LA BANQUE POSTALE

Procedure n° 2018-01

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Reprimand and fine of
EUR 50 millions

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Hearing of 5 December 2018
Decision handed down on 21 December 2018

AUTORITÉ DE CONTRÔLE PRUDENTIEL ET DE RÉSOLUTION
SANCTIONS COMMITTEE

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Having regard to the letter of 5 April 2018 by 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 against La Banque Postale (hereinafter "LBP"), which has its registered office at 115, rue de Sèvres, 75275 Paris, registered under No. 2018-01;

Having regard to the statement of objections dated 5 April 2018 and the attachments thereto;

Having regard to the defense submissions of 18 June and 14 September 2018, as well as the letter of 8 October 2018, by which LBP (i) contests the objections (ii) and presents the corrective actions implemented since the inspection;

Having regard to the submissions of 3 August and 1 October 2018, in which Mrs. Martine Lefebvre, representative of the College, maintains all the notified objections;

Having regard to the report of 2 November 2018 in which Mr Denis Prieur, rapporteur, concludes that the 4 notified objections are substantiated;

Having regard to the letters dated 2 November 2018 summoning the parties to the hearing and informing them of the composition of the Commission and of the fact that LBP's request that the hearing take place in camera shall be granted;

Having regard to the other documents related to the case, in particular the inspection report dated 21 November 2017;

Having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol No. 7 appended thereto (hereinafter the "ECPHRFF");

Having regard to the Monetary and Financial Code (hereinafter the "MFC"), in particular Articles L. 561-36-1, L. 562-1, L. 562-2, L. 562-3, L. 562-4 , L. 562-5, L. 612-38, L. 612-39, R. 562-2 and R. 612-35 in their version applicable to the facts;

Having regard to the amended Regulation No. 97-02 of 21 February 1997 on internal control in credit institutions and investment firms (hereinafter “Regulation No. 97-02”), in particular Articles 5, 11-3 and 11-7 thereof, in its version applicable to the facts;

Having regard to the Arrêté of 3 November 2014 on the internal control of companies in the banking, payment services and investment services sectors subject to the supervision of the Autorité de contrôle prudentiel et de résolution (hereinafter "the Arrêté of 3 November 2014 "), in particular Articles 11, 38, 47 and 253 thereof;

Having regard to Instruction No. 2012-I-04 of 28 June 2012 on information on the anti-money laundering and counter-terrorist financing framework amended by Instructions No. 2014-I-01 of 10 February 2014, No. 2014-I-06 of 2 June 2014, No. 2015-I-14 of 22 June 2015 and No. 2016-I-22 of 3 October 2016 (hereinafter the "Instruction of 28 June 2012");

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

The Sanctions Committee, comprising Rémi Bouchez, Chairman, Claudie Aldigé, Claudie Boiteau, Francis Crédot and Thierry Philipponnat;

Having heard at the session held in camera on 5 December 2018:

- Denis Prieur, rapporteur, assisted by Marie Mallard Saïh, his deputy;

- Alice Navarro, representative of the Treasury;

- Mrs Lefebvre, representing the Collège, assisted by the ACPR's Director of the Legal Affairs Directorate, the Head of the Institutional Affairs and Public Law Division, two lawyers from said Directorate, and the Deputy Head of Public Sector Institutions Division (Banking Supervision Directorate 1); Mrs Lefebvre proposed issuing a reprimand along with a fine of EUR 50 million, to be published in a non-anonymous decision

- LBP, represented by its President of the Executive Board, assisted by the Head of Legal Affairs and Compliance, and Christophe Ingrain, Tristan Gautier and Rémi Lorrain, barristers (from the law firm Darrois Villey Maillot Brochier);

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

1. Whereas LBP, a fully-owned subsidiary of the La Poste Group, offers banking and financial services through the 17,000 offices of the postal network; whereas, in 2017, LBP, with close to 11 million customers, generated a net banking income of EUR 5.7 billion and a total net income (group share) of EUR 764 million;

2. Whereas, at the time of the inspection, LBP offered, among its activities, a "money orders" service, i.e. a service for settling funds transfers within the meaning of article L. 314-1 of the MFC inherited from La Poste; whereas this service could be provided both to customers holding a bank account in LBP's books, i.e. "on account" customers, who represent 38% of transactions, to those not holding an account, i.e. "off-account" customers, who represent 62 % of these transactions; whereas, at the time of the inspection, the domestic money orders (hereinafter "DMO") could be "ordinary" (payment at D + 1) or "urgent" (payment at D); whereas, in 2016, these two categories represented respectively 2.7 million transactions (EUR 522 million) and 2.8 million transactions (EUR 826 million), i.e. a total of 5.5 million transactions and about EUR 1.3 billion; whereas, in 2016, the provision of this DMO service generated a gross operating loss of EUR (...) million;

3. Whereas LBP was subject to an on-site inspection from 2 March to 28 July 2017 on the compliance of its anti-money laundering and counter-terrorist financing framework (hereinafter "AML-CFT"); whereas this inspection led to the signing of a final report on 21 November 2017

(hereinafter the "inspection report"); whereas, in light of this report, the College decided, at its meeting held on 15 March 2018, to open this disciplinary hearing;

I. On compliance with the *non bis in idem* principle

4. Whereas LBP maintains that the opening of this hearing by the College does not meet the *non bis in idem* principle, in particular set out in the first paragraph of Article 4 of Protocol No. 7 appended to the ECPHRFF, which prohibits a person from being tried or punished for an offense for which he has already been finally acquitted or convicted; whereas, with regard to the DMO activity of LBP, the press reported that after communication to the prosecutor's office of the inspection "pre-report", a preliminary inquiry had been opened "for the same acts."

5. Whereas, firstly, Protocol No. 7 appended to the ECPHRFF cannot, however, be put forward by LBP given the reserves accompanying the ratification instrument of the Protocol by France, whereby the "non bis in idem" principle, as resulting from Article 4 thereof, applies only to "offenses falling under French law under the jurisdiction of the courts ruling in penal matters" and does therefore not provide grounds for administrative sanctions in addition to the final decisions handed down by the penal court (Conseil d'État, Ass., 12 October 2018, SARL Super Coiffeur, No. 408567); whereas no final judgment has been reached in this case; whereas, secondly, it arises from the case law of the Conseil constitutionnel (Decision No. 2016-621 QPC of 30 March 2017) that "the principle of necessity of offences and penalties does not preclude the same acts committed by the same person from being subject to different legal proceedings for the purpose of imposing different kinds of sanctions under separate sets of rules "and that "in the event that two initiated proceedings result in cumulative sanctions, the principle of proportionality implies that in any case the overall amount of the sanctions which may be imposed does not exceed the highest amount of any of the sanctions"; whereas moreover this disciplinary procedure relates only to the shortcomings of LBP's mechanism for freezing assets (objection 1), the absence, at the time of the inspection, of corrective measures aimed at correcting them, several years after they have been identified (objection 2), without its Risk Committee even being informed (objection 4) and finally on the communication, in this respect, of erroneous information to the ACPR (objection 3), and not on facts likely to fall within the scope of the criminal proceedings mentioned by LBP;

6. Whereas the argument raised must therefore be dismissed;

II. On the objections

II.1. On the failings of the mechanism for detecting transactions benefiting persons subject to a restrictive measure

7. Whereas, according to paragraph 2.2 of Article 11-7 of Regulation No. 97-02, whose provisions were maintained in Article 47 of the Arrêté of 3 November 2014, reporting entities must put in place specific mechanisms tailored to their activities, which enable them to "detect any transaction benefiting a person or entity subject to a freezing of funds, financial assets or economic resources";

8. Whereas, according to objection 1, based on these provisions, LBP has not set up a mechanism for detecting, before their execution, DMO transactions for the benefit of persons subject to a European or national measure to freeze assets ("listed persons"); whereas these transactions, although they represent significant volumes (close to 25 million DMO transactions executed between 1 January 2013 and 31 March 2017) and sometimes performed by or for detained persons, have not been included in its automated (F1) or manual (F2) filtering tools; whereas, between 1 December 2009 and 13 March 2017, LBP executed at least 75 DMO transactions on behalf of 10 clients whose identity (last name, first name and date of birth) matches that of persons who were subject, at the time of the

transactions, of a freezing measure, in 9 cases out of 10 on account of terrorist activities; whereas LBP was unable to detect, prior to the execution of the transactions, whether the customers, including the so-called "off-account" customers, whether they are issuers or beneficiaries, were subject to a freezing of assets and a prohibition on making funds available; whereas these transactions were executed in the absence of any prior verification of their compliance with the European and national asset freeze obligations (respectively files 1 and 2 and files 3 to 10); whereas certain transactions were detected a posteriori at end-2014 by the institution's internal audit and at end-2016 by its financial transactions security department;

On compliance with the principle that offences and penalties must be defined by law

9. Whereas LBP maintains that the Committee's compliance with the principle that offences and penalties must be defined by law to which it is subject must lead it to dismiss this objection because the legal and regulatory provisions put forward by the plaintiff authority were not applicable to its DMO activity;

10. Whereas, firstly, according to LBP, the European regulations providing for measures to freeze assets mentioned in the statement of objections, adopted pursuant to Articles 60, 301 or 308 of the Treaty establishing the European Community, then to Article 215 of the Treaty on the Functioning of the European Union, which relate to "the common foreign and security policy" and "the interruption or reduction of economic and financial relations with one or more third countries", cannot apply to Union residents; whereas a national mechanism for freezing assets was set up in 2006 in addition to the European mechanism because of limited scope of such measures; whereas LBP cannot therefore be accused of any infringement of the European regulations instituting certain specific restrictive measures in files 1 and 2, [individuals] having become European residents after the freezing of their assets by European Regulations No. 1184/2003 of 2 July 2003 amending Regulation No. 881/2002 and No. 242/2009 of 20 March 2009 amending Regulation No. 1183/2005;

11. Whereas, however, the accusation does not relate to the conduct of DMO transactions for the benefit of listed persons but to the exclusion of all such transactions from LBP's asset freezing mechanism, such that transactions requested by or for listed persons could not be detected a priori; whereas, as pointed out (see recital 8 above), the statement of objections states that the identity of certain customers corresponds to that of persons subject to a freezing measure, but does not adopt a position on whether they could actually be these persons; whereas it is undisputed that at the time of the inspection, LBP's filtering tools could not detect a priori any DMO transactions by or for a person subject to a freezing measure, whether the persons concerned were, or not, European residents when these transactions were conducted; whereas, in particular, LBP was unable to detect a priori DMO transactions carried out by or for a person listed by a European regulation residing outside the European Union but temporarily present in France; whereas the non-detection of the transactions carried out in the cases mentioned by the plaintiff authority illustrates this shortcoming, without the Committee, to which a complaint was submitted only under the objection of a failure to comply with the provisions of Regulation No. 97-02, amended by the Arrêté of 29 October 2009 on the internal control of credit institutions and investment firms which introduced asset freezing obligations, then with those of the Arrêté of 3 November 2014 which maintained them, having to decide on the existence, in both cases, of any infringement of the European regulations imposing restrictive measures;

12. Whereas, secondly, LBP maintains that until 1 July 2017, pursuant to the provisions introduced in Articles L. 564-1 and L. 564-2 of the MFC by Act No. 2006-64 of 23 January 2006 on the fight against terrorism and laying down various provisions relating to security and border controls, before being transferred, as of 1 February 2009, to Articles L. 562-1 to L. 562-6 of the MFC, only assets "held in account" could, under the French system, be subject to freezing and prohibition measures; whereas the restrictive nature of these provisions, which has been highlighted by parliamentary work, including the report of 18 February 2016 on the legislative proposal reinforcing the fight against organised crime, has led the legislator to amend them, Article L. 562-2 of the MFC, which now states,

in its version of 1 July 2017, that the funds and resources "1° which belong to, are owned, held or controlled by natural or legal persons (...)" may be subject to a freezing measure; whereas the DMOs, offered to private customers and, as indicated in the inspection report, "only payable in cash", are not recorded in LBP's accounts; whereas the transactions relating thereto do not therefore concern assets held with LBP;

13. Whereas, however, the provisions of Article L. 564-2 transferred to Articles L. 562-1 and L. 562-2 of the MFC in 2009 referred to, until 1 July 2017, the "funds, financial assets or economic resources held with" reporting entities, "which belong to natural or legal persons who commit, or attempt to commit, acts of terrorism (...)" and not the funds "held in account" by these persons; whereas these provisions must be read in the light of those which specify, in Article L. 561-2 and Article L. 562-4, that the freezing of funds "shall be understood as any action to prevent the movement, transfer or use of funds, financial assets or economic resources that would result in a change in their amount, location, ownership, nature or any other change that would enable individuals subject to the freezing measure to use them"; whereas it would thus be contrary to the very purpose of the legislative provisions in question, which, moreover, are not aimed solely at credit institutions, to restrict to those recorded in a bank account opened in the name of the person concerned the scope of assets held with a financial institution that were, at the time of the inspection, likely to be subject to a freezing measure; whereas the funds remitted by a customer requesting a DMO transaction transited through LBP and were included in its T1 tool until they were remitted to their recipient such that, during their transfer and until this remittance, they were held "with" LBP within the meaning of and for the purpose of the above-mentioned provisions and consequently came within the scope of the French asset freezing mechanism;

14. Whereas, thirdly, LBP maintains that Article L. 562-5 of the MFC, as it read prior to 1 July 2017, was introduced by Order No. 2009-104 of 30 January 2009 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereinafter "Order No. 2009-104"), limited the prohibition on the transfer of funds to transactions carried out solely for the benefit of listed persons and relating to funds belonging to them; whereas, in this formulation, this measure was aimed, for example, at persons selling immovable property and then having the proceeds of the sale paid into their account; whereas, according to LBP, all DMO transactions were excluded from the scope of the provision since they were not conducted "for the benefit" of a listed person, or did not relate to funds "belonging to them"; whereas none of the 31 transactions mentioned by the plaintiff authority as being carried out in violation of a national freezing measure (files 3 to 10) were therefore included in the provisions of this article;

15. Whereas, however, in the report of 16 November 2005 of the National Assembly's Law Committee on the legislative proposal which introduced a French asset freezing mechanism in addition to the European mechanism (AN No. 2681), it was pointed out that "With regard to the funds likely to be concerned by a freezing measure, they are defined in the second paragraph of the new Article L. 564-1 in terms which literally reproduce those in Article 1 of Council Regulation No. 2580/2001 of 27 December 2001"; whereas this European regulation defined funds, financial assets or economic resources as "assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form (…)"; whereas Act No. 2006-64 of 23 January 2006 thus introduced, in the first paragraph of Article L. 564-2, a provision according to which "the Minister of the Economy may decide the freezing, for a duration of six months, renewable, of all or part of the funds, financial assets or economic resources held with [reporting entities] that belong to natural or legal persons who commit, or attempt to commit, acts of terrorism (...)"; whereas these provisions were then supplemented by those of the third paragraph of Article L. 564-2 according to which "The Minister of the Economy may also decide to prohibit, for a period of six months, renewable, any movement or transfer of funds, financial assets or economic resources for the benefit of the natural or legal persons mentioned in the first paragraph."

16. Whereas the definition of the assets likely to be frozen and of the freezing measures was set out in Order No. 2009-104, which was not intended to reduce its scope to Articles L. 562-1 et seq. of the MFC, nor can it have had that effect; whereas after this order came into force, the competences of the Minister of the Economy, as regards the fight against terrorist financing and international financial sanctions, are firstly defined, respectively, in articles L. 562- 1 and L. 562-2, in a wording which introduces no limitation compared to the previous version, while the scope and content of freezing measures are mentioned in a new Article L. 562-4 which still prohibits, as stated above, "any movement, transfer or use of funds, financial assets or economic resources that would result in a change in their amount, location, ownership, nature or any other change that would enable individuals subject to the freezing measure to use them"; whereas article L. 562-5 completes, with respect to the transactions for the benefit of listed persons and relating to funds belonging to them, the provisions set out in the preceding articles; whereas it cannot be seriously argued that, in their wording resulting from Order No. 2009-104, the joint provisions of articles L. 562-1 to L. 562-6 made it possible to include in the freezing measures only the funds movements or transfers by which a listed person deposits funds by requesting that they be credited to his account;

17. Whereas, moreover, the Arrêtés issued with regard to customers whose files illustrate the shortcomings of LBP's detection mechanism contradict the analysis of the institution, since they establish a prohibition of all "movements or transfers of funds, financial assets or economic resources for the benefit of listed persons (...)"; whereas, similarly, Article 11-7 of Regulation No. 97-02 referred to the obligation to set up an internal control system with respect to the freezing of assets in similar terms; whereas it required that the system put in place by any reporting entity enable it to detect any transaction falling within the scope of freezing measures decided by Arrêté of the Minister of the Economy but also restrictive measures taken under European regulations which, as previously stated, established a very broad definition of the assets concerned and the prohibited movements; whereas consequently, whatever the interpretation by LBP of the provisions of article L. 562-5 of the MFC, in its version applicable at the time, it was its responsibility, in order to be able to detect any transaction for the benefit of a person or entity subject to a national or European freezing measure, to include DMOs in its detection tools; whereas, in terms of fund remittances, the operators' obligations had, moreover, been clarified by the joint guidelines of the Treasury and the ACPR, published in June 2016, under which "147. Money remitters shall be required not to execute the transaction where the initiator is a designated person or entity. (...) / 150. In addition, the money remitters shall not make funds available to a beneficiary subject to a freezing measure. They shall not remit funds to a designated person or entity. ";

Of the 75 transactions which, according to the plaintiff authority, were executed on behalf of persons whose identity (surname, first name and date of birth) corresponds to that of persons who, at the date of the transactions, were subject to a freezing measure

18. Whereas LBP maintains that it is necessary to subtract from the 75 transactions carried out, according to the plaintiff authority, for the benefit of 10 customers subject to a European or national freezing measure (files 1 to 10 in the numbering mentioned in recital 8), 16 transactions that cannot have been carried out for the benefit of the listed person (file 1), 32 transactions authorized by an investigating magistrate or the prison administration and conducted on behalf of incarcerated persons and 21 transactions, "conducted prior to 1 February 2013, when LBP became aware of the failures of its control system according to the ACPR report ";

19. Whereas, however, as pointed out, the Committee, to which an objection relating to the asset freezing mechanism of a reporting entity has been submitted, does not have authority to determine whether any transactions have been carried out in breach of an individual freezing measure, in particular by or for detained persons; whereas the files mentioned only constitute, as specified by the plaintiff authority, "mere illustrations of the objection"; whereas the reduction, according to LBP, in the number of transactions concerned does therefore not affect the objection;

20. Whereas LBP, while underlining the effectiveness of its AML-CFT framework, in which more than (...) million euros have been invested since 2014, as well as the existence, at the time of the inspection, of tools for the a posteriori filtering of DMO transactions, does not dispute the exclusion of these transactions from its a priori filtering framework, which was established by the inspection mission; whereas there are no grounds to justify, in the light of European and French definitions of restrictive measures, such exclusion; whereas LBP thus committed a breach of the provisions of 2.2 of article 11-7 of Regulation No. 97-02, then of article 47 of the Arrêté of 3 November 2014; whereas such a breach may be sanctioned in accordance with the principle of legality; whereas the objection is substantiated, whatever the corrective actions undertaken since, which consisted in particular in a discontinuation, over 2017, of the DMO activity; whereas the a posteriori detection of some of these transactions does not affect the objection;

II.2. On the absence of any effective implementation of corrective measures

21. Whereas according to article 11-3 of Regulation No. 97-02, whose provisions now appear in article 38 of the Arrêté of 3 November 2014, reporting entities must set up "procedures for monitoring and assessing the effective implementation of the actions designed to remedy any failure in the implementation of the compliance obligations "; whereas according to f) of article 5 of Regulation No. 97-02, whose provisions now appear in f) of article 11 of the Arrêté of 3 November 2014, the system for controlling transactions must make it possible to check that the corrective measures decided within the reporting entities are executed within a reasonable timeframe;

22. Whereas, according to objection 2, based on these provisions, LBP was aware, as of 2013, of the non-compliance with its legal obligations of its mechanism which did not provide for the detection of DMOs for the benefit of persons whose assets had been frozen; whereas the project for the a priori automatic filtering of DMOs, known as the "Convergence T2/T1" project, to which the same treatment is applied as for international money orders, was examined by the Information Systems Committee on 19 February and 24 May 2013, with a view to "aligning the bank with the regulatory requirements", before its implementation was decided on at the meeting of the Strategic Committee for Information Systems and Major Projects (hereinafter "SCIMP ") on 29 November 2013, the target date then being the third quarter of 2015; whereas, more than 7 years after the entry into force of the obligation to set up such a mechanism, and after several postponements of this IT project, LBP had not, at the time of the inspection, implemented any corrective measures; whereas, however, the analyses of the internal audit of this institution had underlined, in June 2015, "a proven and high risk, with regard to the regulatory requirements (Article L. 562-4 of the MFC)", noted the execution of this type of transaction on behalf of 6 customers subject to freezing measures and recommended that this issue be submitted to the Group Risk Committee by 30 September 2015; whereas this issue was not submitted to the committee neither in 2015 nor in 2016; whereas, moreover, the risk of sanctions resulting from the absence of any filtering of DMOs was mentioned in a procedural note of the compliance and permanent control directorate of LBP known as the "Unit Risk Note" updated in December 2016; whereas, although it had been assessed as "critical", this risk was mentioned as accepted and the implementation of an DMO filtering framework was then only to be finalized by 31 December 2018; whereas, at the end of the on-site inspection mission on 28 July 2017, LBP had thus not put in place any corrective action to integrate DMOs into its asset freezing mechanism;

23. Whereas LBP considers that, since the first objection has no legal basis, so does the second; whereas the a priori filtering of DMOs had been decided on 29 November 2013, the delay in its application being due to technical difficulties, notably relating to its information systems; whereas, in November 2015, the "Convergence T2/T1" project was included in a broader project, known as "C", which delayed its start, then included in a "D/M" project whereby LBP and Bank X decided to pool their payment systems in April 2016; whereas, in 2017, the implementation of the filtering framework was postponed due to constraints at the chosen IT provider, the delivery of the technical platform being initially planned for June 2017 and the operation by LBP for March 2018; whereas, as a result of

these difficulties, a substitution project known as "P", with a target date of mid-2018, was launched over 2017;

24. Whereas, however, LBP's failure, at the time of the inspection, to meet its obligations with regard to the a priori detection of DMO transactions conducted by persons subject to asset freezing measures is substantiated (see recital 20 above); whereas the "Presentation of the T2/T1 Convergence preliminary project" appended to the minutes of the meeting of the SCIMP on 29 November 2013, during which this project was "briefly presented", noted that "Regulation, recalled by the ACP, requires strengthening controls (CFT, know your customer) on domestic money transfers" and specified, under the" regulatory issues ", the need to "control money orders against the lists of French financial sanctions"; whereas the project was then expected to be completed in 2015; whereas, however, the documents appended to the audit committee meeting of 8 October 2014 mentioned at this date that "the budgets for this second phase [i.e. the integration of the domestic money orders in T2] have not been allocated "; whereas after the transfer of this project, the integration of DMOs into the asset freezing mechanism was still not completed at the time of the inspection; whereas the absence of a speedy implementation of corrective measures following LBP's General Inspectorate Report of June 2015, which had been submitted to the President of the Executive Board, the Secretary General, the Director for Compliance and Permanent Control and the Group Risk Manager of this institution constitutes, given the observations of this report relating to domestic money transfers, a particularly serious deficiency; whereas the unit risk note mentioned by the plaintiff authority, created on 20 November 2013 and updated on 13 December 2016, was entitled "Sanctions for non-compliance with the regulatory requirements on the detection of financial sanctions"; whereas it stressed in particular that "the measure of the critical risk results from potentially very high financial, regulatory and reputational impacts in the event of the occurrence of the risk. Moreover, as regards financial sanctions, banking institutions have an obligation to perform." and even included an estimate of the sanction to be pronounced, i.e. EUR 250,000; whereas the decision mentioned in this note was, in the December 2016 version, "risk acceptance with implementation of action plans"; whereas the inspection report, which was not contradicted on this point by LBP, underlined that "the presentation made at the M project steering committee meeting of 2 March 2017 took note of the slippage of more than fifteen months of the mechanism for integrating domestic money orders in the desired filtering solution"; whereas the technical difficulties encountered cannot justify the correction of a major failure being set back several years; whereas the corrective actions, through which the urgent, then ordinary DMOs between natural persons, were successively removed on 28 August and 31 December 2017, have not been implemented within a reasonable timeframe, far from it; whereas the objection is therefore substantiated;

II.3. On the transmission of inexact data to the ACPR

25. Whereas, according to the Instruction of 28 June 2012, reporting entities must submit to the SGACPR so-called "BLANCHIMT" tables which contain information on their AML-CFT framework;

26. Whereas, according to objection 3, based on these provisions, certain answers given to the ACPR General Secretariat for 2016 were inaccurate as regards DMO transactions; whereas, while being aware of the absence of DMO filtering, the institution had declared that its filtering framework "- makes it possible to detect transactions carried out for the benefit of persons or entities subject to national or European asset freezing measures (answer to question 71); / - ensures that the funds, financial assets or economic resources of a person or entity subject to a freezing measure under European or national regulations are not made available to it (answer to question 72); / - makes it possible, following any amendment to the national or European provisions in force, to detect the funds, financial assets or economic resources of a person or entity subject to a freezing measure and to immediately implement this measure (answer to question 73) ";

27. Whereas LBP maintains that the Committee cannot sanction the violation of an ACPR instruction, the legislator having granted it no regulatory power; whereas the violation of an instruction is not listed among the breaches likely to lead to a sanction;

28. Whereas, however, pursuant to Article L. 612-39 of the MFC, the Committee may, in particular, sanction any infringement of a "European legislative or regulatory provision, compliance with which the Autorité has the task of ensuring"; whereas article L. 612-24 of the MFC states that the ACPR is competent for determining "the list, the model, the frequency and the transmission times of the documents and information that must be transmitted to it periodically"; whereas the ACPR thus has, as regards the disclosure of information by reporting entities, a regulatory power; whereas consequently, as already pointed out by the Committee (see the CNP Assurances decision of 26 July 2018), the Instruction of 28 June 2012 is among the regulatory provisions, compliance with which the Autorité has the task of ensuring; whereas non-compliance with this instruction may thus be sanctioned by the Committee; whereas the facts mentioned by the plaintiff authority are not contested; whereas the objection is thus substantiated;

II.4. On the absence of regular information to the Risk Committee

29. Whereas, according to a) of Article 253 of the Arrêté of 3 November 2014, "the effective managers regularly inform, at least once a year, the supervisory body and, where appropriate, the Risk Committee of: (a) the key elements and principal lessons that may be drawn from the analysis and monitoring of the business and result-related risks to which the reporting entity and, where applicable, the group are exposed, in particular (...) the monitoring of the risk of non-compliance ";

30. Whereas, according to objection 4, based on these provisions, the minutes of the meetings of the Risk Committee of the Supervisory Board held in 2015 and 2016 do not show that this committee was informed over this period of the risk of non-compliance linked the absence of an DMO filtering framework;

31. Whereas LBP stresses that the Risk Committee has been regularly informed of AML-CFT related issues; whereas this committee's lack of information about the specific DMO related risk results from the failures of the Security and Financial Operations Directorate and the Compliance and Permanent Control Directorate which had not sufficiently drawn the Executive Board's attention to the successive postponements of the filtering projects initiated as of 2013 and to the severity of the resulting regulatory risks;

32. Whereas, however, generally mentioning AML-CFT related topics during meetings of the Risk Committee of the Supervisory Board does not amount to informing this Committee of the specific risk of non-compliance as regards DMOs that had been detected; whereas the objection is substantiated, regardless of the directorate to which the failure to transmit information may, where appropriate, be attributed;

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33. Whereas, in view of the foregoing, the four objections levied against LBP are substantiated; whereas the framework for detecting transactions carried out by or for a person subject to a European or national asset freezing measure did not, at the time of the on-site inspection, meet the obligations applicable in this field (objection 1); whereas the assessment of the risk of disciplinary action that may result from this failing did not lead to any decision to rapidly ensure compliance, although information on this subject was provided to the top management of the institution (objection 2), which was not submitted to the Risk Committee of the Supervisory Board (objection 4); whereas, moreover, the information provided to the ACPR on this issue was erroneous (objection 3);

34. Whereas LBP and its President of the Executive Board argued at the hearing that the allegations made by the inspection team were limited to its sole DMO activity, whose contribution to net banking income was marginal and under which it suffered losses (EUR (...) million in 2016), while no allegations were made concerning its other activities as regards asset freezing or more generally AML-CFT; whereas the DMO activity, stemming from the former postal orders, was notably carried out, because of LBP's role in ensuring access to banking services, for the benefit of the most fragile, underbanked populations, which used money orders to settle essential daily expenses, which should according to LBP require qualifying the objection;

35. Whereas, however, the setting-up of an effective asset freezing mechanism meets an essential requirement for reporting entities, in particular banking institutions, which are in the front line for implementing this legislation, under which they have a performance obligation; whereas the fact that an institution does not take into account in its a priori filtering framework part of its activity is in itself a very serious failing; whereas, in the present case, the transactions in question, regardless of their share in LBP's activity and their lack of profitability, were very numerous, involved significant cumulated amounts (see recital 2) and resulted in cash movements, which are inherently risky; whereas, moreover, the customers who carried out such transactions, a significant share of which did not hold an account in its books, were not well known to LBP; whereas the noted failing was, because of the number of transactions carried out and the total amounts involved, and notwithstanding the modest average amount of a DMO (less than EUR 300), massive in character and affected the effectiveness of the French asset freezing mechanism; whereas the Committee noted that this shortcoming continued over a period of about 8 years as a result of the successive deferrals of the IT projects aimed at integrating the DMOs into LBP's filtering framework, the first operational decisions having been made, in this field, only after the inspection; whereas the speed with which they were implemented highlights, on the contrary, the negligence shown by the institution up until then, in a context marked by heightened threats of terrorism and the increased attention of public authorities to "Micro-financing" of such acts; whereas the severity of these shortcomings is heightened by the fact that this issue was not submitted to the competent internal body, as well as by the communication of erroneous information to the ACPR, which prevented the permanent control of this Autorité from having access to relevant elements to carry out its missions; whereas the information provided by LBP on the significant investments made under its AML-CFT framework since 2014 is not, owing to its general nature, likely to answer the allegations, any more than the assessment of this framework by intelligence services; whereas at the time of the inspection, LBP's asset freezing framework was not, due to the exclusion of DMOs from its scope, at the level of what could be expected from a large-sized banking institution belonging to the public sector;

36. Whereas, in view of their nature, duration, particular seriousness and very serious potential consequences, the shortcomings upheld by the Committee provide sufficient grounds for a reprimand; whereas, for the same reasons, and in light of the elements cited above, in accordance with the principle of proportionality and in light of LBP's financial situation, a fine of EUR 50 million shall be imposed;

37. Whereas the non-anonymous publication of this decision is not likely to cause a disproportionate prejudice to LBP nor cause seriously disruption to the financial markets; whereas this decision shall therefore be published in a non-anonymous form in the ACPR register for a period of 5 years; whereas it shall subsequently be published in an anonymous form;

FOR THE FOREGOING REASONS

DECIDES:

ARTICLE 1 – A reprimand and a fine of EUR 50 million (fifty million euros) shall be imposed on La Banque Postale.

ARTICLE 2 – This decision will be published in the register of the ACPR, for 5 years in a non-anonymous form then in an anonymous form, 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.