

Confidential/Registered

TikTok Inc., TikTok Technology Limited and

TikTok Information Technologies UK Limited

p.a. Brinkhof Advocaten

[CONFIDENTIAL]

Grote Bickersstraat 74-78

1013KS AMSTERDAM

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

Contact

[CONFIDENTIAL]

Subject

decision to impose an administrative fine

Authority for Personal Data

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Dear [CONFIDENTIAL],

The Dutch Data Protection Authority (hereinafter: AP) has decided to transfer TikTok Inc, located in California (the United States), to impose an administrative fine of € 750,000. The AP notes that TikTok Inc.

during the period from May 25, 2018 to July 28, 2020, its privacy policy to Dutch

users – including children – in the English language only. This is inconsistent with

Article 12, paragraph 1 of the General Data Protection Regulation (hereinafter: GDPR).

[CONFIDENTIAL]. The DPA will ask the Irish SA to complete the investigation and issue a (final) decision to make. In its role as the involved supervisory authority and in its role as om assistance requesting authority, remain involved in the completion of this case and the realization of the final decision.

The decision is explained in more detail below. After the introduction in chapter 1, chapter 2 will be discussed on the authority of the AP to take enforcement action. Chapter 3 then describes the legal frame. Chapter 4 lists the most important facts in this case. In chapter 5 the AP assesses the facts on the basis of the legal framework and concludes that TikTok Inc. has violated Article 12(1) of the GDPR. Chapter 6 describes the amount of the administrative fine motivated. Finally, Chapter 7 contains the operative part and the remedies clause.

1

Our reference

[CONFIDENTIAL]

Date

April 9, 2021

1 Introduction

1.1 Relevant legal entity

1. TikTok Inc. is located in California, United States.¹

2. TikTok Inc. is part of the Bytedance group of companies (hereinafter: Bytedance) of which Bytedance Ltd. the parent company is.² Bytedance operates a range of content platforms worldwide where people are informed, educated, entertained and inspired.³ Launched in May 2017

Bytedance the TikTok app.⁴ This app allows users to create, edit short videos

and share online. In November 2017, Bytedance acquired musical.ly, a content platform app similar to TikTok. After the acquisition of musical.ly by Bytedance, musical.ly

renamed TikTok and in May 2019 changed to musical.ly Inc. company name. changed to TikTok Inc.⁵

1.2 Process flow

3. The AP has launched an official investigation into the processing of personal data by

TikTok Inc. [CONFIDENTIAL]. This research has led to the AP op

adopted a report of findings on 1 October 2020 (hereinafter: the investigation report).

4.

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6.

[CONFIDENTIAL] the investigation report concludes that TikTok Inc. in the period of

May 25, 2018 to July 29, 2020 Article 12(1) of the GDPR has been violated by children not in

understandable language about the processing of personal data.

7.

[CONFIDENTIAL].

8. By letter and e-mail dated October 2, 2020, the AP informed TikTok Information Technologies UK Limited

(hereinafter: TikTok UK) an intention to enforce against TikTok Inc. sent as well as

research report and underlying documents on which it is based. TikTok UK and

TikTok Inc. were given the opportunity to express their views on the research report and the

underlying documents.

1 TikTok INC, 10100 Venice Blvd, Suite 401, Culver City, CA 90232, USA.

2 File document 9, answer to question 1.

3 File document 9, answer to question 1.

4 File document 9, answer to question 1.

5 File document 9, answer to question 1.

2/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

9. On November 11, 2020, TikTok Inc., TikTok UK and TikTok Technology Limited (hereinafter: TikTok Ireland) submitted a written opinion. TikTok has the aforementioned view in that view the results and conclusions of the investigation report. In addition, TikTok has this argued that as of 29 July 2020 it has a principal place of business in Ireland as referred to in Article 4 under 16 of the GDPR and the AP is therefore not authorized to take enforcement action against TikTok.

10. On November 20, 2020, an opinion hearing took place at which TikTok presented its written opinion explained his point of view orally.

11. TikTok also announced in its written opinion and during the opinion hearing to to have rolled out a number of additional measures at the beginning of January 2021, in order to ensure protection of teenagers under the age of 16 [CONFIDENTIAL]. It concerns the following measures:

- 'Account on private' becomes the default setting for users under 16 years old.

A 'private' account means that other users cannot view the videos of the account holders unless these account holders allow other users to follow them. TikTok carries this one change for both existing users and new users under the age of 16.

- the "Suggest your account to others" feature is disabled by default for both existing ones as new users under the age of 16.

- the ability to comment on videos will be extended to all existing and new users

16 years defaults to 'Friends'. The "Everyone" option will be for these users switched off.

- the functions 'Duet' and 'Stitch' are no longer available for users under the age of 16.

- Downloads are only allowed for videos made by users over the age of 16 and older.

- the Family Pairing feature has been expanded with an option that also allows parents privacy manage children's settings.

- a simplified in-app reporting function is created, making it makes it easier for users to mark accounts they believe they belong to users under the age of 13.

12. On January 21, 2021, TikTok submitted additional information to the AP to substantiate her statement that TikTok Ireland qualifies as head office from June 29, 2020

Article 4, preamble under 16 of the GDPR.

2. Authority AP

Introduction

6 Unless otherwise specified, references to “TikTok” include “TikTok Inc, TikTok UK and TikTok Ireland.

7 On January 13, 2021, TikTok publicly announced its changes to TikTok's default settings.

3/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

13. Article 55(1) of the GDPR stipulates that each supervisory authority has the competence to territory of its Member State to carry out the tasks assigned to it in accordance with this Regulation and to exercise the powers conferred on it by this Regulation promised. However, Article 56(1) of the GDPR stipulates that the supervisory authority of the headquarters or the sole establishment of the controller or processor is competent to act as lead supervisory authority for cross-border processing by that controller or processor in accordance with the procedure set out in Article 60 of the AVG.

14. Article 4, preamble under 16 of the GDPR defines the concept of principal place of business as follows: “with regard to a controller that has establishments in more than one Member State, the place where its central administration is located in the Union, unless the decisions on the objectives and means of the

processing of personal data are taken in another establishment of the controller

who is also located in the Union and who is also authorized to implement those decisions, in which case the establishment where those decisions are made is regarded as the principal establishment”

15. In the Guidelines for determining the lead supervisory authority⁸ (Guidelines competence) it is stated on page 7 that recital 36 of the GDPR can help to clarify of the main factor that will be used in determining the principal place of business if it criterion of the central administration does not apply. Recital 36 of the GDPR states: “Which establishment is the main establishment of a controller in the Union should be determined on the basis of objective criteria, such as the effective and actual implementation of management activities, with a view to the making the core decisions about the purposes of and means of processing via permanent proportions.”

16. Opinion 8/2019 on the competence of the supervisory authority in the event of a change in the circumstances of principal establishment or sole establishment⁹ discusses which supervisory authority is competent in the event of a change in circumstances in relation to headquarters during ongoing investigations. This Advice is now relevant in the present case TikTok states that there is a change in circumstances.¹⁰

17. Opinion 8/2019 states, in summary, that in the event of continuous infringements, the jurisdiction can transfer to another supervisory authority until the lead supervisory authority has made a decision. Advice 8/2019 stipulates that the relocation of a head office from a third country to the EU offers the possibility during the procedure controllers to use the “one-stop shop” scheme. ¹¹

⁸ Guidelines for determining the lead supervisory authority of the controller or processor, 5 April 2017, Article 29 Data Protection Working Party.

⁹ Opinion 8/2019 on the competence of the supervisory authority in the event of a change in circumstances regarding the main establishment or the sole establishment, 9 July 2019, European Data Protection Board.

¹⁰ See marginal number 9 of this decision.

11 See marginals 16 and 30 of Advice 8/2019.

4/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

18. A change of the guard in the lead supervisory authorities does not mean that the original lead supervisory authority had no power to act. The acts performed by this old lead supervisory authority and the hereby obtained information and evidence remain valid and may be changed by the new lead supervisory authority used.¹² In addition, Opinion 8/2019 underlines that the cooperation procedure referred to in Article 60 of the GDPR applies in case of a change of lead supervisory authority. This means that the old (leading) supervisory authority on the basis of the Article 60 of the GDPR remains involved in the establishment of a final decision.¹³

19. In addition, Advice 8/2019 points out that forum shopping must be prevented and that it is therefore it is up to the controller to demonstrate that the relocation of the main establishment has actually taken place. The concept of the headquarters in itself indicates that a temporary or mere bureaucratic step by the company is not enough to establish the headquarters point, but that it is a real step with a long-term goal. It's on the supervisory authorities to determine whether the criteria are met, in order to mitigate the risk reduce data controllers from artificially changing their headquarters with the with a view to changing the authority competent to deal with the case.¹⁴

View TikTok

20. TikTok states in its written opinion that the processing responsibility was transferred on July 29, 2020 transferred from TikTok Inc. to TikTok Ireland and TikTok UK and that TikTok Ireland qualifies

as a principal place of business in accordance with Article 4, preamble under 16 of the GDPR. 15 TikTok takes the stand that as a result, the authority to investigate TikTok from July 29, 2020 with the Irish SA lies and not with the AP. TikTok bases this on Advice 8/2019.

21. TikTok further states that the AP finds in the investigation report that TikTok does not yet have shown that TikTok Ireland qualifies as a main establishment, but no evidence forward either means that the AP itself is authorized to act. TikTok states in its written opinion that the AP only refers to the correspondence between TikTok and the Irish SA and in particular to the letter from August 13, 2020 from Irish SA to TikTok.

22. TikTok also notes in its written opinion that the AP does not make any has taken into account the extensive answer that TikTok has on September 30, 2020 sent to the Irish SA. According to TikTok, this answer contains additional, detailed and strong proof that TikTok's headquarters is in Ireland as of July 29, 2020.

12 See marginal number 21 of Advice 8/2019.

13 See marginal number 24 of Advice 8/2019.

14 See marginal number 26 of Advice 8/2019.

15 TikTok has indicated by letter to the Irish SA on September 30, 2020 that its Irish headquarters is based on the fact that this location makes decisions and implements them, and not because this location should be designated as a place where its central administration is located in the Union.

5/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

23. TikTok concludes in its written opinion that TikTok, taking into account all correspondence with the Irish SA, has sufficiently shown that TikTok Ireland and TikTok UK can be regarded as joint controller and TikTok Ireland as well

as the main establishment in accordance with Article 4, preamble under 16 of the GDPR from July 29, 2020. TikTok states that the AP is not authorized and states that on the basis of the AVG and Advice 08/2019 the current cases/proceedings should be transferred to the Irish SA.

Considerations AP

24. First of all, the AP notes that TikTok did not have a main office at the start of the investigation was established in the EU in accordance with Article 4, preamble under 16. During that period, TikTok Inc. if controller designated TikTok UK as its representative in accordance with Article 27 of the GDPR. Article 56(1) of the GDPR was therefore not applicable at the start of the investigation and therefore the DPA was authorized on the basis of Article 55, paragraph 1 of the GDPR.

25. As described above, TikTok states that this situation has changed on July 29, 2020. TikTok poses that it has established itself with a head office in Ireland and from that moment on therefore does not have the AP but the Irish SA has jurisdiction. Below, the question of whether TikTok has demonstrated that it is established in Ireland with a head office. Then the consequences described with regard to the authority of the AP to act as a lead supervisory authority authority to act.

Headquarters

26. It appears from marginal numbers 13 to 18 of this decision that TikTok must demonstrate that there is an actual headquarters created with a long-term goal. The head office must effectively and effectively carry out its management activities, with a view to taking the core decisions about the purposes of and the means of processing through permanent proportions. This should not involve a temporary or purely bureaucratic step or the artificially changing the main place of business for the purpose of handling the case competent authority.

27. As stated in the investigation report, the AP was of the opinion that TikTok with the information it provided information up to and including August 7, 2020 had not sufficiently demonstrated that TikTok was a headquartered in Ireland. In that context, the Irish SA has, by letter dated 13 August 2020

a large number of additional questions asked to TikTok to get more clarity on different aspects.¹⁶

28. TikTok provided additional information to Irish SA on September 30, 2020 in response to aforementioned letter of August 13, 2020. The AP has received some of this additional information via the

¹⁶ See file document 37.

6/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

Irish SA received on October 7, 2020. For another part, the Irish SA had no permission received from TikTok to provide this information to other supervisory authorities (including the AP) without first submitting this to her in connection with TikTok's view highly confidential nature of this part of the documents submitted to the Irish SA. The AP has still requested TikTok to provide these company-sensitive documents to the AP. At 25 January 2021, TikTok handed over all documents to the AP.

29. With the information provided on October 7, 2020 and January 25, 2021, TikTok has shown that there is an actual head office in Ireland with a long-term goal. To this end the AP considers the following.

30. One of the most important findings of the AP in August 2020 was that although TikTok is paper stated that her office in Ireland made decisions and had the authority to enforce them decisions to be implemented within the EU, but that there were still many uncertainties on many related topics. Moreover, it was not possible from the submitted material it can be concluded that there were stable and sustainable agreements within the group and that the Irish branch would have sufficient and competent people and resources to fulfill its role as headquarters properly. In August 2020, it could not be ruled out that TikTok

one had only taken a bureaucratic, artificial step with the aim of treating the competent authority for this case (forum shopping).

31. From the minutes submitted by TikTok on January 25, 2021 of the board of the Irish branch of TikTok shows the changes within the TikTok concern with regard to shifting the processing responsibility for EU data subjects and the creation of a head office in Ireland arise from a long-running project. In the period from, in particular, the end of May 2020 various concrete initiatives have been launched in this context and decisions have been taken to improve the organisation prepare for the new structure. This is evident from these minutes of the board of the Irish branch is actually aimed at a permanent transition and that in this context the above necessary decisions are taken.

32. In addition, minutes of the Data Protection Steering Committee (DPSC)¹⁷ show that this decision-making body from July 29, 2020 actually discusses important matters with regard to data protection and make decisions in this regard. These are things that directly affect you the protection of children. It also appears from various documents submitted that the Irish establishment is actually responsible for the implementation of decisions taken and is responsible for the execution of some central processes such as assessing requests from data subjects and investigating and reporting data breaches.

¹⁷ According to the agreements previously submitted by TikTok (intra-group), this decision-making consultation was set up by the joint controllers to discuss and discuss important data processing issues to take decisions.

7/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

33. In addition, the overviews submitted by TikTok show that TikTok Ireland has a large number recruited (hundreds of) employees in the spring and summer of 2020. Precisely on this point doubts existed now that the Irish branch in Ireland had few employees at the beginning of 2020. The AP had doubts about whether it would be able to deliver on a large scale in times of a pandemic hiring quality staff. Sufficient and high-quality personnel is for one after all, a large platform such as TikTok is essential to actually function as Headquarters. Despite applicable COVID restrictions, TikTok is Ireland according to this submission overviews proved to be able to recruit a large number of permanent and competent employees Pull. As a result, the AP believes that the site in Ireland has sufficient manpower to be able to effectively fulfill its task as head office.

34. With these additional documents in combination with those previously provided in writing agreements between legal entities within the TikTok group, the AP notes that there is one is headquartered in Ireland and that there is not just a bureaucratic and artificial step with the sole purpose of violating the competence of the lead supervisory authority change (forum shopping).

35. Based on the foregoing, the AP establishes that TikTok has demonstrated that it is dealing with a has established its head office according to Article 4, preamble under 16 in Ireland on 29 July 2020.

Authority

36. It follows from Advice 8/2019 that the competence to act as a lead supervisory authority in case of continued infringements, transfers from the AP to the Irish SA at the time TikTok has demonstrated that it has established a head office in Ireland and if it does not already have one (definitive) decision has been taken by the AP. As described above, TikTok has with the op Additional information provided on October 7, 2020 and January 25, 2021 demonstrated that they are with a has established its headquarters in Ireland on July 29, 2020. The AP considers this date to be the date the competency passed from the AP to the Irish SA [CONFIDENTIAL].

37. [CONFIDENTIAL].

[CONFIDENTIAL].

38. [CONFIDENTIAL].

39. [CONFIDENTIAL].

[CONFIDENTIAL].

40. [CONFIDENTIAL].

41. [CONFIDENTIAL].

8/29

Our reference

[CONFIDENTIAL]

Date

April 9, 2021

[CONFIDENTIAL].

42. [CONFIDENTIAL].

43. [CONFIDENTIAL].

[CONFIDENTIAL].

44. With regard to the violation of Article 12(1) of the GDPR described in the investigation report

in the period from May 25, 2018 up to and including July 28, 2020, the AP determines that there is a

violation that ended before July 29, 2020. This violation therefore falls outside the scope of

Advice 8/2019.¹⁸ The AP therefore remains authorized to take a decision and a

impose sanction.

45. [CONFIDENTIAL].

46. Chapter 3 sets out the relevant legal framework. Chapter 4 contains the relevant ones

facts and circumstances. Chapter 5 contains the legal assessment. In chapter 6

the amount of the administrative fine is motivated. Finally, Chapter 7 contains the operative part and the

remedies clause.

3. Legal framework

3.1 Scope GDPR

47. Pursuant to Article 2(1) of the GDPR, this Regulation applies to the wholly or in part automated processing, as well as to the processing of personal data contained in a file are included or are intended to be included therein.

48. Pursuant to Article 3(1) of the GDPR, this Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, whether or not the processing already takes place in the Union then not take place.

49. Pursuant to Article 4 of the GDPR, insofar as relevant here, for the purposes of this regulation means:

‘1) “personal data” means any information relating to an identified or identifiable natural person person (“the data subject”) (...);

2) “processing”: an operation or set of operations relating to personal data or a set of personal data, whether or not performed by automated processes (...);
(...)

18 See marginal number 16 of Advice 8/2019.

9/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

7) “controller” means a natural or legal person who, alone or jointly with others, determines the purposes and means of the processing of personal data (...).

3.2 Principles: lawfulness, fairness and transparency & data minimization

50. Article 5 of the GDPR contains the principles regarding the processing of personal data.

51. Pursuant to Article 5(1)(a) of the GDPR, personal data must be processed

in a manner that is lawful, fair and transparent in relation to the data subject

('lawfulness, fairness and transparency').

3.3 Transparency and obligation to provide information

52. Article 12(1) of the GDPR provides, insofar as relevant here:

The controller shall take appropriate measures to ensure that the data subject receives the information referred to in Articles 13 (...) information (...) related to the processing in a concise, transparent and in an easily accessible form and in clear and plain language, in particular when the information is specifically intended for a child. The information shall be in writing or with other means, including, where appropriate, electronic means.(...)"

53. Article 13(1) of the GDPR provides:

When personal data relating to a data subject is collected from that person, provided the controller informs the data subject when obtaining the personal data following information:

- a) the identity and contact details of the controller and, where applicable, of the representative of the controller;
- b) where applicable, the contact details of the data protection officer;
- c) the processing purposes for which the personal data are intended, as well as the legal basis for processing;
- d) the legitimate interests of the controller or of a third party, if the processing is based on point (f) of Article 6(1);
- e) where applicable, the recipients or categories of recipients of personal data;
- f) where applicable, that the controller intends the transfer personal data to a third country or an international organisation; whether there or not an adequacy decision by the European Commission exists; or, in the case of Article 46, transfers referred to in Article 47 or the second subparagraph of Article 49(1), whichever is the appropriate or appropriate safeguards are, how to obtain a copy of them or where to get them

consulted.'

10/29

Our reference

[CONFIDENTIAL]

Date

April 9, 2021

4. Facts

54. This chapter lists the facts relevant to the decision. First, in paragraph 4.1 a outline description are given of the TikTok app. Section 4.2 discusses the method how users create an account and post videos via the TikTok app and how the privacy policy of TikTok Inc. was offered to users. Section 4.3 briefly discusses the (underlying) processing of personal data that takes place in the context of users' use of the TikTok app. Finally, it is explained in section 4.4 that a large number of children use the TikTok app.

4.1 General description of the TikTok app

55. TikTok is a platform that allows users to create short videos via an app, too edit and share online. The TikTok app allows users to upload photos and videos of their smartphones and allows them to add filters, stickers, effects and music.

Over time, TikTok has developed into a platform where users mainly feel profile by posting creative and humorous short videos. This distinguishes TikTok stands out from other social media platforms such as Instagram.

56. In addition to making, editing and posting short videos, users can also use the TikTok app establish and maintain social contacts. This allows users to post comments on videos from others, like videos, follow other users, become friends with other users and sending and receiving messages from other users, etc. It is also possible, for example to set up live stream connections. The TikTok app can therefore be regarded as social

media app.

57. An important part of the TikTok app is the 'for you' page. This is a page where the user is offered videos relevant to him or her via a continuous feed. Which videos exactly are offered through this feed differs per user and depends on his or her preferences. The algorithm developed by TikTok determines which videos are shown.

In addition, conversations with advertisers who are active on the TikTok platform show that for the time being only TikTok knows exactly how this algorithm works and which factors are exactly decisive.

58. The above functionalities can all be used via the TikTok app. The TikTok app can be accessed via the various app stores can be downloaded for free. TikTok's revenue model is, as with many social media platforms, to generate income through (personalised) advertisements. Our research has shown that at the time of the adoption of the research report, TikTok did not yet have a personalized advertisements as a product offered to advertisers when it comes to Dutch users. This product was already available for larger European markets such as France, Italy, Spain and the UK.

11/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

4.2 User registration and provision of privacy policies to users

Login process

59. After a user has downloaded the TikTok app in an app store, it is immediately possible to download the view videos shared via the TikTok platform. The user also receives via the 'for you' page videos offered via a feed. Further functionalities in the app are not (yet) available. In short, unregistered users can watch videos but not post videos and enter into social contacts about this via the TikTok platform.

60. Creating a TikTok account is a necessary requirement to create, edit videos

and post it online and make use of the interactive possibilities of the TikTok app.

61. The AP has created an account as part of an online test to gain insight into the method

on which users register in the TikTok app and which data they had to do so

provide. In short, a user must go through the following four steps.¹⁹

62. First of all, a user must indicate by which method he or she wants the registration process

through, using a phone number, email address or other existing social media

account. The user is informed in the Dutch language that he or she agrees with the

TikTok Terms of Use and Privacy Policy. The user can click on the word

terms of use and privacy policy to access these documents.

63. The user must then indicate his or her year of birth via a gear wheel. If the

user fills in a year of birth that shows that the person is younger than 13 years, the

user will see a red bar that says “sorry, it looks like you are not eligible for TikTok,

but thank you for looking us up”. Until early 2020, this red bar disappeared after about 5 seconds

and the user came back to the screen to enter his or her year of birth via a gear.

At that point, the user could enter a different year of birth to go through this step

come. At the beginning of 2020, TikTok introduced a temporary block if a user indicates

be younger than 13 years old.²⁰

64. As a third step, the user must enter his or her email address or telephone number and the

user set a password. The screen again states that the user agrees to

TikTok's terms of use and privacy policy.

65. Finally, as a fourth step, TikTok checks that the user is not a robot through a manual test

(use the mouse to move puzzle pieces to the right place). After going through this step

¹⁹ Reference is made to file documents 1 and 7 for a complete description of the process that Dutch users must follow

to create an account and use it to post videos online.

²⁰ The DPA's online test of 17 December 2019 shows that this blockade had not yet been implemented. In the online test of

the

AP of February 25, 2020, this was the case.

12/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

is a user logged in and can he or she use the functionalities of the TikTok app, such as posting videos and entering into social contacts.

Privacy Policy in English language

66. The online tests conducted by the AP in December 2019 and February 2020 showed that the privacy policy was displayed in the English language during the registration process described above. This was also the case when a user was logged in and wanted the privacy policy in the TikTok app consult.²¹ In response to the AP's question about how TikTok informs Dutch children about the processing of their personal data, TikTok has stated on May 1, 2020 that they do this, among other things through its privacy policy. The privacy policy provided by TikTok to the AP concerned a English version.²²

67. TikTok informed the AP on June 26, 2020 that it will change its privacy policy with effect from July 29, 2020. to Dutch persons involved – and therefore also Dutch children under the age of 16 – in the Dutch language will provide. As TikTok also noted in its written opinion In addition, as of July 29, 2020, TikTok has prepared a separate document that in language use and form is appropriate for (Dutch-speaking) children.²³

68. Based on the foregoing, the AP determines that TikTok Inc. during the period of May 25, 2018 has its privacy policy to Dutch users - including children - until July 28, 2020 provided in the English language only.

4.3 Processing of personal data by TikTok

69. As a social media platform, TikTok processes a large number of personal data from both registered and unregistered users. For example, TikTok handles the following categories of personal data to enable users to share videos and about this engage in social interaction via the TikTok platform: User ID, name/nickname, user settings, user generated content (e.g. videos, messages, comments), IP address, mobile carrier, time zone settings, App version, device model, device system, network type, device ID, screen resolution, operating system, access tokens, appId, appsecret, code, redirected URL (for social login/sharing).²⁴

70. The above categories of personal data have been mentioned by TikTok in its register of processing. TikTok has this register for all processing purposes identified by it

21 File document 1 and file document 7.

22 File document 15, answer to question 10 and appendix 5. The text of the privacy policy that TikTok has submitted to the AP concerns the

version last updated in October 2019. However, as evidenced by the answer to question 11, TikTok has changed the terms of the

privacy policy in the period from May 25, 2018 – July 29, 2020 not substantially changed.

23 File document 33 and marginal number 160 of the investigation report.

24 File document 15, appendix 3.

13/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

describes which personal data TikTok processes, including additional characteristics such as basis, retention period, security measures and country.²⁵

4.4 Use of the TikTok App by Children

71. TikTok is a social media app that is popular and used by children. From research

shows that a large group of Dutch children under the age of 16 use the TikTok app and that a part of this group of young children are around 12 years old (and in some cases younger).

72. This is apparent from an indicative study conducted at the end of 2019 by a research agency, which has this to say stated to the AP that TikTok is used by children, especially around the age aged 12.²⁶ In addition, this research agency estimated that approximately 830,000 Dutch children under the age of 18 use TikTok. Below is the table – based on the research results from the end of 2019 from the aforementioned research agency – which show that children aged from 6 to 18 years old used the TikTok app and that TikTok proportionally was mainly used by children around the age of 12 years.²⁷

25 For example, TikTok describes in its processing register, among other things, the following goal: “To enable users to share user content and interact with other users”. It goes too far for this decision to detail all eighteen processing purposes put forward by TikTok to describe. In this decision, a reference to the processing register provided by TikTok will suffice data protection impact assessment, see annex 3 to file document 15 for the processing register and annex 4 to file document 15 for the Data Protection Impact Assessment.

26 File document 24.

27 These results are confirmed in discussions that the AP has had with various parties active in this market, see file document 25, p. 2, file document 26, p.2 and file document 36.

14/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

73. In addition, research shows that TikTok in recent months, at the time of the COVID-19

pandemic, has gained a lot of popularity, also among older users. The below

graph based on official TikTok figures in May 2020 illustrates this²⁸:

²⁸ The marketer who published these figures remarks about these figures that he can conclude that nowadays not only children are more active on the TikTok app : “In the Netherlands there are 7 million app downloads, of which 3.5 million are unique users

are in the Netherlands. This cannot only be young people under the age of 18. That is why there is still a target group that is older than 18 years.” See

file document 26, p2.

15/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

74. Furthermore, media reports in August 2020 state that figures from Bytedance, the parent company of TikTok, show the number of active users of TikTok in the Netherlands had risen to 4.5 million. Although the largest user group would no longer consist of teenagers, users in the 13 to 17 age group would make up as much as 28 percent of all users in the Netherlands, which amounts to approximately 1,260,000 users.²⁹

75. Based on the above, the AP has established that TikTok is used by a large number Dutch children under the age of 16.

5. Assessment

76. This chapter successively establishes that TikTok Inc. if controller has processed personal data and that TikTok Inc. in the period of 25 May 2018 up to and including 28 July 2020 has violated Article 12(1) of the GDPR.

²⁹ See, for example, Emerce: TikTok grows to 4.5 million users in the Netherlands - Emerce.

16/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

5.1 Processing of personal data

Personal data

77. Article 4, preamble and under 1, of the GDPR stipulates that personal data is all information about an identified or identifiable natural person.

78. As can be seen from the register of processing operations³⁰, TikTok Inc. in the period from May 25, 2018 to with 28 July 2020 processed a large number of data from users, including the videos they posted, messages they sent and other (social) activities they engaged in. Based upon of this, the AP determines that in the present case there is information of identifiable persons and therefore personal data within the meaning of Article 4, preamble and under 1, of the AVG.

Processing

79. Pursuant to Article 2(1) and Article 3(1) of the GDPR, the GDPR applies to all or partially automated processing of personal data in the context of the activities of an establishment of a controller or a processor in the European Union. It

Under Article 4, preamble and under 2, of the GDPR, the term 'processing' includes every possible one processing or set of processing of personal data, whether or not carried out via automated processes, such as collecting, storing, disseminating and making available facts.

80. From the register of processing of TikTok Inc. and paragraph 4.1 shows that TikTok Inc. in the period from May 25, 2018 to July 28, 2020 received, processed, analyzed and distributed. This is the processing of personal data in the sense of Article 4, preamble and under 2, of the GDPR.

81. In view of this, the AP concludes that the processing of personal data is subject to the GDPR applies – see Article 2(1) of the GDPR.

30 File document 15, appendix 3.

17/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

5.2 Controller

82. Article 4, preamble and under 7 of the GDPR stipulates that the controller has a natural or legal person, who alone or jointly with others, the purpose of and the means for the processing of personal data. Decisive is who the goal of and the means for the processing of personal data. The controller can do this alone, but also together with others.

View TikTok

83. TikTok states in its written opinion that the processing responsibility was transferred on July 29, 2020 transferred from TikTok Inc. to TikTok Ireland and TikTok UK.

Considerations AP

84. From the register of processing operations and Privacy Policy of TikTok Inc.³¹ submitted on May 20, 2020, as well as TikTok's written submission shows that TikTok Inc., located in California (the United States), in the period from May 25, 2018 through July 28, 2020, the goals and means for determined the processing.

85. The AP therefore concludes that TikTok Inc. for the period from 25 May 2018 to 28 July 2020 qualifies as a controller within the meaning of Article 4, preamble, and under 7, of the GDPR.

5.3 Transparency and obligation to provide information

86. Transparency is an important principle of EU law.³² Transparency is an expression of the

principle of fairness in relation to the processing of personal data as contained in

Article 8 of the Charter of Fundamental Rights of the European Union. Transparency is therefore together with lawfulness and fairness, included in the GDPR in Article 5, paragraph 1, opening lines and under a as one of the basic principles of the processing of personal data.

87. Recital 60 of the GDPR notes that the data subject, in accordance with the Principles of fair and transparent processing, must be informed that there are processing takes place and the purposes thereof. Recital 39 of the GDPR supplements that information and communication related to the processing of those personal data must be easily accessible and understandable. Also must use clear and simple language. Natural persons must become aware made of the risks, rules, safeguards and rights associated with the processing of personal data, as well as how they exercise their rights with regard to this processing can exercise.

31 File document 15, appendices 3 and 5.

32 See, inter alia, Article 1 and Article 22(2) of the Treaty on European Union.

18/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

88. In the Guidelines on Transparency under Regulation (EU) 2016/679 (hereinafter: Transparency Guidelines) emphasizes that one of the core elements of the principle of transparency and fairness is that those involved are informed in advance of the scope and consequences of the processing and not be surprised later by other ways in which their personal data have been used.³³

89. The practical (information) requirements when it comes to informing data subjects are

elaborated in Articles 12 to 15 of the GDPR.

90. Article 12 of the GDPR requires the controller to take appropriate measures

so that data subjects receive the information related to the processing in a concise, transparent,

intelligible and easily accessible form and in clear and plain language, in the

particularly when the information is specifically intended for a child. The information will be in writing

or provided by other means.

91. The element “understandable” is further elaborated in the Transparency Guidelines and serves as

benchmark an average member of the intended audience. Of a

controller that respects the principle of accountability

are expected to know the data subjects about whom information is being collected. On the basis of

this knowledge should allow the controller to determine what the target group is likely to do

to understand. For example, a controller can process the personal data of employees

professionals assume that his or her target audience has a higher level of understanding

than the target group of a controller who processes personal data of children

collects.³⁴

92. In order to comply with the “clear and simple language” element, the information provided to a

data subject is not provided with language or terminology that is too legal, technical or specialist

must contain. When the information is translated into one or more languages, the

controller to ensure that all translations are faithful and that the

word choice and sentence structure in the other language or languages are correct, so that the translated text is good

follow and understand. When the controller addresses data subjects who have a

speak another language, a translation into those languages must be provided.³⁵

93. With regard to providing information to children, recital 58 of the GDPR highlights:

“Since children deserve specific protection, the information and communication, when the

processing is specifically directed at a child, be stated in language such that it is clear and simple

child can understand it easily”.

33 Transparency Guidelines, point 10.

34 Transparency Guidelines, point 9.

35 Transparency Guidelines, point 13.

19/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

94. The Transparency Guidelines also pay extra attention to the duty of care regarding the requirement to use simple language when it comes to the provision of information to children and other vulnerable groups. For example, the guidelines state transparency Stresses that a controller that targets children (or is aware of it, or should be, that his or her goods/services are mainly used by children) ensure that the vocabulary, tone and style of the language used is appropriate for children. In this way, the child for whom the information is intended can understand that information addressed to him or her.³⁶

View TikTok

95. TikTok recognizes that one of the core elements of the principles is transparency and fairness that those involved must be able to determine in advance the scope and consequences of the processing and that they should not be faced with any surprises afterwards about the way in which their personal data is used. First, TikTok believes that it can do so through various measures has met this standard and that the AP wrongly focuses only on the TikTok Terms of Use and Privacy Policy. TikTok refers in this context to

- 1) measures in the TikTok app such as pop-up notifications and the privacy and security settings,
- 2) the TikTok Help Center and Safety Center where users are provided with information, and
- 3) the Dutch summary of its privacy policy rolled out by TikTok in July 2020.

Second, TikTok believes that Dutch users have a decent command of the English language, as a result of which there is no conflict with Article 12, paragraph 1 of the GDPR. She notes in that regard that Since 2011, the Netherlands has been in the top three of the so-called Education First English Proficiency Index. Third, according to TikTok, the research report does not substantiate that its privacy policy has not used clear and simple language aimed at children.

Considerations AP

96. As the Transparency Guidelines show, a controller should be required to know his intended audience and to make a determination based on this information state what qualifies as understandable. In the case of TikTok, this means that they are aware of it should be that the target group consists in any case for a substantial part of children younger than 16 years. This young target group also contributes in accordance with Article 12, paragraph 1 of the GDPR and the Guidelines transparency comes with an extra responsibility when it comes to using clear and simple language in all communication. After all, children deserve specific protection, which makes the use of clear and simple language even more important.³⁷

36 Transparency Guidelines, point 14.

37 See also recital 58 of the GDPR and Transparency Guidelines, point 7.

20/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

97. However, it appears from what has been explained above in marginals 66 to 68 that TikTok Inc. during the period from May 25, 2018 to July 28, 2020, its privacy policy to Dutch data subjects – including children – in the English language only. 38

98. The circumstance that TikTok Inc. has not provided this information in the Dutch language to Dutch (speaking) children under the age of 16 already means that TikTok has Article 12, paragraph 1 of the GDPR

violate. The requirement of comprehensibility requires at least that when the controller addresses data subjects who speak a different language, they translation into that language is provided to those data subjects. This obligation applies in particular when – as in this case – it focuses on (young) children, so that they can easily access that information understand.³⁹ The circumstance that a relatively large group of Dutch people have a good command of English this does not change, especially now that TikTok is used by many people under the age of 16. A good command of the English language of those involved in that age group(s) is not obvious. TikTok Inc. should therefore not have assumed that it was given to children of the English language version of the Privacy Policy only complies with Article 12(1) of the GDPR.

99. The other transparency measures taken mentioned by TikTok do not detract from the fact that the English privacy statement has not been provided in language understandable to children and can already be converted therefore do not compensate for the violation of Article 12 (1) of the GDPR.

100. The pop-ups used by TikTok undeniably contribute to better transparency. This however, this measure does not alter the full privacy policy of TikTok Inc. was not drafted in understandable and simple language for Dutch children under the age of 16. These pop ups are none replace its privacy policy. They inform those involved about the public nature of their information post videos, but do not provide all information as provided by the GDPR under Article 13 of the GDPR controller must be provided.

101. In addition, the privacy and security settings mentioned by TikTok and the Help and Safety Center that children are only informed there if they actively go to information themselves to search. As a result, there is a risk that they will not be informed in time, which – like TikTok itself recognizes - is a crucial element of the transparency obligation.⁴⁰ Moreover, also applies to these measures that it cannot replace its privacy policy now not all information is provided by the controller pursuant to Article 13 of the GDPR are provided.

38 File document 1, file document 7 and file document 15, appendix 5. The text of the privacy policy that TikTok has submitted to the AP concerns

the version last updated in October 2019. However, TikTok has changed the terms of the privacy policy in the period from 25 May 2018 – July 29, 2020 not substantially adjusted, see letter dated May 1, 2020 from TikTok to the AP, p. 7 (answer to question 11).

39 Compare Transparency Guidelines, points 13 and 14.

40 See also Transparency Guidelines, point 27.

21/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

102. With effect from July 29, 2020, TikTok will provide its privacy policy to Dutch data subjects – and

this also includes Dutch children under the age of 16 – in the Dutch language. Like TikTok also in

has noted its written opinion, TikTok also has a

separate document has been drawn up that is in line with (Dutch-speaking) children in terms of language and form.⁴¹ Met

these two measures, TikTok meets the requirement in accordance with Article 12 of the GDPR to

To inform Dutch-speaking children in a language they understand.

5.4 Conclusion regarding Article 12(1) of the GDPR

103. Based on the foregoing, the AP concludes that TikTok Inc. during the period of

25 May 2018 up to and including 28 July 2020 has violated Article 12(1) of the GDPR.

6. Fine

6.1 Introduction

104. By not informing children in understandable language about the processing of their personal data,

has TikTok Inc. in the period from 25 May 2018 up to and including 28 July 2020 acted in violation of article

12 (1) GDPR. TikTok Inc. has not taken any measures to ensure this during this period

ensure that children have the information related to the processing of their personal data in a received clear and simple language for them and has thus completely ignored the importance of Dutch children when it comes to the extra protection they enjoy under the GDPR.

The AP is of the opinion that this is a serious violation.

105. The AP sees this as a reason to make use of its power to impose a fine on the basis of Article 58(2) opening words and under i and Article 83(5) GDPR, read in conjunction with Article 14, paragraph 3 of the UAVG, to TikTok Inc. to impose. The AP uses the Fining Policy Rules 2019.⁴²

View TikTok

106. TikTok is primarily of the opinion that the AP is not authorized to impose a fine since the TikTok's headquarters is located in Ireland. Even if the AP were authorized, there would be none be grounds for imposing a fine because TikTok trades and has traded in in accordance with the GDPR. If the AP thinks otherwise about this, then it has to, before imposing it of a punitive sanction, the AP can demonstrate that TikTok has acted in violation of a legal provision that was clear, precise and foreseeable for TikTok.⁴³

[CONFIDENTIAL]. Imposing a punitive sanction based on open norms is inconsistent

⁴¹ File document 33 and marginal number 160 of the investigation report.

⁴² Stct. 2019, 14586, March 14, 2019.

⁴³ TikTok refers in this context to ECLI:NL:RVS:2002:AF0842, ECLI:NL:CBB:2018:187.

22/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

with the nulla poena principle and the principle of legality. In such cases, a reprimand is one more suitable instrument. Finally, TikTok states that all circumstances of the case must be taken into account

taken into account to arrive at an appropriate settlement, as well as the conditions of Article 83 GDPR and all principles of good administration. TikTok has fully cooperated with the investigation and also requested a meeting with the research department to express their concerns easier to understand.

Considerations AP

107. In section 5.4 of this decision, the AP concluded that TikTok Inc. during the period of 25 May 2018 up to and including 28 July 2020 has violated Article 12(1) of the GDPR. TikTok Inc. has thus not acted in accordance with the GDPR. As described above in Chapter 2 of this Decree has been set out, the DPA is authorized to take action for the established violation of Article 12, paragraph 1 of the GDPR make a decision and impose a sanction. It is a violation that preceded July 29, 2020 has ended. This violation therefore falls outside the scope of Opinion 8/2019⁴⁴ which means that the AP is authorized to impose a fine for this.

108. With its statement that the AP must be able to demonstrate that TikTok acted in violation of a legal provision that was clear, precise and foreseeable to it, TikTok actually does a appeal to the *lex certa* principle.

109. As the Judicial Division of the Council of State has considered⁴⁵ several times the *lex certa* principle, which is included, *inter alia*, in Article 7 of the Convention for the Protection of human rights and fundamental freedoms, of the legislature that he with a view to the legal certainty describes the prohibited conduct as clearly as possible. Thereby should not be forgotten that the legislature sometimes consists of a certain vagueness the use of general terms, describing prohibited behaviors to prevent behaviors that are punishable fall outside the scope of that description. That vagueness can unavoidable, because it is not always possible to foresee how the interests to be protected will be protected will be violated in the future and because, if foreseeable, the descriptions of prohibited behaviors would otherwise be too refined with the result that clarity is lost and this harms the importance of the general clarity of legislation.

110. The mere fact that the notion of “intelligible, clear and simple language” used in this case is decisive for the applicability of Article 12 (1) of the GDPR, based on the facts and circumstances requires explanation, does not mean that the administrative fine is contrary to the lex certa principle.

111. This description is so clear, foreseeable and knowable that TikTok could have known that it was not in offering its privacy policy in the Dutch language to Dutch (speaking) stakeholders, of which

44 See marginal number 16 of Opinion 8/2019.

45 See, among others, the judgments of 9 July 2014, ECLI:NL:RVS:2014:2493 and 16 January 2019, ECLI:NL:RVS:2019:109. 23/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

consists of a large proportion of children, would constitute a violation of the requirement of clear and simple language as referred to in Article 12(1) of the GDPR. This is especially true now in the Guidelines Transparency is considered when the controller is addresses to data subjects who speak another language, a translation into those languages must be provided. This obligation applies in particular when it is aimed at (young) children, so that they have that information easy to understand and connects to the specific protection that children earn pursuant to Recital 58 of the GDPR. The TikTok app is aimed at Dutch involved, including children, and is for the most part in the Dutch language for them made available. In addition, TikTok does point out to the user when installing the app Dutch language that he or she agrees with its privacy policy.

112. There is therefore no conflict with the lex certa principle.

113. [CONFIDENTIAL].

114. The AP sees no reason in what TikTok has stated to exercise its authority to impose

to waive a fine for violation of Article 12(1) of the GDPR.

6.2 Fining Policy Rules of the Dutch Data Protection Authority 2019 (hereinafter: Fining Policy Rules 2019)

115. Pursuant to Article 58(2) opening words and under i and Article 83(5) GDPR, read in conjunction with article 14, paragraph 3 of the UAVG, the AP is authorized to transfer TikTok Inc. in case of a violation of Article 12, paragraph 1 of the GDPR to impose an administrative fine of up to € 20,000,000 or, for a company, up to 4% of the total worldwide annual turnover in the previous financial year, if any figure is higher.

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

117. Pursuant to Article 2, under 2.2, of the Fining Policy Rules 2019, the provisions relating to violations for which the AP can impose an administrative fine not exceeding the amount of € 20,000,000 or, for a company, up to 4% of the total worldwide annual turnover in the previous financial year, if this figure is higher, classified in Annex 2 in category I, category II, category III or category IV.

118. In Annex 2, the violation of Article 12(1) of the GDPR is classified in category III.

119. Pursuant to Article 2.3 of the Fining Policy Rules 2019, the AP sets the basic fine for violations for which a statutory maximum fine of € 20,000,000 applies within the period specified in that article certain penalty bandwidths. For violations in Category III of Annex 2 of the Fining Policy Rules 2019, a fine band between € 300,000 and € 750,000 applies and a basic fine of €525,000.

24/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

120. Pursuant to Article 6 of the Fining Policy Rules 2019, the DPA determines the amount of the fine by

amount of the basic fine upwards (up to the maximum of the bandwidth of the to an offense linked penalty category) or down (to at least the minimum of that bandwidth).

121. Pursuant to Article 7 of the Fining Policy Rules 2019, the AP, without prejudice to Articles 3:4 and 5:46 of the General Administrative Law Act (hereinafter: Awb) take into account the following factors derived from Article 83, paragraph 2 of the GDPR, referred to in the Fining Policy Rules 2019 under a to k.

6.3 Fine amount

122. This section first discusses the factors that may arise under Article 7 of the The 2019 Fining Policy Rules are relevant for determining the fine amount. Finally, it enters on the principle of proportionality.

123. According to the AP, in this case the following are mentioned in Article 7 of the Fining Policy Rules 2019: factors relevant to determining the fine amount:

- the nature, seriousness and duration of the infringement;
- the intentional or negligent nature of the infringement (culpability);
- the measures taken by the controller or processor to mitigate the damage suffered by those involved.

6.3.1 Nature, seriousness and duration of the breach

124. Pursuant to Article 7, preamble and under a, of the Fining Policy Rules 2019, the AP takes into account the nature, gravity and duration of the infringement. In its assessment, the AP involves, among other things, the nature, scope or purpose of the processing as well as the number of data subjects affected and the extent of the damage suffered by them.

125. The protection of natural persons with regard to the processing of personal data is a fundamental right. Pursuant to Article 8(1) of the Charter of Fundamental Rights of the European Union and Article 16, paragraph 1 of the Treaty on the Functioning of the European Union is everyone's right to protection of his personal data. The principles and rules regarding the protection of

natural persons when processing their personal data must comply with their fundamental rights and freedoms, in particular with their right to protection personal data. The GDPR aims to contribute to the creation of an area of freedom, security and justice and of an economic union, as well as to economic and social progress, the strengthening and convergence of economies within the internal market and the well-being of natural persons. The processing of personal data must serve people. It right to the protection of personal data is not absolute, but must be

25/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

considered in relation to its function in society and must conform to it principle of proportionality against other fundamental rights. Any processing of personal data must be done properly and lawfully. It serves for natural persons to be transparent about the collection, use and consultation of personal data concerning them or otherwise processed and to what extent the personal data are or will be processed incorporated.

126. Pursuant to Article 12(1) of the GDPR, the controller must take appropriate measures to ensure that data subjects receive the information related to the processing in a concise, transparent, intelligible and easily accessible form and in clear and plain language received, especially when the information is specifically intended for a child. If inconsistent if this is acted upon, it affects the right of data subjects to have their privacy respected privacy and the protection of their personal data.

127. The activity of TikTok Inc. to which the AP's findings refer concerns the provision of only the English version of the privacy policy to Dutch data subjects, including a large one

group of Dutch(speaking) children younger than 16 years. The privacy policy was not in Dutch language, while a good command of the English language in that age group is not is self-evident. It was therefore not possible for them to predict the scope and consequences in advance of the processing and it was not clear how their personal data is used would become.

128. When assessing the seriousness of the violation, the DPA also takes into account the large number of people involved and the amount of personal data processed. Section 4.4 of this Decree has already been discussed explained that in an indicative study at the end of 2019, a research firm estimated that about 830,000 Dutch children under the age of 18 use TikTok and that TikTok is at that time was relatively mainly used by children around 12 years of age.

In that same paragraph it was noted that media reports in August 2020 report that figures of TikTok's parent company show the number of active users of TikTok in the Netherlands had risen to 4.5 million, with users aged 13 to 17 28 percent of all users in the Netherlands, which amounts to approximately 1,260,000 young users. The processing therefore also related to a vulnerable group of persons, namely children. They have specific rights with regard to their personal data protection, as they may be less aware of the risks, consequences and risks involved safeguards and of their rights in connection with the processing of personal data.⁴⁶ This makes, in especially given the massive number of young users of TikTok in the Netherlands, the violation very serious.

129. With regard to the duration of the violation, the DPA takes into account a period from 25 May 2018 to with 28 July 2020, in which it considers it particularly important that, in the opinion of the AP, this is the case was of an offense that has continued for a considerable period of time.

⁴⁶ Recital 38 of the GDPR.

April 9, 2021

Our reference

[CONFIDENTIAL]

130. In view of the seriousness and duration of the violation, the AP sees reason to set the basic amount of the fine to be increased by € 225,000 to € 750,000, being the maximum of the bandwidth of the violation linked penalty category.

6.3.2 Intentional or negligent nature of the infringement (culpability)

131. Pursuant to Section 5:46(2) of the Awb, when imposing an administrative fine, the AP take into account the extent to which this can be attributed to the offender. Pursuant to Article 7, under b, of the Fining Policy Rules 2019, the AP takes into account the intentional or negligent nature of the infringement. Since this concerns a violation, it is for imposing an administrative fine in accordance with settled case law⁴⁷, it is not required that it be demonstrated that there is intent and the AP may assume culpability if the perpetrator is established.⁴⁸

132. According to Article 12(1) of the GDPR, the controller must process the information in connection with the processing in a concise, transparent, intelligible and easily accessible form and in clear and plain language to the data subjects, in particular when the information is specifically intended for a child. From a professional party like TikTok Inc. may, me given the nature and scope of the processing, it is expected that it will handle it properly applicable standards and comply with them.

133. TikTok Inc. has consciously informed its privacy policy to Dutch data subjects – including children – provided in the English language only⁴⁹, while the comprehensibility requirement requires that when the controller addresses data subjects who speak another language, at least they provides a translation into that language to those data subjects. This obligation is especially true now TikTok Inc. was also aimed at (young) children, while the TikTok app itself for the most part in the Dutch language has been made available to them and TikTok the user upon installation of the

app indicates in the Dutch language that he or she agrees with its privacy policy. In the

In light of the foregoing, the AP deems the violation culpable.

6.3.3 Measures taken to limit the damage suffered by those involved

134. The AP considers that TikTok Inc. has taken various measures aimed at

mitigate the damage suffered by those involved. Getting involved when using the TikTok app

pop-up notifications informing them about the public access of any te

post videos. In addition, the updated privacy and security settings and the Help

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

CBb 7 March 2016,

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

ECLI:NL:RVS:2018:3969, r.o. 5.1.

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

49 See marginal number 66 of this decision.

27/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

Center and Safety Center of TikTok, where users are provided with information, contribute to one

better transparency. Also, as of July 29, 2020, TikTok has provided its privacy policy in the

Dutch language to Dutch parties involved and as of that date it also has a separate

document made available in which (Dutch-speaking) children are taught in understandable language

informed.

135. The AP considers that this has not removed the consequences for the rights of data subjects and

already concludes on this basis that there is no reason to increase the basic amount of the fine

pursuant to Article 7, under c of the 2019 Policy Rules.

6.3.4 Other Factors

136. The AP sees no reason to increase the basic amount of the fine on the basis of the other provisions in Article 7 of the Fining Policy Rules 2019, insofar as applicable in the present case, increase or decrease.

6.3.5 Proportionality

137. Finally, the AP assesses on the basis of Articles 3:4 and 5:46 of the Awb (principle of proportionality) whether the 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. Apply it

The principle of proportionality, according to the Fining Policy Rules 2019, means that the AP when determining of the fine takes into account, if necessary, the financial circumstances of the offender

is. TikTok has not relied on limited funding already for that reason

there is no reason to mitigate the fine on the basis of proportionality. The AP deems a fine in this case of € 750,000 appropriate and offered and TikTok Inc. sufficient to pay this amount can afford.

6.3.6 Conclusion

138. The AP sets the total fine amount at € 750,000.

28/29

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

7. Operative part

fine

The AP imposes an administrative fine on TikTok Inc. for violation of Article 12, paragraph 1 of the GDPR amounting to € 750,000 (in words: seven hundred and fifty thousand euros).50

Yours faithfully,

Authority for Personal Data,

e.g.

ir. M.J. Verdier

Vice President

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.

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