

Confidential/Registered

The Minister of Finance

Mr W.B. Hoekstra MBA

PO Box 20201

2500 EE THE HAGUE

Date

November 25, 2021

Topic

Decision to impose a fine

Our reference

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Contact

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Authority for Personal Data

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Dear Mr Hoekstra,

The AP has decided to pay administrative fines of . to the Minister of Finance (hereinafter: the Minister).

to impose a total of € 2,750,000 for violation of Article 5, first paragraph, opening words and under a, in

read in conjunction with Article 6, first paragraph, opening words and under e, of the General Regulation

data protection (hereinafter: GDPR), and Article 6 read in conjunction with Article 8 of the Act

protection of personal data (hereinafter: Wbp). This is because the Tax and Customs Administration/Benefits (hereinafter also:

Surcharges) without a lawful basis (1) in any case from 1 January 2016 to 30 June 2020 the double

nationality of the Dutch was preserved in his so-called Benefits Benefits System, (2) in

in any case from March 2016 to October 2018 the nationality of applicants for childcare allowance processed for an indicator in its so-called risk classification model and (3) in any case from 1 January 2016 to February 2019 processed the nationality of applicants for childcare allowance for the detection of organized fraud. These processing operations were not necessary for the fulfillment of a public task of Allowances. In addition, Allowances has for the aforementioned processing in the context of of the risk classification model and acted contrary to the principle of propriety as laid down in Article 5, first paragraph, preamble and under a, of the GDPR and article 6 of the Wbp.

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The administrative fines are explained in this decision. To this end, (1) the legal framework, (2) the results of the investigation, (3) the course of the proceedings, (4) the relevant facts, (5) the Minister's view, (6) the violations, (7) the amount of the fines and (8) the decision to the imposition of the fines and the remedies clause.

## 1. Legal framework

Article 5, first paragraph, preamble and under a, of the GDPR provides that personal data must be processed in a manner that is lawful, fair and transparent with regard to the data subject.

Pursuant to Article 6(1) of the GDPR, the processing of personal data is only lawful if and insofar as at least one of the conditions stated in that provision is met. the in die provision, under e, is that the processing is necessary for the fulfillment of a task of general interest or of a task in the exercise of official authority to which the controller has been instructed.

Article 6 of the Wbp stipulates that personal data in accordance with the law and in a proper manner

way are processed.

Article 8, opening words and under e, of the Wbp stipulates that personal data may only be processed if the data processing is necessary for the proper performance of a public law task by the relevant administrative body or the administrative body to which the data is provided.

## 2. Investigation of the AP

The AP has officially launched an investigation into the processing of the nationality of applicants for childcare allowances through Allowances. This in response to a signal received in April 2017 about the possible processing of the dual nationality<sup>1</sup> of applicants for childcare allowance by Surcharges. This investigation has led the AP to issue a report of findings on July 16, 2020 established (hereinafter: the investigation report).<sup>2</sup>

The research report explains that Allowances is the organizational unit of the Tax and Customs Administration, that is charged with granting, paying and reclaiming childcare allowance. Also the supervision of compliance with the regulations regarding childcare allowance is part of the public task of

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1 One person can have multiple nationalities. It is possible to hold multiple nationalities by, among other things: descent or naturalization. In this decree the term 'dual nationality' is used and not 'second nationality'. Because this would the infringement may give rise to priority being given to a particular nationality, while nationalities have no hierarchy.

2 Research report of the AP of 16 July 2020, "Belastingdienst/Supplementary benefits, The processing of the nationality of applicants for childcare allowance". The public version of the investigative report was published on the AP's website on July 17, 2020: [research\\_belastingdienst\\_kinderopvangtoeslag.pdf](#) (autoriteitpersoonsgegevens.nl).

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Surcharges. In order to carry out this public task, Supplements uses personal data from the population administration, including the nationality of individuals.

In the investigation report, the AP first of all assessed the lawfulness of various processing of the data nationality of childcare allowance applicants assessed. Regarding three types processing, the AP has established that these are and/or were unlawful and that the Minister as controller for the processing of Allowances, thus Article 5, first paragraph, preamble and under a, of the GDPR jo. Article 6, first paragraph, preamble and under e, of the GDPR as well as Article 6 jo. article 8 of the Wbp.

The first processing concerns the processing of dual nationalities of Dutch applicants. In the research report concluded that this data has been preserved in the Benefits Benefits System (hereinafter: TVS) used by Supplements and that Supplements this does not need data for the performance of its task. Surcharges therefore did not have this data allowed to process. According to the investigation report, this violation has started on January 6, 2014 and had not yet been fully completed at the time of writing the report.<sup>3</sup>

The second processing concerns the use of the nationality of applicants for an indicator in a system that automatically selects risky requests on which personnel capacity is deployed, the

so-called risk classification model. The AP concluded in the investigation report that it use of nationality was not necessary for this, because a less far-reaching form of processing was possible. This violation lasted for the period from March 2016 until October 2018.

The third processing relates to the use of the nationality of applicants for childcare allowance in the context of the detection of organized fraud. In the investigation report, the AP has concluded that the use of nationality for this purpose was not necessary. This violation has lasted for the period from 2013 to June 2019.

The AP then assessed the appropriateness of the aforementioned processing operations. The second and third processing are also discriminatory and therefore inappropriate, according to the research report, because make this distinction on the basis of nationality, without there being any objective justification for it consists. As a result, the Minister also has Article 5, first paragraph, preamble and under a, of the GDPR as well as violate article 6 of the Wbp. According to the research report, these inappropriate processing place in any case from March 2016 to October 2018 and from 2013 to February 2019 respectively.

3 According to the research report, not all Dutch dual nationalities had been removed from the TVS by April 20, 2020.

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3. Process

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For a detailed description of the investigation procedure, reference is made to chapter 1 of the research report.

By letter dated 13 August 2020, the AP informed the Minister of its intention to impose an administrative sanction and the Minister has been given the opportunity orally or in writing to put forward the point of view. In the same letter, the AP also requested the Minister to substantiated opinion as to whether, and if so by when, measures have been or will be taken to termination of the violations identified in the investigation report. In addition, the AP has research report submitted to the State Secretary of Finance on 17 July 2020 - Allowances and Customs (hereinafter: the State Secretary).

By letter of September 10, 2020, received by the AP on September 14, 2020, the Minister verbally submitted a written opinion from the State Secretary<sup>4</sup>, in which the aforementioned violations have been recognized and in which the measures taken / to be taken have been discussed in more detail.

#### 4. Facts

Now that the Minister has acknowledged the violations identified in the investigation report and the investigation report has not contradicted the facts established, the AP assumes in this decision the investigation report established facts.

For a detailed account of the established facts, reference is therefore made to Chapter 2 of the research report.

#### 5. View of the Minister

With regard to the violations identified in the investigation report, the Minister – summarized and insofar as relevant here – stated the following.

First of all, the Minister has endorsed the conclusions from the investigation report of 16 July 2020. The findings in the report are considered very serious by the Minister. In addition, the Minister declares that he will implement the recommendations in the research report.<sup>5</sup>

4 In the written opinion, the State Secretary noted that - in view of the division of tasks within the Ministry of Finance – has submitted the opinion. For the sake of readability of this Decree, the designation “Minister” is hereinafter referred to as “Minister”.

used.

5 See also the government response of 17 July 2020 to the report of the AP of 16 July 2020 on the processing of the nationality of

applicants for childcare allowance and the letter of 17 November 2020 from the State Secretary of Finance to the House of Representatives,

with answers to the questions about the government response, in which the conclusions from the AP investigative report of 16 July 2020

are endorsed.

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Storing dual nationalities of Dutch nationals in the TVS (initial processing)

19 About the retention of dual nationalities of applicants with Dutch nationality in the TVS

the Minister has also stated that he shares the AP's finding that this processing is not

necessary for the task of Allowances. The Minister also noted the following in this regard.

20 Until 31 January 2015, the Tax and Customs Administration also received the

possible dual nationality from the Municipal Personal Records Database (hereinafter: GBA) and this was

processed by the Tax and Customs Administration in the 'Management' system used by all parts of the Tax and Customs Administration

of Relations' (hereinafter: BVR). The dual nationalities were subsequently taken over by the TVS.

The Basic Registration of Persons (hereinafter: BrP) does not register any new registrations as of January 6, 2014

second (dual) nationality for persons with a Dutch nationality. That is also the case for persons who acquire Dutch nationality: the previous 'other nationality' is obtaining Dutch nationality removed. As of January 31, 2015, the BrP will not issue any second/other registered nationality (besides Dutch) more. For the until January 31, 2015 dual nationality granted by the BrP for persons with a Dutch nationality, this were registered in BVR, but were cleared on July 23, 2015. In the period between January 31, 2015 and July 23, 2015, BVR still provided information about dual nationalities (in addition to the Dutch nationality also the other nationality) to the customers in the tax authorities. The data of persons with dual nationality who were already registered in BVR and thus the TVS before 6 January 2014, stayed longer registered in the TVS with dual nationality. The Minister has stated that there measures have been taken to ensure that access to dual nationality is Benefits employees would be shut down and that the historical data would be removed from the systems be met. The cleaning of these historical data has been picked up in the TVS from the summer of 2019 and has been completed June 30, 2020 fully completed.

Using the nationality of childcare allowance applicants for an indicator in automatic selection of high-risk applications (the risk classification model) (second processing)

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With regard to the use of nationality in risk selection, the Minister has, insofar as it is relevant here, next noted.

22 Whether an applicant is entitled to an allowance follows from legislation and regulations. Surcharges used since 2013 a risk classification model in which a self-learning algorithm estimates whether there is a risk based on dozens of indicators may be a problem with an application. The risk classification model is used to assess an increased predict the risk of errors in a benefit application. This is done on the basis of indicators. The indicators provide an indication of the facts and circumstances in which an application is submitted done. One of the indicators concerned Dutch citizenship/non-Dutch citizenship. This indicator was in



the model was adopted in response to observations made in past supervisory activities. A

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application from non-Dutch nationals in combination with the presence of other indicators therefore had a greater chance of being selected for control than in the case of Dutch citizenship.

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The Minister has acknowledged that the use of such indicators is properly and objectively substantiated should be and has expressed its deepest regret that this was not the case with regard to the Dutch nationality/non-Dutch nationality indicator. Benefit applicants with only one or more foreign nationalities were regarded as non-Dutch nationals. In relation to this they had a higher chance that their benefit application was manually assessed to determine the right to bonus. This should never have happened, he said. Since October 2018, nationality is not used more in the risk classification model for the childcare allowance. With that comes nationality no longer appear in this risk classification model.

The use of the nationality of applicants for childcare allowance in the context of the detection of organized fraud (third-party processing)

24 The Minister expressed his deepest regret that nationality was used in the investigation organized fraud with childcare allowance. When investigating organized abuse of As a rule, the (possibly dual) nationality of the applicant concerned was requested.

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In that regard, the Minister has stated that Allowances formally decided in June 2019 not to so-called queries<sup>6</sup> based on nationality to do/request more. Queries from the past that are still continued, were stopped immediately after discovery and reported to the AP.

## 6. Review

### 6.1 General

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As of 25 May 2018, the GDPR applies.<sup>7</sup> Since the facts in this investigation took place between 2013 and 2020, the AP has assessed against both the Wbp and the AVG.

The research report explains in detail which processing of nationality at Benefits taking place and have taken place in recent years. The AP explains the investigation report and the findings included therein on the basis of this Decree – insofar as this is not the case in this Decree is deviated from. In this decision it is sufficient to provide a brief discussion of the AP detected violations. For a complete overview of all relevant actual practices, – insofar as they are not mentioned here – reference is made to chapter 2 in the investigation report.

6 A query is giving a query to a database, in this case the BVR and TVS, among others.

7 On that date, pursuant to Article 51 of the UAVG, the Personal Data Protection Act (Wbp) was repealed.

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### 6.2 Processing of personal data and processing responsibility

#### 6.2.1 Processing of personal data

28 Below, the DPA assesses whether the three processing operations described above involve processing

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personal data.

Allowances is responsible for granting, paying out and reclaiming benefits. The applicants of childcare allowance (and its allowance partners) are natural persons who are directly can be identified. This is inherent to Benefits' task to issue benefits to individuals to turn. It follows from chapter 2 of the research report that Allowances also have the nationality of the applicant. This is information about a natural person identifiable to Benefits. The The applicant's nationality is therefore personal data within the meaning of Article 4, opening words and under 1, of the GDPR and Article 1, preamble and under a, of the Wbp. The applicants are involved in the sense of Article 4, opening words and under 1, of the GDPR and Article 1, opening words and under f, of the Wbp. It follows from paragraphs 2.1 to 2.4 of the research report that Allowances provide data on the nationality of applicants, among other things, collects, stores, uses, requests and records. With this Processes Supplements personal data as referred to in Article 4, opening words and under 2, of the GDPR and Article 1, preamble and under b, of the Wbp.

It follows from section 2.3 of the research report that Supplements uses a risk-based classification model. The use of the risk classification model by Supplements is a form of profiling, because this processing meets all three conditions referred to in Article 4, preamble and under 4 of the GDPR.<sup>8</sup> Firstly, there is an automated form of processing. The risk-classification model is namely an algorithm that automatically selects requests on which personnel capacity is used. Secondly, the processing relates to personal data. The in the Model indicators used include the applicant's number of children and whether the applicant is or do not have Dutch nationality. The information used for the indicators in the risk classification model is personal data as referred to in Article 4, opening words and under 1, of the GDPR. Third, the processing with the risk classification model aims to evaluate individual characteristics evaluate and categorize. Based on the applicant's personal aspects, an evaluation is made and based on this, an estimate of the risk that the applicant has submitted an incorrect application, and supervision is adjusted accordingly.

<sup>8</sup> Profiling was not defined in the Wbp. Profiling is a way of processing personal data. Using the

risk classification model can therefore be qualified as processing personal data in the sense at the time of the Wbp of Article 1, preamble and under b, of the Wbp.

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### 6.2.2 Processing Responsibility

32 On the basis of what is stated in paragraph 3.1.2. of the investigation report, the AP concludes that the Minister for the three processing operations described above is the controller within the meaning of Article 4, opening words and under 7, of the GDPR and Article 1, opening words and under d, of the Wbp, for the processing of data on the nationality of applicants for childcare allowance through Benefits. For the The AP refers the motivation to paragraph 3.1.2 of the investigation report.

### 6.3. Violation of lawfulness in the three processing operations

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Article 5, first paragraph, preamble and under a, of the GDPR provides that personal data must be processed in a manner that is lawful, fair and transparent with regard to the data subject. on pursuant to Article 6(1) of the GDPR, processing of personal data is only lawful if and insofar as at least one of the conditions referred to in that article is met (bases). At the time of the Wbp, processing of personal data also had to be based on one of the conditions stated in Article 8 of the Wbp. Article 6(1) of the GDPR and Article 8 of the Wbp aim to safeguard the same legal interests and there is no (substantial) material regulatory change on this point.

34 On the basis of the legal basis referred to in Article 6(1)(e) of the GDPR, a processing of personal data only lawfully if the processing is necessary for the performance of a task of public interest or of a task in the exercise of official authority vested in the

controller has been assigned (hereinafter: public task).

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It follows from recitals 41 and 45 of the preamble that the GDPR does not require that for every separate processing requires specific legislation. It will suffice to legislate that as basis functions for various processing operations. Such legislation must be clear and precise and the its application must be predictable for those to whom it applies.

36 The necessity requirement laid down in Article 6, first paragraph, preamble and under e, of the GDPR means that the principles of proportionality and subsidiarity must be met. It

The principle of proportionality means that the infringement of the interests of the data subject in the processing of the personal data concerned should not be disproportionate in relation to the processing purpose to serve. Under the principle of subsidiarity, the purpose for which the personal data is are not reasonably processed in another, for the processing of personal data person concerned, can be achieved in a less detrimental way. The concrete test is or less infringing means are available to achieve the same end.

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In this context, surcharges may only process personal data if they are in a can rely on the basis of the GDPR, such as the performance of a public task, and the processing for that purpose is necessary.

6.3.1 Public task

The research report established that Allowances has a public task, namely the implementation of granting, paying and reclaiming childcare allowance. This public task is laid down in the Childcare Act (hereinafter: Wko) and the General Income-related Schemes Act (hereinafter: Awir).<sup>9</sup> The Awir, read in conjunction with the Awir Designation Supervisors Decree, also stipulates that Supplements is charged with supervising compliance with the provisions of or pursuant to the Awir.<sup>10</sup> Allowances receive the nationality of applicants from the BRP. Are attached to this provision Authorization decisions on the basis of which it is stated which data is provided and with which purpose that happens.

The Authorization Decrees have been published in the Government Gazette and the website of the National Office for identity information and publicly available.

For the detailed motivation, the AP refers to sections 3.4.2, 3.5.2 and 3.6.2 of the research report. In the investigation report, the AP concludes on the basis of the foregoing that Allowances has a public task and that the basis for the processing of nationality for stakeholders is sufficiently known. The Minister has stated this finding and motivation in his view not contested. The AP therefore assumes this in the following.

#### 6.3.2 Necessity

Processing of dual nationality of Dutch nationals in the TVS (first processing)

<sup>40</sup> In the investigation report, the AP established that Allowances for illegal dual nationalities has processed from Dutch applicants for childcare allowance.

<sup>41</sup>

To be eligible for childcare allowance, the applicant for childcare allowance (and his allowance partner, hereinafter jointly also: applicant) have Dutch nationality or must applicant to be a foreign national who has lawful residence in the Netherlands. The processing of the personal nationality is therefore necessary for the public task of Benefits. without this processing, it would not be possible for Allowances to claim childcare allowance and to be able to properly carry out its public task in this regard. As in the research report

explained, the requirements of proportionality and subsidiarity are also met. This is valid

9 See article 1.3, first and third paragraph, of the Wko.

10 Article 43 of the Awir, read in conjunction with Article 1 of the Awir Designation Designation Decree.

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however, only for the nationality that is relevant for determining the entitlement to

childcare allowance.

The research report established that Allowances does not only have the nationality of

persons that is relevant for determining the entitlement to childcare allowance, but also about

dual nationalities of Dutch nationals collected from the GBA and since 6 January 2014<sup>11</sup> in the

TVS have been preserved.<sup>12</sup> It is considered – in summary – that these data are not relevant for

determining the entitlement to childcare allowance and not necessarily for the public task of

Surcharges, since Dutch nationality already gives entitlement. This means that it conflicts

acted in accordance with the principle laid down in the GDPR that personal data must be processed in a

manner that is lawful with regard to data subjects. In the research report, therefore,

concluded that from January 6, 2014 until at least April 10, 2020 there is a violation of

Article 5, first paragraph, preamble and under a, of the GDPR, read in conjunction with Article 6, first paragraph, of the

GDPR and 6 of the Wbp, read in conjunction with Article 8 of the Wbp.

In the opinion, the Minister acknowledged the established facts and the conclusion as well as the motivation in

not contested the investigation report. The AP's finding that the processing of the duplicate nationality of Dutch nationals is not necessary for the task of Benefits is determined by the Minister shared. Furthermore, the Minister has stated that the historical data in the TVS on 30 June 2020 is completely cleared from the systems.

In view of this, the AP concludes that when processing the dual nationality of:

Dutch nationals has committed a violation of Article 5, first paragraph, preamble and under a, of the GDPR in conjunction with Article 6(1) of the GDPR. This also constitutes a violation of Article 6 of the Wbp read in conjunction with Article 8 of the Wbp, insofar as it was committed during the period before 25 May 2018. For the motivation, the AP also refers to paragraph 3.4.2 of the research report. This violation started on January 6, 2014 and ended on June 30, 2020.

The use of the personal data nationality for an indicator in the risk classification model (second processing)

In the investigation report, the AP has established that Allowances has been using the so-called risk classification model to deploy control capacity on (individual) applications and changes in childcare allowance with an increased risk of inaccuracy. The risk-classification model tests all applications and selects draft decisions in which such a

11 As explained above, the BRP Act entered into force on that date, whereby persons with Dutch nationality no more dual nationality is mentioned in the Brp, but only the Dutch nationality.

12 On 25 May 2018, a total of 1.4 million citizens with dual nationality were registered in the TVS. It is according to the It was not possible for the tax authorities to find out how many of these were Dutch and have applied for childcare allowance.

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increased risk exists. These selected draft decisions are not converted automatically in formal decisions, but manually reviewed by a Benefits employee.

46 The risk classification model tests all applications in a month, using a self-learning algorithm, based on which it automatically selects requests on which staffing capacity is deployed. The model estimates, on the basis of various indicators, how great the risk is that a incorrect application has been submitted. Those 100 applications that have the highest risk score in that month will be then presented for a manual check by an employee. One of the indicators of in any case, from March 2016 to October 2018, the model concerned the indicator “Dutch nationality/non-Dutch citizenship”. In the case of dual nationality, including Dutch, it was assumed that Dutch citizenship.

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In the investigation report, the AP has – in summary – established that non-Dutch citizenship (in which nationality was not considered) in combination with other indicators result in a higher risk score and lead to manual review by an employee of Surcharges. In some cases, the applicant's nationality contributed to the likelihood of an extra check.

48 In the investigation report, the AP ruled that the processing of the data 'non-Dutch citizenship' in the risk classification model did not comply with the principle of subsidiarity and thus not meet the requirement of necessity. The indicator Dutch citizenship/non-Dutch citizenship did not indicate any a definitive answer to the question of whether an applicant was eligible for childcare allowance; a more accurate indicator that says more about entitlement to childcare have the Dutch nationality, or EU nationality with registration in a Dutch municipality, or non-EU nationality and a valid residence permit”. This means that there is a less far-reaching form of processing was possible, namely by not basing the indicator solely on nationality.

49 In the opinion, the Minister acknowledged the established facts and the conclusion as well as the motivation in

not contested the investigation report. Furthermore, the Minister stated that the indicator Dutch citizenship/non-Dutch citizenship in the risk classification model not proper and not objective was substantiated. Allowance applicants who did not possess Dutch nationality were regarded as non-Dutch nationals, so that they had a proportionally higher chance that their surcharge application was selected to be reviewed manually. This should never have happened said the Minister. Furthermore, the Minister has stated that nationality is no longer allowed since October 2018. used in the risk classification model for the childcare allowance.

In view of this, the AP concludes that with the processing of nationality for the Dutch nationality/non-Dutch nationality indicator Article 5, paragraph 1, opening words and under a, of the GDPR read in conjunction with Article 6(1) of the GDPR. This also provides a

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violation of Article 6 of the Wbp read in conjunction with Article 8 of the Wbp, insofar as this was committed in the period before 25 May 2018. For the motivation, the AP also refers to paragraph 3.5.2 of the research report. In any case, this violation started in March 2016 and has ended in October 2018.

The use of personal data nationality in the detection of organized fraud (third-party processing)

The AP has established in the investigation report that from 2013 to June 2019, Allowances are the personal data nationality (has) used to detect organized fraud with childcare allowance.

It follows from the research report that, in the context of combating fraud, the nationality of applicants for childcare allowance by Allowances was processed by executing queries.

Firstly, from 9 July 2013, the nationality of applicants was used by Benefits to determine the activity of groups of applicants by performing unprovoked and periodic queries on the nationality of all applicants for allowance, or a change thereof, in the Allowance Portal. Hereby a picture of the number of applications per nationality emerged.

Secondly, from 2013, queries from, among others, the TVS were performed on – among others – the personal nationality and possible dual nationality as a concrete fraud signal to that effect gave rise to this.<sup>13</sup> The results of this were presented in an Excel file and – if applicable of a signal worthy of investigation – further processed from 2014 in the form of a table and recorded in an internal document, a so-called quick scan. In the period from May 25, 2018 to February 14, 2019 executed a total of 213 queries. Nationality was requested in all queries.<sup>14</sup>

The main reason put forward by the Tax Authorities for this processing was that nationality was a could be an indication of the homogeneity of the study population and that the experience would have showed that citizens in the same living environment, including on the basis of nationality, could provide an indication of organized abuse.

Thirdly, the investigation report identified two cases from 2014 in which Allowances to in response to a fraud alert, had requested additional data from all applicants for a certain nationality. It concerns i) a query for all citizens with the Ghanaian nationality who on or

<sup>13</sup> For example, fraud signals could be seen in the time registrations of childminders that are incorrect, too many children present at

certain childminders, incomplete contracts or little or no evaluations or progress interviews with childminders by the

childminder agency. A fraud signal could also be caused by logging in to the Benefits Portal in quick succession with different payment methods

Citizen Service Numbers from one IP address.

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had applied for a supplement after 1 January 2013<sup>15</sup> and ii) a query for all applicants with the Bulgarian nationality who had applied for an allowance between 1 June 2013 and 1 January 2014<sup>16</sup>. This one applicants could also be in possession of Dutch nationality. In fact, this means that applicants who had both Dutch and other nationalities, despite their Dutch nationality on the basis of their other nationality had a chance that their allowance application was assessed for fraud.

57 The research report also notes that Allowances decided to stop on 7 June 2019 with asking the nationality of applicants in query requests to avoid nationality can be part of analysis and research in the context of the detection of organized fraud with childcare allowance. In addition, the AP has all queries and quick scans advanced with which the nationality of applicants was requested. In the period from May 25, 2018 up to February 14, 2019, a total of 213 queries were executed. The Tax and Customs Administration has also stated that after February 14, 2019 the query process as well as the format has been adjusted and the given 'nationality' is not more is included in the query results.<sup>17</sup>

58 In the investigation report, the AP ruled – in summary – that the above-mentioned processing operations are not were necessary for the detection of childcare allowance fraud because the requirements were not met the requirements of proportionality and subsidiarity.

59 In order to get an overview of groups of applicants, a less far-reaching form of processing is possible by only to investigate whether there was increased activity within a nationality if there was more concrete reasons for this.<sup>18</sup> In addition, the Tax and Customs Administration stated during the investigation that mapping the nationality of all applicants for childcare allowance in the Allowance portal did not meet the requirements of proportionality and subsidiarity.

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Furthermore, the research report concludes that the queries and quick scans provided by Surcharges its uses do not provide any support for the view that nationality is a relevant factor in the detection of organized abuse of childcare benefits. Apart from that was a less far-reaching form of processing possible to determine the degree of homogeneity of a group. Allowances has also not been able to substantiate why processing the nationality of childcare allowance applicants in queries and quick scans in response to a fraud signal was necessary for the detection and combating of childcare allowance fraud. On the contrary, the During the investigation, the Tax and Customs Administration correctly stated that Allowances with requesting and using of the nationality of applicants in response to a fraud signal did not pay sufficient attention

15 It follows from the result of this query that 6,074 citizens of Ghanaian nationality had applied for childcare allowance.

16 It follows from the result of this query that 363 citizens of Bulgarian nationality had applied for childcare allowance.

17 See file 134.

18 For example, just one indication that something is wrong with one BSN is insufficient.

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for the requirements of subsidiarity and proportionality and that Supplements has been overshoot in the fraud approach.

With regard to the two cases identified in 2014 where Allowances had additional data requested from all applicants of a certain nationality is also included in the research report concluded that the use of nationality was not necessary in the detection of organized fraud and that no relevant information could be derived from nationality with which fraud could be established. The processing was therefore not necessary for the performance of a public task of Surcharges. During the investigation, the Tax and Customs Administration also stated that with current knowledge, the query where only nationality is selected is disproportionate.

62 In the opinion, the Minister acknowledged the established facts and stated that when investigating organized abuse of benefits, as a rule, the (possibly dual) nationality of the person concerned applicant was asked. This should never have happened, he said. The conclusion as well as the motivation in the research report are not contested. Furthermore, the Minister has reiterated that Allowances in June 2019 has formally decided not to make or collect queries based on nationality to ask.

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In view of this, the AP concludes that the Minister also uses the nationality of applicants of childcare allowance in the detection of organized Article 5, first paragraph, opening words and under a, of has infringed the GDPR read in conjunction with Article 6(1) of the GDPR. This also provides a violation of Article 6 of the Wbp read in conjunction with Article 8 of the Wbp, insofar as this was committed in the period before 25 May 2018. For the motivation, the AP also refers to paragraph 3.6.2 of the research report. In any case, this violation started in 2013 and ended in February 2019.<sup>19</sup>

#### 6.4. Violation of propriety in the last two processing operations

The investigation report further established that some of the processing operations discussed above were also improper within the meaning of Article 5, first paragraph, preamble and under a, of the GDPR and

article 6 of the Wbp. Article 5, first paragraph, preamble and under a, of the GDPR and Article 6 of the Wbp safeguard the same legal interests and there is no (material) material change in the regulations on this point.

65 The controller is obliged to process personal data in a proper manner to process. The principle of fairness under the GDPR entails, among other things, that personal data should be processed in a fair and transparent manner and processing should not may conflict with general principles of law and fundamental fundamental rights of data subjects, such as 19 The last query in which nationality was requested was carried out on 14 February 2019.

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the prohibition of discrimination laid down, inter alia, in Article 21 of the Charter of Fundamental Rights of the European Union (hereinafter: Charter).

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When assessing whether there is discrimination, it is important that it is not required that two similar cases arise. What matters is whether the cases involved are relevant are sufficiently comparable.<sup>20</sup> Furthermore, the prohibition of discrimination does not stand in the way of any unequal treatment of similar cases in relevant respects, but only to those treated as unjustified discrimination must be considered, because for the distinction made no reasonable and objective justification exists. This occurs if that distinction is not legitimate purpose or there is no reasonable, proportionate relationship between the means used and the purpose the aim is to achieve this.<sup>21</sup> This assessment framework applies equally to Article 26 of the ICCPR<sup>22</sup>, Article 21 of the Charter, Article 1 of Protocol No. 12 to the ECHR<sup>23</sup>, Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination and

Article 1 of the Constitution<sup>24</sup>.

67 The AP has investigated whether Allowances has the nationality of the applicant for childcare allowance used as a distinguishing criterion, or as a consideration in the supervision of childcare allowance, without any objective justification. In short, such processing is

as discriminatory and for that reason contrary to the principle of propriety within the meaning of

Article 5, first paragraph, preamble and under a, of the GDPR. To determine whether the various processing of nationality described in the research report were discriminatory, the processing operations were tested to the following cumulative criteria<sup>25</sup>:

1. the opposing interests are sufficiently similar in relevant respects;
2. a distinction has been made between these cases;
3. the distinction has led to a disadvantage in treatment; and
4. the distinction is not reasonable and objectively justified because it does not serve a legitimate purpose and/or there is there is no reasonable and proportional relationship between the distinction and its intended purpose.

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The research report established that the use of personal nationality as an indicator

in the risk classification model can be regarded as discriminatory processing and therefore contrary

is proper within the meaning of Article 5, first paragraph, preamble and under a, of the GDPR and

article 6 of the Wbp. This also applies to all processing operations related to nationality that are at least

20 par. 56 of the ECtHR judgment of 13 December 2011 (*Ludana v Slovakia*), ECLI:CE:ECHR:2011:1213JUD003182702).

21 par. 125 of the judgment of the ECtHR of 22 March 2012 (*Konstantin Markin v Russia*),

ECLI:CE:ECHR:2012:0322JUD003007806)

and para. 90 of the ECtHR judgment of 25 March 2014 (*Biao v Denmark*), ECLI:CE:ECHR:2016:0524JUD003859010).

22 Compare ABRvS 30 March 2016, ECLI NL:RVS:2016:865, ow. 2.4

23 Compare the judgment of the HR of 13 April 2018, ECLI:NL:HR:2018:429, ow. 2.5.2.

24 Compare the judgment of the Supreme Court of 18 October 2004, ECLI:NL:HR:2004:AP0424, ow. 3.4.2 and the judgment of the HR of 4 November 2016,



25 For an extensive legal framework, reference is made to section 3.7.1. of the research report.

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for the purpose of detecting organized fraud. In these processing operations, the AP concluded that they discriminate on the basis of nationality, without there being any objective justification for it. According to the , these improper processing research report takes place in any case from March 2016 to October 2018 and from 2013 to February 2019.

The appropriateness of using nationality for an indicator in the risk classification model (second processing)

69 According to the research report, the distinction made in the risk classification model is not reasonable and objectively justified. The distinction between the two opposing cases, and the resulting disadvantage pending, is not in a reasonable and proportionate proportion to the intended purpose. The indicators in the risk classification model aim to: select requests and changes with the highest risk of inaccuracy. The indicator Dutch citizenship/non-Dutch citizenship did not provide a complete answer to the question of whether an applicant was eligible for childcare allowance on the basis of his or her (dual) nationality. Here is also relevant whether or not an applicant is registered in a Dutch municipality or lawfully in staying in the Netherlands. There are therefore more criteria for determining whether there is lawful residence of interest. There is therefore no objective justification for the choice to reside within lawful residence to look exclusively at Dutch citizenship/non-Dutch citizenship. An objective indicator that more says about the entitlement to supplement would be: "possess Dutch nationality, or an EU nationality with

registration in a Dutch municipality, or a non-EU nationality and a valid residence permit". A

such an indicator would reduce the chance that the trading of Supplements partly depended on the nationality. This means that a less far-reaching form of processing was possible, namely by not to base the indicator solely on nationality.

As set out above in paragraph 49, the Minister has stated the established facts in his opinion

acknowledged and the conclusion as well as the motivation in the investigation report have not been contested. Furthermore, the

Minister stated that the indicator Dutch citizenship/non-Dutch citizenship in the risk

classification model was not properly and objectively substantiated and that nationality

is no longer used in the risk classification model for the childcare allowance since October 2018.

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In view of this, the AP concludes that the processing of nationality for the indicator

Dutch citizenship/non-Dutch citizenship is inappropriate processing, and that the Minister therefore

has violated Article 5, first paragraph, preamble and under a, of the GDPR. This also results in a violation

of Article 6 of the Wbp, insofar as this violation was committed in the period before 25 May 2018. For the

The AP also refers to paragraph 3.7 of the investigation report for its motivation. This violation in any

case lasted from March 2016 to October 2018.

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The appropriateness of the use of nationality in the detection of organized fraud (third-party processing)

With regard to the use of the nationality of applicants by Allowances to enhance the activity of

In order to get a picture of groups of applicants, the following is summarized in the research report:

concluded. A distinction was made by classifying individual applicants on the basis of

nationality, which has led to a disadvantage for applicants with a nationality with an increased

number of applications. Increased activity within a particular nationality, in combination with

other variables for Allowances give rise to further research. These applicants had a

increased chance of being checked compared to applicants who did not belong to a

nationality with increased activity. The distinction made is neither reasonable nor objective

justified. The resulting disadvantage pending is not in a reasonable and

proportionate to the intended purpose. After all, a less far-reaching form is possible

by only examining whether there was an increased activity within a nationality such as that there

have more concrete reasons. However, supplements were made periodically and without concrete reason

an overview of the number of applications for all nationalities.

With regard to the processing of nationality in quick scans in response to a fraud signal

the following is concluded in the research report – in summary. A distinction was made

made between all applicants on the one hand and applicants included in the queries and quick-

scans in response to a fraud signal. Surcharges used here include nationality. The

the intention was to use this to assess the homogeneity of the study population; this was possible according to

Surcharges indicate organized abuse of allowances. This distinction has led to disadvantage in the

treatment for applicants included in such a query and quick scan and is not reasonable and not

objectively justified. The resulting disadvantage in the treatment cannot be reasonably

and proportional to the intended purpose because the necessity of the processing

the nationality of the applicant is not apparent from the relevant legislation and regulations, nor from

the results of processing in practice. In addition, the Minister has considered the necessity of these

processing cannot be demonstrated and the Director-General for Allowances has corrected during the investigation

acknowledged that Supplements did not pay sufficient attention to the requirements of subsidiarity and proportionality.

With regard to the two cases identified in 2014 where Allowances had additional data requested from all applicants of a certain nationality is included in the research report – summarized – concluded the following. A distinction was made by running a query requesting additional information on all applicants with a specific nationality for a certain period. This distinction has led to a disadvantage in treatment because applicants with the Ghanaian and Bulgarian nationality respectively were subject to an additional supervisory act

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subject.<sup>26</sup> This is a suspicious distinction because it is only aimed at applicants with a specific nationality. According to the constant case law of the ECtHR, making suspect distinction is only permitted if there are very compelling reasons for doing so. Surcharges cannot occur for very compelling reasons. The necessity of processing the nationality of the applicant is also not apparent from the relevant legislation and regulations, nor from the results of processing in practice. In addition, the Minister has determined the necessity of this processing nor was it able to demonstrate and the Director-General for Allowances acknowledged during the investigation that Allowances has also paid insufficient attention to the requirements of subsidiarity and proportionality.

As set out above in paragraph 62, the Minister has stated the established facts in his opinion acknowledged and stated that in the case of investigations into organized abuse of benefits, as a rule the (possibly dual) nationality of the applicant concerned, which should never have happened.

The conclusion as well as the motivation in the investigation report are not contested.

76 In view of this, the AP concludes that the Minister also uses the nationality of applicants of childcare allowance in the detection of organized fraud as referred to in Article 5, first paragraph, preamble and has violated the legality requirement laid down under a of the GDPR. This also provides a violation of Article 6 of the Wbp, insofar as this violation was committed in the period before 25 May 2018. For the motivation, the AP also refers to paragraph 3.8 of the investigation report. This violation lasted from 2013 to February 2019.

## 7. Fines

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### 7.1 Introduction

In view of the seriousness of the violations and the extent to which they can be blamed on the Minister, the AP considers the imposition of fines appropriate. The AP therefore makes use its power to impose fines on the Minister for the various processing operations where the GDPR has been violated.

Since in this case there are continuous violations that are subject to both the Wbp and the GDPR have taken place, the DPA has checked against the substantive law as it applied at the time when the behaviors took place. In this case, these are both Articles 6 and 8 of the Wbp and the Article 5, first paragraph, preamble and under a and 6, first paragraph, of the GDPR. These provisions aim at the same legal interests and there is no (material) material change in the regulations on this point.

26 This was also the case when those applicants also had Dutch nationality.

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The AP motivates the imposition of the fines in the following. First, the different processing operations for which the fines are imposed (7.2) and then the amount of the fines to be imposed (7.3). Finally, it is assessed whether the application of the fine policy is not leads to a disproportionate outcome (7.4).

## 7.2 The processing operations to be fined

79 The AP concludes that the Minister must read Article 6, in conjunction with Article 8 of the Wbp, as well as Article 5, first paragraph, preamble and under a, of the GDPR, read in conjunction with Article 6, first paragraph, of the GDPR, has violated three different processing operations, namely:

- the unnecessary retention of the dual nationality of Dutch nationals in the TVS (first processing);
- the unnecessary use of applicants' nationality for an indicator in the risk classification model (second processing);
- the unnecessary use of the nationality of applicants in the detection of organized fraud (third-party processing).

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80 In addition, in the second and third processing, the Minister has applied the principle of fairness as established in Article 6 of the Wbp and Article 5, first paragraph, preamble and under a, of the GDPR.

The AP uses its authority to impose fines on the Minister for the violations established with regard to the first, second and third processing, because the requirement of lawfulness has been violated. In the second and third processing, which also involved a violation of the principle of propriety, the AP takes that fact into account when assessing the seriousness of the violations and thus in determining the amount of the fines.

## 7.3 Determination of the amount of the fines

82 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, jo. Article 18 of the UAVG, the AP is authorized to the Minister in case for violation of Articles 5 and 6 of the GDPR to impose an administrative fine up to an amount

of € 20,000,000. The AP has established fine policy rules regarding the implementation of the aforementioned authority to impose an administrative fine, including determining the amount thereof<sup>27</sup> (hereinafter: the Fine Policy Rules). A category classification has been chosen in the Penalty Policy Rules and bandwidth system. The Penalty Policy Rules stipulate that for the violation of Article 5, first paragraph, under a, of the GDPR and Article 6 of the GDPR, fine category III applies.<sup>28</sup> A

<sup>27</sup> Fine policy rules of the Dutch Data Protection Authority 2019, Stcrt. 2019, 14586, March 14, 2019.

<sup>28</sup> The fine for violation of Article 5(1)(a) of the GDPR is dependent on the underlying violation provision. In the present case, this is Article 6, which is classified in category III of the Policy Rules.

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fine range between a minimum of €300,000 and a maximum of €750,000 and a basic fine of € 525,000.--.

Increase in fines (Article 6, 7 and 8 of the Fine Policy Rules)

Article 83, second paragraph, of the GDPR, provides that the supervisory authority, when determining the amount of the fine takes into account the factors mentioned under a to k. These factors are also adopted in Articles 6 and 7 of the Fine Policy Rules, which – in short – provide that the basic fine is can be increased or decreased within the fine bandwidth based on the factors mentioned.

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84 In view of the factors referred to in Article 83, second paragraph, of the GDPR and Article 7 of the Fines Policy Rules

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In the first place, the AP sees a reason to increase all three (basic) fines to a maximum amount of 750,000.--. In doing so, the AP specifically takes into account the factors mentioned under a, b and f, which are listed below: being discussed. Secondly, the AP has considered that in the second and third

processing involves improper processing, which is the fundamental right of many citizens violated. This means that the AP is of the opinion that the fine category linked to the violation, with a maximum fine of 750,000.--, does not allow an appropriate punishment for these two violations. The AP considers it very serious that a government agency has discriminatory processing executed. In view of the foregoing and the applicable factors to be discussed below, it therefore decides with application of Article 8.1 of the Fine Policy Rules when determining the amount of the fine for the second and third processing to apply the next higher category (IV), and thereby decide within the the permitted bandwidth to increase the fine to a maximum amount of € 1,000,000. The AP motivates this as follows.

With regard to the nature of the violations, the AP takes into account the fact that this concerns processing of discrimination-sensitive personal data, namely nationality, the processing of which carries a higher than usual risk of people being unnecessarily placed in certain groups divided. Extra care must therefore be taken when processing the nationality of citizens to go. In addition, applicants for benefits are in a strong position vis-à-vis the government dependent and unequal position. The costs for childcare are so high that parents can afford it without are generally unable to bear childcare allowance. This means that they are often forced to to allow the processing of their personal data in the context of their acquisition by the government pleasure. A free choice, or the possibility for parents to refuse this processing, is then also no question. In such a dependent and unequal position, it is especially important that the government acts with the utmost care and observes all relevant laws and regulations, including the GDPR.

The AP considers that this has not happened as very serious. Also the systematic – and therefore not incidental – nature of the violation, whereby long-term and systematic unnecessary processing of personal data took place is taken into account when determining the seriousness of the violations.

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With regard to the scope of the violations, the AP takes the following into account. In the TVS on 25 May 2018, 1.4 million citizens were registered with dual nationality.<sup>29</sup> In addition, it appears from figures from Statistics Netherlands that Supplements in the years 2016 to 2018, in which they use the risk classification model used annual childcare allowance to between 543,000 and 634,000 households.<sup>30</sup> In addition, the investigation report established that in tackling organized fraud from July 2013 a monthly overview of the number of applicants per nationality was provided.<sup>31</sup> In the period From May 25, 2018 to February 14, 2019, a total of 213 queries were executed. Although the exact number processing cannot be established on the basis of the available information, it is plausible that probably hundreds of thousands and possibly more than a million people to a greater or lesser extent have been affected by the violation.

<sup>87</sup> In addition, the processing took place over a longer period of time. Thus, the dual nationality of Dutch people stored in the TVS from 2014 and was still not double in February 2020 nationality of all Dutch nationals removed from the TVS. The nationality of applicants is in any case from March 2016 to October 2018 used for an indicator in the risk classification model. For the to tackle organized fraud, queries from, among others, the TVS were carried out from 2013 on – inter alia – the personal nationality and possible dual nationality as a concrete fraud signal gave rise to this. The results were displayed in an Excel file and – if there was a signal worthy of investigation – further processed from 2014 in the form of a table and recorded in an internal document, a so-called quick scan. In the period from May 25, 2018 up to February 14, 2019, a total of 213 queries were executed. Nationality was requested for all queries. Because the AP only has the authority to detect the aforementioned violations since 1 January 2016. fines, in the context of the (increase of the) fine, it only takes the duration from 1 January 2016 view. In that case, too, there are long-term violations.

Moreover, the violations had a major impact on the lives of those involved. By the unnecessary processing of their nationality, applicants ran a higher risk of falsely identifying themselves as fraudsters be considered. As has become clear in the aftermath of the Allowances Affair, this could lead to that some households had to repay tens of thousands of euros in benefits already received. As a result, many applicants have ended up in serious financial problems for years, which is a has (had) a major impact on their personal lives.

29 See file 110b, p. 13. According to the Tax Authorities, it is not possible to determine how many of this number were Dutch.

30 See “Extension childcare allowance, 2013-2019” on the CBS website: <https://www.cbs.nl/nl-nl/maatwerk/2021/16/extension-kinderopvangtoeslag-2013-2019>.

31 Because the results of queries have been removed, it cannot be determined when this assignment was ended, see also section 2.4.1. and

3.9.3. of the research report. It has been established that Supplements decided on 7 June 2019 to stop requesting the nationality of applicants in query requests to prevent nationality from being part of analysis and investigation in the context of the detection of organized fraud with childcare allowance, see paragraphs 2.4.5 and 3.9.3 of the research report.

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With regard to the intentional or negligent nature of the infringements, the AP assumes that Surcharges as administrative body has a special responsibility to handle the personal data that it processes. Citizens must be able to rely on their data being Surcharges are in good hands and are only processed if necessary. This is in particular

important in the processing of personal data such as nationality, whereby careless processing can lead to discriminatory consequences. Surcharges had their processing until the minimum and must be equipped with such guarantees that the risk of discriminatory processing was excluded as much as possible. Surcharges had occurred when processing nationality of data subjects should be limited to what was necessary for the execution of the tasks assigned to it under the Wko and the Awir. Nevertheless, for a long time there have been period and large-scale unlawful, inappropriate and discriminatory processing occurred.

90 In addition, the AP already advised in 2012 that the unnecessary processing of double

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nationalities of citizens and to remove this data from the BRP.<sup>32</sup> Since the entry into force of the BRP on January 6, 2014, the dual nationality of citizens with the Dutch nationality is no longer included in the personal registration.<sup>33</sup> Because it becomes TVS filled with data from the BRP, Benefits also had the dual nationality of citizens at that time with Dutch nationality must be removed from the TVS. Nevertheless, Surcharges has up to and by 2020, the dual nationality of citizens with Dutch nationality will be processed in the TVS. This while the AP in July 2017 still inquired about the use of dual nationality by Surcharges.

Finally, the Minister did not cooperate sufficiently with the AP to remedy the infringement and the mitigate potential negative consequences by making false statements during the investigation that hindered the AP's investigation. For example, the Director General of the Tax authorities stated on July 18, 2017 that the Tax Authorities/Supplementary Benefits has no data on the dual nationality of Dutch applicants for childcare allowance. At the time he also stated that nationality was not used as a selection criterion to select precisely these applicants for childcare allowance to carry out (extra) supervision.<sup>34</sup> Only in April 2019 did the general manager Surcharges stated that the above statements are incorrect or incomplete.<sup>35</sup> With that

incorrect statements has put the AP on the wrong foot and with that the further course of the

32 See “Advice containing a proposal to amend the Basic Registration of Persons Act”, of the Protection Board personal data, 9 August 2012. To be found on the website of the Dutch Data Protection Authority:

<https://autoriteitpersoonsgegevens.nl/nl/nieuws/cbp-advises-over-beperken-registratie-double-nationaliteit>.

33 See Article 2.7, first paragraph, under a, sub 5, of the BRP Act: “In the basic registration, only the registered persons are the following data is included: a. general data: (...) 5: data on nationality, on the understanding that no data about a foreign nationality are included in addition to information about Dutch nationality or the fact that the person concerned is a Dutch person is being treated”.

34 See file 8.

35 See file 23a and 26a.

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investigation complicated and delayed. In addition, the AP had to provide information on September 13, 2019 because the information request dated July 8, 2019 had still not been answered, despite the AP had already extended the initial response period of 31 July 2019 three times at the request of the tax authorities.<sup>36</sup> The AP considers this to be a heavy burden on the Tax and Customs Administration as a government body.

#### 7.4 Proportionality

Finally, the AP assesses pursuant to Articles 3:4 and 5:46 of the General Administrative Law Act (hereinafter: Awb) or the application of its policy for determining the amount of the fine in view of the circumstances of the particular case, does not lead to a disproportionate outcome.

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93 The AP is of the opinion that (the amount of) the fine is proportionate. In this judgment, the AP has assessed the

seriousness of the

violation, the extent to which it can be blamed on the Minister, and other circumstances

weighed in. For example, there was discriminatory processing of sensitive personal data such as

nationality of citizens by a government organization. In addition, there was a large number

involved, did the violation last for a longer period of time, did it have a major impact on

involved and was there an intentional or negligent act on the part of the Minister, whereby

there was insufficient cooperation with the AP to remedy the infringement to prevent its adverse consequences

to limit. The AP qualifies this breach of the GDPR as very serious.

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As explained above, the AP has concluded that the Minister has met the requirement of legality

violation with three different processing operations (i. the unnecessary retention of the double

nationality of Dutch nationals in the TVS, ii. the unnecessary use of the nationality of

applicants for an indicator in the risk classification model and iii. the unnecessary use of the

nationality of applicants in the detection of organized fraud.) In addition, the AP

concluded that the Minister has respected the principle of fairness in the second and third processing

violate. The AP considers the imposition of separate fines for the latter violations of the law

principle of quite disproportionate because the facts from which these offenses arise have already been

be penalized for violations of the lawfulness requirement. Instead, the AP has the

violations of the principle of propriety taken into account when determining the amount of the

fines for violation of lawfulness in the second and third processing.

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In view of the foregoing, the AP sees no reason to set the amount of the fine on the basis of proportionality

and the circumstances referred to in the Penalty Policy Rules, to the extent applicable in the present

case, further increase or decrease.

36 See file 48a.

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## 7.5 Conclusion

96 In view of the foregoing, the AP sets the following fines:

- for the violation of lawfulness during the first processing: € 750,000
- for the violation of lawfulness during the second processing: € 1,000,000
- for the violation of lawfulness in the third processing: € 1,000,000

## 8. Operative part

Fines

I

The AP imposes an administrative fine on the Minister of Finance in the amount of € 750,000.

(in words: seven hundred and fifty thousand euros), for violation of Article 5, first paragraph, preamble and under a of the GDPR read in conjunction with Article 6(1) of the GDPR and violation of Article 6 of the Wbp read in conjunction with Article 8 of the Wbp when storing the dual nationalities of Dutch nationals in the TVS;

The AP imposes an administrative fine on the Minister of Finance in the amount of € 1,000,000.

- (in words: one million euros), for violation of Article 5, first paragraph, preamble and under a, of the GDPR read in conjunction with Article 6(1) of the GDPR and violation of Article 6 of the Wbp read in conjunction with Article 8 of the Wbp when using the nationality of applicants for an indicator in the risk classification model;

The AP imposes an administrative fine on the Minister of Finance in the amount of € 1,000,000.

- (in words: one million euros), for violation of Article 5, first paragraph, preamble and under a, of the GDPR read in conjunction with Article 6(1) of the GDPR has violated and violated of Article 6 of the Wbp read in conjunction with Article 8 of the Wbp when using the

nationality of applicants in the detection of organized fraud. 37

II

III

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

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Yours faithfully,

Authority Personal Data,

w.g.

drs. C.E. Mur

board member

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.