this processing and the legal bases on which Netflix relies as well as information about 'recipients of personal data', 'retention periods' and 'international transfers', the Dutch DPA is of the opinion that the information provided is not (or has not been) specific enough. As a result, data subjects were hindered in exercising control over their personal data. On request, Netflix has indicated that it annually receives around one million questions through its 'help center', that the major part of these questions are technical, and that only a very small part concerns questions about (access to) personal data. In the opinion of the Dutch DPA, the circumstance that not all customers, but only a relatively small number of customers, had questions or complaints about the right of access limits the gravity of the infringement to some extent.
51. As for the duration of the violations, it has been established that these took place during the period from 25 May 2018 up to and including 19 November 2020 and 30 July 2020 respectively. This is a considerable period, and the Dutch DPA also takes into account the circumstance that the investigation took a long time. Several times during this period, Netflix declared itself willing to adjust its privacy statement to recommendations from the Dutch DPA. After the investigation report was sent to Netflix, Netflix adjusted its privacy statement several times on its own initiative, with the aim of specifying the information and thus removing the shortcomings identified by the Dutch DPA. When determining the amount of the fine, the Dutch DPA will take into account the circumstance that the handling of the case by the Dutch DPA took a long time (investigation stage and enforcement stage) and that the Dutch DPA did not respond to Netflix's willingness to adjust its privacy statement.
52. To determine the gravity of the infringement, an assessment must also be made of whether the infringement was intentional or negligent in nature. This is because the gravity of the infringement carries more weight if the controller has consciously committed a violation. If the infringement is the result of negligent behaviour, the gravity of the infringement will carry less weight. As regards the gravity of the infringement, the Dutch DPA takes into account the circumstance that Netflix has modelled its privacy statement on a TV UI that undoubtedly has limited functionalities. The information to be provided is visualised in the form of plain text, and the option to use links or 'side bars' to subpages was limited, in any case at the relevant time. Besides, operating the TV UI with a remote control has limitations compared to other devices such as a computer, tablet or smartphone. The Dutch DPA also takes into account the circumstance that Netflix wanted to guard the uniformity of its privacy statement by not making the contents of its privacy statement dependent on the device through which Netflix's services are used.



Date
26 November 2024

Our reference
[Confidential]

Taking into account these circumstances, the Dutch DPA establishes that Netflix has failed to provide certain information in full or as the case may be in a well-organised manner. In this case, Netflix should have reviewed its privacy statement more often and with a more critical eye, which should have led to adjustment of that statement. By failing to do so, Netflix has provided insufficient information in its privacy statement about 1) legal bases for and purposes of personal data processing; 2) recipients of personal data, 3) retention periods, and 4) international transfers. As a result, Netflix has been negligent in its actions to comply with the GDPR.

53. Furthermore, the categories of personal data to which the infringement relates are the final element for the assessment of the gravity of the infringement. In this case, there is no processing of special categories of personal data within the meaning of Articles 9 and 10 of the GDPR.
54. The Dutch DPA is of the opinion that, taking into account the aforementioned circumstances, in this case the gravity of the infringement should be qualified at a low level, because it cannot be said that Netflix has not been compliant at all with regard to the transparency obligations referred to here.

Re iii) turnover of the undertaking

55. A fair starting amount of the fine must be related to the size of the undertaking. The size of the undertaking is determined on the basis of the turnover. The starting amount for a smaller undertaking is lower, and the amount increases as the size of the undertaking is larger. If an undertaking has a turnover of more than €500 million, the amount of the fine is set at a percentage of the annual turnover of that undertaking.¹⁶ As a result, the size and turnover of the undertaking have already been factored into the amount of the fine, so the starting amount does not require adjustment on that ground.
56. To determine Netflix's turnover, Netflix must in that context be regarded as an undertaking in accordance with Articles 101 and 102, Treaty on the Functioning of the European Union (TFEU). Netflix is a full subsidiary of Netflix Inc., which has its main establishment in Los Gatos, California (United States). According to case law of the CJEU¹⁷, the turnover of the entire group must be used for determining the upper limit of the fine.
57. To determine the turnover, data from the financial year preceding the time of imposing a fine are used. In this case, these are the data on the 2023 financial year.

¹⁶ From an annual turnover of €500 million, 4% of the annual turnover exceeds € 20 million, so this percentage will have to be considered as the maximum fine (Article 83, fifth paragraph, opening words, of the GDPR).

¹⁷ Groupe Gascogne SA/European Commission (Case C-58/12P, ruling of 26 November 2013), ECLI:EU:C:2013:770, pars. 52-57.



Date
26 November 2024

Our reference
[Confidential]

58. Netflix Inc.'s consolidated annual report¹⁸ for 2023 shows that the group had a turnover of €30,733 billion (\$33,723 billion) in that year.¹⁹ It follows from Article 83, fifth paragraph, GDPR, that in the case of a violation of Articles 12 up to and including 22, GDPR, an administrative fine of no more than €20 million or in the case of an undertaking, 4% of the annual turnover, if that amount is higher, may be imposed. This means that the maximum fine to be imposed is €1,229 billion.

6.3.3. Step 3: Assessment of other relevant circumstances

59. According to the Guidelines on the calculation of administrative fines under the GDPR, it must then be assessed if a reason is found in the circumstances of the case to set the amount of the fine higher or lower than the starting amount as determined above. The circumstances to be taken into account can be found in Article 83, second paragraph, opening words and points a through k, GDPR. The circumstances specified in that provision must each be assessed once only. In the previous step – insofar as applicable – the nature, gravity and duration of the violation (part a), the intentional or negligent nature of the infringement (part b) and the categories of personal data (part g) have already been taken into account. This means that parts c through f and h through k must still be assessed.

60. In this case, the Dutch DPA takes into consideration that Netflix has responded in time to the requests for access, by providing collected personal data as well as data about the viewing behaviour, the search history, IP addresses, payments, devices, and interaction with Netflix, among other things. Together with the aforementioned data, Netflix also provided a copy of its privacy statement. After receiving these data, NOYB submitted complaints to the *Datenschutzbehörde* on behalf of data subjects, while Netflix assumed that it had handled the requests of data subjects to their satisfaction. Besides, Netflix ended the violation with respect to 'recipients of personal data' shortly after receiving the investigation report. In doing so, Netflix did not wait for the decision of the Dutch DPA, but expeditiously supplemented the available information and provided it in several languages to the users of its service. The aforementioned circumstances, including the long duration of the handling of this case by the Dutch DPA and the Dutch DPA's failure to reply to Netflix's willingness to adjust its privacy statement, are a reason for the Dutch DPA to reduce the amount of the fine to be determined hereinafter for reasons of proportionality (par. 97 Guidelines on the calculation of administrative fines).

6.3.4. Step 4: Relevant maximum amounts

61. Given Netflix's turnover, a maximum amount of the fine of €1,229 billion or 4% of the annual turnover will apply for the identified violations. It was considered above that in this case, the gravity of the violation must be qualified at a low level. According to the Guidelines, the starting amount for violations with a low level of gravity must be determined at a point between 0 and 10% of the maximum amount of the fine. This

¹⁸ Netflix Inc. 2023 consolidated annual report, p. 39.

¹⁹ The exchange rate determined by the ECB on the day of this decision is €0.9104 per US dollar (cf. <https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-usd.en.html>).



Date
26 November 2024

Our reference
[Confidential]

means that the bandwidth of the fine to be imposed lies between 0% and 10% of € 1,229 billion. This corresponds with an amount between €0 and €122.9 million. Taking into account all relevant facts and circumstances mentioned above, the Dutch DPA sets the amount of the fine at €2.5 million per violation. Since two violations have been identified, the starting amount will be €5 million. This amount is significantly below the maximum amount of the fine of 4 % of Netflix's worldwide annual turnover.

6.3.5. Assessment of the requirements of effectiveness, proportionality and dissuasion

62. Finally, it must be assessed whether the fine is effective, proportionate and dissuasive. It follows from Article 49, third paragraph, of the Charter of Fundamental Rights of the EU and Articles 3:4 and 5:46, second paragraph, Dutch General Administrative Law Act (*Algemene wet bestuursrecht*, Awb) that, given the circumstances of the case, the administrative fine may not lead to a disproportionate outcome.
63. As described in the Guidelines, imposing a fine may be regarded as effective if the fine achieves the aim for which it was imposed. That aim may be, on the one hand, punishing unlawful acts and on the other hand, promoting compliance with the applicable regulations. In view of the nature, gravity and duration of the infringement, as well as the other factors from Article 83, second paragraph, GDPR, as assessed above and taking into account the mitigating circumstances specified above in paragraph 6.3.3, the Dutch DPA is of the opinion that imposing an administrative fine under these circumstances achieves both aims and is, therefore, effective and dissuasive. The Dutch DPA also regards the amount of the administrative fine, which was partly determined on the basis of Netflix's turnover, as effective and dissuasive.
64. In view of the gravity of the violations and the size of the undertaking, the Dutch DPA regards a fine of €4,750,000 as proportionate. In the opinion of the Dutch DPA, it has not become evident that there are any special circumstances that would make the fine disproportionate.

7. Desicion

65. For violation of Article 5, first paragraph, point a, in conjunction with Article 12, first paragraph, GDPR, and Article 13, first paragraph, points c, e and f, and second paragraph, point a, GDPR, and Article 5, first paragraph, point a, in conjunction with Article 12, first paragraph, GDPR, and Article 15, first paragraph, points a, c and d, and second paragraph, GDPR, respectively, the Dutch DPA imposes an administrative fine of **€4,750,000** (in words: four million seven hundred fifty thousand euros) on Netflix.

Yours faithfully,
Dutch Data Protection Authority

A. Wolfsen LLM
chairman



Date
26 November 2024

Our reference
[Confidential]

Legal remedies clause

If you do not agree with this decision, you can submit a digital or paper notice of objection to the Dutch Data Protection Authority within six weeks after the date of sending of the decision. Pursuant to Article 38 of the GDPR Implementation Act, submitting a notice of objection does not suspend the effect of the decision establishing the administrative fine. The Dutch DPA will only proceed to collection after the decision has become final and conclusive. For submitting a digital notice of objection, see www.autoriteitpersoonsgegevens.nl, under the heading Objection to a decision, at the bottom of the page under the heading Contact. The address for submission on paper is: Autoriteit Persoonsgegevens, postbus 93374, 2509 AJ Den Haag. State 'Awb-bezwaar' on the envelope and put 'bezwaarschrift' in the title of your letter. Include at least the following in your notice of objection:

- your name and address;
- the date of your notice of objection;
- the reference stated in this letter (case number), or add a copy of this decision;
- the reason(s) why you disagree with this decision;
- your signature.



Date
26 November 2024

Our reference
[Confidential]

Appendix: Legal framework

Dutch General Administrative Law Act

Article 4:7

1. Before an administrative authority whole or partially rejects an application for giving a decision, it will give the applicant the opportunity to express its opinion if:
 - a) the rejection would be based on facts and interest that concern the applicant; and
 - b) those data deviate from data provided by the applicant themselves in the matter.

[...]

Article 5:50

1. If the infringer is given the opportunity to express their opinion on the intention to impose an administrative fine,
 - a) the report will be sent or handed over to the infringer together with the invitation for this purpose;
 - b) the administrative authority arranges for assistance by an interpreter, if it turns out that the infringer's defence reasonably requires such assistance.
2. If after the infringer has expressed their opinion, the administrative authority decides that:
 - a) no administrative fine will be imposed for the violation, or
 - b) the violation will be submitted to the public prosecutor, this will be communicated to the infringer in writing.

General Data Protection Regulation

Article 4

Definitions

For the purposes of this Regulation:

- 1) 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in



Date
26 November 2024

Our reference
[Confidential]

particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological,

genetic, mental, economic, cultural or social identity of that natural person;

[...]

7) 'controller' means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law;

[...]

23) 'cross-border processing' means either:

- a) processing of personal data which takes place in the context of the activities of establishments in more than one Member State of a controller or processor in the Union where the controller or processor is established in more than one Member State; or
- b) processing of personal data which takes place in the context of the activities of a single establishment of a controller or processor in the Union but which substantially affects or is likely to substantially affect data subjects in more than one Member State.

[...]

Article 5

1. Personal data shall be:

- a) processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency');

[...]

Article 12

Transparent information, communication and modalities for the exercise of the rights of the data subject

1. The controller shall take appropriate measures to provide any information referred to in Articles 13 and 14 and any communication under Articles 15 to 22 and 34 relating to processing to the data subject in a



Date
26 November 2024

Our reference
[Confidential]

concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child. The information shall be provided in writing, or by other means, including, where appropriate, by electronic means. When requested by the data subject, the information may be provided orally, provided that the identity of the data subject is proven by other means.

[...]

Article 13

Information and access to personal data

1. Where personal data relating to a data subject are collected from the data subject, the controller shall, at the time when personal data are obtained, provide the data subject with all of the following information:

- a) the identity and the contact details of the controller and, where applicable, of the controller's representative;
- b) the contact details of the data protection officer, where applicable;
- c) the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;
- d) where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller or by a third party;
- e) the recipients or categories of recipients of the personal data, if any;
- f) where applicable, the fact that the controller intends to transfer personal data to a third country or international organisation and the existence or absence of an adequacy decision by the Commission, or in the case of transfers referred to in Article 46 or 47, or the second subparagraph of Article 49(1), reference to the appropriate or suitable safeguards and the means by which to obtain a copy of them or where they have been made available.

2. In addition to the information referred to in paragraph 1, the controller shall, at the time when personal data are obtained, provide the data subject with the following further information necessary to ensure fair and transparent processing:

- a) the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period;

[...]

Article 15

Right of access by the data subject



Date
26 November 2024

Our reference
[Confidential]

1. The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information:

- a) the purposes of the processing;
- b) the categories of personal data concerned;
- c) the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations;
- d) where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;
- e) the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing;
- f) the right to lodge a complaint with a supervisory authority;
- g) where the personal data are not collected from the data subject, any available information as to their source;
- h) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

2. Where personal data are transferred to a third country or to an international organisation, the data subject shall have the right to be informed of the appropriate safeguards pursuant to Article 46 relating to the transfer.

3. The controller shall provide a copy of the personal data undergoing processing. For any further copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.

4. The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.

[...]

Article 23

Restrictions

1. Union or Member State law to which the data controller or processor is subject may restrict by way of a legislative measure the scope of the obligations and rights provided for in Articles 12 to 22 and Article 34, as well as Article 5 in so far as its provisions correspond to the rights and obligations provided for in



Date
26 November 2024

Our reference
[Confidential]

Articles 12 to 22, when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard:

- a) national security;
- b) defence;
- c) public security;
- d) the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security;
- e) other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation matters, public health and social security;
- f) the protection of judicial independence and judicial proceedings;
- g) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;
- h) a monitoring, inspection or regulatory function connected, even occasionally, to the exercise of official authority in the cases referred to in points (a) to (e) and (g);
- i) the protection of the data subject or the rights and freedoms of others;
- j) the enforcement of civil law claims.

2. In particular, any legislative measure referred to in paragraph 1 shall contain specific provisions at least, where relevant, as to:

- a) the purposes of the processing or categories of processing;
- b) the categories of personal data;
- c) the scope of the restrictions introduced;
- d) the safeguards to prevent abuse or unlawful access or transfer;
- e) the specification of the controller or categories of controllers;
- f) the storage periods and the applicable safeguards taking into account the nature, scope and purposes of the processing or categories of processing;
- g) the risks to the rights and freedoms of data subjects; and
- h) the right of data subjects to be informed about the restriction, unless that may be prejudicial to the purpose of the restriction.

[...]

Article 56

Competence of the lead supervisory authority



Date
26 November 2024

Our reference
[Confidential]

1. Without prejudice to Article 55, the supervisory authority of the main establishment or of the single establishment of the controller or processor shall be competent to act as lead supervisory authority for the cross-border processing carried out by that controller or processor in accordance with the procedure provided in Article 60.

[...]

Article 58

Powers

2. Each supervisory authority shall have all of the following corrective powers:

- i) to impose an administrative fine pursuant to Article 83, in addition to, or instead of measures referred to in this paragraph, depending on the circumstances of each individual case;

[...]

Article 83

General conditions for imposing administrative fines

[...]

5. Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines up to 20 000 000 EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher:

[...]

- b) the data subjects' rights pursuant to Articles 12 to 22;
- c) the transfers of personal data to a recipient in a third country or an international organisation pursuant to Articles 44 to 49;

[...]

General Data Protection Regulation Implementation Act

Article 14



Date

26 November 2024

Our reference

[Confidential]

Tasks and powers of the Dutch DPA

[...]

3. In the case of violation of the provisions of Article 84, paragraph 4, 5, or 6 of the Regulation, the Dutch Data Protection Authority can impose an administrative fine in an amount not exceeding the maximum amounts listed in rotection Authority