Deliberation of restricted committee No SAN-2025-005 of 1September 2025 concerning the company INFINITE STYLES SERVICES CO. LIMITED

Courtesy translation: in the event of any inconsistencies between the French version and this English courtesy translation, please note that the French version shall prevail and have legal validity

The Commission nationale de l'informatique et des libertés, composed of Mr Vincent LESCLOUS, Vice-President, Ms Laurence FRANCESCHINI and Ms Isabelle LATOURNARIE-WILLEMS, Mr KLING and Mr Bertrand du MARAIS, members;

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;

Having regard to Law No 78-17 of 6 January 1978 on data processing, files and freedoms, in particular Articles 20 et seq. thereof;

Having regard to Decree No 2019-536 of 29 May 2019 implementing Law No 78-17 of 6 January 1978 on information technology, files and freedoms;

Having regard to Resolution No 2013-175 of 4 July 2013 adopting the rules of procedure of the Commission nationale de l'informatique et des libertés;

Having regard to Decision No 2023-193C of 31 July 2023 of the President of the Commission nationale de l'informatique et des libertés to instruct the Secretary-General to carry out or have carried out a verification mission;

Having regard to the decision of the President of the Commission nationale de l'informatique et des libertés appointing a rapporteur to the restricted committee of 30 October 2024;

Having regard to the report by Mr Fabien TARISSAN, Commissioner-Rapporteur, notified to INFINITE STYLES SERVICES CO. LIMITED on 18 February 2025;

Having regard to the written observations of INFINITE STYLES SERVICES CO. LIMITED received on 18 March 2025;

Having regard to the rapporteur's reply notified to INFINITE STYLES SERVICES CO. LIMITED on 18 April 2025;

Having regard to the written observations of INFINITE STYLES SERVICES CO. LIMITED received on 19 May 2025;

Having regard to the closure of the investigation notified to INFINITE STYLES SERVICES CO. LIMITED on 10 June 2025;

Having regard to the oral observations made during the restricted committee session of 10 July 2025;

Having regard to the other documents in the file;

The following were present at the restricted committee session on 10 July 2025:

- Mr Fabien TARISSAN, Commissioner, heard his report;

As representatives of INFINITE STYLES SERVICES CO. LIMITED:

- [...]

The President having verified the identity of the defendant's representatives, presented the proceedings of the meeting and recalled that the defendants may, if they so wish, submit introductory oral observations or in response to questions from members of the restricted committee.

The company INFINITE STYLES SERVICES CO. LIMITED having been informed, as a precaution and in view of the still uncertain implications of the jurisprudence of the Constitutional Council in this matter, of its right to remain silent on the facts alleged against it, and the latter having had the floor last.

After deliberation, it adopted the following decision:

I. Facts and procedure

1. The activity of the INFINITE STYLES group consists in the sale, mainly on its website web « shein.com », clothing, shoes and accessories of its brand « SHEIN », but also of trademarks registered by third parties.

2. The INFINITE STYLES group, including the parent company ROADGET BUSINESS PTE LTD is located in Singapore, is composed of several establishments within the European Union, including the Irish establishments INFINITE STYLES ECOMMERCE LIMITED and INFINITE STYLES SERVICES CO. LIMITED wholly owned by the parent company, as well as the French establishment INFINITE STYLES ECOMMERCE FRANCE wholly owned by the Irish company INFINITE STYLES ECOMMERCE LIMITED.

3. The distribution of 'SHEIN' branded products in the European Union is ensured by INFINITE STYLES ECOMMERCE LIMITED. Since 1 August 2023, INFINITE STYLES SERVICES CO. LIMITED has been in charge of managing the European subdomains of the domain name "shein.com". The company INFINITE STYLES ECOMMERCE FRANCE, for its part, promotes, in France, the products of the "SHEIN" brand, in particular by organizing fashion shows and pop-up shops.

4. In 2023, the turnover of ROADGET BUSINESS PTE LTD was [...] dollars (approximately EUR [...]) and profits of USD [...] (approximately EUR [...]).

5. By Decision No 2023-193C of 31 July 2023, the President of the National Commission of the Commission ('the Commission' or 'the CNIL') instructed the Secretary-General to carry out or have carried out a monitoring mission in order to verify compliance with Law No 78-17 of 6 January 1978, as amended, on information technology, files and freedoms ('the Data Protection Act' or 'LIL') and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ('the GDPR' or 'the Regulation'), of any processing accessible from the 'shein.com' domain from a terminal located in France.

6. Pursuant to that decision, on 10 August 2023, a delegation carried out an inspection online on the website 'shein.com', during which it reproduced a user's journey to the website 'shein.com'.

7. By letter of 9 August 2023, INFINITE STYLES ECOMMERCE FRANCE subsequently called for a hearing on 29 August 2023. It was postponed at the request of INFINITE STYLES ECOMMERCE FRANCE. She was therefore summoned, by letter of 24 August 2023, to a hearing on 5 October 2023.

8. All these control operations gave rise to exchanges between the Delegation and controlled companies with particular regard to the purpose of the cookies that were found to be stored during the online check, their activities and the governance of the processing of personal data.

9. For the purposes of examining those matters, the President of the Commission, on 30 October, 2024, appointed Mr Fabien TARISSAN as rapporteur on the basis of Article 39 of Decree No 2019-536 of 29 May 2019 implementing the Data Protection Act.

10. On 18 February 2025, at the end of his investigation, the rapporteur had the company notified of a report detailing the infringement of Article 82 of the amended Data Protection Act which it considered constituted in the present case. That report proposed that the limited body should issue an administrative fine against the company and an injunction with a penalty payment to bring the processing into line with the provisions of Article 82 of the Data Protection Act. He also proposed that this decision be made public.

11. On 18 March 2025, the company submitted observations in response to the penalty report.

12. The rapporteur replied to the company's comments on 18 April 2025.

13. On 19 May 2025, the company filed its second observations in reply.

14. By letter of 10 June 2025, the rapporteur, pursuant to Article 40(III) of the Decree, No 2019-536, informed the company and the president of the restricted formation that the investigation was closed.

15. By letter of 11 June 2025, the company was informed that the file was placed on the order the day of the restricted committee on 10 July 2025.

16. The rapporteur and the company made oral comments at the meeting of the restricted committee.

II. Reasons for the decision

A. The processing at issue and the determination of the controller

17. The processing subject of this procedure is related to the deposit of cookies on the terminal users residing in France when browsing the French subdomain of the domain name "shein.com".

18. Article 4(7) GDPR - which applies because of the referral made by Article 2 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, as amended by Directive 2006/24/EC of 15 March 2006 and by Directive 2009/136/EC of 25 November 2009 ('the *ePrivacy* Directive') to the former Directive 95/46/EC, which was replaced by the GDPR, provides that 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 the processing'.*

19. In the present case, the restricted committee notes that the delegation was informed during the inspection on hearing, that *'the company INFINITE STYLES SERVICES LIMITED... has become the manager of the subdomains of 'shein.com' in the EU' and,* by letter of 21 March 2024, that 'all *cookies on the Shein websites in the EMEA region are operated by Infinite Styles Services Co. Limited'.*

20. The restricted committee also observes that the privacy policy, in its version available on the website 'shein.com' on the day of the online check, *'explains how Infinite Styles Co., Limited, which operates under the name 'SHEIN', collects, uses, shares and processes your personal data when you use or access this website (the 'Site')'* and states that *'the Site and Application are provided by Infinite Services Co. Limited, which is responsible for the processing and protection of your personal data'.*

21. In the light of the foregoing, the restricted committee considers, without, moreover, having been disputed by the company, that the company INFINITE STYLES SERVICES CO. LIMITED acts as the controller relating to the deposit and reading of cookies on the terminal of users of the website 'shein.com'.

B. The jurisdiction of the CNIL

1. <u>The material jurisdiction of the CNIL and the non-application of the 'one-stop shop' under the GDPR</u>

22. The processing subject to the present proceedings, relating to the deposit of cookies on the terminal of users residing in France when browsing the French subdomain of the domain name 'shein.com', is carried out in the context of the provision of publicly available electronic communications services through a public electronic communications network offered within the European Union. As such, it falls within the material scope of the ePrivacy Directive.

Article 5(3) of that directive, relating to storage or access to information already stored in the terminal equipment of a subscriber or user has been transposed into national law in Article 82 of the Data Protection Act, within Chapter IV of the Act on the rights and obligations specific to processing in the electronic communications sector.

23.

24. According to Article 16 of the Data Protection Act, *'restricted committee shall take measures and imposes penalties on controllers or processors who fail to comply with the obligations arising [...] from this Law'.* According to Article 20(III) of that law, *'where the controller or his processor does not comply with the obligations arising ... from this law, the President of the Commission nationale de l'informatique et des libertés... may refer the matter to the restricted committee'.*

25. **The rapporteur** considers that the CNIL is materially competent to monitor and where appropriate, penalize the access or registration of information carried out by INFINITE STYLES SERVICES CO. LIMITED in the terminals of users of the French subdomain of the domain name 'shein.com', which the latter disputes.

26. **In defence,** the company considers that, since the cookies it places on the Users' terminals allow the collection and processing of personal data, the processing in question falls under the GDPR and not the Data Protection Act. It also considers that the one-stop-shop mechanism applies in view of the cross-border nature of the processing at issue. It concludes that the competent authority to decide on that processing is the Irish authority and not the CNIL.

27. The restricted committee recalls, first of all, that since the processing operations which are the subject of the control are carried out in the context of the provision of publicly available electronic communications services through a public electronic communications network offered within the European Union, they fall within the material scope of the ePrivacy Directive. In that regard, it points out that it is necessary to distinguish, on the one hand, the deposit and reading of cookies in the terminal of users visiting the 'shein.com' domain, which is subject to the provisions of Article 5(3) of the ePrivacy Directive, transposed into French law by Article 82 of the Loi Informatique et Libertés, and, on the other hand, the subsequent processing, carried out on the basis of personal data collected through those cookies, which is subject to the provisions of the GDPR.

28. It then observes that it is apparent from the abovementioned provisions that the French legislature instructed the CNIL to ensure that data controllers comply with the provisions of the ePrivacy Directive transposed into Article 82 of the Loi Informatique et Libertés, in particular by entrusting it with the power to penalise any infringement of those articles.

29. Finally, the Restricted committee recalls that the Conseil d'État (Council of State), in its decision *GOOGLE LLC and GOOGLE IRELAND LIMITED* of 28 January 2022, confirmed that the control of access or registration of information in the terminals of users in France of an electronic communications service, even if it is processed cross-border, falls within the competence of the CNIL and that the one-stop-shop system provided for by the GDPR is not applicable: "the so-called *'one-stop-shop' mechanism for cross-border processing, defined in Article 56 of that regulation, has not been provided for in respect of measures for the implementation and supervision of Directive 2002/58/EC of 12 July 2002, which fall within the competence of the national supervisory authorities pursuant to Article 15a of that directive. It follows that, as regards the control of the operations of access to and*

registration of information in the terminals of users in France of an electronic communications service, even if carried out by cross-border processing, the measures to monitor the application of the provisions which have transposed the objectives of Directive 2002/58/EC fall within the competence conferred on the CNIL by the Law of 6 January 1978 ...' (EC, 28 January 2022, 10th and 9th Chambers together, *GOOGLE LLC and GOOGLE IRELAND LIMITED*, No 449209, to the ECR). The Council of State reaffirmed that position in a decision of 27 June 2022 (EC, 10th and 9th Chambers meeting, 27 June 2022, *AMAZON EUROPE CORE*, No 451423, aux Tables).

30. Therefore, the restricted committee considers that the CNIL is competent to monitor and initiate a penalty procedure concerning the processing relating to the deposit and reading of cookies in the terminal of users visiting the French website 'shein.com', which falls within the scope of the ePrivacy Directive, provided that the processing relates to its territorial jurisdiction.

2. The territorial jurisdiction of the CNIL

31. The rule of territorial application of the requirements set out in Article 82 of the Law Computing and Freedoms is laid down in Article 3(1) of that law, which provides: "Without *prejudice, as regards the processing operations falling within the scope of Regulation (EU) 2016/679 of 27 April 2016, to the criteria provided for in Article 3 of that Regulation, all the provisions of this Law apply to the processing of personal data carried out in the context of the activities of an establishment of a controller [...] on French territory, whether or not the processing takes place in France".*

32. **The rapporteur** considers that the CNIL is territorially competent pursuant to those provisions since the processing consisting of access or registration operations in the user terminal located in France when browsing the 'shein.com' website is carried out in the *'framework of activities'* of the company INFINITE STYLES ECOMMERCE FRANCE, which constitutes *the 'establishment' on* French territory of the Irish company INFINITE STYLES SERVICES CO. LIMITED.

33. **The company** disputes this analysis in two respects. As regards the concept of establishment, the company claims that it is part of the same group as INFINITE STYLES ECOMMERCE FRANCE, but points out that the two companies have no legal link. It therefore considers that INFINITE STYLES ECOMMERCE FRANCE cannot be regarded as its establishment within the meaning of the *Weltimmo* decision of the Court of Justice of the European Union ('the Court of Justice' or 'the CJEU') (1October 2015, C-230/14). As regards the existence of processing carried out in the context of the activities of the French establishment, the company submits that the processing at issue does not occur in the context of the activities of INFINITE STYLES ECOMMERCE FRANCE, since the latter does not promote or market advertising space on the 'shein.com' website on which cookies are placed and does not exploit or have access to the data collected by those cookies.

34. **As a preliminary point, the restricted committee** recalls that in order to determine whether the CNIL has jurisdiction to monitor INFINITE STYLES SERVICES CO. LIMITED's compliance

with the requirements laid down in Article 82 of the Loi Informatique et Libertés in the context of the processing which is the subject of the proceedings, it is necessary to examine whether the two criteria for territorial application laid down in Article 3(1) of that law are met, namely, first, whether that company has an 'establishment *on French territory'* and, second, whether the processing at issue is carried out 'in *the context of the activities of that establishment'.*

35. **In** the first place, **as regards the existence of an establishment of the person responsible for**

treatment on French territory, **the restricted group** recalls that, consistently, the CJEU has held that the concept of establishment must be assessed in a flexible manner and that, to that end, it was necessary to assess both the degree of stability of the installation and the reality of the exercise of activities in a Member State, taking into account the specific nature of the economic activities and the provision of services in question.

36. In that regard, the Court of Justice noted that 'recital *19 in the preamble to Directive 95/46 states that establishment in the territory of a Member State presupposes the actual and real exercise of an activity by means of a permanent establishment'* and that *'the legal form adopted for such an establishment, whether it is a mere branch or a subsidiary with legal personality, is not decisive'* (CJEU, 13 May 2014, *Google Spain,* C-131/12, paragraph 48). The Court clarified that 'the *concept of 'establishment', within the meaning of Directive 95/46, extends to any real and effective activity, even a minimal one, carried out by means of a stable installation',* the criterion of the stability of the installation being examined in the light of the presence of 'human *and technical resources necessary for the provision of the specific services in question'* (CJEU, 1October 2015, *Weltimmo,* C-230/14, paragraphs 30 and 31).

37. The assessment of the existence of an *'establishment on French territory' within the* meaning of

I of Article 3 of the Loi Informatique et Libertés therefore proceeds from an assessment *in concreto* and casuistic.

38. The same logic has also been applied by the CJEU in the field of competition, in order to assess the concept *of 'undertaking'* and 'economic *unit'* (see, for example, CJEU C-41/90 of 23 April 1991, paragraph 21; CJEU, Third Chamber, 14 December 2006, C-217/05, paragraph 41; CJEU, Third Chamber, 10 September

2009, C-97/08 P, paragraphs 54 and 55; CJEU, Grand Chamber, 6 October 2021, Case C-882/19, paragraph 41).

39. In the present case, the restricted committee notes that it is apparent from the evidence in the file that

INFINITE STYLES ECOMMERCE FRANCE, created on 6 May 2022, is located at 13-15 rue Taitbout, in Paris (75009). This company is therefore a stable installation in France, with 23 employees.

40. It is apparent from its extract 'Kbis' that its object is *'the import, export of clothing'. and accessory, online sales, retail sales, marketing operations, digital marketing'.* The

restricted committee notes that, despite the request of the delegation of control, INFINITE STYLES ECOMMERCE FRANCE did not communicate the contracts governing its relationship with INFINITE STYLES SERVICES CO. LIMITED.

41. During its hearing at the CNIL on 5 October 2023, the company INFINITE STYLES ECOMMERCE FRANCE stated that *'the main mission of the French establishment is to promote the 'SHEIN' brand* [...] *the French establishment promotes the 'SHEIN' brand through offline or 'in person' marketing activities. Thus, it can: organise fashion shows; implement pop-up shops; carrying out advertising, for example by means of billboards; etc. The French institution may also launch photo operations and produce content for the 'shein.com' website.* The restricted committee considers, therefore, that the company INFINITE STYLES ECOMMERCE FRANCE carries out an effective economic activity on French territory, which contributes to the influence of the French subdomain of the domain name "shein.com" managed by the company INFINITE STYLES SERVICES CO LIMITED. The companies INFINITE STYLES ECOMMERCE FRANCE and INFINITE STYLES SERVICES CO. LIMITED are thus "economically linked" (CJEU, 4th Chamber, 17 May 2018, C-531/16). They maintain close links of such a nature that they bring the two companies closer together to the point of uniting them in an economic entity.

42. In addition, and as stated in paragraph 2, INFINITE STYLES ECOMMERCE FRANCE and INFINITE STYLES SERVICES CO LIMITED are part of the same group and are both owned to different degrees by their parent company, ROADGET BUSINESS PTE LTD. Indeed, INFINITE STYLES ECOMMERCE FRANCE is wholly and directly owned by INFINITE STYLES ECOMMERCE CO. LTD, itself wholly and directly owned by ROADGET BUSINESS PTE LTD, which also wholly and directly owns INFINITE STYLES SERVICES CO LIMITED.

43. Thus, the restricted committee considers, for the reasons set out above, that the company INFINITE STYLES ECOMMERCE FRANCE is an *'establishment',* within the meaning of Article 3 of the Loi Informatique et Libertés, of the company INFINITE STYLES SERVICES CO LIMITED. It considers that that analysis is fully in line with the abovementioned case-law of the CJEU, which enshrines an *in concreto* and casuistic approach to the concept *of 'establishment',* and calls for the relationships between the various entities of a group to be considered not only in the light of their capital links but, more broadly, taking into account their economic relationship. In that context, the fact that INFINITE STYLES ECOMMERCE FRANCE is not a subsidiary of INFINITE STYLES SERVICES CO LIMITED has no bearing on its status as an establishment of that company since they belong to the same group, are both subsidiaries of their parent company, and pursue common economic interests.

44. **In the second place,** as regards the existence of processing carried out in the context of the activities of the French establishment, **the restricted committee** recalls, first of all, that it is not necessary for the processing in question to be carried out 'by *that establishment'* (Google *Spain,* pt. 57), and that it is sufficient if one of the institutions facilitates or sufficiently promotes the deployment in French territory of the processing of personal data carried out by the controller established in another Member State for there to be an obligation to comply with the law territorially applicable in France and to establish the competence of the national supervisory authority.

45. It points out that, in the context of its case-law, the Court of Justice has had the opportunity

to

make it clear on several occasions that the expression 'in *the context of the activities of an establishment'* was not to be interpreted restrictively (see *Google Spain,* paragraph 53, and *Weltimmo,* paragraph 25).

46. It then observes that the Conseil d'État, in its decision *in AMAZON EUROPE CORE,* rappelé qu'« *"It follows from the case law of the Court of Justice of the European Union, in particular its judgment of 5 June 2018, Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein v Wirtschaftsakademie Schleswig-Holstein GmbH (C-210/16), that, in view of the objective pursued by that directive [the ePrivacy Directive], which is to ensure effective and comprehensive protection of the fundamental rights and freedoms of natural persons, in particular the right to privacy and the protection of personal data, the processing of personal data may be regarded as being carried out "in the course of the activities" of a national establishment not only where that establishment itself is involved in the implementation of that processing, but also where it merely promotes and sells advertising space on the territory of a Member State, thereby enabling the controller to make the services offered by the controller profitable, consisting in the collection of personal data through connection trackers installed on the terminals of visitors to a website."*

» (CE, 10ème et 9ème chambres réunies, 27 juin 2022, *société AMAZON EUROPE CORE,* n° 451423, aux Tables).

47. In that decision, the Conseil d'État (Council *of State) held that 'Amazon Online France, which it is not disputed constitutes an establishment of the company Amazon Europe Core in France, carried out an activity of promotion and marketing of advertising tools controlled and operated by the company Amazon Europe Core, operating in particular thanks to the data collected through connection tracers deposited on the terminals of users of the site "amazon.fr" in France. It follows... that, by inferring from those factors that the data processing carried out by Amazon Europe Core was carried out in the context of the activities of its Amazon Online France establishment located in France, within the meaning of Article 3 of the Law of 6 January 1978, the restricted formation of the CNIL, which did not have to justify its own jurisdiction in the grounds for its deliberation and did not therefore, contrary to what is claimed, give insufficient reasons for its decision on that point, correctly applied the provisions of Article 3. (paragraph* 15 of the abovementioned decision).

48. The Restricted committee recalls, first of all, that in the above-mentioned Decision, the Council

The national court assessed the CNIL's territorial jurisdiction in the light of the facts of the case and did not intend to consider that it is solely through the promotion and marketing of advertising tools that it can be considered that data processing is carried out 'in *the context of the activities'* of an establishment.

49. The restricted committee notes that, at the hearing on 5 October 2023, the company INFINITE STYLES ECOMMERCE FRANCE told the delegation that *"the main mission of the French establishment is to promote the 'SHEIN' brand.* As stated in paragraph 40, its activity consists, inter alia, in promoting the 'offline' brand 'SHEIN'. For example,

INFINITE STYLES ECOMMERCE FRANCE reports local events, such as Mother's Day, to the other entities of the SHEIN group, which will then carry out online advertising campaigns inviting recipients to visit the 'shein.com' website to make their gifts. INFINITE STYLES ECOMMERCE FRANCE also organises events with journalists and influencers, thus increasing the visibility of the 'SHEIN' brand among potential customers residing in France, who will visit the 'shein.com' website for those who want to make a purchase.

50. Indeed, the restricted committee notes that apart from some ephemeral shops, the products sold by the company are almost exclusively sold through its website. Thus, the 'offline' promotion carried out by INFINITE STYLES ECOMMERCE FRANCE aims to encourage people to visit the company's website, from which cookies will be placed, which will be used, in part, to track their browsing in order to display advertisements for products it sells.

51. Therefore, according to the restricted committee, the criterion relating to the treatment carried out *'in the framework of activities'* of the French establishment is also completed.

52. It follows from the foregoing that the amended Data Protection Act is applicable in the species and the CNIL competent to exercise its powers.

C. The complaints alleging an irregularity in the procedure

1. <u>The complaint alleging lack of impartiality of the restricted formation</u>

53. **The company** puts forward a complaint alleging the impartiality of the members of the restricted formation of the CNIL. It observes, first, that there is no strict separation of powers between the members of the plenary formation, the body which determines the doctrine of the CNIL, and those of the restricted formation, the judging body, on the ground that the members of the restricted formation sit in the plenary formation. It notes, secondly, the authority exercised by the President of the CNIL, the prosecuting body, over the members of the restricted formation, the adjudicating body.

54. **In the first place, the restricted committee** notes that the composition of the restricted committee is defined by the Loi Informatique et Libertés, Article 9-I of which provides that it *'shall consist of a chairman and five other members elected by the committee from among its members'.*

55. It also points out that, in its decision of 21 April 2023, the Conseil d'État (Council of State) has already on the internal organisation of an independent administrative authority, in this case the Regulatory Authority for Electronic Communications, Posts and Press Distribution, whose organisation is similar to that of the CNIL. It considered that the complaint alleging infringement of the principle of impartiality was not serious, taking the view, first, that *'the fact that the College ... issues an opinion on the proposals for commitments made by operators ... has neither the purpose northe effect of leading its members to prejudge the reality and classification of the facts of which it will be for the formation..., composed of part of them, to assess the action to be taken in the context of a procedure for monitoring*

compliance with those commitments...' and, second, that *'in the context of the regulatory objectives assigned to it and set out in Article L. 32-1 of that code, ARCEP is competent to monitor compliance with the obligations resulting from the legislative and regulatory provisions and the texts and decisions adopted pursuant to those provisions, compliance with which the authority has the task of monitoring. Moreover, the conferral by law on an independent administrative authority of the power to lay down rules in a given area and to ensure compliance with them itself, through the exercise of a power to monitor the activities carried out and to penalise infringements found, does not contravene the requirements arising from Article 16 of the Declaration of the Rights of Man and of the Citizen, provided that that power to penalise is structured in such a way as to ensure respect for the rights of the defence, the adversarial nature of the procedure and the principles of independence and impartiality"* (emphasis added). Lastly, the Conseil d'État adds that *'a penalty imposed by* [that authority] *may be subject to judicial review in circumstances which are not seriously disputed as being appropriate for guaranteeing the rights of the person punished'* (EC, 21 April 2023, No 464349, points 9 and 11).

56. In the light of the aforementioned decision of the Conseil d'État, and taking into account the fact that ARCEP and the CNIL have similar organisations, the restricted formation considers that its impartiality cannot reasonably be called into question on the basis of the company's arguments. Its composition alone does not make it possible to establish that the restricted formation would not be able to carry out the tasks entrusted to it impartially and to assess whether the bodies in question have complied with the applicable rules on data protection, rules which may be informed, where appropriate, by recommendations or guidelines adopted by the plenary formation of the CNIL.

57. Therefore, the restricted committee rejects the company's argument relating to the absence of the impartiality of the members of the restricted formation of the CNIL, given the absence of a strict separation of powers between their qualities as members of the plenary formation and the restricted committee.

58. **In the second place,** as regards the alleged authority exercised by the President of the CNIL on restricted committee, it observes that the composition and role of the various bodies of the CNIL are provided for by the Data Protection Act. Article 9 of the Law thus provides that the restricted formation *'shall consist of a president and five other members elected by the commission from among its members',* and that *'the president* [of the CNIL] *and the vice-presidents shall make up the bureau.* [...] *Members of the Bureau shall not be eligible for restricted committee'.* Therefore, the applicable provisions provide that the President of the CNIL may not participate in the restricted committee.

59. As regards the distribution of powers between the President of the CNIL and the formation restricted, Article 20-IV of the Law further provides that *'where the controller or its processor does not comply with the obligations resulting from Regulation (EU) 2016/679 of 27 April 2016 or from this Law, the President of the Commission nationale de l'informatique et des libertés may* [...] *refer the matter to the restricted committee of the Commission for the adoption, after an adversarial procedure, of one or more of the following measures* [...]'. Article 20 of the Loi Informatique et Libertés then details the various measures which the restricted formation may take when it is seised. Thus, the division of powers within the CNIL between the functions of prosecution, exercised by the President, and those of sanction, falling within the scope of the members of the restricted

formation, is clearly materialised in Article 20 of the abovementioned law.

60. Restricted formation considers that the law establishes sufficient procedural guarantees to ensure the separation of powers between the president of the CNIL and the members of the restricted formation to ensure the indecency of this formation of judgment.

61. In view of the above, the Restricted committee considers that the arguments of the company are not such as to call into question either the impartiality or the independence of the members of the restricted formation as a judging body within the Commission.

2. The complaint alleging infringement of the rights of the defence

62. **The company** submits that its rights of defence have been infringed, in particular in the light of

the failure to grant him additional time to prepare his defence, the late consultation of the case file at the CNIL's premises and the failure to communicate an English version of the penalty report and its documents.

63. **The Restricted committee recalls, first of all,** that it follows from Article 40 of the Decree No 2019-536 of 29 May 2019 that the body notified of a report proposing a sanction against it has a period of one month to send its observations to the rapporteur and the chair of the restricted committee. It is also apparent from those provisions that the chairman of the restricted formation may, at the request of the respondent and depending on the circumstances of the case, decide to extend that period. The grant of an additional period is therefore not a right for the respondent but a possibility offered to him, subject to justification, the benefit of which is a matter for the decision of the chairman of the restricted committee.

64. The restricted group also points out that the Council of State has already had the opportunity to

dismiss the plea of illegality concerning the legal period of one month provided for in Article **7(5)**of the Decree of 20 October 2005 (now Article 40 of Decree No 2019-536 of 29 May 2019) (EC, 19 June 2020, No 430810 pt 13). In that case, the Conseil d'État (Council of State) considered that the company had been able to prepare and present its defence effectively since it had one month in which to reply to the rapporteur's report.

65. In addition, the Restricted committee notes that, in the present case, the refusal of the President of the

Restricted committee to grant additional time to the company is justified given the lack of complexity of the case. It notes, first of all, that the infringement alleged against the company is not innovative and that it forms part of a series of public penalties made available by the restricted committee on cookies since 2020.

66. Next, as regards consultation of the file on the premises of the CNIL, the training Restricted notes that the Rapporteur's sanction report was notified to the company on 18 February 2025, and it was only on 5 March 2025, i.e. two and a half weeks after the notification of the report, that the company requested to consult the file. The file was consulted on 13 March 2025. In that context, the Restricted committee considers that, contrary to the company's assertions, the late nature of the consultation of the file cannot be attributable solely to the CNIL's services.

67. In any event, the restricted committee notes that the company was already aware of almost all the documents annexed to the rapporteur's penalty report on which he based his proposals. It notes that most of the documents were submitted by the company during the control procedure (e.g. replies to questions asked by the delegation) or are the result of the online control of the company's website, of which it has full control. Thus, the restricted committee considers that the one-month period granted to the company is sufficient to enable it to familiarise itself with the file and to respond to the complaints contained in the penalty report, which relate to a single category of infringements of Article 82 of the Loi Informatique et Libertés. It also considers that, in those circumstances, the late access to the file is not such as to vitiate the regularity of the procedure, since it is composed of the procedural elements already available to the company (penalty report and its documents, inspection report and its documents, elements communicated by the company at the end of the inspection, etc.). In any event, the company was able to submit its observations on the elements constituting the procedural file during the two adversarial rounds and at the sitting.

68. Finally, the restricted committee recalls that the language of the sanction procedure before the CNIL is French. It observes that it is not apparent from any legal or regulatory provision that the penalty report and its documents must be notified to the defendant in a language other than that language. In that sense, the Conseil d'État has already had the opportunity to hold, with regard to a CNIL penalty procedure, that *'the fact that most of the documents in the procedure were in French'* does not affect the defendant's rights of defence (CE 19 June 2020, No 430810, paragraph 14). In the present case, in view of the significant material and human resources available to the company, the fact that it has an establishment in France and the fact that it has recourse to a law firm established both in Ireland and in France, the restricted formation considers that the fact that it has the penalty report and the documents only in French did not prevent it from understanding the complaints against it by the rapporteur. Therefore, the restricted committee considers that the absence of an English translation of the penalty report and its documents did not affect the company's rights of defence. In addition, the restricted committee notes that during the session, the company's representatives were assisted by English-language interpreters.

69. Consequently, the procedural complaint alleging infringement of the rights of the defence must be discarded .

D. Failure to comply with the obligations relating to cookies

70. The rules governing the use by an electronic communications service of cookies and other tracers on terminal equipment used in the European Union are set out in 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 electronic communications sector, as amended by Directive 2009/136/EC of 25 November 2009.

71. These rules have been transposed into French law in Article 32(II) of the Law Informatique et Libertés, which has become Article 82 since the rewriting of that law by Ordinance No 2018-1125 of 12 December 2018. It 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 in advance, by the controller or his representative:*
the purpose of any action to access, by means of electronic transmission, information

already stored in its electronic communications terminal equipment, or to record information in that equipment;
2 ° The means at his disposal to oppose it.
Such access or registration may take place only if the subscriber or user has expressed, after receiving that information, his or her consent, which may result from appropriate parameters of his or her connection device or any other device under his or her control.
These provisions shall not apply if access to information stored in the user's terminal equipment or the recording of information in the user's terminal equipment:
(1) Either, has the exclusive purpose of enabling or facilitating communication by electronic means;
2° Either, is strictly necessary for the provision of an online communication service at the express request of the user'.

72. The Restricted committee notes that the Rapporteur has identified four strands of non-compliance:
the cookie obligations it considers to be constituted. Those four parts must therefore be examined in turn.

1. <u>The obligation to obtain the user's consent to the deposit and reading of cookies on his terminal</u>

73. **The rapporteur** maintains that during the online monitoring mission carried out on 10 August
2023, the CNIL delegation noted the deposit on the terminal, as soon as it arrived on the home page of the site and before any interaction with the cookie banner, of several cookies for which the user's consent should have been required beforehand. These are three advertising cookies ("_pinterest_ct_ua", "_pin_unauth" and

'muc_ads'), six cookies relating to the capping of advertising displays (also known as advertising *capping* and hereinafter referred to as 'capping cookies'; cookies 'no_pop_up_fr', 'hideCoupon', 'hideCouponId_time', 'hideCouponWithRequest', 'revisit_canshow' and 'have_show') and an audience measurement cookie ('cookieId'), the lifetime of which was 10 years. He therefore considers that the company infringed the provisions of Article 82 of the Data Protection Act by failing to obtain the user's consent prior to the deposit of those cookies. The rapporteur notes that the company has brought itself into compliance in the course of the procedure by ceasing to deposit these cookies without the prior collection of consent.

74. **The company** does not dispute the fact that the three advertising cookies mentioned by the
The rapporteur in the report was placed on the user's terminal before any expression of consent. It states that that filing without consent is an error which it remedied in the course of the proceedings.

75. As regards advertising cap cookies, the company denies having deposited on
the user's terminal, on the day of the check, the 'have_show' cookie, but recognises the deposit of other cookies, without the user's consent. It considers that those cookies, which are placed only when the user has refused the rest of the cookies, facilitate the user's navigation by preventing the same advertisements from being presented too often to the user. Therefore, it considers that they are not subject to consent. She pointed out that, although she did not share the rapporteur's position, she had changed her practice in the course of the procedure so that advertising cap cookies were no longer deposited without

consent.

76. As regards the 'cookieId' audience measurement cookie, which makes it possible, in particular, to carry out 'A/B *testing'* (which consists of presenting two versions of a website varying slightly to two groups of users, in order to assess the impacts of that variation) the company criticises the rapporteur for relying on the CNIL's guidelines and recommendations on cookies, which are devoid of normative value, in order to consider that it is subject to consent. It disputes the need to obtain the user's consent to deposit that cookie and submits that the restricted committee did not find a failure to deposit a similar A/B test cookie in its resolution SAN-2022-027 of 29 December 2022. She points out that although the lifetime of that cookie could have been 10 years, the rapporteur did not take into account the existence of automatic purge mechanisms built into browsers. However, it states that, during the procedure, it decided to replace the deposit of this cookie by migrating to another solution.

77. **The Restricted committee** recalls that Article 82 of Law No 78-17 of 6 January 1978 requires prior consent to be obtained before reading or writing on the data subject's terminal equipment (computer, telephone, etc.). Any action to store information or access information stored in the terminal equipment of a subscriber or user is in principle subject to this requirement. Those same provisions provide for exceptions to that obligation for transactions, either with the exclusive purpose of enabling or facilitating communication by electronic means, or strictly necessary for the provision of an online communication service at the express request of the user. These provisions have been interpreted by the CNIL in its guidelines and recommendation of 17 September 2020 (deliberations Nos[2020-091] and 2020-092 of 17 September 2020).

78. As a preliminary point, the Restricted committee recalls that although the Guidelines and the While the Commission Recommendation of 17 September 2020 (deliberations referred to above) is not mandatory, it aims to interpret the applicable legislative provisions and to inform stakeholders on concrete measures to ensure compliance with the legal provisions, so that they implement those measures or measures having equivalent effect. To that effect, it is stated in the Guidelines that their *'main purpose is to recall and clarify the law applicable to the reading and/or writing of information... in the subscriber's or user's electronic communications terminal equipment, and in particular to the use of cookies'.* Therefore, the restricted committee recalls that it finds, against the respondent, a failure to comply with the obligations arising from Article 82 of the Loi Informatique et Libertés and not with the guidelines and recommendations, which do not constitute a legal element of criminalisation but provide relevant guidance for assessing how to comply with the obligations laid down by the European and French legislatures.

79. In the first place, as regards advertising cookies, the restricted committee recalls that, since they are not tracers whose purpose is to enable 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, they may not be deposited or read on the person's terminal, in accordance with Article 82 of the Data Protection Act, until the person has provided his or her consent. This solution has been adopted by settled case-law of the Conseil d'État (EC, 14 May 2024, No 472221, point 5; EC, 27 June 2022, No 451423, paragraphs 26 and 27; EC, 28 January 2022, No 449209, paragraphs 18 and 19).

80. The restricted committee notes that during the inspection carried out on the website

'shein.com' on 10 August 2023, the advertising cookies '_pinterest_ct_ua', 'pin_unauth' and 'muc_ads' were placed on the Delegation's terminal without prior collection of consent, which the company does not dispute.

81. The restricted committee considers that by allowing, on the day of the online check, the filing and the reading of those advertising cookies on the user's terminal, when he arrived on the 'shein.com' website, without first obtaining his consent, INFINITE STYLES SERVICE CO. LIMITED infringed the obligations of Article 82 of the amended Data Protection Act, since cookies and other tracking devices for advertising purposes are not part of the cookies exempted from consent under that article. It also points out that since 2020, it has already made public several sanctions against bodies depositing advertising cookies before any collection of the user's consent, which the company could not therefore have been unaware of (Deliberation No SAN-2020-012 of 7 December 2020 validated by the Conseil d'État in its decision No 44209 of 28 January 2022; Deliberation No SAN-2020-013 of 7 December 2020 validated by the Conseil d'État in its decision No 451423 of 27 June 2022).

82. In the second place, the restricted committee observes that it is apparent from the online check of the 10
August 2023 that after closing several pop-up windows appearing on the landing page, the cookies "no_pop_up_fr", "hideCoupon", "hideCouponId_time", "hideCouponWithRequest", "revisit_canshow", but also the cookie 'have_show', which is deposited after a short period of time, are also deposited on the terminal of the user of the website 'shein.com', before any interaction with the banner relating to cookies.

83. The Restricted committee notes that it is apparent from the evidence provided by the company that the
September and 2 November 2023, as well as the privacy policy in its version accessible on the day of the check, that these cookies make it possible to record the information that the user has interacted with a pop-up advertising window so that it is no longer offered to him for a certain period of time (e.g. 10 minutes, 30 days). At the end of this predefined period, the pop-up advertising window will again be presented to the user when he or she browses the 'shein.com' website.

84. The purpose of these cookies is to limit the number of times content is presented
advertising to the same user (this objective is often described as *advertising capping).* They therefore do not fall within the exceptions to consent. Moreover, the restricted committee recalls that the deposit of these cookies, since they contribute to the broader purpose of online advertising, is subject to the prior collection of the user's consent.

85. It recalls that the CNIL has already communicated on the need to collect the
users' consent for this type of cookie, in particular through its FAQ *'Questions and answers on the amending guidelines and the recommendation 'cookie and other tracers' published on its website on 30 September 2020 (question 33), which states that 'in many cases, tracers requiring the user's consent are used to measure the performance of advertising (for example, 'capping' cookies, cookies for measuring advertising audiences or cookies for combating click-through fraud).'* In addition, the restricted committee also recalls that it has already sanctioned, in view of the lack of consent, the deposit of cookies which it considered to be effective in combating fraud, but which, like capping cookies, were also part of a wider advertising purpose (Deliberation SAN-2022-023 of 19 December 2022, paragraphs 51 to 53).

86. Therefore, the restricted committee considers that by depositing the cookies of capping advertising on the user's terminal without first obtaining his consent, the company has failed to comply with the provisions of Article 82 of the Data Protection Act.

87. In the third place, as regards the cookie entitled 'cookieId', the restricted committee recalls that 'A/B *testing'* cookies (which consist of presenting two versions of a website varying slightly to two groups of users to assess the impacts of that variation) may be exempted from the collection of consent where their sole purpose is to produce statistics on the use of the site, under the conditions specified by the CNIL in its deliberation No 2020-091 of 17 September 2020 adopting guidelines on cookies, according to which *'these measures are in many cases essential for the proper functioning of the site or application and therefore for the provision of the service. Consequently, the Commission considers that tracers whose purpose is limited to measuring the audience of the site or application, in order to meet various needs (performance measurement, detection of navigation problems, optimisation of technical performance or ergonomics, estimation of the power of the necessary servers, analysis of content consulted, etc.) are strictly necessary for the operation and day-to-day administration of a website or application and are therefore not subject, pursuant to Article 82 of the Law on Information Technology and Freedoms, to the legal obligation to obtain the user's consent beforehand. In order to limit itself to what is strictly necessary for the provision of the service, the Commission emphasises that those tracers must have a purpose strictly limited solely to the measurement of the audience on the website or application on the publisher's sole behalf. Those tracers must not, in particular, allow the overall tracking of the navigation of the person using different applications or navigating on different websites'(paragraphs* 50 and 51). Furthermore, in its Resolution No 2020-092 of 17 September 2020 adopting a recommendation on cookies, the Commission recommends that *'the lifetime of tracers should be limited to a period allowing a relevant comparison of hearings over time, as is the case for a period of thirteen months...*' (paragraph 50).

88. In the present case, the Restricted committee observes that it is apparent from a document communicated by the company to the Delegation on 2 November 2023 concerning, in particular, the characteristics of the cookie 'cookieId', which has an identifying value, that is to say, it allows each user to be individually identified over a period of 10 years. In defence, the company argues that, in assessing that duration, the rapporteur does not take into account the existence of automatic purge mechanisms embedded in browsers. On this point, the restricted committee considers, first of all, that the company cannot place on the user the burden of setting his browser so that he deletes cookies at regular intervals. The restricted committee then considers that the characteristics of this cookie are particularly intrusive for the user, in that they make it possible to trace the user over a particularly long period of time and thus go beyond what is necessary to determine which version of the website is more effective for society. A/B *testing* cookies only require the identification of the cohort (group A or B) to which a user belongs over a very limited period of time. In view of its characteristics, that cookie cannot therefore be regarded as having the exclusive purpose of enabling or facilitating communication by electronic means, nor can it be regarded as strictly necessary for the provision of an online communication service expressly requested by the user.

89. The restricted formation then observes that, contrary to the company's contention, in its resolution SAN-2022-027 of 29 December 2022, it did not consider that the 'A/B *testing'* cookies deposited by the companies were exempt from the collection of consent.

The restricted committee did not rule on that point, since it did not have in the file the necessary information relating to the characteristics of those cookies, which is not the case here as regards the cookie deposited by the company INFINITE STYLES SERVICES CO LTD.

90. The restricted group therefore considers that by placing the cookie 'cookieId' on the the user's terminal, without first obtaining his consent, the company has failed to comply with the provisions of Article 82 of the Data Protection Act.

91. In the light of all the foregoing, the restricted committee considers that, on the control, the company placed 10 cookies on the user's terminal, without first obtaining his consent, which constitutes a breach of Article 82 of the amended Data Protection Act.

92. In the light of the measures taken by the company in the course of the proceedings, the Restricted notes that it has complied on this point by ceasing to deposit the cookies in question without the prior collection of the user's consent.

2 <u>The obligation to obtain free and informed user consent</u>

93 **In law,** in order to be valid, the user's consent must be characteristics required by the GDPR, since Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 refers to the definition of consent as provided for in the GDPR

94 The restricted committee emphasises that the work carried out by the Commission on Cookie practices in relation to consent banners can usefully be used to assess in general terms the conditions for obtaining free, unambiguous, specific and informed consent. In this regard, the restricted committee observes that Resolution No 2020-091 of 17 September 2020 adopting guidelines on 'cookies and other tracers' expressly recalls that the consent required by Article 82 of the Data Protection Act refers to the definition and conditions laid down in Articles 4 11 and 7 of the GDPR (paragraphs 5 and 6).

95 Article 4(11) GDPR defines consent as *"any manifestation* of *free, specific, informed and unambiguous consent by which the data subject consents, by a statement or by a clear affirmative action, to the processing of personal data relating to him or her'*

96 Recital 32 GDPR also provides that *"consent should be given by a clear affirmative act whereby the data subject freely, specifically, informedly and unequivocally expresses his or her consent to the processing of personal data concerning him or her...*'

97 As regards the informed nature of consent, recital 42 of the GDPR states that *"in order for consent to be informed, the data subject should know at least the identity of the controller and the purposes of the processing for which the personal data are intended".* As regards its free nature, it states that *'consent should not be considered to have been freely given if the data subject does not have a genuine freedom of choice or is unable to refuse or withdraw consent without prejudice'.*

98 Under these combined provisions, the controller is responsible for: inform data subjects and implement a valid mechanism for collecting the consent of

individuals to the registration of and access to information about their terminal equipment (cookies)

2.1 On the first level of information provided to users of the 'shein com' website: the cookies banner and the pop-up window *"Welcome to the France site"*

99 In order to support controllers on how to ensure the informed consent, the Commission made recommendations in its deliberation No 2020-092 of 17 September 2020. In particular, paragraph 10 states that *'in general, in order to be understandable and not to mislead users, the Commission recommends that the bodies concerned ensure that users take full advantage of the options available to them, in particular through the design chosen and the information provided'.* In addition, in paragraph 13, it is proposed that *"each purpose should be highlighted in a short and highlighted title, together with a brief description"* and it recommends in paragraph 14 *"to include, in addition to the list of purposes presented on the first screen, a more detailed description of those purposes, in a way that is easily accessible from the consent-collection interface. This information can, for example, be displayed under a scroll button that the user can activate directly at the first level of information. It may also be made available by clicking on a hyperlink present at the first level of information'.*

100. As regards the free nature of consent, the CNIL states in paragraphs 30 and 31 of the abovementioned decision that *'the controller must offer users both the possibility of accepting and refusing reading and/or writing operations with the same degree of simplicity'.* [...] *Thus, the Commission strongly recommends that the mechanism for expressing a refusal to consent to reading and/or writing operations be accessible on the same screen and with the same ease as the mechanism for expressing consent."*

101. **The rapporteur** maintains that, on the day of the online check, the company presented to the users of its website 'shein.com' two ways of collecting consent to the deposit and reading of cookies on their terminals. It co-existed, on the one hand, a cookie banner, the information of which was incomplete and imprecise, and, on the other hand, a pop-up advertising window, which included a reference to information about the cookies deposited without specifying their purposes and which did not propose to refuse them. It therefore considers that, on the day of the online check, the company did not obtain the user's free and informed consent prior to the deposit and reading of cookies on its terminal. It also considers that offering the user two interfaces for collecting consent (a banner and a pop-up window) is likely to create confusion for the user. The rapporteur notes that the company has complied with this point in the course of the procedure.

102. **In defence,** the company states that the mention of information relating to cookies present on the pop-up window is the result of a technical error, which it corrected in the course of the proceedings. It states that the interaction of the user with that window does not result in the deposit of new cookies on his terminal, that is to say, cookies other than those that were deposited when he accessed the 'shein.com' website. It maintains that only its cookie banner constitutes a means of collecting consent and considers that, on the day of the check, it complied with its obligations since the information according to which the cookies deposited are intended to *'offer content tailored to your interests'* is understandable for the user of a ready-to-wear website. Although it does not share the rapporteur's position, the company states that it has nevertheless specified the purposes pursued by the cookies placed on the user's terminal.

103. **In the first place, the restricted committee** notes that it is apparent from the documents in the file that when the user arrived on the 'shein.com' website, two interfaces containing information relating to cookies and buttons or checkboxes were actually presented to the user.

104. As regards the cookie banner at the bottom left of the home page, it contains a mention of information on cookies accompanied by three buttons *'Cookie settings', 'Refuse all'* and *'Accept'.* It is not disputed that that banner constitutes a means of collecting consent.

105. Next, as regards the pop-up window, it is entitled *'Welcome to the France site'* and offers an offer of *'free shipping on everything for new customers', including* a mention of information on cookies, accompanied by a *'I accept' button.* The restricted committee observes that, contrary to what the company claims, it is apparent from the documents in the file that when the user clicks on the 'I *accept e'* button, which appears on that window, advertising cap cookies are placed. In view of the fact that that interface expressly invites the user to accept the deposit of cookies and that a click on the *'I accept' button results in* the deposit of cookies, the restricted committee considers that it constitutes a method of collecting consent, contrary to what the company maintains.

106. **In the second place,** the restricted committee recalls that all the purposes pursued by cookies must be brought to the attention of the user, before obtaining his consent, from the first level of information (Deliberation No 2020092 of 17 September 2020 paragraphs 13 and 14). It also recalls that it has already sanctioned on several occasions bodies which did not provide complete information with regard to the purposes pursued by the operations of depositing and reading cookies (Deliberation SAN-2022-027 of 29 December 2022, paragraphs 82 to 85; Deliberation SAN-2020-013 of 7 December 2020, paragraphs 92-94).

107. In the present case, the restricted committee notes, with regard to the cookie banner, that the information provided indicates that *'in order to improve your experience, we use cookies to record login details, collect statistics and offer you content tailored to your interests. Click on "Accept to accept cookies, or click on "Cookie settings" to choose which cookies to accept on the site. Click here to view our Privacy Policy »*.

108. The restricted committee considers that, although the wording *'offer content tailored to your interests'* refers to the world of ready-to-wear, as the company points out, it does not make it possible, without further clarification, to inform the user that advertising cookies will be placed on his terminal in the event of acceptance of cookies, in particular in order to track his navigation between several websites and thus to be able to offer him personalised advertising on the basis of his navigation.

109. The restricted committee considers that by not providing precise information on the purposes pursued by advertising cookies and capping advertising on the cookie banner, the company was not collecting, on the day of the check, the informed consent of the user when he accepted the deposit of cookies on his terminal, in breach of the applicable provisions. It notes, however, that the company has modified the information on its cookie banner by specifying the purposes pursued by the cookies placed on the user's terminal when the latter accepts the writing and/or reading of cookies.

110. **In the third place,** as regards the pop-up window, the restricted committee notes that the

information on that window states *'We use cookies to provide you with a better shopping experience. By continuing to use our services or by creating an account on our site, you agree to our Privacy Policy and Cookie Policy."*

111. The restricted committee considers that, on the day of the inspection, that information did not include all the information required to obtain informed consent since it did not provide users with information relating to the purposes of the cookies placed on their terminals. It observes that that reference is particularly vague and thus does not enable the user to understand whether the improvement of his shopping experience will result, for example, in the use of cookies to remember the content of a shopping cart or the language chosen on the site, and/or whether they are cookies to display personalised advertisements to him. Since the statement in question does not sufficiently specify the purposes pursued by cookies, the consent sought cannot therefore be regarded as informed.

112. The restricted committee considers that the consent obtained by the company via this window is not free for two reasons. On the one hand, the unconditional acceptance of all cookies is presented by the company as the only option for users if they wish to continue browsing the 'shein.com' website. On the other hand, the window does not mention the means available to users to refuse the deposit of cookies. The restricted committee includes the presence of a button to immediately accept cookies but the absence of a similar means to be able to refuse them so easily and with a single click. The restricted committee recalls having already sanctioned a body that did not provide users with a means, to which the FR attaches great importance, to oppose the deposit of cookies subject to consent (deliberation SAN-2020-013 of 7 December 2020, paragraph 95).

113. In the light of the foregoing, the restricted committee considers that, on the day of the inspection, the pop-up window did not allow a valid collection of users' consent before placing cookies on their terminal. It notes, however, that the company took steps during the procedure to comply with this point, as the pop-up window no longer allows the company to collect the user's consent to the deposit of cookies on its terminal and the mention of information has been deleted.

114. **Lastly,** the restricted committee considers that the coexistence of several methods of collecting consent when accessing the 'shein.com' website constitutes an information overload for the user, such as to influence his choice of cookies, without the user being in control of their scope. Indeed, the restricted committee recalls that there is no button allowing the user to refuse cookies and that when the user clicks on the only available button 'I *accept' and then interacts* with the cookie banner, he will tend to repeat his choice by clicking on the 'Accept' *button.*

115. In the light of the foregoing, the restricted committee considers that, at the time of the inspection, the conditions for obtaining consent implemented by the company on the 'shein.com' website did not comply with the provisions of Article 82 of the Data Protection Act, as clarified by Article 4(11) of the GDPR and recitals 32 and 42 on the free and informed nature of consent.

2.2 The second level of information provided to users of the 'shein.com' website: the Consent Management Platform

116. **In law,** recital 42 of the GDPR states, inter alia, *that 'in order for consent to be informed, the data subject should know at least the identity of the controller and the purposes of the processing for which the personal data are intended'.*

117. The Commission made recommendations in its deliberation No 2020-092 of 17 September 2020. In particular, paragraphs 18 to 21 state that *'users must be able to ascertain the identity of all controllers of the processing operation(s), including joint controllers, before giving their consent or refusing. Thus, as explained in the guidelines of 17 September 2020, the exhaustive and regularly updated list of controllers of the processing operation(s) must be made available to users at the time of collecting their consent. In practice, in order to reconcile the requirements of clarity and conciseness of information with the need to identify all controllers of the processing operation(s), the specific information on those entities (identity, link to their personal data processing policy), which is regularly updated, may for example be provided at a second level of information. They can thus be made available from the first level via, for example, a hyperlink or a button accessible from that level. The Commission further recommends using a descriptive name and using clear terms, such as "list of companies using tracers on our website/application". Finally, the Commission recommends that such a list should also be made available to users on a permanent basis, in a place that is easily accessible at any time on the website or mobile application.* [...] *In order to increase the reading of the information by users, the number of controllers of the processing operation(s) involved could be indicated at the first level of information. Similarly, the role of the controller(s) could be highlighted by grouping them into categories, which would be defined according to their activity and the purpose of the tracers used.*

118. **The rapporteur** considers that, on the day of the online check, the user's consent was not collected in an informed manner since the second level of information provided to him did not mention the identity of the controllers depositing 'third-party' cookies on the users' terminal. The rapporteur notes, however, that the company has complied in the course of the procedure.

119. **In defence,** the company does not dispute the incomplete nature, on the date of the inspection, of the reference to information provided at the second level and recalls that it complied in the course of the procedure.

120. **The restricted committee** notes that after clicking on the 'Cookie *settings'* button on the cookie banner, the consent management platform then presents the different types of cookies that may be deposited by third parties, such as performance cookies or targeted advertising cookies. However, no information is provided as to the identity of those third parties, which does not sufficiently clarify the scope of the consent given before the user decides whether or not to consent.

121. It follows from the foregoing that, by failing to mention the identity of the controllers depositing third-party advertising cookies on the user's terminal at the time when consent is sought, the user is not in a position to give informed consent, which constitutes a breach of Article 82 of the amended Data Protection Act, as informed by Article 4(11) of the GDPR and recital 42 thereof.

122. The Restricted committee notes, however, that the company took compliance measures in this regard during the course of the proceedings.

1. The obligation to ensure the effectiveness of the user's refusal to deposit and read cookies on his terminal

123. **The rapporteur** notes that, during the online check, the delegation noted that the company reads and writes information in the user's terminal after the user clicked on the 'Refuse *All'* button on the cookie banner and continued browsing the site. He noted that the company had complied in the course of the proceedings.

124. **In its defence,** the company submits that the user's refusal merely resulted, on the day of the inspection, in the deposit of advertising cap cookies and the 'cookieId' audience measurement cookie, which are not subject to consent. It therefore considers that this part of the failure to fulfil obligations is not serious.

125. **The restricted committee** notes that in the scenario followed by the delegation of control dedicated to the refusal of cookies, the latter went to the 'shein.com' website, then clicked on the *'Refuse All'* button, noted the presence of 32 cookies on its terminal, then closed the pop-up windows entitled *'You have received the following discounts'* and *'Connect with Google'* and noted, despite the previously expressed refusal, the registration of 'hideCouponId_time', 'hideCouponWithRequest' and 'hideCoupon' advertising capping cookies. The restricted committee recalls that these cookies are not exempt from the collection of consent for the reasons expressed in paragraphs 82 to 86. The restricted committee noted that the delegation had also found, following the expression of its refusal to write and read cookies on its terminal, that certain advertising capping cookies, previously placed on its terminal, continued to be read.

126. In so far as the user has unambiguously expressed his wish not to see cookies registered and/or read on the terminal, the fact that cookies subject to consent continue to be read and that additional cookies are nevertheless deposited after he has closed the pop-up windows has the effect of depriving the choice expressed by the user of effectiveness. Thus, the mechanism put in place by the company was defective on the day of the inspection since the company carried out operations to write and/or read cookies on the user's terminal despite its refusal. According to the restricted committee, those facts constitute a breach of Article 82 of the amended Data Protection Act.

127. Moreover, the restricted committee recalls that it has already sanctioned bodies that did not make effective the choice expressed by users in terms of cookies (deliberation No SAN-2021-013 of 27 July 2021 and deliberation No SAN-2023-024 of 29 December 2023).

128. The restricted committee notes that the company took measures during the procedure to put an end to the infringement found. It therefore considers that there is no need to issue an order for compliance, as initially proposed by the rapporteur.

2. The obligation to ensure the effectiveness of the withdrawal of the user's consent to the deposit and reading of cookies on his terminal

129. **As a matter of law,** the Loi Informatique et Libertés expressly provides that, provided that they do not fall within the scope of the exceptions referred to in the last two paragraphs of

Article 82, operations to access or record information in a user's terminal may take place only after the user has expressed his consent.

130. Those provisions, as consistently interpreted by the Commission since its Recommendation on cookies and other tracers of 5 December 2013 (Deliberation No$^{2013-378)}$ and, most recently, in its Recommendation of 17 September 2020 (Deliberation No 2020-092 of 17 September 2020), imply not only that data subjects give their consent to access or record information on their terminal, but also that those who have given their consent are able to withdraw it simply and at any time.

131. In a decision of 29 December 2023, the restricted committee thus expressly recalled that, *'while Article 82 of the Loi Informatique et Libertés makes the deposit of cookies conditional on the consent of the subscriber or user, it necessarily offers, in a correlative manner, the right to the interested party to withdraw his consent and thus to reverse his choice to accept cookies being deposited on his terminal'* (CNIL, FR, 29 December 2023, Sanction, SAN-2023-024, published).

132. **The rapporteur** notes that it is apparent from the Delegation's findings on the 'shein.com' website that, despite the withdrawal of consent, the cookies deposited continued to be read and that additional cookies subject to consent were deposited. By way of example, it informs the company that, in order to make the withdrawal of users' consent effective, the company may, inter alia, change the lifetime of the cookie to indicate it as expired. In the context of the written adversarial procedure, the rapporteur then observes that the company has brought itself into conformity in the course of the procedure on this point.

133. **In defence,** the company submits that the failure to collect consent and the lack of effectiveness of the withdrawal of consent constitute a single breach which cannot be penalised twice by the restricted committee.

134. The company further considers that, on the day of the check, no cookie subject to consent continued to be read after the withdrawal of consent, with the exception of advertising cookies in respect of which it has already acknowledged an error. As regards advertising cap cookies and the non-exempt audience measurement cookie, the company points out that they are not subject to consent, so that reading those cookies despite the withdrawal of consent does not constitute a breach under Article 82 of the amended Data Protection Act. Lastly, it submits that the measures referred to by the rapporteur to make the withdrawal of consent effective do not make it possible to comply with the abovementioned article since they necessarily imply that the cookie must be read in order to change its characteristics.

135. As a preliminary point, **the restricted committee** distinguishes, on the one hand, the lack of prior collection of the user's consent before placing cookies subject to consent on his terminal and, on the other hand, the lack of effectiveness of the withdrawal of consent. Restricted committee considers that these are two separate obligations, both of which originate in Article 82 of the Loi Informatique et Libertés but which apply to different phases of the user journey. Moreover, contrary to the company's contention, a failure to comply with the first obligation – to obtain consent before the deposit of cookies – does not necessarily result in the failure of the second obligation, to ensure that cookies are no longer read when consent is withdrawn. Indeed, a mechanism for withdrawing consent could be quite effective even if, originally, the cookies were unlawfully deposited.

136. Restricted committee recalls that access to or registration of information on the user's terminal is, as such (and with exceptions), expressly prohibited by Article 82 of the Data Protection Act, in the absence of the data subject's consent. That article refers to *'any action for access, by means of electronic transmission, to information already stored in* [an] *electronic communications terminal equipment, or for the entry of information in that equipment'.* It provides that *"such access or registration may take place only if the subscriber or user has expressed, after receiving this information, his consent".*

137. It notes that that interpretation of the provisions of Article 82 of the Data Protection Act concerning the right and arrangements for withdrawing the user's consent converges with the provisions of Article 7(3) of the GDPR, which are a source of inspiration concerning the application of the provisions of Article 82 of the Data Protection Act, as are Guidelines No 5/2020 on consent within the meaning of the GDPR adopted on 4 May 2020 by the European Data Protection Board (hereinafter: "EDPB").

138. It points out in that regard that Article 7(3) of the GDPR provides that: The data *subject has the right to withdraw his or her consent at any time. Withdrawal of consent shall not compromise the lawfulness of processing based on consent prior to such withdrawal. The data subject shall be informed before giving his or her consent. It is as simple to withdraw as to give consent"* and that, in the aforementioned GDPR Guidelines, the EDPB states that: The data *subject should also be able to withdraw his or her consent without prejudice. This means, inter alia, that a controller must offer the possibility of withdrawing consent free of charge or without entailing a decrease in the level of service"* (§114).

139. **In the present case,** the restricted committee notes that, during the online check of 10 August 2023, the Delegation made findings in several stages in order to verify the company's compliance with its obligation to ensure the effectiveness of the withdrawal of consent. It first accepted cookies via the cookie banner and noted that 75 cookies had been placed on its terminal, then withdrew its consent via the consent management platform and noted the presence of 85 cookies on its terminal, recording all http requests in 'HAR' files. The Delegation then verified the presence in a 'HAR' file of operations to read cookies after the withdrawal of consent.

140. As regards reading operations after the withdrawal of consent, the restricted committee notes that it is apparent from a 'HAR' file compiled by the delegation that advertising cookies, advertising cap cookies and the non-exempt audience measurement cookie unlawfully deposited when accessing the website, continue to be read in the browser since they appear in http requests sent to the 'shein.com' domain.

141. As regards the writing operations after the withdrawal of consent, the restricted committee notes that 10 additional cookies were also deposited on the user's terminal after that withdrawal, including cookies for advertising purposes deposited by '.shein.com' (including '_uetsid' and '_uetvid' cookies) and third parties (such as the 'MUID' cookie deposited by the domain name '.bing.com'), for which the user's consent is necessary for their deposit.

142. The restricted committee considers that the deposit of new third-party advertising cookies on users' terminals, even though they have withdrawn their consent (and in the absence of any new consent), is particularly serious. By this practice, the company does not take into account the choice of users and will, on the contrary, allow the deposit of new cookies on their terminals by third parties even though users expect that no more non-exempt cookies

will be deposited there, having expressed a clear choice in the matter.

143. In response to the company's argument that the filing without consent and the ineffectiveness of the withdrawal mechanism constitute a single infringement, the restricted committee recalls that it considered that the mechanism for collecting users' consent was defective in so far as the company deposited cookies on the user's terminal before they could even express their choice. It then notes that, even if the company collected their consent, it still did not comply with its obligations because it did not offer its users a mechanism for withdrawing effective consent since non-exempt cookies continue to be read after that withdrawal. The Restricted Chamber considers that these are two separate practices giving rise to infringements of two different branches of Article 82 of the Loi Informatique et Libertés.

144. Therefore, in the light of the foregoing, the restricted group considers that, by carrying out operations to deposit and read information in the user's electronic communications terminal equipment after the withdrawal of his consent, the company is in breach of the provisions of Article 82 of the Data Protection Act.

145. Finally, as regards the technical arrangements for ensuring the effectiveness of the withdrawal of consent, and in response to the company's argument relating to the impossibility of complying with the withdrawal of consent, the restricted committee notes that technical solutions exist and that the CNIL took care to specify, in its recommendation of 17 September 2020, that 'in *order for the withdrawal of consent to be effective, it may be necessary to put in place specific solutions to ensure that the tracers previously used are not read or written'.* A first solution may be to change the expiry date of the cookie, which has the effect of no longer allowing the cookie in question to be read once the action has been taken. Even if the cookie will only be deleted when the browser is closed, the browser prevents the cookie from being read by the issued network requests as it is considered invalid. Failing to be able to change the settings of cookies deposited by third-party domains, another solution may be to block http requests to these called third-party domains in order to ensure that no reading operation is carried out from its site.

146. As regards first of all the cookies linked to the 'shein.com' domain which continued to be read after the withdrawal of consent, the restricted committee considers that the company, which controls all the operations carried out from the cookies linked to the 'shein.com' domain, could implement without difficulty one of the abovementioned measures to ensure the effectiveness of the withdrawal of the user's consent.

147. As regards cookies deposited by third parties, the restricted group recalls that, according to the Council of State, *'site publishers who authorise the deposit and use of cookies by third parties when visiting their site must also be regarded as controllers, even though they are not subject to all the obligations imposed on the third party who issued the cookie, in particular where the latter retains sole control over compliance with its purpose or retention period. As part of the obligations that weigh on the site publisher in such a case, include that of ensuring with its partners that they do not issue, through its site, "cookies" that do not comply with the regulations applicable in France and that of taking any useful steps with them to put an end to breaches"* (CE, 10th and 9th CR, June 6, 2018, No. 412589, ECR.). Thus, even if the company could not itself ensure the removal of third-party cookies, it was for it to implement the measures necessary to ensure that new requests to third-party domains were stopped from being made from the 'shein.com' website, once the user's consent had been withdrawn and to inform its partners that, once the user's consent had

been withdrawn, the cookies which they had deposited on its terminal during its visit to the 'shein.com' website had to be removed. The restricted committee recalls that it has already sanctioned a body that had not carried out these checks on its partners (deliberation SAN-2024-019 of 14 November 2024 §99 and 100).

148. It follows from the foregoing that, by continuing to carry out, on the user's terminal, reading and writing operations subject to the consent of the person concerned, despite the withdrawal of that consent, the company committed a breach of the provisions of Article 82 of the Loi Informatique et Libertés.

149. The restricted committee notes, however, that the company stopped sending requests containing the cookie identifier to third-party domains that no longer allow them to be read from its website during the course of the procedure and that the infringement is no longer ongoing on the day of this deliberation. If the company is only responsible for reading operations carried out from its site, the restricted committee considers that the company should draw the attention of its partners to the fact that consent to the cookies for which they are responsible has been withdrawn.

111. Corrective measures and their publicity

150. Under Article 20-IV of Law No 78-17 of 6 January 1978, as amended, *'where the controller or his processor does not comply with the obligations resulting from Regulation (EU) 2016/679 of 27 April 2016 or from this Law, the President of the Commission nationale de l'informatique et des libertés may* [...] *refer the matter to the restricted committee of the committee for the adoption, after adversarial proceedings, of one or more of the following measures:* [...]

151. *2 ° An injunction to bring the treatment in conformity with the obligations resulting from the*

Regulation (EU) 2016/679 of 27 April 2016 or of this Law or to comply with requests made by the data subject to exercise his or her rights, which may be subject, except in cases where processing is carried out by the State, to a periodic penalty payment, the amount of which may not exceed EUR 100 000 per day of delay from the date fixed by the restricted committee course;

152. *7 ° With the exception of cases where the treatment is implemented by the State, a fine not exceeding EUR 10 million or, in the case of an undertaking, 2% of the total annual worldwide turnover for the preceding financial year, whichever is greater. In the cases referred to in Article 83(5) and (6) of Regulation (EU) 2016/679 of 27 April 2016, those ceilings shall be increased to EUR 20 million and 4% respectively of that turnover. Restricted formation shall take into account, in determining the amount of the fine, the criteria specified in the same Article 83.'*

153. Article 83 of the GDPR further provides that *'each supervisory authority shall ensure that administrative fines imposed pursuant to this Article for infringements of this Regulation referred to in paragraphs 4, 5 and 6 are, in each case, effective, proportionate and dissuasive',* before specifying the elements to be taken into account when deciding whether to impose an administrative fine and when deciding on the amount of that fine.

154. Article 22(2) of the Loi Informatique et Libertés then provides that *'restricted committee*

may make public the measures it takes'.

155. Recital 150 of the GDPR provides that *'where administrative fines are imposed on an undertaking, that term must, for that purpose, be understood as an undertaking in accordance with Articles 101 and 102 of the Treaty on the Functioning of the European Union'.*

156. The Guidelines on the application and setting of administrative fines for the purposes of Regulation 2016/679 specify that the concept of undertaking must be understood as *'an economic unit which can be formed by the parent company and all the subsidiaries concerned. In accordance with EU law and case-law, 'undertaking' means the economic unit engaged in commercial or economic activities, irrespective of the legal person involved'.*

157. In a judgment of 5 December 2023 (CJEU, Grand Chamber, C-807/21), the CUJE held, as regards the concept of *'undertaking', that 'as the Advocate General observed in point 45 of his Opinion, it is in that specific context of the calculation of administrative fines imposed for infringements referred to in Article 83(4) to (6) of the GDPR that the reference, made in recital 150 of that regulation, to the concept of 'undertaking', within the meaning of Articles 101 and 102 TFEU, must be understood. In that regard, it should be noted that, for the purposes of the application of the competition rules, referred to in Articles 101 and 102 TFEU, that concept includes any entity engaged in an economic activity, irrespective of the legal status of that entity and the way in which it is financed. It thus designates an economic unit even if, from a legal point of view, that economic unit consists of several natural or legal persons. That economic unit consists of a unitary organisation of personal, tangible and intangible elements pursuing a specific economic aim on a lasting basis (judgment of 6 October 2021, Sumal, C 882/19, EU:C:2021:800, paragraph 41 and the case-law cited). Thus, it is apparent from Article 83(4) to (6) of the GDPR, which concerns the calculation of administrative fines for the infringements listed in those paragraphs, that, where the addressee of the administrative fine is or is part of an undertaking, within the meaning of Articles 101 and 102 TFEU, the maximum amount of the administrative fine is to be calculated on the basis of a percentage of the total annual worldwide turnover in the preceding business year of the undertaking concerned. In short, as the Advocate General observed in point 47 of his Opinion, only an administrative fine the amount of which is determined by reference to the actual or material economic capacity of its addressee, and therefore imposed by the supervisory authority on the basis, as regards the amount of that fine, of the concept of economic unit within the meaning of the case-law cited in paragraph 56 above, is capable of meeting the three conditions set out in Article 83(1) of the GDPR, namely being effective, proportionate and dissuasive at the same time. Therefore, where a supervisory authority decides, by virtue of its powers under Article 58(2) of the GDPR, to impose an administrative fine on a controller, who is or is part of an undertaking, within the meaning of Articles 101 and 102 TFEU, pursuant to Article 83 of that regulation, that authority is required to rely, under the latter provision, read in the light of recital 150 of that regulation, when calculating the administrative fines for the infringements referred to in paragraphs 4 to 6 of that article 83, on the concept of 'undertaking', within the meaning of Articles 101 and 102 TFEU'* (paragraphs 55 to 59).

158. This position was confirmed by the Court in its judgment of 13 February 2025 (CJEU, Fifth Chamber, C-383/23).

A. The imposition of an administrative fine and its amount

3. The imposition of an administrative fine

159. **The rapporteur** proposes that the restricted committee impose an administrative fine on the company in respect of the failure to comply with Article 82 of the Data Protection Act.

160. **In its defence,** the company submits that all the criteria set out in Article 83 of the GDPR must be assessed in order to determine whether a fine should be imposed. It submits that the rapporteur took only three of those criteria into account and considers that he wrongly assessed them. It disputes the volumetricity of 20 million visits from French territory between January and July 2023, retained by the rapporteur, on the ground that several visits were made by the same user. It considers that, on average, 12 million unique visitors located in France visited the 'shein.com' website each month, between January and July 2023. It also considers that the alleged infringement did not cause any damage to users. She recalled that it had been brought into line even before the rapporteur's report had been received. Lastly, it considers that the rapporteur has not demonstrated that it derived a financial advantage from the alleged failure to fulfil obligations.

161. **As a preliminary point, the restricted committee** recalls that the requirement to state reasons for an administrative penalty does not require either the restricted committee or the rapporteur to rule on all the criteria laid down in Article 83 of the GDPR, nor does it mean that the figures relating to the method of determining the amount of the penalty proposed or imposed must be indicated (EC, 10th/9th, 19 June 2020, No 430810; EC, 10th/9th, 14 May 2024, No 472221).

162. The Restricted committee considers that, in the present case, the Rapporteur has disclosed in a clear and detailed manner the factors which enabled him to assess the proven seriousness of the infringement found. The company was able to defend itself against these elements.

163. That said, the Restricted committee considers that, in the present case, it is necessary to examine the relevant criteria of Article 83 of the GDPR in order to decide whether to impose an administrative fine on companies and, if so, to determine its amount.

164. **In the first place,** the restricted committee considers that, pursuant to Article 83(2)(a) of the GDPR, account should be taken of the nature, gravity and duration of the infringements, taking into account the nature, scope or purpose of the processing operations concerned, as well as the number of data subjects affected.

165. The restricted committee recalls that on the day of the inspection, the company processed the data of its users without their knowledge, by depositing on their terminals, without their consent, cookies that were nevertheless subject to the prior collection of consent. It also recalls the lack of effectiveness, on the day of the check, of the mechanisms for refusing and withdrawing consent proposed by the company to its users, who do not prevent the operations of writing and reading cookies on the terminals. Thus, even when users made a choice about cookies, that choice was not respected. The restricted committee also recalls that when the company obtained the consent of users to the deposit of cookies on their terminals, that consent was not free and informed, in particular because they were not informed of the identity of the companies that placed advertising cookies on their terminals. The restricted committee considers that, on the day of the online check, the company's practices constituted a substantial infringement of the data subjects' right to privacy.

166. It follows for the restricted committee that the company's shortcomings in collecting, refusing and withdrawing consent did not allow the user to reasonably understand the extent of the operations that were carried out on his terminal.

167. The restricted group considers that the processing, in respect of which the company has committed numerous infringements of Article 82 of the Data Protection Act, is massive in nature. It notes in that regard that the company informed the inspection delegation that the 'shein.com' website received more than 20 million visits from French territory between January and July 2023. She notes that the company then told the rapporteur that it estimates that on average around 12 million unique visitors per month visited its website during this period. The restricted committee notes that this volume of visitors, for a single month, reflects the central place occupied by the company in the online ready-to-wear sales sector in France.

168. **In the second place,** the restricted committee considers that account should be taken of the criterion laid down in Article 83(2)(b) and (e) of the GDPR, relating to whether the infringement was committed intentionally or negligently.

169. The restricted committee notes that it is common practice for companies specialising in online ready-to-wear sales, whose company is one of the leaders in France, to use cookies. In those circumstances, it considers that the company was negligent in failing to comply with its obligations under Article 82 of the Loi Informatique et Libertés. Restricted committee considers that society could not ignore them. It points out that the CNIL has accompanied stakeholders in the area of cookies by making public a recommendation recalling the principles that should be respected in order to allow the use of cookies, while respecting the 'Informatique et Libertés' law and that in its guidelines of 4 July 2019, the CNIL recalled that operators must in particular respect the prior nature of consent to the deposit of tracers. The restricted committee also recalls that it has already sanctioned bodies on numerous occasions for failure to comply with the obligation to obtain the user's consent before any reading and/or writing action (deliberation No SAN-2020-012 of 7 December 2020 validated by the Conseil d'État in its decision No 44209 of 28 January 2022; Deliberation No SAN-2020-013 of 7 December 2020 validated by the Conseil d'État in its decision No 451423 of 27 June 2022).

170. **In the third place,** the restricted committee considers that the criterion laid down in Article 83(2)(k) of the GDPR, relating to the financial advantages obtained as a result of the infringement, should be applied.

171. The restricted committee notes that while the main activity of the company is the sale of ready-to-wear, the personalisation of ads, made possible by cookies, makes it possible to significantly increase the visibility of these goods and increase the likelihood that they will be purchased. However, by depositing advertising cookies before individuals consent to them and by not providing them with clear and complete information, the company reduces the risk of those cookies being refused.

172. It also notes that the cookies '_pinterest_ct_ua' and '_pin_unauth' enable the company to identify users who arrive on the 'shein.com' website from a link on the pinterest website. It considers that that marketing campaign analysis enables the company to optimise its marketing expenditure.

173. Consequently, the restricted committee considers, in the light of all those factors and in the

light of the criteria laid down in Article 83 of the GDPR, that an administrative fine should be imposed in respect of the infringement at issue.

4. The amount of the administrative fine

174. **In its defence,** the company disputes the taking into account of the turnover of its parent company as the basis for calculating the fine, even though it is not a party to the proceedings or responsible for the processing at issue. It considers that it follows from the case-law of the CJEU that that turnover can be used only to assess whether the envisaged penalty is likely to exceed the maximum legal ceiling of the fine and not to calculate its amount.

175. **The restricted committee** notes that, pursuant to the provisions of Article 20-IV-7° of the Data Protection Act, it may impose an *'administrative fine not exceeding EUR 10 million or, in the case of an undertaking, 2% of the total annual worldwide turnover of the preceding financial year, whichever is greater' on a controller who has committed the infringements.* It then recalls that administrative fines must be dissuasive and proportionate, within the meaning of Article 83(1) of the GDPR.

176. The restricted committee considers that, by referring to the GDPR in Article 20 of the Loi Informatique et Libertés, the French legislature chose to harmonise the rules relating to the determination of the amount of fines for the protection of personal data, regardless of whether the fine is intended to penalise a breach under the GDPR or the Loi Informatique et Libertés. The Restricted committee further notes that, given the proximity between the GDPR and the ePrivacy Directive, it is consistent that the rules governing the imposition of fines on organisations should be uniform whether it is a breach originating from the GDPR or the ePrivacy Directive.

177. It considers that it is therefore appropriate in the present case to use the concept of *'undertaking' in* competition law, by virtue of the direct and explicit reference made to that concept by recital 150 of the GDPR and by the Guidelines on the application and setting of administrative fines for the purposes of Regulation 2016/679. It points out that, in judgments delivered under the GDPR, the CJEU confirmed that the concept of *'undertaking' contained* in Article 83 of the GDPR must be understood in the light of competition law, which is governed by Articles 101 and 102 TFEU (CJEU, Grand Chamber, 5 December 2023, C-807/21 and CJEU, Fifth Chamber, 13 February 2025, C-383/23).

178. Next, as regards what is covered by the concept of *'undertaking',* the restricted formation notes that, in its abovementioned judgment of 5 December 2023, the CJEU held that an undertaking is an economic unit, even if, from a legal point of view, that economic unit consists of several legal persons. The CJEU states that, like competition law (Court of Cassation, c. com., 7 June 2023, Appeal No 22-10.545; Competition Authority, Decisions No 21-D-10 of 3 May 2021 and No 21-D-28 of 9 December 2021), where a subsidiary is wholly owned directly or indirectly by its parent company, there is a rebuttable presumption that the parent company exercises decisive influence over the conduct of the company. In order to determine the amount of the fine envisaged, and whether it corresponds to the actual economic capacity of its addressee, it is then necessary, according to the two judgments cited above, if the two companies can materially be regarded as belonging to the same economic unit, to take into account the turnover of the parent company in order for the fine to be effective, proportionate and dissuasive.

179. In the present case, the restricted formation recalls that the company ROADGET

BUSINESS PTE LTD owns 100% of the company INFINITE STYLES SERVICES CO LIMITED and thus considers, like competition law, that there is a presumption that the company ROADGET BUSINESS PTE LTD exercises decisive influence over the conduct of the company INFINITE STYLES SERVICES CO LIMITED on the market (CJEU, Grand Chamber, 5 December 2023, C-807/21; also CJEU, Third Chamber, 10 September 2009, Akzo C-97/08 P, paragraphs 58-61. See also, for the application of the presumption of decisive influence in the case of chain ownership: CJEU, Eni v Commission, 8 May 2013 (C-508/11 P, § 48). Consequently, the companies ROADGET BUSINESS PTE LTD and INFINITE STYLES SERVICES CO LIMITED constitute a single economic entity and therefore form a single undertaking within the meaning of Article 101 TFEU.

180. In the light of the foregoing, the restricted group considers that the turnover of the undertaking within the meaning of *'economic unit', namely that of the parent company of the group, should be* taken into account. It recalls that in 2023 the turnover of ROADGET BUSINESS PTE LTD was USD [...] (approximately EUR [...]) and its profits were USD [...] (approximately EUR [...]) at the EUR/USD price in 2023.

181. As regards the amount of the fine, which must be proportionate and dissuasive, in the light of the companies' responsibilities and financial capacity and the relevant criteria of Article 83 of the GDPR, the Restricted committee considers that it appears appropriate to impose an administrative fine of EUR 150 000 000 on INFINITE STYLES SERVICES CO. LIMITED, in the light of the failure to comply with Article 82 of Law No 78-17 of 6 January 1978 on information technology, files and freedoms.

8. The issue of an injunction

182. **In his initial report,** the rapporteur proposed that the restricted committee issue an injunction to bring the processing into line with the provisions of Article 82 of the Data Protection Act, together with a penalty payment of EUR 100 000 per day of delay which could be liquidated after a period of two months from notification of the deliberation.

183. **In its defence,** the company maintained that the issue of an injunction is devoid of purpose, since it implemented compliance measures in the course of the proceedings.

184. In view of the changes made by the company during the procedure, the rapporteur considered, in his reply**,** that it was no longer appropriate to propose that the restricted formation issue an injunction.

185. In view of the factors set out above, **the Restricted committee** considers that there is indeed no need to issue an injunction.

C. Publicity of the penalty

186. **In defence,** the company submits that the publicity of the penalty is not justified. In particular, it considers that the publication of the penalty would have no effect on users, in view of the measures it has taken to remedy the infringement. Moreover, according to the company, an advertisement would have significant consequences in terms of reputation.

187. It asks the restricted formation, in the event that it decides to make its deliberation public, to anonymise it.

188. **The restricted committee** considers that such a publicity measure is justified in the light of

the proven seriousness of the infringement in question, the company's position on the market and the number of persons concerned, who must be informed.

189. It also considers that that measure appears proportionate since the decision will no longer identify the company by name after a period of two years from its publication.

BY THESE REASONS

The restricted formation of the CNIL, after deliberation, decides:

- **order INFINITE STYLES SERVICES CO. LIMITED to pay an administrative fine of EUR 150 million (EUR 150 000 000) for failure to comply with Article 82 of Law No 78-17 of 6 January 1978 on information technology;**

- **make public, on the CNIL website and on the Légifrance website, its deliberation, which will no longer identify the company by name after the expiry of a period of 2 years from its publication.**

The Vice-President

Vincent LESCLOUS

This decision may be appealed to the Conseil d'État (Council of State) within four months of its notification.