

STICHTING DATA BESCHERMING NEDERLAND

CLAIM CODE COMPLIANCE OVERVIEW

August 2024

The foundation Stichting Data Bescherming Nederland (**'SDBN'**) was established in December 2021 and is a non-profit interest organization within the meaning of article 3:305a Dutch Civil Code (**'DCC'**). The foundation has a management board (**'MB'**) consisting of three members and a supervisory board (**'SB'**), also consisting of three members.

The foundation fully complies with the Claim Code, lastly amended as of March 2019 (**'Claim Code'**). The Claim Code is a private initiative comprising seven principles (**'Principles'**). These are viewed as guidelines for the way in which non-profit interest organizations should represent collective interests. The Principles contain a set of standards and good practices for the founders, directors, supervisory board members, consultants, and advisors engaged by the interest organization. Adhering to these Principles ensures that the foundation continues to act in the interest of its constituency. Foundations can deviate from the Principles if that is appropriate in view of the matter at hand, but they should explain why (comply or explain principle).

This claim code compliance overview is a document as set out in clause 6.4 of the foundation's articles (**'Articles'**) and elaboration 1 of Principle I of the Claim Code and will be published on the foundation's websites: www.stichtingdatabescherming.nl and www.jestaattekoop.nl.

Principle I - Compliance with the Claim Code

The governance structure of the foundation is in accordance with the principles of the Claim Code. Clause 3.3 of the articles of association of the foundation (**'Articles'**) determines that the MB and SB are responsible for the maintenance of the foundation's governance structure and for compliance with the Claim Code.

The compliance of the foundation to the Claim Code will be discussed annually within the (joint) MB and SB meeting. If the MB wishes to change the governance structure or to deviate from the Claim Code, it first needs to submit the proposed change for discussion to the SB as set out in clause 6.5 of the Articles.

In accordance with elaboration 1 of Principle I of the Claim Code, the foundation will annually publish an overview of the foundation's governance and its compliance to the Claim Code. This document is such an overview.

Principle II - Protecting collective interests on a non-profit basis

The foundation represents the interests of victims of data breaches and privacy violations, all in the broadest possible sense. The foundation is strictly a non-profit organisation. Also, its participants are not required to pay a registration fee.

The Articles provide important safeguards, preventing that any natural or legal person can –

directly or indirectly – dispose of the foundation’s assets within the meaning of elaboration 1, Principle II of the Claim Code (see also Clause 4.3 of the Articles). For example, Clause 7.1 of the Articles imposes a two-signature rule for external representation of the foundation by the MB. This is also reflected in the Dutch Commercial Register. The risk of improper use of the foundation’s funds is further excluded as the foundation does not generate revenues.

In the interest of financial transparency, the foundations annual accounts will be published on its website(s) each year.

In conformity with elaboration 3 of Principle II of the Claim Code, clause 17.3 of the Articles determines that the MB shall, subject to approval from the SB and with due observance of the interests of the participants of the foundation, determine the appropriation of the surplus after dissolution. The appropriation will have to approach the objectives of the foundation as closely as possible and shall be distributed to the participants or an organization within the meaning of Section 6.33 paragraph 1 section b of the Tax Act 2001.

Principle III - External funding

The foundation may, with due observance of the relevant Claim Code, attract third party financing to pursue its objectives (Clause 2.2.h of the Articles).

General

The MB, SB, and affiliates are fully independent of third parties who provide funding for the foundation’s initiatives. This is achieved, inter alia, through the funding agreements. The funding agreements contain various safeguards with regard to, among other things, (i) control and decision-making authority over the foundation's policy and activities, (ii) confidentiality of information belonging to the foundation, (iii) early termination of the funding agreement, and (iv) sharing (on a confidential basis) the funding terms with the court at its request.

Furthermore, the funding terms do not conflict with the collective interests of the foundation's supporters. The lawyers and other advisers are also completely independent of the funder.

Funding agreements are made in writing, and are governed by Dutch law.

X-Corp-case

For a case against inter alia X-Corp. regarding privacy violations in connection with the use of so-called software development kits (or SDKs), the foundation has attracted third party funding from Tilia Finance LP, an entity registered in the Cayman Islands and owned by funds that are ultimately managed and advised by Orchard Global Capital Group ('Orchard Global').

Orchard Global is a leading alternative asset manager established in 2005, and has been providing litigation funding across the UK, Europe, the US and Australia since 2015. Orchard Global is a renowned litigation funder with extensive experience of funding large and complex litigation, including class actions. Orchard Global is a member of the Association of Litigation Funders and adheres to the association's code of conduct. This code of conduct (which is also referenced in the Claim Code) has been drawn up to protect parties who use litigation financing.

The foundation considers the funding provided by Tilia Finance appropriate for the initiative. Orchard Global has agreed a budget with the foundation for carrying out the proceedings to first instance.

Funding is provided by the funder to the foundation on a so-called non-recourse basis: only in the case of success and in return for having incurred the costs and borne the risks of the litigation, is the funder entitled to a success fee. The success fee payable to the Funder is either a multiple of the Funder's capital committed to the case or a percentage of the proceeds awarded to the class, whichever is the greater. The multiple or percentage of damages increases with the time that the claim takes to resolve but shall not exceed 20% of the total proceeds.

The funding agreement contains a choice-of-forum clause in favour of a Dutch arbitral tribunal.

Amazon-case

For a case against *inter alia* Amazon.com, Inc. regarding the large-scale unlawful processing of personal data, the foundation has secured financing from Marsh Funding LLC, established in Delaware (United States), which is an affiliate of Longford Capital Management Group. Longford Capital is a US-based litigation funder, founded in 2013 and headquartered in Chicago, that provides financial resources to plaintiffs and lawyers involved in complex commercial disputes, intellectual property disputes, and international arbitration. Longford Capital is a member of the International Legal Finance Organisation. This international organization has developed best practices for third-party funders to protect the interests of parties seeking litigation funding.

The foundation considers the funding provided by Marsh Funding appropriate for the initiative. Marsh Funding has agreed a budget with the foundation to carry out the entire proceedings.

Funding is provided by the funder to the foundation on a so-called non-recourse basis: only in the case of success and in return for having incurred the costs and borne the risks of the litigation, is the funder entitled to a success fee. The amount of the success fee shall depend on the amount of the total compensation awarded to the total class, as well as the duration of the action.

- If the total compensation is less than EUR 50.000.000, the success fee shall be equal to the funder's invested capital *plus* 15% of the total compensation.
- If the total compensation exceeds EUR 50.000.000, the success fee, depending on timing of distribution, shall be the greater of (i) no more than 20% of the total compensation achieved for the class or (ii) 2x-5x (two- to five times) the funder's invested capital.

The funding agreement contains a dispute resolution clause pursuant to which disputes will be resolved through binding advice (*bindend advies*) by a Dutch expert, to be appointed by the parties or (if necessary) the Dutch Arbitration Institute (NAI).

Adobe-case

For a case against *inter alia* Adobe Inc., regarding the large-scale unlawful processing of personal data, the foundation has secured financing from Marsh Funding LLC (see above with respect to the Amazon case).

The foundation considers the funding provided by Marsh Funding appropriate for the initiative. Marsh Funding has agreed a budget with the foundation to carry out the entire proceedings.

Funding is provided by the funder to the foundation on a so-called non-recourse basis. The terms under which the funder may be eligible for a success fee are the same as those with respect to the Amazon case (see above).

The funding agreement contains a dispute resolution clause pursuant to which disputes will be resolved through binding advice (*bindend advies*) by a Dutch expert, to be appointed by the parties or (if necessary) the Dutch Arbitration Institute (NAI).

Principle IV - Independence and avoiding conflict of interests

In accordance with elaboration 1 of Principle IV of the Claim Code, any real or apparent conflict between the foundation's MB, SB, the external funder and the engaged advisors should be avoided (see for instance clause 5.3, 8.14, 10.3 and 12.12 of the Articles). If a(n) (in)direct conflict of interests should appear in the course of the litigation, that conflict will be disclosed and the relevant member of the SM/MB will not take part in the deliberations and decision-making process (clause 8.14 (MB) and 12.12 (SB) of the Articles).

In accordance with elaboration 3 of Principle IV of the Claim code, the Articles do not allow the MB to enter into agreements on behalf of the foundation with a legal entity or natural person or other entities, with which an MB or SB member is involved in their capacity of board member, founder, shareholder, supervisor, partner in a partnership or employee, whether through a relationship within the meaning of elaboration 1 of Principle IV of the Claim Code or not.

Principle V - Governance of the MB

In accordance with Principle V of the Claim Code, the MB currently consists of at least three natural persons. The current composition of the MB is as follows: Anouk Ruhaak (until recently a senior fellow with the Mozilla Foundation and before that a data governance consultant to the Open Data Institute, who chairs the MB), Arie van der Steen (treasurer of SDBN, accountant and former CFO of several private companies) and Niels Lemmers (Head of Public Affairs at Flow Traders, former legal counsel and head of public affairs at the Dutch Investor Association (VEB)). As of 11 September 2023, Xander van Dinten (owner of accountancy and tax advisory firm *Finserad*) has also been appointed to the MB. Mr. Van Dinten shall be succeeding Mr. Van der Steen as treasurer of SDBN. Mr. Van der Steen shall step down from the MB as per 15 October 2023.

With these members, the MB has sufficient legal and financial expertise (within the meaning of elaborations 3 and 4 of the Principle V of the Claim Code) to adequately pursue the statutory objectives of the foundation.

Important board resolutions, relating to *inter alia* (i) amending the Articles, (ii) (de)mergers of the foundation with (or into) other entities, (iii) dissolution of the foundation, (iv) initiating legal proceedings, (v) concluding settlements or submitting an application to the Amsterdam Court of

Appeal under the WCAM, and (vi) the appropriation of any surplus capital following dissolution, require approval from the SB (Clause 8.10 of the Articles). Additionally, the SB can decide that other (clearly specified) resolutions of the MB also require prior SB-approval (Clause 8.11 of the Articles). The joint meeting of the MB and the SB will convene at least once a year to discuss the (past and future) policy of the foundation MB with regard to the management of the foundation.

The foundation maintains publicly accessible websites where it will publish relevant information about its governance and any ongoing initiatives, in accordance with elaboration 8 of Principle V of the Claim Code. In addition to this, the foundation seeks to actively communicate with its base through (for example) social media and public education campaigns about privacy and data protection rights.

Principle VI - Remuneration of the members of the MB

The members of the MB receive a management fee for their services to the foundation. For meetings of the MB or joint meetings with the supervisory board, members of the MB are compensated a remuneration of EUR 1,000 (excluding VAT) per day attended.

For additional services related to the activities of the foundation, members of the MB are entitled to a service fee of EUR 200 (excluding VAT) per hour. This hourly rate is justified, considering the experience of the members of the MB.

The total annual compensation for the members of the MB shall depend on the number of initiatives/cases ('actions') for which the foundation has secured funding. For each separately funded action, the maximum compensation shall not exceed the amount that has been budget for that action, and shall in any case be capped at EUR 17.500 (excluding VAT). For the chair of the MB, this cap is EUR 22.500 per year (excluding VAT).

The members of the MB are also entitled to compensation of reasonably incurred costs (e.g. out-of-pocket costs and travel expenses) in the performance of their services, provided that such costs are properly substantiated.

Principle VII - Governance of the SB

In conformity with Principle VII of the Claim Code, the SB currently consists of three natural persons: Ton Louwers (CFO of Allego, which operates the largest public EV charging network in Europe), Michael Silverleaf KC (a seasoned English Barrister with experience as an advocate and mediator in a wide range of technical and commercial fields) and Catherine Mulligan (a leading expert in computer and data sciences).

The members of the SB have sufficient legal and financial expertise and experience (in accordance with elaborations 4 and 5 of Principle VII of the Claim Code) to successfully pursue the objectives of the foundation.

The joint meeting of the MB and the SB will convene at least once a year to discuss the (current and future) policy of the MB with regard to the management of the foundation.

For their services, members of the SB are entitled to an annual remuneration. The amount of the remuneration shall depend on the number of initiatives/cases ('actions') for which the foundation has secured funding. In the event the foundation is handling one funded action, the remuneration shall be EUR 4.500 per year (excluding VAT). For the chair of the SB, the annual remuneration shall in that case be EUR 6.500 per year (excluding VAT).

For each additional separately funded action, members of the supervisory board shall receive additional remuneration of EUR 2.000 per year (excluding VAT). The maximum amount of remuneration for supervisory board members shall be capped at EUR 8.500 per year (excluding VAT). For the chair of the supervisory board, the cap shall be EUR 10.000 per year (excluding VAT).

The members of the SB are also entitled to compensation of reasonably incurred costs (e.g. out-of-pocket costs and travel expenses) in the performance of their services, provided that such costs are properly substantiated.