

BNP Paribas
Procedure No. 2016-06

Reprimand and fine of
EUR 10 million

Hearing of 12 May 2017
Decision handed down on 30 May 2017

**AUTORITÉ DE CONTRÔLE PRUDENTIEL ET DE RÉOLUTION
SANCTIONS COMMITTEE**

Having regard to the letter dated 25 July 2016 in which the Chairman of the *Autorité de contrôle prudentiel et de résolution* (hereinafter the ACPR) informed the Committee that the Supervisory College of the ACPR (hereinafter the College), ruling in its restricted form, decided to open a disciplinary procedure under number 2016-06 against BNP Paribas (hereinafter BNPP), which has its registered office at 16, boulevard des Italiens, 75009 Paris;

Having regard to the statement of objections dated 25 July 2016;

Having regard to the defence submissions dated 21 October 2016 and 20 January 2017, the response to the requests of the rapporteur, and the accompanying documentation, in which BNPP (i) recognises that the organisation of its system for reporting suspicious transactions in France still displayed a number of imperfections at the time of the inspection, which began in June 2015; (ii) underlines that these had in large part already been identified before the start of said inspection and that the majority had been corrected by 31 December 2016, and requests that, in light of the corrective actions undertaken, (iii) the objections be at least substantially qualified, if not dismissed altogether, and that (iv) the decision to intervene not be made public, or at the very least that it be published in an anonymous form, and (v) asks that the Committee's hearing be held in camera;

Having regard to the submission dated 13 December 2016, in which Christian Poirier, representative of the College, upheld all the notified objections;

Having regard to the report of 31 March 2017 drafted by the rapporteur Elisabeth Pauly, in which she concluded that five of the seven notified objections are entirely substantiated, one should be reduced in scope and another dismissed;

Having regard to the letters dated 10 April 2017 summoning the parties to the hearing, informing them of the composition of the Committee and indicating that BNPP's request that the hearing take place in camera shall be granted;

Having regard to the observations submitted on 25 April 2017 by BNPP regarding the rapporteur's report;

Having regard to the other documents related to the case, notably the inspection report dated 26 January 2016 and the documents submitted by the representative of the College in response to the rapporteur's requests;

Having regard to the Monetary and Financial Code, and more specifically to its Articles L. 561-15, L. 561-16, L. 612-39, R. 561-38, and R. 612-35 to R. 612-51, in the version in force at the time of the events;

Having regard to Regulation No 97-02 on the internal control of credit institutions and investment firms (hereinafter Regulation No 97-02), and in particular Article 11-7 thereof;

Having regard to the *Arrêté* (ministerial order) of 3 November 2014 on the internal control system of companies in the banking, payment services and investment services sector supervised by the ACPR (hereinafter the *Arrêté* of 3 November 2014), and in particular Articles 46, 50, 51, 52, 55, 254 and 255 thereof;

Having regard to the Sanctions Committee's Rules of Procedure;

The ACPR's Sanctions Committee, comprising Rémi Bouchez, Chairman, Claudie Aldigé, Jean-Pierre Jouguelet and Thierry Philipponnat;

Having heard at the session held in camera on 12 May 2017:

- Elisabeth Pauly, rapporteur, aided by Fabien Patris, her deputy;
- Rodolphe Lelté, representing the Director General of the Treasury, who said that he had no comments to make;
- Christian Poirier, representing the ACPR College, aided by the ACPR's Deputy Director of the Legal Affairs, the Deputy Head of Institutional Affairs and Public Law, a lawyer from the latter division and the Head of the Banking Supervision Directorate 1; Mr Poirier proposed issuing a warning along with a fine of at least EUR 10 million, to be published in a non-anonymous decision;
- BNPP, represented by the Group's Head of Compliance who is also a member of the Executive Committee, aided by the Group Deputy Head of Financial Security Compliance (Paris), the Head of Financial Security for French Retail Banking (BDDF), the Head of Legal Affairs for Financial Security (Paris), and by the barristers Jean-Guillaume de Tocqueville, Benjamin Delaunay and Valentin Olivet (from the law firm Gide Loyrette Nouel AARPI);

Where BNPP's representatives were given the last word;

Having deliberated in the sole presence of Mr Bouchez, Chairman, Ms Aldigé, Mr Jouguelet and Mr Philipponnat, as well as that of Mr Jean-Manuel Clemmer, Chief Officer of the Sanctions Committee, who acted as meeting secretary;

1. Whereas BNPP is a public limited company licensed to operate as a credit institution, and was formed by the merger in 1966 of Banque Nationale pour le Commerce et l'Industrie (BNCI) and Comptoir National d'Escompte de Paris (CNEP), and subsequently by the merger in 2000 of this group with Banque de Paris et des Pays-Bas (Paribas); whereas, in 2016, BNPP Group, of which it is the parent company, was present in 74 countries, and had over 192,000 staff and EUR 100 billion of capital;

whereas, in that same year, BNPP posted revenues of EUR 43 billion and net income of EUR 7.7 billion; whereas BNPP is structured into 3 divisions: Retail Banking, Corporate and Investment Banking and Investment Solutions; whereas the Retail Banking division includes French Retail Banking, which comprises BDDF Retail, BDDF Enterprise, French after-sales and private banking activities, and specialised financial services; whereas French Retail Banking is organised into 8 network divisions comprising 84 branch groups, and 28 business centres and private banking centres, and includes subsidiaries in the overseas territories and in online banking; whereas at the time of the inspection it employed over 30,000 staff;

2. Whereas BNPP was the subject of an on-site inspection between 25 June and 2 October 2015, the purpose of which was to examine its practices with regard to the reporting of suspicious transactions in France; whereas the inspection resulted in the signature of a final report on 26 January 2016 (hereinafter the inspection report); whereas, in light of this report, the College decided, at its meeting held on 5 July 2016, to open this disciplinary hearing;

I. On the organisation of the resources allocated to the suspicious transaction report (STR) system.

A. On the adaptation and updating of procedures for drafting STRs

3. Whereas paragraph I, point 4 of Article R. 561-38 of the Monetary and Financial Code provides that reporting entities must

"define procedures covering risk control, the implementation of due diligence measures for clients, the filing of documents, the detection of unusual or suspicious transactions and compliance with the obligation to report to Tracfin"; whereas, pursuant to Articles 254 and 255 of the Arrêté of 3 November 2014, *"Reporting companies compile and regularly update procedure manuals that are pertinent and adapted to their specific operations"* and *"in the same conditions, compile and regularly update documentation specifying the resources required to ensure the proper functioning of the internal control system"*;

4. Whereas, according to **objection 1**, which is based on these provisions, at the time of the inspection in June 2015, the institution's procedures for drafting and processing STRs had not been updated or created to take into account the transfer of responsibilities between February 2013 and 31 March 2015 from the anti-money laundering unit (CAB), which is attached to Group Compliance, to the unit for investigating and detecting suspicious transactions (PIDOS), which is attached to BDDF's Compliance department;

5. Whereas, at the time of the inspection, BNPP's Compliance department was undergoing a major reorganisation following the sanction imposed by the US authorities; whereas this did not exempt BNPP from its obligation to set out procedures describing the precise organisation of its reporting function, and thus taking into account the transfer of responsibilities between CAB and PIDOS under the "Cerise" project, which had itself been launched following the inspection conducted in 2012; whereas, although the transfer of responsibilities was approved in February 2013 and implemented between June 2013 and March 2015, the operational guide detailing how PIDOS should process STRs was only drafted in November 2015; whereas the document *"anti-money laundering - reporting of suspicious transactions – organisation and procedures"* taking into account these changes was not disseminated until 20 September 2016, after being validated on 31 March 2016, and the updated Group and France procedures for STRs were established on October 2016; whereas the previous inspection, conducted in 2012 and covering anti-money laundering and combating the financing of terrorism procedures (AML/CFT) at BDDF (excluding BNPP's private banking activities), had already highlighted, among the *"critical points"* that *"do not yet appear to have been dealt with in depth: inadequate management of the updating of procedures"*; whereas the follow-up letter sent on 21 September 2012 noted that *"there is currently no annual schedule of AML/CFT procedures to be updated or drafted. The lack of any planned initiative or effective management of the procedures means that the updating of the body of procedures is not monitored very rigorously or closely. Although a number of positive developments were noted over the course of the inspection, it still generally takes far too long to update the procedures"*; whereas, although

the purpose of the 2015 inspection was not to verify the steps taken since 2012, it is clear from these observations that BNPP's system for updating its AML/CFT procedures had still not been fully corrected since the previous inspection; whereas the presentations on the new organisation given to the relevant BNPP units are too infrequent and thus, while useful, do not make up for the lack of effective updates to the procedures; whereas the objection is therefore substantiated;

B. On the allocation of sufficient human resources to the STR system

6. Whereas Article 51 of the *Arrêté* of 3 November 2014 requires that *"reporting companies ensure, using procedures consistent with their size, the nature of their activities, and the risks identified in the classification of AML/CFT risks, that they have sufficient human resources in place to analyse the anomalies detected by the aforementioned systems"*;

7. Whereas, according to **objection 2**, which is based on these provisions, at the time of the inspection, the number of staff assigned by BNPP to the processing of proposed STRs was insufficient to meet the group's reporting obligations vis-à-vis Tracfin; whereas the inspection report reveals that, from January 2013 to September 2015, the institution had insufficient capacity to deal with the high number of proposed STRs within a reasonable deadline, or to process those already outstanding; whereas, with a headcount of 16 permanent staff and 7 external consultants in 2013, then 14 permanent staff and 9 external consultants in 2014, CAB had 206 proposed STRs awaiting processing in January 2013 and 2,079 in January 2014; whereas, according to the inspection report, the average time taken to process a case, between receipt of the STR proposal by CAB and its transmission to Tracfin, was 231 days in 2014; whereas, following the gradual transfer of the handling of BDDF STR proposals to PIDOS, the outstanding stock awaiting processing by CAB fell to 494 in January 2015 then to 28 in July 2015; whereas, the inspection report nonetheless noted that the outstanding stock of STRs awaiting processing had been transferred to PIDOS; whereas the number of proposed STRs awaiting processing in PIDOS had thus increased from 98 in January 2014 to 527 in May 2015 then to 1,278 in September 2015, plus a further 522 waiting to be assigned, making a total of 1,800 cases; whereas, the average time taken to process a proposed STR in PIDOS also increased, from an average of 55 days in 2014 to 68 days in the first 8 months of 2015;

8. Whereas these observations are not contested by BNPP, which says that the failings had already been identified in April 2015, that is prior to the inspection, and asks that the Committee qualify the objection in view of the corrective measures already implemented under the new organisation, whereby PIDOS handles the majority of the proposed STRs but must inform CAB when certain criteria are met (notably in the case of transactions by private banking France clients or by politically exposed persons, and transactions in excess of EUR 500,000); whereas the continued rise, following the inspection, in the stock of outstanding STR proposals submitted by the BDDF network groups and by the subsidiaries in online banking and in the overseas territories and still awaiting processing, to a total of 3,039 in February 2016, and the fact that average processing times remained high over that year (see recital 22 below) attest to the considerable delay on BNPP's part in adapting its human resources to its needs; whereas, under the new system, the increase in CAB's and PIDOS's total headcount, from 7 in 2012 to 105 in 2016, which enabled the stock of outstanding STR proposals to be reduced to around 425 at the end of that year, can be deemed to be a corrective action; whereas, in absolute terms, the majority of these new recruitments occurred after the on-site inspection, since the two departments had a combined headcount of just 35 at the end of 2015; whereas these actions have no bearing on the objection which therefore remains substantiated and is all the more serious given that the failing had already been pointed out by the inspection of June 2012, and that the headcount needed in order to meet the necessary obligations was low relative to BNPP's size, and in particular relative to that of BDDF;

C. Obligation for individuals reporting to Tracfin to hold an adequate position

9. Whereas Article 52 of the *Arrêté* of 3 November 2014 specifies that reporting entities must *"ensure that the staff concerned have adequate experience, qualifications and training and hold an adequate position to be able to carry out their mission"* and *"ensure that these staff have access to the internal information necessary for the exercise of their functions"*;

10. Whereas, according to **objection 3**, which is based on these provisions, the PIDOS Tracfin declarants did not hold positions enabling them to perform their functions with a sufficient degree of independence, as they were obliged, before sending an STR to Tracfin, to obtain the formal approval of the heads of the network groups or business centres that originally submitted, or were concerned by the proposed STR, and there was no escalation procedure in place allowing them to bypass a lack of approval;

11. Whereas Article 51 of the *Arrêté* of 3 November 2014 requires that "*reporting companies ensure, using procedures consistent with their size, the nature of their activities, and the risks identified in the classification of AML/CFT risks, that they have sufficient human resources in place to analyse the anomalies detected by the aforementioned systems*", that is by the systems referred to in Articles 46 to 50 for monitoring and analysing transactions; whereas, in specifying, immediately after this section, the terms referred to above (see recital 9), the regulatory requirements regarding the qualifications, training and position of the "*staff concerned*", Article 52 of the aforementioned *Arrêté* necessarily refers to those staff assigned to the task of analysing detected anomalies; whereas the obligations of Tracfin declarants and correspondents are specified, not in Article 52 but in Articles 54 to 56 of said text, and in particular in Article 55, which requires that they have access to all information necessary for the exercise of their functions but does not specify that they must hold an "*adequate position*"; whereas, although the joint ACPR/Tracfin guidelines on reporting and disclosure obligations with regard to Tracfin state, in confirmation of Articles 54, 55 and 56 of the *Arrêté* of 3 November 2014, but not of Article 52, that credit institutions must "*ensure that Tracfin correspondents and declarants have the resources required for their functions, according to their respective skills, and thus hold a specific position within the financial organisation concerned*" (p. 19), they do not in themselves form a sufficient basis for applying a sanction; whereas, as a result, the elements cited in the present objection cannot be regarded as a failure to comply with the provisions referred to by the plaintiff authority; whereas the provisions on which the allegations are based in the context of a repressive procedure must be interpreted strictly to the letter; whereas, as a result, the objection must necessarily be dismissed;

D. On ensuring Tracfin declarants have sufficient access to information

12. Whereas Article 55 of the *Arrêté* of 3 November 2014 requires reporting entities to "*ensure that the aforementioned correspondents and declarants have access to all the information necessary for the exercise of their functions*" and "*provide them with the tools and resources necessary to carry out the following tasks, according to their respective abilities: / - submit the declarations specified in Article L. 561-15 of the Monetary and Financial Code; / - process the requests for information from the national body Tracfin*";

13. Whereas, according to **objection 4**, which is based on these provisions, BNPP did not ensure its Tracfin declarants and correspondents could access all the information needed to carry out their functions, or supply them with the tools and resources needed to establish STRs; whereas, due to their inability to directly access identification and KYC information on all the bank's clients (overseas subsidiaries, Wealth Management), and all the automated alert systems (alerts generated by the tool V or W), said declarants and correspondents were obliged to ask for help from the managing entities concerned in order to process the proposed STRs, and there was no escalation procedure in place enabling them to counter any refusals or delays on the part of the local entities in transmitting the relevant information; whereas, in five out of the 57 cases examined by the inspection (A1, A2, A3, A4 and A5) there had either been no response or a delayed response to the Tracfin correspondents' or declarants' requests for information, making it difficult for them to accomplish their mission and adding to the delays in submitting STRs;

14. Whereas BNPP does not contest that the transmission of information to CAB and PIDOS could have been improved at the time of the inspection, but feels that the objection should be qualified given the corrective measures taken to resolve the issue; whereas, although, as BNPP rightly stresses, Article 55 of the *Arrêté* of 3 November 2014 does not oblige reporting entities to give Tracfin declarants and correspondents direct access to information, said article should necessarily be interpreted as implying that the individuals in question should have access to tools and resources enabling them to

obtain, easily and in a timely manner, the information needed to analyse the proposed STRs, and to submit said STRs, where necessary, within a reasonable timeframe; whereas the alleged shortcoming not only concerns the inability of declarants and correspondents to directly access information under certain circumstances, but also the fact that the organisation in place at the time did not allow them to ensure that the information obtained from local entities was actually sent to them within a timeframe compatible with the fulfilment of their duties; whereas, although this objection, which relates to the organisation of BNPP's system and not to individual failings, is only substantiated by a few specific cases, these cases nonetheless illustrate and confirm that the objection is indeed founded; whereas, in case A1, there was no reply to a request sent by CAB to a BNPP subsidiary for information on one of its clients; whereas, similarly, in case A2, no reply was given to a question sent by GFS to a branch group regarding the unusual transactions carried out by a particular client; whereas, in case A3, the local Compliance function, after initially drafting a proposed STR, had not replied to CAB's questions, despite receiving two reminders; whereas, in case A4, PIDOS had dismissed an alert without following it up, due to a lack of response on the part of one of the local risk functions (P2R) set up in each regional department as of 2013; whereas, in case A5, the branch group had failed to reply to CAB despite receiving several reminders; whereas the fact that these failings had been identified by the On-Site Controls unit in June 2015 is not a sufficient defence against the objection regarding the inadequacy of BNPP's system at the time of the inspection, even though it certainly helped to remedy the situation; whereas the inspection report of 2012 and the related follow-up letter both stated that BDDF's financial security function, of which CAB formed a part, did not have any useful information on the cases of money laundering detected, and that, as part of the reorganisation underway, it was important to reinforce "*the exploitation of information on proposed STRs for piloting purposes*"; whereas the corrective measures presented, which notably ensured that "*CAB and PIDOS staff had direct access to the tools and information necessary for their functions, and notably to those relating to the subsidiaries in the overseas territories which were more directly concerned by the objection*", and included the incorporation into Group and France procedures of BDDF operating methods "*governing the timeframe for the exchange of information between business relationship managers and PIDOS and CAB, and the escalation procedure [...]*", were implemented after the inspection and thus have no bearing on the objection, which is therefore substantiated;

II. On compliance with obligations regarding the detection of unusual transactions

15. Whereas, Article 46 of the *Arrêté* of 3 November 2014 provides that "*reporting entities must have systems to monitor and assess their business relationships, based on their knowledge of their customers, which enable them in particular to detect any transactions that are unusual in view of the profile of the business relationship and that merit enhanced scrutiny pursuant to Article L. 561-10-2 (II) or need to be reported pursuant to Article L. 561-15 of the Monetary and Financial Code*";

16. Whereas, according to **objection 5**, which is based on these provisions, BNPP's system for detecting unusual or suspicious transactions was inefficient, since in 18 out of the 57 cases examined by the inspection (A6, A7, A8, A9, A3, A10, A11, A12, A2, A13, A14, A15, A16, A17, A18, A19, A20 and A21), the institution's analysis had been triggered in response to an external event, a judicial requisition, the exercise by Tracfin of its right to information, or, in one case, an accidental discovery;

17. Whereas, first, BNPP maintains that the transactions referred to in the notification of objections were carried out prior to the publication of the *Arrêté* of 3 November 2014, and it cannot therefore be sanctioned on the basis of this *Arrêté*; whereas, the aforementioned provisions of the *Arrêté* of 3 November 2014 nonetheless reproduce in their entirety the terms of paragraph 2.2 of Article 11-7 of Regulation No. 97-02, which they are intended to replace; whereas, as a result, the sole reference in the notification of objections to the provisions of the *Arrêté* cannot be seen as a retroactive application of disciplinary provisions; whereas this did not prevent BNPP from understanding the nature of the allegation against it or from making observations in its defence; whereas it is not therefore possible to dismiss the objection on the grounds of this reference error;

18. Whereas BNPP, while not contesting the materiality of the facts, cites the various corrective measures taken since the inspection and insists on their relevance and

efficiency; whereas the client transactions referred to in the notification of objections should nonetheless have triggered an alert due to their specific characteristics, regardless of any external events; whereas, in 2014, out of 4,174 STRs sent to Tracfin, only 688 or 16% stemmed from the detection tools X (management of deposits) and Y (a posteriori monitoring of accounts and of unusual transactions); whereas the deployment of tool X at all entities concerned was only completed at the start of 2017; whereas, although BNPP maintains that the configuration of tool Y had been modified, in accordance with the terms of the follow-up letter of 21 September 2012 which stressed its inefficiency, this modification had no immediate impact on the quality of the detection system; whereas, among the other corrective measures also mentioned, the "tool project" implemented as part of the OPTIM mission, the purpose of which was to optimise the monitoring tools X and Y and deploy a new tool (Z) designed to automate all enquiries concerning the client base, had not yet been completed at the start of 2017; whereas the improvement of BNPP's system, following which, in 2016, the number of STRs created increased to 6,332, 81% of which stemmed from the two main detection tools, came after the inspection; whereas objection 5 is therefore substantiated;

III. On compliance with the obligation to report suspicious transactions

A. On reporting times for suspicious transactions

19. Whereas, according to Article L. 561-16 of the Monetary and Financial Code "[...] *Where a transaction which should have been the subject of the report referred to in Article L. 561-15 has already been executed on account of it being impossible to defer its execution, or because its deferral could have obstructed investigations relating to a suspected money laundering or terrorist financing transaction, or because it did not appear to be subject to said report until after its execution, the entity referred to in Article L. 561-2 shall inform the unit referred to in Article L. 561-23 thereof without delay*";

20. Whereas, according to **objection 6** which is based on these provisions, the average length of time between the execution of a suspicious transaction by BNPP and the submission of an STR to Tracfin is excessive; whereas the length of time declared in the "BLANCHIMT" report was indeed 285 days for 2013 and 413 for 2014; whereas the length of time declared for 2015 was 285 days, taking into account a change in the method of calculation; whereas the inspection report found that the STRs had been submitted after an excessive delay in 34 cases (A22, A23, A24, A25, A26, A27, A28, A29, A1, A8, A30, A31, A32, A10, A12, A13, A14, A15, A16, A33, A34, A35, A36, A37, A38, A39, A40, A41, A42, A4, A43, A44, A5 and A45);

21. Whereas the average STR times specified in the notification of objections, which are not contested, and which reached 285 days in 2013 and 2015 and 413 days in 2014, imply that BNPP could not meet its obligation under Article L. 561-16 of the Monetary and Financial Code to inform Tracfin "*without delay*" of suspicious transactions that have already been executed, however these terms are interpreted; whereas the reporting time exceeded a year in 34 cases, illustrating the objection; whereas, by way of example, among the cases examined by the inspection, in case A22, relating to a recently created company operating in the construction sector and which had made no payments to the Treasury or to the relevant welfare organisations, the first unusual transaction, executed in January 2012, had been followed by several others; whereas, following the detection, on 9 October 2012, of the suspicious nature of these transactions, it took nearly a year for PIDOS to send an STR proposal to CAB, and then more than a year for the STR to be sent to Tracfin; whereas, similarly, in case A38, after an alert had been generated on 25 February 2013, notably following frequent and large cash withdrawals as of January 2010, an STR was only sent to Tracfin on 19 April 2014; whereas, in general, BNPP, which does not contest the excessive delays in the submission of STRs in the 34 cited cases, requests that the Committee qualify this objection, on the grounds that the suspicious nature of the transactions in question had been detected either in the first half of 2013 at the latest (in 24 cases), or later, but at a date when the "Cerise" project was being deployed and its positive effects had not yet been felt (in 10 cases); whereas these explanations nonetheless have no bearing on the objection, which is therefore substantiated;

22. Whereas these long reporting times should be considered alongside the lack of resources assigned by BNPP to the processing of proposed STRs, which is another criticism levelled at the group (see

recitals 7 and 8 above); whereas, in addition to the individual cases which illustrate the objection, the average time taken to submit STRs, which provides a better picture of the overall efficiency of the system than can be obtained from a sample, remained significant throughout 2016 (271 days on average), and even reached a peak of 325 days in September of that year; whereas there was no notable reduction in this length of time until the beginning of 2017, when it fell from 268 days to 166 between January and March; whereas, according to the information provided by the representative of the College during the hearing, this compares very unfavourably with the average time taken to submit STRs to Tracfin at the seven largest banks, which is 84 days; whereas BNPP's target of reducing the time between the detection of an unusual transaction and the submission of an STR to Tracfin to 60 days should only be met in 2018; whereas the different steps to detect and correct this failing were taken somewhat late, given that the 2012 inspection report had already underlined that "*in spite of the improvement in productivity, there was a sharp increase in 2010 in the time taken by CAB to process STRs, and the outstanding stock of STRs at end-January 2011 represented four months' work, compared with one month (CAB's objective) at end-2009*", and that "*given the increased exchanges between PIDOS and the groups that this reform [whereby responsibility for conducting in-depth analyses of proposed STRs was transferred from CAB to PIDOS] will necessarily generate, it is important to ensure that it does not lead to an increase in processing times, which are already higher than the ten days specified in the internal procedures (61 days on average in the first quarter of 2011)*"; whereas, although this issue was not brought up again in the follow-up letter or in the formal notice sent after the previous inspection, the 2012 inspection report still enabled BNPP to identify the failing at that time and put in place the resources needed to correct it, yet this was not done;

B. On failure to submit initial and complementary STRs

23. Whereas, according to paragraphs I, III and V of Article L. 561-15 of the Monetary and Financial Code: "*I. - The entities referred to in Article L. 561-2 shall be required, under the conditions set forth in this chapter, to declare to the unit referred to in Article L. 561-23 the sums entered in their books or the transactions relating to sums which they know, suspect or have good reasons for suspecting are the proceeds of an offence punishable by a custodial sentence of more than one year or are destined for terrorist financing. / [...] III. Upon completion of the thorough examination stipulated in paragraph II of Article L. 561-10-2, the entities referred to in Article L. 561-2 shall, where applicable, make the report referred to in paragraph I of this article / [...] V. - Any information likely to invalidate, confirm or alter the elements contained in the report shall be drawn to the attention of the unit referred to in Article L. 561-23 without delay*";

1°) On failure to submit an initial STR

24. Whereas, according to **objection 7**, which is based on these provisions, in 7 of the 57 cases examined by the inspection, no initial STR was found (cases A46, A47, A48, A49, A50, A51 and A52);

25. Whereas BNPP stresses that, in several of the cases where it is accused of failing to submit an STR, a judicial requisition was issued or Tracfin exercised its right to information, and these procedures covered the events that had initially aroused the suspicions; whereas BNPP argues that in the 2010 version of the joint ACPR and Tracfin guidelines, financial institutions were advised not to send STRs to Tracfin based solely "*on the fact that the institution had received a judicial requisition [...] concerning such transactions*"; whereas, as a result, "*following receipt of a judicial requisition (or right to information from Tracfin), a credit institution does not have to submit a suspicious transaction report if its response covers all the suspicious transactions of which it is aware*"; whereas, nonetheless, there is no text in force exempting institutions from the obligation to submit an STR if they have received a judicial requisition or demand for information from Tracfin; whereas, in any event, an institution is deemed to have failed to comply with its reporting duties if, at the date of receipt of a judicial requisition or demand for information, said institution should already have sent an STR to Tracfin or its response does not cover all the suspicious transactions of which it is aware;

26. Whereas, first, in case A46, several credit and debit transactions were recorded in the company account between April and October 2012, including the payment of cheques to private individuals in amounts that were unjustified given the scale of the company's activities; whereas, in particular, EUR 351,864 was debited from the account and EUR 274,818 credited to it in July 2012, amounts that were incompatible with the company's reported turnover of around EUR 30,000; whereas the minutes of an interview with the manager of the company on 26 July 2012 noted that the explanations given for these transactions were difficult to understand, which should have led to the submission of an STR to Tracfin before the latter exercised its right to information on 26 March 2013; whereas an STR was finally sent to Tracfin on 13 January 2016;

27. Whereas, in case A47, since 2012, the flows recorded in the personal account of the client, who, according to the information available to the institution, was the manager of a retirement home, had been well in excess of the client's salary and had stemmed from the deposit of cheques issued and signed by the client's employer; whereas, at the date when Tracfin exercised its right to information, that is on 20 November 2014, the transactions carried out by the client should already have led to an STR; whereas an STR was finally sent to Tracfin on 7 January 2016;

28. Whereas, in case A48, [regarding a] citizen [of a European Union (EU) country residing [in a non-EU country] and formerly a senior manager at [a central bank], the enhanced scrutiny by BNPP of this person, whom BNPP had classified as politically exposed and who had received [several hundred thousand euros] via a number of bank transfers from a Luxembourg-based company, for which he had refused to provide evidence establishing that he was the effective beneficiary, through an account [located in the EU country of which he was a citizen], was insufficient to eliminate all suspicion concerning the provenance of the funds; whereas the client continued to provide evasive answers, in particular regarding any remuneration he might have received in respect of his position [at] a company described as a wealth management trust; whereas he had also refused to provide evidence establishing whether he was the effective beneficiary of the Luxembourg-based wealth management company that had initiated the bank transfers, and it was clear just from looking at the irregular timing of these transfers that they did not correspond to a regular remuneration for paid employment; whereas an STR was finally sent to Tracfin on 11 October 2016;

29. Whereas, in case A49, the sharp increase in activity as of October 2013 in the account of the recently created company, which was unjustified in light of the information available to the institution, which in turn did not know in what products the company was dealing in its declared capacity as an intermediary, should have led to the submission of an STR to Tracfin before the receipt of the four judicial requisitions as of 3 April 2014; whereas an STR was finally sent on 13 January 2016;

30. Whereas, in case A50, the sharp rise in credit flows to the client account in 2013 and 2014, which were well in excess of the client's declared income, the payment of sums into the account by the local division of a political party, and the debit and credit flows between the account and two associations for which the client was an official representative, should have resulted in the transmission of an STR to Tracfin before the latter exercised its right to information on 18 February 2015; whereas an STR was finally sent on 19 January 2016;

31. Whereas, in case A51, the transfers to the accounts of a client from a country classified as highly sensitive by BNPP, via a transitory account domiciled in said country, should have led to enhanced scrutiny on the part of BNPP in accordance with its internal procedures, as should the client's dual nationality, which had not been noted by BNPP, and, given the high number of alerts generated on this account between 31 July 2014 and 10 February 2015, should have led to an STR being transmitted prior to the first exercise by Tracfin of its right to information on 20 April 2015; whereas an STR was finally sent to Tracfin on 30 December 2015;

32. Whereas, in case A52, on the other hand, which regards a [Scandinavian] payment institution operating in France under the freedom to provide services, the inspection report does not lead to the conclusion that BNPP should have conducted enhanced scrutiny, or sent an STR before it received the first judicial requisitions, in December 2012; whereas the plaintiff authority has not established that

transactions were conducted that were not covered by the judicial requisition; whereas the demands for information from Tracfin were received in August and September 2014, that is approximately a year after the closure of the account; whereas the objection is therefore dismissed;

33. Whereas the scope of objective 7, which BNPP asks be qualified, is thus reduced to six cases;

2°) *On the failure to submit complementary STRs*

34. Whereas, according to **objection 8** (case A9), following the publication in the press of the information that B, manager of company C, had been formally charged, BNPP did not send Tracfin a complementary STR concerning two bank transfers of [X] euro respectively, made in March 2015, to the beneficiary D and to company E – a wealth management company belonging to the client;

35. Whereas, on 7 March 2013, BNPP sent Tracfin an STR concerning a cheque payment of [X] euro and a bank transfer of [X] euro, made respectively [in] December 2010 and [in] April 2011 to company C, of which B is the effective beneficiary; whereas the information on the very large transfers in the opposite direction, cited above, were liable to "*invalidate, confirm or modify the elements in the initial report*"; whereas a complementary STR was not transmitted to Tracfin until 23 September 2015; whereas the objection is therefore substantiated;

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36. Whereas it is clear from the above that at the time of the inspection, BNPP's AML/CFT procedures had not been updated to take into account the major internal reorganisation approved by the institution regarding STR proposals and the transmission of STRs (**objection 1**); whereas BNPP for a long time had insufficient human resources in place to comply with its reporting obligations in accordance with legal requirements; whereas, as a result, there was a sharp rise in the number of STR proposals left awaiting processing (**objection 2**), and a considerable increase in the amount of time taken to send STRs to Tracfin (**objection 6**); whereas the fact that Tracfin correspondents and declarants did not have sufficient access to the information they needed was notably made clear by the failure of certain units to reply to requests for details (**objection 4**); whereas, at the time, the level of efficiency of the IT tools for detecting unusual transactions, which, in an institution of this size, is crucial to ensuring it complies with its reporting obligations, was low (**objection 5**); whereas, in addition to the shortcomings described above, there were also a few cases noted where BNPP had failed to send an initial or complementary STR (**objections 7 and 8**); whereas, although one objection was dismissed (**objection 3**), those that have been upheld relate to major shortcomings affecting essential aspects of the reporting process, from the detection of suspicious transactions to the transmission of STRs to Tracfin; whereas, due to the relative weight of the reporting activities of BNPP, which the inspection report of 8 June 2012 specified was the leading reporter at national level, and which, in 2015, sent 3,163 of the 43,231 STRs received by Tracfin, these shortcomings necessarily affect the entire French AML/CFT system; whereas, furthermore, some of the shortcomings noted in the 2015 inspection had already been detected during the previous inspection, conducted three years earlier;

37. Whereas BNPP argues that the 2015 inspection took place at a difficult time, when major work was underway and staff were extremely busy dealing with the consequences of the heavy sanction imposed shortly before by the US authorities; whereas, despite these admittedly exceptional circumstances, BNPP still had a duty to comply effectively with its AML/CFT reporting obligations; whereas, it is true that, as indicated in the inspection report and at the hearing, certain cases that can be regarded as sensitive and notably those relating to politically exposed persons, terrorism and private banking, were indeed processed significantly more rapidly than the average by CAB, that is within an average of 44, 65 and 47 days respectively during the period under review; whereas, above all, the corrective measures taken by BNPP appear to be substantial in the College's opinion, and in some cases were already in place at the time of the decision, although their actual effectiveness, notably in achieving a significant and lasting reduction in the average time taken to report to Tracfin, remains to be demonstrated;

38. Whereas, in view of their nature and seriousness, the shortcomings upheld by the Committee provide sufficient grounds for a reprimand; whereas, for the same reasons, but in light of the mitigating circumstances cited above, and, in accordance with the principle of proportionality, in light of BNPP's financial situation, the fine shall be limited to EUR 10 million;

39. Whereas, the damage that would result from the publication of this decision in non-anonymous form does not appear to be excessive; whereas such a publication would not cause serious disruption to the financial markets; whereas the present decision will therefore be published non-anonymously;

FOR THE FOREGOING REASONS

DECIDES:

ARTICLE 1 – A reprimand and a fine of EUR 10 million (ten million euro) shall be imposed on BNPP.

ARTICLE 2 – This decision will be published in the register of the ACPR and may be consulted at the Committee Secretariat.

The Chairman of the Sanctions
Committee

[Rémi BOUCHEZ]

This decision may be appealed within two months of its notification, in accordance with the conditions set out in paragraph III of Article L. 612-16 of the Monetary and Financial Code.