

Locatefamily.com

[CONFIDENTIAL]

Date

Dec 10, 2020

Our reference

[CONFIDENTIAL]

Contact

[CONFIDENTIAL]

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Topic

Decision to impose an administrative fine and an order subject to periodic penalty payments

Dear Ms, Mr,

The Dutch Data Protection Authority (AP) has decided to pay Locatefamily.com an administrative fine of € 525,000 to be imposed, because Locatefamily.com in the period from May 25, 2018 to the present does not have fulfilled the obligation to designate a representative in the European Union (EU) in writing.

Locatefamily.com therefore has Article 27, first paragraph, in conjunction with Article 3, second paragraph, of the General Data Protection Regulation (GDPR).

The AP has also decided to impose a cease and desist order on Locatefamily.com, which relates to the undo this continuing violation. Locatefamily.com must do this within twelve

weeks after the date of and with due observance of this decision to still comply with the obligation as

included in Article 27 of the GDPR and to designate a representative in the EU in writing. In the event that

Locatefamily.com does not comply with the order within this period, Locatefamily.com forfeits a penalty payment

of € 20,000 for every two weeks after the end of the beneficiary period, up to a maximum amount of a total of € 120,000.

The decision is explained below. Chapter 1 contains the relevant facts and the course of the proceedings. In Chapter 2 describes the legal framework. Chapter 3 provides the assessment of the AP, after which the amount of the administrative fine is substantiated in Chapter 4. In chapter 5, the load under penalty displayed. Finally, Chapter 6 contains the operative part and the remedies clause.

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## 1. Facts and process

Locatefamily.com is an organization based outside the European Union (EU) that with its website 'Locatefamily.com' offers a platform where everyone can search for contact details of acquaintances which they have lost sight of.

Because the AP does not know a location address of Locatefamily.com, communication with Locatefamily.com expired via email only.<sup>1</sup>

In the investigation period from May 25, 2018 to July 25, 2019, the AP received nineteen complaints regarding Locatefamily.com. The complaints concern the failure to respond (adequately) to requests for erasure of personal data of data subjects and the lack of an establishment or a representative of Locatefamily.com within the EU.<sup>2</sup>

In response to the complaints received, the AP sent a request by e-mail on June 26, 2018 for information sent to Locatefamily.com, to which Locatefamily.com emailed on July 2, 2018 responded.<sup>3</sup>

On July 9, 2018, the AP sent a second request for information to Locatefamily.com by email, to which Locatefamily.com responded by email on July 19, 2018.<sup>4</sup>

On July 18, 2018, the AP submitted a request for mutual assistance under Article 61 of the GDPR sent to fellow regulators within the EU, where the AP has asked whether they have complaints or have received signals regarding Locatefamily.com and whether there is an establishment or is a representative of Locatefamily.com in that country. At the beginning of September 2018, ten EU supervisors responded to the request of 18 July 2018.<sup>5</sup> A number of countries also confirmed have received complaints about Locatefamily.com.

Following an increase in the number of complaints about Locatefamily.com both in the Netherlands and in other EU Member States, the AP launched an ex officio investigation into Locatefamily.com regarding a suspected violation of Article 27 of the GDPR, pursuant to which the controller or processor provides in writing a representative in the EU should indicate.

1 legal@locatefamily.com and info@locatefamily.com. The latter address is also used by Locatefamily.com, according to her response to one of the 19 complaints.

2 Overview of complaints, appendix 1 to the investigation report.

3 Email exchange with Locatefamily.com, Appendix 12 to the research report.

4 Email exchange with Locatefamily.com, Appendix 12 to the research report.

5 IMI report (Internal Market Information System) with the request to EU supervisors and their responses, Annexes 3 and 4 to the research report.

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In March 2019, the AP conducted a technical investigation that identified Canada as a possible location of Locatefamily.com turned out to be.<sup>6</sup> After that, the AP has an international cooperation initiated through the Enforcement subgroup of the European Data Protection Board (EDPB).

On March 19, 2019, a conference call of this collaborative group of a total of nine European supervisors, chaired by the AP.<sup>7</sup>

On March 25, 2019, the AP sent a letter on behalf of the cooperating European supervisors to the Office of the Privacy Commissioner of Canada, with a request for information regarding Locatefamily.com.<sup>8</sup>

Because the business address of Locatefamily.com remained unknown for the time being, the Irish, French and Dutch regulators agreed to review the submitted national complaints regarding address erasure requests to Locatefamily.com.

On April 8, 2019, the AP provided Locatefamily.com by email with an overview of the complaints received regarding Locatefamily.com's handling of erasure requests and with reference to the obligations for Locatefamily.com under the GDPR.<sup>9</sup>

In emails dated April 10, 2019 and July 27, 2019, Locatefamily.com notified the AP about the removal of the personal data from its website.<sup>10</sup> The request is made in all three countries (Ireland, France, and the Netherlands) largely funded by Locatefamily.com.

On May 28, 2019, the Privacy Commissioner of Canada notified the AP that it is in the process of request of the AP of March 25, 2019.<sup>11</sup>

On July 22, 2019, the AP emailed a third request for information to Locatefamily.com.<sup>12</sup>

To the question in this e-mail of July 22, 2019 to an address of Locatefamily.com or of a representative in the EU, the AP has not received a response from Locatefamily.com.

The findings of the investigation by the AP are included in the report "Locatefamily.com regarding no legal representative within the EU", which was adopted on 25 July 2019 (hereinafter: research report).

6 Scheme, appendix 2 to the research report.

7 Minutes conference call, Appendix 5 to the research report.

8 Letter to Privacy Commissioner of Canada, Appendix 6 to the Investigation Report.

9 Letter to Locatefamily.com dated April 8, 2019 regarding 19 complaints from Dutch data subjects regarding requests for

data erasure, appendix 7 to the investigation report.

10 Emails from Locatefamily.com to AP regarding erasure requests, Appendix 8 to the Investigation Report.

11 Privacy Commissioner of Canada notice dated May 28, 2019, Appendix 9 to the Investigation Report.

12 E-mail exchange with Locatefamily.com, Appendix 12 to the research report.

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On February 24, 2020, the AP made an intention via digital transmission<sup>13</sup> to Locatefamily.com to enforcement sent together with the aforementioned investigation report and the underlying documentation, whereby Locatefamily.com has also been given the opportunity to submit no later than March 23, 2020 to express an opinion. Locatefamily.com has not taken advantage of this opportunity to date created.

On the basis of the report with findings and the underlying documentation, the AP comes to the determination of the following relevant facts.

Locatefamily.com

With its website, Locatefamily.com offers a platform for anyone looking for contact details of acquaintances that they have lost sight of due to the so-called name and address data of those involved, name, address, place of residence and sometimes the telephone number. Locatefamily.com offers this data to any interested party free of charge. The website is publicly accessible and contains data from residents of both within and outside the EU.<sup>14</sup> Locatefamily.com compiles the overviews of data together without data subjects joining the platform or having to create an account

<sup>15</sup> From research conducted by the AP together with its European colleague supervisors, revealed that Locatefamily.com has offered its services in the Netherlands as well as in eight other EU to land. Several EU supervisors have confirmed that data subjects from the relevant

country complaints have been filed regarding Locatefamily.com.<sup>16</sup>

Place of business/representation

On the Locatefamily.com website there is neither a privacy contact person nor a business address and/or representative address.

In response to the AP's question to Locatefamily.com whether it has a representative or branch

in the EU,<sup>17</sup> Locatefamily.com declared the following on July 2, 2018:<sup>18</sup>

"LocateFamily.com is not located in the European Union and does not have any business relationships in the European Union. We do not have an office or a representative in the European Union. LocateFamily.com does not offer goods or services to the European Union.

We are available to respond to any questions you may have regarding the complaints you mention. if you provide us with the names of the individuals and or their e-mail addresses we can provide you with a report that indicates when the removal request was received and when the information was removed."

<sup>13</sup> By email to legal@locatefamily.com and info@locatefamily.com.

<sup>14</sup> Print screen dated 29 July 2019 business model Locatefamily.com, appendix 10 to the research report.

<sup>15</sup> Print screens Locatefamily.com, appendix 10 to the research report.

<sup>16</sup> IMI report (Internal Market Information System) with the request to EU supervisors and their responses, Annexes 3 and 4 to the research report. Complaints from other EU regulators regarding Locatefamily.com, annex 11 to the investigation report.

<sup>17</sup> E-mail exchange with Locatefamily.com, Appendix 12 to the research report.

<sup>18</sup> E-mail of 2 July 2018, appendix 12 to the investigation report.

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When asked by the AP where Locatefamily.com's headquarters are located, on July 19, 2018

the following message: <sup>19</sup>

“As we have already explained in our previous email, we have no business relationships in the European Union, and we do not have an office or a representative in the European Union. We also do not offer goods or services to the European Union.

To be clear we are not situated in any country of the European Union.

We respect the wishes of people who want their address information removed from the web site, and the information is removed within a few days, regardless of which country the individual resides in.

Consequently we are puzzled as to why you would need to know where we are situated.”

Furthermore, European regulators have indicated that there is no establishment or representative of Locatefamily.com was found in the relevant country where those regulators are located.

From a technical investigation conducted by the AP regarding the web host of the website

Locatefamily.com revealed that Locatefamily.com may be located in Canada.<sup>20</sup> From the

international cooperation with fellow supervisors has shown that a

representative of Locatefamily.com in the EU is missing and that the number of complaints both in

The Netherlands as in other EU Member States increased.<sup>21</sup>

The subsequent request of 25 March 2019 from the AP on behalf of the cooperating European

regulators, to the Privacy Commissioner of Canada<sup>22</sup> to verify who is the contracting party of the

web host of the website Locatefamily.com, in order to be able to find the location address of Locatefamily.com

to date, has not yet provided any concrete indications about the location of

Locatefamily.com.

Consultation by the AP of the trade register of the Chamber of Commerce in the Netherlands has also

yielded no results with regard to Locatefamily.com.<sup>23</sup> The other EU regulators have

perform a similar desk investigation nor register Locatefamily.com or any

Locatefamily.com representative found. The European Justice Portal (E-Justice portal)<sup>24</sup>

also does not contain information about a Locatefamily.com location and/or representative in the

EU.<sup>25</sup>

<sup>19</sup> E-mail of 19 July 2018, appendix 12 to the investigation report.

20 Scheme, appendix 2 to the research report.

21 Minutes conference call, Appendix 5 to the research report.

22 Letter to Privacy Commissioner of Canada, Appendix 6 to the Investigation Report.

23 Chamber of Commerce consultation, appendix 14 to the investigation report.

24 [https://e-justice.europa.eu/content\\_find\\_a\\_company-489-en.do](https://e-justice.europa.eu/content_find_a_company-489-en.do) [accessed 25 July 2019].

25 Print screen e-Justice portal survey, appendix 13 to the research report. “The European e-Justice Portal is intended to be a “one-stop”

shop” on the Internet for information on European judicial topics and judicial procedures. The portal is aimed at citizens, companies, lawyers and the judiciary. Citizens should have equally good access to justice in other Member States

have as in their own Member State, and the European e-Justice Portal helps to remove barriers to this in a practical way

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Complaints

In the investigation period from May 25, 2018 to July 25, 2019, the AP received nineteen complaints

regarding Locatefamily.com. Research by fellow European supervisors has shown that there are

Complaints by data subjects from the countries concerned have also been lodged in other EU Member States

regarding the Locatefamily.com.<sup>26</sup> website

## 2. Legal framework

### 2.1 Scope GDPR

Pursuant to Article 2(1) of the GDPR, this Regulation applies to all or part of

automated processing, as well as to the processing of personal data that are in a file

included or intended to be included therein.

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 is carried out in the Union does not take place.

Pursuant to Article 3(2) of the GDPR, this Regulation applies to the processing of personal data of data subjects who are located in the Union, by a person not established in the Union controller or processor, where the processing is related to:

- (a) the offering of goods or services to those data subjects in the Union, whether or not a payment by the data subjects is required; or
- (b) monitoring their behaviour, to the extent that such behavior takes place in the Union.

Pursuant to Article 4 of the GDPR, the following definitions apply:

1. “Personal data”: any information about an identified or identifiable natural person (“the data subject”); considered identifiable is a natural person who can directly or indirectly be identified, in particular by means of an identifier such as a name, a identification number, location data, [...].

2) “Processing”: an operation or set of operations relating to personal data or a set of personal data, whether or not carried out via automated processes, such as the collecting, recording, organizing, structuring, storing, updating or modifying, retrieving, consulting, use, provide by transmission, dissemination or otherwise make available for example by providing information in 23 languages and a large number of links to relevant websites and documents.

Although the responsibility for the content and management of the portal is shared between the European Commission and the individual Member States of the European Union, the European Commission is the data controller for the European e-Justice Portal.”

26 IMI report (Internal Market Information System) with the request to EU supervisors and their responses, Annexes 3 and 4 to the research report.

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set, align or combine, shield, erase or destroy data; [...].

7) "Controller" means a natural or legal person, a public authority, a agency or other body which, alone or jointly with others, determines the purpose and means of the processing of personal data; when the objectives and resources for this processing are established in Union or Member State law, they may specify who the controller is or according to which criteria it is designated; [...].

8) "processor" means any natural or legal person, public authority, agency or other body that processes personal data on behalf of the controller;

17) "Representative" means a natural or legal person established in the Union who of Article 27 has been designated in writing by the controller or processor to to represent the controller or the processor in connection with their respective obligations under this Regulation.

## 2.2 Representatives of controllers not established in the Union

Article 27 of the GDPR provides the following:

1. Where Article 3(2) applies, the controller or processor shall designate in writing to a representative in the Union.
2. The obligation set out in paragraph 1 of this Article shall not apply to: a) incidental processing which is not large-scale processing of special categories of personal data as referred to in Article 9(1) does not concern the processing of personal data related to criminal convictions and offenses as referred to in Article 10, and where there is a small chance that they pose a risk to the rights and freedoms of natural persons, taking into account the nature, context, scope and the processing purposes; or b) any government agency or body.

3. The representative is established in one of the Member States where the data subjects whose personal data in connection with the provision of goods or services to them, or whose behavior is observed.

4. In order to ensure compliance with this Regulation, the representative shall be controller or processor authorized to act alongside or in his place approached, in particular by the supervisory authorities and data subjects, about all processing-related matters.

5. The fact that the controller or processor appoints a representative does does not affect the possibility to bring claims against the controller or the processor itself to set.

### 3. Review

#### 3.1 Processing of personal data

As mentioned, Locatefamily.com offers with its website a platform on which anyone can search for contact details of acquaintances that they have lost sight of and registers data for that purpose

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on its website of many involved. This concerns name and address details and sometimes telephone numbers, which are interested are visible.

Directly identifying data is when data relates to a person

whose identity can be unambiguously established without too many detours. Instantly identifying data

are data such as name, address, date of birth, which in combination with each other are so unique and therefore characteristic of a particular person that they are widely known with certainty or to a large extent

of probability, can be identified. Such data is published in the social

traffic also used to distinguish people from each other.<sup>27</sup>

Name, address and residence details make data subjects directly identifiable and can therefore be qualify as personal data within the meaning of Article 4, opening words, and under 1, of the GDPR.

Pursuant to Article 2(1) and Article 3(2) of the GDPR, the GDPR applies to the

fully or partially automated processing of personal data of data subjects who are in the

Union, by a controller or processor not established in the Union, when

the processing is related to the provision of goods or services to these data subjects in the

Union.

By registering, digitally storing and making these personal data available through its

website Locatefamily.com, there is an automated processing of personal data.

The AP concludes that there is processing of personal data on which, according to

the aforementioned provisions of the GDPR applies.

### 3.2 Controller

In the context of the question of who is or can be regarded as the controller(s) as referred to in

Article 4, preamble and under 7 of the GDPR determines who the purpose and means of the processing of personal data.

The Locatefamily.com Privacy Policy states the following:<sup>28</sup>

“LocateFamily.com does not redistribute information, e-mail addresses, or information obtained from communications with individuals regarding LocateFamily.com, to any third parties. Information displayed on LocateFamily.com is collected and maintained by LocateFamily.com for sole use by LocateFamily.com.”

Locatefamily.com also states on its website:<sup>29</sup>

<sup>27</sup> TK 1997-1998, 25 892, no. 3, p.48.

<sup>28</sup> Privacy policy, appendix 12 to the investigation report.

<sup>29</sup> Print screen <https://www.locatefamily.com/legal.html>, 4/19/2019, appendix 10 to the research report.

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“LocateFamily.com updates its database on a regular basis to ensure that the information displayed continues to be valid.” [...] “LocateFamily.com makes the information in its pages available as is and does not warrant the veracity of the information. The sole intent of making the data available is purely for informational purposes.”

[...]. “Information displayed on LocateFamily.com is property of LocateFamily.com and its interests.”

Locatefamily.com is according to this Privacy policy and explanation on its website

controller. This is how Locatefamily.com determines what the data is used for, who

can receive the personal data, and whether it provides personal data to third parties outside the

European Union.<sup>30</sup>

Processing of personal data by Locatefamily.com takes place with the aim of making it available

suggest to anyone who is looking for a particular person who has lost sight of that person. This one

service is offered free of charge for family reunions, school reunions and the like. It

means for the processing of personal data in this case concerns the registration of personal data

on the Locatefamily.com website.

It is also important that Locatefamily.com in response to the message from the AP regarding the

complaints about the handling of requests for removal, has yet complied with those requests

and has proceeded to remove the personal data of those involved from her

website.<sup>31</sup>

In view of the foregoing, Locatefamily.com has control over how Locatefamily.com

deals with the rights of data subjects and the processing of personal data of

data subjects and determines the purpose and means of this processing.

Locatefamily.com therefore qualifies as a controller as referred to in Article 4, preamble,

and under 7 of the GDPR.

### 3.3 Violation of representative designation

Pursuant to Article 27(1), the controller or processor shall, where Article 3, paragraph 2 of the GDPR applies, to a representative in the Union in writing.

In the present case, the processing of personal data of data subjects who are in the EU located in the EU. When accessing the Locatefamily.com website, name, address and to see residence details of persons within and for that matter also from outside the EU. This one personal data of, among others, EU residents are processed by Locatefamily.com to provide services can be offered via the website such as family reunions, school reunions, etc. It has been found that this services are also aimed at residents of the EU and are offered in several EU countries.

30 Print screen <https://www.locatefamily.com/legal.html>, 4/19/2019, appendix 10 to the research report.

31 Response to the request of the AP of 8 April 2019, appendix 8 to the investigation report.

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Furthermore, the investigation by the AP in collaboration with European colleague supervisors has shown that no location or representative of Locatefamily.com has been found in the relevant EU member state. Consultation of the trade register of the Chamber of Commerce in the Netherlands by the AP furthermore, has not produced any results with regard to Locatefamily.com.<sup>32</sup> The other EU regulators have conducted a similar desk investigation and have not registered Locatefamily.com or a Locatefamily.com representative. When consulting the European Justice Portal (E-Justice portal) there is also no branch and/or representative found in the EU. On the Locatefamily.com website there is neither a privacy contact nor a business address and/or representative address.

Based on the research findings, it can be concluded that in the case of Locatefamily.com the controller is not established in the EU. Moreover, this has shown

that a representative as defined in Article 4, preamble, and under 17 of the GDPR, is not designated in the EU as required by Article 27(1) of the GDPR.

Locatefamily.com also confirmed this to the AP. In response to the AP's question to Locatefamily.com as of June 26, 2018 whether it has a representative or an office in the EU, has Locatefamily.com stated on July 2, 2018 that it is not based in the EU nor has an office or representative in the EU.

With the applicability of Article 3, second paragraph, of the GDPR, the obligation under Article 27, first paragraph of the GDPR to appoint a representative in the EU, unless one of the two exceptions of Article 27, second paragraph, of the GDPR apply.

These exceptions do not arise in the case of Locatefamily.com. From the research findings it has become apparent that there is no incidental processing, nor a situation in which the controller is a public authority or body.

From the foregoing, the AP concludes that Locatefamily.com as established outside the EU controller has acted in violation of Article 27, first paragraph, in conjunction with Article 3, second member of the GDPR, by failing to designate a representative in the EU in writing.

### 3.4 Conclusion

In view of the foregoing, the AP is of the opinion that Locatefamily.com Article 27, first paragraph, of the GDPR, read in conjunction with Article 3(2) of the GDPR, now that it has in the period from 25 May 2018 to date has not complied with the obligation to write to a representative such as defined in Article 4, preamble, and under 17 of the GDPR, in the EU. The offense lasts now on.

32 Chamber of Commerce consultation, appendix 14 to the research report.

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## 4. Fine

### 4.1 Introduction

In view of the violation established above, the AP sees reason to use its competence under Article 58, second paragraph, preamble and under i, in conjunction with Article 83, fourth paragraph, preamble and under a, of the GDPR and Article 14, third paragraph, of the UAVG, to impose a fine on Locatefamily.com. The AP uses the Fine Policy Rules 2019.<sup>33</sup>

Pursuant to Article 83(4)(a) of the GDPR, infringements of Article 27 of the GDPR subject to administrative fines up to € 10,000,000 or, for a company, up to 2% of the total worldwide annual turnover in the previous financial year, if this figure is higher.

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

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

Pursuant to Article 2, under 2.1, of the Fine Policy Rules 2019, the provisions with regard to violation of which the AP can impose an administrative fine not exceeding the amount of € 10,000,000 [...] in appendix 1 classified in category I, category II or category III. In Annex 1, the violation of Article 27, first paragraph, of the GDPR, classified in category III.

Pursuant to Article 2.3 of the 2019 Fine Policy Rules, the AP sets the basic fine for violations subject to a statutory maximum fine of € 10,000,000 [...] fixed within the determined in that article penalty bandwidths. For violations in category III of Appendix 1 of the Fine Policy Rules 2019 applies a fine range between €300,000 and €750,000 and a basic fine of €525,000.

Pursuant to Article 6 of the Fine Policy Rules 2019, the AP determines the amount of the fine by dividing the amount from the basic fine upwards (up to a maximum of the bandwidth of the violation linked fine category) or down (to at least the minimum of that bandwidth). The basic fine is increased or decreased depending on the extent to which the



factors referred to in Article 7 of the 2019 Fine Policy Rules give rise to this.

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

the nature, seriousness and duration of the infringement, taking into account the nature, scope or purpose of the infringement processing in question as well as the number of data subjects affected and the extent of the damage suffered by them injury;

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

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b. the intentional or negligent nature of the infringement;

c. the measures taken by the controller [...] to address the data subjects suffered limit damage;

d. the extent to which the controller [...] is responsible given the technical and organizational measures that he has carried out in accordance with Articles 25 and 32 of the GDPR;

e. previous relevant breaches by the controller [...];

f. the extent to which there has been cooperation with the supervisory authority to remedy the breach and limit the possible negative consequences thereof;

g. the categories of personal data to which the breach relates;

h. the manner in which the supervisory authority became aware of the infringement, 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, paragraph 2, of the GDPR, insofar as they are previously with regard to the controller [...] in question with regard 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, arising directly or indirectly from the infringement

result.

Pursuant to Article 8.1 of the Fine Policy Rules 2019, the AP may, if the

fine category does not allow an appropriate punishment in the specific case, when determining the amount of

the fine the fine bandwidth of the next higher category or the fine bandwidth of the

next to lower category apply.

Pursuant to Article 9 of the Fine Policy Rules 2019, when determining the fine, the AP will, if necessary,

taking into account the financial circumstances of the offender. In case of reduced or

If the offender has insufficient financial capacity, the AP can further mitigate the fine to be imposed if,

after application of Article 8.1 of the policy rules, determination of a fine within the fine range

of the next lower category would, in its opinion, nevertheless lead to a disproportionately high fine.

#### 4.3 Fine amount

According to the AP, in this case, the following factors mentioned in Article 7 are particularly relevant for the

determining the amount of the fine:

a. the nature, seriousness and duration of the infringement;

b. the intentional or negligent nature of the infringement (culpability);

c. the measures taken by the controller or processor to

to limit the damage suffered by those involved.

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#### 4.3.1 Nature, seriousness and duration of the infringement

Pursuant to Article 7, opening words and under a, of the Fine 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 number of

affected persons and the extent of the damage suffered by them.

The protection of natural persons with regard to the processing of personal data is a fundamental right.

Under Article 8, paragraph 1, of the Charter and Article 16, paragraph 1, of the Convention on the Functioning of the European Union (TFEU) everyone has the right to the protection of their personal data.

The principles and rules concerning the protection of natural persons with regard to the processing of their data personal data should be in accordance with their fundamental rights and freedoms,

in particular with their right to the protection of personal data. The GDPR aims to contribute to the

establishment of an area of freedom, security and justice and of an economic union, as well as

economic and social progress, the strengthening and convergence of the economies within the

internal market and the well-being of natural persons. The processing of personal data must be

at the service of man. The right to the protection of personal data is not absolute,

but must be considered in relation to its function in society and must conform to the

proportionality principle against other fundamental rights. Any processing of

personal data must be done properly and lawfully. For natural persons it is

be transparent that personal data concerning them are collected, used, consulted or

otherwise processed and to what extent the personal data is or will be processed.

Where a controller or processor of personal data not established in the Union

of data subjects who are located in the Union, and the processing is related to the

offer of goods or services - regardless of whether a payment is required by the data subjects - to those

data subjects located in the Union or monitoring their behavior in the Union, the

controller or the processor to designate a representative, unless the processing

incidental, not the large-scale processing of special categories of personal data, or the processing of personal data concerning criminal convictions and offences and given the nature, context, scope and purposes of processing, unlikely to be a risk affects the rights and freedoms of natural persons, or unless the controller is a government agency or body.<sup>34</sup>

Locatefamily.com has, in any event, since May 25, 2018, failed to fulfill its obligation to provide written to appoint a representative in the EU. In the research period from May 25, 2018 to July 25, 2019 The AP has received nineteen complaints regarding Locatefamily.com. These complaints do not concern complying with requests from data subjects for data erasure and the lack of an establishment then is a representative of Locatefamily.com in the EU. It has been established that other EU Member States similar complaints have been received regarding Locatefamily.com. This emphasizes the importance of the presence of a representative in the EU acting on behalf of the controller acting with regard to its obligations under the GDPR. For the

34 Recital 80 of the GDPR.

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safeguarding the rights of data subjects, as enshrined in the GDPR, is of fundamental importance that also responsible organizations based outside the EU that provide services in the EU, in the are available in practice to both data subjects and the supervisory authorities on all matters relating to the processing-related matters. In fact, stakeholders in the EU lack a one that they can turn to if they want to exercise their rights under the GDPR. mead in view of the number of affected persons and the duration of the violation, in the opinion of the AP a serious violation.

The AP sees no reason in this to change the basic amount of the fine pursuant to Article 7, under a, of the Increase or decrease fines policy rules 2019.

#### 4.3.2 Intentional or negligent nature of the infringement (culpability)

Pursuant to Article 5:46, second paragraph, of the Awb, when imposing an administrative fine, the AP into account the extent to which this can be blamed on the offender. Pursuant to Article 7(b) of the 2019 Fine Policy Rules, the AP takes into account the intentional or negligent nature of the infringement. Since this is a violation, the imposition of an administrative fine is in accordance with established rules case law<sup>35</sup> does not require it to be demonstrated that there is intent and the DPA may be held liable presume if the perpetrator has been established.<sup>36</sup>

No circumstances have been established that would allow it to be concluded that no obligation exists for Locatefamily.com to appoint an EU representative.

The AP considers the knowledge that a standard addressee - in this case Locatefamily.com - of the applicable laws and regulations is deemed to have taken on the basis of apply that market parties bear their own responsibility to comply with the law.<sup>37</sup> If had doubts arisen about the scope of the injunction, then, also according to settled case-law, it must be held that of a professional and multinational operating market party such as Locatefamily.com requires it to be duly informed or to be informed about the restrictions to which it is behaviors, so that from the outset she could have aligned her behavior with the scope of that commandment.<sup>38</sup>

In light of the above, the AP considers the violation culpable.

#### 4.3.3 Other circumstances and proportionality

<sup>35</sup> Cf. CBb 29 October 2014, ECLI:NL:CBB:2014:395, r.o. 3.5.4, CBb September 2, 2015, ECLI:NL:CBB:2015:312, r.o. 3.7 and CBb March 7, 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.

<sup>36</sup> Parliamentary Papers II 2003/04, 29702, no. 3, p. 134.

37 Cf. CBb 25 June 2013, ECLI:NL:CBB:2013:4, r.o. 2.3, CBb January 25, 2017, ECLI:NL:CBB:2017:14, r.o. 5.2, CBb March 8, 2017,

ECLI:NL:CBB:2017:91, r.o. 6.

38 Cf. CBb 22 February 2012, ECLI:NL:CBB:2012:BV6713, r.o. 4.3, CBb September 19, 2016, ECLI:NL:CBB:2016:290, r.o. 8.6., CBb 19

September 2016, ECLI:NL:CBB:2016:372, b.r. 6.3.

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The AP also sees no reason to pay the basic amount of the fine of € 525,000 on the basis of the other in circumstances referred to in Article 7 of the Fines Policy Rules 2019, insofar as applicable in the present case, increase or decrease.

Given the circumstances, the application of the policy for determining the amount of the fine leads to of the specific case does not lead to a disproportionate outcome.

#### 4.3.4 Conclusion

In view of all the circumstances of this case, including the nature, duration and seriousness of the infringement, the AP considers

a fine of € 525,000 is appropriate and offered.

### 5. Order subject to penalty

#### 5.1 Load

Since this is a continuous violation, it must be terminated as soon as possible. to die

In addition to the aforementioned fine, the AP imposes an order subject to a penalty pursuant to Article 58, second paragraph, preamble and under d of the GDPR, Article 16(1) of the UAVG and Article 5:32(1) of the Awb.

This means that Locatefamily.com still complies with the obligation as included in article 27,

first paragraph of the GDPR and designates a representative in the EU in writing.

## 5.2 Beneficiary period and amount of penalty payment

The AP attaches a favorable period of twelve weeks to the order subject to a penalty. This period

In the opinion of the AP, Locatefamily.com provides sufficient opportunity to allow the violation to cancel.

Article 5:32b, third paragraph, of the Awb prescribes that the penalty amounts are in reasonable proportion to the gravity of the harmed interest and to the intended effect of the penalty. In the latter case

It is important that a penalty payment must provide such an incentive that the order is complied with.

If Locatefamily.com does not end the violation found within twelve weeks, it forfeits

after the end of that beneficiary period, for every two weeks that the burden has not been (fully) met, a

penalty. The AP sets the amount of this penalty every two weeks after the end of the period

beneficiary period fixed at an amount of € 20,000 (in words: twenty thousand euros), up to a

maximum amount of € 120,000 in total (in words: one hundred and twenty thousand euros).

If Locatefamily.com forfeits the penalty payment immediately after the end of the beneficiary period

wish to prevent, the AP recommends Locatefamily.com to provide evidence - with which Locatefamily.com

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can demonstrate that it complies with the order subject to periodic penalty payments - on time, but no later than one week before the end

of the beneficiary period to the AP for assessment.

## 6. Operative part

fine

The AP submits to Locatefamily.com, for violation of Article 27, first paragraph, of the GDPR,

read in conjunction with Article 3(2) of the GDPR, in the period from 25 May 2018 to the present, a  
administrative fine in the amount of € 525,000 (in words: five hundred and twenty-five thousand euros).<sup>39</sup>

Charge under penalty

Locatefamily.com must be submitted within twelve weeks of the date and subject to this decision

to take measures leading to the designation of a representative in the EU in writing.

If Locatefamily.com does not take the measures within twelve weeks after the date of this decision,

has performed to (fully) comply with the order, Locatefamily.com forfeits a penalty of

€ 20,000 (in words: twenty thousand euros) for every two weeks after the end of the beneficiary period,

up to a maximum amount of € 120,000 in total (in words: one hundred and twenty thousand euros).

Yours faithfully,

Authority Personal Data,

drs. C.E. mur,

board member

<sup>39</sup> The AP will hand over the aforementioned claim to the Central Judicial Collection Agency (CJIB).

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Remedies Clause

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

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

Article 38 of the UAVG suspends the effect of the decision to lodge a notice of objection

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

[www.autoriteitpersoonsgegevens.nl](http://www.autoriteitpersoonsgegevens.nl), under the heading Objecting to a decision, at the bottom of the

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



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

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

In your notice of objection, write at least:

- your name and address;
- the date of your notice of objection;
- the reference mentioned in this letter (case number); or attach a copy of this decision;
- the reason(s) why you do not agree with this decision;
- your signature.