



FRANCE

FINANCIAL SECTOR ASSESSMENT PROGRAM

October 2019

TECHNICAL NOTE—SELECT TOPICS IN FINANCIAL SUPERVISION AND OVERSIGHT

This Technical Note on Select Topics in Financial Supervision and Oversight on France was prepared by a staff team of the International Monetary Fund as background documentation for the periodic consultation with the member country. It is based on the information available at the time it was completed on October 1, 2019.

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OVERSIGHT

Prepared By
**Monetary and Capital Markets
Department**

This Technical Note was prepared in the context of an IMF Financial Sector Assessment Program (FSAP) in France in December 2018 and March 2019 that was led by Udaibir Das. Further information on the FSAP program can be found at <http://www.imf.org/external/np/fsap/fssa.aspx>

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Glossary

ACPR	French Prudential Supervision and Resolution Authority
AFG	Association of Asset Management Companies
AIF	Alternative investment fund
AIFMD	Alternative Investment Fund Managers Directive
AMF	French Financial Markets Authority
AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
BdF	Banque de France
BRRD	EU Bank Recovery and Resolution Directive
BTS	Binding Technical Standard
CCP	Central Counterparty
CDC	Caisse des Dépôts et Consignations
CEL	Compte Epargne Logement
CET1	Common Equity Tier 1
CEO	Chief Executive Officer
CGLLS	Caisse de garantie du logement locatif social
CIF	Conseillers en investissements financiers
CMG	Crisis Management Group
CPMI	Committee on Payments and Market Infrastructures
CRR/CRD IV	Capital Requirements Regulation/Capital Requirements Directive IV
DGSD	Deposit Guarantee Scheme Directive
EBA	European Banking Authority
EC	European Commission
ECB	European Central Bank
EIOPA	European Insurance and Occupational Pensions Authority
ELA	Emergency Liquidity Assistance
EMIR	European Market Infrastructure Regulation
EP	European Parliament
EPA	Administrative Public Institution (Etablissement public à caractère administratif),
ESCF	Eurosystem collateral framework
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
EU	European Union
FFA	Federation of French Insurers
FGAO	Fonds de Garantie des Assurances Obligatoires de dommages
FGAP	Fonds de Garantie des Assurances de Personnes
FGDR	Fonds de Garantie des Dépôts et de Résolution
FOLTF	Failing or likely to fail
FRN	National Resolution Fund
FSB	Financial Stability Board
HCSF	High Council of Financial Stability
ICO	Initial Coin Offering

IOSCO	International Organization of Securities Commissions
JSS	Joint Supervisory Standards
KA	Key Attributes
LCR	Liquidity Coverage Ratio
LDDS	Livret de Développement Durable et Solidaire
LEE	Livret d'Épargne Entreprise
LEP	Livret d'Épargne Populaire
LSI	Less significant institution
LTV	Loan-to-Value Ratio
MCR	Minimum Capital Requirement
MiFID	Markets in Financial Instruments Directive
MiFIR	Markets in Financial Instruments Regulation
MoF	Ministry of Finance
MREL	Minimum requirement for own funds and eligible liabilities
NCA	National Competent Authority
NCWO	No Creditor Worse Off
NPL	Nonperforming Loan
NSFR	Net Stable Funding Ratio
RA	Resolution Authority
OCR	Own Funds Requirements
PEL	Plan Épargne Logement
PPSs	Policyholder Protection Schemes
RRP	Recovery and resolution planning
SCR	Solvency Capital Requirement
SI	Significant Institution
SRB	Single Resolution Board
SREP	Supervisory Review and Evaluation Process
SSM	Single Supervisory Mechanism
UCITS	Undertaking for Collective Investment in Transferable Securities

PREFACE

This Technical Note on Selected Issues presents the work by the FSAP team examining different aspects of supervision and oversight in the French financial system. The work was undertaken in the course of the FSAP missions which took place in December 2018 and March 2019. The authors would like to thank the authorities for their cooperation and assistance.

LESS SIGNIFICANT INSTITUTIONS¹

A. Executive Summary

1. The Less Significant Institutions (LSI) sector in France is very small in terms of market share and is diversified by size and business model (Table 1). It proved itself resilient during the financial crisis and is not a source of systemic risk. The sector has a high cost structure and faces a number of competitive and other challenges. The regulatory framework, based on the Capital Requirements Regulation (CRR)/Capital Requirements Directive (CRD) IV, is the same as for Significant Institutions (SIs) but the supervisory framework under the Single Supervisory Mechanism (SSM) is very different. The French Prudential Supervision and Resolution Authority (ACPR) remains the direct supervisor of LSIs but it is now subject to the oversight of the European Central Bank (ECB), which also has full responsibility for certain common procedures. The ACPR has continued its comprehensive supervisory approach, both on-site and off-site, but reflecting the SSM's emphasis on greater harmonization, it has had to become more procedural and may have lost elements of flexibility. In response to SSM initiatives, the ACPR has sharpened its focus on governance issues, although business model and profitability risk remains the main challenge for the LSI sector.

B. Introduction

2. In contrast to Germany, Austria and Italy, which have large populations of (often small) LSIs, the LSI sector in France is limited in numbers and market share. At end June 2018, there were 101 groups or stand-alone entities classified as LSIs in France (Table 2). Excluding French branches of credit institutions located in European countries outside the SSM, there were 82 LSIs subject to full prudential supervision; these included 65 stand-alone entities and 17 groups, of which 13 have a financial holding company as parent entity. Included in this total is LCH SA, a central counterparty (CCP). Together, these entities accounted for 6.3 per cent of total French banking system assets; however, when the assets of the CCP are excluded, the share falls to 1.5 per cent. This is in marked contrast to the market share of LSIs in total SSM banking assets of around 16 per cent, and a market share of around 36 per cent in Germany.

3. Rationalization has seen LSI numbers in France fall dramatically. Although there is no long-run data on institutions classified as LSIs, the number of small credit institutions was thought to be over 400 a decade earlier. Rationalization has mainly involved supervisory consolidation under

¹ This Chapter was prepared by John Laker (External Consultant) and Katharine Seal (MCM).

the umbrella of SIs supervised by the ECB, change of regulatory status, or complete withdrawal from the market. Mergers of LSIs have been rare.

Table 1. France: Less Significant Institution Sector (End June 2018)

	Number of Entities	Number of Groups or Stand-Alone Entities	Total Assets (Billions of euros)	Average Total Assets by Group (Billions of euros)	Percent of the French banking system¹	Supervision
LSIs	118	101	553.9	5.5	6.8	-
<i>Of which, EU branches²</i>	<i>19</i>	<i>19</i>	<i>43.0</i>	<i>2.3</i>	<i>0.5</i>	<i>AML-CFT only</i>
LSIs excluding EU branches	99	82	510.9	6.2	6.3	Full supervision (prudential + AML-CFT)
<i>Of which, CCP³</i>	<i>1</i>	<i>1</i>	<i>387.4</i>	<i>387.4</i>	<i>4.8</i>	<i>Full supervision</i>
Total LSIs, excluding EU branches and CCP	98	81	123.5	1.5	1.5	Full supervision

Source: French Prudential Supervision and Resolution Authority.

¹ The total assets of the French banking system (at the highest level of consolidation) amounted to EUR 8,145 billion as of the end of June 2018.

² French branches of credit institutions located in European countries but outside the SSM. French branches of SSM LSIs are included in the supervision of the parent credit institution and as such are not included in the list of French LSIs.

³ The CCP operating under a banking license is Banque centrale de compensation (LCH SA). Although its balance sheet exceeds the EUR 30 billion threshold for a SI, it is not considered an SI because of different accounting rules compared to other CCPs in the euro area.

4. LSIs in France are very diversified by size and business model. Excluding the CCP, three entities have consolidated balance sheets above €10 billion, three others have balance sheets between €5–10 billion and 14 LSIs between €1–5 billion. 18 LSIs are pawnbrokers (Caisses de Crédit Municipal), most with total assets below €50 million). Overall, 74 per cent of LSIs have balance sheets below €1 billion. (In 2016, the average size of an LSI in the SSM was €1.5 billion.) LSIs are oriented mainly to specialized “niche” activities. The distribution of LSIs by business model shows that specialized finance entities are predominant (45 per cent), followed by retail banking (23 per cent) and private wealth management (18 per cent). Most LSIs in France are joint stock companies. There is only one mutual bank in the LSI sector; other smaller mutual banks are consolidated into their parent banking groups (supervised by the ECB). This picture varies considerably from elsewhere in the SSM, where retail banking is the predominant business model and cooperative banks are prolific in some jurisdictions.

5. The small size of the LSI sector in France means that it has limited, if any, capacity to generate a systemic impact through failures. The heterogeneity of business models is also likely to act as a buffer against the risk of contagion/loss of confidence if one institution in this sector were to fail. Small financial institutions proved resilient in the financial crisis and there was no run on deposits; indeed, there were indications of a “flight to familiarity” to some LSIs when major French banks came under pressure, and only one small institution faced serious problems. Nonetheless,

some LSIs pursuing “niche” activities may be exposed to concentration risk (by economic sector or geographical area) if there were downturns in these sectors/areas.

6. The LSI sector in France has a high cost structure. Costs have been trending down but not at the rate of decline of income. The cost/income ratio for the sector, at around 80 per cent, is the highest in the SSM; the average ratio for LSI sectors in the SSM is around 70 percent and the range 50 to 80 percent. Major explanations for the high cost/income ratio are the impact of the low interest rate environment on net interest income from mortgage lending; conservative investment practices favoring the holding of low risk (and hence low-yield) assets; and the high cost of IT transformation to strengthen cyber security, respond to regulatory changes and meet competitive challenges. However, income from fees and commissions has been rising strongly. Overstaffing does not appear a significant factor. The high cost structure is not reflected in measured return on equity, which appears high among LSI sectors in the SSM; however, the most recent measured figure included some large one-off elements and needs to be treated with caution.

C. Less Significant Institution Regulatory Framework

7. The regulatory framework for LSIs in France is exactly the same as for SIs. In particular, LSIs are subject to the European Union (EU)'s CRR and CRD IV and, more generally, the Single Rule Book, which also encompasses Binding Technical Standards (BTS) drafted by the European Banking Authority (EBA) for implementation of the CRR/CRD IV package. In addition, the ACPR complies with all EBA guidelines and refers to the EBA Single Rulebook Questions & Answers as regulatory references.

8. Since the 2012 France FSAP, the ACPR's powers under national law in one particular area—major acquisitions—have been strengthened. The 2012 FSAP had recommended that the ACP (as it was then) be given powers to ensure that it receives prior notification of proposed acquisitions by credit institutions so that it is able to consider them *ex ante*. Amendments to the Financial and Monetary Code in 2016 provided that credit institutions may acquire holdings in other entities or all or part of other industries after prior authorization of the ACPR, declaration or notification (depending on the appropriate threshold), and that the establishment of branches in states that are not parties to the agreement on the European Economic Area and the acquisition of all or part of a significant industry must be authorized by the ACPR. These powers are unlikely to be used in respect of LSIs because of their limited expansion ambitions, but the powers add to the armoury of the ECB, which has clarified that it is exclusively and directly competent to exercise them in respect of SIs.

9. However, in another area—transactions with related parties—the ACPR's powers under national law have been weakened. Prior to the implementation of the CRR/CRD IV package, French regulations required that related party transactions (transactions with shareholders or linked staff) that were in aggregate greater than 3 percent of own funds be deducted from own funds. This requirement provided for a cap on and a deterrent to related party transactions that otherwise might have sought to exploit potential loopholes in the regulations. Transactions with related parties

are not covered by the CRR/CRD IV, and these particular French regulations were removed from the Financial and Monetary Code in the interests of maximum harmonization within the EU.

D. Less Significant Institution Supervision Framework

10. Within the SSM, the ACPR continues to directly supervise LSIs in France, but subject to the oversight of the ECB. However, for certain common procedures, the ECB has full responsibility with respect to all SSM credit institutions. These common procedures, carried out in cooperation with National Competent Authorities (NCAs), concern the granting and withdrawal of credit institution licenses and the acquisition of qualifying holdings in a credit institution. There have been only a relatively limited number of common procedures involving French LSIs since the establishment of the SSM: two involving license applications, 13 involving the withdrawal of licenses and 32 involving the acquisition of qualifying holdings. None of these procedures is still pending.

11. The scope and intensity of ECB oversight of LSIs depends on their inherent riskiness and their impact on the domestic financial system. The ECB and NCAs have adopted a methodology for classifying LSIs, with the objective of promoting a proportionate approach to supervision and supervisory oversight. Under this methodology, an LSI considered to have medium or high intrinsic risk with high or medium impact (i.e., their failure may damage the domestic financial system) is classified as a high priority LSI, and its supervision involves more regular and in-depth feedback from the NCA to the ECB. In particular, NCAs must submit *ex ante* notifications of material supervisory procedures and draft material decisions related to such LSIs, covering a wide range of supervisory issues (e.g., capital, liquidity, internal governance). Of the 82 LSIs in France, only three (including the CCP) are considered high priority, which is the minimum number required per SSM member. NCAs must also submit notifications regarding any rapid and significant deterioration in the financial situation of an LSI; the ACPR has provided one notification of a very small “financially deteriorated” institution.

12. In July 2018, the ACPR re-organized its LSI supervision to improve coordination with the ECB’s oversight role. The supervision of all but three LSIs is now in the same division; the supervision of the CCP, under the European Market Infrastructure Regulation (EMIR), is in a separate division. A total of 33.3 (FTE) ACPR staff are currently allocated to off-site supervision of LSIs.

13. In its oversight of LSI supervision, the ECB has grouped France with other member states deemed to have relatively small/low risk LSI sectors. A specialized country desk covering these member states is ACPR’s point of contact on developments in the LSI sector in France. The desk monitors the situation of high priority LSIs and any institution notified as financially deteriorated and, more broadly, seeks to understand the quality of supervision in the jurisdiction. ECB senior management meets with ACPR annually (a less frequent cycle than other jurisdictions because of the small size of the LSI sector in France), but some visits take place at the technical level, or conference calls are organized, to follow up recommendations from the senior management visit, and to update the situation of specific LSIs. The ECB also provides ACPR and other NCAs with early warning reports based on a machine-learning model that seeks to predict distress in high priority

LSIs three months hence. The predictive value of the model needs improvement, but the ECB considers that even at present it offers some utility.

E. Less Significant Institution Supervisory Approach

14. The ACPR takes a comprehensive approach to the supervision of LSIs, which has had to be adapted since the establishment of the SSM. The approach has focused on in-depth analysis of LSIs' risk profiles and changes in those profiles, as well as risk management and internal control systems and the robustness and performance of business models. Supervision is conducted off-site (which may include visits to the entity) as well as through on-site inspections of longer and more intense duration (discussed below). Where possible, supervision is tailored to the diversity of business models in the LSI sector. Since the establishment of the SSM, the emphasis on greater harmonization within the euro area has required the ACPR to be more procedural in its approach, which has required cultural change and adaptation; it also claims to have lost elements of flexibility as new ECB policy stances reduce scope for supervisory discretion. The ECB is also much more legally minded, particularly in relation to authorizations. Previously, the ACPR had been willing to grant conditional authorization to a credit institution subject, for example, to production of criminal record checks within a defined period. In contrast, the ECB does not grant conditional authorizations and needs to have all relevant documentation to hand before granting approvals

15. The SSM's commitment to consistent high supervisory standards has shaped the ACPR's supervisory approach to LSIs in other important ways. Prior to the establishment of the SSM, supervisory priorities and planning were based on the ACPR's "ORAP" methodology for assessing the various types of risk to which institutions may be exposed and the quality of systems for measuring, monitoring and reducing those risks. This methodology included an assessment of business development strategy and performance as well as of governance arrangements in place. Analysis was carried out at least annually for each monitored entity (and more often for institutions considered more risky) and was proportionate to each institution's risk profile and significance. The ORAP methodology is being replaced by a common Supervisory Review and Evaluation Process (SREP) methodology for LSIs, which has been jointly developed by the ECB and NCAs. The methodology draws on the principles and methods of the SI SREP but emphasizes proportionality; it has been adapted, simplified and tailored to the particular circumstances of the LSIs. In particular, the methodology offers NCAs scope to adjust the intensity and frequency of supervisory activities according to an LSI's potential impact on the banking system and to its riskiness. Since ORAP had been gradually converging with the SI SREP, no major changes in the ACPR's supervisory planning processes are expected. In 2017, nine French LSIs took part in a trial of the LSI SREP (10 in 2018), with a significant involvement of ACPR's supervisory teams. Experience to date has confirmed the robustness of the new methodology but it is more demanding of time and resources. The LSI SREP is mandatory for high priority LSIs from 2018 and will be progressively applied to all French LSIs by 2020.

16. Additionally, Joint Supervisory Standards (JSSs) have been developed by the ECB in cooperation with the NCAs to promote best practices and ensure consistent supervisory outcomes across the SSM. ACPR teams are actively involved in these harmonization efforts. A total

of eight JSSs specific to LSIs (a ninth applies to supervision of financial market infrastructure) have been developed and will be published in streamlined form in 2019. Of particular relevance to France, the JSS on on-site inspections at LSIs establishes the expectation that one-tenth of the LSIs in a jurisdiction will be visited every year. Because of resource constraints and other priorities, France has not met this expectation. The on-site inspection directorate (around 190 members, with 211 planned for 2020) is part of Banque de France's (BdF's) General Inspection Directorate and is responsible to a BdF General Comptroller, which protects its independence. However, there is no dedicated team for LSIs. The allocation of on-site resources, about half of which are used to carry out ECB on-site inspections, is determined by the on-site inspection directorate in order to meet the various needs of the ECB, the ACPR (LSIs, AML/CTF and financial conduct), and other stakeholders (BdF, French Financial Markets Authority (AMF)). Because of its relatively small size, the LSI sector ranks low in priority. Hence, only eight on-site inspections of LSIs for prudential reasons have taken place in the past three years. ECB staff have not participated in any of these inspections. The number of inspections is planned to increase to nine in 2019 (of which five are on the reserve list); priority will be given to AML/CTF inspections. On-site inspections are comprehensive and can last for several months. The timeliness of any resulting supervisory intervention is also affected by the need for the inspection process to have a formal "contradictory" element, allowing a right of challenge and reply from the institution before the inspector's report and findings are finalized.

17. To support its ongoing supervisory activities with individual LSIs, ACPR staff have undertaken horizontal ("thematic") reviews involving deep dives on particular supervisory concerns. These have covered:

- A review on cyber security in 2017/18, based on a self-assessment tool, for a sample of supervised entities that included around 40 LSIs;
- A review on governance in 2017 for a sample of 10 entities, of which nine were LSIs; and
- An assessment of LSI recovery plans, also in 2017.

F. Less Significant Institution Supervisory Priorities

18. The ACPR's supervisory priorities for LSI supervision in 2019 had not been finalized at the time of the FSAP but were expected to remain broadly in line with overall SSM priorities. The focus will be on two main areas: governance and risk management, and business models and profitability drivers. The SSM's attention over recent years on credit underwriting quality and exposure quality has less relevance to the French LSI sector, which has low levels of nonperforming loans (NPLs).

19. The ACPR's 2017 thematic review on governance had broadly satisfactory findings. The review noted progress in strengthening the composition and functioning of Board of Directors within the LSIs reviewed, in line with the EBA's revised *Guidelines on Internal Governance* (2017) effective from 30 June 2018; the main challenge is identifying suitably qualified individuals to serve as independent LSI Directors. To close this gap, the ACPR has placed considerable importance on

Director training. The review also noted some improvement in the flow of risk information to Boards. The ACPR does not meet Boards of LSIs every year; however, it does meet annually with the Chair of the Board and the Chairs of the Audit and Risk Committees and receives minutes of Board meetings. (Audit Committees of LSIs with assets above €5 billion must have an independent Chair). The ACPR insists that LSIs have a Deputy Chief Executive Officer (CEO) as a counterbalance to the potential dominance of the CEO. The ACPR noted that LSIs within financial groups have generally strong shareholders; it also ensures it has up-to-date information on ultimate beneficial ownership and is aware of the dangers of hidden control or undue influence.

20. At the same time, the thematic review on governance highlighted areas for improvement in risk management. This was especially the case in relation to the implementation of a Risk Appetite Framework (which a number of LSIs lacked) and operationalizing ICAAP and ILAAP frameworks and processes. Changes to prudential regulation and advances in technology are prompting LSIs to adjust their operating model, which may require additional resources in the areas of risk management, internal processes and IT. Some LSIs face difficulties in achieving full compliance with certain new regulatory requirements. Finding skilled compliance officers is a challenge for many LSIs not least because of difficulties competing with bigger financial institutions in terms of competitive salaries.

21. Business model and profitability risk remains the main challenge for the LSI sector in France. As noted above, earnings have been under pressure due to the persistent low interest rate environment and stiff competition within the banking sector. In the course of the annual ORAP/SREP process, the ACPR reviews with the LSIs their main risk exposures and how these risks are managed, taking into account the assessment of their specific business models and the current environment of moderate growth with low interest rates. The need to combat growing risks of cyber security and IT risks are adding to cost pressures. The ACPR's thematic review on cyber security gave incident response and recovering capabilities the lowest ratings, and generated requirements for a number of remediation plans.

22. In the ACPR's assessment, credit risk in the LSI sector in France is well managed overall. While typically on-site inspections have not identified any major issues, recommendations often identified improvements to internal control frameworks for credit risk management. Compared with ORAP, supervisory assessments of credit risk management are more formalized in the SREP for LSIs but the content is little changed. Credit underwriting practices of LSIs focus on loan-to-value (LTV) ratios as well as loan-to-income (LTI) ratios, independent of any guarantees; standard practice is to limit mortgage interest payments on residential housing to one-third of income which is relatively conservative by global standards. There is no LSI support for investor housing.

23. Similarly, the ACPR's assessment is that liquidity risk does not pose significant issues for the LSI sector in France. Since ORAP already emphasized a range of liquidity metrics, the introduction of the Liquidity Coverage Ratio (LCR) and the Net Stable Funding Ratio (NSFR) as part of the Basel III reforms did not require much change in supervisory approach. However, some smaller LSIs find the Basel liquidity risk management framework too complex, while pawnbrokers

(Caisses de Crédit Municipal) have excess liquidity and no incentive to manage it closely. Proportionality in supervisory approach is called for but challenging to implement. Overall, the LSI sector has a high LCR; those LSIs with a lower LCR are part of groups and hold no more liquidity than needed given the group support.

REGULATED SAVINGS²

A. Executive Summary

24. Regulated savings are a significant segment of the French financial system representing a quarter of household deposits (Table 3). These products are the modern-day representation of a historic desire by the state to promote and fund projects and activities with social benefits. The governance and organization of the regulated savings does not present a threat to financial stability, but welcome reforms to the current arrangements, arising from the loi PACTE should ensure that public deposits are subject to appropriate oversight based on up to date standards.

25. Looking forwards aligning the rate of return between regulated and non-regulated products would be beneficial. Not only would this step remove any potential distortion in the market place, or impairment to banks' profitability, it might spur the development of a deeper market in deposit products to the benefit of wider economic activity. Socially important projects should be funded directly from the market, whether from banks, the capital markets or through other fiscal measures.

B. Scope and Approach

26. Regulated savings are a significant segment of the French financial system representing a quarter of household deposits and 14.6 percent of financial assets at end 2017. Regulated savings are channeled by the state to finance various social projects—mainly social housing—as well as investment by local and regional governments and are attractive to households due to their favorable tax treatment, a government guarantee, and fixed returns. This note provides a brief overview of the regulated savings in France, with particular attention to Caisse des Dépôts et Consignations (CDC) and the treatment of regulated savings within the prudential framework. This brief overview therefore notes aspects of the institutional, legal and regulatory framework in place, the supervisory practices employed, as well as recent planned changes being delivered through the Loi Pacte which contains the Government's Action plan for Business Growth and Transformation.

C. Regulated Savings

27. There are a range of regulated savings products currently available to the public in France. These take the form of on-demand interest-bearing bank deposits, subject to a range of conditions such as maximum amounts, conditions of use, tax treatment, and remuneration rates. The

² This Chapter was prepared by Katharine Seal (MCM).

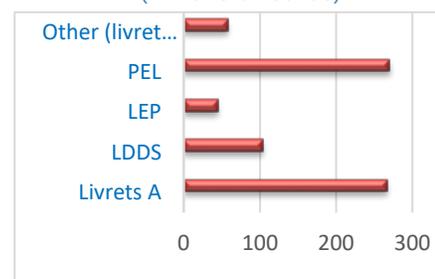
savings options are as follows: Livret A (and remaining Livret Bleu), Livret de Développement Durable et Solidaire (LDDS), Livret d'Épargne Populaire (LEP), Compte Épargne Logement (CEL), Plan Épargne Logement (PEL), Livret Jeune, Livret d'Épargne Entreprise (LEE). Each of the regulated savings products has a particular objective and associated incentive. A significant proportion of some of these instruments—Livret A (and Bleu), LDDS and LEP—are channelled (“centralized”) to the state-backed CDC for the purpose of funding mainly social housing projects. (Please see Annex for further description of the savings products). (Please see section F for a discussion on the CDC).

Table 2. France: Recommendations for Regulated Savings

Recommendations	Time Frame
Reforms to governance of regulated savings and CDC under the Loi PACTE, to be passed and implemented in a timely manner. This recommendation was achieved in May 2019, shortly after the FSAP mission.	Within 1 year
ACPR to be remunerated for the additional supervisory responsibility.	Within 1 year
Develop detailed practical and operational contingency arrangements for the CDC.	Within 1 year
Over time reduce the returns gap between regulated savings and similar non-regulated products.	2–10 years
Consider a gradual move towards funding the state’s social priorities directly from market-based financing.	2–10 years

28. Regulated household savings represented €733 billion at the end of 2017. This represented an increase of 2.5 percent year on year, or 14.6 percent of the French financial assets. Among these savings, the most significant are the PEL with outstanding amounts of €270 billion, Livret A with €255 billion and LDDS with €104 billion (see Figure 1).

Figure 1. Regulated Savings 2017
(Billions of euros)



Source: Banque de France.

D. Centralization of Regulated Savings

29. Some, but not all, regulated savings remain on the balance sheet of the commercial banks. Some types of regulated savings accounts—such as the PEL—remain wholly on the banks’ balance sheets. Other accounts—Livret A, LDDS and LEP—must, in part, be centralized to the CDC. Immediately following the Financial Crisis, banks could centralize all of the regulated savings, for which centralization is permitted, but for the past two years, a cap of 60 percent (59.5 percent) has been imposed on the system as a whole. Individually banks may not be at the 60 percent level, but their positions will be regularized by 2028 at the latest. Banks receive a fee for the deposits that are centralized.

30. Regulated savings, whether centralized to the CDC or not, are subject to investment conditions. Within the CDC, the Livret A, LDDS and LEP are held only in the “Savings Fund” and put,

mainly, to funding social housing projects. Similarly, the non-centralized portion of these savings that remain on banks' balance sheets must be directed to financing SMEs (minimum 80 percent), ecological and energy transition (minimum 10 percent) and social solidarity (non-profit organizations with social mandates).

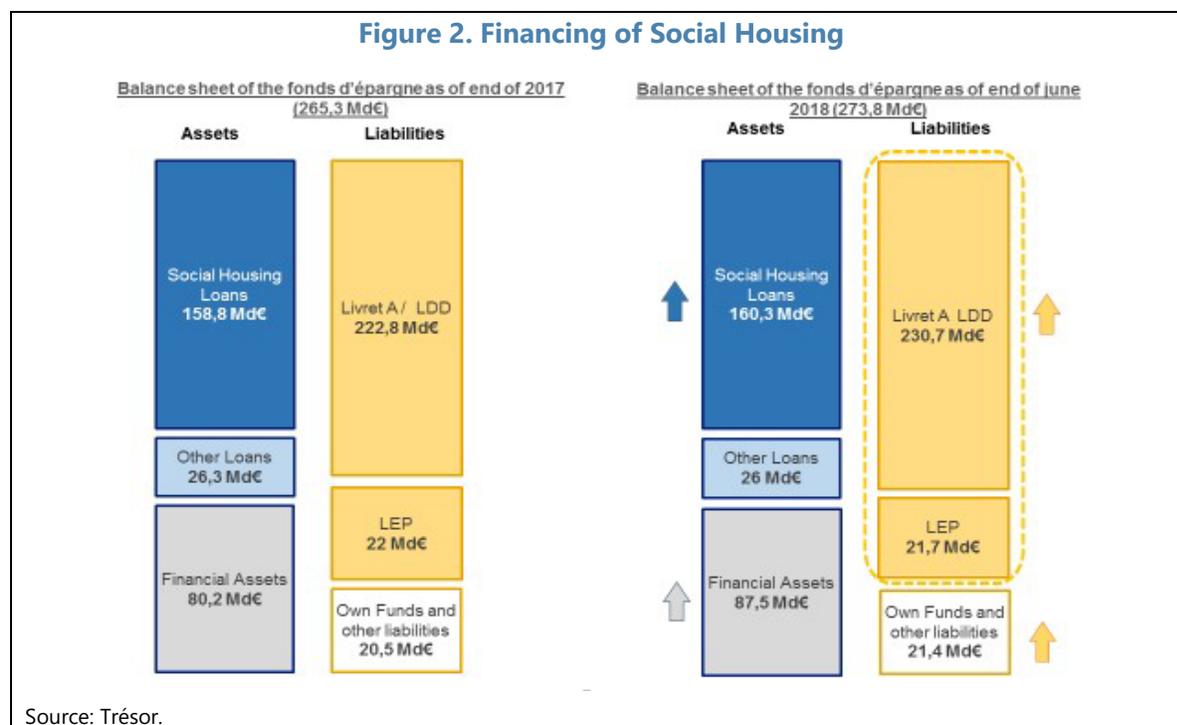
31. The CDC is a major source of financing for social housing through subsidized lending to new construction and renovation. In 2017, 87 percent of Savings Fund lending, amounting to outstanding balances of €159 billion, supported social housing and urban policies. Between 2004 and 2013, CDC loans accounted for an average of 70 percent of new construction financing and 56 percent of renovation.³ The terms of the CDC's Savings Fund lending are defined by central government on an annual basis. This includes the volume of loans and the terms and conditions: purpose, pricing, maximum duration, list of eligible borrowers. The government may not require the CDC to extend loans to specific counterparties. Typically, the social housing loans are of very long duration, and their pricing does not reflect the duration of the loan available. All loans to the social housing sector must be supported by a guarantee either from the local authorities or Caisse de garantie du logement locatif social (CGLLS). The CGLLS is an administrative public institution (EPA), able to guarantee regulated loans granted by the CDC to social landlords. Centralisation rates are set in accordance with the ministerial decree of 16 March 2011 (Decree n° 2011-275, Article 2). Under the decree: (i) the centralized savings of Livret A and LDDS are 25 percent larger than the amount of loans granted by the Savings Fund for social housing and urban policy and (ii) the total centralized savings plus equity and funds for general banking risks are 35 percent larger than the total amount of loans granted by the Savings Fund. At all times the level of regulated savings held in the Savings Fund must be 125 percent of outstanding loans (see Figure 2).

E. Remuneration of Regulated Savings

32. The remuneration of regulated savings products is set according to a formula which is periodically reviewed and adjusted by the Government. The yield on regulated savings is an average of the six-month average Euro Overnight Index Average (EONIA) and inflation. There is also a floor in the formula to ensure that a positive interest rate is paid on Livret A and LDDS accounts. The floor is set to 0.5 percent and was formerly linked to inflation.

33. The Banque de France calculates the Livret A and LDDS rate every quarter and makes a recommendation to the government, which can, however, make its own determination. From 2013, to October 2017, the government consistently set the rates on regulated savings above the level stipulated by the formula. Since October 2017, however, the regulated savings rate has been maintained at 0.75 percent (sometimes below the formula rate) and may shield the banks and Social Housing Providers (whose lending conditions are linked to regulated savings rate) from rising inflation. A new formula, that does not include an inflation-linked floor, will apply from February 2020. This should align the regulated savings rate more closely with market rates, though the government retains its override power.

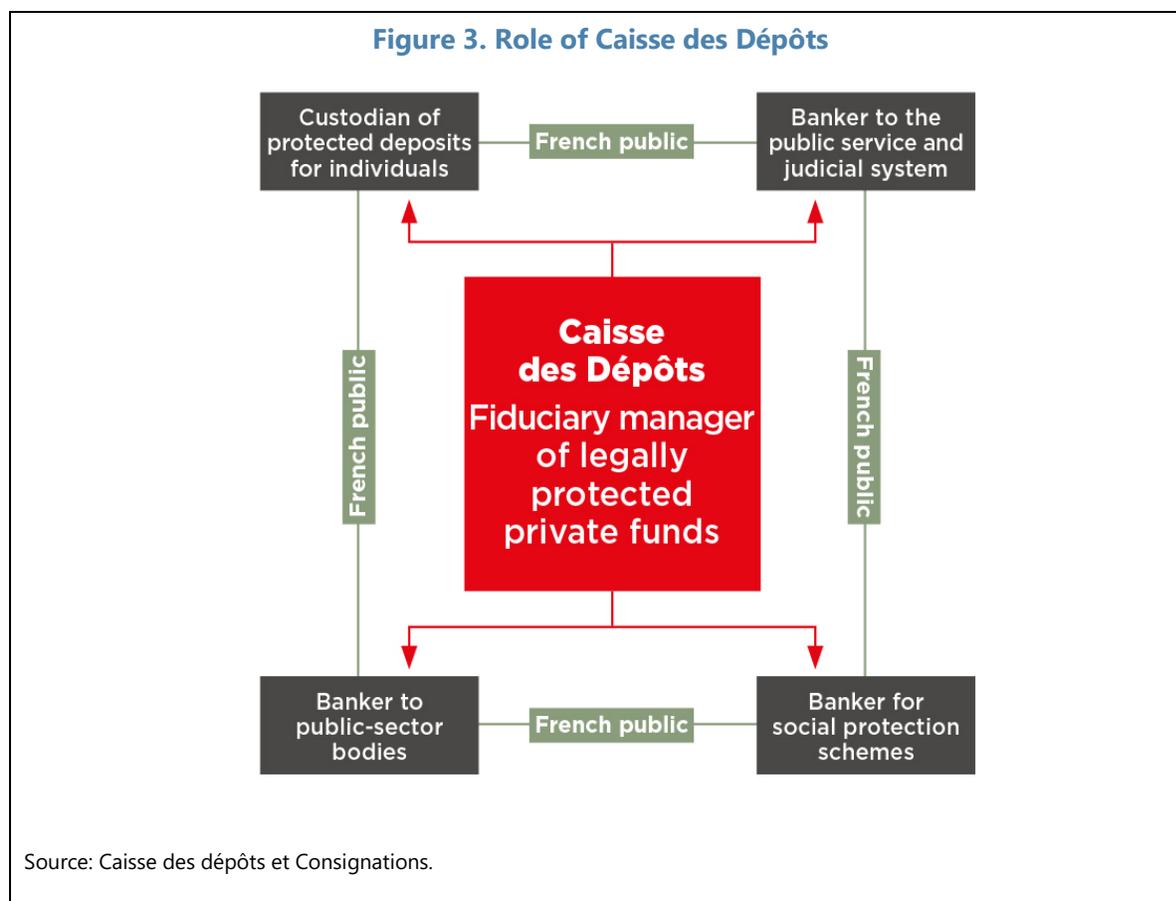
³ See https://www.prets.caissedesdepots.fr/IMG/pdf/eclairages_18.pdf.

Figure 2. Financing of Social Housing

34. At present the average annual rate of return on these savings remains, on average, above inflation. In more detail:

- The rate for the Livret A—which is the same as the rate for LDDS—has been set at 0.75 percent since August 1, 2015. It will remain at this level until 31 January 2020 in accordance with the Ministerial decree of 27 November 2017. This decree also prohibits the Minister of the Economy from revising the rates until 31 January 2020, unless there are exceptional circumstances.
- The rate for new PELs has been stable at 1 percent since August 1, 2016. Savings held in a PEL account are blocked but allow the account owner to earn interest, access loans at a preferential rate and obtain a state bonus, up to a total lifetime limit of €1525. The PEL regulation was changed on January 1, 2018 and reduced the tax benefits for newly opened accounts. For PEL opened before January 2018, and if held for less than 12 years, the interest received is tax free, while, accounts opened since 2018 are subject to the Prélèvement Forfaitaire Unique. The new regulation also removed the state bonus for accounts opened after 2018.

35. On a historical note, the Livret A is the oldest of these regulated savings instruments, created in 1818 by French savings banks group Caisse d'Épargne. The Caisse d'Épargne, currently a retail subsidiary of Groupe BPCE, lost its monopoly in 1881 when the instrument was extended to LaPoste. The distribution of Livret A was further widened to Crédit Mutuel in 1976 and to all French banks in 2009, ensuring a level playing field.



F. The Caisse des Dépôts et Consignations

36. The CDC is a public autonomous agency, created in 1816 and accountable to the Legislature. CDC's legal status is set out in Article L-518 of the monetary and financial code. This status can only be amended through a new law. Notably the CDC cannot be liquidated. CDC is defined as a special agency (*établissement special*) as opposed to a "public agency" (*établissement public*) and endowed with a number of mandates to act in the field of national interest.

37. The CDC mandate is to fulfil missions of general interest for a wide range of public policies. The CDC has two main divisions: the savings fund and the general fund. The regulated savings—Livret A, LDDS and LEP—are centralized only in the savings fund. At the end of 2017 the total consolidated assets reached €143 billion for the general fund (*section generale*) and €274 billion for the savings fund (*fonds d'épargne*). In addition to managing the regulated savings deposits collected by French banks, the CDC holds a number of other, mandatory deposits in its general fund. These deposits include the deposits from the legal professions and unallocated (abandoned) accounts. It also acts as the institutional custody account manager of AcoSS—the French social security agency; and administers several public pension schemes. Through the General Section, the CDC holds Government interests through both majority and minority stakes in a wide range of sectors, including insurance, housing, transportation services, engineering and leisure.

38. The CDC does not issue share capital, although it builds equity through retained earnings, and its debt is not classified as French general government debt. CDC's annual dividend payments to the state is fixed as a percentage of its profits.

G. Institutional Oversight

39. CDC's governance stems from the 1816 law although there have been subsequent modernizations, and major changes from the Loi Pacte are pending. A distinctive feature of the CDC is that its supervisory board is accountable to the National Assembly (parliament) rather than the government. Most key managerial positions are held by civil servants and the CEO is nominated by the French President for a five-year term. Pending the changes from the Loi Pacte, which will introduce more modern governance standards, broadening the supervisory board and granting it powers in respect of budget, financial statements, strategy and investments, the CDC governance architecture comprises three key bodies:

- Supervisory Commission (commission de surveillance), comprised of 13 members among whom 5 are Members of Parliament and three are nominated by the presidents of the National Assembly and the Senate. This body oversees the strategic directions, equity participations, management of the savings funds and the verification of CDC's accounts. It also determines the "prudential model" (modèle prudentiel, an internal steering tool for solvency and liquidity, used by the Supervisory Commission to set the level of own funds it deems appropriate for the CDC) and authorizes the level of bonds issued.
- Executive Committee, comprised of the CEO and 10 other members, is the main steering body of the CDC. It is responsible for monitoring and implementation of strategy and annual objectives.
- Group Management Committee supports the CEO and is the main information forum for strategic consultation and steering of the Caisse des Dépôts group, including major subsidiaries.

40. CDC largely stands outside the purview of EU legislation, but reforms will strengthen prudential oversight. The CDC's core activities are not subject to EU regulation on state aid, and it is exempted from the scope of EU prudential banking regulation. In other words, although the CDC receives public deposits and grants loans it is not defined as a credit institution. Nevertheless, the CDC has been subject to a degree of oversight from the ACPR since 2010 and, following the Loi Pacte reforms, will be subject to the full prudential oversight of the ACPR. Until the reforms take effect, from January 2020, the CDC enjoys a degree of latitude in its supervisory relationship. For example, although a tailored version of the EU banking regulations⁴ is already applied, the focus will be sharpened, and the standards increase. At present the CDC provides regulatory ratios, such as capital adequacy, but the Supervisory Commission decides how to react to potential breaches. On-site inspections are at the request of the CDC who can turn to the ACPR as a source of technical support. Following the reforms, reporting will be required on a quarterly basis, not every half-year,

⁴ The Capital Requirements Regulation/Capital Requirements Directive (CRR/CRDIV package).

and the CDC will have to meet regulatory standards through its own efforts. The ACPR will be able to impose minimum capital requirements above the capital ratio currently applied to the CDC.

41. The ACPR is actively engaging with the CDC to ensure the new prudential regime takes effect smoothly. In particular the expectation is that the CDC must develop a fully-fledged risk architecture and culture throughout its organization. Given that the CDC has a major function as an equity investor—an activity that banks are discouraged from undertaking by the regulatory framework—the exclusion from the EU prudential framework is pragmatic. The ACPR supervisory remit will cover both the activities of the savings fund, which is most purely “bank-like” and also the general fund. Additionally, the ACPR will be able to ensure effective crisis and contingency planning takes place.

H. Caisse des Dépôts et Consignations – A Group with Banking and Insurance Entities

42. The CDC group is not, under the terms of EU legislation, a financial conglomerate as it enjoys a specific exemption. Nevertheless, the group contains both banking and insurance entities. Although neither is a 100 percent subsidiary, CDC has major stakes in both CNP Assurances (CNP) and La Banque Postale (LBP) as well as numerous other interests. CNP Assurances (CNP) is France's largest provider of life insurance and term creditor insurance. It also holds an important market position in Brazil, where CNP is the fifth largest insurance company.

43. Following planned structural reforms, the CDC's existing holdings in both banking and insurance entities will increase. Overall the corporate structures are likely to be simplified but the changes trigger a formal need to consider the change of control for both the banking entity, LBP, and the insurance firm, CNP. A change of control in CNP should be subject to supervisory scrutiny and approval by the ACPR which is the supervisory authority. Equally, if the ultimate majority control of LBP changes to the CDC, which it is currently expected to, then the ECB has a role to determine that the CDC is a suitable controller of LBP which is a Significant Institution in the designation of the SSM and therefore subject to direct supervision by the ECB. Furthermore, international standards of banking supervision⁵ expect the responsible supervisor to take account of whether a major acquisition can be managed effectively and prudently by the acquiring entity. Hence, as LBP could become the immediate parent/majority controller of CNP, then there is an additional consideration of whether LBP is capable of assuming its new role. This assessment should fall to the ECB with the support of the ACPR, and while EU legislation is silent on this angle of mergers and acquisitions, since the 2012 FSAP the French authorities have remedied the legal gap that relates to failure to scrutinize a major acquisition.

44. Overall, the regulatory framework that captures the CDC group adds a further layer of scrutiny and comfort that public interests are being well managed. There is no suggestion or concern that group re-structure or deepening of the conglomerate model should not proceed. It is,

⁵ The Basel Core Principles for Banking Supervision.

of course, important that the changes are well managed and well understood, so it is therefore welcome that the changes will take place within a framework that can support evolution based on current best practices. Further, as the ultimate ownership of CDC, LBP and CNP resides with the French State it could be reasonably stated that there is no substantive change of control taking place. The authorities noted that they do not expect any particular difficulty or complexity in terms of the prudential supervision of CNP or LBP associated with this operation.

I. Prudential Treatment of Regulatory Savings

45. An appropriate prudential treatment is required for regulated savings. It is not obligatory for a bank to offer regulated savings accounts, but if it chooses to do so then it is required to centralize part of the savings balance to the CDC, as noted above. Although a proportion of the regulated savings are transferred to the CDC, the entire amount deposited with the commercial banks remains on their balance sheets as a liability (deposit). The associated asset for the centralised portion of the regulated savings shows as a loan to the CDC. The claim on the CDC is treated as a zero percent risk weighted asset under the standardised approach for credit risk as the CDC is considered a public sector entity that is associated to the central government. There are three major regulatory standards that apply: the LCR, the NSFR and the Leverage Ratio. The regulatory treatment is as follows:

Liquidity Coverage Ratio

46. The EU liquidity framework is based on the Basel standard. From a strictly regulatory perspective, the Basel Committee Regulatory Consistency Assessment Programme (RCAP) found the transposition of requirements to assess outflows in the LCR to be compliant.⁶ Regulated savings are subject to the treatment of interdependent assets and liabilities, a discretion that is permitted to and exercised by the competent authorities—ACPR or ECB—as laid down in the delegated regulation on the Liquidity Coverage Ratio (Article 26). This provision establishes a netting between interdependent inflows and outflows, under specific conditions and the treatment is noted below. It may be noted that the run off rates applied here are more conservative than the Basel LCR standard would permit under national discretion.

- For the 40 percent of the regulated savings that remain with the bank, an outflow rate of 5 or 10 percent is applied, depending on the stability of the deposit, in accordance with the delegated regulation on the LCR (Articles 24 and 25).
- The 60 percent of the regulated savings that are centralized, are captured on a net basis for the purpose of the calculation of the outflows. In other words, as the deposit withdrawal is compensated by the CDC, which is legally required to reimburse the funds within ten days, the net position is zero. The liquidity risk is seen, in practice, as having been transferred to the CDC.

⁶ This note does not comment on the wider practice of liquidity risk supervision that was assessed through the Basel Core Principles in the Euro Area FSAP of 2017 and was found to be materially non-compliant.

- A mechanism is put in place to ensure that either monthly or four times a month—depending on the agreement made by the individual bank—that the flow of funds between the banks and the CDC transfer on a net basis depending on whether the overall level of regulated savings has increased or reduced. The details are provided in Decree 2011-275 of 16 March 2011, as amended by Decree 2012-914 of July 25, 2012 and most recently modified by Decree 2018-83 of 12 February 2018.

Net Stable Funding Ratio

47. The NSFR will apply from the second quarter of 2021, and the provisions of the Basel standard are set out in the revised CRR/CRD IV package.⁷ For the non-centralized part of the regulated savings, an available stable funding factor (ASF) will be applied according to the stability of the deposit, e.g., 95 percent or 90 percent. The Basel option to recognize interdependent assets and liabilities⁸ is being transposed (Article 428(f) of CRR2). This option introduces a limited national discretion to treat centralized regulated savings under the exemption for interdependent assets and liabilities. Interdependency is determined based on contractual arrangements and provided that the liability cannot fall due while the asset remains on the balance sheet, the principal payment flows from the asset cannot be used for something other than repaying the liability, and the liability cannot be used to fund other assets. Conditions include the identical maturity of asset and liability and the requirement for the bank to be acting only as a pass-through to channel the funding. The required stable funding factor (RSF) and available stable funding factor (ASF) applied to the centralized part of the regulated saving are set to zero as permitted under Basel. The intention is to ensure that the banks will not benefit from the whole amount of the regulated savings as they are only able to fund their own assets with the non-centralized part.

Leverage Ratio

48. The supervisory community and the banking community took differing interpretations of the Leverage Ratio requirements as set out in the CRR/CRD IV. The CRR includes a derogation permitting the competent authorities, including the ECB, to allow credit institutions to exclude regulated deposits—Livret A, LDD and LEP—which had been centralized from the calculation of the leverage ratio. The ECB, the competent supervisor for the French SIs, did not, however, choose to apply this derogation, with the exception of LBP which was granted a transitional period until 2023 to comply. As a result, six French banks took their grievance to the General Court of the EU, which found in their favor.⁹ The finding was based on the processes the ECB had adopted to reach its decision not to permit the derogation. While a further appeal on point of law is permitted the CRR2/CRD5 package will ensure that the treatment sought by the banks

⁷ At the time of the FSAP, the final version of the CRR2/CRD5 package had not yet been issued in the *Official Journal of the European Union*, but substantive changes to the wording of the text were not expected.

⁸ Basel NSFR, Paragraph 45.

⁹ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-07/cp180110en.pdf>

remains permanent. Therefore, both now and under the revised regulatory package, deposit funds centralized to the CDC are excluded from the leverage ratio calculation.

J. Safety Net

49. Regulated savings benefit from a state guarantee. This is set out in the Loi Finance 2008/1443 (Article 120). In fact, in terms of a safety net protecting the regulated savings, there is a double layer of state guarantee in place. Therefore, in the event of failure of both the bank and CDC, a state guarantee covers the customer. The State is then entitled to a claim on CDC for the centralized portion of the regulated savings and a claim on Fonds de garantie des dépôts et de résolution (FGDR) for the non-centralized portion. The State also guarantees the institutions' exposure towards CDC in the event that the CDC could not meet its obligations towards the bank in respect of the centralized part. (Article 120 of the Law 2008-1443.) While banks must contribute to FGDR, based on their deposit base, the centralized funds are exempted from the calculation. (Article 3 of Arrêté October 27, 2015). It is worth noting that if banks were to suffer liquidity stress they could not obtain the centralized funds from the CDC for their own liquidity purposes. Withdrawals from the CDC can only be to honour claims made by the underlying depositor. The CDC must honour withdrawals of regulated savings that are passed through to the underlying customer within ten days. In other words, the CDC Savings Fund cannot act as a general source of emergency liquidity to the banks, other than in respect of reimbursing depositors' withdrawals.

K. Market Impact

50. The FSAP did not undertake an impact study on the effect of regulated savings on the overall deposit market and banks' net interest margins. Different industry commentators the FSAP met during the two missions presented views both for and against the proposition that the regulated savings have an adverse impact on banks' margins. It is indeed logical to assume there is an adverse effect. Of course, the higher the level of regulated savings, the more sensitive a bank will be to a change in the regulated savings' rate. Most regulated savings are concentrated in LBP, Group BPCE and Group Credit Mutuel (all SIs supervised by the ECB). These three banks together collected €190 billion of Livret A deposits, as of end-2017.

51. Banks are not obliged to offer regulated savings products, however. In the context of a bancassurance business model that is adopted by most of the major players and that relies on cross selling different a portfolio of products to a client, it may be hard to disentangle the negative impact from the positive effect of being able to attract customers by offering the regulated products. In other words, there may, possibly counterintuitively, be a more negative impact on banks' businesses if they ceased to offer the regulated savings. It is not a straightforward equation.

L. Policy Conclusions

52. There is no indication that the system of regulated savings presents any form of concern to financial stability. It is important that the CDC, which is a cornerstone of the system, is well governed and operates to the best standards. The authorities are mindful of this and have

therefore initiated the reforms set out in the Loi Pacte, including the proper supervision of the CDC by the ACPR. The reforms, once passed, should be implemented in a timely manner. The ACPR is already undertaking thorough preparation well in advance of the expected implementation date.

53. Two practical recommendations must be addressed as part of the ongoing reforms.

First, the ACPR should be remunerated for its supervisory work. Supervisory activity is a public good, but it is costly and the ACPR, even without the enhanced responsibilities that they are taking very seriously, are stretched in terms of resource. The increase in supervisory responsibilities highlights the need for the ACPR to have a clearer view and operational independence for determining ways to resolve its resource constraints. Secondly, the practical, operational details of contingency arrangements need to be developed for the CDC. In terms of crisis planning and preparedness, the ACPR is already aware of the issue.

54. Looking forward, from a policy perspective, the FSAP supports a reduction of the returns gap between regulated and non-regulated products.

Such a move would need to be made at an appropriate time. In addition to removing any potential net interest distortion in the banking market, aligning interest rates may also stimulate banks to create a richer set of deposit products for the market.

55. The FSAP further recommends that the State funds its social priorities directly via funding from the banks, the capital markets or through other fiscal measures.

Should, however, regulated savings be withdrawn by the government, then there might be stability or systemic issues to consider in terms of where the funds would then flow and whether the banking system, or specific banks in particular might be vulnerable to outflow or even a damaged business model. Were there to be significant changes to this system, as with all major reforms, careful preparation, impact studies, communication and transitional arrangements would be advised as the Tresor fully understands.

REGULATION AND SUPERVISION OF INVESTMENT SERVICES¹⁰

A. Executive Summary

56. The French rules reflect the sound EU framework for investment services. Both the AMF and the ACPR have put in place a risk-based approach to supervision, and the amount of time and resource dedicated to entities and activities takes due account of the associated risks. The AMF in particular makes good use of (relatively) limited resources. On-site inspection has intensified since

¹⁰ This Chapter was prepared by Mr. Richard Stobo, Financial Sector Expert from the Monetary and Capital Markets Department of the IMF. The on-site work supporting the findings and conclusions was conducted during December 4–21, 2018. The information in this Chapter is current as of May 2019.

the last FSAP. There is extensive cooperation between the national authorities. The settlement regime for enforcement actions introduced by the AMF is a positive step.

Table 3. France: Regulated Savings Products

SAVINGS PRODUCT	DESCRIPTION
LIVRET A	Regulated savings account that can be opened by any individual and by certain associations. The funds deposited are available at any time. A type 'A' account has an unlimited term. However, it may be closed at any time by the account holder. Only one type 'A' account may be opened per person (including minors). The interest paid on a type 'A' account is tax-exempt. The maximum amount that can be deposited by an individual into a type 'A' account is €22,950.
PLAN D'ÉPARGNE LOGEMENT – PEL	Regulated savings product that allows loans to be issued to finance expenses related to purchasing a primary residence or, under certain conditions, homes which have another purpose. Unlike a home savings account , the PEL has a minimum term of four years and a maximum term of 10 years. After that time, the scheme can continue to exist, but payments can no longer be made to it. The savings interest rate is set for the entire term of the scheme at the rate in effect when the PEL is opened. The money earned on a PEL consists of an interest rate and a government premium provided that the scheme was opened before 2019. The maximum amount of deposits is €61,200.
LIVRET DEVELOPPEMENT DURABLE ET SOLIDAIRE – LDDS	Regulated savings product available only to individuals whose tax residence is in France. The funds deposited are available at any time. An LDDS account has an unlimited term. However, it may be closed at any time by the account holder. Only one LDDS account may be opened per taxpayer plus one for his/her spouse. The interest paid on an LDDS account is tax-exempt. The maximum amount that can be deposited into an LDDS account is €12,000.
LIVRET D'ÉPARGNE POPULAIRE – LEP	Regulated savings product available only to individuals whose tax residence is in France and whose income tax does not exceed an amount which is revised each year. The funds deposited into an LEP are available at any time. The term of an LEP is unlimited so long as the tax ceiling requirement is met. However, it may be closed at any time by the account holder. Only one LEP account may be opened per taxpayer plus one for his/her spouse. Children included in the tax household may not hold this type of account. The interest paid on an LEP account is tax-exempt. The maximum amount of deposits is €7,700.
LIVRET BLEU	Regulated savings account available in the Crédit Mutuel network. As of 1 January 2009, it is no longer possible to open a Livret Bleu account. However, accounts existing as of that date remain in effect. A Livret Bleu account is similar to a type 'A' account. A person may not have a type 'A' account and a Livret Bleu account at the same time.
COMPTE D'ÉPARGNE LOGEMENT – CEL	Regulated savings product that allows the holder to obtain a loan, at the end of a minimum savings period, to finance expenses related to purchasing a primary residence or, under certain conditions, homes which have another purpose. The amount of the home savings loan is based on the savings amount and term. The interest rate of the loan is set by the public authorities. The money earned on a CEL consists of an interest rate and a government premium, which is paid only if a loan is granted. The funds deposited into a CEL are available at any time.
LIVRET JEUNE	Regulated savings product available only to individuals aged 12 to 25 who reside in France. For those under age 16, withdrawals from a Livret Jeune account must be authorised by their legal representative. A Livret Jeune account is closed by no later than 31 December following the account holder's 25th birthday and the credit balances are transferred to another account designated by the account holder. The interest paid on a Livret Jeune account is tax-exempt. The interest rate is set by the credit institutions and may not be lower than the type 'A' rate. The maximum amount of deposits is €1,600.

Source: Banque de France.

57. The 2013 France FSAP identified several issues related to the institutional set-up of the supervisory authorities, and there remains room for improvement. The Ministry of Finance (MoF) sits on the Boards of the AMF and ACPR and, of greater concern, also participates in the meetings of the Sanctions Committee of the ACPR. This gives rise to risks of (perceived) conflicts of interest and lack of independence. In addition, the Sanctions Committee of the AMF includes members who are active in the securities industry. Finally, both the AMF and the ACPR could benefit from greater autonomy in determining their own resources.

58. The withdrawal of the United Kingdom (UK) from the EU could have a material impact on the investment services sector in France. In particular, there could be a significant inflow to France of UK investment firms wishing to retain the ability to “passport” their services across the EU. The authorities are as well-prepared for this outcome as can reasonably be expected, although the issue of autonomy of decision-making on resources is especially relevant in this context. The key concern raised by French market participants relates to continued access to UK CCPs post-Brexit. This issue has been addressed at domestic level and at EU level by the EC and ESMA. The AMF is also actively contributing to discussions within ESMA aimed at ensuring a consistent approach across the EU to decisions on relocations.

59. Cooperation between the AMF and the ECB could be enhanced given the AMF’s role in conduct supervision for investment firms that belong to banking groups under the prudential supervision of the ECB. ESMA developed a template memorandum of understanding for this purpose in 2016 which could be a starting point for the enhanced arrangements. Such a step would be particularly useful in view of the impending transfer of prudential supervision of systemic investment firms to the ECB as a result of legislation recently agreed at EU level.

60. The French authorities should continue to contribute actively to discussions on a new regulatory framework for crypto-assets. The authorities are to be congratulated for seeking to achieve an appropriate balance in the new regime between encouraging innovation and protecting investors. It is difficult to predict the extent of interest among market participants for the regulatory regime that will be put in place, but close supervisory monitoring will be necessary.

B. Introduction

61. The French investment services sector is one of the most significant in the EU and covers a diverse range of entities. It spans some of the largest investment banks in the Euro-area through to small financial advisers consisting of a handful of staff. With an equity capitalization of US\$2,616 billion, Euronext Paris is one of the ten largest exchanges in the world. The bulk of investment services activity in France is provided by French credit institutions. However, non-French entities play an important role, particularly through the system of passporting provided for by EU legislation.

62. This chapter is the result of a review of the regulation and supervision of investment services in France. For the purposes of the chapter, investment services should be understood as the services provided by market intermediaries. As stated in the International Organization of

Securities Commission's (IOSCO) Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation, market intermediaries "generally include those who are in the business of managing individual portfolios, executing orders and dealing in, or distributing, securities. A jurisdiction may also choose to regulate as a market intermediary an entity that engages in any one or more of the following activities:

- *Receiving and transmitting orders.*
- *Proprietary trading/dealing on own account.*
- *Providing advice regarding the value of securities or the advisability of investing in, purchasing, or selling securities.*
- *Securities underwriting.*
- *Placing of financial instruments without a firm commitment basis."*

The terms "market intermediary," "investment firm," and "investment services provider" are used interchangeably in this chapter and should be understood (unless specified otherwise) to cover both investment firms and credit institutions that provide investment services.

63. Discretionary investment management activity is included in the scope of the review, whereas the management of collective investment schemes is generally outside the scope of this analysis. Collective investment management activity—governed in the EU by the Directives on Undertakings for Collective Investment in Transferable Securities (UCITS) and Alternative Investment Fund Managers (AIFMD) in the EU framework—has only been taken into account where necessary to provide, for example, a better overview of the AMF's supervisory work. The review which forms the basis of this chapter uses the relevant IOSCO documents as benchmarks.¹¹

64. Various sources of information were used as a basis for the analysis. This includes the authorities' extensive responses to a detailed questionnaire; a review of the relevant EU legislation and the French law transposing it; and discussions with the authorities, market participants and academics. The FSAP also benefited from insights into specific supervisory cases dealt with by the authorities.

65. This chapter focuses on the regulatory requirements and supervisory practices that are most relevant to financial stability. A brief description of the market structure in France is followed by an explanation of the allocation of regulatory and supervisory responsibilities for investment services. There follows discussion of the regulatory framework, the authorities' approach to authorization, supervision and enforcement, and of the regime for dealing with the failure of a market intermediary. The main recommendations are summarized in Table 4.

¹¹ The relevant IOSCO Principles are: Principles 1–8, 10–12 and 29–32 of the Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation, May 2017.

Table 4. France: Recommendations on Regulation and Supervision of Investment Services

Recommendation	Priority	Timing¹
The AMF should approach the ECB to agree an MoU on exchange of information and supervisory cooperation, using the template developed by European Securities and Markets Authority (ESMA) in 2016 as a starting point.	H	I
The supervisory authorities should continue to work closely with the Ministry of Finance with a view to ensuring that risks from Brexit are properly addressed in the legislative and regulatory framework.	H	I
Both AMF and ACPR should be given more freedom to determine their resource levels.	M	MT
The Ministry of Finance should no longer sit on the Sanctions Committee of the ACPR. The AMF should also find a way to bring in appropriate technical expertise to its Sanctions Committee without having recourse to individuals who work for regulated entities.	M	MT
The AMF and the ACPR should consider carrying out joint inspections of investment firms to allow for a holistic view of the entity from a prudential and conduct perspective.	M	MT
The ACPR should consider allocating additional resources to the on-site inspection of investment firms operating on a solo basis with a view to increasing the frequency of such inspections.	M	MT
¹ I=immediate (within one year); NT=near term (1–3 years); MT=medium term (3–5 years).		

C. Market Structure

66. The bulk of investment services activity in France is provided by investment firms, credit institutions (banks) and asset managers. Article L531–1 of the Code monétaire et financier (COMOFI), the Financial and Monetary code, provides that investment services providers (ISPs) are investment firms, asset managers and credit institutions who are authorized to provide investment services. There are other market intermediaries that are licensed to provide only one or two investment services, such as “conseillers en investissements financiers” (CIF) that are authorized to provide investment advice and are subject to a specific regime. In line with the exemption foreseen under the EU Markets in Financial Instruments Directive (MiFID),¹² certain natural persons and firms can provide investment services without a license.

67. As of January 2019, there were 278 investment firms in France, excluding financial advisers. 32 of these firms provide services in other jurisdictions through a branch, while 115 of them provide services in other jurisdictions without establishing a branch or subsidiary. 20 of these firms have subsidiaries or affiliates that are foreign supervised entities. A total of 40 foreign-owned market intermediaries operate through a subsidiary in France: 16 from other EU member states and 24 from outside the EU. Activity by foreign-owned market intermediaries through a branch is more common: there are 48 branches of such intermediaries from other EU member states, and 63 from outside the EU. Finally, it is notable that 3,334 firms have notified their intention to conduct securities business in France remotely from their home country.

D. Regulation

¹² Directive 2014/65/EU. More detail on MiFID is provided in the section on Regulation below.

Regulatory Framework

68. The regulatory requirements for investment services in France are largely determined at the level of the EU. Several layers of legislation, implementing rules and guidelines make up the EU's so-called single rulebook. Framework principles are set by Level 1 measures, adopted by the European Parliament and the Council of the EU in the form of Directives or Regulations. Directives bind member states to certain goals which they must achieve by transposing those Directives into national law. Regulations are directly and entirely applicable to all EU member states. Level 2 measures, which supplement the Level 1 requirements, can take the form of Implementing Directives or Implementing Regulations issued by the European Commission (EC) by delegated authority; or regulatory or implementing technical standards¹³ drafted by the European Supervisory Authorities (ESAs)¹⁴ and endorsed by the EC. Non-binding Level 3 measures, which take the form of guidelines, recommendations Q&As, opinions and other convergence tools issued by the ESAs, aim to ensure consistent application by national regulators of the Level 1 and 2 framework.

Allocation of Regulatory Responsibilities

69. Supervisory responsibilities for the investment services sector in France are split between the AMF, the ACPR and the ECB (Table 5). The AMF is the securities supervisor that is mainly responsible for conduct regulation, while the ACPR is in charge of prudential matters¹⁵. For market intermediaries that are part of banking groups where the parent company is supervised by the ECB, the market intermediary falls under the consolidated prudential supervision of the banking group. An EU legislative proposal currently, on which the Council of the EU and the European Parliament reached political agreement recently, will transfer supervisory responsibility for systemically important investment firms to the ECB.¹⁶ This means that the ECB will be responsible for prudential supervision of investment firms above a threshold of €30bn in total assets, complemented by two materiality tests, regardless of whether the investment firm is part of a banking group.

70. The AMF is an independent public body with a remit to safeguard investments in financial products, ensure that investors receive material information, and maintain orderly financial markets. Its scope of responsibilities covers financial markets and market infrastructures, listed companies, financial intermediaries authorized to provide investment services and financial investment advice (credit institutions authorized to provide investment services, investment firms,

¹³ Regulatory and Implementing Technical Standards are formally adopted by the European Commission, and they become either Delegated Regulations (in the case of Regulatory Technical Standards) or Implementing Regulations (in the case of Implementing Technical Standards).

¹⁴ The ESMA is typically the ESA responsible for technical standards that are relevant to investment services, but in some cases the work is done jointly with one or both of the other ESAs. The European Insurance and Occupational Pensions Authority (EIOPA) and the EBA issue technical standards in the scope of their respective mandates i.e., insurance and banking.

¹⁵ With the notable exception of operators of collective investment schemes which, as noted above, are generally outside the scope of this note.

¹⁶ For more on this, see paragraphs 92-93 in the Prudential Requirements section below.

investment management companies, financial investment advisers, direct marketers) and collective investment products invested in financial instruments.

Table 5. France: Allocation of Regulatory and Supervisory Tasks¹

				Investment Services Providers	Asset Management
Legislation and Regulation			<i>EU</i>	EC, EP, Council, ESMA and EBA	EC, EP, Council and ESMA
			<i>National</i>	Government, Parliament and AMF	Government, Parliament and AMF
Supervision	<i>Microprudential</i>	<i>EU</i>		ECB ²	N/A
		<i>National</i>	<i>Prudential</i>	ACPR	AMF
			<i>Conduct</i>	AMF	
	<i>Macroprudential</i>	<i>EU</i>	<i>Warnings and recommendations</i>	ESRB	
			<i>Powers of intervention</i>	N/A	N/A
		<i>National</i>		HCSF with proposal power from BdF	
Resolution		<i>EU</i>	SRB ³	N/A	N/A
		<i>National</i>	N/A	ACPR	N/A

Source: Trésor and IMF staff

¹ EC=European Commission; EP=European Parliament; ESRB=European Systemic Risk Board; HCSF= Haut Conseil de Stabilité Financière; BdF=Banque de France; ECB=European Central Bank; SRB=Single Resolution Board.

² For investment services providers that are part of banking groups where the ECB is the consolidated supervisor

³ For credit institutions supervised by the ECB that provide investment services.

71. The AMF has a sound legislative basis but lacks full financial independence. The authority, which was established by France's legislature in 2003, has a Board headed by the AMF Chair, and a Sanctions Committee empowered to impose disciplinary sanctions and fines. The AMF has a staff of 470 and is funded by levies and contributions paid by the firms under its supervision. However, it is not financially independent in the sense that there is a legislative ceiling (reviewed every year) on the amount of fees it may levy and on the number of staff. Any fees collected beyond this ceiling are paid by the AMF to the French state. Allowing the AMF to retain these excess fees would represent a significant increase in its budget (around 10 percent based on recent figures), which would help address some of the challenges identified elsewhere in this chapter.

72. Recommendation: The AMF and the ACPR should have greater financial independence to enable them to meet new regulatory and supervisory challenges in a more flexible manner. This could be achieved in different ways, but one option would be to allow them to retain any fees they gather beyond the ceiling set by the law.

73. The ACPR, which was established in 2010, is responsible for supervision of banks¹⁷ and insurance companies in France. It aims to preserve the stability of the financial system and protect the clients of the entities that it supervises. It is responsible for issuing licences, conducting ongoing supervision of the financial position and operating conditions of the institutions subject to its supervision, and ensuring that reporting entities comply with the rules governing the procedures for doing business. The ACPR also plays a role in supervising the preparation and implementation of measures to prevent and resolve banking crises, with a view to safeguarding financial stability, maintaining the continuity of the activities, services and operations of institutions whose failure would have a serious impact on the economy, protecting depositors, and reducing the risks of recourse to public financial aid.

74. The ACPR is an administrative authority which acts independently in carrying out its mission. The ACPR benefits from the operational backing of the Banque de France, which provides it with human and technical resources. The internal structure of the ACPR reflects its dual role as a prudential supervisor and resolution authority (RA): it has a Supervisory Board and a Resolution Board, both of which are chaired by the Governor of the Banque de France. It also has a Sanctions Committee.

75. It is notable that collective investment schemes (CIS) and their operators fall exclusively under the supervision of the AMF. This means that the AMF is competent for both conduct and prudential supervision of these entities. This chapter does not assess the AMF's role specifically in relation to the activity of collective investment management as this would have required consideration of a much broader set of risks. However, the relevant EU legislation¹⁸ allows CIS operators to seek permission to provide certain investment services (such as investment advice and management of individual portfolios). This aspect has, therefore, been taken into account in the chapter.

76. The ECB directly supervises the significant banks in the euro area. In addition to supervision of individual credit institutions, the ECB's tasks include supervision at the consolidated level of groups where the parent bank is a significant institution.¹⁹ This means that investment services providers which have a parent company supervised by the ECB are also subject to the prudential supervision of the ECB on a consolidated basis. This division of responsibilities, both between EU and national authorities, and between national authorities depending on the type of activity, requires extensive cooperation to work effectively.

77. The AMF and ACPR cooperate extensively at different levels of seniority. A monthly meeting (Réunion des Autorités Financières) brings together high-level representatives accompanied by technical counterparts. The agenda typically revolves around three main topics:

¹⁷ But, as explained elsewhere in this note, the AMF is responsible for oversight of banks' investment services activity.

¹⁸ UCITS Directive and the Alternative Investment Fund Managers Directive.

¹⁹ The list of ECB-supervised institutions as of December 14, 2018:

https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.list_of_supervised_entities_201812.en.pdf

i) general questions, such as new regulatory developments that impact on both authorities; ii) individual cases; and iii) specific topics such as the impact of Brexit. The Joint AMF-ACPR Unit on marketing of financial products (the *Pôle commun*) set up in 2010 provides further concrete evidence of the close working relationship between the authorities, and feedback on the impact of the Joint Unit continues to be positive. Fintech experts from both authorities also cooperate in a Fintech Forum. In addition, there is “cross-membership” at Board level whereby the Chair of the AMF is a member of the ACPR Boards (both Supervisory and Resolution) while a representative of the Governor of the Banque de France sits on the AMF Board.

78. There is no formal cooperation arrangement in place between the AMF and the ECB.

Currently, where necessary, information on relevant French investment firms is passed from the AMF to the ACPR, which then shares it with the ECB. In 2016 ESMA developed a template Memorandum of Understanding (MoU) to be used between national authorities responsible for application of MiFID/Markets in Financial Instruments Regulation (MiFIR) and the ECB. This template MoU provides for a common framework for cooperation and may be agreed and complemented bilaterally, on a voluntary basis, for the performance, respectively, of the tasks under the SSM Regulation and those under MiFID. To date only three securities regulatory authorities in the EU have agreed such an MoU with the ECB. Given the potential for conduct issues to have a significant impact on entities from a prudential perspective (both at a solo level and, depending on the nature of the issue, even at group level), it would be appropriate for the AMF to agree an MoU with the ECB to facilitate and provide the means to enhance exchange of information and cooperation.

79. Recommendation: The AMF should approach the ECB to agree a formal cooperation arrangement to facilitate the exchange information and cooperation on entities for which supervisory responsibility is shared. The arrangement should encourage proactive information-sharing on day-to-day supervisory matters and not be limited to ex-post information exchange.

Regulation of Investment Services

80. The provision of investment services in the EU is regulated in MiFID²⁰ and the MiFIR.

France has fully transposed MiFID into its national legal and regulatory framework, while MiFIR applies directly by virtue of its being an EU Regulation. MiFID and MiFIR provide for a comprehensive regulatory framework, including governance, organizational, and conduct of business requirements. The MiFID conduct of business and organizational requirements also apply to credit institutions that provide investment services, while they are exempted from certain other

²⁰ MiFID I (Directive 2004/39/EC) came into force in 2004 and had to be implemented by EU member states by November 2007; MiFID II (Directive 2014/65/EU) came into force in July 2014 and started to apply in January 2018. References in this note to MiFID should be understood as referring to MiFID II, unless otherwise stated.

MiFID requirements because they are already subject to similar requirements under the EU CRD²¹ and the CRR.²²

81. MiFID sets out the services that investment firms may provide and the activities they may undertake. Pursuant to Annex I, section A of MiFID, investment firms can provide the following services:²³

- a. reception and transmission of orders in relation to one or more financial instruments;
- b. execution of orders on behalf of clients;
- c. dealing on own account;
- d. portfolio management;
- e. investment advice;
- f. underwriting of financial instrument and/or placing of financial instruments on a firm commitment basis;
- g. placing of financial instruments without a firm commitment basis;
- h. operation of a multilateral trading facility; and
- i. operation of an organized trading facility.

82. In France, certain financial institutions²⁴ must create a subsidiary to deal for their own account in financial instruments. The dedicated subsidiary could be either an investment firm, or a credit institution not authorized to receive deposits covered by the national deposit guarantee scheme. This requirement, aimed at limiting the risk of spill overs from risky activities, was introduced in 2013 by the law on separation and regulation of banking activities.²⁵ An initiative to put in place a similar requirement at EU level was withdrawn in July 2018 on the basis that its purpose had in the meantime to a large extent been achieved by other measures.²⁶

²¹ Directive 2013/36/EU, also known as CRD4.

²² Regulation (EU) 575/2013 on prudential requirements for credit institutions and investment firms.

²³ As mentioned above, this note focuses on the services more commonly associated with market intermediaries as described by IOSCO, which corresponds to items (a) to (g).

²⁴ Credit institutions, financial holding companies and mixed financial holding companies who trade in financial instruments in excess of a specific threshold.

²⁵ The only two subsidiaries created to comply with this law have recently shut down.

²⁶ https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/managing-risks-banks-and-financial-institutions/structural-reform-eu-banking-sector_en

83. MiFID provides a list of financial instruments (Annex I, section C) in which investment firms can provide services. These include transferable securities, money market instruments, units in collective investment undertakings and various types of derivative (options, futures, swaps, forward rate agreements, etc.). The license granted to each entity determines which services it may provide and in relation to which financial instruments. MiFID includes a list of ancillary services that market intermediaries may provide in the course of providing “core” investment services. These ancillary services include holding client assets.²⁷

84. MiFID sets out three main categories of client: retail clients, professional clients and eligible counterparties. The categorization determines the level of protection that the investment firm must provide to that client. Retail clients are defined as all clients that are neither professional clients nor eligible counterparties. In order to be categorized as a professional client, meanwhile, the entity or individual must have the experience, knowledge and competence to take an investment decision while assessing its risk. Certain entities are automatically treated as professional clients²⁸ (broadly speaking, authorized financial services providers such as investment firms and credit institutions, as well as governments, large companies and institutional investors whose main activity is to invest in financial instruments). Finally, the eligible counterparty category only applies in specific circumstances: firms that have permission to carry out certain activities (executing orders on behalf of clients, dealing on own account, or receiving and transmitting orders) can enter into transactions with eligible counterparties without having to comply with some of the conduct of business obligations set out elsewhere in MiFID.

85. Product governance rules were a key change introduced in MiFID II. These rules provide that any investment firm proposing, recommending or marketing a financial instrument must define a “target market” and a distribution strategy for that instrument. By way of illustration, if the target market is composed of professional clients, an investment firm may have to take remedial action (such as reporting to the product provider) if it provides a service on such an instrument to a retail client. The objective of this change was to reduce the risk of mis-selling.

86. Key to the investor protection objectives of MiFID are the suitability and appropriateness provisions. When providing investment advice or portfolio management, an investment firm must determine whether the investment is suitable for a given client. This will be the case if:

- The client has the knowledge and experience to understand the product and its risks;
- The client’s financial situation is compatible with such an investment (ability to bear losses); and

²⁷ To use the MiFID terminology, “safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management and excluding maintaining securities accounts at the top tier level.”

²⁸ For other types of entity, MiFID sets out criteria to be satisfied in order for the client to be treated as a professional client.

- The product is compatible with the objectives of the client (in particular the client's risk-tolerance).

87. The appropriateness test applies to the provision of investment services other than investment advice or portfolio management. This requires investment firms to ask their clients or potential clients to provide information regarding their knowledge and experience relevant to the specific type of product or service provided, to enable the firm to assess whether the service or product is appropriate for the client.²⁹ A limited exemption to the application of the appropriateness test is available for execution-only services in relation to “non-complex” financial instruments.

88. At the core of the EU regulatory framework is the ability of EU investment firms and credit institutions to provide investment services in other member states without a separate authorization in the host countries. An investment firm or credit institution can start providing investment services on a cross-border basis from its home country within the EU after its home authority has forwarded the firm's notification to the host authority. Establishing a branch in the host country is subject to additional information requirements and more extensive scrutiny by the home authority. Firms are also permitted to become remote members of trading venues in other EU countries.

89. The regulatory framework for investment services in France shows a high level of consistency with the standards of the IOSCO. The following sections of this chapter discuss in more detail certain aspects of the framework, including any specificities of the French requirements.

Prudential Requirements

90. The prudential requirements for investment firms are currently in the EU CRD and the CRR. Initially investment firms were subject to the full CRD, but various exemptions and waivers have been introduced as the prudential framework has become progressively more complex. Currently, depending on the nature and volume of services provided, some investment firms are fully exempted from prudential regulation, some are subject to a lighter framework, and some have to comply with full CRR/CRD requirements. Member states also have some discretion in the scope of application of the requirements. The EBA drafts the Level 2 and Level 3 measures under the CRR and CRD, including those applicable to investment firms.

Capital Adequacy

91. Capital requirements applicable to investment firms are determined by EU legislation. The standard initial capital requirement set by the CRD is €730,000. However, for investment firms providing certain services only³⁰ and that do not hold client assets, the initial capital requirement is

²⁹ When assessing suitability and appropriateness, the investment firm should have regard to the categorization of the client as explained above.

³⁰ Reception and transmission of investors' orders for financial instruments; the execution of investors' orders for financial instruments; and/or the management of individual portfolios of investments in financial instruments.

€50,000. The CRR sets the own funds requirements applicable to investment firms, which depend on the nature of investment services the firm is authorized to provide. Investment firms that belong to an EU banking group are part of the prudential consolidated perimeter. This means that their assets and off-balance sheet commitments are subject to CRR capital requirements on a consolidated basis. As noted above, Annex I, section A of MiFID sets out the services that investment firms can provide.

Box 1. Financial Advisers

MiFID allows EU member states to exempt from its requirements entities which provide only investment advice and reception and transmission of orders (typically financial advisers), subject to certain safeguards. These safeguards include a requirement that member states apply “analogous” measures to these entities with respect to organizational requirements and conduct of business obligations. France has chosen to take advantage of this exemption. In the first half of 2018, the AMF finalized the implementation of a specific national regime for financial advisers, CIF, which is substantively similar to MiFID II. This is a welcome step as it ensures appropriate regulatory coverage for firms providing similar services as those that fall automatically within the scope of MiFID.

As of February 2017, there were 4,631 CIF in France. The market is rather concentrated, with 50 of these CIF representing 42 percent of total revenues.

CIF are subject to two levels of regulation in France. CIF are not directly authorized by the AMF but are members of an association which is itself authorized by the AMF.¹ The four CIF associations, which should be considered self-regulatory organizations for this purpose, must provide the AMF with their membership procedure for new CIF, their withdrawal procedure and their code of conduct (the latter is approved by the AMF Board). In addition, each CIF is now required to provide its association with a program of activities, for which the AMF introduced a standardized format in early 2018. Over a period of five years, the CIF associations are required to assess the program of activities of all their members.² Via the associations the AMF receives information on the financial instruments which CIF most commonly recommend to their clients.

The AMF has developed and implemented a specific methodology for inspections of CIF. This involves selecting a theme and then assessing compliance across many CIF. This methodology, which complements the risk-based approach for investment firms, has enabled the AMF to increase both the coverage of CIF in terms of inspections and its knowledge of these entities. Between 2016 and 2017, the AMF conducted 140 mass inspections on CIF spread over ten French cities, with the support of external firms or regional branches of the Banque de France. Leveraging on external means in this manner is a sensible approach given the resource constraints referred to elsewhere in this chapter.

¹ The AMF publishes a list of authorized associations on its website: https://geco.amf-france.org/Bio/rech_CIF.aspx

² It was not possible during the FSAP to assess in a comprehensive manner how this self-regulatory model works in practice.

92. The current prudential framework will undergo significant change in the coming months. In December 2017 the EC published a package comprising a draft Directive and Regulation that would create a tailored prudential regime for investment firms³¹. The rationale behind this proposal was that the CRD and CRR had been designed primarily for banks and, accordingly, did not fully reflect investment firms' core business models and the risks they pose in an appropriate and proportionate way for their customers and for other market participants. The EC also highlighted a lack of risk-sensitivity and unjustifiably complex rules (including reporting requirements) considering the services investment firms provide. By putting in place a more bespoke regime for investment firms, the EC is hopeful that there will be greater competition among investment firms and increased capital flows, which would contribute to the goals of the Capital Markets Union (CMU)³² initiative.

93. Negotiations on this package of reforms between the European Parliament and the European Council reached a successful conclusion recently. The French authorities had raised concerns about the potential impact of the reforms in light of the state of play of the negotiations at the time of the FSAP. In particular, there was a fear that the proposal would lead to an overly lenient reduction in own funds requirements for certain investment firms taking risks on their balance sheets. It will be important for the French authorities to continue to assess the likely impact of this reform package as the focus shifts to the implementation phase.

Liquidity

94. As is the case for capital requirements, the rules on liquidity depend on the type of service provided by the market intermediary. Currently, investment firms are only subject to reporting requirements on an individual basis depending on the services they can provide. When an investment firm belongs to an EU banking group, the investment firm is included in the consolidated calculation of the LCR.³³ This generally means that the liquid assets held by the investment firm, as well as the cash inflows and outflows they would be subject to under the provisions of the LCR, are considered in calculating the consolidated ratio. However, the investment firm is not required to meet on an individual basis the minimum LCR ratio that applies to credit institutions. Under the legislative proposal described in paragraph 92, investment firms will be subject to liquidity requirements—which will differ from the LCR and will depend on the type of investment firm—on an individual basis. Investment firms are also subject to governance requirements regarding the management of liquidity and settlement risks.

³¹ A more detailed description of the proposal can be found in the Technical Note – Insurance, Investment Firm and Macroprudential Oversight prepared in the context of the 2018 Euro Area FSAP (<https://www.imf.org/~media/Files/Publications/CR/2018/cr18230.ashx>, see in particular paragraphs 84–99).

³² The CMU, launched in 2015, is a package of measures that aims to increase the role played by market-based financing in the EU and encourage the development of a greater range of funding sources for the real economy.

³³ The LCR is designed to ensure that banks hold a sufficient reserve of high-quality liquid assets (HQLA) to allow them to survive a period of significant liquidity stress lasting 30 calendar days.

Leverage

95. Market intermediaries providing certain investment services are, like banks, required to calculate and disclose a leverage ratio. Under CRR, the ratio is calculated as an entity's capital measure divided by its total exposure measure. The obligation currently applies on an individual basis to investment firms that are authorized to deal on own account, underwrite financial instruments and/or place financial instruments on a firm commitment basis (this obligation will be removed when the new prudential regime for investment firms takes effect). Other types of investment firm are not subject to restrictions on leverage on an individual basis. However, all French investment firms that are part of the consolidated perimeter of a EU banking group are subject to the same CRR requirements on a consolidated basis.

Securities Financing Transactions

96. Rules on securities financing transactions in France are a mixture of EU and national measures. Investment firms that are authorized to provide particular services (such as dealing on own account or portfolio management) must comply with the rules on securities lending and repurchase transactions in the COMOFI. Prudential requirements for securities financing transactions are governed by the CRR. These include that the risk-weighted exposure for repurchase and securities lending transactions be integrated in the calculation of the capital ratios. Currently, investment firms must determine their exposure value for securities financing transactions in accordance with Chapter 4 (credit risk mitigation) or 6 (counterparty credit risk) of Title II of Part Two of the CRR. The level of risk-weighted exposure depends, among other factors, on the presence of a master netting agreement and of its nature. The CRR also provides for additional reporting requirements for securities financing transactions, and securities financing transactions are included in the calculation of the leverage ratio referred to above.

Client Assets

97. Client asset protections are a key element of investment services regulation, as recognized by the IOSCO Principles. French law, which is based on the EU framework, specifies the types of entity that may act as custodians or sub-custodians of client assets and the relevant conditions with which they must comply. Custodians and sub-custodians are supervised for the purposes of their custody activity by the AMF, while credit institutions and investment firms that wish to provide custody services need to obtain a specific authorization to this effect from the ACPR. Custodians are subject to requirements on due diligence and accurate recording of securities held.

98. French law provides that custodians may delegate to third parties all or part of their tasks. The first prerequisite for such delegation is that appropriate due diligence be carried out on the third party. The custodian is also required to take the necessary steps to ensure that any client financial instruments deposited with a third party can be identified separately from the financial instruments belonging to the third party and from the financial instruments belonging to the investment firm, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection. AMF rules set out that delegation of

custody can only be done to providers based in countries that have specific regulations and supervision regarding the holding of financial instruments on behalf of a client.

99. Restrictions apply on the use of client assets held by a custodian or sub-custodian. An investment firm is not permitted to use a client's financial instruments for the purposes of securities financing transactions unless the client has given express consent. In addition, the investment firm is obliged to take all the necessary measures to avoid clients' financial instruments being used for the investment firm's own account or the account of another person.

100. Client asset safeguards help mitigate the risks that can result from the failure of an investment firm. Under the French framework, records and accounts must be kept as are necessary to enable firms at any time and immediately to distinguish assets held for one client from assets held for other clients, and from the firm's own financial instruments. Firms should also put in place adequate organizational arrangements to minimize the risk of loss of clients' assets or of rights in connection with those financial instruments resulting from misuse of the financial instruments, fraud, poor administration, incorrect record-keeping or negligence. In addition, custodians (including investment firms holding client assets as an ancillary service under MiFID) should belong to an investor compensation scheme to guarantee instruments in case of insolvency of a custodian.

E. Authorization

101. Credit institutions—including those that intend to provide investment services—are authorized by the ECB based on a proposal for decision issued by the national competent authority (the ACPR for France), after the approval of their program of activities by the AMF if they intend to provide investment services. The ACPR assesses a number of elements as defined by EU regulation³⁴ before recommending authorization, including: the reputation of the proposed shareholders or members; the reputation, knowledge, skills and experience of any member of the management body and any member of senior management who will direct the business of the applicant; and the financial soundness of the shareholders or members, in particular in relation to the type of business pursued and envisaged by the applicant.

102. The ACPR is responsible for authorizing investment firms that are not credit institutions, while the program of activities of such investment firms is approved by the AMF. Authorizations should be granted within six months, although the deadline can be extended once for a further 6 months. The applicant must submit a complete file to the ACPR that includes, as required by CRR/CRD IV, a description of the applicant and its group, the program of activities envisaged, some financial indications as to the future performance of the entity and its compliance with prudential ratios, the program of operations, the internal organizational structure, the internal control systems and auditors, the initial capital issued, a description of the effective management and of the shareholders or members with qualifying holdings.

³⁴ CRR/CRD4.

Box 2. New Regime for Crypto-Assets

France has decided to introduce a specific regulatory regime for initial coin offerings (ICOs) and crypto-assets that do not fall under any existing regulation. For crypto-assets that qualify as securities under EU legislation, the AMF has participated in work carried out by ESMA¹ and the ACPR in work carried out by the EBA.² The French legislative vehicle for this new framework is the Loi PACTE.³ French authorities had identified an increasing number of innovative fundraising operations targeted to the general public and took the view that a lack of regulation increased the risk of fraudulent activity. The new regime is designed to facilitate innovative financing by clarifying the applicable rules, while encouraging the creation of a sound ecosystem by attracting well-founded projects.

The AMF has identified four priorities for its work:

- Appropriate product information
- Transparency of issuers and investors
- Transparent price formation mechanism to ensure market integrity
- Secure market chain both from a legal and operational standpoint

Three cross-cutting risks have also been identified, namely money laundering, cyber-risk and fraud. The approach will be based on four pillars:

- **Primary markets:** Optional label granted by the AMF to ICOs when a certain number of guarantees are met. Under the proposed Loi PACTE, the AMF would be empowered to: (i) approve those ICOs that request it provided they meet certain criteria; (ii) supervise; and (iii) sanction the issuer in case it breaches its commitments.
- **Secondary markets:** Efficiently-organized secondary markets.
- **Investment funds:** allow professional funds to invest in these assets in a secure way.
- **Efficient investor protection.**

The law, which is expected to be finalized and published by June 2019, also proposes a **new framework dedicated to market intermediaries in crypto-assets that do not qualify as transferrable securities**, composed of an optional label for all services and mandatory registration for some services. The AMF would operate as the single entry-point for all players falling under the scope of this new regime, both for the mandatory registration and the optional licensing process.

Registration by the AMF in relation to AML-CFT/KYC provisions would be mandatory for services related to:

- (i) the custody of digital assets or keys on behalf of third parties;
- (ii) purchase or sale of digital assets against fiat currencies; and
- (iii) exchange of digital assets against other digital assets.

As part of the registration process, the AMF would verify (after obtaining the opinion of the ACPR) whether the senior management and their beneficial owners have the necessary (i) reputation and (ii) professional qualifications or experience for the performance of their duties. It would become illegal to provide these three activities without an AMF registration. This mandatory registration is based on the EU Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

Box 2. New Regime for Crypto-Assets (concluded)

The optional label would encompass:

- Crypto-exchanges organized as **trading venues** with a central order book
- Crypto broker-dealers
- **Safekeeping** of crypto-assets
- Other types of services such as:
 - Reception and transmission of orders
 - Execution of orders
 - Dealing on own account
 - Portfolio management
 - Advice
 - Underwriting of crypto-assets and/or placing of crypto-assets on a firm commitment basis
 - Placing of crypto-assets without a firm commitment basis

Authorization for these services would be optional. AMF would grant the label to providers who respect: (i) a core of overarching rules (insurance, internal control procedures, robust IT system, transparent fees policy, etc.); (ii) AML-CFT requirements; and (iii) a set of specific requirements depending on the planned activities.

It is difficult at this stage to gauge the potential appetite among market participants for this new regime. What is clear is that there has been a high level of engagement in the consultation process carried out by the AMF thus far and strong support from respondents to the consultation for the development of such a framework. It is also evident that there is high-level political support for the development of the crypto-industry in France. Finally, a study by the AMF published in November 2018⁴ indicated that in 74 cases out of 83 surveyed, project initiators intended to realize their ICOs and their activities in France, based on a legal structure established in France.

This chapter does not seek to analyze the possible financial stability or investor protection risks arising from crypto-asset activity, or the extent to which the new regime being developed in France could mitigate those risks. One issue that is worth highlighting, however, is the possible impact of on the resources of the competent authorities (notably the AMF). It is quite plausible that the combined impact of Brexit⁵ and a strong uptake of the new crypto-assets regime would place material pressures on the AMF's day-to-day supervisory work.

In parallel to these evolutions of the supervisory framework, the accounting framework was also updated in 2018. The national competent authority (Autorité des normes comptables) has specified in a new regulation how holding and issuance of crypto-assets should be accounted for under French Generally Accepted Accounting Principles. The text applies to the instruments that meet the definition of "jetons numériques" (digital tokens) in the Loi PACTE (a category which encompasses crypto-currencies and tokens resulting from ICOs). It is expected that this regulation will be reviewed and developed further at a later stage (e.g., for crypto-asset trading platforms).

¹ ESMA submitted its advice on Initial Coin Offerings and Crypto-Assets to the EC on January 9, 2019 (https://www.esma.europa.eu/system/files_force/library/esma50-157-1391_crypto_advice.pdf?download=1)

² EBA submitted the same day its advice on crypto-assets to the EC (<https://eba.europa.eu/-/eba-reports-on-crypto-assets>)

³ The acronym PACTE stems from the French *plan d'action pour la croissance et la transformation des entreprises* (Action Plan for Business Growth and Transformation).

⁴ French ICOs – A new method of financing?: https://www.amf-france.org/technique/multimedia?docId=workspace://SpacesStore/27604d2f-6f2b-4877-98d4-6b1cf0a1914b_en_1.0_rendition

⁵ See Box 3.

103. Neither the AMF nor the ACPR has ever formally refused an application for authorization. However, this can be explained by the fact that there are extensive discussions between the authorities and the applicant as part of the licensing process, and an application may go through multiple iterations. Should these discussions give rise to material concerns on the part of the authorities and the applicant proves unable to address the points raised, the application is typically withdrawn.

104. The FSAP carried out a detailed review of authorization files and processes at both AMF and ACPR. Processes are detailed and comprehensive, including face-to-face meetings with key personnel and inspections of applicants' premises. Both authorities require individuals that will hold key positions in the new entity to have a relevant professional certification. In cases where there is disagreement between the authorities on the standard to be expected of an applicant, the higher of the two standards is applied (although it should be noted that the FSAP did not identify any instances of material disagreement). Important authorization cases are covered in the monthly *Réunion des Autorités Financières* referred to elsewhere in this chapter.

F. Supervision

105. The AMF and the ACPR adapt their supervisory approaches to reflect their respective responsibilities. The ACPR focuses its monitoring on capital and prudential requirements, while the AMF places greater emphasis on investor protection and market integrity. Evidence gathered during the FSAP suggests that there is genuine appreciation among market participants for the technical knowledge of supervisors. Some regulated entities consider that the relatively high turnover of AMF staff (an estimated 12 percent in 2018), particularly among line supervisors, makes it more challenging to develop and maintain an efficient supervisory relationship over the longer term. However, feedback suggests that this is compensated by the ability of AMF staff to take due account of practical issues arising from firms' day-to-day business.

ACPR

106. The ACPR monitors capital and prudential requirements through a specific risk assessment system called *Organisations et Renforcement de l'Action Préventive (ORAP)*.³⁵ This is a key tool for the identification of risks to which individual investment firms are exposed, as well as the nature and scope of those risks. This involves four steps: i) detecting institutions' main points of weakness; ii) formalizing and presenting in a harmonized format the results of the prudential assessment; iii) identifying the institutions for which the probability that losses will materialize is greatest, as well as prudential measures that are proportionate to the magnitude of the weaknesses detected, and allocating resources according to the level of risk; and iv) identifying the corrective measures that appear necessary. The outcome of this analysis is used to prioritize supervisory work. ORAP summary reports are provided to senior management and the Supervisory Board of the ACPR in order to keep members informed of key supervisory findings and potential interventions.

³⁵ Organization and Reinforcement of Preventative Action.

107. Macroprudential analysis carried out by a separate department is also fed into the analysis of individual firms. A monthly report is provided to all directors. Trends, developments, and risks to the French financial system overall are also monitored, summarized in a bi-annual report, and fed into off-site analysis carried out for individual firms.

108. The ACPR's risk assessment methodology is based on an analysis of 10 individual indicators.³⁶ For most indicators, both the materiality of the risk and the adequacy of the investment firm's internal control system for that risk are assessed separately. Each major risk category is rated on a scale of 1 to 4. Both financial ratios and rating of the quality of risk management and control systems feed into the analysis. Following the rating of these individual criteria, a global rating, encompassing all 10 individual scores, is assigned to the institution. Both the individual ratings and the global rating are supported by qualitative (and, for the larger groups, quantitative) analysis, which also underlines the specific areas that may require closer monitoring. Higher risk firms are subject to more intense monitoring, including additional ad-hoc reporting obligations that can be imposed by the ACPR.

109. The ACPR's yearly program of on-site inspections is based on the general priorities identified by the Supervisory Board and the proposal made by the off-site supervisors. When making its proposal, the off-site supervisory team typically gives priority to the large and high-risk institutions and takes into consideration the risk rating assigned to each investment services provider, as well as the date of its last inspection and/or its date of authorization. Based on this request the on-site supervisory team gives its view on the feasibility of the program.

110. On-site inspections by the ACPR are extensive exercises and tend to last several months, with ACPR staff placed temporarily at the entity being inspected. This is reflected in the statistics for on-site inspections carried out on investment firms operating on a solo basis: 22 inspections over the past 6 years (2013–2018), although these statistics cover only the smallest institutions since the larger entities are part of banking groups and are, as such, subject to consolidated supervision. If the ACPR were able to dedicate more resources to supervision of investment firms operating on a solo basis (currently an average of two FTE are allocated to this task each year), it would be possible to increase the frequency of on-site inspections.

111. Recommendation: The ACPR should consider allocating additional resources to the on-site inspection of investment firms with a view to increasing the frequency of such inspections.

AMF

112. The AMF is organized in such a way that the activities of authorization and ongoing off-site supervision of investment firms are located in one department, while on-site

³⁶ 1) Business model risk and profitability; 2) Internal governance and risk management; 3) Credit and counterparty risk; 4) Market risk; 5) Interest rate risk in the banking book; 6) Operational risk; 7) Capital adequacy; 8) Liquidity risk; 9) Anti-money laundering framework; and 10) Segregation of funds.

inspections are in a separate department (Table 6). This reflects that fact that, on the typical supervisory spectrum spanning authorization, supervision and enforcement, on-site inspections are regarded in France as being closer to the enforcement end of the scale. This does not mean that on-site inspections necessarily lead to enforcement action, or even that there is an implicit presumption that such action will follow. However, an on-site inspection of an individual firm is generally not considered a matter of routine supervisory work. On-site inspections are nevertheless discussed in the Supervision section of this chapter in order to separate them from formal enforcement action.

Table 6. France: AMF Inspections 2015–17

	2015	2016	2017
Number of inspections (completed)	33	39	49
<i>CIS operators</i> ¹	15	20	25
<i>Investment services providers (including market infrastructures)</i>	11	13	14
<i>Investment advisers</i>	7	6	10
Number of follow-up letters	29	14	29
Number of statements of objection	12	18	19
<i>CIS operators</i>	8	8	4
<i>Investment services providers (including market infrastructures)</i>	3	6	5
<i>Investment advisers</i>	1	4	10
Referred to the Sanctions Committee	4	9	7
Offer of settlement	8	9	12
File transferred to public prosecutor	2	9	3

Source: AMF.

¹ As explained in the Introduction, this chapter does not discuss regulation and supervision of CIS operators per se. However, the figures for inspections of these entities are included here to give a fuller picture of the AMF's inspection activity and how it has involved in recent years, also taking into account that most of these CIS operators also provide investment services in addition to their core business.

113. The AMF's risk-based approach to supervision of investment firms is designed to cover a broad range of entities including large investment banks, fixed income market-makers and online retail brokerages. Supervisory resource and attention is allocated by taking into account: i) a thematic risk map based on past experience (i.e., areas where failures were identified in some firms) and in light of new regulations to be implemented (i.e., areas where firms need to adapt to a new framework); ii) individual risks detected through the use of supervisory tools, in order to identify "red flags;" and iii) tiered supervision,³⁷ whereby Tier 1 firms receive more supervisory attention than Tier 2 and Tier 3, as measured in periodic reports to the management. The issue of limited resources discussed elsewhere in this chapter is particularly relevant in this context: only nine "relationship managers" are responsible for the ongoing supervision of 160 firms, supported by three analysts.

³⁷ Entities are allocated to tiers based on a thematic risk impact that includes such factors as failures identified in firms, the need to implement material regulatory reforms, and specific tools such as analysis of client complaints.

Box 3. Impact on France of UK's Withdrawal from the European Union

The expected withdrawal of the United Kingdom (UK) from the EU could have a material impact on the investment services sector in France. In particular, there could be a significant inflow to France of UK investment firms (and other entities) wishing to retain the ability to “passport” their services across the EU. The authorities are well-prepared for this outcome, although the issue of autonomy of decision-making on resources raised elsewhere in this chapter is given added urgency in this context. On February 6, 2019 the French government published primary legislation enacting contingency measures in financial services, to enter into force in the event of the UK withdrawing from the EU without a negotiated agreement.

The key concern raised by French market participants relates to continued access to UK CCPs post-Brexit. This issue is being addressed both at domestic level, by the extension of settlement finality provisions to UK systems, and at EU level by the EC and ESMA (through equivalence/recognition decisions and the agreement of MoUs with the relevant UK authorities). The AMF is also actively contributing to discussions within ESMA aimed at ensuring a consistent approach across the EU to decisions on relocations.

In considering possible relocations, a key principle for both the AMF and the ACPR has been the need to have appropriate substance in the (new) French entity. The EU framework leaves room for discretion on the amount of resource that a supervised entity should have, including on the extent to which a firm may have recourse to outsourcing arrangements. The French authorities have found the discussions within ESMA to be valuable in allowing supervisors to exchange views on actual relocation cases. Feedback gathered during the FSAP suggests that market participants in France are understanding of the value of such cross-EU discussions, even if this represents an additional element of process.

114. The AMF recently introduced so-called SPOT³⁸ inspections as part of its risk-based approach. These are shorter inspections which involve assessing the same topic in parallel across several investment firms. This approach aims at increasing the coverage of firms subject to inspections and relies on transparency: the topics to be covered are announced publicly at the beginning of each year and, at the end of these thematic reviews, the good and bad practices identified are also communicated to the market. Seven such topics were identified for 2018, to be assessed across 35 investment firms. This was in addition to the 20 standard on-site inspections planned for the same period.

115. Cooperation and information-sharing between the AMF and ACPR works well on many levels but does not currently extend to carrying out joint inspections of investment firms. Initial efforts in this direction several years ago were abandoned due to the difficulties arising from different internal procedures at each authority. However, the AMF typically asks the ACPR to carry out one or two inspections on its behalf each year. Past examples of such inspections covered portfolio management in banks and the ringfencing of dealing on own account.

³⁸ The acronym SPOT stems from the French *Supervision des Pratiques Opérationnelle et Thématique* (Operational and Thematic Supervision of Practices).

116. Recommendation: The AMF and the ACPR should consider carrying out joint inspections of investment firms to allow for a holistic view of the entity from a prudential and conduct perspective.

117. The standard of supervision carried out by the AMF and the ACPR is high. A review of supervisory files undertaken by the FSAP, combined with detailed discussion on specific cases, showed that both authorities' supervisory staff have in-depth knowledge of the regulated population and take a robust approach to their oversight duties. While their respective styles and cultures differ, both authorities were able to demonstrate how risk-based supervision underpins the identification of supervisory priorities, the day-to-day oversight of firms, and the appropriate follow-up of any issues detected.

118. Recommendation: The supervisory authorities should continue to work closely with the MoF with a view to ensuring that risks from Brexit are properly addressed in the legislative and regulatory framework.

G. Enforcement

119. The IOSCO Principles require regulators to have comprehensive inspection, investigation and surveillance powers, as well as comprehensive enforcement powers. The Principles further require that the regulatory system ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.

AMF

120. A wide range of enforcement powers are available to the AMF. At the investigation stage the relevant AMF staff can request any document, interview anyone who may be useful to the progress of the investigation, enter business premises and carry out searches and seize documents based on a reasoned order from a judge with appropriate jurisdiction. Information may not be withheld from investigators on professional secrecy grounds except by officers of law or for reasons of national security.

121. The AMF Board is the body that decides whether to initiate proceedings against a firm based on the findings set out in the inspection report. Following the conclusion of an investigation, the AMF Board may decide to: serve a statement of objections to the respondent and open sanction proceedings; serve a statement of objections to the respondent and propose a settlement; forward the case to the Public Prosecutor if the evidence in the report points to a criminal offense; forward the case to other French or foreign administrative authorities if the report points to matters within their jurisdiction; or send a letter of observations to persons under investigation to remind them of current regulations.

122. If the AMF Board serves a statement of objection, it may decide to make an offer of settlement or refer the case to the AMF Sanctions Committee. The outcome of the procedure—

whether it is an approved settlement or a decision of the Sanctions Committee—is published on the AMF website. Both the authorities and market participants are generally positive about the added value provided by the settlement regime as it is felt to introduce greater efficiency in the process (the theoretical risk that the existence of such a procedure could encourage the AMF to launch more enforcement actions was not felt to have materialized in practice). Some concern was expressed by market participants about the fact that sessions of the Sanctions Committee are public, and that the name of the entity that is subject to the procedure can become known before a final judgement is made. However, it was noted that such transparency also carried a dissuasive effect.

ACPR

123. The ACPR's work is to a large extent designed to prevent the need for formal enforcement action. The supervisory teams regularly meet investment firms and provide feedback on their analysis of the firm's situation. However, when the ACPR determines that a regulatory requirement has been breached, it has a range of administrative measures at its disposal:

- Injunctions under Article L. 511-41-3 of the COMOFI;
- "*Mesures de police administrative*" under Articles L. 612-30 to L. 612-34 of the COMOFI (e.g., cease and desist orders or the appointment of a provisional administrator); and
- Injunctions with a coercive fine under Article L. 612-25 of the COMOFI.

Over the past three years the ACPR has taken several measures regarding breaches of regulatory requirements by investment firms:

- A cease and desist order for capital inadequacy;
- A temporary prohibition from receiving funds from the public because of the entity's financial fragility; and
- Six injunctions requiring the entity to have equity capital above the minimum amount stipulated by the applicable regulations, triggered by several risk factors within the entities.

124. Breaches of regulatory provisions can also directly be categorized as criminal offenses. This is the case, for instance, when the senior managers of an investment firm fail to publish the firm's annual accounts (Article L. 573-5 of the COMOFI).

Sanctions Committee

125. The composition of the Sanctions Committees of the ACPR and the AMF, notably the participation of the MoF, raised concerns in the 2013 France FSAP. It is important for the activities of supervisory authorities to be independent from any political influence, and to be seen as such. It can be argued that this is particularly the case in relation to formal enforcement action. The continued presence of a MoF representative in the Sanctions Committee of the ACPR risks

potentially undermining the (perceived) independence of the authority. The ACPR has explained that the role of this representative is purely a formal one and that he or she very rarely makes an active contribution to the deliberations of the Committee in practice. If this is indeed the case—and the FSAP found no evidence to the contrary—it in fact tends to strengthen the argument that the MoF should no longer be represented in the Committees as there would be no practical effect from its removal. It is very welcome that the Loi PACTE³⁹ made such a change in relation to the AMF's Sanctions Committee.

126. Differences persist between the AMF and the ACPR regarding the role of active industry representatives in the Sanctions Committee. At the AMF, individuals who hold senior roles at firms supervised by the AMF are permitted to sit on the Sanctions Committee, while such an arrangement is explicitly prohibited in the case of the ACPR. The AMF maintains that these individuals perform a crucial role due to their technical expertise, particularly due to the increasing complexity of the cases that come before the Committee, and that conflicts of interest can be managed. There are certainly challenges in finding the appropriate balance between sufficient expertise and appropriate independence in the use of enforcement powers. It remains possible, however, for the AMF to find alternative arrangements that would reduce further the risk of conflicts without adversely affecting the quality of scrutiny of the Committee.

127. Recommendation: The MoF should no longer sit on the Sanctions Committee of the ACPR. The AMF should also find a way to bring in appropriate technical expertise to its Sanctions Committee without having recourse to individuals who work for regulated entities (e.g., making use of recent retirees or other independent experts).

H. Failure of a Market Intermediary

128. The IOSCO Principles require there to be procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk. As noted above, client asset protections are a key element in minimizing the risks to investors that can arise from the failure of a market intermediary. French law requires investment firms authorized as custodians of financial instruments to be members of the investor compensation scheme, so that investors are compensated in the event of their financial instruments or their related cash deposits being unavailable.

129. The ACPR is the French national resolution authority. ACPR's Resolution Board has exclusive authority to take resolution actions against institutions within its remit. This does not include institutions which are under the remit of the EU's Single Resolution Board (SRB). The Chair of the AMF is a member of the ACPR's Resolution Board, which is chaired by the Governor of the Banque de France.

³⁹ See also Box 2.

130. The EU Bank Recovery and Resolution Directive (BRRD)⁴⁰ introduced arrangements to deal with failing banks at national level and cooperation arrangements to tackle cross-border banking failures. Under the BRRD certain investment firms (those subject to the initial capital requirement laid down in Article 28(2) of the CRD⁴¹) have to submit a recovery plan to their ACPR supervisors, on the basis of which the teams in charge of resolution at the ACPR must draw up a resolution plan for each institution/group. The ACPR sets its expectations regarding recovery plans taking into account such aspects as the nature of the investment firm's activities, its size and its risk profile, as well as the possible negative impact that its failure could have on financial markets, other credit institutions or investment firms, or on the whole economy. The ACPR reviews the recovery plans annually in order to ensure that they meet the relevant requirements.

131. Resolution plans detail the characteristics of the investment firm and describe the preferred resolution strategy for that firm. This includes the credible and feasible resolution actions the resolution authority may implement. For investment firms in France that are subsidiaries of a banking group for which the SRB is competent,⁴² the resolution plan of the banking group must specify how the failure of the investment firm will be managed. In practice, the SRB takes a risk-based approach to the inclusion of investment firms in the resolution plan. For other investment firms it is the responsibility of the ACPR to draw up a dedicated resolution plan. Nevertheless, at this stage, no investment firm within ACPR's scope is expected to be resolved in case of failure.

132. The French Investor Compensation Scheme represents a significant safety net in case of failure of an investment firm. The scheme, which is managed by the Deposit Guarantee Scheme, guarantees the financial instruments of investors up to €70,000 per customer, per institution regardless of the currency in which the securities are denominated. The cash associated with securities accounts is also compensated:

- Up to €70,000 if the securities account is opened with an investment firm and the cash account associated to the securities is denominated in Euros or another currency of the European Economic Area (EEA); and

⁴⁰ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.

⁴¹ Article 28(2) of CRD covers all investment firms other than those referred to in Article 29 of CRD. Article 29 covers investment firms that do not deal in any financial instruments for their own account or underwrite issues of financial instruments on a firm commitment basis, but which hold client money or securities and which offers one or more of the following services: (a) the reception and transmission of investors' orders for financial instruments; (b) the execution of investors' orders for financial instruments; (c) the management of individual portfolios of investments in financial instruments.

⁴² According to Article 2(c) of the Regulation establishing the Single Resolution Mechanism (which includes the SRB), the SRB has responsibility for "investment firms [...] where they are covered by the consolidated supervision of the parent undertaking carried out by the ECB."

- Otherwise, this amount is included in the coverage provided by the deposit guarantee scheme, up to €100,000 (regardless of the currency in which the deposits are denominated), if the securities account is opened with a bank.

I. Systemic Risk Monitoring

133. The French authorities have processes in place to monitor systemic risk arising from the activities of market intermediaries. There is increasing cooperation between the authorities on systemic risk issues. The Haut Conseil de Stabilité Financière (HCSF), relying on preparatory work carried out by the ACPR, AMF, MoF and Banque de France, is ultimately responsible for questions of macroprudential and systemic risk in France. A separate Technical Note on macroprudential oversight prepared in the context of this FSAP describes the role of the HCSF in more detail and the action that it has taken since its creation.

J. Conclusions and Recommendations

134. The regulatory and supervisory framework for investment services in France exhibits a high degree of compliance with the relevant IOSCO Principles. Investment services providers are subject to a robust and comprehensive set of requirements, which are applied effectively by the AMF and the ACPR using a risk-based approach. Cooperation between the two authorities works well despite the potentially complex allocation of responsibilities. Market participants hold both authorities in high regard, praising in particular their technical expertise and availability to discuss challenges arising from application of the regulatory framework.

135. Brexit, combined with the introduction of a new regime for crypto-assets, could increase risks to the investment services sector in France. Since the global financial crisis authorities and market participants have grown accustomed to dealing with major reforms to financial regulation. The EU rules which form the basis of the French framework are constantly evolving. The implementation of MiFID II and MiFIR has proved particularly challenging to investment firms, and the CMU initiative means that the landscape will continue to evolve. Brexit and the new crypto-assets regime are changes of a rather different nature. Brexit could lead to a material increase in the number of investment firms in France in a relatively short period of time. These risks exacerbate the resource constraints discussed in this chapter, especially for the AMF. Meanwhile, the crypto-assets regime—which, based on a very preliminary analysis, appears to be a sound balance between encouragement of innovation and protection of investors—has the potential to attract players to the French financial sector which have limited previous experience of financial regulation. It would be helpful if the strong political momentum behind this reform could also trigger a corresponding increase in the supervisory authorities' resources.

136. Changes to the institutional set-up of the authorities would further strengthen the system. Removing the MoF from the Sanctions Committee of the ACPR would remove a potential source of (perceived) conflicts of interest and reinforce the authority's independence. This issue is important for ACPR in the context of the recent removal of its legal status of independent authority.

The AMF should also find a way to bring in appropriate technical expertise into the Sanctions Committee without having recourse to individuals who work for regulated entities.

137. International standards do not identify an ideal supervisory structure, and splitting responsibility for prudential and conduct matters between different authorities is common practice. Any drawbacks such a structure may present can be addressed through appropriate cooperation arrangements. Such cooperation is easier to manage at national level and, in the case of France, has been shown to work well between the AMF and the ACPR. The ECB now plays an important supervisory role in the Euro-Area regarding investment firms that are part of large banking groups and will soon supervise systemic investment firms.⁴³ Given the potential impact that conduct issues can have on the prudential soundness of a firm, cooperation between the AMF and the ECB should be enhanced through the agreement of a supervisory MoU promoting regular exchange of information and cooperation.

CRISIS MANAGEMENT, PREPAREDNESS, AND SAFETY NETS⁴⁴

A. Executive Summary

138. Reforms in France and the euro area bank resolution and crisis preparedness have been strengthened considerably in recent years. Since the last FSAP France enacted a banking resolution reform in 2013 that set the stage for the transposition of the BRRD in 2015.⁴⁵ Under these reforms ACPR acquired the role of RA for credit institutions and investment firms, which in turn led to the start of recovery and resolution planning exercises in 2016.⁴⁶ In late 2017 ACPR was also mandated with the RA function for insurers.

139. The RA is well identified and mandated in the law for all relevant decision-making under the existing framework, but some adjustments are warranted. The law grants ACPR financial autonomy, but also makes it subject to budgetary caps on its wage bill and its budget constitutes a subsidiary budget of Banque de France. In addition, the composition of the institution's decision-making bodies involves the representation via senior authorities of other public institutions. These features limit the operational independence of the authority. Moreover, while the functions of resolution and supervision require a good level of coordination to carry out their mandates, under the resolution framework, for an insurer to be declared as failing or likely to fail

⁴³ For the purposes of EU law, these investment firms will become credit institutions under the new regime.

⁴⁴ This Chapter was prepared by Mario Mansilla.

⁴⁵ Directive 2014/59/EU of May 2014, also known as BRRD, was transposed into French law via Ordinance No 2015–1024 in August 2015. It supplemented an earlier reform created under Law No 2013–672 of July 26, 2013. The resolution framework for insurers was most recently upgraded by Ordinance 1608 of November 2017. The legal framework for Investment Service Providers is covered for resolution purposes by the BRRD.

⁴⁶ For banks, in 2017 for investment service firms, and in 2019 for select insurers.

(i.e., the first condition to be respected to go in resolution) the decision requires the opinion of the Supervisory College.⁴⁷ This feature could raise concerns about the possibility of supervisory forbearance that needs mitigation.

140. The legal, institutional, and operational arrangements required by the transposition of BRRD are at an advanced level of development, and notable progress has been made in the resolution framework for insurers. The LSIs under the scope of national authorities have made significant progress in the adoption of EU standards. Regarding insurers, France is one of the first countries to implement an enhanced framework for their resolution. Also, alignment of the new framework with the Financial Stability Board (FSB)'s Key Attributes for Effective Resolution regimes for Insurance in terms of the institutional organization and infrastructure is high. However, some areas require further progress to widen the resolution toolkit under the framework. Given the importance of this industry in the EU, some of these enhancements may require consistent treatment at the union level.

141. While recovery and resolution planning developed under the regulatory reforms provide a stronger crisis management and preparedness framework, the main challenges relate to ensuring its full operationalization. Though recovery and resolution planning (RRP) for significant institutions is already entering its fourth cycle, LSIs at the national level have completed only two full cycles. The quality of plans has notably improved among LSIs but has yet to mature. Recovery plans are gradually becoming more focused on key elements, including notably on governance and feasibility of the recovery options, though operationalization and the quantification of recovery options need further progress. The formulation of recovery plans, a relatively new requirement for ACPR and for the supervised entities, absorbs a significant proportion of ACPR oversight resources. The latter applies in particular to insurance supervision, as the RRP is just starting for most undertakings.

142. The assessment of recovery plans and preparation of resolution plans has brought up closer coordination between ACPR's Supervision and Resolution Departments. ACPR formulates resolution plans for 142 entities under its remit, of those 81 are credit institutions (LSIs) jointly representing 1.5 percent of total assets of the banking system. Given such market share and the lack of critical functions among LSIs, the outlined strategies thus far consider liquidation as the preferred option to deal with cases of failure. Similar considerations apply for the case of insurers not selected as significant, and for investment services providers.

143. FGDR and two policyholder protection entities are in charge of protecting depositors, investors, and policyholders. The funds accumulated are significant (EUR 3.9 billion at the FGDR as of end-2017) and the institutions are well established. The FGDR has not arranged backstop facilities, other than one with French banks that allows it to reach the Fund's target accumulation.

⁴⁷ Article L. 613–49 of the Monetary and Financial Code stipulates that the determination that a credit institution or investment firm is failing or likely to fail can be also made directly by the resolution authority, after consulting the competent authority. In this regard, the competent authority shall provide the resolution authority with any relevant information in order to perform its assessment without delay.

FGAP and FGAO (the two PPSs) have been designed to compensate policyholders in the event of failure of life and non-life insurers. The governance of the FGDR includes a Supervisory Board composed by 12 active financial sector executives and an Executive Board that deals with the day-to-day decisions. The FGDR also manages the investor protection scheme, which covers retail investors from losses that could be incurred due to fraud and operational risk by investment service providers. Coverage of these risks for retail investors in asset management companies that offer investment services is not well established, and authorities are in consultations to close that gap.

144. In addition, FGDR is in charge of the resolution fund for LSIs, which is on track to reach the EU recommended target in 2024 (1 percent of deposit base). The resolution fund could be tapped to support the application of resolution tools established in the law upon a decision by the resolution college, where the FGDR is represented for those cases. Regarding insurers, FGAP and FGAO are not prepared to support resolution processes.⁴⁸

145. The Banque de France is the provider of Emergency Liquidity Assistance to support illiquid-but-solvent entities, both before and during resolution. The scheme of Emergency Liquidity Assistance (ELA) in place follows EU principles and is well institutionalized, but it would benefit from some additional features derived from the international experience of recent years. Given the relative importance of FX wholesale funding in the system, addressing the feasibility of advance agreements on the conditions for potential swap lines for ELA in FX would be important. Also, for cases of banks lacking sufficient eligible collateral that required ELA support, contingent arrangements, such as a public guarantee at the national or European level under strict safeguards could add readiness to the scheme. Similarly, establishing rules that could help banks to identify in advance which assets in their balance sheets might be proposed as ELA would help a smooth operational process.⁴⁹

146. Overall, the framework established in France to manage financial crises has a high level of sophistication and preparedness, but further work is warranted in some areas. The main challenge to increase the effectiveness of the overall framework is in dealing with the potential failure of conglomerates. RRP exercises should incorporate the intra-conglomerate dimension for applicable cases. The segmentation of safety net resources is not supportive of resolution in complex structures. In addition, to ensure that all operational aspects of the crisis management framework are up to the task, conducting intra and inter-institutional crisis simulations and tests are warranted. Finally, at the national level the HCSF is well-equipped to undertake a more formal role as the platform for inter-agency crisis preparedness and coordination, aimed at ensuring the financial oversight institutions' individual and joint preparedness.

⁴⁸ Except for the case of forced portfolio transfers, though this option has not been tested.

⁴⁹ See: IMF. Euro Area Policies. Financial System Stability Assessment, June 2018. The TN on Systemic Liquidity management covers these issues in detail.

B. Main Recommendations

- **Continue to enhance crisis preparedness.** RRP exercises at several levels are already implemented and making progress. ACPR needs to deploy sufficient resources for those purposes, particularly for insurers. Some operational aspects of the insurance resolution framework need to be developed as well. The overall scheme of preparedness would benefit from tests and simulation exercises at an interinstitutional level
- **Complete the coverage of safety nets and leverage their funds for resolution.**
 - The resolution framework for insurers lacks some tools (notably, bail-in) and a scheme for privately-financed resolution funding (the two PPSs have a narrow scope of work).
 - FGDR could enhance its coverage by arranging contingent facilities with other DISs.⁵⁰
 - The safety net for investors cover only those of investment service firms, but not those of asset management companies that provide investment services.
- **The ELA scheme of the BdF could be strengthened further by seeking modalities for providing emergency liquidity in currencies other than Euros,** and by establishing rules to help banks identify in advance eligible collateral in their balance sheets, and to buttress their operational readiness to pledge them.
- **Ensure the applicability of the toolkit to the case of a conglomerate failure.** The challenge is to integrate existing tools for crisis preparedness and management at the institutional and the legal level, including by coordinating the roles of national authorities with those of EU instances.
- **Enhance institutional governance practices.** ACPR should have budgetary autonomy to determine the resources it needs to face its present and future demands. Critical decision making for resolution should stay independent from supervision functions. In addition, the membership of the supervision and resolution colleges should support independent decision-making. Separately, also with the objective to avoid the perception of a conflict of interest, the composition of FGDR's Supervisory Board should be changed to independent members.

C. Introduction

147. This section analyzes the financial safety net arrangements for France's bank and part of the nonbank sector. The analysis was completed as part of a Financial Sector Assessment Program (FSAP) undertaken by the International Monetary Fund (IMF) during two visits to Paris in December 2018 and March 2019.⁵¹ Since the last FSAP in 2012, France took significant steps to

⁵⁰ This capacity is provided by the legal framework (arrêté du 27 octobre 2015 relatif aux ressources financières du FGDR).

⁵¹ For this part of the analysis, the FSAP met with officials and senior staff of the regulatory, supervisory and resolution authorities, primarily from ACPR, the Banque de France, the Ministry for the Economy and Finance, and FGDR. Insights from the framework were also received from representatives of the two policy-holders' guarantee

enhance its resolution framework for financial market participants. The process started prior to but was consolidated by the transposition of the BRRD in 2015 and other recent upgrades for banks, a specific ordinance for insurers in 2017, and the transposition of the MiFID for investment firms.⁵²

148. This note focuses on the financial safety net arrangements under the scope of national authorities, i.e., for LSIs, insurers, and investment service providers. The LSI segment is relatively small in France, it comprises 81 institutions representing 1.5 percent of total assets in the banking sector.⁵³ The ECB has grouped the French LSI sector with other member states sharing the lowest risk profile in terms of their oversight. The breakdown of French LSIs is detailed in Table 7 below.

149. Most LSIs in France have a relatively specialized scope of services and small balance sheets. Thus, specialized finance entities represent 45 percent of total entities, retail banks 23 percent, and private wealth management banks 18 percent. Regarding ownership, about 40 percent have foreign shareholding, mainly from third countries. And in terms of size, three-quarters of LSIs have balance sheets below EUR 1 billion, while only three institutions have consolidated balance sheets above EUR 10 billion, and 18 entities are pawnbrokers (Caisses de Crédit Municipal) with limited total assets (ranging EUR 2.9 million to EUR 1 billion). The main LSI is the French CCP, which given its nature requires a specific approach in terms of its resolution.

Table 7. France: Importance of LSIs in the Banking System

	Number of Entities	Number of Groups or Stand-Alone Entities	Total Assets (Billions of euros)	Share of the French Banking System (Percent)
LSIs	118	101	553.9	6.8
<i>Of which, non-EU branches¹</i>	19	19	43.0	0.5
<i>Of which, CCP²</i>	1	1	387.4	4.8
LSIs, excluding non-EU branches and CCP	98	81	123.5	1.5

Source: ACPR.

¹ French branches of Credit institutions located in non-European countries. French branches of SSM LSIs are included into the supervision of the credit institution and as such are not included in the French LSIs.

² The CCP operating under a banking license is Banque Centrale de Compensation (LCH SA).

schemes, one rating agency, academics, the Association of Asset Management Companies (AFG), the Federation of French Insurers (FFA), and AMF.

⁵² Directive 2014/59/EU of May 2014, also known as BRRD, was transposed into French law via Ordinance No 2015—1024 in August 2015. It supplemented an earlier reform created under Law No 2013—672 of July 26, 2013. The resolution framework for insurers was most recently upgraded by Ordinance 1608 of November 2017. The legal framework for Investment Firms was transposed from the Market in Financial Instrument Directive 2014/65/EU of May 2014 which covers organizational requirements, conduct of business and consumer protection; but for resolution purposes the BRRD also applies to them.

⁵³ Excluding the French CCP and EU branches.

150. The regulation and supervision of LSIs, insurers, and investment service entities is led by ACPR. The mandate of ACPR is broad, it includes micro-prudential oversight, resolution powers, the prevention of money laundering and terrorist financing, and also consumer protection issues for the banking and insurance sectors. Enforcement is backed by the power to impose administrative measures and sanctions, or in the extreme the withdrawal of the license. The authority's organizational structure has the General Secretariat leading the work of operational departments, with three top decision-making bodies: the Supervisory College, the Resolution College and a Sanctions Committee.

151. The Monetary and Financial Code designates the ACPR as the authority in charge of implementing the preventive and resolution measures for LSIs, insurers, and investment service firms. The Resolution College is the decision-making body of the RA. The Resolution College has the authority to take resolution actions against supervised entities within the ACPR's remit. In addition, the Resolution College executes and implements resolution measures initiated by the Single Resolution Board for credit institutions which are under the SRB's direct remit.

D. The Resolution and Crisis Management Framework

Institutional Framework

152. As the RA, ACPR has established the legal basis and main procedures to handle the responsibilities derived from the law. With regards to banks and in anticipation of the BRRD, the French legislative framework for banking resolution was originally enacted in July 2013.⁵⁴ The BRRD was transposed under Ordinance 2015-1024 of August 2015 and was complemented at later dates by a set of decrees and orders that dealt with the tools derived from the original directive.⁵⁵ Over time as the new institutions under the banking union issued further guidelines and established practices for the handling of banking failure, the ACPR adopted and implemented those. In September 2018, ACPR, through its Resolution College and/or the Supervision College, decided to adopt all EBA guidelines related to recovery and resolution matters, which will be implemented through regulatory measures. The membership of the Resolution and Supervision colleges involves some overlaps and the representation, via senior authorities, of other public institutions—including the non-voting presence from the MoF. While such structure is geared to ensure coordination, it also implies that both functions are not operationally fully independent.⁵⁶

⁵⁴ Law 2013-672 of July 2013 on the Separation and Regulation of Banking Activities.

⁵⁵ France has made use of two of the national options offered by the EU directives on bank resolution: that FOLTF can be determined by the resolution authority in addition to the competent authority, and France may use the same administrative structure for its financing arrangements for the purposes of the deposit guarantee scheme.

⁵⁶ See: Technical Note on the Pilot Assessment of Compliance of Key Attributes for Insurers for a more detailed description.

153. Nonbank resolution frameworks have been strengthened as well. An ordinance issued in November 2017⁵⁷ upgraded the toolkit for insurers (see the Pilot Assessment of Compliance with the Key Attributes for Insurers) while investment services undertakings are covered under the scope of the law that transposed BRRD.⁵⁸ As for asset managers, undertakings that fall under AMF, there is no resolution regime so normal liquidation rules would apply.

Table 8. France: Institutional Coverage for Resolution

Coverage		Banking		Insurance	Investment Service Providers	Market Infrastructure Operators	Asset management
		SIs	LSIs				
Resolution	EU	SRB/ECB	ACPR				
	National						

Source: French authorities.

154. ACPR's arrangements for crisis management of LSIs follows joint supervisory standards as drafted in cooperation with the ECB. This involves articulation among EU level authorities, national authorities (MoF, BdF, and ACPR), supervised entities, and external stakeholders. Instrumental in this process is the consistency between crisis management and recovery planning work, the administration of the cycle of a crisis from the deterioration of the financial position of a supervised entity to its potential entry into resolution (after the FOLTF determination), and the criteria to use specific supervisory actions or start specific processes (e.g., engaging the process leading to the FOLTF determination). While resource constraints are present, French authorities are keen on such consistency of processes, their internal organization has elements in place to ensure early intervention in a proactive way, and in coordination with the ECB those should help deal with entity failure well. The resolution scheme involves specific cooperation rules with the SRB that may apply in addition to the potential use of the national resolution fund (NRF) or the SRB (see table 8).

155. Operational readiness is supported by several national resolution handbooks that cover the spectrum of credit entities. There are national handbooks on (i) the resolution of credit institutions under the scope of the SRB, which take into account the procedures stipulated in the SRM; (ii) implementation of bail-in; and (iii) insolvency proceedings. In addition, ACPR has developed a handbook for LSIs, which covers all resolution tools. The agenda in this area includes further work regarding insurance resolution, and continued development in coordination with other stakeholders.

156. Regarding CCPs, the French clearing house (LCH SA) has a credit institution license and would accordingly be subject to resolution measures stemming from the BRRD until European regulation on CCP resolution is finalised.⁵⁹ However, given the specific structure of a CCP, some

⁵⁷ Ordinance 1608 of November 2017, which was followed by additional detailed regulations in 2018.

⁵⁸ Specifically, BRRD covers investment firms with capital above EUR 730,000 (per point (2) of Article 4(1) of Regulation (EU) No 575/2013 and Article 28(2) of Directive 2013/36/EU).

⁵⁹ LCH SA is authorized as a central counterparty under regulation (EU) n°648/2012. French law requires that CCPs must be authorized as a credit institution under regulation (EU) n°575/2013 (CRR).

of the tools provided by the BRRD would not be applicable, which reduces the margin of intervention of the RA. Recovery planning is required from the entity, and three cycles have been completed using CPMI-IOSCO guidance as a basis for the assessment. Resolution planning work has been carried out since 2016 and a Crisis Management Group (CMG) has been set up involving EU and non-EU authorities, including from the United States. A cooperation agreement has also been signed by all member-authorities of the CMG. Being licensed as a credit institution, LCH SA therefore contributes to the SRF, for a residual amount excluding its clearing-related activities which represent the main component of its balance sheet. As is the case for other Financial Market Infrastructure entities in the EU with a banking license, LCH SA is only indirectly supervised by the SSM. ACPR has prepared a resolution strategy based on the powers and tools granted by the BRRD, which includes the preferred approaches under two different scenarios as well as a variant strategy on the basis of the 2017 FSB Guidance on CCP Resolution. This work anticipates the provisions of the European draft regulation on CCP resolution, currently in progress.

157. France is one of the first advanced countries to implement an enhanced resolution framework for insurers. Alignment of the new framework with the FSB’s Key Attributes for Effective Resolution regimes for Insurance in terms of the institutional organization and infrastructure is high. The resolution framework is designed to apply to insurers that breach the Solvency Capital Requirement (SCR) and the Minimum Capital Requirement (MCR) coverage ratio while remaining balance-sheet solvent in a Solvency II sense (i.e., assets still cover liabilities). Hence, some areas in the framework require further progress to widen the resolution toolkit. Given the importance of this industry in the EU, some of these enhancements may require consistent treatment at the union level. Notably, the regulatory framework should establish: (i) powers to mandate the bail-in of liabilities (i.e., write-down or conversion);⁶⁰ (ii) safeguards called for under the key attributes (KA) (mainly, respecting the hierarchy of creditor claims, *pari passu* treatment of creditors, and no creditor worse off (NCWO) stipulations); and (iii) privately-financed resolution funding (see below).⁶¹

E. Crisis Management Arrangements

158. France has an institutional approach to financial crisis management arrangements. While there is no official crisis management committee in France, the legal framework establishes formal coordination mechanisms where the relevant economic and financial policy-making institutions participate in accordance to their respective mandates. The arrangements also ensure that material information is shared among participants’ technical teams to support timely decision making. For the purposes of banking and insurance resolution, ACPR’s Resolution College is one of the key decision-making bodies.

⁶⁰ The establishment of the bail-in tool involves concerns about possible legal challenges of constitutional nature, reservations in relation to the structure of the balance-sheet (e.g., level of liabilities in case of pure insurers), and NCWO concerns (for policyholders’ claims under different business lines, e.g., life vs. non-life). These would likely be better dealt with at the EU level.

⁶¹ See TN on the Pilot Assessment of Compliance with the Key Attributes for Effective Resolution regimes for Financial Institutions—Insurance Sector.

159. The Trésor (MoF) and the BdF, have crucial roles each in crisis prevention and risk mitigation. The MoF is represented at ACPR's Supervisory College (without voting power), at the Resolution College (full member with voting power), on the board of the FGDR (as a censor), and is involved in SRB decisions on resolution schemes for EU banks. The BdF supplies ELA to solvent-but-illiquid institutions, based on advice provided by ACPR. Regarding ELA under resolution, pursuant to a recent decision by the ECB Governing Council, ELA to a resolved entity is decided by the ECB on a case-by-case basis.

160. The HCSF is the macroprudential authority. Its main mission is to oversee the financial system as a whole, safeguarding its stability, ensuring a sustainable contribution of the financial sector to economic growth, and preventing and mitigating systemic risks. The HCSF reports to the Parliament, its mandate does not include crisis management but given its structure it could take actions in that domain. As part of enhancing the national crisis management preparation, and to ensure that all operational aspects of the crisis management framework are up to the task, a subgroup from the Council could undertake a formal role as the platform for inter-agency preparedness and coordination, which would ensure the financial safety net members' individual and joint preparedness. Participation of FGDR in such an institutional body should be considered.

F. Recovery and Resolution Planning

161. Preparedness has been strengthened by the implementation of recovery and resolution planning. Recovery plans from LSIs are gradually becoming more focused on key elements, including governance and feasibility of the recovery options, though operationalization and quantification of the recovery options are key aspects on which supervisors are concentrating for the ongoing cycles. These relatively new requirements, both for ACPR and the supervised institutions, help deepening the knowledge of the supervised, but also absorb a significant proportion of ACPR oversight resources. The latter applies in particular to the insurance supervision, as the RRP process is just starting for most undertakings.

162. The assessment of recovery plans and preparation of resolution plans has led to closer coordination between ACPR's Supervision and Resolution Departments. At the same time, ACPR liaises with both the SRB and ECB in the process of assessing plans within their respective scopes. Regarding resolution plans under ACPR remit, given the size of the LSI segment of credit institutions (81 entities, jointly representing 1.5 percent of total assets) and the general lack of critical functions among them, the outlined strategies have opted for liquidation as the preferred option to deal with cases of failure. Similar considerations apply for the case of insurers not selected as significant, and for investment service providers.

163. The Monetary and Financial Code has special provisions for the liquidation of financial entities, many of them adopted since 2013. The provisions supplement insolvency rules established in the Code of Commerce. They specify that ACPR is the only authority that can start liquidation procedures before the judiciary for institutions under its supervision. The special provisions also specify the hierarchy of claims, the process of de-licensing, the conditions to start liquidation procedures, and appointment of liquidators, among others. Purchase and assumption

solutions are more restrictive under liquidation than under resolution. Pursuant to article L.642-1 of the Commercial Code, the commercial court in charge of a liquidation procedure is only entitled to decide the sale of a complete and autonomous branch of activities (as a going concern), or the sale of assets of the undertaking. The participation of FGDR in a scenario of liquidation is limited to its mandate to protect covered deposits. Finally, the hierarchy of claims under a liquidation scenario also applies in resolution. This consistency is reinforced by the NCWO principle and in a scenario of resolution the RA is able to specify exceptionally certain exclusions (e.g., providers of critical services) which would not be possible under liquidation.⁶²

164. Regarding investment firms held by a banking group within SRB's scope, the treatment of their failure is provided in the resolution plan of the banking group. In the other cases (stand-alone investment firms or firms belonging to a domestic LSI group), ACPR draws up a dedicated resolution plan. Thus far, no investment firm within ACPR's scope is expected to be resolved, the preferred approach in case of failure given the lack of criticality of the firms is to move them to insolvency procedures and liquidation.

G. Developments in Resolution Planning and the Approach to Implementing MREL⁶³

165. In addition to LSIs, the round of Resolution Planning in 2018 included important steps for institutions under the scope of the SRB. In particular, the areas of operational continuity and resolvability assessments. To enhance the effectiveness of resolution tools, a national handbook has been developed at the level of ACPR. The operational continuity has involved identification of critical services, review of contracts with resolution-proof clauses, etc. For 2019, the SRB plans to move further in these areas, including by requesting banks to develop bail-in playbooks.

166. The Resolution College is currently setting MREL requirements for LSIs. Under EU rules,⁶⁴ the default MREL requirement for institutions for which normal insolvency proceeding is the preferred resolution strategy is the amount of own funds requirements. Hence, following this principle the setting of MREL for French LSIs puts the requirement to match the level of existing own funds requirements (OCR).

167. Regarding entities under the SRB remit, binding MREL targets have been set at a consolidated level in 2018. Also, subordination requirement in line with the FSB TLAC Term sheet and individual MREL targets have been introduced by the SRB MREL policy and will be implemented in 2019. The SRB MREL policy, which was implemented in two stages depending on whether entities had cross-border resolution colleges, seeks to support resolvability, calibrate requirements of MREL based on bank-specific features, and ensure consistent application. Transition periods are expected to be bank-specific. In the 2018/19 round, subsidiaries that meet the relevance criteria (by size or

⁶² See Article 613–30–3 of the MFC and L.641–13 of the Commercial Code.

⁶³ Minimum requirement for own funds and eligible liabilities.

⁶⁴ Article 2 of the Commission Delegated Regulation (EU) 2016/1450 of May 23, 2016.

function) will also have binding requirements based on their respective frameworks, with guidance in terms of instruments and transition periods.

H. Protection of Depositors, Retail Investors, and Policy Holders

168. The French DGS provides roles to both ACPR and FGDR. ACPR is in charge of triggering the payout for failed institutions and FGDR would implement the payment. FGDR is governed by private law, its governance has two main bodies, a Supervisory Board comprising twelve representatives of banks and financial firms, and an Executive Board that performs the functions of general management for the institutions.⁶⁵ All members are active senior managers in the system. There is a separation of functions between both levels of authority and there are specific practices geared to avoid conflict of interest. A *censeur* (non-voting member) appointed by the MoF also participates in Supervisory Board meetings. The Supervisory Board supervises the Executive Board, appoints and removes its members, appoints the statutory auditors, approves the financial statements, and develops FGDR's internal regulations, subject to the authorization of the French government. The Executive Board is comprised of at least two members who are appointed for four years and may be reappointed. The appointment of the Executive Director is subject to the authorization of the MoF.

169. FGDR's powers to act under resolution are aligned with the BRRD. Those powers include the following:⁶⁶ (i) subscription of additional capital of the failing entity, (ii) subscription of capital for a bridge entity, (iii) provision of guarantees for all or part of the assets or liabilities of the failing entity or a bridge institution, (iv) financing of the entity concerned, its subsidiaries, or bridge institution, and (v) purchase of assets of the credit institution. With regard to central bodies,⁶⁷ FGDR is also able to participate to restore the solvency of the affiliated credit institutions, once ACPR determines the need. FGDR may intervene preventively at ACPR's request to allow the orderly resolution of a troubled institution.

170. The DGS deposit payout procedures are triggered by ACPR's determination that an institution is unable to reimburse the covered deposits of its customers immediately or in the near future. The time limit to indemnify depositors was set at seven days in 2016, ahead of the 2nd Deposit Guarantee Scheme Directive (DGSD2) phased-in timetable. Following EU practices, FGDR's deposit insurance offers no difference of coverage among SIs, LSIs, or foreign depositors. However, regarding subsidiaries and branches located outside the EU, the expectation is that the foreign

⁶⁵ Article L. 312–10 of the MFC stipulates that the Supervisory Board comprises: seven members from the institutions contributing the most to the deposit guarantee scheme, two members from credit institutions, two members from of the investor compensation scheme, and one member from the surety guarantee scheme.

⁶⁶ Directives 2014/49/EU of April 2014 on deposit guarantee schemes (DGSD2) and Directive 2014/59/EU of May 15, 2014 (BRRD) were transposed into French law via Order 2015–1024 of August 2015. The secondary legislation relating to the DGS and the operations of the FGDR was established in five ministerial rulings (*arrêtés*) signed in October 2015. The legal powers of the FGDR under resolution are listed in Article L. 312–5 of the Monetary and Financial Code.

⁶⁷ Entities that affiliate mutual credit institutions and saving and loans undertakings, as described in Article L. 511–30.

deposit protection agency has the responsibility of the coverage. The parameters for payout coverage follow the provisions of the second deposit guarantee scheme Directive (DGSD): €100,000 per person per institution for banks' deposits.⁶⁸ Regulated savings accounts (e.g., Livret A) have the same coverage level by means of a combination of a State guarantee and FGDR's scheme (see note on Regulated Savings). No case of payout involving the DGS has occurred since the previous FSAP.

171. FGDR's total available resources as of end-2017 amounted to €3.9 billion, of which €3.6 billion correspond to the deposit guarantee scheme. The target level of the Fund has been set at 0.5 percent of covered deposits, the lower bound of DGSD's recommended range.⁶⁹ In addition to the accumulated fund, a dedicated credit line for €1.4 billion recently obtained from a seven-bank syndicate allows the FGDR to currently hold usable resources equivalent to the target level to be reached by 2024.⁷⁰ The FGDR has not arranged other backstop facilities. The contributions from the 479 members⁷¹ are determined on the basis of an FGDR proposal that is approved by ACPR's Supervision College, and they are assessed annually. The formula for the contributions amount incorporates the evolution of covered deposits, risk scores, a cycle-adjustment factor (not yet used), relative contributions of individual institutions (to smooth out contributions over time), and a separate administrative contribution to cover DGS's operating costs. Six groups hold 95 percent of the covered deposits.

172. The FGDR is also in charge of managing the National Resolution Fund. As part of this function FGDR collects contributions from institutions falling within a relatively narrow scope (single institution groups without cross border activities, and financial institutions from jurisdictions including Monaco and some French non-EU overseas territories), as all other credit institutions in mainland France and French intra-EU overseas territories contribute to the Single Resolution Fund. The target level of this fund is one percent of the covered deposit base, as of end-2017 it had accumulated €18 million.

173. The resolution fund participation in the financing of resolution measures is subject to ACPR decision. The fund's intervention may take the form of capital injection or financing of the institution under resolution or a bridge institution, acquisition of assets, or other support measures intended to restore the solvency of the bank. The FRN may also substitute certain creditors that

⁶⁸ Following international good practices, there is also a temporary high balance coverage (i.e., for deposits related to real estate transactions, social purposes, particular life events, insurance compensations, etc.) with a cap of €500,000.

⁶⁹ The choice of the lower bound of the range defined in article 10.6 of DGSD is based on the concentrated structure of the French banking system, which would make the activation of the Single Resolution Framework more likely than the activation of the national scheme.

⁷⁰ Keeping in mind credit lines are not included in the harmonized definition of the available financial means from which the target level is set.

⁷¹ Including the three guarantee mechanisms managed by the FGDR. Regarding the DGS, 356 institutions were member in end-2017.

could be excluded by ACPR's decision. Resources held by FGDR as DGS could also assist a resolution process in the event a bail-in measure would affect covered deposits.

174. In addition to its coverage of credit institutions deposits, FGDR also manages an investor compensation scheme. This scheme covers the investment accounts of investment service providers (ISP) that are under ACPR's scope. The coverage is against limited risks: fraud and operational risks, as is standard in this industry credit risks are assumed by the investors. The coverage includes financial instruments (securities, bonds, units of open-end investment companies or mutual funds, certificates of deposit and other negotiable debt instruments) of natural and legal persons held in custody with FGDR members of the investor compensation scheme. The guarantee is capped at €70,000 per customer per institution.⁷² Cash deposits associated with securities accounts are also compensated up to the same limit for securities accounts opened with the ISP, or up to €100,000 (covered by the DGS) if the securities account is opened with a bank.⁷³

175. Investment funds managed by asset management companies are not covered by these compensation arrangements, as customers investing in those funds benefit from alternative protection, including operational management of the cash and securities accounts of the funds by depositary institutions. Asset managers do not directly hold the cash/assets of the funds they manage, they are with a depositary entity, which keeps the assets segregated from its own assets, and those of other clients. The investment manager only implements the investment strategy of the fund under oversight from the depositary. Depositary institutions have bank licenses, which put them under the bank's safety net arrangements. Therefore, in the case of failure of an investment manager, investors would not suffer consequences, other than operational (e.g., change of investment manager). However, in cases of asset managers that offer investment services, coverage from the investment compensation scheme should be applicable and hence contributions to FGDR needed. The AMF, the asset managers supervisor, is in the process to require asset managers that provide investment services to comply with such obligations in accordance with the Directive on Undertakings for Collective Investment in Transferable Securities (UCITS) and the Alternative Investment Fund Managers Directive (AIFMD).

176. FGDR has developed detailed procedures to fulfil its mandate and has a simulation program to test its readiness. A four-year program of simulation tests ending in 2019 has been implemented. The aim is to test the key elements of the deposit compensation scheme, including single customer view files and final account statements. The plan is expected to comply with EBA 2016/04 guidelines and each exercise is subject to a report aimed at enhancing the system. Areas that have been tested include the operational readiness of the instruments of payment,

⁷² Regardless of the currency of denomination. The coverage level compares favorably against the indemnification threshold set by the 1997 Directive, which amounts to €20,000.

⁷³ FGDR also runs a surety guarantee scheme that covers guarantees issued by financial institutions to certain regulated professions (real estate, travel agents, etc.) to guarantee the proper completion of their customer's projects. In case of the entity's failure FGDR honors the guarantee (up to 90 percent of the amount after a deduction of €3,000).

communications strategy during a compensation process, and crossborder compensation arrangements with other deposit protection schemes. These simulations have yet to actively incorporate other decision-making institutions.

177. The safety net for insurance policyholders is composed by two policyholder protection schemes (PPSs) which can provide support in liquidation proceedings.⁷⁴ The PPSs are specialized by type of insurance. The Fonds de Garantie des Assurances Obligatoires de Dommages (FGAO), focuses on the protection of non-life policy holders including car accidents, skiing, bicycle, hunting insurance and mining-related housing damages, among others. The FGAO also protects policyholders of compulsory types of non-life insurance (motor vehicle insurance and construction-related damages) in case of failure of the insurer. FGAO is an industry-funded private entity, governed by a board of directors and supervised by the MoF, its resources are limited.

178. The other PPS is the Fonds de Garantie des Assurances de Personnes (FGAP) specialized in policyholders' protection in the life insurance sector. In the event of a life insurer failure, FGAP provides the liquidator with financial resources to ensure the repayment of the policyholders' claims, up to preestablished limits (€70,000 per policyholder and €90,000 for bodily harm damages), while retaining a claim in the liquidated estate to recover its contributions. FGAP's funding is calculated based on the amount of technical provisions, with an additional committed line of credit from the insurance industry. Other than the participation of the PPSs in a forced portfolio transfer and in the context of liquidation, there is no privately-funded dedicated resolution fund for the insurance sector.

179. The strengthening of the financial safety net institutions, resolution framework, and the overall preparedness must continue. The main challenges are in dealing with scenarios of conglomerate failure. RRP exercises need to incorporate the intra-conglomerate dimension for applicable cases. By checking the separability of business units, the resolvability analysis will partly cover these aspects, but the safety net is structured by sub-industry (e.g., Deposit insurance under FGDR vs. PPSs) so that the resources available to support potential resolution remain also segmented. In addition, authorities need to ensure that all operational aspects of the crisis management framework are up to the task, to that end conducting intra and inter-institutional crisis simulations and tests would help identify potential gaps, including by coordinating the roles of national authorities with those of EU instances.

I. Emergency Liquidity Assistance

180. The Banque de France is the provider of Emergency Liquidity Assistance to support illiquid-but-solvent entities, both before and during resolution. The scheme of ELA in place follows the EU principles as issued in May 2017.⁷⁵ While ELA has not been requested for more than 5 years, the BdF internal manuals and procedures were updated as a result of the EU agreement on

⁷⁴ Both PPSs are private law naturel person (personne morale de droit privé). The by-laws are approved by the Minister of Finance as those entities were founded through dedicated laws.

⁷⁵ See: ECB. Agreement of Emergency Liquidity Assistance, May 17, 2017.

the subject, and to reflect the interaction with the SSM and the ECB. The documents detail the different steps involved during the ELA provision, the scope of responsibility within the BdF, the necessary solvency assessment (in coordination with the relevant supervisory authority), the decision-making bodies (internally and in connection with the ECB Board depending on the size of the ELA), the technical implementation of the payment and the collateral management/valuation. Per the ELA Agreement, the process also requires detailed analytical information regarding funding plan, recapitalization plan if applicable, collateral characteristics, among others. ELA rules are consistent with the collateral framework of the Eurosystem (ESCF). The Risk Committee of the BdF, where ACPR is represented, is in charge of authorizing the eligible assets for collateral.⁷⁶

181. ELA provision is within the scope of responsibility of the BdF and it is provided at its own risk.⁷⁷ Depending on the size and the term the assistance, an ex-ante no-objection from the ECB Governing Council is necessary and provided on the basis of the solvency assessment provided for the entity. The main responsibility within the BdF in this respect is with the Directorate General of Operations and Financial Stability, which coordinates the technical work from other areas of the BdF (e.g., for the calibration of the operation, preparation of bilateral contracts, consolidation of pledged collateral and monitoring the pool of assets, etc.), coordinates with ACPR the prudential assessment, and liaises with the ECB. In order to support preparedness, there are quarterly supervisory data collection exercises done jointly by ECB and BdF to assess the financial soundness of all monetary policy counterparties.

182. Regarding ELA under resolution, such decision would be subject to the ECB on a case by case basis.⁷⁸ While entities with a banking license may be eligible, such assistance would typically be appropriate for bridge banks that have been made solvent by the RA during the resolution process. Wind-down entities without banking license are not entitled to ELA. Emergency liquidity assistance to French non-bank institutions would have to be subject to an additional agreement from Banque de France's internal Risk Committee.

183. While the ELA scheme is well institutionalized, it would benefit from some additional features derived from the international experience of recent years. Given the relative importance of FX wholesale funding in the French system, establishing mechanisms and rules regarding ELA in FX is an avenue that would need to be explored while addressing the feasibility of advance agreements on the conditions for potential swap lines for this purpose. Also, since cases of illiquid banks have been sporadic and not systemic, the BdF has not faced scenarios with banks lacking sufficient eligible collateral that required ELA support, e.g., in the context of entities under resolution.⁷⁹ While resolution planning could help anticipate such cases in the future, contingent arrangements, such as a public guarantee at the national or European level under strict safeguards (e.g., time bound support for bail-in or P&A operations), could add readiness to the scheme. This

⁷⁶ Since the French CCP has a credit institution license, it is legally covered by existing ELA arrangements.

⁷⁷ Article 14.4 of the Statute of the ESCB and ECB and also pursuant to the May 2017 ELA Agreement.

⁷⁸ This is pursuant to a May 15, 2017 decision from the ECB Governing Council.

⁷⁹ Since the French CCP has a credit institution license, it is legally covered by existing ELA arrangements.

type of transaction could trigger the need for an EU assessment under state aid rules. To the extent EU rules were reconsidered for this case as recommended by the EU FSAP, authorities could take action in this area. Similarly, in order to achieve a smooth operational process, authorities should establish rules to help banks: i) identify in advance assets that would be eligible as ELA collateral (including credit claims identified during the horizon scanning process, and the formalities of securing a legally valid pledge), and (ii) buttress the banks' operational readiness to pledge such assets.⁸⁰

⁸⁰ See Technical Note on Systemic Liquidity Management from IMF. Euro Area Policies: Financial System Stability Assessment, June 2018.