Société Générale

Procedure No. 2016-07

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Reprimand and fine of

EUR 5 million

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Hearing of 5 July 2017

Decision handed down on 19 July 2017

**AUTORITÉ DE CONTRÔLE PRUDENTIEL ET DE RÉSOLUTION**

**SANCTIONS COMMITTEE**

Having regard to the letter dated 26 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 2016-07 against Société Générale (hereinafter SG), which has its registered office at Tour Société Générale, 75886 Paris Cedex 18;

Having regard to the statement of objections dated 26 July 2016;

Having regard to the defence submissions dated 25 October 2016, 10 March 2017 and 28 April 2017 and the accompanying documentation, and the statement of defence dated 30 May 2017 in response to the latest documents provided by the plaintiff authority on 26 May 2017, in which SG (i) contests all the notified objections with the exception of that of reporting incorrect information to the ACPR and maintains that if the Committee must conclude that the objections are substantiated, they should be deemed inconsequential in nature, and (ii) requests that the forthcoming decision be published in an anonymous form and that the Committee's hearing be held in camera;

Having regard to the submissions dated 23 January 2017, 13 April 2017 and 11 May 2017, in which Patrick de Cambourg, representative of the College, upheld all the objections with the exception of the complaint in respect of an individual case cited in support of objection 4;

Having regard to the report of 2 June 2017 drafted by the rapporteur Denis Prieur, in which he concluded that all of the notified objections are substantiated, although one should be slightly reduced in scope;

Having regard to the letters dated 2 June 2017 summoning the parties to the hearing, informing them of the composition of the Committee and indicating that SG's request that the hearing take place in camera shall be granted;

Having regard to SG's observations submitted on 19 June 2016 in response to the rapporteur's report;

Having regard to the other documents related to the case, notably the inspection report dated 18 February 2016 and the documents submitted by the representative of the College on 26 May 2017;

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

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, 71 and 72 thereof;

Having regard to Instruction No. 2012-I-04 of 28 June 2012, amended by Instruction No. 2014-I-04 of 10 February 2014 and Instruction No. 2014-I-06 of 2 June 2014 on anti-money laundering and counter‑terrorist financing systems (hereinafter Instruction No. 2012-I-04);

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

The ACPR's Sanctions Committee, comprising Rémi Bouchez, Chairman, Yves Breillat, Francis Crédot, Christine Meyer-Meuret and Thierry Philipponnat;

Having heard at the session held in camera on 5 July 2017:

**-**  Denis Prieur, rapporteur, aided by Lauriane Bonnet, his deputy;

**-**  Rodolphe Lelté, representing the Director General of the Treasury, who stated that he had no comments to add;

**-**  Patrick de Cambourg, representing the ACPR College, aided by the Director of the Banking Supervision Directorate 1, the Head of this directorate's division 1, the ACPR's Deputy Director of Legal Affairs, the Deputy Head of Institutional Affairs and Public Law, a lawyer from the latter division and a lawyer from the AML and Internal Control legal division; Patrick de Cambourg proposed issuing a reprimand along with a fine of EUR 15 million, to be published in a non‑anonymous decision;

**-**  SG, represented by the Corporate Secretary and Group Chief Compliance Officer, the Deputy Head of Group Compliance, the Head of Group Financial Security, the Head of Anti-Money Laundering and Countering Terrorist Financing and a lawyer from the Legal Department, as well as by the barristers Martine Samuelian and Virginia Barat from the law firm Jeantet;

Where SG's representatives were given the last word;

Having deliberated in the sole presence of Rémi Bouchez, Chairman, Yves Breillat, Francis Crédot, Christine Meyer-Meuret and Thierry Philipponnat, as well as that of Jean-Manuel Clemmer, Chief Officer of the Sanctions Committee, who acted as meeting secretary;

1. Whereas SG is a public limited company with a board of directors (*société anonyme à conseil d'administration*) licensed to operate as a credit institution; whereas in 2016 the SG Group had 145,700 employees in 67 countries and more than 31 million customers (individuals, large corporates and institutional investors); whereas, in the same year, SG's net banking income amounted to almost EUR 25.3 billion with group net income at around EUR 3.9 billion; whereas net income from the French Retail Banking activity (hereinafter BDDF – *Banque De Détail en France*) amounted to EUR 1.49 billion for net banking income of EUR 8.4 billion;

2. Whereas at the time of the inspection, SG's Compliance Department, attached to the Group Corporate Secretary, was broken down into three "*cross-business departments*": "*Group Financial Security"* (hereinafter the SFG – *Sécurité Financière du Groupe*), "*Governance, Expertise and Coordination* (CFT/GEA)" and "*Management of compliance tools and controls* (CFT/PIL)"; whereas since 2011, the SFG division has been solely responsible for reporting to Tracfin; whereas within this division, the SFG/AML function centralises the suspicious transaction reporting proposals (hereinafter STRP), that subsequently became "unusual transaction forms" (*fiches d’opération atypique*), which are sent by the compliance teams of the core businesses and business units, and carries out all suspicious transaction reporting (hereinafter STR) for the Group's French entities with the exception of Boursorama and Crédit du Nord; whereas within this function, the French retail banking STRPs are analysed by the AML/KYC-BDDF unit;

3. Whereas SG was subject to an on-site inspection between 8 September 2015 and 1 December 2015, the purpose of which was to examine its STR practices; whereas the inspection resulted in the signature of a final report on 18 February 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;

4. Whereas even though Book V, Title VI of the Monetary and Financial Code, which defines anti‑money laundering and counter-terrorist financing (hereinafter AML-CTF) obligations, was, with respect to a number of its provisions, amended by Ordinance No. 2016-1635 of 1 December 2016 that reinforced the AML-CTF framework in France, the requirements arising from the text as amended are at least equivalent to those in force at the time of the on-site inspection; whereas the provisions of the Monetary and Financial Code cited below are those in force at the time of the facts;

I. On the time taken to report to Tracfin

A. On the processing of suspicious transaction reporting proposals

5. Whereas, according to paragraph II of 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*";

6. Whereas, according to **objection 1**, which is based on these provisions, the STRP processing procedure, overseen by the SFG division's anti-money laundering unit (AML/KYC-BDDF), which deals with 95% of the STRPs received by the division, does not enable SG to comply with its obligation to inform Tracfin "without delay" of the already executed suspicious transactions it has identified; whereas at end‑2013, SG introduced a procedure for the processing of proposed cases of suspicious transactions (hereinafter the STRP procedure), as part of which a weekly review committee determines whether the STRP should be categorised as high priority, low priority, or closed without further action; whereas the SFG's anti-money laundering unit then deals with the high priority STRPs within a maximum of one month and low priority STRPs within a maximum of three months; whereas these time limits start once the SFG receives the STRP and are therefore in addition to the time taken for the preliminary analysis of the transaction that led to the STRP carried out within the commercial operations divisions (hereinafter the DEC *– directions d’exploitation commerciale*);

7. Whereas an organisational structure by which unusual customer transactions are first examined within the network, in this case within the DECs, to establish whether a doubt warrants an STRP, prior to its analysis and, when applicable, submission to Tracfin as an STR by a unique Tracfin reporting unit, is not in itself incompatible with the aforementioned legal provisions and particularly the obligation to inform Tracfin "without delay" for already executed transactions; whereas nevertheless, in order to comply with this obligation to act rapidly, it is the duty of all entities subject to AML-CTF regulations to ensure that irrespective of the chosen structure, and at each stage of the procedure that results, when applicable, in an STR, the required investigations are completed as quickly as possible; whereas it is clear from previous Committee decisions that the starting date chosen to assess a potentially excessive delay in submitting an STR cannot be systematically deferred until the activation of an internal alert, which itself can be long overdue; whereas a fortiori, this date cannot be systematically deferred until the preparation of an STRP as in certain cases this too can be belated due to delays in detecting and then analysing a suspicious transaction; whereas, accordingly, the Committee has already stated that "*any delay in submitting STRs to Tracfin from the date on which the suspicious transaction was executed [must] henceforth be justified by a properly documented statement of the investigations performed to establish whether a doubt warrants an STR*" (Banque Populaire des Alpes decision dated 29 June 2012, Procedure No. 2011-01, and Caisse d’Épargne et de Prévoyance du Languedoc-Roussillondecision dated 25 November 2013, Procedure No. 2013-01);

8. Whereas in the case in point, the objection only covers the SFG's centralised processing of STRPs; whereas the processing procedures and time limits put in place by the SFG, irrespective of the fact that prior to this, the DEC's drafting and forwarding of STRPs is time consuming in itself, do not satisfactorily apply the aforementioned obligation to act rapidly; whereas the organisational structure in place, with its categorisation of high priority and low priority STRPs decided by a weekly review committee, as well as the setting of maximum time limits of one month and three months, respectively, fails to ensure that Tracfin is informed of all already executed suspicious transactions as quickly as possible; whereas the arguments presented by SG in its defence with regard to the trigger event and the calculation used to establish whether the submission of an STR to Tracfin should be categorised as "late", have no bearing in this respect; whereas while SG contests that it could not foresee the likelihood of being sanctioned for the organisation of its reporting function since Tracfin had accorded SG a *satisfecit* on this point, including on the two aforementioned time limits, this is not confirmed by Tracfin, which, in a document attached to this hearing's case file, on the contrary "*insisted on the sometimes excessively lengthy delays between identifying suspicious flows and submitting STRs*"; whereas, accordingly, objection 1 is substantiated;

B. On the late submission of suspicious transaction reports

9. Whereas, according to **objection 2**, which is based on the same provisions as objection 1 (see recital 5), the average time taken by SG to submit STRs to Tracfin from the "initial event" (*événement initial*) recorded in the STRP, was almost 145 days in 2014 and remained"*[...] manifestly excessive in 2015*"; whereas to that effect, 34 cases of late submission to Tracfin may be cited (cases A1 to A34);

10. Whereas, firstly, the average time taken by SG to submit its STRs to Tracfin, such as the 145 days observed in 2014, calculated by SG in terms of working days and starting from the "initial event" rather than the transaction's execution, is excessive and therefore represents in itself a breach of its obligation under Article L. 561-16 of the Monetary and Financial Code to inform Tracfin "without delay" of already executed suspicious transactions, however these terms are interpreted; whereas, therefore, the fact that the 66 individual cases examined by the plaintiff authority, 34 of which were retained to illustrate this objection, only represent 1.9% of the STRs submitted by SG during the period under review, has no bearing;

11. Whereas, secondly, in these 34 cases, the delays in submitting STRs to Tracfin are indeed unjustified; whereas the periods of time observed, starting from the date of the transaction's execution, the alert that it triggered or the detection of its dubious character, range from 74 to 1,123 calendar days, and in 28 cases, exceed six months, according to evidence gathered during the rapporteur's review, which is excessive in view of the investigations performed at each stage; whereas these delays, in all these cases, result from the fact that inconsistencies between the executed transactions and the know your customer information could have been identified more quickly; whereas among the 34 cited cases, the transactions in question were, partly, significant cash movements (cases A2, A5, A6, A14, A19, A20, A26 and A32); whereas, similarly, transfers or cheque deposits were detected in customer accounts for large amounts that were inconsistent with the customer's professional situation, or in the case of legal entities, inconsistent with declared turnover, without, however, Tracfin being informed "without delay" of the transactions (cases A3, A4, A7, A9, A10, A13, A15, A16, A17, A21, A22, A23, A25, A31, A33 and A34); whereas the first type of transaction (cash movements) were sometimes preceded or followed by the second (cheque or transfer transactions) (cases A1, A8, A11, A12, A18, A24, A27, A28, A29 and A30); whereas all these cases are characterised by tardiness in the analyses performed by the DEC and/or the SFG, sometimes despite the customer not replying or only partially replying when asked for information or in spite of suspicions being previously raised internally about the customer's profile and transactions (cases A3, A7, A14, A17, A22, A25 and A32); whereas while mistakes made in certain cases during the forwarding of the STRPs to the SFG can explain the delays observed in part, they do not justify them (cases A1, A15 and A18); whereas to a large extent the investigations performed are not documented (cases A1, A2, A4, A5, A6, A9, A10, A17, A18, A19, A20, A21, A22, A24, A27, A28, A29, A30, A32 and A34), or when they are, do not justify the time taken to submit an STR to Tracfin (cases A3, A7, A8, A11, A12, A13, A14, A15, A16, A23, A25, A26, A31 et A33);

12. Whereas, as an example of these delays, an STR was submitted late to Tracfin on 6 February 2014 for a cash payment of 14,000 euro made in September 2013 by a customer employed as a home help and paid a monthly wage of 1,493 euro, who had already paid out 20,000 euro in cash in March 2011 (case A2); whereas, similarly, in the case of a customer who, during the second quarter of 2012, received 35 bank transfers and 18 cheques from La Française des Jeux for a total amount of more than 200,000 euro, the submission of an STR on 13 July 2015 is well overdue and unjustified by the investigations performed on other subsequent suspicious transactions executed by the same customer (case A31); whereas the transactions of a customer with a personal account and two business accounts, one in the name of a car repair company and the other in the name of a landscaping and wholesale construction equipment company, which prompted 19 alerts, the first of which, for a transfer of 64,408 euro, dates back to 18 December 2012 and was followed by several other alerts for significant cash withdrawals, were suspicious in nature well before they were reported on 19 January 2015 (case A24);

13. Whereas, in addition, even if certain documents in the case file, particularly those supplied by Tracfin, demonstrate an improvement in the average processing times in 2015, they do not cast doubt on the objection with regard to the persistently excessive time taken to submit STRs in 2015, illustrated by 12 of the 34 aforementioned cases; whereas, accordingly, objection 2 is fully substantiated;

II. On the provisions of the suspicious transaction reporting proposals procedure for complementary STRs

14. 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 these internal procedures must cover all of the AML-CTF obligations imposed on a credit institution; whereas, notably, among these obligations, paragraph V of Article L. 561-15 of the Monetary and Financial Code provides that, "*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*.";

15. Whereas, according to **objection 3**, which is based on these provisions, the STRP procedure imposes very tight restrictions in addition to the law with regard to the submission of a complementary STR; whereas, accordingly, the procedure provides that following the submission of an initial STR, a complementary STR, which the procedure refers to as "further information" (*complément d’information*), should be submitted when several conditions are met ("*same type of facts as the initial STR/same activity/same origin or destination of funds/same reasons for the STR"*), when the new transaction value is "*proportionate to*" or "*exceeds*" the initial STR value, and when the lapse of time is "*within four months of the transaction(s) subject to an initial STR*"; whereas by contrast, for cases with the "*same type of facts as the initial STR, [the] same activity, [the] same origin or destination of funds [and the] same reasons for the STR*", when the suspicious transaction takes place more than four months after the transaction reported to Tracfin in the previous STR, SG requires that a "*new STR*" be submitted; whereas the procedure also provides for a new STR when "*transactions are different in nature from the initial STR, [there is a] change of corporate directors, [there is a] change of commercial court, [there is a] change of activity, [there are] different reasons for the STR; [for an] amount proportionate to the initial STR*"; whereas the STRP procedure, on the two latter points, does not comply with the legal requirements for submitting a complementary STR, as SG recommends completing a new STR, without identifying it as further information within the meaning of the regulation; whereas the procedure only requires the recording of the initial STR reference in the analysis section of the "X" IT tool's record, without specifying that it should be included in the information submitted to Tracfin, including in the case of a new STR; whereas this makes the criteria that should be applied for the preparation of a complementary STR or a new STR unnecessarily complex and creates inconsistencies between the regulation and the procedure; whereas it is uncertain that Tracfin can identify the initial STR that the complementary STR should be matched to; whereas, consequently, this procedure does not fulfil its objective, which is to ensure compliance with SG's reporting obligations;

16. Whereas SG's STRP procedure has criteria to distinguish between those reported transactions that are a matter for a complementary STR and those that fall within the scope of a new STR; whereas SG maintains, to this end, that it has drawn on the joint ACP and Tracfin guidelines on the reporting of suspicious transactions of June 2010; whereas after reviewing the aforementioned applicable legal provisions, these provide that "*information that may invalidate the suspicions or that relates to the specific features of the reported transactions or to knowledge of the business relationship must be reported to Tracfin without delay, irrespective of the amount of the transaction*" and that "*by contrast, new financial flows carried out on behalf of a customer whose transactions have recently been submitted in a report should only result in the submission of a complementary report to Tracfin if the new transactions are for significant amounts: for example, in the case of the type of information that confirms the assessment that was brought to Tracfin's attention in an initial submission, only recent transactions whose cumulative totals are at least equivalent to those previously reported should be subject to a complementary report*" (p. 12); whereas by setting out two cases of complementary reports and two cases of new reports for the analysts, the STRP procedure in force at SG at the time of the inspection, imperfect as it was, did not appear to contravene the applicable provisions of the Monetary and Financial Code, or, incidentally, the clarifications provided in the aforementioned guidelines; whereas it has been neither established nor claimed that as a result of this procedure transactions or information that should have been brought to Tracfin's attention went unreported; whereas SG maintains, and the plaintiff authority does not contest it, that applying this procedure leads to new STRs being entered as complementary STRs in its "X" IT tool and then directly exported into Tracfin's ERMES application, which allows Tracfin to match the reports that are successively submitted on the basis of information it receives on the existence of an initial STR and its receipt number; whereas, incidentally, Tracfin makes no reference in its reporting practices focus points for SG to difficulties in processing the submitted STRs that may have resulted from the application of inappropriate criteria for differentiating between the initial STRs and complementary STRs; whereas objection 3 is therefore dismissed;

III. On the anti-money laundering

and counter-terrorist financing monitoring system

17. Whereas paragraph I of Article L. 561-16 of the Monetary and Financial Code provides that, "*The entities referred to in Article L. 561-2 shall refrain from executing any transaction for amounts that 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 may be linked to terrorist financing until such time as they have made the report referred to in Article L. 561-15. They may then proceed with the transaction only if the conditions set forth in the fourth paragraph of Article L. 561-25 are met.*";whereas, Article 46 of the *Arrêté* of 3 November 2014 provides that, *"The 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 paragraph II of Article L. 561-10-2 or need to be reported pursuant to Article L. 561-15 of the Monetary and Financial Code";*

18. Whereas according to **objection 4**, which is based on these provisions, SG has an automated system for detecting unusual transactions, which generates alerts after the execution of such transactions, as well as a "manual" system to detect the same transactions prior to their execution, which relies on human intervention and the vigilance of the agents concerned; whereas the latter system appears neither to meet regulatory requirements nor ensure the effective discharge of its reporting obligation for the following reasons: (i) vigilance on the part of a human operator is not in itself likely to be an effective system to monitor and assess business relationships given the significant volume and variety of transactions processed by SG, (ii) the procedures communicated by SG through AML-CTF summary leaflets prepared for branch staff, are inadequate and do not represent a manual ("human") system for detecting unusual transactions as they do not refer to the cases or transactions where the branch staff should refrain from execution and instead submit an STR in advance, or by contrast, the cases where staff cannot put off the execution and submit an STR without delay, nor do they refer specifically to the existence of a manual detection system prior to the execution of transactions, and (iii) in any event, the detection of suspicious transactions prior to their execution failed in five cases (A4, A5, A25, A27 and A17);

19. Whereas, first, the provisions of Article 46 of the *Arrêté* of 3 November 2014 require the implementation of a system to detect, prior to their execution, all transactions that fall within the provisions of paragraph I of Article L. 561-16 of the Monetary and Financial Code; whereas, although the 2010 guidelines mention that an entity's organisation and size could necessitate the use of IT systems, their absence is not in itself a breach that is likely to be sanctioned, as long as the system in place is effective; whereas, in addition, SG, which had previously declared that it had not implemented an automated system that could be used to detect a priori unusual transactions, has since stipulated in its most recent written statements and confirmed at the audience, without being challenged, that its initial response was due to a misunderstanding and the automated systems it uses (in particular, "Y") do indeed generate alerts prior to the full execution of transactions in the event of flows that are processed by these tools (transfers, cheques, etc.); whereas this part of the objection will consequently be dismissed;

20. Whereas, second, SG maintains that its manual system for detecting unusual transactions prior to their execution is effective, thanks to the roll out of training initiatives and access to standing support material including technical summary leaflets; whereas this system was responsible for the detection prior to execution of almost 70% of unusual transactions in 2015 and 50% in 2016; whereas, however, the leaflets made available to staff, entitled "L – Money laundering and fraud" (*Blanchiment et fraude*) of October 2013 and "Anti-money laundering – Know your customer (KYC)" (*Lutte anti-blanchiment – connaissance client / KYC – Know your customer*) as well as French retail banking instruction No. 20076 of 2 September 2011 on anti-money laundering in the French retail banking sector make no mention of when and how to block a transaction; whereas the leaflet entitled "All markets – AML-CTF – Branch/DEC/DPDI – Processing suspicious transaction reports" (*Tous Marchés – LCB-FT – Agence/DEC/DPDI – Traitement des déclarations de soupçon*) does not clearly state when employees should defer the execution of a transaction, simply saying "example of non-executed transactions: refusal to enter into a relationship, refusal to credit a customer's account with a transfer received without any possible identification of the payer"; whereas, accordingly, the part of the objection relating to these procedures is substantiated;

21. Whereas, lastly, with regard to the five aforementioned individual cases, it is duly noted that the complaint of the representative of the College in respect of case A5 is withdrawn; whereas in case A4, although SG states that the execution of a transaction (transfer of funds from Paraguay) was blocked following a "Y" alert, another part of the funds was not blocked as the corresponding alert was dismissed without being processed; whereas in case A25, notably characterised by the existence of several transactions over a long period of time, including "*five cheques that were improperly signed*", the account's unusual functioning since December 2009 was only detected – manually – in June 2014, and nothing was done until a member of the family intervened; whereas in case A27, incoming transfers for a total amount of EUR 1 million to the account held at the Courbevoie branch in the name of the SCI (*société civile immobilière* – a real estate company) [...], co-managed by Ms. [...], were executed on 17 December 2014 and 24 December 2014, even though an alert had been generated on 7 December 2014 by "Z" IT tool following cash payments amounting to 3,000 euro; whereas in case A17, despite the account's unusual functioning as a transitory account, the customer's request to fax a transfer order for 40,000 euro from an account with SG Luxembourg to his daughter's account with the Banque de Polynésie was only detected due to a fax number error; whereas the objection is therefore substantiated for four of the five cases cited by the plaintiff authority;

22. Whereas objection 4 is substantiated subject to a significantly reduced scope as mentioned in recital 19; whereas, however, it is corroborated by a reduced number of only four cases;

IV. On the internal control of compliance with reporting obligations

23. Whereas Article 71 of the *Arrêté* of 3 November 2014 provides that "*the permanent control of the anti-money laundering and counter-terrorist financing system forms part of the compliance monitoring system, in accordance with the conditions provided in Chapter II of this document*"; whereas Article 72 of the same *Arrêté* provides that "*the head of compliance must verify that the systems and procedures mentioned in this chapter are appropriate and comply in particular with the obligations contained in Articles L. 561-10-2, L. 561-15 and R. 561-31 of the Monetary and Financial Code*";

24. Whereas, according to **objection 5**, which is based on these provisions, SG's internal control of compliance with reporting obligations presents several shortcomings: (i) whereas the quality of the STRs and the analytical information that led to the suspicion are not checked, as the SFG only carries out a formal inspection of STR cases each quarter, which deals solely with checking for completeness; (ii) whereas no corrective measures, at the time of the inspection, had been decided or implemented despite the high rate of identified anomalies in terms of the completeness of files (an anomaly rate of 15%) or the termination of a business relationship once it has been recommended (an anomaly rate of 20%); (iii) whereas monitoring of the time taken to submit STRs to Tracfin is inadequate, as it does not take into consideration the time taken by the DEC to draft the STRPs; (iv) whereas monitoring of the time taken to draft STRPs is ineffective given that there is no precise and uniformly applied definition of the concept of "initial event", which is found in the STRP form and which covers a range of situations such as "*the date of the "Y" or "Z" (automated AML-CTF detection tools) alert, the date of the first emails sent between the risk management function and the marketing function or the date on which any other reason for the suspicion arose*"; and (v) whereas compliance with the STRP procedure, which requires a breakdown between high and low-priority cases, should be more closely monitored;

25. Whereas the description of the control organisation implemented by SG, which is based on a pyramid structure, does not refute the objection that the quality of internal control is inadequate pursuant to the *Arrêté* of 3 November 2014; whereas the second level permanent controls do not address the quality of the STRs, irrespective of the collective expertise of the SFG; whereas the identified anomaly rate is not seriously challenged, nor is the absence of relevant corrective measures, subject to evidence produced by SG with regard to controls over the termination of business relationships; whereas SG's internal control structure "*does not incorporate any monitoring of the time taken*" to draft the STRPs; whereas the assertion that each business unit monitors the time taken to process alerts and unusual transactions is not enough to establish that an internal control over the STRP drafting phase was actually in place at the time of the ACPR's inspection; whereas SG's arguments with regard to the existence of informal controls over the categorisation of STRPs by the weekly review committee are vague and undocumented; whereas the implementation of a sample check of this categorisation in 2016 appears to be a corrective measure introduced after the inspection, and therefore has no bearing on the complaint; whereas, accordingly, subject to a slightly reduced scope as a result of the withdrawal of the objection relating to controls over the termination of business relationships, the objection is substantiated;

V. On the submission to the General Secretariat of the ACPR

of an AML table containing incorrect information

26. Whereas, according to Article 1 of Instruction No. 2012-I-04, "*reporting entities* *must submit AML tables*", including the table entitled "*B8 – Statistical data*", which requires the reporting entity, in question no. 121 in the "*Tracfin reports during the last financial year*" section, to "*[state] the average period of time between the execution of transactions and their reporting (in days) to Tracfin, during the last financial year, pursuant to paragraphs I and III of Article L. 561-15 of the Monetary and Financial Code*";

27. Whereas, according to **objection 6**, which is based on these provisions, SG, in its AML tables for 2014, provided an incorrect answer to the question dealing with the average period of time between the execution of a suspicious transaction and its reporting to Tracfin, by stating a period of 55 days, which did not take into account the average time taken to forward the STRP of 90 days from the "initial event", which, in addition, is not uniformly defined; whereas, accordingly, SG did not answer the actual terms of question no. 121, as the average period of time was closer to 145 days, to which the average time taken from the execution of the suspicious transaction should be added;

28. Whereas while SG acknowledges the error it made in its answer in the AML tables for 2014 by deducting the time taken to process STRPs, it does however consider that the error, which was unintentional, is a result of question no. 121 of the ALM tables being inappropriate as it measures the time taken to submit the STR from the execution of the transaction although it should be calculated from the moment the suspicion arises; whereas, however, it is the responsibility of the reporting entity to answer the questions asked of it in accordance with the regulatory provisions in their actual terms, which in this particular case are clear and precise, and regardless of its judgement of the relevance of these terms; whereas whether a breach is unintentional or not has no bearing; whereas, accordingly, objection 6 is substantiated;

VI. On failures to submit an STR

29. Whereas according to paragraphs I and II 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. / II. As an exception to I, the entities referred to in Article L. 561-2 shall declare to the unit referred to in Article L. 561-23 the sums or transactions which they know, suspect or have good reasons for suspecting are the proceeds of a tax fraud, where at least one criterion defined by decree is present*";whereas paragraph II of Article D. 561-32-1 of the same code notably refers to the following points as criteria: "*4. Execution of financial transactions inconsistent with the firm’s normal activities, or suspicious transactions in sectors where there is risk of VAT carousel fraud, such as the IT, telephony, electronic equipment, domestic appliances, hi-fi and video sectors […]*; *8. Frequent cash withdrawals from a professional account, or cash deposits into such an account that are not justified by the level or type of economic activity […]*; *11. Refusal of the client to provide supporting documents as to the provenance of the funds received, or as to the reasons given for payments, or the impossibility of providing these documents […]*; *15. The deposit by an individual of funds that bear no relation to his known activity or assets"*;

30. Whereas, according to **objection 7**, which is based on these provisions, five cases present a failure to submit an STR;

31. Whereas, with regard to the allegation that the sample of cases that were examined and that led to the identification of these five cases (B1, B2, B3, B4 and B5) is not representative, the reporting obligations, which SG is accused of misapplying, should be complied with in all circumstances; whereas, consequently, each shortcoming identified in this area represents a breach that in itself is likely to be sanctioned; whereas the question of the number of breaches identified and as to whether the sample that generated the examined cases was representative would only be relevant if the intention was to extrapolate in order to formulate a general objection, which is not the case here;

32. Whereas in case B1, the 950,000 euro in cheques deposited on 4 May 2004 into the customer's personal account, issued by company Y, in which the customer has a 99% holding, followed during the same month by the transfer of 920,000 euro to an SCI of which the customer's daughters are majority partners, were investigated by the DEC, which forwarded an STRP on the basis that it could be a "disguised gift"; whereas, when asked, the customer did not reply to requests for clarification; whereas, due to the customer's resulting impoverishment without any known counterparty, these transactions should have been reported to Tracfin, notably on the basis of criterion 11 of paragraph II of Article D. 561-32-1 of the Monetary and Financial Code, cited by the plaintiff authority;

33. Whereas in case B2, the cash movements in the company account since February 2014, which were inconsistent with its activity, in addition to those recorded in the partners' account, should have led to the submission of an STR on the basis of criterion 4 of paragraph II of Article D. 561-32-1 of the Monetary and Financial Code prior to the receipt of a judicial requisition on 13 August 2014;

34. Whereas in case B3, the inconsistency between the amount and timing of the cheques deposited in the customer's account and the customer's supposed paid employment in the building industry on the one hand, and on the other hand, the request to withdraw 3,000 euro in cash on 21 March 2015, which led to a manual alert the same day, should have resulted in the submission of an STR to Tracfin; whereas the account manager (*chargé de clientèle*) had also voiced a concern as to the authenticity of the proof of identity presented by the customer; whereas, nevertheless, on 13 May 2015, SG closed the STRP forwarded by the DEC on 14 April 2015; whereas the customer was questioned too long after the date on which suspicions were raised; whereas in light of both the incoming and outgoing transactions in the customer's account, an STR should have been submitted in accordance with criteria 11 and 15 of paragraph II of Article D. 561-32-1 of the Monetary and Financial Code;

35. Whereas in case B4, in respect of a subsidiary of a German group of the same name, the cash withdrawals made from the account since 2011, as well as the various cheques for 15,000 euro made payable to natural persons, which had been the subject of an STRP in January 2014, should have resulted in the submission of an STR to Tracfin, despite the SFG's investigations, (i) as they had not been explained and (ii) in light of the publicly available information on the group's practices; whereas an STR should have been submitted in accordance with criterion 8 of paragraph II of Article D. 561-32-1 of the Monetary and Financial Code;

36. Whereas in case B5, the inconsistency between the declared income of the customer, a dentist with a sideline in land, property and real estate rental, and the amounts credited to the customer's account in cash or via bank transfers (554,600 euro in 2013 and 412,500 euro in 2014), particularly as the customer, when asked, refused to explain the amounts, notably stating "*it's intrusive to be asked how much you earn*", should have resulted in the submission of an STR to Tracfin, based on paragraph I of Article L. 561-15 of the Monetary and Financial Code;

37. Whereas even if these cases were closed without further action following an analysis and genuine investigations by the SFG, they nevertheless demonstrate an error of judgement in each case;

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38. Whereas it is clear from the above that at the time of the inspection, the STRP procedure was inadequate for the purpose of enabling SG to properly comply with its obligation to report to Tracfin "without delay" any transaction that fell within the scope of the provisions of Article L. 561-15 of the Monetary and Financial Code (**objection 1**); whereas the excessive time taken to report suspicious transactions to Tracfin is substantiated based on statistical data relating to average STR processing times which are corroborated by a substantial number of individual cases; whereas, incidentally, this processing time was subsequently significantly reduced thanks to the expansion of the SFG's workforce from 37 to 170 employees between 2014 and 2017, with more than half of the staff affected to the SFG/AML division, which confirms their excessive nature in 2014 and 2015 (**objection 2**); whereas at the time of the inspection, the manual system for detecting and analysing unusual transactions was flawed (**objection 4**), while there were serious shortcomings in SG's internal control system with regard to its reporting obligations (**objection 5**); whereas the answer to question no. 121 in the AML tables that only took into account the period of time from the receipt of the STRP to the submission of the STR to Tracfin, thereby omitting the STRP drafting phase, represents a serious breach, as it misleads the regulator as to the quality of SG's reporting system and distorts comparisons with other financial entities subject to the same obligation (**objection 6**); whereas certain failures to submit an STR were raised against SG (**objection 7**); whereas, overall, due to the relative weight of SG's reporting activities among the entities subject to AML‑CTF regulations, these shortcomings, and particularly the allegations of delays in submitting STRs to Tracfin, reduce the effectiveness of the French anti-money laundering and counter-terrorist financing system;

39. Whereas, however, the objection relating to the procedural criteria used to decide between the submission of a complementary STR and a new STR has been dismissed (**objection 3**) while the scope of the objections in relation to the system of detection of unusual transactions and SG's internal control respectively, has been reduced (**objection 4 and 5**); whereas it should also be noted that when questioned by the General Secretariat of the ACPR with regard to the reporting practices of SG, Tracfin, despite expressing certain criticisms relating to the "*sometimes excessively lengthy delays between identifying suspicious flows and submitting STRs*", considered that these practices were "*satisfactory overall*" in 2015, which was the last year covered by the inspection report; whereas, in addition, in this inspection procedure, only certain aspects of the AML-CTF system are criticised, particularly the processing of STRs by the centralised structures created at group level, which are not the same as those previously censured by the ACPR in respect of this group;

40. 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, and in light of the mitigating circumstances cited above, in accordance with the principle of proportionality and in light of SG's financial situation, a fine of EUR 5 million shall also be imposed;

41. 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 5 million (five million euro) shall be imposed on Société Générale.

**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.