

Confidential/Registered

The Minister of Finance

Madam. S.A.M. Kaag MA, MPhil

Short Voorhout 7

2500 EE The Hague

Date

April 7, 2022

Subject

Decision to impose a fine

Our reference

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Contact

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Dear Ms Kaag,

The Dutch Data Protection Authority (hereinafter: AP) has decided to inform the Minister of Finance (hereinafter: the Minister) to impose administrative fines totaling € 3,700,000. The AP has come to the conclusion that the Minister as controller for the processing of the Tax and Customs Administration, of 4 November 2013 through February 27, 2020 by processing personal data in the application Fraud Detection Facility (hereinafter: FSV) has acted contrary to the principles of lawfulness, purpose specification, correctness and storage limitation.¹

In addition to violating the four principles mentioned above, the AP concludes that the Tax and Customs Administration

has not taken sufficient appropriate technical and organizational measures with regard to the access security, logging and checking the logging to ensure an appropriate level of security for the to safeguard personal data in FSV.² Finally, the AP has concluded that the Tax and Customs Administration has taken the data protection officer (hereinafter: DPO) has not properly and lately involved the implementation of the data protection impact assessment (hereinafter: DIA) of FSV.³

The AP explains the decision in more detail below. Chapter 1 is an introduction and Chapter 2 contains the findings. In chapter 3 the (amount of the) administrative fines are elaborated and chapter 4 contains finally, the operative part and the legal remedies clause.

¹ See article 5, first paragraph, opening lines and under a, of the AVG and article 6 of the Wbp (lawfulness), article 5, first paragraph, opening lines and under b, of the AVG and article 7 of the Wbp (purpose specification), article 5, first paragraph, preamble and under d, of the AVG and article 11, second paragraph, of the Wbp (correctness) and Article 5, first paragraph, opening lines and under e, of the AVG and Article 10, first paragraph, of the Wbp (storage limitation).

² See article 32, first paragraph, of the AVG and article 13 of the Wbp.

³ See article 38, first paragraph, of the GDPR jo. Article 35, second paragraph, of the GDPR.

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1 Introduction

1.1 AP investigation

The AP has investigated the FSV application that the Tax and Customs Administration has until February 27, 2020. used. FSV was an application in which signals were recorded about detected fraud and signals which could indicate an increased risk of tax and benefit fraud. The AP has in this

investigation concluded that the way in which the Tax and Customs Administration has deployed FSV has resulted in several one

has led to serious violations of the General Data Protection Regulation (hereinafter: GDPR) and the Personal Data Protection Act (hereinafter: Wbp), the law that was applicable until the entry into force of the GDPR. The AP has included these findings in a report (hereinafter: the research report) and made this report public on October 29, 2021.⁴

1.2 Process flow

For a description of the investigation procedure, the AP refers to chapter 1 of the research report.

In a letter dated November 12, 2021, the AP informed the Minister of its intention to launch a to impose an administrative sanction and to give the Minister the opportunity to express an opinion to take.

By letter dated 14 January 2022, the Deputy Director General of the

Tax and Customs Administration has submitted a written opinion, in which the aforementioned violations are noted recognized and in which the measures taken and to be taken are discussed in more detail.⁵

2. Findings

The AP bases this decision on the investigation report and the findings contained therein. That facts are supported by the evidence. The Minister does not have the facts laid down in the investigation report contradicted and furthermore the Minister acknowledged the violations based on those facts.

In section 2.1, the DPA briefly discusses the observed violations. For a complete overview of all relevant actual conduct and findings – insofar as they are not mentioned here – the AP refers to chapters 3 and 4 of the research report. After that, the AP gives in paragraph 2.2 the view of the Minister again.

⁴ <https://autoriteitpersoonsgegevens.nl/nl/nieuws/zwarte-lijst-fsv-van-belastingdienst-conflict-met-de-wet>.

⁵ The deputy director-general of the Tax and Customs Administration 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 readability of this decision

hereinafter referred to as “Minister”.

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2.1 Summary of findings

In FSV, the Tax and Customs Administration mainly included persons who had committed fraud and persons suspected of having committed tax or benefits fraud.

FSV was used within the Tax and Customs Administration when assessing tax returns and applications for surcharges and was used to register information requests from other governments. FSV was also consulted for the preparation of risk models and for determining whether a fine should be imposed are imposed in the context of the collection of tax or benefit debts.

In the period from 4 November 2013 to 27 February 2020, the Tax and Customs Administration received signals from suspected and established fraud and information requests in FSV registered, modified, consulted, used, combined and spread outside FSV over at least 244,273 persons and 30,000 entrepreneurs. The Tax and Customs Administration thus has personal data (including data about health, nationality and criminal personal data) processed within the meaning of Article 4, preamble and under 1, 2 and 15 of the AVG, article 10 of the AVG and article 1, preamble and under a and b, of the Wbp and article 16 of the Wbp.

The AP establishes that the Minister is the controller for the processing of personal data in FSV by the Tax and Customs Administration, as referred to in Article 4, preamble and under 7, of the AVG and article 1, preamble and under d, of the Wbp. Where this decision refers to the Tax and Customs Administration the AP equates this with the Minister.

The AP then establishes that from November 4, 2013 to February 27, 2020, the Tax and Customs Administration the processing of personal data in FSV has acted contrary to the principles of

lawfulness, purpose specification, correctness and storage limitation. The AP explains these violations below.

Personal data should be processed in accordance with the principle of lawfulness,

as referred to in Article 5, first paragraph, opening words and under a, of the AVG and Article 6 of the Wbp. This means that

there must be a basis for the processing of personal data as stated in Article 6, first paragraph,

of the AVG and article 8 Wbp. The AP concludes that for the processing of personal data

FSV was not a basis. The Tax and Customs Administration was unable to successfully appeal for those processing operations

based on the 'legal obligation', because there was no obligation to report signals of

to process (possible) fraud and requests for information as counter-information.

The Tax and Customs Administration's appeal on the basis of 'necessary for the fulfillment of a task of

public interest or of a task in the exercise of public authority' also fails.

The system of the General Act on State Taxes, the General Income Dependent Act

regulations, Title 5.2 of the Awb and the substantive legislation, the Tax and Customs Administration does provide the

authority to (in concrete cases) collect personal data for supervisory purposes.

But this legislation is not precise enough to serve as a basis for a separate, structural,

extensive and segment-transcending collection of multifarious, (too) detailed (special and

criminal) personal data in FSV. In addition, the processing in FSV was not necessary

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for the performance of the Tax and Customs Administration's public task of supervising compliance with

the provisions of or pursuant to tax and benefit legislation. Because it has not been fulfilled

principle of proportionality because the infringement on the interests of the data subjects was disproportionate

proportion to the purpose to be served with the processing, whereby the purposes of FSV are not

defined and therefore unclear. The AP is also of the opinion that it is not up to the

principle of subsidiarity is met because the aim pursued can be achieved in a different, less far-reaching way be served, namely without FSV or with the design of another more limited application.

Personal data should also be processed in accordance with the principle of purpose specification, as laid down in Article 5, first paragraph, opening lines and under b, of the GDPR and Article 7 of the Wbp. This means that personal data is only used for specific and explicitly described purposes may be collected. After investigation, the AP concludes that the pre-formulated purposes of the collection of personal data in FSV were not well defined.

Personal data should also be processed in accordance with the principle of correctness, as included in Article 5, first paragraph, opening lines and under d, of the GDPR and Article 11, second paragraph, of the Wbp. This means that personal data must be correct and, if necessary, must be updated. The AP finds that there were incorrect and non-updated personal data in FSV and the Tax and Customs Administration has not taken reasonable measures to rectify this personal data or to delete.

Personal data should also be processed in accordance with the principle of storage limitation, as laid down in Article 5, first paragraph, opening lines and under e, of the GDPR and Article 10, first paragraph of the Wbp. This means that personal data may not be kept longer than necessary. It follows from the AP's investigation that the personal data were kept longer in FSV than the retention period applicable to the personal data in FSV. This saved the Tax and Customs Administration the personal data (therefore) for longer than necessary.

In addition to violating the four standards mentioned above and underlying them principles, the AP concludes that the Tax and Customs Administration has insufficiently appropriate technical and has taken organizational measures with regard to access security, logging and control on the logging to ensure an appropriate level of security for the personal data in FSV.

As a result, from November 4, 2013 to February 27, 2020, the Tax and Customs Administration acted in violation of Article 32, first paragraph, of the AVG and Article 13 of the Wbp.

Finally, the AP concludes that the Tax and Customs Administration did not properly and timely involve the DPO

the implementation of the GEB of FSV. With this conduct, the Tax and Customs Administration acted in violation of Article 38, first paragraph, of the GDPR jo. Article 35, second paragraph, of the GDPR.

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2.2 View of the Minister

The Minister endorses the facts and conclusions in the investigation report of the AP. FSV was not on may be used in this way, the Minister has acknowledged. The conclusions of the AP are in line with earlier conclusions of the Tax and Customs Administration that led to the elimination of FSV.

The Minister declares that the Tax and Customs Administration has informed the citizens concerned who were included in the FSV

informs them about their registration and informs them the reason why they were registered in FSV. As the

The Tax and Customs Administration does not know the reason for a registration in FSV, the Tax and Customs Administration will let the

stakeholders also know. The Tax and Customs Administration informs those involved of their right of access and informs them them that they can contact the Tax and Customs Administration by telephone and also that they can obtain more information

can be found on the FSV webpage. There is a reporting center FSV, intended for citizens who suspect that they

have had undue consequences of their registration in FSV. If there is more clarity about the answer

when asked with which organizations the Tax and Customs Administration has shared data from FSV, the

stakeholders are also informed. At the moment, about 200,000 people involved have received a letter

received from the Tax Authorities about their registration in FSV. About 100,000 of them have the reason

of that registration in FSV.

The Tax and Customs Administration is having further research carried out into the effects of a registration in FSV, on the external one

data sharing from FSV and to the queries used. Ahead of the outcomes of this

investigations, a compensation scheme is being worked out for the unjustly affected citizens.

Partly in response to the problems with FSV, the Tax and Customs Administration started the program 'Repair, improve and safeguard' (hereinafter: HVB). HVB contains promotions, which are since March 2020 used to solve the problems in the way in which the Tax and Customs Administration has dealt with (personal) registrations, risk models and the use of personal data such as nationality.

The executive directorates-general (Tax Office, Benefits, Customs) work together with it Ministry of Finance (policy department) on action plans to improve the privacy organization from a central and decentralized point of view. In the action plans, including that of the Tax and Customs Administration, among other things, the current and additional measures will be presented for the (structural) compliance with these laws and regulations. About the follow-up of the action plans periodically reported to the Board of Directors of the Ministry of Finance.

In addition, the Tax and Customs Administration is working on a new process for handling signals with a temporary technical facility. The conclusions from the AP's research report have been used in the compile the custom GEB of this process. The Tax and Customs Administration has offered the modified GEB to the DPO for advice. The GEB is then presented to the AP for advice.

The Minister also stated that work is being done on the Bill on Guarantees data processing by the Tax and Customs Administration, Allowances and Customs. The bill aims to lay the foundations for strengthen the processing of personal data by the Tax and Customs Administration, Allowances and Customs and

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make it future-proof. In addition, the bill aims to create a legal framework for the guaranteeing lawful, proper and transparent data processing by these three

implementing organizations.

Finally, the Tax and Customs Administration realizes that fundamental improvements are needed in dealing with personal data and the Tax and Customs Administration will make every effort to prevent recurrence in the future prevent, said the Minister.

3. Fines

3.1 Introduction

The AP has established that the Minister, as controller of the processing in FSV by the Tax and Customs Administration, has acted contrary to the principles of lawfulness, purpose specification, accuracy and storage limitation. The AP has also determined that the Minister does not have an appropriate security level for the personal data in FSV and furthermore that the DPO does not go to properly and was not timely involved in the implementation of the GEB of FSV.

The AP uses its power to impose fines on the Minister for the aforementioned violations. Because of the seriousness of the violations and the extent to which they can be held accountable to the Minister are blamed, the AP deems the imposition of fines appropriate. Since in this case there is continuous violations that have taken place under both the Wbp and the AVG (with exception of the involvement of the DPO), the DPA tested against the substantive law as it applied at the time the conduct occurred. These provisions are intended to promote the same legal interests guarantees. There is no (substantial) material change to the regulations on this point.

The AP motivates the imposition of the fines in the following. The AP first briefly sets the fine system apart. This is followed by the motivation of the fines for the violations of the basic principles of the GDPR. Next comes the violation of the obligation to guarantee a appropriate security level for the personal data in FSV and then the requirement of proper and timely involvement of the DPO in the implementation of the GEB. Finally, the AP assesses whether the application of the fining policy leads to a proportionate outcome.

3.2 Penalty Policy Rules of the Dutch Data Protection Authority 2019

Pursuant to Article 58, second paragraph, opening words and under i and Article 83, fourth paragraph, of the GDPR, read in

connection with Article 14, third paragraph, of the UAVG, the AP is competent in the event of a violation of Article 32 of the AVG and Article 35, second paragraph, of the AVG to impose an administrative fine up to €10,000,000.

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Pursuant to Article 58, second paragraph, opening words and under i and Article 83, fifth paragraph, of the GDPR, read in connection with Article 14, third paragraph, of the UAVG, the AP is competent in the event of a violation of Article 5 of the GDPR to impose an administrative fine of up to € 20,000,000.

The AP has established Fining Policy Rules regarding the implementation of the aforementioned power to imposing an administrative fine, including determining the amount thereof.⁶ In the

Penalty policy rules have been chosen for a category classification and bandwidth system.

Violation of Article 5, paragraph 1, under a of the GDPR has been made dependent on the underlying provision, being article 6, first paragraph, of the GDPR. Category III applies to this, with a fine range between €300,000 and €750,000 and a basic fine of €525,000.

Violations of Article 5, first paragraph, under b, d and e of the GDPR are also classified in category III, with a fine range between €300,000 and €750,000 and a basic fine of €525,000.

Violations of Article 32 of the GDPR and Article 35, paragraph 2, of the GDPR are categorized

II. Category II has a fine range between €120,000 and €500,000 and a basic fine of €310,000.

3.3 Fine amount regarding the general principles of the GDPR and the security of processing of personal data

Lawfulness is one of the basic principles of data protection. A processing of personal data is lawful if it takes place on the basis of a legal basis. In the event of interference

right to respect for the private life of citizens is particularly important to the Tax and Customs Administration as public authority must be able to base its actions on a sufficiently clear, precise and predictable legal requirement. The IRS has failed in this. Because the tax authorities has processed personal data in FSV without a basis, is the core of the right to protection of personal data of many citizens violated.

In addition, personal data may only be processed if it is - explicit and legitimate - purpose of the processing cannot be reasonably achieved in any other way accomplished. The controller must also take all reasonable measures to ensure that to ensure that any personal data found to be incorrect is rectified or erased and that personal data not be kept longer than necessary. The AP has determined that there are incorrect personal data are included in FSV and that this data has also been kept longer than necessary.

To prevent the situation in which organizations infringe the processing of personal data

With regard to the privacy of citizens, the AP also considers it very important that organizations have a risk-based approach apply security level. When determining the risk for the data subject, the nature is, among other things of the personal data and the scope of the processing are important: after all, these factors determine the 6 Stct. 2019, 14586, March 14, 2019.

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potential damage for the individual data subject in the event of loss, alteration or unlawful, for example processing of the data. As the personal data has a more sensitive character, or the context in which they are used pose a greater threat to privacy, stricter requirements are imposed on the security of personal data. The AP is of the opinion that the Tax and Customs Administration has taken insufficient measures with regard to access security,

logging and checking the logging to ensure an appropriate level of security for the personal data in FSV

guarantees.

The AP has concluded that the Tax and Customs Administration applies the above principles with regard to FSV

insufficiently complied with. These principles guarantee the integrity of personal data and couples

citizens to retain control over their own data. That is very important, because a

unlawful processing of personal data can have far-reaching consequences for the personal

sphere of life. The AP explains these consequences and the seriousness of the violations below.

3.3.1 The nature, seriousness and duration of the infringements

Given the nature and scope of the unlawful processing of personal data in FSV, the AP

believes that the violations by the Tax and Customs Administration are very serious. The Tax and Customs Administration has in FSV

unlawfully processed more than 540,000 signals relating to more than 270,000 data subjects.

This very large group of citizens, including hundreds of minors, have been seriously affected in their rights

on the protection of personal data. In doing so, the AP takes into account that the citizens involved in relation to

of the Tax and Customs Administration are in a dependent and unequal position. After all, a citizen has at the

Tax authorities only the obligation to file a tax return or the possibility to do certain

to apply for surcharges. After submitting the opinion of the Tax and Customs Administration, it turned out that the

The Tax and Customs Administration has also shared data from FSV with other government agencies and private parties

parties.⁷ The AP considers it reprehensible that the Tax and Customs Administration – in view of its broad powers and the

unequal position it occupies vis-à-vis the citizen - in this case extraordinary

misused its powers.

With regard to the duration of the violations, the AP has determined that the Tax and Customs Administration has committed the violations

during a period of more than six years, namely from November 4, 2013 to February 27

committed in 2020. The fact that the violations thus occur in a structural manner for a longer period of time

have continued, the AP considers very serious.⁸

The consequences for citizens who were included in the FSV as (potential) fraudsters could be very significant. In some cases, a citizen was labeled a 'fraudster' without this following from a thorough research. And if an investigation had been done and there turned out to be no fraud, then this was a conclusion often not recorded in FSV, so that the suspicion of fraud remained in FSV. A

7 Parliamentary Papers II 2021/22, 31 066, no. 957.

8 Because the AP has only had the authority to fine the aforementioned violations since 1 January 2016, it takes in the context of the (increase of the) fine, only consider the duration from 1 January 2016. In that case, too, there is a long term violations.

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registration in FSV (possibly in combination with other indications), could then lead to that citizen to stigmatisation, more intensive supervision and/or had negative financial consequences.

The more intensive supervision could, for example, result in a disadvantage for the income tax return of that citizen was corrected or that an application for eligibility for care, rental or

childcare allowance was rejected. Also requests for a personal payment arrangement with a benefit debt or amicable debt restructuring in the event of a tax or benefit debt are automatic

rejected because of that citizen's FSV registration. This has left citizens in uncertainty for a very long time wrong about their financial situation. Those involved were not further informed about the fact that they were in

FSV, not even after a request for inspection to that effect. This has resulted in that

data subjects did not know that they were listed in FSV and could therefore not exercise their rights.

Research by the Tax and Customs Administration has also shown that examples have been found in

communication within the Tax and Customs Administration and between the Tax and Customs Administration and other

government institutions

on the identification of risks, whereby a fraud risk was indicated on personal characteristics such as nationality and appearance. In (instruction) documents, for example, the foreign nationality (such as Turkish, Moroccan and Eastern European) used as selection criterion for further tax to research. But also donations to mosques and high deductions due to tax. medication use taxpayers with surnames ending in “-iç” were used as risk indicators for fraud.⁹ This unequal treatment in fraud risk selection carries a high risk of stigmatisation.

In addition, it has not become apparent that the Tax and Customs Administration has acted in a discriminatory and therefore improper manner

data processing had a reasonable and objective justification.

The AP is aware of the consequences of the inadequate security of personal data

next on. Due to the inadequate security of FSV, unauthorized employees of the

Tax and Customs Administration view personal data in FSV. Signals from FSV are regularly exported for it creating a so-called subset outside FSV, so that people who had no access to FSV could search in it. Due to the shortcomings in access security and in the (checking of) logging could the data be misused? The Tax and Customs Administration therefore had no insight into this the further processing of the (exported) data.

3.3.2 Categories of personal data

The Tax and Customs Administration processed many (different) personal data in FSV. A signal in FSV existed in in any case from a citizen service number, and a number of completed fields including name and address data, account number and IP address. Sometimes a signal contained the nationality of persons and documents on committed offenses and criminal convictions. The tax furthermore, where appropriate, also processed data about the physical or mental health of citizens. This is a special category of personal data that enjoys extra protection under the GDPR. The The AP also found that signals could contain data about individuals to whom the signal did not (directly) saw, such as family members, tax service providers and childminders. Considering the size and sensitivity

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nature of the - also - special personal data, the AP also considers the violations based on this particularly serious.

3.3.3 Culpability and Serious Negligence

Since this concerns violations, the imposition of an administrative fine is in accordance with fixed rules

case law does not require that it be demonstrated that there is intent. The AP is allowed culpability

assume if the perpetrator is established. The Minister must act as controller

pursuant to the GDPR, observe the aforementioned basic principles when processing personal data

to take. The AP has determined that the Minister as controller under the GDPR

when processing personal data in FSV has acted contrary to the principles of

lawfulness, purpose specification, correctness and storage limitation. In addition, the Minister does not have one

an appropriate level of security for the personal data in FSV is guaranteed. The AP considers this culpable.

In addition, according to the AP, there is serious negligence on the part of the Minister and the

Tax authorities. Citizens who are obliged to provide personal data to the tax authorities

must be able to assume that the Tax and Customs Administration - as a government agency - will take the necessary measures

has taken to process personal data lawfully, correctly and securely. This has the tax authorities

left behind. The Tax and Customs Administration has had personal data for many years, including special personal data

such as medical data, unlawfully processed in FSV. The working method of the tax authorities

was also in some cases discriminatory in nature and thus led to stigmatisation,

more intensive supervision and/or resulted in negative financial consequences. Even after her own internal

conclusion from January 2019 that the data processing in FSV did not comply with the GDPR, the

The Tax and Customs Administration and also the Minister failed to intervene immediately. The AP therefore comes to the conclusion

that the Tax and Customs Administration - under the responsibility of the Minister - has been seriously culpably negligent acted.

3.3.4 Previous Relevant Breaches

When determining the amount of the fine, the AP may consider previous relevant infringements by the controller. That is the case in this case. The AP has the

Minister for the following violations in the period from 2018 to 2021. On July 3, 2018, the AP

concluded that the Tax and Customs Administration, with regard to the logging, the monitoring of the logging and the access security at the Data Fundamentals & Analytics department acted contrary to article 13 Wbp and

32 GDPR. As of January 1, 2020, the AP has imposed a processing ban on the Minister because of the

unlawful processing of the BSN in the VAT identification number. And on November 25, 2021, the

AP imposed administrative fines on the Minister in the so-called Childcare Allowance Affair, because the

The Tax and Customs Administration has been recording the (dual) nationality of applicants for childcare benefits for years unlawfully processed.

Now that the AP has once again determined that the Minister has personal data without a legal basis

processed and has insufficiently secured, the AP considers these previously established violations

relevant previous infringements. The AP notes that this points to ongoing problems of a structural nature

which can lead to no other conclusion than that at the Tax and Customs Administration, the official management of the

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department and the Minister for years there has been widespread negligence, negligence and

even discriminatory and therefore improper behavior in the application of legal rules regarding data protection.

3.3.5 Amount of fines

Based on the above considerations, the AP determines the amount of the fines as follows.

Legal basis

Because of the serious consequences of the lack of a legal basis and because there is previous relevant infringements as referred to in paragraph 3.3.4, the AP is of the opinion that the offense linked fine category does not lead to an appropriate punishment. The AP therefore concludes with application of Article 8.1 of the Fining Policy Rules when determining the fine amount is the next higher category to apply.

For violation of article 5, first paragraph, under a jo. Article 6, first paragraph, of the GDPR and in view of the the aforementioned considerations, the AP sees reason to impose a fine on the Minister. The AP increases the basic amount of € 725,000:

- with € 155,000 based on the nature, seriousness and duration of the infringement (article 7 sub a Penalty Policy) and the circumstances as stated in paragraph 3.3.1 with;
- with € 90,000 on the basis of the negligent nature of the infringement (article 7 sub b Fining Policy Rules) and the circumstances as stated in section 3.3.3; and
- with € 30,000 based on the categories of personal data (article 7 sub g Fining Policy Rules) and the circumstances as stated in section 3.3.2.

This fine therefore amounts to a total of € 1,000,000.

Purpose limitation

Because of the violation of the rules regarding purpose limitation (Article 5, first paragraph, under b of the GDPR) and the aforementioned considerations, the AP sees reason to impose a fine on the Minister lay. The AP increases the basic amount of € 525,000:

- with € 125,000 on the basis of the nature, seriousness and duration of the infringement (article 7 sub a Penalty Policy) and the circumstances as stated in section 3.3.1;

- with € 75,000 on the basis of the negligent nature of the infringement (article 7 sub b Fining Policy Rules) and the circumstances as stated in section 3.3.3; and
- with € 25,000 based on the categories of personal data (article 7 sub g Fining Policy Rules) and the circumstances as stated in paragraph 3.3.2.

This fine therefore amounts to a total of € 750,000.

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Correctness

Due to the incorrect and non-updated personal data in FSV (Article 5, first paragraph, under d of the GDPR) and the aforementioned considerations, the AP sees reason to impose a fine on the Minister lay. The AP increases the basic amount of € 525,000:

- with € 125,000 on the basis of the nature, seriousness and duration of the infringement (article 7 sub a Penalty Policy) and the circumstances as stated in section 3.3.1;
- with € 75,000 on the basis of the negligent nature of the infringement (article 7 sub b Fining Policy Rules) and the circumstances as stated in section 3.3.3; and
- 2 with € 25,000 based on the categories of personal data (article 7 sub g Fining Policy Rules) and the circumstances as stated in section 3.3.2.

This fine therefore amounts to a total of € 750,000.

Storage limitation

Due to violation of the rules regarding storage limitation (article 5, first paragraph, under e of the GDPR) and the aforementioned considerations see the AP as a reason to impose a fine on the Minister. The AP increases the base amount of €525,000:

- with € 125,000 on the basis of the nature, seriousness and duration of the infringement (article 7 sub a

Penalty Policy) and the circumstances as stated in section 3.3.1;

- with € 75,000 on the basis of the negligent nature of the infringement (article 7 sub b Fining Policy Rules) and the circumstances as stated in section 3.3.3; and

- with € 25,000, based on the categories of personal data (article 7 sub g

Fining Policy Rules) and the circumstances as stated in section 3.3.2

This fine therefore amounts to a total of € 750,000.

Security

Due to violation of the rules regarding security (article 32, first paragraph, of the GDPR) and

the aforementioned considerations see the AP as a reason to impose a fine on the Minister. The

AP increases the basic amount of € 310,000

- with € 90,000, based on the nature, seriousness and duration of the infringement (article 7 sub a

Penalty Policy) and the circumstances as stated in section 3.3.1;

- with € 50,000, based on the negligent nature of the infringement (article 7 sub b Fining Policy Rules) and

the circumstances as stated in section 3.3.3;

- with € 30,000, based on the previous relevant infringement from 2018 as stated in paragraph 3.3.4

(article 7 sub e Fining Policy Rules);

- with € 20,000, based on the categories of personal data (article 7 sub g

Fining Policy Rules) and the circumstances as stated in paragraph 3.3.2

This fine therefore amounts to a total of € 500,000.

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3.4 Fine amount for involvement of data protection officer

The DPO supports the controller in, among other things, monitoring internal compliance

of the GDPR. It is important for this that the controller ensures that the DPO is sent to is properly and timely involved in all matters related to the protection of personal data. The AP has determined that the Tax and Customs Administration has not properly and not timely informed the DPO

involved in the implementation of the Data Protection Impact Assessment (DIA) of FSV.

The Tax and Customs Administration carried out the GEB from November 6, 2018 to January 21, 2019.

years after this period, the DPO was only asked to advise on the GEB. The Tax and Customs Administration therefore has its FG

not asked for advice during the implementation of the GEB. The consequence of this is that the DPO does not fulfill his duties properly and was therefore unable to advise the Tax and Customs Administration in a timely manner on compliance of the GDPR. With a timely consultation, the DPO could have warned the Tax and Customs Administration earlier on the risks related to the unlawful processing of personal data in FSV.

As described earlier, the Tax and Customs Administration has processed a great deal of (sensitive) personal data in FSV of hundreds of thousands of citizens. Especially with large-scale processing of personal data that up to can lead to adverse consequences for a large number of parties involved, the Tax and Customs Administration must timely submit a GEB

and to ask the DPO for advice in this regard. The AP is of the opinion that there is a serious violation by the Tax and Customs Administration, where the Minister is responsible as controller before.

Finally, the AP comes to the conclusion that the Tax and Customs Administration, under responsibility of the Minister, has acted seriously culpably negligently. That the IRS more than a year after the implementation of the GEB and only in response to questions from the media about FSV, has asked the DPO for advice, the AP considers it very negligent.

Now that the Tax and Customs Administration has not obtained the advice of the DPO in time when implementing the GEB, there is

there is a violation of Article 35, second paragraph, of the AVG. In view of this and the above

circumstances, the AP sees reason to impose a fine on the Minister. The AP raises it basic amount of €310,000 due to 1) the nature, seriousness and duration of the infringement with €70,000 due to (2) the negligence with €50,000 and due to (3) the categories of personal data with €20,000. With that this fine amounts to a total of € 450,000.

3.5 Proportionality

Finally, the AP assesses on the basis of Articles 3:4 and 5:46 of the Awb (proportionality principle) application of its policy for determining the amount of the fine given the circumstances of the specific case, does not lead to a disproportionate outcome. Application of the proportionality principle is possible among other things play a role in the accumulation of sanctions. In addition, pursuant to Article 83, third paragraph, of the GDPR, the total fine will not exceed that for the most serious infringement, if the

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controller in relation to the same or related thereto

processing activities infringe several provisions of the GDPR.

In this case, the AP will impose an administrative fine for violation of Article 5, first paragraph, under a (jo. Article 6, first paragraph), b, d and e of the GDPR, Article 32, first paragraph, of the GDPR and Article 35, second paragraph, of the

AVG. Although the offenses committed violate different interests and on that basis separately can be fined, the AP sees in this case the connection between the lack of a legal basis and the storage limitation as a relevant factor to determine the penalty for violation of the storage limitation moderate by € 500,000.

The AP sets the total amount of the fines imposed at € 3,700,000. In the context of Article 10 of the Fining Policy Rules, the AP determines that the total fine is not higher than the statutory

maximum fine (€ 20,000,000) for the most serious violation.

The AP is of the opinion that (the amount of) the total fine amount is not disproportionate.¹⁰ The AP has in this assess, among other things, the seriousness of the violations and the extent to which these are attributable to the Minister can be blamed. Due to the nature and duration of the violations, the far-reaching consequences for the data subjects and the previous relevant breaches, the AP qualifies the relevant breaches the GDPR as serious.

3.6 Conclusion

The AP sets the total amount of the fines imposed at € 3,700,000.

¹⁰ See also sections 3.3 and 3.4 for the justification.

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4. Operative part

I. The AP imposes a fine on the Minister of Finance in the amount of € 1,000,000 (in words: one million euros), because there are no legal requirements for the processing of personal data in FSV basis was. As a result, the Minister of Finance has Article 5, first paragraph, preamble and under a jo. Article 6, paragraph 1, of the GDPR.

II. The AP imposes a fine of € 750,000 on the Minister of Finance (in words: seven hundred and fifty thousand euros), because the personal data in FSV violates the principle of target specification have been processed. As a result, the Minister of Finance has Article 5, first paragraph, preamble and under b of the GDPR.

III. The AP imposes a fine of € 750,000 on the Minister of Finance (in words: seven hundred and fifty thousand euros), because the personal data in FSV violates the principle processed correctly. As a result, the Minister of Finance has Article 5, first paragraph, opening words

and under d of the GDPR.

IV. The AP imposes a fine of € 250,000 on the Minister of Finance (in words:

two hundred and fifty thousand euros), because the personal data in FSV violates the principle

of storage limitation have been processed. As a result, the Minister of Finance has Article 5, first paragraph,

preamble and under e of the GDPR.

V. The AP imposes a fine of € 500,000 on the Minister of Finance (in words:

five hundred thousand euros), because for the personal data in FSV an insufficiently appropriate

level of security is guaranteed. As a result, the Minister of Finance has Article 32, first paragraph,

of the GDPR.

VI. The AP imposes a fine of € 450,000 on the Minister of Finance (in words:

four hundred and fifty thousand euros), because the advice of the DPO cannot be taken during the execution of the

GEB has been obtained. As a result, the Minister of Finance has Article 35, second paragraph, of the GDPR

violate.

Yours faithfully,

Authority for Personal Data,

e.g.

Mr. A. Wolfsen

Chair

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Our reference

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Remedies Clause

If you do not agree with this decision, you can within six weeks from the date of sending it

decides to submit a notice of objection digitally or on paper to the Dutch Data Protection Authority. In accordance

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

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

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

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

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

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

Write in your notice of objection at least:

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