Deliberation SAN-2018-007 of July 24, 2018 National Commission for Computing and Liberties Legal status: In force Date of publication on Légifrance: Tuesday July 31, 2018 Deliberation of the restricted committee no. SAN -2018-007 of July 24, 2018 pronouncing a sanction pecuniary against XLThe National Commission for Computing and Liberties, meeting in its restricted formation composed of Mr. Jean-François CARREZ, President, Mr. Alexandre LINDEN, Vice-President, Mr. Maurice RONAI, Mr. Philippe GOSSELIN and Mrs. Dominique CASTERA, members; Having regard to Convention No. 108 of the Council of Europe of 28 January 1981 for the protection of individuals with regard to the automatic processing of personal data; Having regard to Law No. 78- 17 of January 6, 1978 modified relating to data processing, files and freedoms, in particular its articles 45 and following; 17 of January 6, 1978 relative to information technology, files and freedoms of March 25, 2007; Having regard to deliberation no. 2013-175 of July 4, 2013 adopting the internal regulations of the National Commission for Information Technology and Freedoms; Having regard to complaint no. 17024253 of October 27, 2017; Having regard to the decision of the President of the Commission appointing a rapporteur before the restricted committee, dated April 19, 2018; Having regard to the report of Mr. Eric PERES, commissioner rapporteur, notified by bailiff on 9 May 2018; Having regard to the written observations of X received on June 11, 2018, as well as the oral observations made during the restricted committee meeting; Having regard to the other documents in the file; Were present, during the restricted committee meeting of 21 June 2018:- Mr Eric PERES, Auditor, in his report;- […];- […];- […];The representatives of X who took the floor last;Adopted the following decision:I. Facts and procedure X (hereafter X) is active in the construction, management and rental of social housing. Located […], it employs approximately 200 people and achieved a turnover of 75 million euros for the year 2016. X appointed a Data Protection Correspondent on February 28, 2017. On October 27, 2017, the Commission Nationale de l'Informatique et des Libertés (hereinafter the CNIL or the Commission) received a complaint concerning the sending, on October 9, 2017, of a letter by the President of X, also Mayor of [… ], to tenants of social housing. In this complaint, it was stated that the letter criticized the government's decision to reduce the amount of personalized housing assistance (APL) for all social housing tenants and revealed misuse of X's tenant file for policies. By letter dated December 18, 2017, the Commission's services asked X for his observations on this letter and reminded him of the impossibility of using tenants' personal data, collected as part of his activity as a social landlord for another purpose such as communication of a political nature. On January 9, 2018, X indicated that the letter of October 9, 2017 had the sole purpose of informing tenants about the new regulatory provisions relating to the amount of APL and their impact on the resources allocated to X. In addition, X

specified that this information was part of its activities and the missions it pursues, in particular those of rental management and the implementation of public policies concerning social housing .It was also specified that the letter had been addressed to all the tenants of X, whether or not they were beneficiaries of the APL.With regard to these elements and in particular the response provided by X on the complaint, the President of the Commission appointed Mr. Eric PERES as rapporteur, on April 19, 2018, on the basis of Article 46 of the amended law of January 6, 1978 relating to relating to the information technology, files and freedoms (hereinafter the Data Protection Act or the amended law of January 6, 1978). At the end of his investigation, the rapporteur notified X on May 9, 2018 of a report detailing the violation of the law that he considered constituted in this case. This report proposed to the restricted committee of the Commission to impose a financial penalty which could not be less than 75,000 euros and which would be made public. Also attached to the report was a notice of the meeting of the restricted committee of June 21, 2018 indicating to X that he had one month to submit his written observations. law on June 1, 2018. On June 11, 2018, X produced written observations on the report, through his counsel, reiterated orally during the restricted committee meeting of the following June 21.II. Reasons for the decisionOn the breach of the obligation to process the data in a way compatible with the purposes for which they were collectedThe 2° of article 6 of the law of January 6, 1978 as amended provides that the data are collected for purposes determined, explicit and legitimate and are not subsequently processed in a manner incompatible with these purposes. manner compatible with the initial purpose of the collection. In defence, X mainly argues that the letter of October 9, 2017 is of an informative nature and that it falls within the scope of the purposes mentioned in the reporting formalities carried out with the CNIL.X considers in particular that this letter is a non-commercial external communication which relates to sheet n°19 of the register of u Data Protection Correspondent concerning the processing carried out for the purposes of information and external communication. 20 of 3 April 2014 relating to the management of social housing applications and the housing stock, in particular in the context of the implementation of a new public policy on social housing. On this point, he specifies that the board of directors, after examining the consequences of the 2018 finance bill on its budget, has chosen to communicate this assessment to all of its tenants. X also indicates that this letter is information that falls under its contractual obligations as lessor. He specifies that the loss of financial resources in connection with the APL reform project which may hinder the proper performance of his obligations as a lessor (maintenance of housing, buildings, carrying out rehabilitation or urban renovation works, etc.), he was necessary to inform its co-contractors of the impacts of this reform. In this sense, X considers that this letter relates to the commitment of compliance of March 22, 2017 with the single

authorization n ° 3 of April 3, 2014 concerning the processing of personal data used by public or private law bodies managing real estate assets of a social nature, for the purposes of managing pre-litigation and litigation, on the one hand, and implementing court decisions having an impact on a place of residence, on the other hand. Firstly, on the nature of the mail sent by X, the Restricted Committee notes that the letter of October 9, 2017 qualifies the draft measure go government of unfair because it exclusively targets people housed in social housing and thus marks a real break in equality within the population, this orientation […] would have terrible repercussions on the quality of your living environment. It also mentions an attack against HLM tenants that must be stopped. This is why the board of directors and I have decided to oppose this project […] Tenants who wish can […] get information and mobilize by responding, in particular to calls from tenant associations which have launched the Vive l'APL information campaign (https://vivelapl.org) . Given the terms used by this letter and the general content of the message, which was also sent to all tenants whether or not they benefit from APL, the Restricted Committee considers that it is not purely informative nature. Secondly, the Restricted Committee recalls that X cannot use the tenants' personal data for a purpose other than the initial purposes and in particular those mentioned in the reporting formalities carried out with the Commission. It also recalls that , in accordance with the general missions incumbent on it under Articles L.411-1 and L. 421-1 of the Construction and Housing Code, X collects and processes the personal data of tenants for main purposes, determined, explicit and legitimate, namely the management of its real estate assets, the instruction of applications for social housing and the personalized social monitoring of certain tenants. However, in this case, the Restricted Committee considers that the letter of October 9, 2017 cannot be linked to this main purpose and in particular to that of implementing a public policy concerning social housing, since the the purpose of this letter was not to process the personal data of tenants in order to apply a public policy but to take a critical position on the announcement of the upcoming reduction in APL. In the same way, it considers that this letter cannot be related to the purpose covered by sheet 19 of the register of the Correspondent Informatique et Libertés, which corresponds to deliberation no. external information or communication (declaration waiver decision no. 7). Indeed, this deliberation only concerns the processing of data for the purpose of information or external communication relating to the purpose or activity pursued by the natural or legal person who implements the processing. Are thus, for example, excluded from the scope of this deliberation the use of data for political, electoral or commercial purposes. of October 9, 2017, that the purpose pursued by the controller exceeds the objective of information or external communication relating to the purpose or activity pursued by X in respect of the legal missions entrusted to it, within the meaning of the

deliberation of May 9, 2006 mentioned above. Finally, the Restricted Committee considers that if, under its obligations as lessor, X has the possibility of sending a letter to the tenants, including to inform them about the consequences, proven or not, of the reform of the amount of the APL, he could not however legitimately use the personal data of all the tenants of the social housing stock, since the mail er addressed went beyond the simple purpose of information. necessary to go beyond simply informing tenants about this reform without using personal data and, consequently, without disregarding the fundamental principles of the protection of personal data. It follows from the above that by using the file of its tenants by sending them a letter clearly exceeding the strict information of the people, X has processed the said personal data in a manner incompatible with the initial purpose of the collection - namely the management of applications for social housing or the housing stock - in disregard of 2° of article 6 of the Data Protection Act. On sanctions and publicity Under the terms of I of article 45 of the law of January 6, 1 978 amended, in the version applicable to the facts of the case: When the data controller does not comply with the obligations arising from this law, the president of the National Commission for Computing and Liberties may give him formal notice. to put an end to the observed breach within a time limit that he sets. In cases of extreme urgency, this period may be reduced to twenty-four hours. If the data controller complies with the formal notice sent to him, the chairman of the commission declares the procedure closed. Otherwise, the restricted committee may pronounce, after a contradictory procedure, the following sanctions: 1° A warning; 2° A pecuniary sanction, under the conditions provided for in Article 47, with the exception of where the processing is carried out by the State; 3° An injunction to cease the processing, when this falls under Article 22, or a withdrawal of the authorization granted pursuant to Article 25. When the breach found cannot be brought into compliance within the framework of a formal notice, the restricted committee may pronounce, without prior formal notice, and after an adversarial procedure, the sanctions provided for in this I. paragraphs 1 and 2 of article 47 of the aforementioned law, in the version applicable to the facts of the case, specify that: The amount of the financial penalty provided for in I of article 45 is proportionate to the seriousness of the breach committed and the benefits derived from this lack nt. The restricted formation of the Commission Nationale de l'Informatique et des Libertés takes into account in particular the intentional or negligent nature of the breach, the measures taken by the data controller to mitigate the damage suffered by the persons concerned, the degree of cooperation with the commission in order to remedy the breach and mitigate its possible negative effects, the categories of personal data concerned and the manner in which the breach was brought to the attention of the commission. The amount of the penalty may not exceed 3 million euros. X considers that no sanction should be imposed on it.

The Restricted Committee notes that X, as part of its duties as social landlord, has implemented several appropriate measures with regard to the processing of the personal data of its tenants (eg processing register, diagnosis of processing compliance, awareness-raising and training actions for X employees on data protection regulations). However, the Restricted Committee considers that X has intentionally decided to process this data in a manner incompatible with the initial purposes of the collection, thus disregarding one of the fundamental principles of the Data Protection Act. It also considers that if the categories of personal data processed (surname, first name and postal address) are not of such a nature as to irremediably affect the privacy of the tenants concerned, on the other hand, the number of persons concerned is significant, X indicating that they manage 16,000 housing units social.In view of the elements developed above, the facts observed and the breach constituted in 2° of article 6 of the law of January 6, 1978 as amended, justify the imposition of a pecuniary penalty against X of an amount of 30,000 (thirty thousand euros). For all the aforementioned reasons, and in order to remind all actors in the social sector, of the law applicable to data protection personal and the prohibition to use user files for purposes other and incompatible with the initial purposes, the Restricted Committee considers it essential to make its decision public. FOR THESE REASONS The Restricted Committee of the CNIL, after deliberating, decides to:- pronounce against X a pecuniary penalty in the amount of 30,000 (thirty thousand) euros;- publish its decision, which will be anonymized at the end of a period of two years from its publication.The PresidentJean-François CARREZThis decision may be subject to appeal before the Council of State within two months of its notification.