

Confidential/Registered

[CONFIDENTIAL]

Date

July 30, 2019

Our reference

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Contact

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Subject

Decision to impose an administrative fine

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Dear [CONFIDENTIAL],

The Dutch Data Protection Authority (AP) has decided to issue a Credit Registration Office (BKR).

to impose an administrative fine of €830,000. The AP is of the opinion that BKR Article 12, paragraph 5, of the

GDPR from May 25, 2018 to April 28, 2019, because BKR is not available free of charge

electronically has given access to personal data to data subjects in the context of the law

on inspection. In addition, the AP has come to the conclusion that BKR between 25 May 2018 and 12 March

2019 has violated article 12, second paragraph, of the AVG, because BKR has the right of inspection under

Article 15 of the GDPR has not facilitated.

The decision is explained in more detail below. Chapter 1 is an introduction and Chapter 2 describes it

legal framework. In Chapter 3, the AP assesses its authority, the processing responsibility

and the violations. The (amount of the) administrative fine is elaborated in chapter 4 and chapter 5

contains the operative part and the remedy clause.

1

Our reference

[CONFIDENTIAL]

Date

July 30, 2019

1 Introduction

1.1 Legal entities involved

Bureau Krediet Registratie (BKR) is a foundation that has its registered office at Teisterbantlaan 2a, (4006 EB) in Tiel. BKR was founded on January 14, 1965 and is in the register of the Chamber of Commerce registered under number 11009074. BKR collects financial data of approximately 11 million parties involved in affiliated credit providers.

1.2 Process flow

On July 6, 2018, the AP started an investigation into compliance with Articles 12 and 15 of the General data protection regulation (GDPR) by BKR. Supervisors of the AP in the visited the BKR website on several occasions during the period from July 6, 2018 to November 13, 2018 and took screenshots and downloaded files there. Finally, the AP has three written information requests sent to which BKR has always responded on time.

The AP sent a draft report to BKR on February 25, 2019. BKR has this on March 12 2019 expressed its views by letter. Taking this response into account, the AP has the final decision report established. This report was sent to BKR by letter dated 17 April 2019.

By letter dated 15 May 2019, the AP sent BKR an intention to enforce. To that end too given the opportunity by the AP in a letter of 15 May 2019, BKR has in a letter of 4 June 2019 expressed its views in writing on this intention and the final decision on which it is based report.

On June 4, 2019, an opinion hearing took place at the offices of the AP, at which BKR also

verbally explained her point of view. In an email dated June 14, 2019, BKR provided further information upon request information forwarded.

By letter dated 17 June 2019, the AP sent the report of the opinion hearing to BKR. BKR has on July 3, 2019, made her comments on the report, which the AP has added to the report attached.

On July 3, 2019, the AP requested further information from BKR, which BKR provided on July 12, 2019. sent.

1.3 Background and scope of the investigation

After May 25, 2018, the AP received various complaints from those involved who claim that BKR thresholds raises when exercising the right of inspection by data subjects. It was stated that BKR de

2/23

Date

July 30, 2019

Our reference

[CONFIDENTIAL]

does not offer electronic access to personal data free of charge and that BKR indicates that it only has one once a year (by post) to inspect the processed personal data free of charge. Partly in it

In light of these complaints, the AP has seen reason to investigate how BKR enforces the right to facilitates access.

For the sake of completeness, the AP notes that its investigation focused on compliance with a number requirements regarding the right of inspection and that it has not investigated the question or the processing of personal data by BKR otherwise meets the requirements of the GDPR.

2. Legal framework

2.1 Scope GDPR

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

included or intended to be included therein.

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

Pursuant to Article 4 of the GDPR, for the purposes of this Regulation:

1. "Personal Data": any information relating to an identified or identifiable natural 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 carried out by automated processes [...].
7. "Controller": a [...] legal entity that, alone or jointly with others, achieves the purpose of and determines the means of processing personal data; [...].

2.2 Right of access

Pursuant to Article 12, second paragraph, of the GDPR, the controller facilitates the exercise of the data subject's rights under Articles 15 to 22. [...].

Pursuant to Article 12, paragraph 5, of the GDPR, the provision of the information referred to in Articles 13 and 14 the information referred to, and the provision of the communication and the taking of the measures referred to in Articles 15 to 22 and Article 34 free of charge. When requests from a data subject are evident are unfounded or excessive, in particular because of their repetitive nature, the controller either: a) charge a reasonable fee in light of the administrative costs associated with providing the requested information or communication and

3/23

Date

July 30, 2019

Our reference

[CONFIDENTIAL]

taking the requested measures; or b) refuse to comply with the request.

It is up to the controller to determine the manifestly unfounded or excessive nature of the request to show.

Pursuant to Article 15, paragraph 1, of the GDPR, the data subject has the right to receive information from the controller to obtain a confirmation from the controller as to whether or not personal data relating to him are being processed and, where that is the case, to obtain access to that personal data and to the following information: a) the processing purposes; b) the categories of personal data concerned; c) the recipients or categories of recipients to whom the personal data have been or will be disclosed provided, in particular recipients in third countries or international organisations; d) if possible, the period during which the personal data is expected to be stored, or if so is not possible, the criteria for determining that period; e) that the data subject has the right to the controller to request the controller to rectify or erase personal data, or that the processing of personal data concerning him is restricted, as well as the right against it to object to processing; f) that the data subject has the right to lodge a complaint with a supervisory authority; g) where the personal data are not collected from the data subject, all available information about the source of that data; h) the existence of automated decision-making, including profiling referred to in Article 22(1) and (4), and, at least in that cases, useful information about the underlying logic, as well as the importance and expected consequences of that processing for the data subject.

Pursuant to Article 15, paragraph 3, of the GDPR, the controller provides to the data subject a copy of the personal data being processed. If the data subject requests additional copies of the personal data, the controller may charge a reasonable fee, based on administrative costs, to the data subject. When the data subject submits his request electronically, and not for another scheme, the information shall be provided in a commonly used electronic format.

2.3 Administrative fine

Pursuant to Article 58, paragraph 2, opening words and under i, in conjunction with Article 83, paragraph 5, opening words and

under

b, of the AVG and Article 14, third paragraph, of the General Data Protection Regulation Implementation Act (UAVG), the AP is authorized to impose an administrative fine with regard to infringements of the GDPR.

2.3.1. AVG

Pursuant to Article 83, paragraph 1, of the GDPR, each supervisory authority ensures that the administrative fines imposed under this Article for the offenses referred to in paragraphs 4, 5 and 6 reported infringements of this Regulation are effective, proportionate and dissuasive in each case.

Pursuant to paragraph 2, administrative fines shall be imposed, depending on the circumstances of the specific case, imposed in addition to or instead of the provisions referred to in Article 58, paragraph 2, under a to h and under j, referred measures.

It follows from the fifth paragraph, preamble and under b, that an infringement of the rights of data subjects of Article 12 and Article 15 of the GDPR is subject to an administrative fine of up to € in accordance with paragraph 2

4/23

Date

July 30, 2019

Our reference

[CONFIDENTIAL]

20,000,000 or, for a company, up to 4% of total worldwide annual turnover in the previous financial year, if this figure is higher.

2.3.2 UAVG

Pursuant to Article 14, third paragraph, of the UAVG, the AP may, in the event of a violation of the provisions of Article 83, fourth, fifth or sixth paragraph, of the bye-law impose an administrative fine of at most the in amounts mentioned in these paragraphs.

3. Review

3.1 Processing of personal data

BKR manages the Central Credit Information System (CKI) and offers various digital products,

including the BKR Insolvency Test, BKR Sanction Test, the Politically Exposed Person (PEP) and the BKR Verification Information System (VIS).¹ In these products, BKR stores data about identifiable natural persons are processed.² Therefore, there is processing of personal data, which also by BKR has not been disputed.

3.2 Controller

The AP is of the opinion that BKR determines the purposes and means of data processing for the products CKI, BKR Insolvency Test, BKR Sanction Test, the PEP and VIS. For example, BKR determines what the data is for used, who receives the personal data, the retention period and whether BKR personal data provided to third parties outside the European Union.³ BKR also determines which CKI product personal data must be provided by affiliated credit providers. BKR also determines in which term the personal data must be supplied.⁴ BKR also confirms itself in her privacy statement that it is the controller for these products.⁵

Based on the above, the AP designates BKR as the controller as referred to in article 4, preamble and under 7, of the GDPR.

¹ With BKR Insolvency Test, a lender can check whether a person involved has (had) to deal with bankruptcies, suspension of payments and/or debt restructuring. Lenders can continue with BKR Sanction Test before they receive a granting credit, investigating whether a person concerned appears on a sanctions list. Lenders are also required to, before they grant a loan, to carry out an enhanced customer due diligence if the applicant is a politically exposed person or if the applicant does not live in the Netherlands or does not have Dutch nationality. For this they can use BKR Politically Consult Exposed Person (PEP). With the BKR Verification Information System (VIS) companies and governments can check whether an identity document is valid.

² Privacy statement BKR, 21 August 2018 and answers from the BKR to written questions from the AP, 19 December 2018.

³ BKR website and BKR Privacy Statement, 21 August 2018.

⁴ BKR General Regulations CKI, 25 May 2018.

⁵ Privacy statement BKR, 21 August 2018.

5/23

Date

July 30, 2019

Our reference

[CONFIDENTIAL]

3.3 Violation regarding free access to personal data

3.3.1 Introduction

It should be transparent for natural persons that their personal data is collected, used, consulted or otherwise processed and to what extent the personal data are processed or will be processed.⁶ Access to personal data ensures, among other things, that the data subject can check whether the processing is lawful. Proper implementation of the right of inspection is also necessary to be able to exercise other rights, such as the right to rectification and the right to erasure.

In accordance with the principle of transparency, information and communication related to the processing of those personal data are easily accessible and understandable, and must be clear and simple language is used.⁷ Transparency is therefore codified as a principle in the GDPR.

Article 15, paragraph 1, of the GDPR provides that the data subject has the right to receive information from the controller to obtain access to the personal data concerning him that is processed by the controller are processed. Article 12, paragraph 5, of the GDPR further stipulates that the provision of information on the basis of the right of inspection in Article 15 of the GDPR should be free of charge occur. The controller could until 24 May 2018 on the basis of Article 39 of the Personal Data Protection Act still charge costs for this.

Recital 59 of the GDPR provides further clarification of the standard from Article 12 of the GDPR:

Arrangements should be in place to enable the data subject to exercise his rights under this Regulation easier to exercise, such as mechanisms to request, in particular, access to and rectification or erasure of personal data and, if applicable, to obtain it free of charge, as well as to exercise the right to object. The controller should also provide means to submit requests electronically, especially when

personal data are processed electronically. [...]

Pursuant to Article 15, paragraph 3, of the GDPR, the controller provides the data subject a copy of the personal data being processed. If the data subject requests additional copies requests, the controller may charge a reasonable, based on administrative costs charge a fee. When the data subject submits his request electronically, and not for another scheme, the information shall be provided in a commonly used electronic format.

The AP comes to the following conclusion that BKR from May 25, 2018 to April 28, 2019 has not provided personal data free of charge to data subjects when they have sent it electronically requested access. BKR thus violated Article 12, paragraph 5, of the AVG.

3.3.2 Facts

BKR offers two options on its website to gain access to the personal data that BKR processed. The first option for access is a paid service (subscription) that the data subject can use

6 Recital 39 of the GDPR.

7 Ditto.

6/23

Date

July 30, 2019

Our reference

[CONFIDENTIAL]

who wish to inspect their personal data provides access to an electronic customer environment. Three subscription types are offered by BKR: Basic at 4.95 euros per year, Plus at 7.50 euros per year and Premium at 12.50 euros per year.⁸

The second option is for data subjects to download an access form via the website, this one print it out, fill in the form manually and send it by post together with a copy of it send proof of identity to a PO Box number. BKR does not require payment for this method of inspection.⁹ BKR has indicated in its opinion that it has facilitated the right of inspection in accordance with the AVG by

to set up a simple and clear procedure and to give the consumer the choice: the consumer can choose to inspect by post or inspect electronically.¹⁰ In addition, BKR has confirmed that they have the aforementioned three paid subscription forms for electronic viewing in personal data in the period from 25 May 2018 to 28 April 2019.¹¹ On 29 April In 2019, BKR introduced a free electronic inspection.¹²

3.3.3 Assessment

Data subjects can request access to their personal data electronically from BKR. BKR then provides the personal data to data subjects electronically, which is in line with Article 15, third paragraph, of the GDPR. This states that in response to an electronically submitted request the information must also be provided in a commonly used electronic form, if the data subject does not requests another arrangement.

Pursuant to Article 12, paragraph 5, of the AVG, BKR must then provide free access to the personal data. However, it is not possible for a data subject to do so electronically free of charge obtain access to the personal data that BKR processes about him or her. The person concerned must after all, pay for the (first) access to the personal data (minimum 4.95 euros). The AP is therefore believes that BKR has violated Article 12, paragraph 5, of the AVG, now that BKR does not personal data provided free of charge to data subjects when they requested access by electronic means.

View BKR and response AP

BKR states in its view that it disagrees with the conclusion of the AP that BKR Article 12, paragraph 5, of the GDPR. BKR believes that, with due observance of Article 5 of the AVG, they do not have an inspection process via e-mail because BKR is not allowed to process a BSN, among other things. In addition, BKR believes that recital 59 of the GDPR underlines that offering a free inspection by post and a paid electronic inspection is in line with the GDPR.

⁸ Website BKR, section Requesting data, 21 August 2018.

⁹ Website BKR, part GDPR inspection, August 21, 2018.

¹⁰ Written opinion BKR dated 3 June 2019, p. 6.

11 Discussion report opinion session dated 17 June 2019, p. 21 and 22.

12 Written opinion BKR dated 3 June 2019, p. 11 and Conversation report opinion session dated 17 June 2019, p. 21 and 22.

7/23

Date

July 30, 2019

Our reference

[CONFIDENTIAL]

Finally, BKR has indicated that with the electronic inspection the consumer will have to pay for an electronic chooses a product that gives him 'a year of insight'. The repetitive character is thus established. Before that according to BKR, a reasonable fee will be charged.¹³

The AP does not follow BKR in this. Firstly, a controller of personal data can be provide general information to the data subjects via various electronic means. For determination whether this provision is free of charge is irrelevant whether or not BKR does so in the form of an e-mail can perform. Secondly, it does not follow from recital 59 of the GDPR that a controller in addition to a free inspection by post, may use a paid electronic inspection. This consideration states that the controller must also provide resources for requests electronically, especially when personal data is processed electronically.

Article 12, paragraph 5, of the GDPR and the first sentence of recital 59 of the GDPR then emphasize correct that this arrangement for inspection must be free of charge.

Finally, the AP BKR does not follow the position that its electronic product is repetitive of the access requests of data subjects is established. Data subjects who inspect more than once a year want in their personal data, are forced to take out a subscription with BKR. According to BKR has established the repetitive nature of the requests, regardless of how often the data subject uses them per year makes the subscription. BKR is therefore of the opinion that it may request a fee. The AP considers this a purposeful reasoning based on a possible incorrect assumption in advance where BKR is a

based on a fixed procedure. The fact that a data subject can inspect for a year after payment accessing the data in a digital portal does not mean that we can speak of requests with a repetitive character. After all, BKR requests an electronic inspection at the first inspection compensation. In any case, there is no repetitive character at that time. If the If the data subject again requests multiple inspections in a short period of time after the first inspection, then it is pursuant to Article 12, paragraph 5, of the AVG to BKR to demonstrate on a case-by-case basis whether there is a excessive request for which a reasonable fee may be charged. In addition, BKR stated that the vast majority of data subjects submit a request for access once a year. Once a year In the AP's opinion, requesting access is not so much that this is generally the case can be qualified as an excessive request from a data subject due to its repetitive nature of it.

3.3.4 Conclusion

In view of the foregoing, the AP is of the opinion that BKR article 12, paragraph 5, of the AVG from 25 May 2018 up to and including April 28, 2019, now that BKR does not have free access to electronic data has provided personal data to data subjects in the context of the right of access.

13 Written opinion BKR dated 3 June 2019, p. 6 and 8, and Conversation report opinion session dated 17 June 2019, p. 8.

8/23

Date

July 30, 2019

Our reference

[CONFIDENTIAL]

3.4 Violation of facilitating the right of access

3.4.1. Introduction

In the context of the transparency principle, the controller must monitor the exercise of the facilitate the rights of the data subject, such as the right of access. As mentioned before need information and communications related to the processing of that personal data are easily accessible and

be understandable, and clear and simple language must be used.¹⁴ Access to personal data ensures, among other things, that the data subject can check whether the processing is lawful. A good one interpretation of the right of inspection is also necessary to be able to exercise other rights, such as the right to rectification and the right to data erasure.

Pursuant to Article 12, second paragraph, of the GDPR, the controller must prevent the exercise of facilitate the rights of the data subject under - inter alia - Article 15 of the GDPR. In recital 63 of the GDPR further states that the data subject must have the right to access the personal data collected about him, and to exercise that right simply and at reasonable intervals to practice.

In the following, the AP comes to the conclusion that BKR from May 25, 2018 to March 12, 2019 article 12, second paragraph, of the AVG has violated, because BKR with its policy, which states that one a request for inspection can be made once a year by post, the right of inspection pursuant to Article 15 of the GDPR has not facilitated.

3.4.2 Facts

BKR has communicated to those involved that the possibility of obtaining free access by post the personal data processed by BKR of a data subject is limited to once a year. This turns out first of all from the privacy statement of BKR. It states¹⁵:

“Everyone has the right to have all personal and credit data registered in the CKI free of charge once a year. to view. The inspection is provided on paper at the specified home address. [...]

If you want to view your data in the PEP registration system, you can use the same form as before access to your personal data in the Central Credit Information System (CKI). This inspection is also once a year given free of charge .[...]

If you want to view your data in the VIS registration system, you can use the same form as before access to your personal data in the Central Credit Information System (CKI). This inspection is also once a year given free of charge.”

The AP also notes that BKR actively propagates this policy on its website. On the title web page

'Requesting Data' BKR describes a step-by-step plan with which a data subject can access his own data see. A text block at the bottom of this page is entitled 'GDPR inspection'. BKR states the following there:

14 Ditto.

15 Privacy statement BKR, 21 August 2018.

9/23

Date

July 30, 2019

Our reference

[CONFIDENTIAL]

You can inspect your data free of charge once a year. Do you want quick insight or do you need the overview for credit applications? Then choose BKR Basis, Plus or Premium. The AVG inspection will be done on paper within 28 days supplied.”¹⁶

After clicking the 'Continue' button, a web page titled 'GDPR access' will appear. On this page can the above be read in exactly the same terms.¹⁷

E-mails that the AP has received from those involved have also shown that those involved have registered BKR have complained about the fact that they can only access their information by post once a year personal data processed by BKR. For example, on 30 May 2018, a data subject asked by e-mail to info@bkr.nl why the right of access can only be exercised once a year. In the reply to that e-mail writes BKR on June 7, 2018: 'And then finally, the AVG law speaks about free right of access with reasonable intervals. BKR has opted for free inspection once a year for this.'.¹⁸

In an e-mail of June 19, 2018, BKR writes to another person involved: “From May 25, 2018 you have the right to request a free overview of your data from Stichting BKR once a year. On <https://www.bkr.nl/opvragen-details/how-to-do-this>. With this we comply with the GDPR requirements.”.¹⁹

During the opinion hearing, BKR indicated that in practice they receive several requests for inspection per year and that the applications submitted via the AVG application forms by post do not have a costs for the consumer. In addition, BKR has stated that it does want to prevent that

really excessive access is requested.²⁰ Finally, BKR has indicated that, based on the report

“ACCIS 2017 Survey of Members, Analysis of Credit Reporting in Europe” from the Association of Consumer

Credit Information Suppliers²¹ and own experience facts, with the above policy

given to the term 'reasonable intervals' from the GDPR.²²

BKR has confirmed that it will apply the aforementioned policy on the right of inspection from 25 May 2018 to

with 12 March 2019 via the privacy statement and the website. As of March 13, 2019 BKR

discontinued this communication.²³

3.4.3 Assessment

BKR, as the controller, must, pursuant to Article 12, paragraph 2, of the AVG

facilitating the exercise of the right of access. The data subject must exercise this right simply and reasonably
can perform at intervals.

16 Website BKR, section Requesting data, 21 August 2018.

17 BKR website, part of the GDPR inspection, 21 August 2018.

18 Sent communication between a complainant and the BKR, received by the AP on 10 October 2018.

19 Complaint form received by the AP on 22 June 2018.

20 Discussion report opinion session dated 17 June 2019, p. 13.

21 “ACCIS 2017 Survey of Members, Analysis of Credit Reporting in Europe” of the Association of Consumer Credit
Information

Suppliers, March 2018.

22 Discussion report opinion session dated 17 June 2019, p. 7.

23 Written opinion BKR dated 3 June 2019, p 11. and Conversation report opinion session dated 17 June 2019, p. 27.

10/23

Date

July 30, 2019

Our reference

[CONFIDENTIAL]

It follows from the facts described above that BKR has actively propagated the policy to those involved that data subjects have the right by post to view all personal data free of charge once a year, that is this inspection by BKR is given free of charge once a year and the data subject once a year access free of charge.

The AP is of the opinion that BKR, with the propagation of this policy, protects the data subject's right of inspection hinders. With this BKR raises a threshold. Maximizing one free access request per mail per year does not qualify as facilitating the right of inspection as referred to in Article 12, second paragraph, of the GDPR. BKR should facilitate the right of access and not make it more difficult by using it dissemination of the above policy to discourage data subjects in advance from exercising the right of access to practice.

The AP comes to the conclusion that BKR has violated Article 12, second paragraph, of the AVG, because BKR its policy, which states that a request for inspection can be made once a year by post, has not facilitated the right of access under Article 15 of the GDPR.

View BKR and response AP

BKR cannot agree with the position of the AP. BKR uses as a starting point that once a year free inspection is considered a reasonable period. From research by Association of Consumer Credit Information Suppliers (ACCIS) tracks that consumers make a request for an average of once a year view their credit status. BKR also notes that at 'reasonable intervals' as referred to in consideration 63 concerns an open standard that has not yet been filled in by the AP. And given the empirical facts from practice, which show that inspection once a year fits in perfectly with the information needs of the consumer, BKR does not find it strange that they have an access option that is more exercised more than once a year qualifies as 'repetitive' or as an 'additional copy'.

In fact, there has been no threshold anyway according to BKR, because in practice they have the right of inspection (op writing, free) more than once a year.

In addition, BKR does not agree with the AP that a request for access requires an individual assessment per person concerned assumes. Based on Article 12, paragraph 5, of the AVG, it can be concluded, according to BKR

that a repetitive access request may be qualified as 'excessive'. There
after all, article 12, paragraph 5, of the GDPR speaks of requests that are excessive, with
especially because of their repetitive nature. According to BKR, it is not necessary to establish such a character
(extensive) individual assessment required. Finally, BKR takes the position that the GDPR is correct
does offer the possibility to give substance to the reasons of the data subject for access
desire. It is up to the controller to determine and avoid a repetitive character
act according to the options that the law gives in such a situation.

The AP does not follow BKR's view. Insofar as BKR's policy of free inspection of once per
years by referring to the report 'ACCIS 2017 Survey of Members, Analysis of Credit Reporting in
Europe' of ACCIS and other credit information agencies, the AP BKR does not follow. The table on page 26 of
11/23

Date

July 30, 2019

Our reference

[CONFIDENTIAL]

the report shows how much people involved had to pay in 2017 to submit their credit status report
at 32 European credit reference agencies. From the fact that 8 of the 32 agencies (respondents) in 2017
offered free inspection once a year, it does not follow that consumers receive a
request access to their credit status. Apart from the fact that this report is not relevant to the
interpretation of the right of access and that this cannot be an argument for BKR to adopt a similar policy
handling. Secondly, the AP emphasizes that it has not assessed whether BKR actually gives access to a
data subject who requests access to personal data more than once a year. The AP has
assessed whether the propagated policy regarding the right of inspection of BKR is in line with Article 12, second
member, of the AVG.

Furthermore, pursuant to Article 12, paragraph 5, of the AVG, BKR may only refuse the request for inspection
if requests from a data subject are manifestly unfounded or excessive, in particular because of the

repetitive nature of the request for access. The AP first of all notes that Article 12, paragraph 5, of the GDPR presupposes an individual assessment of a request from the data subject. In this After all, this article stipulates that a refusal to comply with a request can only take place if if the request is manifestly unfounded or excessive. This requires an assessment at the time request has been submitted and prior to substantive handling of the request. In the last sentence Article 12, paragraph 5, of the GDPR also states that the controller is responsible for the apparent demonstrate the excessive nature of the request. The word "request" is here singular. Seen the text and the intention of Article 12, paragraph 5, of the AVG will therefore have to BKR per individual case assess whether there is an excessive request. Finally, BKR's policy is also not in line with recital 63 of the GDPR, which states that data subjects must have the right to access the data easily and at reasonable intervals. BKR facilitates the propagation of her policy via the website, privacy statement and e-mails do not entitle you to access.

3.4.4 Conclusion

In view of the foregoing, the AP comes to the conclusion that BKR between 25 May 2018 and 12 March 2019 has violated article 12, second paragraph, of the AVG, because BKR has the right of inspection under article 15 of the GDPR has not facilitated.

3.5 Full access to personal data

3.5.1 Introduction

It should be transparent for natural persons that their personal data is collected, used, consulted or otherwise processed and to what extent the personal data are processed or will be processed.²⁴ Access to personal data ensures, among other things, that the data subject can check whether the processing is lawful.

Pursuant to Article 15, paragraph 1, of the GDPR, the data subject has the right to receive information from the to obtain a confirmation from the controller as to whether or not personal data relating to him are being processed personal data and, where that is the case, to obtain access to that personal data.

²⁴ Recital 39 of the GDPR.

12/23

Date

July 30, 2019

Our reference

[CONFIDENTIAL]

The AP has investigated whether BKR gives data subjects access to all personal data they have about the data subject processed. In the following, the AP comes to the conclusion that BKR pursues a policy that BKR does not offer full access to personal data. However, the AP has not established that BKR as well has actually offered incomplete access to individual data subjects, which constitutes a violation of Article 15, first paragraph, of the AVG has not been established.

3.5.2 Facts

As already mentioned in section 3.1, BKR manages the CKI and offers various digital products including the BKR Insolvency Test, BKR Sanction Test, the Politically Exposed Person (PEP) and the BKR Verification Information System (VIS). In these products, data about identifiable natural persons.

BKR stated the following during the investigation:²⁵

“With the GDPR, the data subject receives, in addition to the personal data relating to him/her, in the CKI processed, information whether he/she is registered as a politically exposed person and a notification about its validity of the document with which he/she has identified himself/herself. Because this personal data is currently not yet can be accessed digitally, these announcements are not included with the paid services. In addition, find with the paid services, the identification is not done with a copy ID.

The personal data in the context of insolvency and sanction tests are taken from public databases and are not made accessible through the access requests.”

BKR has also indicated in its opinion that with regard to the insolvency and sanctions test, it has refers to the source registers that are publicly accessible.²⁶ In addition, BKR stated that from 28 May 2019, in addition to the CKI, it will now also offer electronic access to

personal data that BKR processes in its other products.²⁷ Finally, BKR has indicated that it takes technical measures to also provide access by post to personal data that BKR processes in the framework of the insolvency and sanctions test. The planned implementation date for this is September 3, 2019.²⁸

3.5.3 Assessment

As a controller, BKR processes various personal data in its products.

Article 15, paragraph 1, of the GDPR indicates that the data subject has the right to inspect the personal data concerning him that a controller processes. However, BKR has declares that, following a request from the data subject, it does not provide access to all personal data it holds incorporated. As a result, the data subject remains in ignorance with regard to part of his data that the BKR processed.

²⁵ Written response BKR of 9 November 2018, p. 4, answer to question 2.

²⁶ Written opinion BKR dated 3 June 2019, p. 8 and 10.

²⁷ Written opinion BKR dated 3 June 2019, p. 11.

²⁸ Written response from BKR of 12 July 2019, answer to question 1b.

13/23

Date

July 30, 2019

Our reference

[CONFIDENTIAL]

The AP is of the opinion that BKR has a policy that BKR does not offer full access to personal data.

However, the AP has not established that BKR has actually offered incomplete access to individual data subjects, with whom a violation of Article 15, paragraph 1, of the GDPR has not occurred to stand firm.

In addition, BKR has stated in its opinion that it already offers full electronic access to personal data and explained this in more detail at the opinion hearing on the basis of examples.

Furthermore, BKR has stated that it will make provisions at the beginning of September to also send full

provide access to personal data. With this, BKR has or will adjust the aforementioned policy

do this so that it is no longer in conflict with Article 15, first paragraph, of the GDPR.²⁹

3.5.4 Conclusion

The AP comes to the conclusion that BKR has a policy that BKR does not offer full insight into personal data. However, the AP has not established that BKR actually has incomplete access has offered to individual data subjects, which constitutes a violation of Article 15, first paragraph, of the GDPR has not been established.

3.6 Other parts of the opinion

In addition to the aforementioned view, BKR has put forward a number of other views. The AP briefly explains these points from BKR's opinion below, accompanied by a response from the AP. BKR argues that the AP has acted contrary to the due care requirements. First, the AP has in the investigative report explained that it launched its investigation after complaints while the AP telephoned indicated that an ex officio investigation is underway. Secondly, in the report, the AP has the reason for the investigation exaggerated, because of the six complaints there were two tips that were not qualify as a complaint. According to BKR, the number of four complaints also falls into the aforementioned period is not included in the total number of data subjects listed in the CKI, the total received access requests and the number of complaints received by the AP as of May 25, 2018. The report contains also suggestive passages. Thirdly, according to BKR, the AP has acted contrary to Article 8.1 of own Disclosure Policy Rules of January 12, 2016 (hereinafter: Disclosure Policy Rules) by to tweet that the AP was handling various complaints against BKR about the right of inspection, without this must first submit the message to BKR.³⁰ In accordance with Article 8.1 of the Publication Policy Rules after all, any communication about an investigated (legal) person must be sent to that (legal) person submitted.

The AP does not follow BKR's view. Firstly, with reference to settled case law, no prior reasoning fact, signal, ground or presumption required for the exercise of supervisory powers and launching an investigation. The number and content of AP

29 The AP will check whether BKR offers data subjects full access to personal data.

30 AP Twitter message of 12 December 2018 with the text: 'We are processing various complaints about BKR and the right of access.

Privacy Act #AVG has clear rules regarding the right of access and the compensation for it. Want to know more about the right of access?

See authority [personal data.nl/nl/zelf-doen/p...](https://personal.data.nl/nl/zelf-doen/p...) ... @BKR_TIEL'

14/23

Date

July 30, 2019

Our reference

[CONFIDENTIAL]

received signals is therefore not relevant in this context.³¹ In this case, the AP has cause for complaint seen to investigate compliance with the GDPR by BKR. The AP has its findings subsequently recorded in the research report. Whether or not it has been communicated in advance what the reason for the use of supervisory powers affects lawfulness and due care from the research.

Secondly, the AP also does not follow BKR's position that the AP has acted contrary to Article 8.1 of the Disclosure Policy. Regardless of whether the tweet falls under this article, the contents thereof have no direct bearing on the investigation conducted or the present decision and nor does it detract from the requirements of due care and lawfulness.

BKR has further argued that the AP has requests from BKR to discuss solutions rejected, depriving BKR of the opportunity to quickly come to a workable solution. Also has according to BKR, the AP acted carelessly because the AP failed to comply with BKR's commitment that it would provide the necessary will take action to address findings, has ignored and not included in the final findings report. Finally, BKR states that the AP also applies double standards,

because, according to its annual report, the AP has entered into discussions with organizations that sell personal data.

The AP also does not follow this view of BKR. The starting point is that BKR has its own has a responsibility to comply with the provisions set out therein from the entry into force of the GDPR rules.³² The AP does not have to consult in the investigation phase, but the

The controller can always submit changes to his or her working method to the AP. BKR has been given the opportunity during the opinion hearing to express its opinion on the contents of the to put forward the findings of the AP and the intention to enforce. As a result, BKR is not in damaged her defenses. Finally, the AP can continue the argument that the AP applies double standards other organizations that sell personal data do not follow the conversation.

Irrespective of which parties the AP has discussions with, it does not exclude the authority of the AP to enforcement in case of obvious violations.

Based on BKR's view, the AP sees no reason to come to different conclusions.

31 Cf. CBb 12 October 2017, ECLI:NL:CBB:2017:326, CBb 12 October 2017, ECLI:NL:CBB:2017:327, District Court. Rotterdam 23 May 2019, ECLI:NL:RBROT:2019:4155.

32 See also CBb 25 June 2013, ECLI:NL:CBB:2013:4, r.o. 2.3, CBb 25 January 2017, ECLI:NL:CBB:2017:14, r.o. 5.2, CBb March 8, 2017, ECLI:NL:CBB:2017:91, r.o. 6.

15/23

Our reference

[CONFIDENTIAL]

Date

July 30, 2019

4. Fine

4.1 Introduction

From May 25, 2018 to April 28, 2019, BKR has not provided electronic access free of charge in personal data provided to data subjects in the context of the right of access. In addition, BKR communicated to those involved from 25 May 2018 to 12 March 2019 that the possibility to access to the personal data that BKR processes concerning the data subject is limited to once a year. In doing so, BKR has not facilitated the right of inspection.

In both established violations, the AP uses its power to impose a fine on BKR to be imposed on the basis of Article 58, second paragraph, opening words and under i and Article 83, fifth paragraph, of the AVG, read in conjunction with Article 14, third paragraph, of the UAVG. The AP applies the Fining Policy Rules for this 2019.³³

BKR has argued in its opinion that the Fining Policy Rules 2019 were not applicable at the time of the conduct. were applicable and therefore unforeseeable for BKR, which is contrary to the provisions of Article 3:4, second paragraph, General Administrative Law Act prohibition of arbitrariness. The AP does not follow BKR in this. As stated on page 19 of the 2019 Fining Policy Rules, this policy relates to determining the amount of a fine for the sake of legal equality and legal certainty. Applying the Fining Policy Rules 2019 prevents arbitrariness.

In the following, the AP will first briefly explain the fine system, followed by the motivation of the fine in the present cases.

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

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 authorized to report to BKR in the event of a violation of Article 12, second paragraph, and Article 12, fifth paragraph, of the AVG to impose an administrative fine up to € 20,000,000 or up to 4% of the total worldwide annual turnover in the previous financial year, if this figure is higher.

The AP has established Fining Policy Rules 2019 regarding the implementation of the aforementioned power to imposing an administrative fine, including determining the amount thereof.³⁴

Pursuant to Article 2, under 2.2, of the Fining Policy Rules 2019, the provisions regarding violation of which the AP can impose an administrative fine not exceeding € 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 as Category I, Category II, Category III or Category IV.

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

34 Ditto.

16/23

Date

July 30, 2019

Our reference

[CONFIDENTIAL]

In Annex II, Article 12, paragraph 2, of the GDPR is classified in category III. Article 12, paragraph 5, of the GDPR is classified in category II.

Pursuant to Article 2, under 2.3, the AP sets the basic fine for violations for which a legal maximum fine 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, [...] fixed within the next fine bandwidth:

Category II: Fine range between €120,000 and €500,000 and a basic fine of €310,000. [...].

Category III: Fine range between €300,000 and €750,000 and a basic fine of €525,000. [...].

Pursuant to Article 6, the AP determines the amount of the fine by increasing the amount of the basic fine (to at most the maximum of the bandwidth of the fine category linked to a violation) or down (to at least the minimum of that bandwidth). The base fine is increased or decreased depending on the extent to which the factors referred to in Article 7 are used give rise.

Pursuant to Article 7, without prejudice to Articles 3:4 and 5:46 of the General Administrative Law Act, the AP (Awb) take into account the factors derived from Article 83, second paragraph, of the GDPR, in the

Policy rules mentioned under a to k:

- a. the nature, gravity and duration of the breach, taking into account the nature, scope or purpose of the processing in question as well as the number of data subjects affected and the extent of the harm suffered by them injury;
- b. the intentional or negligent nature of the breach;
- c. the measures taken by the controller [...] to mitigate the losses suffered by data subjects limit damage;
- d. the extent to which the controller [...] is responsible in view of the technical and organizational measures he has implemented in accordance with Articles 25 and 32 of the GDPR;
- e. previous relevant breaches by the controller [...];
- f. the degree of cooperation with the supervisory authority to remedy the breach and limit the possible negative consequences thereof;
- g. the categories of personal data affected by the breach;
- h. the manner in which the supervisory authority became aware of the breach, in particular whether, and if so, to what extent, the controller [...] has notified the breach;
- i. compliance with the measures referred to in Article 58, second paragraph, of the GDPR, insofar as they are earlier in respect of the controller [...] in question in relation to the same matter have been taken;
- j. adherence to approved codes of conduct in accordance with Article 40 of the GDPR or of approved certification mechanisms in accordance with Article 42 of the GDPR; and
- k. any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial gains made, or losses avoided, which may or may not result directly from the breach result.

17/23

Date

July 30, 2019

Our reference

[CONFIDENTIAL]

Under Article 10, in case of multiple offenses related to the same or related pertaining to processing activities, the total fine does not exceed the legal fine maximum of the most serious violation.

4.3 System

In respect of violations for which the AP can impose an administrative fine not exceeding the amount of € 20,000,000 or up to 4% of the total worldwide annual turnover in the previous financial year, if this figure is higher, the AP has divided the violations into three categories in the 2019 Fining Policy Rules, which are associated with mounting administrative fines. The penalty categories are ranked according to the seriousness of the violation of the articles mentioned, with category I being the least contains serious violations and category III or IV contains the most serious violations.

The violation of article 12, paragraph 2, of the AVG is classified in category III, for which a fine bandwidth between €300,000 and €750,000 and a basic fine of €525,000 has been set. A Violation of article 12, paragraph 5, of the AVG is classified in category II, for which a fine range between €120,000 and €500,000 and a basic fine of €310,000 has been set. The AP uses the basic fine as a neutral point of departure. The amount of the fine is agreed by the AP pursuant to Article 6 of the Fining Policy Rules 2019 then based on the factors referred to in Article 7 of the Fining Policy Rules 2019, by reducing or increasing the amount of the basic fine.

In the present cases, this concerns an assessment of the nature, seriousness and duration of the violation in the specific case. In principle, this is done within the bandwidth of the applicable offense linked penalty category remained. The AP can, if necessary and depending on the extent the aforementioned factors give rise to this, the penalty bandwidth of the next higher resp apply the next lower category.

4.4 Fine amount for violation of free access to personal data

4.4.1. Nature, seriousness and duration of the infringement

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

The GDPR aims at effective protection of personal data. This requires the reinforcement and further description of the rights of the data subject and of the obligation of those who process personal data.³⁵ Article 12, paragraph 5, of the GDPR obliges data controllers to, in principle, provide free access to personal data to data subjects. Inspect personal data regarding credit registrations is of great importance. A negative credit registration is possible

³⁵ Recital 11 of the GDPR.

18/23

Date

July 30, 2019

Our reference

[CONFIDENTIAL]

have consequences for obtaining a loan or mortgage. Free inspection allows those involved able to easily find out which personal data a controller processes and whether they are processed lawfully. A good interpretation of the right of inspection is also necessary to be able to exercise other rights, such as the right to rectification and the right to erasure. With asking a fee for it via electronic way of obtaining access to personal data, BKR has one of the most important principles, namely violated the transparency principle of the GDPR.

From 25 May 2018 to 28 April 2019, BKR did not provide free electronic access to personal data to data subjects in the context of the right of access.³⁶ This violation has therefore took place in a structural manner for more than eleven months and continued for a long period of time. It went

this includes many personal data regarding credit registrations, which are by their nature more sensitive than for example a name or age.

In 2018, BKR processed financial data of ten million Dutch data subjects. By the violation of BKR, a large number of people involved have been affected. In the period of May 25, 2018 alone until September 14, 2018, [CONFIDENTIAL] those involved have the paid Basic subscription purchased from BKR, in order to be able to electronically inspect the data concerning them personal data.³⁷ By violating article 12, paragraph 5, of the GDPR, BKR has therefore can generate income. Considering the duration and nature of the violation, the large number affected involved and the income acquired, in the opinion of the AP there was a serious situation in which data subjects could not exercise the right of access under the right conditions.

A violation of Article 12, paragraph 5, of the GDPR is classified in category II, for which a fine range between €120,000 and €500,000 and a basic fine of €310,000 has been set.

In view of the seriousness of the violation, the AP sees reason to set the basic amount of the fine on the grounds of Article 7, preamble and under a, of the Fining Policy Rules 2019 to be increased by € 75,000 to € 385,000.

4.4.2 Culpability

Pursuant to Section 5:46(2) of the Awb, when imposing an administrative fine, the AP take into account the extent to which this can be attributed to the offender.

According to Article 12, paragraph 5, of the GDPR, the provision of the communication and the meeting of the measures referred to in Articles 15 must be carried out free of charge. From a professional party like BKR may, also in view of the nature and scope of the processing, be expected to take due care of the applicable standards and comply with them.

BKR has deliberately asked for fees in advance for obtaining information electronically access to personal data, while in principle access must be provided free of charge. This is just otherwise where requests from a data subject are manifestly unfounded or excessive. BKR has figured it out

³⁶ The period before 25 May 2018 has not been taken into account in connection with other applicable legislation.

³⁷ Written response BKR of 9 November 2018, p. 5, answer to question 4.

19/23

Date

July 30, 2019

Our reference

[CONFIDENTIAL]

failed to assess its conduct per individual request for access or a data subject apparently has made unfounded or excessive access requests, so that it should have access free of charge provide. BKR has obstructed the data subject's right of inspection with this method. The AP eight this blameworthy.

4.4.3 Other Circumstances

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, to increase or decrease. Insofar as BKR has argued that the violation was short-lived, because it offers the electronic inspection free of charge from 29 April 2019, the AP does not follow this reasoning. As mentioned in section 4.4.1, the DPA considers a structural violation of eleven months to be an infringement of long duration.

BKR has also argued that it responded in a special way during the investigation phase requests from the AP, namely through the electronic inspection option and communication about the how the right of inspection can be exercised. In addition, BKR has a asked to explain her choices about the right of inspection, which is by the AP turned down. The AP is of the opinion that BKR's cooperation has not gone beyond its statutory limits obligation to comply with article 32, first paragraph, of the GDPR and ultimately on March 13, 2019 and April 29, 2019 to Article 12, second paragraph, and Article 12, fifth paragraph, of the GDPR. BKR does not have this in a special way cooperated with the AP. Moreover, after the announcement of the investigation by the AP on 5 September 2018, the violations have not been terminated in the short term.

The AP sets the fine amount for violation of Article 12, paragraph 5, of the AVG in view of the

previous fixed at € 385,000.

4.5 Fine amount for violation of facilitating the right of inspection

4.5.1 Nature, seriousness and duration of the breach

Pursuant to Article 7, under a, of the Fining Policy Rules 2019, the AP takes into account the nature, seriousness and the duration of the infringement. In assessing this, the AP takes into account, among other things, the nature, size or size purpose of the processing as well as the number of data subjects affected and the extent of the damage suffered by them injury.

In the context of the principle of transparency, the controller must, pursuant to Article 12, second paragraph, of the GDPR the exercise of the data subject's rights under - inter alia - facilitating Article 15 of the GDPR. It is essential for data protection that data subjects have access to a access personal data at BKR in an easy way and at reasonable intervals about credit registration. This enables the data subject to do so in a simple manner to find out which personal data a controller processes and whether this be lawfully processed. Proper implementation of the right of inspection is also necessary for other purposes exercise rights, such as the right to rectification and the right to erasure.

20/23

Date

July 30, 2019

Our reference

[CONFIDENTIAL]

From May 25, 2018 to March 12, 2019, BKR violated Article 12, second paragraph, of the GDPR.³⁸ The maximizing one free inspection request per post per year does not qualify as sufficient facilitating the right of access as referred to in Article 12, second paragraph, of the GDPR. This violation of more than nine months has therefore continued for a long period of time in a structural manner. It was about this includes many personal data regarding credit registrations, which are by their nature more sensitive than for example a name or age.

In addition, a large number of those involved have been affected by this violation. Only in the period May 25 2018 up to and including 14 September 2018, more than 10,000 data subjects have access by post to the data concerning them

personal data requested from BKR.³⁹ During the access requests, BKR explicitly informed these data subjects

Please note that a request for inspection can be made once a year. These involved, but also

others involved who can hear this policy through various means of communication from BKR

were discouraged from submitting a request for access. In view of this, as well as the duration and nature

of the violation, in the opinion of the AP there was a serious situation in which BKR

has not facilitated the right of inspection by post.

The violation of article 12, paragraph 2, of the AVG is classified in category III, for which a

fine bandwidth between €300,000 and €750,000 and a basic fine of €525,000 has been set.

In view of the seriousness of the violation, the AP sees reason to set the basic amount of the fine on the grounds of

Article 7, preamble and under a, of the Fining Policy Rules 2019 to be increased by € 125,000 to € 650,000.

4.5.2 Culpability

Pursuant to Section 5:46(2) of the Awb, when imposing an administrative fine, the AP

take into account the extent to which this can be attributed to the offender.

BKR, as the controller, must, pursuant to Article 12, paragraph 2, of the AVG

facilitating the exercise of the right of access. BKR has the right of inspection with its propagated policy

by post not facilitated. BKR has deliberately, in advance, pointed out to those involved that they

can only access it free of charge once a year. The AP is of the opinion that BKR with the propagation

of this policy has hindered the data subject's right of access. The person concerned must simply and with

reasonable intervals to exercise the right of access. From a professional party such as BKR,

also in view of the nature and scope of the processing, they are expected to take due care of the for

verify and comply with its applicable standards. BKR has failed to adapt its policy to the

guarantees that the AVG gives to the right of access. The AP considers this culpable.

4.5.3 Other Circumstances

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, to increase or decrease. Insofar as BKR has argued that the violation was short-lived, because

38 The period before 25 May 2018 has not been taken into account in connection with other applicable legislation.

39 Written response BKR of 24 September 2018, p. 7, answer to question 5.

21/23

Date

July 30, 2019

Our reference

[CONFIDENTIAL]

it has adjusted its communication about the right of inspection from 13 March 2019, the AP follows this not reasoning. As mentioned in section 4.5.1, the AP considers a structural violation to be nine months as a long-term infringement. For the other submitted view of BKR and the response of the AP on this, the AP refers to section 4.4.3.

The AP sets the fine amount for violation of Article 12, second paragraph, of the AVG in view of the previous fixed at € 650,000.

4.6 Proportionality and statutory maximum fine

Finally, the AP assesses 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. Application of the proportionality principle is possible among other things play a role in the accumulation of sanctions. If the AP for distinguishable, but yes wants to impose two or more fines for related violations, the total of the fines still has to be calculated match the seriousness of the violations.

In this case, the AP will impose a fine for violation of both Article 12, second paragraph, and Article 12, fifth paragraph, of the GDPR. In the opinion of the AP, the two different behaviors of BKR, namely not offering free access electronically and actively propagating the policy that

data subjects can view personal data once a year by post, led to two separate violations. At the same time, the AP recognizes that the underlying principle of the relevant provisions are essentially equivalent, namely transparency with a view to control those involved hold about the personal data concerning them. This gives rise to the above to reduce the said fine amount by 20% to € 205,000 on the basis of proportionality.

The AP thus sets the total fine amount at € 830,000. Under Article 10 of the

The AP determines that the total fine does not exceed the statutory maximum fine (€ 20,000,000 or up to 4% of the total worldwide annual turnover in the previous financial year, if this figure higher) of the most serious offence.

4.7 Conclusion

The AP sets the total fine amount at € 830,000.

22/23

Our reference

[CONFIDENTIAL]

Date

July 30, 2019

5. Operative part

Fine

Due to violation of Article 12, second paragraph, and Article 12, fifth paragraph, of the AVG, the AP will submit a administrative fine in the amount of € 830,000 (in words: eight hundred and thirty thousand euros).⁴⁰

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. For the submitting a digital objection, see www.autoriteitpersoonsgegevens.nl, under the heading Objection against a decision, at the bottom of the page under the heading Contact with the Dutch Data Protection Authority. It 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.

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