

# Data Privacy Foundation

## Claim Code Compliance Document

### 2019

#### INTRODUCTION

The Data Privacy Foundation (the "**Foundation**") was established in 2019 to represent the interests of users, former users and/or their legal guardians of any product or service capable of storing, transmitting, or processing Data regarding the user who are, or at any time have been, subject to a Privacy Intrusion (as defined in clause 1 of the Articles of Association of the Foundation (the "**Articles**")); to investigate and establish, either directly or indirectly, any liability, for said Privacy Intrusions and all consequences therefrom or otherwise; and to perform all activities, or further activities, that are incidental to these ends.

The Foundation endorses the Claim Code that came into force on 1 July 2011 as amended on 4 March 2019 (the "**Claim Code**"). The Claim Code consists of principles (the "**Principles**") that are considered to be broadly accepted general guidelines and views on how claim foundations and associations should represent collective interests, including — but not limited to — litigation. The Principles create a set of standards for the founders, directors, supervisory boards, consultants, and advisors engaged by the Foundation or association.

The Foundation currently has a Management Board (the "**Board**") consisting of directors and a Supervisory Board (the "**Supervisory Board**") consisting of supervisory directors. The Board is charged with the management of the Foundation and requires prior written approval of the Supervisory Board for certain resolutions that may significantly impact the Foundation and/or its endeavors to achieve its objects.

#### PRINCIPLE I: COMPLIANCE WITH THE CLAIM CODE

The compliance of the Foundation to the Claim Code will be discussed annually in a joint meeting of the Board and the Supervisory Board. Should the Board ever wish to deviate from the Claim Code, it will need prior written approval of the Supervisory Board as set out in clause 7.1 of the Articles.

This document is intended to comply with the requirements set out in clause 7.2 of the Articles and Elaboration 1 of Principle I of the Claim Code, and will be published on the Foundation's website: [www.dataprivacystichting.com](http://www.dataprivacystichting.com).

## **PRINCIPLE II: PROTECTING COLLECTIVE INTERESTS ON A NON-PROFIT BASIS**

The Foundation acts as a non-profit entity in the collective interests of users, former users and/or their legal guardians, of any product or service capable of storing, transmitting, or processing Data (as defined in the Articles) regarding the user, who is, or at any time has been, subject to a Privacy Intrusion (as defined in the Articles), whether domiciled or residing either in the Netherlands or abroad, and who are persons whose interests the Foundation represents pursuant to its objects, all terms broadly defined (the "**Aggrieved Parties**").

The Foundation does not generate revenue by requiring the Aggrieved Parties to pay a registration fee. There is therefore no risk of inappropriate use of such funds as identified by the Claim Code in Principle II and for which the Claim Code provides important safeguards.

Clause 27.5 of the Articles provides that if the Board adopts a resolution to dissolve the Foundation, it will need to stipulate how surplus funds on winding up, if any, are to be allocated, in line with the objects of the Foundation. The resolution to dissolve the Foundation (including the allocation of a possible surplus) is subject to prior written approval of the Supervisory Board (clause 27.2 in conjunction with clause 26.1 of the Articles) and can, in principle, only be passed by a majority of two thirds of the votes cast at a board meeting at which at least two thirds of the Board members are present or represented (pursuant to clause 27.2 in conjunction with clause 26.2 of the Articles).

Elaboration II.3 of the Claim Code provides that the Articles should also contain a provision that a liquidation surplus should be distributed amongst the Aggrieved Parties. While such a provision is absent from the Articles, per clause 27.5 of the Articles, the Board will determine the destination of any liquidation surplus with the understanding that such determination will be aligned with the statutory objects of the Foundation.

## **PRINCIPLE III: EXTERNAL FUNDING**

The Foundation entered into an agreement with Lieff Cabraser Heimann & Bernstein, LLP ("**LCHB**") and has engaged LCHB (i) to provide the funding to the Foundation and (ii) to render services to the Foundation, including drafting dedicated case documents, marketing and advertising activities, website operations and possible contacts with individual Aggrieved Parties, and all tasks reasonably related thereto (the "**LCHB Engagement**").

LCHB has agreed to fund litigation initiated by the Foundation through, and beyond, a judgment on the merits by the Court of First Instance.

The members of the management Board, members of the Supervisory Board, and the lawyers of the Foundation are all independent from LCHB and its affiliates. The funding conditions do not conflict with the collective interests the Foundation aims to protect on the basis of its Articles. In return for the services rendered and the risks and costs assumed by LCHB, it will receive a fee of 18% of any financial recovery achieved through a collective settlement or litigation.

#### **PRINCIPLE IV: INDEPENDENCE OF THE FOUNDATION AND AVOIDING CONFLICTS OF INTERESTS**

In accordance with the Claim Code and the Articles, any apparent conflict of interest between the Foundation's engaged advisors, the Supervisory Board, and the Board should be avoided. In all cases where there is a direct or indirect conflict of interest between the interests of the Foundation and the interests of one or more members of the Board or the Supervisory Board, the individual with the conflict of interest will not take part in the deliberations and shall abstain from voting with respect to the matter in which he or she has a conflict of interest (Clauses 13.1 and 19.2 of the Articles).

The Articles do not explicitly prohibit the Foundation from entering into agreements with a legal entity in which a member of the Board or Supervisory Board acts as a director, founder, shareholder, partner, member of the Supervisory board and/or employee. The Foundation is currently not engaged in such an agreement. Since the Foundation has an adequate conflict of interest policy, the current governance of the Foundation provides sufficient safeguards in this respect and sufficiently complies with Elaboration IV.3 of the Claim Code.

#### **PRINCIPLE V: COMPOSITION OF THE BOARD**

Elaboration V.1 of the Claim Code provides that the Board of the Foundation should consist of at least three individuals. Currently, the Board consists of: Mr. H.Th. (Dick) Bouma (former partner at law firm Pels Rijcken & Droogleever Fortuijn and expert on class actions and settlements), The Right Honourable Dame Elizabeth Gloster, DBE PC (former Lady Justice at the Court of Appeal in London and former Vice-President of the Civil Division of that Court), and Mr. Ira S. Rubinstein (Senior Fellow at the Information Law Institute at NYU Law School). Given the current composition of the Board, it has adequate legal expertise and experience.

The Board runs a website for the Foundation: [www.dataprivacystichting.com](http://www.dataprivacystichting.com). On this website, stakeholders have access to all relevant information, including — but not limited to — the following documents: (i) the Articles, (ii) this Claim Code Compliance Document, (iii) the résumés of the members of the Board and the Supervisory Board, (iv) updates on any pending litigation, and (v) the ability to contact the Foundation.

#### **PRINCIPLE VI: REMUNERATION OF THE MEMBERS OF THE BOARD**

Directors are entitled to a management fee for services rendered to the Foundation (pursuant to clause 6.6 of the Articles). The Board members have the specific expertise (including legal expertise) required for their roles within the Foundation. Given the complex international setting of the matters in which the Foundation operates, the exposure, and the specific requirement of legal knowledge, the Foundation deems it justified to provide an hourly rate of EUR 300 / USD 300 / GBP 350 (excluding VAT) for time spent by its Board members.

#### **PRINCIPLE VII: THE SUPERVISORY BOARD**

Currently, the Supervisory Board consists of two individuals: Ms. A.P.M. (Ada) van der Veer-Vergeer (former board and supervisory board member of various multinational companies) and Mr. A.H. (Benk) Korthals (former defense secretary and justice secretary of the Dutch Government). Given the current composition of the Supervisory Board, it has adequate legal and financial expertise and experience, in accordance with Elaboration VII of the Claim Code. There is currently one vacancy for the Supervisory Board.