SOCIÉTÉ GÉNÉRALE
Procedure n° 2013-04

Reprimand and fine
of EUR 800,000

Hearing of 2 May 2016
Decision handed down on 19 May 2016

AUTORITÉ DE CONTRÔLE PRUDENTIEL ET DE RÉSOLUTION
SANCTIONS COMMITTEE

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Having regard to the decision dated 14 October 2015 (appeal n° 381173) in which the State Council (*Conseil d'État*), acting in its judicial capacity, ruled on an appeal by Société Générale (hereinafter, SG), (i) overturning in full the decision dated 11 April 2014 in which the Sanctions Committee of the Autorité de contrôle prudentiel et de résolution (ACPR) had imposed a reprimand and a fine of EUR 2 million on the bank, and ordered the publication of its decision in the ACPR's register, (ii) explaining that: "*(...) However, this decision does not prevent the Sanctions Committee from resuming its investigation into the procedure, on the basis of the objections of which it was notified and taking into consideration, if applicable, any additional evidence produced by the plaintiff authority"* (paragraph n° 5);

Having regard to the written submissions dated 21 December 2015, 16 February and 2 March 2016, along with the accompanying documentation, in which Emmanuel Constans, representing the Supervisory College, (i) argued that objection 1 is substantiated, as SG has failed to produce proof that the relevant customers had been offered a free deposit account and had declined the offer, and (ii) with regard to the other eight objections, referred the Committee back to his previous statements;

Having regard to the written submissions dated 29 January, 16 and 29 February and 11 March 2016, in which SG (i) argued that the new statements and documents submitted by the College representative do not establish that objection 1 is well-founded, and (ii) referred the Committee back to its statements dated 10 October 2013 and 30 December 2013 for its defence arguments regarding objections 1 to 9;

Having regard to the report dated 29 March 2016 by Rapporteur Elisabeth Pauly, in which she found that objections 1 and 2 should be dismissed and that objections 3 to 9 are substantiated subject to a reduction in the scope of objections 3, 6 and 8;

Having regard to the letters dated 29 March 2016 summoning the parties to the hearing, informing them of the composition of the Committee and indicating that the hearing would be held in public;

Having regard to the statements submitted on 13 April 2016 concerning the Rapporteur's report, in which SG (i) noted the recommendation made in the Rapporteur's report to withdraw objection 1, and (ii) maintained that the arguments put forward in response to the report are sufficient to exonerate it or, at the very least, should be taken into consideration when deciding whether to impose sanctions on it;

Having regard to the other case documents, including in particular the inspection report dated 8 March 2013 (hereinafter, the inspection report) and the written submissions exchanged before the decision dated 11 April 2014;

Having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the Convention);

Having regard to the Monetary and Financial Code;

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);

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 Jean-Pierre Jouguelet in the chair, Claudie Aldigé, Monique Liebert-Champagne and Christine Meyer-Meuret, having heard at the session held in public on 2 May 2016:

- Elisabeth Pauly, Rapporteur, aided by her deputy, Raphaël Thébault;

- Rodolphe Lelté, representing the Director General of the Treasury, who said that he had no comments to make;

- Emmanuel Constans, representing the ACPR Supervisory College, aided by the Director of the Legal Affairs Directorate, the Head of the Institutional Affairs and Public Law Division, and the Deputy Head of the Oversight of Contracts and Risk Division of the ACPR; after stating that he agreed with the Rapporteur, who found in her report that the facts alleged in relation to the first objection had not been established, Emmanuel Constans maintained his statements with regard to the other objections and proposed issuing a reprimand along with a fine of EUR 1.5 million, to be published in a non-anonymous decision;

- The secretary of SG's board of directors, aided by a member of its legal department and members of its retail banking and corporate banking departments as well as Hubert de Vauplane and Hugues Bouchetemble, barristers (Kramer Levin Naftalis & Frankel law office);

SG's representatives, who had the last word;

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

1. Whereas, following an on-site inspection by the ACP between 20 July and 26 November 2012, which resulted in the signature of a final inspection report dated 8 March 2013 following an oral and written adversarial procedure, the ACP College, ruling through the Sub-College with responsibility for the banking sector, decided on 22 May 2013 to open this disciplinary procedure against SG; whereas, on 11 April 2014, the ACPR Sanctions Committee imposed a reprimand and a fine of EUR 2 million on SG; whereas, following the reversal of this decision, the Committee resumed its investigation; whereas, a new Rapporteur was appointed on 9 November 2015, whereas, the Supervisory College, ruling through the Sub-College with responsibility for the banking sector, confirmed the appointment of its representative, whereas, the Rapporteur filed her report on 29 March 2016;

I. On the disregard of the principle of legality of offences and penalties

2. Whereas, SG has pointed out that the principle of legality of offences and penalties "*implies that the law must define, for sanctions falling within its remit, offences in sufficiently clear and accurate terms to exclude any form of arbitrariness and determine the corresponding sanctions*" (State Council, 16 July 2010, n° 321056); that, by merely referring (i) to "*procedures manuals*" in Article 40, without defining their content, and (ii) to the existence of "*sufficient resources*" in Article 9, without defining the meaning of this expression, Regulation n° 97-02 introduces an extremely vague rule, the interpretation of which is necessarily highly subjective meaning that the arbitrary nature of any sanction cannot be ruled out; that, the use of the above articles to characterise certain objections, namely objections 6 and 9, would result in a disregard of the principle of legality of offences and penalties which, according to established case law, implies that "*the law must define, for sanctions falling within its remit, offences in sufficiently clear and accurate terms to exclude any form of arbitrariness and determine the corresponding sanctions*";

3. Whereas, however, the requirement for a clear and accurate definition of an offence does not have the same scope depending on whether the sanctions are administrative or criminal; whereas, the Constitutional Council (*Conseil constitutionnel*) has ruled that "*other than in matters of criminal law, the requirement to define offences for which sanctions are imposed is satisfied in administrative matters when the applicable texts refer to obligations incumbent upon the relevant parties because of their activities, occupation or profession, the institution they serve or the capacity in which they act*" (Constitutional Council, 2013-332, priority constitutional question, 12 July 2013, *Mrs Agnès B*); whereas, for this reason the State Council dismissed a priority constitutional question challenging the provisions of the Monetary and Financial Code that constitute the basis for Regulation n° 97-02 (State Council, 15 January 2014, *UBS France SA*, n° 371585); whereas, the obligation to draw up procedures manuals which "*must, in particular, describe the procedures for recording, processing and retrieving information, the accounting methods and the procedures for initiating transactions"* and must be adapted to specific operations is laid down in Article 40 of the Regulation in terms that enable credit institutions to understand the substance thereof; whereas, as regards Article 9 of the Regulation, the "*sufficient resources*" referred to are explained in the second paragraph as resources that must make it possible to "*carry out a full audit cycle covering all operations over as few years as possible*"; whereas, the requirements resulting from these articles are set out in sufficiently clear and accurate terms as to be unambiguous; whereas, the objection raised must therefore be dismissed;

II. On the substantive issues

4. Whereas, the notified objections will be examined in the following order, as determined by the Rapporteur:

1. *On the operational implementation of the legislation governing the right to a basic bank account (hereinafter, the Banking Right);*
   - *1.1. On the policy on opening new accounts pursuant to the Banking Right (objection 1);*
   - *1.2. On the procedure for opening new accounts pursuant to the Banking Right (objection 2);*
   - *1.3. On the services offered to holders of accounts opened pursuant to the Banking Right (objection 3);*
   - *1.4. On the fees and charges for so-called "basic" banking services* (hereinafter, BBS) *(objection 4);*
   - *1.5. On the closure of accounts opened pursuant to the Banking Right (objection 5);*
2. *On the internal control system;*
   - *2.1. On the procedures issued to staff (objection 6);*
   - *2.2. On the identification of accounts opened pursuant to the Banking Right (objection 7);*
   - *2.3. On the permanent control system (objection 8);*
   - *2.4. On the periodic control system (objection 9);*

1. On the operational implementation of the legislation governing the right to a basic bank account (the Banking Right)

1.1. On the policy on opening new accounts pursuant to the Banking Right (objection 1)

5. Whereas, Articles L. 312-1, D. 312-5 and D. 312-6 of the Monetary and Financial Code entitle any person for whom Banque de France has designated a credit institution pursuant to the Banking Right to open a deposit account with that institution and to have access to BBS free of charge;

6. Whereas, according to **objection 1**, SG did not open accounts pursuant to the Banking Right for all the individuals referred to it by Banque de France; whereas, although Banque de France designated SG 6,534 times between 1 July 2010 and 30 June 2012, SG opened deposit accounts pursuant to the Banking Right for only 1,257 individuals and legal entities (i.e., 19.24% of the total referrals); whereas, the inspection team looked at whether accounts opened as part of the fee-paying Généris package might account in part for this discrepancy; whereas, it noted that of the 110 accounts opened in the Ile-de-France region between 1 January 2010 and 30 June 2012, 54 files (i.e., 49.09%) contained letters from Banque de France designating SG; whereas, lastly, of the 417 files inspected and identified by SG as falling within the scope of the Banking Right and containing a letter from Banque de France designating SG, after excluding one file concerning an individual customer in view of SG's explanation in reply that an account offering BBS had been opened but that the customer had then decided not to make use of this right, nine accounts were opened as part of a 'packaged' fee-paying offer;

7. Whereas, on 3 December 2015, the Rapporteur asked the College representative "*to provide (her) with information in the possession of the ACPR General Secretariat which, in addition to establishing the difference between the number of Société Générale referrals pursuant to the Banking Right between 1 July 2010 and 30 June 2012 (6,534) and the number of such accounts actually opened (1,257), support the argument that the alleged facts constitute a breach of Articles L. 312-l, D. 3 12-5 and D. 312-6 of the Monetary and Financial Code"*; whereas, in reply on 18 December 2015 it produced "*copies of the documents gathered by the inspection team concerning the above-mentioned 54 files of accounts opened by Société Générale as part of the Généris offer, even though they contained a letter from Banque de France designating Société Générale dated between 1 July 2010 and 30 June 2012, as is evidenced by the enclosed letters from Banque de France*"; whereas it also enclosed "*copies of documents gathered by the inspection team relating to the nine above-mentioned files of accounts identified by the bank as falling under the scope of the Banking Right that were nevertheless opened within the framework of a packaged fee-paying offer; four of these customers were referred between 1 July 2010 and 30 June 2012, as is evidenced by the enclosed letters from Banque de France"*; whereas, the College's representative subsequently produced a copy of an email from SG dated 8 October 2012 confirming that 1,257 BBS accounts had been opened over the period between 1 July 2010 and 30 June 2012;

8. Whereas, however, the documents produced by the plaintiff authority do not contain sufficient information to establish that the customers referred to SG pursuant to the Banking Right and who opened an account as part of the Généris offer had been persuaded not to accept the free banking services to which they were entitled or that they had not been informed of the services; whereas, the plaintiff authority is responsible for producing evidence to this effect, which has not been produced with regard to any of the files included in the scope of the objection, meaning that this objection should be dismissed;

1.2. On the procedure for opening new accounts pursuant to the Banking Right (objection 2)

9. Whereas, according to **objection 2**, of the 417 inspected files of customers covered by the Banking Right, 403 did not include a sworn statement that the applicant did not already have a deposit account;

10. Whereas, the second paragraph of Article L. 312-1 of the Monetary and Financial Code provides that a basic bank account will be opened pursuant to the Banking Right "*after the credit institution has received a sworn statement that the applicant does not have any other account*"; whereas, the College representative has stated that it does not wish to maintain this objection; whereas, in view thereof, this should be recorded and objection 2 should be withdrawn;

1.3. On the services offered to holders of accounts opened pursuant to the Banking Right (objection 3)

11. Whereas, pursuant to Articles L. 312-1 and D. 312-5 of the Monetary and Financial Code, any person referred to a credit institution by Banque de France pursuant to the Banking Right must be offered basic banking services, which must include "*a payment card, use of which will be authorised by the issuing credit institution for each transaction*";

12. Whereas, according to **objection 3**, although SG's internal procedures list among the services offered to customers covered by the Banking Right a 'zero floor limit' payment card in accordance with the above-mentioned Article D. 312-5, these cards were not issued for use with 72 of the 417 inspected accounts opened pursuant to the Banking Right, or at the time the accounts were opened, and there is no evidence to suggest that this was at the customer's request; whereas, in addition, in certain cases these cards were issued to account holders and were then withdrawn without the issue of a new card that was at least equivalent;

13. Whereas, firstly, regarding the six accounts held by individuals (**objection 3.1**), who were never issued with the corresponding payment card as observed in the inspection report, SG has quite correctly remarked, as already taken into consideration by the Committee, that any person covered by the Banking Right may decide not to benefit from one of the BBS provided by law; whereas, the plaintiff authority alleges that SG failed to provide all the BBS to beneficiaries of the Banking Right but has not produced proof that access to only some of the BBS was not the result of a decision on the part of the customer not to benefit from all of these services; whereas, objection 3.1, which moreover concerns a very small number of customers (i.e., 1.43% of the sample), should be dismissed;

14. Whereas, secondly (**objection 3.2**), the inspection report found that 32 individual account holders and six legal entities were not issued with the so-called *VPay SBB* basic banking services payment card when their account was opened; whereas, firstly, concerning the remark by the bank during the investigation on the inspection team's confusion between the contract signature date and the date of subscription of the corresponding payment card, the plaintiff authority has accepted that the time periods observed by the inspection team between the moment basic bank accounts were opened and the moment the corresponding cards were issued could be extended by several days; whereas, accordingly, the data produced by SG should serve as a reference; whereas, in most cases, the lapse of time observed was less than 10 days, thus invalidating the objection as far as those cases are concerned, in view of the technical and administrative constraints associated with the manufacture and issue of the cards, provided that the effect of the time lapse was not to deprive the beneficiaries of a means of payment for a period that would be prejudicial to them; whereas, this is not the case for the other accounts referred to in the objection, for which the lapse of time ranges from one month to more than a year (accounts designated in lines 1, 9, 18, 20, 27, 33 and 34 of the table produced by SG), while the time needed to issue cards for accounts not opened pursuant to the Banking Right cannot be taken into consideration; whereas, however, for the accounts designated in lines 18 and 20 of the same table, SG has established that the actual time lapse was very short; whereas, as a result of its explanations the account designated in line 33 of the table can also be excluded; whereas, however, SG has not been able to justify the delays observed for the accounts designated in lines 9, 27 and 34, and the explanation given for the account referred to in line 1 (that the customer opted for a *VPay Classique* card on 25 January 2011, although the account had been opened 11 months earlier) is not sufficient to establish that the customer was able to benefit from a *VPay SBB* card or another card within a reasonable time lapse; whereas, the second part of the objection is well-founded solely for the four files referred to in lines 1 (11 months), 9, (six months), 27 (one and a half months) and 34 (two months), the second part of the objection is substantiated;

15. Whereas, thirdly (**objection 3.3**), zero floor limit cards were withdrawn from 28 individual account holders without issuing them with another card that was at least equivalent; whereas, according to the objection, SG's explanation that the withdrawals were due to Banque de France including the customer on its list of cases of misuse of bank cards is not acceptable;

16. Whereas, the Banking Right system specifically allows such individuals to hold zero floor limit bank cards; whereas, in the absence of any specific legislation governing withdrawals of such cards, they may only be withdrawn at the account holder's request, in the event of fraud on the part of the account holder or if the account, which should normally have a credit balance, is overdrawn because of the use of the card by the account holder in a manner that is neither occasional nor moderate;

17. Whereas, SG can only be deemed to have satisfied its obligations if it is established that each of the cards were withdrawn within the framework defined above, which is only the case for two of the 28 accounts covered by the objection (designated in lines 4 and 28 of the table), for which a significant debit balance was observed that was not due to bank charges; whereas, in addition, the identification details of two of the other accounts do not correspond to accounts opened with SG (accounts in lines 3 and 14); whereas, the holders of three of the accounts have died (lines 9, 11 and 13); whereas, on the other hand, 21 of the other basic bank accounts show an occasional or small debit balance or one that was essentially due to the repeated payment of bank charges (accounts in lines 1, 2, 6, 7, 10, 16, 18, 21, 22, 23, 24, 25 and 27) or due to unexplained bank charges (account in line 12), which is not sufficient to justify withdrawal of the card in the absence of fraud or any wrongful conduct on the part of the customer; whereas, in addition, the prolonged absence of transactions (accounts in lines 5, 8 and 26), the remittance of a cheque for a large amount (line 15), an overdraft overrun — given that overdrafts should not be allowed for basic bank accounts - (line 20), the closure of an account before the end of the notice period (line 19), or suspected but unproven misuse (line 17) are not sufficient reasons for withdrawal; whereas, this part of the objection is substantiated for these latter cases;

18. Whereas, the third objection is substantiated for a limited number of cases;

1.4. On the fees and charges for BBS (objection 4)

19. Whereas, pursuant to Article D. 312-6 of the Monetary and Financial Code: "*any individual or legal entity domiciled in France who has opened a deposit account with an institution designated pursuant to the procedure defined in the second paragraph of Article L. 312-1 is entitled to the banking services referred to in Article D. 312-5 at no charge*";

20. Whereas, **objection 4** is that, in breach of Articles L. 312-1 and D. 312-6 of the Monetary and Financial Code, 42 of the 46 files for legal entities inspected (i.e., 91.30%) indicate that fees were charged for one or more BBS; whereas, accordingly, 37 accountholders paid account fees, 34 were charged for payments made by direct debit, interbank payment orders (TIP) or bank transfers and 18 were charged for bank cheques, despite the rule allowing two cheques per month free of charge; whereas, during the procedure SG admitted that it had received said fees and charges, while claiming that their impact was relative as they only concerned legal entities, i.e., no more than 2% of beneficiaries of BBS, and suggesting that this was essentially due to failures in the identification process for accounts opened by legal entities covered by the seventh objection below; whereas, SG has also stated that it has taken action to reimburse the holders of the 37 accounts referred to in the inspection report, although five of them have since been closed, and that it is in the process of identifying all basic bank accounts opened by legal entities in order to prevent any further occurrences;

21. Whereas, although these customers represent a small proportion of customers covered by the Banking Right, SG nevertheless has an obligation to comply with the applicable laws and regulations and, accordingly, to provide all beneficiaries with BBS free of charge, which it failed to do; whereas, its undertakings to reimburse the relevant customers which, according to information provided by SG, only concern the accounts identified during the inspection and not all of the basic bank accounts held by legal

entities which may have been charged for services, and the planned measures to improve procedures, have no bearing on the objection; whereas, objection 4, which is based on different facts to objection 7, is substantiated;

1.5. On the closure of accounts opened pursuant to the Banking Right (objection 5)

22. Whereas, pursuant to the seventh paragraph of Article L. 312-1 of the Monetary and Financial Code, "*any decision to close an account taken by the credit institution designated by Banque de France must be notified in a written document, stating the reason therefor, sent to the customer and to Banque de France for information. The account holder is entitled to at least two months' notice*";

23. Whereas, according to the **objection 5**, SG disregarded this legislation as, of the 28 accounts which it closed on its own initiative and which were inspected, this procedure was not followed in 26 of the cases (i.e., 92.85%); whereas, (i) 11 of the files did not contain a copy of the letter informing the account holder of the closure of the account (**objection 5.1**), (ii) of the 17 files which contained this letter, 12 of the letters did not give any reason for the decision (**objection 5.2**), and (iii) 24 files did not contain copies of the letter informing Banque de France (**objection 5.3**);

24. Whereas, verification of compliance with the obligations to notify and provide reasons for account closures entails banks producing copies of letters sent; whereas, SG has explained that the support software called 'Y' it makes available to its account managers enables the tracking of all letters sent, which can be viewed in PDF format, meaning that use of this software by its staff theoretically ensures compliance with the obligation to send the account holder a letter notifying and explaining the closure of the account as well as a letter informing Banque de France, which is sent "automatically"; whereas, however, the existence of this software is not sufficient to guarantee compliance with the above-mentioned obligation, as SG has not been able to produce copies of the letters closing the accounts held by eight individuals and three legal entities, which failure constitutes the first part of the objection; whereas, SG's explanations that some of the letters were not filed by the customer account managers in breach of the internal rules do not have any bearing on this part of the objection; whereas, screenshots that merely show a statement that the letter was sent cannot, in this case, constitute sufficient proof of the existence of a reasoned decision; whereas, the submission in SG's statements of a letter concerning one of these accounts, referring to a letter of closure which was not produced, cannot reduce the scope of the objection; whereas, SG has also failed to produce the letters informing Banque de France of the closure of 24 accounts covered by the third part of this objection; whereas, objections 5.1 and 5.3 are therefore substantiated;

25. Whereas, in addition, as the Committee has already pointed out, a statement such as "*we feel that a contractual relationship is no longer appropriate*" does not constitute an acceptable reason for closure; whereas, all the letters closing accounts produced by SG were worded in this manner; whereas, the fact that this breach is due to the customer account managers failing to comply with SG's internal procedures has no bearing on the objection; whereas, the letter template produced by SG does not mitigate the findings of the inspection; whereas, objection 5.2 is well-founded; whereas, accordingly, although objection 5 concerns a reduced sample of account closures, it is fully substantiated;

2. On the internal control system

2.1. On the procedures issued to staff (objection 6)

26. Whereas, Article 40 of Regulation n° 97-02 requires reporting entities to draw up and regularly update procedures manuals that are pertinent and adapted to their specific operations; whereas, this requirement is also included in Article 254 of the above-mentioned *Arrêté* of 3 November 2014;

27. Whereas, according to **objection 6**, firstly SG failed to take account of a number of legislative and regulatory changes in its internal documentation and most recent procedures covering the Banking Right and, secondly, it failed to remedy longstanding shortcomings in these documents, which prevented the proper implementation of the applicable laws and regulations;

28. Whereas, any document produced and distributed by an institution with the objective of describing the conditions in which its teams and employees must carry out their tasks constitutes a procedures manual within the meaning of Regulation n° 97-02; whereas, Article 40 of the Regulation requires banks to possess procedures manuals that are pertinent and adapted to their specific operations, meaning that not only the absence of such manuals but the existence of any incomplete, incorrect or contradictory document or documents serving as procedures manuals can be sanctioned, as such shortcomings will result in the incorrect processing of files; whereas, the small number of customers concerned by a procedure has no bearing on the need to regularly update the corresponding manual or manuals;

29. Whereas, Instruction n° 4466 of 31 August 2006 entitled "*Le droit au compte et le service bancaire de base*" ("The right to a basic bank account and the basic banking services") and the "*Manuel pratique*" ("Practical guidebook"), particularly section 7, constitute procedures manuals used by SG at the time of the inspection covering the Banking Right; whereas, on this date, Instruction n° 4466 did not describe changes to the laws and regulations on the Banking Right after its distribution in 2006; whereas, however, the case documents establish that the information included in section 7 remedied the shortcomings of Instruction n° 4466; whereas, in addition, although there was no mention of the legal requirement of a 60-day notice period before closing a basic bank account, in practice this is irrelevant as the Instruction refers to a contractual notice period of 60 days, and section 7 confirms this notice period and its statutory nature; whereas, it seems improbable that the incorrect reference to a '*carte bleue nationale'* rather than a *VPay SBB* zero floor limit card deprived customers covered by the Banking Right of any basic banking services; whereas, although the procedures manuals used by SG at the time of the inspection were not perfect, their shortcomings are not sufficient to justify disciplinary sanctions;

2.2. On the identification of accounts opened pursuant to the Banking Right (objection 7)

30. Whereas, Article 5 a) of Regulation n° 97-02 requires credit institutions to put in place a system to control transactions and internal procedures, the main objective of which is to introduce secure, reliable and comprehensive checks to verify that transactions carried out by the entity, its organisation and its internal procedures comply with the applicable provisions specifically relating to banking and financial activities; whereas, these requirements were also included in Article 11 of the above-mentioned *Arrêté* of 3 November 2014;

31. Whereas, according to **objection 7**, the failure to identify accounts opened pursuant to the Banking Right for legal entities means that there is no reliable basis on which to carry out checks in this area, as a large number of accounts held by legal entities were incorrectly charged fees for one or more BBS;

32. Whereas, the small proportion of customers concerned by this objection, estimated by SG at 2% of the accounts opened by legal entities, i.e. 789 times in 2012 alone, cannot justify the failure to identify these accounts, given that failure to identify the accounts inevitably resulted in the customers being incorrectly charged for services; whereas, the "*risk-based approach*" referred to by the bank cannot justify non-compliance with the applicable laws, which require all customers covered by the Banking Right to receive

BBS free of charge; whereas, in addition, such an approach necessarily entails the identification of basic bank accounts held by legal entities in order to ensure the bank does not incorrectly charge for its services; whereas, the creation of a computer system to identify these customers can be analysed as a measure to regularise the situation which has no bearing on the objection; whereas, the objection does not specifically concern the lack of IT developments in this area, rather, it concerns the lack of any system to identify customers that are legal entities with basic bank accounts and to verify that the rules relating to these accounts have been correctly applied; whereas, accordingly, the seventh objection is substantiated;

2.3. On the permanent control system (objection 8)

33. Whereas, on the basis of the same paragraph in Article 5 of Regulation n° 97-02, according to **objection 8** SG's first and second level permanent control system does not enable it to verify compliance with its obligations regarding the Banking Right; whereas:

(i) although first and second level controls on a sample of new business relationships are carried out by branch managers and 'customer services units' respectively, these controls cover all types of accounts and do not necessarily look at accounts opened pursuant to the Banking Right; more specifically, no control points verify *(i)* whether a basic bank account has been opened for all customers referred by Banque de France, *(ii)* the existence of a sworn statement by the customer declaring that he does not hold any other bank account, or *(iii)* whether BBS are provided free of charge;

(i) no first or second level permanent control system exists to verify that BBS are indeed provided and that they continue to be provided free of charge;

(ii) although first and second level controls are carried out on account closures, they do not necessarily cover the closure of basic bank accounts, meaning that no control points verify (i) that letters are sent to notify the customer of the closure and inform Banque de France, (ii) that the said notices provide reasons for the closure, or (iii) compliance with the statutory two-month notice period;

34. Whereas, although reporting entities may use any control system of their choice and are free to determine the points to be systematically verified, the organisation and procedures used must enable them to verify compliance with the obligations laid down in the applicable laws and regulations; whereas, when customers are the subject of specific regulations relating to the type of banking services to which they are entitled, such as beneficiaries of the Banking Right in this case, the entity may need to introduce specific controls and adapt its procedures;

35. Whereas, firstly, although SG maintains that it has a first level permanent control system, consisting of controls by branch managers, this system is based on an initial selection of accounts which may include both traditional accounts and basic bank accounts, meaning that there is no guarantee that new banking relationships with customers benefiting from the Banking Right will be verified, particularly given the small number of accounts opened in each branch pursuant to the Banking Right compared to the number of traditional accounts opened; whereas, in addition, if a basic bank account is selected under the control system, the general nature of the questions asked will not permit the effective verification of compliance with the applicable laws and regulations; whereas, moreover, the objection, which specifically concerns the lack of internal control procedures covering the opening of accounts pursuant to the Banking Right rather than on proposals to open this type of account, is based on the observations of the inspection team that SG has failed to refute; whereas, lastly, SG has failed to produce any evidence to refute the first part of the objection relating to the lack of a first level permanent control system covering the operation and closure of basic bank accounts; whereas, at the time of the inspection SG did not have adequate resources or procedures to ensure compliance with the obligation laid down in Articles L. 312-1, D. 312-5 and D. 312-6 of the Monetary and Financial Code;

36. Whereas, secondly, although SG stated during the inspection that second level permanent controls were performed by 'customer services units' (*pôles services clients)*, during the disciplinary procedure it stated that they were the responsibility of the 'local business development manager' (*responsable commercial local*); whereas, the procedures covering the actions of the local business development manager,

summarised in Instruction n° 010387 and which are generally implemented by the bank as part of the second level permanent controls, are not sufficient to effectively assess action taken, and moreover there are no operational measures to factor in specific features of basic bank accounts;

37. Whereas, accordingly, neither SG's first nor its second level control procedures for basic bank accounts are satisfactory, given that none of the checks factor in the specific features of the Banking Right system; whereas, objection 8 is fully substantiated, subject to a reduction of the scope following the plaintiff authority's withdrawal of its arguments concerning the need to verify the existence of sworn statements in the files of customers covered by the Banking Right;

2.4 On the periodic control system (objection 9)

38. Whereas, Article 6 b) of Regulation n° 97-02 requires banks to ensure, by using procedures consistent with the size and type of their operations, that periodic controls of the compliance of its operations, the effective level of risk, compliance with procedures and the effectiveness and appropriateness of the permanent control systems are carried out; these should take the form of investigations conducted by central and, if appropriate, local employees other than those responsible for the permanent control procedures; whereas, the second paragraph of Article 9 of this Regulation requires them to allocate sufficient resources to the periodic controls to be able to carry out a full audit cycle covering all operations over as few years as possible, and that an audit programme should be drawn up at least once a year that should include the annual objectives of the executive and decision-making bodies in terms of periodic controls; whereas, these requirements are also reproduced in Article 17 of the above-mentioned *Arrêté* of 3 November 2014;

39. Whereas, according to **objection 9**, at the time of the inspection no periodic controls by SG's internal audit department had focused on compliance with the rules relating to basic bank accounts either directly or as part of any broader audit assignment;

40. Whereas, SG refutes this objection and has produced, in support of its argument and to illustrate that controls were carried out, an excerpt from the audit findings and recommendations concerning the Banking Right system in the Paris-Madeleine branch; whereas, however, this excerpt is dated 18 January 2013, which is the date of the draft inspection report, and does not indicate on what date the audit was decided and carried out; whereas, on this date the on-site inspection, which had begun on 20 July 2012, had already been completed; whereas, as no information has been produced by the institution to establish that other periodic controls covering compliance with legislation on the Banking Right were carried out prior to the ACPR inspection, objection 9, the wording of which was sufficiently clear and accurate to enable SG to prepare and present a statement of defence, should be found to be substantiated;

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41. Whereas, in view of the foregoing, although it was initially alleged on the basis of a sample of files that SG did not open accounts for more than 80% of the customers referred to it pursuant to the Banking Right, this particularly serious breach has been dismissed, as the plaintiff authority has failed to provide proof thereof (objection 1); whereas, the Committee has also taken note that the plaintiff authority has withdrawn the objection relating to the absence of sworn statements in the customer files attesting that the customers do not hold other deposit accounts (objection 2); whereas, moreover, the allegations concerning the conditions and timeframes within which payment cards were issued to beneficiaries of the Banking Right have either been dismissed (objection 3.1) or significantly reduced in scope (objection 3.2); whereas, in addition, the shortcomings in SG's internal procedures observed on the date of the inspection cannot constitute grounds for disciplinary sanctions (objection 6);

42. Whereas, however, the circumstances in which zero floor limit payment cards were withdrawn from a number of beneficiaries of the Banking Right were in breach of the applicable obligations (objection 3.3); whereas, a substantial majority of the legal entities covered by the Banking Right in the sample examined by

the inspection team had been required to pay account fees, which is contrary to the principle of provision of basic banking services free of charge to this category of customer (objection 4); whereas, the conditions in which the basic bank accounts were closed did not comply with the applicable legislation, in particular as regards the indication of the reason in the closure letter (objection 5); whereas, such shortcomings in individual case files should be considered in conjunction with the quality of SG's internal control system for accounts opened pursuant to the Banking Right on the date of the on-site inspection, and the fact that the inspection report pointed out a number of different shortcomings relating to the identification of accounts opened for legal entities (objection 7), the organisation of permanent controls (objection 8) and the organisation of periodic controls (objection 9);

43. Whereas, lastly, although the case documents do not suggest any deliberate intent to disregard the obligations and given that the bank has taken various actions to remedy the shortcomings observed, including in particular as regards its internal documentation and its identification of customers covered by the Banking Right in its computer systems, it is nevertheless true that this legislation relates to a particularly vulnerable section of the population who, as such, deserve particular care and attention, which was not provided by SG on the date of the inspection; whereas, in view of the foregoing and of SG's financial situation, the established breaches justify a reprimand and a fine of EUR 800,000; whereas, the injury that would be caused by the publication of this decision and of the credit institution's name is not disproportionate in view of the nature of the sanctioned breaches; whereas, publication will not disrupt the financial markets; whereas, this decision will therefore be published in a non-anonymous format;

FOR THE FOREGOING REASONS

[THE ACPR] DECIDES:

ARTICLE 1 – A reprimand and a fine of EUR 800,000 (eight hundred thousand euros) shall be imposed on Société Générale.

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

Chairman of the
Sanctions Committee

[Jean-Pierre Jouguelet]

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.