

Almost one year after the GDPR, where are we now?



CLINT
employment law

Littler



Before the GDPR: the great GDPR compliance panic



What is GDPR and how will it affect you?

The EU's General Data Protection Regulation comes into force this week... here's what it means

de Volkskrant

Columns & Opinie Video Wetenschap Mensen De Gids

ACHTERGROND PRIVACYWET

Nieuwe privacywet komt klanten ten goede, maar bedrijven krijgen er hoofdpijn van

rtlnieuws

Alles over de nieuwe privacywet (AVG)

Ondernemers, de nieuwe privacywet raakt

10 april 2018 17:40 Aangepast 10 mei 2018 15:50

BBC NEWS

GDPR: The great data privacy panic

19 May 2018

ADVOCATENBLAD

BEDRIJVEN IN PANIEK OVER EUROPESE PRIVACYWET

14 april 2018 10:57

The Telegraph

Technology Intelligence

What is GDPR compliance and will it affect you?

20-05-2018, 16:10 AANGEPAST 20-05-2018, 18:20 BINNENLAND, TECH

Spors
Tech
Entertainment
Uit
Overig
Video's
Podcasts
Regionaal

Waakhonden nog niet klaar voor privacywet
wil 100 man extra

Cambridge

GDPR deadline - how much do

Angst voor privacywet AVG
blijkt ongegrond

Krantenwet: Angst voor privacywet AVG
De introductie van de Europese privacywet
angewakkerd door een legerijde van
honderden nieuwblijvende AVG-consulants
angewakkerd door onervaren advocaten en
consulants

GDPR: 'Don't panic!' data watchdog tells

By Tom Esinger
Business reporter, BBC News

May 25 sees start of new con

'Veel bedrijven voldoen nog niet aan
nieuwe Europese privacywetgeving'

12 mei 2018 02:52
Laatste update: 12 mei 2018 07:37

Veel Nederlandse bedrijven voldoen minder dan twee weken v
deadline nog niet aan de nieuwe Europese privacyregels. Veela

GDPR: Are you ready for the EU's huge
data privacy shake-up?

By Chris Coleman
Legal correspondent, BBC News

20 April 2018

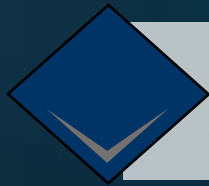
Acht EU-landen missen deadline nieuwe
privacywet

Nederlandse privacywaakhond
vrees geldtekort door nieuwe
wetgeving

De Autoriteit Persoonsgegevens vreest dat op te weinig geld heeft om alle
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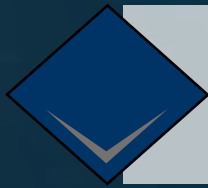
The first year of the GDPR can best be described as "quiet test run".

- What are the most striking fines in the Netherlands and Europe?
 - Portuguese hospital
 - Dutch Labour Office (UWV)
 - Dutch National Police
 - Uber, Uber, Uber...
 - Google
- What can we expect in 2019?
- Will Facebook, Google and Uber be tackled harder?
- On 14 March 2019, the Dutch DPA published an update to its fining policy rules.



Consent remains a processing ground causing troubles in employment relationships

- Consent should be: i) freely given, ii) specific, iii) informed and iv) unambiguous.
- The Article 29 Working Party (now European Data Protection Board/EDPB) considers consent given by employees cannot be considered given freely because of their “weak” position vis-à-vis their employer (*imbalance of power*).
- And what about the application process?
- Is consent never possible as processing ground in an employment relationship?



Tendency in case law to be more protective regarding privacy

- Investigations by third parties (with or without hidden cameras or recording) are less allowed by courts or result in severance payments:
 - ✓ The District Court of Rotterdam, 17 January 2017
 - ✓ The District Court of Limburg, 5 October 2018
 - ✓ The District Court of North Holland, 19 september 2018
- Use of detective agencies only allowed:
 - very special circumstances
 - serious suspicions against the employee
 - about serious offences
 - necessity for secret investigation





Hot topic: testing employees at work on alcohol, drugs or medicines is in principle not allowed

The Dutch DPA emphasized once again that testing employees at work on alcohol, drugs or medicines is in principle not allowed unless:

- there is a specific legal basis to carry out such tests, such as for pilots or train drivers (Alcohol, Drugs and Medicine Decree); and
- appropriate measures are taken to protect the fundamental rights of the employees and to minimize the privacy risks; and
- the strict conditions for the processing of special categories of personal data (ex. Article 9 GDPR) are met.



To Do's

Set up:

- ☐ Record of data processing activities
- ☐ Data deletion policy
- ☐ Data leak policy
- ☐ Process on data protection impact assessments (DPIA)

Review - and if necessary - amend:

- ☐ IT programs processing personal data (*privacy by design and default*)
- ☐ Data processing agreements with service providers
- ☐ Internal data policies and guidelines

👉 keep monitoring and updating. GDPR compliancy is an ongoing process



Questions

