

La Banque Postale  
Procédure No. 2016-04

Reprimand and fine of  
EUR 5 million

Hearing of 28 April 2017  
Decision handed down on 18 May 2017

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

Having regard to the letter dated 24 March 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 2016-04 against La Banque Postale (hereinafter LBP), which has its registered office at 115, rue de Sèvres, 75275 Paris Cedex 06;

Having regard to the statement of objections dated 24 March 2016;

Having regard to the defence submissions dated 16 June 2016, 10 October 2016 and 8 December 2016 and the accompanying documentation, in which LBP: (i) considers that the provisions of Regulation No. 97-02, adopted by the *Arrêté* (ministerial order) of 3 November 2014 on internal controls, do not apply to LBP's insurance intermediation activity, or that, at least, such an interpretation was not foreseeable; (ii) deems, in the event that the above-mentioned texts apply, that it respected the principle of proportionality concerning the permanent and periodic controls in place; (iii) recognises that it did not fully respect its duty to advise in terms of formally recording the information gathered on the client's financial situation and investment objectives and the precision of the client's requirements and needs; and (iv) contests the allegations that the underlying reasons for the advice given for a particular contract were not appropriate to the requirements and needs of the client;

Having regard to the submissions dated 1 August 2016 and 15 November 2016, in which Christian Poirier, representative of the College, considers that, notwithstanding these observations, all the objections are substantiated;

Having regard to the report of 24 March 2017, in which the rapporteur Thierry Philipponnat considers that all the objections are substantiated, either entirely or, in the case of the final objection, reduced in scope;

Having regard to the letters dated 24 March 2017 summoning the parties to the hearing and inviting the Director General of the Treasury, informing them of the composition of the Committee and indicating that LBP's request that the hearing take place in camera shall be granted;

Having regard to the observations of LBP submitted on 10 April 2017 in response to the rapporteur's report;

Having regard to the other documents related to the case, notably the inspection report dated 3 September 2015;

Having regard to the Insurance Code, and more specifically to its Articles L. 132-27-1, L. 520-1 (III) and R. 132-5-1-1;

Having regard to the Monetary and Financial Code, notably its Article L. 511-41 now L. 511-55;

Having regard to Regulation No. 97-02 of 21 February 1997 on internal control in credit institutions and investment firms (hereinafter Regulation No. 97-02), and in particular Articles 4, 6, 9, 11-1 and 11-4 thereof;

Having regard to the *Arrêté* of 3 November 2014 on the internal control 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 13, 17, 25, 35 and 39 thereof;

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

The Sanctions Committee, comprising Rémi Bouchez, Chairman, Claudie Aldigé, Claudie Boiteau, Elisabeth Pauly and Denis Prieur;

Having heard at the session held in camera on 28 April 2017:

- Thierry Philipponnat, rapporteur, aided by Lauriane Bonnet, his deputy;
- Christian Poirier, representing the College, aided by the ACPR's Deputy Director of the Legal Affairs Directorate, a senior manager from the same directorate, the Deputy Head of the Oversight of Contracts and Risk Division and a supervisor from said division; Mr Poirier proposed issuing a reprimand along with a fine of EUR 18 million, to be published in a non-anonymous decision;
- LBP, represented by its Head of Legal Affairs and Head of Compliance;

Where LBP's representatives were given the last word;

Having deliberated in the sole presence of Rémi Bouchez, Chairman, Claudie Aldigé, Claudie Boiteau, Elisabeth Pauly and Denis Prieur, as well as that of Jean-Manuel Clemmer, Chief Officer of the Sanctions Committee, who acted as meeting secretary;

1. Whereas LBP, authorised by Law No. 2005-516 of 20 May 2005 on the regulation of postal activities and licensed on 2 December 2005 by the *Comité des établissements de crédit et des entreprises d'investissement* (the committee for credit institutions and investment firms, hereinafter CECEI), began operations on 1 January 2006; whereas LBP, vested by law with a mandate to offer banking, financial and insurance services to the widest possible audience, proposes all conventional, accessible and simple services or products (deposit accounts, payment methods, property lending, consumer credit, savings products); whereas LBP is also registered with ORIAS as an insurance agent on behalf of companies W, X and Y, and as an insurance and reinsurance broker; whereas LBP conducts its insurance intermediation activity through the La Poste network, whose employees act in its name and on its behalf; whereas at the time of the on-site inspection, the marketing of life insurance contracts was carried out by 87 LBP asset management advisers (*CGP*) and by 3,724 customer advisers (*COCLI*), 3,508 financial advisers (*COFI*) and 794 specialised wealth management advisers (*CSP*) with La Poste; whereas LBP has 3,600 direct employees and is supported by the La Poste network's workforce of 27,400 people; whereas in 2016, LBP's net banking income (NBI) and total net income (group share) amounted to EUR 5.6 billion and EUR 0.7 billion respectively; whereas in 2016, life insurance assets under management increased by 1.1% to EUR 125.9 billion;

2. Whereas LBP marketed the Progressio and Progressio 2006 investment funds (hereinafter Progressio funds), directly or as an underlying asset for its unit linked life insurance contracts; whereas its diversified funds were set up on 1 April 2005 and 20 January 2006 and managed by the portfolio management company, LBP Asset Management (hereinafter LBPAM), which is a 100%-owned subsidiary of LBP; whereas its investment funds carry a capital investment guarantee, maturing after 8 years of investment, of 102.94 euro and 102.43 euro per unit for the first and second funds respectively; whereas the subscriber foregoes this guarantee in the event of divestment prior to maturity; whereas in 2011, these funds lost 15% to 30% of their liquidation value, primarily due to the decision prior to the sovereign debt crisis to replace assets judged to be high risk with government bonds, notably those issued by Greece; whereas the capital investment guarantee, initially provided by company Z, was directly assumed by LBP following the difficulties experienced by that insurer as a result of the subprime crisis; whereas the total amount of actual financial losses incurred by the clients (the difference between the liquidation value at divestment and the maturity guarantee) came to EUR 18.6 million, including EUR 9.3 million between 1 January 2012 and 1 October 2014; whereas 43% of these losses resulted from surrenders and arbitrages, with the remaining balance due to contract terminations following the death of the subscriber;

3. Whereas in September 2011, the *Autorité des marchés financiers* (AMF – the French financial markets authority) drew the attention of LBP and LBPAM to the extremely unfavourable evolution of the Progressio funds' liquidation value; whereas in December 2011, the LBP Savings and Insurance Department had consequently launched a specific internal procedure (hereinafter the Progressio procedure) aimed at its marketing and operations departments and the La Poste Retail Brand Department intended to "*warn clients who would like to opt for an early surrender of their Progressio and Progressio 2006 diversified fund units against the risk of financial loss*"; whereas this procedure set out for "*general consultants, asset management advisers and specialised wealth management advisers*" the measures to adopt in the event that clients ask to divest from the Progressio funds, irrespective of whether the units were held directly in an ordinary securities account or under a life insurance contract; whereas the adviser should have found, if possible, another solution with the agreement of the client, informed the client of the latest liquidation value and that of the maturity guarantee, and specified that surrender entailed the payment of a 0.5% fee; whereas the heirs to these contracts should also have been given this warning; whereas the communication of this procedure was also accompanied by the installation of a computerised warning system on the workstations of the advisers, which, in the event of a request for the surrender or arbitrage of Progressio fund units, reminded the advisers that they should print and have the client sign the "*Désinvestissement des supports PROGRESSIO/PROGRESSIO 2006 dans le cadre d'un contrat d'Assurance-vie*" form, in which clients acknowledged that they were aware of the terms and conditions of exiting the contract and particularly the absence of a capital guarantee when exiting prior to maturity (hereinafter the Progressio printout);

4. Whereas LBP's insurance intermediation activity was subject to an on-site inspection between 17 October 2014 and 5 June 2015, which, following a meeting held on 22 June 2015 and the institution's transmission of its remarks on the draft report, resulted in the signature of a final report on 21 December 2015; whereas, in light of this report, the College decided, at its meeting held on 26 February 2016, to open this disciplinary hearing;

## I. On LBP's supervision of the proper application of the Progressio procedure

### A. On the risk of non-compliance from failing to respect the Progressio procedure

5. Whereas Article 11-1 of Regulation No. 97-02 requires that reporting companies implement "*specific procedures for verifying compliance, notably: – systematic prior approval procedures, including an advice note from a superior responsible for compliance or a person duly authorised by said superior for this purpose, for new products or significant changes made to pre-existing products, for this company or for the market; – or, for the provision of investment services, all systems designed to advise and assist the persons*

concerned responsible for investment services so that they comply with their obligations under this chapter. / Reporting companies also implement control procedures for completed transactions."; whereas, according to Article 11-4 of this Regulation, they must ensure "for all members of staff concerned, training in compliance control procedures that is tailored to the operations they carry out. / Reporting companies implement a mechanism to guarantee the regular monitoring, as frequently as possible, of changes that may be made to the texts governing their operations and, in this respect, to immediately inform all their members of staff concerned"; whereas these provisions, which have not been substantially amended, can now be found in Articles 35 and 39 of the *Arrêté* of 3 November 2014;

6. Whereas, according to **objection 1**, which is based on these provisions, LBP did not implement a compliance control system with regard to the Progressio procedure; whereas, on the one hand, no technical mechanism was implemented to ensure that the Progressio printout, which under this procedure should be signed by the client, was completed and signed prior to recording the transaction; whereas, on the other hand, no specific system to assist and train advisers was put in place in order to raise their awareness of the issues involved in applying the procedure and the alternative solutions to be offered to clients; whereas this procedure was particularly vital as it was also a means to prevent any conflict of interest that could arise as a result of LBP's dual role as customer relationship manager and guarantor of invested capital;

7. Whereas LBP accepts that an IT mechanism to block surrenders of Progressio funds within a life insurance contract, which activated in the absence of a signed Progressio printout, and an adviser training programme would have contributed to the more effective implementation of the Progressio procedure; whereas LBP maintains that, in any event, it is not possible for the Commission to punish LBP for failing to adequately monitor the correct application of this internal procedure, which provided for measures that exceeded its legal obligations, given that by virtue of its insurance intermediation activity, it was not governed by the requirements of Regulation No. 97-02;

8. Whereas, however, the provisions of Article L. 511-41 of the Monetary and Financial Code, upheld in Article L. 511-55 of said code, require that the organisations governed by the Monetary and Financial Code, including credit institutions, implement a governance and internal control system allowing them to assess and effectively manage the risks inherent to their business model and company activities, and that this system must also be "proportionate to the nature, scale and complexity" of those risks and activities; whereas the preparations for Law No. 99-532 of 25 June 1999 on savings and financial security, which introduced these provisions into banking legislation, show that the legislator's intention, by requiring banking sector institutions to have an internal control system, was to encourage them to recognise the risks and returns of all their activities; whereas, similarly, Regulation No. 97-02, now replaced by the *Arrêté* of 3 November 2014, notably states that the internal control framework of these institutions should particularly include "a control system for operations and internal procedures", "systems for measuring risks and performance" and "systems to monitor and control risk", and that all these elements should be proportionate to "the nature and volume of their activities, their scale, their business locations, and the various types of risks they face" (Article 1); whereas other provisions of this regulation show that, in accordance with the legal provisions cited above, the internal control system of a credit institution, which includes controls of the compliance of its transactions, should cover all its transactions; whereas, accordingly, Article 10 requires that all of the organisations subject to the *Arrêté* ensure "that their control system is integrated into the organisation, methods and procedures of every activity" and that the periodic control mechanisms for the compliance of transactions, effective level of risk and respect of procedures "apply to the entire business"; whereas Article 17 *quater* requires them "to implement systems and procedures that allow them to develop an overall understanding of all the risks associated with banking and non-banking operations"; whereas the annual report on the measurement and supervision of risks that they must submit in compliance with Article 43 should "enable an overall and transversal understanding of all risks, by including risks associated with banking and non-banking operations";

9. Whereas, accordingly, the internal control system of a credit institution must cover all its risks and activities; whereas it is in this context that the provisions of section p) of Article 4 of Regulation No. 97-02, which defines the risk of non-compliance as "*the risk of legal, administrative or disciplinary sanctions, material financial loss or loss to reputation, resulting from failure to comply with the provisions pertaining to banking and financial activities, whether legislative or regulatory in nature, or pertaining to professional or ethical standards, or instructions from the executive management body made, notably, in accordance with the directions of the decision-making body*", should be interpreted; whereas, as a result, contrary to what is claimed by LBP and irrespective of the definition of the term "*financial activities*" used in the application of other regulatory provisions or in documents and reports that concern other subjects, the insurance intermediation activity carried out by a credit institution and the resulting risks must be considered as falling within the scope of the aforementioned provisions – and notably those pertaining to compliance control – of Regulation No. 97-02 and later the *Arrêté* of 3 November 2014;

10. Whereas surrenders prior to the maturity of the capital guarantee of the Progressio funds included in life insurance contracts gave rise to the risk for LBP of individual legal disputes with clients, risk to LBP's reputation, and also a risk of disciplinary sanctions for failure in its duty to advise in the event of the surrender of contracts incorporating Progressio fund units in order to reinvest in other products marketed by LBP (see objection 3 below) – risks that the Progressio procedure was intended to prevent; whereas, given the significant financial losses that LBP's clients could incur as a result of these surrenders, these risks were genuine, regardless of whether LBP was likely to be sanctioned in civil court for failure in its duty to advise or to provide a warning in regard to the execution of the contested contracts; whereas, while it is true that the Progressio fund units only represented 0.4% of life insurance contracts, in comparison, for example, to a total of four million life insurance contracts sold by LBP on behalf of insurance company W alone, the resulting risks for LBP must nevertheless be considered in the light of the significant number of clients in absolute terms – 145,315 subscribers at end-March 2015 – and the potential losses of those among them who surrendered their contracts despite the liquidation value of the Progressio funds being inferior to the value of the guarantee (see recital 2); whereas, accordingly, the improper application of the Progressio procedure, which should be viewed as the clarification of the LBP's binding legal and regulatory obligations, can be sanctioned as a breach of the requirements incumbent upon LBP in terms of controls of the compliance of its transactions;

11. Whereas although LBP maintains that such a sanction would not meet the foreseeability requirement that stems from the principle of legality and proportionality of criminal offences and penalties, as insurance intermediation is not expressly included in the scope of Regulation No. 97-02, it is clear that in view of the foregoing (recitals 8 and 9) and in line with the intentions of the legislator, the internal control of credit institutions, including controls of the compliance of its transactions, governed by Regulation No. 97-02, applies to LBP's risks and activities as a whole; whereas moreover, the ACPR's questionnaire on compliance with consumer protection rules for banking clients (*questionnaire sur le respect des règles de protection de la clientèle banque*) sent annually to credit institutions, includes questions pertaining to the distribution of insurance products; whereas LBP itself had incorporated its life insurance marketing activity in its consumer protection risk map, which is a component of its internal control system;

12. Whereas, as previously explained, LBP does not contest the improper application of the Progressio procedure; whereas although LBP (i) maintains that the mechanism put in place was proportionate to the risks involved, (ii) argues that La Poste network advisers were informed of the implementation of said procedure via La Poste's intranet and (iii) points out that few complaints were received, these elements do not respond to the objection, which has been substantiated;

## B. On the permanent and periodic controls of the application of the Progressio procedure

13. Whereas the aforementioned provisions of Article L. 511-41 of the Monetary and Financial Code, upheld in Article L. 511-55 of said code (see recital 8 above), require the organisations governed by the code in particular to implement effective detection, management, monitoring and declaration procedures for the risks to which they are or may be exposed, and specify their main characteristics; whereas the provisions of section a) of Article 6 of Regulation No. 97-02, extended to Article 13 of the *Arrêté* of 3 November 2014, require that the permanent control of compliance, security and approval of completed transactions be ensured with a sufficient set of resources, by employees specifically dedicated to this function on the one hand and by other employees separately carrying out operating activities, on the other; whereas, according to section b) of Article 6 and paragraph 2 of Article 9 of Regulation No. 97-02, whose provisions are now found in Articles 17 and 25 respectively of the *Arrêté* of 3 November 2014, the periodic control of the compliance of transactions, the effective level of risk incurred, respect of procedures and the effectiveness and appropriateness of the permanent control systems are ensured through investigations conducted by central and, if appropriate, local employees, and should be allocated sufficient resources to carry out a complete audit cycle covering all activities over as few years as possible;

14. Whereas, according to **objection 2**, which is based on these provisions, (i) LBP did not implement an adequate system of permanent and periodic control of compliance with regard to the Progressio procedure; whereas, firstly, although this procedure included controls to ensure its proper application, LBP did not perform any permanent controls in this respect; whereas in 90 of the 107 cases relating to surrenders or arbitrages carried out prior to maturity on Progressio funds, there was no Progressio printout; whereas in the case of 8 of the 17 cases that included a Progressio printout, it had not been correctly completed or signed; whereas, in addition, in 80 of the 88 total or partial surrenders, the measures adopted to explore and recommend alternative solutions were either undocumented or only partially recorded (notably cases A1, A2, A3, A4, A5, A6 and A7); whereas non-compliance with this procedure is all the more evident given that for the majority of divestments examined, i.e. 57 out of 107, the clients' savings were redirected towards another contract or product distributed by LBP or La Poste; whereas, in certain cases, the losses incurred by clients who surrendered their investments prior to the maturity of the Progressio funds amounted to several thousand euro (cases A8 and A9); whereas, in addition, case A9 included the recommendation for a surrender and reinvestment in the same contract on the erroneous grounds that the product was not eligible for arbitrage; whereas moreover, the Progressio procedure was never respected in any of the 32 divestments following the insured person's death; (ii) whereas no periodic controls of compliance with the Progressio procedure were carried out;

15. Whereas LBP maintains that due to the very limited nature of the risks that could result from non-compliance with the Progressio procedure, more substantial specific permanent and periodic controls would have been disproportionate; whereas, however, the aforementioned provisions of the Monetary and Financial Code and Regulation No. 97-02 require that the internal control systems be proportionate and adequate in respect of all risks faced by an institution; whereas the principle of proportionality put forward by LBP could not, under any circumstances, authorise an institution to do away with all effective controls of one of its operations that posed a risk, on the grounds that that risk was limited; whereas, as previously explained (see recitals 8 and 9 above), the insurance intermediation activity carried out by LBP should fall within the scope of its internal control system and therefore be subject to permanent and periodic controls;

16. Whereas the measures put forward by LBP with regard to the clients' risk of loss from surrenders or arbitrages carried out prior to the maturity of the Progressio funds, implemented as part of the permanent control system, are too general to validly refute the objection; whereas although the centralised complaints processing system, implemented at the beginning of 2014, did not reveal dissatisfaction from clients in terms of LBP's handling of their specific requests to surrender life insurance plans incorporating Progressio fund units, it did not allow LBP to meet its permanent control obligations; whereas the shortcomings identified by the plaintiff authority in several individual cases, including in the case of an insured person's death, demonstrate that it would have been necessary to adapt the permanent control system in order to check compliance with the Progressio procedure; whereas the low volume of disputes (a single summons received at the time of the inspection – case A6), observed *a posteriori*, cannot justify the absence of any specific control system that should have been put in place *a priori*; whereas, on the same grounds, LBP should have

included these contracts in the scope of its periodic controls; whereas the individual cases cited with respect to this objection confirm that such controls were necessary, even if certain of these cases concern beneficiaries of contracts following the death of the subscriber, for whom LBP claims that the Progressio procedure did not apply in these cases as they failed to appear at the premises; whereas the corrective measures presented, including the implementation at the beginning of 2015 of a specific risk and control indicator for unit linked products with a maturity guarantee, have no bearing on the objection, which is substantiated;

## II. On the duty to advise

17. Whereas paragraph III of Article L. 520-1 of the Insurance Code states that "*prior to the conclusion of an individual insurance contract with a surrender value, a capitalisation contract, or before purchasing a contract mentioned in Article L. 132-5-3 or Article L. 441-1, the intermediary is subject to compliance with the provisions of Article L. 132-27-1, which replaces section 2 of paragraph II of this article*"; whereas Article L. 132-27-1 of the Insurance Code stipulates that "*I. - Prior to the conclusion of an individual insurance contract with a surrender value, a capitalisation contract, or before purchasing a contract mentioned in Article L. 132-5-3 or Article L. 441-1, the insurance or capitalisation undertaking specifies the requirements and needs expressed by the subscriber or policyholder and the reasons explaining the advice provided on a given contract. These precisions, based in particular on the information supplied by the subscriber or policyholder concerning their financial situation and investment objectives, are suited to the complexity of the insurance or capitalisation contract being proposed. / For the application of the previous paragraph, the insurance or capitalisation undertaking takes account of the knowledge of the subscriber or policyholder and of their experience in financial matters. / When the subscriber or policyholder does not provide information specified in the first and second paragraphs, the insurance or capitalisation undertaking warns them prior to the conclusion of the contract. [...]*"; whereas Article R. 132-5-1-1 of the Insurance Code states that, "*The precisions and, where applicable, the warning set out in Article L. 132-27-1 must be clearly and accurately communicated to the subscriber in writing, on paper, or on any other durable medium at the subscriber's disposal and to which the subscriber has easy access. [...]*";

18. Whereas, according to **objection 3**, which is based on these provisions, LBP, during the subscription process following the surrender of life insurance plans incorporating Progressio fund units, did not meet the obligations incumbent upon it in terms of its duty to advise; whereas LBP did not, in this situation, comply with its own procedures which require that advisers gather information on the client (financial situation and investment objectives) and formally record the client's requirements and needs as well as the underlying reasons for the advice given, on a recommendation form (*fiche de préconisation*) and in a customer relations summary file (*synthèse DRC*);

### A. On the gathering of information regarding the client's financial situation and investment objectives and on the precision of the client's requirements and needs

19. Whereas, according to **objection 3.1**, of the 30 subscriptions or purchases of life insurance or capitalisation contracts following the surrender of contracts incorporating Progressio or Progressio 2006 investment fund units, 10 completed and signed recommendation forms were found in the case files during the inspection; whereas of the 17 new subscriptions or purchases following an insured person's death, only 7 recommendation forms were made available to the inspection; whereas, consequently, 30 forms out of 47 were missing; whereas, in addition, the recommendation forms held in the 11 cases examined by the inspection (B1, B2, B3, B4, B5, B6 B7, B8, B9, B10 and B11) lacked elements that were in fact decisive to determining the client's financial situation and investment objectives, such as the client's financial costs (excluding borrowings), investment horizon or the proportion of total assets that the client considered investing; whereas LBP's six predefined general investment objectives of "Building up a capital lump sum", "Capital appreciation", "Passing on capital", "Receiving an income", "Preparing for retirement" and "Tax optimisation" are not set out in order of importance and therefore do not facilitate an understanding of the

client's individual requirements and needs; whereas moreover, the investment strategy options are not described with adequate precision in the recommendation form, with no statement of the different types of investment diversification (*prudente, équilibrée* and *dynamique* – cautious, balanced and dynamic), meaning that the client cannot make an informed, meaningful choice of investment strategy;

20. Whereas the absence of 30 recommendation forms in the case files that were examined is not contested and reflects a shortcoming in the legal obligation to formally record the requirements and needs of the client; whereas the confidential information form (*fiche confidentielle de renseignements*) cited by LBP and prepared as part of its efforts in anti-money laundering and combating the financing of terrorism cannot compensate this shortcoming; whereas in any event the handwritten forms that purportedly contained this information were not made available; whereas although LBP maintains that the period covered by the on-site inspection began on 1 January 2012 and therefore before the publication of ACPR Recommendation No. 2013-R-01 of 8 January 2013 on gathering customer information within the framework of the duty to advise on life insurance contracts, 8 of the 11 forms pertaining to these clients relate to periods after the publication of the recommendation; whereas for the 3 others that relate to the period prior to the publication of the recommendation, the aforementioned provisions, introduced by Ordinance No. 2009-106 of 30 January 2009 on the marketing of life insurance products and operations related to collective contingency and insurance, already required the institutions subject to its provisions to gather information on the client's financial situation; whereas the customer information gathered by LBP did not have the precision required to comply with the aforementioned obligation as, for example, none of it referred to the client's income; whereas the objectives were defined in general terms, which eliminated the possibility of putting them into an order of importance despite the fact that some of them were potentially contradictory; whereas the terms defining the client's investment strategy, in contrast to LBP's claims, did not adequately convey meaning and were not sufficiently understandable that their mention would be enough to comply with the applicable legal provisions; whereas the corrective measures cited by LBP have no bearing on the objection, which is substantiated;

## **B. On the underlying reasons for the advice given**

21. Whereas, according to **objection 3.2**, firstly, for the 30 new subscriptions or purchases following a surrender (20) or an insured person's death (10) for which no recommendation form is available, LBP did not fulfil its duty to advise; whereas for the 17 other new subscriptions or purchases following a surrender (10) or death (7), neither the recommendation form nor the customer relations summary file includes a section where the adviser could set out the underlying reasons for the advice given with respect to a particular contract; whereas, in addition, of the 17 recommendation forms found, 9 correspond to a contract and insurer type and have standard pre-completed wordings with regard to the trade name of the purchased product, even though the purpose of the recommendation form is to help the adviser to propose a contract suited to the client's profile following a process that provides the adviser with an understanding of the client's situation and an analysis of the client's requirements and needs; whereas, secondly, these new subscriptions or purchases did not meet clients' requirements and needs; whereas a recommendation to surrender a product with a view to reinvesting the surrender proceeds in another life insurance or capitalisation product should be made in the light of the client's requirements and needs, and particularly the client's financial situation; whereas by recommending investments in new contracts while the surrender of past products resulted in a financial loss for the client, LBP did not take into consideration the client's requirements and needs and therefore breached its duty to advise; whereas this objection concerns 22 cases of new subscriptions or purchases selected by the inspection from the surrender and arbitrage case files that it examined, of which 4 are mentioned as examples (cases A9, C1, C2 and C3); whereas the absence of underlying reasons for the advice given is even more serious considering that the subscription or purchase following a surrender results in a loss on the divestment of the Progressio and Progressio 2006 products, costs such as surrender fees or fees related to the opening of a new contract, and tax implications, particularly the forfeiting of accrued tax benefits on the surrendered contract;

22. Whereas, firstly, the recommendation forms found in the examined case files did not include a section where the adviser could set out the underlying reasons for the advice given with respect to a particular



contract; whereas the mention of a trade name of a marketed contract, for example (.....), is not enough to fulfil the requirement of a personalised approach that takes into consideration the client's needs; whereas, in addition, the use of standardised wordings in these forms without additional client-specific information and without specifying the particular aspects of the contract that justify its recommendation, makes it difficult to assess the suitability of the contract based on the subscriber's identified need; whereas, accordingly, the formal recording requirements set out in Article R. 132-5-1-1 of the Insurance Code were infringed, both in the case where the forms were found in the case file and, *a fortiori*, in the case where they were absent; whereas this objection is therefore substantiated;

23. Whereas, secondly, with regard to the complaint that the new subscriptions and purchases mentioned in respect of this objection did not fulfil clients' requirements and needs, LBP is not accused of non-compliance with its duty to advise at the time of subscription, by its clients, of life insurance plans incorporating Progressio fund units; whereas Articles L. 132-27-1 and R. 132-5-1-1 of the Insurance Code on which the objection is based do not include a duty of information or to advise that is incumbent on the intermediary once the contract has been purchased; whereas, furthermore, the shortcoming in any duty to warn arising out of civil case law, contested by LBP, is not, in any event, mentioned in the notification of objections; whereas, accordingly, the non-compliance with the aforementioned obligations (see recital 17 above) can only be sanctioned in the event that it is established that the surrender and subsequent purchase of a new contract are linked; whereas in addition to cases where a document explicitly demonstrates the existence of such a link, in the event that evidence demonstrating the desire to proceed on the client's own initiative or at least showing that the client had been properly warned of the consequences of the surrender when the Progressio procedure was applied is absent, the link can be established based on elements such as the recommendation and transaction completion dates and the fact they both fall within a short period of time, similarities between their amounts, and the loss resulting from the transaction;

24. Whereas the review of the cases mentioned by the plaintiff authority demonstrates (i) that for 7 of them (C4, C5, C6, C7, C8, C9 and C10), the existence of a link between the two successive transactions carried out by the clients could not be admitted on the basis of the available evidence; (ii) that in cases C11, C12, C13 and C14, it would appear that the divestment was due to a pressing need for liquidities or that the clients had been properly warned of the consequences of surrendering the Progressio product; (iii) that in cases C2, C15, C16, C17 and C18, the difference between the surrender proceeds and the amount invested or the small size of the loss incurred mean that the two transactions cannot be considered to be linked, in the absence of any evidence to the contrary, and the divestment carried out by the client could be part of a reorientation of the client's savings; whereas, for example, in case C17, the client partly surrendered contract L for 1,796 euro on 30 January 2014, incurring a loss of 272 euro and, according to the information provided by the LBP, invested 87,000 euro in contract M on 19 February 2014; (iv) that in case C3, the reason put forward by the clients for divesting, which followed on from endowments and was part of a reorientation of their savings notably to allow them to "escape the wealth tax", can explain the surrender in November 2013, even though the maturity of the capital guarantee was imminent, in order to reduce their tax base; whereas in these 17 cases, there is not sufficient evidence to conclude that the surrender and the new subscription were linked; (v) whereas, by contrast, in case C1 the surrender and the subscription were made on the same day, resulting in the client losing 5,000 euro, without any precise justification being noted in the case file; whereas, similarly, in cases C19, C20 and C21, despite the difference between the surrender proceeds and the amounts invested, the fact that both transactions were carried out within a short period of time and the significance of the loss incurred by the client in comparison to the amount invested, in the absence of any indication of the client's intentions, suggest the existence of a link between the surrender and the subscription; whereas the same conclusion can be drawn for case C22, despite the indications in the case file of the client's desire to reorient his/her savings, because of the amounts in question and the concomitance of the partial surrender and LBP's recommendation; whereas ultimately, the objection regarding LBP's provision of inadequate advice is therefore substantiated for a greatly reduced scope of these 5 cases;

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25. Whereas it is clear from the above that at the time of the inspection, LBP's internal control system did not satisfactorily cover its insurance intermediation activity and the attendant risks, particularly with regard to unit linked life insurance contracts such as those at issue in this hearing; whereas as a result, the permanent and periodic controls implemented to ensure compliance with the Progressio procedure, put in place to warn clients of the losses involved in the surrender of contracts incorporating Progressio fund units prior to the maturity of the 100% capital guarantee that was a feature of the product, were severely lacking (**objection 2**); whereas this procedure was poorly applied resulting in a risk of non-compliance for LBP, whose significance depended notably on the number of clients that had purchased contracts incorporating Progressio funds and the financial loss that they could incur in the event of early surrender (**objection 1**); whereas, in addition, within the framework of this same activity, it appears that the gathering of customer information was deficient (**objection 3.1**), as was the communication to clients of the underlying reasons for the advice given (first part of **objection 3.2**), meaning that the requirements in respect of the duty to advise and in particular to formally record were not correctly satisfied;

26. Whereas, however, even though, as the plaintiff authority has stressed, the total losses incurred by clients holding Progressio fund units after the communication of the Progressio procedure amounted to a little over EUR 9 million (see recital 2 above), it has not been established that the clients would have rejected or deferred the corresponding surrenders in their entirety, and therefore incurred no losses, if the Progressio procedure had been correctly applied (**objections 1 and 2**) and if LBP had complied more fully with its duty to advise (**objection 3**); whereas it has not been established, nor has it been claimed, that LBP, guarantor of the liquidation value of the funds having replaced company Z, would have voluntarily refrained from ensuring compliance with the Progressio procedure with the intention of reducing the cost of this guarantee; whereas, in addition, LBP stresses that in April 2009, the subscribers of these unit linked contracts had been sent a letter specifically drawing their attention to the fact that the guarantee had been assumed from company Z and to emphasise "*that the net invested capital guarantee is covered at the date of the guarantee only*", and that occasional information letters subsequently sent to clients reminded them of the fact (second part of **objection 3.2**); whereas moreover, since the on-site inspection, LBP has carried out a series of corrective measures to enhance consumer protection; whereas these measures notably include a programme to modernise advisers' workstations so that compliance and traceability requirements are integrated into the approach that the advisers must follow before finalising a sale; whereas LBP has also introduced corrective measures to ensure that advisers comply with the obligation to provide the client with the recommendation form, the content of which has been modified to comply with the ACPR's expectations;

27. Whereas, in view of their nature and seriousness, the shortcomings upheld by the Committee, which primarily concern the organisation and operation of LBP's internal control system with regards to the surrender of life insurance contracts incorporating Progressio fund units, provide sufficient grounds for a reprimand; whereas, for the same reasons, in accordance with the principle of proportionality and in light of LBP's financial situation, a fine of EUR 5 million shall also be imposed;

28. Whereas in view of the nature of these shortcomings, the Committee does not consider that the non-anonymous publication of this decision would cause a disproportionate prejudice to LBP; 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 LBP.

**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.