

**Deliberation of the restricted committee No. SAN-2021-023 of 31 December 2021
concerning GOOGLE LLC and GOOGLE IRELAND 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.

Since the translation is currently being finalized, a new updated version may be put online in the next few days.

The Commission Nationale de l'Informatique et des Libertés (CNIL - French Data Protection Authority), met in its restricted committee consisting of Alexandre LINDEN, Chairman, Philippe-Pierre CABOURDIN, Vice Chairman, Anne DEBET and Alain DRU, members;

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

Having regard to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 on the processing of personal data and the protection of privacy in the electronic communications sector;

Having regard to amended French Data Protection Act No. 78-17 of 6 January 1978, in particular articles 20 *et seq.*;

Having regard to Decree No. 2019-536 of 29 May 2019 implementing French Data Protection Act No. 78-17 of 6 January 1978;

Having regard to deliberation No. 2013-175 of 4 July 2013 adopting the rules of procedure of CNIL (French Data Protection Authority);

Having regard to Decision No. 2021-072C of 20 May 2021 of the Chair of CNIL to instruct the Secretary General to carry out, or have carried out, an audit of the processing accessible from the domains google.fr and youtube.com or concerning personal data collected from the latter;

Having regard to the decision of CNIL's Chair appointing a rapporteur before the restricted committee of 28 July 2021;

Having regard to the report of Valérie PEUGEOT, commissioner rapporteur, notified to GOOGLE LLC and GOOGLE IRELAND LIMITED on 02 September 2021;

Having regard to the written observations made by the counsel of GOOGLE LLC and GOOGLE IRELAND LIMITED on 08 October 2021;

Having regard to the rapporteur's response to these observations notified on 22 October 2021 to the companies' counsel;

Having regard to the written observations made by the counsel of GOOGLE LLC and GOOGLE IRELAND LIMITED received on 12 November 2021;

Having regard to the oral observations made at the restricted committee session;

Having regard to the other exhibits;

The following were present at the restricted committee session on 25 November 2021:

- Valérie PEUGEOT, commissioner, heard in her report;

As representatives of GOOGLE LLC and GOOGLE IRELAND LIMITED:

- [...];

As interpreters of GOOGLE LLC and GOOGLE IRELAND LIMITED:

- [...];

GOOGLE LLC and GOOGLE IRELAND LIMITED having last spoken;

The restricted committee has adopted the following decision:

I. Facts and proceedings

1. GOOGLE LLC is a limited liability company with its registered office in the United States. Since its creation in 1998, it has developed many services for individuals and businesses, such as the *Google Search* search engine, the *Gmail* email service, the *Google Maps* mapping service and the *YouTube* video platform. It has more than 70 offices in about fifty countries and employs more than 135,000 people worldwide. Since August 2015, GOOGLE LLC has been a 100% owned subsidiary of ALPHABET Inc., the parent company of the GOOGLE group.
2. In 2020, ALPHABET Inc. achieved a turnover of more than \$182 billion, while GOOGLE LLC achieved a turnover of [...] dollars. The *Google Search* search engine generated more than \$104 billion in revenue, while advertising via GOOGLE Group services generated close to \$147 billion in revenue and, via the *YouTube* services, close to \$20 billion.
3. GOOGLE IRELAND LIMITED (hereinafter “GIL”) presents itself as the headquarters of the GOOGLE Group for its activities in the European Economic Area and in Switzerland. Established in Dublin, Ireland, it employs around [...] people. It had a turnover of [...] euros in 2019.
4. GOOGLE FRANCE SARL is the French establishment of the GOOGLE Group. A 100% owned subsidiary of GOOGLE LLC, its registered office is located in Paris (France). It employs approximately [...] employees and achieved a turnover of [...] euros in 2019.
5. On 16 March 2020, as part of a previous procedure against GOOGLE LLC and GIL, a delegation of the French Data Protection Authority (hereinafter “CNIL” or “the Commission”) carried out an online check on the google.fr website. The purpose of this check was to verify compliance by GOOGLE LLC and GIL with all the provisions of Act No. 78-17 of 6 January 1978 as amended on data processing, files and freedoms (hereinafter “the French Data Protection Act”) and in particular Article 82 thereof.

6. Pursuant to Article 22 of the French Data Protection Act, the Chair of CNIL appointed a rapporteur on 8 June 2020.
7. By deliberation No. SAN-2020-012 of 7 December 2020, the restricted committee:
 - imposed administrative fines on GOOGLE LLC and GIL in the amounts of EUR 60 million and EUR 40 million respectively for breach of Article 82 of the French Data Protection Act;
 - issued an injunction against GOOGLE LLC and GIL *"to bring the processing into compliance with the obligations arising from Article 82 of the French Data Protection Act, in particular:*
 - o *Informing the data subjects in advance and in a clear and complete manner, for example on the information banner on the homepage of the "google.fr" website:*
 - *of the purposes of all cookies subject to consent,*
 - *of the means available to them to refuse them";*
 - accompanied by the injunction of a penalty of 100,000 euros per late day at the end of a period of three months following notification of this deliberation;
 - make its deliberation public, on CNIL's website and on the Légifrance website, the deliberation no longer identifying the companies by name upon expiry of a period of two years following its publication.
8. On 29 January 2021, the companies filed an application for interim relief before the Council of State, requesting the suspension of the injunction. This application was rejected by a decision of 4 March 2021 (Council of State, judge ruling in summary proceedings, 4 March 2021, No. 449212).
9. At the same time, the companies filed an appeal in full litigation against the deliberation of 7 December 2020. The proceedings are still pending before the Council of State.
10. By deliberation No. SAN-2021-004 of 30 April 2021, the restricted committee considered that the companies had met the injunction within the time limit, insofar as *"persons going to the google.fr website are now informed, in a clear and complete manner, of all the purposes of the cookies subject to consent and the means made available to them to refuse them, through the information banner appearing on their arrival on the site"*.
11. On 18 March, 31 March, 2 April and 28 April 2021, CNIL received several complaints denouncing the methods for refusing cookies from the google.fr and youtube.com websites made available to users located in France.
12. Pursuant to Decision No. 2021-108C of 20 May 2021 of the Chair of the Commission, CNIL services carried out an online check, on 1 June 2021, on the google.fr and youtube.com websites.
13. The purpose of this was to verify the compliance by GOOGLE LLC and GIL (hereinafter the "companies") with the provisions of the French Data Protection Act.
14. As part of the online check, the delegation made findings when the user visits the google.fr and youtube.com websites; when clicking on the "Personalize" button; when clicking on the "Privacy Policy" link and clicking on "Terms of Use".

15. On 3 June 2021, the delegation notified the companies of the minutes drawn up as part of the online check, asking them to indicate, for each cookie mentioned in the said minutes, its purpose and to provide a volume of the number of unique daily visitors for the google.fr and youtube.com websites in the last twelve months from France.
16. On 21 June and 9 July 2021, CNIL received two new complaints denouncing the methods for refusing cookies on the google.fr website.
17. By letter dated 9 July 2021, GIL responded to the delegation's request, stating that it provided a response "*without prejudice to [its] rights under the GDPR, in particular the one-stop-shop mechanism and the role of the Irish Data Protection Commission ("DPC") as the lead authority in investigations.*" It has specified that it acts as a data controller of personal data with regard to cookies deployed on the google.fr and youtube.com domains for users located in the European Economic Area and in Switzerland. It also transmitted the purpose of each of the cookies stored on the user terminal and identified in the report of findings. On the other hand, it refused to provide the volume of the number of unique visitors to these two websites over the last twelve months from France, considering that it was not necessary to provide this information at this stage.
18. In order to examine these issues, the Chair of the Commission appointed Valérie PEUGEOT as rapporteur, on 28 July 2021, on the basis of Article 22 of the French Data Protection Act.
19. At the end of her investigation, on 2 September 2021, the rapporteur had personally handed to the company's counsel, and sent by e-mail to their representatives, a report detailing the breach of Article 82 of the French Data Protection Act which she considered constituted in the present case.
20. This report proposed to the CNIL's restricted committee to impose an administrative fine against the two companies, as well as an injunction to bring the processing consisting of reading and/or writing information into the terminal of users located in France, into compliance with the google.fr and youtube.com websites, with the provisions of Article 82 of the French Data Protection Act, accompanied by a penalty. It also proposed that this decision be made public and that the companies should no longer be identifiable by name upon expiry of a period of two years following its publication.
21. By letter of 9 September 2021, the companies, through their counsel, requested additional time to provide their comments in response. By letter dated 15 September 2021, the chairman of the restricted committee granted them an additional period of time until 8 October 2021.
22. By letter of 27 September 2021 sent to the chairman of the restricted committee, the companies, through their counsel, requested the suspension of the proceedings pending the decision of the Council of State in the context of the appeal against deliberation No. SAN-2020-012 of 7 December 2020. On 30 September 2021, the counsel of the companies informed the chairman of the restricted committee of the creation of a working group by the European Data Protection Board (hereinafter "the EDPB"), to coordinate the response to complaints relating to cookie banners filed by the None of Your Business Association (hereinafter "NOYB") with various European data protection authorities.

23. By letter of 4 October 2021, the chairman of the restricted committee rejected the request for suspension of the proceedings made by the companies.
24. On 08 October 2021, the company submitted observations in response to the sanction report.
25. The rapporteur responded to the comments of the companies on 22 October 2021.
26. On 27 October 2021, through their counsel, the companies filed a request for an extension of the fifteen-day period provided by Article 40 of Decree No. 2019-536 of 29 May 2019 to file their observations in response, a request for postponement of the restricted committee session scheduled for 25 November 2021 and a request for the session to be held behind closed doors.
27. On 29 October 2021, the chairman of the restricted committee provided companies with an additional eight days to file their second observations and refused to postpone the date of the restricted committee session and to hold it behind closed doors.
28. On 12 November 2021, the companies submitted further observations in response to those of the rapporteur.
29. The companies and the rapporteur presented oral observations at the restricted committee meeting.

II. Reasons for the decision

A. Concerning the request for suspension of the proceedings

30. The companies request that the restricted committee stays its proceedings pending the decision to be handed down by the Council of State in the context of the appeal lodged against deliberation No. SAN-2020-012 of 7 December 2020 and pending the conclusions of the new working group of the EDPB mentioned above. They base their request on Article 66 of CNIL's internal regulations and on the principle of good administration of justice. The companies argue in particular that they request the Council of State to rule on a number of grounds which will have direct and decisive consequences on the present sanction procedure. In particular, they argue before the Council of State that CNIL was not competent to impose administrative sanctions against them, whereas the legal framework applicable to cookies has not yet been consolidated and that the sanctions imposed are manifestly unjustified and disproportionate.
31. **Firstly**, the restricted committee observes that Article 66 of CNIL's rules of procedure provides that *"The restricted committee sessions shall be chaired by its chairman or, in the event of impediment, by its vice-chairman. The chairman of the meeting shall direct the discussions and ensure the orderly conduct of the meeting. He may order any suspension he considers appropriate."* The suspension referred to in this article does not concern the suspension of the sanction procedure, but refers to the suspension of the restricted committee session.
32. **Secondly**, the companies have already put forward these same arguments to the chairman of the restricted committee in their letter of 27 September 2021, which refused to grant the request for suspension by letter of 4 October, considering that the decision to initiate a sanction procedure belongs to the Chair of the Commission and that it does not fall within the powers of the chairman of the restricted committee to order their suspension. The chairman of the restricted committee also recalled in this letter that pursuant to Article L. 4 of the Code of

Administrative Justice, the application for annulment filed against the deliberation of the restricted committee of 7 December 2020 before the Council of State has no suspensive effect and, moreover, the date on which this court will examine this case was not known. Finally, he added that the creation of a working group within the EDPB was not likely, in any case, to justify a suspension of the sanction procedure.

33. **Thirdly**, the decision of the Council of State may not take place for several months.
34. **Finally**, as regards the creation of the working group by the EDPB concerning cookie banners, the restricted committee notes that the outcome of this work is not known to date.
35. The restricted committee therefore considers that there is no need for a stay of proceedings.

B. Concerning the complaint alleging breach of the non bis in idem principle

36. The companies argue that the restricted committee cannot rule once again on the same facts as those concerned by deliberations No. SAN-2020-012 of 7 December 2020 and No. SAN-2021-004 of 30 April 2021, without breaching the principle of *non bis in idem*. They argue that the parties concerned by these proceedings and the previous deliberations referred to above are identical, that the two proceedings concern the same facts and that a final decision, deliberation No. SAN-2021-004 of 30 April 2021, took place.
37. **Firstly**, the restricted committee notes that, in its deliberation No. SAN-2020-012 of 7 December 2020, it found a breach of Article 82 of the French Data Protection Act, given the lack of information provided to individuals, the failure to obtain consent from individuals before cookies are deposited on their terminals and the partial failure of the “opposition” mechanism put in place by Google. It also issued an injunction against them “*to bring the processing into compliance with the obligations arising from Article 82 of the French Data Protection Act, in particular:*
 - *Informing the data subjects in advance and in a clear and complete manner, for example on the information banner on the homepage of the "google.fr" website:*
 - *of the purposes of all cookies subject to consent,*
 - *of the means available to them to refuse them;"*
38. The restricted committee also notes that the first procedure leading to the aforementioned deliberation included an injunction on informing users on the purposes of cookies subject to consent and on the means to refuse cookies. The current procedure concerns the methods of refusal themselves, and not only information. Thus, the two proceedings do not concern the same facts.
39. **Secondly**, the companies argue that, under the terms of deliberation No. SAN-2020-012 of 7 December 2020, the restricted committee instructed them to comply with Article 82 of the French Data Protection Act in all its provisions and to provide, but not exclusively on account of the use of the terms “*in particular*”, information on the purposes of cookies and on the means to object to it. They add that, by deliberation No. SAN-2021-004 of 30 April 2021, the restricted committee would have decided that the mechanism of consent and rejection of cookies, in its

entirety, complied with Article 82 of the French Data Protection Act and that the companies would have complied with the injunction within the time limit set.

40. The restricted committee does not support this analysis. The sanction report of the previous procedure only concerned the information put in place by the companies on the cookie banner, the deposit of cookies without consent and the partial failure of the “opposition” mechanism. There is therefore no doubt that the restricted committee was unable to rule on what was not before it in the adversarial procedure. Thus, if the words “*in particular*” can be confusing when taken in isolation, the restricted committee recalls that this injunction cannot be read in isolation from the whole of the corresponding decision. However, within the framework of this previous procedure, the restricted committee only ruled on the above-mentioned scope and the injunction was only issued in connection with informing individuals. The methods for refusing reading and/or writing operations, which are the subject of these sanction proceedings, do not fall within the scope of this injunction. Since deliberation No. SAN-2021-004 of 30 April 2021 must necessarily be read in the light of deliberation No. SAN-2020-012 of 7 December 2020, it cannot be considered that the injunction handed down concerned all the obligations resulting from Article 82 of the French Data Protection Act.
41. In this respect, the restricted committee notes that, in two letters of 17 February 2021 sent to the companies, CNIL Secretary General recalled that, as is clear from the reasons and the operative part of deliberation No. SAN-2020-012 of 7 December 2020, the expected compliance in the context of the injunction procedure concerned only the information provided to persons on the home page of the google.fr website. It was also stated that, with regard to the obligation to inform data subjects in a clear and complete manner of the means available to them to refuse cookies, “*this question is difficult to detach from the question of the methods of refusal on the first level, by a reject button or an equivalent solution, which is not within the scope of the injunction.*” From an accompanying perspective – and in view of the changes expected under the entry into force of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter “the Regulation” or “the GDPR”), informed by the recommendation of 17 September 2020, and for which the CNIL had given the stakeholders a period of adaptation until 1 April 2021 – the letter included an analysis that went beyond the scope of the injunction issued by the restricted committee, which concerned the information provided by the companies in response to the injunction, information that was itself beyond the scope of the deliberation. In this context, the companies were reminded that it must be as easy to give consent as to refuse to give it or to withdraw it and it was indicated to them that it would be up to them to insert on the information strip a “I refuse” button next to the “I accept” button, all by stating that they could “*of course change the names of these buttons as long as they allow users to understand clearly and directly the consequences of their choices.*” While this letter is not binding, the restricted committee notes that pursuant to a letter sent by GIL to the chairman of the restricted committee on 30 March 2021, the company had replied: “*we share the analysis of CNIL’s services according to which Google’s consent mechanism does not fall within the scope of the injunction issued by the restricted committee in its deliberation of 7 December 2020*”.
42. Therefore, the companies cannot claim that the restricted committee validated the new cookie banner set up by them following the first sanction procedure, even though they themselves were fully aware that the mechanism of consent and rejection of cookies, in its entirety, was not the object of this previous procedure and that CNIL recalled on various occasions that it was not pronouncing on this point in the context of the previous procedure.

43. The restricted committee notes in fact that, in its press release relating to the closure of the injunction of 4 May 2021, CNIL also took care to specify that: *“When the case was referred to it before the end of the adaptation period given to the stakeholders by CNIL, the restricted committee did not examine the compliance of the information banner provided on the google.fr site with the new rules on cookies, particularly concerning consent, which are clarified by the guidelines and the recommendation of 17 September 2020. This closing decision therefore does not prejudge CNIL’s analysis of the compliance of google.fr with these requirements, according to which users must now be able to refuse cookies as easily as they can accept them. CNIL now reserves the right to check these methods of refusal and, if necessary, to mobilise its entire repressive chain”*.
44. **Finally**, the restricted committee notes that the present procedure concerns both the google.fr and youtube.com websites, while the previous procedure concerned only the google.fr website.
45. The restricted committee therefore considers that the complaint based on violation of the *non bis in idem* principle must be rejected.

C. Concerning the competence of CNIL

1. Concerning the material competence of CNIL and the non-applicability of the “one-stop-shop” mechanism provided for by the GDPR

46. The processing subject to the check carried out on 1 June 2021 by a delegation of CNIL is carried out as part of the provision of electronic communications services accessible to the public through a public electronic communications network proposed within the European Union. As such, it falls within the material scope of the ePrivacy Directive.
47. Article 5(3) of this Directive, relating to the storage or access to information already stored in a subscriber’s or user’s terminal equipment, has been transposed into national law in Article 82 of the French Data Protection Act, in Chapter IV *“Rights and Obligations for Processing in the Electronic Communications Sector”* of this Act.
48. Under Article 16 of the French Data Protection Act, *“the restricted committee shall take measures and impose sanctions against data controllers or processors who do not comply with the obligations arising [...] from this law”*. According to Article 20(III) of the same Act, *“where the data controller or its processor fails to comply with the obligations arising [...] from this Act, the chair of the CNIL [...] may refer the matter to the restricted committee”*.
49. The rapporteur considers that CNIL is materially competent pursuant to these provisions to monitor and sanction the operations of access or registration of information implemented by the companies in the terminals of users of the google.fr and youtube.com sites in France.
50. The companies contest the competence of CNIL and consider that they should be subject to the procedural framework provided for by the GDPR, i.e. the mechanism for cooperation between supervisory authorities, known as the “one-stop-shop” mechanism, provided for in Chapter VII of the Regulation. In application of this mechanism, the supervisory authority competent to know the facts in question would not be CNIL but the Irish data protection authority, the *Data*

Protection Commissioner (hereinafter the “DPC”), which should act as the lead authority with regard to the deployment of cookies, this being competent according to the companies both under the GDPR and the ePrivacy Directive.

51. To this end, the companies invoke the inextricable link between the GDPR and the ePrivacy Directive, considering that the application of the GDPR cannot be excluded when Article 82 of the French Data Protection Act applies. They also invoke the principle of *lex specialis - lex generalis* by virtue of which, according to them, the ePrivacy Directive specifies and supplements the GDPR. The companies consider that the absence of specific rules on the determination of the competence of the supervisory authority in the case of cross-border processing falling within the scope of the ePrivacy Directive should be replaced by the application of the procedural framework provided by the GDPR. They argue that the application of the “one-stop-shop” mechanism is not only in line with the intention of the European legislator but also with the interpretation of the EDPB, and also corresponds to the position adopted by several European authorities. They point out in this respect that the power given to the Member States to choose the national authority responsible for ensuring compliance with the ePrivacy Directive does not preclude the application of the “one-stop-shop” mechanism provided for by the GDPR, insofar as cooperation agreements between these authorities have been concluded in several Member States so that data protection authorities and the authorities responsible for the application of the ePrivacy Directive, if they are different authorities, can jointly exercise enforcement powers on an issue falling within the scope of the GDPR and the ePrivacy Directive and thus participate in the one-stop shop mechanism.
52. The companies further add that the EDPB announcement of 27 September 2021 on the creation of a cookie banner working group in response to the large number of complaints recently filed with the supervisory authorities by the NOYB association constitutes evidence that the EDPB considers that cookie-related violations fall directly within the scope of the GDPR and, therefore, the “one-stop shop” mechanism.
53. **First of all**, the restricted committee highlights the distinction that must be made between, on the one hand, the operations of depositing and reading a cookie on a user’s terminal and, on the other hand, the subsequent use made of the data generated by these cookies, for example for profiling purposes, generally referred to as “*subsequent processing*” (also known as “*further processing*”). Each of these two successive stages is subject to a different legal regime: while the reading and writing operations in a terminal are governed by special rules, laid down by the ePrivacy Directive - in this case, Article 5 (3) - and transposed into national law, the “*subsequent processing*” is governed by the GDPR and, as such, it may be subject to the “one-stop-shop” mechanism in the event that it is cross-border.
54. In this case, the restricted committee recalls that this procedure only concerns the reading and writing operations carried out in the user’s terminal located in France going to the *Google Search* search engine and *YouTube*, as the material findings made by the delegation during the online check of 1 June 2021 concerned only these operations, without being interested in the subsequent processing carried out on the basis of the data collected via these cookies.
55. **Firstly**, the restricted committee notes that it emerges from the above provisions that the French legislator has instructed CNIL to ensure compliance with the provisions of the ePrivacy Directive transposed to Article 82 of the French Data Protection Act, by entrusting it in particular with the power to sanction any breach of this article. It emphasises that this competence was notably recognised by the Council of State in its *Association of Consulting*

Agencies in Communication decision of 19 June 2020 concerning the decision of CNIL No. 2019-093 adopting guidelines on the application of Article 82 of the 6 January 1978 Act modified to read or write operations in a user's terminal. The Council of State has indeed noted that "*Article 20 of this law entrusts [to] the chair [of the CNIL] the power to take corrective measures in the event of non-compliance with the obligations resulting from Regulation (EU) 2016/279 or its own provisions, as well as the possibility of referring the matter to the restricted committee with a view to pronouncing the sanctions likely to be imposed*" (Council of State, 19 June 2020, req. 434684, pt. 3).

56. **Secondly**, the restricted committee considers that when a processing operation may fall within both the material scope of the ePrivacy Directive and the material scope of the GDPR, reference should be made to the relevant provisions of the two texts which provide for their articulation. Thus, Article 1(2) of the ePrivacy Directive specifies that "*the provisions of this Directive specify and complement Directive 95/46/EC*" of the European Parliament and of the Council of 24 October 1995 on the protection of personal data (hereinafter the "Personal Data Protection Directive 95/46/EC"), it being recalled that since the entry into force of the Regulation, references to this latter Directive must be understood as being made to the GDPR, in accordance with Article 94 of the GDPR. Similarly, it follows from recital 173 of the GDPR that this text explicitly anticipates not being applicable to the processing of personal data "*subject to specific obligations having the same objective [of protection of fundamental rights and freedoms] laid down in Directive 2002/58/EC of the European Parliament and of the Council, including the obligations of the controller and the rights of natural persons*". This articulation was confirmed by the Court of Justice of the European Union (hereinafter CJEU) in its *Planet49* decision of 1 October 2019 (CJEU, 1 October 2019, C-673 /17, pt. 42).
57. In this respect, the restricted committee notes that, contrary to what the companies argue, the ePrivacy Directive constitutes a body of special rules, which provides, for the specific obligations it contains, its own implementation and enforcement mechanism within its Article 15a. Thus, the first paragraph of that Article leaves to the Member States the competence to determine "*the regime of sanctions, including criminal penalties, if applicable, applicable to violations of national provisions adopted pursuant to this Directive and to take all necessary measures to ensure their implementation. The penalties provided for must be effective, proportionate and dissuasive and may be applied to cover the duration of the infringement, even if it has subsequently been corrected*". However, the rule laid down in (3) of Article 5 of the ePrivacy Directive, according to which the reading and writing operations must systematically be subject to the user's prior agreement, after information is provided to them, constitutes a special rule with regard to the GDPR since it prohibits the use of the legal bases mentioned in Article 6 of the latter to be able to lawfully carry out these read and/or write operations on the terminal. The monitoring of this rule is therefore a special monitoring and sanction mechanism provided for by the ePrivacy Directive and not the data protection authorities and the EDPB in application of the GDPR. It is by their own choice that legislators in France have entrusted this task to CNIL. In addition, the second paragraph of the same Article requires Member States to ensure that "*the competent national authority and, where appropriate, other national bodies have the power to order the cessation of the offences referred to in paragraph 1*".
58. In light of the above, the restricted committee considers that, in application of the adage *specialia generalibus derogant*, the specific rules on cookies resulting from the ePrivacy Directive take precedence over the general rules of the GDPR. Thus, the "one-stop-shop"

mechanism provided for by the GDPR cannot be applied to the processing covered by the directive, as the companies claim.

59. **Thirdly**, the restricted committee adds that this exclusion is corroborated by the fact that Member States, which are free to determine the competent national authority for determining violations of national provisions adopted pursuant to the ePrivacy Directive, may have assigned this competence to an authority other than their national data protection authority established by the GDPR, in this case to their telecommunications regulatory authority. Therefore, to the extent that these latter authorities are not part of the EDPB, while this board plays an essential role in the consistency monitoring mechanism implemented in Chapter VII of the GDPR, it is in fact impossible to apply the “one-stop-shop” to practices likely to be sanctioned by national supervisory authorities not sitting on this board.
60. The restricted committee emphasises that the cooperation agreements between data protection authorities and telecom regulators in some Member States, invoked by the company, are intended to establish cooperation at national level between the different regulators in order to ensure the consistency of their doctrines on related subjects, but are not intended to involve telecom regulators as such in the “one-stop-shop” mechanism provided for by Chapter VII of the GDPR.
61. **Fourthly**, the restricted committee notes that the EDPB has, in its opinion No. 5/2019 of 12 March 2019 on the interactions between the privacy and electronic communications directive and the GDPR, explicitly excluded the application of the “one-stop-shop” mechanism to facts that are materially covered by the ePrivacy Directive in these terms: *“Following Chapter VII of the GDPR, the cooperation and consistency mechanisms available to data protection authorities under the GDPR concern the monitoring of the application of GDPR provisions. The GDPR mechanisms do not apply to the monitoring of the application of the provisions of the privacy and electronic communications directive as such”* (EDPB, Opinion 5/2019, 12 March 2019, pt. 80).
62. **Fifthly**, the restricted committee notes that the CJEU, in a *Facebook Belgium* judgment handed down on 15 June 2021, took up the opinion 5/2019 of the aforementioned EDPB. On this point, the CJEU followed the conclusions of its general counsel, Mr BOBEK, who considered that *“in order to decide whether a case actually falls within the substantive scope of the GDPR, a national court, including any referring court, is required to seek the precise source of the legal obligation incumbent on an economic operator whose breach is alleged. If the source of this obligation is not the GDPR, the procedures established by this instrument, which are linked to its main objective, are not logically applicable”* (CJEU, conclusions of General Counsel Mr BOBEK, 13 January 2021, *Facebook Belgium*, C-645/19, pts. 37 and 38).
63. In this case, the restricted committee notes that, in this procedure, the precise source of the legal obligation subject to the control is based on Article 5(3) of the ePrivacy Directive, transposed to Article 82 of the French Data Protection Act, informed by the conditions of consent as provided for by the GDPR, Article 2(f) of the ePrivacy Directive providing that the consent of a user corresponds to the consent of the data subject contained in Directive 95/46/EC, which has been replaced by the GDPR.
64. The restricted committee also points out that other national data protection authorities have already imposed sanctions for failures to read and/or write information in users’ terminals. The Spanish authority has thus issued several sanction decisions against various data controllers in

application exclusively of the national provisions transposing the ePrivacy Directive, in this case Article 22(2) of the *Ley 34/2002 of 11 julio de Servicios de la Sociedad de la Información y de Comercio Electrónico*, without implementing the cooperation procedure established by the GDPR.

65. **Sixthly**, the restricted committee also notes that the possible application of the “one-stop-shop” mechanism to processing governed by the ePrivacy Directive has been the subject of numerous discussions in the preparation of the draft ePrivacy Regulation which has been under negotiation for more than four years at the European level. Therefore, the very existence of these debates confirms that, as is, the one-stop-shop mechanism provided for by the GDPR is not applicable to the matters governed by the current ePrivacy Directive.
66. **Finally**, according to the restricted committee, the creation of a working group on cookie banners in response to the large number of complaints filed with the European supervisory authorities by the NOYB association does not mean, contrary to what is argued, that the EDPB considers that all cookie-related violations necessarily fall within the scope of the GDPR. The restricted committee also notes that some of the issues raised in these complaints concern subsequent processing which fall within the scope of the GDPR. Furthermore, in accordance with Article 70(1)(u), the mission of the EDPB shall be to promote the effective bilateral and multilateral cooperation and exchange of information and best practices between supervisory authorities. The purpose of the working group is thus to discuss the analysis of the numerous complaints filed by NOYB. The creation of this working group does not call into question the position of the EDPB, in its aforementioned opinion 5/2019.
67. Thus, the restricted committee considers that the “one-stop shop” mechanism provided for by the GDPR is not applicable to the present procedure and that the CNIL is competent to control and sanction processing operations consisting of reading and/or writing information in the terminal of users located in France implemented by companies falling within the scope of the ePrivacy Directive, provided that they fall within its territorial jurisdiction.

2. Concerning the territorial jurisdiction of CNIL

68. The rule of territorial application of the requirements laid down in Article 82 of the French Data Protection Act is set out in Article 3(I) of the French Data Protection Act, which states: “*without prejudice, with regard to processing falling within the scope of Regulation (EU) 2016/679 of 27 April 2016, the criteria laid down in Article 3 of that Regulation, all the provisions of this Act shall apply to the processing of personal data carried out as part of the activities of an establishment of a data controller [...] on French territory, regardless of whether or not the processing takes place in France*”.
69. The rapporteur considers that CNIL is territorially competent in application of these provisions when the processing that is the object of this procedure, consisting of operations to access or write information in the terminals of users residing in France when using the *Google Search* and *YouTube*, in particular for advertising purposes, is carried out in the “*context of the activities*” of GOOGLE FRANCE, which constitutes “*the establishment*” on French territory of the GOOGLE Group.
70. On this point, the companies refer to the observations they submitted in the context of the previous sanction proceedings, in which they argued that, insofar as the rules on jurisdiction

and cooperation procedures defined by the GDPR should be applied, CNIL would not have territorial jurisdiction to hear this case, given that the GOOGLE group's "real headquarters" in Europe, i.e. the place of its central administration within the meaning of Article 56 of the GDPR, is located in Ireland.

71. The restricted committee once again holds that the facts in question are materially covered by the provisions of the ePrivacy Directive, not the GDPR. It deduces from this that reference should be made to the provisions of Article 3 (I) of the French Data Protection Act, which determines the scope of the territorial jurisdiction of CNIL.
72. In this regard, the restricted committee points out that the ePrivacy Directive does not itself explicitly lay down the rule of territorial application of the various transposition laws adopted by each Member State. However, this Directive states that it "*clarifies and supplements Directive 95/46/EC*", which at the time anticipated in its Article 4 that "*Each Member State shall apply the national provisions it adopts pursuant to this Directive to the processing of personal data where : (a) the processing is carried out in the context of the activities of an establishment of the controller on the territory of the Member State; when the same controller is established on the territory of several Member States, he must take the necessary measures to ensure that each of these establishments complies with the obligations laid down by the national law applicable*". Although this rule for determining the national law applicable within the Union is no longer relevant for the application of the rules of the GDPR, which replaced Directive 95/46/EC on the protection of personal data and applies uniformly throughout the Union, it appears that the French legislator has maintained these criteria for territorial application for the specific rules contained in the French Data Protection Act, and therefore in this case for those transposing the ePrivacy Directive. Therefore, the case law of the CJEU on the application of Article 4 of the former Directive 95/46/EC on the protection of personal data remains relevant to inform the scope to be given to these two criteria.
73. **Firstly**, as regards the existence of an "*establishment of the data controller on French territory*", the CJEU consistently considered that the concept of establishment should be assessed extensively and that for this purpose it was appropriate to assess both the degree of stability of the installation and the reality of the exercise of the activities in another Member State, taking account of the specific nature of the economic activities and services in question, (see, for example, CJEU, *Weltimmo*, 1 Oct. 2015, C-230/14, pts. 30 and 31). The CJEU also considers that a company, an autonomous legal entity, from the same group as the data controller, may constitute an establishment of the data controller within the meaning of these provisions (CJEU, 13 May 2014, *Google Spain*, C-131/12, pt 48).
74. In the present case, the restricted committee notes, first of all, that GOOGLE FRANCE is the registered office of the French subsidiary of GOOGLE LLC, that it has premises located in Paris, that it employs approximately [...] people and that, according to its articles of association filed with the registry of the Commercial Court of Paris, its purpose is, in particular, "*the provision of services and/or advice relating to software, the Internet, telematics or online networks, including intermediation in the sale of online advertising, the promotion in all its forms of online advertising, the direct promotion of products and services and the implementation of information processing centres.*" The restricted committee then notes, as recalled in its deliberation of 7 December 2020, "*that GOOGLE FRANCE is responsible for promoting online advertising on behalf of GIL, which is co-contractor of advertising contracts concluded with French companies or French subsidiaries of foreign companies*" and "*that GOOGLE FRANCE effectively participates in the promotion of products and services designed*

and developed by GOOGLE LLC, such as Google Search, in France, as well as the advertising activities managed by GIL” (deliberation of the restricted committee no. SAN-2020-012 of 7 December 2020 concerning GOOGLE LLC and GOOGLE IRELAND LIMITED, pt. 42). It notes that these findings are still valid on the date of this deliberation.

75. **Secondly**, as regards the existence of processing carried out “*in the context of the activities*” of this establishment, the restricted committee notes that the CJEU, in its *Google Spain* judgment of 13 May 2014, considered that the *Google Search* search engine processing was carried out “*as part of the activities*” of GOOGLE SPAIN, the establishment of GOOGLE INC - which has since become GOOGLE LLC - insofar as this company is intended to promote and sell the advertising spaces offered by this search engine in Spain, which serve to make the service offered by this search engine profitable. The CJEU stated that “*Article 4(1)(a) of Directive 95/46 requires that the processing of personal data in question be carried out “by” the institution itself, but only that it be “as part of the activities”*” (pt. 52). According to the Court, “*Article 4(1)(a) of Directive 95/46 must be interpreted as meaning that the processing of personal data is carried out as part of the activities of an establishment of the controller in the territory of a Member State, within the meaning of that provision, where the operator of a search engine creates in a Member State a branch or subsidiary intended to promote and sell the advertising spaces offered by that engine and whose activity is aimed at the inhabitants of that Member State*” (pt. 60).
76. Furthermore, the restricted committee notes that the CJEU subsequently considered, in its *Wirtschaftsakademie* and *Facebook Belgium* decisions, that the processing consisting of the collection of personal data via cookies stored in the terminals of users visiting, in Germany and Belgium, pages hosted on the Facebook social network was respectively carried out “*as part of the activities*” of FACEBOOK GERMANY and FACEBOOK BELGIUM, German and Belgian establishments of the Facebook group, insofar as these establishments are intended to promote and sell, in their respective countries, the advertising spaces offered by this social network, which are used to make use of the service offered by Facebook (CJEU, Grand Chamber, 5 June 2018, *Wirtschaftsakademie*, C-210/16, Pts. 56 to 60; 15 June 2021, *Facebook Belgium*, C-645/19, pts. 92 to 95). If, in the *Google Spain* judgment, Spanish jurisdiction had been retained for a processing for which the actual responsibility lies with companies based in the United States, outside the European Union, in these latter judgments, the CJEU extended its reasoning to the case where the actual responsibility for processing lies with a company located in another EU country.
77. The restricted committee notes that, although these three decisions concerned more specifically the “subsequent processing” implemented from cookies stored in users’ terminals, which justified the application of Directive 95/46/EC for the *Google Spain* and *Wirtschaftsakademie* cases and the GDPR for the *Facebook Belgium* case, this case law remains relevant in order to clarify the scope to be given to the concept of processing carried out “*as part of the activities*” of an establishment, insofar as the French legislator adopted it when transposing the ePrivacy directive to base the territorial jurisdiction of CNIL with regard to the processing covered by this directive.
78. In this case, and in addition to the above developments in paragraph 74, the restricted committee notes that, according to the information posted on its website, GOOGLE FRANCE particularly supports small and medium-sized enterprises in France “*through the development of collaboration tools, advertising solutions or to give them the keys to understanding their markets and their consumers*”. Secondly, it has already noted, in its deliberation No. SAN-

2020-012 of 7 December 2020 that, “in its letter of 30 April 2020, GIL indicates that “Google France has a sales team dedicated to the promotion and sale of GIL’s services to advertisers and publishers based in France, such as Google Ads” (point 44). This finding still appears to be valid on the date of this deliberation. Finally, the restricted committee considers that it is stated on its ads.google.com website that “Google Ads allows French companies to highlight their products or services on the search engine and on a large advertising network.”

79. Therefore, the processing consisting of operations involving access or writing of information in the terminals of users of the *Google Search* search engine and *YouTube* residing in France, particularly for advertising purposes, is carried out as part of the activities of GOOGLE FRANCE on French territory, which is in charge of promoting and marketing GOOGLE products and their advertising solutions in France. The restricted committee states that the two criteria provided for in Article 3 (I) of the French Data Protection Act are therefore met.
80. It follows that French law is applicable and that CNIL is physically and territorially competent to exercise its powers, including that of taking a sanction measure concerning the processing in question which falls within the scope of the ePrivacy Directive.

D. Concerning the complaint alleging the illegality of this sanction procedure

81. The companies contest the fact that they did not receive any formal notice before the chair of the CNIL decided to open a sanction procedure, contrary to other stakeholders, thus invoking a difference in treatment between GIL and GOOGLE LLC and the sixty or so companies that CNIL stated that it had issued formal notices for similar acts in its press releases of 25 May and 19 July 2021 published on its website.
82. **Firstly**, with regard to the companies’ argument that the provisions opposed to them by the rapporteur came into force less than five months before the start of the sanction procedure, the restricted committee recalls that, in the context of the present deliberation, it is basing itself exclusively on the provisions of Article 82 of the French Data Protection Act, informed by the enhanced consent requirements of the GDPR, which came into force in May 2018. Therefore, the legal framework applicable to the facts giving rise to the present sanction procedure is fully established.
83. The restricted committee also recalls that, as of June 2019 and on several occasions thereafter, CNIL communicated on its action plan which included two main stages: the publication of new guidelines in July 2019 and consultation with professionals to develop a new recommendation, proposing operational modalities for obtaining consent. CNIL had specified, in a press release of 28 June 2019, that it would carry out verifications of compliance with the recommendation six months after its final adoption. The restricted committee notes that CNIL had been perfectly transparent on the schedule, in order to allow time for organisations to comply before carrying out checks.
84. **Secondly**, the restricted committee recalled that in accordance with Article 20 of the French Data Protection Act, the chair of the CNIL is not required to send a formal notice to the organisation before initiating sanction proceedings against it. It adds that the possibility of directly initiating a sanction procedure was confirmed by the Council of State (see, in particular, Council of State, 4 Nov. 2020, req. No. 433311, pt. 3).

85. It further notes that CNIL’s Secretary General had reminded the companies, in his letters of 17 February 2021, that it must be as easy to give consent as to refuse to give it or to withdraw it. It also notes that GOOGLE LLC and GIL have already been the subject of a sanction procedure relating to their cookie policy. The companies were fully aware that they were subject to any other sanctions since, pursuant to a press release published on 4 May 2021, CNIL had indicated that the termination of the injunction concerned only the scope of the injunction pronounced by the restricted committee in its deliberation of 7 December 2020. It stated that this closure decision did not prejudge CNIL’s analysis of the compliance of google.fr with other cookie rules, particularly regarding consent, which are informed by the guidelines and the recommendation of 17 September 2020, according to which users must now be able to refuse cookies as easily as they can accept. CNIL specified the possibility to control these refusal procedures and, if necessary, to mobilise its entire repressive chain, it being specified that CNIL had received several complaints on this subject.

Thus, the restricted committee considers that GOOGLE LLC and GIL were not in the same situation as other organisations subject to formal notices from CNIL and that the complaint based on the illegality of the sanction procedure must be rejected.

E. Concerning the request for a preliminary ruling

86. The companies alternatively request the restricted committee to refer a question to the Court of Justice of the European Union (“CJEU”) for a preliminary ruling as follows: *“should the absence of a “refuse all” button be regarded as a violation of Article 4(11) and Article 7 of the GDPR, read in conjunction with Article 5(3) of the e-Privacy Directive while the data controller gives the data subject the right to refuse such processing in the second level of the cookie banner and via the browser settings and informs him of this possibility to refuse the processing and the means at his disposal to do so from the first level of the cookie banner?”* ». The companies consider that the restricted committee is a jurisdiction within the meaning of Article 267 of the Treaty on the Functioning of the European Union (hereinafter “the TFEU”) and that it meets the criteria of a court: it is established permanently by the French Data Protection Act; it has a mandatory jurisdiction when the chair of the CNIL decides to initiate a sanction procedure; it follows an adversarial procedure involving the rapporteur and the respondent; it applies the rules of law and is independent and impartial.

87. The restricted committee recalls that, in order for a body to address a preliminary ruling to the CJEU, it must be entitled to the status of “court” within the meaning of Article 267 TFEU, an autonomous concept in Union law. To assess this capacity, the CJEU takes into consideration the following criteria: legal origin of the body, its permanence, its binding nature, the adversarial nature of its proceedings, the application of the rules of law, its independence and the jurisdictional nature of its decisions.

88. The restricted committee states that it is not qualified as a court under domestic law: no legislative provision has recognised this capacity. If, as noted by the companies, the Council of State has already ruled that *“having regard to its nature, composition and powers”*, the restricted committee may be described as a “court” within the meaning of Article 6-1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the “ECHR”) (Council of State, judge ruling in summary proceedings, 19 February 2008, no. 311974), this decision does not recognise the capacity of court.

89. The restricted committee considers, contrary to what the companies argue, that the criteria adopted by the CJEU on the notion of jurisdiction within the meaning of Article 267 TFEU, in particular in its recent ANESCO judgment (CJEU, 16 Sept. 2020, *Anesco*, C-462/19), are not fulfilled by the restricted committee. Indeed, in this judgment, the CJEU stated that, “*it must be noted that the decisions which the CNMC [the Spanish competition authority] are required to adopt in cases such as the one at issue in the main proceedings are similar to decisions of an administrative nature, excluding that they are adopted in the exercise of judicial functions*” (§41). However, the same applies to decisions taken by the restricted committee, which are decisions of an administrative nature since they are sanction decisions that contribute to the effectiveness of CNIL’s action within its regulatory authority. The sanction decision puts an end to the administrative procedure initiated and an administrative legal appeal may then be brought against it before the Council of State.
90. In addition, the restricted committee notes that the Court of Cassation considered that “*it emerges from these texts of European Union law, as interpreted by the Court of Justice of the European Union, that the Competition Authority is not a court capable of asking for a preliminary ruling pursuant to Article 267 TFEU (CJEU, judgment of 16 September 2020, Anesco, C-462/19, concerning the Comisión Nacional de los Mercados y la Competencia, Spanish competition authority)*” (Cass. 2nd civ., 30 September 2021, no. 20-18.302). However, the Competition Authority, as an independent administrative authority, has great organisational and procedural similarities with the restricted committee.
91. Therefore, the restricted committee cannot be qualified as a court within the meaning of Article 267 TFEU, so that it is not able to ask the CJEU for a preliminary ruling.

F. Concerning the determination of the data controller

92. The restricted committee notes, first of all, that Articles 4(7) and 26(1) of the GDPR are applicable to this procedure because of the use of the concept of “data controller” in Article 82 of the French Data Protection Act, which is justified by the reference made by Article 2 of the ePrivacy Directive to Directive 95/46/EC on the protection of personal data which the GDPR has replaced.
93. According to Article 4(7) of the GDPR, the data controller is “*the natural or legal person, public authority, service or other body which, alone or jointly with others, determines the purposes and means of processing*”. According to Article 26(1) of the GDPR, “*where two or more data controllers jointly determine the purposes and means of processing, they are joint controllers.*”
94. The rapporteur considers that GIL and GOOGLE LLC are jointly responsible for the processing in question pursuant to these provisions when both companies determine the purposes and means of processing consisting of information access or writing operations in the terminals of users residing in France during the use of *Google Search* and *YouTube* .
95. The companies state that GIL would be solely responsible for the processing of personal data of users located in the European Economic Area and Switzerland.

96. The restricted committee recalls that the CJEU has repeatedly ruled on the notion of joint responsibility for the processing, in particular in its *Jehovah's Witnesses* judgment. According to the latter, it considered that, according to the provisions of Article 2(d) of Directive 95/46 on the protection of personal data, *"the concept of "data controller" refers to a natural or legal person who, "either alone or jointly with others", determines the purposes and means of the processing of personal data. This concept does not therefore necessarily refer to a single natural or legal person and may concern several stakeholders involved in this processing, each of which must then be subject to the applicable data protection provisions [...]. The objective of this provision being to ensure, by a broad definition of the concept of "controller", effective and comprehensive protection of the data subjects, the existence of joint liability does not necessarily result in an equivalent responsibility, for the same processing of personal data, of the various stakeholders. On the contrary, these stakeholders can be involved at different stages of this processing and according to different degrees, so that the level of responsibility of each of them must be assessed taking into account all the relevant circumstances of the case"* (CJEU, 10 July 2018, C-25 /17, pts. 65 and 66).
97. The restricted committee therefore considers that these developments make it useful to clarify the notion of joint processing liability invoked by the rapporteur in respect of GOOGLE LLC and GIL involved in the processing in question.
98. Lastly, the restricted committee stresses that while this procedure does not concern the same facts as those mentioned in the context of deliberation No. SAN-2020-012 of 7 December 2020 for the reasons described above, it still concerns the reading and writing operations implemented in the user's terminal located in France by GOOGLE LLC and GIL, for which the role of the two companies has already been examined by the restricted committee in the above-mentioned deliberation.
99. The restricted committee also recalls that, in this same deliberation of 7 December 2020, it considered that GOOGLE LLC and GIL jointly determine the purposes and means of the processing consisting of access or registration of information operations in the terminal of users residing in France when using the search engine *Google Search* (pts. 47 to 66 of the deliberation). It considers that this finding is still valid on the date of this deliberation and can be extended to the cookies used on the youtube.com website, as demonstrated by the elements set out below.

1. Concerning the liability of GIL

100. The companies argue that GIL acts as the data controller in question, which the rapporteur also acknowledges.
101. The restricted committee shares this analysis.
102. **Firstly**, it notes that in its deliberation No. SAN-2020-012, it retained that the "representatives of the companies stated that GIL *"participates in the development and supervision of internal policies that guide the products and their design, the implementation of parameters, the determination of confidentiality rules and all the investigations carried out before the launch of the products, in application of the principle of "privacy by design."*"

103. **Secondly**, it recalls that it also pointed out that, in particular with regard to cookies, representatives stated [...] that "*GIL applies, for example, shorter cookie retention periods*" compared to other regions of the world and that it "*limits the scope of processing related to the personalisation of advertising in Europe compared to the rest of the world. For example, GIL does not use certain categories of data to make personalised advertising such as the resources of the assumed home. GIL does not set up personalised advertising for children whom it assumes are minors within the meaning of the GDPR.*"
104. The restricted committee has concluded that "*GIL is, at least partly, responsible for the controlled processing consisting of information access or writing operations in the terminals of users residing in France when using the Google Search search engine*".
105. The restricted committee considers that no change in the role of GIL appears to have taken place since this recent finding, which therefore remains valid. It considers that the same applies to the youtube.com website when, under Google's terms of use, accessible both via the google.fr and youtube.com websites, it is identically indicated that: "*In the European Economic Area (EEA) and Switzerland, Google services are provided to you by the following company with which you enter into a contract: Google Ireland Limited*".
106. Thus, GIL is, at least partly, responsible for the processing consisting of information access or writing operations in the terminals of users residing in France when using the *Google Search* search engine and *YouTube*.

2. Concerning the liability of GOOGLE LLC

107. The companies contest the rapporteur's analysis that GOOGLE LLC shares responsibility for the processing in question with GIL.
108. The restricted committee has already taken a position on this matter, in its deliberation No. SAN-2020-012 of 7 December 2020.
109. **Firstly**, it noted that at the hearing of 22 July 2020, the companies' representatives had stated that GOOGLE LLC "*designs and builds the technology of Google products and that with regard to cookies deposited and read when using the Google Search search engine, there is no difference in technologies between cookies deposited from the different versions of the search engine.*
- Similarly, the companies, in the information they offer to French users in the rules of use accessible from "google.fr," do not make any distinction in their presentation of cookies used by the GOOGLE group since they indicate using "different types of cookies for products associated with Google websites and ads."*, which also includes the youtube.com site according to the restricted committee.
110. It notes that still today, there are no differences in the presentation of cookies used by Google (information provided to French users from the "Technology" tab, "how Google uses cookies", after clicking on the "Terms of Use" button, which can be accessed on google.fr and youtube.com). The company "*describes the types of cookies used by Google,*" stating that "*part or all of the cookies described below may be stored in your browser*". The restricted committee also notes that the privacy policies available from both google.fr and youtube.com confirm this

point as it is stated that “*This Privacy Policy applies to all services offered by Google LLC and its affiliates, including YouTube and Android, as well as to services offered on third-party sites, such as advertising services.*”

111. Thus, in the information they offer to French users, GOOGLE LLC and GIL still make no distinction in their presentation of the cookies used by the GOOGLE group.
112. **Secondly**, the restricted committee also noted, in its aforementioned deliberation, that “*despite GIL's indisputable participation in the various stages and proceedings related to the definition of how cookies are implemented on Google Search, the matrix organisation described by the companies [...] revealed that GOOGLE LLC is also represented in the bodies adopting decisions on the deployment of products within the EEA and Switzerland and on the processing of personal data of users residing therein and that it has a significant influence within it*” or that “*the data protection officer appointed by GIL [...] and his/her deputy DPOs are based in California as employees of GOOGLE LLC*”.
113. **Thirdly**, the restricted committee notes that “*although under a formal reading of the subcontracting agreement of 11 December 2018, GOOGLE LLC would act as a subcontractor of GIL in processing the data of European users collected via cookies, the actual involvement of GOOGLE LLC in the processing in question goes well beyond that of a subcontractor that merely carries out processing operations on behalf of GIL and on its sole instructions*”.
114. In view of the evidence on the record, the restricted committee maintains that GOOGLE LLC plays a fundamental role in the entire decision-making process on the processing in question. It also determines the means of processing since, as mentioned above, it is it that designs and builds the cookie technology deposited on European users’ terminals. The restricted committee notes that, although it had only pronounced itself with regard to the *Google Search* search engine in its deliberation No. SAN-2020-012 of 7 December 2020, it considers that the same reasoning is applicable, on the basis of these same elements, for *YouTube*, particularly insofar as, when the user clicks on “Privacy Policy” and “Terms of Use” from youtube.com, it is referred to the confidentiality rules and conditions of use of the GOOGLE group.
115. It emerges from all of the foregoing that GOOGLE LLC and GIL jointly determine the purposes and means of processing consisting of information access or writing in the terminals of users residing in France when using the *Google Search* search engine and *YouTube*.

G. Concerning the breach of cookie obligations

116. According to Article 82 of the French Data Protection Act “*any subscriber or user of an electronic communications service must be informed in a clear and complete manner, unless it has been previously informed by the data controller or its representative:*
 1. *Of the purpose of any action aimed at electronically accessing information already stored in their electronic communications terminal equipment, or writing information to this equipment;*
 2. *Of how he or she can object to it.**Such access or writing may only take place provided that the subscriber or user has expressed, after receiving such information, his or her consent which may come from the appropriate parameters of his/her connection device or any other device under his or her control. [...]*”.

117. Article 2(f), of the ePrivacy Directive provides that the consent of a user or subscriber corresponds to the consent of the data subject in Directive 95/46/EC, for which the GDPR has been substituted.
118. Thus, since the entry into force of the GDPR, the “*consent*” provided for in the aforementioned Article 82 must be understood within the meaning of Article 4(11) of the GDPR, i.e., it must be given in a free, specific, informed and unambiguous manner and manifested in a clear positive act.
119. In this respect, recital 42 of the Regulation provides that: “*Consent should not be regarded as freely given if the data subject has no genuine or free choice or is unable to refuse or withdraw consent without detriment.*”
120. In this case, as part of the online check of 1 June 2021, the delegation found that, in order to give his consent to the reading and/or writing of information in his terminal, the user going to the home page of the google.fr and youtube.com sites must only click on the “*I accept*” button in the pop-up window, which makes the window disappear and allows the user to continue browsing. On the other hand, users visiting these same home pages and wishing to refuse cookies must click on the “*Personalize*” button of this first window, which makes it accessible, both on the google.fr and youtube.com websites, to an interface that allows them to choose to activate or disable cookies, on which they have the possibility to perform different actions.
121. The rapporteur notes, by way of clarification, that under its guidelines 5/2020 on consent within the meaning of Regulation (EU) 2016/679, adopted on 4 May 2020, the EDPB recalled that “*the adjective “free” implies real choice and control for the data subjects*” (§13).
122. Similarly, in the context of its deliberation no. 2020-092 of 17 September 2020 adopting a recommendation proposing practical arrangements for compliance in the event of use of “cookies and other trackers”, the Commission considered, in view of the above-mentioned applicable texts, that “*the data controller must offer users both the possibility of accepting and refusing reading and/or writing operations with the same degree of simplicity*”.
123. On the basis of the findings made as part of the online check, the rapporteur observes that, if the banner displayed on the google.fr and youtube.com websites contains a button allowing immediate acceptance of cookies, no similar means are offered to the user to be able to refuse, as easily, the deposit of these cookies. To refuse cookies, they must carry out at least five actions (the first click on the “*Personalize*” button, then one click on each of the three buttons to select “*Deactivated*” - each button corresponding to the “*personalization of search*”, the “*YouTube history*” and the “*personalisation of ads*” - and finally a click on “*Confirm*”), against one single action to accept them. According to the rapporteur, such a mechanism does not present the same ease as that for expressing his or her consent, in disregard of the legal requirements of freedom of consent, which imply not to encourage the internet user to accept cookies rather than to refuse them. It thus considers that making the mechanism for refusing cookies more complex than the one for accepting them actually discourages users from refusing cookies and encourages them to prefer the “*I accept*” button. The rapporteur concludes that the methods of rejecting cookies implemented by GOOGLE LLC and GIL on the google.fr and youtube.com websites do not comply with the provisions of Article 82 of the French Data Protection Act as clarified by the enhanced consent requirements laid down by the GDPR.

124. The companies consider that neither the ePrivacy Directive, nor the GDPR nor Article 82 of the French Data Protection Act stipulate that the action to refuse cookies must be as simple as accepting them. They add that, for many years, CNIL had not itself deduced this principle even though the regulations in question had remained unchanged since the entry into force of the GDPR. They note that CNIL cannot, through its guidelines and recommendations, introduce new requirements relating to refusal of consent and consider that it is the responsibility of each data controller to choose the most appropriate method of obtaining consent. In this respect, the companies consider that the mechanism for obtaining consent set up on the google.fr and youtube.com websites already complies with the provisions of Article 82 of the French Data Protection Act. The companies consider that not offering, at the first level of information, a “Refuse all” button is not contrary to the principle of freedom of consent insofar as users have the opportunity to refuse cookies by clicking on the “Personalize” button.
125. **Firstly**, the restricted committee recalls that pursuant to Article 8 I, 2, b) of the French Data Protection Act, CNIL “*draws up and publishes guidelines, recommendations or references intended to facilitate the compliance of personal data processing with the texts relating to the protection of personal data[...]*”.
126. It is within this framework that CNIL adopted deliberation No. 2019-093 of 4 July 2019 adopting guidelines relating to the application of Article 82 of the Act of 6 January 1978 modified to read or write operations in a user’s terminal (particularly to cookies and other trackers), which provided in its Article 2, “*that it must be as easy to refuse or withdraw consent as to give it*”; then the deliberations No. 2020-091 of 17 September 2020 adopting guidelines relating to the application of Article 82 of the Act of 6 January 1978 amended to the operations of reading and/or writing in a user’s terminal (in particular to “cookies and other trackers”) and No. 2020-092 adopting a recommendation proposing practical procedures for compliance in the event of use of “cookies and other trackers”. These instruments are intended to interpret the applicable legislation and to inform stakeholders on the implementation of concrete measures to ensure compliance with these provisions, so that they can implement such measures or measures having equivalent effect. In this sense, it is stated in the guidelines that they “*are primarily intended to recall and explain the law applicable to the reading and/or writing of information [...] in the subscriber’s or user’s electronic communications terminal equipment, including the use of cookies.*”
127. As mentioned above, the Commission has considered, in its recommendation of 17 September 2020, that “*the data controller must offer users both the possibility of accepting and refusing reading and/or writing operations with the same degree of simplicity.*”
128. With regard to possible methods of refusal, in the same recommendation, the Commission recommended “*strongly that the mechanism for expressing a refusal to consent to reading and/or writing operations should be accessible on the same screen and with the same ease as the mechanism for expressing consent. Indeed, it considers that interfaces to obtain consent that require a single click to consent to tracking while several actions are necessary to “set” a refusal to consent present, in most cases, the risk of biasing the choice of the user, who wishes to be able to view the site or use the application quickly.*

For example, at the first level of information, users may have the choice between two buttons presented at the same level and in the same format, on which are written respectively “accept all” and “refuse all”, “authorise” and “ban”, or “consent” and “do not consent”, or any

other equivalent and sufficiently clear formulation. The Commission considers that this method is a simple and clear way to allow the user to express his refusal as easily as his consent.”

129. The restricted committee considers that CNIL has limited itself, in its recommendation mentioned above, to clarify the obligations provided for by the French and European legislators, drawing in particular on all the consequences of the principle of freedom of consent as defined in Article 4(11) of the GDPR, and by applying them to the hypotheses of the acceptance and refusal by the user to the deposit of cookies on his/her terminal. Indeed, this principle of freedom of consent now implies that the user enjoys “*real freedom of choice*”, as highlighted in recital 42 of the GDPR, and therefore that the methods proposed to demonstrate this choice are not biased in favour of consent. As the EDPB recalled in its consent guidelines, adopted on 4 May 2020, the adjective “free” implies real choice and control for the data subjects.
130. It thus appears that CNIL has not created in its recommendation new obligations incumbent on the stakeholders but merely illustrated in concrete terms how Article 82 of the Act must apply.
131. **Secondly**, the restricted committee notes that CNIL’s position on this point, according to which it must be as simple for users to refuse cookies as to consent, was already included in Article 2 of the guidelines of 4 July 2019 - repealed by those of 17 September 2020 - and that it was approved by the Council of State. Indeed, appealed to on the grounds of misuse of powers against these first guidelines the Council of State, in its decision on the Association des agences-conseils en communication, ruled that “*the CNIL, which, in stating that it should be “as easy to refuse or withdraw consent as to give it”, limited itself to characterising the conditions of the user’s refusal, without defining specific technical methods for expressing such a refusal, did not vitiate its deliberation with any disregard of the rules applicable in this matter*” (Council of State, 19 June 2020, No. 434684, T., pt 15).
132. The restricted committee considers that this reading is all the more necessary in view of the conclusions of the public rapporteur on this judgment, which stated: “*As the CNIL points out, the contested guidelines do not impose any technical procedure for collecting this refusal. They merely demand, in general and rightly, that it is no more complicated to refuse than to accept*” (Council of State, conclusions of the public rapporteur on judgment 434684, p. 17).
133. **Thirdly**, the committee notes that in the present case, users residing in France going to the *Google Search* search engine and/or *YouTube* must take a single action to accept cookies, whereas they have to do five to refuse them. It is therefore not as simple to refuse cookies as to accept them.
134. However, it emerges from several recent studies that the organizations that have put in place a “refuse all” button on the first level consent collection interface have seen the consent rate for the acceptance of cookies decreased. Thus, according to the “Privacy Barometer 2021” published by COMMANDERS ACT, the consent rate on computers fell from 70% to 55% in April-May 2021, since the collection of consent was explicit. Similarly, according to a 366-Kantar study, it appears that 41% of Internet users in France systematically or partially refused the storage of cookies in June 2021.
135. The restricted committee thus considers that making the mechanism for refusing cookies more complex than the one for accepting them actually discourages users from refusing cookies and encourages them to prefer the ease of the “*Accept all*” button. Indeed, an Internet user is generally led to visit many sites. Internet browsing is characterised by its speed and fluidity. Having to click on “*Personalize*” and having to understand how the page to refuse cookies is

built is likely to discourage the user, who would nevertheless like to refuse the storage of cookies. It is not disputed that in the present case, the companies offer a choice between the acceptance or refusal of cookies, but the methods by which this refusal can be expressed, in the context of Internet browsing, biases the expression of choice in favour of consent so as to alter freedom of choice.

136. **In view of the foregoing, the restricted committee considers that a breach of the provisions of Article 82 of the French Data Protection Act, interpreted in the light of the GDPR, is constituted, insofar as the companies do not make available to users located in France, on the google.fr and youtube.com websites, a means of rejecting information reading and/or writing operations in their terminals with the same degree of simplicity as that intended to accept its use.**

III. Concerning corrective measures and publicity

137. According to Article 20, paragraph III of the French Data Protection Act: *“When the data controller or its processor does not comply with the obligations resulting from the aforementioned Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 or from this Act, the chair of the Commission nationale de l’informatique et des libertés (French Data Protection Authority) may also, where applicable after having sent it the warning provided for in I of this article or, where applicable, in addition to an order provided for in II, refer the matter to the restricted committee of the Commission with a view to pronouncing, after an adversarial proceeding, any one or more of the following measures: [...] 2. An injunction to make the processing compliant with the obligations resulting from Regulation (EU) 2016/679 of 27 April 2016 or this Act or to comply with the requests made by the data subject to exercise their rights, which may be accompanied, except in cases where the processing is implemented by the State, with a penalty fine not exceeding 100,000 euros per day of delay from the date fixed by the restricted committee; [...] 7. With the exception of cases where the processing is implemented by the State, an administrative fine may not exceed 10 million euros or, in the case of a company, 2% of the total annual global turnover of the previous financial year, whichever is the greater. [...] In determining the amount of the fine, the restricted committee shall take into account the criteria specified in the same Article 83”.*
138. Article 83 of the GDPR, as referred to in Article 20(III) of the French Data Protection Act, provides that *“Each supervisory authority shall ensure that administrative fines imposed pursuant to this Article for breaches of this Regulation as referred to in paragraphs 4, 5 and 6 are, in each case, effective, proportionate and dissuasive”*, and goes on to set out the factors that should be taken into account when deciding whether an administrative fine should be imposed and the amount of that fine.

A. Concerning the issue of administrative fines and their amount

139. The companies argue that the amount of the fines proposed by the rapporteur is unpredictable, disproportionate and unjustified. They dispute the fact that, unlike other French or European administrative authorities with powers of sanction, CNIL has not provided guidelines for the

calculation of its fines. The companies further add that the rapporteur does not explain the distribution of the amount of the fine between GOOGLE LLC and GIL.

140. In addition, the companies argue that by refusing to enter into discussions with them, the rapporteur deprived them of the possibility of cooperating with CNIL, and, therefore, to avail themselves of the mitigating circumstance of Article 83-2(f) of the GDPR in order to reduce the amount of the fine.
141. The restricted committee recalls, on a general basis, that Article 20(III) of the French Data Protection Act gives it authority to impose various penalties, including administrative fines, the maximum amount of which may be equal to 2% of the data controller's total worldwide annual turnover in the previous financial year. It adds that the determination of the amount of these fines is assessed in light of the criteria specified in Article 83 of the GDPR.
142. The restricted committee notes that the rapporteur is not required to specify how the fines she proposes to the restricted committee are calculated. The Council of State also ruled that the restricted committee was not subject to this obligation (Council of State, 10th/9th, 19 June 2020, req. No. 430810). The restricted committee points out that the European courts share this position, since they have already ruled that *“it is not incumbent upon the Commission to state reasons, to indicate in its decision the figures relating to the method of calculation of the fines”* (Judgment of the Court of 16 November 2000, *Stora Kopparbergs Bergslags v. Commission*, C-286/98 P, Rec. I-9925, point 66). Case-law requires only that the sanctioning body should *“set out in clear and detailed fashion the reasoning which it followed, thus enabling the applicant to ascertain the factors taken into account in order to measure the gravity of the infringement for the purposes of calculating the amount of the fine and enabling the Court to exercise its review”* (Judgment of the Court of First Instance, Third Chamber, 8 July 2008, *BPB plc v. Commission of the European Communities*, ECLI:EU:T:2008:254, paragraph 337, case law 008 II-01333). This position is justified, on the one hand, by the fact that *“fines are an instrument of policy”* of an institution *“which must have a margin of discretion in setting their amount in order to guide the behaviour of companies towards compliance with the rules”* and, on the other hand, because *“it is important to avoid that fines are easily predictable by economic operators. Indeed, if the Commission had an obligation to indicate in its decision the figures relating to the method of calculating the amount of the fines, it would be detrimental to the deterrent effect of the fines. If the amount of the fine was the result of a calculation according to a simple arithmetic formula, the companies would have the possibility to provide for the possible sanction and to compare it with the profits they would derive from the infringement of the rules of law.”*
143. **Firstly**, the restricted committee emphasises that, in the present case, it is appropriate to apply the criterion set out in paragraph (a) of article 83 (2) of the GDPR relating to the seriousness of the breach given the nature and scope of the processing and the number of people affected by it.
144. The restricted committee notes that although GIL and GOOGLE LLC refused to communicate the volume of the number of unique visitors from the google.fr and youtube.com websites in the last twelve months from France, it emerges from the figures available on the Internet that in June 2020, Google has more than 51 million unique visitors residing in France per month and *YouTube* more than 46 million (press release of 24 August 2020 published on the Médiamétrie website). The number of persons affected by the processing in question is thus extremely high for the French population.

145. As recalled by the restricted committee in its deliberation No. SAN-2020-012 of 7 December 2020, the Competition Authority noted that, on the French market for online advertising linked to searches, Google holds a dominant position which, in many respects, presents “extraordinary” characteristics. Its search engine now totals more than 90% of the searches carried out in France and its market share in the search-related online advertising market is likely to exceed 90% (ADLC, 19 Dec. 2019, Dec. 19-D-26). The *Google Search* search engine therefore has a considerable reach in France.
146. **Secondly**, the restricted committee considers that the criterion set out in Article 83(2)(b) of the GDPR, relating to the fact that the breach was committed deliberately, should be applied.
147. The restricted committee recalls that the companies have been subject to a recent sanction relating to breaches of Article 82 of the French Data Protection Act with regard to informing and collecting the consent of persons prior to the deposit of cookies on their terminals. Although this sanction is not definitive since it is the subject of an appeal before the Council of State, the restricted committee notes, however, that the attention of the companies had been explicitly drawn by the CNIL services to the methods for refusing cookies. As part of the follow-up to the injunction pronounced by the restricted committee, the companies, on 18 December 2020, through their counsel, sent CNIL a document in which they presented the changes that GOOGLE intended to implement on the google.fr web page to respond to the injunction handed down. On 17 February 2021, the Secretary General of CNIL sent GOOGLE LLC and GIL a response constituting assistance for the companies in order to bring themselves into compliance. The said letter went “*beyond the scope of the injunction*” and also mentioned “*the methods for refusing cookies*”. The Secretary General of CNIL reminded the companies that it must be as easy to give consent as to refuse to give it or to withdraw it and indicated that it would be up to them to insert an “I refuse” button next to the “I accept” button, while specifying that they could “*of course change the names of these buttons as long as they allow the user to understand clearly and directly the consequences of his choices*”. He also stated that: “*If different ways of complying with legal requirements are possible, it seems to me that the proposal in your letter, where only an “I accept” button and a “Set” button, on which you have to click to understand how cookies can be refused, does not comply with the legal requirements of freedom of consent.*” CNIL’s Secretary General had therefore indicated to the companies, as of February 2021, the actions expected with a view to bringing into compliance at the end of the adaptation period left by CNIL to the stakeholders and which ended on 1 April 2021.
148. Moreover, the restricted committee recalls the more general context in which GOOGLE LLC and GIL chose not to offer their users, on the google.fr and youtube.com websites, the ability to easily refuse cookies. Indeed, CNIL has implemented a compliance plan on the issue of cookies spread over several years and has publicly communicated on its website, on several occasions, on the fact that it must be as easy for the Internet user to refuse cookies as to accept them, in particular on 1 October 2020 on the occasion of the publication of the aforementioned guidelines and recommendation of 17 September 2020. The adaptation period left to the stakeholders ended on 1 April 2021. Hundreds of thousands of stakeholders, from the smallest to the largest sites, have entered into compliance and have introduced a “refusal” or “continue without accepting” button on their consent collection interface.
149. In this context, the restricted committee considers that the fact that GOOGLE LLC and GIL, being among the major and essential global players of the Internet and managing some of the most visited sites, refuse to set up a system of easy refusal of cookies at the same time as they were the subject of an injunction monitoring procedure clearly alerting them on this same

subject, reveals a clear desire on the part of these companies not to change their practices. It considers that the companies have intended not to comply with the processing consisting of access or registration of information in the terminal of users residing in France when using the google.fr and youtube.com sites, or use the recommendations of the CNIL to do so.

150. **Thirdly**, the restricted committee considers that the companies cannot avail themselves of exemplary cooperation with CNIL, whereas they have never communicated the volume of the number of unique daily visitors for the google.fr and youtube.com sites in the last twelve months from France, although this information was requested by CNIL's control delegation. The restricted committee noted that Article 18 of the French Data Protection Act states that data controllers "*may not oppose the Commission's action*" and that they must take "*all useful measures to facilitate its task*". Cooperation with the supervisory authority is thus first of all a legal obligation. Thus, the obligation to cooperate is far from being fully satisfied in the present case, so that there is no need to apply a mitigating circumstance under sub-paragraph (f) of paragraph 2 of Article 83 of the GDPR.
151. **Fourthly**, the restricted committee considers that the criterion laid down in Article 83(2)(k) of the Regulation on financial benefits obtained as a result of the breach should be applied.
152. In this regard, the restricted committee notes that reading and writing operations, allowing the collection of user data for targeted advertising purposes via the google.fr and youtube.com websites, allow companies to gain considerable financial advantage. While it admits that all company revenues are not directly linked to cookies, the restricted committee emphasizes that online advertising is mainly based on the targeting of Internet users, in which the cookie participates directly by allowing the identified user to be unique and reach in order to display advertising content corresponding to his/her interests and profile.
153. It points out that, as it noted in its deliberation No. SAN-2020-012 of 7 December 2020, the GOOGLE group makes most of its profits in the two main segments of the online advertising market, i.e. display advertising and search advertising, in which cookies play an undeniable, albeit different role.
154. First of all, in the display advertising segment, the purpose of which is to display content in a specific area of a website and in which cookies and trackers are used to identify users during their browsing to offer them the most personalized content, it is established that the GOOGLE group offers products at all levels of the value chain of this segment and that its products are systematically dominant on these different levels. In this regard, the GOOGLE Group indicates, on one of its websites, that it offers an advertising ecosystem accessible from its tools and services capable of reaching more than 2 million sites, videos and applications and more than 90% of Internet users worldwide.
155. Secondly, the contextual advertising segment, whose purpose is to display sponsored results based on the key words typed by users in a search engine, also requires the use of cookies in its practical implementation, for example in order to determine the geographical location of users and, therefore, adapt the ads offered according to that location. In this respect, it emerges from the annual report of ALPHABET for 2019 that this segment in itself makes up, through the Google Ads service in particular - formerly AdWords - 61% of the GOOGLE Group's turnover.
156. If, as part of the procedure giving rise to the aforementioned deliberation, the restricted committee was not aware of the amount of the profit obtained by the GOOGLE group from the

collection and use of cookies on the French market via the revenue generated by targeted advertising on French users, it noted that “a proportional approximation from publicly available figures would lead to an estimate that France would contribute between \$680 and \$755 million to ALPHABET’s annual net income, the parent company of the GOOGLE group, which is, at the current exchange rate, between €580 and €640 million.”

157. Moreover, the restricted committee once again points out that the studies mentioned above show that companies that have put in place a “refuse all” button on the consent collection interface have seen the consent rate for the acceptance of cookies decrease. Indeed, when a button on the first level allows them to refuse cookies, a significant portion of the Internet users refuses completely or partially, cookies and other trackers, which necessarily has an impact in terms of revenues linked to online advertising. These elements therefore confirm the undeniable financial advantage derived from the breach committed by GOOGLE LLC and GIL by not implementing a mechanism to refuse consent as easy as that of accepting cookies.
158. **Finally**, the restricted committee recalls that pursuant to the provisions of Article 20 paragraph III of the French Data Protection Act, GOOGLE LLC and GIL incur a financial penalty of a maximum amount of 2% of their turnover, which was respectively [...] dollars in 2020 with regard to GOOGLE LLC and more than [...] euros in 2019 concerning GIL.
159. In its deliberation No. SAN-2020-012 of 7 December 2020, the restricted committee demonstrated the greatest involvement of GOOGLE LLC in determining the purposes and means of cookies implemented on the google.fr website in relation to GIL. Indeed, it is GOOGLE LLC which designs and builds the technology of the GOOGLE products. In addition, GOOGLE LLC exercises significant influence in the bodies deciding on the deployment of GOOGLE products in Europe and the processing of personal data of European users.
160. The restricted committee points out that due to the massive use of the *Google Search* search engine and *YouTube* in France, the number of people affected by the breach is considerable. It also notes the considerable profits derived by the companies, through the advertising income indirectly generated by the data collected by these cookies.
161. Therefore, in view of the respective responsibilities of the companies, their financial capacities and the relevant criteria of Article 83(2) of the Regulation referred to above, the restricted committee considers that a fine of €90 million against GOOGLE LLC and a fine of €60 million against GIL appear justified.

B. Concerning the issue of an injunction

162. The companies argue that the rapporteur’s request for an injunction is unnecessary, considering that it was not necessary to initiate a sanction procedure.
163. They also challenge the amount of the periodic penalty proposed in addition to the injunctions since the rapporteur does not demonstrate the need for this penalty or the proportionality of its amount, which is the maximum amount provided for by the French Data Protection Act.
164. Finally, they dispute the time limit proposed by the rapporteur at the end of which the penalty payment could be liquidated, considering that the amendment of the mechanism for obtaining

consent requires complex and substantial computer programming work. They indicate that GIL would need *at least* six months to comply with the terms of the injunction.

165. **Firstly**, the restricted committee notes that, in the current state of the cookie banner on the google.fr and youtube.com websites, users still do not have a means to refuse to read and/or write information in their terminals with the same degree of simplicity as that intended to accept its use. It therefore considers it necessary to issue an injunction so that the companies comply with the relevant obligations.
166. **Secondly**, the restricted committee adds that for the purpose of preserving its comminatory function, its amount must be both proportionate to the seriousness of the alleged breaches but also adapted to the financial capacity of the data controller. It also notes that in determining this amount, account must also be taken of the fact that the breach concerned by the injunction indirectly contributes to the profits generated by the data controller.
167. **Thirdly**, with regard to the time required to execute the injunction, the restricted committee takes note of the arguments put forward by the companies while taking into account the technical and human resources at their disposal.
168. In the light of these elements, the restricted committee considers justified the imposition of a periodic penalty payment amounting to EUR 100,000 per day of delay, payable at the end of a three-month period.

C. On publication of the decision

169. The restricted committee considers that the publication of this decision is justified in the light of the number of data subjects and the seriousness of the non-compliance.
170. The restricted committee considers that this measure will make it possible to alert users residing in France of the google.fr and youtube.com sites of the characterization of the breach of Article 82 of the French Data Protection Act and inform them of the persistence of the breach on the day of this deliberation and the injunction against the companies to remedy it.
171. Finally, the measure is not disproportionate since the decision will no longer identify the companies by name upon expiry of a period of two years following its publication.

FOR THESE REASONS

The CNIL's restricted committee, after having deliberated, decides to:

- **impose an administrative fine of €90,000,000 (ninety million euros) on GOOGLE LLC for breach of Article 82 of the French Data Protection Act,**
- **impose an administrative fine on GOOGLE IRELAND LIMITED amounting to €60,000,000 (sixty million euros) for breach of Article 82 of the French Data Protection Act,**

- **issue an injunction against GOOGLE LLC and GOOGLE IRELAND LIMITED to modify, on the google.fr and youtube.com websites, the methods of obtaining the consent of users located in France to read and/or write information in their terminals, offering them a means of rejecting these operations presenting simplicity equivalent to the mechanism provided for their acceptance, in order to guarantee the freedom of their consent;**
- **associate the injunction with a periodic penalty payment of €100,000 (one hundred thousand euros) per day of delay at the end of a period of three months following notification of this decision, with proof of compliance to be sent to the restricted committee within this period;**
- **send this decision to GOOGLE FRANCE with a view to its execution;**
- **make its deliberation public, on CNIL’s website and on the Légifrance website, the deliberation no longer identifying the companies by name upon expiry of a period of two years following its publication.**

The Chairman

Alexandre LINDEN

This decision may be appealed before the French Council of State within four months of its notification.
--