CREDIT INSTITUTION B

Procedure n° 2017-08

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Reprimand and fine
of EUR 8 million

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Hearing of 22 February 2018
Decision handed down on 22 March 2018

AUTORITÉ DE CONTRÔLE PRUDENTIEL ET DE RÉSOLUTION
SANCTIONS COMMITTEE

Having regard to the letter dated 26 July 2017, in which the Chairman of the *Autorité de contrôle prudentiel et de résolution* (ACPR – French Prudential Supervision and Resolution Authority) informed the Committee that the ACPR Supervisory College (hereinafter, the 'College'), meeting in a restricted session, decided to open a disciplinary procedure against credit institution B;

Having regard to the statement of objections dated 26 July 2017;

Having regard to the defence submissions dated 9 October and 18 December 2017, the document dated 15 January 2018 submitted in response to the Rapporteur's request for information, and the enclosed supporting documents, in which credit institution B challenges all the objections notified, with the exception of sub-objection 3.1 on information provided to employees concerning anti money-laundering and counter terrorist financing measures (hereinafter, 'AML-CTF'); with regard to the first objection, it has asked the Committee, in the alternative and at the very least, to take into consideration the difficulties it has encountered — as have all financial institutions — in defining automated terrorist financing (hereinafter, 'TF') risk detection scenarios in connection with general purpose consumer loans and integrating them into its existing detection tools; it has also requested that its efforts to develop new tools for that purpose be taken into consideration; in addition, it has asked that the forthcoming decision be issued on an anonymous basis and that the Committee hearing not be held in public;

Having regard to the statements of reply dated 23 November 2017 and 4 January 2018, in which Jean-Luc Guillotin, representing the College, maintained all the objections;

Having regard to the report dated 22 January 2018 by Rapporteur Denis Prieur, in which he concluded that the three objections are substantiated, but that the first objection concerning the inadequacy of credit institution B's business relationship monitoring system is substantiated subject to a reduced scope;

Having regard to the letters dated 22 January 2018 summoning the parties to the hearing, informing them of the composition of the Committee and indicating that the hearing would not be held in public, as requested by credit institution B;

Having regard to credit institution B's observations submitted on 6 February 2018 on the Rapporteur's report and the exhibit submitted on 20 February 2018;

Having regard to the other case documents, including in particular the inspection report dated 17 March 2017;

Having regard to the French Monetary and Financial Code (*Code monétaire et financier*, hereinafter, the 'Code') and in particular its Articles L. 561-6, L. 561-10-2, L. 561-15, L. 561-33, L. 612-39 and R. 612-35 to R. 612-51, in the versions in force at the time of the on-site inspection;

Having regard to the decree of 3 November 2014 on the internal control of companies in the banking, payment services and investment services sector supervised by the *Autorité de contrôle prudentiel et de résolution* (hereinafter, the 'Decree of 3 November 2014') and in particular its Articles 45, 46, 49 and 50;

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

The ACPR Sanctions Committee, comprising Rémi Bouchez in the chair, Claudie Boiteau, Yves Breillat and Thierry Philipponnat;

Having heard at the session held in camera on 22 February 2018:

- Denis Prieur, Rapporteur, aided by his deputy, Lauriane Bonnet;

- Priscille Merle, representing the Director General of the Treasury, who stated that she had no observations to make;

- Jean-Luc Guillotin, representing the ACPR College, aided by the Director of the Legal Affairs Directorate, the Head of the AML and Internal Control Division within the Legal Affairs Directorate; the Head of the Institutional Affairs and Public Law Division within the Legal Affairs Directorate, lawyers from that Directorate, and the head of the department responsible for supervising the institution within the Bank Supervision Directorate; Jean-Luc Guillotin proposed that the Committee issue a reprimand along with a fine of EUR 10 million, to be published in a non-anonymous decision;

- Credit institution B, represented by […] and also by barristers Martine Samuelian and Jennifer Chossis (Jeantet law firm);

Credit institution B's representatives had the last word;

Having deliberated in the sole presence of Rémi Bouchez in the chair, Claudie Boiteau, Yves Breillat and Thierry Philipponnat, and also Jean-Manuel Clemmer, Chief Officer of the Sanctions Committee, who acted as meeting secretary;

1. Whereas, credit institution B is a French *société anonyme* (limited company) with a board of directors, which has been authorised to operate as a credit institution;

2. Whereas, on 19 December 2016 the head of Tracfin (the French financial intelligence unit) sent a memorandum to the ACPR Secretary General to inform him that between 25 July and 24 October 2016 a client of credit institution B, Ms X, had made four transfers totalling €650 to a person detained on suspicion of terrorist offences, and had also made substantial cash withdrawals after obtaining a consumer loan on 14 October 2016; after receipt of the memorandum, an on-site inspection was carried out between 27 December 2016 and 3 February 2017; the final inspection report was signed on 17 March 2017 (hereinafter, the 'inspection report'); on the basis of this report, the College decided to open this disciplinary procedure at its meeting of 11 July 2017;

3. Whereas, while it is true that several of the provisions contained in Book V, Part VI of the Code, which defines anti-money laundering and counter terrorist financing obligations (hereinafter, 'AML-CTF'), was amended by Ordinance no. 2016-1635 of 1 December 2016 reinforcing the French AML-CTF system, the resulting obligations are at least equivalent to those that were in force at the time of the events concerned by this case, in other words, before 3 December 2016; the Committee has a duty to consider whether the

objections are well-founded in light of the provisions of the Code that were in force on the date of the events, before the introduction of the ordinance;

I. The automated business relationship monitoring system

4. Whereas, Article 46 of the Decree of 3 November 2014 provides that: “reporting companies shall put in place systems to monitor and analyse their business relationships based on their knowledge of their clients, which enable them inter alia to detect any transactions that are unusual given the profile of the business relationship and that may require a more thorough examination in accordance with Article L. 561-10-2-II of the Monetary and Financial Code, or that need to be reported in accordance with Article L. 561-15 of the same Code.”; Article 49 of the decree provides that “the systems referred to in Articles 46 and 47 shall be tailored to the reporting entity’s business activities, clientele and locations, and to the risks identified as a result of the classification process”; its Article 50 provides that “the systems to monitor and analyse transactions shall enable [the entity] to determine criteria and materiality thresholds specific to anomalies pertaining to money laundering and terrorist financing”;

5. Whereas, according to **objection 1**, based on this legislation, the automated monitoring tool Y used by credit institution B to detect unusual transactions is incomplete and inadequate; firstly, it does not factor in any criteria, scenarios or thresholds pertaining to consumer loans, despite the fact that such products are widely distributed by credit institution B and that TF risks associated with this type of loan are discussed in (i) Tracfin’s 2013 annual report, published in 2014, (ii) measure no. 7 of the action plan against TF published by the French Minister of Finance and Public Accounts in March 2015, and (iii) appendix 2 to the joint instruction on AML-CTF published in 2015; secondly, the scenarios used by the tool with regard to cash withdrawals (no. 1128 and 1143) do not include the detection of TF as one of their many allocated objectives; furthermore, under the scenario pertaining to cash withdrawals by individuals, an alert is triggered at a threshold of €50,000 per month, which is not suitable in the case of TF risk; in addition, on the date of the inspection, the Y tool was not capable of aggregating cash withdrawals made by any single client over a rolling one-month period, or of aggregating withdrawals made from different accounts; accordingly, credit institution B failed to detect the multiple cash withdrawals made by one of its clients, Ms X, from two accounts (no. XXXX and XXXXX), whereas the aggregate amount withdrawn between 19 October and 10 November 2016 was in excess of €10,000, with €9,000 being withdrawn in just three days from 14 October 2016, on which date funds were made available under a consumer loan; these transactions are unusual, as only 0.3% of consumer loans granted by credit institution B over the period from January to November 2016 resulted in cash withdrawals exceeding 50% of the amount of the loan and €10,000 within 31 days of the funds being made available;

The alleged absence on the date of the inspection of published information or recommendations concerning the need to consider the risk of consumer loans being used for terrorist financing purposes

6. Whereas, credit institution B maintains that, on the date of inspection, no publications or recommendations had been issued by national or international authorities pointing out the existence of a TF risk associated with the distribution of consumer loans, and that discussions are still ongoing on the market as to the best way of identifying the various terrorist financing methods; more specifically, it has produced a letter sent to the ACPR General Secretary on 22 November 2017 by the French Banking Federation’s Chief Executive Officer, indicating that Tracfin and other authorities accept that the detection of transactions involved in TF “requires the interpretation of a large number of miscellaneous and seemingly harmless “weak signals” that cannot be integrated into banks’ transaction monitoring tools (…)”; banks are unaware of, or unable to process, many of the signals “such as the purchase of plane tickets to certain countries, a change in a client’s physical appearance, purchases in small community stores, a use of funds obtained from a loan that is not consistent with the reason given at the time of the loan application, links with radicalised individuals, etc.”;

7. Whereas, however, firstly, the above-mentioned provisions of Articles 46, 49 and 50 of the decree of 3 November 2014 are clear; they require all financial institutions to which they apply to put in place a system that is tailored to their clients and transactions and that covers all risks of money laundering and terrorist financing;

8. Whereas, secondly, before the last quarter of 2016, several public authorities had released information on the existence of a TF risk associated with the use of consumer loans; although the 2013 Tracfin report, published in July 2014, described the case of a radicalised person wishing to travel to a combat zone who produces forged documents to obtain a loan, it also nevertheless alerted financial institutions to the practice whereby, for the purpose of TF, a client might apply "to several institutions specialising in consumer loans" because "such institutions may well make funds available in a very short period of time, provided the application does not exceed a few thousand euros" (p. 29); even in the absence of a more specific description in a Tracfin annual report before December 2016, such a micro-financing scenario is equivalent to the actions of Ms X and transposable to a retail bank such as credit institution B; the action plan published by the Ministry of Finance and Public Accounts in March 2015, referred to by the plaintiff, contained the following recommendation (measure no. 7): "enhanced due diligence measures (verification of origin of funds, reason for the transaction or identity of the beneficiary) shall be carried out whenever a transaction involves unusually large amounts (including in the case of consumer loans and cash transfers)"; on 1 July 2015, the Head of Tracfin stated that until that time consumer loans had been considered "low-risk transactions" but that "the events of January unfortunately show that this classification needs to be called into question"; moreover, the joint guidelines published by the ACPR and Tracfin in November 2015 provide that "terrorist financing may rely on a wide range of transactions, including (…) cash withdrawals, (…) credit facilities, essentially characterised by the small amounts involved (…)" (paragraph 70 *ter*), and invited "financial institutions to keep track of national and international developments, and in particular of press releases by the Ministry of Finance, Tracfin annual reports and the FATF's typology reports) (paragraph 70 *cinques*);

9. Whereas, furthermore, in addition to the information and recommendations issued by authorities, in January 2015 the press reported that one of the perpetrators of the attacks carried out a few days previously had used a consumer loan when preparing them;

10. Whereas, lastly, as the plaintiff has pointed out, credit institution B was aware of this risk, as its 2015 AML-CTF internal procedure stated that "other methods are used to finance terrorism, such as micro credit loans and consumer loans"; and the example given in this document, concerning "financed items (that) can be sold for cash, while the lender simultaneously defaults on the loan" (idem) cannot be analysed as the only possible scenario in which the proceeds of a loan can be used for criminal purposes; and yet, as at the date of the inspection, credit institution B had failed to take account of a TF risk associated with consumer loans by configuring scenarios in the Y tool or in any other automated tool;

The TF risk associated with cash withdrawals, in particular when made after obtaining a consumer loan

11. Whereas, credit institution B admits that none of the scenarios configured in its Y tool were specifically designed to handle the TF risk associated with cash withdrawals, but maintains that certain scenarios in the tool did take TF risks into account, while arguing that the exclusion of consumer loans from the mechanism for the systematic transfer of information on cash transactions to Tracfin ('COSI') is proof that this type of loan was not considered to present a risk *per se*; it argues that the statements by the Head of Tracfin in July 2015 were unclear concerning the existence of such a risk;

12. Whereas, however, firstly, the exclusion of certain cash transactions from Tracfin's COSI mechanism is not sufficient in itself to justify the absence of any scenario relating to the TF risk associated with cash withdrawals made after obtaining a consumer loan; the fact that some of the scenarios used by credit institution B to detect TF at the time of the inspection concern cash payments or certain types of international transactions and not withdrawals cannot be raised in response to the objection, which relates, as credit institution B has itself indicated, to the absence in its automated detection tool of a scenario covering cash

withdrawals made after obtaining a consumer loan, and the absence of any other system that could detect such transactions;

13. Whereas, next, in his above-mentioned statement of 1 July 2015, the Head of Tracfin added regarding consumer loans "the lender must also look at the use that will be made of the funds loaned"; In addition, Tracfin's report entitled "Terrorist financing risk trends and analysis, 2014" pointed out, in connection with the lowering of the cash payment threshold, that they "are at the heart of almost all terrorist-related micro-financing transactions" (p. 30); although credit institution B refers to remarks made at a meeting by a Tracfin representative, who allegedly advised using human checks to detect "weak signals" associated with TF, the ACPR, as the authority with jurisdiction to assess whether financial institutions' systems to combat terrorist financing (hereinafter 'CTF') are compliant with the applicable statutory provisions, has never stated at any time that it considered there was no need to integrate into automated systems that detect unusual transactions scenarios that would detect instances of TF; and yet, on the date of the inspection none of the scenarios in the Y tool covered the risk of TF associated with cash withdrawals, alone or in conjunction with other criteria, such as the recent granting of a consumer loan; the failure to aggregate cash withdrawals made by a single client from different accounts, and the fact that client transactions were analysed on the basis of calendar months, also point to the inadequacy of credit institution B's system; however, credit institution B cannot also be criticised for having a scenario with an alert threshold that is too high to be used to adequately detect TF risks, as that scenario was intended to detect other types of transactions carried out by clients in an attempt to avoid payment of French wealth tax (ISF) or with a view to misappropriating funds in the course of their work;

14. Whereas, lastly, the CTF initiatives introduced by credit institution B prior to the last quarter of 2016 do not constitute a sufficient response to the objection; the work on the development of a new detection tool, which began in April 2016 only, had not had any practical consequences on credit institution B's automated detection system at the time of the inspection; moreover, the data used by the tool, which was initially restricted to data to be systematically forwarded, was only supplemented by data on specific client accounts in April 2017; however ambitious and promising such initiatives may be, they did not release credit institution B from an obligation to promptly upgrade its existing detection tool; this was not done, as scenarios covering TF were only introduced into the existing Y tool in July 2017;

The practical feasibility of including criteria relating to cash withdrawals made after obtaining a consumer loan in the automated monitoring systems, and analysing resulting alerts

15. Whereas, credit institution B points out the difficulties associated with introducing relevant criteria concerning consumer loans or revolving loans and transactions following cash withdrawals, that essentially concern the number of alerts generated; it adds that a substantial proportion of these funds are frequently withdrawn in cash; accordingly, the extrapolation to all clients of the tests carried out on a sample has shown, over a one-year period for all clients, a number of alerts that is too high to be of any practical use;

16. Whereas, however, the tests carried out by credit institution B show that the introduction of an additional criterion relating to the amount of withdrawals in absolute terms, and not only as a percentage of the loan obtained, in order to eliminate the impact on the relevance of alerts relating to small cash withdrawals used by clients to fund their daily living expenses, has considerably reduced the number of alerts; as a result, credit institution B added two new scenarios to its Y tool in July 2017, covering consumer loans followed by cash withdrawals and including new criteria; these scenarios triggered 284 alerts, which is a reasonable number to be processed, and which resulted in 27 suspicious transaction reports (hereinafter, 'ST reports'), four of which concerned CTF; the inclusion of the thresholds in the new tool, which has been tested since 2016, has produced similar results, with the number of alerts also being significantly reduced by taking into consideration requests to raise limits; it has not been disputed that, as the plaintiff has stated, only 0.3% of loans have given rise to withdrawals in excess of both 50% of the amount of the loan and €10,000 within 31 days of funds being made available; an examination of the case documents shows that withdrawals of slightly smaller amounts in absolute terms and in percentage terms made after obtaining a consumer loan are also very rare; accordingly, transactions with the same features as those carried out by Ms X were therefore both unusual and liable to be detected by automated systems generating alerts according to type of

client transaction, independently of any weak signals relating to conduct or appearance, which are detectable by branch staff rather than by automated systems; the fact that such systems represent a minority of potential TF cases detected by credit institution B in recent years, namely 26% in 2016 and 12% in 2017, does not mean that a financial institution such as credit institution B can rely solely on human detection of signs of radicalisation; on the contrary, this confirms the shortcomings of its automated system;

17. Whereas, the objection is substantiated subject to a slightly reduced scope following the withdrawal of the claim concerning the existence of an overly high threshold in one of the scenarios used in the Y tool at the time of the inspection;

II. Compliance with due diligence and reporting obligations

18. Whereas, Article L. 561-6 of the Code provides that "Throughout its entire duration, and as stipulated in a decree issued following consultation with the Conseil d'Etat, [the entities referred to in Article L. 561-2] shall, within the scope of their rights and obligations, carry out continuous due diligence checks on the business relationship and a thorough examination of the transactions executed, taking care to ensure that they are consistent with the latest information they have concerning their client"; Article L. 561-10-2-II of the same Code provides that "The entities referred to in Article L. 561-2 shall carry out a more thorough examination of any transaction which is particularly complex or is of an unusually high amount or which does not appear to have any economic justification or lawful object. In such cases, said entities shall make inquiries of the client as to the origin of the funds and the use of such sums as well as the purpose of the transaction and the identity of the beneficiary"; Article L. 561-15-I of the Code provides that "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";

19. Whereas, according to **objection 2**, based on this legislation, a client of credit institution B, Ms X, first entered branch N1 on 29 September 2016 seeking a general purpose consumer loan of €20,000 for an account (no. XXXX) she had held with credit institution B since 5 October 2013; once the funds were released on 14 October 2016, she then returned to the same branch on 19 October and 21 October 2016 and requested that her bank card limit be raised so that she could withdraw some of the loan funds; her "insistent and repeated" requests led to a "clash" between the branch manager and the client, who withdrew €3,000 on 19 October 2016 after her card limit was temporarily raised a first time, and again withdrew €3,000 on 20 October 2016 after her card limit was raised a second time; the reason given by the client when she first requested that her card limit be raised was "that she had to pay part of the price of a vehicle in cash and refund educational costs to her mother"; after withdrawing the maximum amount authorised per card from an ATM at branch N1, and as she was unable to raise her card limit again on the same day, she then entered branch N2, which provided cash facilities, on 21 October 2016 to withdraw another €3,000, meaning that she withdrew a total of €9,000 in three days, corresponding to slightly less than half of the loan amount; she then entered branch N3 on 10 and 22 November 2016, to raise her card limit again and to then transfer her accounts; she withdrew €2,000 on 10 November 2016 from a second account (no. XXXXX) opened with branch N1 on 3 November 2016, also following a request to raise her card limit to withdraw funds using the bank card issued for that second account; the client declared that the purpose of the transaction was, to wit, "the partial financing of works in a chicha bar in Belgium"), which should have raised questions as to the justification and lawful nature of the transaction and, moreover, was not consistent with the reasons given by Ms X when opening the second account, namely payment "of bills by her mother in her absence using the bank card she would leave her"; although credit institution B had identified "the raising of card limits and significant withdrawals" and "transactions associated with consumer loans" as events requiring CTF monitoring, and had even described them as "weak signals that may raise reasonable doubts" in that area, it simply accepted the client's explanations; when processing these transactions, it failed to meet its obligations to carry out continuous due diligence checks and a more thorough examination and, subsequently, to report suspicious transactions to Tracfin;

20. Whereas, firstly, although the application made by Ms X for a consumer loan of €20,000 was not, in itself, inconsistent with the information credit institution B possessed concerning that client, and resulted in a level of debt including the loan of 21.67%, which is not excessive, this amount of €20,000 was nevertheless substantial given Ms X’s income, and enabled her to obtain, over a very short period of time, a sum of money that she was free to use as she wished corresponding to approximately 18 months’ salary; more importantly, the fact that the multiple cash withdrawals made after obtaining the loan, for unusually high amounts in view of the client’s previous transactions, caused her to request on several occasions that her card limit be raised, led to an incident with the branch manager, and also involved her travelling to another branch to withdraw funds, should have caused credit institution B to update its know your client information; the transactions made did not trigger any response from the institution, despite the fact that the need for continuous enhanced due diligence with regard to transactions and conduct that were unusual for a given client, particularly when they concerned cash withdrawals and consumer loans, had been confirmed by a credit institution B executive in a memorandum to compliance officers circulated in November 2015; the general purpose nature of the loan granted to Ms X did not release credit institution B from its AML-CTF obligation to obtain further information on the client’s situation; nor did the application for a second credit facility of €5,000 in the form of a revolving loan less than two months later result in any attempt to obtain explanations supported by documents, even though its almost immediate use, in the form of a withdrawal representing 40% of the funds, resulted in the client substantially increasing her level of debt; credit institution B admits that it merely accepted Ms X’s repeated statements at the time and “did not ask her to produce supporting documents: - at the time of the consumer loan application (…) / - when she drew down the loan”; accordingly, its due diligence efforts were inadequate;

21. Whereas, secondly, although reporting entities cannot carry out a thorough examination of all transactions made after obtaining a consumer loan, in the case at issue the accumulation of unusual cash withdrawals in light of the client’s income and previous account movements, both on the basis of that amount in absolute terms and as a percentage of the loan obtained previously (cf. *supra* recital 16), and the reasons given therefor, which were at times contradictory, the alleged extreme urgency of the transactions, the requests to raise card limits and the client’s conduct in the branch and decision to travel to another branch, rendered such a thorough examination necessary; this is the case notwithstanding the absence of any change in the client’s appearance that might suggest radicalisation, or of any transactions with individuals located in high-risk countries; more specifically, the explanation given by the client that the cash withdrawals made in these circumstances were in part intended to refund her mother for the cost of her education, although she made regular transfers to her, should have raised suspicions; in order to ascertain the economic justification or lawful purpose of the transactions carried out by Ms X, the examination should have included an analysis of previous movements on her account (no. XXXX);

22. Whereas, thirdly, it is not disputed that the account statements for account no. XXXX show several small transfers to a person detained on suspicion of terrorist offences; although the list of transactions made on the account did not identify the beneficiaries, a very simple search of the “reason for transfer” field in the Z tool would have revealed the name of that person; this name also appeared on the client’s account statements, which were accessible by commercial staff via the W tool; this would also have revealed movements on the account over a number of months corresponding to expenditure in Belgium, including on weekdays; an examination of the transactions on Ms X’s second account (no. XXXXX) would also have established that they did not match the client’s explanations when she opened the account;

23. Whereas, lastly, the TF risk that credit institution B allegedly failed to detect does not relate to transfers to the person detained on suspicion of terrorist offences, but rather to cash withdrawals by the client that, in view of her relationship with that person and his friends or family, might be used to finance future terrorist offences; neither the Banque de France nor the French Public Treasury, responsible for the accounts of the relevant prison, were aware of these new transactions, unlike credit institution B; accordingly, objection two is fully substantiated, as the above-mentioned failure to carry out proper due diligence checks and more thorough examinations undoubtedly resulted in credit institution B being unable to file a ST report; credit institution B claims that the public authorities should have informed it immediately of the transfers to the above-mentioned prisoner, as this would have resulted in Ms X’s account then being subject to enhanced

due diligence measures; however, it is not under the purview of the Committee to assess whether these authorities should alert a financial institution to such transactions;

24. Whereas, objection two is substantiated;

III. Staff information and training

25. Whereas, Article L. 561-33 of the Code provides that: "The entities referred to in Article L. 561-2 shall provide their staff with regular training and information to ensure compliance with the obligations laid down in Chapters I and II of this Part. For the purpose of this article, the agents referred to in article L. 523-1 and the persons used by electronic money institutions to distribute electronic money, as defined in Article L. 525-8, shall be deemed equivalent to the staff of the entities referred to in Article L. 521-1"; Article 45 of the decree of 3 November 2014 provides that: "For the purposes referred to in Article 44, reporting entities shall ensure that staff training and information required pursuant to Article L. 561-33 of the Monetary and Financial Code is tailored to their business activities, taking into consideration the risks identified by the classification system and levels of responsibility. In part, staff training and information shall cover procedures describing the transactions that require enhanced due diligence in view of the risks identified by the classification system in use within the reporting entity."

A. Staff information

26. Whereas, according to **sub-objection 3.1**, based on this legislation, the section of credit institution B's intranet on AML-CTF was not updated on a regular basis, as a result of which it made no reference, as at 3 February 2017, to (i) Tracfin's annual reports and risk trends and analysis reports, as the intranet site only mentioned types of money laundering and TF and cited as the only source of information the 2010 activity report published by the Belgian financial intelligence unit, (ii) the most recent sector application processes and guidelines on AML-CTF published by the ACPR, including in particular the 2015 guidelines and the guidelines on the freezing of assets, or (iii) Decree no. 2016-1523 of 10 November 2016 on CTF, which reinforced the due diligence rules concerning consumer loans; accordingly, information provided to credit institution B's branch staff on AML-CTF was not updated in a timely manner, thus hindering effective implementation of the institution's due diligence obligations (cf. *supra* objection 2);

27. Whereas, credit institution B does not deny the alleged shortcomings; the lack of information on credit institution B's intranet site is generalised and, therefore, affects its entire system; the corrective action described, and the creation of a specific CTF page on credit institution B's intranet site, cannot impact on the sub-objection, which is substantiated;

B. Staff training

28. Whereas, according to **sub-objection 3.2**, based on this legislation, at the time of the on-site inspection the general training on AML-CTF for branch staff was based on an e-learning module offered by the banking sector's training centre and updated in 2015; however, not all branch staff studied the updated training module; for example, other than the case studies added in 2015 that did not concern TF and training on international sanctions, the managers of branches N1 and N3 last received training in 2011, i.e. over five years before the events that led to the on-site inspection; in view thereof, the general training received by staff some years ago does not seem to guarantee an adequate level of awareness of AML-CTF issues;

29. Whereas, sub-objection 3.2 is a general objection concerning shortcomings in the organisation and content of AML-CTF training, illustrated by the case of the two branch managers involved in Ms X's file; credit institution B has produced evidence showing that AML-CTF training given to its staff was partially "classroom based"; however, some of the examples given in support of the claim that classroom based training encompassed CTF postdate the first unusual transactions carried out by Ms X; more importantly, credit institution B has failed to produce any evidence concerning such training that establishes the number of employees who received such training; there was no formal record of training given to network staff by

credit institution B's compliance officers; the distribution of information updates on routine security issues, which at times covered AML-CTF, may be seen to supplement training actions but cannot replace them; accordingly, none of the case documents establish that all credit institution B's staff members concerned received adequate AML-CTF training; in particular, none of the evidence produced establishes that the AML-CTF awareness actions put forward by credit institution B in its defence were attended by the relevant branch managers; the AML-CTF e-learning modules they studied are not recent (2011, 2012, 2013), with the exception of a module on international sanctions; the fact that both managers had previous professional experience as customer relationship managers is not sufficient in itself to ensure that they have adequate, up-to-date knowledge in the ever-changing area of AML-CTF; contrary to what has been argued by credit institution B, the manner in which Ms X's transactions were handled from the time she applied for a consumer loan until the moment Tracfin exercised its right to obtain information does not establish that the relevant staff had adequate awareness of CTF issues; the new e-learning modules submitted, the network training timetable, and the distribution in September 2017 of a document setting out the basics of financial security can be analysed as corrective action; accordingly, sub-objection 3.2 is substantiated subject to a reduced scope in view of the organisation of classroom-based training sessions;

30. Whereas, objection 3 is substantiated subject to this reduced scope;

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31. Whereas firstly, in view of the foregoing, the relevance and effectiveness of credit institution B's automated TF detection system were inadequate on the date of the inspection in view of the failure to factor in TF risks associated with cash withdrawals made after obtaining a consumer loan (**objection 1**); moreover, in the individual file examined by the inspection team, this shortcoming was not compensated for by any human checks; on the contrary, this client, who had just obtained a consumer loan, was allowed to make cash withdrawals that were very substantial in view of her resources while providing oral explanations only, that were both unsatisfactory and at times contradictory, before subsequently obtaining a second credit facility and again withdrawing part of the funds in cash; in view of the associated risks, CTF requires a greater level of due diligence and responsiveness than was shown by credit institution B; the circumstances in which this client made cash withdrawals and their amounts should have led to an examination of her transactions, which would have revealed transfers to a person detained on suspicion of terrorist offences; based on this information, credit institution B, which could not have ruled out the fact that this client's new transactions could contribute to TF, possibly involving associates or family of the beneficiary of the transfers, should have reported this to Tracfin (**objection 2**); delays in credit institution B's staff information and training system, which also explain in part the failures observed in Ms X's file, have also been established (**objection 3**);

32. Whereas, however, credit institution B has worked hard to improve its preventive system, reinforcing its existing detection tool and also developing a new tool; although it is true that, as has been stated, publications by ACPR and Tracfin, and also other information made public, had explained that transactions of the type concerned by this case could constitute a specific risk, at the time of the events this information was recent and general in nature; more specifically, risks associated with the use of cash after obtaining a consumer loan were first mentioned specifically in the updated February 2018 version of the joint guidelines published by the ACPR and Tracfin on reporting suspicious transactions; moreover, credit institution B's failure to correctly adapt its automated detection system in order to identify small-scale TF risks should be analysed while bearing in mind that, at the time of the inspection, credit institution B and other similar-sized credit institutions were giving thought to, and discussing, appropriate responses to such risks; moreover, discussions on the appropriate configuration of such detection systems continued on the market after that time, as is established by the letter from the FBF produced by credit institution B;

33. Whereas, in view of their nature and their severity, the shortcomings identified by the Committee justify a reprimand; for the same reasons, and in view of the mitigating circumstances described above, in compliance with the principle of proportionality in view of credit institution B's financial standing, a fine of EUR 8 million will also be imposed;

34. Whereas, in the case at hand, for the reasons given in recital 32 in particular, the Committee considers that this decision should be published in anonymous format;

FOR THE FOREGOING REASONS

DECIDES:

ARTICLE 1 – A reprimand and a fine of eight million euros (EUR 8 million) shall be imposed on credit institution B.

ARTICLE 2 – This decision shall be published in the register of the ACPR in anonymous form, and may be consulted at the Committee Secretariat.

Chairman of the
Sanctions Committee

[Rémi Bouchez]

This decision may be appealed within a period of two months from its notification, in accordance with Article L. 612-16-III of the Monetary and Financial Code.