

Dutch government forces Microsoft to change data practices

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Microsoft will change its telemetry data policies in the Netherlands after a government impact assessment found an “alarming” level of data collection.

A 5 November privacy assessment commissioned by the Netherlands’ Ministry of Justice found several issues that could prompt a renegotiation of Microsoft’s contract with the Dutch government. The study is intended to help inform the decision-making practices of the

organisation that handles all Dutch federal government procurement negotiations with Microsoft.

The Dutch ministry found that the company's web-based Office software, which is used on around 300,000 Dutch government workstations, collects a significant amount of telemetry data "without any public documentation".

Telemetry data relates to 'events' in software like Word and Outlook, such as consistent use of a backspace to indicate that a user doesn't know to spell a word, allowing it to improve spellchecking. But the assessment says Microsoft also sends unnecessary data back to its US servers alongside event data – such as the entire sentence around unrecognised words.

The assessment draws attention to the distinction between content, diagnostic and functional data, noting that Microsoft needs to track and collect some information to perform its services but does not need to store "transient" data, unless it is for security purposes.

Microsoft's storage of transient data, the assessment said, means the company "collects and stores personal data about the behaviour of individual employees on a large scale". It said Microsoft does not allow users to control the amount of data being collected, and denies them the opportunity to turn this type of data collection off or to see what data is being collected.

The assessment also called into question the company's assertion that it is a data processor in this instance, with the government department as controller. The report said the company is a joint controller as it dictates what data is processed and for what purpose.

Microsoft has already started making changes as a result of the assessment, including offering a 'zero exhaust' option that stops the collection of unnecessary data. But a blog post by consultancy Privacy Company, which carried out the study, recommended that government administrators look into using alternative software.

Lokke Moerel at Morrison Foerster in Berlin said the changes could have a knock-on effect forcing Microsoft to change its practices for the private sector, as well as the government. "It's very hard for [Microsoft] to argue that it's not compliant for the government but is for companies," she said.

Moerel praised the Ministry of Justice's decision to make the data protection assessment public, noting that in other countries the department may have tended towards secrecy for fear of a backlash.

Instead, she said, by publishing the assessment and highlighting Microsoft's shortcomings as well as listing concrete measures organisations can take, the department "might have achieved a lot more compliance than any enforcement action".

If Microsoft's changes don't satisfy the government, Moerel said, it indicated it might refer the matter to the Dutch data protection authority.

The report found eight high-risk activities, of which two have been mitigated by Microsoft's remedial actions. The remaining six risks, including the "unlawful storage of sensitive data", will need to be resolved by April 2019.

In 2017, the Netherlands' data protection watchdog found that Microsoft had violated data protection law through its Windows 10 operating system. The data protection authority gave the company until spring 2018 to change the software in order to fall in line with data protection rules. The Ministry of Justice report said Microsoft made those changes, but noted that the investigation did not look into the Office software packages.

A Microsoft spokesperson told GDR that the company is committed to its customers' privacy, and said it "[looks] forward to a successful resolution of any concerns".