

Confidential/Registered

TikTok Inc., TikTok Technology Limited and

TikTok Information Technologies UK Limited

p.a. Brinkhof Advocaten

[CONFIDENTIAL]

Grote Bickersstraat 74-78

1013 KS AMSTERDAM

Date

April 9, 2021

Our reference

[CONFIDENTIAL]

Contact

[CONFIDENTIAL]

Topic

decision to impose an administrative fine

Authority for Personal Data

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Dear [CONFIDENTIAL],

The Dutch Data Protection Authority (hereinafter: AP) has decided to grant TikTok Inc, located in California (de

United States), to impose an administrative fine of €750,000. The AP notes that TikTok Inc.

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

users – including children – in the English language only. This is contrary to

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

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

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

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1 Introduction

1.1 Legal entity concerned

1. TikTok Inc. is located in California, United States.<sup>1</sup>

2. TikTok Inc. is part of the Bytedance group of companies (hereinafter: Bytedance) of which Bytedance

Ltd. its parent company.<sup>2</sup> Bytedance operates a range of content platforms worldwide where

people to be informed, educated, entertained and inspired.<sup>3</sup> Launched in May 2017

Bytedance the TikTok app.<sup>4</sup> This app allows users to create, edit short videos

and share online. In November 2017, Bytedance acquired 'musical.ly', a content platform app

similar to TikTok. After the takeover of musical.ly by Bytedance, musical.ly . became

renamed TikTok and in May 2019, the company name of musical.ly Inc. changed to TikTok Inc.<sup>5</sup>

1.2 Process

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

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

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

4.

[CONFIDENTIAL].

5.

[CONFIDENTIAL].

6.

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

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

understandable language about the processing of personal data.

7.

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

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

the underlying research report and the underlying documents. TikTok UK en

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

to disclose underlying documents.

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

2 File 9, answer to question 1.

3 File 9, answer to question 1.

4 File 9, answer to question 1.

5 File 9, answer to question 1.

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

10. On November 20, 2020, a hearing was held in which TikTok submitted its written has explained in more detail orally.

11. TikTok has also announced in its written opinion and during the opinion session to: rolled out a number of additional measures at the beginning of January 2021, in order to protect of teenagers under 16 years of age<sup>7</sup> [CONFIDENTIAL]. It concerns the following measures:

- 'Account on private' will be the default for users under the age of 16.

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

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

- the ability to comment on videos is extended to all existing and new users under the 16 years set to 'Friends' by default. The 'Everyone' option is displayed for these users turned off.

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

- Downloads are only allowed for videos created by users over 16 years old and older.

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

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

12. On January 21, 2021, TikTok submitted additional information to the AP to substantiate its statement that TikTok qualifies Ireland as a head office from June 29, 2020 in accordance with Article 4, preamble under 16 of the GDPR.

## 2. Authority AP

### Introduction

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

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

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

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

processing of personal data is taken at another establishment of the controller

who is also located in the Union and who is also authorized to execute those decisions, in which case the establishment where those decisions are made is considered to be the principal place of business”

15. In the Guidelines for Determining the Lead Supervisory Authority<sup>8</sup> (Guidelines

competence) it is stated on page 7 that Recital 36 of the GDPR can help clarify

of the main factor that will be used in determining the principal place of business if it

criterion of the central administration does not apply. Recital 36 of the GDPR states: “Which

establishment is the principal place of business of a controller in the Union should be determined on the basis of

of objective criteria, such as the effective and effective execution of management activities, with a view to

taking the core decisions on the purposes and means of processing through resistant

proportions.”

16. Opinion 8/2019 on the competence of the supervisory authority in the event of a change

in the circumstances concerning the principal place of business or the sole establishment<sup>9</sup> addresses the question of which

supervisory authority is competent in the event of a change in circumstances relating to

to headquarters during ongoing investigations. This Opinion is relevant in the present case now

TikTok states that there has been a change in circumstances.<sup>10</sup>

17. Opinion 8/2019 states, in summary, that in case of continuous infringements, the jurisdiction may

transfer to another supervisory authority until the lead supervisory authority

has made a decision. Recommendation 8/2019 stipulates that the relocation of a head office from

offers a third country to the EU during the procedure the possibility to

controllers to make use of the “one-stop shop” scheme. <sup>11</sup>

<sup>8</sup> Guidelines for determining the lead supervisory authority of the controller or processor, 5

April 2017, Article 29 Data Protection Working Party.

<sup>9</sup> Opinion 8/2019 on the competence of the supervisory authority in the event of a change in circumstances

concerning the principal place of business or the only place of business, 9 July 2019, European Data Protection Board.

<sup>10</sup> See marginal 9 of this Decree.

11 See paragraphs 16 and 30 of Recommendation 8/2019.

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

19. In addition, Opinion 8/2019 points out that forum shopping must be prevented and that it is therefore it is up to the controller to demonstrate that the relocation of the principal place of business actually took place. The concept of the head office in itself indicates that a temporary or purely bureaucratic step by the company is not sufficient to establish the head office but that it is a real step with a long-term goal. It's up to the supervisory authorities to determine whether the criteria are met, in order to mitigate the risk reduce data controllers artificially switching headquarters with the with a view to changing the competent authority to handle the case.<sup>14</sup>

TikTok view

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

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

21. TikTok further states that the AP finds in the research report that TikTok does not yet have demonstrated that TikTok qualifies Ireland as head office, but no evidence put forward either implies that the AP itself is authorized to act. TikTok states in its written opinion that the AP only refers to the correspondence between TikTok and the Irish SA and in particular to the letter from August 13, 2020 from the Irish SA to TikTok.

22. TikTok further notes in its written opinion that the AP does not took into account the comprehensive response TikTok has on September 30, 2020 sent to Irish SA. According to TikTok, this answer contains additional, detailed and strong proof that TikTok is headquartered in Ireland as of July 29, 2020.

12 See marginal 21 of Recommendation 8/2019.

13 See marginal 24 of Recommendation 8/2019.

14 See marginal 26 of Recommendation 8/2019.

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

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



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

#### AP . Considerations

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

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

#### Headquarters

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

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

asked a large number of additional questions to TikTok to get more clarity on

different aspects.<sup>16</sup>

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

<sup>16</sup> See file document 37.

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Irish SA received on October 7, 2020. For another part, Irish SA was not authorized

received from TikTok to provide this information to other supervisory authorities

(including the AP) without first presenting this to her in connection with it in the eyes of TikTok

highly confidential nature of this part of the documents submitted to the Irish SA. The

AP has still requested TikTok to provide these business-sensitive documents to the AP. at 25

January 2021, TikTok transferred all documents to the AP.

29. With the information provided on October 7, 2020 and January 25, 2021, TikTok has demonstrated that

there is an actual head office in Ireland with a long-term objective. for this

the AP considers the following.

30. One of the most important findings of the AP in August 2020 was that TikTok was on

paper stated that its office in Ireland made decisions and had the authority to

to implement decisions within the EU, but that there were still many uncertainties

on many related topics. In addition, it was not possible from the material submitted

be drawn up that there were permanent and sustainable agreements within the group and that

the Irish branch would have sufficient and competent people and resources to fulfill its role as

head office properly. In August 2020, it could not be ruled out that TikTok

had taken a merely bureaucratic, artificial step with the aim of improving the treatment of the  
to change competent authority for this case (forum shopping).

31. From the minutes of the board of directors of the Irish branch of . submitted by TikTok on January 25, 2021

TikTok shows that the changes within the TikTok concern regarding the shifting of  
the processing responsibility for EU data subjects and the creation of a headquarters in  
Ireland emerge from a long-running project. In the period from the end of May 2020 in particular,  
Various concrete initiatives have been launched in this context and decisions have been taken to improve the organization  
to prepare for the new structure. These minutes of the board of the Irish branch show that  
is actually aimed at a lasting transition and that, in this context, the  
necessary decisions are made.

32. It appears from the minutes of the Data Protection Steering Committee (DPSC)<sup>17</sup> that this  
decision-making body from 29 July 2020 actually discusses important matters regarding  
data protection and make decisions about it. This concerns matters that directly affect  
the protection of children. It also appears from several documents submitted that the Irish  
establishment is actually responsible for the implementation of decisions taken and  
is responsible for the execution of some central processes such as assessing  
requests from data subjects and investigating and reporting data breaches.

<sup>17</sup> According to the agreements previously submitted by TikTok (intra concern), this decision-making meeting was established  
by the  
joint controllers to discuss and discuss important data processing matters  
to take decisions.

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33. In addition, it appears from statements submitted by TikTok that TikTok Ireland has a large number of (hundreds) of staff has been recruited in the spring and summer of 2020. Right on this point doubts existed now that the Irish branch in Ireland had few employees at the beginning of 2020. The AP had doubts whether it would be able to provide enough in times of a pandemic quality of staff. Sufficient and high-quality personnel is after all, a large platform such as TikTok is essential to be able to actually function as a Headquarters. Despite applicable COVID restrictions, TikTok Ireland is according to this submitted overviews nevertheless proved to be able to recruit a large number of permanent employees who are competent on paper Pull. As a result, the AP is of the opinion that the location in Ireland has sufficient manpower to be able to actually fulfill its task as head office.

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

35. On the basis of the foregoing, the AP establishes that TikTok has demonstrated that it has its registered office in Ireland on 29 July 2020.

#### Jurisdiction

36. It follows from Opinion 8/2019 that the competence to act as lead supervisory authority transfers from the AP to the Irish SA in case of continued infringements at the time TikTok has demonstrated that it is headquartered in Ireland and if there is no (final) decision has been taken by the AP. As described above, TikTok has with the op 7 October 2020 and 25 January 2021 provided additional information demonstrated that they headquartered in Ireland on July 29, 2020. This date the AP considers the date the competence passed from the AP to the Irish SA [CONFIDENTIAL].

37. [CONFIDENTIAL].

[CONFIDENTIAL].

38. [CONFIDENTIAL].

39. [CONFIDENTIAL].

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40. [CONFIDENTIAL].

41. [CONFIDENTIAL].

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42. [CONFIDENTIAL].

43. [CONFIDENTIAL].

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

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

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

Recommendation 8/2019.<sup>18</sup> The AP therefore remains authorized to take a decision for this violation and

impose a sanction.

45. [CONFIDENTIAL].

46. Chapter 3 sets out the relevant legal framework. In chapter 4 the relevant

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

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

remedies clause.

3. Legal framework

### 3.1 Scope GDPR

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

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

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

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

2) “processing” means an operation or set of operations on personal data or a set of personal data, whether or not carried out by automated means (...);  
(...)

18 See marginal 16 of Recommendation 8/2019.

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

### 3.2 Principles: Lawfulness, Fairness and Transparency & Data Minimization

50. Article 5 of the GDPR sets out the principles governing the processing of personal data.

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

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

("lawfulness, fairness and transparency").

### 3.3 Transparency and information obligation

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

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

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

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

a) the identity and contact details of the controller and, where applicable, from the representative of the controller;

(b) where applicable, the contact details of the data protection officer;

c) the processing purposes for which the personal data are intended, as well as the legal basis for processing;

d) the legitimate interests of the controller or of a third party, where the processing is based on Article 6(1)(f);

e) where applicable, the recipients or categories of recipients of personal data;

f) where applicable, that the controller intends to

transfer personal data to a third country or an international organisation; whether or not there is an adequacy decision by the European Commission exists; or, in the case of Article 46,

transfers referred to in the second subparagraph of Article 47 or the second subparagraph of Article 49(1), which are the appropriate or appropriate

guarantees, how to get a copy of them or where to get them

consulted.'

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#### 4. Facts

54. This chapter lists the facts relevant to the decision. First, in section 4.1, a outline description of the TikTok app. Section 4.2 discusses how how users create an account and post videos via the TikTok app and the way in which the privacy policy of TikTok Inc. was offered to users. Section 4.3 briefly describes the (underlying) processing of personal data that take place in the context of the use of the TikTok app by users. Finally, Section 4.4 explains that a large number of children use the TikTok app.

##### 4.1 General description of the TikTok app

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

TikTok has developed over time into a platform where users mainly profiling by posting creative and humorous short videos. This distinguishes TikTok is moving away from other social media platforms such as Instagram.

56. In addition to creating, editing and posting short videos, the TikTok app also allows users establishing and maintaining social contacts. For example, users can comment on videos from others, like videos, follow other users, become friends with other users and send and receive messages from other users, etc. Furthermore, it is also possible, for example



to set up live stream connections. The TikTok app can therefore be considered as social media app.

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

It appears from conversations with advertisers who are active on the TikTok platform that for the time being only TikTok knows exactly how this algorithm works and which factors exactly determine it.

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

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#### 4.2 User registration and provision of privacy policy to users

##### Sign up process

59. After a user has downloaded the TikTok app from an app store, it is immediately possible to watch videos shared via the TikTok platform. The user also gets via the 'for you' page of videos offered via a feed. Further functionalities in the app are not (yet) available. In short, unregistered users can watch videos but not

posting videos and socializing about it via the TikTok platform.

60. Creating a TikTok account is a necessary requirement to create, edit videos and place them online and use the interactive possibilities of the TikTok app.

61. The AP created an account as part of an online test to gain insight into the way on which users register in the TikTok app and what data they had to do with it provide. In short, a user must go through the following four steps.<sup>19</sup>

62. First of all, a user must indicate through which method he or she wants the registration process through, using a phone number, email address, or other existing social media account. The user is informed in the Dutch language that he or she agrees with the TikTok's terms of use and privacy policy. The user can click on the word terms of use and privacy policy to access these documents.

63. Then the user must indicate his or her birth year via a gear wheel. If the user enters a year of birth that shows that the person is younger than 13 years old, gets the user will see a red bar that says "sorry, it looks like you are not eligible for TikTok, but thank you for visiting us." Until early 2020, this red bar disappeared after about 5 seconds and the user came back to the screen to fill in his or her year of birth via a gear wheel. At that time, the user could enter another year of birth to still go through this step come. At the beginning of 2020, TikTok introduced a temporary block if a user indicates be under 13 years of age. <sup>20</sup>

64. As a third step, the user must enter his or her email address or telephone number and the user to set a password. The screen again states that the user agrees with TikTok's Terms of Use and Privacy Policy.

65. Finally, as a fourth step, TikTok checks that the user is not a robot by a manual test for (move puzzle pieces to the correct place with the mouse). After going through this step

<sup>19</sup> Reference is made to file documents 1 and 7 for a full description of the process that Dutch users must follow to create an account and use it to post videos online.

20 The AP's online test of 17 December 2019 shows that this blockade had not yet been implemented. In the online test of the AP of February 25, 2020, this was the case.

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

Privacy Policy in English Language

66. Online tests conducted by the AP in December 2019 and February 2020 showed that the privacy policy was presented in the English language during the registration process described above. This was also the case when a user was logged in and wanted the privacy policy in the TikTok app

21 In response to the AP's question how TikTok informs Dutch children about the processing of their personal data, TikTok stated on May 1, 2020 that they do this, among other things through its privacy policy. The privacy policy provided by TikTok to the AP concerned a English version.<sup>22</sup>

67. TikTok informed the AP on June 26, 2020 that it will update its privacy policy effective July 29, 2020 to Dutch stakeholders – and therefore also Dutch children under the age of 16 – in the Dutch language will provide. As TikTok also noted in its written view In addition, TikTok has drawn up a separate document with effect from July 29, 2020 that and shape suits (Dutch-speaking) children.<sup>23</sup>

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

4.3 Processing of personal data by TikTok

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

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

21 File 1 and File 7.

22 File 15, answer to question 10 and appendix 5. The text of the privacy policy that TikTok submitted to the AP concerns the version that was last updated in October 2019. However, as can be seen from the answer to question 11, TikTok has the conditions from the

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

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

24 File 15, Appendix 3.

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described which personal data TikTok processes, including additional features such as basis, retention period, security measures and country.<sup>25</sup>

#### 4.4 Children's use of the TikTok app

71. TikTok is a social media app that is popular and used by children. From research shows that a large group of Dutch children under the age of 16 use the TikTok app and that a

part of this group of young children are around 12 years of age (and in some cases younger).

72. According to an indicative study conducted at the end of 2019 by a research agency, which has stated to the AP that TikTok is used by children and especially around the age 12.26 This research agency estimated that approximately 830,000 Dutch children under the age of 18 use TikTok. Below is the table – based on the research results from the end of 2019 from the aforementioned research agency – showing that children aged from 6 years to 18 years used the TikTok app and that TikTok proportionally was mainly used by children around the age of 12.27

25 For example, TikTok describes the following goal in its processing register: “To enable users to share user content and interact with other users”. It is going too far for this decision to examine in detail all eighteen processing goals put forward by TikTok to describe. In this decision it is sufficient to refer to the processing register provided by TikTok and data protection impact assessment, see appendix 3 to file 15 for the processing register and appendix 4 to file 15 for the Data Protection Impact Assessment.

26 File 24.

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

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73. In addition, research shows that TikTok in the last months, at the time of the COVID-19 pandemic, has gained in popularity, including among older users. The below chart based on official TikTok figures in May 2020 illustrates this<sup>28</sup>:

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

are in the Netherlands. This cannot only be young people under the age of 18. There is therefore still a target group that is older than 18 years." See

file document 26, p2.

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74. In addition, media reports in August 2020 state that figures from Bytedance, the parent company of TikTok, show that the number of active TikTok users in the Netherlands had risen to 4.5 million. Although the largest user base would no longer be teenagers, 13 to 17 year olds would make up 28 percent of all users in the Netherlands, which amounts to approximately 1,260,000 users.<sup>29</sup>

75. Based on the above, the AP finds that TikTok is used by a large number Dutch children under 16 years old.

5. Review

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

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

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## 5.1 Processing of personal data

### Personal data

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

78. As can be seen from the register of processing<sup>30</sup>, TikTok Inc. in the period from 25 May 2018 to with July 28, 2020 processed a large number of data from users, including the videos they posts, messages they sent and other (social) activities they engaged in. Based upon of this, the AP establishes that in the present case there is information of identifiable persons and therefore personal data within the meaning of Article 4, opening words and under 1, of the GDPR.

### Processing

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

Under Article 4, preamble and under 2, of the GDPR, the term "processing" includes any possible processing or whole of processing of personal data, whether or not carried out via automated processes, such as the collection, storage, distribution and provision of data.

80. From TikTok Inc.'s register of processing operations. and Section 4.1 shows that TikTok Inc. in the period from 25 May 2018 to 28 July 2020, among other things, received, processed, analyzed and distributed. This means the processing of personal data in the sense: of Article 4, preamble and under 2, of the GDPR.

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

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## 5.2 Controller

82. Article 4, preamble and under 7, of the GDPR provides that the controller must be a natural or legal person who, alone or jointly with others, fulfills the purpose and means of processing personal data. Decisive is who the purpose of and the means of processing personal data. The controller may do this alone, but also with others.

TikTok view

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

AP . Considerations

84. From TikTok Inc.'s Register of Processing and Privacy Policy submitted on May 20, 2020<sup>31</sup>, as well as TikTok's written submission, it appears that TikTok Inc., established in California (de United States), in the period from May 25, 2018 to July 28, 2020, the goals and means for determined the processing.

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

## 5.3 Transparency and information obligation

86. Transparency is an important principle of EU law.<sup>32</sup> Transparency is an expression of the principle of fairness in relation to the processing of personal data as contained in

Article 8 of the Charter of Fundamental Rights of the European Union. Therefore, transparency is



together with legality and propriety, included in the GDPR in Article 5(1), preamble and

under a as one of the basic principles of the processing of personal data.

87. Recital 60 of the GDPR notes that, in accordance with the principles

of fair and transparent processing, should be informed that there are

processing takes place and the purposes thereof. Recital 39 of the GDPR adds that

in accordance with the principle of transparency, information and communication related to the

processing of those personal data should be easily accessible and understandable. Also,

clear and simple language. Natural persons must become aware

made of the risks, rules, safeguards and rights associated with the processing of

personal data, as well as the way in which they exercise their rights with regard to this processing

can exercise.

31 File 15, Appendices 3 and 5.

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

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88. In the Guidelines on Transparency under Regulation (EU) 2016/679 (hereinafter:

Transparency Guidelines) emphasizes that one of the core elements of the principle of

transparency and fairness is that those involved know in advance the scope and consequences of the

processing and not be surprised later by other ways in which their

personal data has been used.<sup>33</sup>

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

detailed in Articles 12 to 15 of the GDPR.

90. Article 12 of the GDPR provides that the controller takes appropriate measures

so that the data subjects receive the information related to the processing in a concise, transparent, in comprehensible and easily accessible form and in clear and simple language, in especially when the information is specifically intended for a child. The information will be in writing or provided by other means.

91. The element “understandable” is further elaborated in the Transparency Guidelines and serves as a measure to be taken by an average member of the intended audience. Of a controller who respects the principle of accountability may are expected to know the data subjects about whom information is being collected. On the basis of this knowledge should allow the controller to determine what the target group is likely to to understand. For example, a controller who uses personal data of working professionals assume that his or her target audience has a higher level of understanding than the target group of a controller who processes personal data of children collects.<sup>34</sup>

92. In order to comply with the “clear and simple language” element, the information submitted to a data subject is not provided with too legal, technical or specialist language or terminology should contain. When the information is translated into one or more languages, the controller to ensure that all translations are accurate and that the word choice and sentence structure in the other language or languages are correct, so that the translated text is follow and understand. When the controller addresses data subjects who have a speak another language, a translation into those languages must be provided.<sup>35</sup>

93. With regard to the provision of information to children, Recital 58 of the GDPR emphasizes: “Since children deserve specific protection, the information and communication when the processing is specifically directed to a child, should be stated in such clear and plain language that it child can easily understand it”.

33 Transparency Guidelines, point 10.

34 Transparency Guidelines, point 9.

35 Transparency Guidelines, point 13.

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

TikTok view

95. TikTok recognizes that one of the core elements of the principles of transparency and fairness is that those involved must be able to determine in advance what the scope and consequences are of the processing and that they should not be surprised afterwards about the way in which their personal data has been used. TikTok is of the opinion that through various measures has met this standard and that the AP wrongly focuses only on the TikTok's terms of use and privacy policy. TikTok refers in this regard to

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

Secondly, TikTok believes that Dutch users have a good command of the English language, as a result of which there is no conflict with Article 12 (1) of the GDPR. In this regard, she notes that

The Netherlands has been in the top three of the so-called Education First English since 2011 Proficiency Index. Third, according to TikTok, the research report does not substantiate that its privacy policy has not used clear and simple language aimed at children.

#### AP . Considerations

96. As the Transparency Guidelines show, a controller should be required to know his intended audience and to determine on the basis of this information state what qualifies as understandable. In the case of TikTok, this means that they are aware must be that the target group consists in any case for a substantial part of children younger than 16 years. In addition, this young target group brings in accordance with Article 12(1) of the GDPR and the Guidelines transparency comes with an extra responsibility when it comes to the use of clear and simple language in all communication. After all, children deserve specific protection, which makes the use of clear and simple language extra important.<sup>37</sup>

36 Transparency Guidelines, point 14.

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

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

98. The fact that TikTok Inc. has not provided this information in the Dutch language to Dutch (speaking) children under the age of 16 already means that TikTok has Article 12, paragraph 1 of the AVG violate. The requirement of comprehensibility requires at least that when the controller addresses data subjects who speak another language, they

translation in that language to those data subjects. This obligation applies in particular when – as in this case – it addresses (young) children, so that they can easily access that information to understand.<sup>39</sup> The circumstance that a relatively large group of Dutch people have a good command of English doesn't make this any different, especially now that TikTok is used by many people under the age of 16. A good command of the English language of those involved in that age group(s) is not naturally. TikTok Inc. should therefore not have assumed that it would not be available to children of only the English language version of the privacy policy is in accordance with article 12, paragraph 1 of the GDPR.

99. The other transparency measures taken by TikTok mentioned do not alter the fact that the English language privacy statement is not provided in language understandable to children and can already be for this reason do not compensate for the violation of Article 12 (1) of the GDPR.

100. The pop-ups used by TikTok undeniably contribute to better transparency. This one However, this measure does not affect the fact that the entire privacy policy of TikTok Inc. was not drafted in for Dutch children under the age of 16 understandable and simple language. These pop ups are not replace its privacy policy. They inform data subjects about the public nature of their information post videos, but do not provide all information such as those provided under Article 13 of the GDPR by the controller must be provided.

101. In addition, the privacy and security settings mentioned by TikTok and the Help and Saftety Center that children are only informed there if they actively go to information themselves Search. As a result, there is a risk that they will not be informed in time, which – like TikTok also acknowledges itself – is a crucial element of the obligation of transparency.<sup>40</sup> In addition, these measures that it can not provide a substitute for its privacy policy now not all information provided by the controller pursuant to Article 13 of the GDPR are provided.

38 File 1, file 7 and file 15, appendix 5. The text of the privacy policy that TikTok submitted to the AP concerns the version that was last updated in October 2019. However, TikTok has the terms of the privacy policy in the period from 25

May 2018 – July 29, 2020 not substantially amended, see letter dated May 1, 2020 from TikTok to the AP, page 7 (answer to question 11).

39 Compare Transparency Guidelines, points 13 and 14.

40 See also Transparency Guidelines, point 27.

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102. As of July 29, 2020, TikTok will provide its privacy policy to Dutch data subjects – and therefore also Dutch children under the age of 16 – in the Dutch language. Like TikTok also in has noted its written view, TikTok also has a prepared a separate document that is in line with (Dutch-speaking) children in language use and form.<sup>41</sup> Met With these two measures, TikTok meets the requirement under Article 12 of the GDPR to To inform Dutch-speaking children in a language that they understand.

#### 5.4 Conclusion on Article 12(1) of the GDPR

103. Based on the foregoing, the AP concludes that TikTok Inc. during the period of May 25, 2018 to July 28, 2020 has violated Article 12(1) of the GDPR.

### 6. Fine

#### 6.1 Introduction

104. By not informing children in understandable language about the processing of their personal data, has TikTok Inc. acted contrary to article in the period from 25 May 2018 to 28 July 2020 12(1) of the GDPR. TikTok Inc. has not taken any measures during this period to ensure ensure that children receive the information related to the processing of their personal data in a received clear and simple language for them and thereby completely ignored the importance of Dutch children when it comes to the extra protection they enjoy under the GDPR.

The AP believes that this is a serious violation.

105. The AP sees this as a reason to use its power to impose a fine on the basis of

Article 58, paragraph 2, preamble and under i and Article 83, paragraph 5 of the GDPR, read in conjunction with Article 14, paragraph 3 of the UAVG, to TikTok Inc. to impose. The AP uses the

Fines Policy Rules 2019.<sup>42</sup>

TikTok view

106. TikTok is primarily of the opinion that the AP is not authorized to impose a fine since the

TikTok is headquartered in Ireland. Even if the AP were competent, there would be no

lead to the imposition of a fine because TikTok acts and has acted in

in accordance with the GDPR. If the AP thinks differently about this, then it should be before imposing

of a punitive sanction, the AP can show that TikTok has acted in violation of a

legal provision that was clear, accurate and foreseeable to TikTok.<sup>43</sup>

[CONFIDENTIAL]. Imposing a punitive sanction based on open standards is contrary

<sup>41</sup> File 33 and marginal number 160 of the investigation report.

<sup>42</sup> Stcrt. 2019, 14586, March 14, 2019.

<sup>43</sup> TikTok refers in this regard to ECLI:NL:RVS:2002:AF0842, ECLI:NL:CBB:2018:187.

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with the nulla poena principle and the principle of legality. In such cases, a reprimand is a

more suitable tool. Finally, TikTok states that all circumstances must be taken into account

taken into account to arrive at an appropriate settlement, as well as the conditions of Article 83 GDPR

and all principles of good administration. TikTok has fully cooperated with the investigation and

has also requested a meeting with the research department to address their concerns

easier to understand.

#### AP . Considerations

107. In paragraph 5.4 of this decision, the AP concluded that TikTok Inc. during the period of May 25, 2018 to July 28, 2020 has violated Article 12(1) of the GDPR. TikTok Inc. has thus not acting in accordance with the GDPR. As above in Chapter 2 of this Decree has been set out, the DPA is authorized to act for the established violation of Article 12(1) of the GDPR make a decision and impose a sanction. This is because there is an offense committed before July 29, 2020 has ended. This violation therefore falls outside the scope of Opinion 8/2019<sup>44</sup> which means that the AP is authorized to impose a fine for this.

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

109. As the Judiciary Division of the Council of State has repeatedly considered<sup>45</sup> requires the *lex certa* principle, which is enshrined, *inter alia*, in Article 7 of the Convention for the Protection of human rights and fundamental freedoms, of the legislature that it, with a view to the legal certainty describes the prohibited conduct as clearly as possible. Thereby it must not be lost sight of that the legislator sometimes acts with a certain vagueness, consisting of the use of general terms, describes prohibited behaviors in order to prevent conduct that is punishable by law falls outside the scope of that description. That vagueness can unavoidable, because it is not always possible to foresee how the interests to be protected in the will be infringed in the future and because, if foreseeable, the descriptions of prohibited behaviors can be refined otherwise, with the result that the overview is lost and thereby harms the interest of the general clarity of legislation.

110. The mere fact that the concept of “understandable, clear and simple language” used in this case is decisive for the applicability of Article 12(1) of the GDPR, based on the facts and circumstances require explanation does not mean that the administrative law imposed on the basis of that provision



fine is contrary to the lex certa principle.

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

44 See marginal 16 of Opinion 8/2019.

45 See, inter alia, the judgments of 9 July 2014, ECLI:NL:RVS:2014:2493 and 16 January 2019, ECLI:NL:RVS:2019:109.

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constitutes a large proportion of children, would violate the requirement of clear and simple language as referred to in Article 12(1) of the GDPR. This is especially true now in the Guidance on Transparency It is considered that when the controller is addressed to data subjects who speak another language, a translation into those languages must be provided. This obligation applies in particular when it is addressed to (young) children, so that they easily understand and connects to the specific protection that children earn under Recital 58 of the GDPR. The TikTok app is aimed at Dutch involved, including children, and is largely in the Dutch language to them made available. In addition, TikTok points the user in the app when installing the app Dutch language that he or she agrees with its privacy policy.

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

113. [CONFIDENTIAL].

114. The AP sees no reason in the statements made by TikTok to exercise its authority to impose waive a fine for violation of Article 12(1) of the GDPR.

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

115. Pursuant to Article 58, paragraph 2, preamble and under i and Article 83, paragraph 5 of the GDPR, read in conjunction

with Article 14, paragraph 3 of the UAVG, the AP is authorized to TikTok Inc. in the event of a violation of Article 12, paragraph 1 of the GDPR to impose an administrative fine of up to € 20,000,000 or, for a company, up to 4% of total worldwide annual sales in the previous fiscal year, if figure is higher.

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

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

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

119. Pursuant to Article 2.3 of the 2019 Fine Policy Rules, the AP sets the basic fine for violations subject to a statutory maximum fine of € 20,000,000 [...] fixed within the limits set out in that article certain penalty bandwidths. For violations in category III of Annex 2 of the Fines Policy Rules 2019 applies a fine range between € 300,000 and € 750,000 and a basic fine of € 525,000.

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120. Pursuant to Article 6 of the Fine Policy Rules 2019, the AP determines the amount of the fine by the amount of the basic fine upwards (to a maximum of the maximum of the bandwidth of the a violation linked fine category) or down (to at least the minimum of that bandwidth).

121. 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 (hereinafter: Awb) take into account the following factors that are: derived from Article 83, paragraph 2 of the GDPR, referred to under a up to and including in the 2019 Fine Policy Rules k.

### 6.3 Fine amount

122. This section first examines the factors that are considered pursuant to Article 7 of the Fines policy rules 2019 are relevant for determining the amount of the fine. Finally, it goes into on the principle of proportionality.

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

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

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

124. Pursuant to Article 7, opening words and under a, of the Fine Policy Rules 2019, the AP takes into account the nature, seriousness and duration of the infringement. In assessing this, the AP will include the nature, scope or purpose of the processing as well as the number of data subjects affected and the extent of the damage they have suffered.

125. The protection of natural persons with regard to the processing of personal data is a fundamental right. Under Article 8(1) of the Charter of Fundamental Rights of the European Union and Article 16, paragraph 1 of the Treaty on the Functioning of the European Union, everyone has the right to protection of his personal data. The principles and rules concerning the protection of natural persons when processing their personal data must comply with their fundamental rights and freedoms, in particular with their right to protection of personal data. The GDPR aims to contribute to the creation of an area of freedom,

security and justice and of economic union, as well as to economic and social progress, the strengthening and convergence of economies within the internal market and the well-being of natural persons. The processing of personal data must serve people. It right to the protection of personal data is not absolute, but must be

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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 incorporated.

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

127. The activity of TikTok Inc. to which the findings of the AP relate concerns the provision of only the English version of the privacy policy to Dutch data subjects, including a large group of Dutch(speaking) children younger than 16 years old. The privacy policy has not been published in the Dutch language language, while a good command of the English language in that age (group) does not is self-evident. It was therefore not possible for them to determine in advance the magnitude and consequences

of the processing and it was not clear how their personal data is used

would become.

128. In assessing the seriousness of the violation, the AP also takes into account the large number of those involved and the amount of personal data processed. Section 4.4 of this Decree has already

explained that in an indicative study conducted at the end of 2019, a research firm estimated that

approximately 830,000 Dutch children under the age of 18 use TikTok and that TikTok on

At that time, it was mainly used by children around the age of 12 years.

In the same section, it was noted that media reports in August 2020 report that figures

of TikTok's parent company show that the number of active TikTok users in the Netherlands

had increased to 4.5 million, with users aged 13 to 17 years 28

percent of all users in the Netherlands, which equates to approximately 1,260,000 young

users. The processing operations thus also related to a vulnerable group of persons,

namely children. They have the right to specific information regarding their personal data

protection, as they may be less aware of the risks, consequences and

safeguards and their rights in relation to the processing of personal data.<sup>46</sup> This makes, in

especially in view of the massive number of young TikTok users in the Netherlands, the

violation very serious.

129. With regard to the duration of the violation, the AP takes into account a period from 25 May 2018 to

with 28 July 2020, in which it considers it particularly important that, in the opinion of the AP, this means

was of an offense that lasted for a significant period of time.

<sup>46</sup> Recital 38 of the GDPR.

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130. In view of the seriousness and duration of the violation, the AP sees reason to adjust the basic amount of the fine pursuant to Article 6 and Article 7, opening words and under a, of the 2019 Fine Policy Rules, to be increased by €225,000 to €750,000, being the maximum of the bandwidth of the violation linked fine category.

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

131. Pursuant to Article 5:46, paragraph 2 of the Awb, when imposing an administrative fine, the AP will into account the extent to which this can be blamed on the offender. Pursuant to Article 7, under b, of the Fines Policy Rules 2019, the AP takes into account the intentional or negligent nature of the infringement. Now that this is a violation, the imposition of an administrative fine is in accordance with settled case law<sup>47</sup>, it is not required to demonstrate intent and the DPA may presume culpability if the perpetrator is established.<sup>48</sup>

132. According to Article 12(1) of the GDPR, the data controller must provide the information in connection with with the processing in a concise, transparent, intelligible and easily accessible form and in clear and plain language to the data subjects, in particular when the information is specifically intended for a child. From a professional party like TikTok Inc. may, fellow given the nature and extent of the processing, they are expected to be well aware of the applicable standards and comply with them.

133. TikTok Inc. has consciously disclosed its privacy policy to Dutch data subjects – including children – provided in the English language only<sup>49</sup>, while the requirement of intelligibility requires that when the controller addresses data subjects who speak another language, they are at least provides a translation in that language to those data subjects. This obligation applies in particular now TikTok Inc. also aimed at (young) children, while the TikTok app itself for the most part is made available to them in the Dutch language and TikTok the user when installing the app does indicate in the Dutch language that he or she agrees with its privacy policy. In the In light of the foregoing, the AP considers the violation culpable.

#### 6.3.3 Measures taken to limit the damage suffered by those involved

134. The AP considers that TikTok Inc. has taken various measures aimed at to limit the damage suffered by those involved. Getting involved when using the TikTok app pop-up notifications informing them about the public nature of any information post videos. In addition, the updated privacy and security settings and the Help

47 Cf. CBb 29 October 2014, ECLI:NL:CBB:2014:395, r.o. 3.5.4, CBb 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.

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

49 See marginal 66 of this Decree.

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TikTok Center and Safety Center, where users are provided with information, contribute to a better transparency. Also, with effect from July 29, 2020, TikTok has provided its privacy policy in the Dutch language to Dutch stakeholders and as of that date also has a separate document made available in which (Dutch-speaking) children are presented in comprehensible language informed.

135. The AP considers that this does not remove the consequences for the rights of data subjects and already concludes on that basis that there is no reason to increase the basic amount of the fine pursuant to Article 7, under c of the Policy Rules 2019.

#### 6.3.4 Other factors

136. The AP sees no reason to change the basic amount of the fine on the basis of the other provisions in Article 7 of the Circumstances referred to in the penalty policy rules 2019, insofar as applicable in the present

case, increase or decrease.

#### 6.3.5 Proportionality

137. Finally, on the basis of Articles 3:4 and 5:46 of the Awb (principle of proportionality), 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. Apply to it proportionality principle, according to the 2019 Fine Policy Rules, the AP means that when determining of the fine takes into account, if necessary, the financial circumstances in which the offender is in. TikTok has not invoked limited capacity, which is why there are already there is no reason to moderate the fine on the basis of proportionality. The AP considers a fine in this case of € 750,000 is appropriate and bid and TikTok Inc. sufficient to bear this amount can afford.

#### 6.3.6 Conclusion

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

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#### 7. Operative part

fine

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

Yours faithfully,

Authority Personal Data,

w.g.

ir. M.J. Verdier



Vice President

## 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.

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