Deliberation SAN-2020-013 of December 7, 2020 National Commission for Computing and Liberties Nature of the deliberation: Sanction Legal status: In force Date of publication on Légifrance: Thursday, December 10, 2020 Deliberation of the restricted committee no SAN-2020-013 of December 7 2020 concerning the company AMAZON EUROPE CORETHe National Commission for Computing and Liberties, meeting in its restricted formation composed of Messrs Alexandre LINDEN, president, Philippe-Pierre CABOURDIN, vice-president, and Mesdames Dominique CASTERA, Anne DEBET and Christine MAUGÜE , members; Having regard to Convention No. 108 of the Council of Europe of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data; 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 Directive 2002/58/EC of the European Parliament and t of the Council of July 12, 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector; 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; Considering the ordinance n ° 2014-1329 of November 6, 2014 relating to the remote deliberations of administrative bodies of a collegial nature; Having regard to the decree n 2019-536 of May 29, 2019 taken for the application 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 no. 2019-224C of November 29, 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 accessi processing from the amazon.fr domain or relating to personal data collected from the latter; Having regard to decision no. 2020-042C of December 27, 2019 of the President of the National Commission for Information Technology instruct the Secretary General to carry out or have carried out a mission to verify the processing implemented by the company AMAZON ONLINE France SAS; Having regard to the decision of the President of the National Commission for Computing and Liberties appointing a rapporteur before the restricted committee, dated March 23, 2020; Having regard to the report of Mr. Éric PÉRÈS, reporting auditor, notified to the company AMAZON EUROPE CORE on July 17, 2020; Having regard to the written observations submitted by the board of the company AMAZON EUROPE CORE on September 15, 2020; Having regard to the rapporteur's response to these observations notified to the company AMAZON EUROPE CORE on October 9, 2020; Having regard to the new written observations submitted by the board of the s company AMAZON EUROPE CORE, received on November 2, 2020; Having regard to the oral observations

made during the session of the restricted formation; Having regard to the letter sent by the company AMAZON EUROPE CORE to the chairman of the restricted formation on November 17, 2020; Having regard to the other documents of the file; Were present, during the session of the restricted formation of November 12, 2020:- Mr Éric PÉRÈS, auditor, heard in his report; As representatives of the company AMAZON EUROPE CORE:- […] The company AMAZON EUROPE CORE having had the floor last;The Restricted Committee adopted the following decision:I. Facts and procedure1. The company AMAZON EUROPE CORE (hereinafter the company or AEC) is a company under Luxembourg law whose registered office is located at 5 rue Plaetis, L 2338 in Luxembourg, forming part of the AMAZON group. Its main activity is the operation of the European Amazon websites which allow the online sale of commercial goods. For the purposes of its activities, particularly in France, the company operates the Amazon.fr website accessible from the URL address https://www.amazon.fr/. For the year 2019, it achieved a turnover of approximately 7.7 billion euros.2. Pursuant to Decisions No. 2019-224C of November 29, 2019 and No. 2020-042C of December 27, 2019 of the President of the National Commission for Computing and Liberties (hereinafter the CNIL or the Commission), a delegation of the CNIL carried out the following control operations:- three online controls relating to the Amazon.fr site carried out on December 12, 2019, March 6, 2020 and May 19, 2020;- a control carried out on January 30, 2020 at the premises of the AMAZON ONLINE France SAS, a French establishment of the AMAZON group;- […] 3. The purpose of these missions was to verify compliance by the company with the provisions of law no. 78-17 of 6 January 1978 as amended relating to the information technology, files and freedoms (hereinafter the Data Protection Act or law of January 6, 1978). In particular, it was a question of carrying out investigations in connection with the processing operations consisting of access or registration operations deposited on the terminal of Internet users residing in France during their visit to the Amazon.fr website.4 . During these investigations, several exchanges took place between, on the one hand, the companies AEC and AMAZON ONLINE France SAS and, on the other hand, the delegation of control of the CNIL.5. For the purposes of investigating these elements, the President of the Commission appointed Mr Éric PÉRÈS as rapporteur, on March 23, 2020, on the basis of Article 22 of the law of January 6, 1978.6. At the end of his investigation, the rapporteur had a bailiff serve on AEC, on July 17, 2020, a report detailing the breach of the Data Protection Act that he considered constituted in this case. Also attached to the report was a notice to attend the restricted committee meeting of October 15, 2020, indicating to the company that it could submit its observations in response no later than September 8, 2020.7. This report proposed that the restricted committee of the Commission impose an administrative fine on AEC as well as an injunction, accompanied by a penalty

payment, to bring the processing into compliance with the provisions of Article 82 of the Data Protection Act. 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.8. By letter dated August 19, 2020, the company asked the chairman of the Restricted Committee for additional time to submit his observations in response to the rapporteur's report. On September 1, 2020, the chairman of the restricted committee granted the company an additional one-week extension.9. On September 15, 2020, through its counsel, the company produced observations in response to the rapporteur's report and made a request that the session before the restricted committee be held behind closed doors. She renewed her request on October 13, 2020.10. By email dated September 24, 2020, 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 19 2019), the rapporteur asked the chairman of the Restricted Committee for an additional period of nine days to respond to the company's observations, which was granted to him on September 28, 2020. The company was informed of this on the same day.11. On October 1, 2020, the Secretary General of the CNIL informed the company that the restricted training session initially scheduled for October 15 was postponed to November 12, 2020.12. The rapporteur responded to the company's observations on October 9, 2020.13. On October 22, 2020, the chairman of the Restricted Committee granted the company's request for a closed session on the grounds that […] 14. On November 2, 2020, the company presented new observations in response to those of the rapporteur .15. On November 4, 2020, the company requested the postponement of the restricted training session scheduled for the following November 12. By letter of 5 November, the President of the Restricted Committee refused to grant this request.16. The company and the rapporteur presented oral observations during the restricted training session of November 12, 2020.17. On November 17, 2020, the company, in a letter addressed to the chairman of the restricted committee, indicated that some of its representatives attending the meeting by means of a videoconference system had not been able to hear all of the discussions. between their advisers and the rapporteur, […]. II. Reasons for decisionA. On the competence of the CNIL 1. On the material competence of the CNIL and the applicability of the one-stop-shop mechanism provided for by the GDPR18. 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 […] from this law. Pursuant 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 […] may refer the matter to the Restricted Committee with

a view to pronouncing, after adversarial proceedings, 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; […]an administrative fine not to exceed €10 million or, in the case of a company, 2% of the total worldwide annual turnover of the previous financial year, whichever is higher. 19. Under Article 5(3) 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 communications sector (hereinafter the ePrivacy Directive) Member States shall ensure that storing information, or obtaining access to information already stored, in the terminal equipment of a subscriber or user does not is permitted only on condition that the subscriber or user has given his consent, after having received, in compliance with Directive 95/46/EC, clear and complete information, among other things, on the purposes of the processing […] 20. These provisions have been transposed into domestic law in Article 82 of the Data Protection Act, within Chapter IV of this law, relating to the Rights and obligations specific to processing in the electronic communications sector. This article 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 controller or his representative: 1° Of the purpose of any action tending to access, by electronic transmission, information already stored in its terminal electronic communications equipment, or to enter information in this equipment; 2° The means at its disposal to oppose it. Such access or registrations can only take place on the 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. provisions do not apply if access to information stored in the user's terminal equipment or the registration of information in the user's terminal equipment user: 1° Either, has the exclusive purpose of allowing or facilitating communication by electronic means; 2° Or, is strictly necessary for the provision of an online communication service at the express request of the user .21. The rapporteur considers that the CNIL is materially competent pursuant to these provisions to control and initiate a sanction procedure concerning the operations of access or registration of information implemented by the company in the terminals of users of the Amazon site. fr in France.22. AEC contests the competence of the CNIL. It considers that only the Luxembourg data protection authority (National Commission for Data Protection, hereinafter the CNPD) is competent to initiate sanction

proceedings and possibly impose an administrative fine against it in the event of disregard of its cookie obligations.23. First of all, it maintains that its cookie practices must be examined in the context of the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of personal data and on the the free movement of this data (hereinafter GDPR) due to the close links between this text and the ePrivacy Directive. 24. In support of its argument, the company asserts the inseparable nature of the registration of cookies on user terminals from the subsequent use of the data collected by these cookies for the purposes pursued by the data controller. […].25. The company also notes that both the decision of the President of the CNIL of November 29, 2019 to open an inspection procedure and the correspondence exchanged with the CNIL in the context of these inspections expressly mention that the purpose of the inspections is in particular to assess the compliance of the company's practices with the GDPR. It also notes that the rapporteur himself used concepts from the GDPR in his sanction report when analyzing the consequences for users of the use of cookies. It also notes that the French legislator has chosen to transpose Article 5(3) of the ePrivacy Directive not in a dedicated text, but directly within the Data Protection Act, thus demonstrating the unity of the two materials.26. The company then considers that even in the event that the CNIL's investigations relate solely to the provisions of Article 82 of the Data Protection Act, the cooperation mechanism between the supervisory authorities, known as the one-stop-shop mechanism, provided for in Chapter VII of the Regulation, should apply and that consequently, the CNIL would not be the competent authority to act as lead authority. It considers that insofar as the ePrivacy Directive does not provide for any rules of jurisdiction when the processing it regulates is cross-border, those provided for by the GDPR should be applied, taking into account in particular that, since the entry into application of the GDPR, the references made by the ePrivacy Directive to the repealed Directive 95/46/EC are understood as being made to the GDPR.27. The company also considers that the fact that some Member States of the European Union have chosen to entrust the control of compliance with the ePrivacy Directive to their telecommunications regulatory authority and not to their data protection authority, does not is not an obstacle to the application of the single window mechanism insofar as cooperation agreements between these different authorities have been signed in several Member States, thus allowing the data protection authorities to participate in the single window mechanism in situations involving provisions resulting from the ePrivacy Directive. It considers that any sanction pronounced against it by the Restricted Committee based on disregard of the provisions resulting from Article 5(3) of the ePrivacy Directive would go against the principle harmonization contained in Article 15a of the Directive, which provides that Competent national regulatory authorities may shall adopt measures to ensure

effective cross-border cooperation in monitoring the application of national laws adopted pursuant to this Directive and to create harmonized conditions for the provision of services involving cross-border data flows and the principle of freedom to provide services contained in Article 56 of the Treaty on the Functioning of the European Union (TFEU) under which restrictions on the freedom to provide services within the Union are prohibited with regard to nationals Member States established in a Member State other than that of the recipient of the service.28. The Restricted Committee notes first of all that the operations which are the subject of this procedure are carried out in the context of the provision of electronic communications services accessible to the public on public communications networks and that they relate exclusively to reading and writing actions on the terminal of Internet users located in France when they visit the Amazon.fr site, operations which take the form of the deposit and reading of cookies.29. The Restricted Committee recalls that such processing is governed by the provisions of the Directive on privacy and electronic communications, commonly known as ePrivacy, and in particular by its Article 5(3) which has been transposed into domestic law in Article 82 of the Data Protection Act. The Restricted Committee notes, first of all, that it emerges from the provisions cited above that the French legislator has instructed the CNIL to ensure that data controllers comply with the provisions of the ePrivacy Directive by entrusting it with the power to penalize any breach of this article. It emphasizes that this competence was recognized by the Council of State in its decision Association desagences-conseils en communication of June 19, 2020 concerning CNIL deliberation no. 2019-093 adopting guidelines relating to the application of the article 82 of the law of January 6, 1978 amended to read or write operations in a user's terminal, since the latter has noted that article 20 of this law entrusts its president [of the CNIL] with the power to take corrective measures in the event of non-compliance with the obligations resulting from Regulation (EU) 2016/279 or its own provisions, as well as the possibility of seizing the restricted committee with a view to imposing the sanctions that may be imposed (CE, June 19, 2020, application 434684, point 3).30. It then notes that when processing falls within both the material scope of the ePrivacy Directive and the material scope of the GDPR, reference should be made to the relevant provisions of the two texts which provide for their articulation. Thus, Article 1(2) of the ePrivacy Directive provides that the provisions of this Directive specify and supplement Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of personal data (hereinafter Directive 95/46/EC on the protection of personal data), it being recalled that since the entry into force of the Regulation, references to this latter directive must be understood as references to the GDPR, in accordance with Article 94 of this last. Similarly, it appears from recital 173 of the GDPR that this text explicitly provides that it

is not applicable to the processing of personal data subject to specific obligations having the same objective [of protection of fundamental rights and freedoms] set out in Directive 2002 /58/EC of the European Parliament and of the Council, including the obligations of the controller and the rights of natural persons. This articulation was confirmed by the Court of Justice of the European Union (hereinafter CJEU) in its Planet49 decision of October 1, 2019 (CJEU, October 1, 2019, C□673/17, pt. 42).31. In this regard, the Restricted Committee notes that, contrary to what the company maintains, the ePrivacy Directive does indeed provide, for the specific obligations it includes, its own mechanism for implementing and monitoring its application within its article 15bis. Thus, the first paragraph of this directive leaves to the Member States the power to determine the system of sanctions, including criminal sanctions if necessary, applicable to violations of the national provisions adopted in application of this directive and take any necessary to ensure their implementation. The penalties thus provided for must be effective, proportionate and dissuasive and may be applied to cover the duration of the infringement, even if it has subsequently been corrected. However, the rule laid down in 3 of Article 5 of the ePrivacy Directive, that read and write operations must systematically be subject to the prior agreement of the user, after information, constitutes a special rule with regard to the GDPR since it prohibits relying on the legal bases mentioned in I article 6 which do not require the user's agreement to be able to lawfully carry out these read and write operations on the terminal. The control of this rule therefore falls within the special control and sanction mechanism provided for by the ePrivacy Directive and not the data protection authorities and the EDPS in application of the GDPR. It is by a specific choice that the French legislator entrusted this mission to the CNIL.32. The Restricted Committee then notes that the second paragraph of the same article obliges the Member States to ensure that the competent national authority and, where appropriate, other national bodies have the power to order the cessation of the offenses referred to in paragraph 1.33. It considers that these latter provisions exclude as such the application of the one-stop-shop mechanism provided for by the GDPR to facts falling within the scope of the ePrivacy Directive.34. It adds, moreover, that this exclusion is corroborated by the fact that the Member States, which are free to determine the national authority competent to hear violations of the national provisions adopted pursuant to the ePrivacy Directive, may have attributed this competence to an authority other than their data protection authority, in this case their telecommunications regulatory authority. Therefore, insofar as these latter authorities are not part of the European Data Protection Board (hereinafter EDPS), while this committee plays an essential role in the consistency control mechanism implemented in Chapter VII of the GDPR, it is in fact impossible to apply the one-stop shop to practices likely to be penalized

by national supervisory authorities not sitting on this committee.35. It emphasizes that the cooperation agreements entered into between data protection authorities and telecommunications regulatory authorities in certain States invoked by the company, for example, in the Netherlands, Sweden or Hungary, are intended to establish cooperation at the national level between the different regulators in order to ensure the consistency of their doctrines when a processing operation falls within the material scope of both the GDPR and the ePrivacy Directive but they do not aim to involve as a such as the telecommunications regulatory authorities to the one-stop-shop mechanism provided for in Chapter VII of the GDPR.36. Finally, the Restricted Committee points out that the EDPS, in its Opinion No. 5/2019 of 12 March 2019 on the interactions between the Privacy and Electronic Communications Directive and the GDPR, considered that [free translation] In accordance with Chapter VII of the GDPR, the co-operation and consistency check mechanisms available to data protection authorities under the GDPR relate to monitoring the application of the provisions of the GDPR. The mechanisms of the GDPR do not apply to the control of the application of the provisions of the directive on privacy and electronic communications as such and that the authority or authorities designated as competent within the meaning of the directive on privacy and electronic communications by the Member States are exclusively responsible for monitoring the application of the national provisions transposing the privacy and electronic communications directive which are applicable to this specific processing, including in cases where the processing of personal data falls under both the material scope of the GDPR and that of the Privacy and Electronic Communications Directive37. The Restricted Committee also notes that the possible application of the one-stop shop mechanism to processing regulated by the ePrivacy directive is the subject of numerous discussions in the context of the development of the draft ePrivacy regulation under negotiation for three years in European level. Therefore, the very existence of these debates confirms that, as it stands, the one-stop-shop mechanism provided for by the GDPR is not applicable to matters governed by the current ePrivacy Directive.38. It is therefore necessary to distinguish on the one hand, the operations of reading and writing on a terminal, which are governed by the provisions of article 82 of the Data Protection Act and for which the French legislator has entrusted the CNIL a mission of control and in particular the power to sanction any ignorance of this article and on the other hand, the use which is made subsequently of the data collected thanks to the cookies, which is governed by the RGPD and can therefore, if necessary, be subject to the one-stop-shop mechanism .39. The Restricted Committee also notes that the company has chosen to use a .fr domain name. which is an extension designating the territorial space of France allowing it to benefit from optimal visibility with French Internet users.40. Finally, the Restricted Committee

notes that the references to the GDPR contained in certain documents communicated by the CNIL during the control mission have no impact on the legality of the procedure insofar as the control operations are general but where the CNIL did not hear subsequently prosecute only breaches for which it has the power to sanction, which were clearly indicated in the notification of grievances by the rapporteur and on which the company was given the opportunity to submit its observations under conditions consistent with respect for the rights of the defence.41. It follows from the foregoing that the one-stop-shop mechanism provided for by the GDPR is not applicable to this procedure and that the CNIL is competent to control and initiate a sanction procedure concerning the operations of reading and writing cookies put in place. implemented by the company which fall within the scope of the ePrivacy Directive, provided that they relate to its territorial jurisdiction.2. On the territorial jurisdiction of the CNIL42. The rule of territorial application of the requirements provided for in Article 82 of the Data Protection Act is set out in Article 3, paragraph I, of the Data Protection Act, which provides: without prejudice, with regard to the 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 in within the framework of the activities of an establishment of a data controller or a processor on French territory, whether or not the processing takes place in France .43. The rapporteur considers that the CNIL has territorial jurisdiction pursuant to these provisions when the processing covered by this procedure, consisting of operations to access or register information in the terminal of users residing in France during the The use of the Amazon.fr site is carried out within the framework of the activities of the company AMAZON ONLINE France SAS which constitutes the establishment on French territory of the company AEC. which is specifically responsible for the implementation of the cookies in question in this procedure, which it has not contested.44. In defense, the company considers that the territorial jurisdiction of the CNIL is lacking in this case insofar as one of the conditions allowing the action of the CNIL provided for by I of article 3 of the Data Protection Act , in this case that relating to the fact that the processing of personal data must be carried out in the context of the activities of an establishment of a controller, is not fulfilled. It emphasizes that AMAZON ONLINE France SAS does not intervene in the deposit of cookies on user terminals and that its activity consists of providing marketing solutions and advice to companies wishing to market their products in the Amazon.fr store as well as only on third-party sites. It also specifies that it is the company that places advertisements on third-party sites on behalf of its customers and not the company AMAZON ONLINE France SAS.45. It thus considers that there is no inseparable link between, on the one hand, the activities of AMAZON ONLINE France SAS and, on the other hand, the deposit of cookies by

AMAZON EUROPE CORE from the Amazon.fr site. 46. The Restricted Committee recalls that under Article 3 of the Data Protection Act, the CNIL is competent to exercise its powers when the two criteria provided for in this article are met, in this case, the existence of an establishment of the data controller on French territory and the existence of processing carried out within the framework of the activities of this establishment.47. The Restricted Committee recalls that the ePrivacy Directive, adopted in 2002 and amended in 2006 and then in 2009, does not itself explicitly set the rule of territorial application of the various transposition laws adopted by each Member State. However, this directive indicates that it clarifies and completes directive 95/46. EC , which provided at the time, in its Article 4, that each Member State shall apply the national provisions which it adopts pursuant to this Directive to the processing of personal data when: a) the processing is carried out within the framework activities of an establishment of the controller in the territory of the Member State; if the same controller is established in the territory of several Member States, he must take the necessary measures to ensure that each of his establishments complies with the obligations provided for by the applicable national law. This rule for determining the national law applicable within the Union is no longer relevant for the application of the rules of the GDPR, which replaced Directive 95/46/EC and applies uniformly throughout the territory of the Union, but it is logical that the French legislator has maintained the criterion of territorial application for the specific rules of French law, in particular those which transpose the ePrivacy Directive. Therefore, the case law of the CJEU on the application of Article 4 of the former Directive 95/46/EC remains relevant, insofar as the French legislator used these same criteria to define the territorial jurisdiction of the CNIL. .48. As regards, firstly, the existence of an establishment of the data controller on French territory, the CJEU, in its Weltimmo judgment of 1 October 2015, specified that the notion of establishment, within the meaning of the Directive 95/46, extends to any real and effective activity, even minimal, carried out by means of a stable installation, the criterion of stability of the installation being examined with regard to the presence of human and technical means necessary for the provision of concrete services in question . The CJEU 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).49. In this case, the Restricted Committee notes first of all that the quality of establishment of the company AMAZON ONLINE France SAS is not contested by the company. It then notes that that company has stable premises located in France, at 67 boulevard du Général Leclerc in Clichy, where approximately 120 people work. Consequently, it is indeed an establishment of the AEC company within the meaning of Article 3 of the aforementioned Data Protection Act.50. Secondly,

with regard to the existence of processing carried out in the context of the activities of this establishment, the Restricted Committee recalls that, in its Google Spain decision of 13 May 2014, the CJEU considered that the processing relating to the search engine Google Search , was carried out within the framework of the activities of the company Google Spain, establishment of the company Google Inc. insofar as this company is intended to ensure in Spain the promotion and the sale of the advertising spaces offered by this search engine research, which serve to make the service offered by this engine profitable. It also specified that in order to ensure effective and complete protection of the fundamental rights and freedoms of natural persons, this concept cannot be interpreted restrictively. If in the Google Spain judgment the establishment responsible for processing was established outside the European Union, the Court subsequently, in its judgment of 5 June 2018, applied the same extensive interpretation to the processing carried out within the framework of the activities of a national establishment to a situation where the processing was partly under the responsibility of another establishment present within the European Union (CJEU, 5 June 2018, C-210/16, pts 53 sq). Finally, it should be noted that the interpretation of the concept of processing implemented in the context of the activities of a national establishment of the data controller has no effect on the fact that the debtor of the obligations remains the data controller and, where applicable, its subcontractor.51. The Restricted Committee notes that the company AMAZON ONLINE France SAS presented itself to the delegation of control as offering digital marketing solutions to client companies, themselves supplying products and services sold or not on the amazon.fr site to companies wishing to improve the visibility of their products on the web. In this context, it is required to ensure, as indicated by the company AEC during the control, the promotion and marketing of advertising tools (Sponsored Ads and Amazon DSP) which are controlled and operated by the company Amazon Europe Core S.à.r.l., established in Luxembourg. However, these products developed by the company AEC function in particular thanks to the data collected by means of cookies deposited on the terminals of Internet users. The Restricted Committee thus notes that the company AMAZON ONLINE France SAS carries out an activity enabling it to ensure in France the promotion and marketing of the tools developed by the company AEC. The Restricted Committee notes that the two criteria provided for in Article 3, paragraph I, of the Data Protection Act are therefore met and that the processing is sufficiently territorialized in France to be subject to French law. The application of French law only concerns read and write operations carried out on French territory (Article 4 of Directive 95/46/EC moreover specified that the law of the Member State applied only to the activities of the establishment on the territory of the Member State), which corresponds to the data read on the terminals in France or written on these terminals in France. Finally, the Restricted

Committee emphasizes that this is a constant position on its part since the intervention of the Google Spain case law in 2014 (see in particular the CNIL decision, Restricted Committee, April 27, 2017, SAN-2017-006 CNIL, restricted formation, 19 December 2018, SAN-2018-011).52. It follows that French law is applicable and that the CNIL is materially and territorially competent to exercise its powers, including that of taking a sanction measure concerning the processing in question which falls within the scope of the ePrivacy Directive. The competence of the CNIL is limited to these treatments carried out within the framework of the activity of AMAZON ONLINE France SAS on the French territory, namely the operations of reading and writing carried out by the person in charge of treatment on the terminals (computers , smartphones, etc.) located in France. […] C. On the procedure60. In defence, the company argues that the procedure followed by the CNIL breached its right to a fair trial as guaranteed by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.61. In particular, the company complains that it answered questions from the CNIL's supervisory delegation without the latter telling it what the purpose and legal basis of the inspections were, so that its right to not not participate in his own incrimination would have been violated. She also explains that the decision of the President of the CNIL appointing a rapporteur dated March 23, 2020, which constitutes an indictment, was not notified to her by e-mail until the following May 13, delaying so much the preparation of his defence.62. The company then considers that the procedure followed by the CNIL is tainted with irregularity insofar as the CNIL agents carried out an online check on May 19, 2020 on the basis of the control decision of the President of the CNIL of November 29, 2019 when a rapporteur had already been appointed. It also explains that the methodology followed by the CNIL delegation during this check, which aimed to reproduce the journey of an Internet user visiting the Amazon.fr site from an advertising banner present on third-party sites, does not in no way makes it possible to distinguish the cookies deposited by third-party sites from those deposited on the Amazon.fr site. Respect for the right to a fair trial.63. The Restricted Committee recalls that the right not to participate in one's own incrimination and the right to have the time and facilities necessary for the preparation of one's defense invoked by society are components of the right to a fair trial contained in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and which must, in accordance with the case law of the European Court of Human Rights, be analyzed in the light of their functions in the general context of the procedure (see among others, Mayzit v. Russia, 20 January 2005).64. The Restricted Committee notes, first of all, that under the terms of Article 18 of the Data Protection Act, the persons questioned in the context of the checks carried out by the commission pursuant to g of 2° of I of article 8 are required to provide the information requested by the latter

for the exercise of its missions. Thus, the people interviewed by the CNIL delegation are required to respond to its requests in order to provide it with their assistance in carrying out its missions. 65. The Restricted Committee then recalls that when the delegation of control requests information, in particular factual information, from an organisation, no accusation is yet brought against it, so that the adversarial phase , as understood by the case-law of the European Court of Human Rights, has not yet been initiated.66. With regard to the notification to the organization of the decision of the president to appoint a rapporteur, the restricted committee recalls that in application of article 39 of the decree of May 19, 2019, this appointment can only take place to the extent where a sanction is likely to be imposed under III of article 20 of the Data Protection Act .67. It notes that under article 39 of the decree of May 19, 2019, it is precisely up to the rapporteur to carry out all the necessary due diligence to determine whether or not breaches can be attributed to the natural or legal person in question. . It is for this reason in particular that, in accordance with Articles 8-2-g and 19 of Law No. 78-17 of January 6, 1978 as amended, the rapporteur has the option of carrying out or having carried out additional investigations before to write his report.68. The Restricted Committee thus emphasizes that the decision to appoint a rapporteur does not include any grievance, so that this appointment is not intended, at this stage, to allow the company to understand what could possibly be blamed on it. It recalls that grievances only take shape through the sanction report, which constitutes notification of grievances, since it is this document which contains the breach or breaches that the rapporteur considers to be constituted. The rapporteur's two reports explicitly indicated the legal basis for the breach found. The Restricted Committee also notes that the notification of this decision to the natural or legal person concerned is not governed by any deadline by the applicable texts.69. The Restricted Committee notes that, moreover, the company is not justified in maintaining that it was not able to understand the scope of the CNIL's investigations. It notes in this sense that the inspection reports and their attachments, communicated to the company after the inspections were carried out, clearly established the scope of the investigation carried out by the CNIL. It notes that among the attachments sent to the company included in particular screenshots of the home page of the site where the information banner on cookies appears, as well as information pages on cookies, but also the list of cookies whose registration on the terminal has been observed. The Restricted Committee further notes that on the occasion of the notification of the minutes of the inspection of March 6, 2020, the company was also asked to indicate, for each of the 46 cookies mentioned above, their purpose (for example: technical, advertising, social network sharing button, audience measurement, etc.) 70. Finally, the Restricted Committee recalls that article 40 of decree no. natural or legal entity to whom a report proposing a sanction is notified has a period of one month to

submit its observations in response. In this case, this deadline was respected insofar as the company had an initial deadline of eight weeks to submit its first observations to the rapporteur's report and this deadline was extended by one week at its request. Accordingly, the Restricted Committee considers that the company was enabled to properly prepare its defence.71. The company then had three weeks to respond to the rapporteur's second observations and finally had the opportunity to make oral observations during the restricted training session of November 12, 2020.72. In view of these elements, the Restricted Committee considers that the rights of defense of the company AEC have been respected.b. On the regularity of the online check of 19 May 202073. The Restricted Committee recalls that pursuant to Articles 8-2-g and 19 of Law No. 78-17 of 6 January 1978 as amended, the rapporteur has the possibility of ask CNIL agents to carry out checks. It emphasizes that in the present case, the rapporteur wanted an online check to be carried out retracing two routes of users who visit the Amazon.fr site after clicking on an advertising link present on third-party sites.74 . The Restricted Committee then considers that the fact that the minutes drawn up as part of this inspection bears the reference of inspection decision no. this insofar as the appointment of a rapporteur by the president of the CNIL does not in itself have the effect of closing the control procedure. Indeed, the check of 19 May 2020 was carried out in the continuity of the checks preceding the appointment of the rapporteur and therefore in the extension of the decision of the president.75. The Restricted Committee notes that the cookies whose presence was noted by the delegation when arriving on the home page of the Amazon.fr site during the first two checks are also among those present when arriving on another page of the site in the event that the user accesses it via a third party site. Thus, the other cookies identified by the delegation are those registered by the third-party sites in question and which are therefore not part of the scope of the investigations. It therefore considers that the findings made on May 19, 2020, compared with those made on December 12, 2019 and March 6, 2020, show unambiguously which cookies are, on the one hand, deposited by third-party sites displaying an ad advertising for an Amazon product and on the other hand, those posted when the Internet user arrives on the Amazon.fr site. after clicking on said advertisement.76. In view of these elements, the Restricted Committee considers that the online check of May 19, 2020 is not vitiated by irregularity.D. On breaches of the provisions of Article 82 of the Data Protection Act 77. As recalled in point 20, Article 82 of the Data Protection Act constitutes the transposition into domestic law of the Article 5(3) of the ePrivacy Directive .78. The rapporteur considers that the operations of the AEC company in terms of the deposit and reading of cookies show two series of serious negligence relating to: - the deposit of cookies on the user's terminal before any action on his part and without collection of his consent;- to the

information delivered to the user regarding the operations of access or registration of information in their terminal.79. The rapporteur considers that by placing cookies on the terminal of Internet users located in France visiting the Amazon.fr site before any action on their part, the company necessarily prevents them from validly expressing their consent. It recalls that the Data Protection Act expressly provides that operations for accessing or entering information in the user's terminal, barring exceptions, can only take place after the latter has expressed his consent.80 . The rapporteur then considers that the information provided by the company on the home page of the Amazon.fr website by means of the information banner is insufficient in that it only constitutes a general and approximate description of the purposes of all the cookies deposited and that there is no mention of the means available to the Internet user to oppose the deposit of cookies. He adds that when the user visits the Amazon.fr site not through the home page, but from an advertisement published on a third-party site, cookies are deposited when the user arrives. Internet user on the Amazon.fr site without any information being provided81. In defence, the company recalls that its practices in terms of cookies are subject to compliance with Luxembourg law and not French law. It points out that it launched a vast project to overhaul its policy for the use of cookies in 2019 and that these changes have been effective on the Amazon.fr site since September 2, 2020. It argues that in any event , its cookie practices have always complied with the provisions of Luxembourg law.82. In this respect, while the company does not in itself dispute the fact that before the changes introduced in September 2020, cookies were placed on the user's terminal as soon as he arrived on the page of the Amazon.fr site, it argues that insofar as Luxembourg law provides that consent may be expressed by means of browser settings, it has always validly obtained the consent of users.83. With regard to the information delivered to users, the company considers that even if the Data Protection Act were applicable, the information it provided was, in any event, in accordance with the provisions of Article 82 of this law. It argues that by clicking on the Find out more link in the information banner, the user was redirected to an information page relating to its cookie policy. She explains that in the case of a user who visits the Amazon.fr site via an advertisement displayed on a third-party site, most of these advertisements include an AdChoices icon which refers to a page where the user can read information on its targeted advertising policy.84. The company further states that the vast majority of Internet users who click on Amazon advertisements are customers who have already visited or purchased on the site and therefore already received information relating to its cookie policy.85. It also specifies that its information system is supplemented by the presence at the foot of the page of links to its pages dedicated to the sections cookies and targeted advertising.86. Finally, the company recalls that there is no doctrine common to all European regulators

on the use of cookies and that it is therefore difficult for players to know what is expected of them in this area. . It argues, through a comparative study, that the vast majority of French websites do not comply with the legislation in force. The company also points to the fact that when the CNIL investigations were launched in November 2019, the recommendation relating to cookies and other tracers adopted on December 5, 2013 had already been repealed, which contributed to the legal vagueness on the rules. regarding cookies.87. First of all, with regard to the collection of consent, the Restricted Committee emphasizes that it appears from the observations made by the delegation on December 12, 2019, March 6, 2020 and May 19, 2020 and from the information transmitted by the company that whatever the user's journey, whether the user goes to the home page of the Amazon.fr site or goes to a product page of the site via an ad, more than 40 cookies pursuing an advertising purpose were deposited on the user's terminal.88. So-called advertising cookies cannot fall within the scope of the exceptions defined in Article 82 of the Data Protection Act insofar as their purpose is not to allow or facilitate communication by electronic means and are not strictly necessary for the provision of an online communication service at the express request of the user. Consequently, such cookies cannot be deposited or read on the terminal of the person as long as he has not provided his consent.89. The Restricted Committee observes that the information banner, worded as follows: By using this site, you accept our use of cookies to offer and improve our services. Find out more , did not contain any specific information regarding the means made available to users to express their choice regarding the registration of cookies. In any case, the cookies were deposited before any action by the Internet user, even if it was simply continued browsing, which had been accepted as a valid method of expressing consent in deliberation no. 2013-378 of 5 December 2013 of the CNIL (but which no longer corresponds to the state of the law, clarified by the deliberation n° 2020-091 of September 17, 2020 of the CNIL).90. The Restricted Committee considers that the company should have previously obtained the consent of users, before depositing cookies for advertising purposes on their terminals. It notes that in any case, even if the browser settings may in some cases constitute a valid mechanism for obtaining consent, it is on the condition that the user has been informed beforehand that he has this possibility, which is not the case here.91. Moreover, the Restricted Committee recalls that, as indicated above, it is up to the company to comply with the provisions of Article 82 of the Data Protection Act when cookies are placed on user terminals located in the territory French from the Amazon.fr.92 site. Next, the Restricted Committee considers that the information provided by the company regarding access operations or registration of cookies is, depending on the case, either incomplete or non-existent.93. It recalls that both Article 5-3 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 it.94. 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. On this point, it considers that the terms offer and improve our services only allow the user to be informed that cookies are registered in order to allow the company to ensure the proper functioning of its activity and to develop it. Thus, when reading this banner, the user is not able to understand the type of content and advertisements likely to be personalized according to his behavior95. In addition, the information banner does not mention the means available to the Internet user to refuse the registration of cookies.96. The Restricted Committee also notes that the company's failure to inform individuals is even more notorious when the user visits the Amazon.fr site through an advertisement published on a third-party site, for example after having clicked on a link present in the list of results in a search engine or on an advertisement present on a third-party site promoting a product sold on the Amazon.fr site.97. It appears from the findings made by the CNIL delegation that, in this case, cookies with an advertising purpose were indeed deposited on the terminals of users located on French territory without information being delivered to them. However, the provisions of article 82 of the Data Protection Act provide that 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 (underlining added). The Restricted Committee considers that this scenario is particularly detrimental to the rights of users located on French territory insofar as the company deposits cookies on their terminal without ever having informed them.98. The Restricted Committee considers that the observations submitted by the defending company do not call into question the existence of this breach.99. First of all, the company cannot hide behind the fact that certain advertisements displayed on third-party sites contain an Adchoices icon on which users can click to consult a page informing them of its cookie policy. Indeed, beyond the fact that this system only concerns Internet users coming from a third-party site on which an advertisement with an Adchoices icon is displayed, the Restricted Committee considers that it cannot reasonably be expected of the user to whom is presented an advertisement that he has the reflex to click on a small icon before clicking on the advertisement itself. This icon does not allow people watching the advertisement to know that information relating to cookies is available if they click on it.100. In any event, the Restricted Committee observes that the page to which the Adchoices icon refers simply allows the user to tick a box so that Amazon no longer displays advertisements based on its advertising centers interests. This page does not contain information on the purpose of the actions tending to

register information in his terminal equipment and the means at his disposal to oppose it Finally, no information is issued as to the right of the user to refuse cookies but simply a link to the Cookies page of the site. Such a device does not meet the requirements of the aforementioned Article 82.101. The Restricted Committee recalls, moreover, that the CNIL has adopted several legal instruments of soft law detailing the obligations of data controllers in terms of tracers, including, in particular, a recommendation of December 5, 2013 as well as guidelines of July 4, 2019, in force on the date of the online check. Although devoid of any mandatory value, these instruments provide useful insight for data controllers, by informing them about the implementation of concrete measures to guarantee compliance with the provisions of the Data Protection Act relating to tracers so that either they implement those measures, or they implement measures having equivalent effect.102. In this respect, in article 2 of its 2013 recommendation, the Commission recalled in particular that the information must be prior to obtaining consent but also visible, highlighted and complete . Consequently, the Commission recommended that data controllers implement a two-step consent collection mechanism:- first step: the Internet user who visits a publisher's site (home page or secondary page of the site) must be informed, by the appearance of a banner: of the precise purposes of the cookies used; the possibility of opposing these cookies and changing the settings by clicking on a link in the banner; - second step: people must be informed in a simple and intelligible manner of the solutions available to them to accept or refuse any or part of the cookies requiring the collection of consent: for all the technologies referred to in the aforementioned article 32-II; by category of purpose: in particular advertising, social network buttons and audience measurement .103. Such recommendations had been repeated in the guidelines of 4 July 2019, in equivalent terms.104. Next, the Restricted Committee considers that the company's argument that the vast majority of people who click on an Amazon advertisement have already visited or purchased a product on the Amazon.fr site and that they have therefore already received prior information on the registration of cookies is not effective.105. The Restricted Committee notes that before becoming customers, these people necessarily had to go to the site for the first time, either via the home page or after clicking on an advertising banner. findings of the CNIL precisely show that during their very first visit to the site, Internet users are either insufficiently informed, or are never informed of the registration of cookies and that whatever the level of information received, cookies are systematically registered on their terminal. Moreover, the alleged circumstance that the practices of other websites do not comply with the requirements of Article 82 has no bearing on the obligations of the company.106. Similarly, the Restricted Committee considers that the Cookies links present at the bottom of the page and which refer to an information page do not constitute a satisfactory form of

information when, the deposit of cookies before any action by the user deprives necessarily the information of its prior nature, contrary to what is provided for in the provisions of article 82 of the Data Protection Act, according to which 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 (emphasis added).107. Finally, the Restricted Committee recalls that while the recommendations on cookies have evolved, the practices of which the company is accused have continually been considered non-compliant by the CNIL and this was confirmed in the guidelines of July 4, 2019 and that this position remains unchanged in its second recommendation and in its latest version of the guidelines, which do not call this fact into question.108. The Restricted Committee also observes that in its press release published on its website on July 18, 2019 providing for a moratorium before the effective application of its second recommendation relating to cookies, the CNIL had taken care to specify that it would continue to control the respect of the obligations having not been the subject of any modification by indicating that In particular, the operators must respect the prior nature of the consent to the deposit of tracers [… and] must provide a mechanism for the easy withdrawal of consent from access and use. Thus, the company cannot validly maintain that the obligations allegedly breached in these proceedings were not clearly identified.109. The Restricted Committee specifies that, moreover, the breach alleged against the company is not based on ignorance of the guidelines or recommendations of the CNIL but on ignorance of the provisions of Article 82 of the Data Protection Act, which only contain obligations which already appeared in previous versions of the said law.110. The Restricted Committee also notes that on the basis of these provisions, it has already adopted several sanction decisions, sometimes concerning identical practices, some of which have moreover been made public (see, in this regard, deliberation No. SAN- 2016-204 of July 7, 2016 and deliberation no. SAN-2017-006 of April 27, 2017).111. In view of these elements, the Restricted Committee considers that the breach of the provisions of Article 82 of the Data Protection Act is characterized in that the company deposits cookies on the terminal of users located on French territory before collecting their consent and without providing them with the information prescribed by this article, under the conditions it defines.III. On the pronouncement of corrective measures and publicity112. Article 20 of Law No. 78-17 of 6 January 1978 as amended provides that: when the controller or its subcontractor does not comply with the obligations resulting from Regulation (EU) 2016/679 of 27 April 2016 or this law, the president of the National Commission for Computing and Liberties may […] seize the restricted formation of the committee 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 compliance with the obligations resulting from Regulation

(EU) 2016/679 of 27 April 2016 or from this law or to satisfy the requests submitted by the person concerned in order to exercise their rights, which may be accompanied, except in cases where the processing is implemented by the State, with a penalty payment the amount of which may not exceed €100,000 per day of delay from the date set by the restricted body; […] 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. In the cases 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 83.113. Article 83 of the GDPR, as referred to in Article 20, paragraph III, of the Data Protection Act, provides:1. Each supervisory authority shall ensure 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.2. Depending on the specific characteristics of each case, administrative fines are imposed in addition to or instead of the measures referred to in points (a) to (h) and (j) of Article 58(2). In deciding whether to impose an administrative fine and in deciding the amount of the administrative fine, due account shall be taken in each individual case of the following elements: (a) the nature, gravity and the duration of the breach, taking into account the nature, scope or purpose of the processing concerned, as well as the number of data subjects affected and the level of damage they have suffered; b) the fact that the breach has was committed willfully or negligently; c) any action taken by the controller or processor to mitigate the harm suffered by data subjects; d) the degree of liability of the controller or processor, taking into account the technical and organizational measures they have implemented pursuant to Articles 25 and 32; e) any relevant breach previously committed by the controller or processor; f) the degree of cooperation established with the control in with a view to remedying the breach and mitigating its possible negative effects; g) the categories of personal data concerned by the breach; h) the manner in which the supervisory authority became aware of the breach, in particular if, and to what extent the controller or processor notified the breach; (i) where measures referred to in Article 58(2) have previously been ordered against the controller or processor concerned processor for the same purpose, compliance with these measures; j) the application of codes of conduct approved pursuant to Article 40 or certification mechanisms approved pursuant to Article 42; andk) any other aggravating or mitigating circumstances applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, as a result of the breach.A. On the pronouncement of an administrative

fine114. In defence, the company argues that the amount of the fine proposed by the rapporteur is disproportionate and that the latter did not take into account several criteria provided for in Article 83(2) of the Rules, in particular, the fact that a system for informing users was in place, the absence of intention to commit the breach, the measures taken to mitigate the damage or the absence of previous violations. It argues that it is not possible, to determine the amount of the fine, to take into account the processing carried out using cookies because these elements are not part of the scope of the CNIL's investigations. Finally, it notes that the fine proposed by the rapporteur is disproportionate to the fines imposed by other authorities on cookies.115. In view of the elements developed above, the Restricted Committee considers that the aforementioned facts, constituting a breach of Article 82 of the Data Protection Act, justify the imposition of an administrative fine against the company AEC , legal person responsible for processing. It recalls that the changes made by the company to the Amazon.fr site since September 2020 have no impact on the imposition of a fine insofar as this is intended to penalize the facts observed during the checks.116. The Restricted Committee recalls, in general, that Article 20, paragraph III, of the Data Protection Act gives it jurisdiction to impose various sanctions, in particular an administrative fine, the maximum amount of which may be equivalent to 2% of the turnover of total global annual business for the previous financial year carried out by the data controller. It adds that the determination of the amount of this fine is assessed in the light of the criteria specified by Article 83 of the GDPR.117. In the present case, the Restricted Committee considers that the breach in question justifies the imposition of an administrative fine on the company for the following reasons.118. First of all, the Restricted Committee notes that the breach committed is particularly serious insofar as by placing cookies on the terminals of users located in France before any action on their part, without providing them with the necessary information, the company deprives them of the possibility of exercising their choice in accordance with the provisions of the aforementioned Article 82.119. The Restricted Committee considers that the seriousness of the breach is accentuated in the case of French users who access the Amazon.fr site after having clicked on an ad present in a search engine or on a third-party site. Indeed, given that the deposit of cookies is carried out in this context in the absence of any information from the persons concerned, it is thus carried out without their knowledge.120. The Restricted Committee observes that the seriousness of the breach must also be assessed with regard to the scope of the read and write operations and the number of persons concerned.121. With regard to the scope of read and write operations, the Restricted Committee notes that the visit of an Internet user to the Amazon.fr site results in the deposit by some twenty companies specializing in personalized advertising of cookies, of which the aim is to follow his browsing on the web so that he is

subsequently displayed advertising corresponding to his behavior.122. It considers that account should be taken of the extent of the processing that will be carried out thanks to the prior deposit of cookies on the terminals of users residing in France and the imperative need for them to retain control of their data. In this sense, users must be put in a position to be sufficiently informed of the scope of the processing implemented.123. Regarding the number of people concerned, it appears from the information provided by the company that approximately 300 million AMAZON identifiers were allocated in France over a period of nine months. The Restricted Committee notes that even if a single person is likely to correspond to several different identifiers due to the use of multiple terminals and browsers, this volume reflects the central place occupied by the Amazon.fr site in the daily lives of people residing in France. The information likely to be collected for the same identifier by means of these advertising cookies is also numerous, varied, sometimes relating to aspects affecting the privacy of individuals, and it is not impossible that some reveal information corresponding to sensitive data (religious opinions, policies, state of health, etc. governed by Article 9 of the GDPR.124. Next, the Restricted Committee considers that the company AEC, which achieved for the year 2019 a figure of worldwide business of approximately 7.7 billion euros, derived a certain financial advantage from the breach committed. Indeed, as mentioned in point 121, the use of cookies enables the company to present to users, when they browse the other sites, personalized advertisements promoting its products. these, made possible in particular by cookies, makes it possible to considerably increase the visibility of these goods and to increase the probability that they will be purchased. However, by not delivering clear and complete information to users and by placing cookies before people consent to them, the company eliminates the risk that these cookies will be refused.125. It follows from all of the foregoing and from the criteria duly taken into account by the Restricted Committee, in view of the maximum amount incurred established on the basis of 2% of turnover, that it is justified to impose a fine administrative up to 35 million euros.B. On the issuance of an injunction accompanied by a penalty payment126. The rapporteur proposes, in addition to the administrative fine, that an injunction be issued accompanied by a penalty payment of 100,000 euros insofar as the company does not inform users of the exact purposes of the registration of cookies and the means by which they dispose to oppose it.127. In defence, the company argues that this injunction is not justified insofar as, on the one hand, it has already changed its practices and, on the other hand, the amount proposed is disproportionate. It recalls that no more cookies are deposited before the user has expressed his consent. It also notes that the issuance of an injunction on this point may come up against the publication by the CNIL of its new guidelines and recommendations on cookies. It stresses that it would be forced to undertake two series of modifications, the

first to comply with the injunction and the second to apply the new recommendations of the CNIL.128. The Restricted Committee notes that since receiving the sanction report, the company has made changes to the Amazon.fr site. It notes first of all that regardless of the path by which the user goes to the site, no more cookies are placed on his terminal before he has expressed his consent.129. It then notes that when arriving on the site, regardless of the path followed by the user, the banner displayed contains the following text: Choose your preferences in terms of cookies. We use cookies and similar tools to make shopping easier for you, to deliver our services, to understand how customers use our services so that we can make improvements, and to present ads. Approved third parties also use these tools as part of our display of ads This banner also contains two buttons Accept cookies and Customize cookies .130. The Restricted Committee nevertheless considers that this new system still does not deliver clear and complete information as provided for by Article 82 of the Data Protection Act .131. The Restricted Committee observes that the information provided still does not allow Internet users to understand precisely some of the purposes pursued by the deposit of cookies, in particular advertising purposes, whereas the latter are used in large part to offer them personalized advertising in based on their behaviour.132. Consequently, without disregarding the steps taken by the company to comply with the provisions of Article 82 of the Data Protection Act, the Restricted Committee considers that it has not demonstrated, on the day of the closing of the investigation, its conformity with the provisions of the aforementioned article and that it is therefore appropriate to issue an injunction on this point.133. With regard to the amount of the daily penalty payment, the Restricted Committee recalls that this is a financial penalty per day of delay that the data controller will have to pay in the event of non-compliance with the injunction to the expiry of the period for performance provided for.134. In order to keep the penalty payment its comminatory function, its amount must be both proportionate to the seriousness of the alleged breach but also adapted to the financial capacities of the data controller. It should also be taken into consideration that the breach in question indirectly contributes to the profits generated by the data controller. In view of these elements, the Restricted Committee considers that a penalty payment in the amount of 100,000 euros per day of delay from the notification of this decision appears proportionate.135. With regard to the period granted to the company to comply with the injunction, the Restricted Committee considers that a period of three months from the notification of this decision is sufficient to regularize the situation. C Publicity of the decision[…] 137. The Restricted Committee considers that, given what has been explained above, it is justified to impose an additional sanction of publicity. Account is also taken of the preponderant position occupied by the company in terms of e-commerce, the seriousness of the breaches and the interest that this decision

represents for informing the public, in determining the duration of its publication.[…]FOR THESE REASONSThe Restricted Committee of the CNIL, after having deliberated, decides to:- pronounce against the company AMAZON EUROPE CORE, an administrative fine in the amount of 35 (thirty-five) million euros;- issue an injunction to bring the processing into compliance, within three months of notification of this decision, with the provisions of article 82 of the Data Protection Act, and in particular: - inform the persons concerned beforehand and in a clear and complete manner, for example by means of an information banner appearing when the Internet user first arrives on the Amazon.fr site, regardless of the first page accessed : - the precise purposes of all cookies whose registration is subject to consent - as well as the means at their disposal to refuse them; - attach the injunction to a penalty payment of 100,000 (one hundred thousand) euros per day of delay, the supporting documents for compliance must be sent to the restricted training within this period; - to send this decision to the company AMAZON ONLINE France SAS with a view to the execution of this decision; - make public, on the CNIL site and on the Légifrance site, its deliberation, which will no longer identify the company by name at the end of a period of two years from its publication. Chairman Alexandre LINDEN This decision may be the subject of an appeal before the Council of State within four months of its notification.