



Year 2024

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Law of 5 June 2024, containing regulations on an administrative approach to online child pornography (Administrative Approach to Online Child Pornography Act)

I, Willem-Alexander, by the Grace of God, King of the Netherlands, Prince of Orange-Nassau, etc.

Greetings to all who shall see or hear these presents! Be it known: Whereas We have considered that it is desirable to adopt legislation to combat the storage and transmission of online child pornography; We therefore, having heard the Advisory Division of the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

Subsection 1. Preliminary provisions

Article 1. Definitions

The following definitions apply in this Act and the provisions pursuant to it:

- *provider of a communication service*: the provider of a communication service as referred to in Article 138g of the Code of Criminal Procedure;
- *hosting service provider*: the provider of a communication service consisting in the storage of data originating from another person;
- *Authority*: the Authority referred to in Article 2;
- *automated work*: an automated work as referred to in Article 80sexies of the Criminal Code;
- *child pornographic material*: images as referred to in Article 240b of the Criminal Code;
- *making it inaccessible*: taking measures to prevent access to online child pornography material and to prevent the further dissemination of such material, or removing the material from the automated work, while retaining the data for the purposes of criminal proceedings and administrative proceedings;
- *Our Minister*: Our Minister for Justice and Security.

Subsection 2. The Authority for Online Terrorist and Child Pornographic Material

Article 2. The Authority

1. The Authority, as referred to in Article 2(1) of the Implementing Act for the Regulation on Terrorist Content Online, is also responsible for:
 - a. enforcing the disabling of access to online child pornography material; and
 - b. investigating and providing information on the presence of online child pornography material in order to limit its dissemination to the public, where possible in collaboration with private and public parties.
2. The members of the Authority and the officials designated by decision of the Authority shall be responsible for monitoring compliance with the provisions of or pursuant to this Act.

Article 3. Grounds for exclusion from criminal liability

Article 240b of the Criminal Code shall not apply to the Authority and persons working under the Authority, in so far as they perform acts in execution of the tasks and powers assigned to the Authority by this Act.

Article 4. Electronic communication

1. By way of derogation from Articles 2:14(1) and 2:15(1) of the General Administrative Law Act, in relations between the Authority and a hosting service provider, a message is sent exclusively by electronic means.
2. Rules on the manner in which electronic messaging occurs may be established by regulation of Our Minister.

Article 5. Matching

1. The Authority shall consult with the police and the public prosecution service on the exercise of its tasks and powers.
2. The Authority may provide personal data or information obtained in carrying out the tasks assigned to it under this Act to the police to the extent that such personal data or information is necessary for the performance of its statutory task, as referred to in Article 3 of the Police Act 2012.

Subsection 3. Measures and sanctions

Article 6. Order

1. The Authority may order a hosting service provider that has stored online child pornography material to take all reasonable steps to disable access to such material.
2. Where the order cannot be addressed to a hosting service provider, it may be addressed to a communication service provider.
3. The provider to whom the order is addressed shall act in accordance with that order.
4. The order shall be in writing and shall state:
 - a. the facts and circumstances from which, in the opinion of the Authority, the existence of online child pornographic material is apparent;
 - b. what data should be rendered inaccessible;
 - c. the period within which this must be done, provided that this period does not exceed 12 hours.

Article 7. Burden under penalty payments

The Authority shall have the power to impose a penalty payment order to enforce the obligation laid down in Article 6(3).

Article 8. Administrative fine

1. The Authority shall have the power to impose an administrative fine in the event of infringement of Article 6(3). The administrative fine to be imposed shall not exceed the amount fixed for the second category referred to in Article 23(4) of the Criminal Code.

2. If the infringement consists of a systematic or persistent infringement of Article 6(3), the administrative fine shall not exceed the amount fixed for the sixth category referred to in Article 23(4) of the Criminal Code or, if that category of fine does not permit appropriate punishment, shall not exceed 10 % of the turnover of the undertaking, or, if the infringement is committed by an association of undertakings, of the combined turnover of the undertakings forming part of the association in the business year preceding the decision imposing the administrative fine.

Article 9. Publication

1. The Authority may publish a decision imposing an order subject to a periodic penalty payment as referred to in Article 7 or an administrative fine as referred to in Article 8(1).

2. Article 5.1 of the Open Government Act applies mutatis mutandis to the disclosure.

3. Publication shall not take place until two weeks have elapsed after the date on which the decision was made public.

4. If an interim injunction as referred to in Article 8:81 of the General Administrative Law Act is requested, disclosure shall be suspended until the court hearing the application for interim measures has ruled or the application has been withdrawn.

5. The publication shall state whether an appeal has been lodged against the decision imposing a periodic penalty payment or an administrative fine, or whether there is an option to do so.

6. Detailed rules shall be laid down by general administrative regulation with regard to the information to be disclosed, including the manner in which the disclosure takes place and the possible reaction of the addressee in relation to the disclosure of his data.

Subsection 4. Personal data

Article 10. Protected personal data

1. In view of Article 9, introductory sentence and paragraph 2(g), of the General Data Protection Regulation, the prohibition on processing special categories of personal data, as referred to in Article 1 of the General Data Protection Regulation Implementing Act, shall not apply if the processing is carried out by the Authority to the extent that the processing of these data is necessary for the exercise of its powers under this Act.

2. Pursuant to Article 10 of the General Data Protection Regulation, the Authority may process personal data of a criminal nature, as referred to in Article 1 of the Implementing Act on the General Data Protection Regulation, to the extent that the processing is necessary for the exercise of its powers under this law.

Article 11. Rights of data subjects

1. The obligations and rights referred to in Article 23(1) of the General Data Protection Regulation may be limited if this is necessary and proportionate to safeguard an interest referred to in Article 23(1) (a), (c), (d) or (i) of the General Data Protection Regulation.

2. If the Authority makes use of the power referred to in paragraph 1, it shall inform the person concerned whose rights are being restricted of this in writing, together with a substantiated justification.

3. By way of derogation from paragraph 2, no communication shall be made to the data subject if this undermines the purpose of the restriction.

Article 12. Possession of child pornography

By general administrative order, further rules are laid down with regard to the retention of child pornography material and the associated personal data by the Authority, and rules on the manner in which such material may be used for the purposes of criminal or administrative proceedings.

Subsection 5. Final Provisions

Article 13. Ground for exclusion from prosecution

In Article 54a of the Criminal Code, after 'or a decision as referred to in Article 3(1) of Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on countering the dissemination of terrorist content online (OJEU 2021, L 172)', insert: or an order as referred to in Article 6(1) of the Administrative Approach to Online Child Pornography Act.

Article 14. Concurrence with the Sexual Offences Act

If the proposal for a law amending the Criminal Code and other laws in connection with the modernisation of the criminalisation of various forms of sexual misconduct (Sexual Offences Act) submitted by Royal Message of 10 October 2022 (36 222) has been or will be enacted and Article I of that Act:

a. enters into force or has entered into force before this Act, this Act shall be amended as follows:

1. In Article 1, in alphabetical order, '*child pornographic material: images as referred to in Article 240b of the Criminal Code;*' shall be replaced by '*child pornographic material: visual representations as referred to in Article 252 of the Criminal Code;*'.

2. In Article 3, 'Article 240b of the Criminal Code' is replaced by 'Article 252 of the Criminal Code'.

3. Article 13 now reads as follows:

Article 13. Amendment to the Criminal Code

The Criminal Code is amended as follows:

1. In Article 54a, after 'or a decision as referred to in Article 3(1) of Regulation (EU) 2021/784 of the European Parliament and of the

Council of 29 April 2021 on addressing the dissemination of terrorist content online (OJ 2021 L 172)', the words 'or an order as referred to in Article 6(1) of the Administrative Approach to Online Child Pornography Act' are inserted.

2. In Article 252, 'a child who' is replaced by 'a person who'.

3. In Article 253, 'a child' is replaced by 'a person'.

4. An article is inserted after Article 253, reading as follows:

Article 253a

A person who distributes, offers, openly exhibits, manufactures, imports, exports, acquires or possesses an object with an external appearance of a child or a part of the body of a child below the age of 16 years that is intended for carrying out sexual acts shall be punished by a term of imprisonment of up to 4 years or a fifth-category fine.

5. In Article 254(1)(c), '253' is replaced with '253a'.

b. shall enter into force later than this Act, that Act shall be amended as follows:

1. In Article I, point K, in Article 252, 'a child who' is replaced by 'a person who'.

2. In Article 253, 'a child' is replaced by 'a person'.

3. An article is inserted after Article XV, reading as follows:

ARTICLE XVA

The Administrative Approach to Online Child Pornography Act is amended as follows:

1. In Article 1, in alphabetical order, '*child pornographic material: images as referred to in Article 240b of the Criminal Code;*' shall be replaced by '*child pornographic material: visual representations as referred to in Article 252 of the Criminal Code;*'.

2. In Article 3, 'Article 240b of the Criminal Code' is replaced by 'Article 252 of the Criminal Code'.

Article 15. Amendment of the Implementing Act on the TOI Regulation

Article 19 of the Implementing Act for the Regulation on Terrorist Content Online is repealed.

Article 16. Concurrence provision for the Modernisation of Electronic Administrative Traffic Act

If the proposal for a law amending the General Administrative Law Act in connection with the revision of Section 2.3 of that Act (Parliamentary Document No 35261), submitted by Royal Message of 18 July 2019, has been or will be made law and Article I(D) of that Act enters into force earlier than Article 4 of this Act, Article 4 of this

Act shall replace 'Articles 2:14(1) and 2:15(1) of the General Administrative Law Act' with 'Article 2:8 of the General Administrative Law Act'.

Article 17. Entry into force

This Act shall come into force at a time to be decided by Royal Decree, which may differ for the various articles or subparagraphs thereof.

Article 18. Title of citation

This Act shall be cited as: Administrative Approach to Online Child Pornography Act.

We hereby order that this Act be published in the Bulletin of Acts and Decrees and that all Ministries, authorities, commissions and officials concerned shall ensure its proper implementation.

Parliamentary Paper
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Issued at the Hague, 5 June 2024

Willem-Alexander

The Minister for Justice and Security,
D. Yeşilgöz-Zegerius

The State Secretary for Kingdom Relations and Digitalisation,
A.C. van Huffelen

Issued on the *fourteenth* of June 2024

The Minister for Justice and Security,
D. Yeşilgöz-Zegerius