Appeals Committee Regulations associated to the Privacy Code of Conduct for Vehicle Telematics Systems

Definitions

Article 1
For the purpose of these Appeals Regulations the following terms are understood to mean:

SKRRS:
The Stichting Keurmerk Ritregistratiesystemen (the Dutch Quality Mark Foundation Trip Registration Systems,) responsible for awarding the Quality Mark;

VZR:
Vereniging Zakelijke Rijders (the Dutch Association of Business Drivers), the association that represents the interests of drivers and has declared the code of conduct as binding;

BVLR:
Branche Vereniging Leveranciers Ritregistratiesystemen (the Dutch Trade Association of Trip Registration Systems Suppliers), the association that represents suppliers of TRS members and has declared the code of conduct as binding;

Code of conduct:
The Privacy Code of Conduct of Vehicle Telematics Systems;

Personal data:
Data that identify an individual natural person;

Appeals Committee:
The Appeals Committee associated with the Privacy Code of Conduct for Vehicle Telematics Systems;

Driver:
A natural person, whether or not a member of the VZR whose personal data are processed by an employer;

Employer:
An employer who uses a Trip Registration and/or Vehicle Telematics system that may or may not fall under the SKRRS quality mark scheme;

Data Protection Authority (Autoriteit Persoonsgegevens)
The Data Protection Authority established by Article 51 of the GDPR;

GDPR (AVG):
General Data Protection Regulation (Algemene Verordening Gegevensbescherming);

Dispute:
A dispute between a Driver, whether or not a member of the VZR, on the one hand, and an employer, on the other hand, relating to the employer's failure to comply with one or more provisions of the GDPR and/or the Code of Conduct with respect to a Driver.

Filing a Dispute

Article 2
1. If a Driver believes that an employer is acting against them in violation of the provisions of the Code of Conduct or the GDPR, they may, in addition to what is stipulated in articles 13, 14 and 77 of the GDPR, file a Dispute against the employer.
The Dispute must be filed within twelve months after the Driver has become aware, or could reasonably have become aware, of the actions or omissions of the employer that gave rise to the Dispute.

2. The employer must respond in writing within a period of four weeks after the Dispute has been filed.

3. If the Dispute has not been resolved to the satisfaction of the Driver, or if the employer has not responded within the set time period, the Driver may file the Dispute with the VZR within fourteen days after receipt of the employer's response or, in the absence of a response from the employer within fourteen days after the expiry of the set period of time.

4. If it does not appear from the filed Dispute that the Dispute has been presented to the employer, the VZR will subsequently request the Driver to do so or will request the Driver to present the written documents evidencing that Article 2.1 has been complied with. If the VZR is unable to settle the dispute amicably, the VZR will refer the Driver to the Appeals Committee.

Article 3
1. The Appeals Committee will make a pronouncement in the presented Dispute in the form of a for parties binding advice. Parties may present the Dispute to the Data Protection Authority (Autoriteit Persoonsgegevens), asking the same question. In that case, the Appeals Committee will act as described in article 7, paragraph 3 of these Appeals Regulations.

2. The Appeals Committee will handle the dispute with due observance of Articles 4 to 25 of these Appeals Regulations.

Role, composition, and authority of the Appeals Committee

Article 4
1. The role of the Appeals Committee is to settle disputes.

2. The VZR and the BVLR each appoint a member for the Appeals Committee and a deputy for that member. The members jointly elect an independent chairman.

3. The appointed members, the deputies and the chairman of the Appeals Committee are not members of the VZR or BLVR or employees of the members.

4. The appointed members, the deputies and the chairman must have specific knowledge of the sector, the methods and techniques used.

Article 5
In consultation with the chairman of the Appeals Committee, a legal counsel will complement the Appeals Committee as the Secretary. If necessary, a deputy secretary can be added.

Article 6
The Appeals Committee is not authorised to handle a Dispute if:

a. a legal procedure is (or has been) filed with or a pronouncement has already been made by a judge, a tribunal, the Data Protection Authority, a commission of arbitrators or a comparable body, all of which without prejudice to the provisions of article 7.3;

b. an extra-judicial commission or a specific commission of arbitrators exist for the settlement of the Dispute;

c. in connection with the Dispute, the Driver claims compensation for immaterial damages;

e. it relates to a Dispute requiring a review of the Code of Conduct against the GDPR.

Conditions for handling a Dispute

Article 7
1. A Dispute will only be handled by the Appeals Committee if the Driver has filed the Dispute with the employer or the Appeals Committee respectively, in accordance with Article 2.
If it does not appear from the Dispute filed with the Appeals Committee that the Dispute has been presented to the employer conform Article 2, the Secretary will subsequently request the Driver to do so, or will request the Driver to present the written documents evidencing that Article 2 has been complied with.

2. The Appeals Committee may decide to handle a Dispute if, in the opinion of the Appeals Committee, the Driver is not to blame for non-compliance with the term mentioned in Article 2.

3. If, after the Dispute has been presented to the Appeals Committee, a procedure with the same subject-matter as the Dispute has been filed by a Driver with the Data Protection Authority, the authority of the Appeals Committee is not affected. The Appeals Committee may decide to suspend the handling of the Dispute.

Article 8
1. The Dispute must be filed with the Appeals Committee in writing and include the following information: the names and addresses of the parties involved in the Dispute, an accurate description of the Dispute, any potential damage as well as the claim. Copies of documents that may be relevant to the assessment must be attached. In addition to the supplement referred to in article 7.1, the secretary may request a supplement to the statement, if this seems desirable in the interest of a proper handling.

2. The Secretary acknowledges receipt of the complaint in writing and provides the Driver with an acceptance form which the Driver submits to their employer for signature.

3. By signing the acceptance form, the employer declares that they are willing to follow these Appeals Regulations. By signing the Driver declares, in the case of a claim for damages as well as in the case of a request for a pronouncement concerning the correctness of the employer's conduct, that they hold no further claim against the employer under the present Dispute than the one indicated on the acceptance form, and that they have therefore unconditionally waived the right to potentially claim more.

4. When claiming compensation, and when requesting a pronouncement concerning the correctness of the employer's conduct, the Driver must indicate on the acceptance form the amount of the damage suffered, which may not exceed the amount of EUR 10,000, nor may it consist of immaterial damage, without prejudice to the provisions of Article 6.d.

5. The pronouncement of the Appeals Commission on the Dispute is binding.

Article 9
1. At the request of the secretary, the Driver who filed the Dispute must transfer an amount of Euro 25, - to the bank account of the SKRRS.

2. The contribution referred to in the first paragraph will be refunded by the Appeals Committee if the Driver is found to be wholly or partially in the right.

Article 10
If the Driver does not comply with the provisions of Articles 8 and 9 within one month following the request for signature of the acceptance form by their employer, they will be deemed to have withdrawn their request for handling the Dispute and the Dispute will not be handled. The Appeals Committee may extend the term by at least one month.

The handling

Article 11
If it appears during the handling of a Dispute that the Dispute has not been filed by or against the appropriate party, the Appeals Commission will declare the dispute filed by the Driver to be inadmissible. In the latter case, the Dispute may be refiled by the Driver, without incurring any further costs, but no later than two weeks after the decision, which states the inadmissibility, had been sent.

Article 12
1. The Appeals Committee will notify the employer involved in writing that it will handle the Dispute by sending a copy of the complaint together with any appendices, after which the employer will be given one month to send the Appeals Committee its point of view on the Dispute in writing. The Appeals Committee may extend the term by one month.

2. A copy of the point of view referred to in the first paragraph will be sent by the Appeals Committee to the Driver, who may submit a written response to the Appeals Committee within one month. The Appeals Committee may extend the term by one month.

3. A copy of the reply referred to in the second paragraph will be sent by the Appeals Committee to the employer, who may submit a written response to the Appeals Committee within one month. A copy will be sent to the Driver. The Appeals Committee may extend the term by one month.

4. Together with the documents the parties can submit statements of witnesses and experts. The Appeals Committee will also provide the other party with a copy thereof.

Article 13
1. The Appeals Committee will invite the parties to appear for an oral hearing and will determine the day, time, and place for this purpose. At the unanimous request of all parties involved, the Appeals Committee may, if desired, decide to settle the Dispute in writing.

2. The parties have the right to be assisted or represented by third parties when filing the dispute and in the handling of it.

3. The Driver is invited to attend the oral hearing of the Dispute in person.

4. At their request, the Appeals Committee may allow parties to bring witnesses or experts and have them heard. The names and addresses must be given to the Appeals Committee no later than one week before the session.

Article 14
The parties are obliged to provide the Appeals Committee with any information it may require, and which it deems necessary for the handling of the Dispute. The Appeals Committee is authorised to appoint experts and can furthermore require the introduction of witnesses, and of books, documents, software, and hardware, as well as the examination of books, documents, software, and hardware by an expert it appoints for this purpose.
The Appeals Committee is free, when a party fails to comply with a request such as described above, to draw the conclusion that it sees fit.

Article 15
The Dispute, pending its handling by the Appeals Committee, can only be withdrawn in writing by the concerned Driver and employer jointly.

Pronouncement

Article 16
In the event the Driver is manifestly inadmissible in their Dispute, or the Appeals Committee is incompetent to handle the Dispute, as well as in the event the Dispute is manifestly unfounded, the chairman of the Appeals Committee can notify the Driver prior to the handling of the Dispute under these Appeals Regulations that their Dispute will not be handled, stating the grounds that led to this decision. The decision to declare the dispute manifestly unfounded will also include the notification that the Dispute can still be handled if, within 14 days of the said decision, the Driver requests the Appeals Committee to do so in writing, stating reasons, and if the chairman sees sufficient grounds for it.

Article 17
The Appeals Committee makes a pronouncement in accordance with article 18 of these Appeals Regulations. Every decision of the Appeals Committee will be in accordance with the provisions of the Code of Conduct, the GDPR and in reasonableness and fairness. The pronouncement will be communicated to the parties in writing, stating its reasons.

Article 18
1. The Appeals Committee will decide by majority vote, except in the cases referred to in article 16. The pronouncement will be signed by the chairman and the secretary, and will be communicated to the parties in writing, where possible within eight weeks after the oral hearing of the Dispute.

2. In addition to the decision, the pronouncement must contain in any case:
a. the names of the members and the secretary of the Appeals Committee;
b. the names and places of residence of the parties;
c. the date of the pronouncement; and
d. the grounds for the decision.

3 The pronouncement of the Appeals Committee implies a decision concerning:
a. the competence of the Appeals Committee; and/or
b. the admissibility of the Driver in their Dispute; and/or
c. the total or partial unfounded nature of the Dispute; and/or
d. the employer's compliance with the Code of Conduct and/or the GDPR; and/or
e. the correctness of the employer's actions; and/or
f. an allocation of costs in accordance with article 19.

Article 19
The costs related to the dispute that have been incurred by the parties will be at their own expense, unless the Appeals Committee, in special cases, decides otherwise. In such a case, compensation by the party at fault will be limited to the costs that, in the opinion of the Appeals Committee, have been reasonably incurred by the other party.

Confidentiality, challenge, and recusal

Article 20
Anyone who is involved in the activities of the Appeals Committee in any way whatsoever is obliged to observe confidentiality regarding all information concerning the parties and/or the business matters that came to their knowledge during the handling of the Dispute. In this regard, the Party concerned / Driver retains all rights arising from the GDPR.

Article 21
1. A member of the Appeals Committee can be challenged by one or both parties based on facts or circumstances that would have made it difficult to form an objective opinion of the Dispute.

2. The other members of the Appeals Committee decide whether the challenge is justified. Should votes tie this is deemed to be the case.

3. A member of the Appeals Committee may be recused from the handling of a Dispute. They are obliged to do so if the other members of the Appeals Committee, who participate in the handling of the Dispute, are of the opinion that the facts or circumstances as referred to in the first paragraph apply to them.

4. In case of a challenge or a recusal, the member concerned will be replaced by the Appeals Committee itself.

5. The decision referred to in the second paragraph will be communicated to the parties, as well as, if applicable, the name of the person who will replace the challenged party. The above will apply mutatis mutandis in the cases referred to in the third paragraph.

Final provisions

Article 22
Binding recommendations of the Appeals Committee will be published in the newsletter of the VZR and BVLR provided that the anonymity of the parties involved is guaranteed, unless the Appeals Committee decides otherwise for reasons of public interest.

Article 23
In cases not provided for in these Appeals Regulations, the Appeals Committee will rule in accordance with the requirements of reasonableness and fairness.

Article 24
These Appeals Regulations are available from:
SKRRS
VZR
BLVR

Article 25
These Appeals Regulations have been established on 15-09-2020.