

Deliberation SAN-2021-012 of July 26, 2021 National Commission for Computing and Liberties Nature of the deliberation: Sanction

Legal status: In force Date of publication on Légifrance: Wednesday July 28, 2021 Deliberation of the restricted committee n°SAN-2021-012 of 26 July 2021 concerning MONSANTO COMPANY The National Commission for Computing and Liberties, meeting in its restricted formation composed of Mr. Alexandre LINDEN, President, Mr. Philippe-Pierre CABOURDIN, Vice-President, Mrs. Anne DEBET, Mr. Bertrand du MARAIS and Mrs. Christine MAUGÜE, members; Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 relating to the protection of personal data and the free movement of such data; Having regard to Law No. 78-17 of January 6, 1978 relating to data processing, files and modified freedoms, in particular its articles 20 and following; Considering decree no. 2019-536 of May 29, 2019 taken for the application on Law No. 78-17 of January 6, 1978 relating to data processing, files and freedoms; freedoms; Having regard to referrals no. 19009370, 19009429, 19009432, 19009439, 19009604, 19009666, 19017095; Having regard to decision no. secretary general to carry out or have carried out a mission to verify the processing implemented by the company FLEISHMAN-HILLARD, which became, from January 1, 2017, the company OMNICOM PUBLIC RELATIONS GROUP; Having regard to decision no. 2019-099C of the May 13, 2019 from the President of the National Commission for Computing and Liberties to instruct the Secretary General to carry out or have carried out a mission to verify the processing carried out by the company PUBLICIS CONSULTANTS; Having regard to decision no. 2 019-111C of June 26, 2019 of the President of the National Commission for Computing and Liberties to instruct the Secretary General to carry out or to have carried out a mission to verify the processing implemented by the company MONSANTO COMPANY; Having regard to the decision of the President of the National Commission for Computing and Liberties appointing a rapporteur to the restricted committee, dated November 5, 2020; Having regard to the report of Mrs Valérie PEUGEOT, commissioner rapporteur, notified, at the request of the companies, to BAYER CROPSCIENCE, coming under the rights of MONSANTO COMPANY on February 15, 2021; Having regard to the written observations submitted by the board of MONSANTO COMPANY on March 15, 2021; Having regard to the response of the rapporteur to these observations notified to the board of MONSANTO COMPANY on April 9, 2021; Having regard to the new written observations submitted by the board of MONSANTO COMPANY, received on May 5, 2021; Having regard to the observations s oral statements made during the restricted committee meeting; Having regard to the other documents in the file; Were present at the restricted committee meeting of May 20, 2021:- Mrs. Valérie PEUGEOT, commissioner, heard in her report; representatives of MONSANTO COMPANY:[...] As interpreter:[...] MONSANTO having

spoken last;The Restricted Committee adopted the following decision:I. Facts and procedure1. The MONSANTO COMPANY (hereinafter "the MONSANTO company") is an American company specializing in agricultural biotechnology, whose head office is located at 800 North Lindbergh Boulevard in SAINT-LOUIS, MISSOURI (63167) in the UNITED STATES. The MONSANTO group was acquired in June 2018 by the German pharmaceutical and agrochemical group BAYER CROPSCIENCE.2. However, MONSANTO remains a separate entity, 100% owned by BAYER, which retains its legal personality and the same corporate name.3. During the month of May 2019, an article published in the newspaper "Le Monde" as well as two documentaries broadcast on the channel "France 2" revealed that between 2016 and 2017, the companies FLEISHMAN-HILLARD (now the company OMNICOM PUBLIC RELATIONS GROUP) and the company PUBLICIS CONSULTANTS had created, on behalf of the company MONSANTO, files containing the personal data of more than 200 French and European political figures or members of civil society, including journalists, activists of the environmental cause, scientists and farmers, as part of the campaign for the renewal of the authorization for the use of glyphosate by the European Commission.4. Between the months of May and September 2019, the National Commission for Computing and Liberties (hereinafter "the CNIL" or "the Commission") received seven complaints (requests n° 19009370, 19009429, 19009432, 19009439 , 19009604, 19009666, 19017095) against the company in which the plaintiffs indicated in particular that they had not been informed of the existence of this processing of their personal data.5. Pursuant to decisions n° 2019-098C and n° 2019-099C of May 13, 2019 and n° 2019-111C of June 26, 2019 of the President of the Commission, a delegation from the CNIL carried out the following control operations:- a control on documents, by sending a letter requesting documents on May 15, 2019 to the company FLEISHMAN-HILLARD (which became the company OMNICOM PUBLIC RELATIONS GROUP on January 1, 2017); - a hearing of the company FLEISHMAN-HILLARD on January 21, 2020;- a document check, by sending a letter requesting documents on May 14, 2019, to PUBLICIS CONSULTANTS;- a document check, by sending a questionnaire on May 6, 2019; August 2019, to MONSANTO.6. The purpose of these assignments was to verify compliance by these companies with all the provisions of law no. and Freedoms" or "the law of January 6, 1978") and Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 (hereinafter "the GDPR" or "the Regulation"). In particular, it was a question of carrying out investigations in connection with the processing carried out at the request of the company MONSANTO and within the framework of a global mission of representation of interests, by the company FLEISHMAN-HILLARD, consisting in collect and organize personal data with a view to fulfilling an interest representation

mission concerning the use of glyphosate in Europe and worldwide.⁷ It appears from the investigations carried out by the CNIL's delegation of control that, through a framework contract for the provision of services dated July 18, 2013, supplemented by three riders and four specifications, the company MONSANTO entrusted the company FLEISHMAN- HILLARD - which became OMNICOM PUBLIC RELATIONS GROUP (OPRG) on January 1, 2017 - an interest representation mission concerning the use of glyphosate in Europe and worldwide, from 2016 until May 31, 2019.⁸ Indeed, among its activities, the company develops and markets phytosanitary products. The best known of these is RoundUp, one of the active substances of which is glyphosate. In view of the renewal of the authorization of glyphosate by the European Commission, which finally took place on November 27, 2017, the company MONSANTO carried out a major campaign to represent its interests, in particular with the help of the companies FLEISHMAN-HILLARD and PUBLICIS.⁹ . As part of this service, the company FLEISHMAN-HILLARD identified and compiled information relating to personalities involved in the debate on the renewal of the authorization to use glyphosate in Europe, which is given concrete form in particular by drawing up and maintaining a list of the "stakeholders" involved in this campaign. This file, entitled "French Monsanto stakeholders database - cultivating trust", included a list of 201 people residing in France, including members of environmental protection associations, farmers' associations, associations in the field health, professional organizations, politicians, members of administrations, journalists, academics and farmers. For each of these people, the following information was provided: organization of attachment and website, position held, professional address, professional landline telephone number, mobile telephone number, professional e-mail address and, where applicable, "Twitter" account. " .¹⁰ In addition, a score ranging from 1 to 5 was assigned to each person, in order to assess their influence, credibility and support for the MONSANTO company on six topics, namely agriculture, pesticides, genetically modified, the environment, food and health.¹¹ The file also included a free comment area in which could be indicated the events that these people had attended or that they had organized, the people with whom they worked, the contacts they had had with representatives of the MONSANTO company or again the articles they had published about glyphosate.¹² In addition, between 2016 and 2017, the company FLEISHMAN-HILLARD commissioned the company PUBLICIS CONSULTANTS, on behalf of the company MONSANTO, to identify influential people in the public debate in France, to produce analytical notes relating electoral trends in France and to monitor the media on French legislative and political news in connection with the debate on the renewal of the authorization for the use of glyphosate in Europe. FLEISHMAN-HILLARD terminated the mission of PUBLICIS CONSULTANTS in April 2017.¹³ In order to investigate these

elements, the President of the Commission appointed Mrs Valérie PEUGEOT as rapporteur, on November 5, 2020, on the basis of Article 22 of the amended law of January 6, 1978.¹⁴ At the end of her investigation, the rapporteur had a bailiff serve on MONSANTO, on February 15, 2021, a report detailing the breaches of the GDPR that she considered constituted in this case. Also attached to the report was a notice to attend the restricted committee meeting of April 1, 2021, indicating to the company that it could submit its observations in response no later than March 16, 2021.¹⁵ This report proposed that the restricted committee of the Commission impose an administrative fine on MONSANTO. It also proposed that this decision be made public and no longer allow the company to be identified by name after the expiry of a period of two years from its publication.¹⁶ On March 15, 2021, the company filed comments in response. On March 23, 2021, the rapporteur asked the chairman of the Restricted Committee, on the basis of Article 40, paragraph 4, of Decree No. 2019-536 of May 29, 2019 taken for the application of the Data Protection Act (hereinafter "the decree of May 29, 2019"), an additional period to respond to the company's observations, which was granted to it on March 25, 2021. This information was brought to the attention of the company the same day. It was also informed that the session of the restricted formation initially scheduled for 1 April was postponed to a later date.¹⁷ On March 23, 2021, the company made a request for the session of the Restricted Committee to be held behind closed doors, a request which was rejected by the Chairman of the Restricted Committee, by letter dated April 8, 2021.¹⁸ The rapporteur responded to the company's observations on April 9, 2021. On the same day, the general secretary of the CNIL informed the company that the restricted training session would be held on May 20, 2021.¹⁹ On 5 May 2021, the company submitted new observations in response to those of the rapporteur.²⁰ The company and the rapporteur presented oral observations during the session of the restricted committee.

II. Reasons for decision

A. On the complaint based on the impartiality of the procedure²¹. The MONSANTO company criticizes the rapporteur for having shown bias in her investigation insofar as her sanction report is essentially based on the declarations of the FLEISHMAN-HILLARD company and where certain documents communicated to the CNIL by the FLEISHMAN-HILLARD companies HILLARD and PUBLICIS during the checks would not have been transmitted to him. She also points out that neither the CNIL departments nor the rapporteur conducted her hearing, whereas FLEISHMAN-HILLARD was heard by the CNIL's supervisory delegation. It also emphasizes that the company FLEISHMAN-HILLARD had every interest in imputing responsibility for the processing implemented to the company MONSANTO.²² The company also criticizes the rapporteur for having retained only incriminating evidence against it and for having excluded certain documents from the debates. She further notes that certain documents annexed to the

rapporteur's report have been partially concealed, thus depriving her of the right to prepare her defense effectively. In particular, the company complains that the impact study carried out by the company FLEISHMAN-HILLARD was not communicated to it. It also notes that the audit report carried out by the company SIDLEY following the publication of the press articles and the broadcasting of the reports, an audit which was carried out at the request of the company BAYER CROPSCIENCE and whose report demonstrates the absence of the litigious file within MONSANTO's information system is not discussed by the rapporteur.²³ Firstly, the Restricted Committee notes that the minutes of the hearing of the representatives of the company FLEISHMAN-HILLARD, carried out by the CNIL's control delegation on January 21, 2020, are part of the documents annexed to the sanction report which was notified to the company on February 15, 2021, as well as all the other documents on which the rapporteur based her analysis and her proposal within the framework of the procedure. Thus, as provided for in Article 40 of Decree No. 2019 536 of May 29, 2019, the company had the opportunity to make written observations in response to the rapporteur's report and therefore to question any statement made by the company FLEISHMAN -HILLARD that she considered erroneous or untruthful. Moreover, the Restricted Committee points out that the company also had the opportunity to submit new observations in response to those of the rapporteur and that, finally, it was able to develop its arguments during the Restricted Committee meeting of 20 May 2021, in accordance with article 42 of the aforementioned decree. MONSANTO was therefore able to submit its observations at various stages of the procedure, in accordance with the applicable provisions.²⁴ Secondly, the Restricted Committee notes that the choice of the rapporteur to append to her sanction report only the elements useful to the characterization of the breaches that she considered should be blamed on the company, and not all the elements collected within the framework of control procedures, in no way hinders the company's rights of defence. Indeed, on the one hand, the rapporteur was free to consider that certain documents were not useful for her demonstration and, on the other hand, as explained in the previous point, the adversarial procedure organized by the law "Informatique et Libertés" and the decree adopted for its application allowed the company to produce any document it considered useful for its defence.²⁵ As regards the fact that certain documents communicated by the rapporteur contain concealments, the Restricted Committee notes that the rapporteur indicated that these concealments related to information protected by business secrecy, unrelated to this procedure, or to data of a personal nature. The Restricted Committee also notes that on the occasion of her response to the company's observations dated April 9, 2021, the rapporteur finally communicated to the company several of these documents in their full version.²⁶ The Restricted Committee recalls,

moreover, that it was not made the recipient of the unobstructed versions of these documents, so that it is not aware of any additional element that would not have been communicated to the company in the framework of the procedure. In any event, the Restricted Committee specifies that the concealment in question in no way distorted its understanding of the case and had no impact on its decision-making.²⁷ Thirdly, with regard to the absence of a hearing of the company, the Restricted Committee notes first of all that an inspection of the documents of the company MONSANTO was carried out by a delegation from the CNIL, which translated by the sending of a questionnaire questioning it on the implementation of the processing in question, to which the company replied. The Restricted Committee thus observes that the company was heard during the procedure, in compliance with the applicable legal provisions, the control on documents constituting one of the four forms of control provided for by article 19 of the Data Protection Act and Freedoms. Then, it recalls that the hearing by the rapporteur of the organization against which a sanction procedure has been initiated is only an option which is offered to the rapporteur by article 39 of the aforementioned decree and not a compulsory step in the procedure. The Restricted Committee also notes that the company did not request a hearing directly from the rapporteur either.

Irregularity.B. On the quality of data controller of the company MONSANTO²⁸. Under Article 4 (7) of the GDPR, the controller is defined as "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".²⁹ The rapporteur considers that in this case, the company MONSANTO must be regarded as the controller in question insofar as it is the person on whose behalf the processing is carried out, who determines why the processing takes place and how its purpose is to be achieved. The purpose of the file in question was to enable MONSANTO to identify and list the stakeholders in the sector in order to put in place a targeted communication strategy in favor of the renewal of the authorization of glyphosate by the Commission European. It thus recalls that it is to achieve this objective that it has decided to entrust the company FLEISHMAN-HILLARD with all activities related to public relations and the company's reputation and, more particularly from 2016, a mission of representation of interests concerning the use of glyphosate in Europe and in the world and that it is within the framework of this mission that the file named "20160822 French Monsanto stakeholders database - cultivating trust" was established.³⁰ In defence, the company considers that the responsibility for the processing fell exclusively to the company FLEISHMAN-HILLARD and that the rapporteur confuses the notions of beneficiary of a service and that of data controller. It points out that it was the company FLEISHMAN-HILLARD which, in its capacity as a company specializing in consultancy and public relations, compiled the file independently, according to a methodology which it defined

itself, then who offered it to MONSANTO.³¹ The company stresses that it is because of the expertise of the company FLEISHMAN-HILLARD that it has called on its services and that the constitution of lists of names is a common practice in this sector of activity. It points out that it never gave any instructions to the company FLEISHMAN-HILLARD as to how to carry out this mission and that it only reacted to the proposals made by the latter.³² MONSANTO further explains that, dissatisfied with the result obtained, it has never used the file in question. However, she notes that if she had acted as data controller, she would have asked FLEISHMAN-HILLARD to modify the file as she saw fit in order to obtain a result that better met her expectations.³³ The company also indicates that FLEISHMAN-HILLARD presents itself on its website as the data processing manager for the tasks entrusted to it by its customers. It also recalls that it was FLEISHMAN-HILLARD which responded to requests for the exercise of the rights of data subjects in connection with the processing in question.³⁴ Firstly, the Restricted Committee recalls that the data controller is the person who determines the purposes of the processing implemented, i.e. the expected or sought-after result, and the means of this processing, i.e. ie how to achieve this result.³⁵ The notions of controller and processor are clarified by the European Data Protection Board (hereinafter "the EDPS") in its guidelines 07/2020 adopted on September 2, 2020 and submitted for public consultation. The EDPS indicates therein that "Determining the purposes and means amounts to deciding respectively the 'why' and the 'how' of the processing: in the case of a particular processing operation, the controller is the actor who has determined why the processing is taking place (i.e. "for what purpose" or "for what purpose") and how this purpose is to be achieved (i.e. what means are to be used to achieve the purpose A natural or legal person who exercises such influence over the processing of personal data thus participates in determining the purposes and means of this processing in accordance with the definition in Article 4(7) of the GDPR. The controller must decide both the purpose and the means of processing described below. Therefore, the controller cannot only determine the purpose. He must also make decisions on the means of the processing. I Conversely, the party acting as processor can never determine the purpose of the processing" (free translation).³⁶ In the present case, it is undisputed that MONSANTO was pursuing a specific objective, namely to promote and obtain the renewal of the authorization by the European Commission for the use of glyphosate. It is in order to achieve this objective that the company decided that the way to achieve it was to launch an interest representation campaign for the needs of which it was necessary to establish the mapping of the stakeholders in the debate. on the renewal of the authorization for the use of glyphosate in the European Union. It was to achieve this result that MONSANTO called on FLEISHMAN-HILLARD, a company specializing in activities related to public relations.³⁷ The

Restricted Committee notes that by a framework contract for the provision of services dated July 18, 2013 (Exhibit 14 appended to the penalty report), the company MONSANTO, among other things, entrusted the company FLEISHMAN-HILLARD, as public relations and strategic communication consulting agency, missions related to the company's reputation. From the signing on August 5, 2016 of amendment No. 13 (Exhibit No. 17 appended to the sanction report), the company FLEISHMAN-HILLARD was more specifically responsible for drawing up the list of "stakeholders" (" stakeholders") as part of the campaign for the renewal of the authorization of glyphosate in Europe.³⁸ The need for the MONSANTO company to have such a map emerges explicitly from amendment no. 13 is to add an extra layer to the stakeholder mapping to get a clearer picture of who is currently discussing glyphosate, what they are saying and where they are saying it. This request was included in amendment No. 7 dated October 15, 2016 (Exhibit No. 16 appended to the sanction report), which was renewed numerous times until May 31, 2019. It thus appears that the FLEISHMAN-HILLARD was explicitly required to draw up the list of stakeholders as part of the campaign for the renewal of the authorization of glyphosate in Europe.³⁹ Secondly, the Restricted Committee notes that, contrary to what MONSANTO maintains, it emerges from several exchanges that took place between the two companies by electronic means that MONSANTO was closely associated with the identification and listing of the stakeholders involved in the debate on glyphosate, an activity which notably took concrete form in the creation of the file in question. Furthermore, the very regular exchanges between the two companies show that the MONSANTO company made very specific requests on what it considered should be taken into account by the FLEISHMAN-HILLARD company in carrying out its missions and other messages. relate to the organization of meetings involving representatives of the two companies. The documents annexed to the sanction report thus attest to the involvement of the MONSANTO company in the monitoring of the tasks carried out by the FLEISHMAN-HILLARD company, and in particular the organization of daily exchanges between the teams, weekly, monthly and quarterly points allowing the MONSANTO company to follow the progress of the tasks entrusted to FLEISHMAN-HILLARD and the delivery of the work carried out or in progress.⁴⁰ The Restricted Committee considers that these exchanges demonstrate that the company FLEISHMAN-HILLARD reported to the company MONSANTO on the progress of the campaign linked to the renewal of glyphosate and the actions carried out in this context, and above all that the latter exercised management power over the activities of FLEISHMAN-HILLARD, thus depriving it of the autonomy normally enjoyed by a data controller. These elements demonstrate that the company FLEISHMAN-HILLARD acted as a subcontractor of the company MONSANTO, within the meaning of Article 4(8) of the GDPR.⁴¹ Finally, the Restricted

Committee notes that the fact that MONSANTO indicates that it did not ultimately use the file drawn up by FLEISHMAN-HILLARD, a point which it was not possible to verify within the framework of the CNIL checks, is irrelevant on the fact that it was she who, by the directives given to FLEISHMAN-HILLARD, defined upstream the purposes and means of the processing which was implemented with a view in particular to establishing this file.⁴² Thirdly, the Restricted Committee considers that it cannot be inferred from the mere fact that FLEISHMAN-HILLARD offered MONSANTO a stakeholder monitoring strategy that the latter can be qualified as data controller.⁴³ The Restricted Committee emphasizes on the contrary that it is the fact for the company MONSANTO, the company giving the order, to decide to accept the proposal made by the company FLEISHMAN-HILLARD, and to contractually ask it to carry out operations on its behalf as a provider, who allowed the processing to exist. Indeed, if the MONSANTO company had refused this proposal, the FLEISHMAN-HILLARD company would not have implemented this processing. It follows from the case law of the Court of Justice of the European Union (CJEU) that the fact of resorting to the processing of personal data which has been designed by another actor and on which the sponsor can only make certain settings (CJEU, June 5, 2018, Wirtschaftsakademie Schleswig-Holstein, C-210/16), or even no configuration (CJEU, July 29, 2019, Fashion ID GmbH & Co. KG, C-40/17) does not exempt anyone who uses this processing in its capacity as data controller. The Court also specifies that "a natural or legal person who influences, for his own purposes, the processing of personal data and thereby participates in determining the purposes and means of this processing, may be considered to be a controller, within the meaning of Article 2(d) of Directive 95/46" (CJEU, 10 July 2018, Tietosuojaalvautuutettu/Jehovan todistajat, C-25/17).⁴⁴ Finally, the Restricted Committee considers that the fact that FLEISHMAN-HILLARD has responded to requests for access rights does not necessarily entail the qualification of data controller. Indeed, Article 28-3-e of the GDPR provides that the processor "helps the controller, by appropriate technical and organizational measures, as far as possible, to fulfill his obligation to give following the requests that the data subjects refer to it in order to exercise their rights". Thus, with regard to the specificities of the processing, the subcontractor can respond to the requests of the people himself if this measure allows better respect for the rights of the people. It is also common for it to be the subcontractor who is best able to process requests for the exercise of rights. The Restricted Committee therefore considers, taking into account these elements, that MONSANTO must be qualified as responsible. treatment.C. On the competence of the CNIL⁴⁵. Article 55-1 of the GDPR provides that "each supervisory authority is competent to exercise the missions and powers vested in it in accordance with this regulation on the territory of the Member State to which it belongs".⁴⁶

Article 8-2° of the Data Protection Act further specifies that "the National Commission for Data Processing and Freedoms (...) ensures that the processing of personal data is carried out in accordance with the provisions of this law and the other provisions relating to the protection of personal data provided for by laws and regulations, European Union law and France's international commitments". Thus, the CNIL is competent to ensure, on French territory, that the processing operations to which the provisions of the GDPR or the of January 6, 1978 as amended apply are implemented in accordance with the provisions of these texts.⁴⁸ Firstly, Article 3-1) of the GDPR provides "this regulation applies to the processing of personal data carried out in the context of the activities of an establishment of a controller or a sub- processing within the territory of the Union, whether or not the processing takes place in the Union". As a result, the CNIL is competent to ensure compliance with the provisions of the GDPR of the processing of personal data implemented in the context of the activities of an establishment of a subcontractor of a data controller, when this establishment is located in France.⁵⁰ In this case, the Restricted Committee notes that it appears from the documents in the file that the subsidiary of FLEISHMAN-HILLARD INC. based in Paris, the company FLEISHMAN-HILLARD France (now OPRG), notably intervened in the processing of personal data corresponding to the identification and mapping of the stakeholders in the debate on the renewal of the authorization of glyphosate, which resulted in the creation of the "French Monsanto stakeholders database - cultivating trust" file (Exhibit 13 appended to the sanction report).⁵¹ The CNIL is therefore competent, on the basis of article 3-1) of the GDPR, to know about the processing of personal data implemented in the context of the establishment of the file "French Monsanto stakeholders database - cultivating trust " by the company FLEISHMAN-HILLARD France.⁵² Secondly, under Article 3(2)(b) of the GDPR, the provisions of the Regulation apply "to the processing of personal data relating to data subjects who are located in the territory of the European Union by a controller or a processor who is not established in the Union, when the processing activities are linked (...) to the monitoring of the behavior of these persons, insofar as this is a behavior that takes place within the Union" .⁵³ Furthermore, Article 3 of the Data Protection Act provides that "the national rules adopted on the basis of the provisions of the same regulation referring to national law the task of adapting or supplementing the rights and obligations provided for by this regulation apply when the data subject resides in France, including when the data controller is not established in France". It follows from these provisions that the CNIL is competent to ensure compliance with the provisions of the Data Protection Act and the GDPR with regard to the processing of personal data relating to the monitoring of the behavior of persons when these persons reside in France, in case of tracking activity based on individual profiles, regardless of where the data controller is

established.⁵⁵ In view of the foregoing, the Restricted Committee notes that as part of its mission to represent interests on behalf of the company MONSANTO, the company FLEISHMAN-HILLARD collected and processed the personal data of stakeholders involved in the debate on the renewal of the authorization for the use of glyphosate in the European Union. The processing thus implemented proceeds from the monitoring of the behavior of the persons concerned within the meaning of the provisions of Article 3-2)-b) of the GDPR and therefore falls within the territorial scope of the GDPR and the provisions of the Data Protection Act. et Libertés, regardless of where the data controller is established.D. On the applicability of the GDPR to the facts of the case⁵⁶. The rapporteur points out that the processing of personal data corresponding to the identification and mapping of the parties involved in the debate on the renewal of the authorization of glyphosate, which has resulted in particular in the creation of the file "20160822 French Monsanto stakeholders database - cultivating trust", began in 2016 but continued until 2019, i.e. after the entry into application of the GDPR, as is explicitly apparent from the specifications of amendment no. 7, signed on October 15, 2016 and renewed numerous times until 2019.⁵⁷ The rapporteur considers that the alleged lack of modification of the file after 2017 cannot succeed insofar as the modification is not the only processing operation that can prolong the characterization of the breaches. It notes that under the terms of Article 4(2) of the GDPR, storage, copying or consultation constitute processing operations. It recalls on this point that MONSANTO was the recipient of the file in question and kept it as part of the archiving of its employees' emails.⁵⁸ However, the rapporteur notes that, at a minimum, the receipt, consultation and storage of a file containing personal data, established in the context of processing, the purposes and means of which have been defined by the person concerned constitutes, for this data controller, a processing operation.⁵⁹ The rapporteur therefore considers that, since the storage of the file by the company continued for a long period, some of the breaches committed by the company are continuous breaches which began before the entry into application of the GDPR but continued after.⁶⁰ The company considers for its part that the GDPR is not applicable to the facts of the case insofar as the disputed file, named "20160822 French Monsanto stakeholders database - cultivating trust" dates, in its most complete version, from 22 August 2016. It notes that even if the restricted training is based on the declarations of the company FLEISHMAN-HILLARD, which indicated to the CNIL that the file had not been updated after April 2017, the applicable law would be the one in force at that time, and not the GDPR. It also underlines that the companies FLEISHMAN-HILLARD and PUBLICIS are not able to produce this file in an updated version after August 2016 or even to find exchanges on this subject. The company further indicates that the file's metadata shows that it was last updated on December 19, 2016.⁶¹ The company

then points out that amendment no. 7 which supplemented the framework contract for the provision of services concluded with the company FLEISHMAN-HILLARD was signed in October 2016, i.e. after the creation of the file, and that this amendment could not therefore not concern the creation of the file in question. It also notes that the subsequent continuation of commercial relations with the company FLEISHMAN-HILLARD does not imply that the processing linked to the file has continued, given that the relations between the two companies were not limited simply to this processing. Finally, it argues that the mere fact that the file in question may have been kept in the storage space of an employee's professional email does not mean that the processing of the personal data contained in this file would have endured.⁶² The company therefore considers that the facts in dispute took place entirely before the entry into force of the GDPR and that it is, therefore, the Data Protection Act in its version in force on August 22, 2016, or even at the latest in its version in force in April 2017, which should be applied to the facts of the case. According to the company, this implies that the CNIL should have sent it a formal notice prior to the initiation of sanction proceedings.⁶³ Firstly, the Restricted Committee finds that the company MONSANTO has entrusted the company FLEISHMAN-HILLARD with a broad mission of representation of interests involving an inventory of information relating to personalities involved in the debate on the renewal of the authorization of the glyphosate. This request was formulated in the framework contract for the provision of services of July 18, 2013 then in amendment no. 13 of August 5, 2016, which explicitly provided for the production of a map of the stakeholders in the debate relating to glyphosate. The Restricted Committee points out that this request for identification of the stakeholders was included in a second amendment dated October 15, 2016, identified as being amendment no 7, which was renewed on numerous occasions until 2019, in particular September 1, 2018 and January 1, 2019.⁶⁴ The maintenance of the file entitled "French Monsanto stakeholders database – cultivating trust", gathering personal data collected by the company FLEISHMAN-HILLARD was therefore carried out as part of the service of identification, inventory and mapping of stakeholders which lasted until 2019.⁶⁵ In this respect, the Restricted Committee considers that the fact that this file was modified for the last time no later than April 2017, i.e. before the entry into application of the GDPR, has no effect on the persistence of the processing of personal data. , since the file concerned continues to exist in the information system of the company in question, or of one of its service providers acting on its behalf, until a date after the entry into force of the GDPR. In this case, the file was indeed stored in the email archives of an employee of MONSANTO.⁶⁶ The Restricted Committee recalls that the mere storage constitutes processing of personal data. Thus, since as data controller, the MONSANTO company has kept, including with an intermediate archiving status, a file containing personal data, which it

had itself requested to be produced, it has of its own doing extend the existence of this file beyond the entry into application of the GDPR.⁶⁷ The Restricted Committee also emphasizes that the creation of this file is part of a broader objective of identifying, listing and mapping the stakeholders in the debate on the renewal of glyphosate. On this point, amendment no. 7, renewed in particular on September 1, 2018 and January 1, 2019, explicitly contains instructions intended to update stakeholder maps, which corresponds well to the objective pursued by the disputed file. ⁶⁸. Thus, if the services requested by the company MONSANTO from the company FLEISHMAN-HILLARD, materialized in particular by the preparation of the file in question, began before the entry into application of the GDPR, they have, at least, by the sole fact of the conservation of this file, continued after the entry into application of this text.⁶⁹ Secondly, the Restricted Committee notes that the shortcomings relating to the information of persons and the supervision of relations between the controller and its subcontractor are continuous shortcomings which persisted after the entry into application of the GDPR. . It points out that if the company proceeded to inform people, through the intermediary of the firm SIDLEY in 2019, this information is subsequent to the entry into application of the GDPR and that it was only carried out after the revelation of the facts in the press. However, it was up to the company to ensure, itself or through its subcontractor, the information of persons, either under the influence of the provisions applicable before the entry into force of the GDPR (in particular at the time of of the constitution of the file), or under the GDPR, to regularize the situation, after the entry into application of the latter. The Restricted Committee also notes that the obligation to inform persons whose data has not been collected from them already appeared in Article 32-III of the "Informatique et Libertés" law in its version in effective on August 5, 2016, the date on which amendment no. 13 providing for the creation of the file was signed. Similarly, although having a different scope, the obligation for a data controller to regulate his relations with his subcontractor by a legal act was provided for in article 35 of the "Informatique et Libertés" law.⁷⁰ . The restricted committee recalls on this point that in its decision of March 1, 2021, Société Futura Internationale, no. 437808, the Council of State confirmed that the CNIL could sanction, on the basis of the GDPR, a continuous breach that began before application and continued after. Consequently, the Restricted Committee considers that the Data Protection Act, in its version prior to the entry into force of the GDPR, then the GDPR are applicable to the facts of the case.E. On the breach of the obligation to inform the persons concerned pursuant to Article 14 of the GDPR⁷¹. Article 14 of the GDPR provides that when the personal data have not been collected from the person concerned by the processing, the data controller shall provide the latter with the elements referred to in this same article "within a reasonable period of time after having obtained the personal

data, but not exceeding one month, having regard to the particular circumstances in which the personal data is processed or if it is intended to communicate the information to another recipient, at the latest when the data of a personal nature are communicated for the first time".⁷² The rapporteur notes that the persons whose personal data were collected and processed in this case were not informed of this processing until 2019, when the company BAYER, after having acquired the company MONSANTO, carried out the informing people through the firm SIDLEY. It considers that none of the exceptions to the obligation to inform persons provided for in Article 14(5) of the GDPR can be invoked in the present case.⁷³ In defence, MONSANTO considers that, insofar as it had no control over the data in question, it was not up to it to inform the persons concerned. It considers that this obligation was incumbent on the company FLEISHMAN-HILLARD, which had control over the data contained in the file. It explains that in any event, informing the persons would have been of little interest insofar as the data in question were public, that the persons concerned could reasonably expect that their data the object of such treatment and that she ultimately never used this file.⁷⁴ Firstly, it appears to the Restricted Committee that the processing of personal data, consisting of the collection of information aimed at identifying the influential persons with whom a company wishes to represent its interests may, subject to certain conditions, be carried out on the basis of the legitimate interest pursued by the data controller. Indeed, processing such as that in question may be justified by the pursuit of the legitimate interest of the data controller, provided that the interests and fundamental rights of the persons concerned do not prevail over the interests of the data controller. This balance between the various interests present requires in particular to take into account the reasonable expectations of the persons concerned as to the nature of the data collected and the way in which they are processed for the constitution of the disputed processing, as provided for in recital 47 of the GDPR.⁷⁵ In the present case, the Restricted Committee notes that the persons whose data appeared in the disputed file could reasonably have expected that MONSANTO, or more generally organizations engaged in the representation of interests, would be interested in their positioning in the glyphosate-related debate, and deals with their professional contact details as well as information relating to their public positions.⁷⁶ Indeed, the people present in the file in question took part in the public debate on the use of glyphosate or subjects related to this theme, whether in particular through the development of public decisions, their influence on representing or directing companies or public and private organizations known to be involved in ecological and environmental issues, or even taking a public position or actively participating in these debates. Therefore, these people could reasonably expect that players in the sector in which they operated would collect information about them from publicly and

lawfully accessible data in order to know and understand their positions and possibly to get in touch with them. .77. The Restricted Committee notes that in all cases, the data controller who implements such processing must ensure compliance with the obligations provided for by the GDPR and in particular the obligation to inform persons so that they can exercise their rights.78. The Restricted Committee thus recalls that under Article 14 of the GDPR, the information that the data controller must provide to the person concerned is, in particular, the identity and contact details of the data controller (and, where applicable, the contact details of the data protection officer), the purposes of the processing, its legal basis, the categories of personal data concerned, where applicable the recipients or categories of recipients of the data, the fact that the controller has the intention to transfer the data to a third country as well as, if necessary to guarantee fair and transparent processing, the duration of the data retention, the existence of the various rights enjoyed by individuals, the existence of the right to withdraw consent at any time and the right to lodge a complaint with a supervisory authority, the source from which the data originates and the existence possible automated decision-making.79. The provision of this information enables the data subject to exercise his rights with the data controller. It thus contributes to making the activity of interest representation more transparent.80. Secondly, the Restricted Committee recalls that under the terms of Article 14(5)(b) of the GDPR, this obligation to provide information does not apply when "the provision of such information proves impossible or would require disproportionate efforts" or when compliance with this obligation to inform "is likely to render impossible or seriously compromise the achievement of the objectives of the said processing" .81. With regard to the exceptions provided for in the aforementioned Article 14(5)(b), the Restricted Committee notes that the information of the persons appearing in the file entitled "French Monsanto stakeholders database – cultivating trust" would not have required the part of the MONSANTO company disproportionate efforts and was, therefore, necessary. The Restricted Committee first points out that the file in question concerned more than 200 people and that the company had contact information for almost all of them such as an address, a telephone number or an address electronic mail.82. The Restricted Committee recalls in this regard that, in its decision of 12 March 2014, Société Pages Jaunes Groupe, no. 353193, the Council of State considered that the information by the data controller of 25 million people concerned collection of their personal data was not impossible and did not constitute a "disproportionate effort", taking into account the interest which attaches to the respect of the fundamental rights and freedoms of these persons, since in particular the person in charge of treatment had useful contact details for contacting them.83. The Restricted Committee also notes that the persons concerned were finally informed individually in 2019, through the firm

SIDLEY, which demonstrates that information was entirely possible.⁸⁴ It does not appear then that the provision of information to the data subjects relating to the processing carried out would have been likely to render impossible or seriously compromise the achievement of the objectives of that processing. Indeed, the Restricted Committee notes that the legislative framework for the activity of interest representatives is moving towards increased transparency both at European Union and national level. On this point, the French Association of Lobbying and Public Affairs Consultants defines lobbying as "the representation of interests (...) through a contradictory and balanced sharing of information", which appears incompatible with exercise of this activity in an opaque manner, without the knowledge of the persons concerned.⁸⁵ Finally, the Restricted Committee notes that the circumstances invoked by MONSANTO, namely that the data in question were public, that the persons concerned could reasonably expect that their data would be subject to such processing and that this file has never been used by the company, do not constitute grounds for exempting the data controller from his obligation to provide information with regard to the provisions of Article 14 of the GDPR. In addition, contrary to what the company maintains, the responsibility for ensuring that the information has indeed been delivered to the persons concerned lies with the data controller and not with the subcontractor. Therefore, the Restricted Committee considers that the facts aforesaid constitute a breach of article 14 of the GDPR.F. On the breach of the obligation to regulate by a formalized legal act the processing carried out on behalf of the data controller⁸⁶. Article 28 of the Regulation provides that when processing is carried out by a processor, this processing is governed by a contract or another legal act which defines the object and duration of the processing, the nature and the purpose of the processing. , the type of personal data, the categories of data subjects and the obligations and rights of the controller. This contract also provides for the conditions under which the subcontractor undertakes to carry out the processing operations on behalf of the controller.⁸⁷ The rapporteur notes that in this case, the processing relating to the mapping between stakeholders was the subject of several contracts and successive amendments between the companies MONSANTO and FLEISHMAN-HILLARD but that none of them contains the information provided for in Article 28 of the GDPR.⁸⁸ In defence, the company recalls that, for the reasons already expressed in points 30 to 33, it was not acting as data controller and that, consequently, the obligation provided for by article 28 of the GDPR is not applicable to it. not enforceable.⁸⁹ The Restricted Committee recalls that for the reasons set out in points 34 to 43, the MONSANTO company must be regarded as acting as data controller and the FLEISHMAN-HILLARD company as a subcontractor.⁹⁰ The Restricted Committee notes that the processing of personal data in question, carried out by the company FLEISHMAN-HILLARD within

the framework of the mission of representation of interests entrusted to it by the company MONSANTO, has its origin in the framework contract agreement signed between the two companies on July 18, 2013. This framework agreement was supplemented by several amendments, in particular amendment no. 7, the specifications of which were regularly renewed until May 2019.⁹¹ However, the Restricted Committee notes that none of these acts concluded between the two companies from May 25, 2018, the date on which the obligation contained in Article 28 of the GDPR became applicable, contains the information provided for in this article. 28. Consequently, the Restricted Committee considers that these facts constitute a breach of Article 28 of the GDPR.^{III. On corrective measures and publicity}⁹². Under the terms of III of article 20 of the modified law of January 6, 1978: "When the data controller or its subcontractor does not comply with the obligations resulting from regulation (EU) 2016/679 of April 27, 2016 or from the this law, the president of the National Commission for Computing and Liberties may also, if necessary after having sent him the warning provided for in I of this article or, if necessary in addition to a formal notice provided for in II, seize the restricted formation of the commission with a view to the pronouncement, after adversarial procedure, of one or more of the following measures: [...] 7° With the exception of cases where the processing is implemented by the State, an administrative fine not to exceed 10 million euros or, in the case of a company, 2% of the total worldwide annual turnover of the previous financial year, whichever is higher. mentioned in 5 and 6 of article 83 of regulation (EU) 2016/ 679 of April 27, 2016, these ceilings are increased, respectively, to 20 million euros and 4% of said turnover. The restricted committee takes into account, in determining the amount of the fine, the criteria specified in the same article 83". ⁹³. Article 83 of the GDPR provides that "Each supervisory authority shall ensure that the administrative fines imposed in under this Article for breaches of this Regulation referred to in paragraphs 4, 5 and 6 are, in each case, effective, proportionate and dissuasive" , before specifying the elements to be taken into account to decide whether to impose an administrative fine and to decide on the amount of this fine.⁹⁴ In defence, MONSANTO maintains that it is the "Informatique et Libertés" law - in its version in force on December 19, 2016 or, alternatively, in its version in force in April 2017 - which is applicable to the facts of the case and that, therefore, a formal notice should necessarily have been notified to it before sanction proceedings could be initiated, which could lead to the issuance of a administrative fine.⁹⁵ The company recalls that in addition to the fact that it does not have the status of data controller, the data appearing in the disputed file had all been made public by the persons concerned. It therefore considers that the damage suffered by them is slight.⁹⁶ In addition, the company considers that the amount of the fine proposed by the rapporteur is disproportionate in view of the seriousness of the breaches alleged, but also

in view of the recent sanction deliberations issued by the restricted committee.⁹⁷ Finally, with regard to the publicity of the sanction, the company points out that it has already been very exposed in the media in 2019 for the same facts. She considers that a public sanction would cause a new wave of media damage to her image.⁹⁸ Firstly, the Restricted Committee notes that the failure to comply with the obligation to inform the persons concerned has infringed the rights of the latter, insofar as, not being aware that their personal data were being processed by the company, these people have not been put in a position to control the use of their data in this context. It recalls that the obligation to inform constitutes a central measure for the protection of individuals, insofar as it allows the exercise of rights. It also notes that Article 83(5) of the GDPR provides that failure to comply with this obligation may be sanctioned up to 20 million euros or 4% of turnover, which constitutes the ceiling of highest fine.⁹⁹ In addition, the Restricted Committee notes that the breach was only brought to an end several years after the processing in question was implemented and only after several media revealed the existence of the disputed .100 file. The Restricted Committee then considers that the fact that the MONSANTO company did not provide a legal framework for the processing carried out on its behalf by the FLEISHMAN-HILLARD company contributed to accentuating the fact that the personal data of the persons processed in this executives have not benefited from the protection offered by the GDPR. Indeed, Article 28 of the GDPR provides various concrete guarantees in terms of data protection, for example by providing for the implementation of security measures or the assistance to be provided by the subcontractor to the data controller with regard to exercise of rights.¹⁰¹ Consequently, the Restricted Committee considers that an administrative fine should be imposed with regard to the breaches of Articles 14 and 28 of the GDPR.¹⁰² Secondly, the Restricted Committee recalls that under the terms of Article 83(1), the fines imposed must be effective, proportionate and dissuasive. In particular, it considers that the financial situation of the company must be taken into account when determining the sanction and in particular, in the event of an administrative fine, its amount. It notes in this respect that the company reports a turnover for the year 2018 of approximately 12 billion euros. In addition, it observes that the processing in question was implemented in particular for the purpose of defending the economic interests of the company. In view of these elements, the Restricted Committee considers that the imposition of a fine of 400,000 euros appears justified.¹⁰³ Finally, the Restricted Committee considers that the publicity of the sanction is justified in view of the nature of the breaches noted, their duration and their seriousness. It also considers that this measure will make it possible to inform the persons concerned of the breaches sanctioned, insofar as these facts have been the subject of several complaints. : pronounce against MONSANTO COMPANY an administrative fine of

400,000 (four hundred thousand) euros; make public, on the CNIL website and on the Légifrance website, its deliberation, which does not will identify the company more specifically at the end of a period of two years from its publication. Chairman Alexandre LINDEN This decision may be appealed to the Council of State within four months of from its notification.