

Locatefamily.com

[CONFIDENTIAL]

Date

December 10, 2020

Our reference

[CONFIDENTIAL]

Contact

[CONFIDENTIAL]

Authority for Personal Data

PO Box 93374, 2509 AJ The Hague

Bezuidenhoutseweg 30, 2594 AV The Hague

T 070 8888 500 - F 070 8888 501

authoritypersonal data.nl

Subject

Decision to impose an administrative fine and an order subject to periodic penalty payments

Dear Ms, Mr,

The Dutch Data Protection Authority (AP) has decided to impose an administrative fine on Locatefamily.com

€ 525,000 to be imposed, because Locatefamily.com has not in the period from 25 May 2018 to date

complied with the obligation to designate a representative in the European Union (EU) in writing.

Locatefamily.com thus has Article 27, first paragraph, in conjunction with Article 3, second paragraph, of the General

Data Protection Regulation (GDPR) violated.

The AP has also decided to impose an order subject to periodic penalty payments on Locatefamily.com, which pertains to the

undo this continuing violation. Locatefamily.com serves this purpose within twelve

weeks after the date of and with due observance of this decision, to still comply with the obligation such as

included in Article 27 of the GDPR and appoint a representative in the EU in writing. If

Locatefamily.com does not comply with the order within this period, Locatefamily.com forfeits a penalty

of € 20,000 for every two weeks after the end of the beneficiary period, up to a maximum amount of a total of € 120,000.

The decision is explained below. Chapter 1 contains the relevant facts and the course of the proceedings. In Chapter 2 describes the legal framework. In chapter 3 follows the assessment of the AP, after which in chapter 4 the amount of the administrative fine is motivated. In chapter 5, the burden is under penalty is displayed. Finally, Chapter 6 contains the operative part and the remedies clause.

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1. Facts and procedure

Locatefamily.com is an organization based outside the European Union (EU) with its website

'Locatefamily.com' offers a platform on which anyone can search for contact details of acquaintances which they have lost sight of.

Because the AP does not know the location address of Locatefamily.com, communication with

Locatefamily.com expired via email only.¹

In the investigation period from May 25, 2018 to July 25, 2019, the AP received nineteen complaints regarding Locatefamily.com. The complaints concern failure to respond (adequately) to requests for the deletion of personal data of data subjects and the lack of an establishment or a representative of Locatefamily.com within the EU.²

In response to the complaints received, the AP sent a request by e-mail on June 26, 2018 information sent to Locatefamily.com, whereupon Locatefamily.com emailed on July 2, 2018 responded.³

On July 9, 2018, the AP sent a second request for information to Locatefamily.com by email, to which Locatefamily.com responded by email on July 19, 2018.⁴

On July 18, 2018, the AP submitted a request for mutual assistance under Article 61 of the GDPR sent to fellow supervisors within the EU, asking the AP whether they have complaints or have received signals with regard to Locatefamily.com and whether there is a branch c.q. is a representative of Locatefamily.com in the relevant country. At the beginning of September 2018, ten EU supervisors responded to the request of 18 July 2018.⁵ A number of countries also confirmed to have received complaints about Locatefamily.com.

Following an increase in the number of complaints about Locatefamily.com both in the Netherlands and in other EU member states, the AP launched an ex officio investigation at the end of December 2018 Locatefamily.com regarding an alleged violation of Article 27 of the GDPR, pursuant to which determine the controller or the processor in writing a representative in the EU should indicate.

1 legal@locatefamily.com and info@locatefamily.com. The latter address is also used by Locatefamily.com according to her response to one of the 19 complaints.

2 Overview of complaints, appendix 1 to the investigation report.

3 Email exchange with Locatefamily.com, appendix 12 to the research report.

4 Email exchange with Locatefamily.com, appendix 12 to the research report.

5 IMI report (Internal Market Information System) with the request to EU supervisors and the responses thereto, Annexes 3 and 4 to the research report.

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In March 2019, the AP conducted a technical investigation proving Canada as a possible location of Locatefamily.com revealed.⁶ After that, the AP has an international collaboration

launched through the Enforcement subgroup of the European Data Protection Board (EDPB).

On March 19, 2019, a conference call was held from this collaboration group of in total nine European supervisors, chaired by the AP.⁷

On March 25, 2019, the AP sent a letter on behalf of the cooperating European supervisors to the Office of the Privacy Commissioner of Canada, with a request for information regarding Locatefamily.com.⁸

Because the location address of Locatefamily.com remained unknown for the time being, the Irish, French and Dutch regulator agreed to review the national complaints filed direct data erasure requests to Locatefamily.com.

On April 8, 2019, the AP provided Locatefamily.com with an overview by e-mail of the receive complaints regarding Locatefamily.com's handling of data erasure requests and thereby pointed out the obligations for Locatefamily.com under the GDPR.⁹

In emails dated April 10, 2019 and July 27, 2019, Locatefamily.com notified the AP of the removal of the personal data from its website.¹⁰ The request has been sent in all three countries (Ireland, France, and the Netherlands) largely funded by Locatefamily.com.

On May 28, 2019, the Privacy Commissioner of Canada informed the AP that it is working on the request of the AP dated March 25, 2019.¹¹

On July 22, 2019, the AP sent a third request for information to Locatefamily.com by email.¹²

When asked in this July 22, 2019 email for an address from Locatefamily.com or from a representative in the EU, the AP has not received a response from Locatefamily.com.

The findings of the AP's investigation are included in the report "Locatefamily.com on lack of legal representative within the EU", adopted on 25 July 2019 (hereinafter: research report).

⁶ Scheme, appendix 2 to the research report.

⁷ Minutes conference call, appendix 5 to the research report.

⁸ Letter to Privacy Commissioner of Canada, Appendix 6 to the Investigation Report.

9 Letter to Locatefamily.com dated 8 April 2019 regarding 19 complaints from Dutch data subjects regarding requests for data erasure, appendix 7 to the investigation report.

10 Emails from Locatefamily.com to AP regarding data erasure requests, Appendix 8 to the Investigation Report.

11 Privacy Commissioner of Canada Notice dated May 28, 2019, Annex 9 to the Investigation Report.

12 Email exchange with Locatefamily.com, appendix 12 to the research report.

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On February 24, 2020, the AP informed Locatefamily.com via digital transmission¹³ of its intention to enforcement together with the aforementioned investigation report and the underlying documentation, whereby Locatefamily.com has also been given the opportunity to submit no later than March 23, 2020 to express an opinion. Locatefamily.com has not used this opportunity to date made.

Based on the report with findings and the underlying documentation, the AP comes to the determination of the following relevant facts.

Locatefamily.com

Locatefamily.com offers with its website a platform for anyone looking for contact details of acquaintances whom they have lost sight of due to the so-called name and address details of those involved, name, address, place of residence and sometimes the telephone number. Locatefamily.com offers this data free of charge to any interested party. The website is publicly accessible and contains data of residents from both inside and outside the EU.¹⁴ Locatefamily.com compiles the overviews of data together without the data subject becoming a member of the platform or having to create an account to make.¹⁵ Research carried out by the AP together with its European fellow supervisors shows showed that Locatefamily.com has offered its services in the Netherlands as well as in eight other EU

to land. Several EU supervisors have confirmed that data subjects from the relevant

countries complaints have been filed regarding Locatefamily.com.¹⁶

Place of business/representation

On the Locatefamily.com website there is neither a privacy contact person nor a business address and/or representative address.

In response to the AP's question to Locatefamily.com whether it has a representative or a branch

in the EU,¹⁷ Locatefamily.com has stated the following on July 2, 2018:¹⁸

"LocateFamily.com is not located in the European Union and does not have any business relationships in the European Union. We do not have an office or a representative in the European Union. LocateFamily.com does not offer goods or services to the European Union.

We are available to respond to any questions you may have regarding the complaints you mention. If you provide us with the names of the individuals and or their e-mail addresses we can provide you with a report that indicates when the removal request was received and when the information was removed."

¹³ By email to legal@locatefamily.com and info@locatefamily.com.

¹⁴ Print screen dated July 29, 2019 business model Locatefamily.com, appendix 10 to the research report.

¹⁵ Print screens Locatefamily.com, appendix 10 to the research report.

¹⁶ IMI report (Internal Market Information System) with the request to EU supervisors and their responses, Annexes 3 and 4 to the research report. Complaints from other EU regulators regarding Locatefamily.com, Appendix 11 to the Investigation Report.

¹⁷ Email exchange with Locatefamily.com, appendix 12 to the research report.

¹⁸ E-mail of 2 July 2018, appendix 12 to the research report.

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On July 19, 2018, when asked by the AP where Locatefamily.com's head office is located,

the following message: 19

“As we have already explained in our previous email, we have no business relationships in the European Union, and we do not have an office or a representative in the European Union. We also do not offer goods or services to the European Union.

To be clear we are not situated in any country of the European Union.

We respect the wishes of people who want their address information removed from the web site, and the information is removed within a few days, regardless of which country the individual resides in.

Consequently we are puzzled as to why you would need to know where we are situated.”

Furthermore, European supervisors have indicated that there is no branch or representative of Locatefamily.com was found in the relevant country where those regulators are located.

From technical research conducted by the AP regarding the web host of the website

Locatefamily.com has revealed that Locatefamily.com may be based in Canada.²⁰ From the

international cooperation with fellow supervisors has emerged that a

representative of Locatefamily.com in the EU is missing and that the number of complaints in both the Netherlands as in other EU member states.²¹

The subsequent request of March 25, 2019 from the AP on behalf of the cooperating European

regulators, to the Privacy Commissioner of Canada²² to verify who is the contracting party to the

web host of the Locatefamily.com website, in order to be able to find the location address of Locatefamily.com

tracing, has not yet yielded any concrete indications about the location of

Locatefamily.com.

Consultation by the AP of the trade register of the Chamber of Commerce in the Netherlands also has

no results with regard to Locatefamily.com.²³ The other EU supervisors have

performs a similar desk search, nor does a Locatefamily.com registration or a

Locatefamily.com representative found. The European Justice Portal (E-Justice portal)²⁴

also does not contain information about a location and/or representative of Locatefamily.com in the

EU.25

19 E-mail of 19 July 2018, appendix 12 to the investigation report.

20 Scheme, appendix 2 to the research report.

21 Minutes conference call, appendix 5 to the research report.

22 Letter to Privacy Commissioner of Canada, Appendix 6 to the Investigation Report.

23 Chamber of Commerce consultation, appendix 14 to the research report.

24 https://e-justice.europa.eu/content_find_a_company-489-en.do [accessed 25 July 2019].

25 Print screen e-Justice portal survey, appendix 13 to the research report. “The European e-Justice Portal is intended to be a “one-stop

shop” on the Internet for information on European judicial issues and legal procedures. The portal focuses on citizens, companies, lawyers and the judiciary. Citizens should have equal access to justice in other Member States as in their own Member State, and the European e-Justice Portal helps to remove obstacles in a practical way

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Complaints

In the investigation period from May 25, 2018 to July 25, 2019, the AP received nineteen complaints regarding Locatefamily.com. Research by European fellow supervisors has shown that Complaints have also been submitted in other EU Member States by data subjects from the countries concerned regarding the website of Locatefamily.com.²⁶

2. Legal framework

2.1 Scope GDPR

Pursuant to Article 2, paragraph 1, of the GDPR, this Regulation applies to the whole or in part automated processing, as well as to the processing of personal data contained in a file

included or intended to be included therein.

Pursuant to Article 3, paragraph 1, of the GDPR, this regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, whether or not the processing takes place in the Union does not take place.

Pursuant to Article 3, second paragraph, of the GDPR, this regulation applies to the processing of personal data of data subjects who are located in the Union by a person not established in the Union controller or processor, when the processing is related to:

- a) the offering of goods or services to those data subjects in the Union, whether or not a payment is made by data subjects is required; or
- (b) monitoring their behaviour, insofar as this behavior takes place in the Union.

Pursuant to Article 4 of the GDPR:

1. "Personal Data": any information relating to an identified or identifiable natural person ("the data subject"); is considered identifiable a natural person who can directly or indirectly be identified, in particular by an identifier such as a name, a identification number, location data, [...].

2) "Processing": an operation or set of operations relating to personal data or a set of personal data, whether or not carried out by automated processes, such as the collecting, recording, organizing, structuring, storing, updating or changing, retrieving, consulting, use, provide by transmission, distribution or otherwise available for example by providing information in 23 languages and a large number of links to relevant websites and documents.

Although the responsibility for the content and management of the portal is shared between the European Commission and the individual Member States of the European Union, the European Commission is the data controller for the European e-Justice Portal."

26 IMI report (Internal Market Information System) with the request to EU supervisors and their responses, Annexes 3 and 4 to

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compile, align or combine, block, erase or destroy data; [...].

7) “Controller”: a natural or legal person, a public authority, a agency or other body which, alone or jointly with others, determines the purpose and means of the determines the processing of personal data; when the objectives of and the means for this processing are set out in Union or Member State law, they may specify who the controller is or according to which criteria it is designated; [...].

8) 'processor' means a natural or legal person, public authority, agency or other body that processes personal data on behalf of the controller;

17) “Representative” means a natural or legal person established in the Union who, by virtue of of Article 27 has been designated in writing by the controller or processor to carry out the controller or the processor in connection with their respective obligations under this Regulation.

2.2 Representatives of controllers not established in the Union

Article 27 of the GDPR stipulates the following:

1. Where Article 3(2) applies, the controller or processor shall designate in writing to a representative in the Union.
2. The obligation contained in paragraph 1 of this Article does not apply to: a) incidental processing which does not large-scale processing of special categories of personal data as referred to in Article 9(1) does not concern the processing of personal data related to criminal convictions and criminal offenses as referred to in Article 10, and where there is little chance that it poses a risk to the public

rights and freedoms of natural persons, taking into account the nature, context, size and

the processing purposes; or b) a government agency or body.

3. The representative is established in one of the Member States where the data subjects are located whose personal data are processed in connection with the offering of goods or services to them, or whose behavior is observed.

4. In order to ensure compliance with this Regulation, the representative shall be appointed by the controller or the processor is authorized to act in addition to or in his place approached, in particular by the supervisory authorities and data subjects, on all matters relating to the processing related matters.

5. The fact that the controller or processor appoints a representative does does not affect the possibility of bringing claims against the controller or the processor itself to set.

3. Assessment

3.1 Processing of personal data

As mentioned, Locatefamily.com offers with its website a platform on which everyone can search for contact details of acquaintances whom they have lost sight of and registers data on that basis

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on its website of many stakeholders. This concerns name and address details and sometimes telephone numbers, which for each interested are visible.

Directly identifying data is when data relates to a person

whose identity can be unequivocally established without much detour. Directly identifying data

are data such as name, address, date of birth, which in combination with each other are so unique and therefore characterize a particular person that it is widely known with certainty or to a great extent of probability, can be identified. Such data will be in the civic traffic is also used to distinguish people from each other.²⁷

Name, address and place of residence data make those involved directly identifiable and can therefore be traced qualify as personal data within the meaning of Article 4, opening words, and under 1, of the GDPR.

Pursuant to Article 2, first paragraph and Article 3, second paragraph, of the GDPR, the GDPR applies to the fully or partially automated processing of personal data of data subjects who are in the Union, by a controller or processor not established in the Union, when the processing is related to the offering of goods or services to these data subjects in the Union.

By registering, digitally storing and making this personal data available through it website Locatefamily.com, there is an automated processing of personal data.

The AP comes to the conclusion that there is a processing of personal data which, according to aforementioned provisions, the GDPR applies.

3.2 Controller

In the context of the question of who is or can be regarded as the controller(s) as referred to in Article 4, preamble, and under 7, of the GDPR determines who has the purpose of and the means for the processing of personal data.

The Locatefamily.com Privacy Policy states the following:²⁸

“LocateFamily.com does not redistribute information, e-mail addresses, or information obtained from communications with individuals regarding LocateFamily.com, to any third parties. Information displayed on LocateFamily.com is collected and maintained by LocateFamily.com for sole use by LocateFamily.com.”

Locatefamily.com also states on its website:²⁹

²⁷ TK 1997-1998, 25 892, no. 3, p.48.

²⁸ Privacy policy, appendix 12 to the research report.

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“LocateFamily.com updates its database on a regular basis to ensure that the information displayed continues to be valid.” [...] “LocateFamily.com makes the information in its pages available as is and does not warrant the veracity of the information. The sole intent of making the data available is purely for informational purposes.”

[...]. “Information displayed on LocateFamily.com is property of LocateFamily.com and its interests.”

Locatefamily.com is according to this Privacy Policy and explanatory notes on its website

controller. For example, Locatefamily.com determines what the data is used for, who

can receive the personal data, and whether it provides personal data to third parties outside the

European Union.³⁰

Processing of personal data by Locatefamily.com takes place with the aim of making it available

for anyone looking for a particular person who has lost track of them. This

service is provided free of charge for family reunions, school reunions and the like. It

means for the processing of personal data in this case concerns the registration of personal data

on the Locatefamily.com website.

It is also important that Locatefamily.com, in response to the AP's message regarding the

complaints about the handling of requests for removal, has responded to those requests

and proceeded to remove the personal data of those involved

website.³¹

In view of the foregoing, Locatefamily.com has control over how Locatefamily.com

the rights of data subjects and the processing of personal data are dealt with

data subjects and determines the purpose and means of this processing.

Locatefamily.com therefore qualifies as a controller as referred to in Article 4, opening words, and under 7 of the GDPR.

3.3 Representative Appointment Violation

Pursuant to Article 27, paragraph 1, when Article 3, paragraph 2 of the GDPR applies, in writing to a representative in the Union.

In the present case, there is the processing of personal data of data subjects who are in the located in the EU. When accessing the Locatefamily.com website, name, address and residence details of persons within and, incidentally, also from outside the EU. This personal data of, among others, EU residents are processed by Locatefamily.com to provide services to be offered via the website, such as family reunification, school reunions, et cetera. It turned out that this services are also aimed at residents of the EU and are offered in several EU countries.

30 Print screen <https://www.locatefamily.com/legal.html>, 4/19/2019, appendix 10 to the research report.

31 Response to the request of the AP dated 8 April 2019, Appendix 8 to the investigation report.

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Furthermore, the investigation by the AP in collaboration with European fellow supervisors has shown that no location or representative of Locatefamily.com has been found in the relevant EU member state. Consultation of the trade register of the Chamber of Commerce in the Netherlands by the AP has also yielded no results with regard to Locatefamily.com.³² The other EU regulators have conducted a similar desk investigation and no record of either Locatefamily.com or a Locatefamily.com representative found. When consulting the European Justice Portal (E-Justice portal) there is also no branch and/or representative found in the EU. There is neither a privacy contact nor a privacy contact on the Locatefamily.com website

business address and/or representative address.

Based on the research findings, it can be determined that in the case of Locatefamily.com there is a controller not established in the EU. Moreover, this has been shown that a representative as defined in Article 4, preamble, and under 17, of the GDPR, is not designated in the EU as required in Article 27, paragraph 1, of the GDPR.

Locatefamily.com also confirmed this to the AP. In response to the AP's question Locatefamily.com of June 26, 2018 whether it has a representative or an establishment in the EU, has Locatefamily.com on July 2, 2018 indicated that it is not located in the EU nor has an office or representative in the EU.

With the applicability of Article 3, second paragraph, of the GDPR, the obligation under Article 27, first paragraph, of the GDPR to designate a representative in the EU, unless one of the two exceptions of Article 27, paragraph 2, of the GDPR.

These exceptions do not apply in the case of Locatefamily.com. From the research findings it has become apparent that there is no question of incidental processing, nor of a situation in which the controller is a public authority or body.

From the above, the AP concludes that Locatefamily.com is established outside the EU controller has acted contrary to Article 27, first paragraph, in conjunction with Article 3, second member, of the GDPR, by failing to appoint a representative in the EU in writing.

3.4 Conclusion

In view of the foregoing, the AP is of the opinion that Locatefamily.com Article 27, first paragraph, of the GDPR, read in conjunction with Article 3, second paragraph, of the AVG, has violated, now that they are in the period of May 25, 2018 to date has not fulfilled the obligation to provide a representative in writing such as defined in Article 4, opening lines, and under 17, of the GDPR, in the EU. The violation lasts currently on.

32 Chamber of Commerce consultation, appendix 14 to the research report.

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4. Fine

4.1 Introduction

In view of the violation established above, the AP sees reason to use its

jurisdiction under Article 58, second paragraph, opening words and under i, in conjunction with Article 83, fourth paragraph, preamble and under a of the AVG and Article 14, third paragraph, of the UAVG, to impose a fine on

Locatefamily.com. The AP applies the Fining Policy Rules 2019.33 for this

Pursuant to Article 83, paragraph 4, under a, of the GDPR, violations of Article 27 of the GDPR are

subject to administrative fines of up to €10,000,000 in accordance with paragraph 2 or, for a

company, up to 2% of the total worldwide annual turnover in the previous financial year, if this figure is higher.

4.2 Fining Policy Rules of the Dutch Data Protection Authority 2019 (Fining Policy Rules 2019)

The AP has established Fining Policy Rules 2019 regarding the implementation of the aforementioned power to imposing an administrative fine, including determining the amount thereof.

Pursuant to Article 2, under 2.1, of the Fining Policy Rules 2019, the provisions regarding violation of which the AP can impose an administrative fine not exceeding the amount of € 10,000,000 [...] in

annex 1 classified in category I, category II or category III. In Annex 1, the violation of Article 27, first paragraph, of the AVG classified in category III.

Pursuant to Article 2.3 of the Fining Policy Rules 2019, the AP sets the basic fine for violations

for which a statutory maximum fine of € 10,000,000 applies [...] fixed within the period stipulated in that article

penalty bandwidths. The following applies to violations in category III of Appendix 1 of the 2019 Fining Policy Rules a fine bandwidth between €300,000 and €750,000 and a basic fine of €525,000.

Pursuant to Article 6 of the Fining Policy Rules 2019, the AP determines the amount of the fine by the amount

from the basic fine upwards (up to a maximum of the bandwidth of the offense linked penalty category) or down (to at least the minimum of that bandwidth). The basic fine is increased or decreased depending on the extent to which the factors referred to in Article 7 of the Fining Policy Rules 2019 give cause to do so.

Pursuant to Article 7 of the Fining Policy Rules 2019, the AP, without prejudice to Articles 3:4 and 5:46 of the General Administrative Law Act (Awb) takes into account the following factors derived from Article 83, second paragraph, of the AVG, in the Policy Rules referred to under a to k:

a. the nature, gravity and duration of the breach, taking into account the nature, scope or purpose of the processing in question as well as the number of data subjects affected and the extent of the harm suffered by them injury;

33 Stct. 2019, 14586, March 14, 2019.

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b. the intentional or negligent nature of the breach;

c. the measures taken by the controller [...] to mitigate the losses suffered by data subjects limit damage;

d. the extent to which the controller [...] is responsible in view of the technical and organizational measures he has implemented in accordance with Articles 25 and 32 of the GDPR;

e. previous relevant breaches by the controller [...];

f. the degree of cooperation with the supervisory authority to remedy the breach and limit the possible negative consequences thereof;

g. the categories of personal data affected by the breach;

h. the manner in which the supervisory authority became aware of the breach, in particular whether, and

if so, to what extent, the controller [...] has notified the breach;

i. compliance with the measures referred to in Article 58, second paragraph, of the GDPR, insofar as they are earlier in respect of the controller [...] in question in relation to the same

matter have been taken;

j. adherence to approved codes of conduct in accordance with Article 40 of the GDPR or of

approved certification mechanisms in accordance with Article 42 of the GDPR; and

k. any other aggravating or mitigating factor applicable to the circumstances of the case, such as

financial gains made, or losses avoided, which may or may not result directly from the breach

result.

Pursuant to Article 8.1 of the Fining Policy Rules 2019, the AP may, if the

fine category does not allow for an appropriate punishment in the concrete case, when determining the amount of

the fine the fine bandwidth of the next higher category or the fine bandwidth of the

apply next to lower category.

Pursuant to Article 9 of the Fining Policy Rules 2019, the AP, when setting the fine,

taking into account the financial circumstances of the offender. In case of reduced or

insufficient capacity of the offender, the AP can further moderate the fine to be imposed, if,

after application of article 8.1 of the policy rules, determination of a fine within the fine range

of the next lower category would, in its opinion, nevertheless lead to a disproportionately high fine.

4.3 Fine amount

According to the AP, the following factors mentioned in Article 7 are particularly relevant in this case

determining the fine amount:

a. the nature, seriousness and duration of the breach;

b. the intentional or negligent nature of the breach (culpability);

c. the measures taken by the controller or processor to

mitigate the damage suffered by those involved.

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4.3.1 Nature, seriousness and duration of the breach

Pursuant to Article 7, preamble and under a, of the Fining Policy Rules 2019, the AP takes into account the nature, the seriousness and duration of the infringement. The AP takes into account the number, among other things, in its assessment

affected parties and the extent of the damage suffered by them.

The protection of natural persons with regard to the processing of personal data is a fundamental right.

Under Article 8(1) of the Charter and Article 16(1) of the Convention on the functioning of the European Union (TFEU), everyone has the right to the protection of their personal data.

The principles and rules regarding the protection of natural persons with regard to the processing of their personal data must comply with their fundamental rights and freedoms,

in particular with their right to the protection of personal data. The GDPR aims to contribute to the

creation of an area of freedom, security and justice and of an economic union, as well as to

economic and social progress, the strengthening and convergence of economies within the

internal market and the well-being of natural persons. The processing of personal data must

at the service of man. The right to the protection of personal data is not absolute,

but must be considered in relation to its function in society and must conform to it

principle of proportionality against other fundamental rights. Any processing of

personal data must be done properly and lawfully. It serves for natural persons

to be transparent that personal data concerning them is collected, used, consulted or

otherwise processed and to what extent the personal data are or will be processed.

Where a controller or processor not established in the Union processes personal data

of data subjects located in the Union, and the processing is related to the

offer of goods or services - whether or not payment is required by the data subjects - to those

data subjects located in the Union or monitoring their conduct in the Union, the

the controller or the processor to designate a representative, unless the processing

incidental, not the large-scale processing of special categories of personal data, or the

processing of personal data relating to criminal convictions and offences

and, given its nature, context, scope and processing purposes, unlikely to be a risk

affects the rights and freedoms of natural persons, or unless the controller

is a government agency or body.³⁴

In any case, since May 25, 2018, Locatefamily.com has not fulfilled its obligation to provide in writing

appoint a representative in the EU. In the study period from May 25, 2018 to July 25, 2019

the AP has received nineteen complaints regarding Locatefamily.com. These complaints are irrelevant

complying with requests from data subjects for data erasure and the lack of an establishment

representative of Locatefamily.com in the EU. This has also been established by other EU Member States

similar complaints have been received regarding Locatefamily.com. This highlights the importance of the

presence of a representative in the EU acting on behalf of the controller

acts in relation to its obligations under the GDPR. For the

³⁴ Recital 80 of the GDPR.

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safeguarding the rights of data subjects, as laid down in the GDPR, is also of fundamental importance

responsible organizations based outside the EU that offer services in the EU, in the

be accessible to both data subjects and the supervisory authorities in all areas of practice

processing related matters. In fact, those involved in the EU lack one

counter to which they can turn if they want to exercise their rights under the GDPR. Mead

in view of the number of affected parties involved and the duration of the violation, in the opinion of the AP a serious violation.

The AP sees no reason in this to change the basic amount of the fine pursuant to Article 7, under a, of the Increase or decrease the 2019 fine policy rules.

4.3.2 Intentional or negligent nature of the infringement (culpability)

Pursuant to Section 5:46(2) of the Awb, when imposing an administrative fine, the AP take into account the extent to which this can be attributed to the offender. Pursuant to Article 7(b) of the Fining Policy Rules 2019, the AP takes into account the intentional or negligent nature of the infringement. Since this concerns a violation, the imposition of an administrative fine is in accordance with fixed rules case law³⁵ does not require that it be demonstrated that there is intent and the AP is allowed culpability assume if the perpetrator is established.³⁶

There has been no evidence of circumstances on the basis of which it could be concluded that no there is an obligation for Locatefamily.com to appoint a representative in the EU.

With regard to the knowledge that a standard addressee - in this case Locatefamily.com - has of the applicable laws and regulations is deemed to have the position that is based on te apply that market parties bear their own responsibility to comply with the law.³⁷ If doubts had arisen about the scope of the commandment, then, also according to settled case law, that should apply of a professional and multinational market party such as Locatefamily.com is required to inform itself properly or to be informed about the restrictions to which it is subject behaviors are subject, so that she could have geared her behavior to the scope of that commandment.³⁸

In light of the above, the AP therefore considers the violation to be culpable.

4.3.3 Other Circumstances and Proportionality

35 Cf. CBb 29 October 2014, ECLI:NL:CBB:2014:395, r.o. 3.5.4, CBb 2 September 2015, ECLI:NL:CBB:2015:312, r.o. 3.7 and CBb 7 March 2016,

ECLI:NL:CBB:2016:54, r.o. 8.3, ABRvS 29 August 2018, ECLI:NL:RVS:2018:2879, r.o. 3.2 and ABRvS December 5, 2018, ECLI:NL:RVS:2018:3969, r.o. 5.1.

36 Parliamentary Papers II 2003/04, 29702, no. 3, p. 134.

37 Cf. CBb 25 June 2013, ECLI:NL:CBB:2013:4, r.o. 2.3, CBb 25 January 2017, ECLI:NL:CBB:2017:14, r.o. 5.2, CBb March 8, 2017,

ECLI:NL:CBB:2017:91, r.o. 6.

38 Cf. CBb 22 February 2012, ECLI:NL:CBB:2012:BV6713, r.o. 4.3, CBb 19 September 2016, ECLI:NL:CBB:2016:290, r.o. 8.6., CBb 19

September 2016, ECLI:NL:CBB:2016:372, r.o. 6.3.

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The AP also sees no reason to increase the basic amount of the fine of € 525,000 on the basis of the other circumstances referred to in Article 7 of the Fining Policy Rules 2019, insofar as applicable in the case, to increase or decrease.

The application of the policy for determining the amount of the fine is appropriate given the circumstances of the specific case does not lead to a disproportionate outcome.

4.3.4 Conclusion

In view of all the circumstances of this case, including the nature, duration and seriousness of the infringement, the AP considers

a fine of € 525,000 is appropriate and required.

5. Order subject to periodic penalty payments

5.1 Charge

Since it is a continuous violation, it should be ended as soon as possible. For those

reason, in addition to the aforementioned fine, the AP imposes an order subject to periodic penalty payments pursuant to Article 58, second paragraph, preamble and under d of the AVG, article 16, first paragraph, of the UAVG and article 5:32, first paragraph, of the Awb. This means that Locatefamily.com still complies with the obligation as included in Article 27, paragraph 1 of the GDPR and appoint a representative in the EU in writing.

5.2 Period of grace and penalty amount

The AP attaches a grace period of twelve weeks to the order subject to periodic penalty payments. This period In the opinion of the AP, Locatefamily.com offers sufficient opportunity to commit the violation to cancel.

Article 5:32b, third paragraph, of the Awb stipulates that the penalty amounts must be in reasonable proportion to the seriousness of the violated interest and to the intended effect of the penalty. At that last one It is important that a penalty must provide such an incentive that the order is complied with.

If Locatefamily.com does not end the observed violation within twelve weeks, it will forfeit after the end of that grace period, for every two weeks that the payment has not been (fully) met, one penalty. The AP sets the amount of this penalty for every two weeks after the end of the fixed at an amount of € 20,000 (in words: twenty thousand euros), up to a maximum amount of € 120,000 in total (in words: one hundred and twenty thousand euros).

If Locatefamily.com forfeit the penalty immediately after the end of the beneficiary period wishes to avoid, the AP recommends Locatefamily.com to provide evidence - which Locatefamily.com

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can demonstrate that it complies with the order subject to periodic penalty payments - in good time, but no later than one week before the end

of the beneficiary period to the AP for assessment.

6. Operative part

fine

The AP informs Locatefamily.com, due to violation of article 27, first paragraph, of the GDPR, read in conjunction with article 3, second paragraph, of the GDPR, in the period from 25 May 2018 to the present, a administrative fine in the amount of €525,000 (in words: five hundred and twenty-five thousand euros).³⁹

Load under duress

Locatefamily.com must be submitted within twelve weeks of the date and with due observance of this decision take measures to ensure that a representative is designated in writing in the EU.

If Locatefamily.com does not take the measures within twelve weeks of the date of this decision has performed to (fully) comply with the order, Locatefamily.com forfeits a penalty of € 20,000 (in words: twenty thousand euros) for every two weeks after the end of the beneficiary period, up to a maximum amount of € 120,000 in total (in words: one hundred and twenty thousand euros).

Yours faithfully,

Authority for Personal Data,

drs. C.E. Mur,

Board member

³⁹ The AP will hand over the aforementioned claim to the Central Judicial Collection Agency (CJIB).

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Remedies Clause

If you do not agree with this decision, you can within six weeks from the date of sending it decides to submit a notice of objection digitally or on paper to the Dutch Data Protection Authority. In accordance

Article 38 of the UAVG suspends the effect of the decision until submitting a notice of objection

imposition of an administrative fine. For submitting a digital objection, see

www.autoriteitpersoonsgegevens.nl, under the heading Objecting to a decision, at the bottom of the

page under the heading Contact with the Dutch Data Protection Authority. The address for submission on paper

is: Dutch Data Protection Authority, PO Box 93374, 2509 AJ The Hague.

Mention 'Awb objection' on the envelope and put 'bezwaarschrift' in the title of your letter.

Write in your notice of objection at least:

- your name and address;
- the date of your objection;
- the reference referred to in this letter (case number); or enclose a copy of this decision;
- the reason(s) why you disagree with this decision;
- your signature.