PARIS JUDICIAL TRIBUNAL
Chamber 4, Section 1
Madam Pre-Trial Judge R.G. N° :
21/11358

Notified and delivered to the registry on 19 April 2024

SUMMARY CROSS-APPEAL SEEKING A DECLARATION THAT THE COURT LACKS JURISDICTION AND THAT THE ACTION IS INADMISSIBLE

FOR :

Tasarruf Mevduatı Sigorta Fonu (Savings Deposit Insurance Fund), a public agency under Turkish law, having its registered office at Büyükedere Cad. No. 143 Esentepe, 34394 Şişli, Istanbul (Turkey), in the person of its legal or statutory representative domiciled in that capacity at the said registered office;

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CO-DEFENDANTS

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PLEASE THE PRE-TRIAL JUDGE

1. By writ of summons dated 13 July 2021, Mr Cem Cengiz Uzan and Mr Murat Hakan Uzan (the "Plaintiffs" or "Consorts Uzan") decided to bring an action in tort against the Tasarruf Mevduatı Sigorta Fonu or Savings Deposit Insurance Fund (the "TMSF", the "Fund" or "the Defendant"), together with some fifty other defendants (the "Co-Defendants", collectively with the TMSF "the Defendants"), for compensation for alleged financial losses they suffered as a result of an alleged
They are also alleged to have "*fraudulently captured*" the assets of companies of which they are the "*ultimate economic beneficiaries*".

2. The Consorts Uzan are thus seeking to submit to the jurisdiction of the French courts tort claims relating to events that took place in Turkey more than 15 years ago, concerning measures taken by a Turkish public authority (the TMSF) in response to a banking fraud on an unprecedented scale characterised by the misappropriation of billions of dollars of deposits for the benefit of the family of the Consorts Uzan and the group of companies it controlled.

3. In an attempt to give an appearance of credibility to their arguments[1] - and circumvent the rules of international jurisdiction of the French courts, as well as the grounds of inadmissibility that defeat their claims - the Uzan family accumulates approximations, confusions and untruths. Their action is an abuse of the right to sue.

4. These manoeuvres forced the Defendant to file, on 12 September 2022, incidental pleadings seeking a declaration that the Court lacked jurisdiction and that the action brought by the Consorts Uzan was inadmissible. The other co-defendants also filed submissions on 12 September and 5 December 2022.

5. After a necessary detailed review of the facts and the proceedings (**I**), the Defendant will set out the reasons why the Paris Court should declare that it does not have jurisdiction to hear the Uzan's claims (only the Turkish courts have jurisdiction to hear them) and note that the Uzan's claims have been dismissed on numerous grounds (**II**).

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[1] The TMSF firmly disputes the merits of the Uzan Consorts' claims, which would be debated at a later stage (if applicable), if by some extraordinary means the Tribunal considered itself competent to hear all or part of these claims and ruled that all or part of these claims would be admissible.

I. FACTS AND PROCEDURE

A. Presentation of the Parties

1. Mr Cem Cengiz Uzan and Mr Murat Hakan Uzan

6. Mr. Cem Cengiz Uzan and Mr. Murat Hakan Uzan (the "Plaintiffs" or "Consorts Uzan") are the sons of Kemal Uzan, a Turkish businessman descended from a family of Bosnian farmers who settled in Turkey in the 1910s.[2]. Mr Kemal Uzan made his fortune in the construction sector from 1970-1980 onwards.[3].

7. Building on his early success in the construction sector, Kemal Uzan, with the participation of other members of his family, notably his sons Cem and Murat and his brother Yavuz (the "Uzan Family"), built a conglomerate active in the energy, finance, telecoms and media sectors in particular.[4]. By the early 2000s, the Uzan Family controlled a group of more than 200 companies[5]. It was considered to be one of the richest families in Turkey, with a fortune of over 1 billion dollars[6] and its members travelled extensively between Turkey, Europe and the United States.[7].

8. The year 2002 marked the beginning of serious legal troubles for the Uzan family and the group of companies it controls (the "Uzan Group") - long known for

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[2] See **TMSF Exhibit 3**, Forbes, "Dial 'D' for Dummies - How a Turkish family business partnered with Motorola and Nokia -- and left the telecoms holding a $ 2.7 billion bag", March 18, 2002.

[3] See **TMSF Exhibit 3**, Forbes, "Dial 'D' for Dummies - How a Turkish family business partnered with Motorola and Nokia -- and left the telecoms holding a $ 2.7 billion bag", 18 March 2002; **TMSF Exhibit 4**, Jeune Afrique, "Turkey: Cem Uzan protected by Claude Guéant?", 30 July 2013, p. 2.

[4] See **TMSF Exhibit 5**, Britannica Online Encyclopedia, "Cem Uzan"; **T M S F Exhibit 4**, Jeune Afrique, "Turquie : Cem Uzan protégé par Claude Guéant?", 30 July 2013, p. 2; **Exhibit TMSF n° 6**, Le Monde, "Cem Uzan, passé du gotha turc aux fichiers d'Interpol", 19 October 2009.

[5] See **TMSF Exhibit 4**, Jeune Afrique, "Turquie : Cem Uzan protégé par Claude Guéant?", 30 July 2013, p. 1 ; **TMSF Exhibit 6**, Le Monde, "Cem Uzan, passé du gotha turc aux fichiers d'Interpol", 19 October 2009.

[6] See **TMSF Exhibit 3**, Forbes, "Dial 'D' for Dummies - How a Turkish family business partnered with Motorola and Nokia -- and left the telecoms holding a $ 2.7 billion bag", 18 March 2002; **TMSF Exhibit 4**, Jeune Afrique, "Turkey: Cem Uzan protected by Claude Guéant?", 30 July 2013, p. 1.

[7] See, **for** example, **TMSF Exhibit 3**, Forbes, "Dial 'D' for Dummies - How a Turkish family business partnered with Motorola and Nokia -- and left the telecoms holding a $ 2.7 billion bag", 18 March 2002 ("*One of Cem's children still attends public school in New York, where he owns a $6 million flat on Park Avenue (one of Uzan's five multimillion-dollar Manhattan estates). He seems immune to his legal problems. It's hard to be understood when you're surrounded by jealousy," he says. Father and son still commute between Turkey and Europe by private jet or Sikorsky helicopter. A year ago, Cem dined at Buckingham Palace at a charity event for Prince Charles. Uzan père runs the show from Geneva; Hakan leads a quieter life in Istanbul*"); **TMSF Exhibit 6**, Le Monde, "Cem Uzan, passé du gotha turc aux fichiers d'Interpol", 19 October 2009 ("[In 2002] *Cem Uzan was* [...] *living large: yachts, sports cars, a Boeing 747 and properties in eleven countries, including the top floor of the Donald Trump Tower in New York, purchased for 38 million dollars. He donated millions to the British Royal Family's charitable foundations and became friends with Prince Charles*.)

their unfair (and more often than not illegal) practices, the source of numerous scandals and lawsuits[8] - when several members of the Uzan family and several Uzan Group companies found themselves at the heart of two large-scale fraud cases involving billions of US dollars:

- The first case concerns fraud committed by the Uzan family and companies in the Uzan Group in connection with the execution of loan contracts worth almost USD 3 billion granted by Motorola and Nokia in the late 1990s, which were intended to develop the business of the mobile phone operator Telsim.[9]. Motorola and Nokia, having discovered that the funds lent to Telsim had been misappropriated by the Uzan family, brought an action under the *Racketeer Influenced and Corrupt Organizations Act* before the US *District Court* for the *Southern District of* New York. In July 2003, the US judge ordered certain members of the Uzan Family and companies in the Uzan Group (as well as the other defendants) to pay more than 2 billion dollars in damages to Motorola for the loss suffered.
- The second case concerns the discovery in 2003 of the fraudulent activities of Türkiye İmar Bankası T.A.Ş. ("Imar Bank" or "Imar"), one of the two banks controlled by the Uzan family.[10]. Bank Imar's fraudulent activities included systemic failures to report deposits with the bank and massive misappropriations of those deposits for the benefit of Uzan Group companies (the "Imar Fraud"). The Imar Fraud was discovered after Imar's licence was withdrawn and control and management of the bank was transferred to the TMSF in 2003. In order to preserve confidence in the banking system (already seriously undermined by the Turkish banking crisis of 2000-2001[11]), the Turkish authorities

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8 As noted by Forbes magazine in 2002, the Uzan family has a "*controversial history*" and its members or companies owned by the family are "involved *in more than 100 civil and criminal cases,* with *complaints ranging from money laundering to slander*". Examples cited included the launch of a private television channel by Mr Cem Cengiz Uzan in violation of the constitutional monopoly of the national radio and television company at the time; the use of media controlled by the family to serve its financial interests; and suspicions of fraud in connection with the takeover of the electricity production company Çukurova Elektrik. With regard to the latter case, the representative of Templeton Emerging Markets Fund, the Uzans' partner in the Çukurova Elektrik project, stated that this project was "*one of our worst investment experiences in emerging markets*": **TMSF Exhibit 3**, Forbes, "Dial 'D' for Dummies - How a Turkish family business partnered with Motorola and Nokia -- and left the telecoms holding a $ 2.7 billion bag", 18 March 2002.

9 For more details on the dispute between the Uzan Family and Motorola, see *infra*, ¶¶ 26-33.

10 For more details on Imar Fraud, see Section I.B. *below.*

11 See *infra*, ¶¶ 19-21.

repay the misappropriated deposits made with the bank, a task that fell to the TMSF in its capacity as resolution authority. As Banque Imar lacked liquidity, the TMSF had to borrow several billion dollars from the Treasury.

9. These two fraud cases, which came to light in the early 2000s, have given rise to hundreds of civil, commercial and criminal proceedings in Turkey and around the world. The present proceedings are just one of the latest twists (to date) in this twenty-year legal saga.

10. The Imar fraud has given rise to numerous criminal proceedings (in particular against the Uzan family) and is the subject of numerous administrative disputes in Turkey.[12].

11. In the context of the criminal proceedings brought against them from 2003, Messrs Cem Cengiz Uzan and Murat Hakan Uzan refused to cooperate with the Turkish prosecuting and judicial authorities and decided to flee abroad in order to escape Turkish justice.[13]. This is how the Claimants arrived in France, where they claim to have been residing since September 2009 and September 2014 respectively , [14]without specifying in what capacity[15].

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[12] See Sections I.B.3 and I.C.2 *below.*

[13] See **TMSF Exhibit 7**, Judgment of the Cour nationale du droit d'asile concerning the asylum application filed by Mr Cem Cengiz Uzan, 23 May 2013, pp. 3-4 (the Court recalling that, according to OFPRA, "*many other members of [*Cem Cengiz Uzan's] *family are also involved* [in the financial offences committed by Cem Cengiz Uzan] *and are being prosecuted, in particular his father Kemal Uzan and his brother Hakan Uzan, who are living in hiding in Jordan following their indictment in the fraudulent bankruptcy of the IMAR bank and are the subject of an international arrest warrant issued by Interpol*") and p. 8 ("*following the authorities' finding that the IMAR Bank bankruptcy was fraudulent, the applicant's father and younger brother fled Turkey; that Mr. Mr UZAN states that he broke off all contact with them following these events and that he was banned from leaving Turkey on 17 July 2003* [...] *faced with these numerous legal proceedings, Mr UZAN, convinced that they all stemmed from the ruling party's desire to eliminate him from the Turkish political scene once and for all, decided to flee his country for France on 3 September 2009, where he applied to OFPRA for asylum, his application being registered on 7 September 2009*"). See also **TMSF Exhibit 6**, Le Monde, "Cem Uzan, passé du gotha turc aux fichiers d'Interpol", 19 October 2009 ("*Cem Uzan [...]* *s'est volatilisé début octobre. Threatened with arrest, he had fled his country in a yacht shortly before, mooring on a Greek islet. He was said to be in Jordan, but could be in France.* [...] *Cem has joined his father Kemal and brother Hakan on the run, suspected, like him, of having embezzled several billion dollars*").

[14] See **Plaintiffs' Summons of July 13, 2021**, ¶ 1. See also **Plaintiffs' Submission on the Merits No. 1 of 21 November 2023**, ¶ 1; **Plaintiffs' Reply Submission on Incident o f 21 November 2023**, ¶ 9.

[15] In support of their assertions, the Applicants have in particular produced a residence permit valid for 10 years, for Mr Cem Cengiz Uzan, and temporary residence permits valid for one year for the period 2020-2021, for Mr Murat Hakan Uzan: see **Applicants' exhibits 1** and **2**. The documents produced do not make it possible to determine the date on which the Claimants arrived in (or passed through) France and the reasons for which these permits were issued. The Respondent points out, with regard to Mr Cem Cengiz Uzan (who is said to have been a close associate of Mr Claude Guéant, Secretary General of the Presidency of the Republic in 2007-2011, then Minister of the Interior in 2011-2012), that he was authorised to reside in France despite an international arrest warrant issued against him by Interpol, before being granted the benefit of subsidiary protection by a decision of the National Court of Asylum in 2013: see **TMSF Exhibit 8**, Paris Match, "L'étau se resserre autour de Claude Guéant", 6 June 2018; **TMSF Exhibit 7**, Jugement de la Cour nationale du droit d'asile relatif à la demande

2. Tasarruf Mevduatı Sigorta Fonu (TMSF): Savings Deposit Insurance Fund

12. The Tasarruf Mevduatı Sigorta Fonu or Savings Deposit Insurance Fund (the "TMSF" or the "Fund"), the counterpart of the Fonds de Garantie des Dépôts et de Résolution in France[16]is a Turkish public institution. The TMSF is a member of various associations and forums of deposit insurance funds at European and international level, such as the *European Forum of Deposit Insurers* and the *International Association of Deposit Insurers.*[17].

13. The TMSF, which was originally an unincorporated body - managed and represented successively by the Central Bank of Turkey from 1983 to 1999 and the Turkish Banking Regulatory and Supervisory Authority (the "ARSB") from 1999 to 2003 - became an independent entity in 2003, a legal person under public law with its own budget and operating autonomy[18] .

14. The legislative provisions relating to the tasks of the TMSF, the general principles of its organisation and operation, and its powers are now set out in Banking Act no. 5411 of October 2005 (replacing Banking Act no. 4389 of 18 June 1999 and consolidating the many amendments made to that Act).

15. Article 111 of Law no. 5411 provides that the TMSF is "*endowed with public legal personality and administrative and financial autonomy*" with the mission of "*insuring deposits and holding funds, managing the Fund's banks, strengthening, restructuring, transferring, grouping, selling and liquidating their financial structures, ensure and finalise the monitoring and recovery of the Fund's receivables, manage the Fund's assets and resources, and carry out other tasks assigned by law, with the aim of protecting the rights and interests of depositors within the framework of the powers conferred by this law and other relevant legislation*".[19].

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asylum application lodged by Mr Cem Cengiz Uzan, 23 May 2013. To the best of the Respondent's knowledge, Mr Murat Hakan Uzan does not benefit from subsidiary protection.

16 See **TMSF Exhibit 9**, Official website of the Fonds de Garantie des Dépôts et Résolution in France, "About the FGDR" section.

17 See **TMSF Exhibit 10**, Official website of Tasarruf Mevduatı Sigorta Fonu, "International Relations" section. See also **TMSF Exhibit 11**, Official website of the *European Forum of Deposit Insurers*, List of member institutions; **TMSF Exhibit 12**, Official website of the *International Association of Deposit Insurers*, List of member institutions.

18 See **TMSF Exhibit 13**, Tasarruf Mevduatı Sigorta Fonu official website, "Historical Background" section.

19 **TMSF Exhibit 14**, Banking Act 5411 of 19 October 2005, Article 111.

16. The tasks and powers of the TMSF - which now extend beyond deposit insurance alone to include, for example, banking resolution (which consists of taking over the supervision and management of "*banking or financial institution*[s] that are *failing or likely* to *fail, so as to restructure* them *or wind them up in an orderly manner and avoid their bankruptcy*") or the recovery of its claims - are similar to those of its counterparts in many other countries.[20]) or the recovery of its debts - are similar to those of its counterparts in many other countries[21] as reflected, for example, in the *Core Principles* established by the *International Association of Deposit Insurers* (IADI) [22].

17. While the scope of the TMSF's activities was initially limited to insuring bank deposits, it expanded considerably during the 1990s and early 2000s to meet the new needs of the Turkish banking sector and deal with the various crises that the sector has experienced.[23].

18. When Turkey was hit by the financial crisis in 1994, the TMSF was given the role of banking resolution authority. This role was subsequently confirmed and clarified by Banking Law no. 4389 of 18 June 1999:

- Article 14 of this law provided that if a bank's assets "*cannot meet its liabilities as they fall due, or if this situation is about to arise, or if it does not comply with liquidity regulations*", and if a certain number of other conditions were met, the ARSB's Board of Directors could "*transfer the company's rights, excluding dividends, and the management and control of the bank to the Fund, or revoke its authorisation to carry out banking transactions and/or accept deposits*".[24].

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20 **TMSF Exhibit 15**, Official website of the Fonds de Garantie des Dépôts et Résolution in France, "Banking crisis resolution" section.

21 See, in this regard, **TMSF Exhibit 16**, Financial Stability Board, "Second Thematic Review on Resolution Regimes - Peer Review Report", 18 March 2016, in particular pp. 12-13 and Appendices B and C. The *Financial Stability Board is* an international institution created as part of the work of the G20 to monitor the functioning of the international financial system and make recommendations with a view to promoting the necessary regulatory and supervisory reforms.

22 See **TMSF Exhibit 17**, International Association of Deposit Insurer (IADI), *IADI Core Principles for Effective Deposit Insurance Systems,* November 2014, Principle 12 (recognising that resolution authorities have the power to act against persons through whose fault the bank is failing) and Principle 14 (clarifying that resolution and depositor protection is not limited to repayment and covers, inter alia, the power to change the management of the failing institution and to dispose of and sell its assets).

23 See **TMSF Exhibit 13**, Tasarruf Mevduatı Sigorta Fonu official website, "Historical Background" section.

24 **TMSF Exhibit 18**, Banking Act 4389 of 18 June 1999, Article 14.

- In addition, Article 16 of Law no. 4389 provided that "[i]f *a bank's authorisation to carry out banking transactions and accept deposits is revoked, its management and control shall be transferred to the* [TMSF]". In this event, the Fund was responsible for "*directly request*[*ing*] *the bankruptcy of the bank in place of the depositors by paying, directly or through another bank, the insured deposits to the bank whose management and control have been transferred*". In the event that the bank was declared bankrupt, the Fund had the power "*as preferred creditor [...*] [to] *liquidate the bank*".[25].

19. The TMSF was then called upon to play a leading role during the Turkish banking crisis of 2000-2001, in its capacity as resolution authority.

20. By the early 2000s, the Turkish economy had accumulated a number of structural problems (large public deficits and debt, high interest rates, inflation).[26]. In order to resolve these difficulties, the Turkish government decided to sign a major US$4 billion loan agreement with the International Monetary Fund, committing itself to an ambitious stabilisation programme (notably to curb inflation).[27]. It was against this difficult economic backdrop that the financial weaknesses of many private banking establishments (*most of* which "*belonged* to *conglomerates controlled by family groups*"[28]) led to a loss of confidence in Turkish banks, which in turn led to a liquidity crisis, a dramatic rise in interest rates, capital flight and, ultimately, an economic recession.[29]. The financial difficulties of many banks then worsened[30].

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[25] **TMSF Exhibit 18**, Banking Act 4389 of 18 June 1999, Article 16.

[26] See **TMSF Exhibit 19**, J.-C. Vérez, "The vicious circle of banking, monetary and financial crises in Turkey", *Revue Tiers Monde n° 175*, Volume 2003/3, pp. 685-691, spec. p. 683.

[27] See *id.* at 684.

[28] *Idem*, p. 695.

[29] See *id.* at pp. 693-694.

[30] See *id.* at p. 685, footnote 1.

21. As a result, at the end of the crisis, the TMSF found itself in charge of the resolution of 25 banking institutions (notably in the context of a Banking Sector Restructuring Programme set up by the ARSB[31]), listed in the table below [32].

Table 1-1: Banks which Operating Licenses were Revoked and Transferred to the SDIF *

	Bank	Cause of Transfer	Date of Transfer	Assets (**) TL Million	Assets (**) %	Personnel (**) Number	Personnel (**) %	Duty Loss USD Million
1	Türk Ticaret Bankası A.Ş.	3182 B.K. 64/2	06.Nov.97	677	0.6	3,664	2.1	778
2	Bank Ekspres A.Ş.	3182 B.K.1, 5, 64 Fon Yön.12. Mad.	12.Dec.98	311	0.3	629	0.4	435
3	Interbank A.Ş.	3182 B.K. 64/2	07.Jan.99	1,112	1.1	1,320	0.8	1,269
4	Egebank A.Ş	4389 B.K. 14/3 ve 14/4	21.Dec.99	795	0.8	1,990	1.2	1,220
5	Yurtbank A.Ş	4389 B.K. 14/3 ve 14/4	21.Dec.99	332	0.3	563	0.3	656
6	Yaşarbank A.Ş.	4389 B.K. 14/3	21.Dec.99	823	0.8	1,626	1	1,149
7	Esbank A.Ş	4389 B.K. 14/3 ve 14/4	21.Dec.99	948	0.9	1,898	1.1	1,113
8	Sümerbank A.Ş.	4389 B.K. 14/3 ve 14/4	21.Dec.99	447	0.4	1,407	0.8	470
9	Kıbrıs Kredi İstanbul Şub.	4389 B.K. 14/3 ve 16/1	27.Sep.00	1	0	22	0	0
10	Bank Kapital T.A.Ş	4389 B.K. 14/3 ve 14/4	27.Oct.00	89	0.1	538	0.3	393
11	Etibank A.Ş.	4389 B.K. 14/3 ve 14/4	27.Oct.00	826	0.8	2,035	1.2	698
12	Demirbank T.A.Ş.	4389 B.K. 14/3	06.Dec.00	2503	2.3	4,225	2.4	648
13	Park Yatırım A.Ş.	4389 B.K. 14/3	06 Dec.00					
14	İhlas Finans Kurumu	4389 B.K. 20/6	10 Feb. 01					
15	Ulusal Bank A.Ş.	4389 B.K. 14/3	28.Feb.01	312	0.3	251	0.1	524
16	İktisatBankası T.A.Ş.	4389 B.K. 14/3 ve 14/4	15.Mar.01	685	0.7	1,339	0.8	1954
17	T. Emlak Bankası A.Ş. (***)	Lw Nr. 4684 and BRSA 5508	03 – 09Jul.01	3,684	3.5	10,000	5.8	
18	Kentbank A.Ş.	4389 B.K. 14/3 ve 14/4	09.Jul.01	899	0.9	1,766	1	681
19	EGS Bank A.Ş.	4389 B.K. 14/3 ve 14/4	09.Jul.01	510	0.5	1,004	0.6	545
20	Bayındırbank A.Ş.	4389 B.K. 14/3 ve 14/4	09.Jul.01	259	0.2	486	0.3	116
21	Sitebank A.Ş.	4389 B.K. 14/3	09.Jul.01	25	0	97	0.1	53
22	Tariş Bank A.Ş.	4389 B.K. 14/3	09.Jul.01	185	0.1	526	0.4	74
23	Toprakbank A.Ş.	4389 B.K. 14/3 ve 14/4	30.Nov.01	3,541	2	2,458	1.7	880
24	Pamukbank T.A.Ş.	4389 B.K. 14/3 ve 14/4	19.June02	4,942	1.9	4,040	3.2	3,618
25	T. İmar Bankası T.A.Ş	4389 B.K. 14/3 ve 16/1	03.Jul.03	1,158	0.5	1,521	1.2	5,933
Total (Emlak Bankası excluded)				**21,378**	**15.5**	**33,405**	**21**	**23,205**

Source: BRSA

(*)Banks operating licenses of which were abolished and partnership rights other than dividends and management and supervision of which are transferred to SDIF (**) Reflects the balance sheet value concerning the year-end before its resolution and its shares within total during the mentioned year. Thus, the figures reflecting the Total show the sum of values and ratios belonging to different years. (***)Emlak Bankası was taken into a resolution process by transferring to Ziraat Bankası pursuant to the Act Number 4684 and BRSA resolution Number5508.

22. According to the report on the 2000-2001 banking crisis prepared by the ARSB in 2009, the banks that were transferred to the Fund during this period "*represented one fifth of the banking sector in terms of the size of their assets and liabilities during the period in question. In these banks transferred to the TMSF, there were intense abuses by dominant shareholders as well as liquidity and capital inadequacy problems*".[33].

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31 See **TMSF Exhibit 20**, Autorité de Régulation et de Supervision Bancaire, "From Crisis to Financial Stability (Turkey Experience)", p. 12 ("*The Banking Sector Restructuring Programme (BSRP), announced on 15 May 2001, focused on the intermediation function and aimed to ensure the transition to an internationally competitive banking sector capable of withstanding internal and external shocks. The priorities of the PRSB were identified as recovering the deterioration caused by the 2000-2001 crisis in the banking sector and building a solid foundation for the system by ridding it of weak banks*"); see also **TMSF Exhibit No. 21**,
A. Steinherr, A. Tukel and Murat Ucer, Economic and Financial Report 2004/02 prepared under the auspices of the European Investment Bank, "The Turkish Banking Sector Challenges and Outlook in Transition to EU Membership", pp. 8-9.

32 See **TMSF Exhibit 20**, Autorité de Régulation et de Supervision Bancaire, "From Crisis to Financial Stability (Turkey Experience)", p. 3.

33 *Idem*, p. 10.

In the context of its resolution mission, the TMSF was forced to bail out these troubled institutions, whose total losses amounted to 23.2 billion US dollars, according to ARSB estimates.[34].

23. Because of the Fund's large claims on banks in difficulty or in bankruptcy, the issue of recovering these claims quickly became crucial and the Fund's powers in this area were strengthened:

> *"In order to speed up the recovery of debts arising from the abuses of banks' dominant shareholders, the TMSF monitoring and recovery authorities have been strengthened by legal regulations. In order to protect companies that might survive and to increase the ability to recover TMSF debts, repayment agreements have been concluded with debtors other than the dominant shareholder. In the monitoring carried out under the powers given to the Fund by the Banking Act and Act no. 6183, significant measures were taken, especially after 2005, for the effective recovery of public debts*".[35].

24. The report prepared by the BRSA points out in this respect that under Law 5020 of 16 December 2003 "*it has been possible to punish effectively those responsible for corrupting the financial structures of banks, which have caused savers and the rights of the public to suffer and endangered financial stability; a solid basis has been established for recovering losses from those responsible and for establishing a deterrent in this area*".[36].

25. The provisions of this law, and its application in the case of Banque Imar, will be discussed in more detail below.

3. Motorola

26. Motorola Solutions Credit Company LLC, the successor to Motorola Credit Corporation, ("Motorola Credit") is a subsidiary of Motorola Inc, a leading global telecommunications company. In the late 1990s, the group

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[34] See *idem*, p. 10.

[35] *Idem*, p. 11.

[36] *Idem*, p. 14.

Motorola and Nokia have entered into a partnership with the Uzan family with a view to gaining a foothold in the Turkish telecommunications market.[37].

27. In the context of this partnership, Motorola Credit and Nokia have provided and/or secured financing to Telsim (a mobile operator and part of the Uzan Group) for a total of USD 2.7 billion to fund the acquisition of a 25-year mobile operating licence as well as the purchase of various infrastructure elements and equipment required to develop Telsim's business.[38].

28. Following a default by Telsim - which failed to repay a US$700 million instalment in April 2001 - Motorola and Nokia gradually discovered that the Uzan Family had misappropriated loans granted to Telsim to finance other Uzan Group companies or for personal use.[39] - Motorola and Nokia gradually discovered that the Uzan Family had misused the loans granted to Telsim to finance other Uzan Group companies or for personal use[40] .

29. On 28 January 2002, Motorola and Nokia filed a fraud lawsuit in the US *District Court* for the *Southern District of* New York against Kemal Uzan, Cem Cengiz Uzan, Murat Hakan Uzan, other members of the Uzan Family, business associates of the family and several companies of the Uzan Group.

30. On July 31, 2003, the *District Court* found that the Uzan Family and the other defendants had committed fraud on a massive scale and ordered them, among other things, to pay more than US$2 billion in damages to compensate Motorola for its losses and more than US$2 billion in punitive damages.[41].

31. A reading of the US judge's decision, which condemned in the strongest possible terms the fraud perpetrated by Motorola and Nokia, is particularly instructive in terms of the Uzan family's modus operandi (also followed in the context of the Imar fraud). By way of introduction to his judgement, the American judge noted:

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37 See **<u>TMSF Exhibit 3</u>**, Forbes, "Dial 'D' for Dummies - How a Turkish family business partnered with Motorola and Nokia -- and left the telecoms holding a $ 2.7 billion bag", March 18, 2002.

38 See in particular **<u>Exhibit TMSF No. 22</u>**, *United States District Court* for the *Southern District of* New York, *Motorola Credit Corporation and Nokia Corporation v. Kemal Uzan et al*, judgment of 31 July 2003, page 490 and ¶¶ 202- 213.

39 See *id.* at ¶¶ 269-274.

40 On the evidence of embezzlement that the U.S. judge considered in the July 31, 2003 decision, see *id.* at ¶¶ 315-322.

41 See *idem*, p. 580.

> *"No legal question [...*] *can hide the fact that all the credible evidence before the Court proves that the defendants - in particular the members of the Uzan family - perpetrated an enormous fraud. Under the guise of obtaining financing for a Turkish telecommunications company, the Uzans siphoned more than a billion dollars of the plaintiffs' money into their own pockets and into the coffers of other entities they controlled. After fraudulently obtaining the loans, they sought to advance and conceal their scheme through an almost endless series of lies, threats, and chicanery, including, among other things, filing false criminal charges against high-level U.S. and Finnish executives, grossly diluting and weakening the security for the loans, and repeatedly disobeying orders of this Court [...*]"[42].

32. The U.S. judge also held the Uzan family and the other defendants in contempt *of court*, noting that the defendants had repeatedly violated court orders:

> *"The complaint, filed in January 2002, charged the defendants with federal racketeering, state fraud and other serious misconduct. At the outset of the case, the Court issued injunctions in an effort to maintain the status quo, including the preservation of what was left of the warranty. But the defendants contemptuously refused to obey the Court's orders, even going so far as to break their sworn promise not to further destroy the security*".[43].

33. The defendants did not appeal the award of damages for the harm suffered.[44]However, they did obtain the annulment of certain other forms of reparation and a reduction in the amount of punitive damages.[45].

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[42] *Idem*, p. 490.

[43] *Idem*, p. 491.

[44] See **Exhibit TMSF No. 23**, *United States Court of Appeals* for the *Second Circuit*, *Motorola Credit Corporation and Nokia Corporation v. Kemal Uzan et al*, judgment of 22 October 2004, p. 59.

[45] See *id.* at 65-66; **TMSF Exhibit 24**, *United States Court of Appeals* for the *Second Circuit*, *Motorola Credit Corporation and Nokia Corporation v. Kemal Uzan et al*, judgment of 21 November 2007.

4. The Other Defendants

34. The other Defendants are natural and legal persons whom the Uzan Consorts present - without any supporting evidence[46] - as the "*ultimate economic beneficiaries* of *the entity or entities that transferred the assets of the Companies* [of the Uzan Group]".[47]

35. The TMSF notes, for all practical purposes, that the assets in question were transferred to companies incorporated under Turkish law (which the Claimants themselves admit)[48], following public auctions organised in accordance with Turkish law.[49].

36. In this context, it is up to Mr and Mrs Uzan t o explain in what way the alleged The "*ultimate economic beneficiaries*" who did not participate in the auctions and who are not parties to the asset sale agreements with the TMSF could be held liable for alleged misconduct (assuming that such misconduct is established) in connection with these sales.

B. Background to the contested measures: the Imar fraud

37. The Respondent will recall the main events that led to the revocation of Banque Imar's banking licence **(1)** and will then briefly describe the large-scale fraudulent scheme that it discovered when the Fund took over the management of the Bank (**2**).

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46 In support of their claims relating to the "*ultimate economic beneficiary*[ies] of *the entity or entities that are transferees of the assets of the Companies* [of the Uzan Group]", the Claimants have submitted an alleged "expert report" prepared by Mr Selahattin Bal consisting of a series of enumerations of transferees of assets and their ultimate economic beneficiaries, without the Claimants disclosing the documents used by the alleged "expert" for the purposes of his "analysis" (even though the report refers to "*folders*" containing "*data indexes*" that the "expert" appears to have compiled concerning the entities presented as transferees): see **Plaintiffs' Exhibit 7**, Report of Mr. Selahattin Bal dated 28 June 2021. The Defendant also points to the manifest lack of independence and impartiality of this so-called "expert": see *infra*, ¶ 113.

47 **Plaintiffs' Reply Brief on Incident of November 21, 2023**, ¶ 23.

48 See **Plaintiffs' Summons of 13 July 2021**, pp. 13-15. See also **Plaintiffs' Submission on the Merits No. 1 of 21 November 2023**, pp. 15-17; **Plaintiffs' Reply Submission on the Incident o f 21 November 2023**, pp. 16-19.

49 See *infra*, ¶¶ 87-100.

1. The events that led to the revocation of Banque Imar's banking licence

38. Founded in 1928, Banque Imar came under the control of the Uzan family in 1984.[50]. In the 1980s and 1990s, the bank grew rapidly, charging very high interest rates.[51].

39. Most of the loans granted by the Bank went to companies in the Uzan Group[52]. Because of the high level of intra-group lending, Banque Imar came under increased scrutiny in the 1990s, first from the Treasury and then from the ARSB when it was created in 1999.[53]. At the time of the 2000-2001 banking crisis, the ARSB demanded that the bank be recapitalised and that it reduce its exposure to the rest of the Uzan Group.[54]. In the absence of any such action by the bank's management, the ARSB was forced to intervene in the bank's management by appointing a representative to the board of directors:

> *"Once the ARSB was established, the new authority asked Bank Imar's shareholders to recapitalise the bank and reduce exposure to the Uzan group. As no action was taken on either front, the ARSB appointed a board member with veto power in July 2001 and another representative was appointed to the board in December 2001. In 2002, during the recapitalisation programme in May, the bank reduced its exposure to the Uzan Group companies; shareholders injected capital into Imar Bank and the ARSB decided to remove the board member with veto rights in August 2002. With an ARSB representative still on the board, the problem seemed to have been solved and a takeover avoided*".[55].

40. Although the intervention of the ARSB temporarily enabled Banque Imar's balance sheet to be put on a sounder footing, the situation quickly deteriorated.

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50 See **TMSF Exhibit 25**, B. Aktan, O. Masood and S. Yilmaz, "Financial shenanigans and the failure of ethics in banking: a review and synthesis of an unprecedented fraud", Banks and Bank Systems, Volume 4(1), 2009, p. 31.

51 The ARSB has written to Banque Imar on several occasions on this subject, asking it to reduce its interest rates to bring them into line with the average rates charged in the banking sector: see, for example, **TMSF Exhibit 26**, ARSB letter to Banque Imar dated 15 November 2002.

52 See **TMSF Exhibit 21**, A. Steinherr, A. Tukel and Murat Ucer, Economic and Financial Report 2004/02 prepared under the auspices of the European Investment Bank, "The Turkish Banking Sector Challenges and Outlook in Transition to EU Membership", Annex 1.

53 See *idem*, Appendix 1.

54 See *id.*

55 *Id.*

41. In June 2003, following the cancellation of concession contracts signed with two of the Uzan Group's electricity generation and distribution companies, Çukurova Elektrik A.Ş. ("ÇEAŞ") and Kepez Eletrik T.A.Ş. ("Kepez") - these companies having in particular refused to comply with a new law passed in 2001 liberalising the electricity sector[56] - Bank Imar found itself in difficulty:

> "*The bank was hit again in June 2003 when the charters of the two regional electricity companies, which provided the bulk of the Uzan companies' cash, were revoked by the Electricity Regulatory Board. This news caused a run on the bank and liquidity problems ensued. Bank Imar's board members refused to cooperate with the ARSB and resigned from their positions at the end of June. During this time, the ARSB had only four board members and could not take a decision because a decision required at least five members. After the government appointed the fifth member, the ARSB cancelled Bank Imar's deposit licence and declared that all personal deposits were guaranteed by the government*".[57].

42. The rapid succession of events described in the above extract led to the cancellation of Banque Imar's operating licence. Contrary to what the Claimants maintain in defiance of the facts, it was not Banque Imar (or its President, Mr Kemal Uzan) that "*returned* [*its] banking licence to the State and* [...] *requested [* the ARSB's] *protection*" (supposedly to "*protect the rights of depositors*").[58]. In reality, it is

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[56] See **<u>TMSF Exhibit 173</u>**, *Cementownia 'Nowa Huta' S.A. v. Republic of Turkey*, ICSID Case No. ARB/AF/06/2, Award of 17 September 2009, ¶¶ 9-16. The measures taken by the Turkish authorities against ÇEAŞ and Kepez were challenged before the competent Turkish courts, which upheld their legality. The measures in question were also challenged by Mr Kemal Uzan and the companies Rumeli Elektrik, ÇEAŞ and Kepez before the European Court of Human Rights, which considered that the complaints raised by the applicants were "*manifestly ill-founded*" and rejected them: see **<u>TMSF Exhibit 201</u>**, *Uzan et al.*
c. Turkey, European Court of Human Rights, Decision on the admissibility of application no. 18240/03 of 29 March 2011. The Court noted, for example, that "*the termination of the contracts on account of the misconduct of the companies* [ÇEAŞ and Kepez] *is the normal consequence of the contractual law binding the parties*". Having found that the termination of the contracts at issue was "*also based on Law no. 4628 on the electricity market*", the Court also examined the legitimacy of the aim pursued by the national authorities in adopting and applying that law and concluded that "*the interference complained of by the applicants pursued a legitimate aim which was in the general interest of society, namely the liberalisation and regulation of the electricity market in order better to satisfy national demand*" (*id.*, ¶¶ 94-101). The claim made by the Claimants in their new pleadings that the measures taken against ÇEAŞ and Kepez were part of "*an orchestrated attack on the Uzan family*" is thus manifestly unfounded. These measures have also given rise to several arbitration proceedings (such as the aforementioned *Cementownia* case), initiated on the basis of various investment protection and promotion treaties by nominees of the Uzan Family. In all of these arbitration proceedings, the claims were declared inadmissible: see *infra*, ¶ 123 and **<u>TMSF Exhibit 2</u>**, Annex 2, Some examples of attempts by the Uzan Family to manipulate the justice system.

[57] **<u>TMSF Exhibit 21</u>**, A. Steinherr, A. Tukel and Murat Ucer, Economic and Financial Report 2004/02 prepared under the auspices of the European Investment Bank, "The Turkish Banking Sector Challenges and Outlook in Transition to EU Membership", Annex 1.

[58] **Claimants' reply submissions of 21 November 2023**, pp. 19-20. The Claimants' contention that the decisions and measures taken by Banque Imar and its directors at that time were intended to protect the interests of depositors (made without the slightest evidence to support it) is

the ARSB, which took the decision to cancel Banque Imar's licence in a decision dated 3 July 2003, in order to preserve "*the security* [and] *stability of the financial system*" and "*depositors' rights*[59]. The management and control of the Bank were then transferred to the TMSF, in accordance with Article 16 of Banking Law no. 4389.[60].

43. The transfer of the Bank's management and control to the TMSF, which was complicated by the behaviour of the Bank's directors and managers who refused to cooperate with the ARSB and the TMSF, enabled the fraudulent system set up within Banque Imar to be uncovered, enabling a large proportion of the deposits received by the Bank to be diverted to Uzan Group companies.

2. The discovery of a vast fraud scheme benefiting the Uzan Group

44. On 26 June 2003, a week before the revocation of Imar's banking licence, all the members of the Board of Directors (except the one appointed by the ARSB) - including two members of the Uzan Family, Kemal and his brother Yavuz - collectively resigned from their positions.[61]. They were followed by 42 other executives who resigned on the same day as the banking licence was revoked.

45. As was subsequently established, many of the Bank's documents, as well as much of the data on the Bank's operations, disappeared or were destroyed in the days leading up to these serial resignations. In particular, the manager of the Bank's data processing system - Merkez Yatırım (another Uzan Group company) - refused to share information about the Bank with the new management team put in place by the ARSB and the TMSF. It was later discovered that Merkez Yatırım had destroyed a large part of the Bank's data processing system.

46. Obstruction on the part of the Bank's former directors and managers complicated the work of the new team put in place by the TMSF to take over the direction and management of the Bank. Nonetheless, the new management team quickly discovered significant inconsistencies between the deposits recorded in the Bank's registers that it had in its possession.

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contradicted by the behaviour of the Bank's management and by the vast fraud scheme uncovered after the TMSF took over the management of Banque Imar, following audits of the Bank.

59 **TMSF Exhibit 27**, ARSB Resolution 1085 of 3 July 2003.

60 See, **for** example, **TMSF Exhibit 28**, TMSF Council Resolution 396 of 3 July 2003.

61 See **TMSF Exhibit 29**, Resignation letters from members of Imar's Board of Directors dated 26 June 2003.

and other information relating to deposits actually made with the Bank. The TMSF then set up teams to investigate these inconsistencies[62].

47. On the basis of the information gathered as a result of these investigations (in particular information obtained from the Bank's depositors and following seizures at Merkez Yatırım's premises), the TMSF found that the Bank had systematically under-declared the deposits it received from the public.

48. For example, the report of 22 September 2003 prepared by the ARSB on the results of the investigation conducted by the TMSF teams into the difference between the deposits declared by the Bank and the deposits it actually received indicates that the Bank declared less than 10% of the deposits it actually received:

> "The *number of accounts is 444,126 and the total deposit of these depositors is 8,144,639,636,406,690 TL (Turkish Liras). Savings Deposit Insurance Fund officials have also stated that claims are continuing and that this figure is expected to rise further. However, it can be seen from the daily monitoring form (Annex: 2) sent to the Banking Supervision and Regulation Agency on 25/06/2003 by the Bank that the total deposit is TL 735,544 billion, which is less than 10% of the total deposits detected on 04/07/2003. In the balance sheet (Annex: 3) that the Bank made public on 31/12/2002, total deposits amounted to TL 976 043 billion. Therefore, the Bank has hidden more than 90% of the accumulated deposits and has not announced this in its official statements and public balance sheets. Following these observations, it was noted that the difference between the real and visible deposits on the assets side of the Bank is not included on the assets side of the balance sheets prepared by the Bank and made public and/or notified to the Banking Supervision and Regulation Agency, because the need for the sum of the real and visible balance sheets to be equal in the balance sheet also requires the presence of an asset opposite the deposit which is on the liabilities side of the balance sheet. This asset, which may be in cash and may also be a security or a receivable (e.g. a bank loan), must be present on the liabilities side of the balance sheet.*
> *credit). However, in the assets side of the bank's balance sheet, there is no asset as mentioned above that would cover the difference between the real and apparent deposit*".[63].

49. The authors of the report also noted that the analysis of all the information gathered at this stage of the investigation into the activities of Banque Imar unquestionably led to the following conclusions

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62 See **TMSF Exhibit 30**, TMSF Board Decision 455 of [1] August 2003.

63 **TMSF Exhibit 31**, ARSB Report prepared in accordance with Article 22(3) of the Banking Act, 22 September 2003, pp. 3-4.

to the conclusion that the undeclared deposits (i.e. more than 90% of the deposits made with the Bank) were the subject of a misappropriation of funds (the "Misappropriated Deposits") involving several members of the Uzan Family, in particular Kemal (the Claimants' father), Yavuz (the Claimants' uncle) and Murat (one of the Claimants):

> "*It has been concluded that the Bank's assets, which are the equivalent of deposits collected by our team from the public, but which do not appear in the bank's official records and official declarations, are misappropriated by the persons referred to in chapter **"V.3. THE PERSONS RESPONSIBLE"** of the report and that equality between total assets and total liabilities has been achieved by reducing the amount of embezzlement. No importance is given to the offence of embezzlement when it comes to where and how it is used and the final beneficiary of the bank's resources, which represents the deposit that is not shown but is collected by the Bank. It is sufficient for the perpetrators of the offence not to show the amount mentioned among the bank's assets and to act as if they were the holder of that amount. Even if in fact the perpetrator intends to return the bank assets used as holder, this does not eliminate the crime of embezzlement. Studies into how and in what form deposits collected by the Bank are used are continuing, and further reports may be prepared by our Team based on their findings.*
>
> [...]
>
> *It was considered more appropriate to take into account the responsibilities of those individuals below who were senior managers of the Bank at the time in question and who are likely to have criminal responsibility because of their transactions and actions in accordance with paragraph 3 of article 22 of the Banking Act no. 4389, in relation to the misappropriation of funds collected from depositors by accepting deposits and concealing the misappropriated part of the deposit in order to ensure the equality of the totals of the assets and liabilities of the balance sheet as explained in detail in the relevant sections of the report.*

FRAME	**FUNCTION**	**Start date**	**Depart ure date**
Kemal UZAN	Chairman of the Board of Directors / Chief Executive Officer	21.11.1984	26.06.2003
Yavuz UZAN	Chairman of the Board of Directors general manager	21.11.1984	26.06.2003

> [...]
>
> *Our team has concluded that the ultimate motivation for the actions and practices described in the previous sections of the Report is to deliver benefits to the Bank's core shareholder group.*

Given the severity of the sanction, it is considered appropriate to determine the degree of responsibility of the Bank's managers other than the members of the Board of Directors following an investigation.

[...]

On the other hand, it was concluded that due to the printing of a legal book and the creation of a balance sheet which are not in agreement with the accounting records of the branches of Merkez Yatirim ve Ticaret A.S., and due to the technical support activities related to these matters and the presence of responsibility of Murat Hakan UZAN, Bahattin UZAN, Azmi YILMAZ and Suat GUSINALI who are and have been members of the Board of Directors while occupying the position of senior manager at Merkez Yatirim ve Ticaret A.S., in fact these persons above have participated in the actions of "embezzlement" of the Bank by showing inferior deposit in the legal book and balance sheet of the Bank".[64].

50. Investigations into the activities of Banque Imar and the misappropriated deposits continued, particularly in the context of the criminal proceedings launched to determine who was responsible for the Imar fraud. In June 2005, a team from the ARSB finalised a report aimed in particular at identifying the beneficiaries of the embezzlement. After describing the fraudulent system set up within Banque Imar (and the company Merkez Yatırım, which was responsible for managing its data processing system), the June 2005 report established that this fraudulent system had largely benefited the Uzan Group:

"Following a review of the information and documents provided by all these sources, our team has come to new conclusions regarding the transfer to the Uzan Group of funds collected from the public under the guise of the sale of deposits and treasury bills and the transfer to the Uzan Group of unpaid taxes to the Tax Authorities, and the need to carry out additional assessments regarding those responsible for the transfer of funds has become apparent.

It is understood that the transfer of funds to the Uzan Group has been going on within the Bank for many years, that a serious technical infrastructure has been put in place at the Bank and Central Investment for this purpose, and that the directors and employees of the companies belonging to the Uzan Group, including Imar Banque, Imar Off-Shore and Central Investment, have been organised in a serious manner to carry out the transfer of funds and to conceal it from the public authorities. It is believed that the transfer of funds from the Bank to the Uzan Group and the concealment of these transactions from the public authorities date back at least to the early 1990s, when the

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64 *Id.* at 43, 49-51.

GM04 was designed into the computer system. Numerous irregular operations were carried out by the managers and employees of the Bank and Merkez Yatırım in the computer system in order to transfer funds collected from the public and unpaid taxes to the Tax Administration to the Uzan Group secretly from the public authorities and to conceal the transfer of funds in the legal books and financial statements.

In fact, it was not just one systematic method that was used to ensure the transfer of funds to the Uzan Group and to conceal the transfer of funds in the legal books and financial statements, but many methods of a different nature that were used. Managers and employees of the Bank and Merkez Yatırım frequently intervened in the accounting files of the computer system, which is the basis for the production of the documents in question, in order to make the legal books and financial statements appear different from what they were, by issuing fictitious retroactive receipts and deleting certain receipts.

[...]

The extent of the technical infrastructure and organisation set up at the Bank and Merkez Yatırım to intervene in the Bank's IT system, the scale of the funds transferred, the fact that the transfer of funds was concealed from the public authorities for years [by] *not showing in the legal books and financial statements, and the lack of effort to collect sufficient capital and interest on the transfer of funds, it shows that the managers and employees of İmar Bank, İmar Off-Shore, Merkez Yatırım and the companies belonging to the Uzan Group knew that they had caused the irreversible transfer of funds from İmar Bank to the Uza*n Gr*oup."*[65].

51. The discovery of this vast fraud scheme, which benefited the Uzan Group for years, led to numerous prosecutions and criminal convictions.

1. <u>The offences committed in connection with the Imar fraud have been the subject of numerous criminal convictions</u>

52. The Imar fraud was the subject of a large number of criminal proceedings aimed at identifying and convicting those responsible for the fraud. These proceedings have resulted in numerous criminal convictions, including against Mr Cem Cengiz Uzan.[66].

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[65] **<u>TMSF Exhibit 32</u>**, Supplementary ARSB report on the transfer of funds from Banque Imar to Groupe Uzan, 21 June 2005, pp. 153-154.

[66] In their submissions of 21 November 2023, the Uzan Estate claimed that the judicial proceedings that gave rise to these criminal convictions were "*very seriously* [sic] *questionable*", in particular because of the alleged involvement *of* "*proven members*" "*of the terrorist organisation Fethullah ('FETÖ')*" (**submissions in response to the Applicants' incident of 21 November 2023**, ¶¶ 47-57). This claim, made without the slightest supporting document, is manifestly unfounded. Moreover, it was rejected by the Turkish courts when Mr Cem Uzan attempted to obtain a review of the criminal decisions on this basis. Furthermore, the Applicants do not

53. In criminal case no. 2004/1, brought before the Istanbul Court of First Instance (8ème Criminal Division), 24 defendants, including Kemal, Yavuz, Bahettin and Murat Hakan Uzan, were charged with forming, participating in and directing a criminal organisation with a view to committing an offence, participating in activities on behalf of the criminal organisation, and misappropriation of funds.[67].

54. At the end of these proceedings, in a judgment handed down on 21 February 2006, the Istanbul Court of First Instance sentenced Hilmi Başaran (the director of Banque Imar[68]), Yeşim Öztürk, Tacettin Pak, Bahaettin Uzan and Mustafa Akar to pay fines totalling several tens of billions of Turkish lira and to various prison sentences for embezzlement in an organised gang. In particular, Bahettin Uzan and Mustafa Akar were sentenced to 15 years, 6 months and 20 days in prison and fined 19,426,377,822 Turkish lira.[69]. The judgement also states that Kemal Uzan had led the criminal organisation that perpetrated the fraud.[70]. An arrest warrant was issued for Kemal, Yavuz and Murat Hakan Uzan on the same charges, but they could not be arrested following their flight abroad, so the proceedings were severed in their respect.[71].

55. In criminal case no. 2005/123, brought before the Istanbul Court of First Instance (7ème Criminal Division), a number of defendants, including Kemal Uzan, Yavuz Uzan, Cem Cengiz Uzan and Murat Hakan Uzan, were charged with forming, participating in and directing a criminal organisation with the aim of

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cannot seriously claim that the "*irregularity of the criminal proceedings*" was "*recognised*" by the French courts. The decisions of the Paris Tribunal de Grande Instance and the Paris Court of Appeal to which the Claimants refer concern only one of the many decisions handed down by the Turkish criminal courts in relation to the Imar Fraud. These decisions of the Tribunal de Grande Instance de Paris and the Cour d'Appel de Paris, under which the French judges refused to grant exequatur to the Turkish judgment in question, were not based on any alleged "*irregularity*" in the Turkish criminal proceedings, but on the fact that the judgment was contrary to "*the French conception of international public policy*" because of the personal link between the president of the court and the prosecutor in charge of the case (**Plaintiffs' Exhibit no. 28**, Paris, 3 November 2020, RG no. 19/07329, p. 3).

67 See **TMSF Exhibit 33**, Judgment of 21 February 2006 of the [8th] Criminal Division of the Istanbul Court of First Instance, pp. 2-3.

68 See *id.* at ¶ 3.2.1.

69 See *idem*, p. 2.

70 See *idem*, p. 6.

71 See *idem*, p. 1. This judgment was upheld by the [7th] Criminal Division of the Court of Cassation in its judgment of 26 January 2007, case no. 2006/7636.

commission of an offence, participation in activities on behalf of a criminal organisation, aggravated fraud, falsification of documents and breach of banking law.

56. At the end of these proceedings, in a judgement handed down on 15 April 2010, the Istanbul Court of First Instance (7ème criminal division) sentenced Cem Cengiz Uzan to 3 years' imprisonment for setting up and running an organisation with the aim of committing a crime, to 8 years and 9 months' imprisonment for falsifying documents, and to 10 years and 15 months' imprisonment and a fine of 33,750 Turkish pounds for fraud targeting public institutions and organisations.[72].

57. <u>In criminal case no. 2008/10</u>, brought before the Istanbul Court of First Instance (8ème correctional chamber), 46 defendants including Cem Cengiz Uzan, Ayşegül (Akay) Uzan, Yavuz Uzan, Kemal Uzan, Yeşim Öztürk, Antonio Luna Betancourt, Raad El Rifai, Bahaettin Uzan, Melahat Uzan and Murat Hakan Uzan, were prosecuted on charges of aggravated bank fraud, aggravated fraud against the State, forming, participating in and directing a criminal organisation with a view to committing an offence, participating in activities on behalf of the criminal organisation, keeping fictitious accounts (breach of Banking Act no. 5411) and misappropriation of funds from a private bank (breach of Banking Act no. 5411).

58. At the end of these proceedings, in a judgment dated 29 March 2013, the Istanbul Court of First Instance sentenced Cem Cengiz Uzan to 18 years, 5 months and 20 days' imprisonment and a fine of 4,404,721,134.63 Turkish lira[73]. He was also banned from holding public office[74] and ordered to pay part of the compensation due to Bank Imar for the damage suffered, i.e. 1,468,240,378.21 Turkish Liras[75]. Other people involved (Raife Aynur[76]Olgun Uyar and Ufuk Uzunkaya[77]) were sentenced to 7 years, 3 months and 15 days imprisonment and a fine of

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[72] See **<u>TMSF Exhibit No. 34</u>**, Judgment of 15 April 2010 of the 7th Criminal Chamber of the Istanbul Court of First Instance. These convictions were confirmed by a judgment of the 5th Criminal Chamber of the Court of Cassation on 28 September 2011, case no. 2011/7664. Certain other convictions handed down against Mr Cem Cengiz Uzan by the Court of First Instance were also overturned in a separate decision.

[73] See **<u>TMSF Exhibit No. 35</u>**, Judgment of 29 March 2013 of the 8th Correctional Chamber of the Istanbul Court of First Instance, p. 383.

[74] See *id.*

[75] See *idem*, p. 385.

[76] Raife Aynur is a member of the Board of Directors and Managing Director of Banque Imar Bank Offshore Limited (see *id.*, p. 21).

[77] The three convicted persons were members of the Board of Directors of Banque Imar Bank Offshore Limited (see *id.*, p. 20).

4,404,513,400.65 Turkish pounds[78]. They were also banned from holding public office[79] and they were ordered to pay the other part of the compensation due to Banque Imar for the damage suffered, i.e. 1,468,240,378.21 Turkish Liras[80].

59. In the three decisions just mentioned, the Turkish criminal courts confirmed, in application of the more stringent standard of proof that prevails in criminal cases
(*i*) the existence of the Imar Fraud, (*ii*) the amount of funds misappropriated, (*iii)* the fact that this misappropriation took place with the active participation of members of the Uzan Family (in particular Kemal, Cem and Murat Uzan), and (*iv*) the fact that the Imar Fraud benefited the Uzan Family and the Uzan Group.

C. Measures taken by the Turkish authorities (in particular the TMSF) in response to the Imar fraud

60. When the Imar Fraud was discovered in 2003, the ARSB and the TMSF noted the existence of several billion dollars' worth of Misappropriated Deposits - the repayment of which was at issue due to the withdrawal of the Bank's licence - which were much larger than the figures officially communicated by the Bank to the ARSB. In addition, the Imar Fraud and the potential damage it was likely to cause to the Bank's customers posed a systemic risk of loss of confidence in the banking system, which was only just beginning to recover from two years of crisis.

61. In these circumstances, the most important and urgent issue facing the Turkish authorities following the discovery of the Imar Fraud was to determine and implement the necessary measures to protect depositors' rights and avoid further difficulties in the banking sector. As set out below, the Turkish authorities decided to put in place mechanisms to enable the TMSF to fully reimburse most of the Bank's depositors (**1**). Having reimbursed the depositors of Banque Imar, the Fund then exercised the powers granted to it by law to recover the claims arising from these reimbursements (in accordance with the regime applicable to public claims, applicable under banking laws no. 4389 and 5411) (**2**).

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78 See *idem*, p. 385.

79 See *id*.

80 See *id*. This judgment was upheld under the terms of a judgment of the 7th Criminal Chamber of the Court of Cassation of 28 January 2015, case no. 2014/12969.

1. Compensation for Banque Imar depositors

62. Following the revocation of Banque Imar's banking licence, the Turkish authorities took a series of decisions to protect the interests of the Bank's customers, particularly after the discovery of the Imar fraud in the second half of 2003.

63. As a first step, by Resolution no. 1083 adopted on 3 July 2003, the ARSB strengthened depositor protection by abolishing for a period of one year the maximum guarantee threshold for covered bank deposits, so that this guarantee would apply to all deposits covered by the guarantee, regardless of their amount [81].

64. The Turkish legislator and executive then specified the procedure to be followed to ensure compensation for the depositors of Banque Imar :

- Law no. 4969 of 31 July 2003 (subsequently amended on 16 December 2003) provided that the principles and procedures relating to the compensation of deposits after banks whose banking licence had been revoked (as well as the determination of the deposit accounts to be excluded) were to be set by decision of the Council of Ministers, on the basis of proposals made jointly by the TMSF and the Treasury[82].
- Law No. 5021 of 16 December 2003 concerning, inter alia, certain measures to be taken in the context of the withdrawal of Banque Imar's licence then specified that the reimbursement of depositors by the Fund could be financed by funds granted by the Treasury and included an amendment in the Finance Law to allow the Treasury to issue additional debt securities up to a maximum of 8.5 quadrillion Turkish lira (approximately USD 5.9 billion at the time) [83]. Law no. 5021 also provided that certain categories of deposits with the Bank (in particular deposits of the Bank's shareholders or directors) were to be excluded from the scope of deposits guaranteed by the law [84].
- Resolution no. 2003/6668, which was adopted by the Council of Ministers on 29 December 2003 and came into force on 3 January 2004, then specified, in accordance with Laws no. 4969 and 5021, the conditions and procedures to be followed for (*i*) determining the deposits that should

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81 See **TMSF Exhibit 36**, ARSB Resolution No. 1083 of 3 July 2003.

82 See **TMSF Exhibit 37**, Law 4969 of 31 July 2003, provisional Article 2.

83 See **TMSF Exhibit 38**, Law 5021 of 16 December 2003, Article 2 and Provisional Article 1.

84 See *id.* at Article 1 and Provisional Article 1.

to be indemnified and those that were not, and *(ii)* to indemnify covered deposits[85] .

65. Taking into account the aforementioned legal and regulatory provisions, the TMSF Board adopted Decision No. 677 to organise the payment of the sums due to the depositors of Bank Imar (estimated at the time at 7.8 quadrillion Turkish lira, or 5.5 billion US dollars at the then exchange rate), into accounts opened with Bank Ziraat [86]. The decision of the Fund's Board also provided that the Fund would apply to the Treasury for additional funds amounting t o approximately 6.8 quadrillion Turkish lira in the form of a special public debt issue (equivalent to US$4.8 billion at the time).[87].

66. The payments provided for in Decision no. 677 were made during 2004, once the necessary agreements had been signed between the TMSF, the Central Bank of Turkey, the Treasury and Bank Ziraat:

> "*Within the framework of Laws No. 4969 and 5021 and Resolution No. 2003/6668 of the Council of Ministers, protocols were signed between the Undersecretariat of the Treasury, the Central Bank of the Republic of Turkey, T.C. Ziraat Bankası A.Ş. and the TMSF on 7 January 2004 and between T.C. Ziraat Bankası A.Ş. and the TMSF on 14 January 2004.*
>
> *According to the protocols signed, the number of depositors paid under the insurance guarantee in 2004, the amounts of savings deposits transferred, the amounts of withholding tax on returns on shares and bonds and the total outgoing resources of the TMSF are as follows:*

Steps	Number of applicants	Amount savings deposit payments (billion euros) of TL)	Holding total (billions of TL)	Resources (billion TL)
Stage 1 (16.01.2004)	364.335	7.524.811	28.185	7.552.996
Step 2 (12.03.2004)	9.006	201.917	823	202.740
Step 3 (16.04.2004)	8.329	169.816	728	170.544
Step 4 (19.07.2004)	992	18.392	84	18.476
Step 5	667	9.430	46	9.476

[85] See **TMSF Exhibit 39**, Decision 2003/6668 of the Turkish Council of Ministers of 29 December 2003.

[86] See **TMSF Exhibit 40**, TMSF Council Decision 677 of 29 December 2003, points 1, 2 and 6.

[87] See *idem*, point 9.

(20.09.2004)				
Step 6 (19.11.2004)	234	3.338	15	3.353
Total	383.563	7.927.704	29.881	7.957.585

[...] "[88].

67. The amount of deposits repaid then increased over the following years, for two reasons:

- On the one hand, the Turkish Council of State invalidated the decision to exclude certain deposits from the scope of the guarantee.[89]. The TMSF has assumed responsibility for reimbursing these deposits [90].
- On the other hand, a number of depositors did not come forward immediately, but contacted the TMSF in subsequent years to request repayment of their deposits.

68. The total amount of repayments assumed by the TMSF in its capacity as guarantee fund for depositors of Banque Imar will therefore amount to 8,629,979,234 Turkish lira at 31 December 2021.[91].

2. Recovery of public debts resulting from Imar fraud

69. At the same time as repaying the deposits made with Banque Imar, the TMSF initiated compulsory liquidation proceedings against the Bank, subrogating itself in the rights of the depositors repaid for the purposes of the compulsory liquidation, in accordance with the provisions of Article 16(3) of Law no. 4389.[92]. The Bank's liquidation proceedings are still in progress.[93].

70. At the same time, the TMSF continued its efforts to recover the funds committed to reimbursing the Bank's depositors (the amount of which was significantly higher than the amount of the Bank's deposits).

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88 **TMSF Exhibit 41**, TMSF Annual Report 2004, pp. 15 and 16.

89 See *idem*, p. 16.

90 See **TMSF Exhibit 42**, TMSF Annual Report 2021, p. 39.

91 See *id.* at 38. The Respondent points out that in January 2005, the Turkish State replaced the currency in circulation, a "new" Turkish lira worth 1,000,000 "old" Turkish lira.

92 See **Exhibit TMSF No. 18**, Banking Law No. 4389 of 18 June 1999, Article 16(3); **Exhibit TMSF No. 43**, Official Website of the Tasarruf Mevduatı Sigorta Fonu, section "Revocation of the Operating License of Bank".

93 See **TMSF Exhibit 44**, Official website of the Tasarruf Mevduatı Sigorta Fonu, "Bankrupt Banks / Banks with a Revoked Operating License" section.

than initially planned), in particular with the Uzan family and the Uzan Group.

71. The powers available to the TMSF and the measures it can take to recover these debts are expressly provided for and governed by Turkish legislation, in particular the Banking Law no. 4389 referred to above (as amended) and the new Banking Law no. 5411 (adopted in 2005). After recalling the main legislative provisions applicable in this context (**a)**, the Respondent will provide a brief chronological overview of the measures taken by the TMSF (**b**).

a. <u>The powers of the TMSF granted by law</u>

72. Turkish banking legislation stipulates that TMSF claims must be considered as public claims, the legal regime of which, which is an exception to ordinary law, is set out in a special law, Law no. 6183 on public claims.[94].

73. The TMSF's powers were extended in the early 2000s as part of the legislative reforms aimed at strengthening the regulation of the banking sector, particularly in light of the difficulties created by the series of bank failures during the banking crisis and by the Imar fraud. These new powers were aimed in particular at preventing the disappearance of assets that could be used to recover the TMSF's claims and at improving the effectiveness of the recovery measures put in place by the TMSF in the context of the numerous bank resolution procedures for which it was responsible.[95].

74. Firstly, provisional Article 2 of Law No 4969 of 31 July 2003, relating to banks whose licence has been revoked (such as Banque Imar), introduced the possibility for the TMSF to freeze assets in the event of a discrepancy between the deposits declared by the bank in question and the deposits actually recorded. This provision stipulated that the TMSF could ask the competent local court to order the freezing of the assets of a certain number of people, including the bank's shareholders and directors. It also specified that recovery of the difference between the deposits declared by the bank

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94 See **<u>TMSF Exhibit 18</u>**, Banking Act 4389 of 18 June 1999, Article 15(3); **<u>TMSF Exhibit 14</u>**, Banking Act 5411 of 19 October 2005, Article 132. Article 15 of Banking Act 4389 stipulated that the TMSF could pursue the recovery of its claims against the shareholders of the banks whose shares had been transferred to it and against the companies controlled by these shareholders (in accordance with the rules set out in Act 6183 on the recovery of public claims): see **<u>TMSF Exhibit 18</u>**, Banking Act 4389 of 18 June 1999, Article 15.

95 See *supra*, ¶¶ 20-24.

in question and the deposits actually recorded could be pursued in accordance with the procedures laid down in Articles 14 and 15 of Banking Act No. 4389 :

> "In the *event of a difference between the amount of the insured savings deposit declared by the bank to the competent authorities in accordance with Law No. 1211 of the Central Bank of the Republic of Turkey and the amount of the savings deposit determined by the Fund, at the request of the Fund's legal officer and/or the Treasury's legal officer assigned to the Fund, the judge of the court where the registered office of the bank concerned is located may take the following decisions with regard to claims considered to be Treasury claims in accordance with this Law: impose measures in proportion to this difference on all bank accounts, including foreign currency deposit accounts and limited and unlimited credit card accounts, safe deposit boxes, with banks and non-bank financial institutions and other real and legal property, all kinds of movable and immovable property, including land vehicles and maritime vehicles, securities and other titles such as domestic or foreign treasury bills, government bonds, shares, certificates of participation in investment funds, independent commercial enterprises, plants and facilities, trademark and licensing rights for the operation of these facilities, operating rights which authorise the establishment and operation of a facility such as a television channel or a power station arising from public concession contracts, shares in companies operating and establishing such facilities with or without licence rights belonging to the Chairman and members of the Board of Directors and the Credit Committee of the bank, the Chief Executive Officer, the Deputy Chief Executive Officers, the executives whose signatures are binding on the bank, the managers, their spouses, their children and their other relatives by blood and marriage, and all kinds of movable and immovable property, rights and claims obtained therefrom. In addition, the Fund may decide to monitor and recover the above-mentioned difference in accordance with the provisions of Articles 14 and 15 of Banking Act 4389.*
>
> *These provisions also apply to persons acting on behalf of the persons listed above or acquiring sums, property or rights in their name*".[96].

75. Law 5020 subsequently supplemented the powers conferred on the TMSF under Article 15 of Banking Law 4389[97]in particular by providing that the TMSF could take control of companies owned directly or indirectly by the shareholders of a bank under its management and exercise the rights of shareholders in such companies (with the exception of the right to receive dividends). Directors and members of the governing bodies

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96 **TMSF Exhibit No. 37**, Law No. 4969 of 31 July 2003, Provisional Article 2.

97 This law also incorporated the aforementioned provision of Law 4969 on asset freezes into Banking Law 4389, as an additional Article 1: see **TMSF Exhibit 45**, Law 5020 of 12 December 2003, Article 27.

The corporate officers appointed by the TMSF to these companies could then sell the companies' assets to pay the TMSF's debts:

> "In the *event that the Fund is the beneficiary of the recovery of its receivables and whether or not the persons concerned are debtors to the Fund, it is authorised to take over the corporate rights (excluding dividends relating to all and/or part of the shares they hold in these companies) of subsidiaries under the management and control of a bank whose shares are partially or wholly transferred to it, legal entity shareholders who directly or indirectly, alone or together, hold the management and control of this bank, companies whose natural person and legal entity shareholders directly or indirectly, alone or together, hold the management and control as well as the management and supervision. He is authorised to remove and/or appoint members of the Boards, by increasing and/or decreasing their number, whether or not they are appointed on the basis of preference shares, and regardless of the number of members of the Management Board, the Executive Chairmen and the Supervisory Board determined in the Articles of Association of the company concerned.*
>
> *After the members of the board of directors and supervisory board and the managers are appointed in these companies by the Fund, the directors, managers and members of the supervisory board, appointed by the Fund, of the companies whose management and supervision the Fund ensures and/or of the companies whose management and control it has taken over pursuant to this paragraph, as well as the company's employees such as the managing director, the deputy managing director and the manager authorised to represent and bind the company, appointed by the former, are authorised to sell shares and/or assets proportionate to these shares belonging to the natural or legal persons listed in this paragraph, to deduct the sums obtained from these sales from the Fund's receivables or to allocate them to the payment of public debts and/or the debts of these companies to the Social Security institution and other debts and to take decisions concerning these transactions, regardless of Article 324 of Turkish Commercial Code no. 6762*".[98].

76. The provisions of Laws 4389, 4969 and 5020 relating to the powers thus granted to the TMSF were then largely taken over, and developed where necessary, by Banking Law 5411, in particular in articles 132, 134 and 135 of this law [99].

b. Measures taken by the TMSF to recover debts arising from Banque Imar

77. After taking the necessary steps to reimburse Banque Imar's depositors for the misappropriated deposits, the TMSF undertook to recover the debts arising from these transactions.

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98 *Id.* at Article 20.

99 See **TMSF Exhibit 14**, Law 5411 of 19 October 2005, Articles 132, 134 and 135.

repayments, in accordance with its mission to recover public debts arising from the repayment of guaranteed deposits made with a bank in difficulty (Banque Imar in this case). By Decision no. 673 of 24 December 2003, the Fund's Board decided to take the necessary steps to recover the sums corresponding to the Misappropriated Deposits:

> "*The difference between the aggregate amount of savings deposits falling within the insurance framework, declared by the bank to the competent authorities pursuant to the Central Bank of Turkey Act No. 1211 and the Banking Act No. 4389 and the aggregate amount of savings deposits ascertained by the Savings Deposit Insurance Fund shall be subject to debt pursuit and shall be recovered taking into account the reports drawn up in this regard by sworn bank inspectors and the information, documents and figures provided by the General Management of T. İmar Bankası T.A.Ş and by the Presidency of the Fund Liquidation Department, in accordance with the provisions of Law no. 6183*"[100].

78. The TMSF then exercised its powers, provided for under Turkish law, with a view to obtaining recovery of the claims arising from the reimbursement of the depositors of Banque Imar. A brief review of the measures taken in respect of the Uzan Group is necessary at this stage, as the Uzan Estate is very confused about the course of events and omits to mention certain important contextual elements.

i. Payment orders

79. In accordance with the provisions of Law no. 6183 on public claims, the TMSF first sent notices to the natural and legal persons it had identified as debtors of its claims arising from the repayment of Misappropriated Deposits pursuant to the provisions of Banking Law no. 4389.[101].

80. In the absence of payments received from the persons notified, the TMSF decided to initiate compulsory enforcement measures and thus issued payment orders, in accordance with article 55 of Law no. 6183 on public debts[102].

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100 **TMSF Exhibit 46**, TMSF Board Decision 673 of 24 December 2003.

101 In particular, these notices were sent to all Uzan Group companies and to members of the Uzan Family, including Cem Cengiz and Murat Hakan Uzan (the Claimants in these proceedings), to Kemal Uzan (their father) and to Ayşegül Uzan (their sister) : see, for example, **Exhibit TMSF No. 47**, Letter of invitation to pay addressed to Cem Cengiz Uzan in January 2004; **Exhibit TMSF No. 48**, Letter of invitation to pay addressed to Murat Hakan Uzan on 26 January 2004; **Exhibit TMSF No. 49**, Letter of invitation to pay addressed to Kemal Uzan on 26 January 2004 and **Exhibit TMSF No. 50**, Letter of invitation to pay addressed to Aysegül Akay on 26 January 2004.

102 As with the Notices, the TMSF sent payment orders to all Uzan Group companies and to members of the Uzan Family, including Cem Cengiz and Murat Hakan Uzan (the Plaintiffs in these proceedings), to Kemal Uzan (their father) and to Ayşegül Uzan (their sister): see, for example, **TMSF Exhibit No. 51**, Payment Order

81. The Defendant points out that Messrs Cem, Murat and Kemal Uzan applied to the competent Turkish administrative courts for the cancellation of the notifications and payment orders sent by the TMSF. Their applications for cancellation were all rejected, the Turkish courts confirming that they were indeed debtors to the TMSF within the meaning of Banking Law no. 4389.[103].

ii. Asset freezes and takeovers of Uzan Group companies

82. The TMSF then took several measures to prevent the concealment of assets that could be used to recover public debts resulting from the repayment of misappropriated funds.

83. Initially, the TMSF sought and obtained from the Turkish criminal courts, in accordance with the provisions of provisional Article 2 of Law no. 4969 of 31 July 2003[104]orders freezing the assets of the shareholders and directors of Bank Imar (including Kemal, Cem, Murat and Ayşegül Uzan) and members of their families (including many other members of the Uzan Family), as well as the companies under their control (including the Uzan Group).

84. The TMSF noted, however, that after these orders to freeze the assets of individuals and companies in the context of the banking fraud orchestrated by the Uzan Family had been issued, the transfers and transfers of funds and assets continued, in breach of these orders. It was in this context that the TMSF decided to take control and management of the Uzan Group companies, in accordance with the powers granted to it by Article 15 of Banking Law no. 4389 (as amended by Law no. 5020).[105].

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addressed to Cem Cengiz Uzan on 5 April 2004; **Exhibit TMSF No 52**, Payment Order addressed to Murat Hakan Uzan on 31 May 2004; **Exhibit TMSF No 53**, Payment Order addressed to Kemal Uzan on 29 March 2004 and **Exhibit TMSF No 54**, Payment Order addressed to Aysegül Akay on 31 May 2004.

103 See **Exhibit TMSF No. 55**, Judgment No. 2006/2046 of the 4th Istanbul Administrative Court of 12 October 2006; **Exhibit TMSF No. 56**, Judgment No. 2007/7709 of the 13th Chamber of the Council of State of 28 April 2008; **Exhibit TMSF No. 57**, Judgment No. 2009/3071 of the 13th Chamber of the Council of State of 28 May 2009; **Exhibit TMSF No. 58**, Judgment No. 2007/1703 of the 2nd Istanbul Administrative Court of 25 May 2007; **Exhibit TMSF No. 59**, Judgment No. 2010/2740 of the 13th Chamber of the Council of State of 2 April 2010; **Exhibit TMSF No. 60**, Judgment No. 2011/2535 of the 13th Chamber of the Council of State of 30 May 2011; **Exhibit TMSF No. 61**, Judgment No. 2006/3043 of the 6th Istanbul Administrative Court of 20 December 2006; **Exhibit TMSF No. 62**, Judgment No. 2008/3886 of the 13th Chamber of the Council of State dated 24 April 2008; **Exhibit TMSF No. 63**, Judgment No. 2009/2778 of the 13th Chamber of the Council of State dated 9 March 2009; **Exhibit TMSF No. 64**, Judgment No. 2007/185 of the 3rd Istanbul Administrative Court dated 30 January 2007; **Exhibit TMSF No. 65**, Judgment No. 2006/3071 of the 6th Istanbul Administrative Court dated 20 December 2006; **TMSF Exhibit 66**, Judgment No. 2007/7710 of the 13th Chamber of the Council of State dated 23 November 2007; **TMSF Exhibit 67**, Judgment No. 2009/3412 of the 13th Chamber of the Council of State dated 25 March 2009 and **TMSF Exhibit 68**, Judgment No. 2006/3008 of the 6th Istanbul Administrative Court dated 20 December 2006.

104 See *supra*, ¶ 74.

105 See *supra*, ¶ 75.

85. In Decision No. 13 of 13 February 2004, the TMSF Board decided to take control and management of most of the companies in the Uzan Group and to replace the managers and members of the boards of directors of these companies[106]. In three decisions dated 9 March 2004, 22 June 2004 and 22 December 2004, the TMSF took control of several other Uzan Group companies[107].

86. The TMSF's decisions have been the subject of almost a hundred challenges before the Turkish administrative courts, which have rejected these challenges.[108].

iii. Disposal of assets of Uzan Group companies

87. The TMSF then sold the assets of certain Uzan Group companies, in accordance with the provisions of Article 15(7) of Banking Act No. 4389 (as amended by Act No. 5020), and subsequently Article 134 of Banking Act No. 5411.

88. As a reminder, Article 20 of Law no. 5020 provides in particular that the representatives appointed to the corporate bodies appointed by the Fund of "the *companies whose management and supervision the Fund ensures and/or the companies whose management and control it has taken over pursuant to this paragraph, as well as the employees of the company such as the managing director, the deputy managing director and the manager authorised to represent and bind the company, appointed by the former, <u>are authorised to sell shares and/or assets proportionate to these shares belonging to the natural persons or legal entities listed in this paragraph, to deduct the sums obtained from these sales from the Fund's receivables</u> or to allocate them to the payment of public debts and/or debts of these companies to the Social Security institution and other debts and to take decisions concerning these transactions, regardless of Article 324 of Turkish Commercial Code no. 6762*".[109]. This provision is repeated, in similar terms, in Article 134 of Banking Law no. 5411[110].

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[106] See **<u>TMSF Exhibit 69</u>**, TMSF Board Decision 13 of 13 February 2004.

[107] See **<u>TMSF Exhibit 70</u>**, TMSF Board Decision 51 of 9 March 2004; **<u>TMSF Exhibit 71</u>**, TMSF Board Decision 310 of 22 June 2004; **<u>TMSF Exhibit 72</u>**, TMSF Board Decision 638 of 22 December 2004.

[108] See, for example, **<u>Exhibit TMSF No. 73</u>**, Judgment No. 2008/1278 of the 6th Istanbul Administrative Court of 21 July 2008; **<u>Exhibit TMSF No. 74</u>**, Judgment No. 2006/1188 of the 3rd Istanbul Administrative Court of 31 May 2006; **<u>Exhibit TMSF No. 75</u>**, Judgment No. 2006/105 of the 5th Istanbul Administrative Court of 27 January 2006 and **<u>Exhibit TMSF No. 76</u>**, Judgment No. 2005/2631 of the 5th Istanbul Administrative Court of 16 December 2005.

[109] **<u>TMSF Exhibit 45</u>**, Law 5020 of 12 December 2003, Article 20 (emphasis a d d e d). See also **<u>TMSF Exhibit 18</u>**, Banking Act No. 4389 of 18 June 1999, Article 15(7).

[110] **<u>TMSF Exhibit 14</u>**, Banking Act 5411 of 19 October 2005, Articles 132, 134 and 135.

89. A number of preliminary observations are in order at this stage.

90. Firstly, as the Defendant pointed out in its first submissions, a mere reading of Article 15(7) of Banking Law no. 4389 and Article 134 of Banking Law no. 5411 (which the Plaintiffs conveniently omitted to cite in their summons) is sufficient to disprove the two claims on which the Plaintiffs chose to build the case they are defending in the present proceedings and which appeared in ¶ 38 of the summons[111] :

- On the one hand, contrary to what the Claimants maintain, the purpose of these provisions is not to grant the TMSF a simple status of "*manager"* which would allow it to assume the management of the companies (following the example of a judicial liquidator) on a purely conservatory basis; these provisions expressly provide that the TMSF (and its representatives) have the power to dispose of the assets of the companies over which they have taken control under the conditions provided for by law, with the aim of recovering the TMSF's public debts.
- On the other hand, neither the provisions of Banking Laws 4389 and 5411, nor those of Law 6183 on public debts (which contains no special provision relating to TMSF debts) make it a condition of the proposed asset transfers that the company or companies in question must have "*committed an unlawful act*".

91. The TMSF points out that in their submissions in response to the incident submitted on 21 November 2023, the Uzan Estate purely and simply deleted the two claims appearing in the ¶ 38 of the summons, without making the slightest comment about Article 15(7) of Banking Act No. 4389 and Article 134 of Banking Act No. 5411. This confirms, if need be, the manifestly unfounded nature of these claims[112].

92. Secondly, the Respondent notes that the Uzan Consorts maintain their view that the validity of the transfers of assets of the Uzan Group companies would be subject to the demonstration that the company or companies in question had "*committed an unlawful act*", which, however, they formulate in substantially different terms in their final pleadings[113]. The Plaintiffs do not cite any legislative provision in support of this claim, and make the following points

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111 See, e.g., **Plaintiffs' Summons of July 13, 2021**, ¶ 38.

112 In this regard, a comparison should be made between the **Claimants' Summons of 13 July 2021**, ¶¶ 36-39, and the **Claimants' Submissions in response to the incident of 21 November 2023**, ¶¶ 59-61, noting the deletion in the Submissions of the passage corresponding to ¶ 38 of the Summons.

113 See, for example, **Plaintiffs' Reply Brief on Incident of 21 November 2023**, ¶ 67.

reference to decisions of Turkish administrative courts without the slightest relevance to the facts of the case[114].

93. In support of their contention, the Applicants also quote observations made by the Turkish Government in a case before the European Court of Human Rights, taking out of context three passages from the Government's submission[115]. However, the passages cited by the Applicants do not relate to the conditions under which the TMSF is entitled to exercise the prerogatives set out in Article 15(7) of Banking Law no. 4389 and Article 134 of Banking Law no. 5411 (and therefore to the question of the legality of the TMSF's acts under Turkish law), but on a different issue, relating to the proportionality of the measures taken by the TMSF in the case before the Court (which was defended by the Turkish Government) [116].

94. Having made these preliminary observations, the Respondent will briefly outline the asset disposals made by TMSF between 2004 and 2008, pursuant to the express provisions of the applicable Turkish banking laws.

95. The TMSF has the option of selling the assets of companies under its control, either separately or in batches (in order to maximise their sale price), the batches in question being designated by a term that could be translated into French as "*ensemble commercial et économique*") [117]. In the case of Uzan Group companies, the Fund has most often disposed of "commercial and economic packages" (often including the assets of several companies) [118].

96. The sales of each of the "commercial and economic complexes" were then organised following a procedure that included (*i)* a financial valuation of these assets by independent financial experts, (*ii*) a public invitation to tender for these assets, followed by an auction procedure, and (*iii*) a review of the outcome of the invitation to tender.

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[114] See **Plaintiffs' Exhibit 14**, Decisions of Turkish Courts Regarding Measures Against Mr. Antonio Luna Betancourt, Kepez Company and ÇEAŞ Company. These decisions do not concern measures taken against any of the Uzan Group companies at issue in these proceedings and do not establish that the measures taken by the TMSF against these companies - which are referred to below and the legality of which has been confirmed by the Turkish administrative courts - would not comply with Turkish law.

[115] See **Applicants' Exhibit 11**, Observations of the Government of the Republic of Turkey on the admissibility and merits of application no. 54208/11 before the European Court of Human Rights.

[116] See *id.* at ¶¶ 177-193.

[117] **TMSF Exhibit 14**, Banking Act 5411 of 19 October 2005, Article 134.

[118] See **TMSF Exhibit 1**, Appendix 1, Summary table of asset disposals by TMSF of Uzan Group companies. The remainder of the disposals concerned property or groups of properties: see *id.*

(where applicable) by the regulatory authorities of the various economic sectors concerned[119]. It is in this context that the decisions taken by the TMSF concerning the sale of the assets of the Uzan Group companies were published in the Official Gazette of the Republic of Turkey, indicating in particular the assets that were included (these assets often coming from several different companies), the date of the auction and the deadline for the submission of bids by potential purchasers.[120].

97. In a further decision, the TMSF approved the transfer of the "commercial and economic package" in question to the successful bidder.[121]. The results of the auction (and the allocation of the price paid by the successful bidder) were then published in the Official Journal[122] .

98. For an overview of the sales of assets of the Uzan Group companies organised by the TMSF, the Respondent invites the Court to consult the attached summary table which lists all the auctions organised by the TMSF, as well as the results of these sales published in the Official Gazette of the Republic of Turkey.[123].

99. The TMSF received a total of approximately USD 6 billion from these disposals, including USD 4.55 billion from the sale of the "commercial and economic package" comprising the Telsim assets. The TMSF then used the proceeds of these disposals to settle the debts of the company(ies) concerned (including debts to certain suppliers and tax and social security debts), with the public debts held by the TMSF as a result of its intervention to repay the depositors of Banque Imar representing only part of these debts.[124].

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119 See **TMSF Exhibit 14**, Banking Act 5411 of 19 October 2005, Article 134.

120 See, for example, **TMSF Exhibit 77**, Announcement of the sale of the "commercial and economic package" of Telsim's assets published in the Official Gazette of the Republic of Türkiye on 25 August 2005.

121 See, for example, **TMSF Exhibit 78**, TMSF Board Decision 243 of 24 May 2006 validating the award of the "commercial and economic package" of Telsim's assets to Vodafone Telekomünikasyon A.Ş.

122 See, by way of example, **TMSF Exhibit 79**, Statement of collocation relating to the "commercial and economic package" of Telsim's assets published in the Official Gazette of the Republic of Türkiye on 27 April 2007.

123 See **TMSF Exhibit 1**, Appendix 1, Summary table of asset disposals by TMSF of Uzan Group companies.

124 The Defendants also point out that, with respect to the Telsim assets, slightly more than a quarter of the proceeds of the sale (approximately USD 1.3 billion) were paid to Motorola and Nokia, pursuant to assignment agreements entered into with those companies: see **Exhibit TMSF No. 79**, Collocation statement relating to the "commercial and economic package" of Telsim's assets published in the Official Gazette of the Republic of Turkey on 27 April 2007. In their statement of claim, the Claimants devote lengthy paragraphs to the agreement with Motorola (without mentioning the agreement with Nokia). TMSF firmly disputes the Claimants' fanciful claims.

100. The decisions taken by the TMSF in the context of each of these asset disposals were challenged before the Turkish administrative courts, all of which were dismissed.[125].

* * *

101. It is thus clear from the foregoing that, contrary to what the Uzan Consorts maintain - who are trying to have the Court of First Instance believe that the measures taken by the TMSF with a view to recovering its debts would "constitute *a misappropriation of assets committed in a brutal and massive manner [...*] *outside any legal framework*" - the TMSF did no more than implement the prerogatives granted to it by Turkish law for the purpose of fulfilling a mission in the public interest. This, moreover, is confirmed by the observations made by Ms Özge Aksoylu, Associate Professor at Galatasaray University, specialising in Turkish administrative law, who was consulted by the TMSF for the purposes of the present case[126] :

> *"This activity, carried out with the aim of achieving the public interest rather than the private interests of the companies, is carried out from start to finish (taking over the management and control of the companies; selling the company's assets by invitation to tender, in accordance with the legal procedures and benefiting from various privileges; recovering TMSF's debts and other public debts from the income obtained from the forced sales), using prerogatives of public power, to which no legal entity under private law can lay claim under the Constitution*".[127].

102. The Respondent also pointed out (and this was not disputed by the Claimants in their submissions in response to the incident) that the legality of the measures taken by the TMSF with a view to recovering the debts arising in connection with the repayment of the Misappropriated Deposits had been

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which have no basis in fact. The TMSF simply notes, at this stage, that the Claimants have not put forward any serious evidence that could support these serious accusations.

125 See, by way of example, **<u>TMSF Exhibit No. 1</u>**, Appendix No. 1, Summary table of asset disposals of Uzan Group companies carried out by the TMSF, column relating to "Challenge proceedings before Turkish administrative courts". The Defendant points out that the decisions referred to in this Appendix represent only a small part of all the decisions handed down by the Turkish administrative courts concerning asset disposals. In view of the large number of disposals and the numerous proceedings before the Turkish administrative courts in relation to these disposals - most of which have been heard by each level of court - the Respondent does not intend to make an exhaustive presentation of these proceedings (and related decisions) at this stage, as such a presentation is not necessary in view of the numerous inaccuracies and approximations made by the Claimants in their pleadings.

126 See *infra*, ¶¶ 134 and 197.

127 **<u>TMSF Exhibit 245</u>**, Legal opinion of Ms Özge Aksoylu of 18 April 2024, p. 14.

the subject of numerous appeals before the Turkish administrative courts, which have exclusive jurisdiction over such disputes[128].

103. In these circumstances, the Claimants clearly wrongly claim that some of the acts or decisions taken by the TMSF fall within the scope of private law relationships. More specifically, the Uzan Estate cannot seriously maintain that the TMSF took decisions allegedly in the capacity of "*TMSF-manager*" and/or "*TMSF-shareholder*", when there is no provision in the law to establish the existence of these alleged capacities or the consequences that the Uzan Estate claims to draw from them (i.e. that, when it acts in these alleged capacities, the TMSF acts as a person governed by private law).[129].

D. The referral to the Paris Court of First Instance and the present incident

104. By writ of summons dated 13 July 2021, the Plaintiffs sued TMSF and the co-defendants before the Paris Court of First Instance, seeking compensation for alleged financial losses they had suffered as a result of an alleged "*fraudulent appropriation*" of the assets of companies of which they were the "*ultimate economic beneficiaries*".

105. By cross-appeal of 12 September 2022, the TMSF raised a number of procedural objections and grounds for dismissal seeking a declaration that the Paris Court had no jurisdiction and that the Plaintiffs' claims were inadmissible. To this end, the Defendant first challenged the international jurisdiction of the French courts (and, in so doing, of the Paris Court). The Defendant also raised a number of grounds for dismissal, namely (*i*) the immunity of the TMSF from jurisdiction, (*ii)* the Plaintiffs' lack of interest and standing, and (*iii*) the inadmissibility of the action in that it seeks to circumvent the res judicata effect of judgments handed down by foreign administrative courts,
(*iv) the* inadmissibility of the action in that it stems from an abuse of the right to institute legal proceedings and (*v) the* inadmissibility of the action brought by the Uzan Estate on the grounds that it is time-barred.

106. Motorola also filed incidental pleadings on 12 September 2022, as did all the other co-defendants between December 2022 and April 2023.

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[128] See in particular **<u>TMSF Exhibit 18</u>**, Banking Act 4389 of 18 June 1999, Article 15(7); **<u>TMSF Exhibit 14</u>**, Law no. 5411 of 19 October 2005, article 134; see also *infra*, ¶¶ 81, 86, 100.

[129] Moreover, the Uzan Partners do not concretely identify the decisions allegedly taken by "*TMSF-manager*" and "*TMSF-shareholder*", submitting, if applicable, the documents containing or reflecting these decisions. In the absence of concrete allegations (and of written evidence in support of such allegations), the Defendant is not in a position (*i*) to verify that the decisions that the Uzan Consorts intend to challenge are indeed decisions taken by TMSF (and not, for example, by the corporate bodies of the Uzan Group companies) and (*ii*) to discuss in a concrete manner the classification of such decisions as acts of civil law or acts of administrative law. TMSF reserves all its rights with regard to the particularly unfair procedural conduct of the Claimants.

107. By reply submissions dated 21 November 2023, the Uzan Estate sought dismissal of the various procedural issues raised by the Defendants.[130].

E. Preliminary observations on the Plaintiffs' action

108. As will be shown in the second part of these pleadings, the claims of the Consorts Uzan must be dismissed on the grounds that the Paris Court of First Instance does not have jurisdiction to hear this action and, where applicable, that these claims are inadmissible.

109. Before setting out these numerous grounds for dismissal, the Defendant wishes to make a few preliminary observations which are sufficient to establish the manifest lack of seriousness of the Plaintiffs' claims, as well as the abusive conduct adopted in the present proceedings.

110. Firstly, Mr Cem Cengiz Uzan and Mr Murat Hakan Uzan claim to submit their claims to the jurisdiction of the French courts on the basis of their alleged "domicile" in France since 2009 and 2014 respectively [131]. Thus, following their theory that the French courts would have jurisdiction to hear the claims for compensation raised in the present proceedings on the basis of their alleged domicile in France, the Consorts Uzan could have brought those claims as early as 2009 (in the case of Mr Cem Cengiz Uzan) and 2014 (in the case of Mr Murat Hakan Uzan).

111. However, the Consorts Uzan did not bring the present proceedings until many years after the dates on which they claim to have arrived in France: nearly 12 years in the case of Cem Cengiz Uzan and nearly 7 years in the case of Murat Hakan Uzan. Such an apparent lack of responsiveness is surprising, to say the least, on the part of "*two talented businessmen*" who claim to have suffered an extremely serious loss.[132] who claim to have suffered extremely significant losses, which they now put at 68 billion dollars.

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[130] The Plaintiffs filed a first version of their response to the incident on September 18, 2023, in which they nevertheless omitted to cite a certain number of exhibits, which they communicated two weeks later, on October 4, 2023. On 21 November 2023, at the request of the TMSF and the co-defendants and at the invitation of the Pre-Trial Judge, the Consorts Uzan then submitted new submissions in response to the incident mentioning the documents communicated after the notification of their submissions in response to the incident on 18 September 2023.

[131] As the Defendant explains above, the Plaintiffs confuse the notions of "domicile" and "place of residence" and do not demonstrate that they would be domiciled in France: see *infra*, ¶¶ 211-212.

[132] **Plaintiffs' Summons of July 13, 2021**, ¶ 1. See also **Plaintiffs' Submission on the Merits No. 1 of 21 November 2023**, ¶ 1; **Plaintiffs' Reply Submission on Incident of 21 November 2023**, ¶ 9.

112. The Respondent points out that the Uzan Estate did not provide the slightest explanation in this regard in their new submissions filed on 21 November 2023.

113. Secondly, the Uzan Consorts' claims for compensation amount to an extravagant sum of nearly 68 billion US dollars, without submitting any assessment of the damage in support of these claims. As evidence of the alleged damage they have suffered, they submit a document that is merely a "summary" of an alleged "expert report" prepared by a Turkish chartered accountant, Mr Selahettin Bal [133]. Quite apart from the manifest lack of independence and impartiality of this so-called "expert" - in reality a former employee and shareholder in certain Uzan Group companies - the alleged
This "expert report" is simply incomprehensible.

114. In fact, after a description of his work that was abstract, to say the least[134] , Mr Bal indicated that his report would be a "*summary of* [his*] conclusions*", consisting of a "*summary of the amount*" and a "*summary of the appended companies*".[135]. Mr Bal then simply listed the figures, presented in several tables, without any explanation of what had been "valued" or the "valuation" method used, without providing the slightest detail of the calculations he had made, and without providing a copy of the documents and information used to prepare the report.

115. For example, while the Consorts Uzan claim that the alleged loss they have suffered corresponds to the portion of the value of certain assets of the Uzan Group of which they are the "*ultimate economic beneficiaries*", as well as the "*dividends already generated by these activities and assets for the last 19 years*", the alleged "report" by Mr Bal merely indicates the amount of the alleged financial loss for each company in the group.[136]Mr Bal's so-called "report" merely indicates the amount of the alleged financial loss for each of the companies in the group. It is not clear whether this amount corresponds to the value of the assets, the value of the dividends allegedly generated, or the sum of these two values.

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[133] See **Exhibit 18**, Report by Mr Selahettin Bal of 28 June 2021 (summary)**.**

[134] Mr Bal states that his work "*included examining the raw data underlying the documents used by any accountants* [sic]*, such as share registers, percentage holdings in shareholder registers, minutes of general meetings, tables and graphs, financial statements and public statements, annual reports*": see **Plaintiffs' Exhibit 18**, Report of Mr Selahettin Bal of 28 June 2021 (summary), p. 2, point (V).

[135] **Applicants' Exhibit 18**, Report by Mr Selahettin Bal of 28 June 2021 (summary), p. 3, points (VII) and (VIII).

[136] **Plaintiffs' Summons of July 13, 2021**, ¶ 124.

116. The Respondent notes that, on this subject too, the Uzan Estate provided no explanation in their new submissions filed on 21 November 2023.

117. The Uzan Estate cannot reasonably claim that it would be able to obtain any compensation whatsoever (let alone an amount representing approximately 8% of Turkey's GDP in 2021) on the basis of such an "assessment".

118. Thirdly, the introduction of the present proceedings was an opportunity for the Uzan family to launch a major media campaign. The institution of proceedings was accompanied by numerous publications in the press[137] and the creation of a website dedicated to the "*Uzan case*" before the Court of Appeal, presenting the proceedings as "*the trial of the century*" (www.uzancasetruejustice.com):

119. As the Defendant pointed out in its initial submissions of 12 September 2022, the legal action brought by Consorts Uzan before the Tribunal de céans appears to be motivated more by a desire to make a publicity stunt than by a genuine desire to obtain compensation for alleged "harm" suffered as a result of measures taken by the TMSF, most of which were taken some fifteen years ago.

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137 See **TMSF Exhibit 80**, Extract from the "Uzan True Justice Case" website. The conduct of the present proceedings is also accompanied by the publication of articles in certain Turkish media with the aim of creating a sensation, presenting the conduct of the present proceedings in a favourable light for the Uzan Consorts: see, e.g., **TMSF Exhibit No. 81**, Euronews (Turkey), "In the Uzan $69 billion compensation case, the court asked TMSF to defend itself", 17 January 2022 (stating, for example, that "[*a]ccording to a source close to the case at the Paris Court of Appeal* [sic], *the judges* [reportedly] *asked the defendants to defend themselves by saying: give your answers to the Uzan brothers' summons*"); **TMSF Exhibit 82**, Euronews (Turkey), "Second hearing in the Cem Uzan case: defendants who were unable to defend themselves appeal", 26 May 2022 and **TMSF Exhibit 83**, Odatv.com, "New development in the Uzan case: Unusual case", 17 January 2022.

120. Since then, the Plaintiffs have continued their communication campaign, using new methods to manipulate these proceedings.

121. For example, the Claimants continue to update the www.uzancasetruejustice.com website, publishing biased reports of the pre-trial hearings (in the "*Case Updates"* section) and downloading some of the pleadings filed by the parties to the proceedings (in the "*Case Archive"* section) [138]. They also state - no doubt in an attempt to lend some credence to their extravagant claims - that the chances of success of their action have *been* "*independently assessed by a leading French law firm*".[139]. In support of this claim, they published, in the form of a visual extract, a one-page attestation from the law firm Olivier Pardo Associés (which provided no information as to how the alleged "assessment" had been prepared[140]), according to which the Claimants' chances of success would be 80% at the jurisdiction and admissibility stage and 60-70% on the merits:

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[138] The Plaintiffs did not upload to the website in question all of the pleadings filed by the co-Defendants, nor their latest sets of pleadings, filed in September 2023 and November 2023.

[139] See **TMSF Exhibit 202**, "The Case", taken from the website www.uzancasetruejustice.com, accessed on 15 April 2024.

[140] The Defendant notes that the website set up by the Plaintiffs and the one-page certificate reproduced above do not indicate the documents that were allegedly provided to Olivier Pardo Associés by the Plaintiffs' counsel in order to carry out this alleged "assessment" and do not provide any information regarding the content of the alleged "analysis" that would have made it possible to determine the Plaintiffs' chances of success. It should also be noted that, according to this certificate, the alleged "evaluation" of the Plaintiffs' chances of success would have been carried out in June 2022, i.e. before the filing of the pleadings of TMSF and the other co-Defendants. Consorts Uzan do not indicate on their website whether they asked Olivier Pardo Associés to update the so-called "assessment" to take into account the Defendants' objections of lack of jurisdiction and inadmissibility (as well as the new evidence submitted to the debate).

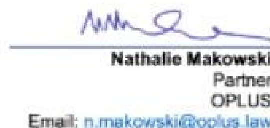
Murat UZAN & Cem UZAN v. TMSF, Motorola, Vodafone & All

We have conducted an analysis of the likelihood of success of the dispute on the basis of documents made available by the Claimants' counsel before the Tribunal judiciaire including the summons and accompanying exhibits, legal opinions provided by Turkish and French professors, as well as publicly available information.

Based on the above, we estimate the likelihood of success of the Claimants' claims as follows:

- ✓ Regarding the jurisdiction of the Tribunal judiciaire of Paris (France) to hear the claims of the Uzan Brothers against the Defendants and the admissibility of the claims, we estimate the likelihood of success to be over **80 %**.
- ✓ Regarding Messrs. Uzan's claims against TMSF, we estimate the likelihood of success to be over **70 %**.
- ✓ Regarding Messrs. Uzan's claims against Motorola, we estimate the likelihood of success to be over **70 %**.
- ✓ Regarding Messrs. Uzan's claims against Vodafone we estimate the likelihood of success to be over **70 %**
- ✓ Regarding Messrs. Uzan's claims against the other Defendants, we estimate the likelihood of success to be over **60 %**.

DISCLAIMER
The recipient hereby acknowledges that the assessment of the likelihood of success was conducted on the basis of documents made available by the claimants' counsel, expert legal opinion and publicly available information. It was last modified on 17 June 2022 and could be amended subject to new circumstances and/or additional documents not previously submitted. Nothing in the information provided concerning the assessment of the likelihood of success shall be construed as creating any relationship between OPLUS and the recipient. OPLUS does not assume any liability to any recipient, on any ground whatsoever, in relation with the assessment of the likelihood of success of the dispute. The recipient acknowledges and agrees not to rely on our assessment in reaching their purchase decision and waive any right of recourse against OPLUS.



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122. In 2022, the Claimants also launched a second website (www.gpwin.io), on which they offered the public the opportunity to purchase what they described as non-fungible *tokens* ("NFTs"). [141]. As can be seen from the content of the site

[141] At the Defendant's request, the entire content of the website in question was the subject of a bailiff's report drawn up by Maître Aymeric Mazari of De Lege Lata on 6 October 2022. See **Exhibit TMSF No. 203**, Minutes of the report by Maître Aymeric Mazari relating to the content of a website https://www.gpwin.io, drawn up on 26 October 2022.

www.gpwin.io, and as set out in detail in a presentation document which was available on this site, the Uzan Consorts were offering for purchase 3.38 million "*Gross Proceeds NFTs*" or "GPNFTs", each of these GPNFTs purporting to confer "a direct, contractual right to [a fraction of] the gross proceeds of the 'Winterfell' case [the present proceedings]".[142]each of these GPNFTs was supposed to confer "*a **direct, <u>contractual</u> right** to* [a fraction of] *the gross proceeds of the 'Winterfell' case* [the present proceedings]".[143]. The Defendant reproduces below an extract from the presentation document in question (contained in Annex 7 to the bailiff's report drawn up at the Defendant's request):

> " - *GPNFT Winterfell (GPWIN) is the world's first crude oil NFT.*
>
> • *Raw product NFTs make it possible to represent and exchange rights to the raw product of a peer-to-peer dispute on a blockchain in the form of NFTs.*
>
> • *Each GPWIN represents a direct and fully transparent right to a share of the gross proceeds of the Winterfell business.*
>
> • *The 'Winterfell' case is a landmark action brought before the court in Paris, France. The plaintiffs are seeking damages for the fraudulent seizure of assets. The amount claimed is no less than 69 billion dollars, and is expected to increase by 3.5 billion dollars a year until judgement due to the accumulation of interest and ongoing losses.*
>
> • *The 'Winterfell' case has been independently assessed by a leading French law firm, which estimates that the main claims have a more than 70% chance of success.*
>
> • *The gross proceeds of the litigation will be distributed to GPWIN's owners through a combination of escrow agreements, smart contracts and other secure processes.*
>
> • *GPNFTs can be traded peer-to-peer on the DANHA marketplace.*
>
> • *Minting will take place until 31 January 2023, at which time, if there are any unminted GPWINs left, they will be burnt and the collection will be limited to only those GPWIN NFTs minted up to that date*".[144].

123. It is clear from the foregoing that the Uzan Consorts sought to derive immediate financial benefit from the pending proceedings by offering to sell (in the form of a product under the

[142] See, for example, **<u>Exhibit TMSF No. 203</u>**, Report by Maître Aymeric Mazari on the content of a website https://www.gpwin.io, drawn up on 26 October 2022, pp. 6, 12-13 and Appendix 8 (file entitled "Short Deck GPWIN (EN)").

[143] **<u>TMSF Exhibit 203</u>**, Report by Maître Aymeric Mazari on the content of a website https://www.gpwin.io, drawn up on 26 October 2022, Appendix 7 (file entitled "Winterfell NFT WP"), p. 18 (underlined and in bold in the original).

[144] *Idem*, p. 4.

legal indeterminacy) part of the alleged gains to which they are entitled at the end of these proceedings.

124. At this stage, it is not possible to determine the exact number of GPNFTs that Consorts Uzan have managed to sell. The www.gpwin.io website is no longer accessible (an automatic message indicating that the site has "expired") and the https://www.uzancasetruejustice.com/ website does not provide any information on these GPNFTs.

125. The Defendant strongly denounces the conduct of the Plaintiffs, which constitutes a new attempt to grossly manipulate the French justice system, and reserves all its rights in this regard.

126. This is not the first time the Uzan family has attempted to manipulate a judicial process. By way of example, the Uzan Family has on numerous occasions attempted to act through mere nominees, either to bring claims for compensation or to try to oppose the seizure of some of its "assets", which has been noted (and, in some cases, sanctioned as an abuse of process) by the courts or arbitral tribunals called upon to rule on the disputes in question. A brief summary of some of these cases is provided in **Appendix 2**, submitted with these incidental submissions[145] .

127. Like the many other courts that have not allowed themselves to be misled, the Tribunal de céans cannot accept this new attempt by the Uzan Family to manipulate justice, the latest (but in all likelihood not the last) in a very long series. As the Defendant will now explain, the Court can only reject the Uzan Family's extravagant claims - which do not fall within the jurisdiction of the Court and are in any event inadmissible - and sanction the Plaintiffs' conduct, which constitutes an abuse of rights.

128. For the reasons set out below, the Tribunal judiciaire de Paris is asked to declare that it does not have jurisdiction to hear the action brought by Consorts Uzan, and at the very least, to declare the action inadmissible.

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145 See **TMSF Exhibit 2**, Appendix 2, Some examples of the Uzan family's attempts to manipulate the justice system.

II. DISCUSSION

130. As a preliminary point, the Paris Court of First Instance does not have jurisdiction to hear the action brought by Consorts Uzan (**A)**, whose claims also come up against the immunity from jurisdiction of the Turkish State (**B**).

131. In any event, the claims of Consorts Uzan are inadmissible (**C**).

A. As a preliminary point, on the lack of jurisdiction of the Paris Court of First Instance

132. It should be emphasised, as a preliminary point, that the action brought by the Consorts Uzan in the present proceedings concerns relationships under (public) law that have no connection with France or the French legal system. It is in fact common ground that the alleged "*acts*" challenged concern recovery measures taken in Turkey by a Turkish public authority against companies incorporated under Turkish law, in application of Turkish law, and which led, in certain cases, to the sale of assets in Turkey, under the terms of auctions held in Turkey.[146].

133. Despite the absence of the slightest element of connection with France, the Claimants argued in their writ that the French courts would have jurisdiction to hear their claims, on the basis of Article 46 of the Code of Civil Procedure and, in the alternative, by virtue of the "*combined application*" of Article 14 of the Civil Code and Article 6(2) of Regulation No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "Brussels I bis Regulation")[147].

134. However, the entirety of Consorts Uzan's argument is based on the manifestly erroneous claim that their action concerns "*legal relationships governed by private law*".[148]. And yet,

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[146] See *supra*, ¶¶ 69-100.

[147] The Defendant points out that in their submissions in response to the incident submitted to the Pre-Trial Judge, the Consorts Uzan did not repeat the developments in their writ of summons in which they argued that the French courts had international jurisdiction to hear their action on the basis of Article 46 of the Code of Civil Procedure. The Consorts Uzan thus abandoned this contention before the Pre-Trial Judge, who therefore did not hear any plea by the Consorts Uzan in response to the Defendant's contention that Article 46 of the Code of Civil Procedure could not provide a basis for the jurisdiction of the French courts in the present case in the absence of a tort or damage suffered in France. The same is true of the Consorts Uzan's initial submissions in their writ of summons relating to Article 42 of the Code of Civil Procedure. The only claim that remains before the Juge de la mise en état by the Consorts Uzan is that the French courts have international jurisdiction by virtue of *the* "*combined application*" of Article 14 of the Civil Code and Article 6(2) of the Brussels I bis Regulation. For the reasons set out below, this contention is unfounded in law and in fact. See *infra*, ¶¶ 184-216.

[148] **Plaintiffs' Summons of July 13, 2021**, ¶ 144 ("*In this case, as has been shown, TMSF is being sued and prosecuted in these proceedings for its actions as manager of the Companies, i.e., in the context of* ***legal relationships governed by private law*****")**. See also **Submissions on the merits no. 1 of the**

the alleged "*actions*" (described in an extremely vague manner by the Plaintiffs) are in fact measures taken by the Defendant to recover public debts, pursuant to the powers granted to the TMSF by Turkish legislation, in particular several Turkish banking laws[149]. As Ms Özge Aksoylu pointed out in her legal opinion of 18 April 2024, these acts of the Defendant, taken on the basis of the aforementioned provisions, are acts performed in the interest of a public service mission by virtue of prerogatives of public authority; they are therefore administrative acts.[150].

135. The Plaintiffs' contention that their claims concerned "*private law legal relationships*" was invented for the purposes of the case in an attempt to artificially create a basis for the international jurisdiction of the French judge.

136. As explained in the following sections, the action brought by the Uzan family in the present proceedings falls outside the jurisdiction of the Paris Court, since the French courts do not have jurisdiction to interfere in the operation of the public services of the Turkish State (**1**) and, in any event, the Uzan family does not justify any ground of international jurisdiction that could justify the jurisdiction of the Paris Court in the present case (**2**).

1. On the lack of jurisdiction of the French courts to interfere in the operation of the public services of the Turkish State

137. It is a principle of public international law that a State may not infringe the sovereignty of other States by interfering in the operation of their public services or by exercising control over their activities.[151].

Plaintiffs November 21, 2023, ¶ 11 ("*As a preliminary matter, it should be noted that while TMSF is a legal person under Turkish public law, it is sued in this case for its seriously unlawful and fraudulent conduct committed* ***in the course of activities falling within the scope of private law legal relationships****, as a manager of companies and as a representative of the shareholders of companies under private commercial law, as set forth below*"), ¶¶ 175 and 184; **Plaintiffs' November 21, 2023 reply brief on incident**, ¶ 218 ("*In the present case, as has been shown, TMSF is being sued and prosecuted in these proceedings for its actions as manager of the Companies and as a person entitled to exercise shareholders' rights with the exception of the right to dividends, i.e., in* ***the context of legal relationships governed by private law (company law)***"),
¶¶ 19, 340, 357 and 367.

149 See *supra,* ¶¶ 69-100.

150 See **TMSF Exhibit 245**, Legal advice from Ms Özge Aksoylu dated 18 April 2024.

151 See **TMSF Exhibit No. 84**, P. Mayer, V. Heuzé, B. Remy, *Droit international privé*, LGDJ, 12th edition, ¶ 329. See also **TMSF Exhibit 85**, Paris, 17 October 1990, *Soc. La Martiniquaise v. Soc. Companhia Geral da Agricultura das Vinhas do alto Douro*, excerpt from Rev. Crit. DIP 1991 p.400 ("*But whereas* [Article 14 of the Civil Code] *is general in scope, it cannot however be an obstacle to the principle of private international law according to which a State may not infringe the sovereignty of other States by interfering in the operation of their public services or by exercising control over the activity of the latter; - Whereas the registration of a trade mark is an act of concession emanating from a public service which may operate only in accordance with the laws which*

138. By virtue of this principle, the French courts do not have jurisdiction where the action brought directly challenges a foreign administrative act.[152]in particular where the action seeks to annul a public act issued by a foreign administrative authority or to enjoin a foreign administrative authority to take such an act[153]This has been pointed out by eminent authors:

> *"A French court is never competent to order a foreign civil registrar to perform an act; it cannot annul a foreign judgment, administrative decision or public act; it cannot order a foreign social security body to register an insured person; it has no power to order the release of an attachment ordered by a foreign body, etc. This incompetence derives from an obvious rule of public international law: a State must not interfere in the operation of the public services of another State. This lack of jurisdiction derives from an obvious rule of public international law: a State must not interfere in the operation of the public services of another State* .[154].

139. For these reasons, the French courts do not have jurisdiction to rule on the validity of a claim by a foreign State or a foreign public authority based on the public law provisions of the State in question, or of an administrative act adopted by a public authority of that State, as such a challenge falls within the exclusive jurisdiction of the courts of that State [155].

That it follows that disputes arising from this operation in connection with the grant of a trade mark necessarily fell within the jurisdiction of the courts of the country of filing, ensuring the maintenance of domestic public policy, which takes precedence in this case over all other considerations"); **TMSF Exhibit No. 86**, Tribunal de grande instance de Paris, 13 May 2016, RG No. 15/03149 ("*[N]o text gives French courts jurisdiction to rule on an application for invalidity of an industrial property title issued by a foreign authority, as such an examination runs counter to the principle that one State cannot exercise control over the activity of another sovereign State*") and **TMSF Exhibit No. 204**, B. Audit, L. d'Avout, *Droit international privé,* Traité, LGDJ, Lextenso, 9th edition, 2022, ¶ 443. This is not disputed by Consorts Uzan. See **Plaintiffs' Reply Submissions of 21 November 2023**, ¶ 259.

152 See **TMSF no. 205**, Y. Lequette, note in Cass. 1ère civ. 20 October 1981, *Vannoni v. Rigal*, *Rev. crit. DIP*, 1982, pp. 720-724, spec. p. 723 ("*The exclusion of Articles 14 and 15 of the Civil Code is certain when the action directly challenges a foreign administrative act [...] Respect for the sovereignty of the foreign State requires them not to exercise control over such acts*" (emphasis added)).

153 *Id.*

154 **TMSF Exhibit 84**, P. Mayer, V. Heuzé, B. Remy, *Droit international privé*, LGDJ, 12th edition, ¶ 329.

155 See, for example, **Exhibit TMSF No. 87**, Metz, 7 February 2017, RG No. 15/01586 ("*Whereas the contested enforcement order was issued in Germany by a German tax authority on the basis of German tax law to recover a claim by the German State against Mr A; whereas any challenge to the legality of the claim and the German enforcement order is a matter for the courts of the requesting Member State*") ; **Exhibit TMSF no. 88**, Nancy, 6 February 2017, RG no. 15/02482 ("*Whereas it is not for the court to rule on the legality of an administrative act, a fortiori if it is an act emanating from a foreign authority, that Sarl Transports Schiocchet Excursions, which, moreover, brought an action before the Luxembourg administrative court against the rider of 17 June 2007, and all of whose arguments were rejected by that court, cannot usefully ask the Enforcement Division to rule again on the validity of the said authorisation*" (emphasis added). See also **TMSF Exhibit No. 89**, Nancy, November 8, 2017, RG No. 15/03361 ("*The Commercial Court correctly held that it was not for it to rule on the legality of an individual administrative act emanating from a foreign authority, a fortiori when the validity of that act had been recognised by the foreign court with jurisdiction to rule on it, in this case the Luxembourg Administrative Court of Appeal, to which the matter had been referred by Transports Schiocchet Excursions*"); **TMSF Exhibit No. 90**, Douai,

140. In the same way, the French courts do not have jurisdiction to hear (and/or are not empowered to hear) claims by a foreign State or a foreign public body based on provisions of public law, insofar as, from the point of view of French law, their subject-matter relates to the exercise of public authority.[156].

141. If the French courts, by way of exception to this principle, may be called upon to rule on the validity of a public act issued by a foreign authority in the exercise of a public service mission, it is only in disputes involving private law relationships and for the sole purpose of not giving effect to such an act in France e[157].

142. It follows from the foregoing that the French courts, just as they do not have jurisdiction to annul an act taken by a foreign administrative authority or to enjoin such an authority to take an act, do not have jurisdiction to hear an action for liability brought against a foreign administrative authority in respect of an act taken by that authority on the basis of foreign public law in the exercise of a public service mission.[158].

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20 June 2018, RG n° 18/01236 ("*The French courts do not have jurisdiction, even by way of exception, to verify whether the Border Force officers complied with the procedural rules applicable in the transit zone under their supervision when they discovered Mr Y C. concealed in the trailer of a heavy goods vehicle*").

156 See **TMSF Exhibit 91**, Cass. civ. [1ère], 29 May 1990, no. 88-13.737, Bull. civ. I, no. 123 ("*Having regard to the rules of international law governing relations between States, together with Article 3 of the Civil Code; Whereas the combination of these rules and this text results in the lack of power of the French courts to hear, in principle, claims by a foreign State or a foreign public body, based on provisions of public law, insofar as, from the point of view of French law, their object is linked to the exercise of public power ; Whereas the judgment under appeal, in declaring that the Tribunal de Grande Instance de Grasse had jurisdiction, stated that 'in order to classify the claims, it is necessary to disregard the criteria adopted in French domestic law to divide the litigation between the administrative and judicial courts and to look beyond the mere establishment of the relationship between the Haitian State and its former leaders to the exact nature of the claims'; After referring, in this respect, to the plaintiffs' written submissions 'from which it follows that the purpose of the claims is the restitution of funds taken by the defendants for personal purposes and are based on the personal fault committed by them while in power in Haiti', the judgment held that the relationship between a public body and one of its employees who, through his or her personal fault, causes it damage, is a private relationship and that the claims are not based, in their formulation, on any rule of Haitian public law; Whereas in so determining, whereas according to French law taken as the qualifying law of the forum, disputes relating to the relationship between a State and its leaders, whatever the nature of the faults committed by the latter, are necessarily linked to the exercise of public power and can find their solution only in the principles of public law, the Court of Appeal exceeded its powers and violated the rules and text referred to above*" (emphasis added)).

157 See **TMSF Exhibit 84**, P. Mayer, V. Heuzé, B. Remy, *Droit international privé*, LGDJ, [12th] edition, ¶ 330 ("It *is the nature of the decision to be given, rather than that of the rules to be applied, which is likely to lead to a change in the criteria of international jurisdiction. Thus the mere incidental application of a rule relating to the operation of a foreign public service must not be excluded, provided that the French court has jurisdiction to hear the private dispute in which it is invoked. Our courts may, in relation to a principal claim for nullity of a marriage celebrated by a foreign civil registrar, agree to apply foreign rules in order to verify whether the celebration was lawful. In the case of an accident at work which occurred in France and for which compensation is paid by a foreign social security system, they may apply the foreign rule which eliminates recourse under ordinary law against the employer. In all these cases, in fact, the operative part of the judgment assesses private rights and contains no injunction against foreign bodies*").

158 In the same way, the French court would not be competent to rule on an action for liability brought against a foreign civil registrar for the pronouncement of a marriage or divorce, against a court, or against a foreign court for the pronouncement of a marriage or divorce.

143. In this case, the Consorts Uzan are asking the French courts to interfere in the operation of Turkish public services by asking the Tribunal judiciaire de Paris to rule that the TMSF, a legal person governed by Turkish public law, is liable by adopting the administrative measures it took in the exercise of the functions conferred on it by Turkish law - the validity of which the Consorts Uzan dispute - in order to fulfil its public interest missions, in the present case, by implementing the procedures provided for by Turkish law, in order to recover the claims arising from its intervention as a deposit guarantee fund (public claims within the meaning of Turkish law)[159]. The Consorts Uzan are asking the Tribunal Judiciaire de Paris to order the TMSF to pay damages for the alleged financial consequences suffered by the Consorts Uzan as a result of the said measures (the legality of which is subject to review by the Turkish administrative courts).[160]).

144. In other words, under the guise of an action in tort based on the provisions of the French Civil Code, the action brought by Consorts Uzan in reality concerns a relationship under public law, falling within the exclusive jurisdiction of the Turkish administrative courts, so that Article 46 of the Code of Civil Procedure, Article 14 of the Civil Code and Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "Brussels I bis Regulation"), which apply only to disputes concerning private law relationships, are not applicable and cannot provide a basis for the jurisdiction of the French courts[161].

145. This is all the more obvious in the Plaintiffs' response to the incident and their final submissions on the merits, served on 21 November 2023, in which the Plaintiffs ask the Paris Court of First Instance to "*hold that, on the basis of the*

It may also bring an action against any other public authority in respect of acts performed by that authority in the exercise of the public service mission entrusted to it.

159 See *supra*, Section I.C.2. In this regard, the Respondent recalls that, in the present case, in order to be able to reimburse the clients of Banque Imar whose deposits were misappropriated, the Fund was forced to request exceptional financing from the Turkish Treasury in an amount equivalent to several billion dollars (at the time). Part of the sums recovered by the Funds pursuant to the contested measures were used to repay these sums: see, in this regard, *supra*, ¶¶ 65 and 99.

160 See in particular *supra*, ¶¶ 101, 81, 86, 100 and **TMSF Exhibit 1**, Annex 1, Summary table of asset disposals of Uzan Group companies carried out by the TMSF, column relating to "Challenge proceedings before Turkish administrative courts".

161 See references cited in footnotes 154-157 and ¶¶ 171-216.

Turkish law[162] certain acts taken by the TMSF[163]thus asking the French court to question, in addition to the validity, the very existence of administrative acts carried out by a foreign public authority in the exercise of a public service mission.[164].

146. For the foregoing reasons, the Uzan claim falls outside the jurisdiction of the French courts. Consorts Uzan's claim falls within the exclusive jurisdiction of the Turkish administrative courts, which have already had to rule on numerous occasions on the validity of the various types of measures now being challenged by Consorts Uzan in the present proceedings. The measures taken by the TMSF in response to the Imar Fraud - in particular the decisions relating to the auction of assets belonging to the Uzan Group companies - have in fact been the subject of a large number of lawsuits brought by the shareholders or directors of the Uzan Group companies (including by certain members of the Uzan Family), which have systematically resulted in the rejection of the complaints lodged against the measures taken by the TMSF.

147. In view of the foregoing, the Pre-Trial Judge is requested to declare that the Paris Court of First Instance does not have jurisdiction to hear the action brought by the Uzan Estate against TMSF in the present proceedings.[165].

2. On the lack of jurisdiction of the Paris Tribunal Judiciaire with regard to the grounds of jurisdiction invoked by Consorts Uzan

148. In their writ of summons, the Consorts Uzan argued that the French courts had international jurisdiction to hear their action, pursuant to Article 46 of the Code of Civil Procedure.

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162 **Plaintiffs' November 21, 2023 Response to Intervention**, ¶¶ 439-602, speculative ¶ 453.

163 See, in particular, **Conclusions in response to the Plaintiffs' incident of 21 November 2023**, p. 9 ("*Under Turkish law, the action for recognition of non-existence ('Bultan') is not subject to any limitation period*"), ¶ 344 ("*As indicated above, the Claimants' action is an action for non-existence under Turkish law relating specifically to acts taken by TMSF-manager and TMSF-shareholders in the context of the management of the Companies placed under its control*" (emphasis added)) and Section 6 ("*On the admissibility of the action for non-existence*").

164 The Uzan Estate took care not to specify the nature of their action in the operative part of their submissions on the merits, confining themselves - in very general terms - to seeking an order *in solidum against* the Defendants for the payment of damages and interest in respect of the alleged capture of assets (see, in this regard, **Plaintiffs' Submissions on the Merits No. 1 of November 21, 2023**, pp. 65-76). In any event, for the reasons set out above, the arguments put forward by the Uzan Estate to contest the merits of the objection raised by the TMSF on the grounds that *the TMSF* "does *not exercise any prerogative of public authority in its capacity as manager, but merely manages the Companies, as did the former management, by limiting itself to exercising normal powers in the context of normal commercial management*" are manifestly unfounded.

165 For the reasons set out above, the objection raised by the TMSF, based on the incompetence of the French courts to interfere in the operation of the public services of the Turkish State, is by definition an objection to the jurisdiction of the French courts. See *infra*, ¶¶ 160-165. The fact that the plea raised in support of this objection may also be such as to justify the inadmissibility of the Uzan Estate's claims is irrelevant in this respect.

Code of Civil Procedure or, in the alternative, by virtue of the combined application of Article 14 of the Civil Code and Article 6 of the Brussels I bis Regulation[166]. The Claimants also invoked the jurisdiction of the Paris Court of First Instance on the basis of Article 42(3) of the Code of Civil Procedure[167].

149. For the reasons set out below, neither Article 46 of the Code of Civil Procedure (**b**) nor Article 14 of the Civil Code (**c**) can provide a basis for the jurisdiction of the Tribunal judiciaire de Paris in the present case. Furthermore, the Claimants cannot validly rely on Article 42(3) of the Code of Civil Procedure in an attempt to justify the internal territorial jurisdiction of the Paris Tribunal (**d**).

150. As a preliminary point, and contrary to what the Consorts Uzan maintain in their response to the incident, the objection to jurisdiction raised by the TMSF in this respect is perfectly admissible (**a**).

a. Admissibility of the objection to jurisdiction raised by the TMSF

151. In their submissions in response to the incident[168]the Consorts Uzan challenge the admissibility of the objection to jurisdiction raised by the TMSF on the grounds that, contrary to what the Consorts Uzan maintain, Article 46 of the Code of Civil Procedure and Article 14 of the Civil Code do not provide a basis for the jurisdiction of the French courts in the present case.

152. In support of this contention, the Consorts Uzan maintain that the objection to jurisdiction raised by the TMSF on the basis of the principle of non-interference by the French courts in the operation of Turkish public services does not constitute an objection to jurisdiction (and, more precisely, a procedural objection within the meaning of Articles 73 et seq. of the Code of Civil Procedure), but a plea of inadmissibility, so that the pleas developed subsequently, based on Article 46 of the Code of Civil Procedure and Article 14 of the Civil Code, were not raised '*before any defence on the merits or plea of inadmissibility*', as provided for in Article 74 of the Code of Civil Procedure, and were therefore inadmissible.

153. For the reasons set out below, the objection to jurisdiction raised by the Consorts Uzan is manifestly unfounded and the objection to jurisdiction raised by the TMSF is admissible.

[166] See **Plaintiffs' Summons of July 13, 2021**, ¶¶ 126-135.

[167] See **Plaintiffs' Summons of July 13, 2021,** ¶¶ 136-138.

[168] See to this effect, **Plaintiffs' Reply Brief on Incident of 21 November 2023**, ¶ 259.

154. Principally, it is manifestly incorrect for the Consorts Uzan to maintain that the TMSF raised an objection to jurisdiction (based on the principle of non-interference by the French courts in the operation of Turkish public services) before raising an objection to jurisdiction (based on Article 46 of the Code of Civil Procedure and Article 14 of the Civil Code).

155. In its pleadings served on 12 September 2023, the TMSF challenged the jurisdiction of the French courts to hear the claims of the Consorts Uzan and raised this procedural objection as a preliminary point, before any defence on the merits or plea of inadmissibility.

156. It is thus clear from the order of the claims formulated by the TMSF in the operative part of its reply that the TMSF intended to raise - and indeed did raise - a procedural objection at the outset - and more specifically an objection to the jurisdiction of the French courts.[169] :

> **PAR CES MOTIFS**
>
> *Vu les articles 14, 42 alinéa 3, 46 et 700 du Code de procédure civile,*
> *Vu le Règlement Bruxelles I bis du 12 décembre 2012,*
>
> **Il est demandé au Juge de la mise en état de** :
>
> À titre liminaire :
>
> - **DÉCLARER** le Tribunal judiciaire de Paris incompétent pour connaître des demandes des Consorts Uzan (seules les juridictions turques ayant vocation à en connaître) ;
> - **DÉCLARER** que l'action des Consorts Uzan se heurte à l'immunité de juridiction de TMSF, de sorte que les juridictions françaises sont dépourvues du pouvoir d'en connaître ;

157. This is sufficient to confirm that the Plaintiffs' objection is manifestly unfounded.

158. The TMSF also points out that the wording of its pleas in law in the body of its incident conclusions notified on 12 September 2023 also confirms, if necessary, that the

169 It should be emphasised in this respect that, in accordance with Article 768 of the Code of Civil Procedure, "[t]*he court shall rule only on the claims set out in the operative part and shall examine the pleas in support of those claims only if they are raised in the discussion*". The Paris Court of First Instance is thus bound by the order of presentation of the claims as set out in the operative part of the pleadings submitted by the parties. In the present case, however, the TMSF did comply with the requirement that procedural objections must be raised earlier than other defences in the operative part of its submissions of 12 September 2022.

TMSF challenged the jurisdiction of the Paris Court of First Instance, before any defence on the merits or plea of inadmissibility, on the basis of several separate pleas, according to which the claims infringe the principle of non-interference by the French courts in the operation of Turkish public services and none of the grounds of jurisdiction invoked by the Consorts Uzan, on the basis of Articles 46 of the Code of Civil Procedure and 14 of the Civil Code, is capable of establishing the jurisdiction of the French courts.[170].

159. In view of the foregoing, the Plaintiffs' plea of inadmissibility can only be dismissed.

160. In the alternative, the position of the Consorts Uzan that the principle of non-interference by the French courts in the operation of foreign public services (and, in the present case, of the Turkish public services) constitutes a plea in bar, resulting from a lack of jurisdictional power on the part of the French courts, and not a procedural objection (and in particular a plea that the French courts lack jurisdiction) is erroneous.[171].

161. Firstly, this position is contrary to case law, which considers that the principle of non-interference by the French courts in the operation of the public services of a foreign State is a ground of lack of jurisdiction on the part of the French courts, and not a ground for inadmissibility of claims based on a lack of jurisdictional power on the part of the French courts.[172]and not a ground for inadmissibility of claims based o n a lack of jurisdictional power on the part of the French courts.

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[170] As regards the plea based on the principle of non-interference by the French courts in the operation of Turkish public services, it was developed, like the other pleas of lack of jurisdiction, in part II.A of the incidental pleadings submitted on 12 September 2023 entitled "*A. A. As a preliminary point, on the lack of jurisdiction of the Paris Tribunal Judiciaire*", at the end of which the TSMF "*asked the Pre-Trial Judge to declare that the Paris Tribunal Judiciaire does not have jurisdiction to hear the action brought by the Consorts Uzan against TMSF in the present proceedings*" (**Conclusions d'incident of 12 September 2023**, II.A., spec.
¶ 120 (emphasis added)).

[171] By way of reminder, the concept of jurisdiction in civil procedure refers to the rules of distribution that make it possible to settle a question of competition between several courts (or legal orders), potentially called upon to hear the same dispute. The concept of jurisdictional power, on the other hand, refers to the ability of a given court, outside any competition between courts, to exercise its power to rule on the claims of the parties. In this sense, see **TMSF Exhibit 206**, C. Chainais, F. Ferrand, L. Mayer, S. Guinchard, *Procédure civile : Droit commun et spécial du procès civil, MARD et arbitrage*, Précis Dalloz, 36ème édition, 2022, ¶ 1497.

[172] See **TMSF Exhibit 85**, Paris, 17 October 1990, *Soc. la Martiniquaise v. Companhia Geral da Agricultura das Vinhas do alto Douro. Companhia Geral da Agricultura das Vinhas do alto Douro,* extract from Rev. Crit. DIP 1991 p.400. See also **Exhibit TMSF No. 86**, Tribunal de grande instance de Paris, 13 May 2016, RG No. 15/03149; **Exhibit TMSF No. 87**, Metz, 7 February 2017, RG No. 15/01586 and **Exhibit TMSF No. 90**, Douai, 20 June 2018, RG No. 18/01236. These decisions confirm, contrary to what the Consorts Uzan maintain, that the French courts treat the principle of non-interference by the French courts in the operation of foreign public services as a question of jurisdiction, and not an objection. As stated above, the fact that the plea in law relied on in support of that objection may also, as the Consorts Uzan maintain, be such as to justify the inadmissibility of their claims is irrelevant in that regard.

162. The position of the Consorts Uzan is also contradicted by legal doctrine, which confirms that the principle of non-interference by the French courts in the operation of foreign public services concerns the - international - jurisdiction of the French courts, and not the admissibility of claims (and in particular the jurisdictional powers of the French courts).[173].

163. Consorts Uzan's vain attempt to call into question the characterisation of the plea based on the principle of non-interference by the French courts as a procedural objection, established both in the case-law and in the legal literature, by means of analogies with the characterisations relating to immunity from jurisdiction or to heads of "*exclusive jurisdiction"* is unfounded and can only be rejected.

164. It will be emphasised in that regard that Consorts Uzan's contention that the plea alleging lack of international jurisdiction of the French courts constitutes a plea in bar alleging lack of jurisdictional authority of the French courts, and not an objection to jurisdiction constituting a procedural objection, is manifestly contrary to Articles 76[174] and 81[175] of the Code of Civil Procedure and case law[176]. The same applies to the

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[173] See, **for** example, **TMSF Exhibit 205**, Y. Lequette, Note under Cass. 1ère civ. 20 October 1981, *Vannoni v. Rigal*, *Rev. crit. DIP*, 1982, pp. 720-724, spec. p. 720. See also **TMSF Exhibit 207**, H. Gaudemet-Tallon, "Compétence internationale : matière civile et commerciale", *Répertoire de procédure civile,* March 2019, ¶ 154; **TMSF Exhibit No. 208**, A. Huet, Note sous Paris, 17 October 1990, *Soc. La Martiniquaise v. Soc. Companhia Geral da Agricultura das Vinhas do alto Douro*, *Journal du droit international (Clunet)*, no. 3, 1991, pp. 729-734, specul.
p. 729 ("*Turning then to the possible privileged international jurisdiction of the French courts, it is again very precisely that the Court of Appeal states that Article 14 of the Civil Code [...]: everyone agrees in fact that Articles 14 and 15 of the Civil Code are inapplicable (and more generally that the French courts are incompetent) when a foreign State or one of its public services is involved in a dispute, even between private persons*") and **TMSF Exhibit No. 204**, B. Audit, L. d'Avout, Droit international privé, Traité, LGDJ, Lextenso, 9th edition, 2022, ¶¶ 441-443. Audit, L. d'Avout, *Droit international privé,* Traité, LGDJ, Lextenso, 9th edition, 2022, ¶¶ 441 to 443.

[174] See Article 76 of the Code of Civil Procedure ("*Jurisdiction may be declined of its own motion in the event of infringement of a rule of jurisdiction of attribution where that rule is a rule of public policy or where the defendant does not appear. Jurisdiction may only be declared in these cases. Before the Court of Appeal and the Court of Cassation, lack of jurisdiction may be raised ex officio only if the case falls within the jurisdiction of a criminal or administrative court or is beyond the knowledge of the French court*" (emphasis added).

[175] See Article 81 of the Code of Civil Procedure ("*Where the court considers that the case falls within the jurisdiction of a criminal, administrative, arbitral or foreign court, it shall simply refer the parties to take further proceedings. In all other cases, the court that declares that it does not have jurisdiction shall designate the court that it considers to have jurisdiction. This designation is binding on the parties and on the referring court*" (emphasis added).

[176] See, for example, **TMSF Exhibit 209,** Cass. 1ère Civ, 23 May 2012, no. 10-26.188. See also **TMSF Exhibit 210**, Cass. Com. 25 March 2020, no. 16-20.520, **TMSF Exhibit 211**, Cass. 1ère Civ. 27 January 2021, no. 19-23.461, and **TMSF Exhibit 212**, Paris 14 March 2023, RG no. 22/12488. The Claimants may not attempt to rely on the three decisions of the Court of Cassation handed down on 7 May 2010 and 7 December 2010 (Cass. 1ère Civ., 7 May 2010, no. 09-14.324, no. 09-11.177 and Cass. 1ère Civ, 7 December 2010, no. 09-16.811), in which the Court of Cassation appeared to hold that the plea alleging lack of jurisdiction of the French courts constituted a plea of inadmissibility based on a lack of jurisdictional authority, whereas the position adopted by the Court of Cassation in these three decisions does not correspond to the current position of the Court of Cassation and was, moreover, adopted, in the words of the doctrine, for "*a question of expediency rather than of law*", and in disregard of the qualification of procedural exception provided for by Articles 74 and 81 of the Code of Civil Procedure. See **TMSF Exhibit 206**,
C. Chainais, F. Ferrand, L. Mayer, S. Guinchard, *Procédure civile : Droit commun et spécial du procès civil, MARD and Arbitration*, Précis Dalloz, 36th edition, 2022, ¶ 1497. See also the commentary referred to by the Claimants

plea of lack of jurisdiction based on the existence of a rule conferring '*exclusive jurisdiction*' on another court, whether that rule is internal to the French legal system[177] or a rule enacted by a European instrument[178].

165. Consequently, the defence raised by the Defendant on the basis of the principle of non-interference in the operation of the public services of the Turkish State is a plea of lack of jurisdiction, the admissibility and merits of which can only be found by the Pre-Trial Judge.[179].

166. In any event, if the civil court, by virtue of Article 12 of the Code of Civil Procedure, must give or restore their exact characterisation to the facts and acts in dispute, without stopping at the name that the parties may have proposed, this prerogative, which relates to the court's power when it rules on the claims and pleas in law before it, has no relevance when it comes to examining the admissibility of procedural objections with regard to the order of the claims that a party intends to raise.

167. The court's power of re-characterisation, when examining the merits of the claims submitted to it, cannot allow it to conclude (unless it exceeds its powers) that a party who has raised a procedural objection at the outset would not have raised it (or would not have raised it at the outset), on the basis of the assessment of the pleas in support of that objection.

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but which they do not produce, **TMSF Exhibit No. 213**, P. Théry, "Le désordre des moyens de défense : exception d'incompétence et fin de non-recevoir...", *RTD civ.*, 2012, p. 566 and **TMSF Exhibit No. 214**, A. Huet, "Compétence des tribunaux français à l'égard des litiges internationaux", Fascicule 581-42, *JurisClasseur Droit international*, November 2017 (updated August 2023), ¶ 2.

177 See **TMSF Exhibit 215**, Cassation Com. 18 October 2023, no. 21-15.378 ("*14. Lastly, it contradicts Article 33 of the Code of Civil Procedure, from which it follows that the designation of a court by virtue of the subject matter covered by the rules on judicial organisation and by special provisions falls within the jurisdiction of the court having jurisdiction. 15. This finding led the Commercial, Financial and Economic Division to change its case law. 16. Accordingly, it should now be held that the rule resulting from the combined application of Article L. 442-6, III, now L. 442-4, III, and Article D. 442-3, now D. 442-2, of the French Commercial Code, which designates the only courts indicated by the latter text to hear cases concerning the application of the provisions of I and II of the aforementioned Article L. 442-6, which have become Article 442-1, establishes a rule of exclusive jurisdiction and not an end of non-receipt*" (emphasis added).

178 See, for example, **TMSF Exhibit 216**, Cass. Com. 15 March 2011, Bull. civ. IV, no. 47. See also **TMSF Exhibit 217**, Cass. 1ère Civ. 31 January 2006, Bull. civ. I, no. 42 and **TMSF Exhibit 218**, Cass. 1ère Civ. 20 April 2017, no. 16-16.983, published in the bulletin.

179 Apart from the fact that the decisions cited by the Claimants (Cass. Civ. 2ème, 8 July 2004, no. 02-19.694 and Cass. Civ. 3ème, 8 March 1977, no. 75-14.834) enshrine a principle that has been the subject of divergent positions between the chambers of the Cour de cassation, these decisions in no way require that the principle of anteriority of procedural objections be respected at the stage of the development of the legal and factual arguments in the body of the pleadings and not only at the stage of the operative part.

168. If a party raises a procedural objection at the outset (for example, that the court seised does not have jurisdiction) and, in support of that objection, puts forward a plea that the court considers to relate to the admissibility of the claims or to the substance of the dispute, it remains the case that the party has raised a procedural objection at the outset (for example, that the court seised does not have jurisdiction), with regard to the examination of the order of the claims raised by that party and the admissibility of that party's claims, that the party has raised a procedural objection as a preliminary issue (for example, that the court seised lacks jurisdiction), which is before the court and on which it must rule[180].

169. In the present case, even if the Court of First Instance were to consider that the principle of non-interference invoked in support of the objection to jurisdiction raised by the TMSF at the outset does not concern jurisdiction but the admissibility of the claims of the Consorts Uzan, that consideration would have no bearing on the fact that the TMSF challenged the jurisdiction of the Court of First Instance at the outset and on the admissibility of the other pleas raised by the TMSF in support of that objection.

170. In the light of the foregoing, the Court can only reject the plea of non-admissibility raised by the Consorts Uzan and declare admissible the objection to jurisdiction set out below.

b. On the lack of jurisdiction of the French courts on the basis of Article 46 of the Code of Civil Procedure

171. For the reasons set out below, and as the TMSF has already argued in its submissions filed on September 12, 2022, the Consorts Uzan cannot validly maintain that the Paris Court of First Instance has jurisdiction to hear their action on the basis of Article 46 of the Code of Civil Procedure[181].

172. As a preliminary point, it should be noted that the Consorts Uzan do not develop any arguments in response to this claim by the TMSF and do not argue, before the Pre-Trial Judge, as they did in their writ of summons, that the French courts would have jurisdiction on the basis of Article 46 of the Code of Civil Procedure.

173. Consequently, the Juge de la mise en état has not been seised of any claim in this respect by the Consorts Uzan, so that the Juge de la mise en état can only rule that article 46 of the Code of Civil Procedure does not apply.

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180 This is confirmed by the fact that, where a court considers that the plea in support of a procedural objection actually concerns the admissibility or the merits of the dispute, it remains seized of the procedural objection and may dismiss it on the grounds that the plea is irrelevant.

[181] See **Plaintiffs' Summons of July 13, 2021**, ¶¶ 127-130.

Code of Civil Procedure cannot provide a basis for the jurisdiction of the French courts in this case[182].

174. In any event, for the reasons set out below, the claim made by Consorts Uzan in their writ of summons that the French courts have jurisdiction to hear their claims as the courts "*of the place where the harmful event occurred or the court within whose jurisdiction the damage was suffered*" is manifestly unfounded.

175. Article 46 of the Code of Civil Procedure provides for a choice of jurisdiction in matters relating to tort or delict between "*the court of the place where the harmful event occurred or the court within whose jurisdiction the damage was sustained*".[183].

176. The place of the harmful event is the place where the alleged fault was committed and "*cannot be confused with the place of domicile where the plaintiff's assets are located*".[184].

177. As regards the place where the damage was suffered, this is neither the place where a pecuniary loss consecutive to the initial loss directly suffered in another State was suffered[185] , nor the place of the

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[182] See **Plaintiffs' November 21, 2023 Reply Brief on Incident**, ¶¶ 359-423.

[183] Article 46 of the Code of Civil Procedure.

[184] **TMSF Exhibit No. 92**, Cassation Com. 7 January 2014, No. 11-24.157, Bull. IV, no. 5 ("*that it finally holds that the place where the harmful event occurred cannot be confused with the place of residence where the claimant's assets are located*"). See also **TMSF Exhibit 93**, Cass. civ. 2ème, 28 February 1990, no. 88-11.320, Bull. II no. 46 p. 25 : "*Whereas, however, by thus assimilating to the place where the damage was suffered the place where the financial consequences of the alleged conduct could subsequently be measured, the court of appeal violated the aforementioned text*"); **TMSF Exhibit 94**, ECJ, 19 September 1995, Case C-364/93, *Marinani*, ¶¶ 13-21 ("*The option thus open to the claimant cannot, however, be extended beyond the particular circumstances which justify it, otherwise the general principle, enshrined in the first paragraph of Article 2 of the Convention, of the jurisdiction of the courts of the Contracting State in whose territory the defendant is domiciled would be rendered meaningless and the courts of that State would be deemed to have jurisdiction, outside the cases expressly provided for, the jurisdiction of the courts of the plaintiff's domicile, which the Convention has rejected by ruling out, in the second paragraph of Article 3(*a*), the application of national provisions providing for such grounds of jurisdiction in respect of defendants domiciled in a Contracting State. [*The *answer to the question referred for a preliminary ruling must therefore be that the concept of 'the place where the harmful event occurred' in Article 5(3) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as meaning that it does not refer to the place where the victim claims to have suffered pecuniary damage as a result of initial damage which occurred and was suffered by him in another Contracting State*' (emphasis added).

[185] See, for example, **TMSF Exhibit 95**, Cass. Com, 8 April 2021, no. 19-16.931 ("*It follows from the case-law of the Court of Justice of the European Union that where the place where the event giving rise to liability in tort, delict or quasi-delict occurs and the place where that event causes damage are not identical, the expression 'place where the harmful event occurred' must be understood as referring both to the place where the damage is sustained and to the place of the causal event (CJEC, Mines de potasse d'Alsace, 30 November 1976, no. 21/76), that this concept must however be interpreted in the sense that it does not refer to the place where the victim claims to have suffered pecuniary damage consecutive to an initial damage which occurred and was suffered by him in another Contracting State (CJEC, Antonio Marinari, 19 September 1995, C-364/93), nor the place of the claimant's domicile where the centre of his assets is located, on the sole ground that he has suffered financial loss there resulting from the loss of elements of his assets which occurred and was suffered in another Contracting State (ECJ, Rudolf Kronhofer, 10 June 2004, C-168/02) and that, while the courts of the claimant's domicile may have jurisdiction, in respect of the materialisation of the damage alleged, where that damage results from an unlawful act committed in another Member State and consists of financial loss realised directly in a bank account held by*

the claimant with a bank established in the jurisdiction of those courts (CJEU, Harald Kolassa, 28 January 2015, C-375/13, CJEU,

the applicant's domicile "*where the centre of his assets is located*".[186]. Moreover, even if the financial loss is the initial loss that materialises directly in the claimant's bank account, the location of this bank account is not sufficient to identify the place where the loss was suffered in the absence of other connecting factors[187] .

178. By way of illustration, in the case of a liability action brought against the portfolio manager of a Luxembourg company to obtain compensation for financial loss following fraud and the company's receivership, the Cour de cassation stated that such loss "can only be understood as the loss of its assets by the company".[188]that such loss "*can only b e understood as the loss of the company's assets*".[189].

Helga Löber, 12 September 2018, C-304/17), it is on condition that there are other connecting factors contributing to the attribution of jurisdiction to those courts (CJEU, Universal Music International Holding, 16 June 2016, C-12/15). [...] *In light of these findings and assessments, from which it follows that Banque Delubac had not produced any information enabling it to know how the funds lent were managed within its network, the Court of Appeal, which deduced that the alleged loss had not materialised directly in the bank's corporate accounts, which were only affected as a result of the financial losses suffered in these establishments, rightly held that the Aubenas Commercial Court did not have territorial jurisdiction*" (emphasis added)). See also **TMSF Exhibit 96**, ECJ, 11 January 1990, Case C-220/88, *Dumez*, ¶¶ 14-22, spec. ¶ 22 ("*the rule of jurisdiction laid down in Article 5(3) of the Convention cannot be interpreted as authorising a claimant who alleges damage which he claims to be the consequence of damage suffered by other persons who are direct victims of the harmful event to bring proceedings against the perpetrator of that event in the courts of the place where he himself ascertained the damage to his assets*"); **TMSF Exhibit 94**, ECJ, 19 September 1995, Case C-364/93, *Marinani*, ¶¶ 13-21; **TMSF Exhibit 93**, Cass. Civ. 2ème, 28 February 1990, n° 88-11.320, Bull. II n° 46
p. 25 ("*Whereas, however, by assimilating to the place where the damage was suffered the place where the financial consequences of the alleged acts could subsequently be measured, the Court of Appeal violated the aforementioned text*") and **TMSF Exhibit No. 97**, Cass. Com, 8 February 2000, no. 98-13.282 ("*Whereas by thus assimilating to the place where the damage was suffered the place where the financial consequences of the alleged acts could subsequently be measured, the Court of Appeal violated the aforementioned text*").

186 **TMSF Exhibit 95**, Cass. Com. 8 April 2021, No. 19-16.931. See also **TMSF Exhibit 98**, ECJ, 10 June 2004, Case C-168/02, *Rudolf Kronhofer*, ¶¶ 19-21 ("*As the Court has held, the concept of 'the place where the harmful event occurred' cannot be interpreted so broadly as to encompass any place where the harmful consequences of an event causing damage which actually occurred in another place may be felt* [...]").. *the Convention must be interpreted as meaning that the expression 'place where the harmful event occurred' does not cover the place of the claimant's domicile where 'the centre of his assets' is situated, on the sole ground that he has suffered financial loss there as a result of the loss of elements of his assets which occurred and was suffered in another Contracting State*").

187 See **TMSF Exhibit No 99**, CJEU, 16 June 2016, Case C-12/15, *Universal Music International Holding*, ¶ 38 ("*a purely financial loss which materialises directly in the claimant's bank account cannot, on its own, be classified as a 'relevant connecting factor' under Article 5(3) of Regulation No 44/2001."). In that regard, it should also be noted that it cannot be ruled out that a company such as Universal Music might have had a choice between several bank accounts from which it could have paid the settlement amount, so that the place where that account is located does not necessarily constitute a reliable connecting factor*").

188 The Court of Cassation's solution is in line with that of the CJEU in the matter referred to above.

189 **TMSF Exhibit 92**, Cass. com. 7 January 2014, no. 11-24.157, Bull. IV, No. 5 ("*the acts of which UBS Luxembourg is accused were necessarily committed in Luxembourg and that the place where the damage occurred, which can only be understood as the loss of its assets by Luxalpha Sicav, is in Luxembourg; it also holds that the place where Mrs Z Z Z's financial loss materialised was not France but Luxembourg, where Luxalpha Sicav first suffered the loss in value of its securities*" (emphasis added)).

179. In addition, where the French courts are seised as the courts for the place where the event giving rise to the damage occurred and the damage was only partially suffered in France, they can only rule on that part of the damage which would have been suffered in France.[190].

180. In the present case, it is not disputed that the alleged misconduct of the TMSF resulted from measures adopted in Turkey, namely the transfer of the control and management of Turkish companies of the Uzan Group to the TMSF, followed by the sale of the assets of these companies by tendering and auction procedures in accordance with Turkish law.[191]. The Consorts Uzan cannot therefore validly argue that the Paris Court of First Instance would have jurisdiction on the basis of Article 46 of the French Code of Civil Procedure to hear their claim as "*the court for the place where the harmful event occurred*".

181. In addition, the financial loss claimed by the Uzan family, which would result, on the one hand, from the sale of the assets of Turkish companies in respect of which the Uzan family maintain (without proving it) that they would be the "*ultimate economic beneficiaries*" [192] and, secondly, the

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[190] See **TMSF Exhibit 100**, ECJ, 7 March 1995, Case C-68/93, *Fiona Shevill,* ¶ 33 ("*the expression 'place where the harmful event occurred' used in Article 5(3) of the Convention must, in the case of defamation by means of a press article circulated in several Contracting States, be interpreted as meaning that the victim may bring an action for damages against the publisher either in the courts of the Contracting State in which the publisher of the defamatory publication is established or in the courts of the Contracting State in which the publisher of the defamatory publication is established, which have jurisdiction to award compensation for all the damage resulting from the defamation, or in the courts of each Contracting State in which the publication was disseminated and where the victim claims to have suffered damage to his or her reputation, which have jurisdiction only in respect of damage caused in the State of the court seised*" (emphasis a d d e d). See also **TMSF Exhibit 101**, L. Pech, JurisClasseur Communication - Fascicule 28: Conflit de lois et compétence internationale des juridictions françaises, ¶ 14 ("*In matters of jurisdiction, where the elements of the tort are dissociated, the victim is left to choose between the court of the place where the event giving rise to the tort occurred and the court of the place where the damage was suffered. What will be the jurisdiction of the French court seised as the court of the place where the event giving rise to the damage occurred if the damage was only partially sustained in France? The solution is to distinguish between the case where the court is seised as the court of the place where the harmful event occurred in its entirety, in which case its jurisdiction will extend to the entire dispute, and the case where it is seised as the court of the place where the damage was suffered or occurred. In the latter case, the court's jurisdiction will be limited to compensation for the damage suffered in France*" (emphasis added). In this respect, the Claimants are wrong to assert that the French courts would have jurisdiction to hear the entirety of a loss partially suffered in France. They rely in that regard on case-law relating to the multiplicity, on French territory, of places where the alleged damage was suffered. This solution is inapplicable to the case in point as regards the international jurisdiction of the Paris Tribunal Judiciaire.

[191] See **Plaintiffs' Summons of July 13, 2021**, ¶ 153 ("*In the present case, the fraudulent acts pursued by the Plaintiffs were committed in Turkey, where the damages resulting from the faults committed by TMSF, MOTOROLA and the other Defendants, through the fraudulent capture of the Companies' assets, occurred*"). See also **Plaintiffs' Submission on the Merits No. 1 of November 21, 2023**, ¶ 187 ("*In addition, the fraudulent conduct sought by the Plaintiffs was committed in* ***Turkey*** *where the damages resulting from the misconduct of TSMF, MOTOROLA and the other Defendants, through the fraudulent misappropriation of the Companies' assets, occurred*").

[192] As evidence of their claims regarding their shareholdings in the companies mentioned in the summons, the Claimants submit a third "report" by their so-called "expert", Mr Bal: see **Claimants' Exhibit 4**, "Report on Claimants' Profits in and Activities of Captured Companies" by Mr Selahettin Bal dated 28 June 2021. The "report" in question contains, in the first part, a series of tables showing percentages of shareholdings in various companies for Mr Cem Cengiz Uzan, Mr Murat Hakan Uzan, Mr Kemal Uzan and Ms Ayşegül Uzan. The "report" does not provide the slightest explanation regarding the preparation or content of these tables. For example, the The "report" does not indicate the valuation date used, nor does it specify whether the percentage holdings indicated

correspond to direct or indirect holdings (or both). Nor does the report contain

loss of dividends which those assets would have generated, could only constitute - if it were established - a loss by ricochet. Assuming the existence of any loss resulting from sales made in accordance with Turkish law and as a consequence of the fraud orchestrated by the Uzan Family, such loss can only be suffered by the Turkish companies themselves, and not by their shareholders or ultimate beneficiaries. As none of these companies is registered in France, the Uzan Family cannot validly argue that the Paris Court has jurisdiction on the basis of Article 46 of the Code of Civil Procedure to hear their claim as the court "within *whose jurisdiction the damage was suffered*".

182. In any event, the Court could only rule on claims relating to the portion of a loss allegedly suffered in France, assuming that this could be demonstrated, which the Claimants do not do. On the contrary, according to their own allegations in their writ of summons, the Claimants have only been resident [193]in France since 3 September 2009 in the case of Mr Cem Cengiz Uzan and since 3 September 2014 in the case of Mr Murat Hakan Uzan[194]although the asset disposals in question took place between 2005 and 2008. Accordingly, it is up to the Claimants to show how the TMSF caused them direct damage on French territory.[195].

183. In the light of the foregoing, and given that Mr and Mrs Uzan have abandoned any claim in this regard in the present incident, the Pre-Trial Judge can only rule that Article 46 of the Code of Civil Procedure does not provide a basis for the jurisdiction of the Paris Court of First Instance in the present case.

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information on the sources used or the method of calculation and does not present the details of the calculations made. It is not accompanied by any supporting documents. The second part of the "report" consists of a PowerPoint presentation that is more advertising than expert opinion.

193 In their submissions filed on 21 November 2023, the Uzan Estate no longer maintained that they were resident but claimed that they were "domiciled" in France.

194 See **Plaintiffs' Summons of July 13, 2021**, ¶ 1: "*Mr. Murat Hakan UZAN and Mr. Cern Cengiz UZAN (hereinafter collectively referred to as "**Messrs. UZAN**") are two talented businessmen of Turkish nationality, who have been residing in France since September 3, 2014 and September 3, 2009, respectively (exhibits 1 and 2)*. In their submissions of 21 November 2023, Consorts Uzan no longer state that they "reside" in France, but that they are "domiciled" there. See in this regard, **Plaintiffs' Submission No. 1 of November 21, 2023**, ¶ 1 ("*Mr. Murat Hakan UZAN and Mr. Cem Cengiz UZAN (hereinafter collectively referred to as "**Messrs. UZAN**") are two talented businessmen of Turkish nationality, who have been domiciled in France since September 3, 2014 and September 3, 2009, respectively (Exhibits 1 and 2)*"). See also **Plaintiffs' Reply to Intervention of 21 November 2023**, ¶ 9.

195 It being understood that the fact that the Consorts Uzan are domiciled in France (assuming that such a fact is established by the plaintiffs, which is not the case here) is not sufficient to establish that they have suffered damage in France.

c. <u>On the lack of jurisdiction of the Paris Court of First Instance on</u> the <u>basis of Article 14 of the Civil Code</u>

184. Article 14 of the Civil Code states that :

> *"A foreigner, even one not resident in France, may be summoned before the French courts for the performance of obligations contracted by him in France <u>with a French person</u>; he may be brought before the French courts for obligations contracted by him in a foreign country <u>with French persons</u>"*.[196] (emphasis added).

185. Article 6(2) of the Brussels I bis Regulation provides that :

> *"Any person, whatever his nationality, who is <u>domiciled in</u> a Member State may, like the nationals of that Member State, invoke in that Member State against that defendant the rules of jurisdiction in force in that State and in particular those which the Member States must notify to the Commission pursuant to Article 76(1)(a)"*.[197].

186. Article 6(2) of the Brussels I Bis Regulation, subject to its applicability[198]allows the privilege of jurisdiction enjoyed by claimants of French nationality under Article 14 of the Civil Code to be extended to foreign claimants domiciled in France.[199].

187. In the present case, the Consorts Uzan maintain that the French courts have jurisdiction to hear their action on the grounds t h a t they are domiciled in France and that they are

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[196] Article 14 of the Civil Code (emphasis added).

[197] Regulation (EU) No 2015/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), Article 6(2) (emphasis added).

[198] See **<u>TMSF Exhibit 204</u>**, B. Audit, L. d'Avout, *Droit international privé,* Traité, LGDJ, Lextenso, 9th edition, 2022, footnote 124, p. 400 ("*Paradoxically, however, the Brussels and Lugano Conventions have extended the scope of Art. 14 by allowing, <u>in a dispute falling within the scope of those Conventions</u>, any person domiciled in France to invoke it against a defendant not domiciled in a Contracting State (infra no. 626)*" (emphasis added)) and ¶ 451 ("*The Brussels I Regulation authorises, in a particular case, an extension of the operation of national privileges such as Articles 14 and 15 : where, in the absence of application of the Regulation, the claimant is a foreigner to the forum State but is domiciled there*") and **<u>TMSF Exhibit No. 219</u>**, L. Pailler, "Les vicissitudes de la compétence internationale en matière de cyberdélit", *Dalloz actualité*, 17 March 2023 ("*Both Article 4 and Article 6 presuppose the applicability of the said Regulation so that the national rules of international jurisdiction apply accordingly*").

[199] The Uzan partners do not dispute this principle, since their entire argument is based on the assumption that Article 6(2) applies. The case law cited by the plaintiffs was handed down in situations in which the Brussels I bis Regulation was applicable (particularly with regard to its substantive scope) but where the grounds of jurisdiction provided for by the Regulation were not implemented on French territory. In this regard, see in particular **Applicants' Exhibit no. 72**, Order of the Paris District Court of 12 January 2023, RG no. 21/05467; **Applicants' Exhibit no. 33**, Comments on the judgments of the Court of Cassation of 29 June 2022 (no. 21-11.722 and no. 21-10.106).

would therefore benefit, pursuant to Article 6(2) of the Brussels I Bis Regulation, from the extension of the jurisdictional privilege of Article 14 of the Civil Code.

188. Such a claim is manifestly unfounded given that the Brussels I Bis Regulation is not applicable to the claims of the Consorts Uzan (*i)* and that, in any event, they do not establish that they are domiciled in France (*ii*).

i. Brussels I bis Regulation does not apply to the Consort Uzan action

189. As set out in Article 1, the Brussels I bis Regulation applies only to civil and commercial matters. It does not apply to administrative matters:

> *"This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not apply, in particular, to revenue, customs or administrative matters or to the liability of the State for acts or omissions in the exercise of State authority (*acta jure imperii*)"*.[200].

190. As reiterated by the Court of Justice of the European Union and, very recently, by the Paris Court of Appeal in the *Eurelec* case, the Brussels I bis Regulation is not applicable where, having regard to the nature of the legal relationship between the parties to the dispute and the subject-matter of the dispute (or the basis on which and the manner in which the action brought in the context of the dispute is exercised), one of the parties exercises prerogatives of a public authority:

> *"Under Article 1(1), Regulation 1215/2012 applies in civil and commercial matters and whatever the nature of the court or tribunal. It shall not apply, in particular, to revenue, customs or administrative matters or to the liability of the State for acts or omissions in the exercise of State authority (acte jure imperii).*
>
> *Identifying the cases in which the State's liability is called into question is not a criterion for distinguishing between disputes that fall within the concept of 'civil and commercial matters' and those that do not, as the Minister maintains on the basis of a literal interpretation of the aforementioned article.*

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200 Regulation (EU) No 2015/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), Article 1. See also **TMSF Exhibit No. 102**, ECJ, October [1,] 2002, Case C-167/00, *Henkel*, ¶ 26 ("*that only disputes between a public authority and a person governed by private law fall outside the scope of the Brussels Convention, even though that authority is acting in the exercise of public authority*"). In addition, it seems important to specify that the notion of "*civil and commercial matters*" must be understood conventionally as opposed to public law and criminal law - the reference to "*fiscal, customs or administrative matters*" having been specified only to clarify the notion for Member States with a Common Law tradition where "*the distinction between public law and private law has little currency*" (**TMSF Exhibit 204**, B. Audit, L. d'Avout, *Droit international privé,* Traité, LGDJ, Lextenso, 9th edition, 2022, ¶ 617).

> *According to the established case-law of the Court of Justice, recalled in the preliminary ruling (paragraphs 21 to 23), it is the exercise of powers conferred by public authority by one of the parties to the dispute which excludes such a dispute from the scope of the Regulation (see, to that effect, judgments of 15 February 2007 in Case C 292/05 [D] and Others, paragraph 34, and of 28 February 2019 in Case C 579/17 Gradbeni'tvo Korana, paragraph 49). It follows that, in order to determine whether that is the case, it is necessary, according to the Court of Justice, to examine the factors which characterise the nature of the legal relationship between the parties to the dispute and the subject-matter of that dispute or, alternatively, the basis on which, and the manner in which, the action brought in the context of that dispute is exercised (judgments of 16 July 2020 [J], C-73/19, paragraph 37, and the case-law cited)*" (emphasis added).[201].

191. It is settled case law of the Court of Justice of the European Union that the exercise of prerogatives of a public authority means "*the exercise by* [one of the parties to the dispute] *of powers which are exorbitant in relation to the rules of ordinary law applicable in relations between private individuals*".[202].

192. In this respect, in the decision handed down in the *Eurelec* case on 24 February 2024, the Paris Court of Appeal, like the Court of Justice of the European Union in the same case, ruled that the action brought by the French Minister of the Economy and Finance before the Paris Commercial Court (for the purpose of putting an end to restrictive competition practices on the basis of the former Article L. 442-6, III of the Commercial Code - against the Belgian companies Eurelec and Scabel) falls within the scope of administrative matters within the meaning of the Brussels I Bis Regulation.

193. In reaching this conclusion, the Paris Court of Appeal held that the action brought by the Minister constituted an act of public authority insofar as (*i*) the Minister produced evidence in support of his action obtained by means of powers of investigation, inspection and seizure that could not be implemented by private individuals and therefore constituted powers that were exorbitant in relation to ordinary law, and (ii) the Minister sought an order that the defendant companies pay a civil fine for alleged practices of imbalance, (*ii)* the Minister is seeking an order that the defendant companies pay a civil fine for alleged practices of significant imbalance, which private individuals are not entitled to seek

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201 **TMSF Exhibit No. 220**, Paris, February 21, 2024, RG No. 21/09001, *Eurelec Trading SCRL et S.A. Scabel c/ Monsieur le Ministre de l'Economie, des Finances et de la Relance*. See also **TMSF Exhibit No 221**, CJEU, 22 December 2022, Case C-98/22, *Eurelec Trading*, ¶ 23; **TMSF Exhibit No 102**, ECJ, 1 October 2002, Case C-167/00, *Henkel*, ¶ 29 and **TMSF Exhibit No 222**, CJEU, 12 September 2013, Case C-49/12, *Sunico*, ¶¶ 33 and 35.

202 **TMSF Exhibit No 102**, ECJ, 1 October 2002, Case C-167/00, *Henkel*, ¶ 30. See also **TMSF Exhibit 223**, ECJ, 15 February 2007, Case C-292/05, *Lechouritou,* ¶ 34; **TMSF Exhibit 222**, CJEU, 12 September 2013, Case C-49/12,

Sunico, ¶ 39 and **TMSF Exhibit 221**, CJEU, 22 December 2022, Case C-98/22, *Eurelec Trading*, ¶ 22.

who are acting on the basis of the same provisions of the Commercial Code to seek the cessation of the said practices or compensation for the damage caused by them[203].

194. Similarly, the Court of Justice of the European Union considers that decisions of an administrative authority taken in the exercise of its "*regulatory powers conferred on it by national legislation*" fall within the scope of administrative matters within the meaning of Article 1er of the Regulation:

> *"The Court thus held that, while certain disputes between a public authority and a person governed by private law may fall within the scope of Regulation No 44/2001, the situation is different where the public authority is acting in the exercise of its public authority [...*].
>
> *In order to determine whether that is the case in the context of a dispute such as that at issue in the main proceedings, it is therefore necessary to identify the legal relationship between the parties to the dispute and to examine the basis on which and the manner in which the action was brought [...*].
>
> *In that regard, it should be noted that, while private actions brought with a view to ensuring compliance with competition law fall within the scope of Regulation No 44/2001* [...] *it is certain, on the other hand, as the Advocate General pointed out in his Opinion, that a penalty imposed by an administrative authority in the exercise of the regulatory powers conferred on it by national law falls within 'administrative matters', which are excluded from the scope of Regulation No 44/2001. Advocate General in paragraph 34 of his Opinion, that a penalty imposed by an administrative authority in the exercise of the regulatory powers conferred on it by national law is an 'administrative matter', excluded from the scope of Regulation No 44/2001 pursuant to Article 1er (1) thereof*".[204].

195. The CJEU has also ruled that an administrative matter is one in which one of the parties has the option of issuing the enforcement order itself, enabling it to pursue recovery of its claim without recourse to ordinary legal proceedings.[205].

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203 See **TMSF Exhibit No. 220**, Paris, February 21, 2024, RG No. 21/09001, *Eurelec Trading SCRL et S.A. Scabel c/ Monsieur le Ministre de l'Economie, des Finances et de la Relance*.

204 **TMSF Exhibit No 103**, CJEU, 28 July 2016, Case C-102/15, *Gazdasági Versenyhivatal v Siemens Aktiengesellschaft Österreich*, ¶¶ 32-34. It should also be noted that Professors Hélène Gaudemet-Tallon and Marie-Elodie Ancel point out, in the light of the case law of the Court of Justice, that it is "*more consistent to retain only the criterion of the exercise of public authority, without it necessarily being the State's liability that is directly at issue*" (see **TMSF Exhibit 104**, H. Gaudemet-Tallon and M.-E. Ancel, *Compétence et exécution des jugements en Europe*, LGDJ, 2018, ¶ 41(3)).

205 In this regard, see in relation to the recovery of tax debts, **TMSF Exhibit No 222**, CJEU, 12 September 2013, Case C-49/12, *Sunico*, ¶¶ 39 and 40 ("*39 - As the Commission and the United Kingdom Government have set out, in the context of this legal report, the Commissioners do not exercise powers which are exorbitant in relation to the rules applicable in relations between persons governed by private law. In particular, as the Advocate General emphasised in paragraph 44 of her Opinion, the Commissioners do not have the possibility, as is generally the case in the context of the exercise of their prerogatives as a public authority, of themselves issuing the writ of execution enabling them to pursue recovery of their debt, but must to that end, in a context such as that of the*

present case, use the ordinary legal channels. 40. It follows that the legal relationship between the Commissioners and Sunico is not one based on public law,

196. It should also be pointed out that the civil nature of the action is irrelevant in this respect: as long as the action originates in an act of public authority, the application of the Brussels I bis Regulation is excluded, even if the action is civil in nature according to the classification under domestic law, as confirmed by the Paris Court of Appeal[206] and the Court of Justice of the European Union[207].

197. In this case, the TMSF acted in accordance with the powers conferred on it by Turkish banking law[208]the purpose of which is to regulate the principles and procedures designed to ensure confidence in the banking system.

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in this case, tax law, involving recourse to prerogatives of public authority" (emphasis added)).

206 In the *Eurelec* decision, after holding that the Brussels I bis Regulation was not applicable to the action brought by the Minister of the Economy and Finance for the cessation of restrictive competition practices before the Commercial Court, the Paris Court of Appeal held that, in order to designate the national courts with jurisdiction to hear the said action, the ordinary law rules of territorial jurisdiction of the domestic Code of Civil Procedure, extended to the international order, were applicable, by retaining the civil nature of the Minister's action. See **TMSF Exhibit No 220**, Paris, 21 February 2024, RG No 21/09001, *Eurelec Trading SCRL et S.A. Scabel v Monsieur le Ministre de l'Economie, des Finances et de la Relance* ("*As international jurisdiction is determined by extending the rules of domestic territorial jurisdiction, French courts have jurisdiction, even if the parties are foreign, when the jurisdictional criterion or one of the jurisdictional criteria retained by a domestic rule of territorial jurisdiction is met in France. To determine which domestic rules of territorial jurisdiction apply, it is necessary to consider the nature of the Minister's action. It should be remembered that under Article L.442-6 III of the French Commercial Code in its version prior to Order no. 2019-359 of 24 April 2019 applicable to the dispute (now Article L.442-4) the legislator has given the public authority the power to bring legal proceedings before the civil or commercial courts to put an end to the restrictive competition practices referred to in the same article, to declare unlawful clauses or contracts null and void, to order the repayment of undue payments made pursuant to the nullified clauses, to compensate for the resulting damage and to impose a civil fine on the perpetrator of the said practices;* [...]. *Accordingly, under domestic law, the action brought by the Minister for the Economy on the basis of Article L 442-6 III of the French Commercial Code is civil in nature (to this effect, see Com., 18 October 2011, Appeal no. 10-28.005, Bull. 2011, IV, no. 160, which validates the characterisation as an action in tort) and is subject to the rules of the French Code of Civil Procedure. The analysis made by the preliminary ruling of the Minister's action as brought in the present case in order to interpret the autonomous concept in Union law of "civil and commercial matters" and exclude it from the scope of the Brussels I bis Regulation has no bearing on the nature of the action attributed by the French legislature to the public authority to bring proceedings before the civil or commercial courts to prevent restrictive practices of competition between commercial partners operating on the French market. In fact, Eurelec and Scabel are challenging the Minister's power to bring proceedings against foreign companies on the basis of Article L442-6 of the French Commercial Code, a challenge which relates to the application of substantive law and has no bearing on the determination of the international jurisdiction of the French courts. It is therefore appropriate to refer to the ordinary law rules of territorial jurisdiction of the domestic Code of Civil Procedure, extended to the international order*" (emphasis added).

207 See **TMSF Exhibit 223**, ECJ, 15 February 2007, Case C-292/05, *Lechouritou,* ¶ 41 ("*First of all, the Court has already held that the fact that the claimant is acting on the basis of a claim which has its source in an act of public authority is sufficient for his action to be regarded, whatever the nature of the proceedings available to him for that purpose under national law, as excluded from the scope of the Brussels Convention (see Rüffer, cited above, paragraphs 13 and 15). The fact that the action brought before the national court is presented as being of a civil nature in so far as it seeks to obtain pecuniary compensation for the material and non-material damage caused to the applicants in the main proceedings is therefore irrelevant*"). See also **TMSF Exhibit 224**, ECJ, 16 December 1980, Case 814/79, *Rüffer*, ¶ 15 ("*The fact that the manager, in pursuing recovery of those costs, is acting on the basis of a right to a claim which has its source in an act of public authority is sufficient for his action to be regarded, whatever the nature of the proceedings available to him for that purpose under national law, as excluded from the scope of the Brussels Convention*"). The allegedly unlawful nature of acts of public authority, which does not concern the subject matter of those acts, has no bearing on the inapplicability of the Brussels I Bis Regulation (to this effect, see **TMSF Exhibit 223**, ECJ, 15 February 2007, Case C-292/05, *Lechouritou,* ¶ 43).

208 See *supra*, ¶¶ 72-76.

and stability of financial markets, the functioning of the credit system and the protection of depositors' rights and interests[209]. Under the Banking Act, the TMSF, and the persons it appoints to manage and control the companies under its supervision, have the power to decide on the sale of assets of controlled companies.[210]. These decisions could be and/or were challenged before the Turkish administrative courts.[211]. Ms Özge Aksoylu, Associate Professor of Turkish Administrative Law consulted by the TMSF, pointed out in this regard that the decisions in question, relating to the "*recovery of TMSF's debts and other public debts from the proceeds of forced sales* [were adopted] *using prerogatives of public power, to which no legal person under private law can lay claim under the Constitution*".[212].

198. The Respondent points out, by way of comparison, that the intervention of the FGDR (the French deposit guarantee mechanism and the resolution financing mechanism), when a credit institution is no longer able (or will in the short term no longer be able) to return the deposits entrusted to it, may lead to a "*total or partial sale of the credit institution or to the extinction of its business, in particular by the sale of its business assets*", and appeals against its decisions fall within the jurisdiction of the administrative courts. [213]Appeals against these decisions fall within the jurisdiction of the administrative courts.[214]. In a ruling dated 28 September 2021, the Conseil d'Etat clarified the status of the FGDR as a private entity entrusted with a public service mission.
". *endowed for this purpose with prerogatives of public authority*" and that even in the absence of such prerogatives, it must be regarded as carrying out a public service mission, having regard in particular to "*the general interest of its activity*".[215].

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209 See in particular **TMSF Exhibit 14**, Banking Act No. 5411 of 19 October 2005, Article 134. This law determines the powers of the TMSF and the procedures applicable to the recovery of the Fund's claims, Article 1.

210 See *id.* at article 134.

211 See in particular *supra*, ¶¶ 101, 81, 86, 100 and **TMSF Exhibit 1**, Annex 1, Summary table of asset disposals of Uzan Group companies carried out by the TMSF, column relating to "Challenge proceedings before Turkish administrative courts".

212 **TMSF Exhibit 245**, Legal opinion of Ms Özge Aksoylu of 18 April 2024, p. 14.

213 Monetary and Financial Code, article L. 312-5, II.

214 See Monetary and Financial Code, article L. 312-5 V.

215 **TMSF Exhibit No. 105**, CE, September 28, 2021, No. 447625, *Fonds de garantie des dépôts et de résolution (FGDR)* (*"Irrespective of the cases in which the legislature itself intended to recognise or, conversely, to exclude the existence of a public service, a private person who carries out a mission of general interest under the control of the administration and who is endowed to that end with prerogatives of public authority is entrusted with the performance of a public service. Even in the absence of such prerogatives, a private person must also be regarded, in the silence of the law, as carrying out a public service mission when, having regard to the general interest of its activity, the conditions of its creation, organisation or operation, the obligations imposed on it and the measures taken to verify that the objectives assigned to it are achieved, it appears that the administration intended to entrust it with such a mission*"). In addition, Thierry Samin and Stéphane Torck note that

199. It follows from the foregoing that the Claimants' action against the TMSF, which has its source in acts of public authority taken by the TMSF, falls within the scope of "*administrative matters*" within the meaning of Article 1 of the Brussels I bis Regulation. The Brussels I bis Regulation (including Article 6(2)) is therefore inapplicable to the present case.[216].

200. Consequently, the Plaintiffs cannot avail themselves of the jurisdictional privilege of Article 14 of the Civil Code, as they do not have French nationality.[217]and the Pre-Trial Judge will have to rule that the French courts do not have jurisdiction to hear the action brought by Consorts Uzan.

ii. Les Consorts Uzan are not domiciled in France

201. Even if the Pre-Trial Judge were wrong to consider that the Brussels I Bis Regulation is applicable to the Plaintiffs' action, the Pre-Trial Judge can only rule that the French courts do not have jurisdiction to hear the action brought by the Consorts Uzan since the Plaintiffs do not prove that their domicile is in France, so that they cannot rely on the jurisdictional privilege provided by Article 14 of the Civil Code.

202. The effect of Article 6(2) of the Brussels I bis Regulation is to extend the privilege of jurisdiction provided for in Article 14 of the Civil Code only to foreigners domiciled in France. As regards the determination of domicile, Article 62(1) of the Brussels I bis Regulation refers to the law of each Member State, providing that :

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the Conseil d'Etat has adopted an "*all-encompassing notion of the public service mission including regulation*" and in particular prevention and banking regulation **(TMSF Exhibit 106**, Thierry Samin and Stéphane Torck, note under CE, 28 September 2021, no. 447625, *Fonds de garantie des dépôts et de résolution (FGDR), Revue de droit bancaire et financier,* no. 2, March-April 2022, comm. 41, p. 4).

216 The TMSF points out that, in case RG no. 21/05467 (**Plaintiffs' Exhibit no. 72**), in which the pre-trial judge applied the Brussels I Bis Regulation, the Consorts Uzan's action, which is not directed against the TMSF but exclusively against Motorola, in no way concerns the relationship between the TMSF and the Consorts Uzan or the prerogatives of public authority exercised by the TMSF in the present case. The action brought by the Consorts Uzan in this other case arose from an application by Motorola for enforcement of an American judgment ordering the Consorts Uzan to compensate Motorola for the damage it had suffered as a result of the fraud perpetrated, an application for enforcement which the Consorts Uzan maintain constitutes an abuse of the right to claim and an abuse of the right to bring legal proceedings.

217 See **TMSF Exhibit 107**, Cass. Civ. 1ère, 14 December 2004, No. 01-03.285, Bull. civ. I, No. 311, p. 260 ("*Mais attendu que la compétence internationale des tribunaux français, par application de l'article 14 du Code civil, est fondée non sur les droits nés des faits litigieux mais sur la nationalité des parties, sauf preuve d'une fraude destinée à donner artificiellement compétence à la juridiction française pour soustraire le débiteur à ses juges naturels*" (emphasis added)). See also **TMSF Exhibit 204**, B. Audit, L. d'Avout, *Droit international privé,* Traité, LGDJ, Lextenso, 9th edition, 2022, ¶ 451 ("*La nationalité française, condition nécessaire et suffisante. Arts. 14 and 15 apply solely on the basis of the French nationality of the plaintiff or defendant, i.e. without the need for any other connection with France, in particular through the domicile or residence of the person concerned*" (emphasis added)).

> *"To determine whether a party is domiciled in the territory of the Member State whose courts are seised of the matter, the court shall apply its domestic law*".[218].

203. Article 102 of the Civil Code defines domicile as follows:

> *"The domicile of any French person, with regard to the exercise of his civil rights, is the place where he has his main establishment*".[219].

204. Domicile means the private place where a natural person actually lives, which is stable, permanent and coincides with the centre of the person's family ties and occupations.[220].

205. The domicile of a natural person is the place where he has his main establishment, his permanent home, the centre of his activities, in all aspects of life, political and public, property, professional, family and private life; and this connection with a place must be of a lasting nature.[221].

206. The concept of domicile is distinct from that of residence, which refers to "the *place where a natural person actually lives on a fairly stable basis, but which may not be his domicile*".[222]. It is common ground that the criterion used by the Brussels I bis Regulation to extend the privilege of jurisdiction provided for in article 14 of the Civil Code is that of the foreigner's domicile in France, and not that of his residence.

207. Domicile is determined in a concrete manner, by means of material and intentional elements, capable of establishing a real and effective link with a territory. Irrespective of the material elements taken into consideration to determine domicile, it is the intention to establish the centre of one's interests in a country (intentional element) that is truly decisive.

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[218] Regulation (EU) No 2015/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), Article 62(1).

[219] Article 102 of the Civil Code.

[220] See **TMSF Exhibit No. 108**, Cass. Civ. [1ère], 10 February 1993, No. 91-17.601, Bull. Civ. I, no. 69. See also **TMSF Exhibit No. 109**, Orléans, 15 January 2018, RG No. 17/00312 and **TMSF Exhibit No. 110**, Paris, 31 May 2022, RG No. 20/10132 ("*domicile, within the meaning of nationality law, means the actual residence that is stable, permanent and coincides with the centre of the person's family ties and occupations*").

[221] See, for example, **TMSF Exhibit No. 225**, Aix-en-Provence, 6 March 2014, RG No. 12/23854. See also **TMSF Exhibit No. 226**, Paris, 16 May 2018, RG No. 17/20599.

[222] **TMSF no. 111**, G. Cornu, Association Henri Capitant [ed.], Vocabulaire juridique, "Résidence", p. 918. Although it is possible for "*the law to attach* [subsidiarily] *various legal effects*" to the concept of residence, this is the case in matters of territorial jurisdiction only in relation to the residence, if not the domicile, of the defendant (article 43 of the Code of Civil Procedure: "*The place where the defendant resides is understood to be: - in the case of a natural person, the place where that person has his domicile or, failing that, his residence* [...]").

from home[223]. Domicile thus presupposes a "*psychological element, the intention to remain there for an indefinite period of time*".[224].

208. In addition, the claimant cannot rely on the privilege of jurisdiction under Article 14 of the Civil Code in the event of "*fraud intended to artificially give jurisdiction to the French court in order to shield the debtor from his natural judges*".[225].

209. In the present case, the documents submitted by Mr and Mrs Uzan do not constitute sufficient evidence to locate their respective domiciles in France. This evidence is in fact insufficient to establish that, on the day the present proceedings were instituted, the Uzans intended to make French territory the centre of their activities, in all aspects of their lives, political and public, property, professional and family.[226].

210. On the other hand, it is clear from the facts of this case that Mr and Mrs Uzan have both stood as candidates in the presidential elections in Turkey in May 2023. Moreover, in the documents they submitted for the purposes of their respective candidacies, Mr Cem Uzan and Mr Hakan Uzan gave an address in Ankara, Turkey.[227]. This confirms, in the light of the circumstances of the case, that the Applicants are not domiciled in France, in particular because the element of intent required for recognition of a domicile in France has not been established in this case.

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223 See **TMSF Exhibit 227**, E. Ralser, "Domicile et résidence dans les rapports internationaux", Fascicule 543-10, *JurisClasseur Droit international*, 27 September 2017, ¶ 39.

224 **TMSF Exhibit 204**, B. Audit, L. d'Avout, *Droit International Privé*, Traité, LGDJ, Lextenso, 9th edition, 2022, ¶¶ 212-213.

225 **TMSF Exhibit 107**, Cass. 1st Civil Division, 14 December 2004, no. 01-03.285, Bull. I, no. 311, p. 260.

226 With regard to Mr. Murat Hakan Uzan, the only information submitted is essentially a residence permit in France that expired in December 2021 (**Applicant's Exhibit 34**), an income tax notice for 2017 only, from which it appears that he has never had any income in France (**Applicant's Exhibits 43 and 44**), judgments stating that he had a "marital home" at 32 avenue Foch in the 16th arrondissement of Paris in 2017, the passport and birth certificate of his last son mentioning the same address in 2018, medical tests and a hospital record for 2017 and 2018 (**Applicants' Exhibits 52 and 53**) and a civic training course taken in 2019 (**Applicants' Exhibit 55**). In the case of Mr Cem Cengiz Uzan, these are mainly mobile phone bills, the most recent of which mention the address of 32 avenue Foch (**Applicant's Exhibit 69**), gas bills from 2017 (**Applicant's Exhibit 68**), a hospital bill from 2010 (**Applicant's Exhibit 63**) and a health insurance card issued in 2016 (**Applicant's Exhibit 64**).

227 See **TMSF Exhibit 228**, Application of Mr Murat Hakan Uzan (original in Turkish, accompanied by a free translation into French) and **TMSF Exhibit 229**, Application of Mr Cem Cengiz Uzan (original in Turkish, accompanied by a free translation into French). The address indicated corresponds to the headquarters of the political party of
Mr. Cem Uzan. The candidacies of Mr. Cem and Mr. Murant Uzan were not admitted, because their candidacy files were not submitted in person: see **TMSF Exhibit No. 230**, Decisions No. 192 and 193 of the High Electoral Commission of the Republic of Turkey of 20 March 2023.

211. In the present case, the Claimants do not prove that they are domiciled in France. Although, for the purposes of the case, they refer to a domicile in France[228]it is a residence in France that they intend to prove[229].

212. Consequently, the Plaintiffs, who do not prove that they are domiciled in France, cannot benefit from the privilege of jurisdiction arising from the combination of Article 14 of the Civil Code and the Brussels I bis Regulation.

213. In any event, the Plaintiffs are attempting to artificially create the jurisdiction of the Paris Court in order to circumvent the exclusive jurisdiction of the Turkish courts to rule on their claims.[230].

214. It will be emphasised in this respect that the Plaintiffs, who claim to be "*the successors in title to their sister, Mrs Aysegul Uzan, and their father, Mr Kemal Uzan*", rely in support of the foregoing on "[a]*cts confirming the agreements transferring the rights of Mrs Aysegul Uzan and Mr Kemal Uzan to Mr Murat Hakan UZAN and Mr Cem Cengiz UZAN*".[231]. The Respondent points out in this regard that these "*confirmatory deeds*", produced by the Claimants in Exhibit 3, were signed on 30 May 2021, i.e. one and a half months before the Claimants' summons. They are clearly documents prepared for the purposes of the case, which do not, moreover, give any indication of the essential elements of the alleged transfers, such as the date and price, for example.[232]. In such circumstances, there is every reason to believe that

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[228] See **Plaintiffs' Summons of July 13, 2021**, ¶ 134 ("*In this case, the Plaintiffs may be of foreign nationality, but they are all domiciled in France, and have been for years (Exhibits 1 and 2)*"). See also **Plaintiffs' Submission on the Merits No. 1 of 21 November 2023**, ¶ 165; **Plaintiffs' Reply Submission on Incident of 21 November 2023**, ¶ 365.

[229] See **Plaintiffs' Summons of July 13, 2021**, ¶ 129 ("*France is indeed the place where the Plaintiffs carry on their 'activity' as economic beneficiaries of the Companies, so that the damage was and still is suffered in France where this capacity as shareholders is exercised, as natural persons having their residence in France*" (emphasis added)). See also **Plaintiffs' Submissions on the Merits No. 1 of November 21, 2023**, ¶ 160. The Plaintiffs then maintain the confusion by claiming that they are domiciled in France ("*In the present case, the Plaintiffs may be of foreign nationality, but they are all domiciled in France, and have been for years (exhibits 1 and 2)*"): **Plaintiffs' Summons of 13 July 2021**, ¶ 134 - See also **Plaintiffs' Submissions on the Merits No. 1 of 21 November 2023**, ¶ 165; **Plaintiffs' Reply Submissions on the Incident of 21 November 2023**, ¶ 365) while producing in support of this claim exhibits No. 1 and 2 entitled "*Proof of Residence in France*" (see **Plaintiffs' Schedule of Exhibits**).

[230] See *infra*, ¶¶ 288-294.

[231] **Exhibit 3**, Deeds confirming the agreements to transfer the rights of Ms Aysegul Uzan and Mr Kemal Uzan to Mr Cem Cengiz Uzan and Mr Murat Hakan Uzan.

[232] The Respondent points out that only the production of the alleged "*assignment agreements*" themselves (and not the "*confirmatory deeds*" prepared for the purposes of the case by the Claimants' father and sister) would make it possible to verify the terms of the alleged assignments of claims or rights, in particular the purpose of the alleged assignments, their date, the price, as well as the other conditions relating to the assignments (if any).

believe that the alleged assignments, if they existed at all, were made solely for the needs of the case, in accordance with the strategy already used by the Uzan Family in the past[233]. even though the rights allegedly assigned relate to measures taken by the TMSF, the legality of which has been confirmed by the Turkish courts on the occasion of challenges brought before them[234].

215. The TMSF emphasises that the Claimants have refrained from submitting with their latest submissions any evidence of the reality of the alleged transfers, which is sufficient to confirm their non-existence. In other words, either the transfers in question do not exist, or they were made in an abusive manner in order to fraudulently create an artificial connecting link with France (i.e. the Claimants' alleged domicile in France) in an attempt to justify the jurisdiction of the French courts.

216. In view of the foregoing, the Pre-Trial Judge is asked to rule that the French courts (including the Paris Court) do not have jurisdiction to hear the Plaintiffs' claims.

d. Lack of jurisdiction on the basis of Article 42 paragraph 3 of the Code of Civil Procedure

217. Furthermore, the Plaintiffs cannot validly rely on Article 42, paragraph 3 of the Code of Civil Procedure to justify the internal territorial jurisdiction of the Paris Court as "the *court of their choice*" or "the *court of the place where they live*".[235].

218. The TMSF first points out that the Consorts Uzan did not, in their submissions in response to the incident before the Juge de la mise en état, make any claim that the Tribunal judiciaire de Paris would have territorial jurisdiction on the basis of Article 42(3) of the Code of Civil Procedure, nor any plea in response to the objection to jurisdiction raised by the TMSF in that regard. In these circumstances, the Pre-Trial Judge, who is not

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233 See, for example, **TMSF Exhibit 2**, Annex 2, Some examples of attempts by the Uzan Family to manipulate the justice system. See also **TMSF Exhibit No. 174**, ICSID, *Europe Cement Investment and Trade S.A. v. Republic of Turkey*, Case No. ARB(AF)/07/2, Award of 13 August 2009, ¶¶ 84-85 and 163-164.

234 See in particular *supra*, ¶¶ 81, 86, 100 and **TMSF Exhibit 1**, Annex 1, Summary table of asset disposals of Uzan Group companies carried out by the TMSF, column relating to "Challenge proceedings before Turkish administrative courts".

235 **Plaintiffs' Summons of July 13, 2021**, ¶¶ 137-138 ("*since the defendants reside abroad, the Plaintiffs are entitled to bring suit before the Judicial Court of Paris, the court of their choice and, moreover, the court of the place where they reside. Consequently, the Court will have to retain its internal territorial jurisdiction to hear the present dispute*"). See also **Plaintiffs' Submissions on the Merits No. 1 of 21 November 2023**, ¶¶ 168-169.

to which the Consorts Uzan have not submitted any claim or plea in response - who have thus abandoned this claim - can only rule that the Paris Court does not have jurisdiction.

219. In any event, Consorts Uzan's claim in this respect, as set out in its writ of summons, is unfounded and can only be rejected.

220. Article 42 paragraph 3 of the Code of Civil Procedure states:

> *"If the defendant has no known domicile or residence, the plaintiff may seise the court of the place where he lives or the court of his choice if he lives abroad"*.[236].

221. The case law points out that the aforementioned provision can only give rise to the jurisdiction of a French court if "*the defendant has no known domicile or residence*", and if the plaintiff lives abroad.[237].

222. In the present case, it is not disputed by the Plaintiffs that the domicile of the TMSF (as well as that of the other co-defendants) is known. Consequently, the Plaintiffs cannot validly invoke Article 42 paragraph 3 of the Code of Civil Procedure to justify the jurisdiction of the Paris Court.

B. As a preliminary point, on TMSF's immunity from jurisdiction

223. It is settled case law that foreign States enjoy immunity from jurisdiction where the act which gives rise to the dispute participates, by its nature or purpose, in the exercise of the sovereignty of those States and is therefore not an act of management.[238]. This is the case when the action relates to acts of public authority or performed in the interest of a public service.

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236 Article 42, paragraph 3 of the Code of Civil Procedure (emphasis added).

237 See, for example, **TMSF Exhibit No. 112**, Tribunal de grande instance de Paris, 31 May 2013, RG No. 11/14039 ("*Paragraph 1 of Article 42 is intended to apply in this case, to the exclusion of paragraph 3, which concerns only cases where the defendant has no known domicile, which is clearly not the case here since the summons was validly served on him at his domicile in Lausanne, Switzerland*" (emphasis added)). See also **TMSF Exhibit No. 113**, Paris, February 22, 2019, RG No. 17/14719 ("*the principle laid down by Article 42 of the Code of Civil Procedure leads us to favour the territorial jurisdiction of the place where the defendant is domiciled, which in this case would lead us to refer the examination of the dispute to a Belgian court. If, on the other hand, the Piriou company maintains that paragraph 3 of Article 42 of the Code of Civil Procedure should be applied, which would allow it, itself having its registered office abroad, to choose the French court of its choice, it should be noted that this text provides for subsidiary jurisdiction which can only come into play if '*the defendant has no known domicile or residence*', which is not the case here, as the registered offices of companies B C and Sealease are known, even though they are not located in France*" (emphasis added)).

238 See, for example, **TMSF Exhibit No. 114**, Cass 1ère civ. 12 July 2017, Nos. 15-29.334 and 15-29.335, published in the Bulletin.

224. It is also accepted that this immunity from jurisdiction may be invoked by any entity acting in the name and on behalf of the foreign State for acts of public authority or performed in the interest of a public service.[239].

225. This is not disputed by the Uzan[240]who maintain that the TMSF does not enjoy immunity from jurisdiction on the grounds, first, that the TMSF is not an emanation of the Turkish State and, second, that the acts of the TMSF, by their nature, do not constitute acts of public authority.[241] and, secondly, that the acts of the TMSF, by their nature, do not constitute acts of public authority.

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239 See, for example, **TMSF Exhibit no. 115**, Cass. Civ. 1ère, 19 May 1976, no. 74-11.424, Bull. Civ. I, No. 181 ("*But whereas, after having rightly recalled* that *immunity from jurisdiction may be invoked by foreign States and by bodies acting by their order or on their behalf, for acts of public authority or performed in the interest of a public service, the court of appeal found that, by virtue of the Japanese legal texts that it analysed, the Bank of Japan, when it acts as foreign exchange controller, does so by order and on behalf of the Japanese State*"). See also **TMSF Exhibit 116**, Cass. civ. 1ère, 27 April 2004, no. 01-12.442, Bull. Civ. I, no. 114 ("*But whereas foreign States and bodies or persons acting by their order and on their behalf enjoy immunity from jurisdiction not only for acts of public authority but also for those performed in the interest of a public service; that the Court of Appeal, having noted, firstly, that M. Y...a non-commissioned officer in the army, was a member of the USAPT, which was attached to the United States Army Recruiting Command, then that the training during which the accident occurred was part of the ordinary activities of the USAPT on American territory, was financed by the American army and was carried out under its command, and again, that the association of a civilian team with this training did not cause it to lose its military character, since it was a question of the American army training its parachutists and promoting its recruitment, deduced exactly from this that the activity of the parachuting team was carried out in the context of the performance of a public service mission of the foreign State and decided that Mr. Y... was entitled to claim damages. Y... was entitled to rely on the principle of sovereign immunity of States, thereby depriving the forum seised of the power to judge and without being able to invoke the provisions on jurisdiction in Article 14 of the Civil Code*" (emphasis added); **TMSF Exhibit 117**, Cass. Civ. 1ère, 14 December 2004, no. 01-15.471 and 01-15.472, Bull. Civ. I, No. 310 ("*But whereas the Court of Appeal rightly held that the immunity from jurisdiction invoked by ASECNA was not based on its status as an international agency under the Dakar Convention, but on the activities carried out on behalf of the Senegalese State in performance of the contract of 7 December 1987, so that the complaints of the first three branches are factually lacking; whereas, next, the Court of Appeal did not have to carry out a search that was not requested of it ; that finally, having noted that the Agency's liability was called into question for the storage conditions of the fuel depots under its control and that, contrary to the statements of the first judge who had focused only on the commercial activity entrusted to ASECNA, this body was performing, on behalf of the Senegalese State, a public service mission relating to the safety of national air transport and the maintenance of airports under the administrative and financial control of the Minister of Civil Aviation of that State, the Court of Appeal rightly deduced that ASECNA, which was acting by virtue of a public service delegation, should benefit from immunity from jurisdiction, which deprived the French court of the power to rule against it*" (emphasis added)); **TMSF Exhibit 118**, Cass. civ. 1ère, 17 April 2019, no. 17-18.286, published in the bulletin ("*Mais attendu que les activités de certification et de classification, qui relèvent de régimes juridiques différents, sont dissociables et que seule la première autorise une société de droit privé à se prévaloir de l'immunité juridictionnelle de l'Etat du pavillon qui l'a spécialement habilité à délivrer, en son nom, au propriétaire d'un navire, la certification statutaire*" (emphasis added)) and **TMSF** Exhibit **No. 231**, Cass. 1ère Civ, 3 March 2021, No. 19- 22.855. See also **TMSF Exhibit 119**, United Nations Convention on Jurisdictional Immunities of States and Their Property, Article 1b) ("*1. For the purposes of this Convention:* [...] *(b) The term 'State' means : (i) The State and its various organs of government; (ii) Components of a federal State or political subdivisions of the State, which are empowered to perform acts in the exercise of sovereign authority and are acting in that capacity; (iii) State institutions or agencies or other entities, insofar as they are empowered to perform and are actually performing acts in the exercise of the sovereign authority of the State; (iv) Representatives of the State acting in that capacity*" (emphasis added)).

240 It will be noted that the Consorts Uzan rely in particular on the court decisions submitted by the TMSF (**TMSF exhibits no. 114, 117 and 118)** and do not contest the relevance or the interpretation by the TMSF of the other decisions referred to by the Respondent.

241 See **Plaintiffs' November 21, 2023 Reply Brief on Incident**, ¶¶ 187-212.

226. As a preliminary point, the Uzan Consorts' claim that the TMSF is not an emanation of the Turkish State is inoperative, since the TMSF is not - and does not maintain that it is - an emanation of the Turkish State. The TMSF enjoys immunity from jurisdiction in respect of the acts that it performed in the context of the Imar Fraud and that the Uzan Consorts are contesting in the present proceedings, insofar as those acts, which form part of the exercise of the sovereignty of the Turkish State, are acts of public authority and/or performed in the interest of a public service. Consorts Uzan's contention that TMSF does not enjoy immunity from jurisdiction on the ground that TMSF '*has proven de facto and de jure autonomy vis-à-vis the Turkish State*' is thus manifestly unfounded and irrelevant to the present case.[242].

227. In the present case, the TMSF enjoys immunity from jurisdiction insofar as the claims of the Consorts Uzan relate to acts of public authority performed by the TMSF in the interest of a public service.[243] as mentioned above, in the context of the Imar Fraud, the TMSF acted as a resolution authority before taking measures to recover the public debts that arose on that occasion[244].

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242 Consorts Uzan's references to court decisions rendered not on immunity from jurisdiction, but on immunity from execution, are also irrelevant in the present case, since immunity from jurisdiction and immunity from execution are governed by different regimes and are subject to different conditions (**TMSF no. 232**, Cass. 1ère Civ., 6 February 2007, Bull. civ. I, no. 52 and **TMSF no. 233**, Cass. 1ère Civ., 15 July 1999, no. 97-19.742. On the distinction between immunity from jurisdiction and immunity from execution, see **TMSF Exhibit 204**, B. Audit, L. d'Avout, *Droit international privé,* Traité, LGDJ, Lextenso, 9th edition, 2022, ¶ 504).

243 The Claimants cannot validly attempt to challenge the TMSF's immunity from jurisdiction and/or the classification of the TMSF's acts as acts of public authority by relying on decisions of the Court of Justice of the European Union, since the system of immunity from jurisdiction is "*determined by each State on its own behalf*". **TMSF Exhibit 204**, B. Audit, L. d'Avout, *Droit international privé,* Traité, LGDJ, Lextenso, 9th edition, 2022, ¶ 492.See also **TMSF Exhibit No. 234**, F. Mélin, "Conditions de l'immunité de juridiction des Etats étrangers", *Dalloz actualité*, 14 September 2017 ("*Il est en effet acquis qu'en matière d'immunité, la qualification des activités litigieuses intervient* lege fori"). The TMSF also points out that, in its pleadings, the Consorts Uzan limit themselves to challenging the TMSF's immunity from jurisdiction by arguing that, by their nature, the acts of the TMSF at issue would constitute acts of management (which is incorrect), without commenting on the purpose of those acts, whereas the question of whether an act "*participates in the exercise of the sovereignty of a State*" is assessed with regard to either the nature or the purpose of that act. See **TMSF Exhibit no. 235**, M. Audit, Commentary on Cass. 1ère Civ, 3 March 2021, no. 19-22.855, *Journal du droit international (Clunet), no. 4, October 2021*, pp. 1367-1379, spec. p. 1373 ("*From this examination, it must be concluded whether it participates 'in the* exercise of [its] sovereignty*' by the State in question. If not, it is an '*act of management*', which deprives it of its immunity. However, the Court of Cassation ruled that this participation in the exercise of sovereignty should be considered from two possible angles: either by "*its nature*" or by "*its purpose"). In the present case, the acts of the TMSF that the Consorts Uzan are challenging in these proceedings - and that the Paris Tribunal Judiciaire intends to find 'non-existent' - are acts which, by their nature and purpose, constitute acts of public authority and/or acts performed in the interest of the public service, so that the TMSF enjoys immunity from jurisdiction.

244 See *supra*, Section I.C and ¶ 198. See also **Exhibit TMSF No. 120**, Judgment No. 2007/1077 of the 1st Istanbul Administrative Court of 25 April 2007; **Exhibit TMSF No. 121**, Judgment No. 2009/455 of the 6th Istanbul Administrative Court of 19 March 2009; **Exhibit TMSF No. 122**, Judgment No. 2014/2069 of the 13th Chamber of the Council of State of 28 May 2014; **Exhibit TMSF No. 123**, Judgment No. 2007/2344 of the 4th Istanbul Administrative Court of 31 October 2007.

228. The Respondent points out in this respect, as indicated above, that the FGDR (the French deposit guarantee mechanism and the resolution financing mechanism (*i*) which intervenes when a credit institution is no longer in a position to return the deposits entrusted to it, (*ii)* whose intervention may lead to a "*total or partial sale of the credit institution or the extinction of its activity, in particular by the sale of its business*"[245] and (*iii*) whose decisions fall within the jurisdiction of the administrative courts[246]) constitutes, as the Conseil d'État has ruled, a private person entrusted with a public service mission "It is considered, even in the absence of such prerogatives, to be carrying out a public service mission, particularly in view of "*the general interest of its activity*".[247].

229. For these reasons, Consorts Uzan's claim that the action they brought concerned "*management acts*" of a commercial nature, carried out "*within the framework of legal relationships governed by private law*[248] is manifestly unfounded[249].

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245 Monetary and Financial Code, article L. 312-5, II.

246 See Monetary and Financial Code, article L. 312-5 V.

247 **<u>TMSF Exhibit No. 105</u>**, CE, September 28, 2021, No. 447625, *Fonds de garantie des dépôts et de résolution (FGDR) ("Regardless of the cases in which the legislature has itself intended to recognise or, conversely, to exclude the existence of a public service, a private person who carries out a mission of general interest under the control of the administration and who is endowed for this purpose with prerogatives of public authority is entrusted with the performance of a public service. Even in the absence of such prerogatives, a private person must also be regarded, in the silence of the law, as carrying out a public service mission when, having regard to the general interest of its activity, the conditions of its creation, organisation or operation, the obligations imposed on it and the measures taken to verify that the objectives assigned to it are achieved, it appears that the administration intended to entrust it with such a mission*"). In addition, Thierry Samin and Stéphane Torck note that the Conseil d'Etat has adopted an "*all-encompassing notion of the public service mission, including regulation*" and in particular prevention and banking regulation (**<u>TMSF exhibit no. 106</u>**, Thierry Samin and Stéphane Torck, note in CE, 28 September 2021, no. 447625, *Fonds de garantie des dépôts et de résolution (FGDR), Revue de droit bancaire et financier,* no. 2, March-April 2022, comm. 41, p. 4).

248 **Plaintiffs' Summons of July 13, 2021**, **¶¶** 139-150. See also **Plaintiffs' Submission on the Merits No. 1 of November 21, 2023**, **¶¶** 170-181; **Plaintiffs' Reply Submission on Incident of November 21, 2023**, **¶¶** 218-233. Moreover, the Claimants' attempt to challenge the classification of the TMSF's acts as "acts of public authority" by relying on decisions of the Court of Justice of the European Union can only be rejected. Indeed, immunity from jurisdiction is a concept specific to each State, the "*regime of* which *has been determined by each State on its own behalf*".

249 The decisions relied on by the Consorts Uzan, in which the French courts dismissed claims based on immunity from jurisdiction (Cass. Civ. [1ère], 7 October 1969, Bull. civ. no. 292; Cass. Civ. [1ère], 18 November 1986, no. 85-11.404 and TGI Paris, 30 June 2015, RG no. 13/13177) cannot be transposed to the case in point since they relate to acts of private law, involving claims under private law or taken by entities exercising limited prerogatives in these matters that do not constitute prerogatives of public authority. The judgment of 30 June 2015 was overturned by the Paris Court of Appeal on 24 March 2017 (RG no. 15/14229).

230. In view of the foregoing, TMSF is entitled to rely on immunity from jurisdiction, with the result that the French courts have no jurisdiction to hear the action brought by Consorts Uzan.

C. On the inadmissibility of the claims of Consorts Uzan

231. The Defendant points out, as a preliminary matter, that a large number of the companies referred to in the summons and submissions on the merits no. 1 have not been the subject of asset d i s p o s a l s . The Claimants appear to maintain that the assets of these companies were also transferred, but that "*the details* [of these transfers] *were not publicly disclosed*".[250]. On this basis, they appear to be seeking more than $20 billion in damages (i.e. one third of their claims).[251].

232. In its submissions of September 12, 2022, the Defendant noted that the Uzan Consorts' claim was so imprecise that it was impossible to respond to it as it stood. It invited the Plaintiffs to clarify their allegations, in particular regarding the nature of the assets that were allegedly transferred, the procedure followed to carry out the alleged transfers, the identity of the alleged transferees, the price of the alleged transfers, the date on which the alleged transfers took place, and the circumstances in which the Plaintiffs allegedly became aware of these alleged non-public transfers.

233. The Applicants did not provide any clarification in this respect in their response to the incident of 21 November 2023.

234. As noted above, in the absence of the details requested, the TMSF cannot exhaustively verify the regularity, admissibility and merits of the Claimants' claims. The Defendant reserves all its rights in this respect.

235. With regard to the claims of the Consorts Uzan relating to companies whose assets were the subject of the disposals listed in **Appendix 1**[252]these claims are also inadmissible on at least four separate grounds. The Defendant will thus demonstrate that the Plaintiffs do not justify a personal and legitimate interest in bringing the action (**2)**, that the present action tends to circumvent the res judicata authority attached to the judgments rendered by the Courts

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250 **Plaintiffs' Summons of 13 July 2021**, ¶ 276. See also **Plaintiffs' Submission on the Merits No. 1 of 21 November 2023**, ¶ 331.

251 See **Plaintiffs' Summons of 13 July 2021**, p. 52. See also **Plaintiffs' Submission on the Merits No. 1 of 21 November 2023**, p. 65.

252 See **TMSF Exhibit 1**, Appendix 1, Summary table of asset disposals by TMSF of Uzan Group companies.

Turkish administrative authorities concerning the measures taken by the TMSF in the context of the Imar Fraud (**3**), that the present action is an abuse of rights (**4**) and that the Uzan Consorts' claims are time-barred (**5**).

236. As a preliminary matter, TMSF seeks dismissal of Uzan's request for referral of "*all of the grounds for dismissal raised in the alternative by* [TMSF] [...] *to the bench for* final judgment and to join them to the merits", which is unfounded and cannot be granted by the Pre-Trial Judge.[253] which is unfounded and cannot be granted by the Pre-Trial Judge (**1**).

1. On the request for referral of the grounds of inadmissibility to the formation of the judgment and their consolidation on the merits

237. In their submissions in response to the incident , [254]the Consorts Uzan request the Pre-Trial Judge, pursuant to Article 789, 6° of the Code of Civil Procedure[255]to refer the grounds of non-admissibility raised by the TMSF and the other co-defendants (with the exception of the ground of non-admissibility based on immunity from jurisdiction) back to the court hearing the case. This request for referral and joinder was justified, according to Consorts Uzan, by the alleged need to first rule on "*substantive issues*". For the reasons set out below, this request is unjustified, and the TMSF therefore opposes the referral of these pleas of non-admissibility to the bench, to be decided by the Pre-Trial Judge.

238. In fact, the Plaintiffs have failed to identify any "*substantive issues*" that would need to be resolved before ruling on the grounds for dismissal raised by the TMSF, including the grounds for dismissal based on the limitation period for the action and the lack of interest and standing on the part of the Uzan Estate. [256]. On the contrary, it is clear from the exchanges

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253 **Claimants' reply submissions of 21 November 2023**, pp. 117-118.

254 See **Plaintiffs' November 21, 2023 Response to Intervention**, ¶¶ 165-179.

255 See Article 789 of the Code of Civil Procedure ("*Where the application is lodged after his appointment, the Pre-Trial Judge shall, until he relinquishes jurisdiction, have sole jurisdiction, to the exclusion of any other formation of the court, to:* [...] *6° Rule on the pleas of inadmissibility. Where the plea of inadmissibility requires that a substantive issue first be decided, the Pre-Trial Judge shall rule on this substantive issue and on this plea of inadmissibility. However, in cases that do notfall within the jurisdiction of the single judge or that are not assigned to him, a party may object. In such a case, and by way of exception to the provisions of the first paragraph, the Pre-Trial Judge shall refer the case back to the formation of the court, where appropriate without closing the investigation, so that it may rule on the substantive issue and on the objection. The court may also order this referral if it considers it necessary. The referral decision is a measure of judicial administration. The Pre-Trial Judge or the bench of judges rules on the substantive issue and on the plea of inadmissibility by means of separate provisions in the operative part of the order or judgment. The bench shall rule on the plea of inadmissibility even if it does not consider it necessary to rule first on the substantive issue. Where appropriate, it shall refer the case back to the pre-trial judge*").

256 The legal arguments put forward by the Uzan partners in an attempt to justify the existence of substantive issues that would have to be resolved before the appeal could be dismissed are inoperative. With regard to the "The decisions cited by the Claimants are not relevant since they *concern* the question of determining the law applicable to the substance of the dispute, and not the law applicable to the plea of inadmissibility. Similarly, it is incorrect to state that "*the interpretation of the law*

between the Parties that the Pre-Trial Judge can now rule on these pleas of inadmissibility, without it being necessary to decide any substantive issue. Consequently, the request for referral and joinder on the merits can only be rejected.

239. Even if the Pre-Trial Judge were to find that there is a "*substantive issue*" that needs to be decided beforehand, any referral to the bench could, according to the Plaintiffs' own allegations, only concern the grounds for dismissal based on the limitation period for the action and the lack of interest and standing to bring the action, i.e. the only grounds for dismissal that the Uzan Consorts maintain raise substantive issues. With regard to the - inaccurate - claim by Mr & Mrs Uzan that the determination of the applicable law constitutes a "*substantive issue*", it should be noted that it is not disputed by the parties that the law applicable to the question of limitation is Turkish law.[257]so that the question of the applicable law is not one that it would be necessary to decide before examining the plea of non-receipt[258].

240. In addition, the mechanism provided for in Article 789 of the Code of Civil Procedure does not in any case include a referral to the bench, accompanied by a joinder on the merits.[259]. The referral is, in

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The question of whether the "*foreign law*" applicable to the plea of inadmissibility constitutes a substantive issue that needs to be decided beforehand.

257 The parties agree that Turkish law is applicable to the question of the limitation period. The Uzan brothers and sisters noted this in their submissions in response to the incident. On this point, see the **Claimants' reply submissions of 21 November 2023**, ¶ 451.

258 The argument put forward by the Uzan Estate that referral back to the panel of judges ruling *in fine* would be justified by the fact that the grounds for dismissal raised "*are not likely to put an end to the present dispute*" is not only unfounded - the statute of limitations and the lack of interest and/or standing to bring an action make it impossible to examine the merits of the dispute by simply putting an end to the action - and is not based on any source, The Plaintiffs merely refer to "*the practice established by several chambers of the Paris Judicial Court*".

259 See **TMSF Exhibit 236**, J. Jourdan-Marques, "Chronique d'arbitrage : où va le contrôle étatique de l'arbitrage international ?", *Dalloz actualité*, 30 April 2021 ("[O]*ne should specify that, even though Article 789 allows the Pre-Trial Judge to refer the matter to the bench, it does not allow the incident to be joined to the merits. In fact, it states that "the Pre-Trial Judge shall refer the case back to the bench of judges, if necessary without closing the preliminary enquiry, so that it may rule on the substantive issue and on the plea of inadmissibility". It must surely be understood that the objection cannot be dealt with in the decision on the merits, but must be dealt with in a separate decision*" (emphasis added). This solution is in line with the spirit of the 2019 reform of civil procedure, which amended article 789 of the Code of Civil Procedure. The purpose of this amendment was to allow the pre-trial judge to purge the case of all incidents, procedural objections and pleas of non-receivability, and thus avoid the case being unnecessarily put on hold for judgment on the merits (In this regard, see **TMSF Exhibit 237**, M. Kebir, "Réforme de la procédure civile : promotion de la mise en état conventionnelle et extension des pouvoirs du JME", *Dalloz actualité*, 23 December 2019 ("*Le décret n° 2019-1333 modifie en partie la procédure ordinaire écrite devant le tribunal judiciaire. More specifically, the provisions relating to pre-trial preparation are contained in articles 780 to 807 of the Code of Civil Procedure. The impact of this reform can be seen in the two aspects of the task entrusted to the Pre-Trial Judge (JME): preparing the judgment and purging the case of its ancillary litigation* [...] *A major innovation, the new article 789 of the Code of Civil Procedure adds that the Pre-Trial Judge has jurisdiction to hear "pleas of inadmissibility"* [...] *The objective is very clear: to deal with these defences as quickly as possible. Proceedings that are likely to end in inadmissibility can thus be terminated "without the case being put on the point of being judged on the merits"*.

The referral is limited to the substantive issue and to the plea of inadmissibility concerned by that substantive issue. The pre-trial judge is thus not relieved of jurisdiction by the referral and continues to have exclusive jurisdiction to hear the case.[260]. Accordingly, in view of the circumstances of the case, and in the absence of any substantive issue to be decided prior to consideration of the pleas in bar, the proper administration of justice requires that the Pre-Trial Judge rule, without referral, on the pleas in bar raised by the co-defendants, so as not to unduly delay the hearing of the present proceedings.

241. In view of the foregoing, the Pre-Trial Judge can only reject the Plaintiffs' request for referral and joinder on the merits of the grounds of non-admissibility to the formation of the Court.

2. Inadmissibility of the claims on the grounds that the Uzan consorts had no legitimate interest in bringing proceedings

242. Article 31 of the Code of Civil Procedure states that :

> *"An action may be brought by anyone who has a legitimate interest in the success or rejection of a claim, subject to cases in which the law confers the right to bring an action only on persons whom it qualifies to raise or combat a claim or to defend a specific interest.*[261].

243. Article 122 of the Code of Civil Procedure provides that :

> "A plea of *inadmissibility is any ground that seeks to declare an adversary's claim inadmissible, without examination of the merits, for lack of right to sue, such as lack of standing, lack of interest, prescription, time limit, res judicata*".[262].

(JCP n° 18, doctr. 530, n° 3, L. Mayer). The pre-trial judge can thus prevent proceedings from being prolonged unnecessarily in the event of inadmissibility" (emphasis added)).

260 See **TMSF Exhibit 238**, Y. Strickler, "Mise en état," *Répertoire de procédure civile*, July 2023, ¶ 54 ("*Once the fin de non-recevoir and the question de fond have been decided, the case will normally return to the juge de la mise en état, who will continue his investigation*" (emphasis added)). See also **TMSF Exhibit 239**, H. Croze, " Procédure écrite ordinaire devant le tribunal judiciaire - Essai d'archéologie juridique contemporaine ", *Procédures*, n° 3, mars 2020, ¶ 17 ("*It is noteworthy that it is specified that this referral does not necessarily entail the closure of the hearing, a sign that the mise en état is not necessarily complete and that this procedure can be seen as a sort of incident of the mise en état. Moreover, where appropriate, the court "refers the case back to the pre-trial judge*").

261 Article 31 of the Code of Civil Procedure (emphasis added).

262 Article 122 of the Code of Civil Procedure (emphasis added).

244. In accordance with the above-mentioned articles 31 and 122, in order for an action to be admissible, the plaintiff must demonstrate an interest in bringing the action. This interest must be direct and personal, legitimate, born and present [263].

245. While the Plaintiffs acknowledge that the requirement of a born and present interest is a matter governed by the law of the forum[264]law, they dispute that the same applies to the requirement of a direct and personal interest in bringing proceedings, on the one hand, and a legitimate interest, on the other [265].

246. The Uzan Estate's contention that the question of whether the requirement of a direct, personal and legitimate interest in bringing proceedings is a matter for the law of the case is contradicted by the doctrine cited by the Plaintiffs themselves. On this point, Professors Huet and Barba point out the following (referring to eminent authors and a number of case-law examples):

> *"Above all, the law of the court seised determines the nature of the interest which the person acting must justify* [...]. *This rule is practically more important than the previous one because of the variety of laws on the nature of the interest [...*].
>
> [...]
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> *Whether the alleged interest is direct and personal depends on the law of the forum [...*].
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> [...]
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> *Finally, the requirement of legitimacy of the interest* (CPC, art. 31) *is a matter for the law of the forum insofar as the expression means that the interest invoked must be serious (cf. [...] H. Motulsky 'the interest is procedurally legitimate if the action does not constitute an abuse of the right to institute legal proceedings*'").[266].

247. Similarly, Professors Audit and d'Avout point out that it is the law of the forum that defines the concept of an interest in bringing proceedings and, above all, the characteristics that the interest must have (while recalling that, in certain circumstances, it would be appropriate to take into account, where applicable, the situation resulting from the law of the substance):

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263 See for example, **TMSF Exhibit 124**, T. Le Bars, K. Salhi, J. Héron, *Droit judiciaire privé*, 2019, Lextenso, ¶ 67.

264 See **Plaintiffs' Reply Brief on Incident of 21 November 2023**, ¶ 476.

265 See *id.* at ¶ 477 ("*defendants [...*] *wrongly assume that the law applicable to these elements of standing would be the* [sic] *law of the forum, i.e., French law*").

266 See **TMSF Exhibit 240**, A. Huet, M. Barba, "Compétence de la lex fori - Domaine de lex fori: action en justice", Fascicule 582-10, *JurisClasseur Droit international*, February 2023, ¶¶ 51, 55 and 61.

The requirement of an interest [...] *illustrates the fundamental hesitation between* lex substantiae *and* lex fori. *In favour of the former, it may be argued that interest varies according to the subject-matter and that one's conception of it depends on that of the law itself. But the purpose of the requirement is to cut short unnecessary disputes and avoid clogging up the courts; as such, it is procedural in nature. The Cour de cassation has endeavoured to balance the two considerations, coming out in favour of the procedural character while reserving the case where the law applicable to the substance does not grant rights to the person suing. The law of the forum will define precisely the concept of interest and above all the characteristics it must have (born, present, direct...), taking into account if necessary the situation resulting from the substantive law. For example, the law of the insurance contract must be consulted when a foreign insurer acts in France claiming to represent co-insurers; consulting the foreign law makes it possible to identify the holders of the rights in dispute and to check the admissibility of the legal action in the light of the requirements of the forum. In the same way, consulting the organisation of a* trust *governed by foreign law makes it possible to understand the* trustee*'s position and, where appropriate, to classify the trustee as the holder of the rights at issue, who is entitled to take legal action in France without having to identify the beneficiaries*".[267].

248. Consequently, contrary to what the Claimants suggest, French law (and more specifically the conditions set out in Article 31 of the Code of Civil Procedure, as clarified by French case law) is applicable to the question of whether the Consorts Uzan have an interest in bringing proceedings in the present case.

249. However, as set out below, the Claimants have not demonstrated either a direct and personal interest (**a**) or a legitimate interest (**b**).

a. The Plaintiffs do not establish a direct and personal interest in bringing the action

250. The interest in bringing an action must be "*personal*", i.e. specific to the person bringing the action:

> "*This requirement means that a person may take legal action only in so far as the infringement of the right affects his own interests and the result of the action will benefit him personally. It is not possible to recognise the right to act to ensure respect for the* general interest [...]*, nor the right to act to defend the* interests of others*, whether natural or legal persons, because 'no one pleads by counsel' and res judicata has only relative authority between the parties to the proceedings*".[268].

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[267] **TMSF no. 204**, B. Audit, L. d'Avout, *Droit international privé,* Traité, LGDJ, Lextenso, 9th edition, 2022, ¶ 539; see also, with regard to the consultation of foreign law to identify the owners of the disputed rights for the purpose of establishing the existence of a personal and direct interest within the meaning of the French law applicable as the law of the forum: **TMSF Exhibit No. 241**, Cass. 1ère Civ. 14 April 2010, Bull. civ. I, No. 92.

[268] **TMSF Exhibit No. 125**, L. Cadiet, E. Jeuland, *Droit judiciaire privé*, Lexis Nexis, 2016, p. 287, ¶ 358 (emphasis added).

251. An action in tort brought by a claimant acting in his capacity as a partner or shareholder of a company is therefore admissible only on the twofold condition that the claim relates to compensation for a personal loss distinct from a loss suffered by the company[269] and, where applicable, that the claimant provides proof of his status as a partner or shareholder[270].

252. With regard to the first condition, a member or shareholder of a company does not justify an action for compensation for personal injury where the alleged injury consists of a "The amount *of the loss suffered by the group of creditors or by the debtor company*:

> *"If the plaintiff in the action for damages is a shareholder acting in liability against the directors of the debtor company, the admissibility of his action is subject to the allegation of a personal loss distinct from that which could have been suffered by the company itself [...]* In so ruling, without distinguishing *whether Mr [M]'s action was seeking to make good only a fraction of the loss suffered by the company, the Court held that it was not necessary to allege a personal loss.*

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269 See, for example, with regard to an individual shareholder's action against a company director, **TMSF Exhibit No. 126**, Cass. Com. 26 January 1970, No. 67-14.787, Bull. Chambre commerciale no. 30, p. 31 ("Whereas the *contested confirmatory judgment [...] is criticised for declaring that* [the shareholder] [...] *is inadmissible to subsequently claim compensation for the loss resulting from the sale of his shares from the directors responsible for the company's mismanagement* [...].*that in complaining of having sold at a loss,* [the shareholder] *is not asserting a prejudice that is specific to him, that in this case it is only a question of the prejudice suffered by the company itself as a result of mismanagement, that the prejudice caused to the shareholder is only the corollary thereof* [*...that in ruling as it did, the Court of Appeal, far from having committed the alleged distortion, confined itself to giving the circumstances of the case their true character*" (emphasis added); **TMSF Exhibit 127**, Cass. Com, 28 June 2005, no. 04-13.586 ("*But whereas the judgment holds that partners who do not act obliquely in this case and do not bring an action on behalf of the company are only admissible in their personal action if they can prove a personal loss distinct from the loss suffered by the company in which they hold shares and that the losses suffered by the partners of a company in liquidation, relating to losses in the value of their shares as a result of the alleged breach of contractual stipulations by the company's sole customer, are suffered indiscriminately by the group of shareholders and by the company; that in so deciding that the loss claimed by the members who, by virtue of their rights and duties as members of the company, were called upon to bear the losses of the company, being merely the corollary of the loss caused to the company, was not personal in nature, the Court of Appeal correctly applied the aforementioned provisions*" (emphasis added); **TMSF Exhibit No. 128**, Paris, February 18, 2016, RG No. 15/06253 ("*The Court recalls that partners have an individual liability action against corporate officers, distinct from the action ut singuli brought on behalf of the company. In order to be admissible, a partner who brings such an action must suffer a personal loss distinct from the loss suffered by the company*" (emphasis added)). See also, with regard to an individual shareholder's action against a third party, **TMSF Exhibit 129**, Cass. com. 8 February 2011, no. 09-17.034, Bull. IV, No. 19 ("*Having regard to Article 1382 of the Civil Code, together with Article 31 of the Code of Civil Procedure; Whereas the admissibility of an action for liability brought by a shareholder against a co-contractor of the company is subject to the allegation of a personal loss distinct from that which could be suffered by the company itself*") and **TMSF Exhibit No. 130**, Cass. Com, 4 November 2021, no. 19-12.342, published in the bulletin ("*Having regard to articles 1382, now 1240, of the Civil Code and 31 of the Code of Civil Procedure: It follows from these texts that the admissibility of a liability action brought by a partner against a third party is subject to the allegation of a personal prejudice distinct from that which could be suffered by the company itself, i.e. a prejudice that cannot be erased by compensation for the company's prejudice. The mere fact that this partner is acting on the basis of contractual liability is not sufficient to establish the personal nature of the alleged loss [...] In so ruling, without investigating, as it was required to do, whether the financial loss alleged by Mr [X] in his capacity as a partner of the company was personal and distinct from that which could be suffered by the company itself, that is to say, a loss that cannot be made good by making good the loss suffered by the company. [X] in his capacity as shareholder was not, in whole or in part, the corollary of the loss suffered by the company [X] Group as a result of the alleged depreciation of the catalogue of works constituting its principal asset, the Court of Appeal deprived its decision of a legal basis*" (emphasis added)).

270 See **TMSF Exhibit No. 131**, Cass. Com. 2 December 2008, No. 07-19.061; **TMSF Exhibit No. 132**, Paris, 30 January 2008, RG No. 05/21137; **TMSF Exhibit No. 133**, Tribunal de Grande Instance de Paris, 19 December 2007, RG No. 05/14342; **TMSF Exhibit No. 134**, Aix-en Provence, 31 January 2019, RG No. 16/12713.

the Court of Appeal deprived its decision of a legal basis".[271].

253. With regard to the second condition, where the plaintiff claims to be acting as a shareholder or partner of a company in respect of dividends distributed by the company of which he claims to have been deprived, the action is inadmissible unless the plaintiff can prove that he is a shareholder or partner of the company.[272].

254. It should be remembered that it is common ground under both French and Turkish law that only the members or shareholders of a company are entitled to the dividends distributed by that company (which is not disputed by the Claimants).[273] (which is not disputed by the Claimants).

255. In the present case, in their writ of summons dated 13 July 2021, the Plaintiffs claimed to have suffered financial losses consisting of (*i*) the loss of value of the assets held by the Companies, on the one hand, and (*ii*) an alleged "loss of dividends" generated by the assets sold, on the other:

> *"This loss represents the* *<u>market value to date of the activities and assets transferred by the Companies</u>* *under the management of TMSF, including the* *<u>dividends already generated by these activities and assets today</u>* *for the Companies under the management of TMSF.*
> *19 years, as well as the present and future dividends generated by these activities and assets now held by third parties, representing more than 68 billion US dollars to date.*
>
> [...]
>
> *As a result of TMSF's fraudulent appropriation of the Companies' assets, the Claimants were in fact impoverished by* *<u>the value of the assets wrongfully sold by TMSF</u>*.
>
> *This loss represents the* *<u>current market value of the businesses and assets sold by the companies</u>* *under TMSF's management, including the* *<u>dividends already generated by these businesses and assets</u>* *over the last 19 years.*

[271] **<u>TMSF Exhibit 135</u>**, Cass. Com. 2 June 2021, no. 19-23.758 (emphasis added).

[272] See **<u>TMSF Exhibit 136</u>**, Cass. com. 9 June 2004, no. 01-02.356.

[273] See, for example, for commercial companies, Article L. 232-12 of the French Commercial Code: "*After approving the annual accounts and establishing the existence of distributable sums, the general meeting determines the share allocated* *<u>to the shareholders</u>* *in the form of dividends*" (emphasis added); Article 507 of the Turkish Commercial Code: "*<u>Each of the shareholders is entitled</u>* *to a share in proportion to his share in the net profit for the financial year, the distribution of which to the shareholders is decided in accordance with the provisions of the law and the articles of association*" (emphasis added).

> *years, as well as present and future dividends generated by these activities and assets currently held by third parties*".[274].

256. With regard to the first category of alleged losses (loss of value of the Companies' assets), the Defendant reiterated in its incidental submissions that, for the reasons set out above, the Plaintiffs' action must be deemed inadmissible insofar as their action does not seek compensation for a separate loss distinct from that allegedly suffered by the Companies. The Defendant thus pointed out that the Plaintiffs are inadmissible to claim compensation for an alleged loss corresponding to the value of the assets of the Companies that were the subject of the transfers, since this loss, if proven, would directly affect only the assets of these companies.

257. In the absence of any argument in response, the Claimants have decided to fundamentally change the subject matter of their claims for compensation, which now exclude the loss of value of the Companies' assets from the alleged loss:

> "*This loss represents the value of the dividends received at the date of the writ by the beneficial owners and/or shareholders of the acquiring companies, amounting to more than 68 billion US dollars (USD) to date (amount to be completed).*
>
> [...]
>
> *As a result of TMSF's fraudulent appropriation of the Companies' assets, the Claimants were in effect impoverished by the value of the assets wrongfully sold by TMSF and the dividends that it should have received from the operation of those assets.*
>
> *This loss represents the value of the dividends received at the date of the writ by the economic beneficiaries and/or the shareholders of the acquiring companies, representing to date more than 68 billion US dollars (USD) (amount to be completed)*".[275].

258. The change in the subject matter of the Plaintiffs' claims (excluding a significant part of the loss previously alleged) should logically have resulted in a significant reduction in the amount of damages sought. However, this is not the case: the Plaintiffs are still claiming "*more than 68 billion US dollars*", now solely in respect of the "*dividends*" to which they claim to be entitled.[276].

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274 See **Plaintiffs' Summons of July 13, 2021**, ¶¶ 124 and 273-274 (emphasis added).

275 **Plaintiffs' Submission on the Merits No. 1 of November 21, 2023**, ¶¶ 155 and 328-329 (emphasis added).

276 Les Consorts Uzan now claim that "*their right to dividends [...] is precisely the subject of the present dispute*": see, for example, **Plaintiffs' Submissions on the Merits No. 1 of 21 November 2023**, ¶ 92; whereas

259. This circumstance is a further illustration of the fanciful nature of their claims for compensation (and of the purported assessment of the loss submitted in support of these claims)[277].

260. With regard to the second category of alleged losses (loss of "*dividends*"), the Respondent notes that, in their final pleadings, the Uzan Estate clarified their claims, indicating that this alleged loss would correspond to "*the value of the dividends received* [...] *by the economic beneficiaries and/or the shareholders of the acquiring companies* [of the assets transferred by the TMSF]".[278].

261. In other words, it appears that the Consorts Uzan are seeking payment of a sum corresponding to dividends distributed by companies in which, according to their own argument, they do not hold the slightest direct or indirect interest[279].

262. Having regard to the principle, well established in both French and Turkish law[280]according to which only the members or shareholders of a company are entitled to the dividends distributed by that company, the Claimants do not justify any personal and direct interest in the payment of the sums corresponding to the dividends distributed by the "*acquiring companies*".[281].

263. A claim for compensation for an alleged loss of "*dividends"* could only make sense if the Uzan shareholders were claiming compensation for a loss resulting from the non-distribution in the form of dividends of the profits that would have been made by the companies in which they held interests, which the Uzan shareholders did not do.

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that in their Summons they claimed that it was the "*misappropriation of the Companies' assets* [...] *which is precisely the subject of the present dispute*" (emphasis added).

277 See *supra*, ¶¶ 113-116.

278 **Plaintiffs' Submission on the Merits No. 1 of November 21, 2023**, ¶ 329 (emphasis added).

279 See in particular, in this regard, **Plaintiffs' Summons of 13 July 2021**, ¶¶ 14, 17; **Plaintiffs' Reply Submissions on Incident of 21 November 2023**, ¶¶ 23, 26; **Plaintiffs' Submissions on the Merits No. 1 of 21 November 2023**, ¶¶ 15, 18.

280 See *supra*, ¶ 254.

281 The Respondent points out, for all intents and purposes, that according to the Uzan Group they would have an "*interest in bringing an action [...] under Turkish law*" because the shareholders of a joint stock company would be "*presumed to have a legal interest in bringing an action for the non-existence*" of acts taken by the general meeting of that company: see the **Claimants' submissions in response to the incident of 21 November 2023**, ¶ 506. It is up to the Plaintiffs to explain in what way the demonstration of a personal and direct interest in suing for the nullity (or non-existence) of certain acts and decisions of the Uzan Group Companies - which the Plaintiffs have not taken the trouble to identify - would be sufficient to establish that the Uzan Partners would also have a personal and direct interest in suing for compensation for an alleged loss corresponding to the dividends of third-party companies in which they are not shareholders.

264. In any event, the Respondent points out that the Claimants are not entitled to claim damages for the absence of dividends, which is merely the consequence of the alleged loss suffered by these same companies[282]the disposal of the assets which, in the Plaintiffs' own words, made it possible to generate these dividends[283]. The Claimants also present the loss they have allegedly suffered as an uncertain fraction of the loss suffered by the company.[284]of the company's loss.

265. Finally, it is common ground between the parties to the proceedings that, in the present case, the existence of an interest in bringing proceedings on the part of the Uzan Consorts depends on them proving that they are shareholders in the companies in the Uzan group. [285]. It is up to Consorts Uzan, as plaintiffs in the

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282 See *supra*, ¶¶ 251-252. The Applicants cannot set aside this well-established solution by arguing, in a manifestly unfounded manner, that "*these decisions* would *not be applicable in the present case*" or by putting forward (hypothetical) considerations of pure expediency: see the **Applicants' submissions in response to the incident of 21 November 2023**, ¶¶ 525-529.

283 See **Plaintiffs' Summons of 13 July 2021**, ¶ 124 ("*This loss represents the market value to date of the activities and assets transferred by the Companies under the management of the TMSF, including the dividends already generated by these activities and assets today for the last 19 years, as well as the present and future dividends generated by these activities and assets today held by third parties, representing to date more than **US$68 billion***" (emphasis added)). The Uzan Estate also amended their submissions in this regard in their submissions notified on 21 November 2023: see in this regard, **Claimants' Submissions on the Merits No. 1 of 21 November 2023**, ¶ 155. See also **Plaintiffs' Reply Submission o f November 21, 2023**, ¶ 163 ("*This loss represents the value of the dividends received as of the date of the writ by the beneficial owners and/or shareholders of the acquiring companies, representing to date more than **68 billion U.S. dollars (**USD) (amount to be perfected)*").

284 *Id.* **Plaintiffs' Exhibit No. 4**, to which the Plaintiffs refer, is the "report" which, according to the Plaintiffs, sets out the Plaintiffs' shareholdings in the companies whose asset disposals are being challenged in these proceedings. However, as noted above, this report is incomplete and incomprehensible (see footnote 192 *above*). In addition, the report (i) lacks supporting annexes, and (ii) does not list companies, but rather "commercial and economic complexes" formed by the TMSF in accordance with Turkish law to sell together assets whose collective use makes economic and commercial sense, and to do so at the best possible price (see in particular *supra*, ¶ 95). *First,* some of these "commercial and economic packages" contained assets of different companies; this is the case, for example, of the "Star TV" "commercial and economic package", which includes assets of the following companies: Star Televizyon Hizmetleri AŞ; Teleon Reklamcılık ve Filmcilik Sanayi ve Ticaret AŞ; İnter Televizyon Servisleri AŞ; Yıldız Medya Reklamcılık Hizmetleri Ticaret AŞ; M.B.I. Reklamcılık ve Filmcilik Sanayi ve Ticaret AŞ; Universal Filmcilik ve Reklamcılık Sanayi AŞ; Merkez Sistem Filmcilik ve Yayıncılık Ticaret AŞ; Uyum Televizyonculuk Reklamcılık ve Yayıncılık AŞ ; Boyut Prodüksiyon ve Yayıncılık Ticaret AŞ ; Güncel İletişim Filmcilik ve Yayıncılık Ticaret AŞ ; Rumeli Teknik AŞ ; Kutup Prodüksiyon AŞ ; Lotus Reklamcılık AŞ ; Film Türk Film Prodüksiyon ve Dağıtım Ticaret AŞ ; Prime Prodüksiyon Hizmetleri AŞ ; Star Haber Ajansı AŞ ; Ultra Filmcilik ve Reklamcılık Sanayi ve Ticaret AŞ ; Medya Prodüksiyon Ticaret AŞ ; Prime Medya Filmcilik ve Reklamcılık San. AŞ; Star Digital İletişim AŞ. *Secondly*, the assets of a single company could be divided into different commercial and economic packages; this is the case, for example, of Star Televizyon Hizmetleri AŞ, whose assets were divided into the commercial and economic packages "Süper FM", "Metro FM", "Star TV", "Rock FM", "Radyo Alaturka", "Joy FM", "Joy Türk FM" and "Rumeli Plaza". See **TMSF Exhibit 1**, Appendix 1, Summary table of asset disposals by the TMSF of Uzan Group companies. It is common ground that the assets of a commercial company do not form part of the assets of the company's shareholders. Consequently, the Claimants cannot seriously claim to be in a position to determine their shareholding in groups of assets and, consequently, the report produced in **Claimants' Exhibit 4** is not such as to justify the Claimants' status as shareholders, nor to establish the existence of a definite injury to a right of the Claimants as a result of the asset disposals that they claim caused them prejudice.

285 See, for example, on this subject, **Plaintiffs' Reply Submissions on Incident of 21 November 2023**, ¶¶ 506 and 509.

t o provide evidence t o establish their status as shareholders (and therefore their interest in bringing an action).

266. As the Defendants have already pointed out in their Statement of Claim dated 12 September 2022, the Plaintiffs, who sometimes present themselves as the "*ultimate beneficiaries*" and sometimes as the "shareholders" of the Companies in the Uzan group whose asset disposals allegedly caused them damage, have not provided any proof that they are shareholders or partners (and in what proportion) in the said Companies. [286]sometimes as the "*shareholders*" of the Companies in the Uzan group whose asset disposals allegedly caused them harm, do not provide any proof that they are shareholders or partners (and in what proportion) of the said companies[287].

267. In response, in their final pleadings, the Uzan Estate merely cited a few scattered documents referring, in a general and unspecified manner, to companies or organisations that are not members of the Uzan Estate.
"*The Uzan family*'s "*businesses*[288]. These elements are clearly insufficient to verify the validity of the Plaintiffs' claim that they are "shareholders" of the companies in question (and even less to understand what share of the capital they claim to hold in each of these companies).

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[286] See, e.g., **Plaintiffs' Summons of 13 July 2021**, ¶ 3: "[Plaintiffs] *act in this case as the **ultimate beneficial owners** of numerous Turkish companies (hereinafter referred to as the "**Companies**") of which they hold, directly or indirectly, more than 25% of the capital or voting rights and whose assets were fraudulently misappropriated by the defendants (exhibit no. 4)*" (emphasis added)). It should be noted that the Uzan Estate also amended their submissions in this regard in their pleadings served on 21 November 2023: see in this regard, **Plaintiffs' Submission on the Merits No. 1 of 21 November 2023**, ¶ 3. See also **Plaintiffs' Reply Submission on Incident of 21 November 2023**, ¶ 11 ("[The Plaintiffs] *are acting in this case as ultimate economic beneficiaries and as ultimate holders of the dividend rights of numerous Turkish companies (hereinafter the 'Companies'), or as partners or shareholders of these Companies, in which they hold, directly or indirectly, more than 25% of the capital or voting rights and whose assets have been fraudulently misappropriated by the Defendants as well as the dividend rights of their shareholders (Exhibit 4)*" (emphasis added)).

[287] It should be noted in this respect that Mr Cem Cengiz Uzan had stated in his defence to the criminal proceedings brought against him in Turkey, at the end of which he was convicted of money laundering, fraud committed against depositors, fraud committed against the State, aggravated embezzlement, and criminal organisation with a view to embezzlement, that "*after 1994 he severed all relations with Imar Bank of Turkey S.A., Imar Bank Off-Shore Ltd. as well as with all the companies dependent on the Uzan Group* [...] *that he severed all de jure and de facto links with Imar Bank of Turkey S.A., Imar Bank Off-Shore Ltd. and with the companies dependent on the Uzan Group*" (emphasis added): **TMSF Exhibit No. 35**, Judgment of the [8th] Criminal Chamber of the Istanbul Court of First Instance, 29 March 2013, No. 2008/10, p. 217 (emphasis added). In addition, the Claimants have a habit of using nominees to bring various actions to circumvent the applicable jurisdictional rules: see for example **TMSF Exhibit No. 2**, Annex No. 2, Some Examples of Attempts by the Uzan Family to Instrumentalise Justice, and in particular **TMSF Exhibit No. 137**, ICSID, *Saba Fakes v. Turkey*, Case No. ARB/07/20, Award of 14 July 2010, ¶¶ 136-149, inter alia ("In *light of the foregoing, the Tribunal concludes that the parties to the Uzan-Masoud-Fakes 'arrangement' never intended to give effect to the purported transfer of Masoud shares to Mr. Fakes and instead agreed to implement an agreement that did not even transfer legal ownership of the Telsim share certificates to Mr. Fakes. Accordingly, the Tribunal concludes that Mr Fakes' arrangement does not satisfy the requirement of contribution* [...]*, nor the requirements of duration and risk, since no rights were actually transferred to the Claimant through the Uzan-Masoud-Fakes arrangement* [...]. *In other words, Mr. Fakes did not make any investment in Telsim that would meet any of the three criteria for the existence of an investment within the meaning of Article 25(1) of the ICSID Convention*" (emphasis added)).

[288] See **Plaintiffs' November 21, 2023 Reply Brief on Incident**, ¶¶ 509-520.

268. The Plaintiffs' legal action must therefore be deemed inadmissible if they do not justify a personal interest in bringing the action.

b. The Plaintiffs do not demonstrate a legitimate interest in bringing the action

269. The interest in bringing an action must be legitimate. Legitimacy means controlling the use of the action as a means to an end, which must also meet the requirement of legitimacy.[289] in the service of a purpose that must also meet this requirement of legitimacy[290].

270. A claimant in an action in tort must prove, not that there has been any damage whatsoever, but that there has been definite injury to a legally protected legitimate interest.[291]. His action will not be admissible if the legally protected interest whose injury he intends to sanction is affected by illegality or immorality preventing it from being sanctioned by the courts.[292].

271. In this case, the Plaintiffs have not demonstrated a legitimate interest.

272. As mentioned above[293]the measures taken by the TMSF and challenged by the Claimants in the present proceedings originate in the fraud organised within Banque Imar (which was controlled by the Uzan family) which enabled the diversion of

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[289] The judge must then "*ensure that the origin of the evil does not prevent the use of social coercion to remedy it*": **TMSF exhibit no. 138**, G. Wicker, "La légitimité de l'intérêt à agir", Mél. Serra, Dalloz, 2006, p. 455, spec. p. 461.

[290] See *id.*

[291] See **TMSF Exhibit 139**, Cassation Civ. 28 July 1937, Bulletin des arrêts Cour de Cassation Chambre civile, No. 181, p. 377 ("*the claimant of a delictual or quasi-delictual indemnity must justify, not any damage, but the certain injury of a legitimate interest, legally protected*"). See also **TMSF Exhibit 140**, Cass. civ. 2ème, 19 February 1992, no. 90-19.237, Bull. II, no. 54, p. 26 ("*Having regard to article 31 of the new Code of Civil Procedure, together with article 1384, paragraph 1, of the Civil Code* [...] *In the light of these statements, which do not establish the illegitimacy of his interest in seeking compensation for his loss from the train keeper, the Court of Appeal deprived its decision of a legal basis*"); **TMSF Exhibit No. 141**, Cass. Civ. 2ème, 24 January 2002, no. 99-16.576, Bull. II, no. 47 ("*Whereas a victim can only obtain compensation for the loss of his or her remuneration if it is lawful*").

[292] See **TMSF Exhibit 138**, G. Wicker, "La légitimité de l'intérêt à agir", Mél. Serra, Dalloz, 2006, p. 455, specul. p. 461. The Court of Cassation has ruled that a plaintiff who has committed a tort cannot claim compensation for the loss "*resulting from the impossibility of pursuing such activity*" caused by the market supervisor prohibiting the company of which the plaintiff was the sole director from carrying on business, and secondly, the fact of continuing "*the liability action that he had brought in 1984 against the Commission des Opérations de Bourse, after his conviction by the criminal courts had become final ten years later, in 1994*" was an abuse of the right to sue, punishable in this case by an order to pay a civil fine under Article 32-1 of the Code of Civil Procedure: see **TMSF Exhibit 142**, Cass. Com, 30 November 1999, no. 97-15.978.

[293] See *above*, Section I.B.

billion US dollars in deposits made by customers of Banque Imar, for the benefit of companies in the Uzan Group or members of the Uzan Family themselves[294].

273. Following the discovery of this fraud, in the exercise of its public service mission of guaranteeing deposits made with Turkish banking institutions, the TMSF compensated all of the depositors of Bank Imar who were victims of the fraudulent manoeuvres within the Bank (and for which one of the Claimants, Mr Cem Cengiz Uzan, was convicted of a criminal offence in Turkey, receiving heavy prison sentences), from funds obtained by borrowing from the Turkish Treasury. Secondly, in the exercise of its public powers under Turkish law, the TMSF took steps to recover the public debts it held in respect of the funds used to overcome the Imar Fraud.

274. The measures taken by the TMSF, consisting of acts of public authority performed in the interest of a public service and carried out in accordance with Turkish law, have moreover been the subject of numerous challenges before the Turkish administrative courts (including by members of the Uzan Family), which have upheld the legality of the measures taken by the TMSF.

275. Under the terms of the present proceedings, under cover of an action in tort based on the provisions of the French Code of Civil Procedure, the Consorts Uzan are seeking to obtain a ruling from the Tribunal Judiciaire de Paris on the validity of the acts of public authority taken by TMSF, a Turkish public authority, and to order TMSF to compensate them for the alleged losses they have suffered as a result of the measures taken in the exercise of its public service mission.

276. The action brought by the Claimants, appropriately presented as an action in tort (whereas it seeks to challenge the exercise by a Turkish public authority of prerogatives of public power which it derives from provisions of Turkish public law), seeks to obtain from the French courts that they deprive of effect the measures taken by the TMSF as a result of the banking fraud committed by Banque Imar for the benefit of the Uzan Family.

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[294] It is emphasised that the Claimants personally participated in this fraud, Mr Cem Cengiz Uzan having been convicted by the Turkish courts of money laundering, fraud committed against depositors, fraud committed against the State, aggravated embezzlement and criminal organisation with a view to embezzlement. See *supra*, Section I.B.3. See also **TMSF Exhibit No. 143**, Judgment of the *United States District Court (Southern District of New York)* of February 8, 2006, *Motorola Credit Corporation and Nokia Corporation (Plaintiffs) v. Kemal UZAN, Cem Cengiz Uzan, Murat Hakan Uzan, Melahat Uzan, Aysegul Akay, Antonio Luna Betancourt, Unikom Iletism Hizmetleri Pazarlama A.S., Standart Pazarlama A.S., and Standart Telekomunikasyon Bilgisayar Hizmetleri A.S.*

277. If the Court of Appeal were to uphold the claims of the Uzan Consorts in whole or in part, this would have the effect, on the one hand, of allowing the Uzan Consorts to profit from fraudulent activities carried out by Banque Imar to the detriment of its depositors and, on the other hand, of ordering the TMSF to bear the cost of the damage caused to Banque Imar's depositors by these fraudulent activities.

278. In any event, the Claimants do not justify any legitimate interest in bringing proceedings in respect of the claims made in *their* capacity as successors in title of "*their sister, Ms Aysegul Uzan, and their father, Mr Kemal Uzan*", since the Claimants have not submitted any evidence of the reality of the alleged transfers and that these transfers, if they existed, would have taken place in an abusive manner in order to artificially create a connecting link with France and a right of action for the Claimants in respect of these alleged transfers.

279. In this context, Consorts Uzan do not justify any legitimate interest in acting, so their claims are inadmissible.

3. On the inadmissibility of the Uzan Consorts' claims insofar as they seek to circumvent the res judicata effect of judgments handed down by the Turkish administrative courts

280. The Plaintiffs are thus attempting, under cover of an action in tort, to have the Paris Court of Justice rule on the legality of the TMSF's actions, which cannot be allowed, for the reasons set out below.

281. As is clear from the extracts of the summons reproduced in the table below by way of example, in order to rule on the claims for tortious liability of the Consorts Uzan, the Paris Court of First Instance would necessarily have to rule on the legality of the measures taken by the TMSF in the context of the Imar Fraud. In their pleadings served on 21 November 2023, the Uzans have deleted or amended the extracts below, although this does not affect the inadmissibility of their claims.

Extracts from the summons confirming that the Claimants' action seeks to challenge the legality of the TMSF's acts

Reference	Extract
p. 7	"*TMSF misused its legal prerogatives by committing a colossal abuse of power by organising and implementing the sale of all the Companies' assets [...]*" (emphasis added).[295].
p. 7	"*By serving its own interests through a real misuse of corporate assets, TMSF thus instrumentalised these Companies by inducing them, through a form of coercion, to accept in a totally unjustified manner, in their name and on their behalf, payment orders issued by TMSF itself for the benefit of the debt that TMSF had undertaken to recover, without the slightest legal basis and without proof, in respect of the Difference alleged by TMSF on the deposits of IMAR BANK*" (emphasis added).[296].
p. 7	"*TMSF did not shy away from using perfectly illegal means, outside any legal framework or judicial process, to take possession of the Companies' assets*" (emphasis added).[297].
¶ 18	"*These proceedings relate to acts carried out outside any legal framework, by abuse of prerogatives provided by law in the circumstances set out below*" (emphasis added)[298].
¶¶ 40-41	"*TMSF never made any of the essential demonstrations that would have enabled it to exercise the extensive powers referred to above.* *In a very serious illegal manner, however, TMSF ignored this lack of demonstration and proof of its allegations, by abusing its powers in order to fraudulently capture the assets of the Companies, as set out below*" (emphasis added)[299].

295 Consorts Uzan deleted this extract in their submissions on the merits no. 1, served on 21 November 2023.

296 *Id.*

297 *Id.*

298 The Uzan Estate amended this extract in its pleadings on the merits no. 1, served on 21 November 2023, as follows: see **Claimants' pleadings on the merits no. 1 of 21 November 2023**, ¶ 20 ("*The present proceedings relate to conduct that has no legal basis whatsoever and was carried out outside any legal framework - the aim and purpose of which was to seriously prejudice the rights of the Claimants, and in particular to deprive them of their right to dividends - in the circumstances set out below*").

299 The Uzan Consorts amended this extract in their submissions on the merits no. 1, served on 21 November 2023, as follows: see **Claimants' Submissions on the Merits no. 1 of 21 November 2023**, ¶¶ 53-54 ("*53. It should already be pointed out that not only has TMSF in this case never demonstrated or proved the slightest link and the slightest responsibility of the Companies in the Difference alleged by TMSF on the IMAR BANK deposits, but all the criminal proceedings brought against the Companies for this purpose have ended in dismissal. This demonstrates, on the contrary, the total absence of involvement of the Companies in connection with the alleged fraudulent operations of the IMAR BANK and the Difference alleged by TMSF on the deposits of the IMAR BANK (exhibits 8 and 14). 54. In a very seriously illegal manner, however, TMSF went beyond this lack of demonstration and proof of its allegations in order to fraudulently capture the Companies' assets, thereby seriously infringing the shareholders' right to dividends, as set out below*").

Reference	Extract
¶¶ 71-72	*"TMSF then decided to commit abuses of power that resulted in the misappropriation of the Companies' assets, which is precisely the subject of the present dispute.* *In fact, TMSF misused the extensive powers granted to it by law to organise the capture of the Companies' assets and to obtain settlement of the payment orders, even though they were unlawful, that TMSF had issued against them and then accepted on their behalf, still without any demonstration or proof of imputability to the Companies or of any link whatsoever between these Companies and the Difference alleged by TMSF on the IMAR BANK deposits, and when TMSF knew that it was perfectly incapable, at that stage, of making such a demonstration, as shown by the court decisions entered in the proceedings and as confirmed by MOTOROLA itself (before its change of position)*" (emphasis added)[300].
¶ 74	*"In this situation, if TMSF had acted in accordance with the laws requiring the preservation of shareholders' economic rights, TMSF could in no way have abused its position to alter or undermine those economic rights. However, TMSF will do just the opposite*" (emphasis added).[301].
¶ 77	*"In these exceptional circumstances of "full powers" and when TMSF should have respected the limits of its legal prerogatives, which were limited to conservatory purposes, TMSF exceeded its powers and, contrary to the law, initiated operations to capture the assets of the Companies through fraudulent manoeuvres which consisted materially in* [...]" (emphasis added).[302].
¶ 83	*"This unbelievable and clearly illegal situation amounts to an abuse of power in every respect*" (emphasis added).
¶ 85	"...] *TMSF did not comply with the legal conditions allowing it to implement compulsory enforcement measures and, in so doing, by exceeding its powers, which were limited to protective measures, TMSF necessarily acted without right and therefore in an abusive manner, and outside any legal framework [...*]" (emphasis added).

300 The Uzan Estate amended this extract in its submissions on the merits no. 1, served on 21 November 2023, as follows: see **Plaintiffs' Submissions on the Merits no. 1 of 21 November 2023**, ¶¶ 92-93 ("*92. TMSF then decided to abuse its powers, by acting outside any legal framework, in order to misappropriate the Companies' assets, thereby violating the Claimants' rights, including their right to dividends, which is precisely the subject of the present dispute. 93. Indeed, TMSF placed itself outside the law in order to organise the capture of the Companies' assets and to obtain the settlement of payment orders, even though they were unlawful, since they were not based on any claim*").

301 Consorts Uzan deleted this extract in their submissions on the merits no. 1, served on 21 November 2023.

302 The Uzan Estate amended this extract in its submissions on the merits No. 1, served on 21 November 2023, as follows: see **Plaintiffs' Submissions on the Merits No. 1 of 21 November 2023**, ¶ 98 ("*In these exceptional circumstances of 'full powers' and impunity, **TMSF exceeded its powers and, contrary to the law, initiated operations to capture the Companies' assets** through fraudulent manoeuvres that materially consisted of **(Exhibit 18)**:* [...]").

282. Moreover, the Consorts Uzan now expressly admit that in order to rule on their claims for compensation, the Paris Court will necessarily have to rule on the legality of the acts of the TMSF Consorts Uzan. Indeed, in their latest submissions, the Plaintiffs now assert that they are jointly exercising a

. an "*action in non-existence*" against acts taken by the TMSF and an action in civil liability[303]. According to the Claimants themselves, their claims for compensation would involve calling into question the validity of the TMSF's acts, by finding that they were allegedly

. a "*non-existent*" claim, before drawing all the consequences to demonstrate the existence of alleged faults on the part of the TMSF[304].

283. In practice, this would lead the Paris Court to rule on matters falling within the exclusive jurisdiction of the Turkish administrative courts and to review the merits of a large number of decisions of the Turkish administrative courts (including the Turkish Council of State), thereby undermining the res judicata effect of those decisions.

284. As the Respondent pointed out earlier, it is for the Turkish administrative courts to review the legality of the TMSF's decisions in the context of the recovery of public debts.[305]. Hundreds of challenges to the measures taken by the TMSF to recover public debts resulting from the Imar Fraud - whether payment orders, the transfer of control and management of the Uzan Group companies to the TMSF, or asset disposals carried out in accordance with Banking Law No. 5411 - have been brought before the Turkish administrative courts and the legality of these measures has been upheld.[306].

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303 See, in this regard, the **Applicants' submissions in response to the incident of 21 November 2023**, ¶ 173 ("*In the present case, the pleas of non-admissibility based on the statute of limitations and on interest and standing to sue and defend require the prior determination of a number of substantive issues relating to [...] the interpretation of Turkish law as to the conditions for admissibility of the action for non-existence, namely interest and standing to sue and defend and the statute of limitations" (emphasis added)):* [...] *the interpretation of Turkish law as to the* *<u>conditions for admissibility of the action for non-existence, namely interest and standing to sue and defend as well as prescription</u>*" (emphasis added)), ¶¶ 330-340 and ¶ 344 ("*As indicated above, the <u>Plaintiffs' action is an action for non-existence</u> under Turkish law relating specifically to acts taken by TMSF-manager and TMSF-shareholders in the context of the management of the Companies placed under its control*" (emphasis added)). See also *Id.* at Section 6 "*On the Admissibility of the Action for Non-Existence*" and **Plaintiffs' Submission No. 1 of November 21, 2023** at 9 ("*Under Turkish law, the action for recognition of non-existence ("Bultan") is not subject to any limitation period*").

304 The Uzan Estate was careful not to specify the nature of its action in the operative part of its pleadings on the merits, limiting itself - in very general terms - to seeking an order *in solidum against* the Defendants for the payment of damages in respect of the alleged "*capture*[s] *of assets*". See in this regard the **Plaintiffs' Submissions on the Merits No. 1 of 21 November 2023**, pp. 65-76. The result of this vagueness is that the court would not be seised of claims in respect of an alleged "*action in non-existence*", which would not appear in the operative part of the Plaintiffs' pleadings on the merits.

305 See in particular *supra*, ¶ 101.

306 See in particular *supra*, ¶¶ 81, 86, 100. For an overview of Turkish administrative court decisions upholding the legality of the asset disposals of Uzan Group companies, see **<u>TMSF Exhibit No. 1</u>**, Annex No. 1, Summary Table on Asset Disposals of Uzan Group Companies by the TMSF. See also

285. In their conclusions, the Consorts Uzan argue that the objection raised by the TMSF should be dismissed because there is no "*threefold identity of subject-matter, cause of action and parties*" between their action and the Turkish administrative decisions that they are seeking to circumvent - and challenge - in the present proceedings. Such a contention is inoperative insofar as the Defendant does not maintain that these Turkish administrative decisions would benefit from res judicata authority in France that the judgment to be delivered would be likely to disregard in the event that the Paris Court of First Instance were to grant the claims of the Uzan Consorts. The TMSF challenges the admissibility of the Uzan Consorts' claims in that the Plaintiffs, under cover of an action in tort (to which has been added, since their last pleadings, an action for non-existence of the TMSF's acts), are attempting to obtain in France a decision calling into question the legality and validity of the measures taken by the TMSF, which have been confirmed in Turkey by administrative decisions that have the force of res judicata.

286. The French courts refuse to give effect to attempts to use actions brought before them for the sole purpose of circumventing the res judicata effect of foreign decisions or arbitration awards.[307].

Exhibit TMSF No. 144, Judgment No. 2011/17 of the 13th Chamber of the Council of State of 11 January 2011; **Exhibit TMSF No. 145**, Judgment No. 2014/1427 of the Plenary Assembly of the Administrative Chambers of the Council of State of 3 April 2011; **Exhibit TMSF No. 146**, Judgment No. 2007/2600 of the 4th Administrative Court of Istanbul of 29 November 2007 and **Exhibit TMSF No. 147**, Judgment No. 2011/20 of the 13th Chamber of the Council of State of 11 January 2011.

[307] For example, the French courts dismissed an application for enforcement of a foreign court judgment because it related to a foreign judgment rendered in fraud of an earlier arbitral award, the application for enforcement having been made with a view to "[*obtaining] indirectly what the* [company] *had failed to obtain directly from the arbitral tribunal*" (**TMSF Exhibit No. 242**, Cass. 1ère Civ., 17 May 2023, No. 21-18.406, published in the Bulletin) ("*14. The Court of Appeal noted that, although BEG was not directly a party to the proceedings before the Tirana District Court, it had acted before the Court by artificially interposing its Albanian subsidiary, whose shareholding had been subject to apparent changes in the three months preceding the institution of the proceedings, The company remained, in reality, under the full control of BEG, which was, moreover, at that date, the sole holder of the concession to operate the hydropower plant. It held that, in view of the chronology of the proceedings, the similarity of the facts and pleas put forward, the alleged faults and the losses for which compensation had been sought in the two proceedings, the action brought before the Tirana District Court in fact had the same purpose as that brought before the arbitral tribunal, namely to obtain a declaration that Enelpower had breached the cooperation agreement and that it sought to obtain indirectly what BEG had failed to obtain directly from the arbitral tribunal.*
15. In the light of these findings and assessments, and leaving aside the erroneous but over-abundant reason relating to the refusal to carry out an incidental review of the award, criticised by the first two pleas in law, the Court of Appeal was able to hold that the judgment had been obtained by fraud and from this it correctly deduced that the exequatur had to be refused" (emphasis added). It should be pointed out that in the above-mentioned case, the parties to the foreign judgment were partly identical to those who had taken part in the arbitration proceedings - which once again demonstrates the indifference of complying with the "*triple identity" rule* when fraud against res judicata is invoked.

287. In such circumstances, the Court of Appeal, which does not have the power to review the merits of foreign judgments[308] or to rule on matters falling within the jurisdiction of the Turkish courts, must declare the claims of the Uzan Estate inadmissible.[309].

4. On the inadmissibility of the claims of Consorts Uzan arising from an abuse of the right to institute legal proceedings

288. For the reasons set out below, the claims of the Consorts Uzan are inadmissible as they are the result of an attempt to misuse the legal remedies available under French law, constituting an abuse of rights , [310]and confirming, insofar as is necessary, the Claimants' lack of a legitimate interest in bringing proceedings.

289. Abuse of rights, whether abuse of the right to bring an action or abuse of the choice of court , [311]may result in particular from the fact that the legal action is based on an "abuse of rights".

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308 It is common ground that French courts do not have the power to review the merits of foreign judgments. This solution was reiterated with regard to the exequatur of foreign judgments by the landmark *Munzer* decision of the Court of Cassation: see **TMSF Exhibit No. 148**, Cass. Civ. 1ère, 7 January 1964, Bull. Civ. I, no. 15 ("*That this verification, which is sufficient to ensure the protection of the French legal order and interests, the very purpose of the institution of exequatur, constitutes in all matters both the expression and the limit of the supervisory power of the judge responsible for rendering a foreign decision enforceable in France, without that judge having to review the merits of the decision*" (emphasis added)). See also **TMSF Exhibit 149**, Pascal de Vareilles-Sommières, "Jugement étranger : matières civile et commerciale - Généralités", in *Répertoire de droit international*, Dalloz, September 2013 (update: September 2020), ¶ 50. Contrary to what the Claimants claim, the fact that the foreign judgment (or arbitral award) is not exequatur has no bearing on the plea of non-receipt raised by the Respondent on the grounds of circumvention of res judicata (to this effect, see **TMSF Exhibit No. 242**, Cass. 1ère Civ., 17 May 2023, No. 21-18.406, published in the Bulletin).

309 It is also common ground that actions whose effect is to grant the judge a power that does not fall within the scope of his powers must be declared inadmissible: see **TMSF Exhibit No. 150**, Cass. Civ. 2ème, 8 January 2015, no. 13-21.044, Bull. Civ. II, No. 3 ("[...] *And whereas the Court of Appeal, in order to justify the failure to refer the case back, correctly points out that the plea based on the lack of jurisdictional power of the court seised constitutes a plea of non-receivability and not a plea of lack of jurisdiction*"). See also **TMSF no. 151**, Cass. Civ. 2ème, 15 April 2021, no. 19-20.281, published in the bulletin ("a *judge's lack of jurisdictional power constitutes a plea of non-receivability, which may therefore be raised in any event pursuant to article 123 of the Code of Civil Procedure*"); **TMSF no. 152**, Cass. Civ. 2ème, 21 April 2005, no. 03-15.607, Bull. Civ. II, no. 116, p. 105 ("*By ruling in this way, even though the argument put forward by Mr X... concerning the lack of jurisdictional power of the Court seised constituted a plea in bar and not an objection to jurisdiction and the judgment referred to had not put an end to the proceedings, the Court of Appeal violated the aforementioned texts*") and **TMSF Exhibit No. 153**, Cass. Civ. 2ème, 8 July 2010, no. 09-65.256, Bull. Civ. II, no. 134 ("*In so ruling, whereas the plea based on the lack of jurisdictional power of the court seised, which is itself required to verify the legality of its referral, constitutes a plea of non-receivability, the court of appeal violated the aforementioned texts*").

310 See, for example, **TMSF no. 154**, M. L. Niboyet, "La globalisation du procès civil international dans l'espace judiciaire européen et mondial", *Journal du droit international (Clunet)*, no. 3, July 2006, var. 14. See also **TMSF no. 155**, E. Cornut, "Forum shopping et abus du choix de for en droit international privé", *Journal du droit international (Clunet),* no. 1, January 2007, doctr. 2, ¶¶ 27-31.

311 On abuse of rights in general, see in particular **TMSF Exhibit 156**, Ph. Le Tourneau (ed.), *Droit de la responsabilité et des contrats*, Dalloz Action, 2020, ¶ 2213.12; **TMSF Exhibit 157**, H. Gaudemet-Tallon, "*De l'abus de droit en droit international privé*", in *Mélanges en l'honneur du Professeur Bernard Audit - Les relations privées internationales*, LGDJ, 2014, p. 384 et seq.; **TMSF Exhibit No. 158**, L. Josserand, *De l'Esprit des droits et de leur relativité. Théorie dite de l'abus des droits*, 1939 (available on the gallica.bnf.fr website). See also **TMSF Exhibit No. 159**, ICSID, *Orascom TMT Investments S.à.r.l. v. La République algérienne démocratique et populaire*, Case No. ARB/12/35, Award of 31 May 2017, ¶¶ 540-543.

use by the claimant of multiple courts with contradictory and unfounded claims and arguments[312].

290. In this case, the Consorts Uzan are seeking a ruling from the Tribunal judiciaire de Paris that the TMSF is liable in tort for the measures adopted by this Turkish public authority, which could be and/or were challenged before the Turkish administrative courts.

291. This action is part of the strategy implemented by the Uzan family for over twenty years to challenge, directly or indirectly, before as many courts as possible - whether judicial or arbitral - all the measures taken by the TMSF, adopting contradictory positions from one proceeding to the next, even though these actions are constantly rejected by the courts called upon to hear them.

292. In this regard, the TMSF emphasises that the Uzan Family maintains in the present proceedings that the TMSF is "an *autonomous legal entity, with its own budget, accounts and governance*", allegedly acting "*in the context of activities falling within the scope of private law legal relationships*", whereas the Uzan Family (including the Uzan Family) has, directly or indirectly, on numerous occasions brought actions before the Turkish administrative courts challenging the measures taken by the TMSF, which it did not dispute at the time were administrative measures taken by a public authority in the context of activities falling within the scope of private law *legal relationships,* on numerous occasions brought before the Turkish <u>administrative</u> courts challenges to measures taken by TMSF, which they did not dispute were <u>administrative</u> measures taken by a public authority in the context of activities governed by <u>public</u> law relationships, and on the contrary <u>never brought before the</u> Turkish <u>civil courts</u> actions in tort against TMSF based on private law provisions for the measures they intend to challenge in the present proceedings.

293. The abusive nature of the action thus brought is confirmed insofar as is necessary by the fact that the Claimants (who claim to have arrived in France in 2009 and 2014 respectively), while claiming to be victims of colossal damage to the tune of 68 billion dollars, cannot justify having waited more than ten years (in the case of Mr Cem Cengiz Uzan) and almost seven years (in the case of Mr Murat Hakan Uzan) to bring the present action before the French courts.

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312 See, for example, <u>**TMSF Exhibit No. 160**</u>, Clermont-Ferrand Commercial Court, 24 March 2016, RG No. 2013003812 ("*Whereas this instrumentalisation of multiple jurisdictions degenerates into abuse when the claims and arguments developed, in particular during the present proceedings, contradict each other and include repeated accusations that are as unfounded as they are unfounded, of 'faults', 'discrimination' and 'vexations' brought against his mother, Mrs E Y, with the clear intention of causing harm*").

294. For the reasons set out above, the action brought by Consorts Uzan is an abuse of the right to institute legal proceedings and is therefore inadmissible.

5. On t h e inadmissibility of the claims of Consorts Uzan on the grounds of prescription

295. The Pre-Trial Judge can only find that these claims are time-barred under both Turkish and French law.

296. With regard to the law applicable to the limitation period of the action brought by the Uzan Estate, article 2221 of the Civil Code provides that :

> "*Extinctive prescription is subject to the law governing the right which it affects*".

297. In this respect, the case law has confirmed that the applicable law in relation to the limitation period for an action in tort or delict is that of the State of the place where the harmful event occurred (*lex loci delicti commissi*).[313].

298. In the present case, it is not disputed that the place of the alleged harmful event invoked by Mr and Mrs Uzan is Turkey.[314]. The damage allegedly suffered was also suffered in Turkey by the companies that were the subject of the measures taken by the TMSF.[315]. In view of the foregoing, the law applicable to the limitation period of the action brought by the Uzan partners is Turkish law.[316].

299. Under Turkish law, in accordance with Article 60 of the Turkish Code of Obligations applicable at the time (prior to a reform that took place on 1[er] July 2012), the limitation period for an action in tort was three years.

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313 See, for example, **TMSF Exhibit No 161**, Paris, 19 November 2021, RG No 16/22163 ("*Under French private international law, the limitation period for legal proceedings is governed by the law applicable to the substance of the case. [...] pursuant to article 3 of the Civil Code, the law applicable to extra-contractual liability is that of the State of the place where the harmful event occurred, this being understood to mean both the place where the event giving rise to the damage occurred and the place where the damage was sustained. In the present case, it is not disputed by the parties that the events complained of by Mr Y, assuming they are proven, took place in Russia and originated from a contract signed in Moscow. As Russian law is applicable to the present dispute, the extinctive prescription of the action is also subject to that same law*" (emphasis added)).

314 See *supra*, ¶ 180.

315 See *supra*, ¶ 181.

316 This is not contested by the Uzan Consorts. See **Plaintiffs' Reply Brief on Incident of 21 November 2023**, ¶ 451.

liability in tort or delict is one year from the date on which the alleged victim became aware of the alleged damage and its perpetrator[317].

300. Pursuant to this provision, the action brought by the Uzan Consorts before the Court of Appeal is therefore time-barred, as the allegedly harmful events (the transfers of assets of the Uzan Group companies) - of which the Plaintiffs were aware - occurred between 2004 and 2008, i.e. between 13 and 17 years before the present proceedings were instituted.[318].

301. To get around this difficulty, the Uzan partners appear to be claiming that, in reality, they are exercising two categories of actions of a different nature at the same time: (*i*) a
an "*action for non-existence*" against "*all acts taken by TMSF which led to the deprivation and spoliation of dividend rights*", which would not be subject to any statute of limitations; and
(*ii*) "*claims for damages arising from the non-existence of acts taken by TMSF*", the limitation period for which would only begin to run from the date of the decision of the Paris Court of First Instance annulling "*all of* the *acts taken by TMSF*" challenged by the Claimants[319].

302. This argument, put forward by the Claimants for the purposes of the case (in support of which they produce a so-called "Legal Expert Opinion" allegedly prepared by a University Professor in Turkey, which is devoid of any probative value[320]), calls for the following observations on the part of the TMSF.

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317 See **TMSF Exhibit No. 164**, Turkish Code of Obligations, Article 60 (version applicable before [1] July 2012).

318 See *above*, Section I.C.2.b and **TMSF Exhibit 1**, Annex 1, Summary table of asset disposals of Uzan Group companies carried out by the TMSF. The Respondent points out in this respect (and for all practical purposes) that the invitations to tender for the sale of the assets of the Uzan Group companies were advertised in the Official Gazette of the Republic of Turkey: see in particular *id*.

319 See **Plaintiffs' November 21, 2023 Reply Brief on Incident**, ¶¶ 452-466.

320 While a scanned copy of an electronic signature appears to have been affixed under Professor Ahmet Türk's name on the cover letter accompanying the "Opinion" and on the signature page of that "Opinion", it is stated on the first page of that same "Opinion" that it was drafted by Mr Metin Altmışkara, a lawyer at the Izmir Bar, and not Prof. Ahmet Türk, whose name nevertheless appears at the top of the same page ("I, Metin Altmışkara, a Turkish Lawyer of the Izmir Bar Association and Professor of Law at the Izmir Bar"). Ahmet Türk, whose name appears at the top of the same page ("*I, Metin Altmışkara, a Turkish Lawyer of the Izmir Bar Association and Professor of Law at the Izmir Dokuz Eylul University, Faculty of Law, the Commericla Law Department, and Faculty Member, was contacted by an advocat admitted to the Paris Bar, in France, with the need for a 'MEMORANDUM ON ILL-FOUNDED ACTS UNDER TURKISH LAW'* [...]. *In line with this request, I have prepared the following legal expert opinion*"). The Respondent therefore expresses the strongest reservations as to the identity of the author and drafter of this "Opinion". The Respondent further notes that the French translation of the "Opinion" (submitted *a posteriori* by the Claimants with the second version of their second set of written responses on incident on 21 November 2023) does not accurately reflect the English version, since the word "*I*" in English (meaning "I the undersigned") has been deleted (as well as other passages) and the first paragraph has been written in the third person singular, in order to conceal the fact that this "Opinion" was in fact drafted by a lawyer : "*Metin Altmışkara, a Turkish lawyer at the Izmir Bar was contacted by a lawyer registered at the Paris Bar with a view to obtaining a 'MEMORANDUM ON MAL - FOUNDED ACTS UNDER TURKISH LAW',* [...]. *In accordance with this request, I have prepared the following expert legal opinion*". This concealment is all the more serious given that Mr Altmışkara has represented the Uzan Family in other proceedings. The circumstances

303. First, at this stage, the Plaintiffs are manifestly unfounded in claiming that they brought an "*action in non-existence*" against *the* "*set* of *acts taken by TMSF*" (a "*set" the* content of which they have still not specified after nearly three years of proceedings). In fact, the Consorts Uzan limit themselves - using very general terms - to requesting that the Defendants be ordered *jointly and severally to* pay damages for the alleged "*capture*[s] of *assets*".[321]. In other words, the Uzans did not bring any claims before the Paris Court of First Instance in respect o f an alleged
This is a "*non-existence action*", as no such claim appears in the operative part of the Plaintiffs' last submissions on the merits.

304. Secondly, assuming that the Claimants really do intend to bring an action "*for the non-existence*" of the "*set* [of] *acts taken by TMSF*" that they are challenging, they are then required to identify precisely each of the acts whose non-existence they are asking the Paris Court to declare, in order to enable TMSF (and the other Defendants) to respond fully and usefully to their claims. In particular, these details will enable the Paris Court to determine:

- whether the acts which the Claimants intend to challenge are indeed "*acts taken by TMSF*";
- whether the conditions are met for declaring the contested acts "non-existent" under the applicable rules of Turkish law.

305. The TMSF reserves its right to respond fully to the new claims of the Uzan Consorts, should they specify their claims under their alleged "*non-existence action*".

306. Thirdly, and for all intents and purposes, the TMSF recalls that the acts it took in relation to the Uzan Group Companies in the context of the Imar Fraud, in particular with a view to the disposal of the assets of certain of these companies, are administrative acts.[322]. However, as Ms Özge Aksoylu, Associate Professor at the University of Galatasaray, points out, the theory of non-existence relied on by the Claimants is limited, in Turkish administrative law, to acts that are not administrative acts.

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set out above are sufficient to deprive the alleged "Legal Expert Opinion" submitted by the Plaintiffs of any probative value.

321 See **Plaintiffs' Submission on the Merits No. 1 of 21 November 2023**, pp. 65-76.

322 See *supra*, ¶¶ 87-102.

cases in which the alleged "*affect*[s] *the constituent elements of what may be considered an administrative act*".[323]. In the present case, Ms Aksoylu points out that :

> "T]he *acts of the TMSF* [that the Consorts Uzan] *are challenging in the proceedings brought before the Paris Court of First Instance are said to be 'totally devoid of any legal basis', to be contrary to fundamental rights and freedoms and to constitute an 'abuse' of the powers vested in the TMSF. Such criticisms (assuming they are well-founded) would not allow the acts in question to be considered non-existent.*
>
> *Therefore, even supposing that the circumstances alleged by the Uzan consorts would make it possible to characterise an irregularity affecting the acts of the TMSF, such circumstances would not correspond to the cases of non-existence provided for in the case law of the Turkish administrative courts*".[324].

307. The Claimants cannot seriously claim that the acts taken by the TMSF in relation to the Uzan Group companies, on the basis of prerogatives expressly granted to it under Turkish law, fall within one of these three scenarios.

308. TMSF wishes to point out that the action brought by Consorts Uzan is also time-barred under French law.

309. In French law, the Act of 17 June 2008 reforming the statute of limitations in civil matters reduced the limitation period applicable in tort from ten years to five years. Article 2224 of the Civil Code now provides that the limitation period for personal or movable actions (including actions in tort) "shall run *for five years from the day on which the holder of a right knew or should have known the facts enabling him to exercise it*".[325].

310. The transitional provisions of Law No 2008-561 of 17 June 2008 reforming the statute of limitations in civil matters provide in particular that the provisions "*which reduce the duration of the statute of limitations shall apply to statutes of limitations from the day on which this Law comes into force, without the total duration exceeding the duration provided for by the previous law*".[326].

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[323] **TMSF Exhibit 245**, Legal opinion of Ms Özge Aksoylu of 18 April 2024, p. 17.

[324] **TMSF Exhibit 245**, Legal opinion of Ms Özge Aksoylu of 18 April 2024, p. 20.

[325] Article 2224 of the Civil Code ("*Actions of a personal or movable nature shall be barred after five years from the day on which the holder of a right knew or ought to have known the facts enabling him to exercise it*").

[326] In the same way, article 2222 paragraph 2 of the Civil Code provides that "[i]*n the event of a reduction in the duration of the limitation period or the period of foreclosure, the new period shall run from the day on which the new law comes into force, but the total duration may not exceed the duration provided by the previous law*".

311. The Cour de cassation thus affirmed that the new common law time limit in article 2224 of the Civil Code "*applies to limitation periods running from 19 June 2008*" without the total duration of the time limit exceeding the ten-year period provided for in the former article 2270-1 of the Civil Code [327].

312. Consequently, for events occurring before the entry into force of Law no. 2008-561 of 17 June 2008 reforming the limitation period in civil matters, the new limitation period began to run on the day the Law came into force, 19 June 2008, and expired on 19 June 2013 at the latest.

313. In the present case, the Plaintiffs' action is time-barred in its entirety under both Turkish and French law.

314. In view of the foregoing, the Pre-Trial Judge is asked to rule that the claims made by the Uzan Consorts in these proceedings are time-barred and, consequently, to rule that these claims are inadmissible.

315. For the foregoing reasons, the Pre-Trial Judge can only rule that the claims of the Uzan Estate in the present proceedings are inadmissible and dismiss them.

D. Conviction of Consorts Uzan for abuse of process

316. It is settled case law that legal action degenerates into abuse in cases of malice, bad faith, intent to injure, or gross error amounting to fraud on the part of the plaintiff.[328].

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327 **TMSF Exhibit No. 165**, Cass. Civ. 3rd, 13 February 2020, No. 18-23.723 ("*Article 2 of the Civil Code should be applied, according to which the law provides only for the future and has no retroactive effect. It can therefore be deduced from these texts, on the one hand, that the Law of 17 June 2008, which cannot have retroactive effect, did not have the effect of modifying the starting point of the extinctive prescription period that had begun to run prior to its entry into force (3rd Civ, 24 January 2019, Appeal no. 17-25.793, published),secondly, that the limitation period, set at five years by article 2224 of the Civil Code, applies to limitation periods running from 19 June 2008, without the total period exceeding the ten-year period provided for by article 2270-1 of the Civil Code*").

328 See **TMSF Exhibit 166**, Y. Desdevises and O. Staes, "Action en justice", Fascicule 500-60, *Jurisclasseur Procédure civile*, 5 November 2019, ¶ 60. See also **TMSF No. 167**, L. Cadiet and Ph. Le Tourneau, "Abus de droit", *Répertoire de droit civil*, May 2017, ¶¶ 141-148; **TMSF No. 168**, Cass. Civ. 2ème, 16 February 1984, No. 82-12.399; **TMSF No. 169**, Cass. Civ. 3ème, 28 November 2001, No. 00-14.539; **TMSF No. 170**, Cass. Com, 28 February 2006, no. 04-17.194 and **TMSF Exhibit no. 171**, Cass. Civ. 1ère, 9 July 2014, no. 12-14.562. Contrary to what the Consorts Uzan claim, the delimitation of the powers of the pre-trial judge by articles 780 to 797 of the Code of Civil Procedure does not prevent him from awarding damages where one of the parties brings a dilatory or abusive action (or raises an incident) (to this effect, see **TMSF Exhibit no. 243**, Aix-en Provence, 19 October 2023, RG no. 22/16079 ("*On the claim for damages - It is common ground that bringing an action before the courts constitutes a right, which can only degenerate into an abuse if it is shown that the opposing party intended to do harm or acted in bad faith or made a blamable error or negligence amounting to fraud, which presupposes proof of this type of fault, of a loss and of a causal link between the two, under the conditions set out in Article 1240 of the Civil Code. The same applies to an incident raised in the course of a dispute submitted to a pre-trial judge. In the present case, the claim for damages made by Mr and Mrs [C]*

317. In the present case, apart from the fact that the Claimants' action, opportunely presented as an action in tort (whereas it seeks to challenge the exercise by a Turkish public authority of prerogatives of public power that it derives from provisions of Turkish law), was brought before the French courts, which clearly lack jurisdiction to hear it, on the basis of an artificial connecting factor, by individuals who do not provide proof of the rights they claim to have or of a specific loss for which they wish to obtain compensation, the Uzan family's claim seeks to have the French courts render ineffective the measures taken by the TMSF as a result of the banking fraud committed by Banque Imar for the benefit of the Uzan family.

318. All these factors, as well as the context in which the Uzan brothers are bringing this action (their inaction over many years, the manifestly unserious nature of the alleged "assessment" of their alleged "damages", the media campaign surrounding this lawsuit, etc.) confirm that the legal action brought by the Uzan brothers before the Court of Appeal is clearly motivated by a desire to make a publicity stunt rather than by a genuine desire to obtain compensation for the damages suffered.[329]) confirm that the legal action brought by Consorts Uzan before the Tribunal de céans is clearly motivated by a desire to make a publicity stunt rather than by a genuine desire to obtain compensation for alleged "damages".
"prejudices".

319. In view of the foregoing, the Pre-Trial Judge is asked to rule that the action brought by Consorts Uzan is an abuse of process and to order Consorts Uzan to pay the sum o f 150,000 euros by way of damages for abuse of process.

E. Irrecoverable costs

320. It would be unfair to leave TMSF to bear the costs it has had to incur to assert its rights in the present proceedings, which constitute an attempt by the Uzan Consorts to manipulate French justice.

321. The Pre-Trial Judge is therefore asked to order Consorts Uzan to pay TMSF the sum of 250,000 euros under Article 700 of the French Code of Civil Procedure.

322.

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seeks compensation for the damage resulting from the abusive nature of the incident raised, which falls within the jurisdiction of the Pre-Trial Judge. In view of the outcome of the incident, Mr and Mrs [C]'s claim cannot succeed. The order appealed will therefore be set aside on this point" (emphasis added). See also **Exhibit TMSF no. 244**, Versailles, 5 April 2023, RG no. 22/04847).

[329] See *above*, Section I.E.

FOR THESE REASONS

Having regard to Articles 14, 42 paragraph 3, 46, 122, 700 and 789 of the Code of Civil Procedure, Having regard to the Brussels I bis Regulation of 12 December 2012,

The Pre-Trial Judge is asked to :

By way of introduction :

- **DECLARE that** the Tribunal judiciaire de Paris does not have jurisdiction to hear the claims of the Consorts Uzan (only the Turkish courts have jurisdiction);

- **DECLARE** that the Consorts Uzan's action comes up against TMSF's immunity from jurisdiction, so that the French courts have no jurisdiction to hear it;

Principal activity :

- **REJECT** the request of Consorts Uzan for referral to the formation of the judgment of the grounds of non-admissibility raised by the TMSF;

- **JUDGE that** the claims of the Consorts Uzan are inadmissible on the grounds of TMSF's immunity from jurisdiction, the lack of an interest in bringing proceedings on the part of the Consorts Uzan, the lack of power of the French courts to review the merits of foreign judgments, the abuse of the right to bring proceedings by the Consorts Uzan and the statute of limitations on the claims of the Consorts Uzan**;**

In any event :

- **DISMISS** the Uzan Estate's claim;

- **TO DISMISS** all of the claims of the Uzan Estate;

- **ORDER** the Consorts Uzan to pay TMSF the sum of 150,000 euros in damages for abuse of process;

- **ORDER** Consorts Uzan to pay TMSF the sum of 250,000 euros under Article 700 of the French Code of Civil Procedure;

- **ORDER** Consorts Uzan to pay the costs.

WITHOUT PREJUDICE

1. **DOCUMENTS SUBMITTED BY TASARRUF MEVDUATI SIGORTA FONU**

2.

3. 12 September 2022

Part number	Title
1.	4. Appendix 1, Summary table of asset disposals by TMSF of Uzan Group companies
2.	5. Appendix 2, Some examples of attempts by the Uzan family to manipulate the justice system
3.	6. Forbes, "Dial 'D' for Dummies - How a Turkish family business partnered with Motorola and Nokia -- and left the telecoms holding a $ 2.7 billion bag", 18 March 2002.
4.	7. Jeune Afrique, "Turquie : Cem Uzan protégé par Claude Guéant?", 30 July 2013.
5.	8. Britannica Online Encyclopedia, "Cem Uzan".
6.	9. Le Monde, "Cem Uzan, passé du gotha turc aux fichiers d'Interpol", 19 October 2009.
7.	10. Judgment of the Cour nationale du droit d'asile on the asylum application lodged by Mr Cem Uzan, 23 May 2013.
8.	11. Paris Match, "L'étau se resserre autour de Claude Guéant", 6 June 2018.
9.	12. Official website of the Fonds de Garantie des Dépôts et Résolution in France, "About the FGDR" section.
10.	13. Tasarruf Mevduatı Sigorta Fonu official website, "International Relations" section.
11.	14. Official website of the *European Forum of Deposit Insurers*, List o f member institutions
12.	15. Official website of the *International Association of Deposit Insurers*, List of member institutions
13.	16. Tasarruf Mevduatı Sigorta Fonu official website, "Historical Background" section.
14.	17. Banking Act no. 5411 of 19 October 2005
15.	18. Official website of the Fonds de Garantie des Dépôts et Résolution in France, "Banking Resolution" section.

16.	19. Financial Stability Board, "Second Thematic Review on Resolution Regimes - Peer Review Report", 18 March 2016, in particular pp. 12-13 and Appendices B and C.
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29.	32. Resignation letters from members of Imar's Board of Directors dated 26 June 2003
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31.	34. ARSB report prepared in accordance with Article 22(3) of the Banking Act, 22 September 2003.
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49.	52. Letter of invitation to pay sent to Kemal Uzan on 26 January 2004
50.	53. Letter ofinvitation to pay sent to Aysegül Akay on 26 January 2004
51.	54. Payment order sent to Cem Cengiz Uzan on 5 April 2004
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53.	56. Payment order sent to Kemal Uzan on 29 March 2004
54.	57. Payment order sent to Aysegül Akay on 31 May 2004

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