



Vertrouwelijk/Aangetekend

TikTok Inc., TikTok Technology Limited en
TikTok Information Technologies UK Limited
p.a. Brinkhof Advocaten
[CONFIDENTIAL]
Grote Bickersstraat 74-78
1013 KS AMSTERDAM

Date
9 April 2021

Our reference
[CONFIDENTIAL]

Contact person
[CONFIDENTIAL]

Subject
decision to impose an administrative fine

Dear [CONFIDENTIAL],

The Dutch Data Protection Authority (*Autoriteit Persoonsgegevens*) (hereinafter: the AP) has decided to impose an administrative fine of **€750,000** on TikTok Inc., with its place of business in California, the United States of America. The AP finds that during the period from 25 May 2018 to 28 July 2020 inclusive, TikTok Inc. provided its Privacy Policy to Dutch users - including children - only in English. 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 take a (final) decision. The AP, in its role as the supervisory authority concerned and the requesting authority, will continue to be involved in the finalisation of this case and in the realisation of the final decision.

This decision is explained in more detail below.¹ After the introduction in Section 1, Section 2 deals with the authority of the AP to take enforcement action. Section 3 then describes the legal framework. Section 4 sets out the main facts of the case. In Section 5, the AP assesses the facts on the basis of the legal framework and concludes that TikTok Inc. has infringed Article 12(1) of the GDPR. Section 6 gives reasons for the level of the administrative fine. Finally, Section 7 contains the operative part and the legal remedies clause.

¹ The Dutch-language decision is authentic, however this English-language version contains a complete and accurate translation of it.



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1. Introduction

1.1 Legal entities concerned

1. TikTok Inc. is based in California, United States of America.²
2. TikTok Inc. is part of the Bytedance group of companies (hereinafter: Bytedance), whose parent company is Bytedance Ltd.³ Bytedance operates a range of content platforms worldwide that inform, educate, entertain and inspire people.⁴ In May 2017, Bytedance launched the TikTok app.⁵ This app allows users to create short videos, edit them and share them online. In November 2017, Bytedance acquired 'musical.ly', a content platform app similar to TikTok. Following the acquisition of musical.ly by Bytedance, musical.ly was rebranded TikTok and in May 2019 the corporate name of musical.ly Inc. was changed to TikTok Inc.⁶

1.2 Course of the investigation

3. The AP initiated an ex officio investigation into the processing of personal data by TikTok Inc. [CONFIDENTIAL] This investigation by the AP culminated in a report of findings on 1 October 2020 (hereinafter: investigative report).
4. [CONFIDENTIAL]
5. [CONFIDENTIAL]
6. [CONFIDENTIAL] the investigative report concludes that during the period from 25 May 2018 to 29 July 2020 inclusive, TikTok Inc. infringed Article 12(1) of the GDPR by failing to inform children in an intelligible language about the processing of personal data.
7. [CONFIDENTIAL]
8. By letter and e-mail dated 2 October 2020, the AP informed TikTok Information Technologies UK Limited (hereinafter: TikTok UK) of its intention to enforce its decision against TikTok Inc. and sent it the underlying investigative report and documents. TikTok UK and TikTok Inc. were given the opportunity to express their views on the investigative report and the underlying documents.

² TikTok Inc., 10100 Venice Blvd, Suite 401, Culver City, CA 90232, United States of America.

³ Case document 9, response to question 1.

⁴ Case document 9, response to question 1.

⁵ Case document 9, response to question 1.

⁶ Case document 9, response to question 1.



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9. On 11 November 2020, TikTok Inc., TikTok UK and TikTok Technology Limited (hereinafter: TikTok Ireland) submitted a written viewpoint. In this viewpoint, TikTok⁷ disputed the results and conclusions of the aforementioned investigative report. TikTok also argued that, as of 29 July 2020, it has its main establishment, as referred to in Article 4(16) of the GDPR, in Ireland and, as a result, the AP is not competent to take enforcement action against TikTok.
10. A hearing for expressing views took place on 20 November 2020, during which TikTok provided further oral explanations of its written viewpoint.
11. TikTok also announced in its written submission and during the hearing for expressing views that it intended to roll out a number of additional measures by early January 2021 with the aim of increasing protection for teenagers under the age of 16 years⁸ [CONFIDENTIAL]. These measures are as follows:
 - 'Private account' will become the default setting for users under the age of 16 years. A private account means that other users cannot see the account holders' videos unless these account holders allows other users to follow them. TikTok is implementing this change for both existing users and new users under the age of 16 years.
 - The feature 'Suggest your account to others' is turned off by default for both existing and new users under the age of 16 years.
 - The option to comment on videos will be set to 'Friends only' by default for all existing and new users under the age of 16 years. The 'Everyone' option is disabled for these users.
 - The 'Duet' and 'Stitch' features are no longer available for users under the age of 16 years.
 - Downloads are only allowed for videos created by users aged 16 years and above.
 - The Family Pairing feature has been expanded with an option that allows parents to also manage children's privacy settings.
 - A simplified in-app reporting function has been created, making it easier for users to flag accounts which they believe belong to users under the age of 13 years.
12. On 21 January 2021, TikTok submitted additional information to the AP in support of its contention that, as of 29 June 2020, TikTok Ireland qualifies as main establishment, pursuant to Article 4 (16) of the GDPR.

2. Competence of the AP

Introduction

13. Article 55(1) of the GDPR provides that each supervisory authority shall be competent for the performance of the tasks assigned to and the exercise of the powers conferred on it in accordance with this Regulation on the territory of its own Member State. Article 56(1) of the GDPR, however, provides that the supervisory authority of the main establishment or of the single establishment of

⁷ Unless otherwise indicated, references to TikTok relate to TikTok Inc., TikTok UK and TikTok Ireland.

⁸ On 13 January 2021, TikTok publicly announced these changes to the default settings of TikTok.



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the controller or processor shall be competent to act as lead supervisory authority for the cross-border processing carried out by that controller or processor in accordance with the procedure provided in Article 60 of the GDPR.

14. Article 4 (16) of the GDPR defines the concept of main establishment as follows: *“as regards a controller with establishments in more than one Member State, the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of personal data are taken in another establishment of the controller in the Union and the latter establishment has the power to have such decisions implemented, in which case the establishment having taken such decisions is to be considered to be the main establishment.”*
15. The Guidelines for identifying the lead supervisory authority⁹ specify on page 7 that Recital 36 of the GDPR is useful in clarifying the main factor to be used to determine the main establishment if the central administration criterion does not apply. Recital 36 of the GDPR states: *“The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes and means of processing through stable arrangements.”*
16. Opinion 8/2019 on the competence of a supervisory authority in case of a change in circumstances relating to the main or single establishment¹⁰ addresses the issue of which supervisory authority is competent in the event of a change of circumstances regarding the main establishment during ongoing investigations. This Opinion is relevant in the present case as TikTok alleges that there has been a change in circumstances.¹¹
17. Opinion 8/2019 alleges, summarised, that in the event of continuing infringements the competence may shift to another supervisory authority until a final decision is taken. Opinion 8/2019 provides that the relocation of a main or single establishment from a third country to the EU during ongoing proceedings allows controllers to benefit from the one-stop-shop mechanism.¹²
18. The switch of the role as lead supervisory authority does not mean that the initial supervisory authority was not competent to act. The actions taken by the former lead supervisory authority and the information and evidence obtained therefrom can be used by the new lead supervisory authority.¹³ Furthermore, Opinion 8/2019 stresses that the cooperation procedures mentioned in Article 60 of the GDPR apply in the event of a change of lead supervisory authority. This means that the former (lead) supervisory authority remains involved in reaching a final decision, on the basis of the procedures described in Article 60 of the GDPR.¹⁴

⁹ Guidelines for identifying a controller or processor’s lead supervisory authority, 5 April 2017, Article 29 Data Protection Working Party.

¹⁰ Opinion 8/2019 on the competence of a supervisory authority in case of a change in circumstances relating to the main or single establishment, 9 July 2019, European Data Protection Board.

¹¹ See marginal number 8 of this decision.

¹² See marginal numbers 16 and 30 of Opinion 8/2019.

¹³ See marginal number 21 of Opinion 8/2019.

¹⁴ See marginal number 24 of Opinion 8/2019.



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19. In addition, Opinion 8/2019 notes that forum shopping should be avoided and that it is therefore up to the controller to prove that the relocation actually took place. The concept of the main establishment itself indicates that it is not just a momentary or only a bureaucratic step to defined by the undertaking, but a real one, made with a lasting purpose. Therefore, supervisory authorities should exercise effective control over the notion of main establishment in order to reduce the risk that controllers or processors artificially change their main establishment for the purpose of changing the competent authority to handle the case.¹⁵

Viewpoint of TikTok

20. In its written viewpoint, TikTok states that controllership has been transferred from TikTok Inc. to TikTok Ireland and TikTok UK on 29 July 2020 and that TikTok Ireland qualifies as the main establishment in accordance with Article 4 (16) of the GDPR.¹⁶ TikTok alleges that as a result, from 29 July 2020, the competence to investigate TikTok lies with the Irish SA and not with the AP. TikTok bases this viewpoint on Opinion 8/2019.
21. TikTok further alleges that while the AP states in the investigative report that TikTok has not yet demonstrated that TikTok Ireland qualifies as its main establishment, it does not provide any evidence that the AP is competent to act in the first place. TikTok states in its written viewpoint that the AP only provides a reference to correspondence between TikTok and the Irish SA and in particular to the letter of 13 August 2020 from the Irish SA to TikTok.
22. TikTok further notes in its written viewpoint that, in the investigative report, the AP has failed to take into account the extensive response that TikTok sent to the Irish SA on 30 September 2020. According to TikTok, this response offers additional, detailed and strong evidence that TikTok's main establishment has been in Ireland since 29 July 2020.
23. TikTok concludes in its written viewpoint that it, taking into account all correspondence with the Irish SA, has sufficiently demonstrated that TikTok Ireland and TikTok UK are joint controllers, and that TikTok Ireland can also be regarded as the main establishment in accordance with Article 4(16) of the GDPR as of 29 July 2020. TikTok alleges that the AP is not competent and argues that, according to the GDPR and Opinion 08/2019, every pending proceeding should be transferred to the Irish SA.

Considerations of the AP

24. First of all, the AP notes that TikTok did not have a main establishment in the EU in accordance with Article 4 (16) at the start of the investigation. At that time, as the controller, TikTok Inc. had appointed TikTok UK as its representative in accordance with Article 27 of the GDPR. Therefore,

¹⁵ See marginal number 26 of Opinion 8/2019

¹⁶ TikTok stated in its letter of 30 September 2020 to the Irish SA that TikTok Ireland's main establishment is based on its decision-making role and its power to have decisions implemented, rather than the location of its place of central administration.



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Article 56(1) of the GDPR was not applicable at the start of the investigation and thus the AP was competent based on Article 55(1) of the GDPR.

25. As described above, TikTok alleges that this situation changed on 29 July 2020. TikTok alleges that it has created a main establishment in Ireland and that, from this date onwards, the Irish SA is competent and not the AP. In the following, we will first address the question of whether TikTok has proved that it has created a main establishment in Ireland. We will then describe the consequences regarding the competence of the AP to act as the lead supervisory authority.

Main establishment

26. It is clear from marginal numbers 13 to 19 of this decision that TikTok must prove that it has set up an actual main establishment made with a lasting purpose. A main establishment must carry out its management activities effectively and efficiently, with a view to taking key decisions on the purposes of, and the means for, the processing through stable arrangements. This should not be a momentary or only a bureaucratic step or an artificial change of the main establishment with the aim of changing the competence of the lead supervisory authority with regard to an ongoing case.
27. As stated in the investigative report, based on the information provided by TikTok up to 7 August 2020, the AP considered that it had not yet sufficiently demonstrated that it had its main establishment in Ireland. In that context, the Irish SA, by letter of 13 August 2020, submitted a large number of additional questions to TikTok in order to obtain further clarification on various aspects.¹⁷
28. In response to the aforementioned letter of 13 August 2020, TikTok provided additional information to the Irish SA on 30 September 2020. The AP received part of this additional information via the Irish SA on 7 October 2020. The remaining additional information was withheld because the Irish SA had not obtained permission from TikTok to disclose this information to other supervisory authorities, including the AP. TikTok considered this information to be highly company-confidential in nature and required that it first be consulted before it was disclosed by the Irish SA. The AP has requested TikTok to provide these company-confidential documents to the AP. On 25 January 2021, TikTok provided all documents to the AP.
29. The information provided on 7 October 2020 and 25 January 2021 showed that TikTok has an actual main establishment in Ireland made with a lasting purpose. With regard to this viewpoint, the AP considers as follows.
30. One of the AP's key findings in August 2020 was that, although TikTok stated on paper that its establishment in Ireland made decisions and had the authority to implement these decisions within the EU, there were still many uncertainties about many related issues. In addition, the documents submitted did not demonstrate that there were stable and lasting arrangements within the group and that the Irish establishment would have sufficient qualified people and resources to fulfil its role as

¹⁷ See case document 37.



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the main establishment. In August 2020, it could not be ruled out that TikTok had merely taken a bureaucratic, artificial step with the aim of changing the competence of the lead supervisory authority (forum shopping).

31. The minutes of the board of TikTok's Irish branch submitted by TikTok on 25 January 2021 show that the changes within the TikTok group concerning the shifting of controllership for EU data subjects and the setting up of a main establishment in Ireland are the result of a project that has already been running for some time. In particular, in the period since the end of May 2020, several concrete initiatives have been started and decisions taken in this framework in order to prepare the organisation for the new structure. These minutes of the board of the Irish branch show that a lasting transition is actually being pursued and that necessary decisions are being taken in this context.
32. In addition, minutes from the Data Protection Steering Committee (DPSC)¹⁸ show that this decision-making body has been discussing and making actual decisions on important data protection issues since 29 July 2020. These are issues that directly affect the protection of children. It is also clear from various documents submitted that the Irish branch is actually responsible for the implementation of decisions taken and is responsible for carrying out some key processes, such as assessing requests from data subjects and investigating and reporting data breaches.
33. In addition, summaries submitted by TikTok show that TikTok Ireland recruited hundreds of new employees in the spring and summer of 2020. It was precisely on this point that there were doubts, since the Irish branch had very few employees at the beginning of 2020. The AP had doubts as to whether TikTok Ireland would be able to recruit employees of sufficient quality on a large scale during a pandemic. After all, it is essential that a large platform such as TikTok has sufficient high-quality employees to actually function as a main establishment. According to these summaries, TikTok Ireland has been able to attract a large number of permanent and, on paper, competent employees despite prevailing COVID restrictions. As a result, the AP is of the opinion that the Irish establishment has sufficient manpower to actually fulfil its role as the main establishment.
34. Based on these additional documents in combination with the existing written agreements between legal entities within the TikTok group, the AP finds that there is a main establishment in Ireland and that this is not merely a bureaucratic and artificial step for the sole purpose of changing the competence of the lead supervisory authority (forum shopping).
35. Pursuant to the foregoing, the AP finds that TikTok has shown that it created a main establishment, in accordance with Article 4 (16) of the GDPR, in Ireland on 29 July 2020.

Competence

¹⁸ According to the agreements previously submitted by TikTok (intra-group), this decision-making body was established by the joint controllers to discuss and make decisions on important data processing issues.



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36. It follows from Opinion 8/2019 that the competence to act as lead supervisory authority in the case of continuing infringements shifts from the AP to the Irish SA at the moment that TikTok has shown that it set up a main establishment in Ireland and if no final decision has yet been taken by the AP. As described above, the additional information provided on 7 October 2020 and 25 January 2021 proves that TikTok set up a main establishment in Ireland on 29 July 2020. The AP therefore considers this to be the date on which the competence [CONFIDENTIAL] shifted from the AP to the Irish SA.
37. [CONFIDENTIAL]
- [CONFIDENTIAL]
38. [CONFIDENTIAL]
39. [CONFIDENTIAL]
- [CONFIDENTIAL]
40. [CONFIDENTIAL]
41. [CONFIDENTIAL]
- [CONFIDENTIAL]
42. [CONFIDENTIAL]
43. [CONFIDENTIAL]
- [CONFIDENTIAL]
44. With regard to the infringement described in the investigative report of Article 12(1) of the GDPR in the period from 25 May 2018 to 28 July 2020 inclusive, the AP notes that the infringement ended prior to 29 July 2020. This infringement therefore falls outside the scope of Opinion 8/2019.¹⁹ The AP therefore remains competent to take a decision and use its corrective powers.
45. [CONFIDENTIAL]
46. Section 3 sets out the relevant legal framework. Section 4 deals with the relevant facts and circumstances. Section 5 contains the legal assessment. Section 6 gives reasons for the level of the administrative fine. Finally, Section 7 contains the operative part and the remedy clause.

¹⁹ See marginal number 16 of Opinion 8/2019.



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3. Legal framework

3.1 Scope of the GDPR

47. Pursuant to Article 2(1) of the GDPR, this Regulation applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.
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, regardless of whether the processing takes place in the Union or not.
49. Pursuant to Article 4 of the GDPR, for the purposes of this Regulation:
- “1) ‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’) (...);
 - 2) ‘processing’ means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means (...);
 - (...)
 - 7) ‘controller’ means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data (...).”

3.2 Principles: lawfulness, fairness and transparency & data minimisation

50. Article 5 of the GDPR sets out the principles relating to the processing of personal data.
51. Under Article 5(1)(a) of the GDPR, personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject (“lawfulness, fairness and transparency”).

3.3 Transparency and obligation to provide information

52. Insofar as relevant for these purposes, Article 12(1) of the GDPR states:
“The controller shall take appropriate measures to provide any information referred to in Articles 13 (...) relating to processing to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child. The information shall be provided in writing, or by other means, including, where appropriate, by electronic means. (...)”
53. Article 13(1) of the GDPR states:
“Where personal data relating to a data subject are collected from the data subject, the controller shall, at the time when personal data are obtained, provide the data subject with all of the following information:
a) the identity and the contact details of the controller and, where applicable, of the controller’s representative;
b) the contact details of the data protection officer, where applicable;



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- c) the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;*
- d) where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller or by a third party;*
- e) the recipients or categories of recipients of the personal data, if any;*
- f) where applicable, the fact that the controller intends to transfer personal data to a third country or international organisation and the existence or absence of an adequacy decision by the Commission, or in the case of transfers referred to in Article 46 or 47, or the second subparagraph of Article 49(1), reference to the appropriate or suitable safeguards and the means by which to obtain a copy of them or where they have been made available.”*

4. The facts

54. This section lists the facts relevant to the decision. First, in paragraph 4.1, the TikTok app will be described in general terms. Paragraph 4.2 discusses how users create an account and post videos via the TikTok app and how the Privacy Policy of TikTok Inc. was offered to users. In paragraph 4.3, the underlying processing of personal data that takes place in the context of the use of the TikTok app is briefly discussed. Finally, paragraph 4.4 outlines the large number of children who use the TikTok app.

4.1 General description of the TikTok app

55. TikTok is a platform that allows users to create, edit and share short videos online via an app. The TikTok app enables users to upload photos and videos from their smartphones and add filters, stickers, effects and music. Over time, TikTok has evolved into a platform where users present themselves by posting creative and humorous short videos. This distinguishes TikTok from other social media platforms, such as Instagram.
56. In addition to creating, editing and posting short videos, users can also make and maintain social contact via the TikTok app. For example, users can comment on other users' videos, like videos, follow other users, become friends with other users and send and receive messages from other users, and so on. It is also possible, for example, to set up live stream connections. The TikTok app can therefore be considered as a 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 that are relevant to him or her via a continuous feed. Exactly which videos are offered via this feed differs per user and depends on his or her preferences. The algorithm developed by TikTok determines which videos are shown. In addition, interviews with advertisers active on the TikTok platform show that for the time being only TikTok knows exactly how this algorithm works and which factors are decisive.
58. The above features can all be used via the TikTok app. The TikTok app can be downloaded for free from various app stores. As with many social media platforms, the business model of TikTok focuses



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on the generation of income via advertisements, including personalised advertisements. Where Dutch users are concerned, the investigation has shown that TikTok was not yet offering personalised advertisements as a product to advertisers at the time the investigative report was drawn up. However, this product is already available in larger European markets such as France, Italy, Spain and the UK.

4.2 Registration of users and provision of the Privacy Policy to users

Registration process

59. After a user has downloaded the TikTok app in an app store, he or she can immediately view the videos that have been shared via the TikTok platform. Via the 'for you' page, the user will also receive videos via a feed. As yet, no other features are available in the app. This means that unregistered users can watch videos but cannot post videos or enter into social contact about them via the TikTok platform.
60. It is necessary to create a TikTok account in order to create, edit and post videos online and to make use of the interactive options of the TikTok app.
61. As part of an online test, the AP created an account to see how users sign up in the TikTok app and what data they have to provide. Briefly, a user has to go through the following four steps.²⁰
62. First of all, a user must indicate the method he or she wishes to use for the sign-up process by means of telephone number, email address or other existing social media account. The user is informed in Dutch that he or she is agreeing to the Terms of Service and Privacy Policy of TikTok. To open these documents, the user can click on the Terms of Service and Privacy Policy.
63. Afterwards, the user must indicate his or her year of birth by means of a cogwheel. If the user fills in a year of birth showing that the person is under the age of 13 years, the user will see a red bar with the text "*sorry, it looks like you are not eligible for TikTok, but thank you for looking us up*". Until the beginning of 2020, this red bar disappeared after about 5 seconds and the user returned to the screen to re-enter his or her year of birth via a cogwheel. At that moment the user could enter a different year of birth in order to proceed through this step. At the beginning of 2020, TikTok introduced a temporary blockade if a user indicates that they are under the age of 13 years.²¹
64. As a third step, the user must enter his or her email address or telephone number and set a password. It is once again stated on the screen that the user agrees with the Terms of Service and Privacy Policy of TikTok.

²⁰ Reference is made to case documents 1 and 7 for a full description of the process that Dutch users need to go through to create an account and post videos online.

²¹ The online test conducted by AP on 17 December 2019 showed that this blockade had not been implemented as yet. However, this was the case during the online test conducted by AP on 25 February 2020.



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65. Finally, as a fourth step, TikTok checks that the user is not a robot by presenting a manual test (using the mouse cursor to move puzzle pieces to the correct place). After proceeding through this step the user is logged in and can use the features of the TikTok app, such as posting videos and making social contacts.

Privacy policy in English

66. The online tests carried out by the AP in December 2019 and February 2020 showed that the Privacy Policy was displayed in English during the registration process described above. This was also the case when a user was logged in and wanted to consult the Privacy Policy in the TikTok app.²² In response to the AP's question about how TikTok informs Dutch children about the processing of their personal data, TikTok stated on 1 May 2020 that it does this through its Privacy Policy, among other means. The Privacy Policy provided by TikTok to the AP was an English version.²³
67. On 26 June 2020, TikTok informed the AP that it will provide its Privacy Policy to Dutch data subjects, including to Dutch children under the age of 16 years in Dutch from 29 July 2020. TikTok also pointed out in its written viewpoint that, from 29 July 2020, it has also compiled a separate document that is appropriate for Dutch-speaking children in terms of language and form.²⁴
68. Based on the foregoing, the AP finds that during the period from 25 May 2018 to 28 July 2020 inclusive, TikTok Inc. provided its Privacy Policy to Dutch users - including children - only in English.

4.3 Processing of personal data by TikTok

69. As a social media platform, TikTok processes a large amount of personal data of both registered and unregistered users. For example, TikTok processes the following categories of personal data to enable users to share videos and interact with other users 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, appsecret, code, redirected URL (for social login/sharing).²⁵
70. The above categories of personal data are mentioned by TikTok in its register of processing activities. In this register, TikTok describes which personal data it processes, including additional characteristics such as the basis, retention period, security measures and country, for all processing

²² Case documents 1 and 7.

²³ Case document 15, response to question 10 and Annex 5. The text of the Privacy Policy submitted by TikTok to the AP concerns the version last updated in October 2019. However, as can be seen from the response to question 11, TikTok did not substantially modify the terms of the Privacy Policy in the period from 25 May 2018 - 29 July 2020.

²⁴ Case document 33 and marginal number 160 of the investigative report.

²⁵ Case document 15, Annex 3.



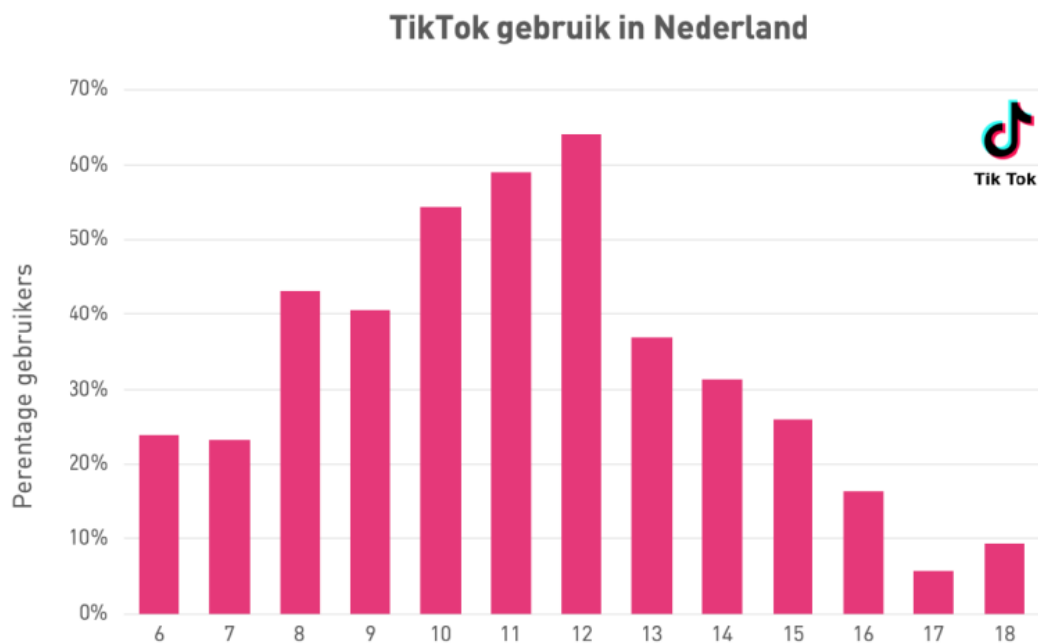
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purposes it has identified.²⁶

4.4 Use of the TikTok app by children

71. TikTok is a social media app that is popular with and used by children. Research data shows that a large group of Dutch children under the age of 16 years use the TikTok app and that some of this group of young children are around 12 years of age (and in some cases even younger).
72. For example, an indicative study carried out at the end of 2019 by a research agency and communicated to the AP, shows that TikTok is used by children, especially around the age of 12 years.²⁷ This research agency estimated that approximately 830,000 Dutch children under the age of 18 years use TikTok. The table below - which is based on the results of the study from the end of 2019 by the aforementioned research agency - shows that children aged from 6 to 18 years used the TikTok app and that TikTok was used proportionately mainly by children aged around 12 years.²⁸



²⁶ For example, TikTok describes the following purposes in its processing register: *"To enable users to share user content and interact with other users"*. It would be going too far for this decision to describe in detail all eighteen processing purposes of TikTok. For the purposes of this decision, it is sufficient to refer to the processing register and data protection impact assessment provided by TikTok. See Annex 3 to case document 15 for the record of processing activities and Annex 4 to case document 15 for the data protection impact assessment.

²⁷ Case document 24.

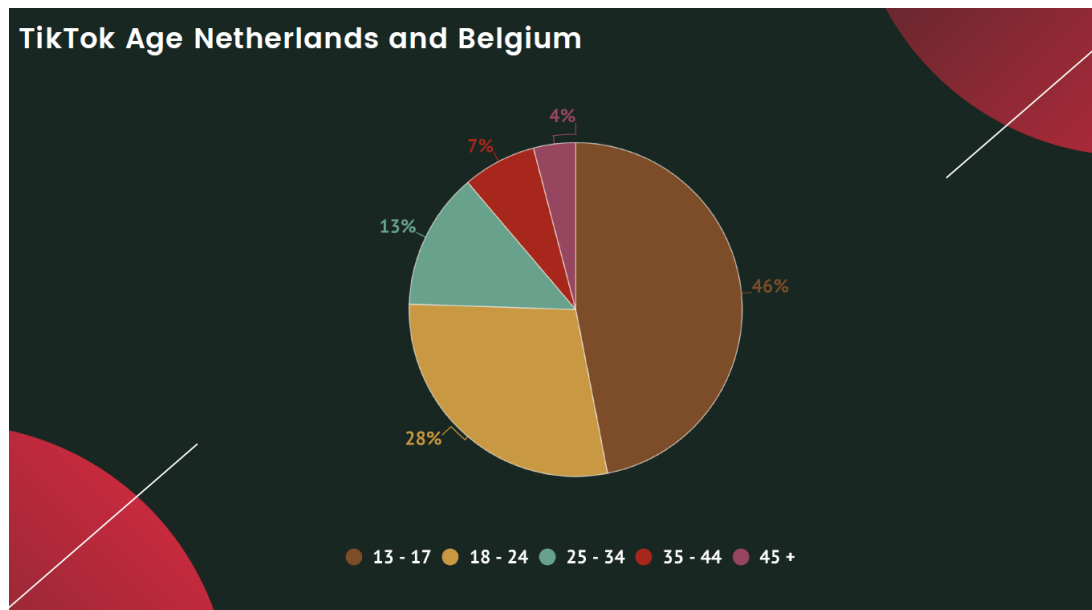
²⁸ These results have been confirmed during discussions that the AP has had with various parties active in this market, see case document 25, p. 2, case document 26, p.2 and case document 36.



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73. In addition, research shows that TikTok has gained in popularity in recent months during the COVID-19 pandemic, including among older users. This is illustrated in the chart below, which is based on official TikTok figures for May 2020²⁹:



74. Furthermore, the media reported in August 2020 that figures from Bytedance, TikTok's parent company, show that the number of active TikTok users in the Netherlands had risen to 4.5 million. According to these figures, although teenagers are no longer the largest group of users, users in the age category 13 to 17 years constitute 28 percent of all users in the Netherlands, which amounts to approximately 1,260,000 users.³⁰
75. On the basis of the above, the AP finds that TikTok is used by a large number of Dutch children under the age of 16 years.

²⁹ The marketer that published these figures notes that it is not only children who currently use the TikTok app: "There are 7 million app downloads in the Netherlands, 3.5 million of which are unique users. This cannot just be young people under the age of 18. It means that there is still a target group that are older than 18 years". See case document 26, p.2.

³⁰ See for example Emerce: [TikTok grows to 4.5 million users in the Netherlands - Emerce](#).



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5. Assessment

76. This section consecutively establishes that TikTok Inc. processed personal data as a controller and that TikTok Inc. infringed Article 12(1) of the GDPR during the period from 25 May 2018 to 28 July 2020 inclusive.

5.1 Processing of personal data

Personal data

77. Article 4 (1) of the GDPR provides that personal data includes any information relating to an identified or identifiable natural person.

78. As shown in the record of processing activities³¹, during the period from 25 May 2018 to 28 July 2020 inclusive, TikTok Inc. processed a large amount of users' data including the videos they posted, messages they sent and other (social) activities they engaged in. On this basis, the AP establishes that the present case involves information on identifiable natural persons and can therefore be considered as personal data within the meaning of Article 4 (1) of the GDPR.

Processing

79. Pursuant to Articles 2(1) and 3(1) of the GDPR, the GDPR applies to the processing of personal data wholly or partly by automated means in with the context of the activities of an establishment of a controller or a processor in the European Union. The term 'processing', pursuant to Article 4(2) of the GDPR, includes any operation or set of operations which is performed on personal data, whether or not by automated means, such as collection, storage, dissemination and making available of data.

80. The record of processing activities of TikTok Inc. and paragraph 4.1 show that in the period from 25 May 2018 to 28 July 2020 inclusive, TikTok Inc. received, processed, analysed and disseminated users' data, among other things. This concerns the processing of personal data within the meaning of Article 4(2) of the GDPR.

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

5.2 Controller

82. Article 4(7) of the GDPR states that the controller is a natural or legal person which, alone or jointly with others, determines the purposes and means of the processing of personal data. The determining

³¹ Case document 15, Annex 3.



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factor is who determines the purposes and the means of the processing of personal data. The controller can do this alone or jointly with others.

Viewpoint of TikTok

83. TikTok states in its written viewpoint that controllership has been transferred from TikTok Inc. to TikTok Ireland and TikTok UK as of 29 July 2020.

Considerations of the AP

84. The record of processing activities and Privacy Policy of TikTok Inc.³² submitted on 20 May 2020, as well as TikTok's written viewpoint, show that TikTok Inc., based in California (the United States), determined the purposes and means of the processing operations during the period from 25 May 2018 to 28 July 2020 inclusive.
85. The AP therefore concludes that, for the period from 25 May 2018 to 28 July 2020 inclusive, TikTok Inc. qualifies as a controller within the meaning of Article 4(7) of the GDPR.

5.3 Transparency and obligation to provide information

86. Transparency is an important principle of EU law.³³ Transparency is an expression of the principle of fairness with regard to the processing of personal data, as enshrined in Article 8 of the Charter of Fundamental Rights of the European Union. Transparency, together with lawfulness and fairness, is therefore included in Article 5(1) (a) of the GDPR as one of the basic principles for the processing of personal data.
87. Recital 60 of the GDPR states that the principles of fair and transparent processing require that the data subject be informed of the existence of the processing operation and its purposes. Recital 39 of the GDPR adds that the principle of transparency requires that any information and communication relating to the processing of such personal data be easily accessible and easy to understand, and that plain and language be used. Natural persons should be made aware of risks, rules, safeguards and rights in relation to the processing of personal data and of how to exercise their rights in relation to such processing.
88. The Guidelines on transparency under Regulation (EU) 2016/679 (hereinafter: Transparency Guidelines) state that one of the core elements of the principles of transparency and fairness is that data subjects must be able to determine in advance what the scope and consequences of the processing entails and that they should not be taken by surprise at a later point about the ways in which their personal data have been used.³⁴

³² Case document 15, Annexes 3 and 5.

³³ See, among others, Articles 1 and 22(2) of the Treaty on European Union.

³⁴ Transparency Guidelines, point 10.



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89. The practical information requirements for informing data subjects are detailed in Articles 12 to 15 of the GDPR.
90. Article 12 of the GDPR provides that the controller shall take appropriate measures provide any information relating to the processing to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child. The information shall be provided in writing or by other means.
91. The “intelligible” element is specified in the Transparency Guidelines, using an average member of the intended audience as a yardstick. An accountable data controller will have knowledge about the people they collect information about and it can use this knowledge to determine what that audience would likely understand. For example, a controller collecting the personal data of working professionals can assume its audience has a higher level of understanding than a controller that obtains the personal data of children.³⁵
92. In order to comply with the element of “clear and plain language”, the information provided to a data subject should not contain overly legalistic, technical or specialist language or terminology. Where the information is translated into one or more languages, the controller should ensure that all the translations are accurate and that the phraseology and syntax makes sense in the second languages, so that the translated text does not have to be deciphered or re-interpreted. A translation in one or more other languages should be provided where the controller targets data subjects speaking those languages.³⁶
93. As regards the provision of information to children, Recital 58 of the GDPR emphasises: *“Given that children merit specific protection, any information and communication, where processing is addressed to a child, should be in such a clear and plain language that the child can easily understand.”*
94. The Transparency Guidelines also pay particular attention to the duty of care with regard to the requirement to use plain language when providing information to children and other vulnerable groups. For example, the Transparency Guidelines emphasize that a controller targeting children or who is aware, or should be aware, that its goods/services are particularly utilised by children, must ensure that the vocabulary, tone and style of the language used is appropriate to and resonates with children. In this way, the child addressee of the information recognises that the message/information is being directed at them.³⁷

³⁵ Transparency Guidelines, point 9.

³⁶ Transparency Guidelines, point 13.

³⁷ Transparency Guidelines, point 14.



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Viewpoint of TikTok

95. TikTok recognises that one of the core elements of the principles of transparency and fairness is that data subjects must be able to determine in advance what the scope and consequences of the processing entail and that they should not be taken by surprise at a later point about the ways in which their personal data have been used. Firstly, TikTok believes that it met this standard via various measures and that the AP is wrong to focus only on the TikTok Terms of Service and Privacy Policy. In this context, TikTok refers to:
- 1) measures in the TikTok app, such as pop-up notifications and the privacy and safety settings, 2) TikTok's Help Centre and Safety Centre, where users are provided with information, and 3) TikTok's Dutch summary of its Privacy Policy rolled out in July 2020.
- Secondly, TikTok is of the opinion that Dutch users are quite proficient in English so there is no infringement of Article 12(1) of the GDPR. It notes that since 2011, the Netherlands was ranked among the top three countries worldwide in the Education First English Proficiency Index. Thirdly, according to TikTok, the investigative report does not substantiate that the TikTok Privacy Policy did not use clear and plain language aimed at children.

Considerations of the AP

96. As the Transparency Guidelines show, the controller is required to know its intended audience and to identify what qualifies as understandable on the basis of this information. In the case of TikTok, this means that it must be aware that a substantial part of its intended audience consists of children under the age of 16 years. Moreover, in accordance with Article 12(1) of the GDPR and the Transparency Guidelines, this young, intended audience brings an additional responsibility in terms of the use of clear and plain language in all communications. After all, children deserve specific protection, which makes the use of clear and plain language of particular importance.³⁸
97. However, from what is set out above in marginal numbers 66 to 68, it appears that during the period from 25 May 2018 to 28 July 2020 inclusive, TikTok Inc. only provided its Privacy Policy to Dutch data subjects - including children - in English.³⁹
98. The fact that TikTok Inc. has not provided this information in Dutch to Dutch speaking children under the age of 16 years already means that TikTok infringed Article 12(1) of the GDPR. The requirement of intelligibility requires at least that when the controller addresses data subjects who speak another language, it provides a translation into that language to those data subjects. This obligation applies in particular when - as in the present case - it is addressed to (young) children, so that they can easily understand the information.⁴⁰ This does not differ due to the fact that a relatively large group of Dutch

³⁸ See also Recital 58 of the GDPR and Transparency Guidelines, point 7.

³⁹ Case document 1, case document 7 and case document 15, Annex 5. The text of the Privacy Policy submitted by TikTok to the AP concerns the version last updated in October 2019. However, TikTok did not substantially modify the terms of the Privacy Policy in the period from 25 May 2018 - 29 July 2020: see the letter dated 1 May 2020 from TikTok to the AP, p. 7 (response to question 11).

⁴⁰ Compare Transparency Guidelines, points 13 and 14.



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people have a good command of English, especially as TikTok is used by many people under the age of 16 years. It cannot be taken for granted that data subjects in that age group will have a good command of English. Therefore, TikTok Inc. should not have presumed that merely providing the English version of the Privacy Policy to children is in compliance with Article 12(1) of the GDPR.

99. The other transparency measures mentioned by TikTok do not alter the fact that the privacy statement in English was not provided in a language intelligible to children and, for that reason alone, cannot compensate for the infringement of Article 12(1) of the GDPR.
100. The pop-ups used by TikTok undeniably contribute to better transparency. However, this measure does not alter the fact that the entire Privacy Policy of TikTok Inc. was not drafted in intelligible and plain language for Dutch children under the age of 16 years. These pop-ups are not a substitute for its Privacy Policy. They inform data subjects about the public nature of the videos they are about to post, but do not provide all the information that the controller is obliged to provide, pursuant to Article 13 of the GDPR.
101. In addition, the privacy and safety settings mentioned by TikTok and the Help and Safety Centre do not provide information to children: children must actively search for the information themselves. This creates the risk of them not being informed in due time, which - as TikTok itself recognises - is a crucial element of the transparency obligation.⁴¹ Moreover, these measures are also no substitute for its Privacy Policy as they do not provide all the information that must be provided by the controller, pursuant to Article 13 of the GDPR.
102. As of 29 July 2020, TikTok provides its Privacy Policy to Dutch data subjects - and therefore also to Dutch children under the age of 16 years - in Dutch. As TikTok also pointed out in its written viewpoint, from 29 July 2020 it has provided a separate document that is appropriate in terms of language and form for Dutch-speaking children.⁴² These two measures mean that TikTok complies with the requirement to inform Dutch-speaking children in a language they can understand, pursuant to Article 12 of the GDPR.

5.4 Conclusion with regard to Article 12(1) of the GDPR

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

⁴¹ See also Transparency Guidelines, point 27.

⁴² Case document 33 and marginal number 160 of the investigative report.



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6. Fine

6.1 Introduction

104. By failing to inform children in understandable language about the processing of their personal data, TikTok Inc. infringed Article 12(1) of the GDPR during the period from 25 May 2018 to 28 July 2020 inclusive. During this period, TikTok Inc. did not take measures to provide children any information relating to the processing of their personal data in a language that is clear and plain to them, and therefore completely ignored the interests of Dutch children with regard to the additional protection they enjoy under the GDPR. The AP considers this to be a grave infringement.
105. The AP sees this cause to exercise its authority to impose a fine on TikTok Inc., pursuant to Article 58(2)(i) and Article 83(5) of the GDPR, read in conjunction with Article 14(3) of the General Data Protection Regulation (Implementation) Act (*Uitvoeringswet Algemene verordening gegevensbescherming*). In this regard, the DPA applies the Administrative Rules on Penalties (Data Protection Authority) 2019.⁴³

Viewpoint of TikTok

106. TikTok's main viewpoint is that the AP lacks competence to impose a fine on TikTok, since its main establishment is located in Ireland. Even if the AP were competent, there would be no reason to impose a fine because TikTok acts and has acted in compliance with the GDPR. If, nonetheless, the AP would take a different view, TikTok notes that, in order to impose a punitive sanction, the AP must be able to demonstrate that TikTok is in breach of a statutory provision that is clear and precise, and its application foreseeable to TikTok.⁴⁴ [CONFIDENTIAL] The imposition of a punitive sanction based on open norms violates the *nulla poena* principle and legality principle. In such cases a reprimand would be more appropriate. Finally, TikTok argues that all the circumstances of the case should be taken into account in order to arrive at an appropriate measure, as well as the conditions of Article 83 of the GDPR and all principles of proper administration. TikTok has fully cooperated with the investigation and has also requested to meet with the investigation department to better understand its concerns.

Considerations of the AP

107. In paragraph 5.4 of this decision, the AP concluded that TikTok Inc. infringed Article 12(1) of the GDPR during the period from 25 May 2018 to 28 July 2020 inclusive. TikTok Inc. has therefore not acted in accordance with the GDPR. As explained in section 2 of this decision, the AP is competent to

⁴³ Government Gazette 2019, 14586, 14 March 2019.

⁴⁴ In this context, TikTok refers to ECLI:NL:RVS:2002:AF0842, ECLI:NL:CBB:2018:187.



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take a decision and impose a penalty for the established infringement of Article 12(1) of the GDPR. This is because there is an infringement that ended before 29 July 2020. This infringement therefore falls outside the scope of Opinion 8/2019⁴⁵, which means that the AP is authorised to impose a fine.

108. By arguing that the AP must be able to demonstrate that TikTok has contravened a legal provision that was clear, precise and foreseeable to it, TikTok is actually invoking the *lex certa* principle.
109. As the Administrative Jurisdiction Division of the Council of State (*Afdeling Rechtspraak van de Raad van State*) has repeatedly held, the *lex certa* principle, enshrined *inter alia* in Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (*Europees Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden*),⁴⁶ requires the legislature, in the interests of legal certainty, to define the prohibited practices as clearly as possible. It should be borne in mind that the legislator sometimes defines prohibited practices with a certain vagueness by using general terms, in order to prevent practices worthy of punishment from falling outside the scope of that definition. This vagueness is unavoidable because it is not always possible to foresee how the interests to be protected will be infringed in the future and, if this can be foreseen, the descriptions of prohibited practices would otherwise be too refined, resulting in a loss of clarity and therefore harming the interests of the general clarity of legislation.
110. The mere fact that the concept of “intelligible, clear and plain language”, which is decisive in the present case for the applicability of Article 12(1) of the GDPR, requires interpretation in the light of the facts and circumstances does not mean that the administrative fine imposed on the basis of that provision is contrary to the *lex certa* principle.
111. This description is so clear, foreseeable and knowable that TikTok must have known that not offering its Privacy Policy in Dutch to Dutch speaking data subjects, a large number of whom are children, would constitute an infringement of the requirement of clear and plain language as referred to in Article 12(1) of the GDPR. This is especially true since the Transparency Guidelines consider that, when the controller addresses data subjects who speak another language, a translation should be provided in those languages. This obligation applies in particular when it is addressed to (young) children, so that they can easily understand the information, and is in line with the specific protection children deserve, pursuant to Recital 58 of the GDPR. The TikTok app is aimed at Dutch data subjects, including children, and is mostly made available to them in Dutch. Moreover, when installing the app, TikTok does inform the user in Dutch that he or she is agreeing to its Privacy Policy.
112. There is therefore no conflict with the *lex certa* principle.
113. [CONFIDENTIAL]

⁴⁵ See marginal number 16 of Opinion 8/2019.

⁴⁶ 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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114. The AP sees no reason in TikTok's arguments to waive its competence to impose a fine for the infringement of Article 12(1) of the GDPR.

6.2 Administrative Rules on Penalties (Data Protection Authority) 2019 (*Boetebeleidsregels Autoriteit Persoonsgegevens 2019*) (hereinafter: Administrative Rules on Penalties 2019)

115. In the event of an infringement of Article 12(1) of the GDPR, pursuant to Article 58(2) (opening lines) (i) and Article 83(5) of the GDPR, read in conjunction with Article 14(3) of the General Data Protection Regulation (Implementation) Act (*Uitvoeringswet Algemene verordening gegevensbescherming*), the AP is authorised to impose an administrative fine on TikTok Inc. of up to €20,000,000 or up to 4% of the total worldwide annual turnover of the preceding business year, whichever is higher.
116. The AP has adopted the Administrative Rules on Penalties 2019 in order to implement the aforementioned power to impose an administrative fine, which includes determining the amount of the fine.
117. Pursuant to Article 2(2.2) of the Administrative Rules on Penalties 2019, the provisions for which the AP can impose an administrative fine of up to €20,000,000 or, in the case of a company, up to 4% of its total worldwide annual turnover in the preceding business year, whichever figure is the higher, are classified as categories I, II, III or IV in Annex 2.
118. In Annex 2, the infringement of Article 12(1) of the GDPR is classified into category III.
119. Pursuant to Article 2.3 of the Administrative Rules on Penalties 2019, the AP sets the basic fine for infringements carrying a statutory maximum fine of €20,000,000 [...] within the penalty ranges laid down in that Article. For infringements that fall under category III of Annex 2 of the Administrative Rules on Penalties 2019, the penalty range is €300,000 to €750,000 and the applicable base fine is €525,000.
120. Pursuant to Article 6 of the Administrative Rules on Penalties 2019, the AP determines the amount of the fine by adjusting the basic fine either upwards (up to the maximum amount of the penalty range for the category that applies to the infringement) or downwards (to the minimum in that range).
121. Pursuant to Article 7 of the Administrative Rules on Penalties 2019, notwithstanding Articles 3:4 and 5:46 of the General Administrative Law Act (*Algemene wet bestuursrecht*), the AP takes into account the factors enumerated in Article 83(2) of the GDPR, as referred to in the Administrative Rules on Penalties 2019 under a to k.

6.3 The amount of the fine

122. This paragraph first discusses the factors that are relevant to the determination of the amount of the fine, pursuant to Article 7 of the Administrative Rules on Penalties 2019. Finally, the principle of



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proportionality is addressed.

123. According to the AP, in this case, the following factors enumerated in Article 7 of the Administrative Rules on Penalties 2019 are relevant to the determination of the fine:
- the nature, gravity and duration of the breach;
 - the intentional or negligent character of the infringement (imputability);
 - the action taken by the controller or processor to mitigate the damage suffered by data subjects.

6.3.1 Nature, gravity and duration of the breach

124. Pursuant to Article 7(a) of the Administrative Rules on Penalties 2019, the AP must take into account the nature, gravity and duration of the infringement. In assessing this, the AP will take into account the nature, scope or purpose of the processing as well as the number of data subjects affected and the extent of the damage suffered by them.
125. The protection of natural persons during the processing of personal data is a fundamental right. Pursuant to Article 8(1) of the Charter of Fundamental Rights of the European Union (*Handvest van de grondrechten van de Europese Unie*) and Article 16(1) of the Treaty on the Functioning of the European Union (*Verdrag betreffende de werking van de Europese Unie*), everyone has the right to the protection of their personal data. The principles of, and rules on the protection of natural persons with regard to the processing of their personal data should respect their fundamental rights and freedoms, in particular their right to the protection of personal data. The GDPR is intended to contribute to the accomplishment of an area of freedom, security and justice and of an economic union, to economic and social progress, to the strengthening and the convergence of the economies within the internal market, and the well-being of natural persons. The processing of personal data should be designed to serve mankind. The right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality. Any processing of personal data should be lawful and fair. It should be transparent to natural persons that personal data concerning them are collected, used, consulted or otherwise processed and to what extent the personal data are or will be processed.
126. Pursuant to Article 12(1) of the GDPR, the controller shall take appropriate measures to provide any information relating to processing to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child. Acting contrary to this affects the rights of data subjects with regard to respect for their privacy and protection of their personal data.
127. The AP's findings relate the provision by TikTok Inc. of its Privacy Policy to Dutch data subjects, including a large group of Dutch-speaking children under the age of 16, only in English. The Privacy Policy was not provided in Dutch, whereas it cannot be taken for granted that that age group will have a good command of English. It was therefore not possible for them to determine in advance what the



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scope and consequences of the processing entails, and it was not clear how their personal data would be used.

128. In assessing the gravity of the infringement, the AP also takes into account the large number of data subjects and the amount of personal data processed. In paragraph 4.4 of this decision, it has already been explained that a research agency estimated in an indicative study at the end of 2019 that approximately 830,000 Dutch children under the age of 18 years use TikTok and that, proportionately, TikTok was mainly used by children around the age of 12 years at that time. In the same paragraph, it was noted that media reports in August 2020 stated that figures from TikTok's parent company showed that the number of active TikTok users in the Netherlands had risen to 4.5 million, with users in the age category of 13 to 17 years allegedly constituting 28 per cent of all users in the Netherlands, which amounts to approximately 1,260,000 young users. The processing operations thus included a vulnerable group of persons, namely children. They merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data.⁴⁷ This makes the infringement even more grave, in particular given the massiveness of the number of young users of TikTok in the Netherlands.
129. As regards the duration of the infringement, the AP takes into account a period from 25 May 2018 to 28 July 2020 inclusive, whereby it considers it particularly important that this was an infringement that lasted for a considerable period of time.
130. In view of the seriousness and duration of the infringement, the AP sees cause to increase the basic amount of the fine pursuant to Article 7 (a) of the Administrative Rules on Penalties 2019 by €225,000 to €750,000, being the maximum of the penalty range in that category

6.3.2 Intentional or negligent character of the infringement (imputability)

131. Pursuant to Article 5:46(2) of the General Administrative Law Act, when imposing an administrative fine, the AP must take into account the extent to which the offender is imputable. Pursuant to Article 7(b) of the Administrative Rules on Penalties 2019, the AP must take into account the intentional or negligent nature of the infringement. As this infringement is a minor offence (*overtreding*), settled case law on the imposition of administrative fines⁴⁸ does not require evidence of intent and the AP may assume imputability if perpetration has been established.⁴⁹
132. According to Article 12(1) of the GDPR, the controller must take appropriate measures to provide any information relating to processing to the data subject in a concise, transparent, intelligible and easily

⁴⁷ Recital 38 of the GDPR.

⁴⁸ Cf. Administrative Court for Trade and Industry, 29 October 2014, ECLI:NL:CBB:2014:395, consideration 3.5.4; Administrative Court for Trade and Industry, 2 September 2015, ECLI:NL:CBB:2015:312, consideration 3.7; Administrative Court for Trade and Industry 7 March 2016, ECLI:NL:CBB:2016:54, consideration 8.3; Administrative Jurisdiction Division of the Council of State 29 August 2018, ECLI:NL:RVS:2018:2879, consideration 3.2; and Administrative Jurisdiction Division of the Council of State 5 December 2018, ECLI:NL:RVS:2018:3969, consideration 5.1.

⁴⁹ Parliamentary Papers, House of Representatives 2003/2004, 29 29702, no. 3, p. 134.



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accessible form, using clear and plain language, in particular for any information addressed specifically to a child. In view of the nature and scope of the processing, a professional party such as TikTok Inc. may be expected that it is thoroughly acquainted with and complies with the standards applicable to it.

133. TikTok Inc. has deliberately provided its Privacy Policy to Dutch data subjects - including children - only in English⁵⁰, whereas the requirement of comprehensibility requires that when the controller addresses data subjects who speak another language, it must provide these data subjects with at least a translation into their own language. While the TikTok app is made available to these users mostly in Dutch and TikTok does notify users in Dutch when installing the app that he or she is agreeing to its Privacy Policy, this obligation applies in particular since TikTok Inc. is also addressing (young) children. In view of the foregoing, the AP considers the infringement to be imputable.

6.3.3 Action taken to limit the damage suffered by data subjects

134. The AP considers that TikTok Inc. has taken various actions aimed at limiting the damage suffered by data subjects. When using the TikTok app, data subjects receive pop-up notifications informing them about the public nature of the videos they are about to post. Furthermore, the renewed privacy and safety settings and TikTok's Help Centre and Safety Centre, where users are provided with information, contribute to improved transparency. Also, as of 29 July 2020, TikTok has provided its Privacy Policy in Dutch to Dutch data subjects and, as of that date, has also made a separate document available informing (Dutch-speaking) children in a language they can understand.
135. The AP considers that this does not remove the consequences for the rights of data subjects and for that reason alone concludes that there is no reason to change the amount of the basic fine pursuant to Article 7(c) of the Administrative Rules on Penalties 2019.

6.3.4 Other factors

136. The AP sees no reason to raise or reduce the amount of the basic fine on the basis of the other circumstances enumerated in Article 7 of the Administrative Rules on Penalties 2019, insofar as applicable in the present case.

6.3.5 Proportionality

137. Finally, on the basis of the principle of proportionality laid down in Articles 3:4 and 5:46 of the General Administrative Law Act, the AP assesses whether the application of its policy for determining the level of the fine would produce a disproportionate outcome given the circumstances of the specific case. According to the Administrative Rules on Penalties 2019, the application of the principle of proportionality means that the AP should take into account the financial circumstances of the offender when imposing the fine. TikTok has not invoked a limited ability to pay, so that for

⁵⁰ See marginal number 66 of this decision.



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that reason alone there is no reason to moderate the fine on the grounds of proportionality. The AP considers a fine of €750,000 appropriate and necessary in the present case and deems TikTok Inc. to be sufficiently able to pay this amount.

6.3.6 Conclusion

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



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7. Operative part

Fine

The AP imposes an administrative fine on TikTok Inc. in the amount of **€750,000** (in words: seven hundred and fifty thousand euros) for the infringement of Article 12(1) of the GDPR.⁵¹

Yours sincerely,
Autoriteit Persoonsgegevens (The Dutch Data Protection Authority)

ir. M.J. Verdier
Vice President

Legal remedies

If you do not agree with this decision, you can submit a notice of objection, by post or through the AP website, within six weeks of the date on which the decision was sent.

Pursuant to section 38 of the General Data Protection Regulation (Implementation) Act, a notice of objection has a suspensive effect on the decision to impose an administrative fine.

The postal address for submitting an objection is:
Autoriteit Persoonsgegevens, Postbus 93374, 2509 AJ The Hague, The Netherlands.
Please write 'AWB objection' on the envelope to indicate that an objection under the General Administrative Law Act (AWB) is enclosed, and put 'Notice of objection' in the title of your letter.

To submit your notice of objection online, please use the designated form via www.autoriteitpersoonsgegevens.nl, under 'Contact met de Autoriteit Persoonsgegevens', → 'Bezwaar maken' → digitaal formulier bezwaarschrift Formulier bezwaarschrift | Autoriteit Persoonsgegevens.

Your notice of objection should include at least the following:

- your name and address;
- the date of your notice of objection;

⁵¹ The AP will transfer enforcement of the aforementioned claim to the Central Judicial Collection Agency (*Centraal Justitieel Incassobureau*, CJIB).



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- the reference number of your case (as stated on the decision) or a copy of the decision;
- the grounds for objection;
- your signature.

For more information on the objection procedure in Dutch, see
<https://autoriteitpersoonsgegevens.nl/nl/bezwaar-maken>