Deliberation SAN-2020-012 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-2020-012 of December 7 2020 concerning the companies GOOGLE LLC and GOOGLE IRELAND LIMITEDThe 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 Parliament European Parliament and of the Council of 27 April 2016 relating to the protection of personal data and the free movement of such data; Having regard to law no. 78-17 of 6 January r 1978 relating to data processing, files and freedoms, in particular its articles 20 and following; Having regard to ordinance 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 regulation of the National Commission for Computing and Freedoms; Having regard to decision no. 2020-072C of March 15, 2020 of the President of the National Commission for Computing and Liberties to instruct the Secretary General to proceed a mission to verify the processing accessible from the google.fr domain or relating to personal data collected from the latter; Having regard to the decision of the President of the National Commission for Computing and Liberties appointing a rapporteur before the restricted committee, dated June 8, 2020; Having regard to the hearing of the companies GOOGLE LLC and GOOGLE IRELAND LIMITED at the CNIL premises, on July 22, 2020; Having regard to the report of Mr. Bertrand du MARAIS, reporting auditor, notified to the companies GOOGLE LLC and GOOGLE IRELAND LIMITED on August 12, 2020; Having regard to the written observations submitted by the counsel of the companies GOOGLE LLC and GOOGLE IRELAND LIMITED on September 25, 2020; Having regard to the response of the rapporteur to these observations notified on October 9, 2020 to the counsels of the companies; Having regard to the written observations submitted by the counsels of the companies GOOGLE LLC and GOOGLE IRELAND LIMITED received on October 26, 2020; Having regard to the oral observations made during the restricted training session ;Having regard to the memorandum of deliberation of December 2, 2020 addressed by the counsel of the companies GOOGLE LLC and GOOGLE IRELAND LIMITED to the chairman of the Restricted Committee;Having regard to the other documents in the file;Were present at the meeting of the Restricted Committee of November 12 2020:- Mr. Bertrand du MARAIS, statutory auditor, heard in his report;

As representatives of GOOGLE LLC and GOOGLE IRELAND LI MITED:- […] As interpreters for the companies GOOGLE LLC and GOOGLE IRELAND LIMITED:- […] The companies GOOGLE LLC and GOOGLE IRELAND LIMITED having the floor last;The Restricted Committee adopted the following decision:I. Facts and procedure1. GOOGLE LLC is a limited liability company headquartered in California (USA). Since its creation in 1998, it has developed many services for individuals and businesses, such as the Google Search search engine, the Gmail e-mail box, the Google Maps mapping service and the YouTube video platform. It has more than 70 offices located in around fifty countries and in 2019 employed more than 110,000 people around the world. Since August 2015, it has been a wholly-owned subsidiary of ALPHABET Inc., parent company of the GOOGLE.2 group. In 2019, ALPHABET Inc. had revenue of over $161 billion, while GOOGLE LLC had revenue of over $160 billion. […] 3. The company GOOGLE IRELAND LIMITED (hereinafter the company GIL) presents itself as the headquarters of the GOOGLE group for its activities in the European Economic Area (hereinafter the EEA) and in Switzerland. Based in Dublin (Ireland), it employs around 9,000 people. In 2018, it achieved a turnover of more than 38 billion euros.4. GOOGLE FRANCE SARL is the French establishment of the GOOGLE group. A wholly-owned subsidiary of GOOGLE LLC, its head office is located in Paris (France). In 2018, it employed around 1,400 people and had a turnover of more than 400 million euros.5. Pursuant to Decision No. 2020-072C of March 15, 2020 of the President of the Commission, the CNIL services carried out an online check, on March 16, 2020, on the google.fr website.6. The purpose of this mission was in particular to verify compliance, by the companies GOOGLE LLC and GIL (hereinafter the companies), with all the provisions of law no. 78-17 of 6 January 1978 as amended relating to data processing, files and freedoms (hereinafter the Data Protection Act) and in particular its article 82.7. In the context of online control, the delegation was thus able to observe that when a user visits the google.fr page, several cookies are automatically placed on their terminal, without action on their part, as soon as they arrive on the site. On March 16, 2020, the delegation notified the companies of the report drawn up as part of the online control, asking them, in particular, to specify the purposes of the various cookies whose deposit had been noted.8. By letter of April 30, 2020, the company GIL responded on its behalf to this last request while considering that the CNIL did not have the competence to control the google.fr .9 website. For the purposes of investigating these elements, the President of the Commission appointed Mr. Bertrand du MARAIS as rapporteur, on June 8, 2020, on the basis of Article 22 of the Data Protection Act .10. By letter dated June 29, 2020, the companies were called to a hearing on the following July 15, pursuant to Article 39 of Decree No. 2019-536 of May 29, 2019. At the companies' request, the rapporteur accepted, by letter of the

following July 9, a postponement of the hearing to July 22, 2020.11. During the hearing of July 22, 2020, which gave rise to minutes signed by all the parties present, the companies notably provided answers to the rapporteur's questions relating to the determination of the controller concerning the processing consisting of information access or registration operations in the terminal of users residing in France when using the Google Search search engine.12. By letter dated July 29, 2020, the company GIL responded to several of the additional requests made by the rapporteur following the hearing of July 22, 2020, by providing, in particular, the subcontracting contract of December 11, 2018 concluded with GOOGLE LLC. On the other hand, they did not produce the income of the company GIL from the activity of google.fr and GOOGLE FRANCE in respect of its commission as a business provider, although requested by the rapporteur.13. At the end of his investigation, on August 12, 2020, the rapporteur had a report personally served on the boards of the companies and by e-mail on their representatives detailing the breach of the Data Protection Act which he considered constituted in l species.14. This report proposed that the restricted committee of the Commission issue an injunction to bring the processing into compliance with the provisions of Article 82 of the Data Protection Act, together with a penalty payment, as well as an administrative fine to the against the two companies. It also proposed that this decision be made public and no longer allow companies to be identified by name after the expiry of a period of two years from its publication.15. On August 18, 2020, through their counsel, the companies made a request for the session before the Restricted Committee to be held behind closed doors, a request which was rejected by the Chairman of the Restricted Committee by letter dated September 23 2020.16. On September 25, 2020, the companies filed submissions in response to the sanction report.17. The rapporteur replied to the companies' observations on 9 October 2020.18. By email dated October 15, 2020, the companies requested an extension of the fifteen-day period provided for in Article 40 of Decree No. 2019-536 of May 29, 2019 to produce observations in rejoinder, a request which was rejected by the Chairman of the Restricted Committee by letter dated October 16, 2020.19. On October 26, 2020, the companies submitted new observations in response to those of the rapporteur.20. The companies and the rapporteur presented oral observations during the session of the Restricted Committee.21. By e-mail of December 2, 2020, the companies sent a note under advisement to the Chairman of the Restricted Committee.II. Reasons for decisionA. On the competence of the CNIL1. On the material competence of the CNIL and the applicability of the one-stop-shop mechanism provided for by the GDPR22. The provisions 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 sector (hereinafter the ePrivacy Directive)

relating storage or access to information already stored in the terminal equipment of a subscriber or user have been transposed into domestic law in article 82 of the Data Protection Act, in chapter IV Rights and obligations specific to processing in the electronic communications sector of this law.23. Under the terms of Article 16 of the Data Protection Act, the Restricted Committee takes measures and imposes sanctions against data controllers or subcontractors who do not comply with the obligations arising […] from this law . Under the terms of 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 et des libertés […] may seize the restricted committee .24. The rapporteur considers that the CNIL is materially competent pursuant to these provisions to control and sanction the operations of access or registration of information implemented by companies in the terminals of users of the Google Search search engine residing in France. .25. The companies acknowledge that the facts of this procedure fall materially within the ePrivacy Directive but believe that they should be subject to the procedural framework provided for in Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 (here -after the Regulation or the GDPR), i.e. the cooperation mechanism between supervisory authorities, known as the one-stop-shop mechanism, provided for in Chapter VII of the Regulation. Pursuant to this mechanism, the supervisory authority competent to know the facts in question would not be the CNIL but the Irish data protection authority, the Data Protection Commissioner (hereafter the DPC), which should act as as lead authority with regard to the deployment of cookies by the company GOOGLE IRELAND LIMITED, which is competent according to the companies both under the GDPR and the ePrivacy directive.26. In support of this, the companies invoke, in particular, the adage specialia generalibus derogant by virtue of which, according to them, the absence of specific rules relating to the determination of the competence of the supervisory authority in the event of cross-border processing in the Directive ePrivacy should be supplemented by the application of the procedural framework provided for by the GDPR. They maintain that a teleological reading of the preparatory works of the GDPR and its recitals would tend in the same direction. They add that the exclusion of the one-stop-shop mechanism in the present case would contribute to the fragmentation of the European regulations on personal data relating to cookies, a fragmentation which is already confirmed by the fact that several supervisory authorities (the authorities French, British and Spanish) have adopted diverging guidelines or even repressive policies with regard to these devices.27. 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 compliance, by data controllers, with the provisions of the ePrivacy Directive

transposed in Article 82 of the Data Protection Act, entrusting it in particular 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).28. 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).29. In this regard, the Restricted Committee notes that, contrary to what the companies maintain, the ePrivacy Directive does provide, for the specific obligations it contains, its own mechanism for implementing and monitoring its application within its article 15bis. Thus, the first paragraph of this article leaves the Member States the power to determine the system of penalties, including criminal penalties where appropriate, applicable to violations of the national provisions adopted pursuant to this Directive and take any necessary to ensure their implementation. The penalties provided for must be effective, proportionate and dissuasive and may be applied for 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, according to which read and write operations must systematically be the subject of the prior agreement of the user, after information, constitutes a special rule in with regard to the GDPR since

it prohibits relying on the legal bases mentioned in 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 legislator in France entrusted this mission to the CNIL.30. In addition, the second paragraph of the same article obliges Member States to ensure that the competent national authority and, where appropriate, other national bodies have the power to order the cessation of the infringements referred to in paragraph 1.31 . The Restricted Committee considers that these last provisions exclude as such the application of the one-stop shop mechanism provided for by the GDPR to facts falling under the ePrivacy Directive .32. 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 national data protection authority established by the GDPR, in this case to 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.33. She points out that the EDPS also shares the same interpretation, having specified in particular, in his Opinion No. 5/2019 of 12 March 2019 on the interactions between the Privacy and Electronic Communications Directive and the GDPR, that the mechanisms of the GDPR do not do not apply to monitoring the application of the provisions of the privacy and electronic communications directive as such (pt. 80, free translation).34. Finally, the Restricted Committee notes that the possible application of the one-stop-shop mechanism to processing governed by the ePrivacy Directive is currently the subject of numerous discussions within the framework of the development of the draft ePrivacy regulation currently under negotiation. for three years at European level. She notes that the very existence of these debates confirms that, as it stands, the one-stop shop mechanism provided for by the GDPR is not applicable for matters governed by the current ePrivacy Directive. It points out that the EDPS opinion of 19 November 2020, relied on by the companies in their memorandum of deliberation of 2 December 2020, corroborates this analysis since in this opinion the EDPS merely calls for the application of the unique to the future regulation, proof that in the state of positive law, this mechanism does not apply to the cookie provisions of the ePrivacy Directive in force.35. 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 sanction the processing carried out by companies falling within the scope of application of this procedure. the ePrivacy Directive, provided that they relate to its territorial jurisdiction.2. On the territorial jurisdiction of the CNIL36. 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 Data Protection Act which provides: without prejudice, with regard to processing involving Within the scope of Regulation (EU) 2016/679 of April 27, 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 the framework of the activities of an establishment of a data controller (…) on French territory, whether or not the processing takes place in France .37. 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 Google Search search engine, in particular for advertising purposes, is carried out within the framework of the activities of the company GOOGLE FRANCE, which constitutes the establishment on French territory of the GOOGLE group.38. The companies maintain that insofar as it would be appropriate to apply the rules of jurisdiction and cooperation procedures defined in the GDPR, the CNIL would not have territorial jurisdiction to hear this case given that the real headquarters of the GOOGLE group in Europe, being its place of central administration within the meaning of Article 56 of the GDPR, is located in Ireland.39. The Restricted Committee again holds that, given that the facts in question materially fall under the provisions of the ePrivacy Directive, and not the GDPR, the one-stop-shop mechanism provided for by the latter is not applicable in this case. It deduces from this that it is appropriate to refer to the provisions of Article 3, paragraph I, of the Data Protection Act, determining the scope of the territorial jurisdiction of the CNIL.40. In this respect, the Restricted Committee points out 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 on the protection of personal data and s 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 on the protection of personal data remains relevant, insofar as the French legislator used these same criteria to define the territorial jurisdiction of the CNIL.41. Thus, with regard, in the first place, to the existence of an establishment of the data controller on French territory, the CJEU has consistently considered that the concept of establishment should be assessed extensively and that to this end , it was necessary to assess both the degree of stability of the establishment and the reality of the exercise of the 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 tha 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).42. In this case, the Restricted Committee notes, first of all, that the company GOOGLE FRANCE is the headquarters of the French subsidiary of the company GOOGLE LLC, that it has premises located in Paris, that it employs around 1,400 persons and that, according to its articles of association filed with the Registry of the Commercial Court of Paris, its purpose is in particular the provision of services and/or advice relating to software, the Internet network, telematic or online networks, in particular intermediation in terms of the sale of online advertising, the promotion in all its forms of online advertising, the direct promotion of products and services and the implementation of information processing centers. The Restricted Committee then notes that it appears from the hearing of July 22, 2020 that the company GOOGLE FRANCE is responsible for ensuring the promotion of online advertising on behalf of the company GIL, which is a co-contractor of the advertising contracts entered into with French companies or French subsidiaries of foreign companies. Finally, it notes that the company GOOGLE FRANCE participates effectively in the promotion of products and services designed and developed by the company GOOGLE LLC, such as Google Search, in France, as well as in the advertising activities managed by the company GIL. 43. As regards, secondly, the existence of processing carried out in the context of the activities of this establishment, the Restricted Committee notes that the CJEU, in its Google Spain judgment of 13 May 2014, 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 - which has since become GOOGLE LLC -, insofar as the company GOOGLE SPAIN is intended to ensure in Spain the promotion and sale of advertising space offered by this search engine, which serves to make the service offered by this search engine profitable. If, in the Google Spain judgment, the establishment of the controller was established outside the European Union, the Court subsequently, in its Facebook Ireland Ltd judgment of June 5, 2018, applied the same extensive interpretation of 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.44. In the present case, the Restricted Committee notes, first of all, that it appears from press releases from the company GOOGLE FRANCE posted on its website that the latter's mission is in particular to support small and medium-sized enterprises in France through the development of collaboration tools, advertising solutions or to give them the keys to understanding their markets and their consumers. It then notes that in its letter of April 30, 2020, the company GIL indicates that Google France has a sales team dedicated to the promotion and sale of GIL's services to advertisers and publishers based in France, like Google Ads . Finally, it notes that the GOOGLE group specifies on its ads.google.com website that Google Ads allows French companies to promote their products or services on the search engine and on a large advertising network .45. Consequently, the processing consisting of operations of access or registration of information in the terminal of users of the search engine Google Search residing in France, in particular for advertising purposes, is carried out within the framework of the activities of the company GOOGLE FRANCE on French territory, which is in charge of the promotion and marketing of GOOGLE products and their advertising solutions in France. 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 on the protection of personal data specified that the law of the Member State only applied 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).46. It follows from the foregoing 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 directive. ePrivacy. B. On the determination of the data controller47. Pursuant 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. Under Article 26(1) of the GDPR, where two or more controllers jointly determine the purposes and means of processing, they are joint controllers.48. The rapporteur considers that the companies GIL and GOOGLE LLC are joint controllers of the processing in question pursuant to these provisions since the companies both determine the purposes and means of the processing consisting of operations of access or registration of information in the terminal of Google Search users residing in France.49. The companies respond that the company GIL would be solely responsible for the processing in question. […]the company GIL would be responsible for the processing of most Google services and products processing the personal data of users residing in the EEA and Switzerland, including cookies, while the company GOOGLE LLC would only be sub- dealing with the first. They also highlight the participation of the company GIL in the various stages and bodies of the decision-making process set up by the group to define the characteristics of the cookies deposited on Google Search and underline that a series of differences relating specifically to the cookies deposited on the terminals of European users using the Google Search engine (different retention periods, compliance with obligations relating to minors within the meaning of the GDPR, etc.) attest to the decision-making autonomy of the company GIL in this area.50. 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 concept of data 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, which has been replaced by the GDPR.51. The Restricted Committee then 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 under which it considered that according to the provisions of Article 2 , under d), of Directive 95/46 on the protection of personal data, the notion of controller refers to the natural or legal person who, alone or jointly with others , determines the purposes and means of data processing of a personal nature. This concept does not therefore necessarily refer to a single natural or legal person and may concern several actors participating in this processing, each of them must then be subject to the applicable data protection provisions (…). Since the purpose of this provision is to ensure,

through a broad definition of the notion of controller, effective and complete protection of the persons concerned, the existence of joint liability does not necessarily result in equivalent liability, for a 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, points 65 and 66).52. The Restricted Committee therefore considers that these developments make it possible to usefully shed light on the concept of joint processing responsibility invoked by the rapporteur with regard to the companies GOOGLE LLC and GIL concerned by the processing in question.1. On the responsibility of the company GIL53. The companies maintain that the company GIL acts as controller of the processing in question, which the rapporteur also acknowledges.54. The Restricted Committee agrees with this analysis.55. Firstly, it thus notes that, during the hearing of July 22, 2020, the representatives of the companies declared that the GIL company participates in the development and supervision of the internal policies which guide the products and their design, in the implementation parameters, the determination of confidentiality rules and all the checks carried out before the launch of the products, in application of the principle of privacy by design .56. Secondly, it points out that, with regard more specifically to cookies, the representatives stated during the hearing that GIL applies, for example, shorter retention periods for cookies compared to other regions of the world and that it limits the scope of processing related to the personalization of advertising in Europe compared to the rest of the world. For example, GIL does not use certain categories of data to perform personalized advertising such as assumed household resources. GIL does not set up personalized advertising for children whom it assumes are minors within the meaning of the GDPR .57. It follows that the company GIL is, at least in part, responsible for the controlled processing consisting of operations of access or registration of information in the terminal of users residing in France when using the Google search engine. Search.2. On the liability of GOOGLE LLC58. The companies dispute the rapporteur's analysis that GOOGLE LLC shares responsibility for the processing in question with GIL.59. The Restricted Committee notes, firstly, that during the hearing of July 22, 2020, the companies affirmed that it is indeed GOOGLE LLC which designs and builds the technology of Google products and that with regard to the cookies deposited and read when using the Google Search search engine, there is no difference in technology between the cookies deposited from the different versions of the search engine.60. Similarly, the companies, in the information they provide to French users in the rules of use accessible from google.fr, make no distinction in their presentation of the cookies used by the GOOGLE group when they indicate use different types of cookies for

ad-related products and Google websites .61. Secondly, the Restricted Committee observes that despite the unquestionable participation of the company GIL in the various stages and bodies linked to the definition of the procedures for implementing the cookies deposited on Google Search, the matrix organization described by the companies during the hearing of July 22, 2020 highlighted that GOOGLE LLC is also represented in the bodies adopting decisions relating to the deployment of products within the EEA and in Switzerland and to the processing of personal data of users residing there and that 'it exercises a significant influence […].62. Similarly, the Restricted Committee notes that the Data Protection Officer appointed by GIL (hereinafter DPO) and his assistant DPOs are based in California as employees of GOOGLE LLC. In this regard, it appears from the statements of the representatives of the companies made during the hearing of July 22, 2020 that the GOOGLE group made this choice so that the DPO of the company GIL would be as close as possible to the company's decision-makers. 63. Thirdly, the Restricted Committee considers that the differences that the companies put forward between the cookies deposited on the terminals of European users and those intended for other users (different retention periods, compliance with the obligations relating to minors within the meaning of the GDPR , etc.) are only differences in execution that do not call into question the overall advertising purpose for which they are used, this purpose being determined in particular by the company GOOGLE LLC. Although the main purpose of these differences is to ensure compliance with European law for cookies placed on European user terminals, they do not, as such, illustrate the decision-making autonomy of GIL on all of the essential characteristics of the means and purposes of the processing in question.64. Fourth, the Restricted Committee notes that although under a formal reading of the subcontracting agreement of December 11, 2018, the company GOOGLE LLC would act as a subcontractor of the company GIL in the processing of user data collected via cookies, the real involvement of the company GOOGLE LLC in the processing in question goes well beyond that of a subcontractor who would be content to carry out processing operations on behalf of the company GIL and on his instructions alone.65. The Restricted Committee considers that these latest developments show that, despite the entry into force of the subcontracting agreement on January 22, 2019, the company GOOGLE LLC continues to play a fundamental role in the entire decision-making process relating to the treatment in question. It also determines the means of processing given that, as mentioned above, it is the company that designs and builds the cookie technology placed on the terminals of European users. Therefore, the Restricted Committee holds that it should also be given the status of data controller.66. It follows from all of the foregoing that the companies GOOGLE LLC and GIL 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 the use of the search engine Google Search.C. On the breach of cookie obligations67. Under the terms of article 82 of the Data Protection Act (formerly article 32, paragraph II, of this same law) any subscriber or user of an electronic communications service must be informed in a clear and complete manner, except if it has been previously, by the controller or his representative: 1° The purpose of any action seeking to access, by electronic transmission, information already stored in his electronic communications terminal equipment, or to record 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 his connection device or any other device placed under his control. These provisions do not apply if access to information stored in the user's terminal equipment or the recording of information in the the 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 .68. In this case, the members of the delegation noted during the online check of March 16, 2020 that, when they arrived on the google.fr website, seven cookies were placed on their terminal equipment, before any action on their part. In its letter of April 30, 2020, the company GIL indicated that four of these seven cookies pursue an advertising purpose.1. On the lack of information for people69. The rapporteur maintains that the information given to users residing in France relating to operations for accessing or entering information on their terminal when using the Google Search search engine was insufficient and unclear, in violation of the requirements of Article 82 of the Data Protection Act .70. The company GIL, which considers itself solely responsible for the processing in question, replies that no legal provision prescribes specific practical methods for the processing manager to inform its users, as long as the latter are effectively informed, and maintains that it has opted for information by level, as recommended by the Article 29 Group (which has become the EDPS since the entry into application of the GDPR) in its guidelines on transparency within the meaning of the Regulation, adopted in their revised version on 11 April 2018.71. It thus argues that its first level of information complied with the requirements of transparency and accessibility of information since it redirected users to the rest of the information, and in particular that relating to cookies. It argues that it provided, within the framework of the second level, specific information on the processing of cookies, namely their purposes and the means made available to the user to oppose them.72. Firstly, the Restricted Committee recalls that under Article 82 of the Data Protection Act, access to or registration of cookies in a user's terminal can only take place on the condition that the latter has consented

after having received [a] clear and complete information relating to the purposes of the cookies deposited and the means at his disposal to oppose them.73. The Restricted Committee considers that for the purpose of interpreting these provisions, it is relevant to refer to recital 25 of the ePrivacy Directive, which provides that the methods used to communicate information, offer a right of refusal or seek consent should be as user-friendly as possible .74. The Restricted Committee also points out that the CNIL has adopted several soft law legal instruments detailing the obligations of data controllers with regard to tracers, including, in particular, a recommendation of December 5, 2013 and guidelines of July 4, 2019, in force on the date of the online check. Although devoid of any mandatory value, these instruments offer useful insight to 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.75. 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 present in the banner; - second stage: people must be informed in a simple and intelligible manner of the solutions made 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 .76. Such recommendations had been repeated in the guidelines of 4 July 2019, in equivalent terms.77. In the present case, the Restricted Committee notes, firstly, that it appears from the online check of March 16, 2020 that when a user arrived on the google.fr page, an information banner was displayed at the bottom of the page, containing in particular the following statement Reminder regarding Google's privacy policy, opposite which were two buttons entitled Remind me later or Consult now .78. The Restricted Committee thus retains that no information relating to the deposit of cookies on the terminal equipment was provided at this stage to the persons concerned on this banner even though cookies with an advertising purpose had already been deposited on their terminal as soon as they were arrival on the google.fr page. She adds that the simple reference to the confidentiality rules was far from being sufficiently explicit at this stage to allow people reading this banner to know that information relating to cookies was available later in the navigation path, to respond to their expectations in this area and to

meet the requirements of Article 82 of the Data Protection Act .79. The Restricted Committee points out, secondly, that it appears from the findings made during the online check that the confidentiality rules which opened in pop-up windows when people clicked on the Consult now button still did not contain any development dedicated to the use of cookies and other tracers, despite general information relating to the personal data processed by Google services.80. Furthermore, people were still not informed at this stage that they could refuse cookies on their terminal equipment, since they were only informed that they could manage the search results according to the activity of search in this browser or even manage the types of Google ads that display .81. Finally, the information provided in the context of this pop-up window did not include, again, any explicit reference to the confidentiality rules applicable to cookies. While the companies ensure that the latter were indeed provided to the user, the Restricted Committee notes that the information architecture put in place by the companies was such that to achieve this the user had to understand for himself that he needed scroll through the content of the entire pop-up window, without clicking on any of the five hyperlinks in that content (Our Rules, Learn More, Change Search Settings, Change Ads Settings, Change Youtube Settings), to finally click on the Other options button at the very bottom of the window.82. Therefore, the Restricted Committee notes that the information provided by the companies, both in the context of the banner and in that of the pop-up window, did not allow users residing in France, when they arrived on the Google Search search engine , to be informed beforehand and clearly about the existence of operations allowing access and registration of information contained in their terminal or, consequently, of the purpose of these and the means made available to them as regards the possibility of refusing them.83. Secondly, the Restricted Committee notes that since the initiation of the sanction procedure, the companies have undertaken a series of changes to the way in which they use cookies.84. The first update was first made available to search engine users not logged in to a Google account starting August 17, 2020 and fully rolled out to all users on September 10, 2020 […] 85. The GIL company highlights that […], the new information provided to users meets the requirements of article 82 of the Data Protection Act .86. The Restricted Committee notes that people who visit the google.fr site now see a pop-up window appear in the middle of their screen, before being able to access the search engine, entitled Before continuing, which contains the following development: Google uses cookies and other data to provide, manage and improve its services and advertisements. If you agree, we'll personalize the content and ads you see based on your activity on Google services like search, Maps, and YouTube. Some of our partners also evaluate how our services are used. Click "More Information" to learn about your options or visit g.co/privacytools at any time, the terms cookies, partners and g.co/privacytools being clickable links.

At the bottom of this pop-up window, there are two buttons labeled More information and I accept .87. The Restricted Committee notes that companies now provide prior information relating to cookies when users visiting the google.fr page are now openly and directly informed of the fact that companies use cookies, which is an undeniable step forward compared to previous information banners.88. However, the Restricted Committee considers that the information provided is still not clear and complete within the meaning of Article 82 of the Data Protection Act, insofar as this information does not inform the user of the whole the purposes of the cookies deposited and the means at his disposal to oppose them.89. Thus, the description of the different purposes mentioned in this banner remains too general for users to be able to understand easily and clearly for what specific uses cookies are placed on their terminal.90. In particular, the user is not able to understand the type of content and advertisements likely to be personalized according to his behavior - for example, if it is geolocated advertising -, the exact nature of the services Google that use personalization or the fact that this personalization operates between these different services.91. The Restricted Committee considers, moreover, that the information provided is incomplete since users are still not informed of their possibility of refusing these cookies, nor of the means made available to them for this. Indeed, the terms options or More information are not explicit enough to allow users to directly understand the extent of their rights with regard to the cookies placed on their terminal.92. […] 93. In view of all of the foregoing, the Restricted Committee considers that a breach of the provisions relating to the information of persons of Article 82 of the Data Protection Act has been established.94. The Restricted Committee notes that this breach persisted on the date of the closing of the investigation, the modifications made by the companies since the initiation of the sanction procedure having not made it possible to bring this information into compliance with the requirements of the article 82 data processing and freedoms .2. On the failure to obtain the consent of people before the deposit of cookies on their terminal and the impossibility for people to refuse the deposit of all cookiesa. On the failure to collect the consent of people before the deposit of cookies on their terminal95. The rapporteur maintains that the companies have violated the provisions of Article 82 of the Data Protection Act relating to the consent of individuals insofar as, during the online check of March 16, 2020, it was found that as soon as the arrival of the user on the google.fr page, several cookies pursuing an advertising purpose were deposited on his terminal before any action on his part.96. GIL does not dispute this branch of the breach.97. The Restricted Committee notes that under the terms of Article 82 of the Data Protection Act, access or registration [of cookies] can only take place on condition that the subscriber or 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. Only cookies whose exclusive purpose is to allow or facilitate communication by electronic means, or those strictly necessary for the provision of an online communication service at the express request of the user, are exempt from this obligation.98. In this case, the Restricted Committee points out that the online check of March 16, 2020 revealed that when arriving on the google.fr page seven cookies were automatically deposited on the delegation's terminal, before any action of his part.99. The Restricted Committee notes that the company GIL indicated in its letter of April 30, 2020 that four of the seven cookies deposited, namely the cookies NID , IDE , ANID and 1P_JAR , pursue an advertising purpose.100. Since these four cookies do not have the exclusive purpose of allowing or facilitating communication by electronic means nor are they strictly necessary for the provision of an online communication service at the express request of the user, the restricted training considers that the companies should have obtained the users' consent beforehand, before depositing them on the latter's terminal.101. In view of the foregoing, the Restricted Committee considers that a breach of the obligation provided for by Article 82 of the Data Protection Act to obtain prior consent from individuals before placing cookies on their terminal has been constituted.102 . It nevertheless points out that during the sanction procedure the companies made changes to the google.fr page, which in particular led, since September 10, 2020, to the cessation of the automatic deposit of these four cookies as soon as the user on the page.b. On the partially flawed nature of the opposition mechanism put in place by Google.103. The rapporteur maintains that in addition to the fact that consent, when necessary, was not collected, the system put in place by the companies to oppose cookies for advertising purposes placed on the user's terminal s also proved to be partially defective, in violation of the requirements of article 82 of the Data Protection Act .104. The GIL company disputes this assessment and replies that it held, and continues to take into account the user's choice to withdraw his consent through a mechanism allowing users to personalize ads on Google search as well as on the web.105 . In this case, the Restricted Committee emphasizes first of all that the companies depositing these cookies for advertising purposes even before having obtained the consent of the users (absence of opt-in), the use of the expression withdraw its consent by the GIL company is particularly abusive. Therefore, the companies could at most highlight the fact of having set up a mechanism to oppose these cookies (opt-out).106. In addition, the Restricted Committee notes that it appears from the online check of March 16, 2020 that when people clicked on the Consult now button present on the information banner at the bottom of the google.fr page, a window appeared within where they could click the Edit Ads Settings button and then opt out of Ads Personalization on Google Search and Ads Personalization on the Web through slider buttons. When people turned off ad personalization through

this slider, a new window appeared asking them to confirm their choice and telling them that ads will continue to show but will no longer be personalized.107. The Restricted Committee notes that after having deactivated the personalization of ads on Google search, the delegation noted, while continuing to browse the site, that several of these cookies for advertising purposes remained stored on its terminal equipment. It points out, in this regard, that at least one of these cookies did not belong to the category of so-called opposition cookies, which remain stored on the user's terminal with the opt-out value to indicate to the server the domain to which they are linked that the user has expressed his refusal to future deposits of identical cookies from this same domain.108. As GIL itself acknowledged, in its letter of April 30, 2020, that the cookie in question pursues an exclusively advertising purpose, the Restricted Committee concludes that the opposition mechanism put in place by the companies was partially faulty. Indeed, this cookie remaining deposited on the user's terminal without being assigned the opt-out value, the information it contained continued to be systematically read by the server of the domain to which the cookie is linked (for example google .com or google.fr) during each new interaction with the domain concerned.109. In view of the foregoing, the Restricted Committee considers that the companies have disregarded the obligation provided for by Article 82 of the Data Protection Act to set up an effective mechanism allowing users to refuse or no longer read cookies. requiring their consent.III. On corrective measures and publicity110. Under the terms of Article 20, paragraph III, of the Data Protection Act: When the data controller or its subcontractor does not comply with the obligations resulting (…) from this law, the President of the National Commission for 'Informatique et des Libertés may also, if necessary after having sent it 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 contradictory procedure, of one or more of the following measures: […] 2° An injunction to bring the processing into conformity with the obligations resulting (…) from this law or to satisfy the requests presented by the data subject with a view to exercising his rights, which may be accompanied, except in cases where the processing is implemented by the State, of 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. 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 section 83.111.

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 legality of this sanction procedure112. The companies argue, first of all, that there is nothing to justify that the CNIL directly initiated sanction proceedings against them without a formal notice having been sent to them beforehand.113. They then argue that, given the instability of the legal framework relating to cookies, the pronouncement of a financial penalty for the facts in question would violate the principle of legality of offenses and penalties, guaranteed in Article 8 of the Declaration of the Rights of Man and of the Citizen. They argue in particular that the characterization of the breaches is based on the application of guidelines, the meaning of which was not binding at the time of the online check of March 16, 2020, the CNIL having granted, in July 2019, a period of adaptation of twelve months from the publication of the guidelines of 4 July 2019 so that data controllers can comply with them.114. Firstly, the Restricted Committee recalls that, in accordance with Article 20 of the Data Protection Act, the

President of the CNIL is not required to send a formal notice to a data controller before initiating a sanction proceedings against him. It adds that the possibility of directly initiating sanction proceedings has been confirmed by the Council of State (see, in particular, CE, 4 Nov. 2020, application no. 433311, pt. 3).115. Secondly, the Restricted Committee recalls, first of all, that the various branches of the breach alleged against the companies have as their sole legal basis the provisions of Article 82 of the Data Protection Act which transposed the provisions relating to cookies and ePrivacy Directive tracers. It points out that if these prescriptions were formerly provided for in Article 32, paragraph II, of this same law, before the text was recast as a whole by Ordinance No. 2018-1125 of December 12, 2018, their content is remained unchanged since 2011.116. The Restricted Committee then 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).117. The Restricted Committee points out, finally, that although the CNIL's communications relating to cookies and tracers have recently undergone certain changes, the practices at the origin of the various branches of the breach alleged in this case against the two companies have been continuously considered as non-compliant by the CNIL, whether by the first recommendation of December 5, 2013 or by the guidelines of July 4, 2019, in force on the date of the findings made by the CNIL delegation. It notes, for information, that the second recommendation and the latest version of the guidelines, which date from 17 September 2020 and which were published on 1 October 2020, are also part of this continuity. In any event, as recalled above, the non-compliant practices identified in the context of this procedure are assessed with regard to the Data Protection Act and not the guidelines or recommendations of the CNIL.118. With regard more specifically to the adaptation period from the publication of the guidelines of July 4, 2019 invoked by the companies, the Restricted Committee notes that it is, in this case, ineffective, since the practices in question relate specifically to the obligations which the CNIL had taken care of, in its press release published on its website on July 18, 2019, to specify that they remained binding on data controllers, warning them that this adaptation period [does not will not prevent] from fully monitoring compliance with the other obligations which have not been the subject of any modification and, if necessary, from adopting corrective measures to protect the privacy of Internet users. In particular, operators must respect the prior nature of consent to the deposit of trackers […] and must provide a device for withdrawing consent that is easy to access and use .119. Due to the permanence of the legal basis and the provisions under which the breach is established and the consistency of the CNIL's position with regard to the practices which are the subject of this procedure, the

Restricted Committee considers that the pronouncement of an administrative fine against each of the companies without prior formal notice would not contravene the principle of legality of offenses and penalties.B. On the pronouncement of administrative fines and their amount120. The companies argue that the amount of the fine proposed by the rapporteur is disproportionate and estimated on a discretionary basis since, unlike other French or European administrative authorities with sanctioning power, the CNIL has not provided guidelines for calculating its fines.121. They add that this amount should be significantly reduced, in particular pursuant to subparagraph f) of Article 83, paragraph 2 of the Regulation in order to take into account their strong cooperation with the CNIL since the beginning of the procedure with a view to terminating breach and to mitigate any negative effects thereof.122. 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 administrative fines, the maximum amount of which may be equivalent to 2% of the turnover total global annual business for the previous financial year carried out by the data controller. 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.123. 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 Rules relating to the seriousness of the breach, taking into account the nature and scope of the processing.124. Thus, the Restricted Committee notes that the Google Search search engine, from which the cookies in question are deposited, has considerable reach in France, the Competition Authority having noted that it dominated the online search market with a market share of over 90% (ADLC, Dec. 19, 2019, Dec. No. 19-D-26, pt. 313).125. It points out that, since the search engine Google Search has at least 47 million users in France, which corresponds to 70% of the French population, the number of people concerned by the processing is extremely large.126. With regard to the structuring of this market, the Restricted Committee considers that the seriousness of the breach is characterized by the fact that by not respecting several of the requirements of article 82 of the Data Protection Act, companies deprive users of Google Search residing in France of the possibility of choosing between search methods that better preserve the confidentiality of their data and methods that allow better personalization of the service, thus reducing the informational autonomy and the choice of individuals.127. Finally, the Restricted Committee notes that the breach is all the more serious in view of the role played by search engines in access to information, a fortiori by that developed by companies. In this respect, the power of this dominant position gives unparalleled value to the cookies placed by companies from their search engine because they ensure third-party sites reach the maximum number of users and, in the case of tracking cookies, to be able to follow them with the greatest

efficiency.128. Secondly, 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 the financial advantages obtained as a result of the breach.129. Thus, it points out that the GOOGLE group makes the bulk of its profits in the two main segments of the online advertising market, namely display advertising (Display Advertising) and contextual advertising (Search Advertising), in which cookies play an undeniable, albeit different, role.130. Firstly, in the segment of display advertising, the purpose of which is to display content in a specific area of a website and in which cookies and tracers are used to identify users during their navigation for the purpose of offering them the most personalized content, it is established that the GOOGLE group offers products at all levels of the value chain of this segment and that its products are systematically dominant at these different levels. In this respect, the GOOGLE group indicates, on one of its websites, that it offers an advertising ecosystem accessible from its tools and services capable of reaching more than 2 million sites, videos and applications and more than 90% of Internet users in the world.131. Next, the segment of contextual advertising, the object of which is to display sponsored results according to the keywords typed by users into a search engine, also requires the use of cookies in its practical implementation, for example to be able to determine the geographical location of users and, thereby, adapt the advertisements offered according to this location. In this regard, it appears from the ALPHABET company's annual report for 2019 that this segment alone constitutes, notably through the Google Ads service - formerly AdWords -, 61% of the GOOGLE group's turnover.132 . The Restricted Committee has no knowledge of the amount of profit derived by the GOOGLE group from the collection and use of cookies on the French market via the income generated by advertising targeted at French Internet users, the companies involved n not having provided this information when they were asked to do so as part of the investigation of the file. By way of order of magnitude, and in order to assess the proportionality of the amount of the penalty proposed by the rapporteur, it notes that a proportional approximation based on publicly available figures would lead to an estimate that France would contribute between 680 and 755 million to the annual net profit of ALPHABET, the parent company of the GOOGLE group, ie, at the current exchange rate, between 580 and 640 million euros.133. Thirdly, with regard to the criterion provided for in subparagraph f) of Article 83, paragraph 2 of the Rules invoked by the companies in support of a reduction in the fine proposed against them by the rapporteur, the Restricted Committee notes that it follows from Article 18 of the Data Protection Act that data controllers cannot oppose the action of the Commission and that they must take all useful measures to facilitate its task. Cooperation with the supervisory authority is thus first and foremost an obligation provided for by law.134. In order for this

cooperation to possibly become a mitigating circumstance in the characterization of the breach and, thereby, contribute to the reduction of the fine initially envisaged, the Restricted Committee stresses that the data controller must not only have previously fulfilled its obligation under the aforementioned Article 18, but also having complied in a particularly diligent manner with the requests of the supervisory authority during the investigation phase and implemented all the measures in its power to minimize the impact of the failure on the persons concerned.135. In this case, the Restricted Committee notes that the companies have in particular never communicated to the Commission services the advertising revenues of the companies GOOGLE LLC and GIL made in France, financial elements yet requested on several occasions by the rapporteur, upstream and following the hearing of July 22, 2020. Consequently, the cooperation they have shown should have no impact on the amount of their fine since it is barely in line with what the CNIL is entitled to to expect from a data controller.136. In conclusion, the Restricted Committee recalls that the breach of Article 82 of data protection and freedoms is in this case characterized in three ways, since by automatically depositing the cookies in question on the terminals of users residing in France when they arrive on the google.fr page the companies did not meet the requirement of prior, clear and complete information for users, nor that of the compulsory collection of their consent and that, moreover, the mechanism for opposing these cookies is was partially defective.137. It points out that, due to the reach of the search engine Google Search in France, these practices have affected nearly fifty million users residing in France and that the companies have derived considerable profits from them through the advertising revenue indirectly generated by the data collected by these cookies.138. Pursuant to the provisions of Article 20, paragraph III, of the Data Protection Act, companies incur a financial penalty of a maximum amount of 2% of their turnover, which was 38 billion euros in 2018 for GIL and $160 billion in 2019 for GOOGLE LLC.139. 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 €60,000,000 against the company GOOGLE LLC and a fine of 40,000,000 euros against the company GIL appear effective, proportionate and dissuasive, in accordance with the requirements of article 83, paragraph 1, of these Regulations.C. On the issuance of an injunction140. The companies maintain that the requests formulated under the injunction proposed by the rapporteur and relating in particular to the information of persons and the prior deposit of cookies subject to consent have become devoid of purpose […].141. They also dispute the amount of the daily penalty payment proposed in addition to the injunctions since the rapporteur does not demonstrate the need for this penalty payment or the proportionality of its amount, which is the maximum amount provided for

by law. IT and freedoms .142. Firstly, the Restricted Committee notes that in the current state of the information provided to users, companies still do not inform users residing in France, in a clear and complete manner, of the purposes of all the cookies subject to the consent and the means at their disposal to refuse them, […] It therefore considers it necessary to issue an injunction so that the companies comply with the applicable obligations in this area.143. Secondly, the Restricted Committee points out that a daily fine 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 at the expiry of the deadline for execution. Its pronouncement may therefore sometimes prove necessary to ensure compliance of the data controller within a certain period.144. The Restricted Committee adds that in order to keep the penalty payment its comminatory function, its amount must be both proportionate to the seriousness of the alleged breaches but also adapted to the financial capacities of the data controller. It notes, moreover, that in certain cases, as in the present case, this amount must be all the higher as the breach concerned by the injunction indirectly contributes to the profits generated by the data controller.145. In view of these two elements, the Restricted Committee considers proportionate the pronouncement of a penalty payment in the amount of 100,000 euros per day of delay and liquidable at the end of a period of three months. The execution time allowed is also reasonable given the technical means available to the companies and the adaptability they rely on.D. On advertising146. The Restricted Committee considers that the publication of this decision is justified in view of the seriousness of the breach in question, the scope of the processing and the number of data subjects.147. The Restricted Committee considers that this measure will make it possible to alert French users of the Google Search search engine to the characterization of the breach of Article 82 of the Data Protection Act in its various branches and to inform them of the persistence of the breach of day of this deliberation and of the injunction issued against the companies to remedy it. It adds that this measure is made all the more necessary since the cookies at issue were placed without the knowledge of the users, so that only the publication of this decision will allow them to become aware of the practices in question.148.Finally, the measure is not disproportionate since the decision will no longer identify the companies by name at the end of a period of two years from its publication. to: pronounce against GOOGLE LLC an administrative fine in the amount of 60,000,000 euros (sixty million euros) for breach of article 82 of the Data Protection Act; against GOOGLE IRELAND LIMITED an administrative fine in the amount of 40,000,000 euros (forty million euros) for breach of article 82 of the Data Protection Act; pronouncing against GOOGLE companies LLC and GOOGLE IR ELAND LIMITED an injunction to bring the processing into compliance with the obligations resulting from article 82 of the Data Protection Act, in particular: o Inform the persons concerned beforehand and in

a clear and complete manner, for example on the information banner present on the home page of the google.fr site: - the purposes of all cookies subject to consent, - the means at their disposal to refuse them; match the injunction with a penalty payment of €100,000 (one hundred thousand euros) per day of delay at the end of a period of three months following the notification of this deliberation, the supporting documents of compliance must be sent to the restricted formation within this period; address this decision to the company GOOGLE FRANCE SARL with a view to the execution of this decision; 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 of two years from its publication. President Alexandre LINDEN This decision may be appealed to the Council of State within four months of its notification.