

Confidential/Registered

The Minister of Finance

Mr W.B. Hoekstra MBA

PO Box 20201

2500 EE THE HAGUE

Date

November 25, 2021

Subject

Decision to impose a fine

Our reference

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Contact

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Dear Mr Hoekstra,

The AP has decided to impose administrative fines on the Minister of Finance (hereinafter: the Minister).

to impose a total of € 2,750,000 for violation of Article 5, first paragraph, preamble and under a, in

read in conjunction with Article 6, paragraph 1, preamble and under e, of the General Regulation

data protection (hereinafter: AVG), and article 6 read in conjunction with article 8 of the Act

protection of personal data (hereinafter: Wbp). This is because the Tax Authorities/Allowances (hereinafter also:

Surcharges) without a legitimate basis (1) in any case from 1 January 2016 to 30 June 2020 the double

nationality of Dutch citizens was retained in his so-called Supplementary Benefits System, (2) in

in any case from March 2016 to October 2018 the nationality of applicants for childcare allowance processed for an indicator in its so-called risk classification model and (3) in any case from 1 January 2016 to February 2019 processed the nationality of childcare allowance applicants for the detection of organized fraud. These processing operations were not necessary for the fulfillment of a public task of Allowances. In addition, Supplements for the aforementioned processing in the context of the risk classification model and acted in violation of it when detecting organized fraud principle of fairness as laid down in Article 5, first paragraph, preamble and under a, of the GDPR and Article 6 of the Wbp.

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The administrative fines are explained in this decision. To this end, we will successively discuss (1) the legal framework, (2) the investigation results, (3) the course of the proceedings, (4) the relevant facts, (5) the view of the Minister, (6) the violations, (7) the amount of the fines and (8) the decision to the imposition of the fines and the remedies clause.

## 1. Legal framework

Article 5, first paragraph, preamble and under a, of the AVG stipulates that personal data must be processed in a manner that is lawful, fair and transparent in relation to the data subject.

Pursuant to Article 6(1) of the GDPR, the processing of personal data is only lawful if and insofar as at least one of the conditions stated in that provision is met. The in that provision, under e, is conditional that the processing is necessary for the fulfillment of a task of general interest or of a task in the exercise of official authority the controller has been instructed.

Article 6 of the Wbp stipulates that personal data must be processed in accordance with the law and in a proper manner

manner are processed.

Article 8, preamble and under e, of the Wbp stipulates that personal data may only be processed if the data processing is necessary for the proper performance of a public-law task by the relevant administrative body or the administrative body to which the data are provided.

## 2. Research by the AP

The AP has officially launched an investigation into the processing of the nationality of applicants childcare allowances by Allowances. This in response to a signal received in April 2017 about the possible processing of the dual nationality<sup>1</sup> of applicants for childcare allowance Surcharges. This investigation led to the AP having a report of findings on July 16, 2020 established (hereinafter: the investigation report).<sup>2</sup>

The research report explains that Allowances are the organizational unit of the Tax and Customs Administration, that is charged with allocating, paying and reclaiming childcare allowance. Also supervision compliance with the regulations regarding childcare allowance is part of the public task of

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1 One person can have several nationalities. It is possible to possess multiple nationalities by, among other things parentage or naturalization. In this decision the term 'dual nationality' is used and not 'second nationality'. Because this would could lead to the infringement that priority is given to a particular nationality, while nationalities have no ranking.

2 AP research report of 16 July 2020, "Belastingdienst/Benefits, The processing of the nationality of applicants for childcare allowance". The public version of the research report was published on July 17, 2020 on the website of the AP: [research\\_belastingdienst\\_childcare allowance.pdf](#) (autoriteitpersoonsgegevens.nl).

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Surcharges. To perform this public task, Toeslagen uses personal data from the population records, including the nationality of individuals.

In the investigation report, the AP first of all assessed the lawfulness of various processing of the nationality of childcare allowance applicants assessed. Regarding three types processing, the AP has established that these are and/or were unlawful and that the Minister as controller for the processing of Surcharges with that Article 5, first paragraph, opening words and under a, of the GDPR jo. article 6, paragraph 1, preamble and under e, of the AVG as well as article 6 in conjunction. article 8 of the Wbp.

The first processing concerns the processing of dual nationalities of Dutch applicants. In the research report concludes that these data have been preserved in the Supplementary Benefits System (hereinafter: TVS) used by Supplements and that Supplements does not need data for the performance of its task. Allowances therefore did not have this information allowed to process. According to the investigation report, this violation has started on 6 January 2014 and had not yet been fully terminated at the time of adoption of the report.<sup>3</sup>

The second processing relates to the use of the nationality of applicants for an indicator in a system that automatically selects high-risk applications for which human resources are deployed, the

so-called risk classification model. The AP has concluded in the investigation report that the use of nationality was not necessary for this, because a less far-reaching form of processing was possible. This violation lasted for the period from March 2016 until October 2018.

The third processing checks the use of the nationality of applicants for childcare allowance the framework of the detection of organized fraud. The AP has in the investigation report concluded that the use of nationality for this purpose was not necessary. This violation has lasted for the period from 2013 to June 2019.

Subsequently, the AP assessed the properness of the aforementioned processing. The second and third processing are, according to the research report, also discriminatory and therefore improper, because they discriminate on the basis of nationality, without any objective justification consists. As a result, the Minister also has Article 5, first paragraph, preamble and under a, of the GDPR as well violation of Article 6 of the Wbp. According to the research report, these improper processings took place place at least from March 2016 to October 2018 and from 2013 to February 2019 respectively.

3 According to the research report, not all Dutch dual nationalities had been removed from the TVS on 20 April 2020.

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3. Process flow

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For a detailed description of the examination procedure, please refer to chapter 1 of the research report.

By letter dated August 13, 2020, the AP informed the Minister of its intention to launch a to impose an administrative sanction and to give the Minister the opportunity orally or in writing to put forward a point of view. In the same letter, the AP also requested the Minister to to indicate substantiated views as to whether, and if so by when, measures have been or will be taken to termination of the violations found in the investigation report. In addition, the AP has it research report on 17 July 2020 handed over to the State Secretary of Finance - Allowances and Customs (hereinafter: the State Secretary).

By letter dated September 10, 2020, received by the AP on September 14, 2020, the Minister has submitted a written opinion of the State Secretary<sup>4</sup>, in which the aforementioned violations have been acknowledged and in which the measures taken / to be taken are discussed in more detail.

#### 4. Facts

Now that the Minister has acknowledged the violations found in the investigation report and the investigation report has not contradicted the established facts, the AP assumes in this decision the information contained in the research report established facts.

For a detailed account of the established facts, reference is therefore made to Chapter 2 of the research report.

#### 5. View of the Minister

With regard to the violations found in the investigation report, the Minister – summarized and insofar as relevant here - explained as follows.

First of all, the Minister endorsed the conclusions of the investigation report of 16 July 2020. The The findings in the report are regarded by the Minister as very serious. In addition, the The Minister stated that he would implement the recommendations in the research report.<sup>5</sup>

4 The State Secretary noted in the written opinion that – in view of the division of tasks within the Ministry of Finance – submitted the opinion. For the sake of the readability of this decree, the designation "Minister" will be used below. used.

5 See also the government's response of 17 July 2020 to the AP report of 16 July 2020 on the processing of the nationality of applicants for childcare allowance and the letter of 17 November 2020 from the State Secretary of Finance to the House of Representatives, with answers to the questions about the government's response, in which the conclusions from the research report of the AP of 16 July 2020 are endorsed.

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Storing dual nationalities of Dutch citizens in the TVS (first processing)

19 About the storage of dual nationalities of applicants with Dutch nationality in the TVS the Minister has also stated that he shares the AP's finding that this processing is not necessary for the task of Allowances. The Minister also noted the following in this regard.

20 Until 31 January 2015, the Tax and Customs Administration also received the any dual nationality from the Municipal Basic Administration (hereinafter: GBA) and this was accepted by the Tax and Customs Administration processes in the 'Management' system used by all parts of the Tax and Customs Administration

of Relations' (hereinafter: BVR). The dual nationalities were subsequently taken over by the TVS.

The Basic Registration of Persons (hereinafter: BRP) does not register any new registrations as of January 6, 2014 second (dual) nationality for persons with a Dutch nationality. That is also the case for persons who acquire Dutch nationality: the previous 'other nationality' is added to the

obtaining Dutch nationality. As of January 31, 2015, the BrP does not provide any second/other registered nationality (in addition to Dutch) more. For the until January 31, 2015 dual nationality granted by the BrP for persons with a Dutch nationality, this applies were registered in BVR, but were cleared on July 23, 2015. In the period between January 31, 2015 and July 23, 2015 BVR therefore still provided information about dual nationalities (in addition to the Dutch nationality also the other nationality) to the customers in the Tax and Customs Administration. The data from persons with dual nationality who were already in the BVR and thus the TVS before 6 January 2014, remained registered in the TVS with dual nationality for longer. The Minister has stated that there is measures have been taken to ensure access to dual nationality employees of Supplements would be shut down and that the historical data would be removed from the systems be met. In the TVS, the cleaning of these historical data has been started from summer 2019 and on June 30, 2020 fully completed.

The use of the nationality of childcare allowance applicants for an indicator in automatic selection of high-risk applications (the risk classification model) (second processing)

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The Minister has, insofar as relevant here, discussed the use of nationality in risk selection noticed next.

22 Whether an applicant is entitled to a supplement is determined by legislation and regulations. Surcharges used since 2013 a

risk classification model in which a self-learning algorithm based on dozens of indicators estimates whether may be a problem with an application. The risk classification model is used to achieve an increased predict the risk of errors in an allowance application. This is done on the basis of indicators. The indicators provide an indication of the facts and circumstances within which an application is submitted done. One of the indicators concerned Dutch nationality/non-Dutch nationality. This indicator was in included in the model as a result of observations made during supervisory activities in the past. A



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application from non-Dutch people in combination with the presence of other indicators had as a result a greater chance of being selected for inspection than in the case of Dutch nationality.

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The Minister has acknowledged that the use of such indicators is properly and objectively substantiated should be and has expressed its deepest regret that this was not the case with regard to the Dutch nationality/non-Dutch nationality indicator. Allowance applicants with only one or more foreign nationalities were regarded as non-Dutch. They related to that a higher chance that their benefit application was manually assessed to determine entitlement bonus. This should never have happened, he said. Since October 2018, nationality is not used more in the risk classification model for childcare allowance. With that comes nationality no longer appear in this risk classification model.

The use of the nationality of applicants for childcare allowance in the context of tracing organized fraud (third processing)

24 The Minister has stated that he deeply regrets that nationality was used in the investigation to organized fraud with childcare allowance. In investigating organized abuse of surcharges, the (possibly dual) nationality of the applicant concerned was usually requested.

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In that context, the Minister also stated that in June 2019, Supplements formally decided not to so-called queries<sup>6</sup> based on nationality to do/request more. Queries from the past that still continued, were stopped immediately after discovery and reported to the AP.

## 6. Review

### 6.1 General

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The GDPR is applicable as of 25 May 2018.<sup>7</sup> Since the facts in this investigation took place between 2013 and 2020, the AP has tested against both the Wbp and the GDPR.

The research report provides a detailed explanation of the processing of nationality at Supplements take place and have taken place in recent years. The AP submits the research report and the findings contained therein form the basis of this decision – insofar as not included in this decision is deviated. In this decision, a brief discussion of the AP detected violations. For a complete overview of all relevant actual conduct – insofar as they are not mentioned here – reference is made to chapter 2 in the research report.

6 A query is the provision of a query to a database, in this case including the BVR and TVS.

7 On that date, the Personal Data Protection Act (Wbp) was repealed pursuant to Article 51 of the UAVG.

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## 6.2 Processing of personal data and controller responsibility

### 6.2.1 Processing of personal data

28 Below, the DPA assesses whether the three processing operations described above involve processing of

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personal data.

Benefits is responsible for allocating, paying and reclaiming benefits. The applicants of

childcare allowance (and its allowance partners) are natural persons who are paid by Toeslagen direct

can be identified. This is inherent to the task of Allowances to issue allowances to individuals to turn. It follows from chapter 2 of the research report that Supplements also have nationality of the applicant. This is information about an identifiable natural person for Surcharges. The nationality of the applicant is therefore personal data within the meaning of Article 4, opening words and under 1, of the AVG and article 1, preamble and under a, of the Wbp. The applicants are data subjects in the sense of article 4, preamble and under 1, of the AVG and article 1, preamble and under f, of the Wbp.

It follows from paragraphs 2.1 to 2.4 of the research report that Supplements data on the collects, stores, uses, retrieves and records the nationality of applicants, among other things. With this processes Surcharges of personal data as referred to in Article 4, preamble and under 2, of the GDPR and article 1, preamble and under b, of the Wbp.

It follows from section 2.3 of the research report that Supplements use a risk classification model. The use of the risk classification model by Supplements is one form of profiling, because this processing meets all three conditions referred to in Article 4, preamble and under 4 of the AVG.<sup>8</sup> Firstly, there is an automated form of processing. The risk- This is because the classification model is an algorithm that automatically selects applications based on personnel capacity is deployed. Secondly, the processing relates to personal data. The in it Model indicators used include the number of children of the applicant and whether the applicant is or does not have Dutch nationality. The information used for the indicators in the risk classification model are personal data as referred to in Article 4, preamble and under 1, of the GDPR. Third, the processing with the risk classification model aims to identify individual characteristics evaluate and categorize. Evaluation is based on personal aspects of the applicant and on the basis of this an estimate is made of the risk that the applicant has submitted an incorrect application, and supervision is adjusted accordingly.

<sup>8</sup> The Wbp does not define profiling. Profiling is a way of processing personal data. Using it risk classification model can therefore be qualified at the time of the Wbp as a processing of personal data in the sense of Article 1, preamble and under b, of the Wbp.

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#### 6.2.2 Processing Responsibility

32 On the basis of what has been stated in section 3.1.2. of the research report, the AP concludes that the Minister is the controller for the three processing operations described above within the meaning of Article 4, preamble and under 7, of the AVG and Article 1, preamble and under d, of the Wbp, for the processing of data on the nationality of applicants for childcare allowance by Toeslagen. For the justification, the AP refers to paragraph 3.1.2 of the investigation report.

#### 6.3. Violation of lawfulness in the three processing operations

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Article 5, first paragraph, preamble and under a, of the AVG stipulates that personal data must be processed in a manner that is lawful, fair and transparent in relation to the data subject. On Pursuant to Article 6(1) of the GDPR, the processing of personal data is only lawful if and insofar as at least one of the conditions referred to in that article is met (foundations). At the time of the Wbp, processing of personal data also had to be done based on one of the conditions stated in Article 8 of the Wbp. Article 6, first paragraph, of the GDPR and Article 8 of the Wbp aim to safeguard the same legal interests and there is no (substantial) material change to the regulations on this point.

34 Pursuant to the basis referred to in Article 6(1)(e) of the GDPR, processing of personal data only lawfully if the processing is necessary for the performance of a task of public interest or of a task in the exercise of public authority vested in the controller has been assigned (hereinafter: public task).

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It follows from recitals 41 and 45 in the preamble that the GDPR does not prescribe that for every separate processing specific legislation is required. Legislation that if basis for various processing operations. That legislation must be clear and precise and the its application must be predictable for those to whom it applies.

36 The necessity requirement laid down in Article 6, first paragraph, opening words and under e, of the GDPR means that the principles of proportionality and subsidiarity must be complied with. It principle of proportionality means that the infringement of the interests of the processing of the personal data of persons involved may not be disproportionate in relation to the processing purpose to serve. Based on the subsidiarity principle, the purpose for which the personal data are not reasonably processed in any other way, for the processing of personal data person concerned, can be achieved in a less detrimental way. The concrete test is or less infringing means are available to achieve the same goal.

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Allowances may only process personal data in this context if they have registered for this basis from the AVG, such as the performance of a public task, and the processing for this necessary.

#### 6.3.1 Public task

The research report has established that Supplements have a public task, namely the implementation of granting, paying and reclaiming childcare allowance. This public task is laid down in

the Childcare Act (hereinafter: Wko) and the General Income-dependent Arrangements Act (hereinafter: Awir).<sup>9</sup> The Awir, read in conjunction with the Decree on the appointment of Awir supervisors, has also been determined that Supplements is charged with supervising compliance with the provisions of or pursuant to the Awir.<sup>10</sup> Supplements receive the nationality of applicants from the BRP. Depend on this provision Based on authorization decisions stating which data is provided and with what goal that happens.

The Authorization Decrees have been published in the Government Gazette and the website of the Rijksdienst voor identity data and publicly available.

For the detailed justification, the AP refers to paragraphs 3.4.2, 3.5.2 and 3.6.2 of the research report. Based on the foregoing, the AP concludes in the investigation report that Allowances has a public task and that the basis for the processing is nationality stakeholders is sufficiently known. The Minister has this observation and justification in his opinion not contested. The AP therefore assumes this in the following.

#### 6.3.2 Necessity

Processing dual nationality of Dutch nationals in the TVS (first processing)

<sup>40</sup> In the investigation report, the AP has established that Supplements unlawfully grant dual nationalities has processed from Dutch applicants for childcare allowance.

<sup>41</sup>

To be eligible for childcare allowance, the applicant for childcare allowance (en his allowance partner, hereinafter jointly referred to as: the applicant) have or must have Dutch nationality applicant must be a foreign national who has lawful residence in the Netherlands. The processing of it personal nationality is therefore necessary for the public task of Supplements. Without these after all, it would not be possible for Allowances to claim childcare allowance and to properly perform its public task in this respect. As in the research report has been explained, the requirements of proportionality and subsidiarity are also met. This applies

<sup>9</sup> See Article 1.3, first and third paragraph, of the Wko.

10 Article 43 of the Awir, read in conjunction with Article 1 of the Decree designating the Awir supervisors.

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however, only for the nationality relevant to determining entitlement to  
childcare allowance.

The research report has established that Supplements not only have the nationality of  
persons relevant to determining the entitlement to childcare allowance, but also about  
dual nationalities of Dutch nationals collected from the GBA and since January 6, 2014<sup>11</sup> in the  
TVS have been preserved.<sup>12</sup> It is considered – in summary – that these data are not relevant to  
determining the entitlement to childcare allowance and not necessarily for the public task of  
Surcharges, since Dutch nationality already gives entitlement. This means that is inconsistent  
acted in accordance with the principle laid down in the GDPR that personal data must be processed on a  
manner that is lawful with regard to data subjects. Therefore, in the research report  
concluded that from January 6, 2014 until at least April 10, 2020, there has been a violation of  
Article 5, paragraph 1, opening lines and under a, of the GDPR, read in conjunction with Article 6, paragraph 1, of the  
AVG and 6 of the Wbp, read in conjunction with article 8 of the Wbp.

In the opinion, the Minister has acknowledged the established facts and has included the conclusion as well as the motivation  
the research report is not disputed. The AP's finding that the processing of the duplicate  
nationality of Dutch nationals is not necessary for the task of Supplements will be determined by the Minister

shared. Furthermore, the Minister has stated that the historical data in the TVS on 30 June 2020 are completely cleared from the systems.

In view of this, the AP concludes that the Minister, when processing the dual nationality of Dutch have committed a violation of Article 5, first paragraph, preamble and under a, of the GDPR in conjunction with Article 6(1) of the GDPR. This also constitutes a violation of Article 6 of read the Wbp in conjunction with Article 8 of the Wbp, insofar as it was committed in the period before 25 May 2018. For the motivation, the AP also refers to section 3.4.2 of the research report. This violation started on January 6, 2014 and ended on June 30, 2020.

The use of nationality personal data for an indicator in the risk classification model (second processing)

In the investigation report, the AP has established that Supplements have been using the so-called risk classification model to deploy control capacity on (individual) applications and changes to childcare allowance with an increased risk of inaccuracy. The risk-classification model reviews all applications and selects draft decisions involving such

11 As explained above, the BRP Act came into force on that date, whereby persons with Dutch nationality are subject to this no more dual nationality is mentioned in the BRP, but only Dutch nationality.

12 On 25 May 2018, a total of 1.4 million citizens with dual nationality were registered in the TVS. It is according to the The Tax and Customs Administration was unable to find out how many of these were Dutch citizens and applied for childcare allowance. See file item 134.

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increased risk exists. These selected draft decisions are not automatically converted



in formal decisions, but assessed manually by an employee of Toeslagen.

46 The risk classification model tests all applications in a month and uses a self-learning algorithm, based on which it automatically selects requests for which human resources are available is deployed. The model estimates the risk of a incorrect application has been submitted. Those 100 applications that have the highest risk score in that month become then presented for manual review by an employee. One of the indicators of since at least March 2016 to October 2018, the model concerned the indicator “Dutch nationality/non-Dutch citizenship”. In the case of dual nationality, including Dutch, it was assumed Dutch citizenship.

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In the investigation report, the AP has – in summary – established that non-Dutch citizenship (whereby the nationality was not taken into account) in combination with other indicators result in a higher risk score and lead to manual review by an employee of Surcharges. In certain cases, the nationality of the applicant contributed to the chance of an additional check.

48 In the investigation report, the DPA ruled that the processing of the data 'non-Dutch nationality' in the risk classification model did not comply with the subsidiarity principle and therefore not the requirement of necessity. The Dutch nationality/non-Dutch nationality indicator showed none a definite answer to the question of whether an applicant was eligible on the basis of his (dual) nationality childcare allowance; a more accurate indicator that says more about entitlement to childcare would are “possess Dutch nationality, or EU nationality with registration in a Dutch municipality, or non-EU nationality and a valid residence permit”. That means there is a less far-reaching form of it processing was possible, namely by not basing the indicator exclusively on nationality.

49 In the opinion, the Minister has acknowledged the established facts and has included the conclusion and motivation the research report is not disputed. Furthermore, the Minister stated that the indicator Dutch nationality/non-Dutch nationality in the risk classification model is not proper and not objective

was substantiated. Benefit applicants who did not have Dutch nationality regarded as non-Dutch, so that they had a relatively higher chance that their allowance application was selected for manual review. This should never have happened said the Minister. Furthermore, the Minister has stated that since October 2018 nationality will no longer be used in the risk classification model for the childcare allowance.

In view of this, the AP concludes that the Minister should also process the nationality for the Dutch nationality/non-Dutch nationality indicator Article 5, first paragraph, preamble and under a, of the GDPR read in conjunction with Article 6(1) of the GDPR. This also provides a

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violation of article 6 of the Wbp read in conjunction with article 8 of the Wbp, insofar as this was committed in the period before 25 May 2018. For the motivation, the AP also refers to paragraph 3.5.2 of the research report. In any case, this violation started in March 2016 and has ended in October 2018.

The use of nationality personal data in the detection of organized fraud (third processing)

In the investigation report, the AP has established that Supplements from 2013 to June 2019

(has) used personal nationality data to detect organized fraud with

childcare allowance.

It follows from the research report that in the context of fraud prevention, the nationality of applicants of childcare allowance was processed by Toeslagen by performing queries.

Firstly, from 9 July 2013, the nationality of applicants was used by Supplements to determine the activity of groups of applicants by performing periodic queries on the nationality of all applicants for allowance, or a change thereof, in the Allowance Portal. Hereby a picture emerged of the number of applications per nationality.

Secondly, from 2013 queries from, among others, the TVS were carried out on – among other things – the personal nationality and any dual nationality as a concrete fraud signal for this purpose gave cause.<sup>13</sup> The results were presented in an Excel file and – if applicable of a signal worthy of investigation – from 2014 further processed in the form of a table and recorded in an internal document, a so-called quick scan. In the period from May 25, 2018 to February 14, 2019 a total of 213 queries were executed. Nationality was requested in all queries.<sup>14</sup>

The main reason given by the Tax and Customs Administration for this processing was that nationality is a could be an indication of the homogeneity of the study population and that experience would have

It has been shown that citizens in the same living environment, including on the basis of nationality, could provide an indication are of organized abuse.

Thirdly, the research report identifies two cases from 2014 in which Supplements to requested additional information from all applicants for a fraud alert

particular nationality. It concerns i) a query to all citizens with the Ghanaian nationality who on or

<sup>13</sup> Signs of fraud could be seen, for example, in time registrations of childminders that are incorrect, too many children present certain host parents, incomplete contracts or little to no evaluations or progress talks with host parents by the childminder agency. A fraud signal could also be caused by logging in to the Supplementary Portal with different users in quick succession

BSNs from one IP address.

14 See file document 134.

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applied for a supplement after 1 January 2013<sup>15</sup> and ii) a query to all applicants with the Bulgarian nationality who had applied for a benefit between 1 June 2013 and 1 January 2014<sup>16</sup>. This applicants could also have Dutch nationality. Actually, this means that applicants who had both Dutch and another nationality, despite their Dutch nationality nationality on the basis of their other nationality had a chance that their allowance application would be processed assessed for fraud.

57 The investigation report also notes that Supplements decided to stop on 7 June 2019 with querying the nationality of applicants in query requests to avoid that nationality can be part of analysis and research in the context of the investigation of organized fraud with childcare allowance. In addition, the AP has all queries and quick scans requested by which the nationality of applicants was requested. In the period of May 25, 2018 until February 14, 2019, a total of 213 queries have been executed. The Tax and Customs Administration has also stated that after February 14, 2019 the query process as well as the format has been adjusted and the 'nationality' has not more is included in the query results.<sup>17</sup>

58 In the investigation report, the AP has – in summary – ruled that the above-mentioned processing is not were necessary for the detection of fraud with childcare allowance because the requirements were not met the requirements of proportionality and subsidiarity.

59 To get a picture of groups of applicants, a less far-reaching form of processing is possible by only to investigate whether there was increased activity within a nationality if more there concrete reasons for this.<sup>18</sup> In addition, the Tax and Customs Administration stated during the investigation that

mapping the nationality of all applicants for childcare allowance in the

Allowance portal did not meet the requirements of proportionality and subsidiarity.

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The research report also concludes that the queries and quick scans used by Toeslagen are used do not provide any support for the position that nationality is a relevant factor in the detection of organized abuse of childcare allowances. Apart from that one was less far-reaching form of processing is possible to determine the degree of homogeneity of a group. Allowances itself was also unable to substantiate why the processing of the nationality of applicants for childcare allowance in queries and quick scans in response to a fraud signal was necessary for detecting and combating childcare benefit fraud. On the contrary, the

During the investigation, the Tax and Customs Administration correctly stated that Allowances with the retrieval and use of the applicants' nationality has not been sufficiently taken into account as a result of a fraud signal

15 The result of this query shows that 6,074 citizens with a Ghanaian nationality had applied for childcare allowance.

16 It follows from the result of this query that 363 citizens with a Bulgarian nationality had applied for childcare allowance.

17 See file document 134.

18 Just one indication that there is something wrong with one BSN, for example, is not enough.

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for the requirements of subsidiarity and proportionality and that Supplements have gone too far in the fraud approach.

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With regard to the two cases established in 2014 where Supplements had additional information requested from all applicants of a particular nationality is also included in the research report

concluded that the use of nationality was not necessary in the detection of organized crime fraud and that no relevant data could be derived from the nationality with which fraud could be committed be determined. The processing was therefore not necessary for the performance of a public task Surcharges. During the investigation, the Tax and Customs Administration also stated that with today's knowledge, the query that only selects on nationality is disproportionate.

62 In the opinion, the Minister has acknowledged the established facts and stated that when investigating organized abuse of benefits, usually the (possibly dual) nationality of the person involved applicant was asked. This should never have happened, he said. The conclusion as well as the reasons in the investigation report are not disputed. The Minister also reiterated that Surcharges formally decided in June 2019 not to make or collect queries based on nationality to ask.

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In view of this, the AP concludes that the Minister also uses the nationality of applicants of childcare allowance in the detection of organized Article 5, first paragraph, preamble and under a, of has violated the GDPR read in conjunction with Article 6, paragraph 1, of the GDPR. This also provides a violation of article 6 of the Wbp read in conjunction with article 8 of the Wbp, insofar as this was committed in the period before 25 May 2018. For the motivation, the AP also refers to section 3.6.2 of the research report. In any case, this violation started in 2013 and ended in February 2019.<sup>19</sup>

#### 6.4. Violation of fairness in the last two processing operations

The research report further established that some of the processing operations discussed above were also improper within the meaning of Article 5, first paragraph, preamble and under a, of the GDPR and Article 6 of the Wbp. Article 5, first paragraph, preamble and under a, of the GDPR and Article 6 of the Wbp aim guarantee the same legal interests and there is no (material) material change to the regulations on this point.

65 The controller is under an obligation to process personal data in a proper manner

to process. The principle of fairness in the context of the GDPR entails, among other things, that personal data should be processed in a fair and transparent manner and processing should not may conflict with general principles of law and fundamental fundamental rights of data subjects, such as

19 On 14 February 2019, the last query was carried out in which the nationality was requested.

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the prohibition of discrimination enshrined, inter alia, in Article 21 of the Charter of Fundamental Rights of the European Union (hereinafter: Charter).

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When assessing whether there is discrimination, it is important that two in all are not required similar cases occur. What matters is whether the cases involved in relevant respects are sufficiently comparable.<sup>20</sup> Furthermore, the prohibition of discrimination does not stand in the way of every unequal treatment of cases which are similar in relevant respects, but only those which are treated as unjustified discrimination must be considered, because no reasonable and objective justification exists. This occurs if that distinction is not legitimate purpose or there is no reasonable, proportionate relationship between the means used and the purpose that the aim is to achieve this.<sup>21</sup> This assessment framework applies equally to Article 26 of the ICCPR<sup>22</sup>, Article 21 of the Charter, Article 1 of Protocol No. 12 to the ECHR<sup>23</sup>, Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination and Article 1 of the Constitution<sup>24</sup>.

67 The AP has investigated whether Allowances has the nationality of the childcare allowance applicant used as a distinguishing criterion, or as a consideration in monitoring childcare allowance,

without any objective justification. In short, such processing is on

to be regarded as discriminatory and for that reason contrary to the principle of fairness within the meaning of

Article 5, first paragraph, opening lines and under a, of the AVG. To determine whether the various processing operations of

nationality described in the research report were discriminatory, the processing operations were tested

meets the following cumulative criteria<sup>25</sup>:

1. the opposing interests are sufficiently similar in relevant respects;
2. a distinction has been made between these cases;
3. the distinction has led to a disadvantage in treatment; and
4. the distinction is not reasonably and objectively justified, because it does not serve a legitimate purpose and/or is there is no reasonable and proportionate relationship between the distinction and the intended purpose.

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In the research report it has been established that the use of the personal data of nationality as an indicator

in the risk0 classification model can be regarded as discriminatory processing and is contrary to this

is with due process within the meaning of Article 5, first paragraph, preamble and under a, of the GDPR and

Article 6 of the Wbp. This also applies to all processing related to nationality that is carried out at

20 Par. 56 of the judgment of the ECtHR of 13 December 2011 (Ludana v. Slovakia),

ECLI:CE:ECHR:2011:1213JUD003182702).

21 Par. 125 of the judgment of the ECtHR of 22 March 2012 (Konstantin Markin v. Russia),

ECLI:CE:ECHR:2012:0322JUD003007806)

and para. 90 of the judgment of the ECtHR of 25 March 2014 (Biao v. Denmark), ECLI:CE:ECHR:2016:0524JUD003859010).

22 Compare ABRvS 30 March 2016, ECLI NL:RVS:2016:865, ow. 2.4

23 Compare the judgment of the Supreme Court of 13 April 2018, ECLI:NL:HR:2018:429, ow. 2.5.2.

24 Compare the judgment of the HR of 18 October 2004, ECLI:NL:HR:2004:AP0424, ow. 3.4.2 and the judgment of the

Supreme Court of 4 November 2016,

ECLI:NL:HR:2016:2495, ow. 2.4.1.

25 For an extensive legal framework, see section 3.7.1. of the research report.



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have taken place for the purpose of detecting organized fraud. With these processing the AP concluded that these discriminate on the basis of nationality, without being one objective justification exists. According to the research report will take place at least from March 2016 to October 2018 and from 2013 to February 2019.

The appropriateness of using nationality for an indicator in the risk classification model (second processing)

69 According to the research report, the distinction made in the risk classification model is not reasonable and objectively justified. The distinction between the two opposing cases, and the resulting disadvantage in treatment, is not in a reasonable and proportionate proportion to the intended purpose. The indicators in the risk classification model aim to applications and changes with the highest risk of errors. The indicator

Dutch nationality/non-Dutch nationality did not give a complete answer to the question whether an applicant applied was eligible for childcare allowance on the basis of his or her (dual) nationality. Here is

It is also relevant whether or not an applicant is registered in a Dutch municipality or is legally registered in it Netherlands resides. There are therefore more criteria for determining whether there is lawful residence of interest. There is therefore no objective justification for the choice of lawful residence

only looking at Dutch nationality/non-Dutch nationality. An objective indicator that more says about the entitlement to a supplement would be: "Have the Dutch nationality, or an EU nationality with registration in a Dutch municipality, or a non-EU nationality and a valid residence permit". A

such an indicator would reduce the chance that the performance of Surcharges also depended on the

nationality. This means that a less far-reaching form of processing was possible, namely through not to base the indicator solely on nationality.

As explained above in marginal 49, the Minister has established the facts in his opinion acknowledged and the conclusion as well as the reasoning in the investigation report are not contested. Furthermore, the Minister stated that the indicator Dutch nationality/non-Dutch nationality in the risk classification model was not properly and objectively substantiated and that nationality is no longer used in the risk classification model for childcare allowance since October 2018.

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In view of this, the AP concludes that the processing of the nationality for the indicator Dutch nationality/non-Dutch nationality is an improper processing, and that the Minister has violated article 5, first paragraph, opening lines and under a, of the GDPR. This also results in a violation of Article 6 of the Wbp, insofar as this violation was committed in the period before 25 May 2018. For the justification, the AP also refers to section 3.7 of the investigation report. This offense in any case lasted from March 2016 to October 2018.

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The fairness of the use of nationality in the detection of organized fraud (third processing)

With regard to the use of applicants' nationality by Surcharges for the activity of

In order to get a picture of groups of applicants, the research report summarizes the following

concluded. A distinction was made by classifying individual applicants on the basis of nationality, which has led to a disadvantage for applicants with an elevated nationality number of requests. An increased activity within a certain nationality could, in combination with other variables for Surcharges give rise to further research. These applicants had a increased chance of being checked compared to applicants who did not belong to one nationality with increased activity. The distinction made is neither reasonable nor objective justified. The resulting disadvantage in treatment is not in a reasonable and proportionate to the intended purpose. After all, a less far-reaching form is possible by only investigating whether there was increased activity within a nationality like that more concrete reasons. Surcharges, however, were made periodically and without concrete reason an overview of the number of applications for all nationalities.

With regard to processing nationality in quick scans in response to a fraud signal the research report – in summary – concludes as follows. There was a distinction made between all applicants on the one hand and applicants included in the queries and quick-scans in response to a fraud signal. Surcharges used, among other things, the nationality. The the intention was to assess the homogeneity of the study population; this was possible Allowances indicate organized abuse of allowances. This distinction has led to disadvantage in the treatment for applicants who were included in such a query and quick-scan is not reasonable and not objectively justified. The resulting disadvantage in treatment is not in a reasonable state and proportionate to the intended purpose because of the necessity of the processing of the nationality of the applicant has not been apparent from the relevant laws and regulations, nor from the results of the processing in practice. In addition, the Minister has recognized the necessity of this processing and the Director General of Benefits was correct during the investigation acknowledges that Supplements have not paid sufficient attention to the requirements of subsidiarity and proportionality.

With regard to the two cases established in 2014 where Supplements had additional information

requested from all applicants of a certain nationality, the research report –  
in summary – the following conclusion. A distinction was made by running a query  
requesting additional information on all applicants with a specific nationality for a  
certain period. This distinction has led to disadvantage in treatment by applicants with the  
Ghanaian and Bulgarian nationality, respectively, were subject to an additional supervisory act

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subject.<sup>26</sup> There is a question of a suspicious distinction because it is only aimed at applicants with  
a specific nationality. According to constant case law of the ECtHR, making is suspicious  
distinction is only allowed if there are very compelling reasons for doing so. Allowances are not possible  
for very compelling reasons. The necessity of processing the nationality of  
the applicant is again not apparent from the relevant legislation and regulations, nor from the results  
of processing in practice. In addition, the Minister has the necessity of this processing  
could not demonstrate either and the Director-General of Benefits acknowledged this during the investigation  
Allowances here too paid insufficient attention to the requirements of subsidiarity and proportionality.  
As explained above in marginal 62, the Minister has established the facts in his opinion  
acknowledged and stated that, in the case of an investigation into organized abuse of benefits, the (possibly  
dual) nationality of the applicant concerned was requested, which should never have happened.  
The conclusion and the reasoning in the investigation report are not disputed.

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76 In view of this, the AP concludes that the Minister also uses the nationality of applicants  
of childcare allowance in the detection of organized fraud the in Article 5, first paragraph, opening lines and  
has violated the properness requirement laid down under a of the GDPR. This also provides a

violation of Article 6 of the Wbp, insofar as this violation was committed in the period before 25 May 2018. For the motivation, the AP also refers to section 3.8 of the investigation report. This violation lasted from 2013 to February 2019.

## 7. Fines

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### 7.1 Introduction

Given the seriousness of the violations and the extent to which they can be blamed on the Minister, the AP deems the imposition of fines appropriate. The AP therefore makes allowances for the established violations use its power to impose fines on the Minister for the various processing operations where the GDPR has been violated.

Since in this case there are continuous violations that fall under both the Wbp and the AVG have taken place, the AP has tested against the substantive law as it applied at the time the behaviors took place. In this case, these are articles 6 and 8 of the Wbp as well as the Articles 5, first paragraph, preamble and under a and 6, first paragraph, of the GDPR. These provisions have the same purpose legal interests and there is no (material) material change in the regulations on this point.

26 This was also the case when these applicants also held Dutch nationality.

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The AP motivates the imposition of the fines in the following. First, the different processing operations for which the fines are imposed (7.2) and then the amount of the

finances to be imposed (7.3). Finally, it is assessed whether the application of the fining policy is not leads to a disproportionate outcome (7.4).

## 7.2 The processing operations to be fined

79 The AP concludes that the Minister read Article 6, in conjunction with Article 8 of the Wbp, as well as Article 5, first paragraph, opening lines and under a, of the GDPR, read in conjunction with Article 6, first paragraph, of the GDPR, has violated with three different processing operations, namely:

- the non-necessary storage of the dual nationality of Dutch citizens in the TVS (first processing);
- the unnecessary use of the nationality of applicants for an indicator in the risk assessment classification model (second processing);
- the unnecessary use of the nationality of applicants in the investigation of organized fraud (third processing).

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80 In addition, the Minister has applied the principle of fairness to the second and third processing, such as laid down in Article 6 of the Wbp and Article 5, first paragraph, preamble and under a, of the AVG.

The AP uses its power to impose fines on the Minister for the established violations to impose in respect of the first, second and third processing, because the requirement of lawfulness has been violated. During the second and third processing, which also involved a violation of the principle of proper conduct, the AP takes that fact into account when assessing the seriousness of the violations and thus in determining the amount of the fines.

## 7.3 Determination of the amount of the fines

82 Pursuant to Article 58, second paragraph, opening lines and under i and Article 83, fifth paragraph, of the GDPR, read in coherence with Article 14, third paragraph, in conjunction. Article 18 of the UAVG, the AP is authorized to the Minister in case to impose an administrative fine up to an amount of violation of Articles 5 and 6 of the GDPR of €20,000,000. The AP has established Fining Policy Rules regarding the implementation of the aforementioned authority to impose an administrative fine, including the determination of the amount thereof<sup>27</sup>

(hereinafter: the Penalty Policy Rules). In the Fining Policy Rules, a categorization has been chosen and bandwidth system. The Fining Policy Rules stipulate that for the violation of Article 5, first paragraph, under a, of the AVG and Article 6 of the AVG fine category III applies.<sup>28 A</sup>

<sup>27</sup> Penalty Policy Rules of the Dutch Data Protection Authority 2019, Stcrt. 2019, 14586, March 14, 2019.

<sup>28</sup> The fine for violation of Article 5(1)(a) of the GDPR depends on the underlying underlying provision. In the present case this is article 6, which is classified in category III of the Policy Rules.

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fine range between a minimum of €300,000 and a maximum of €750,000 and a basic fine of € 525,000.--.

Increase in fines (Articles 6, 7 and 8 of the Fining Policy Rules)

Article 83, paragraph 2, of the GDPR stipulates that the supervisory authority, when determining the amount of the fine takes into account the factors referred to under a to k. These factors are also taken over in Articles 6 and 7 of the Fining Policy Rules, which – in short – stipulate that the basic fine on can be increased or decreased within the penalty range based on the factors mentioned.

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84 In view of the factors referred to in Article 83, second paragraph, of the GDPR and Article 7 of the Fining Policy Rules

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First of all, the AP sees reason to increase all three (basic) fines to a maximum of 750,000.--. In doing so, the AP specifically takes into account the factors referred to under a, b and f, which are listed below being discussed. Secondly, the AP has taken into account that in the second and third processing involves improper processing which is the fundamental right of many citizens violated. As a result, the AP is of the opinion that the fine category linked to the violation,

with a maximum fine of 750,000.00, does not allow appropriate punishment for these two violations.

The AP considers it very serious that a government agency has discriminatory processing executed. In view of the foregoing and the applicable factors to be discussed below, it therefore concludes with application of Article 8.1 of the Fining Policy Rules when determining the fine amount for the second and third processing to apply the next higher category (IV), and decide within the permitted bandwidth to increase the fine to a maximum amount of € 1,000,000. The AP motivates this as follows.

With regard to the nature of the violations, the AP weighs heavily that this concerns processing of discrimination-sensitive personal data, namely nationality, the processing of which is a carries a higher than usual risk of individuals becoming unnecessarily placed in certain groups divided. Extra care must therefore be taken when processing the nationality of citizens to go. In addition, applicants for benefits are in a strong position vis-à-vis the government dependent and unequal position. The costs for childcare are so high that parents do not have them are generally unable to bear childcare allowance. This means that they are often forced themselves to allow the processing of their personal data in the context of obtaining it by the government pleasure. Of a free choice, or the possibility for parents to refuse this processing, is then no question either. In such a dependent and unequal position, it is especially important that the government proceeds with the utmost care and observes all relevant laws and regulations, including the GDPR.

The AP considers it very serious that this has not happened. Also the systematic – and therefore not incidental – nature of the violation, whereby unnecessary processing is carried out for a long time and systematically personal data took place, is taken into account in determining the seriousness of the violations.

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With regard to the scope of the violations, the AP takes the following into account. In TVS

dual nationality was registered for 1.4 million citizens on 25 May 2018.<sup>29</sup> In addition, it appears from

figures from Statistics Netherlands that Supplements in the years 2016 to 2018, in which they use the risk classification model used, has granted annual childcare allowance to between 543,000 and 634,000 households.<sup>30</sup>

The research report also establishes that in tackling organized fraud from July 2013

a monthly overview of the number of applicants per nationality was provided.<sup>31</sup> In the period

from May 25, 2018 through February 14, 2019, a total of 213 queries were run. Although the exact number processing operations cannot be established on the basis of the available information, it is plausible that probably hundreds of thousands and possibly more than a million people to one degree or another are affected by the violation.

<sup>87</sup> In addition, the processing took place over a longer period of time. Thus, the dual nationality of

Dutch people stored in the TVS from 2014 and was still not double in February 2020

nationality of all Dutch citizens removed from the TVS. The nationality of applicants is in any case

used from March 2016 to October 2018 for an indicator in the risk classification model. For the

approach to organized fraud, queries from, among others, the TVS were carried out from 2013 on –

among other things – the personal nationality and any dual nationality as a specific

fraud signal gave rise to this. The results were presented in an Excel file and

– if there was a signal worth investigating – further processed from 2014 in the form of a

table and recorded in an internal document, a so-called quick scan. In the period of May 25, 2018

until February 14, 2019, a total of 213 queries have been executed. Nationality was requested in all queries.

Because the AP has only had the authority to enforce the aforementioned violations since January 1, 2016

in the context of the (increase of the) fine, it only takes up the duration from 1 January 2016

review. In that case, too, there are long-term violations.

In addition, the violations have had a major impact on the lives of those involved. By the

unnecessary processing of their nationality, applicants ran a higher risk of being falsely identified as a fraudster are designated. As became clear in the aftermath of the Supplementary Affair, this could lead to this that some households had to repay tens of thousands of euros in benefits already received.

Many applicants have been in serious financial trouble for years as a result, which is a has (had) a major impact on their personal lives.

29 See file document 110b, p. 13. According to the Tax and Customs Administration, it is not possible to determine how many of these were Dutch nationals.

30 See “Extension of childcare allowance, 2013-2019” on the CBS website: <https://www.cbs.nl/nl-nl/maatwerk/2021/16/extension-childcare-allowance-2013-2019>.

31 Because the results of queries have been deleted, it is not possible to determine when this assignment ended, see also section 2.4.1. and

3.9.3. of the research report. However, it has been established that Supplements decided on 7 June 2019 to stop requesting the

nationality of applicants in query requests to prevent nationality from being part of analysis and

investigation in the context of the detection of organized fraud with childcare allowance, see paragraphs 2.4.5 and 3.9.3 of the research report.

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With regard to the intentional or negligent nature of the violations, the AP assumes that Surcharges as administrative body has a special responsibility to deal with the personal data it processes. Citizens must be able to trust that their data is up to date

Allowances are in good hands and are only processed if necessary. This is in particular

important when processing personal data such as nationality, where careless processing can lead to discriminatory consequences. Surcharges had their processing into it must limit to a minimum and must be provided with such guarantees that the risk of discriminatory processing was excluded as much as possible. Surcharges had accrued upon processing nationality of those involved must be limited to what was necessary for the performance of the at or tasks assigned to it under the Wko and the Awir. Nevertheless, for a long time period and large-scale unlawful, improper and discriminatory processing occurred.

90 In addition, the DPA already advised in 2012 against unnecessary processing of duplicate

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nationalities of citizens and to remove this data from the BRP.<sup>32</sup> Since the entry into force of the BRP on January 6, 2014, the dual nationality of citizens with the Dutch nationality is also no longer included in the personal registration.<sup>33</sup> Because it will become TVS filled with data from the BRP, Supplements also had dual nationality of citizens at that time with Dutch nationality should be removed from the TVS. Nevertheless, Surcharges to and by 2020, the dual nationality of citizens with Dutch nationality will be processed in the TVS. This while the AP inquired in July 2017 about the use of dual nationality by Surcharges.

In conclusion, the Minister has insufficiently cooperated with the AP to remedy the infringement and the limit possible negative consequences by making false statements during the investigation that have hindered the AP's investigation. For example, the Director General of the Tax and Customs Administration stated on July 18, 2017 that the Tax and Customs Administration/Allowances have no data on the dual nationality of Dutch applicants for childcare allowance. He also did at the time stated that nationality was not used as a selection criterion for these applicants childcare allowance to carry out (extra) supervision.<sup>34</sup> It was not until April 2019 that the general director

Surcharges declare that the above statements are not correct or complete.<sup>35</sup> With those

incorrect statements have put the AP on the wrong track and with that the further course of it

32 See “Recommendation containing a proposal to amend the Personal Records Database Act”, of the Protection Board personal data, 9 August 2012. Can be found on the website of the Dutch Data Protection Authority:

<https://autoriteitpersoonsgegevens.nl/nl/nieuws/cbp-advises-about-beperken-registration-double-nationality>.

33 See Article 2.7, paragraph 1, under a, sub 5, of the BRP Act: “In the basic registration, only the

following information: a. general information: (...) 5: information about nationality, on the understanding that no information about a foreign nationality are included in addition to information about Dutch nationality or the fact that the person concerned is a

Dutchman is being treated”.

34 See file document 8.

35 See file documents 23a and 26a.

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research complicated and delayed. In addition, the AP needed information on September 13, 2019

progress because the information request of July 8, 2019 had still not been answered, despite the AP

had already extended the initial response period of 31 July 2019 three times at the request of the Tax and Customs Administration.<sup>36</sup> The

AP places a heavy burden on the Tax and Customs Administration as a government body.

#### 7.4 Proportionality

Finally, the AP assesses pursuant to Sections 3:4 and 5:46 of the General Administrative Law Act (hereinafter:

Awb) or the application of its policy for determining the amount of the fine in view of the

circumstances of the particular case, does not lead to a disproportionate outcome.

93 The AP is of the opinion that (the amount of) the fine is proportionate. In this opinion, the AP has recognized the seriousness of the violation, the extent to which this can be attributed to the Minister, and other circumstances weighed in. For example, there was discriminatory processing of sensitive personal data such as nationality of citizens by a government organization. In addition, there was a large number involved, the violation lasted for a longer period of time, there was a major impact for them involved and whether there was intentional or negligent action on the part of the Minister, whereby there is also there has been insufficient cooperation with the AP to remedy the infringement to avoid the adverse consequences thereof to limit. The AP qualifies this breach of the GDPR as very serious.

As explained above, the AP has concluded that the Minister has the legality requirement violated with three different processing (i. the unnecessary retention of the duplicate nationality of Dutch nationals in the TVS, ii. the unnecessary use of the nationality of applicants for an indicator in the risk classification model and iii. the unnecessary use of the nationality of applicants in the detection of organized fraud.) In addition, the AP concluded that the Minister adheres to the principle of fairness in the second and third processing violate. The AP considers imposing separate fines for the latter violations of the law principle of being properly disproportionate because the facts from which these violations arise already be punished for violations of the requirement of legality. Instead, the AP has the violations of the principle of proper conduct are taken into account when determining the amount of the fines for violation of lawfulness in the second and third processing.

In view of the foregoing, the AP sees no reason to set the amount of the fine on the basis of proportionality and the circumstances referred to in the Penalty Policy Rules, insofar as applicable in the foregoing case, further increase or decrease.

36 See file document 48a.

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## 7.5 Conclusion

96 In view of the foregoing, the AP sets the following fine amounts:

- for the violation of lawfulness during the first processing: € 750,000
- for the violation of lawfulness during the second processing: € 1,000,000
- for the violation of lawfulness in the third processing: € 1,000,000

## 8. Operative part

Fines

i

The AP imposes an administrative fine in the amount of € 750,000 on the Minister of Finance

(in words: seven hundred and fifty thousand euros), for violation of Article 5, first paragraph, opening words and under a of the AVG read in conjunction with Article 6, first paragraph, of the AVG and violation of article 6 of the Wbp read in conjunction with article 8 of the Wbp when storing the dual nationalities of Dutch nationals in the TVS;

The AP imposes an administrative fine in the amount of € 1,000,000 on the Minister of Finance

- (in words: one million euros), for violation of article 5, first paragraph, preamble and under a, of the AVG read in conjunction with Article 6, first paragraph, of the AVG and violation of Article 6 of read the Wbp in conjunction with Article 8 of the Wbp when using the nationality of applicants for an indicator in the risk classification model;

The AP imposes an administrative fine in the amount of € 1,000,000 on the Minister of Finance

- (in words: one million euros), for violation of article 5, first paragraph, preamble and under a, of the

AVG read in conjunction with Article 6, first paragraph, of the AVG has violated and violation of Article 6 of the Wbp read in conjunction with Article 8 of the Wbp when using the nationality of applicants in the detection of organized fraud. 37

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III

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

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Yours faithfully,

Authority for Personal Data,

e.g.

drs. C.E. Mur

Board member

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](http://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.