

**MEMORANDUM OF UNDERSTANDING BETWEEN THE  
UNITED STATES FEDERAL TRADE COMMISSION AND THE DUTCH DATA  
PROTECTION AUTHORITY ON MUTUAL ASSISTANCE IN THE ENFORCEMENT  
OF LAWS PROTECTING PERSONAL INFORMATION IN THE PRIVATE SECTOR**

The United States Federal Trade Commission ("FTC") and the Dutch Data Protection Authority ("Autoriteit Persoonsgegevens" or "AP"), (collectively, "the Participants"),

RECOGNIZING the nature of the modern global economy, the increase in the flow of personal information across borders, the increasing complexity and pervasiveness of information technologies, and the resulting need for increased cross-border enforcement cooperation;

RECOGNIZING that the OECD Recommendation on Cross-Border Co-operation in the Enforcement of Laws Protecting Privacy, the Global Privacy Enforcement Network's Action Plan, resolutions of the International Conference of Data Protection and Privacy Commissioners, and the APEC Privacy Framework call for the development of cross-border information-sharing mechanisms and enforcement cooperation arrangements; and that such information sharing and enforcement cooperation are essential elements to ensure privacy and data protection compliance, serving an important public interest;

RECOGNIZING that the U.S. Federal Trade Commission Act, 15 U.S.C. § 41 et seq., as amended by the U.S. SAFE WEB Act, authorizes the FTC to share information with law enforcement authorities from other countries under appropriate circumstances;

RECOGNIZING that subsection 1 and 2 of Section 2:5 of the Dutch General Administrative Law Act (de Algemene wet bestuursrecht) provide that a Dutch public body may disclose confidential information to (a) person(s) or organization who is involved in the execution of the task of this Dutch public body if this is necessary to fulfill the supervisory task of the Dutch public body and the confidentiality of the information is maintained;

RECOGNIZING that the AP is the designated authority in the Netherlands for the purposes of the Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data (which was opened for signature on 28th January 1981) and is the supervisory authority in the Netherlands for the purposes of the General Data Protection Regulation (GDPR) on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The AP is also the supervisory authority in the Netherlands for the purpose of the Dutch General Data Protection Regulation Implementation Act (Uitvoeringswet Algemene verordening gegevensbescherming);

RECOGNIZING that the Participants each have functions and duties with respect to the protection of personal information in their respective countries;

RECOGNIZING that the Participants have worked together in connection with several international initiatives related to privacy;

RECOGNIZING that the Participants have cooperated in the context of several international networks, including the Global Privacy Enforcement Network, and the International Conference of Data Protection and Privacy Commissioners; and

RECOGNIZING that the Participants would not be able to provide assistance to the other if such assistance is prohibited by their respective national laws, such as privacy, data security, or confidentiality laws; or enforcement policies.

HAVE REACHED THE FOLLOWING UNDERSTANDING:

2.

- all materials related to each request, and
  - all information and material provided in response to each request, unless otherwise decided; and,
4. prior to requesting assistance, Participants should perform a preliminary inquiry to ensure that the request is consistent with the scope of this Memorandum.

C. Participants should use their best efforts to resolve any disagreements related to cooperation that may arise under this Memorandum through the contacts designated under Section III.A, and, failing resolution between the designated contacts in a reasonably timely manner, by discussion between appropriate senior officials designated by the Participants.

#### **IV. Limitations on Assistance**

A. The Requested Participant may exercise its discretion to decline the request for assistance, or limit or condition its cooperation, including where it is outside the scope of this Memorandum, or more generally, where it would be inconsistent with domestic laws, or important interests or priorities.

B. The Participants recognize that it is not feasible for a Participant to offer assistance to the other Participant for every Covered Privacy Violation. Accordingly, the Participants intend to use best efforts, as outlined in Section II, to seek and provide cooperation focusing on those Covered Privacy Violations most serious in nature, such as those that cause or are likely to cause damage or distress to a significant number of persons, and those otherwise causing substantial damage or distress, especially if this concerns both countries.

C. If the Requested Participant is unable to offer full assistance or declines assistance, it should explain the reasons why.

D. Participants intend, in so far as they are able and are allowed by their respective laws, to share confidential information pursuant to this Memorandum only to the extent that it is necessary to fulfill the purposes set forth in Section II.

#### **V. Confidentiality, Privacy, and Limitations on Use**

A. Subject to any restrictions imposed by their respective national laws, to the fullest extent possible, each Participant certifies the confidentiality of information to be shared under this Memorandum. The certification of confidentiality applies not only to the shared information, but also to the existence of an investigation to which the information relates. The Participants are to treat the shared information, the existence of the investigation to which the information relates, and any requests made pursuant to this Memorandum as confidential, and so far as they are able, not further disclose or use this information for purposes other than those for which it was originally shared, without the prior written consent of the Requested Participant.

B. Notwithstanding Section V.A., it is understood that:

1. A Participant may disclose information provided pursuant to this Memorandum in response to a formal request from a Participant country's legislative body or an order issued from a court with proper jurisdiction in an action commenced by the Participant or its government.

2. Material obtained in connection with the investigation or enforcement of criminal laws may be used for the purpose of investigation, prosecution, or prevention of violations of either Participant's country's criminal laws.

C. Each Participant is to use best efforts to safeguard the security of any information received under this Memorandum and respect any safeguards decided by the Participants. In the event of any access to, or disclosure of, the information not authorized by a Participant, the Participants are to take all reasonable steps to prevent a recurrence of the event and are to notify the other Participant of the occurrence.

D.

## **VII. Retention of Information**

A. If Participants wish to retain materials obtained from the other Participant under this Memorandum, the Participants understand they are not to retain such materials for longer than is reasonably required to fulfill the purpose for which they were shared or for longer than is required by the Requesting Participant's country's laws.

B. The Participants recognize that in order to fulfill the purpose for which the materials were shared, the Participants typically need to retain the shared materials until the conclusion of the pertinent investigation or related proceedings for which the materials were requested, including until a judgment has become irrevocable.

C. The Participants are to use best efforts to return any materials that are no longer required if, at the time they are shared, the Requested Participant makes a written request that such materials be returned. If no request for return of the materials is made, then the Requesting Participant may dispose of the materials using methods prescribed by the Requested Participant, or if no such methods have been prescribed, by other secure methods, as soon as practicable after the materials are no longer required.

## **VIII. Costs**

Unless otherwise decided by the Participants, the Requested Participant is expected

**X. Legal Effect**

Nothing in this Memorandum is intended to:

A. Create binding obligations, or affect existing obligations, under international or domestic law.

B. Prevent a Participant from seeking assistance from or providing assistance to the other Participant pursuant to other agreements, arrangements, or practices.

C. Affect any right of a Participant to seek information on a lawful basis from a Person located in the territory of the other Participant's country, or preclude any such Person from voluntarily providing legally obtained information to a Participant.

D. Create a commitment that conflicts with either Participant's national laws, court orders, or any applicable international legal instruments.

E. Create expectations of cooperation that would exceed a Participant's powers.

**Signed simultaneously in Washington D.C., United States and The Hague, the Netherlands on \_\_\_\_\_ in duplicate.**

Joseph J. Simons	Aleid Wolfsen
Chairman	Chairman
United States Federal Trade Commission	

