

## AUTORITÉ DE CONTRÔLE PRUDENTIEL ET DE RÉOLUTION SANCTIONS COMMITTEE

Having regard to the letter dated 27 April 2015 in which the Chairman of the Autorité de Contrôle Prudentiel et de Résolution (hereafter the ACPR) informed the Committee that the Supervisory College of the ACPR (hereafter the College), ruling through its Sub-College with responsibility for the insurance sector, had decided at its meeting of 21 April 2015 to open a disciplinary procedure under number 2015-05 against Ufifrance Patrimoine (hereafter UFP), a company having its registered offices at 32, avenue d'Iéna, Paris;

Having regard to the statement of objections dated 27 April 2015;

Having regard to the statements of defence dated 10 July 2015, 21 October 2015 and 22 December 2015 along with their accompanying documentation, in which UFP (i) recalled that, with its *Société Générale* ruling No. 381173 of 14 October 2015, the Conseil d'État had determined that in disciplinary matters, it was the prosecuting authority's responsibility to provide evidence of the alleged breaches, and argued that in this case proof had not been provided for the final two objections; (ii) challenged the complaints concerning the failure to issue a placement logbook to enable employees to demonstrate acquisition of the professional capabilities required to carry on the business of insurance intermediary, non-compliance with the legal obligations relating to the placements used to acquire these capabilities, and the marketing of insurance products by some employees even though they had not yet acquired these capabilities; (iii) requested that the future decision be published in a format that would not allow it to be identified;

Having regard to the statements of reply dated 15 September 2015 and 25 November 2015, in which Jean-Luc Guillotin, representing the College, considered (i) regarding the method of providing evidence, that the Conseil d'État, in the cited ruling, did not require proof of the alleged acts to be established immediately, it being possible to reverse the burden of proof should the respondent entity merely issue a denial without providing counter-evidence even though it holds or ought to hold such evidence (*Arca Patrimoine* decision of 18 June 2013); (ii) in this case that proof was provided for all the alleged facts;

Having regard to the report of 24 February 2016 by Rapporteur Francis Crédot in which he found (i) that objection 1 concerning the failure to issue placement logbooks was established, as were objections 2 and 3, both of which involved a narrower scope and concerned, respectively, shortcomings in the training provided to acquire the requisite capabilities and the marketing of insurance products by some employees even though they did not have the necessary professional capabilities; (ii) that UFP's request to have the future decision published in an anonymous format should be dismissed;

Having regard to the letters dated 26 February 2016 summoning the parties to a Committee hearing on 1 April 2016, informing them of the composition of the Committee for that hearing and indicating that the hearing would not be public, in accordance with the institution's request;

Having regard to the observations presented on 15 March 2015 by UFP on the rapporteur's report;

Having regard to the other case documents, notably the letter dated 30 December 2013 indicating that UFP was subject to inspection and the inspection report of 3 November 2014;

Having regard to the Insurance Code, notably Articles L. 511-1, L. 512-5, R. 511-1, R. 512-7, R. 512-9, R. 512-10, R. 512-11, R. 514-3 (a) and R. 514-4;

Having regard to the Monetary and Financial Code, notably Articles L. 612-38 and R. 612-35 *et seq.*;

Having regard to the order of 23 June 2008 approving the minimum programmes for the training placements of insurance intermediaries and level I and level II employees;

Having regard to the Sanctions Committee's rules of procedure;

The ACPR Sanctions Committee, comprising Rémi Bouchez in the chair, Claudie Aldigé, Christian Lajoie, Christine Meyer-Meuret and Denis Prieur;

Having heard, at the session held on 1 April 2016:

- Francis Crédot, rapporteur, aided by his deputy, Fabien Patris;
- Nicolas Duval, representing the Director General of the Treasury, who said that he had no comments to make;
- Jean-Luc Guillotin, representing the ACPR College, assisted by members of the Legal Affairs and Supervision of Business Practices departments; Mr Guillotin proposed issuing a warning along with a EUR 300,000 fine, to be published in a non-anonymous decision;
- the Deputy Chief Executive Officer of Uifrance Patrimoine, assisted by the company's head of training, and Hugues Bouchetemple, barrister (Kramer Levin Naftalis & Frankel LLP law office);

The representatives of Uifrance Patrimoine having the last word;

Having deliberated in the sole presence of Mr Bouchez, Ms Aldigé, Mr Lajoie, Ms Meyer-Meuret, Mr Prieur and Jean-Manuel Clemmer, Chief Officer of the Sanctions Committee, who acted as meeting secretary;

1. Whereas the Union financière de France (UFF) group, which specialises in asset management advisory services, had 215,754 customers at 31 December 2014 and approximately EUR 11 billion in assets under management; whereas it comprises a holding company, Union financière de France Banque (UFFB), which is authorised as a bank and has as its majority shareholder Aviva-Vie; whereas UFFB owns all of Uifrance Patrimoine (UFP), a simplified joint-stock company doing business in mutual fund investment, insurance policies and real estate transactions; whereas UFP, which is the group's commercial company, is recorded in the ORIAS register as an insurance broker and banking intermediary; whereas it also acts as a financial investment adviser (FIA); whereas UFFB also owns several other subsidiaries or equity interests, including Uifrance Gestion (UFG), which holds the support functions, CGP Entrepreneurs, which handles partnerships with independent wealth advisers, and Financière du Carrousel, the central procurement and services company for independent wealth advisers, which it holds through CGP Entrepreneurs and Myria Asset Management, a collective investment scheme (CIS) management company approved by the Autorité des Marchés Financiers on 14 October 2014; whereas UFFB additionally owns 33% of Primonial Real Estate Investment Management (REIM), a company that manages real estate investment companies; whereas in 2014, the share of consolidated net profit attributable to the group came to EUR 25.1 million, compared with EUR 18.4 million in 2013;

2. Whereas UFP had a network of over 1,173 employees at 31 December 2014, divided among 22 branches; whereas it distributes insurance products including life, capital accumulation and retirement savings (PERP, Madelin) policies [...]; whereas following losses sustained in 2011, UFP's capital was strengthened through a EUR 34.5 million contribution from UFFB; whereas UFP's revenues are essentially made up of fees paid over by UFFB and UFG in payment for placement services; whereas in 2014, revenues totalled EUR 111 million, including EUR 55.5 million in life insurance-related fees, for a loss of EUR 11 million; whereas UFP's profits returned to positive territory in 2015;

3. Whereas it is alleged that UFP, as at the inspection date, failed to issue logbooks to employees that had been on placements in order to acquire the professional capabilities required to carry on the business of insurance intermediary (**objection 1**), failed to ensure that these placements were sufficiently long and offered the content needed to acquire these capabilities (**objection 2**), and allowed some employees to market insurance products even though they did not yet satisfy this requirement (**objection 3**);

## I. On the failure by UFP to issue placement logbooks in accordance with legal requirements

4. Whereas, according to **objection 1**, UFP had failed since 2006 to formally establish or issue placement logbooks in accordance with the legal requirements;

5. Whereas Article R. 514-3 lists the documents that may be presented as evidence of the professional capabilities that employees of legal entities acting as intermediaries must possess to carry on the business of intermediation; whereas persons who have acquired such capabilities through a professional placement may demonstrate this by presenting a placement logbook, which Article R. 514-4 states shall be "*signed by the persons with whom the placement was carried out, [...] contain an annex with the results of the skills check-up referred to in point II of Article R. 512-11, [and] be provided in a timely fashion to the holder*"; whereas, according to point II of Article R. 512-11, "*The acquired skills shall be checked at the end of the placement. The check-up results must be included in an annex to the placement logbook provided for in Article R. 514-4.*";

6. Whereas according to the abovementioned provisions of the Insurance Code, the placement logbook is required to mention all training received during the placement with a view to carrying on the business of insurance intermediary as well as the results of the check-up on the theoretical or practical skills acquired; whereas it is required to be signed by the persons with whom the placement was carried out and returned to the interns once training is complete such that they have a personal document allowing them to demonstrate their professional capabilities, if need be to a new employer; whereas while UFP argues that it did not issue hardcopy logbooks but extracted theoretical training hours logged in its IT system and provided each intern with a document entitled *Itinéraire vers votre réussite* (Path to your success), the company was seemingly not in a position to gather together all the training experiences of newly hired employees in a single document; whereas the case file does not prove that the electronically stored information on training experiences was comprehensive; whereas merely extracting training hours, not all of which, moreover, relate to insurance intermediation training, is not a substitute for providing a placement logbook; whereas *Itinéraire vers votre réussite* is a general document accompanying new employees as they receive training and become integrated within UFP with a view to exercising the full span of activities performed by wealth or individual customer advisers, and while it may contain information about the intern, it is filled out by the intern him or herself and cannot be used to clearly identify the training modules matching the regulatory requirements for the initial training of insurance intermediaries (cf. recitals 10 and 11 below); whereas the shortcomings noted are not merely formal; whereas, moreover, a UFP internal audit found in December 2013 that "*The training arm is capable of logging and providing evidence of face-to-face and non-face-to-face theoretical courses provided by the training department.[...] Currently the placement logbook, which is required to be updated by the sales manager and employee, is not utilised effectively and cannot be presented as a record of practical training.*"; whereas the marks received for the *Premio* training course, which UFP said were provided to participating employees, were not annexed to this document but sent in a group email to employees; whereas these marks were overall marks and could not be used to determine the results of the insurance skills check-up because *Premio* is a wealth advisory training course that extends far beyond insurance alone; whereas since the training plan meant to come into effect in early 2015 and presented as a response to the draft report provides for "*an overhaul of the logbook used with insurance placements*" notably to indicate the topics covered and report the number of teaching hours in the area, is seen as a remedial measure with no bearing on the objection, which is established;

## II. On the failure by UFP to comply with the obligation to ensure that its employees had the requisite professional capabilities

7. Whereas, according to **objection 2**, UFP failed to ensure that its employees complied with professional capability requirements; whereas the *Premio* training course set up by UFP for all new employees was the only way for those who did not have the requisite level when they were hired to demonstrate compliance with professional capability requirements; whereas this training course did not comply with the duration or minimum programming requirements for the acquisition of professional capabilities; whereas regarding employees hired in 2012 and 2013, the company was able to provide evidence of only 70 training hours in "theoretical" modules, rather than the minimum 150 hours required to reach level I or level II; whereas, regarding the acquisition of level I and level II capabilities, the training units for insurance intermediation and personal insurance were not covered; whereas in the case of level I, the unit on property and liability insurance was not taught either; whereas of the 241 new employees hired in 2012 and 2013, 62, including three sales managers required to show evidence that they had reached level I and 59 advisers required to show evidence that they had reached level II, lacked the requisite qualification or professional experience to carry on the business of insurance intermediary;

8. Whereas Article L. 512-5 of the Insurance Code provides that the professional capability requirements to be satisfied in particular by employees of legal entities acting as insurance intermediaries are set out in a Conseil d'État decree "*that notably takes account of the nature of the business carried on by such persons and the products distributed*"; whereas, according to Article R. 512-7 of the same code, any entity carrying on the business of insurance or reinsurance intermediation for compensation and that has individual

employees under its authority "is required to ensure that [employees] meet the fitness, propriety and capability requirements applicable under this section"; whereas the provisions applicable to different categories of employees of these intermediaries are set out in Articles R. 512-9, R. 512-10 and R. 512-12 of this code, which impose varying requirements in terms of professional experience or qualification on, respectively, senior managers or individuals acting as production office managers or with responsibility for coordinating a production network (level I employees), on employees engaging in brokerage activities outside the head office or a production office in brokerage firms (level II employees) and on persons working in the head office or in a production office, and which require a placement of at least 150 hours to be undertaken with an insurance firm or intermediary in the case of the first two categories and training of sufficient duration for the last category; whereas Article R. 512-11 of the code states that "I. - The professional placement referred to in Articles R. 512-9 and R. 512-10 is intended to enable interns to acquire, prior to carrying on the business of intermediary, the legal, technical, commercial and administrative skills described in a minimum training programme drawn up by the organisations representing the industry and approved by an order by the Minister for the Economy. / II. - The acquired skills shall be checked at the end of the placement. The check-up results must be included in an annex to the placement logbook provided for in Article R. 514-4."; whereas the minimum programmes for professional training placements of insurance intermediaries and employees mentioned in Article R. 512-9 (level I) and Article R. 512-10 (level II) are set down in the order of 23 June 2008 approving the minimum programmes for professional training placements of insurance intermediaries and level I and II employees; whereas, according to Article R. 514-3 of the Insurance Code, "Evidence of the professional capabilities referred to in Article L. 512-5 shall be provided by presenting, as applicable, one of the following documents: / a) Placement logbook defined in Article R. 514-4; / b) Statement of training referred to in Article R. 514-5; / c) Statement of duties; / d) Diploma, qualification or certificate referred to in Articles R. 512-9, R. 512-10 and R. 512-12.";

9. Whereas UFP claims that the content of the instruction provided to interns complied with the order of 23 June 2008, with the exception of the module on long-term care, which it acknowledged was not included in its training courses since it does not offer any long-term care products; whereas, citing a Conseil d'État decision dated 14 October 2015, it observed that the prosecuting authority was responsible for providing evidence of the alleged breaches and said that it was not subject to the principles of the order of 3 November 2014 on internal control or any other rule imposing similar obligations;

10. Whereas UFP claimed that the duration of the professional placement referred to in the action did not take account of additional practical in-branch training; whereas its "*journées d'accompagnement*" (support days), which add up to 280 hours per employee, constitute a bona fide component of the placement; whereas, in view of the revenue share attributable to life insurance (43%), at least 40% of training is devoted to life insurance, or 110 hours; whereas, similarly, interns receive one half-day of training per week during the first 12 weeks, of which at least 40% is devoted to insurance products; whereas, however, the Committee believes that this broad and non-specific assessment does not address the objection, which concerns compliance with the legal requirements for the initial training of any employee who is going to carry on the business of insurance intermediary; whereas UFP cannot, as regards modules such as those covering insurance intermediation and personal insurance, argue that practical training should be counted towards the acquisition of professional capabilities but fail to provide any details about the skills check-ups for these specific areas, considering that the inspection team found that the tests performed did not cover all the mandatory modules; whereas there is nothing in the case file to support the notion that the *journées d'accompagnement*, which involved no materials as UFP itself admits, supplemented the theoretical training provided; whereas the statements produced by UFP employees primarily show that the *journées d'accompagnement*, whose goals and content varied depending on the participants, were not designed as part of an overall package intended to ensure compliance with the provisions of the abovementioned order of 23 June 2008; whereas the half-day per week reserved for training interns during the first 12 weeks cannot, for the same reason, be counted towards training in order to obtain a total that is well above the required 150 hours, as argued by UFP;

11. Whereas UFP described several theoretical training courses as supplementing the *Premio* placement, which is the initial theoretical training course; whereas however the training described covered the marketing

of policies in the *Aviva Senseo* range and carried that name; whereas while some theoretical information about personal insurance was covered, these materials mainly concerned the specific features of in-house products; whereas it cannot be seriously argued that since the order of 23 June 2008 does not specify the minimum length of time that must be devoted to each module, it would be enough to make up the shortfall by spending a few minutes on a subject, since presumably the necessary knowledge could not be acquired in such a short period;

12. Whereas UFP argues that the objection concerning employees, which were alleged to lack the qualifications and professional experience required to carry on the business of insurance intermediary, applies to only 59 of the 62 new employees mentioned in the action; whereas according to UFP, of the three remaining employees, one was a former bank branch manager, which was sufficient evidence of the required professional experience, while the other two never held sales manager positions and were not therefore required to provide evidence of level I capabilities, contrary to what was stated in the notification of objections; whereas, accordingly, the Committee considers that the objection applies to only 59 of the 62 examples, for whom level II professional capabilities were required;

13. Whereas, overall, the evidence produced by the action, which was not adequately refuted by UFP, shows that the insurance intermediation training provided to new employees did not meet the regulatory requirements on length or content; whereas the objection is therefore established with a slightly reduced scope in terms of the number of examples of employees hired in 2012 and 2013 and mentioned in the action;

### III. On the marketing of insurance policies by UFP employees without the requisite professional capabilities

14. Whereas according to **objection 3**, UFP allowed employees without the requisite professional capabilities to carry out insurance intermediation activities; whereas, of the 62 employees not providing evidence of these capabilities at 31 December 2013, 59 wealth advisers and individual customer advisers had, following their recruitment in 2012 or 2013, and through to 31 December 2013, engaged in intermediation activities by distributing 742 policies for a total outstanding amount of EUR 9,106,876; whereas, in particular, just over 85% of these 742 policies, i.e. 636 policies, were distributed before these advisers had completed the *Premio* training course; whereas the *Premio* training course required interns to engage in marketing activities because to move on to the *Premio 2* module interns had to provide evidence of at least 12 weeks of work and demonstrate "*acquisition*" of four "*new qualified customers*"; whereas before completing this training course, every new adviser had to generate revenues of at least EUR 300,000 by bringing in at least 20 new qualified customers and by marketing all the products offered by the company, including life insurance policies; whereas the marketing of insurance policies by employees constitutes an intermediation activity as defined by Articles L. 511-1 and R. 511-1; whereas the distribution of such policies by persons without the requisite professional capabilities constitutes a breach of the provisions of Articles L. 512-5, R. 512-9, R. 512-10 and R. 512-12 of the Insurance Code;

15. Whereas the professional capability requirements to be satisfied by employees of legal entities acting as insurance intermediaries are laid down as recalled above; whereas point I of Article L. 511-1 of the Insurance Code states that "*Insurance or reinsurance intermediation is an activity that consists in presenting, proposing or assisting in the conclusion of insurance or reinsurance policies or in carrying out other preparatory work with a view to concluding such policies. / Activity consisting solely of the management, adjustment and settlement of claims is not considered to qualify as insurance or reinsurance intermediation. / An insurance or reinsurance intermediary is any person carrying on the business of insurance or reinsurance intermediation for compensation.*"; whereas Article R. 511-1 of the same code states that "*For the purpose of applying Article L. 511-1, any natural person or legal entity that solicits or receives subscriptions to, or memberships of, a policy, or that describes a policy's coverage terms orally or in writing to a potential subscriber or member with a view to subscription or membership, is considered as presenting, proposing or assisting in the conclusion of an insurance transaction. / The preparatory work done with a*

view to concluding a policy referred to in Article L. 511-1 shall mean any analytical or advisory work performed by any natural person or legal entity presenting, proposing or assisting in the conclusion of an insurance transaction. It shall not include activities consisting in providing information or advice on an occasional basis as part of a professional activity other than that mentioned in the first sub-paragraph.";

16. Whereas in support of the objection, the representative of the College observed that, according to the inspection findings, "*generally speaking, new arrivals engaging in direct marketing are authorised to conduct the initial introductory interview alone*"; whereas the *Premio* training course was designed such that, to move up to the next module, the intern had to bring in four new policies and be positioned "*at the source of the contractual relationship, [...] the initial entry into contact and ongoing support of the relationship*"; whereas interns, acting alone, were authorised to contact customers, set up meetings and send them documentation; whereas the tasks performed by interns qualify as engaging in the business of intermediation, even if policies were subsequently co-signed by a sales manager; whereas in addition, new employees, who are required to operate outside the head office or production office, had to hold 14 meetings with prospective or actual customers per week and generate EUR 1.5 million in 12-month revenues; whereas UFP's operating approach requires employees to undergo a particularly lengthy 13-month training course, making it impossible for them to be accompanied throughout that time, and even UFP itself acknowledged a lack of oversight of employees by sales managers; whereas the fact that some policies were signed over the weekend, and occasionally on a Sunday, makes it seem unlikely that interns were accompanied at all times; whereas since policies continued to be co-signed by the employee and the sales manager after the former had obtained the requisite professional capabilities, i.e. once he or she was entitled to carry on the business of intermediation, co-signature before this date does not prove that only the sales manager was engaged in the business of intermediation;

17. Whereas in its defence, UFP argued that the action failed to provide objective and precise evidence to prove that employees without the requisite professional capabilities had engaged in unsupervised insurance intermediation activities; whereas it pointed out that its company-wide agreement states that "*employees may only market products for which they have received authorisation and hold the appropriate professional licence*", which happens only following completion of the *Premio* training course; whereas the employment contract of new advisers does not permit such marketing either; whereas although interns are admittedly tasked with contacting prospective customers over the telephone, they may merely set up meetings and send said persons "*marketing documentation*" before the products to be offered have been determined, but do not perform unsupervised either the preparatory work with a view to concluding an insurance transaction or the signature of policies; whereas interns are required to be accompanied by their sales manager, a fact confirmed by internal sales processes and transcripts of phone conversations with customers or prospects, which do not mention the insurance products marketed by UFP; whereas UFP produced many subscription forms, all co-signed by interns and their sales managers, plus diaries providing evidence of the joint presence of interns and sales managers, and stressed that the audit report appended to the inspection report indicated that sales managers supervised interns, a fact corroborated by the information taken from diaries but also the ratio of interns to each sales manager [...]; whereas in any event the main task of sales managers is to supervise and accompany customer advisers, especially those in training; whereas although the training received by interns takes a long time, aside from making contact with customers, interns are allowed to market non-insurance products during this initial phase; whereas the co-signature of policies by interns is intended to show that they were responsible for the initial contact with the customer and to build up a portfolio of customers who will be under their personal care by the end of their training course; whereas the fact that some policies were signed on Saturdays is not unusual in the wealth management industry and whereas the rare instances in the lists provided where policies were signed on a Sunday may be the result of computer errors or special circumstances;

18. Whereas, in view of the evidence provided by the parties, the Committee finds that it cannot be considered as proven that interns, i.e. newly hired employees who had not completed their training, did themselves, acting alone, carry out insurance intermediation activities, although the Committee is cognisant that the specific procedures implemented by UFP to integrate and train wealth management advisers and individual customer advisers mean that this cannot be absolutely ruled out; whereas as the case stands, the objection against the company cannot be upheld;

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19. Whereas in view of the above, UFP failed to comply with the regulatory obligations in terms of keeping and presenting a placement logbook as at the inspection date (objection 1); whereas since the company chose to hire some employees without the requisite professional capabilities needed to carry on the business of insurance intermediary, it was obliged to set up a training course in accordance with the regulatory obligations recalled above; whereas at the inspection date, this was not the case; whereas UFP's new employees all received the same training, whether or not they had the professional capabilities; whereas the design and implementation of this training, which was mainly based around studying in-house products, did not satisfy the applicable provisions on length and content (objection 2); whereas conversely it has not been proven, as the case stands, that interns carried on the business of insurance intermediary without having the requisite professional capabilities (objection 3);

20. Whereas it is appropriate when assessing the sanction to take into account the fact that that it was neither demonstrated nor even alleged in the action that shortcomings in training had adverse consequences for customers; whereas the objection concerning the most serious offence – marketing of insurance products by people without the requisite professional capabilities – was dismissed owing to inconclusive evidence (objection 3); whereas UFP did, upon being inspected, provide information about enhancements to its training arrangements; whereas accordingly, it will receive a warning; whereas considering the shareholders' equity and profit performances of UFP, a EUR 200,000 fine is also being imposed;

21. Whereas in view of the nature of the breaches upheld by the Committee, the publication of this decision in a non-anonymous format, even if it may have negative consequences for UFP vis-à-vis its customers and employees or future employees, will not cause it disproportionate injury as defined by Article L. 612-41 of the Monetary and Financial Code; whereas it will therefore be published in this format;

## **FOR THE FOREGOING REASONS**

### **DECIDES:**

**ARTICLE 1** – A warning and a fine of EUR 200,000 (two hundred thousand euros) shall be imposed on Uifrance Patrimoine.

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

Chairman of the  
Sanctions  
Committee session

[Rémi Bouchez]



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