

Flemish Parliament Act on Electronic Administrative Communications

Chapter I. General provisions and definitions

Article 1. This Flemish Parliament Act covers a Community and regional matter.

Art. 2. Pursuant to this Flemish Parliament Act the following definitions shall apply:

- 1° electronic administrative communications: the electronic flow of data within and between public authorities;
- 2° authentic data source : an electronically stored collection of data which the Flemish Government recognises as being the most comprehensive, of a high quality and useful or necessary in the context of electronic administrative communications;
- 3° user: any natural or legal person, including companies, institutions, associations and any government entities that are in contact with the government via electronic administrative communications;
- 4° Privacy Act: The 8 December 1992 Act on the protection of privacy with regard to processing personal data and its implementing orders;
- 5° Commission for the Protection of Privacy : the Commission set up pursuant to Article 23 of the Privacy Act;
- 6° processing: any processing as referred to in Article 1, §2, of the Privacy Act;
- 7° notification : one or more procedures, as referred to in Article 1, §2, of the Privacy Act, referring to the provision of data through transmitting, disseminating and any other way of providing data in a systematic and organised way. Notifying people the data relates to, their legal representatives and those expressly authorised to process the data is not regarded as notification within the meaning of this Flemish Parliament Act;
- 8° Monitoring Commission: the Flemish Monitoring Commission for Electronic Administrative Communications, referred to in Article 10;
- 9° entities of the Flemish administration :
 - the Flemish departments and internally and externally autonomous agencies, referred to in Article 3, first and second sections, of the Framework Flemish Parliament Act on administrative policy dated 18 July 2003;

- the strategic advisory councils, referred to in Article 2, 1°, of the 18 July 2003 Flemish Parliament Act for the organisation of strategic advisory councils;
 - Flemish Radio and Television Broadcasting Company;
 - The administrative services of the Council for Community Education, referred to in Article 66 of the special Flemish Parliament Act of 14 July 1998 concerning Community education;
 - The Flemish Water Supply Company, referred to in Article 2 of the Flemish Parliament Act of 28 June 1983 setting up the Flemish Water Supply Company;
 - UZ Gent;
 - The VITO, referred to in Article 2 of the Flemish Parliament Act of 23 January 1991 concerning the Flemish Institute for Technological Research;
 - IWT-Vlaanderen, referred to in Article 2 of 23 January 1991 concerning the creation of an Institute for the Promotion of Innovation by Science and Technology in Flanders;
- 10° body: the body, referred to in Article 4, §1, of the Flemish Parliament Act of 26 March 2004 concerning open government;
- 11° external government: a government at international or federal level, another Community or another Region and the institutions or legal persons subordinate thereto, as well as legal persons governed by private laws who are responsible for tasks of general interest;
- 12° meta-data: documentation describing what the content of the authentic data source is and how often it is updated, and the technical means for approaching and accessing this source;
- 13° test data: a copy limited in scale of the authentic data source with technically the same characteristics as the authentic data source, but comprising anonymous, disidentified or fictitious data;
- 14° personal data : the personal data, referred to in Article 1 of the Privacy Act;
- 15° electronic forms : electronic documents and digital applications where information is provided online in pre-defined answer spaces and sent electronically with annexes, where appropriate, to the Flemish government via the proposed or recommended application in order to apply the legislation;
- 16° paper forms : paper documents where information is provided manually in pre-defined answer spaces and sent with annexes, where appropriate, to the Flemish government in order to apply the legislation;
- 17° customer forum: a forum comprising customers of a relevant authentic data source;
- 18° provincial and local authorities: a province, a municipality, a public centre for social welfare, an autonomous agency set up by them or an association they take part in pursuant to the Flemish Parliament Act of 6 July 2001 concerning inter-municipal cooperation or the Organic Act of 8 July 1976 concerning the public centres for social welfare or the administration of a recognised religion.

Chapter II. Basic principles of electronic administrative communications

Division I. Authentic data sources

Art. 3. Entities of the Flemish administration shall collect the data they need to develop the electronic administrative communications from authentic data sources.

Only if it is impossible for technical or legal reasons to collect data from an authentic data source, or no authentic data source is available, shall entities of the Flemish administration collect data from the user.

In accordance with the Flemish Parliament Act of 1 June 2001 granting the right to complain about administrative bodies, a user from whom an entity of the Flemish administration seeks data may lodge a complaint specifying that the required data should, in accordance with §1, be sought from an authentic data source, although a user may not refuse to provide the required data on the basis of this complaint. The right to make a complaint may be exercised as soon as the Flemish Government has specified the authentic data sources, pursuant to Article 4, §1, and §2.

Art. 4. §1. The Flemish Government shall specify the authentic data sources and decide, according to the procedure it establishes, which bodies are managing authentic data sources. These bodies shall be responsible for maintaining, providing, the security, access and use of the authentic data sources and data from this authentic data source in question and may seek data from the user towards this end.

In order to develop the electronic administrative communications, the Flemish Government may determine the circumstances and method for processing the data.

§2. The Flemish Government shall decide which authentic data sources being managed by an external government have to be consulted by entities of the Flemish administration so as to develop electronic administrative communications. The Flemish Government shall conclude appropriate agreements with the external governments so the data featured in the authentic data sources may be used.

§3. The Flemish Government may single out one or more entities of the Flemish administration to become involved in the notification of data from authentic data sources or ensure supportive user and access management.

Towards this end, this entity or entities may manage electronic repertories or reference repertories if need be or coordinate data. Where appropriate, they must ensure the authorisations for the notification of the data, referred to in Article 8, §1, are respected. The Flemish Government shall decide the rules

for making, maintaining, updating and discontinuing the aforementioned repertories.

§4. In the case of bodies managing authentic data sources pursuant to Article 4, §1, and the case of entities pursuant to Article 4, §3, the Flemish Government may create customer fora to offer advice to these bodies and entities so as to improve the electronic administrative communications.

Division II. MAGDA (Maximum Information Sharing Between Administrations) cooperative structure

Art. 5. A strategic consultation and cooperative structure shall be created to lend support to the bodies in enforcing this Flemish Parliament Act and developing and operating a structured communication and management system for maximum information sharing between administrations, hereinafter referred to as the MAGDA (Maximum Information Sharing Between Administrations) cooperative structure. The MAGDA shall be responsible for various items such as:

- 1° proceeding within the bodies to maximise the effectiveness of the process for preparing, using, exchanging and managing data;
- 2° adopting a structured approach for developing a Flemish authentic data sources system;
- 3° consultations about preparing and managing authentic data sources;
- 4° developing a meta-data exchange organisation;
- 5° promoting, lending support to and coordinating bodies' authentic data sources;
- 6° joint information gathering.

The MAGDA cooperative structure shall comprise representatives of the entities of the Flemish administration and of provincial and local authorities.

The Flemish Government shall establish the subsequent arrangements for the organisation, composition and tasks of the cooperative structure.

Division III. Rights and obligations

Art. 6. §1. The bodies shall in any case be required:

- 1° to process personal data pursuant to the Privacy Act;
- 2° for each new application of the electronic administrative communications, to incorporate suitable technical and organisational measures beforehand for compliance with the Privacy Act;
- 3° to ensure the quality and security of the data at all times and take any measures to guarantee problem-free storage of personal data;
- 4° to lend support to the Monitoring Commission in carrying out its tasks;

5° to supply the Monitoring Commission with information and provide for the inspection of any documentation and information processing systems any time this is requested.

§2. The electronic notification of data from authentic data sources, as referred to in Article 4, §1, to other bodies shall be undertaken free of charge.

The Flemish Government may determine rules for charging costs for the electronic notification of this data to third parties.

Should the recipient of the data discover that it is inaccurate or incomplete or incorrect, this must be reported at once to the body managing the relevant authentic data source. The Flemish Government may determine the rules governing this reporting process.

Art. 7. §1. The bodies managing authentic data sources pursuant to Article 4, §1, or the bodies, referred to in Article 4, §3, shall make the meta-data of the authentic data sources publicly accessible free of charge but without infringing the intellectual property rights and the confidentiality requirements related to these data sources, and without disclosing information that allows improper access or improper use of the data sources or jeopardises the integrity thereof.

They can make test data available pursuant to the Flemish Parliament Act of 27 April 2007 concerning the reuse of government information.

§2. The Flemish Government can prevent meta-data or test data being misused by issuing further provisions about the registration of the consultation of meta-data and the use of test data.

Chapter III. Protection of personal data and the Flemish Monitoring Commission for Electronic Administrative Communications

Division I. Protection of privacy

Art. 8. A body's electronic notification of personal data shall require an authorisation from the Monitoring Commission or a chamber of the Monitoring Commission as referred to in Article 10, §1, unless the electronic notification of the data is already covered by an authorisation from another sectoral committee, created within the Commission for the Protection of Privacy.

Prior to giving authorisation, the Monitoring Commission shall check to see if the electronic notification is consistent with the Privacy Act, this Flemish Parliament Act and its implementing measures as well as the regulatory provisions mindful of what the notification is required for. The Monitoring Commission's authorisation can determine the electronic notification procedure and the conditions for the electronic notification.

Art. 9. Any body managing an authentic data source featuring personal data, any body receiving or exchanging electronic personal data and any entity which, pursuant to Article 4, §3, is appointed and processes personal data, shall appoint a security consultant. The Flemish Government shall determine the tasks and the security consultants appointment procedure.

Division II. The Flemish Monitoring Commission for Electronic Administrative Communications

Art. 10. §1. An independent Flemish Monitoring Commission for Electronic Administrative Communications shall be set up within the Flemish Parliament which shall comprise six members and six alternates. Their term of office shall be five years and be renewable.

The Flemish Parliament can set up chambers for specific issues within the Monitoring Commission.

§2. Subsequent to consultations with the Commission for the Protection of Privacy, the Flemish Parliament shall appoint three members of the Monitoring Commission, including the president and alternates for each of them, from among the members or alternates of the Commission for the Protection of Privacy.

The other three members of the Monitoring Commission shall be a legal expert, a computer engineer and a person who can show professional experience in personal data management respectively. They shall be

appointed by the Flemish Parliament, which shall also designate an alternate for each one of them.

§3. The alternate shall replace the member for whom he/she is the alternate, when the person cannot take part in the Monitoring Commission decision making process owing to a conflict of interests or in anticipation of that person's replacement.

Should a member of the Monitoring Commission's term of office expire before the date decided upon, the Flemish Parliament shall provide for the replacement thereof within six months.

The new member shall complete the term of office of that member's predecessor.

§4. In order to be appointed a member or alternate and to be able to remain so the candidate has to meet the following conditions:

1° enjoy civil and political rights;

2° not be a Member of the European Parliament, the Senate, the House of Representatives, the Flemish Parliament or another Community or regional council;

3° not be under the authority of the Flemish Parliament or of the Flemish Government;

4° offer full guarantees as regards the independent exercise of the task.

§5. The Flemish Parliament shall regulate the procedure for the call or invitation for applications for an appointment as a member or alternate.

§6. The members of the Monitoring Commission shall be of equal value and have the same responsibilities. Within the limits of their responsibilities they shall not receive instructions from anyone. They shall not be dismissed for opinions they express or acts they perform as part of their task within the Monitoring Commission.

Art. 11. §1. In response to a request or at its own initiative, the Monitoring Commission shall deliver advisory opinions to the Flemish Parliament, the Flemish Government, the bodies and stakeholders about the protection of privacy pursuant to this Flemish Parliament Act and its implementing provisions.

In accordance with Article 8 the Monitoring Commission shall provide authorisations for the electronic notification of personal data within 60 days after an application and provided all the information required towards this end is notified to the Monitoring Commission. The authorisations the Monitoring Commission provides shall be open to public scrutiny.

The Monitoring Commission shall be required every year to provide the Flemish Parliament with a written report about how it has carried out its tasks during the previous year, including recommendations for the enforcement of this Flemish Parliament Act. The Flemish Parliament shall make the Monitoring Commission report public. The president of the Monitoring

Commission may, at his or her own request or otherwise, be heard by the Flemish Parliament at any time.

§2. The Monitoring Commission shall establish its rules of procedure and notify them to the Flemish Parliament for ratification. The rules of procedure shall expressly determine that in the case of a tied vote, the Monitoring Commission president's vote is decisive.

§3. The president of the Monitoring Commission shall promote and coordinate the Monitoring Commission's consultations and cooperation with the Commission for the Protection of Privacy. The president shall ensure the recommendations, advisory opinions and decisions of the Monitoring Commission and the draft decisions it is presented with are compatible with the Privacy Act.

The president may ask the Monitoring Commission to postpone an advisory opinion, recommendation or decision and first of all submit the matter to the Commission for the Protection of Privacy. The Monitoring Commission shall be obliged to do so on the basis of a simple request from an interested party. In this case, the Monitoring Commission's consideration of the matter shall be postponed and the matter shall be notified without delay to the Commission for the Protection of Privacy.

Should the Commission for the Protection of Privacy fail to deliver an advisory opinion within a period of 30 calendar days, starting from the date when the matter is received, the Monitoring Commission shall issue its advisory opinion or recommendation or take its decision without waiting for the advisory opinion of the Commission for the Protection of Privacy.

The Commission for the Protection of Privacy's viewpoint shall be expressly featured in the advisory opinion, recommendation or decision of the Monitoring Commission. Where appropriate, the Monitoring Commission shall provide an explicit and reasoned explanation as to why it does not at all or only partly endorse the Commission for the Protection of Privacy's viewpoint.

Art. 12. §1. The Monitoring Commission shall have a secretariat, whose establishment plan, statutes and recruitment process shall be determined by the Flemish Parliament, on the basis of a proposal by the Monitoring Commission. To a limited and suitably responsible extent, the establishment plan may provide the opportunity to appoint employees with a fixed-term employment contract.

The president of the Monitoring Commission shall oversee the secretariat.

§2. The alternate president and the permanent members or alternates shall be entitled to an attendance fee amounting to Euro 223.18 (index figure 1.2682). This amount shall be pegged to changes in the consumer price index. The president shall be entitled to one and a half times the attendance fee.

All members shall be entitled to compensation for travel and accommodation expenses pursuant to the provisions applicable to the staff of ministries.

§3. The Flemish Parliament shall approve the Monitoring Commission's budget and accounts every year on the basis of the president's proposal.

Chapter IV. Qualitative improvement and digitising forms

Art. 13. The Flemish Government may adjust Flemish Parliament Act provisions so as to abolish the requirement specified therein to use a specific form or to discontinue a specimen form and replace it with a list of the data that has to be provided to the competent authorities mindful of the application of the system in question.

Art. 14. The Flemish government may make electronic forms available for the application of the legislation for which it is competent.

The electronic forms shall be equated with paper forms featuring the same headings and shall be completed, validated and provided pursuant to the conditions laid down by the Flemish Government.

Chapter V. Amendment provisions

Division I. Amendments in the Flemish Parliament Act of 17 July 2000 establishing the Geographical Information System in Flanders

Art. 15. The following sentence shall be added to Article 12, §2, of the Flemish Parliament Act of 17 July 2000 establishing the Geographical Information System in Flanders:

“The GI Council shall be a customer forum for geographical data, as referred to in Article 4, §4, of the Flemish Parliament Act on Electronic Administrative Communications of (date)”.

Art. 16. In Article 14 of the same Flemish Parliament Act amended by the Flemish Parliament Acts of 16 April 2004 and 7 May 2004, §3 shall be replaced by what follows:

“§3. Subject to the maintenance of the provisions in the Flemish Parliament Act of 16 April 2004 establishing the Large-scale Reference File (LRF) the agency may, in the light of a proposal by the steering group, decide on compensation for providing services to participants and third parties and for keeping up to date and providing third parties with reference and theme-specific files. The electronic notification of data from reference and theme-specific files to the participants and the bodies, referred to in Article 2, 10°, of

the Flemish Parliament Act on Electronic Administrative Communications of (date) shall be free of charge.”

Art. 17. The following sentences shall be added to Article 19, §1 of the same Flemish Parliament Act, replaced by the Flemish Parliament Act of 16 April 2004:

“At the same time and on the basis of a proposal by the steering group, the Flemish Government shall designate the participant in *GIS Vlaanderen* who manages the reference file pursuant to Article 4, §1, of the Flemish Parliament Act on Electronic Administrative Communications of (date).

The reference files shall be authentic data sources as referred to in Article 4 of the aforementioned Flemish Parliament Act. On the basis of a proposal by the steering group, the Flemish Government may determine the conditions under which and the way in which the data of the reference files is processed.”

Art. 18. The following sentences shall be added to Article 19, §2, of the same Flemish Parliament Act, replaced by the Flemish Parliament Act of 16 April 2004:

“These theme-specific files shall be authentic data sources as referred to in Article 4 of the Flemish Parliament Act on Electronic Administrative Communications of (date). On the basis of a proposal by the steering group, the Flemish Government may determine the conditions under which and the way in which the data of the theme-specific files is processed.”

Art. 19. The following sentence shall be added to Article 25 of the same Flemish Parliament Act, amended by the Flemish Parliament Act of 7 May 2004:

“The agency shall be an entity as referred to in Article 4, §3, of the Flemish Parliament Act on Electronic Administrative Communications of (date).”

Division II. Amendment in the Flemish Parliament Act on Preventive Health Policy of 21 November 2003

Art. 20. In Article 32, §3, Article 33, §2, and Article 45, §1, first and second sections, of the Flemish Parliament Act on Preventive Health Policy of 21 November 2003 the words “Commission for the Protection of Privacy” shall be replaced by the words “a chamber of the Monitoring Commission as referred to in Article 10 of the Flemish Parliament Act on Electronic Administrative Communications of (date) which specifically ensures the protection of privacy with regard to the processing of personal data concerning health”.

Division III. Amendment in the 3 March 2004 Flemish Parliament Act concerning primary health care and cooperation between care providers

Art. 21. In Article 16, §3, and Article 17, §2, of the 3 March 2004 Flemish Parliament Act concerning primary health care and cooperation between care providers the words “Commission for the Protection of Privacy” shall be replaced by the words “a chamber of the Monitoring Commission as referred to in Article 10 of the Flemish Parliament Act on Electronic Administrative Communications of (date) which specifically ensures the protection of privacy with regard to the processing of personal data concerning health”.

Division IV. Amendments in the Flemish Parliament Act of 16 April 2004 creating the Large-scale Reference File (LRF).

Art. 22. The following sentence shall be added to Article 3, §2, second section, of the 16 April 2004 Flemish Parliament Act creating the Large-scale Reference File (LRF):

“The LRF council shall be a customer forum as referred to in Article 4, §4, of the Flemish Parliament Act on Electronic Administrative Communications of (date).”

Art. 23. The following sentences shall be added to Article 14 of the same Flemish Parliament Act, amended by the Flemish Parliament Act of 21 April 2006:

“The Agency shall be a body as referred to in Article 4, §1, of the Flemish Parliament Act on Electronic Administrative Communications of (date). The LRF shall be an authentic data source as referred to in Article 4 of the aforementioned Flemish Parliament Act.”

Division V. Amendment in Flemish Parliament Act of 7 May 2004 creating the externally autonomous agency “Agency for Geographical Information in Flanders” governed by public law

Art. 24. The following sentence shall be added to Article 5, 15°, of the 7 May 2004 Flemish Parliament Act creating the externally autonomous agency “Agency for Geographical Information in Flanders” governed by public law, replaced by the Flemish Parliament Act of 21 April 2006:

“The Agency shall be an entity as referred to in Article 4, §3, of the Flemish Parliament Act on Electronic Administrative Communications of (date).”

Division VI. Amendments in the Flemish Parliament Act on the health information system of 16 June 2006

Art. 25. Point 24° shall be added to Article 2 of the Flemish Parliament Act on the health information system of 16 June 2006, which shall read as follow:

“24° the chamber: a chamber of the Monitoring Commission as referred to in Article 10 of the Flemish Parliament Act on Electronic Administrative Communications of (date) which specifically ensures the protection of privacy with regard to the processing of personal data concerning health.”

Art. 26. In Article 20, second section, of the same Flemish Parliament Act the words “the Monitoring Commission referred to in Article 55” shall be replaced by the words “the chamber”.

Art. 27. In Article 23, §2, first section, Article 25, second section, Article 27, §2, second section, Article 28, second section, Article 31, second section, Article 38, §2 and §3, Article 39, 40, §3, Article 42, §2, 6°, Article 53, Article 54, Article 70, second section, Article 80, §1, and Article 82, 2° and 3°, of the same Flemish Parliament Act the words “Monitoring Commission” shall be invariably replaced by the word “chamber”.

Division VII. Amendment in the Flemish Parliament Act of 25 May 2007 harmonising the procedures for pre-emptive rights.

Art. 28. A fourth section shall be added to Article 3 of the 25 May 2007 Flemish Parliament Act harmonising the procedures for pre-emptive rights, which shall read as follows:

“The Agency for Geographical Information in Flanders shall be a body as referred to in Article 4, §1, of the Flemish Parliament Act on Electronic Administrative Communications of (date). The geographical theme-specific file ‘Flemish pre-emptive rights’ is an authentic data source as referred to in Article 4 of the aforementioned Flemish Parliament Act.”

Chapter VI. Final provisions

Art. 29. Article 83 of the Flemish Parliament Act on preventive health policy of 21 November 2003 shall be cancelled.

Art. 30. In Article 26 of the 3 March 2004 Flemish Parliament Act concerning primary health care and cooperation between care providers the first section shall be cancelled.

Art. 31. Chapter VI, comprising Articles 55 to 69, and Article 88 of the 16 June 2006 Flemish Parliament Act on the health information system, shall be cancelled.

Art. 32. The tasks of the Monitoring Commission or of one or more chambers of the Monitoring Commission may, pursuant to a cooperation agreement concluded between the federal administration, the Communities and the Regions, be transferred to a common sectoral Committee, as referred to in Article 31bis of the Privacy Act, created within the Commission for the Protection of Privacy.

The Flemish Government shall determine the time when the tasks and responsibilities of the Monitoring Commission or of one or more chambers of the Monitoring Commission shall be transferred to the common sectoral committee, referred to in the first section.

Art. 33. For each of the articles, the Flemish Government shall decide the date of entry into force and article 31 shall come into force on the date of the entry into force of Articles 25 through 27.