

Deliberation SAN-2022-027 of December 29, 2022 National Commission for Computing and Liberties Nature of the deliberation: Sanction Legal status: In force Date of publication on Légifrance: Friday January 13, 2023 Deliberation of the restricted committee n°SAN-2022-027 of 29 December 2022 concerning the companies TIKTOK INFORMATION TECHNOLOGIES UK LIMITED and TIKTOK TECHNOLOGY LIMITED 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 , Mrs Christine MAUGÜÉ, Mr Alain DRU and Mr Bertrand du MARAIS, members; Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of personal data and the free movement of these data; Having regard to law no. 78-17 of January 6, 1978 relating to data processing, files and freedoms, in particular its articles 20 and following; Having regard to decree no. 2019-536 of May 29, 2019 taken for the application of Law No. 78-17 of January 6, 1978 relating to data processing, files and freedoms; Having regard to deliberation No. 2013-175 of July 4, 2013 adopting the internal regulations of the National Commission for Data Processing and Freedoms; Having regard to decision n° 2020-047C of December 27, 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 any processing of personal data relating, in whole or in part, to data relating to the marketing or use of products or services associated with the "Tik Tok" brand; Having regard to the decision of the President of the National Commission for Computing and Freedoms relating appointment of a rapporteur before the restricted committee of February 3, 2022; Having regard to the report of Mrs. Valérie PEUGEOT, reporting auditor, notified to the companies TIKTOK INFORMATION TECHNOLOGIES UK LIMITED and TIKTOK TECHNOLOGY LIMITED on July 7, 2022; Having regard to the written observations submitted by the companies TIKTOK INFORMATION TECHNOLOGIES UK LIMITED and TIKTOK TECHNOLOGY LIMITED on August 22, 2022; Having regard to the rapporteur's response to these observations notified on September 22, 2022 to the Board of Companies; Having regard to the written observations of the companies TIKTOK INFORMATION TECHNOLOGIES UK LIMITED and TIKTOK TECHNOLOGY LIMITED received on October 24, 2022; Having regard to the other documents in the file; Were present at the restricted committee meeting of December 1, 2022:- Mrs. Valérie PEUGEOT, auditor, heard in her report; As representatives of the companies TIKTOK INFORMATION TECHNOLOGIES UK LIMITED and TIKTOK TECHNOLOGY LIMITED:- [...] The companies TIKTOK INFORMATION TECHNOLOGIES UK LIMITED and TIKTOK TECHNOLOGY LIMITED having the floor last;The Restricted Committee adopted the following decision:I. Facts and

procedure<sup>1</sup>. The TIKTOK group, which has offices in Europe, the Middle East, North America, Asia and Africa, is part of the BYTEDANCE group of companies, which operates a range of content distribution platforms. BYTEDANCE LTD, parent company of TIKTOK Group, is incorporated in Cayman Islands. 2. BYTEDANCE launched the TIKTOK app in May 2017. In November 2017, BYTEDANCE acquired "musical.ly", a content distribution platform for users to create, view and share content. The American company MUSICAL.LY INC. offered the "musical.ly" application to users located in the United States and the European Union. Following this acquisition, the "musical.ly" application was rebranded as TIKTOK in August 2018 and the corporate name of MUSICAL.LY INC. was changed to TIKTOK INC. in May 2019. 3. TIKTOK INC. continued to offer the app to people in the European Union following the acquisition of the app by BYTEDANCE and its renaming to TIKTOK. TIKTOK INC. was responsible for processing the personal data of users located in the European Union until July 2020. As part of the control procedure, the companies TIKTOK INFORMATION TECHNOLOGIES UK LIMITED (hereinafter "TIKTOK UK") and TIKTOK TECHNOLOGY LIMITED (hereinafter "TIKTOK IRELAND") have indicated that, since July 29, 2020, the responsibility for the processing of personal data of European users lies with them jointly.<sup>4</sup> TIKTOK UK, whose head office is located in London (United Kingdom), had [...] employees in June 2020. 5. A subsidiary of TIKTOK UK, TIKTOK IRELAND has its head office located in Dublin (Ireland). Incorporated at the end of 2018, it employed [...] people in June 2020. 6. In 2021, the company BYTEDANCE, parent company of TIKTOK, achieved a turnover of approximately [...]dollars. The total turnover of the TIKTOK UK company and its subsidiaries amounted to almost [...] dollars in 2019 and more than [...] dollars in 2020.<sup>7</sup> In addition, two TIKTOK establishments are present in France, NEWS REPUBLIC and TIKTOK SAS, which have their head offices in Bordeaux and Paris respectively. 8. During the first quarter of 2020, the TIKTOK application had around 60 million monthly active users in the European Union and the United Kingdom. About 7 million of these monthly active users were located in France, including 5 million registered users, i.e. with an account. According to publicly available information, TIKTOK was the most downloaded mobile phone application in 2021. 9. Pursuant to decision no. hereinafter "the Commission" or "the CNIL") of December 27, 2019, the CNIL carried out an online inspection mission on the "tiktok.com" website on May 14, 2020. 10. On June 3, 2020, a Documentary control mission was also carried out by sending a questionnaire to the company TIKTOK INC., then responsible for processing, a copy of which was sent to the company TIKTOK UK. The company was thus invited to answer several questions relating in particular to the organization of the group, its responsibility in the context of the processing implemented on the "tiktok.com" site, the purposes of the reading and/or writing operations carried out from this site

in the terminal of users residing in France.<sup>11</sup> On June 29, 2020, TIKTOK UK sent response elements to the CNIL. By emails of August 26 and September 30, 2020, the CNIL delegation requested additional clarifications from the company, which were provided by TIKTOK IRELAND by letters of September 24 and October 9, 2020. <sup>12</sup> June 3, 2021, a second online check was carried out by a delegation from the CNIL. During this check, the delegation followed three paths in order to identify whether cookies are deposited on the user's equipment during navigation:- path 1 - "refusal of the deposit of cookies": when the user goes to the "www.tiktok.com" website and continues browsing after clicking on the "Manage settings" tab located in the information banner relating to cookies, then on the "Open cookie settings" button, then on the "Save" button; - route 2 - "no choice expressed": when the user goes to the "www.tiktok.com" website and then does not click on any of the buttons displayed in the information banner, then continues browsing in the social network; - path 3 - "acceptance of cookies, then withdrawal of consent": when the user goes to the website "www.tiktok.com" and, after clicking on the "Accept all" tab located in the information banner relating to cookies, continues browsing the social network; then when he goes to the link entitled "Cookies" in the footer, clicks on the "Open cookie settings" button, unchecks the "Analytics and marketing data" slider, then clicks on the "Save" button and continues browsing. <sup>13</sup> The control delegation asked the company TIKTOK IRELAND, within the framework of the online report of findings drawn up at the end of the control, for additional details on the purpose of each of the cookies mentioned in the said report and on the purpose of the requests addressed to certain domains mentioned in the exhibits.<sup>14</sup> By letter dated June 22, 2021, TIKTOK IRELAND provided the details requested by the delegation of control.<sup>15</sup> For the purposes of examining these elements, the President of the Commission, on February 3, 2022, appointed Mrs Valérie PEUGEOT as rapporteur on the basis of Article 39 of Decree No. 2019-536 of May 29, 2019.<sup>16</sup> By letter dated May 30, 2022, the rapporteur requested additional information from the board of the companies TIKTOK UK and TIKTOK IRELAND, relating in particular to the current functions of the companies TIKTOK SAS and NEWS REPUBLIC, to the legal links between the companies NEWS REPUBLIC, TIKTOK SAS, TIKTOK IRELAND and TIKTOK UK and on the date on which the "refuse all" button was added to the cookie banner on the "tiktok.com" site. These additional elements were sent to the rapporteur by letter dated June 14, 2022. <sup>17</sup> Then, at the request of the rapporteur, the President of the Commission had a new mission carried out to verify the processing implemented on the website "tiktok.com" on June 30, 2022.<sup>18</sup> On July 7, 2022, the rapporteur notified the company of a report detailing the breach of Article 82 of Law No. 78-17 of January 6, 1978 as amended relating to data processing, files and freedoms (see below). after "the Data Protection Act") which it considered constituted in this case.

The rapporteur proposed to the restricted committee of the Commission to issue an administrative fine against the companies TIKTOK UK and TIKTOK IRELAND, as well as an injunction, accompanied by a penalty payment, to stop depositing cookies and tracers subject to the collection of the consent of people residing in France when they arrive on the "tiktok.com" site, even before they have had the possibility of making a choice as to the operations of access or registration of information in their terminal, after their refusal of read and write operations or after withdrawal of their consent, and to inform the persons concerned about the purposes of the various cookies for which the user can make a choice by clicking on a slider button, in order to allow him to give free and informed consent. It also proposed that the sanction decision be made public, but that it would no longer be possible to identify the companies by name after the expiry of a period of two years from its publication.<sup>19</sup>. On August 22, 2022, the companies filed their observations in response to the sanction report.<sup>20</sup>. The rapporteur replied to the companies' observations on 22 September 2022. <sup>21</sup>. On 24 October 2022, the companies submitted new observations in response to those of the rapporteur.<sup>22</sup>. By letter dated November 9, 2022, the rapporteur informed the company board that the investigation was closed, pursuant to Article 40, III, of amended decree no. 2019-536 of May 29, 2019.<sup>23</sup>. By letter dated November 10, 2022, the companies were informed that the file was on the agenda of the restricted meeting of December 1, 2022.<sup>24</sup>. The rapporteur and the companies presented oral observations during the restricted committee session.

II. Reasons for decision

A. On the processing in question and the competence of the CNIL

1. On the material competence of the CNIL and the non-application of the "one-stop shop" mechanism provided for by the GDPR<sup>25</sup>. The processing covered by this procedure relates to the deposit of cookies and tracers on the terminal of users residing in France when browsing the "tiktok.com" site and on the TIKTOK sub-domains. The main domain – "tiktok.com" – is the main site through which users can watch videos on the TIKTOK platform. As for the sub-domains, they are dedicated to other specific activities: sub-domain dedicated to TIKTOK news ("newsroom.tiktok.com"), sub-domain allowing collaboration with creators according to one's industry, its budget and its commercial goals ("creatormarketplace.tiktok.com") or even a sub-domain allowing developers to create tools for creators and communities ("developers.tiktok.com") for example. <sup>26</sup>. The processing that is the subject of the procedure is carried out in the context of the provision of electronic communications services accessible to the public through a public electronic communications network offered within the European Union. As such, they fall within the material scope of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications, as amended by Directive 2006/24/EC of March 15, 2006 and by

Directive 2009/136/EC of November 25, 2009 (hereinafter the "ePrivacy" Directive).<sup>27</sup> Article 5(3) of this directive, relating to the storage of or access to information already stored in the terminal equipment of a subscriber or user, has been transposed into national law in Article 82 of the Data Protection Act, within Chapter IV of the law relating to the Rights and obligations specific to processing in the electronic communications sector. 28. Under the terms of Article 16 of the Data Protection Act, "the restricted committee takes measures and pronounces sanctions against data controllers or subcontractors who do not comply with the obligations arising [...] of this law". According to Article 20, paragraph III, of this same law, "when the data controller or its subcontractor does not comply with the obligations resulting from [...] this law, the president of the National Commission for Informatics and freedoms [...] can seize the restricted formation".<sup>29</sup> The rapporteur considers that the CNIL is materially competent to control and sanction the operations of access or registration of information implemented by companies in the terminals of users of the TIKTOK social network in France.<sup>30</sup> In defence, the companies did not comment on the competence of the CNIL in their pleadings, stating that they "reserve[d] the right to decide later".<sup>31</sup> The Restricted Committee recalls that the Council of State, in its decision *Société GOOGLE LLC and société GOOGLE IRELAND LIMITED* of January 28, 2022, confirmed that the control of operations for accessing or registering information in the terminals of users in France of an electronic communications service, even resulting from cross-border processing, falls within the jurisdiction of the CNIL and that the one-stop-shop system provided for by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter "the GDPR" or "the Regulation") is not applicable: "it has not been provided for the application of the so-called "one-stop shop" mechanism applicable to cross-border processing, defined in Article 56 of this regulation, for the measures for the implementation and control of Directive 2002/58/EC of 12 July 2002, which fall within the competence of the national control authorities by virtue of Article 15 bis of this directive. It follows that, with regard to the control of operations for accessing and recording information in the terminals of users in France of an electronic communications service, even if proceeding from cross-border processing, the measures of control of the application of the provisions having transposed the objectives of Directive 2002/58/EC fall within the competence conferred on the CNIL by the law of January 6, 1978 [...]" (EC, 10th and 9th chambers combined, January 28, 2022, company GOOGLE LLC and company GOOGLE IRELAND LIMITED, n° 449209, pt. 12). The Council of State reaffirmed this position in a judgment of June 27, 2022 (CE, 10th and 9th chambers combined, June 27, 2022, company AMAZON EUROPE CORE, n° 451423).<sup>32</sup> Therefore, the Restricted Committee considers that the CNIL is competent to control and initiate a sanction procedure concerning the

processing carried out by companies falling within the scope of the "ePrivacy" directive, provided that the processing relates to its territorial jurisdiction.<sup>2</sup> On the territorial jurisdiction of the CNIL<sup>33</sup>. The rule of territorial application of the requirements set out in Article 82 of the Data Protection Act is set out in Article 3, paragraph I, of the same law which provides: "without prejudice, with regard to processing falling within the scope of Regulation (EU) 2016/679 of 27 April 2016, of the criteria provided for in Article 3 of this regulation, all the provisions of this law apply to the processing of personal data carried out within the framework activities of an establishment of a data controller [...] on French territory, whether or not the processing takes place in France".<sup>34</sup> The rapporteur considers that the CNIL has territorial jurisdiction in application of these provisions since the processing covered by this procedure, consisting of operations to access or register information in the terminal of users residing in France during the navigation on the "tiktok.com" website is carried out within the "framework of the activities" of the company TIKTOK SAS, which constitutes the "establishment" on French territory of the companies TIKTOK UK and TIKTOK IRELAND.<sup>35</sup> In defence, the companies again made no observations on this point, stating that they "reserve[d] the right to comment later".<sup>36</sup> Firstly, with regard to the existence of an establishment of the data controller on French territory, the Restricted Committee recalls that the Court of Justice of the European Union (hereinafter the "CJEU") considered that the concept of establishment should be assessed in a flexible manner and that to this end, it is necessary to assess both the degree of stability of the establishment and the reality of the exercise of activities in another Member State, taking into account the specific nature of the economic activities and the provision of services in question (see, for example, CJEU, *Weltimmo*, 1 Oct. 2015, C 230/14, pts. 30 and 31). The CJEU also considers that a company, an autonomous legal person, from the same group as the controller, can constitute an establishment of the controller within the meaning of these provisions (CJEU, 13 May 2014, *Google Spain*, C-131/ 12, pt 48).<sup>37</sup> In this case, the Restricted Committee notes, first of all, that the companies indicated in the context of the procedure that the company TIKTOK SAS had taken over the functions of the company NEWS REPUBLIC. TIKTOK SAS, registered in France since March 17, 2020, has premises located at 19 rue Poissonnière in Paris (75002). Under the terms of its articles of association filed with the Paris Commercial Court, its main purpose is "in France and in all countries, to develop, promote, sell and/or distribute software, services, advice and/or products allowing or facilitating access by the user of mobile telephone or other mobile medium to content in all its forms: texts, videos, music, images".<sup>38</sup> In addition, the Restricted Committee notes, with regard to the links between these two establishments and the companies TIKTOK UK and TIKTOK IRELAND, that the companies NEWS REPUBLIC and TIKTOK SAS are both part of the

BYTEDANCE group taking part in the processing of personal data French users and are both 100% owned by TIKTOK UK. They are bound together by contractual agreements. 39. Secondly, with regard to the existence of processing carried out "in the context of the activities" of this establishment, the Restricted Committee notes that, in its AMAZON EUROPE CORE decision of June 27, 2022, the Board of State recalled that "it follows from the case law of the Court of Justice of the European Union, in particular from its judgment of 5 June 2018, Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein v Wirtschaftsakademie Schleswig-Holstein GmbH (C-210/16 ), that in view of the objective pursued by this directive [the "e-Privacy" directive], consisting in ensuring effective and complete protection of the fundamental rights and freedoms of natural persons, in particular the right to protection of privacy and the protection of personal data, processing of personal data may be regarded as carried out "in the context of the activities" of a national establishment not only if this establishment itself intervenes in the implementation of this processing, but also in the case where the latter is limited to ensuring, on the territory of a Member State, the promotion and sale of advertising space making it possible to make profitable the services offered by the person responsible for processing consisting of collect personal data through connection tracers installed on the terminals of visitors to a site" (CE, 10th and 9th chambers combined, June 27, 2022, company AMAZON EUROPE CORE, n° 451423, pt. 10). The Council of State considered in this same decision that this was the case when the activities of the establishment of the data controller consist of the promotion and marketing of advertising tools controlled and operated by the data controller operating in particular thanks to the data collected through connection tracers placed on the terminals of users of the site operated by the data controller (pt. 15 of the aforementioned decision).40. In this case, the Restricted Committee notes that the operations for accessing or registering information in the terminal of users located in France when using the TIKTOK social network – main domain and subdomains – are intrinsically linked to the activities of the company TIKTOK SAS (and of the company NEWS REPUBLIC before TIKTOK SAS resumed its functions). Indeed, the companies TIKTOK IRELAND and TIKTOK UK operate the website "tiktok.com" on which advertising space is purchased by advertisers. The sale of these advertising spaces and more broadly the promotion of advertising tools are ensured, for the French market, by the company TIKTOK SAS (and previously by the company NEWS REPUBLIC), which collaborates with advertisers to target "local audiences". and thus offer the most relevant advertisements. However, the display of personalized advertisements to a specific Internet user is only possible if the navigation of the latter within the application could be traced thanks to a cookie, in order to determine which content would be the most relevant to display. 41. Thus, the processing consisting of information access or

registration operations in the terminal of users residing in France, when using the TIKTOK social network, is carried out within the framework of the activities of the company TIKTOK SAS (and formerly NEWS REPUBLIC). The Restricted Committee notes that the two criteria provided for in Article 3, paragraph 1, of the Data Protection Act are therefore met. 42. It follows that French law is applicable and that the CNIL is materially and territorially competent to exercise its powers, including that of imposing sanctions concerning processing falling within the scope of the "ePrivacy" directive. B. On the determination of the data controller 43. The Restricted Committee notes, first of all, that Articles 4, paragraph 7, and 26, paragraph 1, of the GDPR are applicable to this procedure because of the use of the notion of "controller" in article 82 of the Data Protection Act, which is justified by the reference made by article 2 of the "ePrivacy" directive to directive 95/46/EC on the protection of personal data replaced by GDPR.44. According to Article 4(7) of the GDPR, the controller is "the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of treatment". According to Article 26(1) of the GDPR, "where two or more controllers jointly determine the purposes and means of processing, they are joint controllers".45. The rapporteur considers that the companies TIKTOK IRELAND and TIKTOK UK act as joint controllers of the processing in question, in that they jointly participate in determining the purposes and means of the processing consisting of access or registration operations information in the terminal of users residing in France when using the TIKTOK social network, in particular on the "tiktok.com" site and the TIKTOK.46 subdomains. The companies did not submit any observations on this point in their pleadings. 47. The Restricted Committee recalls that the CJEU has ruled on several occasions on the notion of joint responsibility for processing, in particular in its Jehovah's Witnesses judgment. In this judgment, it considered that, according to the provisions of Article 2(d) of Directive 95/46 on the protection of personal data, "the notion of 'controller' refers to the natural or legal person which, "alone or jointly with others", determines the purposes and means of the processing of personal data. This notion therefore does not necessarily refer to a single natural or legal person and may concern several actors participating in this processing, each of them then having to be subject to the applicable provisions on data protection [...] The objective of this provision being to ensure, by a broad definition of the concept of "responsible", a protection effective and complete of the data subjects, the existence of a joint responsibility does not necessarily translate into an equivalent responsibility, for the same processing of personal data, of the different actors. On the contrary, these actors may be involved at different stages of this processing and to different degrees, so that the level of responsibility of each of them must be assessed taking into account all the relevant circumstances of the case. (CJEU, 10 July 2018, C 25/17, pts. 65 and 66).48 The



Restricted Committee considers that these developments make it possible to usefully clarify the notion of joint processing responsibility invoked by the rapporteur with regard to companies TIKTOK UK and TIKTOK IRELAND concerned by the processing in question 49. The Restricted Committee points out that the company TIKTOK UK specified, in a letter dated June 29, 2020 sent to the CNIL during the review procedure, that it was "in the process of passing to a joint controller model, in which TikTok Information Technologies UK Limited in the United Kingdom and TikTok Technology Limited in Ireland will become joint controllers of the personal data of users located in the EU". Then, in a letter dated September 24, 2020, TIKTOK IRELAND mentioned the role of TIKTOK IRELAND and TIKTOK UK as joint controllers of user data processing in the European Economic Area.<sup>50</sup> The Restricted Committee notes that during the online check of June 3, 2021, the privacy policy present on the "tiktok.com" site indicated in paragraph 11: "About us and how to contact us": "TikTok Ireland and TikTok UK provide the Platform and related services and jointly process personal data as described under this policy and our Terms of Service".<sup>51</sup> Finally, in a letter dated June 15, 2022, the board of the TIKTOK companies confirmed that the announced restructuring of the BYTEDANCE group, to which the companies TIKTOK IRELAND and TIKTOK UK belong, has no impact on their status as joint controllers with regard to the "tiktok.com" site, made available to TIKTOK users in France. He clarified that the two companies "jointly determine the purposes and means of the processing activities consisting of accessing and recording information in the terminal of users residing in France when using TikTok services".<sup>52</sup> . It follows from all of the foregoing that the companies TIKTOK UK and TIKTOK IRELAND jointly determine the purposes and means of the processing consisting of operations of access or registration of information in the terminal of users residing in France during of the use of the TIKTOK social network and therefore act as joint controllers of the processing in question.

C. On the breach of cookie obligations 53. Under the terms of article 82 of the Data Protection Act, transposing article 5, paragraph 3, of the "ePrivacy" directive, "any subscriber or user of an electronic communications service must be informed in a clear and complete manner , unless it has been done beforehand, by the controller or his representative: 1° The purpose of any action aimed at accessing, by electronic transmission, information already stored in his terminal communications equipment electronic devices, or to register information in this equipment; 2° The means at his disposal to oppose it. These accesses or registrations can only take place on condition that the subscriber or the user has expressed, after having received this information, his consent which may result from appropriate parameters of his connection device or any other device placed under his control. These provisions are not applicable if access to the information stored in the user's terminal equipment or the registration of information in the user's

terminal equipment: 1° Either, has the exclusive purpose of allowing or facilitating communication by electronic means; 2° Or, is strictly necessary for the provision of a communication service in line at the express request of the user ".1. On the need for a collection of consent to read and/or write operations 54. The rapporteur notes that the checks carried out according to three distinct user paths have shown that, upon arrival on the site before any action, after navigation without having accepted the deposit of cookies, after refusal of cookies by the user and after withdrawal of consent, several cookies were deposited, including the cookies named "tt\_webid", "tt\_webid\_v2" and "ttwid". According to the information communicated during the control procedure, the companies first indicated that the purpose of the "tt\_webid\_v2" cookie was for internal analysis. Then, the company TIKTOK IRELAND specified that the purposes of these three cookies were the following: "security and detection of fraud (i.e., identification of bots); capping of the frequency of viewing of the most popular videos on the platform; capping the frequency of advertisements served on the platform and A/B testing". 55. In her first writings, the rapporteur noted that cookies relating to the capping of display, sometimes called "advertising capping", consist of not presenting the same advertisement to a user in an excessively repetitive manner. It considered that these cookies, the purpose of which is part of the broader purpose of online behavioral advertising, do not have the exclusive purpose of allowing or facilitating communication by electronic means and cannot be regarded as strictly necessary for the provision of an online communication service at the express request of the user. The rapporteur therefore considered that the companies TIKTOK UK and TIKTOK IRELAND breached the obligations of article 82 of the Data Protection Act by depositing such cookies without the user's consent. 56. In their first observations in defence, the companies explain that they provided incorrect information to the delegation of control regarding the purposes of the "tt\_webid", "tt\_webid\_v2" and "ttwid" cookies. They specify that the purpose announced as "advertising cap" is in fact the fight against spam and that the incorrect information transmitted to the CNIL is the result of "an involuntary error made during the drafting of the response, due to poor internal communication". They add that this purpose aims to prevent bots and malicious users from sending unwanted messages to users (anti-spam measure) or publishing ads not authorized by the TIKTOK platform, for example in the "comments" section of published videos. by users. They conclude that the "tt\_webid", "tt\_webid\_v2" and "ttwid" cookies are strictly necessary and that they therefore do not require the user's consent when they are placed on their terminal.<sup>57</sup> Given these new elements, in her second submissions, the rapporteur considered that in the absence of documents communicated by the companies describing the technical specificities of the three cookies mentioned above (use of each cookie, cookie program, etc. .), it was not in a position to comment on whether

these three cookies could be placed on users' terminals without obtaining their prior consent, in accordance with one of the two exemptions provided for in Article 82 of the aforementioned Data Protection Act. It thus invited the companies TIKTOK UK and TIKTOK IRELAND to produce additional evidence in support of their assertions.<sup>58</sup> In response, the companies indicated that as of August 31, 2022, the "tt\_webid" and "tt\_webid\_v2" cookies have been removed from all TIKTOK domains and that they were removed from the main domain at an earlier date. The companies now explain that they only use the "ttwid" cookie. They have also provided additional details on the purposes that were pursued by said cookies. They indicate that these cookies are intended for security and fraud detection, capping the frequency of viewing of the most popular videos on the platform, detection and prevention of spam and tests to compare two versions of the same page (commonly called A/B testing) and consider that they are exempt from obtaining consent. In addition, the companies specify that non-essential cookies, and therefore subject to the collection of consent, are only placed on the user's terminal if the user accesses one of the TIKTOK subdomains. <sup>59</sup> During the meeting, taking into account the latest information communicated by the companies and in the absence of stabilized doctrine as it stands with regard to certain purposes mentioned by the companies, the rapporteur proposed to the restricted committee not to adopt any breach in connection with the need to obtain consent with regard to the registration of the "ttwid", "tt\_webid" and "tt\_webid\_v2" cookies on the user's terminal.<sup>60</sup> The Restricted Committee considers that the elements of the file submitted for its assessment do not allow it to comment on the characterization of the breach relating to the registration of these three cookies on the user's terminal before any action on its part. It nevertheless notes that it appears from the writings of the companies that other cookies not exempt from consent are deposited on the TIKTOK<sup>2</sup> subdomains. On the conditions for obtaining consent to the deposit and reading of non-essential cookies <sup>61</sup>. In law, the "ePrivacy" directive provides in its article 2, f), that the consent of a user or subscriber corresponds to the consent of the data subject contained in Directive 95/46/EC, which has been replaced by the GDPR. <sup>62</sup> Thus, since the entry into force of the GDPR, the "consent" provided for in the aforementioned Article 82 must be understood within the meaning of Article 4, paragraph 11, of the GDPR, that is to say that 'it must be given in a free, specific, enlightened and unequivocal manner and manifest itself in a clear positive act. <sup>63</sup> In this respect, recital 42 of this Regulation provides that "consent should not be considered to have been freely given if the data subject does not have a real freedom of choice or is not in a position to refuse or to withdraw consent without prejudice". <sup>64</sup> The CNIL considers that it follows from these combined provisions, as it interpreted them in its deliberations no. 2020-091 of September 17, 2020 adopting guidelines relating to the application of

Article 82 of the law of 6 January 1978 amended to read and/or write operations in a user's terminal (in particular to "cookies and other tracers") and n° 2020-092 adopting a recommendation proposing practical methods of compliance in the event of the use of "cookies and other tracers" that it must be as easy to refuse or withdraw consent to tracers as to give it. These instruments aim to interpret the applicable legislative provisions and to inform the actors on the implementation of concrete measures to guarantee compliance with these provisions, so that they implement these measures or measures with equivalent effect. In this sense, it is specified in the guidelines that the main purpose of these "is to recall and explain the law applicable to the operations of reading and/or writing information [...] in the terminal equipment subscriber's or user's electronic communications, and in particular the use of connection cookies ".<sup>65</sup> With regard to the possible refusal procedures, in this same recommendation, the Commission "strongly recommended that the mechanism making it possible to express a refusal to consent to read and/or write operations be accessible on the same screen and with the same facility as the mechanism for expressing consent. Indeed, it considers that consent collection interfaces which require a single click to consent to tracking while several actions are necessary to "parameterize" a refusal to consent present, in most cases, the risk of biasing the choice of the user, who wants to be able to view the site or use the application quickly. For example, at the stage of the first level of information, users can have the choice between two buttons presented at the same level and on the same format, on which are written respectively "accept all" and "refuse all", "authorize" and "prohibit", or "consent" and "do not consent", or any other equivalent wording and clear enough. The Commission considers that this modality constitutes a simple and clear way to allow the user to express his refusal as easily as his consent". shed light on the obligations provided for by French and European legislators, in particular by drawing all the consequences of the principle of freedom of consent as defined in Article 4, paragraph 11, of the GDPR, and by applying them to the assumptions of acceptance and the refusal by the user to the deposit of cookies on his terminal. Indeed, this principle of freedom of consent implies that the user benefits from a "true freedom of choice", as underlined in recital 42 of the GDPR, and therefore that the methods offered to her to express this choice are not biased in favor of consent. <sup>67</sup> The rapporteur observed that on the day of the online check carried out on June 3, 2021, if the banner displayed on the site " contained a button to immediately accept cookies, no similar means were offered to the user to be able to refuse, easily and with a single click, the deposit of these cookies. He had to perform at least three actions (a first click on "Manage settings", then a click on "Open cookie settings" and a click on "Save"). Such a mechanism therefore did not, according to the rapporteur, offer the same facility as that allowing express consent, in disregard of the legal

requirements of freedom of consent, which imply not encouraging the Internet user to accept cookies rather than to refuse them. The rapporteur therefore considered that the conditions for obtaining consent implemented by the companies TIKTOK UK and TIKTOK IRELAND on the "tiktok.com" site did not comply with the provisions of article 82 of the Data Protection Act, that informed by article 4, paragraph 11, of the GDPR on the freedom of consent, at the time of the online control from June 3, 2021 and until February 28, 2022, the date on which the companies implemented a button " Refuse everything ".<sup>68</sup>. In defence, the companies explain that before the implementation of this "Refuse all" button, TIKTOK did not rely on the implicit consent of its users for the use of non-essential cookies and that no non-essential cookies were placed on users' terminals before they clicked the "Accept All" button. In this sense, when the user refrained from clicking on the "Accept all" button, this had the consequence that no non-essential cookie was registered on his terminal and that thus, it was as easy to refuse as consent to read and/or write operations. They specify that the CNIL guidelines themselves provided that the absence of any action on the part of the user is an acceptable mechanism for the user to refuse non-essential cookies: "The Commission observes that if the consent must result in a positive action by the user, the latter's refusal can be deduced from his silence. The expression of the user's refusal must therefore not require any action on his part or must be able to result in an action presenting the same degree of simplicity as that for expressing consent" (§30 of the aforementioned guidelines). The companies consider that "the Cookie Banner explicitly told users that TikTok would only use non-essential cookies when they clicked the ["Accept All"] button. Any user action other than explicit acceptance cookies being considered a refusal by TikTok, its practices were in accordance with the CNIL Guidelines ".<sup>69</sup>. Firstly, the Restricted Committee notes that, if the companies TIKTOK UK and TIKTOK IRELAND are now arguing that the lack of choice expressed by the user resulted in no non-essential cookies being placed on their terminal, the information banner displayed to the user contained no such information.<sup>70</sup> The Restricted Committee considers, as the Commission recalled in its aforementioned guidelines, that if the user's refusal to consent to cookies can be deduced from his silence, it is on condition that the user is fully informed. Otherwise, the balance between the terms of acceptance and refusal is not respected. However, that was not the case here: by viewing the banner, the user was not informed of the means available to him not to simply consent to cookies. <sup>71</sup>. The Restricted Committee considers, on the contrary, that it was not intuitive for the user to consider that he could continue browsing without performing any action on the cookie banner. It also notes that, when the user made no choice and browsed the site, the banner remained displayed. The persistence of the banner at the bottom of the page, although not preventing the user from using the functions

of the website, was likely to encourage the person to make a choice, if only to make the banner disappear to facilitate its navigation. Therefore, the simplest choice for an Internet user was to accept cookies via the "Accept all" button, since the banner disappeared immediately in this case. Thus, the Restricted Committee considers that in the absence of information on the consequences of their inaction, the user wishing to refuse cookies was strongly encouraged to click on the "Manage settings" button, then to carry out the three actions described above.<sup>72</sup> In addition, the Restricted Committee notes the inexplicit nature of the "Manage settings" button offered in the context of the first window, which did not clearly mention the existence of means to refuse cookies. It considers that the fact that the cookies were not, moreover, not deposited has no effect on the confusion generated by the information path which could give the user the feeling that it was not possible to refuse the deposit of cookies and that he had no means of control in that regard.<sup>73</sup> Secondly, the Restricted Committee notes that it appears from several studies that the organizations which have set up a "refuse all" button on the consent collection interface at the first level have seen the consent rate relating to acceptance cookies decrease. Thus, according to the "Privacy barometer - 2021 edition" published by the company COMMANDERS ACT, the rate of consent on computers fell from 70% to 55% in April-May 2021, since the collection of consent is explicit. Similarly, according to a 360-Kantar study, it appears that 41% of Internet users in France systematically or partially refused the deposit of cookies in June 2021. <sup>74</sup> The Restricted Committee thus considers that making the refusal mechanism more complex cookies than accepting them actually amounts to discouraging users from refusing cookies and encouraging them to favor the ease of the "Accept all" button. Indeed, an Internet user is generally led to consult many sites. Internet browsing is characterized by its speed and fluidity. Having to click on "Manage settings" and having to understand how the page to refuse cookies is constructed is likely to discourage the user, who would nevertheless wish to refuse the deposit of cookies. It is not disputed that in this case, the companies offered a choice between the acceptance or the refusal of cookies before the insertion of the "Refuse all" button, but the methods by which this refusal could be expressed, in the context of browsing the Internet, biased the expression of choice in favor of consent in such a way as to alter the freedom of choice.<sup>75</sup> Finally, the Restricted Committee notes that, if the companies indicate in their writings that non-essential cookies are not placed on users' terminals when they visit the main domain, any consent obtained by the banner of the main site entails the deposit of cookies when visiting certain TIKTOK sub-domains, without a new consent collection banner being displayed at the entrance to these sub-domains. It emphasizes that the registration of non-essential cookies outside the main domain is corroborated both by the terms used in the banner observed

during the online check of June 3, 2021, in this case "We use cookies and other technologies to improve your experience on our websites. By clicking "Accept All", you agree to our use of third-party cookies for analytics and marketing purposes "except as set out in Tik Tok's cookie policy:" With your consent, we use the third-party cookies described below for analytical purposes to promote our services on other platforms and websites, and to measure the effectiveness of our own marketing campaigns."76. The companies also specify in their writings that the choices of users in terms of cookies expressed when they arrive on the main domain "tiktok.com" are recorded and kept in memory for all navigation on all TIKTOK domains. Thus, the choice expressed by the user on the main domain in terms of cookies is valid for all cookie registration operations carried out on the subdomains. The presence of a modality allowing to refuse as easily as to accept cookies was therefore essential, so that the user's consent is given freely, both on the main domain and on the subdomains. 77. In view of the foregoing, the Restricted Committee considers that a breach of the provisions of Article 82 of the Data Protection Act, interpreted in the light of the GDPR, is constituted, insofar as the user does not was not able to refuse read and/or write operations with the same degree of simplicity as he had to accept them at the time of the online check of June 3, 2021 and until the implementation of a button "Refuse all" on February 28, 2022. 3. On the lack of information of persons 78. As indicated previously, article 82 of the Data Protection Act provides that "any subscriber or user of an electronic communications service must be informed in a clear and complete manner, unless he has been informed beforehand, by the data controller or his representative: 1° Of the purpose of any action aimed at accessing, by electronic transmission, information already stored in its electronic communications terminal equipment, or to enter information in this equipment [...]"79. The aforementioned CNIL guidelines of September 17, 2020, intended to recall and explain the applicable law, provide that "the information must be written in simple and understandable terms by all and that it must allow users to be duly informed of the different purposes of the trackers used [...]. The information must be complete, visible and highlighted. A simple reference to the general conditions of use will not suffice" (§§ 22 and 23). The Commission adds that "A minimum, the provision of the following information to users, prior to obtaining their consent, is necessary to ensure the informed nature of the latter: [...] the purpose of the data reading or writing operations [...]" (§24). 80. The rapporteur noted that, on the banner appearing during the online check carried out on June 3, 2021, among the purposes pursued by cookies are "analysis and marketing purposes", without further details. According to her, these purposes were not determined and precise enough to consider that the information complies with the obligations arising from Article 82 of the Data Protection Act. The due diligence carried out on June 30, 2022 revealed that the companies have

added a "Refuse all" button to their cookies banner at the first level and have completed the information relating to the purposes. However, the rapporteur noted that the modified banner contained a material error ("You can manage cookies at any time"). In addition, the rapporteur noted that, in the context of this second check, when the user clicked on "cookie management" on the banner presented to him when he arrived on the "tiktok.com" site, a new window appeared with a list of "analytics and marketing cookies". Such a window with a list of "analytical and marketing data" cookies was also present at the time of the online check carried out on June 3, 2021. The rapporteur considered that, if the companies offer the user the possibility of expressing their consent for each cookie, it is however not indicated what the purpose pursued by each cookie is (analysis or marketing or both at the same time), thus making it impossible for the user to know exactly what he is consenting to. The rapporteur concluded that the information provided by the companies is therefore not sufficient and does not allow the user to be able to give free and informed consent. 81. In defence, the companies explain that they corrected the grammatical error in the French version of the banner as of July 15, 2022. They point out that "the banner relating to cookies was understandable for the average user" and that the speed of the update highlights their willingness to cooperate with the CNIL and to constantly improve their practices based on feedback from regulators. They add that the CNIL guidelines require, in their paragraph 24, only to provide users, at the first level of information, "the purpose of the data reading or writing operations", without specifying the level of detail of this information, and that the CNIL, in its deliberation n° 2020-092 of September 17, 2020 adopting a recommendation on the aforementioned cookies, provides that a more detailed description of the purposes can be accessed via a hypertext link provided in the first level of information. However, this was indeed the case in this case according to them since the purposes appearing in the banner relating to cookies were specified within the cookie settings and the cookie policy, both accessible by a hypertext place which provided information additional details to users. They add that, without acknowledging any violation on their part but in a constant effort to improve their practices, they added more details to the cookie settings on September 16, 2022. As for the second branch of the breach, the companies indicate that there is no obligation either in the "ePrivacy" directive, or in the Data Protection Act, or in the CNIL guidelines to repeat the purpose of each of the non-essential cookies in the cookie settings, in the insofar as several cookies serve the same purpose. The companies consider that, when a certain number of cookies have the same purpose, it is sufficient to indicate this same purpose above all the non-essential cookies concerned, with an on/off slider button. They further add that the cookie policy, which is easily accessible from the cookie banner, provides detailed information on the purpose of each cookie individually.



The companies conclude that the cookie banner and the cookie policy provide users with sufficient information to enable them to give free and informed consent. Finally, they specify that, insofar as they strive to continually improve transparency and understanding of users, they have modified the cookie settings in order to further specify the description of the purposes of each non-essential cookie listed in the settings of cookies under each slider button. 82. Firstly, with regard to the first branch of the breach, the Restricted Committee recalls that both Article 5, paragraph 3, of the "ePrivacy" Directive and Article 82 of the Data Protection Act expressly provide that the user must be fully informed of the purposes pursued by the operations of depositing and reading cookies and the means at his disposal to oppose them.<sup>83</sup> However, the Restricted Committee notes that the aforementioned information banner displayed on the home page only contained a general and approximate description of the purposes of the set of cookies deposited. Indeed, the terms "to improve your experience on our websites" and "for analysis and marketing purposes" are particularly imprecise. 84. The term "analysis" does not make it possible to identify the purpose pursued by this analysis, nor the difference with the purpose relating to the terms "to improve your experience on our websites". Similarly, the Restricted Committee notes that the "marketing" purposes may overlap with various processing operations (statistics, commercial prospecting, targeted advertising, contextual advertising, etc.). Thus, when reading this banner, the user was not able to understand what types of content were going to be presented to him and, if so, in what form. 85. In addition, if the Restricted Committee confirms that it is possible to supplement the information appearing at the first level via a hypertext link, the fact remains that that present in the dedicated banner must be sufficiently clear to allow the user to make an informed choice at this stage. However, the Restricted Committee considers that in this case, as explained above, the purposes are not developed in a sufficiently precise manner. The Restricted Committee also notes in this regard that the new wording used by the companies in the banner, as noted during the online check carried out on June 30, 2022, is more precise, in that the companies explain what the purpose of "marketing", namely "to be able to understand the effectiveness of TikTok's advertising campaigns".<sup>86</sup> Secondly, the Restricted Committee notes that, if several cookies can serve the same purpose or that certain cookies can pursue several purposes, the user must be informed of this when the consent collection interface offers to express his cookie choice by cookies. Indeed, article 82 of the aforementioned Data Protection Act expressly provides that the user "must be informed in a clear and complete manner". However, in this case, the Restricted Committee considers that before the latest modifications made by the companies in September 2022, the user did not know whether the cookies listed were intended for "analytical data" and/or "marketing". , which seem to be two ends of a different nature (and moreover

designated in a way that is too imprecise) and which should be able to be accepted separately. The Restricted Committee therefore considers that, until September 2022, the information provided by the companies was not sufficient and did not allow the user to be able to give free and informed consent. 87. Given all of these elements, the Restricted Committee considers: - that by not informing the user of the purposes of the operations to read and/or write information in his terminal equipment in a precise manner on the first level of information at the time of the online check of June 3, 2021, the companies TIKTOK UK and TIKTOK IRELAND disregarded the obligations provided for in article 82 of the Data Protection Act; - that, until September 2022, the information provided by the companies relating to the purposes of the various cookies for which the user can make a choice by clicking on a slider button, accessible at the second level, was insufficient and did not allow him to give free and informed consent, in violation of article 82 of the Data Protection Act.III. On corrective measures and their publicity<sup>88</sup>. Under the terms of article 20, III, of the amended 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 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: [...] 2° An injunction to bring the processing into conformity with the obligations resulting from the regulation ( EU) 2016/679 of April 27, 2016 or of this law or to satisfy the requests presented by the person concerned in order to exercise their rights, which may be accompanied, except in cases where the treatment is implemented by the State, a penalty payment the amount of which may not exceed €100,000 per day of delay from the date set by the restricted committee; [...] 7° With the exception of cases where the processing is implemented by the State, an administrative fine not exceeding 10 million euros or, in the case of a company, 2% of the turnover total worldwide annual business for the previous fiscal year, whichever is greater. [...] The restricted committee takes into account, in determining the amount of the fine, the criteria specified in the same article 83 ".<sup>89</sup>. Article 83 of the GDPR provides that "each supervisory authority ensures that administrative fines imposed 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 s it is appropriate to impose an administrative fine and to decide on the amount of this fine.A. On the imposition of administrative fines and their amount<sup>90</sup>. The companies consider that the proposed administrative fines are disproportionate and unjustified with regard to the circumstances of the the case and the

nature of the breaches alleged. They consider that a call to order would suffice, in the event that the CNIL finds the existence of any breach. 91. The Restricted Committee recalls that Article 20, paragraph III, of the Data Protection Act gives it jurisdiction to pronounce various sanctions, in particular administrative fines, the maximum amount of which may be equivalent to 2% of the total annual worldwide turnover for the previous financial year achieved by the person responsible. salary or 10 million euros. It adds that the determination of the amount of these fines is assessed in the light of the criteria specified by Article 83 of the GDPR.<sup>92</sup> Firstly, the Restricted Committee stresses that it is appropriate, in this case, to apply the criterion provided for in subparagraph a) of Article 83, paragraph 2, of the GDPR relating to the seriousness of the breach taking into account the scope of the processing and the number of data subjects.<sup>93</sup> The restricted training highlights the massive nature of the treatment. She recalls that the social network had 13.9 million unique visitors in France for the month of August 2021 according to publicly available sources, which corresponds to almost a quarter of the French population. The number of people affected by the processing in question is thus extremely large on the scale of the French population.<sup>94</sup> In addition, the Restricted Committee notes that it appears from publicly available information that 38% of TIKTOK users are between 13 and 17 years old. As children are vulnerable people, they deserve special protection. 95. With regard to the seriousness of the breach, the Restricted Committee nevertheless notes, as detailed above, that it did not find any breach in connection with the need to obtain consent pursuant to Article 82 of the Data Protection Act concerning the registration of "ttwid", "tt\_webid" and "tt\_webid\_v2" cookies on the user's terminal.<sup>96</sup> Secondly, the Restricted Committee notes that the companies collaborated with the CNIL services and that they responded to all requests for information within the time limits set. In doing so, the companies complied with the obligations arising from Article 18 of the Data Protection Act, without the facts of the case constituting a mitigating circumstance. 97. Thirdly, the Restricted Committee considers that it is appropriate to apply the criterion provided for in subparagraph k) of Article 83, paragraph 2, of the Rules relating to any other circumstances applicable to the facts of the case. 98. The restricted training recalls the general context in which the companies TIKTOK UK and TIKTOK IRELAND have chosen not to offer their users, on the "tiktok.com" site, the option of easily refusing cookies until the end of February 2022. Indeed, the CNIL has implemented a compliance plan on the issue of cookies spread over several years, and which has also given rise to litigation before the Council of State. The CNIL has communicated publicly on its website, on several occasions, on the fact that it must be as easy for the Internet user to refuse cookies as to accept them, in particular on October 1, 2020 on the occasion of the publication of the aforementioned guidelines and recommendation of September 17,

2020. Compliance was to take place by April 1, 2021 in order to guarantee Internet users free consent. Hundreds of thousands of players, from the smallest sites to the largest, have complied and have introduced a "refuse all" or "continue without accepting" button on their consent collection interface. 99. The Restricted Committee notes that it was however only on February 28, 2022 that the companies chose to comply and insert a "Refuse all" button. 100. Finally, the Restricted Committee recalls that pursuant to the provisions of Article 20, paragraph III, of the Data Protection Act, the companies TIKTOK UK and TIKTOK IRELAND incur a financial penalty of a maximum amount of 2 % of their turnover, which amounted to almost [...] dollars in 2019 and more than [...]dollars in 2020, or 10 million euros, whichever is greater . The amount of the fine incurred in this case therefore amounts to the sum of 10 million. 101. Therefore, with regard to the respective responsibilities of the companies, their financial capacities and the relevant criteria of Article 83, paragraph 2, of the Rules mentioned above, the Restricted Committee considers that a fine of 2.5 million against the company TIKTOK UK and a fine of 2.5 million euros against the company TIKTOK IRELAND appear justified. B. On the issuance of an injunction<sup>102</sup>. The rapporteur proposed to the Restricted Committee, in its initial report, to issue a compliance injunction, which could consist of: - the cessation of the deposit of cookies and tracers subject to the collection of the consent of persons residing in France during the arrival on the "tiktok.com" site, even before they have had the possibility of making a choice as to the operations of access or registration of information in their terminal, after their refusal of the reading operations and writing or after withdrawal of their consent; - informing the persons concerned about the purposes of the various cookies for which the user can make a choice by clicking on a slider button, accessible at the second level, in order to allow him to give free and informed consent.<sup>103</sup> Given the modifications made by the companies in September 2022, the rapporteur proposed, in her second pleadings, not to retain the second branch of the injunction since, henceforth, the persons concerned are well informed of the purposes of the various cookies for which the user can make a choice by clicking on a slider button. In addition, during the session, the rapporteur also abandoned the first part of the injunction initially proposed.<sup>104</sup> The companies argue that the first part of the injunction proposed by the rapporteur is inappropriate, the "ttwid" cookie being strictly necessary. 105. In view of the elements developed above, the Restricted Committee considers that there is no need to issue an injunction. C. On advertising<sup>106</sup>. The companies dispute the rapporteur's proposal to make this decision public. To justify this request for publicity, the rapporteur relies in particular on the number of people concerned. The companies contest this point, considering that non-essential cookies are not deposited on the main domain, but only on the relevant TIKTOK subdomains and that the number of French users who

visit these subdomains is much lower. 107. The Restricted Committee considers that the publication of this decision is justified in view of the seriousness of the breaches in question, the scope of the processing and the number of persons concerned.

FOR THESE REASONS

The Restricted Committee of the CNIL, after having deliberated, decides to: pronounce against the company TIKTOK INFORMATION TECHNOLOGIES UK LIMITED an administrative fine of 2.5 million euros (two million five hundred thousand euros), with regard to the breach of Article 82 of the Data Protection Act; pronounce against the company TIKTOK TECHNOLOGY LIMITED an administrative fine of 2.5 million euros (two million five hundred thousand euros), with regard to the breach constituted in article 82 of the Data Protection Act and Freedoms; address this decision to the company TIKTOK SAS with a view to its execution; make public, on the CNIL website and on the Légifrance website, its deliberation, which will no longer identify the companies by name 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 its notification.