CREPA
Procedure no. 2015-11

Reprimand and fine
of EUR 300,000

Hearing of 29 June 2016
Decision handed down on 19 July 2016

AUTORITÉ DE CONTRÔLE PRUDENTIEL ET DE RÉSOLUTION
SANCTIONS COMMITTEE

Having regard to the letter dated 15 December 2015 in which the Chairman of the Autorité de contrôle prudentiel et de résolution (hereinafter, the ACPR) informed the Committee that the Supervisory College of the ACPR (hereinafter, the College), ruling through the Sub-College with responsibility for the insurance sector, decided at its meeting of 17 November 2015 to open a disciplinary procedure under number 2015-11 against the provident institution (PI) CREPA, having its registered office at 80, rue Saint-Lazare, 75009 Paris;

Having regard to the statement of objections dated 15 December 2015;

Having regard to the statements of defence dated 19 January, 14 March and 11 May 2016, along with their accompanying documentation, in which CREPA (i) contested the objections concerning the payment of fixed allowances to some of its directors and the signature of prohibited agreements benefiting the son of the former Chairman of its Board of Directors; (ii) nevertheless pointed out that it has ceased the challenged practices and begun the process of renewing its Board of Directors;

Having regard to the statements of reply dated 26 February 2016, in which Jean-François Lemoux, representing the College, reiterated all the stated objections;

Having regard to the report of 26 May 2016 by Rapporteur Christine Meyer-Meuret, in which she found that objections 1 and 2, relating to the payment of fixed allowances to some of CREPA's directors and the signature of prohibited agreements, were substantiated;

Having regard to the letters dated 26 May 2016 summoning the parties to a Committee hearing on 29 June 2016, informing them of the composition of the Committee for that hearing and indicating that the hearing would not be public, in accordance with the institution's request;

Having regard to the other case documents, including in particular the inspection report dated 10 September 2015 and the additional documents requested by the Rapporteur;

Having regard to the Social Security Code, notably Articles R. 931-3-22 and R. 931-3-23, in the version in force at the time of the events;

Having regard to the Monetary and Financial Code, notably Articles L. 612-2, L. 612-38, L. 612-39 and R. 612-35 *et seq*.;

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

The ACPR Sanctions Committee, comprising Rémi Bouchez in the chair, Claudie Aldigé, Christian Lajoie, Elisabeth Pauly and Denis Prieur;

Having heard, at the session held on 29 June 2016:

- Christine Meyer-Meuret, Rapporteur, aided by her deputy, Fabien Patris;

- Jeanne Lanquetot-Moreno, representing the Department of Social Security, who said that she had no observations to make;

- Jean-François Lemoux, representing the ACPR College, aided by the Deputy Director of the Legal Affairs Directorate, the Head of the Institutional Affairs and Public Law Division and members of the Legal Affairs Directorate and the Cross-Functional and Specialised Supervision Directorate; Jean-François Lemoux proposed issuing a reprimand along with a EUR 400,000 fine, to be published in a non-anonymous decision;

- The Chairman and Deputy Chairman of the Board of Directors and the Chief Executive Officer of CREPA, assisted by Francis Kessler and Damien Stalder, barristers;

The representatives of CREPA having the last word;

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

1. Whereas, CREPA is a provident institution (PI) and a legal entity governed by private law operated on a non-profit basis, jointly governed by "subscribing members" (*membres adhérents*) and "participating members" (*membres participants*) respectively representing employers and employees of one or several professional branches, which is governed by Book IX, Titles I and III of the Social Security Code; PIs are supervised by the ACPR pursuant to Article L. 612-2, I-B-5 of the Monetary and Financial Code;

2. Whereas, CREPA was founded on 18 October 1960 by social partners covered by the national collective bargaining agreement of 20 September 1959 (IDCC n° 277) governing relations between French lawyers with the status of *avoué (*authorised to represent clients before the district courts and appeal courts) and their employees; following a number of different reforms of the legal professions, its remit was extended to include employees of French lawyers with the status of *avocat,* a new profession created by the collective bargaining agreement of 20 February 1979 (IDCC n° 1000); following the disappearance of the profession of *avoué* on 1 January 2012, CREPA now only covers the profession of *avocat*; although CREPA's initial purpose was to provide a complementary retirement scheme for its participating members, in 1995 this activity was transferred to CREPA-UNIRS, subsequently renamed CREPA-REP, under the supervision of AGIRC-ARRCO; at the present time, its main purpose is to provide its participating members, in other words the employees of French lawyers, with life, death, incapacity and disability insurance and to implement a point-based supplementary retirement scheme (for branch 26); in 2014, it had 12,600 subscribing members and 37,978 participating members, 85% of whom are employed by entities with less than four employees; in the same year, it reported a net non-technical result of EUR 5.6 million;

3. Whereas, between 1 September 2014 and 10 April 2015, CREPA was the subject of an on-site inspection, with the final report being signed on 10 September 2015 (hereinafter, the inspection report); on the basis of this inspection the College, ruling through its Sub-College with responsibility for the insurance sector, decided at its meeting of 17 November 2015 to open this disciplinary procedure, which was referred to the Committee on 15 December 2015;

I. On the payment of a duty allowance to CREPA directors and members of the Board of Directors' Bureau

4. Whereas, according to **objection 1**, during the period under review the 12 directors who were members of the Board of Directors' Bureau and four former Bureau members received a regular and systematic fixed allowance in addition to reimbursements of travel and hotel expenses and compensation for lost salary; accordingly, between 2007 and May 2014, CREPA, which is responsible for managing the operating fund for the national collective bargaining agreement for employees of law firms, paid a total of EUR 838,800 as an allowance to its directors who were members of the Board of Directors' Bureau, with each receiving between EUR 1,200 and EUR 19,200 each year; whereas, this is in breach of Article R. 931-3-23 of the Social Security Code;

5. Whereas, on the date of the alleged facts, Article R. 931-3-23 of the Social Security Code provided that "*the functions of director of a provident institution (...) are [performed] free of charge*" and that "*any clause to the contrary shall be deemed to have no legal effect*"; whereas, directors of these institutions nevertheless are "*entitled to the reimbursement of travel and hotel expenses and compensation for salary lost due to the performance of their functions*"; whereas, these provisions can now be found in Article R. 931-3-21 of the Code; whereas, Article 45 of the collective bargaining agreement of 20 February 1979 (IDCC n° 1000) provides that "*an operating fund for the collective bargaining agreement is set up to finance, in particular, travel and hotel expenses incurred by employer members and employees required to attend any professional bodies or committees set up by the said agreement, and to also cover the costs of printing and distributing the new collective bargaining agreement and these supplemental agreements and the cost of filing records*";

6. Whereas, CREPA asserts in its defence that the decision to pay an allowance to directors was taken by the branch social partners at meetings of the collective bargaining agreement's joint committee (*commission mixte paritaire*) on 7 April 2006 and 13 September 2013; whereas, as a result, the allowances were not drawn from its own funds but were drawn from those of the joint operating fund created by Article 45 of the collective bargaining agreement of 20 February 1979 (IDCC n° 1000), which it managed; whereas, when the operating fund accounts were presented the social partners granted it discharge and release for its management; whereas, in addition, at the initiative of CREPA's new executive management team a number of corrective actions were taken in the first half of 2014, i.e., before the start of the on-site inspection; whereas, the payment of such indemnities was suspended in the first half of 2014; whereas, a joint association for the management of the operating fund, called ADDSA, was set up and has been responsible for the management since 1 August 2014; whereas, CREPA's Board of Directors recalled on 20 November 2015 that "*the functions of privately-appointed director, privately-appointed deputy director and member of the provisional bureau are [performed] free of charge and may not give rise to any remuneration or allowances for direct or indirect loss of earnings or career opportunities, with the exception of the reimbursement of travel and hotel expenses and salary lost when performing these functions*"; whereas, "*the joint funds managed by ADDSA ceased to pay an allowance to the chairman, deputy chairman and members of the Bureau from that date*"; whereas, more generally, CREPA's governing body has been entirely renewed since the on-site inspection;

7. Whereas, firstly, nothing in the laws or regulations creates an exception to the rule of non-remuneration of directors stated above; whereas, this rule is based on the joint and non-profit status of PIs and the mitigating factors that exist for mutual insurance companies and unions governed by the Mutual Insurance

Code do not apply to them; whereas, the allowances received by members of CREPA's Bureau were paid in addition to the reimbursement of their travel and hotel expenses; whereas, they cannot be justified as a means of compensation for lost salary, as employee directors, who are trade union representatives, are entitled by the law and applicable agreements to a certain number of hours, paid by their employer, to carry out their duties, and Article R. 931-3-23 does not provide that employee representatives are entitled to compensation for lost income;

8. Whereas, although CREPA was responsible for managing the joint operating fund created by the collective bargaining agreement of 20 February 1979, and accordingly performed an additional mission to those provided for in its articles of association, this does not allow it to depart from the rules of governance applying to it; whereas, although the allowances in question were drawn from the fund's resources and not from CREPA's resources, it is nevertheless true that the relevant individuals, who moreover were not all members of the joint committee, received these allowances in their capacity as directors and members of the PI's Bureau and not in any other capacity, in breach of the texts providing that they should perform their functions free of charge; whereas, in accordance with the case law of the State Council (*Conseil d'Etat* - 20 January 2016, *Caisse d'Épargne et de Prévoyance du Languedoc-Roussillon*, n° 374950), this legislation is sufficiently clear for the punishment of non-compliance to be reasonably foreseeable, including in the absence of any prior interpretation by the Authority and as from the first time this matter arises in a disciplinary procedure;

9. Whereas, lastly, the decision to grant a so-called hardship allowance to certain CREPA directors was taken on 19 February 1993 by CREPA's Board of Directors, well before the joint committee decision of 7 April 2006, and clearly cannot therefore be seen as a consequence of this; whereas, CREPA's Board of Directors again expressly and unanimously validated the principle of the payment of allowances at its meeting of 10 July 2006, although CREPA, as an institution with a legal personality and quite separate bodies to the joint committee, enjoyed a level of autonomy that should have led it to object to decisions taken by the committee that were clearly contrary to the principle of non-remuneration of directors, which is moreover stated in its articles of association; whereas, CREPA's Board of Directors also adopted allowance rates that were more favourable than those used as a basis for the joint committee's decisions; whereas, in addition, the release and discharge granted by the joint committee to CREPA for the management of the operating fund has no bearing on the objection; whereas, the principle of payment of these so-called hardship allowances was never approved by the supervisor; whereas, accordingly, the objection is substantiated;

II. On the signature of agreements with the son of one of CREPA's top managers

10. Whereas, according to **objection 2**, between 2007 and 2013 fees totalling EUR 734,000, excluding VAT, were paid in respect of a number of real property investments made by CREPA and management rental contracts to company A, whose manager and sole shareholder, Mr B, is the son of Mrs C, a CREPA director, who held the offices of chairman and senior deputy chairman during that period; whereas, in addition, from 2010 company A took over the management of all CREPA's real property in Paris; whereas, the fees paid under this management mandate, i.e., 4%, excluding VAT, of the total rental amounts excluding service charges, totalled EUR 89,600 in 2013; whereas, payment of these fees is in breach of Article R. 931-3-22, paragraph 1, of the Social Security Code;

11. Whereas, firstly, Article L. 931-1 of the Social Security Code provides that "*provident institutions are legal entities governed by private law operating on a non-profit basis, jointly governed by subscribing members and participating members, as defined in Article L. 931-3. / Their purpose is: / a) To enter into undertakings towards the participating members, the performance of which will depend on the length of human life, to undertake to pay a capital sum in the event of marriage or the birth of children or to accept*

investments for funded savings products and enter into specific commitments in this connection; / b) To cover the risk of bodily injury resulting from accident or illness; / c) To cover the risk of unemployment (...)"; whereas, according to Article R. 931-1-1 of the same Code, PIs "*may only exercise those activities defined in Article L. 931-1 and implement those transactions that directly result therefrom, under the conditions determined in the said article*"; whereas, secondly, on the date of the alleged facts, the first paragraph of Article R. 931-3-22 of the Code, which is now included in the Code as Article R. 931-3-20, provided that "*on penalty of the invalidity of the contract, top managers as defined in the second paragraph of Article R. 951-4-1 of the provident institution or union of provident institutions are prohibited from contracting loans in any form whatsoever with the institution or union, accepting an overdraft facility, whether in the form of a current account or otherwise, from the institution or union, arranging for the institution or union to secure or endorse their commitments towards third parties and receiving, directly or through an intermediary, any remuneration relating to transactions implemented by the institution or union. This prohibition also applies to the spouses, ascendants and descendants of the individuals referred to in this article, and to any intermediary*"; whereas, Article R. 951-4-1 of the same Code defines top managers of a PI as "*members of the board of directors, the chief executive officer, the deputy chief executive officer or officers and any de facto senior manager of an institution or union*";

12. Whereas, CREPA maintains that the challenged transactions do not qualify as agreements prohibited by this legislation; whereas, it has produced in support of its observations a memorandum by a law firm analysing Article R. 931-3-22 of the Social Security Code and an opinion by the legal affairs committee of the *Compagnie nationale des commissaires aux comptes* (CNCC – national institute of statutory auditors); whereas, it argues that the expression "*transactions by provident institutions*" used in Book IX, Title III, Chapter II of the Social Security Code refers exclusively to insurance operations; whereas, investments, which are not included therein, are the subject of specific regulations, codified in Book IX, Title III, Chapter I, section X 'Financial regime', subsection IX of the Social Security Code; whereas, in view thereof, transactions associated with such investments cannot be analysed as insurance operations; whereas, Article R. 931-3-22 of the Social Security Code should be interpreted in light of the equivalent provisions contained in the Insurance Code and the Mutual Insurance Code for other non-profit insurance bodies (Articles R. 322-55-1, seventh paragraph and L. 114-31, respectively), as only prohibiting remuneration directly or indirectly pertaining to contributions received by the PI; whereas, accordingly, the contracts entered into with company A were not covered by the rules on prohibited agreements defined by Article R. 923-3-22, but were covered by the rules on regulated agreements, as set out in Article R. 931-3-24 *et seq*. of the Social Security Code; whereas, these contracts were approved by its Board of Directors and reported in a special report issued by its statutory auditor; whereas, they were entered into on an arm's length basis, as is certified by a real property expert, and were not therefore prejudicial to CREPA; whereas, moreover, the real property investments made have proved to be highly profitable for CREPA;

13. Whereas, however, by prohibiting PI top managers as defined in Article R. 951-4-1 of the Social Security Code and their close friends and family from directly or indirectly receiving any remuneration relating to transactions implemented by the institution, the legislator's intention was to lay down rules to prevent conflicts of interest and the promotion of their personal interests that are stricter than those that apply to other categories of institutions, including in particular those governed by the Insurance Code or the Mutual Insurance Code; whereas, this stricter framework, which is also reflected by a rule on non-remuneration of directors that is stricter than the rule applying to directors of mutual insurance companies or mutual unions (see recitals 5 and 7), is due to the fact that PIs operate on a non-profit and joint basis, and that any non-compliance is likely to impact on the social partners; whereas, the Social Security Code does not limit this prohibition to "*transactions by provident institutions*", as defined and governed by Book IX, Title III, Chapter II of the Social Security Code; whereas, given that it refers to "*transactions implemented by the institution*" without any cross references or clarification, Article R. 923-3-22 cannot be interpreted as containing any such restriction; whereas, accordingly, for application of this article, investments made by a PI intended to represent regulated commitments that result directly from the activities defined in Article L. 931-1 of the Social Security Code and the associated transactions, also qualify as transactions by the PI that cannot give rise to payment of remuneration to top managers or their close friends or family; whereas, in addition, in accordance with the case law referred to above (see recital 8), the relevant legislation is sufficiently clear for punishment of non-compliance to be reasonably foreseeable, including in the absence of

any prior interpretation by the Authority and as from the first time this matter arises in a disciplinary procedure;

14. Whereas, in view of the foregoing, the agreements entered into by CREPA and the son of one of its directors relating to the acquisition, sale or management of real property assets were prohibited; whereas, the fact that these agreements were referred to in a special report by CREPA's statutory auditor has no bearing on the relevance of the objection; likewise, nor does the fact that the agreements were brought to the attention of the supervisor, who did not approve them but, conversely, responded by initiating an inspection and then opening a disciplinary procedure; whereas, the fact that the services provided were entered into on an arm's length basis and were ultimately useful and economically beneficial to CREPA have no bearing on the alleged breach; whereas, the fact that company A acted as an intermediary in the payment of remuneration by CREPA to the son of one of its top managers does not preclude application of Article R. 931-3-22, as this article expressly refers to the possibility of payment of remuneration to the descendant of a top manager "*directly or through an intermediary*"; whereas, the receipt of remuneration by Mr B, directly or through the intermediary of company A, therefore constitutes a breach of the prohibition referred to above; whereas, accordingly, the objection is substantiated;

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15. Whereas, in view of the foregoing, it is established that CREPA has failed to comply with its regulatory obligations relating, on the one hand, to the performance of the functions of director free of charge (objection 1) and, on the other hand, the prohibited nature of certain agreements (objection 2); whereas, these breaches are serious as they are indicative of the Board of Directors' lack vigilance in its leadership and supervisory roles, and as they concern essential governance issues for PIs;

16. Whereas, however, the breaches that are the subject of this procedure were the result of decisions taken by CREPA's former management team; whereas, the new managers took corrective action even before the start of the on-site inspection, which at the present time concerns the two objections, thus demonstrating their desire to bring an end to the mistakes that are the focus of this procedure and to cooperate with the supervisor; whereas, more specifically and as previously discussed, CREPA has stated that the chairman, senior deputy chairman and directors who are members of the Board of Directors' Bureau no longer receive a duty allowance; whereas, the rental management contracts entered into with company A were terminated with effect on 8 January 2016, and a tender procedure has been put in place to select a new service provider to manage CREPA's real property; whereas, as also previously discussed, significant changes have been made to CREPA's governance team since the events;

17. Whereas, although the Committee have taken these circumstances and changes into consideration, it is nevertheless the case that this procedure has been opened against the legal entity CREPA alone; whereas, in view thereof, a reprimand shall be issued to CREPA; whereas, in view of the amount of its equity and recent results and also of the facts stated above, a fine of EUR 300,000 shall also be imposed;

18. Whereas, in view of the nature of the breaches upheld by the Committee, the publication of this decision in a non-anonymous format will not cause CREPA disproportionate injury as defined by Article L. 612-39 of the Monetary and Financial Code; whereas, it will therefore be published in this format;

FOR THE FOREGOING REASONS

[THE ACPR] DECIDES:

ARTICLE 1 – A reprimand and a fine of EUR 300,000 (three hundred thousand euros) shall be imposed on CREPA.

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.