ISBANK PARIS
Procedure n° 2015-06

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Reprimand and fine of EUR 150,000

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Hearing of 18 April 2016
Decision handed down on 29 April 2016

AUTORITÉ DE CONTRÔLE PRUDENTIEL ET DE RÉSOLUTION
SANCTIONS COMMITTEE

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Having regard to the letter dated 28 April 2015, in which the Chairman of the Autorité de contrôle prudentiel et de résolution (ACPR) informed the Committee that the ACPR College, ruling through the Sub-College with responsibility for the banking sector, decided at its meeting of 13 April 2015 to open a disciplinary procedure under number 2015-06 against the Paris branch of Isbank AG (hereinafter, Isbank), having its registered office at 13, place Kossuth, 75009 Paris;

Having regard to the statement of objections dated 28 April 2015;

Having regard to the defence submissions dated 10 July 2015, 20 November 2015, 22 January 2016 and 22 February 2016, along with the accompanying documentation, in which Isbank (i) argued that due to the lapse of time between signature of the inspection report and the decision to open the disciplinary procedure, this decision does not comply with Article 6, paragraph 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the Convention), (ii) claimed that the inspection team's assessment of the implementation of the action requested in the formal notice dated 20 February 2012 was in breach of the principle of legality of offences and penalties, (iii) denied that the notified objections constitute breaches, and (iv) requested that the Committee hearing not be held in public and that the subsequent decision not be published in a non-anonymous form;

Having regard to the written submissions dated 1 October 2015, 28 December 2015 and 9 February 2016, along with the accompanying documentation, in which Christian Duvillet, representing the College, considered that (i) the procedure is not in breach of Article 6, paragraph 3 of the Convention, (ii) the objection concerning non-compliance with the formal notice of 20 February 2012 is not in breach of the principle of legality of offences and penalties and of legal certainty, (iii) the notified objections are substantiated with the exception of the second objection concerning the identification of occasional customers transferring funds, which he has decided to withdraw, while objections 3 and 6 concerning the system for monitoring and assessing business relationships and the permanent control system covering anti-money laundering and terrorist financing (hereinafter, AML-CTF) are substantiated but with a reduced scope;

Having regard to the deposition by the Head of Isbank, interviewed by the Rapporteur on 17 November 2015 at her request;

Having regard to the report dated 16 March 2016 by Rapporteur Thierry Philipponnat, in which he found (i) that the alleged breaches of Article 6, paragraph 3 of the Convention and the principles of legality of offences and penalties and of legal certainty should be dismissed, (ii) regarding the substantive issues, that

objection 1 relating to the identification of customers in business relationships is substantiated subject to a significantly reduced scope, that objection 2 relating to the identification of occasional customers should be dismissed, that objection 3 relating to the system for monitoring and assessing business relationships and the profile of business relationships is established subject to a slightly reduced scope, that objection 4 relating to enhanced scrutiny shortcomings is substantiated subject to a reduced scope, that objection 5 relating to shortcomings in the reporting of suspicious transactions is fully substantiated, that objection 6 relating to the AML-CTF permanent control system is substantiated subject to a significantly reduced scope, and that objection 7 relating to non-compliance with the formal notice is substantiated but needs to be kept in perspective;

Having regard to the letters dated 16 March 2016 summoning the parties to the hearing, informing them of the composition of the Committee and indicating that the hearing would not be held in public, as requested;

Having regard to the statements on the Rapporteur's report submitted by Isbank on 31 March 2016;

Having regard to Isbank's letter to the ACPR's General Secretariat dated 20 August 2012, produced by the plaintiff authority at the hearing of 18 April 2016;

Having regard to the other case documents, including in particular the inspection report dated 31 March 2014;

Having regard to the Convention of 4 November 1950, and more specifically its Article 6, paragraph 3;

Having regard to the Monetary and Financial Code, in the version in force at the time of the events;

Having regard to Regulation n° 97-02 of 21 February 1997, as amended, on the internal control of credit institutions and investment firms (hereinafter, Regulation n° 97-02), in the version in force at the time of the events;

Having regard to the *Arrêté* (ministerial order) of 3 November 2014 on the internal control of companies in the banking, payment services and investment services sector supervised by the ACPR;

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

The ACPR Sanctions Committee, comprising Rémi Bouchez in the chair, Claudie Aldigé, Francis Crédot, Jean-Pierre Jouguelet and Christine Meyer-Meuret, having heard at the session held in camera on 18 April 2016:

- Thierry Philipponnat, Rapporteur, aided by his deputy, Raphaël Thébault;

- Christian Duvillet, representing the ACPR Supervisory College, aided by the Deputy Director of the Legal Affairs Directorate, the Head of the Institutional Affairs and Public Law Division, and managers from that division and the division responsible for foreign banks in France; Christian Duvillet proposed issuing a reprimand along with a fine of EUR 150,000, to be published in a non-anonymous decision;

- The head of Isbank AG's Paris branch, aided by Isbank AG's Head of Compliance and Guillaume Berruyer, barrister (Jeantet Assoiés AARPI law office);

The representative of the Director General of the Treasury, who had been invited to attend, was absent;

Isbank's representatives, who had the last word;

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

1. Whereas, Isbank, founded in 1998, is the French branch of the German bank Isbank AG, which exists in its current form since 1992 and combines the activities of the European subsidiaries and branches of the Turkish bank Tibas; whereas, the branch offers its customers international commercial banking services (export and import credits, documentary credits, demand guarantees, payment services, operational financing, short and medium-term credit facilities); whereas, around 16% of its customers are legal entities and the self-employed and 84% are private individuals with links with Turkey; whereas, in 2015 it had nine employees and managed 1,060 customer accounts; whereas, its total balance sheet at that time was EUR 19,077,000, and it reported an operating profit of EUR 1,131,000 and a net loss of EUR 508,000;

2. Whereas, following an on-site inspection in the first half of 2011 which focused on Isbank's anti-money laundering and counter terrorist financing system (AML-CTF), a report was signed on 9 June 2011; whereas, on 20 February 2012, Isbank was issued with a formal notice to remedy the 14 main breaches identified during the inspection within three or six months, depending on the breach; whereas, a new inspection took place between 12 July and 8 November 2013 to verify that the action requested in the formal notice had been taken and that certain recommendations contained in the letter of 7 November 2011, sent following the first inspection, had been implemented; whereas, following this second inspection a final report (hereinafter, the inspection report) was signed on 31 March 2014; whereas, the ACPR College, ruling through the Sub-College for the banking sector, decided to open this procedure at its meeting of 13 April 2015;

I. General matters and procedural arguments

1. On the principle of prompt notice, pursuant to Article 6, paragraph 3 of the Convention

3. Whereas, Article 6, paragraph 3 of the Convention provides that "*Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him* (…)"; whereas, Isbank argues that the lapse of time between the date on which the inspection report was signed on 31 March 2014 and the date of the College meeting at which it decided to open a disciplinary procedure, namely 13 April 2015, has made it more difficult to exercise its rights of defence;

4. Whereas, however the guarantee of promptness pursuant to this Article does not apply during the period prior to the accusation, which is defined as "*the official notice given by the authority with jurisdiction of the allegation that a criminal offence has been committed*" (ECHR, *Bertin-Mourot vs. France*, 2 August 2000, n° 36343/97); whereas, this interpretation has also been upheld by the State Council (*Conseil d'État*, 2 July 2015, appeal. n° 366108); whereas, in view thereof, the principle does not apply to the period of more than one year between the signature of the inspection report and notification of the objections, which is the first procedural document; whereas, the argument put forward should therefore be dismissed;

2. On the principles of legality of offences and penalties and of legal certainty

5. Whereas, regarding the observations in the inspection report concerning non-compliance with the formal notice (objection 7), Isbank argues that the wording used, and more specifically the association of the adjective "*compliant*" with the adverbs "*broadly*" or "*partially*" reveal a subjective assessment and accordingly undermine the legal certainty to which banks are entitled;

6. Whereas, accordingly, Isbank does not argue that the laws and regulations that the ACPR's College allege it has breached disregard the principle of legality of offences and penalties or undermine the legal certainty to which entities supervised by the ACPR are entitled, due to their lack of accuracy or their vagueness, it argues that the on-site inspection team's assessment of its compliance with these laws and regulations, as recorded in the inspection report, disregarded this principle; whereas, however, it is clear from the wording used by the inspection team that any implementation of the laws and regulations described other than as "*compliant*" (to requests contained in the formal notice) was not compliant; whereas, the adverbs used simply indicate the discrepancy between the measures implemented and the corrective action requested; whereas, moreover, following referral of such an objection it is the responsibility of the Sanctions Committee to assess whether it is well-founded, and the wording used in the inspection report is only one part of the evidence on record on which it will base its decision; whereas, no breach of the principle of legality or legal certainty has been established; whereas, the argument put forward should therefore be dismissed;

II. On the substantive issues

1. On the difference between occasional customers and customers in a business relationship and the implementation of appropriate due diligence measures

1.1. On identifying customers in a business relationship

7. Whereas, Article L. 561-2-1 of the Monetary and Financial Code provides that *"a business relationship shall be created when an individual or legal entity referred to in Article L. 561-2 enters into a professional or commercial relationship which is intended, at the time contact is made, to persist for a certain period of time. The business relationship may be set forth in a contract pursuant to which several successive transactions will be carried out between the contracting parties or which places continuous obligations on them. A business relationship shall also be created where, in the absence of such a contract, a client has the benefit of regular assistance from an aforementioned individual or legal entity to carry out several transactions or a single transaction of a continuous nature (…)"*;

8. Whereas, according to **objection 1**, effective from 1 January 2013, Isbank determined and implemented three alternative thresholds above which its occasional customers were considered to be in a business relationship (EUR 15,000 of successive transactions in a year or EUR 8,000 in one single transaction or a total of six transactions over the year) but whereas, because the management tool did not contain any alert or blocking functions, it was unable to guarantee compliance with these thresholds, which were checked manually by its branch cashiers; whereas, moreover, the inspection team's analysis of transactions involving the transfer of funds during the first half of 2013 identified 11 cases in which thresholds were exceeded, including four customers who deposited a total of more than EUR 15,000, and application of these thresholds over a rolling one-year basis identified 36 cases in which thresholds were exceeded but a deposit account was not immediately opened, as is required by the branch's procedures, and the due diligence measures applying to customers and business relationships were not implemented;

9. Whereas, firstly, Isbank provided contradictory explanations for the changes in its AML-CTF procedures, whereas, in the course of this procedure it finally stated that only the threshold based on the number of transactions serves as a criterion to distinguish between occasional customers and business relationships, and that the purpose of the thresholds based on the amount of transactions is to adapt the monitoring of occasional customers; whereas, however, its internal procedures applicable in July 2012 and March 2013 state that transactions exceeding a unit threshold of EUR 8,000 or as a result of which the EUR 15,000 threshold is exceeded in any given year cannot be executed by occasional customers, irrespective of the supporting documents produced, but that this can be done by customers who have opened an account and are therefore classified as in a "business relationship" pursuant to the AML-CTF procedures; whereas, this means that these criteria do indeed serve to differentiate between occasional customers and customers in business relationships, as does the criterion based on the number of transactions; whereas, moreover, this is how Isbank interpreted its own procedures in the letters it sent to the ACPR on 21 March and 20 August 2012;

10. Whereas, next, the branch does not refute the allegation concerning the absence of any warning or blocking system in its management tool, but argues that since the beginning of January 2013 a new system has been in use which requires employees to fill out information forms for any cash transfers of EUR 5,000 or more and that, whenever an occasional customer enters a bank, the cashier must check the Z system to view the number of fund transfers previously carried out and the names of the declared beneficiaries of the transferred funds; whereas, however, although banks are not prohibited from using a manual system to verify compliance with the thresholds they have defined, they are required to put in place a system that effectively verifies compliance with these thresholds and the associated consequences; whereas, although Isbank has stated that the new IT system (…), which will include a blocking system in the event the indicated thresholds are exceeded, will be operational from May 2016, there was no such system at the time of the inspection;

11. Whereas, lastly, although it would have been difficult to use the statement of objections to identify the relevant customers in 11 of the 36 cases referred to, as it merely quotes figures and refers to the findings of the inspection report, set out in a table listing 55 names, following the clarifications provided in this connection in the statements of reply by the College representative, Isbank was able to see the list of cases used by the plaintiff authority to illustrate the alleged facts, and to challenge it, if it saw fit; whereas, the case documents referred to the Committee establish that the above-mentioned thresholds were indeed exceeded in at least 36 cases during the second half of 2012 and the first half of 2013; whereas, accordingly, Isbank did not correctly differentiate between its occasional customers and those in a business relationship pursuant to the above-mentioned Article L. 561-2-1; whereas, the objection is substantiated;

1.2. On the identification of occasional customers transmitting funds

12. Whereas, Article R. 561-10-3 of the Monetary and Financial Code requires banks to identify and verify the identity of occasional customers transmitting funds and, where appropriate, the effective beneficiaries of the transaction, from the first Euro;

13. Whereas, according to **objection 2**, of a sample of 11 transactions each involving the transfer of more than EUR 5,000 after 20 May 2012, two files concerning customers who deposited cash at the branch and then transferred funds do not contain a copy of the customer's proof of identity or references;

14. Whereas, the plaintiff authority decided to withdraw this objection; whereas, its withdrawal is noted;

2. On the system for monitoring and assessing business relationships

15. Whereas, sub-section 2.2 of Article 11-7 of Regulation 97-02 provides that "*companies subject [to the regulation] must have systems to monitor and assess their business relationships, based on their knowledge of their customers, which enable them in particular to detect any transactions that are unusual in view of the profile of the business relationship and that merit enhanced scrutiny pursuant to Article L. 561-10-2 (II) or need to be reported pursuant to Article L. 561-15 of the Monetary and Financial Code. They must also have systems that are adapted to their specific operations and enable them to detect any transaction benefiting an individual or entity whose funds, financial instruments and economic resources have been frozen";* whereas, these requirements have also been included in Articles 46 and 47 of the above-mentioned *Arrêté* of 3 November 2014;

16. Whereas, according to **objection 3**, Isbank has defined specific AML-CTF risk indicators for to its operations; whereas the score of each customer file based on these indicators is calculated manually using an Excel 'Know Your Customer' worksheet; whereas, 210 individual customers and 34 legal entities did not have KYC sheets at the time of the inspection and were therefore classified in the management system as low-risk, with a different score to the one recorded in the management system used by the branch (Z) and managed by the parent company; whereas, 171 individual customers (i.e., 11.56%) and 14 legal entities (i.e., 6.28% of the total number) were assigned a lower risk profile in Z than they were assigned using the KYC sheets and, of these customers, 77 were classified as high risk by the bank; whereas, as the tool used to detect

unusual and suspicious transactions (Y) is only connected to the Z management system, the system for monitoring and assessing business relationships is not capable of detecting all the anomalies in customer profiles, as is demonstrated by the shortcomings in terms of enhanced scrutiny and the reporting of suspicious transactions covered by objections 4 and 5;

17. Whereas, regarding the updating of scores for the 34 customers that are legal entities, the plaintiff authority has stated that the inclusion of the 'Nostro' accounts of Isbank Paris and Isbank Amsterdam -subsidiaries of Isbank AG- in the scope of the objection was a mistake, and that they should be excluded; whereas, likewise, regarding the bank accounts of companies A and B, the documents produced by Isbank establish that although the KYC sheets were not included in these customers' paper files at the time of the inspection, they did exist in the database; whereas, moreover, the plaintiff authority has not explained why Isbank should have had KYC sheets for the 14 accounts opened in the name of representations in France of [country]; whereas, in view of the evidence produced by the plaintiff authority with regard to these 14 accounts, the scope of the objection will therefore be reduced to cover one account only; whereas, conversely, although four customer accounts identified by the inspection team have been closed, this does not exempt Isbank from its obligation to have previously prepared KYC sheets for them, which it should have been able to produce during the inspection; whereas, moreover, a sheet should also have been prepared for the account of the company in compulsory liquidation; whereas, the fact that 11 of the customer files were scored in the Z central information system, managed by the parent company in Germany, is not sufficient to refute the objection in view of the shortcomings of the system, regarding which the inspection report found that "*an examination of the data has established that descriptive information entered in the application is inadequate as regards both know your customer information and the type of transactions covered by the transaction codes (…)"*; whereas, accordingly, the scope of the objection should be reduced to 17 customer files relating to legal entities; whereas, it has not been established that the absence of KYC sheets for these customers systematically resulted in a low-risk classification, and this should also be taken into consideration;

18. Whereas, regarding the updating of scores for the 210 customer files for individuals, 99 individuals who were shareholders or top managers of customers and not customers themselves should be excluded from the scope of the objection; whereas, likewise, Isbank has been accused of not holding a KYC file for "account O", but this corresponds to a customer identifier and not to an account number; whereas, the account entitled "closure 60800" appears to be a technical account which should be excluded from the scope of the objection; whereas, as regards accounts C and D, the KYC files existed in Excel format but had not been printed out and placed in the paper files examined by the inspection team, but this has now been remedied; whereas, lastly, for 14 customer files Isbank has established that KYC files did exist in the paper files, meaning that they should also be excluded; whereas, conversely, 33 files regarding which Isbank has stated that the KYC sheets were in preparation at the time of the inspection and 17 other files for which the final scores were calculated after this procedure was opened must be included in the scope of the objection; whereas, the 14 accounts concerned by the MS Access program used to automatically calculate scores, the use of which allegedly explains the absence of Excel format KYC files in the customer files, should also be included in the scope of this objection, as use of this program does not exempt Isbank from the need to keep KYC information in the same place; whereas, although Isbank has explained that 28 of the accounts covered by the procedure had been closed, it is unable to provide proof that KYC sheets had been prepared for these customers; whereas, in addition, there is no reason to exclude from the scope of the Know Your Customer obligations the account opened for a customer who is also a branch employee; whereas, a total of 93 customer files for individual customers should be found to be non-compliant;

19. Whereas, lastly, although the bank, which does not dispute the inconsistencies in its scoring calculations in the Y and Z tools, attempts to minimise the consequences of this by explaining that they were due to a computer "bug" that only affected a small percentage of its customers, the reason for this deficiency can have no bearing on the objection; whereas, these discrepancies concerned a significant percentage of customers and, contrary to what is claimed by Isbank, had practical consequences as 77 customers assessed as presenting a high risk were recorded in the Z management system as moderate risk which would imply the application of less rigorous due diligence procedures than if they had been classified as high risk; whereas, although Isbank has said that since July 2014, in accordance with Article 5.2.1 of its AML-CTF procedure,

all customers with a 'Z' score of 1 are the subject of standard due diligence measures rather than the simplified due diligence measures, this constitutes corrective action which, moreover, does not remedy the actual problem pinpointed, namely that whenever "customer identification" is updated in 'Z', these customers are assigned a score of 1;

20. Whereas, it is established as a result of the foregoing that Isbank's monitoring and assessment systems for its business relationships were seriously deficient on the date of inspection; whereas, although the number of cases covered by the objection should be reduced as noted above, objection 3 is substantiated;

3. On shortcomings regarding enhanced scrutiny and the reporting of suspicious transactions

3.1. On the six failures to carry out enhanced scrutiny reviews (objection 4)

21. Whereas, Article L. 561-10-2-II of the Monetary and Financial Code requires financial institutions to carry out enhanced scrutiny reviews of all transactions that are particularly complex, involve unusually high amounts or do not seem to have any economic justification or legitimate purpose; whereas, in such a case they must ask the customer about the origin and destination of the funds, the purpose of the transaction and the identity of the beneficiary;

22. Whereas, according to **objection 4**, Isbank failed to carry out enhanced scrutiny reviews of transactions carried out by six customers, of whom two were legal entities and four were individuals;

23. Whereas, firstly, the way in which the account of the first company covered by the objection operated had changed between 2012 and 2013, with a sharp increase in the number of transactions and, in some cases, a reversal of their direction, which should have led to an enhanced scrutiny review to understand the reasons for this change; whereas, next, as regards the second company, the Committee considers that adequate justification was given for the intragroup transactions in question, which led to grouped payments for invoices corresponding to small amounts; whereas, lastly, regarding the four individuals who deposited cash and then transferred funds amounting to between EUR 6,000 and EUR 8,000, in view of the information available to Isbank concerning these customers' operations and the absence of any supporting documents to establish the origin of the funds, these transactions should, at the very least, have been subject to enhanced scrutiny;

24. Whereas, subject to a reduced scope following the exclusion of transactions carried out by one of the two legal entities, the objection is substantiated;

3.2. On the nine failures to report suspicious transactions or to file additional reports (objection 5)

25. Whereas, Article L. 561-15-I of the Monetary and Financial Code requires reporting entities to report to Tracfin any amounts recorded on their books or transactions relating to amounts that they know, suspect or have good reason to suspect result from an offence punishable by a custodial sentence of more than one year or that contribute to the financing of terrorism; whereas, paragraph V of the article also requires them to promptly provide Tracfin with any information confirming or modifying the information contained in the initial suspicious transaction report;

26. Whereas, according to **objection 5**, Isbank failed to send Tracfin eight initial suspicious transaction reports and one additional suspicious transaction report;

27. Whereas, firstly, with regard to the failure to send eight initial suspicious transaction reports, two concerned a series of cash payments followed by transfers to individuals residing abroad, representing unit

amounts of several thousand euros, made by occasional customers who were individuals and who seemed to belong to the same family; whereas, in a third case, a number of occasional customers remitted funds at the counter totalling EUR 60,800 in 11 transactions, and each requested that the funds be transferred to the same company; whereas, in three cases Isbank did not obtain sufficient proof of the origin or destination of the funds, the purpose of the transaction or the ties between the various participants; whereas, Isbank has a duty to put in place and implement a system to detect split transactions and to draw the appropriate consequences with regard to compliance with its reporting obligations as regards transactions carried out at its counters that may have been deliberately split;

28. Whereas, next, Isbank's failure to comply with its obligations is also established in a fourth case relating to an individual in a business relationship with the bank, as large amounts were debited and then credited to the customer's account as the result of transfers to and then from a member of his family residing abroad; whereas, although most of the credit transactions corresponded to loans granted to the customer, it is impossible to identify the corresponding repayments by looking at the account; whereas, given that on the date of these transactions the customer file did not contain sufficient proof of the origin of the funds received, a suspicious transaction report should have been filed;

29. Whereas, lastly, the fifth and sixth alleged instances of non-filing of suspicious transaction reports concern legal entities in a business relationship with the bank on whose accounts cash had been deposited although the amounts and recent transactions were not consistent with the nature of their operations or any changes thereto, and were not fully justified by documents in the customer files; whereas, in the seventh case, an initial transaction was not consistent with the expected operation of an account opened by a company, and receipt of a transfer in a significantly smaller amount than the invoice it was intended to pay, followed by the closure of the account by the customer after it was asked in writing to provide information, should have resulted in a suspicious transaction report; whereas, likewise, in an eighth case the conditions under which the purchase of the company was financed — including the lack of clear information on the origin of the funds and the insufficient information concerning its new manager — should have caused Isbank to suspect that these transactions fell within the scope of Article L. 561-15-I of the Monetary and Financial Code;

30. Whereas, in the ninth case, after a company's transactions had already resulted in a suspicious transaction report it continued to make transfers, including some to a number of different foreign countries, without justifying the amounts or direction of the transactions, which should have led the bank to file an additional suspicious transaction report;

31. Whereas, accordingly, the failure to file a suspicious transaction report or additional suspicious transaction report has been established in all nine cases selected by the plaintiff authority; whereas, the fifth objection is fully substantiated;

4. On the permanent control system covering its money laundering and terrorist financing procedures

32. Whereas, Article 11-7-9 of Regulation 97-02 provides that the AML-CFT permanent control procedures form part of the compliance system and that the head of compliance must verify that the AML-CTF systems and procedures are appropriate and comply in particular with the obligations contained in Articles L. 561-10-2, L. 561-15 and R. 561-31 of the Monetary and Financial Code; whereas, these provisions have been included in Article 71 and 72 of the above-mentioned *Arrêté* of 3 November 2014;

33. Whereas, according to **objection 6**, three shortcomings were identified in Isbank's permanent control system, concerning the management of alerts, the monitoring of occasional customers and the filing of suspicious transaction reports; whereas (i) firstly, the management of alerts cannot be effectively controlled as these are managed on a daily basis by one of the branch's two AML-CTF officers and their status is then recorded in a monthly summary statement which is sent out and approved by the branch manager, and as neither the transaction triggering the alert nor the investigations carried out as a result of the alert nor the

reason for closure of the file are recorded in the monthly summary statement, which is controlled by the branch manager; (ii) whereas, secondly, occasional customers are not covered by the permanent control system; (iii) whereas, lastly, at the time of the inspection no permanent controls were carried out prior to submission of suspicious transaction reports; whereas, accordingly, of the eight suspicious transaction reports filed between 3 October 2012 and 4 July 2013, six were inadequate and a seventh was filed too late; whereas, information on the identity of the effective beneficiaries was not included in the suspicious transaction reports sent to Tracfin in three cases relating to legal entities (companies E, F and G); whereas, in addition, information on the purpose and nature of the business relationship is missing in six suspicious transaction reports (companies H, I, J, K, L and M), while in the case of company I, which operates in the construction and public works sector, on 12 December 2012, an instance of suspected tax fraud was reported following the unjustified payment to company N of EUR 37,250 in five cheques; whereas, during the second fortnight of December company I then issued three other cheques to company N and two other entities operating in the food sector; whereas, as no supporting documents were produced Isbank closed the account on 23 January 2013; whereas, an additional suspicious transaction report was then sent on 15 March 2013, i.e., more than two months after the last cheque was debited and almost two months after the account was closed;

34. Whereas, firstly, Isbank maintains that although following modifications to the tool Y in October 2012 only one alert summary could be printed out and signed to record controls carried out, the AML-CTF officer and the branch manager could log into the tool; whereas, however, as the controls used a monthly summary statement sent out and approved by the branch manager and that did not indicate the transaction at the origin of the alert, the investigations carried out as a result or the reason for closure of the file, the regulatory requirements reiterated above are not satisfied; whereas, the only form used to record investigations following alerts that was produced in defence is a blank document which cannot be used to assess the effectiveness of the permanent control system;

35. Whereas, at the time of the inspection transactions carried out by occasional customers were recorded in the Z management system, and the same data was used by tool Y; whereas, although the College representative argued that management of alerts and control procedures was nevertheless inadequate, the objection set out in the statement of objections concerns Isbank's exclusion of this category of customer from its system; whereas, this part of the objection should be dismissed;

36. Whereas, lastly (i) regarding one of the three files in which Isbank allegedly failed to identify the effective beneficiaries in the suspicious transaction report relating to transactions recorded on company K's account, the plaintiff authority has withdrawn the objection, and this is duly noted; whereas, the suspicious transaction report relating to transactions on company F's account named certain individuals as effective beneficiaries; whereas, Isbank cannot validly be reproached for its failure to identify company G's effective beneficiaries given that the reason stated for reporting a suspicious transaction was specifically "the impossibility of identifying the effective beneficiaries"; whereas, none of these three files can therefore be included in support of the objection; whereas, conversely (ii) the suspicious transaction reports produced by Isbank relating to companies H, I, K, L and F do not contain sufficiently specific information on the purpose and nature of the business relationship; whereas, Isbank cannot cite the terms of implementation of the obligation — arising from the *Arrêté* of 6 June 2013 determining the procedure for transmitting reports pursuant to Article L. 561-15 of the Monetary and Financial Code — to file reports using the secure Ermes platform in order to explain the lapse of time between the new transactions that led to an additional suspicious transaction report relating to company I and the date on which the report was sent as, on the one hand, it had not entered into effect at that time and, on the other hand, if the platform is unavailable a paper report can always be sent; whereas, these shortcomings constitute deficiencies in the compliance system as regards verification of the content of suspicious transaction reports;

37. Whereas, subject to the reduced scope as stated above, and while tempering the objection concerning the indication of the purpose and nature of business relationships in view of the clarifications provided under the heading "*analysis of the facts, indications of money laundering*" in the suspicious transaction reports, the sixth objection is substantiated;

5. On non-compliance with the official notice of 20 February 2012

38. Whereas, pursuant to Article L. 612-31 of the Monetary and Financial Code, "*The ACPR may issue any person or entity under its supervision with a formal notice to implement measures within a specific time period to bring it into compliance with the obligations supervised by the ACPR"*

39. Whereas, in a formal notice dated 20 February 2012, Isbank was asked to comply with a number of provisions contained in Book V Title VI of the Monetary and Financial Code relating to AML-CTF;

40. Whereas, according to **objection 7**, Isbank failed to implement a number of actions requested in the formal notice dated 20 February 2012, namely actions 10, 11 and 12 (objection 7-1), 7 and 14 (objection 7-2), 3 to 6 and 9 (objection 7-3);

41. Whereas, according to objection 7-1, this shortcoming essentially concerns requests n° 10, 11 and 12; whereas, these were worded as follows: "*10 Define the criteria used to differentiate occasional customers from customers in a business relationship"; "11 For the customers in business relationships incorrectly classified as occasional customers, create customer files and implement appropriate due diligence measures"; "12 Define the amounts to be used as control thresholds (for individual transactions and cumulative transactions carried out by a single customer over a given period of time) that are suitable in view of customer operations"*;

42. Whereas, Isbank considers that it cannot be found to have failed to comply with the requests, as it defined the criteria used to differentiate occasional customers from customers in a business relationship and updated its AML-CTF procedures and that, when assessing whether this objection is well-founded, the files dismissed from the procedure and the objections withdrawn by the plaintiff authority should be taken into consideration;

43. Whereas, request n° 10 was based on the finding during the previous inspection, held between October 2009 and September 2010, that 93 occasional customers carried out at least 20 transactions over the 12-month period under review representing approximately EUR 2 million; whereas, as pointed out previously (cf. *supra* paragraphs 9 to 11), Isbank failed to correctly differentiate between occasional customers and customers in a business relationship; whereas, regarding request n° 11, the inspection team's review has established that of the sample of 30 of these 93 files that were inspected, shortcomings were identified in seven of them; whereas, this should be counterbalanced by the action taken with regard to certain files in order to comply with the eleventh request; whereas, pursuant to request n° 12, the control thresholds should have been put in place within three months; whereas, this was only done from 1 January 2013; whereas, Isbank failed to take action as requested within the requisite time periods;

44. Whereas, according to **objection 7-2**, Isbank failed to comply with requests n° 7 and 14, as its supervision of suspicious transaction reports and its management of alerts remains inadequate; whereas, in the formal notice, these were worded as follows: "*7 Put in place a permanent control system covering the AML-CTF system"; "14 Implement internal controls to ensure these procedures are correctly applied";*

45. Whereas, Isbank also refutes this objection in view of the action taken to control alerts produced by Y and the measures taken to control suspicious transaction reports;

46. Whereas, however, the assessment contained in objection 6 leads us to conclude, subject to a reduction in scope and appropriate relativisation, that this objection is substantiated;

47. Whereas, according to objection **7-3**, requests 3, 6 and 9 in the formal notice were not complied with; whereas, the formal notice requested as follows: "*3 Define profiles of customers in a business relationship more precisely"; "6 Draw up a suitable AML-CTF risk classification"; "9 Update all the files using a risk-based approach that is consistent with the new risk classification*"; whereas, these shortcomings were due to the lack of a correlation table between the customer classification and the necessary level of due diligence,

preventing the operational implementation of customer classification according to AML-CTF risk levels, the definition of a business relationship profile and the detection of unusual or suspicious transactions; whereas, moreover, the so-called 'KYC' sheets used to determine the profiles of business relationships using a score of 1 to 3 had not been filled out in certain cases, i.e., for 210 individuals and 34 legal entities, who were systematically allocated a score of 1, indicating the lowest risk; whereas, in addition, the scores allocated manually to certain customers using the branch's own risk classification are not always consistent with those used in the management tool, which is linked to the system for monitoring and assessing business relationships; whereas, the inspection team accordingly observed that the scores allocated in the management tool and ultimately in the tool used to detect unusual or suspicious transactions were lower than the scores that should have been allocated pursuant to the branch's procedures;

48. Whereas, Isbank also refutes this objection, in view of the resources it has put in place and the small number of customers that did not have KYC sheets on the date of inspection;

49. Whereas, however, the inspection report correctly pointed out that the indicators used by Isbank did not allow sufficient differentiation in view of the settings used, and often resulted in inaccurate risk assessments; whereas, at the time Isbank did not use a suitable risk classification system based on customer profiles; whereas, subject to a reduced scope in view of the findings concerning the third objection, the breach is established;

50. Whereas, although the scope of certain of the breaches to which it relates has been reduced as previously stated, objection 7 relating to non-compliance with the formal notice is substantiated;

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51. Whereas, in view of the foregoing, firstly on the date of inspection Isbank's AML-CTF system presented a number of serious shortcomings as regards the criteria used to differentiate between occasional customers and customers in business relationships and their implementation (objection 1), as did its system for monitoring and assessing business relationships (objection 3); whereas, in addition, several shortcomings were identified in its processing of individual files as regards its obligations to carry out enhanced scrutiny reviews (fourth objective) or report suspicious transactions (objection 5); whereas, shortcomings in its permanent control system have also been established (objection 6); whereas, the requirements set out in the official notice dated 20 February 2012 asking Isbank to remedy the main deficiencies identified in a previous inspection were not complied with within the requisite time period (objection 7);

52. Whereas, however, the scope of certain objections (objections 3, 4 and 6) has been reduced, and the objection relating to the identification of occasional customers transmitting funds abroad has been withdrawn (objection 2); whereas, in addition, Isbank's AML-CTF system has been improved since the inspection report was signed more than two years ago; whereas, accordingly, it has significantly reinforced both its human and technical resources; whereas, in addition, the new management team has stated that the branch has now refocused its operations on the development of business relationships with companies involved in Franco-Turkish trade; whereas, in view thereof it has already drastically reduced the proportion of its business that consists of the transfer of funds for occasional customers, as evidenced by the documents it has produced;

53. Whereas, in view whereof, and considering the AML-CTF deficiencies, relating in particular to individual cases, together with the failure to comply with an official notice, it is appropriate for Isbank to be issued with a reprimand; whereas, in view of the nature of the breaches and the bank's financial situation, a fine of EUR 150,000 is not disproportionate;

54. Whereas, next, Isbank argues that (i) because the offence occurred some years previously and given that it has remedied most of the shortcomings identified or intends to do so in the very near future, the injury

caused by the publication of a non-anonymous decision would be disproportionate; (ii) the anonymity of the customers referred to in support of objections 4 and 5 would not guarantee banking secrecy in view of the amount and characteristics of the transactions carried out by these customers, some of whom are celebrities or high-profile companies in Turkey;

55. Whereas, however, despite the efforts made, Isbank failed to remedy all of the shortcomings observed by the first inspection team in 2011 within the time period stipulated in the written notice dated 20 February 2012 and, by the end of the investigation of this case, as previously stated, several individual files established its non-compliance with its obligations to report transactions or carry out enhanced scrutiny reviews; whereas, in view thereof, the decision should be published in a non-anonymous format; (ii) whereas, however, in view of Isbank's small number of customers and the characteristics of its customers, most of whom are residents of Turkish nationality or individuals or entities with links with Turkey, it is essential that customers are not able to recognise themselves or be recognised by third parties despite the omission of their name or company name; whereas, accordingly, a summarised presentation of the facts relating to the files referred to in objections 4 and 5 is appropriate so that these customers cannot be identified;

FOR THE FOREGOING REASONS

[THE ACPR] DECIDES:

ARTICLE 1 – A reprimand and a fine of EUR 150,000 (one hundred and fifty thousand euros) shall be imposed on Isbank Paris.

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

[Rémi Bouchez]

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