

Confidential/Registered

The Minister of Finance

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

Short Forewood 7

2500 EE The Hague

Date

Apr 7, 2022

Topic

Decision to impose a fine

Our reference

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Contact

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Dear Ms Kaag,

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

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

has not taken adequate technical and organizational measures with regard to the access security, logging and logging control to ensure an appropriate level of security for the personal data in FSV.<sup>2</sup> Finally, the AP concluded that the Tax and Customs Administration de data protection officer (hereinafter: DPO) has not properly and in a timely manner involved in the implementation of the data protection impact assessment (hereinafter: DEB) of FSV.<sup>3</sup>

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

<sup>1</sup> See Article 5, first paragraph, preamble and under a, of the GDPR and Article 6 of the Wbp (lawfulness), Article 5, first paragraph, preamble and under b, of the GDPR and Article 7 of the Wbp (target specification), Article 5, first paragraph, preamble and under d, of the AVG and Article 11, second paragraph, of the Wbp (correctness) and Article 5, first paragraph, preamble and under e, of the GDPR and Article 10, first paragraph, of the Wbp (storage limitation).

<sup>2</sup> See Article 32, first paragraph, of the GDPR and Article 13 of the Wbp.

<sup>3</sup> See Article 38(1) of the GDPR jo. Article 35, second paragraph, of the GDPR.

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1 Introduction

1.1 Investigation of the AP

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

investigation concluded that the way in which the Tax and Customs Administration has deployed FSV to several and has resulted in serious violations of the General Data Protection Regulation (hereinafter: GDPR) and the Personal Data Protection Act (hereinafter: Wbp), the law that was applicable until the entry into force of the GDPR. The AP has included these findings in a report (hereinafter: the research report) and this report was made public on October 29, 2021.<sup>4</sup>

## 1.2 Process

For a representation of the investigation procedure, the DPA refers to chapter 1 of the research report.

In a letter dated 12 November 2021, the AP informed the Minister of the intention to impose an administrative sanction and the Minister has been given the opportunity to put forward his point of view bring.

In a letter dated 14 January 2022, on behalf of the Minister, the deputy director-general of the Tax authorities have submitted a written opinion, in which the aforementioned violations are recognized and in which the measures taken and to be taken are discussed in more detail.<sup>5</sup>

## 2. Findings

The AP bases this decision on the investigation report and the findings contained therein. That facts are supported by the evidence. The Minister has not disclosed the facts set out in the investigation report and furthermore the Minister has acknowledged the violations based on those facts.

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

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

<sup>5</sup> The deputy director-general of the Tax and Customs Administration noted in the written opinion that – in view of the division of tasks within the Ministry of Finance – has submitted the opinion. For the sake of readability of this decision, hereinafter referred to as “Minister”.

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## 2.1 Summary of findings

The Tax and Customs Administration mainly included persons who had committed fraud and persons suspected of having committed tax or benefit fraud.

FSV was used within the Tax Authorities to assess tax returns and applications for surcharges and was used to register information requests from other governments. FSV was also consulted for risk modeling and in determining whether to impose a fine imposed in the context of the collection of tax or allowance debts.

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

The AP establishes that the Minister is the controller for the processing of personal data in FSV by the Tax Authorities, as referred to in Article 4, opening words and under 7, of the GDPR and Article 1, preamble and under d, of the Wbp. Where the Tax and Customs Administration is mentioned in this Decree

the AP equates this with the Minister.

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

legality, purpose specification, accuracy and storage limitation. The AP explains these violations below.

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

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

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

of the GDPR and Article 8 Wbp. The AP concludes that for the processing of personal data in

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

do on the 'legal obligation' as the basis, because there was no obligation to

Process (possible) fraud and information requests as counter-information.

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

public interest or of a task in the exercise of official authority" does not succeed either.

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

regulations, title 5.2 of the General Administrative Law Act and the substantive legislation gives the tax authorities the

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

But this legislation is insufficiently precise to serve as the basis for a separate, structural,

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

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

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for the fulfillment of the tax authorities' public task of supervising compliance with

the provisions of or pursuant to the tax and allowances legislation. This is because it has not met the

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

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

well-defined and therefore unclear. The AP is also of the opinion that it is not

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

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

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

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

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

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

Finally, the AP concludes that the Tax and Customs Administration has not properly and timely involved the DPO in

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

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## 2.2 View of the Minister

The Minister endorses the facts and conclusions in the investigation report of the AP. FSV didn't finish may be used in this way, the Minister has acknowledged. The conclusions of the AP are in line with previous conclusions of the tax authorities that led to the shutdown of FSV.

The Minister declares that the Tax and Customs Administration will inform concerned citizens who were included in the FSV informs them about their registration and informs them of the reason why they were registered in FSV. As the If the tax authorities do not know the reason for a registration in FSV, the tax authorities will let the stakeholders also know. The Tax and Customs Administration points out to those involved their right of access and informs them that they can contact the tax authorities by phone and also that they can get more information can be found on the FSV web page. There is an FSV hotline, intended for citizens who suspect that they unjustified consequences of their registration in FSV. If there is more clarity about the answer when asked with which organizations the Tax and Customs Administration has shared data from FSV, the stakeholders are also informed. At the moment, about 200,000 people involved have a letter received from the tax authorities about their registration in FSV. Of these, about 100,000 have the reason of that registration in FSV.

The Tax and Customs Administration is having further research carried out into the effects of a registration in FSV, into the external data sharing from FSV and to the queries used. In anticipation of the outcomes of this investigations, a compensation scheme will be worked out for citizens who have been wrongly affected.

Partly as a result of the problems with FSV, the Tax and Customs Administration started the program 'Repair, improve and secure' (hereinafter: HVB). HVB contains promotions, which have been in effect since March 2020

deployed to solve the problems in the way in which the Tax and Customs Administration has dealt with (personal) registrations, risk models and the use of personal data such as nationality.

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

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

The Minister also declares that work is being done on the Bill on the Guarantee Act data processing Tax authorities, Allowances and Customs. The bill aims to establish the foundations for to strengthen the processing of personal data by the Tax Authorities, Benefits and Customs and

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to make it future-proof. In addition, the bill aims to create a legal framework for the guarantee of lawful, fair and transparent data processing by these three implementing organizations.



Finally, the Tax and Customs Administration realizes that fundamental improvements are needed when dealing with personal data and the Tax and Customs Administration will make every effort to avoid repetition in the future prevented, the minister said.

### 3. Fines

#### 3.1 Introduction

The AP has established that the Minister, as controller for the processing in FSV by the tax authorities, has acted contrary to the principles of legality, target specification, accuracy and storage limitation. The AP has also established that the Minister does not have an appropriate security level for the personal data in FSV and furthermore that the DPO does not appropriate and has not been involved in the implementation of the GEB of FSV in a timely manner.

The AP uses its power to impose fines on the Minister, because of the aforementioned violations. Due to the seriousness of the violations and the extent to which they can be reported to the Minister, are blamed, the AP considers the imposition of fines appropriate. Since in this case there is ongoing violations that have taken place under both the Wbp and the GDPR (with exception of the involvement of the DPO), the DPA has checked against the substantive law as it applied at the time the conduct took place. These provisions are intended to protect the same legal interests guarantees. There is no (substantial) material change in the regulations on this point.

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

#### 3.2 Fine policy rules of the Dutch Data Protection Authority 2019

Pursuant to Article 58, second paragraph, preamble and under i and Article 83, fourth paragraph, of the GDPR, read in in conjunction with article 14, third paragraph, of the UAVG, the AP is authorized in the event of a violation of

Article 32 of the GDPR and Article 35, second paragraph, of the GDPR, to impose an administrative fine until € 10,000,000.

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

The AP has established fine policy rules regarding the interpretation of the aforementioned power to imposing an administrative fine, including determining the amount thereof.<sup>6</sup> In the

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

Violation of Article 5(1)(a) of the GDPR is made dependent on the underlying provision, being Article 6(1) of the GDPR. Category III applies to this, with a penalty bandwidth between €300,000 and €750,000 and a basic fine of €525,000.

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

Violations of Article 32 of the GDPR and Article 35(2) of the GDPR are classified into category

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

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

Legality is one of the basic principles of data protection. A processing of personal data is lawful if it takes place on a legal basis. In the event of an interference with the right to respect for the private life of citizens is particularly important that the Tax and Customs Administration as

government agency must be able to base its actions on a sufficiently clear, accurate and predictable legal regulation. The IRS has failed in this regard. Because the tax authorities has processed personal data in FSV without justification, is the core of the right to the protection of personal data of many citizens.

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

To prevent the situation that organizations with processing personal data infringe

On the privacy of citizens, the AP also finds it of great importance that organizations have a risk-adjusted apply security level. In determining the risk for the data subject, among other things, the nature of the personal data and the scope of the processing are important: after all, these factors determine the 6 Stcrt. 2019, 14586, March 14, 2019.

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potential damage to the individual data subject in the event of, for example, loss, alteration or unlawful processing the data. The more sensitive the personal data is, or the more

context in which they are used represent a greater threat to privacy,

stricter requirements are imposed on the security of personal data. The AP is of the opinion that the

The tax authorities have taken inadequate measures with regard to access security,

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

guarantees.

The AP has concluded that the Tax and Customs Administration has with regard to the above-mentioned principles insufficiently complied with. These principles safeguard the integrity of personal data and establish citizens to maintain control over their own data. This is of great importance, because a unlawful processing of personal data can have far-reaching consequences for the personal lifestyle. The AP sets out these consequences and the seriousness of the violations below.

### 3.3.1 The nature, seriousness and duration of the infringements

Given the nature and scope of the unlawful processing of personal data in FSV, the AP is of the opinion that the violations by the tax authorities are very serious. The Tax and Customs Administration has in FSV unlawfully processed more than 540,000 signals relating to more than 270,000 data subjects.

This very large group of citizens, including hundreds of minors, have been severely affected in their right on the protection of personal data. In doing so, the AP takes into account that the citizens involved in relation to of the tax authorities are in a dependent and unequal position. After all, a citizen has

Tax authorities only have the obligation to file a tax return or the possibility to to apply for allowances. After the submission of the opinion of the Tax Authorities, it became apparent that the The Tax and Customs Administration has also shared data from FSV with other government and private authorities parties.<sup>7</sup> The AP finds it reprehensible that the Tax and Customs Administration – in view of its broad powers and the unequal position it occupies vis-à-vis the citizen - in this case extraordinary mishandled its powers.

With regard to the duration of the violations, the AP has established that the Tax Authorities committed during a period of more than six years, namely from November 4, 2013 to February 27 committed in 2020. The fact that the violations thus structurally last for a longer period have continued, the AP considers very serious.<sup>8</sup>

The consequences for citizens who were included in FSV as (potential) fraudsters could be very large. In In some cases, a citizen was labeled 'fraud' without this following from a thorough research. And if an investigation had been carried out and it turned out that there was no question of fraud, it was

conclusion often not recorded in FSV, so that the suspicion of fraud remained in FSV. A

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

8 Because the AP only has the power to fine the aforementioned violations since 1 January 2016, it takes

In the context of the (increase of the) fine, only the duration from 1 January 2016 into account. In that case, too, there is a long-term

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registration in FSV (in possible combination with other indications), could then lead to that citizen

to stigmatisation, more intensive supervision and/or had negative financial consequences.

For example, the more intensive supervision could have the effect of making the income tax return to the detriment of that citizen was corrected or that an application to be eligible for healthcare, rent or

childcare allowance was rejected. Also requests for a personal payment arrangement with a

allowances debt or amicable debt rescheduling in the event of a tax or allowance debt are automatic

rejected, because of that citizen's FSV registration. As a result, citizens have been in uncertainty for a long time

wrong about their financial situation. Those involved were not further informed about the fact that they

FSV, even after a request for inspection to that effect. This has resulted in

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

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

communication within the tax authorities and between the tax authorities and other government institutions

on the identification of risks, whereby a risk of fraud was indicated on personal characteristics such as

nationality and appearance. In (instruction) documents, for example, the foreign

nationality (such as Turkish, Moroccan and Eastern Europe) used as a selection criterion for further tax

to research. But also gifts to mosques and high deductions related to drug use by

taxpayers with surnames ending in "–ić" were used as risk indicators for

fraud.<sup>9</sup> This unequal treatment in the fraud risk selection poses a great risk of stigmatization.

In addition, it has not been shown that the Tax and Customs Administration for this discriminatory and therefore improper method of data processing had a reasonable and objective justification.

With regard to the consequences of the insufficient security of the personal data, the AP notes it

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

Tax authorities can view personal data in FSV. Signals from FSV are regularly exported for the

creation of a so-called subset outside FSV, so that persons who did not have access to FSV

could search in it. Due to the shortcomings in the access security and in the (control of) logging

the data could be misused. The Tax and Customs Administration therefore had no insight into

the further processing of the (exported) data.

### 3.3.2 Categories of personal data

The Tax and Customs Administration processed many (different) personal data in FSV. A signal in FSV existed in

in any case from a citizen service number, and a number of completed fields including name and address

data, account number and IP address. Sometimes a signal contained the nationality of persons and

documents about committed offenses and criminal convictions. The tax

furthermore, where appropriate, also processed data about the physical or mental health of

citizens. This is a special category of personal data that enjoys extra protection under the GDPR. The

The AP also found that signals could contain data about individuals who were not notified by the signal

(directly), such as family members, tax service providers and childminders. Given its size and sensitivity

<sup>9</sup> Parliamentary Papers II 2021/22, 31 066, no. 977.

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

### 3.3.3 Blame and gross negligence

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

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

presume if the perpetrator is established. As the controller, the Minister must act

on the basis of the GDPR, observe the aforementioned basic principles when processing personal data

to take. The AP has established that the Minister, as the controller on the basis of the GDPR

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

legality, purpose specification, accuracy and storage limitation. In addition, the Minister does not have a

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

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

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

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

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

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

such as medical data, unlawfully processed in FSV. The working method of the Tax and Customs Administration

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

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

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

Tax authorities and the Minister also failed to intervene. The AP therefore comes to the conclusion

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

### 3.3.4 Previous Relevant Infringements

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

The Minister accused the following violations in the period from 2018 – 2021. On July 3, 2018, the AP concluded that with regard to the logging, the control of the logging and the access security at the Data Foundations & Analytics department acted in violation of Article 13 Wbp and 32 GDPR. The AP has imposed a processing ban on the Minister as of January 1, 2020 because of the unlawful processing of the citizen service number in the VAT identification number. And on November 25, 2021, the AP imposed administrative fines on the Minister in the so-called Childcare Allowance Affair, because the For years, the tax authorities have determined the (dual) nationality of applicants for childcare allowance processed unlawfully.

Now that the AP has once again established that the Minister has personal data without a legal basis processed and insufficiently secured, the AP considers these previously identified violations to be relevant previous infringements. The AP notes that this points to ongoing problems of a structural nature which can lead to no other conclusion than that at the Tax and Customs Administration, the official management of the

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department and the Minister there has been or has been widespread negligence, negligence and even act in a discriminatory and therefore improper manner when applying legal rules regarding data protection.

### 3.3.5 Amount of the fines

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

Legal basis

Due to the serious consequences of the lack of a legal basis and because there is



previous relevant infringements as referred to in paragraph 3.3.4, the AP is of the opinion that the violation linked fine category does not lead to an appropriate penalty. The AP therefore concludes with application of Article 8.1 of the Fine Policy Rules when determining the amount of the fine, the next higher category to apply.

For violation of Article 5, first paragraph, under a jo. Article 6(1) of the GDPR and having regard to the

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

increases the basic amount of € 725,000:

- by € 155,000 on the basis of the nature, seriousness and duration of the infringement (Article 7 sub a Penalty Policy Rules) and the circumstances as stated in paragraph 3.3.1 with;

- with € 90,000 on the grounds of the negligent nature of the infringement (article 7 sub b Fine policy rules) and the circumstances as stated in paragraph 3.3.3; and

- with €30,000 on the basis of the categories of personal data (Article 7 sub g Penalty Policy Rules) and the circumstances as stated in paragraph 3.3.2.

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

Target binding

Due to the violation of the rules regarding purpose limitation (Article 5, first paragraph, under b of the

AVG) and the aforementioned considerations, the AP sees reason to impose a fine on the Minister

lay. The AP increases the basic amount of € 525,000:

- by € 125,000 on the basis of the nature, seriousness and duration of the infringement (Article 7 sub a Penalty Policy Rules) and the circumstances as stated in paragraph 3.3.1;

- with € 75,000 based on the negligent nature of the infringement (Article 7 sub b Fine policy rules) and the circumstances as stated in paragraph 3.3.3; and

- with € 25,000 on the basis of the categories of personal data (Article 7 sub g Penalty Policy Rules) and the circumstances as stated in paragraph 3.3.2.

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

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Accuracy

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

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

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

Storage limitation

Due to violation of the storage limitation rules (Article 5(1)(e) of the GDPR) and

The AP sees the above considerations as reason to impose a fine on the Minister. The

AP increases the basic amount of € 525,000:

- by € 125,000 on the basis of the nature, seriousness and duration of the infringement (Article 7 sub a Penalty Policy Rules) and the circumstances as stated in paragraph 3.3.1;
- with € 75,000 based on the negligent nature of the infringement (Article 7 sub b Fine policy rules) and the circumstances as stated in paragraph 3.3.3; and
- by € 25,000, based on the categories of personal data (Article 7 sub g Fine policy rules) and the circumstances as stated in paragraph 3.3.2

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

## Security

Due to breach of security rules (Article 32(1) of the GDPR) and

The AP sees the above considerations as reason to impose a fine on the Minister. The

AP increases the base amount of € 310,000

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

Penalty Policy Rules) and the circumstances as stated in paragraph 3.3.1;

- by €50,000, based on the negligent nature of the infringement (article 7 sub b Fine policy rules) and

the circumstances as stated in paragraph 3.3.3;

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

(Article 7 sub e Fine policy rules);

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

Fine policy rules) and the circumstances as stated in paragraph 3.3.2

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

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### 3.4 Fine for the involvement of a data protection officer

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

of the GDPR. For this it is important that the controller ensures that the DPO

appropriately and in a timely manner involved in all matters related to the protection of

personal data. The AP has established that the Tax and Customs Administration has not properly and timely filed the DPO

has been involved in the implementation of FSV's Data Protection Impact Assessment (DIA).

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

years after this period, the DPO was only asked to advise on the GEB. So the tax authorities have their DPO

not asked for advice during the implementation of the GEB. The consequence of this is that the DPO does not fulfill his duties has been able to carry out properly and therefore has not been able to advise the Tax and Customs Administration in a timely manner about compliance

of the GDPR. In the event of a timely consultation, the DPO could have warned the tax authorities earlier on the risks related to the unlawful processing of personal data in FSV.

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

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

Finally, with regard to this violation, the AP also concludes that the Tax and Customs Administration, under responsibility of the Minister, has acted seriously culpably negligently. That the tax authorities more than a year after the implementation of the GEB and only in response to questions from the media about FSV, has asked the DPO for advice, the AP deems it very negligent.

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

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

circumstances, the AP sees reason to impose a fine on the Minister. The AP raises it

basic amount of € 310,000 because of 1) the nature, seriousness and duration of the infringement with € 70,000, because of (2) the

negligence with €50,000 and because of (3) the categories of personal data with €20,000. With that

this fine amounts to a total of € 450,000.

### 3.5 Proportionality

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

applying 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 principle of proportionality may inter alia play in the accumulation of sanctions. In addition, pursuant to Article 83(3) of the GDPR, the total fine does not exceed that for the most serious infringement, if the

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controller in respect of the same or related processing activities infringes several provisions of the GDPR.

In this case, the AP imposes an administrative fine for violation of Article 5, first paragraph, under a (jo.

Article 6(1)(b), d and e of the GDPR, Article 32(1) of the GDPR and Article 35(2) of the GDPR

GDPR. Although the violations committed violate various interests and on that basis separate

fine, in this case the DPA sees the connection between the lack of a legal basis and

the storage limitation as a relevant factor to determine the penalty for the violation of the storage limitation moderate by €500,000.

The AP sets the total amount of the fines imposed at an amount of € 3,700,000. In the context of Article 10 of the Fine Policy Rules, the AP determines that the total fine is not higher than the legal limit maximum fine (€ 20,000,000) for the most serious offence.

The AP is of the opinion that (the amount of) the total fine is not disproportionate.<sup>10</sup> The AP has in this judge, among other things, the seriousness of the infringements and the extent to which these are communicated to the Minister

can be blamed. Due to the nature and duration of the violations, the far-reaching consequences for the data subjects and the previous relevant infringements, the AP qualifies the relevant infringements on the GDPR as serious.

### 3.6 Conclusion

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

10 For the motivation, see also paragraphs 3.3 and 3.4.

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4. dictum

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

II. The AP imposes a fine of €750,000 on the Minister of Finance (in words: seven hundred and fifty thousand euros), because the personal data in FSV violates the principle of target specification have been processed. As a result, the Minister of Finance has amended Article 5, paragraph 1, preamble and under b of the GDPR.

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

IV. The AP imposes a fine on the Minister of Finance in the amount of € 250,000 (in words: two hundred and fifty thousand euros), because the personal data in FSV is contrary to the principle of storage limitation have been processed. As a result, the Minister of Finance has amended Article 5, paragraph 1, preamble and under e of the GDPR.

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

five hundred thousand euros), because for the personal data in FSV an insufficiently appropriate security level is guaranteed. As a result, the Minister of Finance has Article 32, first paragraph, violate the GDPR.

VI. The AP imposes a fine on the Minister of Finance in the amount of € 450,000 (in words: four hundred and fifty thousand euros), because the advice of the DPO is not GEB has been obtained. As a result, the Minister of Finance has applied Article 35, second paragraph, of the GDPR violate.

Yours faithfully,

Authority Personal Data,

w.g.

mr. A. Wolfsen

Chair

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Our reference

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Remedies Clause

If you do not agree with this decision, you can 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.