

Cooperative Menzis U.A.

Chairman of the Board

Mr. R. Wenselaar

PO Box 75000

7500 KC Enschede

Date

January 9, 2019

Our reference

[CONFIDENTIAL]

Contact

[CONFIDENTIAL]

070 8888 500

Topic

Decision to collect penalty payment

Authority for Personal Data

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Dear Mr. Wisher,

By decision of 15 February 2018 with reference z2016-12335, the Dutch Data Protection Authority (AP) has pursuant to Section 65 of the Personal Data Protection Act (Wbp) and viewed in conjunction with Section 5:32, first paragraph, of the General Administrative Law Act (Awb), an order subject to a penalty imposed on Coöperatie Menzis U.A. (Menzis) for violation of Article 13 of the Wbp, now Article 32 of the General Data Protection Regulation (GDPR).

In a letter dated 12 November 2018, the AP has sent Menzis an intention to collect the amounts paid by Menzis

forfeited penalty sent. In this intention, the AP has committed a violation of burden part 1 of the order subject to penalty. Menzis issued its opinion on this intention on 6 December 2018 given.

In this decision, the AP notes that Menzis has not fully complied with part 1 of the 15 February 2018 order subject to a penalty and therefore a penalty of €50.000,00 . by operation of law has forfeited. Menzis therefore receives after sending this collection order and after court decision in the case z2016-12335 of the CJIB – on behalf of the AP – a reminder to two weeks to pay.

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#### 1. Procedure

On 15 February 2018, the AP imposed an order subject to periodic penalty payments on Menzis in connection with. a violation of article 13 of the Wbp.

In a letter dated 17 April 2018, Menzis informed the AP about the progress of the implementation of the various remedial measures to comply with the order subject to penalty.

On April 24, 2018, the AP confirmed receipt of the progress report by letter.

In a letter dated 3 May 2018, Menzis sent documents to the AP to demonstrate that Menzis complies with part 1 of the order subject to penalty.

On May 25, 2018, the AP announced by letter that an on-site investigation (OTP) is necessary for checking part 1 of the order subject to penalty.

In a letter dated 29 May 2018, Menzis sent documents to the AP to demonstrate that Menzis complies with part 1 of the order subject to a penalty.

On June 12, 2018, the AP confirmed by letter that the OTP will take place on June 18, 2018 at the office van Menzis in Wageningen.

On June 18, 2018, the OTP took place at the Menzis office in Wageningen. The AP has requested Menzis to send information to the AP during this on-site investigation. The final Menzis received a report of this on-site investigation by letter dated 31 July 2018.

In an email dated 18 June 2018, Menzis responded to the AP's request.

On June 26, 2018, the AP sent a further request for information by letter and email.

Menzis responded to the AP's request by email of 27 June 2018.

On June 28, 2018, Menzis answered questions from the AP by telephone. The AP and Menzis have

During this telephone conversation it was agreed that Menzis would look for one question and answer it later. It Menzis was sent a definitive report of this conversation by letter dated 31 July 2018.

Menzis answered the open question of 28 June 2018 by e-mail dated 3 July 2018.

On July 5, 2018, the AP requested a further request for information by e-mail.

Menzis responded to the AP's request by e-mail dated 10 July 2018.

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On 6 August 2018, Menzis answered questions from the AP by telephone.

On August 7, 2018, the AP informed Menzis by telephone that the AP has come to the conclusion:

It has come to the fore that Menzis does not comply with part 1 of the order subject to periodic penalty payments because employees of the

Marketing and Sales Department still have unauthorized access to health data.

On August 8, 2018, the AP sent a letter requesting a further request for information.

In an email dated 20 August 2018, Menzis responded to the AP's request.

On September 10, 2018, the AP sent Menzis a report with findings about the follow-up check.

In a letter dated 24 September 2018, Menzis gave its view on the report with findings about the follow-up.

On October 5, 2018, the AP made a further request for information by letter.

In a letter dated 22 October 2018, Menzis responded to the AP's request.

On November 12, 2019, the AP sent a letter an intention to collect the money forfeited by Menzis penalty sent to Menzis and to Vrijbit as an interested party.

In a letter dated 16 November 2018, Vrijbit gave its opinion in writing on the intention to recovery of the penalty payment forfeited by Menzis. The AP has the view of Vrijbit on 21 November 2018 forwarded to Menzis by e-mail.

In a letter dated 6 December 2018, Menzis gave its opinion in writing on the intention to recovery of the penalty payment forfeited by Menzis.

## 2. Text of the violation and charge item 1

### 2.1 Text of the violation

The established violation in the order subject to a penalty as determined by the AP by decision of 15 February 2018 imposed on Menzis reads as follows:

In its findings, the AP concludes that Menzis violates Article 13 of the Wbp. In that context, the AP has following noted:

1. Menzis has organized its corporate culture in such a way that only employees may have access to personal data concerning health insofar as this is necessary for the purpose for which the employees process the personal data. For example, Menzis has established that marketing employees not be allowed to process personal data relating to health.

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2. The investigation by the AP shows, however, that Menzis marketing employees do in fact have access to personal data concerning health. Being able to consult personal data is, pursuant to Article 1, preamble and under b of the Wbp to be regarded as processing personal data.

3. Menzis therefore does not have adequate technical means to ensure that employees do not have access to personal data that are not necessary for the purpose for which they are processed. In this context, the AP points out that Menzis, for example, does not keep log files about access to personal data, including special personal data.

4. The foregoing leads to the conclusion that Menzis does not have appropriate technological measures as referred to in Article 13 of the Wbp. The AP has derived from underlying documents that show how a marketing action Menzis is carried out, incidentally, no indications were found for the conclusion that marketing employees actually process personal health data for a marketing campaign. However, that does not affect the conclusion that Article 13 of the Wbp has been violated, because the technological measures that Menzis affected are not appropriate.

## 2.2 Text of load part 1

The authorization matrix and accompanying documents in which it can verify the logical access security of its Part 1 of the order subject to a penalty as imposed by the AP in a decision of 15 February 2018 to Menzis reads as follows:

The AP orders Menzis to set up its system in such a way that unauthorized access to personal data is not possible is prevented.

To that end, it must in any case:

1. systems must be adapted. These documents must be adapted or has been redrafted so that it clearly follows from this which access rights employees have. The authorization matrix must contain a provide a clear overview of the authorizations and consultation roles that belong to a position or role by means of sub

more unambiguous use of terminology. Menzis must record for which function or role the processing is performed of personal data relating to health is necessary and for what purpose and this document, if necessary, revise business insights. Furthermore, the authorizations of Menzis employees must therefore be permanently actually be reconciled.

(...)

beneficiary period and amount of penalty with regard to parts 1 and 3a

With regard to part 1. of this burden, the AP is of the opinion that less effort is involved in its implementation to be. The AP therefore attaches to part 1 and part 3a of the order a beneficiary period that ends on May 26th 2018.

If Menzis does not meet the payment before the end of the beneficiary period referred to under 0, it forfeits a penalty. The AP sets the amount of this penalty at an amount of € 50,000.00 for each (entire) week, after

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expiry of the last day of the set term, on which Menzis fails to pay part 1 and part 3a of the order to a maximum of € 250,000.00.

In view of the fact that the penalty should be an incentive to comply with the order, the amount of Menzis' turnover, the large number of insured persons and the seriousness of the violation, the DPA considers the amount of this penalty to be appropriate.

### 3. Findings

#### 3.1 Findings prior to the on-site investigation of June 18, 2018

Menzis sent documents to the AP on 3 and 29 May 2018 to demonstrate that Menzis complies with part 1 of the order subject to penalty. This documentation on the authorization policy of Menzis is not just about the Marketing and Sales department, but about all Menzis employees.

The authorization policy documentation focuses on four documents:

- Overview FAM authorizations for all employees with functional units<sup>1</sup>: an Excel file containing all users with associated IT roles and indication of whether there is access to personal data and personal data with regard to health.<sup>2</sup> The DPA first viewed this document as a final situation. However, it later turned out that this document did not concern the final situation after May 26th 2018, but an inventory that was used to arrive at a desired situation.

Function Authorization Matrix (FAM)<sup>3</sup>: An overview of the business role name/authorization profile as can be assigned to an employee with the required roles (that an employee with these company role name), allowed roles (that an employee with this company role name can and is allocated by means of a separate procedure) and associated allocation rule. This document provides an overview of which company roles have been issued after the adjustments.

Data Authorization Matrix (DAM)<sup>4</sup>: An overview of business role name/authorization profile including indicated whether this profile has, among other things, access to the Data Ware House, personal data and health data (care & claims and diagnoses/fraud).

Purpose binding framework<sup>5</sup>: An overview of the business functions per cluster, whether access should be available personal data and health data (care & claims and diagnoses / fraud), where the data come from, for what purposes they were collected and what the basis is. By business function the roles and authorization profiles are indicated.

The AP first analyzed the documentation provided by Menzis. From this, the AP concluded that the Excel document '20180425\_Overzicht FAM authorizations all employees with

1 Official document name: 20180425\_Overview FAM authorizations all employees with functional units(003).

2 This document relates to the IST situation (actual situation, as adjusted in the Menzis systems) of 25 April 2018.

An IST situation should be seen in combination with a SOLL situation (a desired situation that is being worked towards).

3 Official document name: FAM overview report 2018-05-30.

4 Official document name: 20180525\_Data\_Authorization\_Matrix.

5 Official document name: 20180522\_Doelbindingskader (005).

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functional units(003)' gave a recent overview of the authorizations of all employees. This is based on the following information:

- a. The naming of the Excel document containing the date.
- b. The columns mentioned, including: employee number, sector, department, job title, authorization profile, access to personal data and access to health data.
- c. The large number of rows indicates that it indeed concerns all employees.

However, based on the accompanying documentation, it was not clear to the AP in advance that this was a document is from before the changes in the FAM and DAM. During the on-site investigation at Menzis only became aware that this document was not a recent situation.

The AP then decided to once again focus on the Marketing department during the follow-up check and Sales, because the previous investigation showed that the employees of the Marketing and Sales had unauthorized access to personal health data. On the basis of the Excel document '20180425\_Overzicht FAM authorizations all employees with functional units(003)', the AP made a selection of employees from the Marketing and Sales department for the sample during the on-site investigation at Menzis in order to be able to obtain some authorizations to check.

### 3.2 Findings during the on-site investigation of June 18, 2018

On June 18, 2018, the AP conducted an on-site investigation at Menzis to determine whether Menzis load part 1 correctly. During this investigation, the AP asked questions about the supplied documentation and a sample is carried out.



During the on-site investigation, Menzis stated that the document '20180425\_Overzicht FAM' authorizations all employees with functional units(003)' an up-to-date manually drawn up list which has served as input for the redrafting of the FAM and DAM. As a result of this finding, the AP reconsidered the authorizations of the previously selected employees with the recent version of the FAM, the DAM and the target binding framework.

Menzis has further stated that access to (special) personal data per position is laid down in the dam.

Menzis subsequently stated that no other person other than the employee [CONFIDENTIAL] employees within the Marketing and Sales department may have access to health data.

The AP has determined that the employee [CONFIDENTIAL] of the Marketing and Sales department has access to the SAS6 environment. Allows the [CONFIDENTIAL] access to a large number of tables used for making analyses. The AP has established that this employee has access to the table 'idacom.DMT\_Salesforce\_Case'. This table contains information about individual cases/complaints, including a column of information reported by the customer.

6 Statistical Analysis System is a collection of software that is used for analysis, business intelligence and data management.

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The AP has further established that columns are visible in the table with, among other things, the sender of the complaint (in this column names of persons are visible on some lines) and the content of the complaint (column name: "Description\_Problem") in which, on some lines, data about health are listed.

Menzis has stated the following about this:

“The Marketing and Sales department is involved in product development, among other things, and in view of this, the employees of this department have insight into the individual feedback on Menzis products.

Product development is a task that can be assigned to [CONFIDENTIAL] as an employee of this department commissioned. It is therefore necessary for the fulfillment of his function that a marketing employee can see about which Menzis receives complaints. Menzis' products are health insurance policies, which is why complaints and customer feedback contain medical information. Menzis' instructions about the handling personal data. Customer feedback is not classified as under the purpose limitation framework health data.”

In the context of this sample, the AP has not identified any other health data sources.

### 3.3 Findings after the on-site investigation of June 18, 2018

The AP has reviewed authorizations of seven previously selected employees in the context of the current situation with the following documents:

- 20180522\_Target Binding Framework (005)
- 20180525\_Data\_Authorization\_Matrix
- FAM overview report 2018-05-30

The AP has established in this sample that the access rights to personal data relating to the health are described in a consistent manner in the documentation mentioned above.

#### 3.3.1 Findings on the table 'idacom.DMT\_Salesforce\_Case'

On 27 June 2018, Menzis provided the AP with an overview of the last 100 entries from the table 'idacom.DMT\_Salesforce\_Case', including the column names, provided.

The AP has once again established that in the table 'idacom.DMT\_Salesforce\_Case' personal data health information available to the [CONFIDENTIAL]. This means that employees, who, like the [CONFIDENTIAL], have been assigned the permitted role in the FAM who gives access to this table, also have (may) have access to this data in practice. These are for example, employees of the Marketing and Sales department with the authorization profile

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The AP has further determined from the purpose limitation framework, the DAM and the FAM that an employee with the business role name/authorization profile [CONFIDENTIAL] (which is assigned to the [CONFIDENTIAL])

may have access to personal data but not have access to health data. See

for this figure 3 and 4. The same also applies to, for example, other employees of the department

Marketing and Sales with the authorization profile [CONFIDENTIAL], [CONFIDENTIAL] and

[CONFIDENTIAL].

[CONFIDENTIAL]

Figure 3. Row 20, column A, C, D, E, F and G of the document 20180525\_Data\_Authorization\_Matrix.

The absence of a cross in a column means no access to the data from that column.

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Figure 4. Row 6, column A, B, C, D, E, F, G, I and J in the second tab of the document 20180522\_Doelbindingskader (005). Under the heading 'Access to personal data' you will only find 'Personal data'. Under the heading 'Functions' linked to the business processes' is the function [CONFIDENTIAL]. And under the heading 'Authorization profiles linked to the business processes', the profile is [CONFIDENTIAL].

Examples of personal data related to health in the table

'idacom.DMT\_Salesforce\_Case' are the following:

[CONFIDENTIAL]

Figure 5. Row 39, column A and AJ from part of the table 'idacom.DMT\_Salesforce\_Case', as provided by Menzis to the AP on June 27, 2018.

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Figure 6. Row 42, column A and AJ from part of the table 'idacom.DMT\_Salesforce\_Case', as provided by Menzis to the AP on June 27, 2018.

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Figure 7. Row 81, column A and AJ from part of the table 'idacom.DMT\_Salesforce\_Case', as provided by Menzis to the AP on June 27, 2018.

On September 10, 2018, the AP published its findings about the follow-up check, including the conclusion that Menzis thereby violating charge item 1, determined and sent to Menzis. Menzis has in its view on this report states that Menzis has classified the data from the table Changed 'idacom.DMT\_Salesforce\_Case' to health data.

Menzis submitted evidence on 22 October 2018 showing that Menzis did so on 20 September 2018 has ensured that the employees of the Marketing and Sales department Can't see 'idacom.DMT\_Salesforce\_Case' anymore.

### 3.3.2 Findings about applications outside the Data Ware House

Menzis stated on August 6 that authorizations to applications that do not use the Data Ware House, but provide access to health data, which can be found in the documentation from Menzis:

-

In the current FAM overview (FAM overview report 2018-05-30) per authorization profile display the 'Required Roles' and 'Allowed Roles'. The Required Roles has every employee with that assigned authorization profile. The Permitted Roles can per employee depending on their specific task within the role.

- To determine which applications an employee has access to and whether this application provides access to health data should be looked at in the document

'20180425\_Overview FAM authorizations for all employees with functional units(003)'

(the deprecated IST situation/FAM) in the fourth tab 'IST – Users & IT roles'.

Together with Menzis, the AP has these authorizations for applications that do not use the Data Ware House randomly checked on two employees. In addition, the AP itself has a additional check performed. In this sample, the AP has established that these access rights on are described in a consistent manner in the documentation supplied by Menzis.

#### 4. Review

Menzis' authorization model shows that employees of the Marketing and Sales department (with exception of one employee) should not have access to health data. Menzis has

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also stated during the on-site investigation that no other employees other than one employee have access to health data within the Marketing and Sales department.

However, as already mentioned in paragraphs 3.2 and 3.3.1, the AP has established that employees of the Marketing and Sales department have access to the table 'idacom.DMT\_Salesforce\_Case' containing health data. Menzis has stated in this regard that it is for the employees of the Marketing and Sales department is necessary to view this data and on the basis of the target limitation framework does not classify this data as health data.

The AP classifies some data from the table idacam.DMT\_Salesforce\_Case as personal data health and concludes that employees of the Marketing and Sales Department (with exception of one employee) have unauthorized access to health data.

For the term 'personal data' it is relevant whether the data contain information about a person.

The identifiability of the person is the second element that determines the answer to the question whether personal data is involved. The basic principle is that a person is identifiable if his identity can reasonably be established without disproportionate effort. Two factors play a role here: the nature of the data and the possibilities of the controller to identify to establish. A person is identifiable if data is collected alone or in combination with other data, are so characteristic of a particular person that it is of which can be identified.

The concept of personal data concerning a person's health is interpreted broadly; it not only includes the data provided in the context of a medical examination or medical treatment by a doctor are processed, but any data affecting the mental or physical health of a person concern. In addition, the mere fact that someone is ill is also a fact of health, although that fact in itself says nothing about the nature of the disorder.

Data shown in figures 5, 6 and 7 such as chronic back disease, pregnancy and a broken only clear data pertaining to a person's physical health. This data is by the insurance number and sometimes the name in the description for Menzis as controller and the employees of the marketing and sales department are also traceable to a natural person. Employees of the Marketing and Sales department thus have access to personal data concerning health.

Now it appears from the documents supplied by Menzis that employees of the Marketing and Sales department should not have access to health data, but the on-site investigation showed that for these employees there is in practice access to personal data relating to health, there is unauthorized access to personal data. Menzis has thus not finished its system arranged in such a way that unauthorized access to personal data is prevented.

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The AP is then faced with the question whether Menzis has complied with part 1 of the imposed obligations burden under duress. The AP includes the evidence provided by Menzis on 22 October 2018 that according to her, the violation has ended.

The AP has established that, from 20 September 2018, Menzis will still be subject to part 1 of the imposed burden has paid penalty, because it is sufficiently plausible with written documents and video material made that the table 'idacom.DMT\_Salesforce\_Case' with personal data concerning health is no longer accessible to the employees of the Marketing and Sales department.

Menzis view on report with findings and response AP

In its view of the report with findings, Menzis has recognized that the personal data in the the above table should have been classified as health data. Menzis has further stated that the finding established by the AP does not mean that it does not have the burden correctly complied with. Menzis is of the opinion that this finding is not included in the authorization matrix, the associated documents or the actual authorizations based on them and is therefore not subject to the burden. Menzis has that is not further argued or substantiated. As a result of this statement, the AP did not see any points of departure for deviating from its earlier findings.

Menzis view on the intention to collect penalty payments

Menzis takes the view that it has complied with part 1 of the burden under . on time and in full penalty. Menzis puts forward three arguments for this.

Firstly, Menzis argues that there was no unauthorized access to personal data because the employees concerned were (at that time) authorized to have access to the relevant table. The fact that Menzis does not treat the personal data in the table as personal data concerning health, does not mean that unauthorized access. In addition, the AP only established that access was theoretically possible.

Secondly, Menzis concludes that the AP is of the opinion that the order subject to a penalty has been violated because Article 32 GDPR has been violated. The conclusion from the AP's September 10, 2018 report seems, according to Menzis also to point out such a view. Menzis fights this view because the burden does not look at every violation of article 32 GDPR and because there is no violation of this article of law.

Thirdly, Menzis takes the position that there is a special circumstance that makes that recovery should be waived. Menzis has only one of the three components of the burden partially not implemented. Given the large number of employees and the large amount of files, failure to correctly qualify one table is a shortcoming that can be regarded as marginal. Moreover part 1 of the charge has now been fully met.

#### Response AP

The AP does not follow Menzis in its position that there is no unauthorized access to personal data. The AP has not tested whether the employees of the Marketing and Sales department had authorized access to the table 'idacom.DMT\_Salesforce\_Case', but whether these employees were authorized to have access to personal health data. As before

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described is apparent from the Menzis authorization model that employees of the Marketing and Sales should not have access to health data. The AP has established that employees of the Marketing and Sales department nevertheless had access to health data in the table 'idacom.DMT\_Salesforce\_Case'. In view of this, Menzis had not designed its system in such a way designed to prevent unauthorized access to personal health data. That Menzis acknowledged that it had not classified the personal data in the table as health data does not change this conclusion. In addition, the AP checked the systems during its visit to Menzis



can establish that employees of the Marketing and Sales department are actually in practice, and not only in theory, had access to health data for product development.

Nor does the AP follow Menzis in its view on Article 32 of the GDPR. An imposed penalty is forfeited by operation of law, as soon as it appears that the order imposed has not been fulfilled. The follow-up by the AP Contrary to what Menzis believes, it only focuses on determining whether the content of the imposed obligations has been complied with

burden, as it was imposed at the time, and thus whether the imposed burden has been fulfilled.

Finally, the AP does not follow Menzis' position that there is a special circumstance that means that collection should be completely waived. It partially, but not completely, comply with an order subject to periodic penalty payments is not a circumstance that necessarily results in an administrative body waiving of recovery. In principle, compliance with a load component afterwards is also not a ground for to waive recovery. In addition, the AP must charge item 2, which has a different beneficiary term and constitutes a penalty, yet to be assessed. The AP further notes that the AP committed the violation on September 10 2018 and did not qualify as a continuing violation. If in this case the If the AP had established the violation as a continuous violation, Menzis would have a penalty of €250,000.00 forfeit.

Vrijbit's view on the intention to collect penalty payments and response from the AP

Vrijbit states that Menzis processes medical personal data without a legal basis was in favor of, with evasion of the then mandatory by the College Bescherming Persoonsgegevens Code of Conduct to be approved. It is important for Vrijbit that the AP pays the imposed penalty per progresses immediately.

The AP has taken note of Vrijbit's view. The statement that Menzis medical processing personal data without a legal basis for doing so, evading the at the time required to be approved by the Dutch Data Protection Authority Code of Conduct, responds no role in this decision-making. With this decision, the AP will proceed to collect the penalty.

5. Conclusion

It appears from the authorization model and accompanying documents supplied by Menzis that employees of the Marketing and Sales department should not have access to health data. The AP has during the follow-up, however, established that in practice these employees did have access to health data. Menzis had thus not set up its system in such a way that unauthorized access to personal health data has been prevented.

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In view of this, the AP determines that Menzis has not fully complied with the first sentence of the burden under penalty in combination with order part 1 from the decision of 15 February 2018.

On September 10, 2018, the AP published its findings about the follow-up check, including the conclusion that Menzis thereby violating charge item 1, determined and sent to Menzis.

With the subsequent proof of 22 October 2018, Menzis has made it plausible that Menzis has been September 20, 2018 still to the first sentence of the order subject to penalty in combination with load part 1 has met.

In view of the foregoing, Menzis has legally forfeited a penalty over the period of 10 September 2018 to September 20, 2018. This means that one full week has passed before the imposed burden has been met. The amount of the forfeited penalty is € 50,000.00 once €50,000.00.

Pursuant to Article 5:33 Awb, a forfeited penalty is paid within six weeks after is forfeited by law. The AP has not yet received payment on the date of this decision.

## 6. Decision

In view of the above and Article 5:37 Awb, the AP determines that:

i.

Menzis has not fully complied with the first sentence of the order subject to a penalty in combination with:

burden part 1 from the decision of 15 February 2018.

Menzis has forfeited a penalty payment of €50,000.00.

II.

The AP proceeds to collect the penalty of €50,000 forfeited by Menzis.

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

In the absence of timely payment, the outstanding amount will be increased by the reminder and any recovery costs.

7. Finally

In connection with Section 5:37 Awb, Vrijbit, as an interested party, will receive a copy of this decision. This does not include data that make it possible to identify employees or customers of Menzis.

If you have any questions about this letter, please contact the above-mentioned contact person.

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A copy of this letter has also been emailed to [Monitoring@menzis.nl](mailto:Monitoring@menzis.nl).

Yours faithfully,

Authority Personal Data,

w.g.

mr. A. Wolfsen

Chair

If you do not agree with this decision, you can, within six weeks of the date of dispatch of the decision pursuant to the General Administrative Law Act submit a notice of appeal to the Central Netherlands District Court, where these proceedings have already been initiated

is pending. You must enclose a copy of this decision. Submitting a notice of appeal suspends the operation of not make this decision.