




2011
Annual report



The annual report reviews the activity of the Authority and its departments and provides information about its budget (dues paid to cover supervision and other main items of expenditure). It also presents noteworthy developments in terms of authorisations and restructurings of existing firms, arranged by banking and insurance sector, during the year under review.

A statistical section will be added in September-October 2012, allowing for current constraints in production of statistics.

Contents

Editorial of Christian Noyer, ACP Chairman and Governor of the <i>Banque de France</i>	4
Interview with Danièle Nouy, ACP Secretary General	8
Chapter 1	
Statutory objectives, organisation and powers	12
1. Statutory objectives	14
2. Organisation of the ACP	17
3. Powers of the ACP College and its activities in 2011	30
4. Performance monitoring	41
5. Monitoring the ACP's activities	52
Chapter 2	
Contributing to the stability of the financial system	58
1. Licensing	60
2. Prudential supervision	77
3. Macroprudential supervision	107
Chapter 3	
Customer protection in banking and insurance	122
1. Inspections carried out in 2011 and lessons learned	124
2. Switching banks: checking credit institutions' commitments, taken in the frame of the Financial Sector Consultative Committee	133
3. Processing customer requests to the ACP	137
4. Recommendations published in 2011	141
5. The Consultative Committee on Business Practices	143
6. The activities of the ACP/AMF Joint Unit	144
7. ACP coordination with other customer protection bodies at national level	147
8. Supervising business practices: the international dimension	148
Chapter 4	
Punishing violations: activity of the Sanctions Committee	150
1. Effects of the Banking and Financial Regulation Act on the membership and operation of the Sanctions Committee	152
2. Activity of the Sanctions Committee in 2011	157
Chapter 5	
Playing an influential role in developing the international, European and French regulatory framework	162
1. ACP involvement in European and international bodies	165
2. Ongoing reform of accounting standards	178
3. Developments in French laws and regulations	187
Chapter 6	
Budget	192
1. Budget of the ACP	194
2. Summary of the ACP 2011 budget outturn	196
Chapter 7	
Annex	206
Main findings of the examination of planned variable pay awards for 2011	208
Glossary	212

Insert contents

Chapter 1		Anti-money laundering and counter terrorist financing risk classification	106
Statutory objectives, organisation and powers		EBA stress tests in July 2011 and the exercise to strengthen institutions' capital base in autumn 2011	110
Regular initiatives to inform the market	15	EIOPA stress tests (end-2010 data)	112
Membership of the ACP Audit Committee	21	ACP Scientific Consultative Committee	115
Membership of the Consultative Committee on Prudential Affairs	22	Systemic risk dashboards developed by European authorities	115
Membership of the Consultative Committee on Anti-Money Laundering	23	Chapter 3	
Membership of the Consultative Committee on Business Practices	24	Customer protection in banking and insurance	
Membership of the Scientific Consultative Committee	25	ACP supervision of advertising	126
An ongoing and intensive recruitment drive from the outset	27	Periodic returns from credit institutions and insurance firms concerning customer protection: the Annex to the annual Internal Control Report	126
The ACP: an independent administrative authority attached to the <i>Banque de France</i>	29	Particularities involved in the supervision of intermediaries	131
Acting transparently	33	The high-level principles on financial consumer protection approved by the G-20	149
Summary of the National Assembly Finance Commission report published 6 December 2011	53	Chapter 4	
IMF Financial Sector Assessment Program	54	Punishing violations: activity of the Sanctions Committee	
Chapter 2		Membership of the Sanctions Committee at end-2011 (cases opened following the entry into force of the Banking and Financial Regulation Act)	154
Contributing to the stability of the financial system		Chapter 5	
Withdrawal of licenses without consultation	64	Playing an influential role in developing the international, European and French regulatory framework	
Changes in the number of credit institutions, investment companies and payment institutions in France and in the number of credit institutions in Monaco	68	Consultative Committee on Prudential Affairs	164
Money changers	69	International activity of the ACP General Secretariat: key statistics	166
Valuation of insurance institutions' real estate assets	73	The ACP's contribution to the EBA information system	166
Transfers from a mutual insurance union to a mutual insurance company	75	Solvency II Update	168
Affiliation with a mutual insurance union group	75	CRD 4 Update	171
Changes in the number of insurance institutions	76	Assessment of systemically important banking and insurance groups	177
The ACP's response to the crisis	77	Own credit risk and its counter-intuitive impacts on earnings	183
Enforcement of regulations on remuneration	80	Chapter 6	
The joint decision process in Europe	83	Budget	
Integrated action by the ACP in relation to links between banks and insurance institutions	90	The ACP Audit Committee	195
The market for supplementary health insurance in France	91	Contributions for the cost of supervision	198
Supervisory colleges and EIOPA	92	Main collection figures for contributions for the cost of supervision in 2011	199
Bond debt	97		
Guidelines on third-party reliance and sector enforcement principles applicable to the insurance sector	101		
Efforts by the ACP to enhance anti-money laundering and counter terrorist financing measures at domestic and international level	102		

Editorial of Christian Noyer

ACP Chairman
and Governor of the *Banque de France*

Amid a global economic slowdown, French banks and insurers reported positive earnings and satisfactory solvency.

In 2011, the top 5 French banking groups¹ generated a total of €14 billion in net income attributable to equity holders of the parent, compared with €21.9 billion in 2010, a decline of 36%. However, these results are still 21% higher than the €11.6 billion reported in 2009, a year of buoyant recovery in the aftermath of the 2008 crisis (€6.1 billion).

Income was slightly lower overall, but income from retail banking in France remained robust. The cost of risk rose sharply, notably because the provisioning rate for total holdings of Greek sovereign debt reached 70%-75%.

Corporate and investment banking performed less well in 2011 because the continued decline in the cost of risk failed to offset a sharp contraction in business volumes, causing pre-tax earnings from this activity to plummet 46.8% compared with 2010.

The main listed insurance undertakings operating in the French market² also reported a steep year-on-year decline in attributable net income (excluding exceptional items, which were substantial in the case of one group). Turnover fell by between 2% and 7% depending on the group, mainly because of a weaker performance in life insurance, and the

group share of consolidated net income was down between 17% to 50% (although one group reported substantial disposal gains that made up for the fall in ordinary income).

These outcomes are due chiefly to an unfavourable financial climate, reflected in volatile and bearish markets, low interest rates and provisions on Greek sovereign debt.

Net life insurance inflows were positive for the year as a whole but sharply lower than in 2010, and this weighed heavily on insurers' premium income. Turnover from life business for the main institutions active in the domestic market was down between 6% and 21% depending on the group. In non-life, the groups' turnover was higher than in 2010 while their combined ratios were lower owing to a lower loss experience in France.

Despite these weaker results, however, the main participants in the French financial markets maintained a satisfactory level of solvency.

All the groups posted Core Tier 1 capital ratios in excess of 9%, mainly because they transferred a substantial portion of profits to reserves and lowered their risk-weighted assets. This confirms their ability to reach the targets set on 30 June 2012 by the European Banking Authority and to attain the objectives they set themselves in the run-up to the Basel III prudential standards.

¹ BNP PARIBAS, SOCIÉTÉ GÉNÉRALE, GROUPE CRÉDIT AGRICOLE, BPCE, GROUPE CRÉDIT MUTUEL.
² AXA, CNP, GENERALI, ALLIANZ.



On the whole, coverage of the solvency margin (including unrealised capital gains) is higher than the regulatory minimum, although there are marked differences from one insurance group to another.

Maintaining a robust financial sector was a focal point of the ACP's action in 2011 in keeping with its strategic guidelines of sector financial stability, preparation for new prudential international standards and consumer protection.

Firstly, the ACP paid particular attention to ensuring that credit institutions and insurance undertakings were able to cope with prevailing macroeconomic conditions. As part of its supervisory activities, it took account of two of 2011's main events: on the one hand, mounting stress in the interbank market and strong pressures on French banks in the latter part of the year, and, on the other hand, the emergence of sovereign risk in the euro area. The ACP sharply increased its surveillance of banking groups' liquidity and their implementation of plans to adjust to the new economic and financial environment.

To measure ongoing trends more effectively, the ACP bolstered its resources for analysing sector-specific and cross-sector risks. It focused in particular on the key aspects of financing the real economy by monitoring home lending conditions more extensively. An initial analysis revealed a tendency toward greater caution, with a reduction in average loan amounts, stable initial terms and a decline in the loan-to-income ratio. However, the ACP will be watching closely to see whether these trends gain traction in 2012.

In the insurance sector, weekly surveillance of inflows and surrenders in the life segment made it possible to monitor and analyse the net outflow that emerged at

the end of summer 2011. That analysis contributed to a better understanding of household savings patterns during a period when the ACP was carefully scrutinising competition in deposit-taking. While the savings rate reached all-time highs in 2011, topping 17% in the second and third quarters, households chose their investments more warily and opted for the most liquid products. It remains to be seen whether this trend will continue in 2012 and to gauge the impact on the financial position and liquidity of banks and insurance undertakings.

Secondly, the ACP saw to it that credit institutions and insurance undertakings took the measures needed to adapt to far-reaching changes in prudential rules.

In 2011, after a fifth impact study, the insurance industry stepped up efforts to prepare for the Solvency II directive. The ACP supported these efforts by maintaining close contacts with the institutions under its supervision. It organised conferences, drafted a questionnaire on market preparedness, and organised discussions, interviews and visits. In addition, through on-site inspections and off-site supervision, the Authority's staff oversaw the pre-application process for institutions wanting to use internal models to calculate their regulatory capital requirements. In this respect, the ACP was able to rely on its staff's solid expertise in actuarial and accounting matters. In the banking sector, it held regular situational reviews with French banks on implementation of Basel III and preparations for new liquidity regulations.

Internationally, the ACP played an active part in preparing one of the major decisions of the G-20 under the French Presidency, namely identifying 29 banks considered to be systemically important. Four of these groups are French (BPCE, BNP PARIBAS, CRÉDIT AGRICOLE and SOCIÉTÉ GÉNÉRALE). In the coming months, this facet of the reform will be

rounded out by work undertaken with all 29 groups to draw up recovery and resolution plans. In the insurance sector, the International Association of Insurance Supervisors (IAIS) is preparing the methodology for identifying systemically important insurance groups. The ACP is actively contributing to the IAIS's work to ensure that the specific characteristics of insurance activities are given due consideration.

Thirdly, the ACP successfully deployed its activities in the area of customer protection in 2011.

The action taken by the ACP has consolidated public confidence in the financial system. The number of inspections of credit institutions', insurance undertakings' and their intermediaries' business practices was increased. Three priorities for on-site inspection in 2011 were complaints handling, internal control systems and a formalised duty to provide advice. Inspection arrangements and methods were expanded. The ACP now asks credit institutions and insurance undertakings to provide information *via* a special annex to their internal control report about their business practices and the organisational measures taken to comply with customer protection rules. The ACP has also adopted a methodology for monitoring advertising and the contracts that enable it to analyse promotional materials. Through a survey of more than 300 institutions, the ACP checked that members of the French Banking Federation were abiding by their commitments to encourage banking mobility. Furthermore, to extend its local reach, the ACP works with the *Banque de France* network. Thus in 2011, the Lille, Lyon and Toulouse branches of the network were called in to inspect insurance intermediaries in their respective regions. Taken together, these initiatives made it possible to identify best practices for the marketing of banking and

insurance products. In particular, the ACP published five recommendations on customer protection in 2011. These major strategic directions have an undeniable impact on consumer confidence and will be taken forward in 2012.

2012 will be a year of challenges to lay the foundations for a sustained return to growth

While continuing to finance economic activity in 2012, banks must pursue their efforts to keep a firm grip on risks so that they can closely monitor changes in the quality of their commitments and in their risk-related costs.

For the past three years and more, the crisis has highlighted the need for a strong prudential supervision authority. Formed in 2010, the ACP demonstrated in 2011 that it was fully operational, amid a period of upsets. Its action is essential to ensure that the financial sector remains in good health and that depositors are properly protected.

Interview with Danièle Nouy

ACP Secretary General

What achievements should be highlighted, two years after the ACP came into existence?

First, the ACP has to be transparent and accountable. These values are important for all public authorities and particularly so for supervisory authorities. It is critical that everyone should know how we work, what we do and how we do it. Of course, the details of individual cases cannot be disclosed, except those handled by the Sanctions Committee, which makes its sanctions public. Yet the credibility of the ACP hinges on explaining its objectives and priorities and the outcomes of its action. Genuine efforts have been made to communicate since the founding of the ACP and they must be continued. This annual report is part of that effort. More specifically, it explains the ACP's activities during the previous year. We have taken care to be precise and to quantify our activities as far as possible. The figures speak for themselves. For example, the ACP College made more than 570 decisions on general issues and individual cases; more than 900 licensing and authorisation applications and senior management appointments were examined; the risk profiles of nearly 1,200 institutions were subjected to in-depth analysis; 286 on-site inspections were carried out; 4,000 written questions from consumers were dealt with; and ACP staff attended the meetings of nearly 200 European

and international working groups. Such is the day-to-day activity of the ACP General Secretariat.

The *quid pro quo* of the ACP's independence is transparency and rigour, which guide its every action. For that reason I wanted to introduce a comprehensive management control programme to ensure that we had the necessary oversight instruments. This was accomplished at the end of 2011. Furthermore, the ACP Chairman charged the Audit Committee with implementing performance indicators, as recommended by Parliament. Those indicators are published in this report. It should also be remembered that the ACP itself is the subject of various external assessments. It has been placed under the supervision of Parliament and the *Cour des comptes* (Court of Auditors). As part of its responsibility for assessing supervision of the French financial sector, the IMF is looking at how the ACP applies international supervisory standards, and the *Banque de France* audit unit has been auditing the ACP General Secretariat since the end of 2011. The law also provides for an external assessment of the ACP's action in 2013.

The second imperative consists in ensuring that the ACP has the resources it needs in order to act and, more specifically, that it has the capacity to respond to unexpected events. In 2011, the priority for strengthening the ACP's resources was to grow our staff. We needed more



technical skills in certain supervisory areas. We also had to recruit legal and IT staff, specialists in business practices, and so on. This intensive recruiting drive, along with a comparable effort to train and induct new recruits, boosted the ACP's capacity for action. Our staffing target is nearly 1,150 for the end of 2012, compared with 1,008 at the end of 2011.

But the ACP is already operating smoothly. It has top quality resources that enable it to fulfil all its responsibilities for prudential supervision, as well as oversight of business practices, while playing an active role in developing international regulations, as the figures above show.

What were the priorities for 2011?

1. The key issues in 2011 were the euro area sovereign debt crisis and changes in prudential standards.

Fears about financial institutions' exposure to some euro area governments sparked major turbulence on financial

markets starting in summer 2011. Against this backdrop of severe tension, particularly with regard to bank refinancing, the ACP management and staff worked hard to step up the supervision of potential areas of weakness in banks under stress. Credit institutions' liquidity came under close scrutiny, as did banks' efforts to build up their capital and strengthen their solvency. In insurance, the changing pattern of inflows in the life segment also came under close scrutiny. The ACP also participated in two stress-testing exercises for banks and insurance companies under the authority of the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), as well as in the EBA's exercise to strengthen the capital of 90 European banks in the fourth quarter of 2011.

The ACP also worked on preparations for implementing new regulations. In the banking sector, the transposition of CRD 3 was a preliminary response (pending CRD 4) to the financial crisis that started in mid-2007. In the insurance sector,

the ACP's questionnaire on market preparedness for the Solvency II Directive delivered a wealth of information. The ACP worked closely with the industry on the Pillar 3 aspects of Solvency II to prepare the market to provide supervisors with more information. An educational effort is particularly critical in the run-up to reforms that require both the ACP and insurers to make painstaking preparations for the radical changes that lie ahead in prudential regulations.

The Financial Action Task Force's very favourable assessment of France's efforts to combat money laundering and terrorist financing underlines the strong involvement of the ACP in prevention. Our success in this area relies on highly effective prevention through supervision – based on regular contacts between the ACP and institutions – and is underpinned by frequent training seminars and conferences.

The ACP has made an active contribution to developing and defending France's positions on customer protection, and on other issues, at the international level (OECD High-Level Principles on Financial Consumer Protection) and at the European level (EIOPA Committee on Consumer Protection chaired by the ACP). In France, the ACP issued a large number of recommendations on matters such as credit institutions' management of trustee accounts for joint ownerships, advertising for unit-linked insurance plans based on bonds and other debt securities, the marketing of life insurance policies linked to funeral payment plans, and complaints handling. Further, its work on banking mobility was published in a report. The ACP also built up its supervision capacity, especially for intermediaries, and market surveillance capability (monitoring of advertising, etc.)

With Solvency II, the ACP will have to develop new computerised reporting tools. In the banking area, implementation of the EBA's reporting system, conducted by the ACP and the *Banque de France*, underlined the good performance of the ACP's information systems.

2. What were the main operational projects in recent months?

The conclusion of the integration offer, which saw 91 contract employees and 12 seconded civil servants from ACAM, the former insurance supervisory authority, join the *Banque de France* staff, completed a major step in the merger process. The process ended on 1 March 2012 when the insurance auditors were incorporated by decree into the *Corps de Mines*, one of the major technical corps of the French State.

The second major organisational issue was the introduction of a modern system of management by objectives, the only way to involve the whole structure in the ACP's operation. In addition to looking after day-to-day operations, the Authority needs the wherewithal to ensure its own internal control. This explains the aforementioned decision to bring in management control and performance indicators. These indicators are designed to measure the effectiveness of the ACP's action with regard to its statutory objectives: maintaining the stability of the financial system and protecting the customers of the institutions under its supervision. As a newly formed authority financed by the dues paid by reporting institutions, the ACP needed to be able to measure its ability to discharge its duties while using its resources efficiently. The indicators selected are linked with management control to make the new system fully operational.

The ACP's organisational structure includes a Research Directorate. The ACP's capacity for macroprudential analysis had to be strengthened so that it can play its full role in international bodies and make the requisite contribution to preventing systemic risk, both in Europe and internationally.

What are the main plans for 2012?

Faced with the current economic and financial uncertainty, the ACP needs to remain constantly watchful. This involves fast and frequent contact with reporting institutions and requests for information with quick response and dealing times. It also involves closer cooperation with foreign supervisors. Our teams' strong involvement will allow us to continue monitoring all banks and insurers very closely, through ongoing supervision as well as on-site inspections.

Playing a leading role in financial system regulation will require further major contributions to evolving prudential standards under Basel III-CRD 4 and Solvency II. The European Systemic Risk Board is an important venue for strengthening our position in Europe's supervisory architecture, as are our contributions at the meetings of EIOPA and the EBA. We also need to make sure that institutions take effective action to prepare for implementation of new regulations. This is particularly the case for insurers, which need to maintain their efforts to get ready for Solvency II, despite the delayed schedule. At the same time as it finalises the Level 2 measures, the ACP will continue working with the industry to approve internal models and contributing to discussions on Level 3 measures.

Last but not least is the duty to protect customers. We have come a long way since

the ACP was founded, but our system for monitoring business practices needs to be further enhanced. Once again, the keys to success are pooling knowledge and enhancing shared skills. The ACP must prove itself capable of fostering sound marketing practices without hindering financial innovation. This innovation must be managed and adapted to each customer category. Transparency must be more than a concept; it must be seen as a requirement and a reality. The ACP is determined to support the industry in this approach. Largely as a result of the crisis, the need to protect consumers has grown stronger over the years.

To accomplish these objectives, the ACP will continue its effort to recruit the necessary skills and to train and integrate its new staff so that it can fulfil its duties.



Contents

- 14 Statutory objectives
- 17 Organisation of the ACP
- 30 Powers of the ACP College and its activities in 2011
- 41 Performance monitoring
- 52 Monitoring the ACP's activities

CHAPTER 1

Statutory objectives, organisation and powers

The *Autorité de contrôle prudentiel* (ACP) was formed on 9 March 2010¹ as the body responsible for supervising the banking and insurance sectors in France. It had its first full year of activity in 2011.

The Authority's main duty is to maintain financial stability and to provide protection for banks' customers and for insurance policyholders and beneficiaries. The ACP also represents France for matters within its jurisdiction in Europe as well as in international negotiations.

The ACP is an independent administrative authority attached to the *Banque de France* and funded by contributions from reporting entities. The General Secretariat has all the skills needed for the Authority to carry out its duties. Its staff of 1,008² makes every effort to ensure that the French supervisory framework is effective and serves the public interest.

¹ The ACP was formed from the merger of the licensing authorities (*Comité des établissements de crédit et des entreprises d'investissement*, CECEI, et *Comité des entreprises d'assurance*, CEA) and supervisory authorities for the banking and insurance sectors (*Commission bancaire*, *Autorité de contrôle des assurances et des mutuelles* - ACAM).

² Effective end-December 2011.

1

Statutory objectives

1.1 Statutory objectives of the ACP

The statutory objectives of the ACP are set out in Article L. 612-1 of the Monetary and Financial Code:

“The Autorité de contrôle prudentiel is an independent administrative authority charged with preserving the stability of the financial system and protecting the customers, insurance policyholders, members and beneficiaries of the persons that it supervises”.

The ACP is responsible for issuing licenses and authorisations to reporting institutions, in accordance with legal and regulatory requirements. In addition, it conducts ongoing supervision of the financial position and operating conditions of the institutions referred to by law, especially as regards the solvency requirements and liquidity maintenance rules governing their business. The Authority also ensures that insurance institutions are able at all times to honour their commitments to their policyholders, members, beneficiaries or companies holding reinsurance, and that they actually do so in practice.

Regarding the specific task of customer protection, the ACP makes sure that reporting institutions comply not only with laws and regulations but also with the codes of conduct approved at the request of professional associations or

with industry best practices that the Authority either observes or recommends. It also checks that they have adequate resources and appropriate procedures to comply with these rules. For this statutory objective, it cooperates with the *Autorité des marchés financiers* (AMF) through an entity, the Joint Unit, common to both institutions.

Cooperating closely with the *Banque de France* and relevant government agencies, the ACP represents France in the international and European bodies responsible for supervising the insurance and banking industries. Since the bulk of regulation is derived from supranational standards, the ACP takes part in the international dialogue on these issues and submits proposals regarding the areas under its jurisdiction. It thus contributes to achieving the goal of financial stability in Europe and to bringing national and European supervisory practices more closely into line.

REGULAR INITIATIVES TO INFORM THE MARKET

The ACP informs reporting institutions about its activities on a regular basis through several media.

- A two-monthly review, *La Revue de l’Autorité de contrôle prudentiel*, deals with the activities of the ACP College and the latest news and developments in financial regulation. It is widely disseminated to market professionals.
- The ACP’s research is published in a review titled *Analyses et Synthèses*.

The ACP also organises conferences to reach out to the market. Banking and insurance professionals are

invited to these events, which encourage dialogue and information exchange between the ACP and reporting institutions.

Two conferences were organised in Paris in 2011:

- 27 April 2011 at *La Maison de la Chimie*, on Solvency II, chaired by ACP Chairman Christian Noyer, and in the presence of Gabriel Bernardino, Chairman of the European Insurance and Occupational Pensions Authority (EIOPA);
- 7 October 2011, at *Palais Brongniart*, chaired by ACP Vice-Chairman Jean-Philippe Thierry, on

supervision of marketing practices for banking and insurance products, and Pillar 3 of Solvency II.

Another highlight of 2011 was the overhaul of the ACP website at www.acp.banque-france.fr. The new site is more practical, reflecting the ACP’s organisation and statutory objectives. It also provides easier access to relevant information for each user category (banks, insurers, intermediaries, individuals, journalists, etc.).

1.2 Jurisdiction

The ACP’s supervision focuses on compliance with the provisions of the Monetary and Financial Code, the Insurance Code, Book IX of the Social Security Code, the Mutual Insurance Code, and Book III of the Consumer Code. It can also punish infringements of these provisions, as well as breaches of any other legislative and regulatory provisions.

Article L. 612-2 of the Monetary and Financial Code stipulates which entities report to the ACP.

In the banking sector, payment services and investment services:

- 1) credit institutions;
- 2) investment firms other than portfolio management companies, as well as members of the regulated market, clearing house members, entities authorised to act as custodians or administrators of financial instruments

(referred to in 4° and 5° of Article L. 542-1 of the Monetary and Financial Code);

- 3) payment institutions;
- 4) financial holding companies and mixed financial holding companies;
- 5) money changers;
- 6) the bodies referred to in Article L. 511-6(5) of the Monetary and Financial Code (microcredit associations and foundations);
- 7) the legal entities referred to in Article L. 313-21-1 of the Monetary and Financial Code (companies selected to contribute to the creation of activities or the development of employment under a government contract).

The ACP may also extend its supervision to intermediaries involved in banking transactions and payment services.

The Authority supervises the investment services supplied by the entities referred to in paragraphs 1) and 2), subject to the powers of the AMF with regard to the supervision of best practice rules and other professional obligations.

For the purposes of supervising the entities referred to in 3), the ACP may request the opinion of the *Banque de France* as part of its duty to supervise the correct and secure functioning of payment systems, pursuant to Section I of Article L. 141-4 of the Monetary and Financial Code. The *Banque de France* may bring any and all information to the ACP's attention for this purpose.

In the insurance sector

- 1) Insurance companies providing the direct insurance referred to in Article L. 310-1 of the Insurance Code;
- 2) Companies with their head offices located in France that engage in the reinsurance business;
- 3) Mutual insurance companies and unions governed by Book II of the Mutual Insurance Code, unions managing the federal guarantee systems and the mutual insurance holding companies referred to in Article L. 111-4-2 of that code;
- 4) The mutual insurance companies and unions referred to in Book I that manage mutual insurance payments and contracts on behalf of the mutual insurance companies and unions referred to in Book II, for the purposes of Title VI of Book V of the Monetary and Financial Code (obligations concerning anti-money laundering, counter-terrorist financing, and prohibited lotteries, gaming and betting);

- 5) Provident institutions, unions and groups governed by Title III of Book IX of the Social Security Code;
- 6) Group insurance companies and mixed group insurance companies referred to in Article L. 322-1-2 of the Insurance Code;
- 7) The universal guarantee fund for rental risks referred to in Article L. 313-20 of the Construction and Habitat Code;
- 8) Securitisation vehicles that entail insurance risks, referred to in Article L. 310-1-2 of the Insurance Code;
- 9) All the aforementioned entities operating in France under the right of establishment or the freedom to provide services, as regards compliance with the provisions applicable to them.

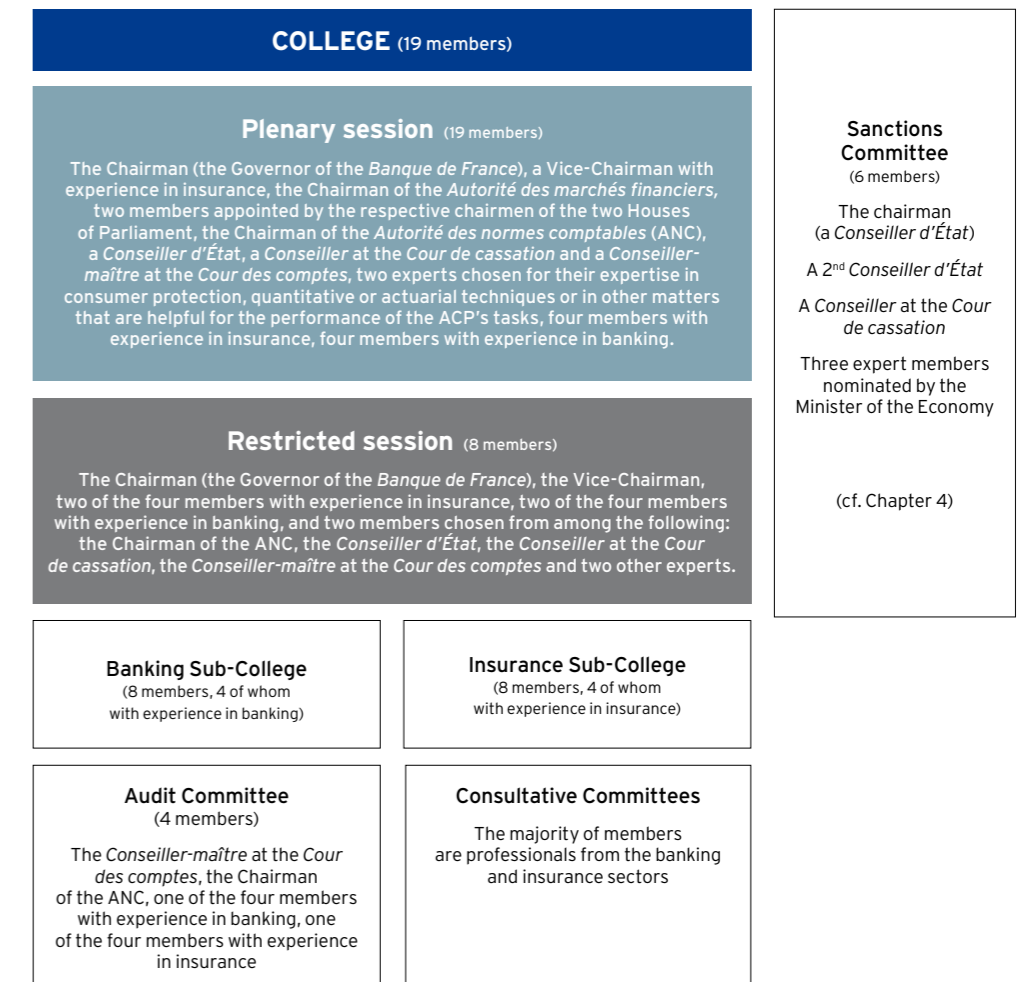
The ACP may also extend its supervision to:

- any entity that has received a subscription or management mandate from an undertaking engaging in insurance transactions;
- any entity taking out a group insurance policy;
- any entity acting as an insurance or reinsurance intermediary in any way whatsoever;
- any entity that intervenes directly or indirectly between a body referred to in 3) or 4) and an entity wishing to join or belonging to said body.

2

Organisation of the ACP

The ACP is organised in a way that reflects its status as an independent administrative authority spanning both the banking and the insurance sectors. The organisational structure meets several essential requirements, including independence, collegial governance, the presence of the various skills the Authority needs to fulfil its statutory objectives, as well as effective, responsive and consistent decision-making.



* NB: This organisational structure was presented in detail in the ACP's 2010 annual report (cf. page 19).

The ACP College



First row, from left to right :

Hélène Rey, Hervé de Villeroché (General Directorate of Treasury), Jean-Philippe Thierry, Vice-charman of the ACP, Danièle Nouy, Secretary General of the ACP, Christian Noyer, Chairman of the ACP, Anne Le Lorier, First Deputy Governor of the *Banque de France*, Robert Ophèle, Second Deputy Governor of the *Banque de France*, Monique Millot-Pernin, Lucien Uzan, Jean-Philippe Vachia.

Second row, from left to right :

Cyril Roux, First Deputy Secretary General of the ACP, Jean-Marie Levaux, Philippe Mathouillet, Jérôme Haas, Olivier Fouquet, Christian Poirier, Francis Assié, Jean-Pierre Jouyet.

Back row, from left to right :

Dominique Thiry, Emmanuel Constans, Thierry Coste, Philippe Auberger, Dominique Hoenn.

Membership of the various bodies of the ACP College

Plenary session (19 members)	Restricted session (8 members)
<p>Chairman: 01 Christian Noyer 02 or Robert Ophèle</p> <p>A Vice-Chairman with professional experience in insurance matters, appointed by the ministers in charge of the economy, social security and mutual insurance: 03 Jean-Philippe Thierry, Vice-Chairman of the ACP.</p> <p>The other members of the ACP College are: 04 Jean-Pierre Jouyet, Chairman of the AMF</p> <p>05 Philippe Auberger appointed by the Chairman of the National Assembly</p> <p>06 Monique Millot-Pernin, appointed by the President of the Senate</p> <p>07 Jérôme Haas, Chairman of the <i>Autorité des normes comptables</i> (Accounting Standards Authority)</p> <p>Appointed following proposal from the Vice-Chairman of the <i>Conseil d'État</i>: 08 Olivier Fouquet, <i>conseiller d'État</i></p>	<p>Chairman: Christian Noyer or Robert Ophèle</p> <p>Vice-Chairman: Jean-Philippe Thierry</p> <p>Chairman of the <i>Autorité des normes comptables</i>: Jérôme Haas</p> <p><i>Conseiller</i> at the <i>Cour des comptes</i>: Jean-Philippe Vachia</p> <p>Members chosen for their expertise in banking: Thierry Coste Dominique Hoenn</p> <p>Members chosen for their expertise in insurance: Philippe Mathouillet Dominique Thiry</p>
<p>Appointed following proposal from the Chairman of the <i>Cour de cassation</i>: 09 Francis Assié, <i>conseiller</i></p> <p>Appointed following proposal from the Chairman of the <i>Cour des comptes</i>: 10 Jean-Philippe Vachia, <i>Conseiller maître</i> (senior auditor)</p> <p>Appointed for their expertise in customer protection or quantitative or actuarial techniques or in other matters that are helpful for the performance of the Authority's statutory objectives: 11 Emmanuel Constans 12 Hélène Rey</p> <p>Appointed for their expertise in insurance, mutual insurance, provident institutions and reinsurance: 13 Jean-Marie Levaux 14 Philippe Mathouillet 15 Dominique Thiry 16 Lucien Uzan</p> <p>Appointed for their expertise in banking transactions, payment services and investment services: 17 Thierry Coste 18 Dominique Hoenn François Lemasson 19 Christian Poirier</p>	
<p>Banking Sub-College (8 members, 4 of whom with experience in banking)</p>	<p>Insurance Sub-College (8 members, 4 of whom with experience in insurance)</p>
<p>Chairman: Christian Noyer or Robert Ophèle</p> <p>Vice-Chairman: Jean-Philippe Thierry</p> <p><i>Conseiller d'État</i>: Olivier Fouquet</p> <p>Expert member: Emmanuel Constans</p> <p>Members chosen for their expertise in banking: Thierry Coste Dominique Hoenn François Lemasson Christian Poirier</p>	<p>Chairman: Jean-Philippe Thierry</p> <p>The Governor or Deputy-Governor of the <i>Banque de France</i>: Christian Noyer or Robert Ophèle</p> <p><i>Conseiller</i> at the <i>Cour de cassation</i>: Francis Assié</p> <p><i>Conseiller</i> at the <i>Cour des comptes</i>: Jean-Philippe Vachia</p> <p>Members chosen for their expertise in insurance: Jean-Marie Levaux Philippe Mathouillet Dominique Thiry Lucien Uzan</p>

Furthermore the Director General of the Treasury or his or her representative sits on all of the bodies of the College, and the Director of the Social Security administration, or his or her representative, sits on the Insurance Sub-College or other sessions when they deal with the entities governed by the Mutual Insurance Code or the Social Security Code. They do not have a vote, but they are entitled to ask for matters to be deliberated a second time.

2.1 The ACP College

The Board has 19 members and is chaired by Christian Noyer, Governor of the *Banque de France*. It has several configurations depending on the topics and issues it is addressing.

- **The plenary session** of the College deals with general supervisory and financial stability issues, along with general issues affecting the authority's operations, e.g. setting supervisory priorities, voting on the budget and establishing organisational and operating principles.
- **Two Sub-Colleges**, one for banking, the other for insurance, have jurisdiction over individual matters and general issues relating to the respective sectors.

The Banking Sub-College can meet in a Monegasque configuration when issues specific to the Principality of Monaco are being discussed. In this case, Monaco is represented by Isabelle Rosabrunetto, the Principality's Director of the Budget and Treasury.

- **A restricted session of the College**, composed of eight members, deals with individual issues having a material impact on the two sectors or on financial stability as a whole, as well as matters relating to the supervision of financial conglomerates.

Jean Paul Redouin, first Deputy-Governor of the *Banque de France*, chaired the restricted session of the College and the Banking Sub-College as a representative of the ACP Chairman, from the creation of the Authority until 31 December 2011. He was replaced on 4 January 2012 by Robert Ophèle, second Deputy-Governor of the *Banque de France*.

2.2 The Sanctions Committee

The objective of the ACP Sanctions Committee is to punish breaches of laws and regulations applicable to reporting institutions. The membership and activities

of the committee are discussed in detail in Chapter 4.

2.3 The Audit Committee

In accordance with its internal procedures, the ACP has also formed an Audit Committee to make sure that its resources are properly used. The committee acts as a consultative body, giving a prior opinion especially on:

- the ACP's preliminary budget before it is adopted by the College,
- the budget outturn report for the previous year, which sets out all the ACP's income and expenses for the period and analyses the rebilling of resources

and services sourced by the *Banque de France*, as well as variances between the original budget and the outturn;

- the rebilling agreements for resources and services provided by the *Banque de France*, before they are approved by the ACP College.

(Further details on the Audit Committee and its activities in 2011 can be found in Chapter 6).

MEMBERSHIP OF THE ACP AUDIT COMMITTEE

- Lucien Uzan, Chairman
- Jean-Philippe Vachia, *Conseiller-maître* at the *Cour des comptes*
- Jérôme Haas, Chairman of the *Autorité des normes comptables*
- François Lemasson

2.4 Consultative Committees and Scientific Consultative Committee

The College has set up several consultative committees to assist it with specific topics.

The task of the **Consultative Committee on Prudential Affairs** is to give an opinion prior to adoption on ACP instructions governing reporting institutions' periodic prudential filings. The committee is also consulted on draft versions of

explanatory notices or guides (Details of the Consultative Committee on Prudential Affairs and its activities in 2011 can be found in Chapter 5).

MEMBERSHIP OF THE CONSULTATIVE COMMITTEE ON PRUDENTIAL AFFAIRS

- **Dominique Thiry**, Chairman
- **Christian Poirier**, Vice-Chairman

Members appointed from entities reporting to the ACP:

Insurance sector

- **Cédric Cornu**, Pro BTP
- **Nicolas Eyt**, SOGÉCAP
- **Christian Herbere**, La Mutuelle Familiale
- **David Kadoch**, Axa
- **Richard Rey**, Covéa

Banking sector

- **Francis Canterini**, Crédit agricole
- **François Laugier**, Dexia
- **Benoît Catherine**, Exane
- **Christian Lajoie**, BNP Paribas
- **Catherine Meritet**, Société générale
- **Éric Spielrein**, RCI Banque

The following professional associations are also members of the committee:

Insurance sector

- *Centre technique des institutions de prévoyance (CTIP)*
- *Fédération française des sociétés d'assurances (FFSA)*
- *Fédération nationale de la mutualité française (FNMF)*
- *Groupement des entreprises mutuelles d'assurances (GEMA)*

Banking sector

- *Association française des sociétés financières (ASF)*
- *Association française des marchés financiers (AMAFI)*
- *Fédération bancaire française (FBF)*

Caisse des Dépôts et Consignations appoints a representative.

The **Consultative Committee on Anti-Money Laundering** gives an opinion on draft versions of instructions, guidelines and other ACP documents dealing with money laundering and terrorist finan-

cing. (Details of the anti-money laundering committee and its activities in 2011 can be found in section 2.3, Chapter 2).

MEMBERSHIP OF THE CONSULTATIVE COMMITTEE ON ANTI-MONEY LAUNDERING

- **François Assié**, Chairman
- **François Lemasson**, Vice-Chairman

Five members appointed from entities reporting to the ACP:

Insurance sector

- **Gaël Buard**, Natixis Assurances
- **Philippe Giraudel**, Groupama
- **Paul-Henri Mezin**, *groupe Malakoff Médéric*
- **Catherine Petapermal**, *La France Mutualiste*
- **Dominique Rouquayrol de Boisse**, Axa France

Eight members appointed from entities reporting to the ACP:

Banking sector

- **Alain Breuillin**, Bank Audi Saradar France
- **Raoul d'Estaintot**, *Caisse fédérale de Crédit mutuel*
- **Catherine Frenzel**, Exane
- **Édouard Leveau-Vallier**, HSBC France
- **Jacques Piccioloni**, BNC
- **Henri Quintard**, BNP Paribas
- **Luc Retail**, *la Banque Postale*
- **Grégory Torrez**, Banque Accord

The following professional associations are also members of the committee:

Insurance sector

- *Centre technique des institutions de prévoyance (CTIP)*
- *Fédération française des sociétés d'assurances (FFSA)*
- *Fédération nationale indépendante des mutuelles (FNIM)*
- *Fédération nationale de la mutualité française (FNMF)*
- *Groupement des entreprises mutuelles d'assurances (GEMA)*
- *Chambre syndicale des courtiers d'assurances (CSCA)*

Banking sector

- *Association française des établissements de paiement et de monnaie électronique (AFEPAME)*
- *Association française des sociétés financières (ASF)*
- *Association française des marchés financiers (AMAFI)*
- *Fédération bancaire française (FBF)*

Caisse des Dépôts et Consignations appoints a representative.

The duties of the **Consultative Committee on Business Practices** are to give an opinion on draft recommendations within its jurisdiction, go deeper into issues relating to business practices identified by the ACP, and gather information and

suggestions from its members on customer protection. (Details of the business practices committee can be found in section 5, Chapter 3).

MEMBERSHIP OF THE CONSULTATIVE COMMITTEE ON BUSINESS PRACTICES

- **Emmanuel Constans**, Chairman
- **Jean-Marie Levaux**, Vice-Chairman

Five members chosen for skills acquired by participating in associations representing professional or retail customers, savers' associations, charity organisations operating in this area, and the consumer institute INC:

- **Jean Berthon**, FAIDER
- **Véronique Crespel**, *Familles de France*
- **Fanny Favorel-Pige**, *Conseil du commerce de France*
- **Valérie Gervais**, AFOC
- **Nicole Perez**, *UFC-Que Choisir*

Four members chosen for skills acquired at a credit institution, insurance institution or industry group:

- **Pierre Bocquet**, FBF
- **Élisabeth Havis**, MATMUT
- **Alain Lasseron**, ASF
- **Philippe Poiget**, FFSA

Two members chosen for skills acquired at an insurance intermediary, an intermediary specialising in banking transactions and payment services or an industry group:

- **Patrick Charrier**, VERSPIEREN
- **Hervé Wignolle**, AFIB

One member chosen for his experience in representing the staff of entities reporting to the ACP:

- **Luc Mathieu**, CFDT, full member of CCSF

One member chosen for his academic work on banking and insurance issues:

- **Pierre-Grégoire Marly**, senior law professor

One member chosen for his expertise in monitoring these issues through the media:

- **Jean-François Filliatre**, chief editor, *Mieux vivre votre argent*

The ACP has also set up a **Scientific Consultative Committee** to promote synergy between financial research and prudential supervision and to keep abreast of scientific developments in the

banking and insurance sectors. (Details of the scientific committee and its activities in 2011 can be found in section 3, Chapter 2).

MEMBERSHIP OF THE SCIENTIFIC CONSULTATIVE COMMITTEE

- **Hélène Rey**, Chair (London Business School)
- **Philippe Mathouillet**, Vice-Chairman

- **Antoine Frachot** (*Écoles nationales d'économie et de statistiques*)
- **Guillaume Leroy** (*Institut des actuaires*)
- **Didier Marteau** (ESCP Europe)
- **Guillaume Plantin** (*université de Toulouse*)
- **Christian Gourieroux** (ENSAE)
- **David Thesmar** (HEC)
- **Philippe Weil** (OFCE)
- **Philippe Trainar** (SCOR)
- **Laurent Clerc** (*Banque de France*)

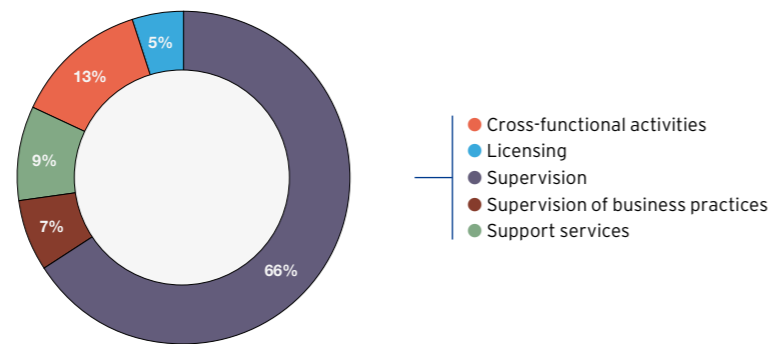


2.5 Operational services under the umbrella of the General Secretariat

The General Secretariat is responsible for implementing the decisions of the College. With a staff of 1,008 *Banque de France* employees at end-2011, it is chaired by a Secretary General, Danièle Nouy,

who authorises expenditure within the limits of the budget voted by the College. The Secretary General is assisted by a First Deputy Secretary General and four other Deputy Secretaries General.

• Staff analysis by main area of activity



In terms of activity, 78% of the staff (annual average full-time equivalents) are responsible for supervising reporting institutions on an individual basis, monitoring business practices and licensing and authorising institutions. A further 13% are assigned to macroprudential supervision, international work on regulatory preparation, legal activities and cross-cutting assignments. The remaining 9% of the staff perform support services, which include human resources management, training, management control and budgeting, premises, logistics and IT system management. (However, projects relating to IT applications designed specifically for the activities of the ACP General Secretariat are the responsibility of the major activity areas concerned.)

The administrative structure of the General Secretariat's staff changed significantly in 2011 because a large percentage of former ACAM employees accepted an offer to join the statutory staff of the *Banque de France*, effective 1 July 2011, in accordance with the terms of the Executive Order of 21 January 2010 instituting the ACP.

In consequence, the staff at end-2011 (976.3 FTEs, excluding interns) breaks down into 87% permanent and private-law contract employees, 9% civil servants and public-law contract employees, and 4% personnel on fixed-term contracts.

AN ONGOING AND INTENSIVE RECRUITMENT DRIVE FROM THE OUTSET

It is vitally important to consolidate the ACP's workforce, given the extent of its duties, the impact of the financial crisis and the introduction of new backbone regulations in banking and insurance.

The recruitment targets should result in an overall increase in staff numbers to some 1,150 at end-2012 compared with 898 immediately after the merger. This ambitious target is being pursued jointly with the *Banque de France* through an intensive recruitment drive focusing on internal job transfers and *Banque de France* competitive exams (a substantial proportion of successful candidates are assigned to the ACP General Secretariat) as well as on external hiring.

In the insurance sector, a variety of initiatives are underway to encourage the recruitment of people with scientific backgrounds, in view of the changes being

made to the status of insurance examiners. Furthermore, the ACP has organised recruiting panels - an unprecedented procedure at the *Banque de France* - and is playing a more active part in jobs forums.

As a result, 30 people with science-based backgrounds were hired on open-ended contracts in 2011, thus meeting the recruitment target for managerial and executive staff in the insurance field and establishing a positive outlook for further recruitments in 2012.

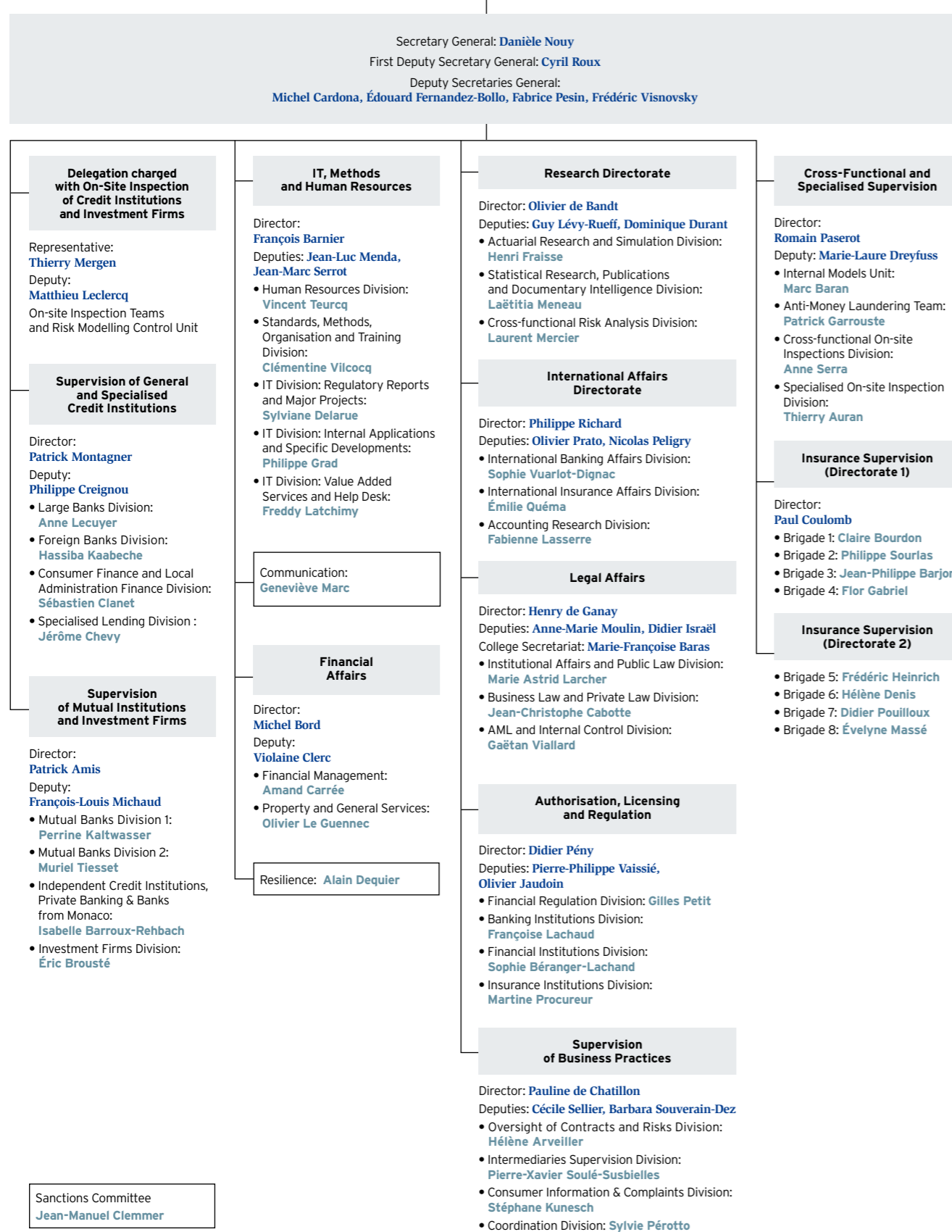
Training is also a key concern during periods of intensive recruitment. ACP staff followed a total of 54,000 hours' training in 2011, and that figure is set to increase by 50% in 2012. In terms of content, the emphasis was on induction of new recruits, management and upskilling to deal with regulatory developments under Basel III and Solvency II.

The Deputy Secretaries General of the ACP



From left to right : Michel Cardona, Cyril Roux, First Deputy Secretary, Édouard Fernandez-Bollo, Fabrice Pesin, Frédéric Visnovsky.

Organization chart of the ACP General Secretariat (march 2012)



The Management Board of the ACP (31 march 2012)



From left to right : Patrick Amis, François Barnier, Henry de Ganay, Romain Paserot, Paul Coulomb, Olivier Fliche, Pauline de Chatillon, Thierry Mergen, Patrick Montagner, Didier Pény, Michel Bord, Olivier de Bandt, Philippe Richard.

THE ACP: AN INDEPENDENT ADMINISTRATIVE AUTHORITY ATTACHED TO THE BANQUE DE FRANCE

The ACP is attached to the Banque de France so that, for its supervisory duties, it can benefit from a full range of synergies with the central bank's other functions and from its resources, given its role in maintaining financial stability. This support takes several forms:

- the Banque de France employs the ACP's staff;

- the ACP uses the Banque de France's resources;
 - the ACP has its own budget, which is an annex to the central bank budget.
- The Banque de France collects reporting institutions' contributions to its operating expenses and transfers them in full to the ACP. It may also top up these contributions with additional allocations.

3

Powers of the ACP College and its activities in 2011

The ACP's powers allow it to take action in respect of all reporting entities in order to fulfil its two interlocking statutory objectives: maintaining the stability of the financial system and protecting customers.

College activity in figures...

570

decisions in 2011, chiefly composed of

- 445 decisions on individual situations
- 31 on general issues
- 18 on the ACP's organisation and General Secretariat

23

administrative policing measures

44

injunctions

3

disciplinary proceedings initiated

The ACP has inherited the combined powers of its legacy authorities. The Parliament enhanced those powers so that the Authority could carry out its duties in the area of customer protection. It has supervisory, policing and sanctioning powers over the entities referred to in Article L. 612-2 of the Monetary and Financial Code (cf. 1.2 on the ACP scope of supervision). The Authority also has the right to publicly disclose any information deemed ne-

cessary to fulfil its statutory objectives, without being bound by the rules of professional secrecy. In addition it uses proprietary legal instruments, notably to inform reporting institutions of the policy settings and analyses on which it relies to carry out its duties.

3.1 Decisions of general scope

Given the extent and diversity of its powers and instruments, the ACP decided to summarise them in a single document, "*Politique de transparence de l'Autorité de contrôle prudentiel*", which explains how they are used. The aim was to give reporting institutions a better understanding of the Authority's activities. This initiative was taken in response to a demand for clarification concerning, among other things, the ACP's terminology. Accordingly, on 7 July 2011, the Authority published an **explanatory document** on its official register containing full details of all its instruments, notably their nature, terminology, content and legal scope.

The document was put out to **public consultation** on 1 February 2011 and was also submitted for consultation to professional associations and the College's consultative committees, especially the committee on business practices. In light of the extensive discussions that ensued, the ACP clarified some aspects of its transparency policy prior to adoption.

The final version of the document makes a distinction between the instruments covering all the ACP's policy areas and those relating specifically to marketing and customer protection. It also describes the procedure used for adopting the instruments, which involves close cooperation between the ACP and the professions it supervises.

A Instruments covering all the ACP's policy areas

The ACP adopts **instructions** setting forth the list, format, frequency and filing schedules for the mandatory documents and information that reporting institutions submit periodically. The content of standard applications files, particularly for licensing, is also specified in instructions.

Instructions are compulsory; non-compliance can thus lead to administrative enforcement measures or disciplinary sanctions. Further, in the event of failure to conform to instructions on periodic document filing, the College can issue an injunction and a coercive fine. All instructions are published on the ACP's official register.

In 2011, the College adopted **19 instructions on matters of licensing, prudential supervision, anti-money laundering or business practices**.

To clarify the meaning and scope of some legislative and regulatory measures, the ACP draws up **notices** on prudential matters³, as well as **guidelines** and **sector enforcement principles** for anti-money laundering and terrorist financing. It also adopts analyses on specific issues in the form of **positions**⁴ and **answers to queries** from reporting institutions.

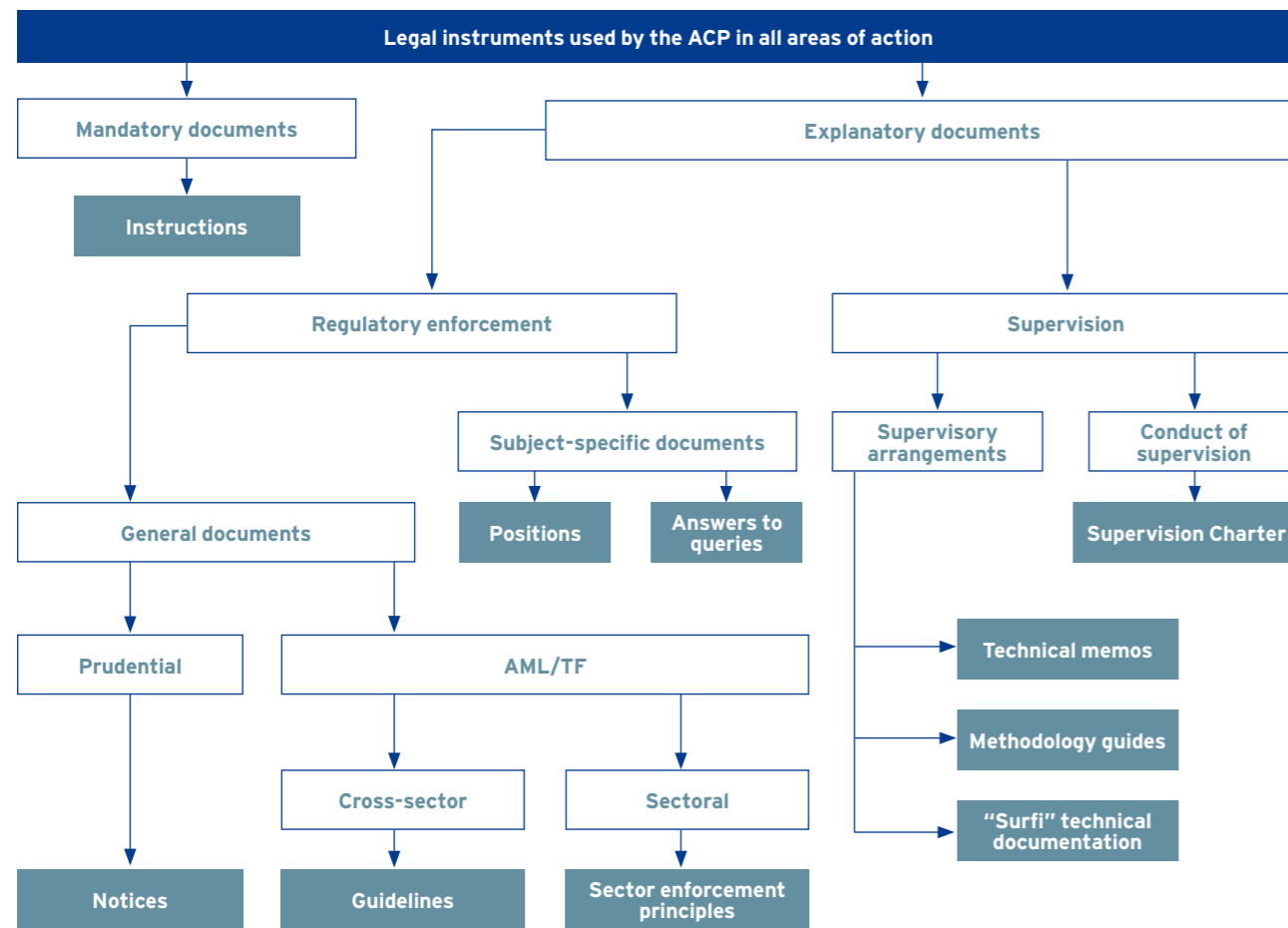
In 2011, the College adopted a position of the legal classification of rolling spot forex transactions. In the sphere of anti-money laundering, it adopted three guidelines on beneficial owners, third-party reliance on due diligence and intra- and extra-group exchanges of information. It also adopted sector enforcement principles on third-party reliance for the insurance sector.

To explain precisely how it operates, the Authority adopts **supervision charters**, which bind it to the institutions being inspected, notably on-site. Two charters have so far been adopted, one for the insurance sector, the other for on-site inspections in the sectors of banking, payment services and investment services.

³ For example, application of the advanced approach for liquidity risk management (ministerial order of 5 May 2009), solvency ratio calculation methods (ministerial order of 20 February 2007 on capital requirements for credit institutions and investment firms and Regulation 90-02 on capital).

⁴ For example, ACP position on sales with premium in life insurance, 4 November 2010.

The ACP's legal instruments



B Instruments specific to the ACP's activities in the areas of marketing and customer protection

In the sphere of customer protection, the ACP is empowered to elicit **best practices** for reporting institutions. It can either take formal note of existing practices or formulate **recommendations** that define them.

Any institution that jeopardises its customers by deviating from best practices is liable for a warning which, if not heeded, can lead to the opening of disciplinary proceedings.

In 2011, the ACP issued five recommendations in the areas of life insurance, management of customer accounts by credit institutions, and handling of customer complaints by reporting institutions. The latter recommendation applies both to banking and to insurance (cf. Chapter 3).

The ACP can also **approve codes of conduct** at the request of professional associations representing one or more categories of reporting institutions. If approved, the code becomes binding on the members of the association seeking approval. If a code of conduct is not complied with, the ACP can issue an enforcement order which, if breached, can give rise to a sanction. However, it cannot directly open a disciplinary proceedings solely on the grounds of having observed the non-compliance (cf. Chapter 3).

The ACP adopted instruction 2011-I-19 on 23 November 2011 to clarify the application procedures for approving a code of conduct. In particular, the instruction requires associations filing an approval application to append a table setting out the provisions of the code of conduct, having regard to prevailing regulations, observed practices, and objectives. The ACP has also published a list of representative professional organisations, within the meaning of Article L. 612-29-1 of the Monetary and Financial Code, that are entitled to submit applications. However, organisations that are not on the list may submit an application if they meet the conditions set forth in Article L. 612-29-1, i.e. they "represent[...] the interests of one or more categories of entities within the area of competence of the Autorité de contrôle prudentiel, or which may be subject to its supervision" and their members are entities that report to the ACP.

C Adoption procedure: close cooperation between the ACP and reporting institutions

The ACP's use of its instruments entails a consultation with the industry or, where relevant, with other stakeholders. The instruments are adopted by the ACP College after referral to the **consultative committees** it has established and, where appropriate, after a broad-based **specific consultation**.

ACTING TRANSPARENTLY

Acting transparently by publishing instruments and documents adopted by the College on the ACP's online official register

Aside from the statutory provisions on document disclosure and accessibility, including for the general public in the sphere of customer protection, the ACP College places great importance on acting transparently and making sure that reporting institutions heed its policies and analyses. All instruments and documents adopted by the College are therefore published on the ACP's **official register**, which is accessible on its website. Moreover, codes of conduct approved by the Authority and the other best practices it has noted or recommended are collated in a special area of the site ("*Supervision of Commercial Practises*").

Decisions on general issues adopted in 2011

INSTRUCTIONS	
01/11/2011	Instruction 2011-I-01 on the creation of a supplemental table for quarterly statement Q2
01/11/2011	Instruction 2011-I-02 on the creation of a supplemental table for statements of investments
02/04/2011	Instruction 2011-I-03 amending Commission bancaire instructions 2010-01, 2010-02 and 2010-03 on the information and documents to be submitted by money changers and persons carrying on a money changing business pursuant to the ministerial order of 10 September 2009 on the business of money changing
04/20/2011	Instruction 2011-I-04 on information about the Anti-money laundering and counter terrorist financing system as regards money changers - Table AML B1 - Identity of Tracfin reporting members of staff and identity of Tracfin correspondents - Table AML B2 - Internal procedures - Table AML B3 - Data on the previous year - Table AML B4 - Annual statistical statement
07/01/2011	Instruction 2011-I-05 on the information to be submitted to the <i>Autorité de Contrôle Prudentiel</i> in connection with the acquisition or extension of an ownership interest in an insurance or reinsurance undertaking
07/01/2011	Instruction 2011-I-06 on the cover ratio for mortgage credit institutions and home loan companies
07/01/2011	Instruction 2011-I-07 on disclosure by mortgage credit institutions and home loan companies on the quality of funded assets
07/07/2011	Instruction 2011-I-10 on monitoring the internal models used to calculate capital requirements
07/11/2011	Instruction 2011-I-08 on commitments related to international banking business
07/21/2011	Instruction 2011-I-11 amending instruction 2007-02 of 26 March 2007, as amended
08/04/2011	Instruction 2011-I-09 amending Annex 4 of Instruction 2009-01 on implementing a uniform financial reporting system
10/13/2011	Instruction 2011-I-14 on the supervision of home loan risks in France
11/14/2011	Instruction 2011-I-15 amending instruction 2000-09 on information about the Anti-money laundering and counter terrorist financing system and instruction 2010-08 on information about the Anti-money laundering and counter terrorist financing system concerning payment institutions
12/01/2011	Instruction 2011-I-19 on the procedure for approving a code of conduct
12/01/2011	Instruction 2011-I-17 modifying the licensing application form for payment institutions
12/01/2011	Instruction 2011-I-16 on the contents of the declaration prior to affiliation with, withdrawal from or exclusion from a Mutual Insurance Group Union
12/02/2011	Instruction 2011-I-13 amending instruction 2000-07 of 4 September 2000 on supervision of large exposures and gross risks
12/02/2011	Instruction 2011-I-12 amending instruction 2007-02 of 26 March 2007 on capital requirements for credit institutions and investment firms
12/06/2011	Instruction 2011-I-18 amending ACP instructions 2009-01 of 19 June 2009 on implementing a uniform financial reporting system; 2008-04 of 30 April 2008 on the ring-fencing of customers' funds by investment firms; 2010-06 of 15 February 2010 implementing a uniform financial reporting system for payment institutions; 2009-04 of 19 June 2009 on supplementary rebates for calculating contributions due from institutions subject to the guarantee systems for deposits, securities and bank guarantees; and 93-01 on submission to the ACP of annual financial statements, prudential documents and sundry information

RECOMMENDATIONS	
02/15/2011	Recommendation 2011-R-01 on management by credit institutions of trustee accounts on behalf of joint ownerships
03/25/2011	Recommendation 2011-R-02 concerning advertising communication for unit-linked life insurance contracts, with bonds and other debt securities as underlying assets
05/06/2011	Recommendation 2011-R-03 concerning the marketing of unit-linked life insurance contracts, with debt securities issued by an entity that is financially linked to the insurance undertaking as underlying assets
06/17/2011	Recommendation 2011-R-04 on the marketing of life insurance policies linked to funeral payment plans
12/14/2011	Recommendation 2011-R-05 on complaints handling

GUIDELINES	
04/08/2011	Guidelines on third-party reliance on due diligence
04/08/2011	Guidelines on intra- and extra-group exchanges of information
10/17/2011	Guidelines on beneficial owners (explanatory document)

SECTOR ENFORCEMENT PRINCIPLES	
12/27/2011	ACP sector enforcement principles on third-party reliance in the insurance sector

POSITION	
05/31/2011	Position 2011-P-01 on the legal classification of rolling spot forex transactions

OTHER DECISIONS	
07/07/2011	Transparency policy of the <i>Autorité de contrôle prudentiel</i> (explanatory document)
12/27/2011	Decision 2011-C-75 - List of professional associations entitled to seek ACP approval of a code of conduct

All these documents are published on the ACP's official register, accessible online at www.acp.banque-france.fr.

The ACP has received a diverse range of statutory instruments that give it a substantial capacity to fulfil all its statutory objectives. That diversity is underscored by the fact that the instruments can be

used on a combined basis. While some of the new instruments instituted in the field of customer protection are mainly designed for explanatory and preventive purposes, this does not rule out the use of the enforceable or punitive measures set forth in the Monetary and Financial Code.

3.2 Decisions concerning individual entities

Issues relating to individual entities are examined by the sectoral sub-colleges and restricted session of the College. They relate in particular to licensing applications and, for institutions that are already licensed, to applications for changes in situation, authorisations and waivers provided for in regulations, as well as to supervisory follow-up action, which may include injunctions, administrative enforcement measures and the opening of disciplinary proceedings, as the case may be (A). The College has delegated some of its powers to the Chairman or the Vice-Chairman and to the Secretary General (B). The College took a total of **445 measures affecting individual institutions in 2011**.

A Powers of the College

a. Licensing

Institutions wishing to carry on a banking or insurance business must submit a **licensing** application to the ACP. Pursuing an unlicensed business is liable to criminal penalties.

When an institution is issued with a license, it acquires a status that brings it under the ACP's scope of supervision, pursuant to Article L. 612-2 of the Monetary and Financial Code. Generally speaking, the College pays particularly close attention to the quality of the proposals submitted to it, which are often backed up by commitments or conditions. Most of the licenses granted by the ACP in 2011 were in the banking sector (cf. section 1, Chapter 2).

To ensure better public disclosure and customer protection, Article L. 612-21 of the Monetary and Financial Code empowers the Authority to draw up and publish a list of licensed entities and of intermediaries in banking transactions

and payment services declared by their principals. Drawn up as at 1 January each year, the list is published on the ACP's website under "*Licences and authorisations*".

b. Authorisations

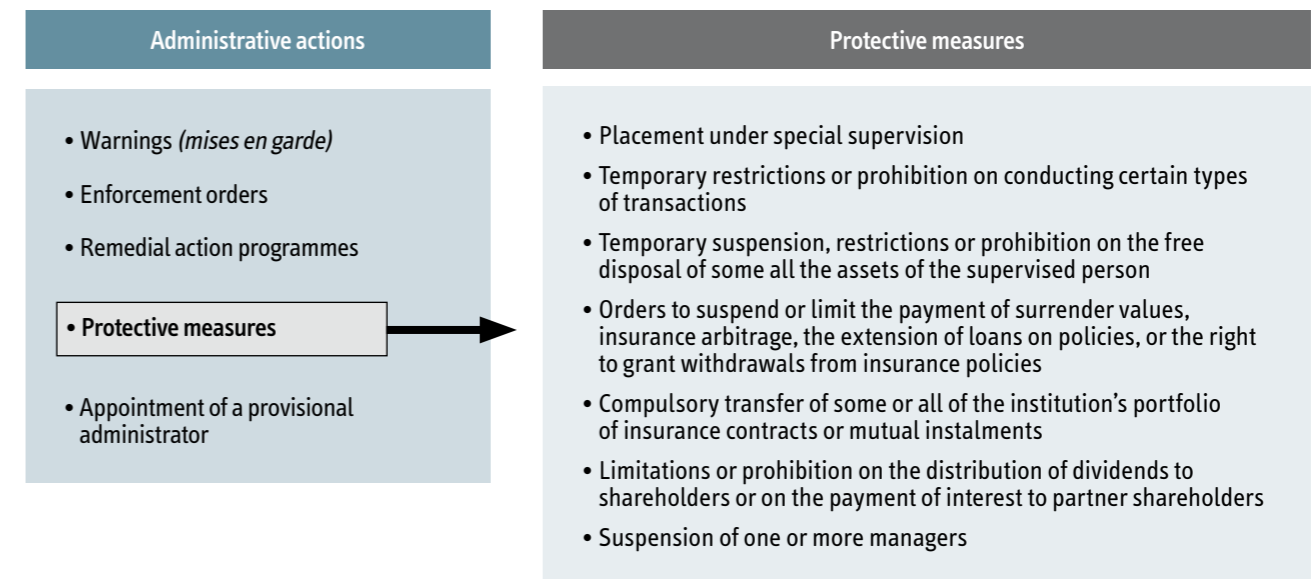
Throughout 2011, the College examined a large number of transactions subject to authorisation. This is because any **changes** to or **extension** of a license issued by the College have to be referred to it. It can also **withdraw** a licence. In accordance with regulations, reporting institutions have to obtain an authorisation from the College to carry out certain transactions or to use internal approaches for calculating regulatory ratios. Furthermore, the College can also grant temporary waivers.

c. Supervision

The College is charged with setting supervisory priorities, both for its main focal areas and for the general resources allocated to them. The special organisational arrangements for these tasks are the responsibility of the Secretary General. In this regard, the College reviews the results of individual inspections as well as general issues of financial stability that inform its thinking.

Also, in the course of the year it may take several decisive decisions concerning the supervision of reporting institutions, whether in a European or a purely domestic framework; the effects of such decisions are similar to those of administrative enforcement measures. In the banking sector, for example, pursuant to Article L. 511-41-3 of the Monetary and Financial Code, it can subject credit institutions to capital requirements that exceed the regulatory minimum (so-called Pillar 2 measures).

List of administrative actions



d. Administrative enforcement measures

The ACP has broad powers to take administrative enforcement measures, acting in a corrective capacity with a dual aim of financial stability and customer protection.

When it observes a reporting entity engaging in practices that could jeopardise the interests of its customers, policyholders, members or beneficiaries, the Authority can issue a **warning**. If the practices continue, the College can decide to open disciplinary proceedings.

That power, set forth in Article L. 612-30 of the Monetary and Financial Code, is tailored specifically to the ACP's duties in the area of business practices. **The Authority used it against three credit institutions in 2011**. These institutions' practices made it possible for one of their customers to avail itself of funds entrusted by householders' associations to property managing agents in its network. Deposited on trustee accounts and transferred to third institutions by

debiting "mirror" accounts opened in the agents' names, the funds were subject to agreements to amalgamate those accounts with the trustee accounts, such that no debits appeared on the latter. As a result, monies deposited on the agents' trustee accounts in the name of housing associations might not have been available to serve their statutory purpose of settling the associations' expenses.

The ACP also has the power to issue **enforcement orders**, as per Article L. 612-31 of the Monetary and Financial Code, whereby it demands that a reporting entity take any and all measures necessary to achieve compliance with prevailing regulations within a set timeframe. The College can decide to open disciplinary proceedings if the order is not heeded within the specified period. **Six enforcement orders were issued in 2011** against three credit institutions, two investment firms and one insurance institution. They mainly concerned requirements on internal control, anti-money laundering and control of liquidity risk.

The Authority also required one insurance institution to submit a **remedial action programme**, in accordance with Article L. 612-32 of the Monetary and Financial Code.

Also in 2011, it placed one insurance institution under **provisional administration** (art. L. 612-34). In all, three insurance institutions and three banks were under **provisional administration** at end-2011.

The diversity of these powers and the fact that they can be used successively or together means that the ACP's action is efficient, effective and proportional.

In addition to these powers, the ACP can rely on a wide range of **protective measures**, provided in Article L. 612-33 of the Monetary and Financial Code, if the solvency or liquidity of an inspected entity or the interests of its customers are or may be compromised. It can:

- place an entity under special supervision;
- restrict or temporarily prohibit the execution of certain transactions;
- suspend, restrict or temporarily prohibit the free disposal of all or some of the supervised entity's assets;
- order the suspension or limitation of payment of surrender values, the right to execute insurance arbitrage transactions, the extension of loans on policies or the right to grant withdrawals from insurance policies;
- compulsory transfer all or some of the insurance contracts or mutual instalments;
- prohibit or limit the distribution of a dividend to the shareholders or a payment of interest to partner shareholders;
- suspend one or more of the supervised entity's senior managers.

In 2011, the College decided to **transfer the portfolio of an insurance institution** that was under provisional administration at the time. In addition to initiating the automatic transfer procedure, published in a notice in the *Official Journal of the French Republic*, the ACP issued a call for tenders to take over the portfolio. Several bidders responded and the Authority selected one of them.

It should be noted that if a supervised entity breaches the obligation to make a declaration or to provide periodic statements, documents or data, the ACP may impose an injunction along with a coercive fine, pursuant to Article L. 612-25 of the Monetary and Financial Code.

Since all these measures are binding, inter partes proceedings must be instituted before they are implemented, as provided in Articles L. 612-35 and R. 612-34 of the Monetary and Financial Code and Article 16 of the ACP Rules of Procedure. In accordance with those proceedings, the College has to inform the respondent institution of the measures it envisages and why it considers them justified. The institution is given a period of time in which to submit its written and/or oral comments. Furthermore, in cases where protective measures or the appointment of a provisional administrator are being envisaged, the institution is summoned to a hearing before the College, at which it may be assisted or represented by the persons of its choosing. The College does not adopt a final position until this procedure is complete. In an emergency, however, the ACP can decide to take protective measures or appoint a provisional administrator on a temporary basis without prior inter partes proceedings. In this case, the proceedings must be instituted immediately in order to lift, adapt or confirm the measure.

e. Opening of disciplinary proceedings

The College in restricted session, the Banking Sub-College and the Insurance Sub-College can decide to initiate a sanction procedure, based either on the conclusions reached by the ACP as part of its prudential supervision duties or on the on-site inspection report prepared under Article L. 612-27 of the Monetary and Financial Code.

The chairman of the relevant session notifies the institution concerned of the complaints against it and forwards the notification to the Sanctions Committee. The College appoints one of its members, assisted by the ACP's staff, to represent it in relation to the Sanctions Committee. It may also decide that the appointed College member should be represented by the ACP's staff. The College representative is responsible for submitting written comments during the examination phase and speaking at the hearing where he proposes a sanction.

The College opened three disciplinary proceedings in 2011, following publication of Decree 2011-769 of 28 June 2011 revisiting Sanctions Committee proceedings.

The ACP Chairman can lodge an appeal against a Sanctions Committee decision within two months of being notified, after having first been authorised to do so by the College session that originated the disciplinary proceedings. No such appeals were lodged in 2011 (cf. Chapter 4).

B Delegation of powers

As allowed by law, the College has delegated some of its powers to its Chairman or Vice-Chairman (art. L. 612-14 of the Monetary and Financial Code) and to the Secretary General (art. L.612-15).

The two initial delegation decisions, dating from 12 April 2010 and published in the *Official Journal of the French Republic*, were amended by decisions 2011-C-22 and 2011-C-23 of 15 June 2011 and decisions 2011-C-29 and 2011-C-30 of 13 July 2011, to accommodate recent legal and regulatory measures and to make the arrangements more efficient. In this regard, materiality thresholds were brought in for some decisions.

Powers have so far been delegated in the following areas:

Delegation of powers by the College to the Chairman

- Issuing enforcement orders;
- suing for criminal damages;
- issuing and withdrawing authorisations to money changers;
- withdrawing a license, at the request of a reporting entity in the banking sector, where the decision takes effect without a settlement period;
- authorising the decrease below 10% of the voting rights by a capital provider, for banking and insurance institutions;
- authorising freedom of establishment or freedom to provide services for banking and insurance institutions having their registered office in France.

Delegation of powers by the College to the Secretary General

- placing an intermediary under supervision;
- giving an opinion on the appointment or reappointment of statutory auditors;
- appointing controllers to implement certain administrative enforcement measures;
- amending articles of incorporation or substitution agreements in the insurance sector;

- taking refinancing agreements into account for calculating the liquidity ratio;
- calculating contributions to guarantee funds;
- cooperating with authorities and disclosing certain types of information to them;

Decisions taken on the basis of delegated powers are reported to the College at each meeting.

3.3 Organisation-related decisions

The College adopted a number of decisions on organisational matters in 2011. For example, the membership of several consultative committees was modified, chiefly because of the departure of certain members and the formation of new professional associations. The College also amended its Rules of Procedure to incorporate new powers brought in by the Banking and Financial Regulation Act 2010-1249 of 22 October 2010, along with clarifications given in the ACP's transparency policy document. In addition, the College changed the departmental

organisational principles of the General Secretariat, adopted when the ACP was founded, by splitting the Research and International Relations Directorate into an International Directorate and a Research Directorate.

In sum, as far as the College is concerned, the salient features of 2011 were intense activity and effective implementation of all its statutory powers, both the new ones and those inherited from the legacy authorities.

4

Performance monitoring

4.1 Setting up performance monitoring is an ACP commitment

In 2011, in order to measure **its efficiency in achieving the statutory objectives assigned to it at its inception in 2010, the ACP adopted a set of performance indicators**, namely maintaining the stability of the financial system and protecting the customers of entities that report to it. Given that the bulk of regulation is derived from international standards, the ACP adopted a third strategic objective: to increase its influence in the international supervision process. The Authority has chosen to focus its actions and resources on these three strategy areas.

As a newly formed authority financed by the fees paid by supervised entities, the ACP needed to be able to measure its ability to efficiently discharge its duties.

These initiatives also comply with the recommendations of a parliamentary report from the 28th of October 2010 (prepared on behalf of the committee charged with the evaluation and oversight of independent administrative authorities) to publish annual performance targets and indicators.

To make the new system fully operational, the indicators chosen are linked to the management control activities carried out by the ACP's General Secretariat during the same year.

The ACP endeavoured to choose indicators that capture its "performance" most accurately. That concept is inherently hard to define and measure for a supervisory authority, as it is for any institution where a simple quantitative measure of efficiency will be imperfect.

The ACP has decided to publish information in this annual report of the indicators it has put in place and measured. The initial indicators are likely to be modified in light of experience, not only in order to measure more accurately the ACP's performance but also in order to respond to changes in its environment. The indicators most likely to change are those limited to measuring activity levels.

The ACP's 3 strategy areas are divided into 8 operational objectives, matched with 16 indicators to measure achievements.

To measure the ACP's efficiency in maintaining financial stability, the operational objectives reflect that:

- timely handling of licensing and authorisation applications contributes at an early stage to the health of the financial system,
- the stability of the financial system also depends on the ACP's ability to maintain or intensify off-site supervision and on-site inspections,
- in an environment dominated by cross-border groups, strong cooperation with foreign supervisors is essential in order to oversee these groups and carry out stress tests.

In order to assess the ACP's efficiency in the convergent implementation of European and domestic standards, the following objectives have been chosen:

- increase France's influence in the international regulatory system in order to be involved in the standard-setting process from the outset,
- apply regulation at the operational level and provide supervised entities with more information,
- supply computerised accounting and prudential reporting processes in a timely manner so that the industry can adapt its IT systems.

In order to measure progress on the new mission of protecting supervised entities' customers, the objectives reflect the first steps involved in setting up this task:

- improving consumer information about the ACP's role in this area,
- expanding supervision of business practices.

Several indicators have been put in place to measure the level of achievement with regards to the objectives.

Some indicators **measure improvements in the quality of the ACP's services and action**. They check for two things: compliance with deadlines and the increase in the information given to financial institutions and the public. This increase in information is part of a transparency policy that fosters better understanding not only of applicable standards but also of the ACP's expectations and activities.

Other indicators seek to **measure the effectiveness and intensity of controls**. This is done by assessing the activities of the ACP College *via* the number of individual decisions verifying that an annual assessment of the prudential situation of all supervised entities has been performed, counting the number of institutions subject to enhanced ongoing supervision, and implementing the on-site inspection programme.

A third set of indicators **measures the impact of the ACP's action** by assessing the Authority's influence in the international supervision system and identifying the resources used to facilitate convergent enforcement of standards.

4.2 Initial results reflect the growing momentum of the ACP

A Strategy area: maintaining the stability of the financial system

OPERATIONAL OBJECTIVE 1

Process licensing and authorisation applications in due time

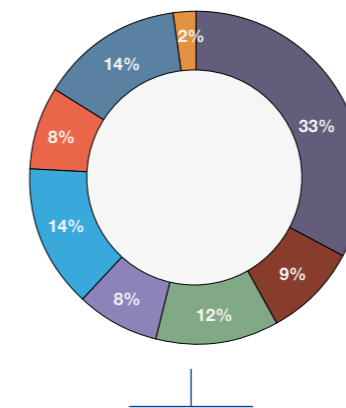
Indicator

Percentage of licensing and authorisation applications submitted to the College or its Chairman that are decided upon within the allotted deadline.

Target: 100%

Result

100%
of licensing and authorisation applications in the banking and insurance sectors were processed on time.
Giving rise to 512 decisions, broken down as follows:



- Applications for licensing, authorisation and registration
- Amendments to licences and authorisations
- Withdrawal of licences and authorisations, waivers
- Substitution agreements
- Administrative amendments
- Changes in ownership structure
- Portfolio mergers and/or transfers
- Other

Analysis of the result

The purpose of this indicator is to check the ability of the ACP to submit licensing and authorisation applications for banking and insurance to the relevant bodies of the ACP College in a timely fashion. It measures the Authority's capacity to effectively take over and attain the statutory objectives of licensing and authorisation, previously handled by CECEI (for the banking sector) and CEA (for the insurance sector), under the new organisational structure.

A total of 347 applications for the banking sector and 165 for the insurance sector were submitted to the College or its Chairman, and the related decisions were adopted in due time. The timeframes are sometimes very tight, especially since they may include a statutory consultation with other authorities, during which the deadline continues to apply. This indicator is likely to be modified as part of an ongoing review of the quality of the ACP's performance monitoring.

OPERATIONAL OBJECTIVE 2

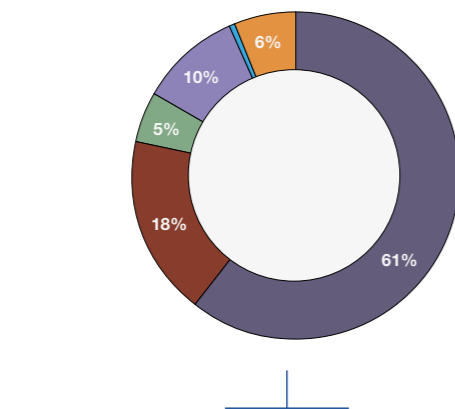
Measure the ACP's assessment activity of the individual situations of supervised entities

Indicator

Number of individual decisions taken during the year, presented by type of College decision, as well as the cease-and-desist orders given by the Chairman acting under a delegation from the College.

Result

445
decisions on individual situations on
570
decisions taken by the ACP College in 2011



- Licenses and authorisations
- Decisions on supervision
- Administrative enforcement measures
- Pillar 2 injunctions
- Opening of disciplinary proceedings
- Other

Analysis of the result

The aim is to establish an initial measurement for 2011 and monitor how it evolves in the coming years in order to assess the changing pattern of activity and the breakdown of individual decisions. This indicator can also be used to measure effective implementation of all the College's statutory powers.

In 2011, the College issued 267 decisions on licensing and authorisation. A total of 79 individual decisions were handed down in connection with supervision of institutions on several counts, e.g. authorising the use of internal models, enforcing regulations on the measurement of own funds, liquidity and large exposures in the banking sector, or on life insurance policies in the insurance sector.

The ACP issued 44 Pillar 2 injunctions, aimed at raising the capital of credit institutions or investment firms in excess of the regulatory requirement, and 23 administrative enforcement measures (including 6 cease-and-desist orders issued by the Chairman under a delegation from the College). It also opened 3 disciplinary procedures. The College took 29 other individual measures concerning, in particular, the launch of joint decision making processes for banking groups whose parent company is supervised by the ACP.

OPERATIONAL OBJECTIVE 3

Measure the intensity of ongoing supervision

Indicator 1

Percentage of credit institutions, investment firms, financial holding companies, insurance and reinsurance, provident and mutual insurance institutions with turnover of more than 5 million euros, referred to in Article L. 612-2-1 of the Monetary and Financial Code, whose risk profile has been fully assessed as part of ongoing supervision during the year under review.

Target: 100%

Result

84%
institutions covered by the indicator had their risk profiles fully assessed in 2011.

Analysis of the result

The rates for the largest institutions and for mid-sized firms are close to 100%, with some assessments spilling over to the first quarter of 2012. The rates for some categories of smaller firms are lower. This is due to the fact that exhaustive coverage requires more systematic processing, that would be phased in gradually.

In 2011, this indicator was used to verify that ongoing supervision included a full annual assessment of institutions' risk profiles, in addition to the ACP General Secretariat's analysis of their accounting and prudential reports.

From 2012, all the institutions covered by this indicator will undergo a full annual risk profile assessment via ongoing supervision. Alongside the performance indicator measuring the intensity of ongoing supervision, an activity indicator identifies the number of institutions subject to specific supervision following a decision by the College.

Indicator 2

Number of institutions subject to specific supervision by the General Secretariat following a College decision.

Result

Situation at 31 December 2011:

14
institutions in the banking or insurance sector are subject to specific ongoing supervisions:

8
under special supervision and

6
under provisional administration

Analysis of the result

The aim is to identify the institutions subject to specific ongoing supervision further to a decision by the College in order to prevent default risk. The institutions in question, in both sectors, are those under special supervision within the meaning of Article L. 612-33 of the Monetary and Financial Code, and those under provisional administration as per Article L. 612-34. It should be noted that 13 of the 14 institutions were already under specific ongoing supervision prior to 2011. One other institution was placed under provisional administration during 2011, taking the total to 14. Moreover, one institution was ordered to implement a recovery programme pursuant to Article L. 612-32, execution of which was followed by ongoing supervision.

OPERATIONAL OBJECTIVE 4

Make sure that the on-site inspection programme is implemented

Indicator

Number of on-site inspections for prudential and anti-money laundering purposes carried out during the year under review relative to the number of inspections set by the Secretary General on the basis of College instructions.

Target: 100%

Result

97,5%
of on-site inspections performed or underway at end-December 2011 as part of the 2011 programme

Analysis of the result

The implementation rate for the inspection programme was close to the target of 100% at end-2011, with 219 on-site inspections underway or completed (136 in the banking sector, 83 in the insurance sector). By definition, this indicator does not identify the on-site visits made since 2010 by ongoing banking supervision staff in order to interview key personnel on specific issues. These short visits last approximately 48 hours and supplement the usual round of meetings.

OPERATIONAL OBJECTIVE 5

Cooperate closely with supervisors to strengthen consolidated supervision of banking and insurance groups

Pending the transposition of the Solvency II Directive, the banking and insurance sectors are not subject to a unified regime for colleges of supervisors. Accordingly, different indicators have been put in place for each sector in order to assess the ACP General Secretariat's efforts in this area.

- Measure the cooperation on banking group supervision

Indicator 1

Percentage of joint decisions obtained through colleges of supervisors, without requiring arbitration by the EBA, on the capital adequacy of banking groups that the ACP supervises on a consolidated basis.

Target: 100%

Indicator 2

Proportion of contributions made within the applicable time limits in response to joint assessments and decisions as the French supervisor of French subsidiaries of European banking groups.

Target: 100%

Result

100%
of draft joint reports submitted to the ACP College for the period under review

100%
of responses sent in due time to the European consolidated supervisor.

Analysis of the result

Consolidated supervision of major French banking groups has become an integral and compelling aspect of ongoing supervision and is crucial to maintaining financial stability. The aim of these two indicators is to measure the efficacy of the ACP General Secretariat in ensuring that joint decisions on the capital adequacy of groups for which the ACP is the consolidated supervisor are adopted in due time and without arbitration by the EBA. Where the ACP is the supervisor of the French subsidiaries of a European group, the aim is to measure the capacity of its General Secretariat to contribute to joint decisions within the applicable time limit.

- Measure active cooperation in the supervision of insurance groups

Indicator 1

Percentage of pre-application processes for Solvency II internal models put in place with the other relevant supervisory authorities for groups having submitted a pre-application file in the appropriate form.

Target: 100%

Result

100%
of pre-application processes have been implemented with the supervisors of the insurance groups concerned.

Analysis of the result

For all entities having expressed interest in using Solvency II internal models, discussions were launched with the relevant European supervisors on the coordinated pre-application processes by exchanges of letters with the groups' supervisors. Depending on the groups, the proceedings are at different stages, from finalisation of the work programme to ongoing on-site inspections.

Indicator 2

Percentage of meetings of colleges of supervisors held during the year for insurance groups with a French parent. The frame of reference is EIOPA's list of the 30 largest European insurance groups, 6 of which are French.

Target: 100%

Result

83%
of college meetings concerning the 6 main European insurance groups with a French parent and appearing on the EIOPA list were held in 2011; the 6th meeting was held in early 2012.

Analysis of the result

Annual college meetings for European insurance groups are not yet mandatory, in contrast to the banking sector and its Basel II requirement. However, pending application of Solvency II, European supervisors are cooperating closely, notably on supervision of the largest groups identified by EIOPA. The ACP held at least one college meeting in 2011 for all 6 groups identified by EIOPA that have a French parent. This does not include the other college meetings organised for other insurance groups that ACP supervises on a consolidated basis.

OPERATIONAL OBJECTIVE 6

Conduct European and international stress tests within the allotted time

Indicator

Percentage of EBA, EIOPA or international stress test exercises carried out on time, in collaboration with the industry.

Target: 100%

at 30 June 2011 for the EBA stress test and at 30 September 2011 for the EIOPA tests.

Result

2

stress tests conducted in 2011 within the European framework in collaboration with the EBA and EIOPA

Analysis of the result

Stress tests of banks and insurance institutions are vital tools for analysing financial stability. The ACP takes part at the European level in exercises coordinated by the supervisory authorities for the banking and insurance sectors, the EBA and EIOPA respectively.

For weeks, the ACP's supervisory departments and research units devoted considerable efforts, both in the preparatory stages (identifying the exposures to test, etc.) and during the exercise, to ensuring that the results announced by the industry were reliable.

Thanks to those efforts, the bank stress test and the first EIOPA-coordinated insurance test were carried out efficiently and in due time, in collaboration with the European bodies in charge of these exercises.

B Strategy area: contribute to setting international standards and implement domestic and European measures in a convergent manner

OPERATIONAL OBJECTIVE 1

Increase France's influence in the international regulatory system

Indicator 1

presence of staff seconded to institutions considered essential to prudential supervision.

Target:

- at least 2 members of staff seconded to the EBA and EIOPA.
- at least 1 member of staff seconded to the following institutions: Basel Committee secretariat, European Central Bank (ESRB secretariat), European Commission (and other European institutions).

Result

10

staff members seconded to the above international bodies at 31 December 2011

Analysis of the result

The objective of having 2 members of staff seconded to the EBA has been attained, with one of the two being appointed to the position of director. At EIOPA, the second person on secondment returned at the end of September 2011 and has not yet been replaced. The other members of staff on secondment are: 1 at the Basel Committee secretariat, 1 at the Directorate General for financial stability at the European Central Bank, three at the European Commission (1 in the task force set up for the financial crisis, 1 at the Directorate General in charge of accounting and financial reporting and the third at the Directorate General responsible for banks and financial

conglomerates), 1 at the Permanent Representation of France to the European Union, and 1 at the Committee on Economic and Monetary Affairs of the European Parliament.

Greater French influence in the international regulatory system is also measured through two indicators reflecting the participation of the ACP General Secretariat in international bodies dealing with issues of banking and insurance supervision and the percentage of these bodies that it chairs.

Indicator 2

- Rate of participation in international committees, working groups and sub-groups on banking and insurance issues.
- Percentage of chairmanships or co-chairmanships of the international working groups and sub-groups in which the ACP General Secretariat participates.

The list of international committees, working groups and sub-groups on banking and insurance issues will be revised annually to encompass all the ACP's activities, including prudential and accounting regulation and supervision of business practices. For 2011, representatives of the ACP General Secretariat were eligible to participate in a total of 212 working groups or sub-working groups. The institutions in question are: EBA, EIOPA, ESRB, IAIS, Basel committee, Bank for International Settlements, European Commission, Council of the European Union, Club of Rome, FATF, GIABA, OECD, XBRL, JCFC, CIMA.

Result

Representation rate:

90%

196 working groups or sub-working groups

Percentage of chairmanships:

6%

12 chairmanships

Analysis of the result

The 90% representation rate reflects the participation of the ACP General Secretariat in all working groups and sub-groups (without ranking by importance). While ACP General Secretariat representatives take part in the parent working groups, the absence of representation is confined largely to a few sub-groups. Members of the ACP General Secretariat's staff also take part in almost all the working groups of the main international institutions responsible for banking and insurance regulation. For example, representatives of the ACP General Secretariat are members of 3 of the 4 main Basel sub-committees and of 8 BIS working groups (excluding sub-working groups), as well as of 9 EBA working groups (excluding sub-groups), more than 18 EIOPA groups or task forces (excluding sub-working groups), and all IAIS committees.

Aside from the working group chairmanships held by the *Banque de France*, not counted here, the ACP General Secretariat chairs 12 working groups in its own name, or 6% of the groups in which it participates. The value of this indicator is hard to interpret, since chairmanship appointments depend not only on active participation by Member States but also on political considerations. It should be pointed out, however, that this metric covers key chairmanships such as the Standing Committee on Accounting, Reporting and Auditing at the EBA. At EIOPA the ACP General Secretariat chairs, for example, the committee responsible for issues of consumer protection and financial innovation, a particular useful appointment insofar as the ACP is required to develop this mission.

OPERATIONAL OBJECTIVE 2

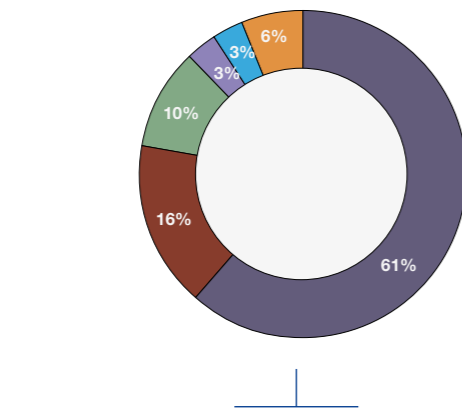
Apply regulation at the operational level and provide supervised entities with more information

Indicator

Number of measures (instructions, guidelines, recommendations, etc.) adopted by the ACP during the year and published on its official register or communication media (website, *La Revue de l'ACP*) for the purpose of implementing regulations.

Result

31
measures on general issues published by the ACP in 2011



- Instructions
- Recommendations
- Guidelines
- Sector implementation principles
- Positions
- Other

Analysis of the result

This indicator is used to assess the transparency policy that the ACP College endeavours to promote, as described in an explanatory document published in *La Revue de l'ACP* in 2011. In 2011, the College decided on 31 measures concerning general issues, which were published. The purpose of the measures is to enable or facilitate implementation of regulations and to spell out the ACP's expectations. They consist of:

- 1 explanatory document on the ACP's transparency policy;
- 19 instructions on matters of licensing, prudential supervision, anti-money laundering and business practices;
- 1 position on the legal classification of rolling spot forex transactions;
- 5 recommendations on marketing and consumer protection issues and a decision containing a list of professional associations entitled to seek ACP approval of a code of conduct;
- 3 guidelines and 1 sector implementation principle on anti-money laundering and against the financing of terrorism.

C Strategy area: ensure that reporting institutions' customers are protected

OPERATIONAL OBJECTIVE 1

Improve consumer information about the ACP's role

Indicator

This indicator measures the contact made by the public with the ACP on matters of customer protection.

It identifies the number of phone calls received by the *Assurance Banque Épargne Info Service* platform.

Result

23,369
phone calls
or **36%**
of the total received by *Assurance Banque Épargne Info Service*, concern the ACP directly

Analysis of the result

The *Assurance Banque Épargne Info Service* platform received 65,000 calls in 2011. This indicator helps measure the public's knowledge of what the ACP does in this area, alongside the AMF, by measuring the number of calls to the platform.

OPERATIONAL OBJECTIVE 2

Develop supervision of business practices

Indicator

Number of on-site inspections focusing specifically on business practices.

Result

67
on-site inspections concerning business practices were carried out in 2011

Analysis of the result

This indicator measures the ACP's growing role in conducting on-site inspections of business practices, on top of the inspections it carries out at credit institutions, investment firms and insurance institutions. Furthermore, the ACP General Secretariat earmarked some of its resources for publicising this role and the way it will be performed amongst intermediaries, which are a very mixed population.

5

Monitoring the ACP's activities

Aside from its own management control and audit procedures and the resources that the *Banque de France* may deploy for the purpose, the ACP is subject to external assessments of its activities.

5.1 Oversight by Parliament and the *Cour des Comptes*

The ACP Chairman, Governor of the *Banque de France*, and the Secretary General testify regularly to committees of the Senate and of the National Assembly.

Hearings attended by the ACP in 2011

DATE	TOPIC	REQUESTING PARTY	ACP REPRESENTATIVE
9 February 2011	The sovereign debt crisis / Basel III	Senate Finance Committee	Christian Noyer, ACP Chairman
19 May 2011	The status of wealth management advisers	Louis Giscard d'Estaing, MP on assignment appointed by the prime minister	Fabrice Pesin, ACP Deputy Secretary General
25 May 2011	Financing of the economy/ Basel III and SMEs	National Assembly Finance Committee	Jean-Paul Redouin, Deputy Governor of the <i>Banque de France</i>
11 October 2011	Impact of the banking crisis on the financing of the economy	National Assembly Committee of Economic Affairs	Christian Noyer, ACP Chairman
12 October 2011	Situation of French banks and the financing of the economy	Senate Finance Committee	Christian Noyer, ACP Chairman
9 November 2011	Structured lending to local authorities	Parliamentary Enquiry Committee	Danièle Nouy, ACP Secretary General
30 November 2011	Final report of the functioning of the ACP	National Assembly Finance Committee	Danièle Nouy, ACP Secretary General
5 December 2011	EBA/Basel III/Miscellaneous regulations	Senate Finance Committee	Danièle Nouy, ACP Secretary General

The ACP may also contribute to parliamentary discussions by taking part in panel hearings on technical matters.

Furthermore, in late 2010 a request for an enquiry into the establishment of the ACP was referred to the *Cour des Comptes* (court of auditors) by the National As-

sembly Finance Commission, in accordance with Article 58(2) of the Organic Law on Budget Acts No 2001-692 of 1 August 2001.

SUMMARY OF THE NATIONAL ASSEMBLY FINANCE COMMISSION REPORT PUBLISHED 6 DECEMBER 2011

The rapporteur started by stressing that the enquiry concerned the functioning of the ACP, not the quality of prudential supervision. Accordingly, the *Cour des Comptes* did not make an assessment of the Authority's activities. This would have been premature since the enquiry took place just sixteen months after the inception of the new independent administrative authority.

The merger of four administrative authorities amid a radical overhaul of prudential regulation at international and European levels and an unprecedented financial crisis was "a delicate reform in many ways", in the words of the *Cour des Comptes*. The rapporteur was aware that setting up an authority of this kind was a difficult undertaking, especially as regards personnel management.

Regarding prudential oversight, a considerable amount of supervisory work is required on multiple work streams, such as preparing for Solvency II and Basel III, monitoring the extent and supervision of market activities,

enforcing new French regulations on liquidity, bonuses, etc., and supervising governance more intensively.

The rapporteur considered that the merger was already in the consolidation phase, in terms both of organisation and of personnel. However, on the basis of the *Cour des Comptes* enquiry, three areas requiring substantial improvements warranted the attention of Parliament as part of its constitutional duty to monitor France's public finances:

- prudential supervision: step up on-site inspections and clarify the sanction policy;
- supervision of business practices: develop the ACP-AMF Joint Body to give due consideration to the interest and concerns of consumers;
- human resources: reach the planned staffing levels quickly and launch an active requirement drive to attract people with technical backgrounds and strengthen the ACP's presence in European and international authorities in charge of financial regulation.

The *Cour des Comptes* can also initiate inspections at any time under its own powers.

5.2 International Monetary Fund (IMF) assessment of France's financial sector supervision

The IMF is analysing France's financial sector in 2012 under the Financial Sector Assessment Program (FSAP). The purpose of the FSAP, part of the IMF's bilateral surveillance pursuant to Article IV of its Articles of Agreement, is to assess financial sector stability.

IMF FINANCIAL SECTOR ASSESSMENT PROGRAM

Established in 1999 as a joint initiative by the IMF and the World Bank, the FSAP offers member countries a comprehensive and in-depth analysis of their financial system in the broad sense of the term, i.e. banking, insurance and financial markets. The FSAP is part of the IMF's bilateral surveillance, reflected in a regular dialogue with member countries on developments in their respective macroeconomic and financial situation and policies.

The first FSAP for France was conducted in 2005. To date, more than three quarters of IMF member countries, including nearly all the members of the G-20, have undergone assessments. Since April 2010, FSAP assessments have been a mandatory part of the IMF's bilateral surveillance for 25 jurisdictions, including France.

Objective of the FSAP: assess the stability of the financial sector

The FSAP assesses the stability of a country's financial sector from several angles:

- the source, probability and potential impact of the main risks to macro-financial stability in the short medium-term;
- the country's financial stability policy framework;
- the capacity of the entities concerned (banks and insurance companies) and the authorities to manage and resolve a financial crisis should the risks materialise.



The following aspects in particular are assessed through the FSAP:

- whether regulation and supervision of banks, securities markets, insurance and financial infrastructures comply with international standards; on this point, both the institutional framework and the concrete action taken by the supervisory authorities are measured against those standards;
- the solidity of financial institutions (measured in particular through stress tests), in an effort to detect vulnerabilities in the overall system and identify shock transmission mechanisms.

The FSAP assessment relies among other things on in-depth dialogue with the French authorities (notably the ACP, AMF and *Banque de France*), as well as with the government and financial sector firms. The FSAP will make it possible to evaluate the quality of regulation, supervision and inspection activities in France along with risk management and effective enforcement of prudential rules. The IMF's team is due to complete its assignment with a stress test exercise, coordinated by the ACP, in spring 2012.

Highlights of 2011

January

26

The ACP College adopts Recommendation 2011-R-01 on management by credit institutions of trustee accounts on behalf of joint ownerships.

March

15

The Authority announces the results of the fifth Quantitative Impact Survey (QIS 5) under the Solvency II Directive. France is one of the leading European contributors, with extensive involvement of insurance institutions.

25

The ACP College adopts Recommendation 2011-R-02 concerning advertising communication for unit-linked life insurance contracts, with bonds and other debt securities as underlying assets.

29

The ACP publishes its first annual report. Chairman Christian Noyer presents it at a press conference.

April

08

The Authority publishes guidelines on third-party reliance in the area of AML/CTF.

27

The ACP organises a conference on Solvency II at *Maison de la Chimie* in Paris.

May

03

Danièle Nouy, Secretary General of the ACP, Thierry Francq, Secretary General of the AMF, and Fabrice Pesin, Deputy Secretary General of the ACP and coordinator of the Joint Unit, present the first report of the AMF/ACP *Assurance Banque Épargne Info Service* platform at a press conference.

06

The ACP College adopts Recommendation 2011-R-03 concerning the marketing of unit-linked life insurance contracts, with debt securities issued by an entity that is financially linked to the insurer undertaking as underlying assets.

31

The ACP and the AMF publish a joint position (2011-P-01) on the legal classification of rolling spot forex transactions.

June

17

The ACP College adopts Recommendation 2011-R-04 on the marketing of life insurance policies linked to funeral payment plans.

30

The ACP publishes the results of its enquiry into revaluation rates for mathematical reserves on capitalisation contracts and individual life insurance contracts for 2010.

July

04

EIOPA publishes the results of Europe-wide stress tests in the insurance sector. The exercise was carried out jointly with national supervision authorities, including the ACP.

07

- The ACP publishes its transparency policy in a document describing its various legal instruments;
- The ACP and the AMF issue a public warning on certain activities in the forex market.

15

The EBA and national supervision authorities, including the ACP, publish the results of a stress test exercise involving 90 banks to assess the robustness of the European banking system.

20

The ACP publishes the results of its enquiry into residential property financing in 2010.

August

In view of heavy turbulence on financial markets, the ACP introduces daily supervision of the cash balances of credit institutions.

September

08

The ACP publishes a report on banking mobility, which assesses compliance with the commitments made by members of the French Banking Federation pursuant to the measures put forward by the Financial Sector Consultative Committee.

30

- The ACP publishes a study of factoring in 2010.
- End September: insurance institutions submit their responses to the questionnaire sent out by the ACP in order to assess readiness for Solvency II and identify institutions' problems.

October

07

The ACP organises a conference at *Palais Brongniart* on the supervision of business practices in banking and insurance and on Pillar 3 of Solvency II.

14

The ACP publishes its 2010 annual report with data on the banking and insurance market. The report includes an initial assessment of the application of international principles on remuneration policies in major French firms, in accordance with the Banking and Financial Regulation Act of October 2010.

17

The ACP publishes guidelines on beneficial owners.

27

The EBA publishes the preliminary results of an exercise conducted to highlight any capital shortfalls in the European banking sector, in response to concerns about sovereign debt exposures; the ACP publishes the results for French banks.

December

08

The EBA publishes the final results on the capital requirements of European banks; the ACP publishes the results for French banks.

15

The ACP and the AMF tighten their requirements for dealing with customer complaints in the financial sector. The ACP College adopts Recommendation 2011-R-05 on complaints handling to upgrade practices in this area.

16

The Sanctions Committee issues a warning and a fine on a credit institution for deficiencies in its internal control system for capital market activities, even though no material losses are incurred.



Contents

- 60 Licensing
- 77 Prudential supervision
- 107 Macroprudential supervision

CHAPTER 2

Contributing to the stability of the financial system

The stability of the financial sector is a matter of cardinal importance. For consumers, it is a guarantee that their bank deposits are secure and that they are well insured against risks. For companies, financial stability means that they receive the financing and services that are essential for their business. The ACP is responsible for licensing and supervising establishments in the banking and insurance sectors. For this purpose, the ACP is responsible for all the tasks formerly performed by the banking supervisor (*Commission bancaire*), the insurance supervisor (*Autorité de contrôle des assurances et des mutuelles* – ACAM), the bank and investment company licensing authority (*Comité des établissements de crédit et des entreprises d'investissement* – CECEI) and the insurance company licensing authority (CEA).

1

Licensing

512

decisions on licensing or authorisation applications in 2011,

- of which **347** in banking
- and **165** in insurance

A substantial proportion of the decisions made by the ACP College, both in restricted sessions and through the Banking and Insurance Sub-Colleges, dealt with applications for licensing and authorisation. In addition, the Chairman of the College made other decisions using his delegated powers. The Licensing, Authorisation and Regulation Directorate of the ACP General Secretariat examined a total of 907 applications from the banking and insurance sectors: 512 licensing and authorisation applications and 395 senior management appointments.

1.1 Banking, investment services and payment services

The ACP made **347 licensing and authorisation decisions** relating to the banking and financial sector in 2011. Of these decisions, 142 dealt with credit institutions (including 5 with their registered offices in Monaco), 36 dealt with investment companies, 55 dealt with payment institutions (including 44 agent registrations), 4 dealt with businesses applying

The applications for licenses, extension of licenses, changes in ownership, asset transfers and restructuring require closer scrutiny in collaboration with the supervision departments. These applications gave rise to more than 260 meetings with institutions during the year.

In addition to dealing with these applications, the ACP General Secretariat gives its opinion on proposed appointments of statutory auditors by the institutions subject to the ACP's supervision (except for the bodies referred to in Article L. 511-6 (5) and the legal entities referred to in Article L. 313-21-1 (5), money changers, hybrid payment institutions, companies belonging to mixed insurance groups and the entities referred to in Article L. 612-2 (II) and (III)). A total of 1,092 such opinions were issued in 2011 (675 in the banking sector and 417 in the insurance sector).

for an exemption from licensing, and 110 concerned money changers. New licenses were granted to 19 institutions, including 10 payment institutions. Furthermore, **32 licenses were withdrawn**, including 27 credit institution licenses and decisions were made concerning **25 changes in control**.

The ACP examined the fitness and propriety of 286 senior managers of credit institutions, investment companies, payment institutions and financial holding companies.

A As in 2010, new licenses were granted mainly to a new category, payment institutions, in 2011

In 2011, the ACP granted 10 licenses for payment institutions, of which 7 licenses became definitive at the end of the year (the other 3 were still conditional): ADP GESTION DES PAIEMENTS, ALLOPASS, BUYSTER, CARDS OFF, MONEYGLOBE, SENCILLO, and TEMPO FRANCE. Since the Payment Services Directive was transposed into French law and came into force on 1 November 2009, licenses have been granted to 15 payment institutions and 12 of these licenses had become definitive as of 31 December 2011.

Of the 15 payment institutions licensed on 1 November 2009, 5 specialise in fund transfers, 8 in collecting payments made primarily by cards or direct debits on behalf of business customers, 2 institutions issue cards and handle the payment orders made by the cardholders. Towards the end of the year, the ACP approved a change of control at one of these institutions.

Three of these institutions are hybrid businesses as defined in the Monetary and Financial Code since they engage in activities other than payment services or related services as their usual business. The shareholders in payment institutions are primarily French. The investors are natural persons in nearly half of the cases.

Furthermore, the number of payment services agents (credit institutions or

payment institutions) registered with the ACP stood at 49 at the end of 2011. The registrations are mainly for institutions specialising in fund transfers. These registered agents offer payment services under the full and sole responsibility of the payment services provider that registers them and within the scope of the license of that payment services provider.

The ACP also granted 4 license exemptions for payment institutions (2 applications) and for credit institutions wishing to issue electronic money (2 applications). It verified compliance with the requirements set out in Articles L. 511-7-II and L. 521-3-I of the Monetary and Financial Code, meaning that the payment medium provided by the institution is used to acquire goods or services under the terms of a commercial agreement applicable to:

- a limited network of entities accepting the payment medium in 2 of the cases;
- a limited range of goods and services in the other 2 cases.

With 15 licensed payment institutions, France is comparable to other large continental European countries, but it trails far behind the United Kingdom, which has a much larger number.

That the licensing of payment institutions in France is slower than in other countries is largely due to two factors.

First, before the Payment Services Directive was implemented, only licensed credit institutions were permitted to provide these services in France, meaning that almost all the entities licensed since 2009 are new, non-bank institutions. In some other European countries, by contrast, payment services were not a banking monopoly and many unregulated entities were already providing such services. After the Directive came into

force in these countries, it was simply a question of licensing entities that were already doing business, which made the process much faster.

Second, the difference in France stemmed from the choices made by lawmakers, who called for a genuine licensing process and not merely an authorisation procedure. This required action by the *Banque de France* to verify the operational security of the systems used. It also stemmed from stringent requirements with regard to anti-money laundering and counter-terrorist financing. In addition, an examination of the applications revealed that some promoters had problems raising the capital needed to start their business and expand it under a three-year business plan.

In the credit institutions category, the ACP modified the licenses of 6 finance companies and granted licences for 4 new ones:

- 7 home loan companies (SFHs), under the new legal framework established by the Banking and Financial Regulation Act 2010-1249 of 22 October 2010, of which 6 were licensed under a special procedure under the transitional rules set out in Article 74 of the Act. These companies had previously been licensed as ordinary finance companies specialised in refinancing loan portfolios by issuing covered bonds: BNP PARIBAS HOME LOAN SFH, CRÉDIT MUTUEL-CIC HOME LOAN SFH, CRÉDIT AGRICOLE HOME LOAN SFH, CRÉDIT MUTUEL ARKÉA HOME LOANS SFH, HSBC SFH (FRANCE), SOCIÉTÉ GÉNÉRALE SFH. BPCE SFH was licensed as a home loan company under the normal licensing procedure. These companies are specialised entirely in refinancing home loans and can issue home loan bonds. Despite their special characteristics, SFHs are subject to the special

prudential rules applying to mortgage credit institutions (SCFs);

- CRÉDIT AGRICOLE EXPORT CREDIT AGENCIES SCF, a wholly owned subsidiary of the CRÉDIT AGRICOLE group, licensed as a mortgage credit institution. This category now comprises 10 licensed institutions;
- BANQUE POSTALE CRÉDIT ENTREPRISES, a wholly owned subsidiary of LA BANQUE POSTALE, licensed as a finance company to provide business loans;
- a finance company providing investment services, PRÉT D'UNION, in which CRÉDIT MUTUEL ARKÉA holds a 39.49% stake, which was licensed to grant retail consumer loans, along with investment services including order reception and transmission for third parties, investment advice and unguaranteed investments in debt securities. Order reception and transmission services for third parties and investment advice are provided for qualified investors only. As soon as PRÉT D'UNION makes its loans, the loans are sold to a securitisation fund. The ACP has set specific licensing requirements to prevent credit risk from spreading outside the financial sphere through the immediate sale of loans to a securitisation fund and to make the company accountable for the quality of its risks.

Five investment companies were also licensed:

- MIRABAUD FRANCE SA, a company that had formerly been licensed as an asset management company under the name MIRABAUD GESTION SA and was wholly owned by the Swiss financial group MIRABAUD, was licensed to provide investment services, order reception and transmission for third parties, investment advice and portfolio management services (restricted to individual discretionary management), as well as the related custody services;
- FAIRHEDGE, a company owned by individual shareholders, was licensed to provide investment services, investment advice, order reception and transmission for third parties for all types of financial instruments;
- GALAXY, controlled by a US financial data services provider and set up according to the specifications of the Cassiopee Committee, which represents the Paris financial industry, was licensed to revitalise the corporate bond sector in France. This investment company provides the investment service of operating an organised multilateral trading facility for debt securities;
- NORTIA INVEST, a 50%-owned subsidiary of the insurance broker NORTIA SAS, was licensed to provide order reception and transmission services for third parties through a dedicated trading system for financial investment advisers and their end customers that was developed in partnership with PRO-CAPITAL. This trading system handles capital accumulation and life insurance products. It provides online trading for customers of the NORTIA group, mainly in collective investment scheme shares or units, as well as other securities;

- ACCENTURE INVESTMENT PROCESSING SERVICES, owned by the international audit and strategy consulting group ACCENTURE and a wholly owned subsidiary of ACCENTURE INSURANCE SERVICES, specialising in delegated management and distribution of life insurance policies, was licensed to provide order reception and transmission services for third parties. ACCENTURE INVESTMENT PROCESSING SERVICES was formed in response to growing demand from some of the group's customers for assistance in providing such services.

B Internal restructuring continued

Licenses have been withdrawn by the ACP, following limited reorganisation within the BPCE, BNP PARIBAS, HSBC, CRÉDIT IMMOBILIER DE FRANCE and CRÉDIT MUTUEL groups:

- BANQUE POPULAIRE DU SUD OUEST (BPSO) was taken over by BANQUE POPULAIRE CENTRE ATLANTIQUE (BPCA) and the new entity was named BANQUE POPULAIRE AQUITAINE CENTRE ATLANTIQUE. As part of this transaction, BANQUE PELLETIER and CRÉDIT COMMERCIAL DU SUD OUEST (CCSO), which were both controlled by BPSO, were taken over by BPCA, and then BANQUE PELLETIER was taken over by CCSO. In addition, MULTI ACCÈS BANQUE wound up its regulated activities;
- BNP PARIBAS took over its subsidiary BANQUE DE BRETAGNE and took over all of the assets of its subsidiary, the finance company PARIBAS DERIVÉS GARANTIS SNC;
- HSBC FRANCE took over its wholly owned subsidiary, HSBC PRIVATE BANK FRANCE;

- FINANCIÈRE RÉGIONALE DE CRÉDIT IMMOBILIER DE BRETAGNE took over CRÉDIT IMMOBILIER DE FRANCE BRETAGNE ATLANTIQUE;
- CAISSE FÉDÉRALE DU CRÉDIT MUTUEL D'ANJOU became a local institution covered by the collective license granted to CAISSE FÉDÉRALE DE CRÉDIT MUTUEL;
- as part of the restructuring of the development capital business of the CRÉDIT MUTUEL CIC group, BANQUE DE VIZILLE and the investment company, VIZILLE CAPITAL FINANCE, wound up all their regulated business activities.

The CARREFOUR and LASER COFINOGA groups restructured their specialised financing arms, leading the ACP to withdraw licenses:

- LASER COFINOGA took over its finance subsidiaries MÉDIATIS and SOFICARTE;

- The finance subsidiaries of the CARREFOUR GROUP, SOCIÉTÉ FINANCIÈRE POUR L'EXPANSION DE LA DISTRIBUTION (SOFINEDIS) and its subsidiary FINIFAC, decided to merge, with the latter taking over the former, which surrendered its license.

In another development, the branch of the US-based CITIBANK N.A. and the home loan company VEOLIA P.P.P. FINANCE, a wholly owned subsidiary of the VEOLIA group requested the withdrawal of their licenses since they no longer engaged in regulated business activities. Also, the finance companies KBC BAIL FRANCE, SOFRAFI, BARCLAYS BAIL, AFFINE and SOFRACEM asked to have their licenses withdrawn after ceasing trading. The ACP also withdrew the licenses of BANQUE SAFRA FRANCE and the investment companies FINANCE FI, EUROLAND FINANCE and ORBEO after they ceased engaging in regulated business activities.

WITHDRAWAL OF LICENSES WITHOUT CONSULTATION

In most cases, the ACP withdraws licenses at the request of the institutions concerned. However, the Monetary and Financial Code gives the ACP the power to decide to withdraw credit institutions' licenses under Articles L. 511-15, investment companies' licenses under Article L. 532-6 and payment institutions' licenses under Article L. 522-11.

The ACP can decide to withdraw a license at its own initiative if an institution no longer fulfils the requirements set or the commitments made for their licenses or later authorisations, or if institutions do not make use of their license within twelve months or if they cease to do business for six months or more. The ACP also has the power to withdraw the licenses of

investment companies or payment institutions if those licenses were obtained by making false declarations or any other unlawful means.

At the end of 2011, the ACP initiated a procedure to withdraw the license of a credit institution at its own initiative. The withdrawal took effect in the first quarter of 2012.

Changes in control were mainly the result of new strategies

In 2011, the ACP examined applications for changes of control from several banking groups.

As part of the acquisition of an equity stake in LA POSTE by CAISSE DES DÉPÔTS ET CONSIGNATIONS (CDC), the ACP authorised CDC to acquire equity in LA BANQUE POSTALE and its subsidiaries licensed as credit institutions, investment companies and insurance companies indirectly as part of a concerted transaction with the state.

BANQUE FÉDÉRATIVE DU CRÉDIT MUTUEL was authorised to acquire half of the voting rights in BANQUE DU GROUPE CASINO as part of a concerted transaction with CASINO GUICHARD PERRACHON.

When part of the ABN AMRO group in the Netherlands was taken over by a foundation that the Dutch government set up for this purpose, the ACP authorised the foundation to acquire indirectly holdings of more than 50% in BANQUE NEUFLIZE OBC, ABN AMRO COMMERCIAL FINANCE and FORTIS COMMERCIAL FINANCE SAS, as well as in the insurance company NEUFLIZE VIE.

Several stand-alone institutions also underwent changes of control:

- the American-based SIGUE CORPORATION was authorised to acquire the finance company COINSTAR MONEY TRANSFER SAS, both companies are in the money transfer business;
- the finance company TICKET SURF INTERNATIONAL, which issues and manages electronic money, was acquired by a company made up of the initial shareholders and new investors who contributed the capital necessary to develop the business;

- the combination of the private banking businesses of the Luxembourg groups QUILVEST and COMPAGNIE DE BANQUE PRIVÉE led to virtually a complete takeover of QUILVEST BANQUE PRIVÉE by the Luxembourg-based holding company that holds the two groups' joint holdings.

Other developments in the financial intermediation and private banking field include:

- a new acquisition by the ODDO ET CIE group, which, after acquiring Banque d'Orsay in 2010, bought 100% of BANQUE ROBECO in 2011 from the RABOBANK NEDERLAND group; the ROBECO group wanted to leave the private banking sector in France and ODDO ET CIE wanted to take over the high-end range of life insurance products that BANQUE ROBECO offers its customers;
- the investment company W FINANCE was acquired from the ALLIANZ insurance group, which wanted to refocus its business; the buyer was the PRIMONIAL GROUP, the holding company of a group specialising in portfolio management and asset management advice. This deal, which combines the networks of financial investment advisers and real-estate management advisers belonging to W FINANCE and the PRIMONIAL GROUP, led to the withdrawal of the license of W FINANCE, which will give up its status as an investment company after a period set by the ACP to become a financial investment adviser.

- the investment company ORBEO, which was founded in 1986 (jointly and equally owned by the RHODIA and SOCIÉTÉ GÉNÉRALE groups), specialised in the provision of investment services for carbon allowance derivatives and underwent a change of control in 2011 as part of a friendly takeover bid for the RHODIA group from the Belgium chemical group SOLVAY; it then requested the withdrawal of its license at the end of the year, when the partnership between the SOCIÉTÉ GÉNÉRALE group and RHODIA-SOLVAY ended and it ceased its intermediation business in carbon allowance derivatives.

In Monaco, two local subsidiaries of the DEXIA and MONTE PASCHI banking groups were sold to banks specialising in private asset management. MONTE PASCHI MONACO was acquired by ANDORRA BANC AGRICOL REIG SA, an Andorran bank. DEXIA PRIVATE BANK MONACO SAM was sold to the Luxembourg bank BANQUE HAVILLAND.

D European passport use in 2011

a. Institutions from the European Economic Area (EEA) doing business in France

- Under the freedom of establishment

The ACP received 16 notifications in 2011. As of 31 December, 122 EEA institutions had branches in France (66 credit institutions, 52 investment companies and 4 payment institutions).

- Under the freedom to provide services

The ACP received 376 notifications in 2011. As of 31 December, 2,965 EEA institutions were entitled to do business in France under the freedom to provide services (527 credit institutions, 2,320 investment companies and 118 payment institutions).

b. French institutions doing business in other EEA countries

- Under the freedom of establishment

The ACP received 12 notifications of branches in 2011 (10 from credit institutions and 2 from investment companies). As of 31 December, French credit institutions had 143 branches in other EEA countries and investment companies had 24.

- Under the freedom to provide services

The ACP received 33 notifications in 2011 (21 from credit institutions, 9 from investment companies and 3 from payment institutions). As of 31 December, a total of 161 credit institutions were covered by 1,269 notifications of activity under the freedom to provide services, 48 investment companies were covered by 561 notifications and 3 payment institutions were covered by 45 notifications.

FACTS AND FIGURES

The long-term downtrend in the population of banking and financial institutions in France continued in 2011. The number of credit institutions fell from 683 to 657 (or from 615 to 591, excluding branches from other EEA countries), involving both full-service banks and finance companies. In contrast, the population of credit institutions in Monaco was stable at 24.

After rising from 742 to 785 in 2010, the number of investment companies (including asset management companies

supervised by the *Autorité des marchés financiers*) declined slightly to 778, as EEA institutions reduced their presence in France. The number of ACP-supervised investment companies stood at 97.

Payment institutions were the only category to see a significant increase in numbers in 2011, rising from 4 to 16 fully licensed institutions (including 4 branches of payment institutions from other EEA countries) as of 31 December 2011.



Changes in the number of credit institutions, investment companies and payment institutions in France and in the number of credit institutions in Monaco

	31/12/2010	31/12/2011	Change (number)
LICENSED CREDIT INSTITUTIONS IN FRANCE			
Institutions licensed for all banking transactions	325	311	- 14
1.1. Banks	206	198	- 8
1.2. Mutual and co-operative banks	101	95	- 6
1.3. Municipal credit banks	18	18	0
Financial companies	287	277	- 10
Specialised financial institutions	3	3	0
SUB-TOTAL	615	591	- 24
Branches of credit institutions from the European Economic Area doing business under the freedom of establishment	68	66	- 2
TOTAL FRANCE	683	657	- 26
Licensed credit institutions in Monaco	24	24	0
TOTAL FRANCE AND MONACO	707	681	- 26

	31/12/2010	31/12/2011	Change (number)
INVESTMENT COMPANIES			
Investment companies licensed by the ACP	97	96	- 1
Branches of investment companies doing business under the freedom of establishment	59	52	- 7
TOTAL	156	148	- 8

	31/12/2010	31/12/2011	Change (number)
PAYMENT INSTITUTIONS			
Payment institutions licensed by the ACP	3	12	+ 9
Branches of payment institutions doing business under the freedom of establishment	1	4	+ 3
TOTAL	4	16	+ 12

MONEY CHANGERS

Under Article L. 524-1-I. of the Monetary and Financial Code, money-changing transactions entail, on the one hand, the immediate exchange of bills or banknotes denominated in different currencies and, on the other hand, accepting payment by another means of payment for cash delivered to a client, provided that the cash delivered is denominated in a different currency. Article L. 524-2-I. also stipulates that money changers may deliver cash in euros in exchange for travellers cheques denominated in euros. This means that merchants who accept payments from non-residents in foreign currencies for goods or services are not deemed to be money changers.

Natural persons and legal entities seeking to do business as money changers need to obtain authorisation from the ACP. They have to request authorisation using the standard application form from the ACP General Secretariat that, in accordance with Article L. 524-3-I., determines that the applicant fulfils the following requirements:

- be registered on the companies register;
- have paid up capital or a guarantee from a credit institution or an insurance company of at least €38,000;
- have fit and proper senior managers or beneficial owners with the requisite expertise.

Money changers already doing business before the new authorisation rules under Order 2009-104 of 30 January 2009

came into force had to obtain authorisation to do business from the ACP General Secretariat under the same conditions as first-time applicants.

In addition, the new authorisation rules stipulate that individuals and entities carrying out money changing transactions on an occasional basis, or for small amounts, as described in Article D. 524-1 of the Monetary and Financial Code, are not required to be authorised money changers. There are two types of exemptions from this article:

The first type of exemption is for individuals or entities when money changing is not their main business and when they are subject to the anti-money laundering rules under Article L. 561-2 of the Monetary and Financial Code. This exemption applies if the sum of the buy and sell transactions in foreign currencies is less than €100,000 in any given financial year.

The second type of exemption is for individuals or entities when money changing is not their main business and when they are not subject to the anti-money laundering rules under Article L. 561-2 of the Monetary and Financial Code. This exemption applies when the money changing is carried out subject to the following conditions:

- it is done only for customers of the main business and it is directly related to that main business;
- the sum of the buy and sell transactions in foreign currencies is less than €50,000 and less than 5% of the turnover for all business activities;

- the absolute value of each money changing transaction is €1,000 or less, whether the operation is carried out as a single transaction or a series of apparently related transactions.

The individuals and entities concerned by these exemptions must file a sworn statement with the ACP General Secretariat once a year, within three months of the end of their financial year, certifying that:

- they have not done business as money changers as defined in Article L. 524-1 (II) of the Monetary and Financial Code;
- they comply with Article D. 524-1 of the Monetary and Financial Code.

Article L. 572-1 of the Monetary and Financial Code stipulates that doing business as a money changer without first obtaining authorisation from the ACP carries a penalty of two years in prison and a €30,000 fine. Failing to file the annual statement with the ACP General Secretariat in the case of individuals and entities carrying out money changing transactions on an occasional basis or for small amounts carries a penalty of one year in prison and a fine of €15,000.

FACTS AND FIGURES

Full implementation of the new rules applying to money changers at the end of 2011 led to a significant decline in their number. Out of the 500 or so money changers doing business under the pre-2009 reporting system, the number of remaining licensed money changers stood at 163 at the end of December 2011, down from 174 at the end of 2010. This decline stems from the regulatory thresholds that exempt individuals and entities engaging in money changing

from the authorisation requirement under the conditions set out in Article D. 524-1 of the Monetary and Financial Code (130 money changers are exempt) and from new and more stringent requirements.

Ten money changers account for most of the business volume. In addition, 56% of the population of money changes are also coin and gold dealers, and another 38% also sell gifts and souvenirs.

1.2 Insurance

The ACP made 165 decisions on licensing and authorisations in the insurance sector in 2011, as well as examining 109 applications for approval of senior managers. As was the case in 2010, most decisions (100) dealt with entities governed by the Mutual Insurance Code for mergers or transfers of portfolios (53) and for agreements to transfer risks or amendments to such agreements (40). Decisions on undertakings governed by the Insurance Code (60) concerned mergers or transfers of portfolios (15), changes in ownership (11), applications for licenses or extensions of licenses (10) or for exemptions from licensing requirements (3) and on terminating lapsed licenses (9). Three decisions concerned entities governed by the Social Security Code. In addition, 2 decisions were made regarding the registration of Retirement Savings Groups (GERPs).

A All types of institutions used the structures provided for under the Insurance Code

The ACP licensed 5 new insurance companies in 2011. Significantly, several of them were set up by the mutual insurance sector.

a. Partnerships

MUTEX, which was licensed as an insurance company, is the result of a sweeping reorganisation of the mutual insurance sector. UNION NATIONALE DE PRÉVOYANCE DE LA MUTUALITÉ FRANÇAISE (UNPMF), which was responsible for providing its member mutual insurers with savings services, and individual and collective supplementary pension and provident services, underwent reorganisation in 2011. Most of its liabilities were transferred to MUTEX, a public limited company governed by the Insurance Code. This company is controlled by 6 groups governed by the Mutual Insurance Code (HARMONIE MUTUALITÉ, PRÉVADIÈS, ADRÉA, EOVI, OCIANE, APRÉVA). MUTEX jointly assumed all of

the guarantees provided by the MUTALIS union, set up by the HARMONIE MUTUALITÉ and PRÉVADIÈS groups.

MUTUELLE GÉNÉRALE DE PRÉVOYANCE (governed by the Mutual Insurance Code) and UNION DE GROUPE MUTUALISTE ENTIS (of which it is a component) set up a mutual insurance company governed by the Insurance Code, MUTUELLE D'ASSURANCE SOLIDAIRE (MAS), which provides car and home insurance for their members. MAS is affiliated with GROUPEMENT DES ASSURANCES MUTUELLES DE L'EST (GAMEST), a union of mutual insurance companies governed by the Insurance Code, and was granted an exemption from the administrative licensing requirement by virtue of this affiliation. GAMEST assumed responsibility for MAS for compliance with the regulatory prudential requirements.

HARMONIE, a mutual insurance company governed by the Mutual Insurance Code, took over SPHÉRIA VIE, which is governed by the Insurance Code, which it used to own jointly and equally with SPHÉRIA VAL DE FRANCE, another mutual insurance company governed by the Mutual Insurance Code.

LA BANQUE POSTALE, which was already present in the personal insurance market in partnership with CNP and in the retail accident insurance market in collaboration with Groupama, expanded its bancassurance strategy to encompass health insurance in an alliance with MUTUELLE GÉNÉRALE, a mutual insurance company governed by the Mutual Insurance Code.

The insurance company AXA FRANCE VIE and the provident institution NOVALIS PRÉVOYANCE, which belongs to the NOVALIS-TAITBOUT supplementary social insurance group, became partners for collective retirement savings schemes by setting up a jointly and equally owned subsidiary, R2E.

The provident institution APGIS became affiliated with the company of the COVÉA mutual insurance group that unites the MMA, MAAF and GMF groups so that MAAF could extend its customer base to include large corporations and sell group policies.

The SMABTP group, specialising in construction insurance, acquired the life insurance company IMPÉRIO from the EUREKO group in order to strengthen its personal insurance business.

The end of the partnership that SMABTP, its subsidiary SAGENA and L'AUXILLIAIRE had forged with the COVÉA group for insuring corporate vehicle fleets meant that the 3 companies sold their equity interest in COVÉA FLEET and, simultaneously, the policy portfolios corresponding to each of the three companies' shares in COVÉA FLEET's policy production were transferred to SMABTP, SAGENA and L'AUXILLIAIRE.

The ALLIANZ FRANCE credit insurance subsidiary EULER HERMÈS started working with the Spanish insurer MAPFRE to build up its market positions in Spain, Portugal and Latin America. The vehicle for this collaboration is the Spanish company MAPFRE CAUCIÓN Y CRÉDITO (jointly and equally owned by the two groups), which took over the portfolio built up by the French company EULER HERMÈS SFAC in Spain through its local branch and, at the same time, the credit insurance business of the MAPFRE group.

b. Internal restructuring

As part of a merger by absorption, BNP PARIBAS ASSURANCE combined the businesses of CARDIF ASSURANCE VIE and ANTIN ÉPARGNE PENSION (formerly DEXIA ÉPARGNE PENSION) under CARDIF ASSURANCE VIE to streamline the structure of its insurance business.

The GENERALI FRANCE group continued to simplify its structure by merging its legal insurance subsidiary EUROPÉENNE DE PROTECTION JURIDIQUE into L'ÉQUITÉ.

AXA created a pan-European insurance company called FAMILYPROTECT to supplement its direct sales infrastructure. The new company will market term life, whole life and accident insurance under the freedom to provide services in various EEA countries and in Turkey.

GROUPAMA continued restructuring its mutual insurance business by merging CRAMA DU SUD into CRAMA D'ALPES MÉDITERRANÉE. This reorganisation reduced the number of regional companies to 11 (of which 9 are located in metropolitan France). At the same time, GROUPAMA merged its 2 liability insurance subsidiaries that use brokers to market their products, GAN EUROCOURTAGE (personal, professional and corporate insurance), and GROUPAMA TRANSPORT (the group's transport insurance subsidiary). GAN EUROCOURTAGE was the acquiring entity.

The AGPM group, which specialises in insurance for military personnel and high-risk professions, such as fire-fighters and police, transferred the business of its subsidiary AGPM FAMILLES, which sells home and casualty insurance to relatives of its members, to the mutual insurance company AGPM ASSURANCES.

The MONCEAU group rationalised by winding up the business activity of one of its entities, MUTUELLE D'ASSURANCES DE GUADELOUPE (MAG), which was a member of UNION DES MUTUELLES D'ASSURANCES MONCEAU (UMAM). The portfolio of policies sold by MAG was divided up between MONCEAU GÉNÉRALE ASSURANCES (a subsidiary of the group) and MUTUELLE CENTRALE D'ASSURANCES, also a member of UMAM.

c. Other changes

The supplementary social insurance group APICIL bought the life insurance company COPARC from ALLIANZ FRANCE. APICIL markets savings products through the network of advisers and asset management advisers who are salaried employees of the financial services company W FINANCE, which ALLIANZ simultaneously sold to the financial group PRIMONIAL.

The venture capital fund MBO CAPITAL 2 (whose management company is owned by nine individuals), an investment company, SOCIÉTÉ GÉNÉRALE CAPITAL PARTENAIRES, and the employee mutual fund of CFDP ASSURANCES acquired a minority stake (33.5% in all) through a holding company in CFDP ASSURANCES, which specialises in legal insurance. This company is controlled by its employees and by the intermediaries that it relies on to distribute its products.

OPÉRA FINANCE SA, a Luxembourg holding company, acquired an indirect equity interest in the non-life insurance company LA PARISIENNE by buying the interests of various investors who are shareholders in the PROTÉGYS brokerage group. The latter is the majority shareholder (66%) of LA PARISIENNE alongside SWISS RE.

Five insurance institutions obtained extensions of their licenses. Two of them sought to offer a broader range of new policies (Caisse de Garantie des Professionnels de l'Assurance, CALYPSO). The other three extensions stemmed from restructuring.

As of 31 December 2011, 327 licensed insurance institutions were in business.

d. Reinsurance companies

LA RÉASSURANCE INTERCONTINENTALE, a subsidiary of MMA that confined itself to managing the existing portfolio until its winding up, asked the ACP to void

the administrative license granted to it in 2008 to act as a reinsurer in order to speed up the voluntary winding up of MMA.

As of 31 December 2011, 19 licensed reinsurance institutions were in business.

VALUATION OF INSURANCE INSTITUTIONS' REAL ESTATE ASSETS

The ACP is responsible for approving the appointment of the real-estate appraisers that value insurance institutions' real estate assets.

Articles R. 332-20-1-d) of the Insurance Code, R. 212-54 of the Mutual Insurance Code and R. 931-10-42 of the Social Security Code stipulate that buildings and shares in unlisted real-estate and property companies have a realisable value⁵ that is determined by an appraisal to be carried out every five years by an ACP-approved appraiser. For their financial statements compiled on 31 December each year, entities must have carried out an appraisal of assets that were appraised five years earlier or acquired in the interim. Between two five-year appraisals, the value of an asset can be estimated and certified by the appraiser who conducted the five-year appraisal or by another appraiser approved by the ACP.

The practical procedures are set out in the memorandum of 8 June 2006, available on the ACP website⁶. The steps in the procedure are as follows:

- the annual programme of asset appraisals and remeasurements is sent to the ACP;
- the appraisers responsible for valuing real estate assets, and/or the central appraisers who assess the value of shares in real-estate companies, are appointed;
- the appraised values of all the assets owned by the entity are sent to the ACP, along with a summary of the appraiser's findings and the updated valuations of the assets; these data are appended to the detailed annual report.

Insurance entities are free to choose any appraiser, provided it has:

- the requisite technical skills: the appraiser must be competent for the types of assets to be appraised and comply with recognised ethical principles and professional standards⁷. The central appraiser, whose task is to analyse the value of the company by incorporating the appraised values of the buildings found by the previous appraiser, must have sufficient legal and accounting qualifications to value the company in question as well. The information about the appraisers' qualifications is filed with the ACP using the presentation form provided in the memo.
- the requisite dual independence: this independence is assessed on the basis of the document appointing the appraiser, which confirms the appraiser's independence from both the insurer and from the asset to be appraised.

Entities must also ensure that their choice of appraisers complies with the requirement of regular rotation of appraisers.

The ACP is deemed to approve the appraiser within 30 days of receiving the full filing, including the list of real-estate assets, the presentation forms and the documents appointing the appraisers.

With few exceptions, the real-estate appraisers presented by insurance institutions have the requisite qualifications. However, there is room for improvement at every step of the procedure. More specifically, the presentations do not fully comply with the rule on rotation of appraisers. When statutory auditors are presented as central appraisers whose task is restricted to certifying the calculation of the value of shares, they may not be used as appraisers. Valuations that are established in violation of the procedure are not valid under the regulations in force.

⁵ The realisable value is given in the notes to the balance sheet and can be used to calculate unrealised gains or losses.

⁶ <http://www.acp.banque-france.fr/agreements-et-autorisations/procedures-secteur-assurance/valorisation-et-expertises-immobilieres.html>

⁷ *Real Estate Appraisal Charter*, Barthès de Ruyter Report (available on the AMF website).

B Provident institutions governed by the Social Security Code were broadly unchanged in 2011

INSTITUTION DE PRÉVOYANCE VERNET (IPV) handles the supplementary pension scheme for employees of HSBC FRANCE. It has no other liabilities. Management and employee representatives decided to wind up the institution and transfer its liabilities to AXA FRANCE VIE.

CREPA, a provident institution specialising in pensions for law firm employees and legal assistants, supplemented the range of products offered to its members with long-term care insurance.

As of 31 December 2011, there were 51 provident institutions in business.

C Mergers continued between mutual insurance companies governed by Book II of the Mutual Insurance Code

The merger trend continued at a less sustained pace in 2011, as mutual insurers sought to increase their size to pool resources in a fiercely competitive environment. Mergers were also spurred by higher threshold requirements for the management of the social security scheme for self-employed workers and regulatory changes stemming from Solvency II.

Following the 48 mergers approved in 2011, the number of mutual insurance companies in business as of 31 December 2011 stood at 672, of which 219 had larger partners assuming their risks.

The main restructuring operations were as follows:

- MUTUELLE VIASANTÉ (formerly VIASANTÉ LA MIC) took over all of the mutual insurance companies in the VIASANTÉ group.
- NOVALIA MUTUELLE took over 6 mutual insurance companies as part of the continuing regrouping of the mutual insurance companies in the EOVI group. It also received a transfer of the group insurance business of UNION LANGUEDOC MUTUALITÉ and signed new agreements to assume the risks of 33 mutual insurance companies that had formerly been backed by UNION LANGUEDOC MUTUALITÉ.
- To simplify its legal structure, the UMC group transferred the UMC union's policies to a newly formed company, UMC SANTÉ. UMC was then wound up. UMC SANTÉ also took over 7 mutual insurers that had formerly been backed by UMC. UMC SANTÉ also assumed the risks of 3 mutual insurers that had previously been backed by UMC.
- MUTUELLE DES ARTISTES ET DES PROFESSIONNELS DU SPECTACLE (MAPS) and MUTUELLE D'ORGANISATIONS SOCIALES (MUDOS) were taken over by MUTUELLE NATIONALE DE LA PRESSE, DU LIVRE ET DE LA COMMUNICATION (MNPLC). The takeover was carried out because all 3 mutual insurers belong to the AUDIENS group. The new mutual insurance company will be called MUTUELLE DE LA PRESSE, DU SPECTACLE ET DE LA COMMUNICATION.
- ADRÉA MUTUELLE ALPES DAUPHINÉ (AMAD) received a transfer of the policies written by ADRÉA MUTUELLE PAYS DE L'AIN and also took over the six other mutual insurers in the ADRÉA group: AMAD changed its name to "ADRÉA MUTUELLE".

Four of the restructurings came with requests for license extensions from the acquiring companies in order to benefit from the licenses of the mutual insurance companies acquired.

One application for approval of a merger was rejected because, following the merger, the companies planned to maintain fully separate policies and financial rules, depending on the policyholders'

original company. This would have violated mutual insurance principles (Article L. 112-1 (3) of the Mutual Insurance Code). Furthermore, the merger agreement called for only some of the policyholders under the new entity to receive an annual "subsidy" from their employer, which is also a violation of mutual insurance principles.

TRANSFERS FROM A MUTUAL INSURANCE UNION TO A MUTUAL INSURANCE COMPANY

Following the examination of applications involving restructuring plans for mutual insurance institutions, it is essential to stress the following points with regard to transfers from a mutual insurance union to a mutual insurance company:

- a mutual insurance union must make a distinction between its own insurance policies and its assumption of other entities' risks;
- only the portfolio of its own policies can be transferred to a mutual insurance company, as defined in Article L. 212-11, along with the corresponding assets;

- the other mutual insurance companies that it backs must enter new agreements with the mutual insurance company in question to have it assume their risks;
- the other mutual insurance companies that it backs may recover any capital that they originally contributed, if so provided in the agreement to assume their risks;
- a mutual insurance union may not transfer its assets to a mutual insurance company, but it must provide a vested interest in its net assets when the union is dissolved.

AFFILIATION WITH A MUTUAL INSURANCE UNION GROUP

A mutual insurance union group structure (UMG), which is similar to a mutual insurance company group structure (SGAM), was introduced by Implementing Decree 2010-217 of 3 March 2010. This new structure allows mutual insurance unions to work with other insurance institutions and forge strong and lasting financial links with them. For example, if one of the affiliated undertakings encounters temporary financial difficulties, the group will come to its aid.

Since 2010, 2 mutual insurance union groups have been created, and there are plans for others to be created in 2012. Decree 2011-1192 of 26 September 2011 on the registration of mutual insurance companies, unions and federations gives the ACP the power to define the contents of an application for affiliation with a mutual insurance union group. An ACP Instruction dated 23 November 2011 defines the contents of an application and the ACP authorised the first affiliation in December 2011.

Changes in the number of insurance institutions

	31/12/2010	31/12/2011	CHANGE
Life and combined insurance companies	102	103	1
<i>of which combined insurance</i>	39	40	1
Non-life insurance companies	229	224	- 5
TOTAL INSURANCE COMPANIES	331	327	- 4
Reinsurance companies	20	19	- 1
Branches from non-EU countries	6	5	- 1
Governed by Insurance Code	357	351	- 6
Provident institutions	53	51	- 2
Governed by Social Security Code	53	51	- 2
Governed by Book II of the Mutual Insurance Code	719	672	- 47
<i>of which companies backed by larger partners</i>	237	219	- 18
Governed by the Mutual Insurance Code	719	672	- 47
TOTAL LICENSED UNDERTAKINGS AND UNDERTAKINGS NOT REQUIRING A LICENSE	1,129	1,074	- 55

D European passport use in 2011

a. Companies from the European Economic Area (EEA) doing business in France

• Under the freedom of establishment

The ACP received 8 notifications in 2011. As of 31 December, 102 undertakings from other EEA countries had an establishment in France (81 non-life, 15 life and 6 combined insurance companies)

• Under the freedom to provide services

The ACP received 49 notifications in 2011. As of 31 December, a total of 1,080 undertakings (including 160 branches) from other EEA countries were doing business in France under the freedom to provide services.

b. French undertakings doing business in other EEA countries

• Under the freedom of establishment

The ACP received 15 notifications, including notifications from GAN EUROCOURTAGE, CHARTIS EUROPE SA and ALLIANZ GLOBAL ASSISTANCE INTERNATIONAL; Poland was the host country in 4 cases and Spain in 3 cases.

• Under the freedom to provide services

The ACP received 59 notifications, including notifications from GAN EUROCOURTAGE, GROUPAMA ASSURANCE CRÉDIT, CAISSE RÉGIONALE D'ASSURANCES MUTUELLES AGRICOLES D'OC and IMA ASSURANCES.

2

Prudential supervision

219

on-site inspections were underway or completed under the 2011 inspection programme

- these included **136** inspections of banks and
- **83** inspections of insurance companies, i.e. a **97%** completion rate of the 2011 inspection programme

123

action letters were sent out on the basis of reports in 2011,

- including **82** to banks,
- and **41** to insurance institutions.

1,197

entities saw a change in their risk profile in 2011,

- including **666** banks
- and **531** insurance institutions.

30

colleges of supervisors were set up for groups where the ACP is the consolidating supervisor,

- including colleges for **14** banks
- and colleges for **16** insurance institutions.

THE ACP'S RESPONSE TO THE CRISIS

Since mid-2007, financial institutions have suffered a series of severe shocks that called for closer supervision and frequent preventive actions by supervisors. Concerns about financial institutions' exposure to certain euro area countries intensified in the third quarter of 2011, when the United States' credit rating was downgraded, stock markets fell and leading French credit institutions had greater difficulty refinancing in dollars. This turmoil affected the behaviour of households and businesses, causing them to reallocate some of their resources and, more generally, to be more hesitant in a very uncertain economic environment.

Under these circumstances, the ACP General Secretariat's teams, which had played an active role in the regulatory changes based on the lessons learned from the subprime crisis and made sure that institutions implemented corrective actions, were kept very busy by developments from the start of the summer.

The ACP was very active on many fronts at the same time in order to deal with the crisis.

The Chairman, Vice Chairman and General Secretariat of the ACP made extensive efforts to raise the awareness of economic agents about the situation of banks and insurance institutions by restating

fundamental principles and by fighting rumours, misconceptions and half-truths.

The ACP maintained its enhanced supervision of the main areas of vulnerability, while continuing to ensure compliance with all regulations and requiring stringent internal risk monitoring by the entities under its supervision in order to maintain public confidence in the financial system during the economic downturn.

The liquidity of credit institutions was closely supervised, with frequent exchanges with treasurers from the beginning of August, close monitoring of adjustment measures and disclosures to host country

authorities. Liquidity ratios were carefully monitored. Constant compliance with the rules is especially important in an extremely critical environment. In the insurance sector, new funds for life insurance were scrutinised very closely. A “re-forecasting” exercise was carried out in the fourth quarter of 2011 in which leading life insurers were asked to provide information for an assessment of the anticipated impact that financial turmoil would have on their solvency on 31 December 2011 under different scenarios.

The ACP played an active role in conducting Europe-wide stress tests of banks and insurance institutions in 2011 under the auspices of the EBA and EIOPA. Analysts paid close attention to these stress tests, which revealed the robustness of French institutions.

The ACP also worked on monitoring the preparations of credit institutions and insurance institutions for the implementation of the new Basel III and Solvency II regulations in response to the current crisis, while trying to prevent the reoccurrence of some of the financial imbalances seen in the past. These preparations were punctuated by impact studies. They continued with conferences organised by the ACP and periodic meetings with industry representatives and the entities subject to ACP supervision.

For the purposes of the Basel Committee and the G-20, the ACP has gathered statistics to identify potentially «systemically important» institutions (cf. Chapter 5). Exemplary behaviour is especially important during a crisis. Consequently, the ACP ensured that the rules governing the

remuneration of market professionals were implemented.

The ACP also played a direct role in macro-prudential supervision by various national and international bodies with the aim of analysing market developments and weaknesses in the financial system, cooperating on the preparation of standards and working with other institutions.

The ACP's response to the crisis involves different timeframes, from very short-term measures to deal immediately with disruptive rumours to medium and long-term preventive action.

The ACP has kept a very close watch over the largest institutions that are likely to pose a systemic threat, while also performing its duties to protect customers.

2.1 Banking

A Ongoing supervision

a. The scope of ongoing supervision of banks and investment companies

The *Autorité de contrôle prudentiel* supervises compliance with laws and regulations applying to credit institutions, investment companies, payment institutions, financial holding companies and mixed financial holding companies.

It also supervises members of the regulated markets, clearing house members, entities authorised to do business as custodians or administrators of financial instruments and money changers.

The ACP has also supervised micro-credit companies since 2010, as long as they request supervision by the ACP under prudential regulations that are appropriate for the characteristics of such companies.

Decree 2010-411 of 27 April 2010 makes the ACP responsible for supervising the banking and financial activity of the CAISSE DES DÉPÔTS ET CONSIGNATIONS group, on behalf of its Supervisory Board, based on an internal model (“prudential model”) previously defined by the Board.

b. Continuing to enhance preventive action

1) The risk assessment system used by the ACP

The ACP assesses the risk profile of all of the licensed institutions using its own methodology, called ORAP 2. This methodology analyses all the risks that institutions are exposed to and the quality of their internal control systems⁸. In addition to examining the nature, scale and complexity of the institutions' business activities, the assessment considers:

- **credit risk**, including an examination of the quality of the loan portfolio, provisions for bad loans, stress-test results and any imperfections in the models used to calculate capital adequacy requirements for credit risk;
- **concentration risk** with regard to a single counterparty or related counterparties in the same economic sector or in the same geographical area;
- **market risk**, including exchange rate risk and intermediation risk, along with an examination of stress-test results;
- **operational risk**, particularly with regard to fraud, errors or reputation risk;

- **liquidity risk;**
- **interest rate risk;**
- **the quality of the organisation of the internal control system**, including risk monitoring and management procedures for conflicts of interest, reputation and image risk, and compliance risk;
- **the strategy used** and the quality of general organisation, particularly with regard to corporate governance;
- **earnings;**
- **the level, structure and stability of capital**, including the definition of economic capital and capital adequacy for the various types of risk incurred.

The intrinsic situation of each institution in light of the various assessment criteria is analysed on the basis of:

- quantitative data used to assess the institution's risk profile with regard to each of the assessment criteria, and its financial situation;
- qualitative data used to assess the quality of the risk management, monitoring.

⁸The 2007 Banking Commission Annual Report contained a detailed presentation of the ORAP 2 methodology.

ENFORCEMENT OF REGULATIONS ON REMUNERATION

The ACP's powers to control remuneration were strengthened in keeping with the 2009 Financial Stability Forum (FSF) principles and standards, under the Banking and Financial Regulation Act of 22 October 2010 and under the Ministerial Orders of 5 November 2009 and 17 December 2010 that were transposed into the Monetary and Financial Code and the Banking and Financial Regulation Committee Regulation 97-02 on internal control in credit institutions and investment firms.

These provisions strengthened the governance of institutions with regard to remuneration and introduced new rules on remuneration policies and practices with regard to employees whose activities have an impact on their employer's risk profile.

In early 2011, the ACP analysed how well the practices of the leading French credit institutions in respect of 2010 complied with the new provisions. The analysis was based on quantitative and qualitative questionnaires that the ACP sent to the institutions to track implementation of the new rules. An analysis of the responses received shows that French banks have taken good account of the changes in remuneration regulations. Nevertheless, there are still disparities between institutions, reflecting differences in size or corporate culture. More specifically, the notion of "risk-taker" does not seem to be the same from one bank to the next. At the same time, there is still room for improvement in some areas, such as the portion of share-based remuneration, clawback arrangements and guaranteed remuneration. The ACP made recommendations to institutions, notably to moderate pay awards.

At the same time, the ACP reported on progress with the application of the Financial Stability Board principles and standards in France

and in the leading countries licensing Global Systemically Important Financial Institutions (G-SIFIs).

This work was published in the 2010 ACP Annual Report, with the figures for the French banking and insurance market, available on the ACP website.

At the end of 2011, a new questionnaire on practices in 2011 was sent to institutions to assess their plans for variable remuneration awards for 2011 (see appendix to this report). The responses show that the revisions of overall variable remuneration awards for each bank and for each broad category of personnel or business in 2011 are in line with trends in earnings and that they are compatible with the capital strengthening expected of the banking groups.

The ACP General Secretariat also examined the plans for variable remuneration awards to corporate officers. Overall, the examination shows that banks' boards of directors or supervisory boards have cut remuneration awards substantially and that the cuts are, on the whole, in keeping with the decline in earnings.

However, there is a new tendency to award "long-term profit sharing or incentive plans" reserved for corporate officers, and senior managers in some cases, instead of the former awards of stock options. These plans, which are usually correlated to the variable remuneration awards, are subject to achieving specific targets and, in general, the awards vest after two, three or five years.

As part of the ACP's general responsibility for supervising variable remuneration awards, the General Secretariat will continue to analyse the effective impact of these changes over time with regard to French and international requirements.

2) Enhanced monitoring

The ACP staff in charge of monitoring individual institutions conducted an in-depth analysis of their quarterly financial statements and prudential filings. The analysis was supplemented with information from the annual reports on risk exposure and internal control systems. The content of these reports was substantially expanded in 2010, along with that of the annual reports on anti-money laundering. This periodic analysis forms the basis for monitoring the institutions and enriches the detailed assessment of institutions' situations under the ORAP 2 methodology. The risk profiles of a total of 666 institutions were assessed in 2011.

To round out this work, against the backdrop of the financial crisis, the supervisory staff held more periodic meetings with the senior executives of the institutions (senior managers, chief financial officers, heads of business lines, risk monitoring, periodic and ongoing supervision, etc.), which led to a substantial increase in the number of meetings held to a total of nearly 1,100.

At the same time, to get a clearer idea of the specific risks of certain business activities, thematic studies were once again performed for institutions operating in certain market segments, such as consumer credit, home loans, factoring, car loans and financing of business real estate. Some of these studies were published in the ACP's Review "Analyses et Synthèses⁹".

The ACP uses a special approach for large banking groups that is based on a structured programme of meetings called enhanced supervision. The approach is structured by business line (retail

banking in France, retail banking in other countries, investment banking, etc.), by geographical area and, where appropriate, by legal entities, if they warrant enhanced supervision. During these meetings, an in-depth diagnosis is made of institutions' risks (credit risk, market risk, liquidity risk, etc.) and their systems for monitoring and managing these risks. The General Secretariat's overall assessments of these groups' situations were disclosed to their senior executives and decision-making bodies, as well as the institutions' statutory auditors.

Foreign credit institutions doing business in France are also subject to enhanced supervision based on the ACP's active participation in colleges of supervisors (via contributions to the group assessment as part of the joint risk assessment following the plan set out by the European supervisors and the EBA) and based on an in-depth analysis of the situations of the groups in question. These colleges of supervisors have been mandatory in Europe for several years. They are now being developed in other areas of the world at the initiative of the G-20 and the Financial Stability Board.

All of the information gathered during ongoing supervision work, supplemented by findings of on-site inspections (nearly 100 reports in 2011), led the ACP to make recommendations aimed at improving licensed institutions' risk profiling and risk management systems. This information was also considered when imposing add-ons to capital adequacy requirements for certain institutions in 2011 under Pillar 2 of the Basel II system (see the 2009 Commission Bancaire Annual Report, "Implementation of Pillar 2 of Basel II").

⁹ No. 3, July 2011 "Synthèse de l'enquête sur le financement de l'habitation en 2010" and No. 4, September 2011 "Étude sur l'affacturage en 2010".

On-site visits are a new supervisory procedure first implemented in 2010 by the staff responsible for ongoing banking supervision. These visits continued in 2011. This flexible supervision technique complements supervisory meetings. They involve going into institutions, generally for two days, to meet key personnel in the areas under review.

The meetings held during these visits provide an opportunity for obtaining a clearer idea of the actual organisation and technical tools used in institutions. Inter alia, the visits have made it possible to make a better assessment of practical aspects of internal controls in some institutions, to understand the procedures for producing some of the regulatory filings required from large banking groups, implementation of the Consumer Credit Act and specialised institutions' execution techniques (algorithmic trading). They also made it possible to gather information about the business activities, strategies and risks of some smaller institutions.

c. Supervision in an increasingly international framework

1) Colleges of supervisors

Colleges of supervisors were set up for French banking groups with significant international business back in 2005, without waiting for them to become mandatory in Europe. The groups concerned were BNP PARIBAS, SOCIÉTÉ GÉNÉRALE and CRÉDIT AGRICOLE. The colleges bring together the supervisors of the European subsidiaries of the banking groups concerned, along with non-European supervisors of the largest international establishments, as a separate body where appropriate.

Under the terms of Directive 2006/48/EC (recast), colleges of supervisors became mandatory as of the end of 2010 for groups with one or more subsidiaries located in another Member State of the European Union. For this purpose, the ACP started establishing new colleges of supervisors in 2010 that are now in operation. The ACP heads a total of 14 colleges of supervisors for banking groups where it is the consolidating supervisor in Europe. It has identified another 20 institutions where it is likely to take part in a college of supervisors in its capacity as the supervisor of a subsidiary of a European banking group.

Colleges of supervisors are meant to promote greater cooperation between the authorities supervising the entities of the groups in question.

The main objectives of the colleges are to:

- share information about the overall situations of the groups in order to make a joint assessment of their risk profiles;
- harmonise approaches to enforcing prudential regulations with regard to the different entities of the group;
- coordinate supervisory actions, particularly in the case of on-site inspections.

Depending on the subjects being discussed, the supervisors of the insurance subsidiaries of French banking groups may be invited to participate in the discussions within the colleges. In 2010, representatives of the Committee of European Banking Supervisors (CEBS) were also invited to attend the meetings of the colleges for BNP PARIBAS, SOCIÉTÉ GÉNÉRALE and CRÉDIT AGRICOLE as observers. Since 1 January 2011, representatives of the European Banking Authority (EBA),

which replaced the Committee of European Banking Supervisors (CEBS) and has more extensive powers, have been entitled to be members of European colleges of supervisors. The senior managers and representatives of the groups concerned

are periodically invited to attend the meetings of the colleges of supervisors to present the annual financial statements, likely changes in risk profiles and planned strategic developments.

THE JOINT DECISION PROCESS IN EUROPE

Since 2011, Directive 2006/48/EC, as amended by Directive 2009/111/EC of the European Parliament and the Council of 16 September 2009¹⁰ has made the process of joint evaluation by the supervisors of the risk profile of a banking group and its subsidiaries mandatory so as to reach a joint decision each year concerning:

- the financial situation of the banking group and its subsidiaries and their risk profile;
- the level of capital requirements, with a view to imposing possible so-called Pillar 2 add-ons on each entity in the banking group and on a consolidated basis.

The Directive states that the consolidating supervisor must provide the authorities responsible for the supervision of the group's subsidiaries in the European Union with a report on the assessment of the group's risk exposure, taking into account the assessment of the risk exposure of the European subsidiaries.

The authorities have four months (extended to six months up until 31 December 2012) to reach a joint decision on the adequacy of the group's capital and on any add-ons applying to the subsidiaries on a consolidated basis. At the end of the allotted time for discussions between the authorities, it is up to the consolidating supervisor, after considering the group risk assessment and the opinions of the competent authorities for supervising the subsidiaries, to acknowledge the agreement of all the authorities concerned and present the joint decision regarding the group and its subsidiaries. The capital requirements that these authorities set for the subsidiaries take account of any reservations expressed by the consolidating supervisor. If the authorities fail to reach an agreement,

the consolidating supervisor may refer the matter to the European Banking Authority at its own initiative or at the request of another authority. In this case, the various authorities must then abide by the opinion expressed by the EBA.

The joint decisions made regarding the group and its subsidiaries, along with the explanations for these decisions, are presented in a single document that the consolidating supervisor then transmits to the parent company and to all of the authorities concerned. The decisions are updated once a year or, under exceptional circumstances, at the request of an authority responsible for the supervision of a subsidiary. In this case, the update may be made on a bilateral basis.

The Committee of European Banking Supervisors published recommendations in December 2010 aimed at harmonising the enforcement of the new provisions on the operation of colleges of supervisors and the joint decision process. The process used in the colleges of supervisors presided by the ACP is consistent with these recommendations. The 14 colleges of supervisors presided by the ACP implemented this process in 2011 and will do so again in 2012 in order to adjust the specific capital requirement under Pillar 2.

The ACP College was very active with regard to this process in 2011. It examined the situations of 39 entities belonging to European banking groups where capital add-ons were upheld. This examination resulted in an upward revision of the capital requirements for two banking groups where the ACP is the consolidating supervisor. The ACP College also imposed add-ons to the capital requirements of 3 institutions where the only European location is France.

¹⁰ This Directive was transposed into French law by the Banking and Financial Regulation Act 2010-1249 of 22 October 2010 in Article L. 613-20-1 and the following articles of the Monetary and Financial Code. The implementing procedures for these provisions were set out in Decree 2011-18 of 5 January 2011 (Article R. 613-1 and the following articles of the Monetary and Financial Code).

2) Institutions' preparations for Basel III

Following the G-20 recommendations and those of the Financial Stability Board, the Basel Committee published the Basel III Agreements on 16 December 2010. The new rules will enter into force on 1 January 2013. They increase capital requirements and provide a more restricted definition of the best quality capital (CET1: Core Equity Tier 1). The new rules will be phased in from 2013 up to 2019, when the minimum CET1 ratio will be 7% (instead of today's minimum of 4% of core capital or Tier 1 capital). In addition, the leading French banking groups will be subject to specific add-on requirements in their capacity as Global Systemically Important Financial Institutions (Global SIFIs) according to the list drawn up by the Financial Stability Board.

The Basel Committee has also introduced two international liquidity ratios: a short-term Liquidity Coverage Ratio (LCR) to cover net cash outflows over a 30-day period and a more structural Net Stable Funding Ratio (NSFR) for liquid asset stocks over a one-year period. These ratios are designed to complement each other. The combined ratios should make it possible to ensure that an institution can cope with a sudden liquidity shock (LCR) and that its asset and liability management is sound (NSFR).

In Europe, the Basel Committee's proposals will be adopted by the Parliament and the Council under the Codecision Procedure and result in a new version of the Banking Directive (CRD 4).

At the end of 2010, the leading French banks took part in the Quantitative Impact Study (QIS) on the new Basel rules, which looked at more than 250 banks

in the 23 member countries of the Basel Committee. In 2011, the ACP held periodic meetings with French banks to discuss their progress on Basel III. The banks also addressed the issue in the financial communications and, more specifically, when they published their quarterly results. This work will continue in 2012 and incorporate the specific provisions of the European Directive CRD 4. The final version of the Directive should be ready about half way through 2012 (cf. Chapter 5).

d. Special monitoring relating to the crisis

1) Crisis Management Groups

In 2011, the Financial Stability Board stepped up its international work on the prevention and orderly management of failures of systemically important financial institutions. More specifically, this work specified the tasks and targets of the Crisis Management Groups (CMGs), as they are called under the Financial Stability Board terminology.

The CMGs are made up of supervisors, central banks and the finance ministries, both from the consolidated country and the other countries concerned. The groups must examine and discuss Recovery and Resolution Plans (RRP), drawn up in advance by large cross-border financial groups to cope with crisis situations. This work gives the national authorities of the main host countries of such groups a better understanding of the links between each of the components in the group and the most relevant information possible in the event that a group goes through a crisis that makes restructuring necessary.

Organisation of CMGs

The Crisis Management Groups were set up in 2011 for each of the major French banking groups. The objective of the first meetings was to discuss the confidentiality of the information shared within the CMGs and the specific reorganisation rules of each member country. Drafts of Recovery and Resolution Plans under development were also presented.

The first Recovery and Resolution Plans were finalised at technical meetings of the ACP, the *Banque de France* and the other supervisory authorities and central banks concerned.

In keeping with the objectives set by the Financial Stability Board, a preliminary version of these plans is due to be presented and discussed by the end of 2012. In accordance with the principles defined by the Financial Stability Board, the ACP, working in cooperation with the *Banque de France*, stepped up its work with the major French banking groups and also took part in work involving major foreign banking groups doing business in France.

Governance of draft Recovery and Resolution Plans

The French banks concerned increased the resources allocated for drafting their plans in 2011. Governance structures were set up to finalise the plans in 2012. Boards of directors are receiving periodic progress reports on the plans and are validating any approaches submitted to them, along with the procedures for periodic reviews and updates of the plans.

Progress on French banking groups' plans

The ACP measured the substantial progress made on the elaboration of Recovery and Resolution Plans, especially in the second half of 2011, through many meetings with the groups concerned about the approaches and methodologies used.

Most "Recovery Plans" are now complete or well advanced. They set out the options for the recovery of institutions' financial situations in the event of a crisis. These options are identified with due consideration of their impact on liquidity and solvency, and the time required to implement them.

Elaborating the "Resolution Plans" is a more complex task. The purpose of such plans is to provide the competent authorities with critical information for orderly reorganisation of banking groups in the event of a crisis. They require an analysis of the functions in the groups' various entities or business lines that are deemed to be critical for the economy and markets. The many interdependent financial and operational relations within international groups need to be clearly identified, along with obstacles to the orderly reorganisation of the groups. Most French banking groups will do further work on these plans in 2012.

The ACP and the *Banque de France* will continue to assess the changes made to Recovery and Resolution Plans in 2012, through discussions with the major French banking groups and more intensive discussions within the Crisis Management Groups. This work will incorporate the guidelines set by the Financial Stability Board and the European Commission's legislative proposal on crisis management expected in 2012.

2) Enhanced liquidity monitoring

In 2011, the ACP continued to strengthen its liquidity risk analyses of French credit institutions and investment companies. Many meetings were held in the first half of the year with the teams in charge of cash management and asset and liability management. Building on the initiatives taken in 2010, data to supplement regulatory disclosures were gathered from major groups on a regular basis to refine the analysis of their refinancing structures and terms, and to improve monitoring of their asset and liability management (comparing asset maturities to the maturities of their refinancing).

This work facilitated supervision of institutions' situations when market conditions deteriorated in the third quarter of 2011, with the large drop in the volume and maturity of dollar investments by US mutual funds in European banks.

French banks were some of the leading counterparties for such transactions and were hit especially hard. French banks then had to turn to other markets and investors (off-shore dollar markets, currency swaps) to maintain financing for their dollar transactions (project financing, international trade) and, in some cases, had to cut back their activity (trading in financial instruments in particular).

As in 2008 and 2009, the two banking supervision directorates instituted crisis liquidity monitoring of large institutions from the beginning of August. They held daily telephone meetings with the treasurers and supplemented their disclosure system. They maintained close contacts with the *Banque de France* staff in charge of market transactions. Seve-

ral meetings were also held with institutions to examine the appropriateness of their reactions to the new environment. Especially close attention was paid to the preparation of budgets and refinancing plans for 2012. Information sharing with supervisors in the main foreign countries concerned was stepped up to track refinancing conditions in the leading financial markets more closely.

Tensions eased slightly at the end of 2011, as the various measures taken by the European Central Bank helped to loosen refinancing constraints for European credit institutions: three-month collateralised dollar loans and up to three-year euro loans, expanding the list of securities that the central bank accepts as collateral and lower reserve requirements starting in January 2012.

The ongoing supervision unit for banks was also closely involved in the two stress-testing exercises and the strengthening of capital carried out by the EBA in 2011 (cf. section 3 of this chapter).

B On-site inspections and follow-up

The inspections initiated in 2011 by the on-site inspection unit, under the programme set by the Secretary General of the ACP, are in line with the supervisory priorities defined by the ACP College. These priorities are to supervise the types of business activities or institutions perceived as presenting specific risk factors, following in-depth analysis by the ongoing supervision teams and to ensure proper enforcement of the new regulatory requirements and measure their impact on institutions.

The on-site inspection programme covers two types of inspections. The first type is general inspections, which cover all of the inspected institutions' activities. These inspections focused on small and medium-sized institutions that had been flagged by the ongoing supervision unit, but are inspected with regard to all of their activities. The second type is thematic inspections, which primarily concern large groups. These inspections focus on certain activities or business lines. Generally, inspections with the same theme are carried out in several banking groups (cross-functional inspections) and focus on regulatory systems and the effects of the crisis on the banking industry.

The liquidity of large French banking groups was one of the primary focuses of such inspections in 2011, and, more specifically how well prepared these groups are for the new international liquidity standards being developed under Basel III. The implementation of a coordinated cross-functional approach to visits to the various institutions inspected made it possible to provide the ACP with an accurate and documented overview of the ramifications of the current reforms for French banks. Some inspections focusing on the calculation of regulatory liquidity coefficients were also carried out.

The teams carried out inspections of market activities with regard to applications for authorisation to use internal models under the new requirements set out in CRD 3 in order to improve capital adequacy for trading book market risk. These changes include provisions on stressed value at risk (stressed VaR), the Incremental Risk Charge (IRC) for additional default and migration risks and

the Comprehensive Risk Measure (CRM) for the credit correlation portfolio. These new requirements were implemented on 31 December 2011. In 2011, some on-site inspections also focused on control, monitoring and rescaling of market activities, along with management of activities in run-off mode by certain groups.

Ongoing implementation of the Basel II Agreement led to inspections for the first authorisation of internal models under the advanced measurement approach that institutions developed to calculate their capital requirements for their retail banking assets and corporate portfolios.

Inspections in 2011 also focused on the themes of management of international business lines by certain banking groups, compliance risk, wealth management activities and anti-money laundering and terrorist financing systems, which are always closely watched.

On-site inspections also covered the various activities of specialised French and foreign institutions licensed as credit institutions or investment companies.

Consequently, the 2011 inspection programme, like that of every other year, covered a broad range of institutions specialising in the following activities: business financing, consumer loans, managing employee savings schemes, private asset management, intermediation, etc.

The on-site inspections in the leading institutions in France consistently led the inspectors to follow up their inspections by inspecting foreign businesses to ensure that risk monitoring and management procedures were being properly followed.

On-site inspections were carried out in close collaboration with the ongoing supervision teams, which followed up the inspection reports and tracked the measures taken by the institutions inspected.

Several inspections were carried out with regard to credit institutions' marketing practices, under the powers given to the ACP for the supervision of business practices (cf. Chapter 3).

2.2 The insurance sector

A Ongoing supervision

a. Scope of ongoing supervision in the insurance sector

The *Autorité de contrôle prudentiel* monitors compliance with legislation and regulations applicable to insurance and reinsurance firms, mutual insurers governed by Book II of the Mutual Insurance Code and their unions, and provident institutions and their unions. It also supervises group insurance companies, mixed group insurance companies and provident groups.

The Authority ensures that insurance institutions are able at all times to honour their commitments to their policyholders, members and beneficiaries, and that they actually do so in practice.

It ensures that procedures for appointing and running insurance institutions' decision-making and executive bodies comply with the relevant regulations.

Furthermore, under the provisions of Articles L. 621-9-2 and R. 621-31 of the Monetary and Financial Code, inspections were carried out under a mandate from the AMF to ensure compliance with the provisions of the AMF General Regulation. After consulting with the Directorate General of Customs, the ACP carried out on-site inspections of money changers in 2011.

b. Continued preventive action by the ACP

1) Individual diagnosis of each insurance institution

Ongoing supervision activities mainly draw on analysis of financial and prudential disclosures, in-depth interviews with institutions' representatives and the findings of on-site inspections.

Periodic information used by ACP staff responsible for monitoring individual insurance institutions mainly consists of the following: thorough examination of institutions' quarterly and annual financial and prudential filings, as applicable, and detailed reviews of internal control reports, solvency reports, investment policy reports and reinsurance reports submitted annually. ACP staff use this information to analyse and assess the status of supervised institutions using a long-established methodology. Risk profile assessments were carried out on 531 insurance institutions in 2011.

The ACP General Secretariat assesses reporting institutions based on the nature, volume and complexity of the activities they undertake. Its assessment mainly covers the following areas:

- **underwriting risk**, including in particular reviewing commitments given to policyholders, members and beneficiaries, pricing, portfolio monitoring undertaken by insurers, and the appropriateness of reinsurance policies to the risks underwritten;
- **quality and adequacy of provisions** in respect of each uniform portfolio of policies, choice of discount rates and tables used in life insurance, and monitoring of the liquidation of provisions, changes in average frequencies and costs, and major claims in non-life insurance;
- **adequate diversification of investments** so as to ensure that no institution is excessively exposed to a single counterparty or group of related counterparties belonging to the same economic sector or located in the same geographical region;
- **prudent assessment of investments**, including their correct regulatory classification and recognition of required other-than-temporary impairment and additional provisions, as applicable;
- **operational risk** relating in particular to the risk of fraud, error, reputation and IT systems failure;

- **quality of asset-liability management and interest rate risk management;**
- **quality of the organisation of compliance and internal control systems**, including risk monitoring and management procedures;
- **corporate governance** and the proper functioning of decision-making and executive bodies;
- **profitability of insurance activities and formation of profit;**
- **the level, structure and sustainability of shareholders' equity.**

Each institution's intrinsic position in relation to the various assessment criteria is analysed using the following:

- quantitative data in relation to each of the assessment criteria, as well as the institution's financial position;
- qualitative data intended to assess the quality of risk management, monitoring and control systems.

The outcome of this ongoing supervision process is a diagnosis that is updated annually. The process serves to detect early signs of any deterioration in an institution's financial soundness and assess any required remedial action. This analysis is supplemented by way of regular meetings with key managers of institutions (executives, representatives of finance and accounting departments, departments responsible for underwriting and provisioning, business line heads, compliance officers, etc.).

INTEGRATED ACTION BY THE ACP IN RELATION TO LINKS BETWEEN BANKS AND INSURANCE INSTITUTIONS

As indicated in the January 2009 Deletré report on the organisation and operation of the supervision of financial activities in France, *“while the insurance and banking businesses are different, the fact remains there are some areas of overlap”*. Indeed, France’s largest financial groups include both banking and insurance businesses. Major French banking groups have created or developed insurance subsidiaries which now offer personal customers a comprehensive range of life and non-life insurance products and represent significant equity investments by their parent companies.

Above certain thresholds, these financial groups become “financial conglomerates” and are subject to “supplementary supervision” over and above the individual controls carried out on each individual entity or group by bank and insurance supervisors. The supervisor of a conglomerate’s predominant business is responsible for undertaking this supplementary supervision in cooperation with the other relevant supervisors. French financial conglomerates are predominantly banking groups.

As an integrated authority, the ACP is in a much better position to observe interactions between the banking and insurance divisions of financial conglomerates, and the resulting risks, than were ACAM and the *Commission bancaire*, despite the dialogue between those two authorities. As a result, the ACP has already been able to take resolute action and thereby make a more significant contribution to the stability of the financial sector.

For example, in 2011, credit institutions were faced both with stress on the interbank market and changes in banking regulations governing liquidity and solvency. The ACP paid close attention to ensure that these pressures did not lead to inappropriate use – particularly within financial conglomerates – of insurance companies’ resources, which would have heightened their internal counterparty risk, increased the proportion of illiquid assets holdings, or reduce the net capital actually allocated to them, thus amplifying interdependencies and the risk of contagion within conglomerates. The ACP took action where necessary. The scope of its review was extended to cover sales of unit-linked policies invested in securities issued by related banks, including in particular insurers’ parent companies. In such situations, insurers are exposed to additional liquidity risk that is not unrelated to the risk that the related banks are exposed to. The ACP reminded the insurers in question that they had to be able to assess the consequences of such a situation and, in any event, to maintain such exposure within the limits called for by prudent management and appropriate asset-liability matching.

In 2011, a joint inspection of an insurance institution and its partner banks by the banking and insurance supervisors resulted in sanctions for the institution in question (cf. Chapter 4) and warnings for its partner banks.

2) Tightening of ACP filing requirements

The ACP tightened requirements on the filing of information about investments by asking all institutions to systematically submit another table, in addition to the statement of investments, to supplement the information used to analyse insurance institutions’ assets. **These tighter requirements were covered by instruction 2011-I-02 on the creation of a supplemental table to the statements of investments.**

Given the investment risks borne by insurance institutions, the Authority made an in-depth review of these statements so as to obtain a full assessment of the

companies’ position. The filing of this information enabled the ACP’s supervisory staff to more accurately analyse the composition of investments, including in particular the use of complex and structured securities, exposure to specific countries and sectors, the proportion of investments invested in issuers belonging to the same group, and the nature and spread of securities. Combined with quarterly statements tracking the main changes in investment portfolios, the supplementary table to the statement of investments also enabled supervisors to better assess institutions’ investment policies and the adequacy of their asset-liability management.

Inspections also focused on unrealised gains and losses recognised by institutions at the end of their accounting periods.

3) Close monitoring of cross-border insurance groups

Particular attention was paid to insurance groups, especially French subsidiaries of European groups. Subsidiaries constituting French insurance groups have to comply with current regulations, and in particular the adjusted solvency requirement, which corresponds to aggregate solvency requirements of all subsidiaries.

The ACP believed it important to encourage healthy allocation of capital within such groups and not to settle for arrangements that create capital artificially. Otherwise, French entities belonging to insurance sub-groups could post

comfortable solvency margins while in reality carrying not only the risks arising from their own activities, which account for solvency margins’ requirements, but also, through financing and support arrangements, the risks of other group entities.

The ACP General Secretariat reminded groups operating in France that their adjusted solvency had to be positive at all times. Compliance with this requirement must be assessed not only in relation to each institution’s financial position at a given point in time, but also where there is a higher loss experience or a financial market downturn. This approach has led European insurance groups to recapitalise their French subsidiaries where necessary.

THE MARKET FOR SUPPLEMENTARY HEALTH INSURANCE IN FRANCE

In France, three categories of organisation can offer services for supplementary health cover (in addition to compulsory cover provided by the health insurance branch of the social security system): mutual insurers governed by the Mutual Insurance Code, insurance companies and provident institutions.

At 31 December 2010, the ACP had identified 574 organisations offering supplementary health cover: 439 mutual insurers governed by the Mutual Insurance Code, 106 insurance companies and 29 provident institutions. The share of each institution’s business generated by health insurance varies substantially by type of organisation. More than 89% of total revenue generated by mutual insurers arises from health insurance business, while the equivalent figure is only 48% for provident institutions, compared with a mere 14% for “non-life” insurance companies and 6% for “life and mixed” insurance companies.

The supplementary health insurance market was worth €31.4 billion at end-2010, up 4.23%. At that date, insurance companies held 27% of the supplementary health insurance market; their revenue from that market grew by 6.4% in the year to €8.5 billion. Mutual insurers, which together accounted for 56.3% of the market, saw their revenue grow by 4.3% to €17.7 billion. The rest of the market – i.e. almost 17% – was accounted for by provident institutions.

Effective supervision of institutions offering supplementary health insurance focuses in particular on ensuring that commitments are met and, where applicable, provisions for increasing risks are recognised. Further to the introduction by the public authorities of changes to the compulsory health insurance system and its funding, the cost of supplementary health insurance is also closely monitored by supervisory staff to ensure that such cover is properly priced.

SUPERVISORY COLLEGES AND EIOPA

In the early 2000s, the European Commission decided to strengthen cooperation in the supervision of insurance. **The adoption of Directive 98/78/EC, implemented as part of the "Helsinki Protocol" of 11 May 2000, led to the creation of supervisory colleges for each European insurance group.**

The protocol governs the operation of these colleges and specifies their objectives.

The ACP participates in 27 insurance colleges, 6 of which dedicated to insurance groups included on EIOPA's list of the top 30 groups (cf. EU Regulation 1094/2010 of 24 November 2010). It is lead supervisor for 16 of these colleges.

Each college is generally organised around regular meetings and is intended to facilitate dialogue on key issues facing the group. The topics addressed include matters relating to adjusted solvency reported by the group's supervisor, strategic direction (investment policy, reinsurance policy, etc.), along with internal management and governance issues. Depending on the group and the topics addressed, the supervisors of the group's banking subsidiaries may be invited to attend meetings.

EIOPA is involved in all colleges supervising cross-border groups and thus has an overall view of how they operate. It can draft technical regulatory standards and check that they are uniformly applied within the various colleges. It also issues recommendations, thus sharing best practices that have been ratified within the various colleges. In addition, it plays a legally binding mediation role under which it settles disagreements between authorities.

Supervisory colleges stepped up their activities in 2011. They focused particular attention on developing and implementing "emergency plans" relating to the financial position of each supervised group. Priority areas for the supervisory colleges in which the ACP is involved also included making a joint analysis of the fifth impact study (QIS 5) undertaken in late 2010, establishing timetables and work programmes for the pre-application process for internal models, and reviewing of stress tests.

For groups with significant non-European operations, the ACP continued to take part in global supervisory colleges. Cases in point are the AXA group and SCOR, for which the ACP is global lead supervisor.

c. Continued market preparations for Solvency II

The ACP has drawn up an action plan intended specifically to prepare the market for the entry into force of Directive 2009/138/EC (Solvency II). The plan consists of 8 major work streams – international negotiations, internal models, valuation of prudential balance sheet items, reporting and IT, market preparations, transposition and small entities – overseen by dedicated working groups.

More specifically, the ACP staff focused on the following issues in 2011:

1) Governance requirements for Pillar 2 of Solvency II

Market preparations for Pillar 2 continued in 2011, notably in the areas of governance, procedures and risk management within institutions. Particular emphasis was placed on insurance institutions' organisational structure to ensure that their operational and internal control functions were properly segregated.

Attention was also focused on the **Own Risk and Solvency Assessment (ORSA) which, under the new prudential regime, will be an integral part of strategic decisions.** Proper application of ORSA will require institutions to identify potential changes or deviations in the risk profile relative to their latest prudential balance sheets. In particular, institutions will need to be able to prove at all times that their estimated margin requirements are in line with their risks. Above all, they must be able to prove that their present and future solvency is aligned with their own strategic targets.

2) Filing requirements under Pillar 3 of Solvency II

In practice, the purpose of Pillar 3 of the Directive is to govern disclosure of information to the public and submission of information to the regulator.

To support institutions in implementing Pillar 3, the ACP General Secretariat held a special conference on this subject on 7 October 2011, at which ACP staff presented draft future filing requirements applicable to insurance institutions.

Assessing the degree of market preparedness for implementation of Solvency II

Given the workload that institutions have to cope with, the *Autorité de contrôle prudentiel* continued to support the market as it came to grips with the future prudential regime.

This involved designing a questionnaire to better assess the degree of market preparedness for the entry into force of Solvency II. As well as seeking to assess preparedness, the questionnaire served as a basis for discussion and planning for institutions that had not yet done their own preparatory work; it was sent

to all institutions supervised by the ACP and potentially falling within the scope of the Directive at end July 2011. The questionnaire consisted of 177 questions covering all three pillars of Solvency II. **The findings were presented to the market at a conference on 27 April 2011.**

The responses showed that most institutions had indeed begun to prepare for the challenges raised by Pillars 1 and 2. Half of the institutions surveyed, however, had no action plan for the requirements of Pillar 3. The findings were consistent across all three categories of insurance institution, whether they were covered by the Insurance Code, the Social Security Code or the Mutual Insurance Code.

Market consultation, particularly on Pillar 3

As part of market preparations, 2011 saw the launch of a public consultation on Pillar 3. Industry bodies were consulted at special meetings dealing with implementation of future European reporting statements as well as questions related to specific domestic issues.

The meetings were also used to raise market awareness of IT-related aspects. To this end, the ACP General Secretariat undertook an in-depth consultation with a range of stakeholders.

A technical questionnaire was sent to industry bodies for circulation among a representative sample of members, enabling the ACP to consult insurance institutions that will be required to submit the new reporting statements in accordance with new procedures and technical standards. More than 200 responses covering the filing methods used for the current statements and planned changes to them were gathered and processed. At the same time, the consultation among

industry users resulted in around 30 meetings between the project team and a number of institutions.

Furthermore, the ACP General Secretariat also involved future recipients of some of the information gathered. They included EIOPA; the *Banque de France's* Directorate General Statistics, particularly on behalf of the ECB; INSEE; and the Research and Surveys Directorate of the Health Ministry.

The technical questionnaire and meetings with industry professionals enabled the ACP General Secretariat to put together a summary of industry needs. The findings also formed the basis for specifications required to initiate internal IT developments at the ACP. The General Secretariat is using these documents in its internal "Solvency II IT and Reporting" sub-project dedicated to preparing information systems for the collection of future reporting statements.

Regular dialogue between the ACP's ongoing supervision directorates and insurance institutions

Continuing preparations for Solvency II naturally have to include Pillars 1 and 2. The ACP General Secretariat thus held discussions aimed specifically at supporting institutions through changes in assessing the new quantitative and governance requirements in the Directive (cf. section 1 of the on-site inspection priorities of the ACP College).

On the basis of their 2010 financial statements, some institutions took the initiative of recalculating their quantitative requirements under the QIS 5 model. Similarly, some institutions developed specific ORSA projects. Following these exercises, the institutions in question contacted the ACP's ongoing supervision

directorates to help them prepare more efficiently for the entry into force of the Directive.

Furthermore, regarding the quantitative requirements laid down by Solvency II in areas such as prudential assessment of balance sheet items and calculation of capital requirements, the ACP's staff addressed the issue of pre-applications for internal models.

Although applications to use internal models cannot officially be filed with any European supervisory authority until the Directive comes into force, EIOPA has encouraged Member States to begin an informal pre-application process for internal models as soon as possible to facilitate future official applications.

Following this recommendation, the ACP General Secretariat contacted institutions that had expressed their interest in principle and asked them to submit, for the first quarter of 2011, an executive summary and a planned timetable for submitting internal model components to the ACP. The ACP's supervisory staff reviewed these documents and maintained dialogue with institutions so as to establish a pre-application timetable consistent with the progress of their projects. For international groups, this work was undertaken in consultation with the ACP's counterparts within supervisory colleges. It also provided the opportunity to allocate human resources efficiently, within both the ACP General Secretariat and other European supervisory authorities, to deal specifically with on-site inspections of pre-applications for internal models (cf. section B of this chapter).

In line with these timetables, specially commissioned on-site inspections were started in 2011 as part of an in-depth review of the components of internal models at institutions that feel they are already close to finalisation (cf. section B of this chapter).

d. Specific monitoring of the financial crisis

Like all financial market participants, insurance institutions have been affected by the current financial crisis. First, they had to cope with deteriorating market conditions in 2011 and whole segments of their investments, especially equities and Greek bonds, suffered a lasting decline in value.

At the same time, net life insurance inflows fell substantially from the beginning of 2011 onwards, turning into a net outflow in the last five months of the year.

Since 2008, the ACP has required all life insurance companies to submit statements of premiums and benefits on a weekly basis. In light of the economic and financial environment, these weekly statements are critically important, making it possible to monitor gross inflows, surrender rates, and transfers between non-unit-linked and unit-linked policies, all in real time. Gross inflows in full year 2011 appeared lower than in either 2009 or 2010. However, this average position conceals contrasting patterns among key market participants. For some firms, gross inflows into non-unit-linked policies held steady, in particular as a result of transfers from unit-linked to non-unit-linked policies. By contrast, some insurers saw gross inflows decline by more than 25%.

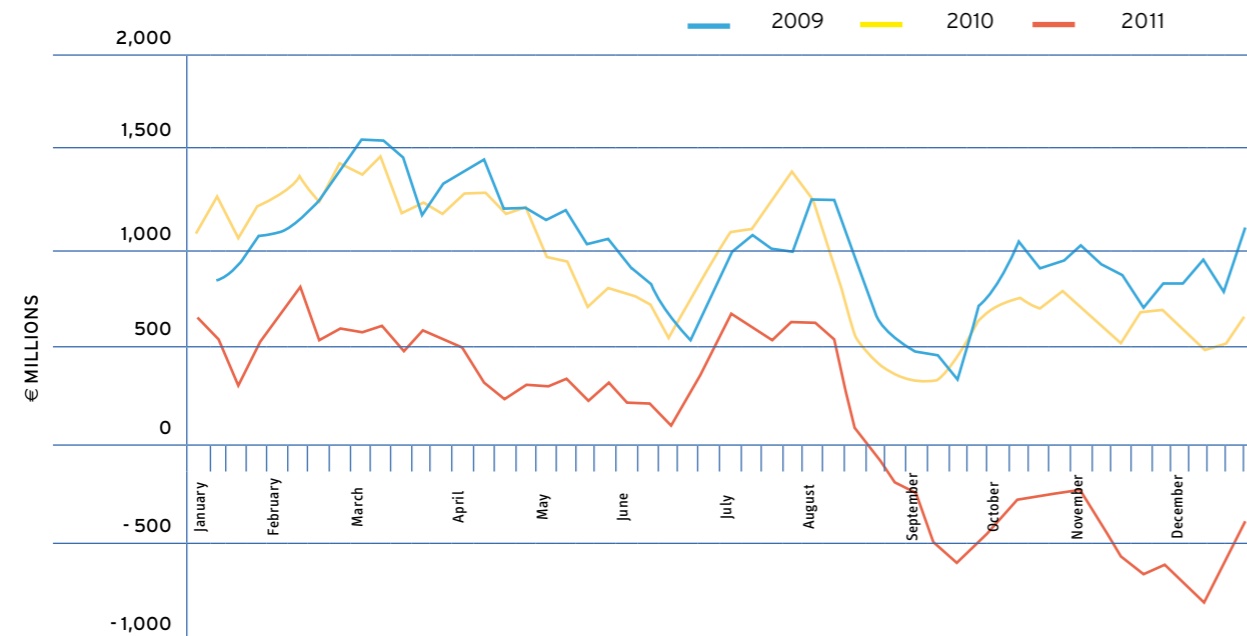
At the same time, surrender rates on non-unit-linked products increased considerably, from an average of 5% in 2010 to more than 6% in 2011. Unlike gross inflows, from September 2011 onwards the trend in surrenders diverged increasingly sharply from the 2010 trend. An initial analysis of surrenders reveals that:

- the increase in surrenders appears mainly to take the form of partial surrenders;
- policies considered for tax purposes to have been in force for more than 8 years do not appear to have been harder hit;
- low-value policies and the highest-value policies appear to have suffered most.

Moreover, net outflows from non-unit-linked policies in the last few months of 2011 represented less than 1% of mathematical reserves, well below the return on the assets representing those reserves and redemptions on maturing bonds: these outflows did not, therefore, force life insurers to dispose of their investments.

In sum, although the market was in a net outflow situation from end August to end December, net inflows remained positive overall across the full year.

Net inflows into euro-denominated products across the market as a whole



N.B.: the data, which represents weekly inflows, has been smoothed by applying a rolling average.
Source: ACP.

In autumn, the ACP asked the market's main life insurers to submit forecast summary financial statements for 2011 (income statements, balance sheets and a few items of analytical information on the financial statements under French GAAP) so that it could conduct an early assessment of the impact of various economic and financial scenarios on insurers' solvency and profitability.

More specifically the ACP's goal was to assess more accurately and in advance the impact of current market turbulence – especially recognition of impairment losses on investments having suffered a lasting or permanent decline in value – on the regulatory

solvency of insurance institutions at 31 December 2011, and thus to identify weaknesses that could subsequently undermine insurers.

These forecast financial statements formed the basis of discussions with the institutions in question covering, in particular, inflow levels, investment policy, revaluation of in-force business and, more generally, how the institutions were being managed in the economic and financial environment. The discussions also provided an opportunity for the ACP to reiterate its concerns about accounting practices and financial product distribution policies, expressed in a letter to industry bodies in late October 2011.

BOND DEBT

The values of several financial asset classes fell sharply in 2011. Equities lost a substantial proportion of their value from the beginning of the second half-year, as did other categories of securities. Furthermore, Greece was no longer able to honour all its commitments, leading the political leaders of the euro area to organise a restructuring of the country's debt under agreements signed on 21 July and 26-27 October 2011, which provided for voluntary private sector involvement in partial write-downs of Greek sovereign debt.

The ACP Vice-Chairman, Jean-Philippe Thierry, wrote to the chairmen of insurance industry bodies to raise a number of areas of concern in relation

to the 2011 year-end, asking the bodies to inform their members of these concerns.

In particular, the Vice-Chairman reiterated that the value of amortising bonds had to be written down if there were grounds for considering that the borrower might be unable to honour its initial commitments, either in full or in part – which was certainly true of Greece. Moreover, the value of financial securities falling outside the special regime applicable to amortising bonds, such as equities, and which have suffered a permanent decline in value, must also be written down.

The Authority also recommended great caution in revaluing the rates offered to life policyholders in respect of profit sharing.

Given poor market performance in the latter part of 2011, there was a risk that institutions might commit to paying out amounts that they would be unable to meet without damaging their asset bases.

The ACP also reiterated the need for prudent management, recommending that institutions leave themselves financial leeway to help them face uncertainties in relation to the economic and financial situation in 2012.

Finally, the ACP drew industry bodies' attention to the need to ensure fair treatment of policyholders. In particular, it pointed out that the impact of declining returns on financial assets should not be borne disproportionately by any one category of policyholders.

The ACP's insurance supervision directorates also took part in the European stress test exercise led by EIOPA (cf. section 3 of this chapter).

B On-site inspections

Each year, the ACP College establishes the Authority's inspection priorities and the General Secretariat shapes them into an inspection programme. The decision to conduct an on-site inspection depends on the inspection policy adopted by the College, the results of ongoing supervision, the quality of information submitted and/or the institution's financial position. The timetable for on-site inspections, determined by the ACP General Secretariat, is also influenced by other parameters, such as the volume and content of policyholder complaints,

as well as topical regulatory or legal issues that raise concerns in relation to insurance institutions. On-site inspections are intended to reach a critical assessment of an institution's operations and compliance with regulations.

With this in mind, the on-site inspection programme for 2011 addressed various themes aimed at ensuring a continuing focus on specific issues, in addition to general-purpose and emergency inspections covering all the activities of the institutions under review.

Specific themes addressed in 2011 included governance – one of the ACP's core duties in relation to insurance institutions and a fundamental requirement of Solvency II – and the analysis of interest rate risk, particularly in life insurance, linked to an analysis of investment-related risks.

1) Intensified supervision of governance within the current regulatory framework and the forthcoming entry into force of the Solvency II Directive

As in 2010, various on-site inspections conducted in 2011 examined governance issues and the actual role played by executive and decision-making bodies. These inspections covered insurance companies, provident institutions and mutual insurance companies governed by the Mutual Insurance Code. As part of its supervisory duties, the ACP is responsible for checking that firms comply with regulations.

In practice, on-site inspections focused in particular on checking that senior managers and decision-making bodies were actually fulfilling their roles and responsibilities in accordance with the Insurance Code and the Commercial Code, including where supervised insurance companies form part of an insurance group or a financial conglomerate with integrated governance. In the course of inspections, observations were made on the disclosure of regulated agreements and the proper functioning of Audit Committees.

On-site inspections also looked at the composition and regular holding of mutual insurers' general meetings, compliance with the democratic principle and methods used to elect representatives, the proper functioning of executive and decision-making bodies, and preparations for the organisation of formal risk management and internal control systems.

Moreover, Solvency II includes a large number of qualitative requirements, and the issue of governance is bound to gain in importance once the Directive

enters into force. Indeed, Solvency II explicitly introduces the need for a risk management system and an "actuarial function" within each insurance institution's governance framework. The "governance system" forms an integral part of Pillar 2 of the Directive, in which it is defined in very broad terms:

- fit and proper requirements;
- risk management;
- internal control and internal audit;
- the actuarial function and subcontracting.

The Own Risk and Solvency Assessment (ORSA), which is an internal process, will also be a fully-fledged supervision tool. The ACP is therefore monitoring institutions as they prepare for the new Solvency II regulations.

2) Assessing the resilience of life insurers in a low interest rate environment

In 2011, the ACP examined life insurers' sensitivity to changes in interest rates. The current low-rate environment is of concern to the ACP, especially given that the financial crisis has narrowed some institutions' room for manoeuvre. For this reason, inspections focused on balance sheet structure as well as governance and internal control.

Low interest rates reduce the rates paid out to policyholders and beneficiaries on in-force policies, and also expose insurers to the risk of being unable to deliver the returns expected by policyholders or to cover their own administrative costs. However, future interest rate rises will cause insurers to run the risk of substantial surrenders as policyholders seek to reinvest the proceeds at higher yields than those expected on their former poli-

cies. Insurance institutions must therefore anticipate this risk and ensure that their asset-liability management procedures adequately cater for it.

The ACP's on-site inspections identified a variety of commercial and management strategies used by institutions. They also assessed the degree of financial flexibility enjoyed by supervised insurers in the face of these risks. These risks will continue to be closely monitored in 2012.

3) Expanding knowledge of institutions newly supervised by the ACP, particularly in the mutual insurance sector

When the ACP was founded, its remit for prudential supervision of mutual insurers was extended to cover all mutual insurers subject to Book II of the Mutual Insurance Code and, in particular, mutual insurers previously supervised by regional Prefects. Further to this new definition of the ACP's supervisory scope, ongoing supervision staff at the General Secretariat reviewed and analysed all institutions. The risks pertaining to each one were assessed in light of prudential requirements. Reminders were issued to institutions with identified shortcomings in terms of profitability, liability coverage or data quality.

On-site inspections were carried out at those institutions shown by the ongoing supervision department's diagnosis to be the most vulnerable. The key areas of focus were governance and internal control. In addition to post-inspection action letters, some of these inspections led the College to adopt administrative enforcement measures against the institutions in question.

4) Reviewing internal models to prepare insurance institutions for Solvency II

Numerous discussions, visits and on-site inspections were carried out as part of the pre-application process for institutions wishing to use internal models to calculate their capital requirements under Solvency II. The ACP undertook initial reviews of internal model components, in accordance with timetables agreed with interested institutions in the first quarter of 2011 (cf. section A of this chapter).

Initial on-site inspections showed that the various supervisory bodies were both coordinated and very active in relation to this issue: as well as being internally coordinated, with involvement from the three ACP's insurance supervision directorates, they were also internationally coordinated with the European authorities as part of the pre-application process for certain groups.

As such, in its capacity as group supervisor or domestic supervisor, the ACP successfully completed its own inspections as well as taking part in joint inspections with its European counterparts in 2011. The conclusions of these joint inspections were also discussed within supervisory colleges, in particular at dedicated steering committee meetings. These meetings, which have certainly strengthened European cooperation, will continue throughout the pre-application procedure.

5) ACP continues its ad hoc on-site inspection activities

In 2011, as every year, the ACP General Secretariat carried out *ad hoc* on-site inspections in response to situations specific to certain supervised institutions, in addition to the themes laid down by the College. The focus varies according to the institution in question and any difficulties it may be encountering. Following such inspections, the ACP has sometimes had to exercise its enforcement powers, for example by issuing a cease-and-desist order.

Furthermore, since the Authority now has specialised inspectors, a series of more specific on-site inspections were

undertaken in 2011. These inspections covered information systems, whether or not linked to pre-applications for internal models, and compliance with anti-money laundering and counter-terrorist financing regulations. In addition, coordinated joint inspections were undertaken in the area of business practices, focusing in particular on issues relating both to the proper performance of contracts and recognition of adequate provisions for them. (These inspections were jointly conducted with the Business Practices Supervision Directorate; cf. Chapter 3.)

2.3 Anti-money laundering and counter-terrorist financing

A Work of the AML Consultative Committee

The Anti-Money Laundering Consultative Committee is tasked with giving the College an opinion on all mandatory documents (instructions) and explanatory documents (guidelines) adopted and published by the College with regard to anti-money laundering and counter-terrorist financing (AML/CTF). The committee met 9 times in 2011.

In particular, it was consulted on the following:

Guidelines on third-party reliance and sector enforcement principles for the insurance sector.

This document explains to financial institutions, which use the third-party mechanism to carry out identification and verification checks on their customers, how to implement the provisions of the Monetary and Financial Code, including in particular Articles L. 561-7 and R. 561-13-I (cf. inset).

GUIDELINES ON THIRD-PARTY RELIANCE AND SECTOR ENFORCEMENT PRINCIPLES APPLICABLE TO THE INSURANCE SECTOR

The guidelines set out the reference legislation, define the concept of third-party reliance and specify other ways in which financial institutions may call upon third parties to implement certain due diligence checks for AML/CTF.

The guidelines set out obligations in relation to the quality and selection of third parties as well as institutions' customer due diligence obligations in connection with third-party reliance. In particular, they specify the procedures used

by financial institutions to audit checks carried out by third parties.

They cover the special case of third-party reliance within groups, in line with changes in the recommendation by the Financial Action Task Force (FATF).

They also set out the conditions governing exchanges of information, as laid down in Article L. 561-7-II of the Monetary and Financial Code, and describe the final responsibility of institutions making use of third parties.

In response to specific requests from the insurance industry, these guidelines have been supplemented by sector enforcement principles specific to the insurance sector, which take the form of two factsheets.

Sheet 1 describes how institutions engaging in insurance activities may make use of third party reliance, while Sheet 2 covers insurance brokers acting as third parties.

Guidelines on exchanges of information within and outside groups

These guidelines set out arrangements for exchanging information within a group as required for AML/CTF due diligence. **Financial institutions are required to have procedures governing the circulation of information, particularly in relation to professional secrecy obligations, data protection and the designation of persons authorised to exchange such information.** To ensure that exchanges of particularly sensitive information are completely secure, the document emphasises the need to define procedures for organising and monitoring exchanges as well as highlighting the need to submit Tracfin reports and clarifying the content of such reports, both within groups and between entities not belonging to the same group (in accordance with Articles L. 561-20 and L. 561-21 of the Monetary and Financial Code).

Guidelines on beneficial owners

This document sets out the conditions for implementing the provisions of the Monetary and Financial Code in relation to beneficial owners, including in particular Articles R. 561-1 to R. 561-3 and R. 561-7, in the banking and insurance sectors. The guidelines define the concept of beneficial owner and describe procedures for identifying and verifying beneficial owners as well as the due diligence measures to be implemented in the context of business relationships. Financial institutions must ensure that their internal control procedures include the required checks on beneficial owners in respect of AML/CTF, and must, as part of their permanent and periodic control processes, ensure compliance with these obligations. Ten appendices based on specific cases illustrate various aspects of the guidelines from an operational perspective. In the course of 2012, these guidelines will be supplemented by sector enforcement principles on beneficial owners for the corporate and investment banking sector.

Instruction for money changers on information about AML/CTF procedures

This instruction, which specifies all the information that money changers have to supply regularly to the ACP, requires them to submit a questionnaire on their AML/CTF arrangements.

Instruction for credit institutions, investment firms and payment institutions on information about AML/CTF procedures

In light of institutions' answers to the questionnaires concerning 2010, three questions in the AML tables have been changed to facilitate responses in 2012.

In 2012, the work of the Consultative Committee will focus in particular on drawing up a questionnaire with a common core applicable to the banking and insurance sectors. Particular attention will be paid to internal control and the implementation of consolidated oversight. Questionnaires will be sent out annually across all sectors.

Furthermore, the Consultative Committee will examine new draft guidelines (on business relationships and occasional customers), sector enforcement principles (on correspondent banking and beneficial owners of collective investment schemes) and position papers (on implementation by payment providers of AML/CTF procedures for funds transfer services).

Once adopted by the College, instructions, guidelines, sector enforcement principles and position papers are published in the ACP's official register.

All documents submitted for opinion to the Consultative Committee are published in the anti-money laundering section of the ACP website.

B Banking supervision regarding anti-money laundering

a. Ongoing supervision

1) Banking institutions (excluding money changers)

Institutions in the banking sector are required to submit answers to a questionnaire on their AML/CTF arrangements to the ACP annually. Reviews of these answers form part of AML/CTF oversight.

A review of information submitted by institutions in 2011 showed that AML/CTF arrangements on the whole complied with regulations. There were, however, areas for improvement, relating firstly to the scope of internal control, which was sometimes too restrictive, and secondly to two sets of questions introduced in 2009: procedures for exchanging information within groups and due diligence measures for funds transfers.

Once questionnaire answers had been analysed, 122 letters were dispatched pointing out the main deficiencies and asking institutions to bring themselves into compliance with applicable regulations.

2) Money changers

Ongoing supervision of money changers was tightened in 2011 with the introduction of an annual questionnaire on AML/CTF arrangements put in place by entities subject to ACP supervision in this area.

As a result, money changers are now required to submit answers to a questionnaire on their AML/CTF arrangements to the ACP on an annual basis.

Answers to the questionnaire were analysed and 92 letters were sent out detailing the main shortcomings. Money changers were asked to provide further information in connection with their answers and/or to bring themselves into compliance with applicable regulations.

b. On-site inspections

1) Banking institutions (excluding money changers)

As part of investigations carried out by the on-site inspection delegation in 2011, 47 on-site inspections included an AML/CTF component: 36 of these were general investigations and 11 were specifically targeted at AML/CTF arrangements. As part of the inspection priorities established by the ACP College, these investigations were ordered in light of an analysis by the ACP's banking supervision directorates and regular dialogue with Tracfin.

EFFORTS BY THE ACP TO ENHANCE ANTI-MONEY LAUNDERING AND COUNTER TERRORIST FINANCING MEASURES AT DOMESTIC AND INTERNATIONAL LEVEL

At the FATF, the ACP jointly chaired one of two groups tasked with revising the task force's recommendations. It was particularly involved in overhauling the recommendations on the risk-based approach, identification procedures and supervision, with the aim of publishing the revised recommendations in February 2012.

The Basel Committee's AML/CTF group, chaired by the ACP, took part in work to revise the FATF's recommendations, in particular those on third-party reliance, internal control and supervision. With regard to the International

Association of Insurance Supervisors (IAIS), the ACP took part in work to revise ICP 22 on the prevention of money laundering.

Within the Anti Money Laundering Committee (AMLC, previously the AMLTF), which reports to the joint committee comprising the three European authorities (EBA, EIOPA and ESMA¹¹), the ACP actively promotes a common approach to AML/CTF arrangements. A memorandum of cooperation, setting out procedures to be used by host countries to check that European payment institutions are AML/CTF-compliant if they operate through agents in another

Member State is to be submitted for adoption to the joint committee.

The ACP General Secretariat also led a series of "AML Meetings" alongside Tracfin. These were aimed at facilitating dialogue on the subject of anti-money laundering arrangements with professionals from the insurance sector (September 2011) and the banking sector (December 2011).

The ACP General Secretariat was also involved in consultative work leading to the development of the single authorisation (no. AU-003), published by CNIL, the French data protection agency, on 7 July 2011.

¹¹ ESMA: European Securities and Markets Authority.

Following these inspections, 45 action letters including observations relating to AML/CTF arrangements were sent out. While institutions have made significant efforts to align their arrangements with AML/CTF requirements, further improvements are required, particularly in relation to the following:

- Know Your Customer (KYC) procedures, including more rigorous updating of customer records;
- transaction monitoring, including the introduction of tools for detecting unusual transactions;
- compliance with ongoing due diligence measures (particularly in respect of information gathering and systematic and regular account reviews) and enhanced due diligence for high-risk customers;
- internal control, and in particular level 2 permanent control, which appeared to be relatively sparse in some cases;
- risk classification (cf. inset p. 106);
- updating of procedures;
- training, which is not always aligned with employees' needs.

2) Money changers

On-site inspections of money changers are carried out by inspection teams from the on-site inspections department and customs officers acting on behalf of the ACP. In 2011, 20 inspections of this type were carried out.

In 2011, 20 action letters were sent out to money changers upon completion of inspection reports. Most of the observations contained in these letters covered the following areas:

- failure to properly identify and verify customers and complete KYC procedures (including in particular problems distinguishing occasional customers from regular customers) and failure to undertake ongoing due diligence;
- failure to properly maintain a register of transactions and properly organised accounting records;
- failure to effectively detect split transactions;
- failure to submit or delays in submitting suspicious transaction reports, and poor quality of submitted reports;
- lack of adequate staff training and information.

C Insurance sector supervision for anti-money laundering and counter terrorist financing

a. Ongoing supervision

In 2011, approximately 300 institutions offering life insurance submitted answers to a detailed questionnaire to the ACP. An analysis of these answers enabled the ACP to assess the degree of compliance of each institution's AML/CTF arrangements.

The ACP General Secretariat completed an overall assessment of compliance both within the insurance sector as a whole and within each category of institution, with the aim of identifying the main areas in which the ACP expected improvements to be made.

Its findings provided an indication of efforts made by the sector to adapt to new legal and regulatory requirements. However, there is still significant room for improvement in the areas of KYC, due diligence measures in accordance with the risk-based approach and development of internal control.

The ACP sent a letter to the senior management of each relevant institution setting out the main shortcomings identified and requesting that corrective action be taken where applicable. The ACP will closely monitor action taken by institutions in response to these letters. In the course of 2011, the ACP continued with the approach begun in 2009 of meeting with the personnel responsible for AML/CTF arrangements at insurance institutions. The purpose of these meetings was to review the action taken and discuss certain aspects of regulations that might be difficult to implement.

b. On-site inspections

As in the banking sector, on-site inspections in the insurance sector are designed to ensure, in particular, that internal procedures are properly applied and to measure the extent to which insurance institutions actually meet their due diligence and Tracfin reporting obligations. Ten on-site inspections were carried out in 2011. The order of priority for on-site inspections depends on the nature of each institution's business, the results of ongoing supervision, and the pursuit of more closely targeted objectives analysed on a cross-disciplinary basis.



c. Information-sharing and preventive action

In 2011, the ACP met with the main professional organisations in the insurance industry and their members. The findings of the ACP's analysis of institutions' AML/CTF arrangements were presented at these meetings, together with areas in which improvements were expected. Discussions with the industry were also held on more specific topics such as staff training, intra-group exchanges of information and relations with brokers.

Since the third anti-money laundering directive was transposed into French law, financial institutions have been required to classify their AML/CTF risks in accordance with Article R. 561-38 of the Monetary and Financial Code. This obligation is clarified in sector-specific provisions (Article 11-7 of CRBF Regulation 97-02 on internal control within credit institutions and investment firms and Article A. 310-8 of the Insurance Code).

Classification of AML/CTF risks: an area of focus for the ACP

Effective application of the risk-based approach, and hence of due diligence measures appropriate to the risks identified, is based on classifying risks in a manner suited to each institution's business. The ACP thus pays careful attention to monitoring the quality of risk classification.

As part of ongoing supervision procedures, information on this subject is submitted to the ACP General Secretariat, in particular *via* answers to the AML/CTF questionnaire by institutions in the banking sector¹². Similarly, institutions in the insurance sector offering life insurance were also surveyed in 2010¹³.

Furthermore, in accordance with Article 42 of CRBF Regulation 97-02, internal control reports submitted by credit institutions and investment firms¹⁴ have to describe how AMF/CTF risks are classified and to present the analyses on which the classification is based.

In both sectors, special attention is paid during on-site inspections to risk classification, in particular the relevance of the classification adopted to the nature of the products and services offered, the conditions under which transactions are carried out, the distribution channels used and customer characteristics. In addition, inspection teams check that the classification is taken into account when procedures are drawn up.

Information submitted in internal control reports needs to be better substantiated

The information submitted in internal control reports is often very concise, making it impossible to understand the analyses on which AML/CTF risks is assessed.

Institutions must take care to ensure that their internal control reports set out the factors that lead them to adopt enhanced due diligence measures or to reduce the intensity of the due diligence measures they implement. Where applicable, they must specify any events that prompt them to update their classification, as well as the date on which the classification was last revised.

Criteria used to determine the risk classification are often insufficient

In the course of on-site inspections, the ACP has on more than one occasion identified incomplete classifications that do not sufficiently reflect the parameters referred to above.

Best practice identified by the ACP includes various cases where institutions have taken into account the characteristics of transactions giving rise to suspicious transaction reports when developing their risk classifications. The ACP has on several occasions noted that the information sheet on the risk-based approach to sector enforcement principles in the insurance sector has been used as a reference by institutions when determining their risk classifications.

Risk classification for companies belonging to a group must be broken down by business area

For several groups whose main business is retail banking, the classification has not been broken down for the remaining business areas. Group-level risk classifications must be broken down by business area to ensure that the specific features of each business are properly taken into account. Risk classifications for branches and subsidiaries of foreign institutions must be appropriate to the nature of the business done in France. At the same time, groups must take care to ensure that any given risk is assessed in a consistent way within the group.

In this regard, as recommended in the ACP's guidelines on exchanges of information within and outside groups, "the entities in question must exchange information on the risks identified by the risk classification process".

Assessment of "geographical" risk within the risk classification must be expanded

It has been noted that the only countries classified by institutions as being high risk are those designated by the FATF; institutions do not undertake any further analysis in respect of other jurisdictions, which are automatically assumed not to represent a high AML/CTF risk, even where they are not included in the French list of equivalent third countries¹⁵.

Steps should be taken to ensure that the risk classification is updated whenever new information is published by a competent AML/CTF authority, notably the FATF. As well as taking into account such lists, the ACP expects financial institutions to analyse their geographical risk in line with the nature of their business.

Furthermore, institutions must take care to ensure that the assessment of geographical risk does not lead to discriminatory practices against foreign customers solely on the basis of their country of origin.

3

Macroprudential supervision

Macroprudential supervision in figures...

4 studies published in 2011, including 1 in the "Revue d'économie financière"

2 stress tests performed in 2011 in connection with European action coordinated by the EBA and EIOPA

1 exercise carried out to strengthen the capital base of leading French banking groups

2 macro stress tests carried out on the banking sector, with results presented to the ACP College

Analytical work undertaken on

4 research topics: home loans, bank margins, life insurance revaluation rates and household savings patterns

As well as undertaking microprudential supervision of individual institutions, the ACP's financial stability responsibilities require it take account of interactions between institutions and to maintain an overall view of the risks to the financial system. An analysis of the overall dynamics of the banking and insurance sectors, an in-depth knowledge of institutions' general or cumulative exposure to major risks (macroeconomic shocks, sovereign risk, property risk, etc.), and in particular an analysis of "systemic risk" (a situation in which the financial system is no longer able to fulfil its essential function of allocating savings and distributing credit to the economy) also suggest that priority should be given to overall, or "macroprudential", supervision.

Within the ACP, this function of analysing macroprudential risk is undertaken by the Research Directorate, which was formed in September 2011, which works across both the banking and insurance sectors.

As well as microprudential research into the comparative positions and performance of credit and insurance institutions, the Research Directorate undertakes analysis that helps clarify decision-making by the ACP College and the European Systemic Risk Board, of which the Governor of the *Banque de France* and the Secretary General of the ACP are members. Macroprudential policies draw on an assessment of the main risks facing the financial system, sensitivity analysis, and global stress tests to mea-

¹² Question n° 00970, Table B4 of Instruction n° 2000-09 and question n° 00930, Table B4 of Instruction n° 2010-08.
¹³ Questions n° 2.1 to 2.5.4, Table B1 of Instruction n° 2010-I-04, questions n° 2.1 to 2.5.4, Table B1 of Instruction n° 2010-I-05, and questions n° 2.1 to 2.5.4, Table B1 of Instruction n° 2010-I-06.
¹⁴ Money changers are not subject to Regulation n° 97-02.
¹⁵ Article 2 of the Order of 27 July 2011 on the list of equivalent third countries in respect of AML/CTF measures, referred to under section II, paragraph 2 of Article L. 561-9 of the Monetary and Financial Code, stipulates that "within their systems for assessing and managing risks associated with AML/CTF, as laid down in Article L. 561-32 of the Monetary and Financial Code, the persons referred to in Article L. 561-2 of that same Code are required to take into account, in particular, information and reports circulated by the international body tasked with consulting on and coordinating efforts in relation to the prevention of AML/CTF, of which France is a member, or by the Minister for the Economy, which are liable to refute the presumption of equivalence established in Article 1" of that Order.

sure the ability of banking and insurance institutions to withstand severe shocks, while remaining realistic. To this end, the Research Directorate undertakes modelling work designed to capture institutions' behaviours and understand how these behaviours feed back and interact with each other.

The Research Directorate has undertaken and initiated a number of analyses of this type since it was formed, the common thread being that they all study the macroprudential challenges raised by the current crisis as well as their impact on the financial position of major groups and how such groups manage their liquidity. In this way, they reinforce individual monitoring undertaken by the ACP's supervisory directorates.



3.1 Measuring institutions' resilience via stress tests (macro, banking and insurance stress tests)

Stress tests, in which crisis scenarios are applied to banking and insurance institutions, are key tools for analysing financial stability.

At a European level, the ACP takes part in exercises coordinated by the European BANKING AUTHORITY (EBA) and the European Insurance and OCCUPATIONAL PENSIONS AUTHORITY (EIOPA). ACP representatives on international working groups have helped identify the main risks to be tested, determine the size of shocks consistent with the macroeconomic scenario and define the methodology to be applied by institutions.

When stress tests have been carried out, ACP staff have analysed and checked the reliability of results from both the banking and insurance sectors, working closely with the EBA and EIOPA, which check that scenarios are applied consistently in different countries.

The ACP develops its own tools based on prudential and accounting data regularly submitted by banks.

These tools enable the supervisor to undertake six-monthly macro stress tests, the results of which are communicated to the ACP College. The off-site and on-site inspection units draw lessons from them to help prioritise their inspections. The ACP's Research Directorate cooperates with the *Banque de France's* Directorate General Economics and International Relations to construct crisis scenarios that are generally characterised by significant deviations from macroeconomic forecasts (between -3 and -4 percentage points of GDP in relative terms). The models are then used to simulate the impact of these shocks on the banking system as a result of increases in the cost of credit, a decline in the quality of credit portfolios and deteriorating profitability among institutions. The results of stress tests are summarised through a stressed solvency ratio, which forms the basis of an assessment of the robustness of the French banking sector. These macro stress tests complement those tests coordinated by the EBA.

EBA STRESS TESTS IN JULY 2011 AND THE EXERCISE TO STRENGTHEN INSTITUTIONS' CAPITAL BASE IN AUTUMN 2011

1) The EBA's July 2011 stress test (end-2010 data)

The first coordinated European exercise led by the EBA followed on from the one undertaken in 2010 by the Committee of European Banking Supervisors (CEBS, the EBA's forerunner), though it represented a step forward in many respects, in particular in relation to cooperation between domestic and European regulators.

At the ACP, the exercise was led by the Research Directorate in cooperation with the banking supervision directorates.

The ACP took part in EBA working groups to define the scenarios and assumptions used in the exercise, as well as helping analyse the results and check that they were reliable. The detailed examination undertaken by supervisors was then supplemented by a peer review exercise coordinated by the EBA: the experts appointed to this work,

including one from the ACP, not only made a second assessment of the results validated by domestic supervisors but also checked that scenarios had been applied consistently and that the various institutions had been treated equally. In particular, this process of reviewing the data led to methodological adjustments in the course of the exercise, and therefore to the revision of institutions' initial submissions.

The aim of the stress tests was to assess the European banking system's ability to withstand a severe downturn in the macroeconomic environment. Particular attention was also paid to the definition of capital: a Core Tier 1 ratio, based on but separate from the Basel III agreements, was defined to facilitate comparisons between banks in the sample.

For the euro area, the "stressed scenario" assumed a 4 percentage

point loss in GDP growth (relative to the economic forecast) in 2 years, leading to a two-years recession (-0.5% in 2011 and -0.2% in 2012).

- This scenario was aggravated by a series of additional shocks, particularly in relation to sovereign risk. Banks had to apply haircuts (of up to more than 30% on the debt of certain countries) to sovereign debt in their trading books and recognise provisions on assets in their banking books.
- They had to simulate a spreading of the crisis to the banking sector via increases in their funding costs measured using highly conservative assumptions.

Ultimately, the "stressed scenario" and additional shocks impacted both banks' results and their risk weighted assets, eroding their solvency ratios.

The European banking system proved relatively resilient, with 82 out of 90 banks¹⁶ posting a Core Tier 1 solvency ratio in excess of the 5% threshold, and 66 above 6%.

The eight institutions that failed the test had a combined capital shortfall of €2.6 billion, an amount that can be absorbed perfectly well given the implementation of voluntary support measures. These results reflect the €50 billion in capital raised by European banks in early 2011, partly in anticipation of stress tests: had these additional funds not been raised, the EBA considers that 20 banks would have failed.

The 4 participating French banks, BNP PARIBAS, SOCIÉTÉ GÉNÉRALE, the CRÉDIT AGRICOLE group and BPCE group passed the test by a significant margin, posting an aggregate Core Tier 1 ratio of 7.5% under the most adverse scenario (which entailed a 90-point reduction in the ratio).

Banks also made an unprecedented effort to ensure transparency on their risk exposure, with each bank publishing highly detailed information on its capital, revenue, banking exposure and exposure to sovereign risk. This information provides an insight into the way that institutions are affected by stress, and it enables observers to carry out any analyses or updates considered necessary in light of changes in the economic scenario and prevailing risks.

2) The October-December 2011 exercise to strengthen institutions' capital base

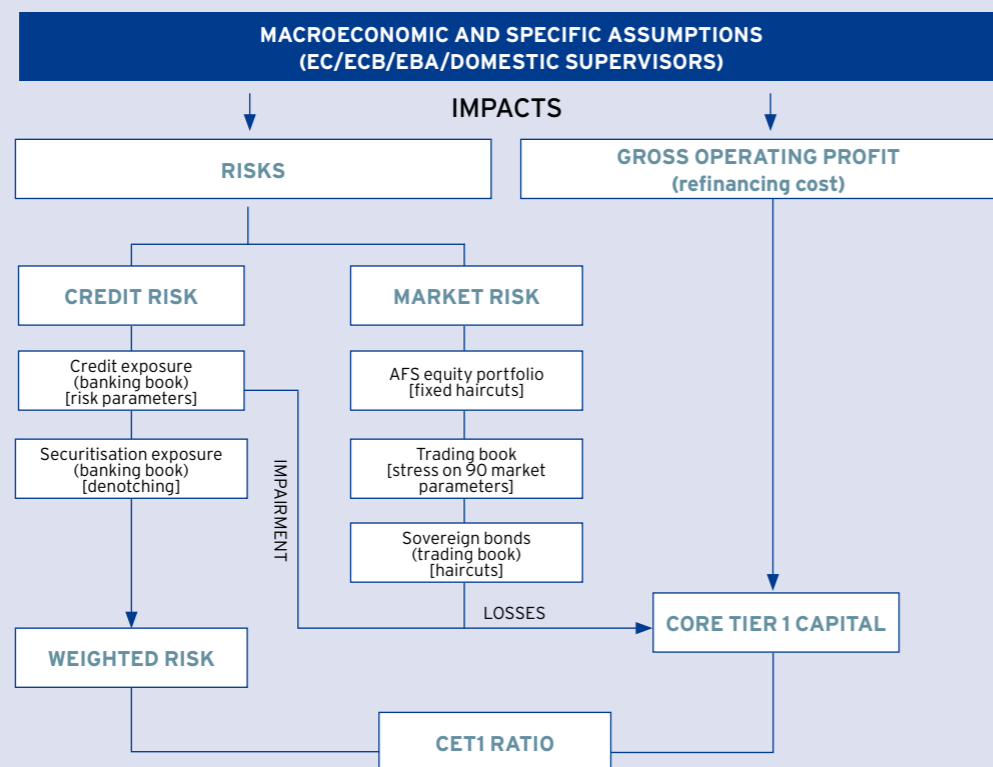
The results of stress tests were published within a broader context of uncertainty as to the solvency of euro area countries and the potential risks of contagion, particularly to the banking sector. On their own, they were not enough to remove market uncertainties.

On 26 October 2011, the European Council therefore approved a new EBA test, the final results of which were published on 8 December 2011¹⁷, for the top 71 European institutions. The purpose of this exercise was to create a temporary safety cushion demonstrating the ability of those institutions to withstand a shock while maintaining adequate capital.

After taking into account any haircuts on European sovereign debt, assessed at market value at 30 September 2011, banks will need to maintain enough capital to meet a Core Tier 1 ratio of 9% by end June 2012 at the latest.

For the four French banks involved in the exercise - BNP PARIBAS, SOCIÉTÉ GÉNÉRALE, the CRÉDIT AGRICOLE group and BPCE group - which represent more than 80% of the French banking sector in terms of balance sheet assets, the combined total capital requirement amounted to €7.3 billion.

On 13 January 2012, banks submitted plans to the ACP to strengthen their capital base and manage their risks such that they would meet the 9% Core Tier 1 ratio by no later than 30 June 2012, without government assistance.



¹⁶ 91 banks took part in the exercise, of which 90 agreed to publish their results.

¹⁷ Provisional results published on 27 October were based on exposure as at 30 June 2011.

EIOPA STRESS TESTS (END-2010 DATA)

The first coordinated European exercise led by EIOPA followed on from the exercise undertaken in 2010 by the European Insurance and Occupational Pensions Committee (EIOPC), though it involved a broader sample of insurance groups (with 8 French groups taking part in the exercise) and was undertaken under the future Solvency II regulatory framework to ensure that results could be compared across countries. The purpose of the exercise was to test insurers' ability to meet the future Minimum Capital Requirement (MCR) under Solvency II.

Since the regulatory framework used for the exercise had not yet been completely stabilised, the European authority opted only to publish aggregate results at European level. Within the ACP, the Research Directorate analysed and checked the reliability of the results, working in cooperation with experts from the International Affairs Directorate and insurance supervision directorates.

The aim of these new stress tests was to assess the European insurance system's ability to withstand a severe deterioration in the macroeconomic environment, as well as testing market preparedness for the major changes ushered in by the future Solvency II standard.

Three core stress scenarios were put together:

- the baseline scenario equated to a mild recession;
- the adverse scenario was based on a more severe recession combined with very low interest rates (relative to the baseline scenario, the market shocks were more severe, while the insurance shocks were unchanged);

- in the inflationary scenario, central banks raised interest rates (unlike the above two scenarios, under which interest rates fell), while other market shocks under the scenario were nil and insurance shocks were unchanged.

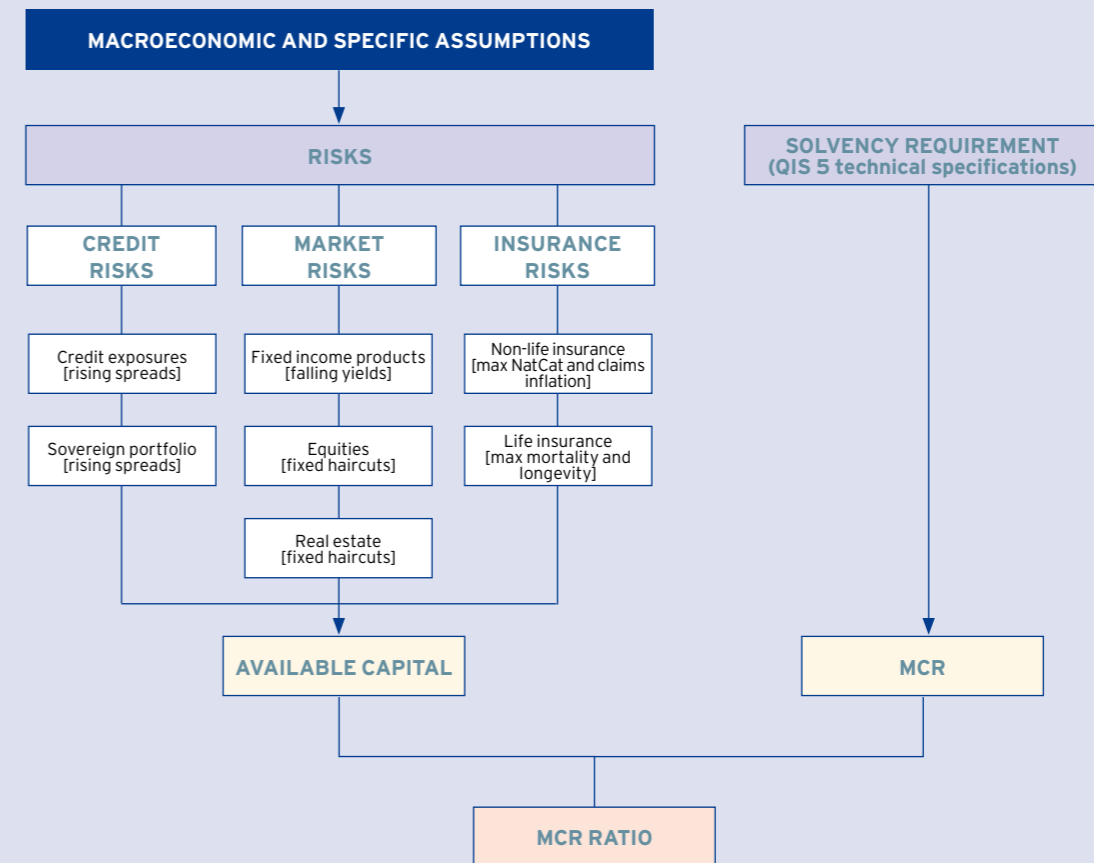
Insurers also simulated the impact of three additional scenarios:

- one sovereign stress scenario, on a country-by-country basis;
- two scenarios equating to an extended low interest rate environment.

These shocks resulted in impacts on insurers' balance sheets and eligible capital, which was then compared with the MCR.

Given the ambitious nature of this exercise, in terms of severity of stress, the broad scope of the exercise and the implementation of a new regulatory framework, Christian Noyer, Chairman of the ACP and Governor of the *Banque de France*, reiterated when the results were published that *"the resilience test related to hypothetical stress scenarios and in no way constituted a forecast"*. He noted that *"the good results demonstrated the strength of the French insurance sector and its ability, once again, to overcome challenging macroeconomic circumstances"*.

The results also showed that the European insurance sector as a whole was highly resilient. Under the most adverse scenario, the aggregate MCR coverage ratio was well in excess of the required minimum, at 281%. There was, however, an aggregate solvency shortfall of around €4.4 billion for participants not meeting the MCR.



3.2 Leading indicators of vulnerability

To reinforce its supervision of individual and systemic risk – an essential addition to its prudential supervision responsibilities – the ACP has designed new supervisory tools known as “leading indicators of vulnerability”. These indicators, to be implemented shortly, stem from the work done by the ACP’s Scientific Consultative Committee (cf. inset).

Leading indicators of vulnerability are intended to compare profits generated by banking books (defined at a relatively granular level) with the corresponding capital requirements.

The aim is to identify the potential development of businesses that appear to generate abnormal risk-adjusted returns whenever those returns result from a poor understanding of risk and are therefore liable to have a negative impact on both solvency and systemic risk.

In practice, these indicators have been constructed using information taken from institutions’ internal reports. This information will be submitted quarterly from 2012 onwards, with first data collected in 2012 relating to the position

at end December 2011. Five institutions representing the market will initially be involved in the exercise, submitting the following to the ACP:

- their 10 most promising strategies (for capital markets and credit) – i.e. the 10 strategies whose net banking income has grown the fastest over the 12 months preceding the date on which the report is submitted. For each strategy, the indicators will be calculated by dividing the amount of net banking income generated (less the cost of risk) by the associated regulatory capital requirement;
- the amount of net banking income (less the cost of risk) and the regulatory capital requirement for all portfolios and/or strategies.

Ultimately, the intention is to extend the data collection exercise to cover a broader sample of French institutions and to refine the analysis by requiring those institutions to submit more granular information.

ACP SCIENTIFIC CONSULTATIVE COMMITTEE

The ever-increasing complexity of banking and insurance activities is leading to the use of increasingly sophisticated valuation and risk measurement methodologies. The changing nature of these activities, combined with the growing interaction between the real and financial spheres, is one of the major challenges facing prudential supervision.

In response to these challenges, the ACP Scientific Consultative Committee was formed by decision of a plenary session of the ACP College on 29 September 2010 in order to develop a full and forward-looking understanding of these changes and their implications for financial stability.

The Committee has a dual role:

- foster synergies between research in the financial arena and prudential supervision by undertaking analysis to clarify the ACP’s strategic policies, in particular to help develop tools used by ACP staff to measure risk;

- monitor scientific developments in regard to finance, with the aim of identifying ahead of time those that are liable to impact the activities of banks and insurers and, consequently, the ACP’s scope of activity.

The committee has met quarterly since November 2010. It presents its analysis – together with proposals where applicable – to the ACP College *via* its Chairman.

Subjects addressed to date include :

- the assessment of extreme risks, in particular *via* stress tests;
- systemic risk;
- the profitability of banks and insurers (return on equity);
- and the definition of leading indicators of vulnerability.

SYSTEMIC RISK DASHBOARDS DEVELOPED BY EUROPEAN AUTHORITIES

The mandate given to the European Supervisory Authorities (ESAs) and the European Systemic Risk Board (ESRB) includes responsibility for developing a set of quantitative and qualitative indicators to identify and measure systemic risk¹⁸.

The dashboards produced by the various authorities must share common characteristics. To meet this requirement, a committee comprising the ESAs and the ESRB has established a set of general principles to be followed for all

dashboards produced by ESAs¹⁹, which must:

- include predetermined categories of risk: macroeconomic risk, credit risk, liquidity risk, profitability risk, solvency risk and risks associated with contagion and imbalances. Each ESA may also add risks specific to the sector it supervises;
- be sufficiently flexible to be able to quickly incorporate imminent risks.

Finally, ESAs must take care to ensure consistency between their various dashboards.

¹⁸ ESA article 22.2 ; ESRB 3.2 (g).

¹⁹ Report on Systemic Risk Methodologies by the Joint Group on cooperation between the ESAs and the ESRB on Systemic Risk (JGSR), final version, 5 July 2011.

3.3 Risks facing both banking and insurance sectors

In accordance with its role of evaluating common risks faced by the banking and insurance sectors, the ACP has been monitoring trends in household savings flows and analysing the various components making up such flows.

In this regard, 2011 saw a drop-off in net household financial investment; expressed as a combined total for the last 4 quarters, these investments fell from €2.2 billion at end June 2011 to 72.8 billion at end December 2011. This trend encompasses a decline in life insurance inflows, withdrawals from investment funds and considerable growth in the most liquid banking products:

- Net inflows into life insurance – the financial product that represents the bulk of non-bank household savings – have been in steady decline since the second half of 2010, becoming negative in the fourth quarter of 2011. Outflows have mainly affected non-unit-linked products (- 1.2 billion²⁰), though they have also, to a lesser extent, affected unit-linked products (- 0.5 billion). Relative to total assets in each category, outflows from unit-linked products have been higher than outflows from non-unit-linked products.
- Investment funds, whose assets represent a limited proportion of household financial investment *via* non-bank financial intermediaries, also saw net

withdrawals of 11.1 billion euros in 2011, compared with 15.3 billion euros in 2010. The long-term decline in investment in money market funds continued in 2011, though this trend continued to weaken. Meanwhile, non-money-market funds fluctuated much more erratically. Net inflows were highly positive in the second quarter of 2011 (+€ billion euros, compared with -€5.8 billion euros for the same period in 2010), before turning negative in the third quarter (-€3.3 billion euros in 2011, compared with +€1.1 billion euros in 2010) and approaching zero in the fourth quarter (-€0.9 billion euros in 2011, compared with -€0.7 billion euros in 2010).

- Quarterly flows into passbook savings accounts have been steadily increasing since mid-2010. The bulk of these flows are into *Livret A* and ordinary passbook accounts: net inflows into *Livret A* accounts reached €1.6 billion euros in 2011, compared with €0.4 billion euros in 2010, while passbook savings accounts subject to tax attracted inflows of 17 billion euros in 2011, compared with 13.2 billion euros in 2010.

²⁰ Source: *Banque de France*. This trend relates to flows of mathematical reserves which take into account the capitalisation of interest.

French household financial investment flows

(Cumulative net flows over 4 quarters, in billions of euros)

	March 2010	June 2010	September 2010	December 2010	March 2011	June 2011	September 2011	December 2011*
Bank investments	- 7.6	- 0.4	8.3	16.6	28.0	36.1	42.9	49.3
Non-bank investments	88.0	73.2	71.1	66.3	54.9	56.0	39.8	23.5
Of which life insurance policies	88.4	84.2	82.6	77.4	68.3	61.5	51.4	33.3
Fund units	- 14.7	- 25.1	- 20.4	- 15.3	- 17.7	- 4.3	- 12.5	- 11.3
Debt securities and equities	14.3	14.1	8.8	4.2	4.2	- 1.2	0.9	1.5
Total financial investments	80.4	72.9	79.3	82.9	82.8	92.2	82.7	72.8

* Data subject to revision
Sources: financial accounts, *Banque de France*.

The ACP pays particular attention to monitoring these trends, regularly collecting information on savings flows.

In cooperation with the *Banque de France*, the ACP has developed an analysis of these trends, particularly in relation to bancassurance groups. Although such groups offer a full range of financial products, they do not appear to have “reintermediated” household savings to any greater extent than the rest of the market.

The trends observed appear to be driven more by changes in the relative returns generated by different products and households’ desire to make their investments more liquid: the differential between rates of return on the various savings products has narrowed and households have diversified their investments as a precautionary measure. These trends are, as yet, too recent to point to a lasting change in savings behaviour, though structural trends are also at play (uncertainties as to the tax regime, demographic trends, etc.).

Since changes in household savings behaviour have a major impact on both financial sector funding and the real economy – as reflected, for example, in trends in real estate prices – the ACP plans to step up its monitoring, in cooperation with the *Banque de France*, by cross-checking macroeconomic data with data on bank and non-bank financial savings.

In particular, the ACP will endeavour to measure the impact of these trends on banking groups’ financial position and liquidity management arrangements. Furthermore, to ensure that credit institutions adopt a cautious approach to raising funds from their customers, the ACP will monitor changes in the returns offered to customers. This approach will be widened to include monitoring of deposits placed by large corporates, which are subject to increasing competition between banks.

3.4 Analysis of life insurance revaluation rates

In insurance, the ACP General Secretariat has continued, as in previous years, to study the methods and rates used to revalue non-unit-linked life insurance policies. In an environment of declining returns on assets, such revaluation is a key management variable for institutions since it affects life insurers' results and, consequently, their solvency.

An ACP survey of life insurance revaluation rates in 2010²¹ concluded that, on the whole, insurance institutions had demonstrated restraint in an environment of historically low bond yields. The average policy revaluation rate (weighted to reflect the corresponding mathematical reserves), net of management fees, fell by one quarter point from 3.65% in 2009 to 3.4% in 2010. This fall continues the declining trend seen in the past few years (4.1% in 2007; 3.9% in 2008), in line with the steady fall in interest rates.

This fall in revaluation rates has been observed across a broad swath of the market, with 88% of mathematical reserves on policies being revalued at a lower rate in 2010 than in 2009.

An analysis of the rates applied to various policies shows that those revalued in 2010 at a rate of 4% or higher represented barely 9% of mathematical reserves, compared with 23% in 2009. Furthermore, policies with a revaluation rate of more than 3.5% in 2010 represented less than half (45%) of mathe-

matical reserves; in 2009, policies in excess of this threshold represented 67% of mathematical reserves.

Much can also be learned from dispersion analysis of revaluation rates across the market as a whole. In 2010, in terms of mathematical reserves, the bottom quartile (the 25% of policies offering the lowest returns) generated an average return of 2.9%, while the top quartile (the 25% offering the highest returns) generated an average return of 3.9%. It also emerges that rates were slightly less dispersed in 2010 than in 2009.

The ACP repeated this survey in respect of 2011 data to ensure that institutions were continuing to demonstrate a high level of responsibility in defining revaluation rates, despite a more challenging environment in terms of life insurance inflows.

It has already emerged that the average policy revaluation rate fell slightly more sharply in 2011 than in the previous few years (from 3.4% in 2010 to 3% in 2011), reflecting in particular poor market performance at the end of 2011.

3.5 Areas of concern in the banking sector

The ACP has paid particular attention to rising risk perception, particularly in regard to sovereign risk, reflected in high volatility on the sovereign debt market, a deterioration in the situation of several European countries and rising spreads. Faced with uncertainty about the value of assets held by those banks with the highest exposure to these countries, the ACP's analysis has focused, in particular, on the solvency of banking groups, rising funding costs and harder access to liquidity.

Aside from aspects directly linked to the financial crisis, the ACP stepped up its monitoring in relation to two risks. On the one hand, the French housing market is unusual in that, relative to other OECD countries, it has not experienced a severe downward adjustment during the crisis. This raises questions as to how long the situation can last, the extent to which banks are responsible for driving up real estate prices and the impact on banks of a potential fall in those prices. On the other hand, restoring bank solvency means, in particular, allocating a substantial portion of earnings to reserves. Since earnings themselves depend on the level of margins, this reinforces the importance of monitoring those margins at macroprudential level.

A Home loans and monitoring of real estate lending

The situation in the French property market led the *Autorité de contrôle prudentiel* to issue a call for vigilance when presenting its 2010 annual report at the beginning of 2011.

The ACP stepped up its monitoring of real estate financing in 2011.

The annual survey of housing finance²² showed that the significant rise in house prices had continued as a result of a persistent imbalance between housing supply and demand, and the fact that loan interest rates remained at exceptionally low levels. Furthermore, the rise in real estate prices, which has outpaced growth in household income, is liable to contribute to a social phenomenon under which a section of the population is driven out of the real estate market.

The ACP has introduced new measures to check that credit institutions are paying close attention to monitoring and supervising key risk management indicators on real estate lending.

²¹ *Analyses et synthèses*, n° 2, June 2011.

²² *Analyses et synthèses*, issue 3, June 2011.

The Chairman of the ACP wrote to the Chairman of the French Banking Federation on 7 September 2011 recommending adherence to rigorous risk management principles. The letter reiterated that credit institutions should pay careful attention to ensuring that mortgage repayments remain limited to a reasonable proportion of borrowers' disposable income. As part of their loan agreement processes, lenders should also conduct a prudent assessment of loan-to-value ratios. Finally, lending for excessively long periods should be avoided.

To enable the ACP to assess changes in lending conditions, the College adopted Instruction 2011-I-14 on 29 September 2011. The aim is for authorities responsible for financial stability to have access to appropriate monitoring tools. The main French mortgage lenders are now required to submit monthly data on new mortgage business, including three indicators: affordability ratio (ratio of mortgage repayments to the borrower's disposable income), the loan-to-value ratio and the maximum original term of loans.

In addition, credit institutions have been asked to include specific information on mortgage lending policies and risk management arrangements in their internal control reports. The ACP will use this information to check that institutions have appropriate risk management tools in place, notably tools for monitoring appropriate pricing and satisfactory customer information, the quality of legal guarantees and loan duration.

B Monitoring banks' margins

Margins are key indicators of a bank's profitability. They can also be used to compare entities of different sizes and organisational types.

To ensure that the profitability of lending business and its performance relative to the cost of risk is closely monitored, the ACP General Secretariat has worked closely with credit institutions to put in place an *ad hoc* survey of banks' margins on loans and deposits.

This quarterly survey gathers data on various margins in relation to both the stock of loans and new loan business:

- narrow interest rate margin (for loans, this is the difference between the interest rate excluding fees, i.e. the narrowly defined effective rate, and the funds transfer pricing rate (FTP); for deposits, it is the difference between the replacement rate (i.e. IRR) for the bank and the investment income rate for the customer);
- overall loan margin (the difference between the Annual Percentage Rate of Charge, including both interest and fees, and the IRR);
- margin net of expected loss (EL - the difference between the narrow interest rate margin on loans, as defined above, and the percentage expected loss over the life of a loan).



New business margins reflect a bank's strategy at a given point in time, while margins on loan stock provide a more structural indication due to the inertia inherent in stock calculations.

The survey shows that margins on the stock of mortgage loans are very low as a result of both competition in this market segment and the low level of expected losses.

Moreover, deposit margins appear to be relatively stable in spite of the increase

in proposed prices: banks' IRRs have also risen, reflecting stress on the liquidity market.

Ultimately, these data highlight the fact that banks' deposit business is more profitable in margin terms than their lending business, and in particular real estate lending.



Contents

- 125 Inspections carried out in 2011 and lessons learned
- 133 Switching banks
- 137 Processing customer requests to the ACP
- 141 Recommendations published in 2011
- 143 The Consultative Committee on Business Practices
- 144 The activities of the ACP/AMF Joint Unit
- 147 ACP coordination with other customer protection bodies at national level
- 148 Supervising business practices: the international dimension

CHAPTER 3

Customer protection in banking and insurance

The ACP ensures that the entities under its supervision comply with customer protection rules concerning advertising, pre-contractual information, due advice and the full execution of contracts, till the commitments are fulfilled. The Authority also checks that they have the appropriate resources and procedures in place to do so.

The ACP's supervision of business practices is aimed at maintaining a fair and transparent relationship between institutions and their customers, thereby underpinning public confidence in the financial system.

The ACP carries out this mission through its Business Practices Supervision Directorate (DCPC, *direction du Contrôle des pratiques commerciales*). This department has cross-sectoral mission covering both banking and insurance.

Supervision of business practices in figures...

67
on-site inspections carried out in 2011

4,049
written requests received during the year

5
recommendations published

Almost
65,000
telephone calls taken on the ABE Info Service platform

2,554
advertisements analysed

1

Inspections carried out in 2011 and lessons learned

In 2011, the Business Practices Supervision Directorate initiated numerous inspections of credit institutions, insurance firms and their intermediaries.

1.1 Organisation of inspections

While the vast majority of inspections were carried out by the ACP on its own, some were performed in conjunction with the securities supervisor (AMF, *Autorité des marchés financiers*) through the Joint Unit (*Pôle Commun*). To strengthen its inspection capacity at local level, the ACP also works with the *Banque de France* network. The Lille, Lyon and Toulouse branches were called upon in 2011 to inspect certain insurance intermediaries in their respective regions.

Inspections are carried out both off-site and on-site. The ACP can demand clarification and supporting documentation from the entity concerned, for example in the context of its supervision of advertising (cf. inset). It can also decide to go on-site for more in-depth inspections related to periodic returns submitted by professionals or in response to requests from customers.



ACP SUPERVISION OF ADVERTISING

Customer protection involves for the ACP, monitoring new insurance policies and banking products put on the market as well as advertising campaigns run by supervised entities. The aim is to ensure compliance with the applicable rules and prevent abuse. Advertising and product terms are monitored on a daily basis.

The ACP has the capacity to check that advertising by supervised entities complies with the regulation: applicable provisions of the Monetary and Financial Code, the Insurance Code, the Mutual Insurance Code, the Social Security Code (Book IX), the Consumer Code (Book III), approved codes of conduct, and ACP recommendations.

The ACP's supervision of advertising has its legal basis in the Monetary and Financial Code (Articles L. 612-1-I, L. 612-1-II §3 and L. 612-23). It should be noted that the ACP does not have the power to screen advertising before it is issued.

The ACP also makes sure that professionals commit adequate resources and implement appropriate procedures for compliance with of the Consumer Code (Book I).

The ACP's Business Practices Supervision Directorate has established a monitoring system for advertising and products that enables it to analyse marketing materials with a view to:

- detecting violations of the rules overseen by the ACP in accordance with Article L. 612-1 of the Monetary and Financial Code;
- identifying changes in business practices and the development of new products;
- ensuring compliance with customer protection rules.

In 2011, the Business Practices Supervision Directorate concentrated its efforts on the internet and the press, paying

particular attention to two topical issues:

- **Consumer credit:** the Consumer Credit Reform Act no. 2010-737 of 1 July 2010 significantly tightened the rules on the form and content of advertising for consumer credit (personal loans, revolving loans and specific-purpose loans), with the aim of increasing the amount of information given to the consumer from the outset;
- **Life insurance:** where the emphasis is on ensuring that information - including advertising materials - on life insurance or endowment policies is accurate, clear and not misleading. Moreover, advertisements must be clearly identified as such. The ACP also makes sure that entities take proper account of its recommendations and views on issues related to advertising. On-site inspections were launched following these investigations.

PERIODIC RETURNS FROM CREDIT INSTITUTIONS AND INSURANCE FIRMS CONCERNING CUSTOMER PROTECTION: THE ANNEX TO THE ANNUAL INTERNAL CONTROL REPORT

Since its founding in March 2010, the ACP has asked credit institutions and insurance companies for information on their business practices and their arrangements for ensuring compliance with customer protection rules. **It has asked for a specific Annex to the firms' Internal Control Reports, based on its own template.**

In 2011, the ACP launched an IT project aimed at optimising the task of gathering and processing

information while facilitating the production of the Annex. Following consultations with professional associations, work on specifications and the choice of a solution, an application will be available in early 2012 for the 2011 Report.

This initiative will enable the ACP to process data on the basis of information sent in by credit institutions and insurance firms. The solution, based on a PDF-type document that can be downloaded

from the ACP's website, will give reporting entities considerable flexibility. User-friendly and with embedded controls (verification of input fields), the files can be saved and updated as and when data become available.

Ultimately, the ACP will have an effective tool with computer-enhanced efficiency for managing periodic reports related to customer protection.

1.2 Inspection topics in 2011

The inspections of credit institutions and insurance carried out in 2011 revealed a strong wish to take customer protection into account in the firms. Inspections also identified a number of good and bad practices in the marketing of banking and insurance products.

The ACP targeted three main topics in its on-site inspections: formalisation of the duty to provide advice, complaints handling and internal control arrangements. Each sector, with its characteristics gave rise to specific observations.

A Advice: gathering customers' needs and recording the advice given

The legal obligations concerning the sale of life insurance policies include a requirement to assess customers' needs and demands and record them in durable form; the same applies when giving advice. The inspections found several points needing improvement, notably the computer tools used to gather customers' needs and the match between the customer's profile and the product eventually offered.

In the credit business, the implementation of the provisions in the Consumer Code concerning the explanations given to borrowers, the assessment of the suitability of loans given the borrowers' financial situation and checks of borrowers' solvency also appeared to need improvement. The procedures established by the institutions involved were not always put into practice.

Training sales force is one of the keys to high-quality advice. Inspectors noted that apart from initial training, very few institutions have systematic development programmes for their sales staff concerning products or customer protection rules.

B Complaints handling

Most of the institutions inspected have a two-stage complaints procedure. The first stage involves centralising customer complaints in an attempt to resolve the most common issues. The second concerns the most intractable complaints. While this system is appropriate, progress has to be made in order to reach a satisfactory level of customer service.

Inspections revealed very diverse situations among institutions. In some cases, inspectors saw a shortage of information on how complaints are handled, inadequate organisation and a lack of professionalism; but conversely, in others, best practices based on organised systems which ensure that the staff involved in customer protection intervene effectively were noted.

Guaranteeing clear and transparent information on the complaints procedure also favours simple and direct access to customers. But banks' and insurance companies' pre-contractual and contractual documentation does not systematically inform customers of the applicable complaints procedure. That information is sometimes missing or hard to obtain.

Shortcomings in the handling of complaints may explain why relations between some institutions and their customers are less than ideal. For example, giving a premium-rate telephone number for lodging complaints does not facilitate customer access to complaints handling systems. Inspections showed that progress has still to be made in terms of formalising procedures, setting acceptable resolution deadlines and identifying the departments concerned.

Formalisation can be based on a clear, precise definition of a complaint, such as that used by the European Commission on 12 May 2010 (2010/304/EU) and taken up in ACP Recommendation 011-R-05 on complaints handling. This document also recommends using appropriate electronic monitoring to follow each individual customer files. The institution can then provide a highly detailed analysis of the way it has handled complaints. By becoming a central objective for firms, optimising complaints procedures would offer a harmonised response that could adapt to customers' demands and thereby increase their satisfaction.

It is important to ensure that there is no confusion between the complaints department and mediation arrangements. Among other things, this separation means that the complaints department must supply the ombudsman's contact details in all its replies to customers, irrespective of the action taken on the complaint. Also, it must be possible to pass any case on to the ombudsman, when the first stages of the complaints procedure have been completed.

A best practice observed in certain cases consists in establishing Steering Committees representing the Complaints Department, Operational departments, the Legal Department, Compliance and the ombudsman secretariat. These committees can assess recurrent themes cropping up in complaints and take appropriate corrective actions.

C Internal control

Inspections showed that risk maps do not always capture the risks related to non-compliance with customer protection rules, even though they are an important issue for firms. Including these issues in internal control procedures (permanent control and periodic control, in the case of the banking sector) is therefore an area of future progress.

Furthermore, it was noted that whenever internal control has looked into marketing practices and compliance with customer protection rules, the corrective action plans have been inadequate and generally not followed up properly.

Concerning internal coordination, inspectors frequently noted that firms had not always established procedures enabling them to check the quality of information, guaranteed the traceability of advice and corrected bad marketing practices in their networks. Shortcomings have also been observed in respect of consultation with Legal Departments during approvals for new product marketing and contractual materials, and in reviewing publications intended for customers. Lastly, inspectors occasionally encountered breaches of confidentiality concerning customers' medical records.

1.3 Business practices by sector

A Insurance

Inspections of insurance and mutual insurance companies in 2011 raised a number of points for improvement concerning regulations, customer information, the marketing of life insurance policies and the duty to advise.

Inconsistencies were sometimes identified in pre-contractual and contractual information: pre-contractual documents are occasionally provided only after the policyholder's signature, standard waiver letters are not always presented in distance selling, and general or particular conditions of sale are not systematically signed.

As far as informing the customer is concerned, and more particularly regarding the way policies are drafted, apart from their form (legible font size, text in bold typeface), the ACP insists that information should always be as clear as possible to the customer and must not leave room for interpretation through vague exclusion clauses, unexplained abbreviations, an absence of worked examples, and so on. Confusion can be a source of material loss for the customer, who may wrongly believe to be protected against certain risks and with a given level of cover. Note that according to Article L. 133-2 of the Consumer Code, contract clauses open to doubt are interpreted in the most favourable way for the retail customer.

The following points specific to insurance need improvement.

Insurance companies must be particularly vigilant in the marketing of unit-linked policies. Inspections reveal that advice on such policies should be more standard from one customer to another and should take more account of the profile defined at the outset. Insurance companies do not provide sufficient guidance on switching non unit-linked life insurance policies into unit-linked ones (the Fourgous Amendment)²³, notably in terms of contractual documentation. Inspection assignments examined the cases of very elderly people for whom transfers had been executed in contradiction with the French Insurance Association's (FFSA, *Fédération française des sociétés d'assurances*) own ethical rules. Moreover, the obligation to pay out the capital sum within one month of the policy expiring is not always respected.

Checks of compliance with Recommendation 2010-R-01 on the marketing of unit-linked life insurance policies based on complex financial instruments showed that the insurance firms inspected had informed their members or policyholders of the risks related to these instruments. **That said, the clarity of the information should be assessed with reference to the customers involved and must mention whether a capital guarantee exists.** More information could also be given on the consequences of a surrender request or death before the expiry of the underlying security. Some information documents are limited to an indication of the risks of exit before maturity, without specifying the cases in question (the same is true of the case of the death of the insured).

²³ Named after the legislator that proposed it, the Fourgous Amendment of late 2005 permits the transformation of non-unit linked life insurance policies into unit-linked policies.

The regulations also state that a systematic search for beneficiaries must be made when a life insurance policy expires or becomes payable by reason of death. Some insurance companies have established highly detailed internal procedures in this area. Some firms have been asked to revise their procedures and to consult systematically the national register of natural persons, RNIPP, irrespective of the beneficiary's age or the size of the policy liability to check whether the insured person is still alive.

B Banking

Inspections of credit institutions showed that progress has to be made in bank account management, loan offers and customer information.

Concerning account management, on-site inspections revealed failings in checking compliance with the rules on the content of Annual Percentage Rates of Charge, notably on overdrafts, that often affect already vulnerable customers.

Inspections carried out before 1 May 2011, when the main provisions of the Lagarde Act on consumer credit reform came into effect, revealed that not all reporting institutions had incorporated the new requirements into their internal procedures. Institutions' attention was drawn to the way credit offers are drafted (detailed information, font size, legal notices) and to account agreements that sometimes contain clauses on revolving credit scoring even though the law requires a clear separation between account management and the extension of credit. Account agreements could also be clearer for the customer and be restricted to provisions specifically applicable to his or her profile (a retail customer, for example, as opposed to a professional customer) or the profile he or she has chosen, rather than applicable to all the institution's product offerings.

The Lagarde Act was not always being applied to online banking services. Online requests for credit could be validated by a simple click, for example, even though the spirit of the law dictates closer examination of the customer's financial situation before a loan is offered, with systematic consultation of the national database of household loan delinquencies, a customer solvency analysis, and a fresh offer in the event of an increased loan amount.

Accelerated repayment clauses are sometimes open to criticism. Some loan offer documents permit the credit institution to effect the repayment of the loan by transferring the requisite sum from the customer's current account or savings account without prior notice. Several trial courts have described such clauses as abusive.

In more general terms, inspections of credit institutions have shown that compliance requirements often take account of "Know Your Customer" regulations, anti-money laundering and customer protection rules. But there is room for improvement on internal resources and procedures as well as internal control arrangements concerning matters such as advertising, pre-contractual information, the legality of contracts, banking mobility, the right to a bank account, respect for value dates and fee structures.

1.4 Intermediaries: issues raised during inspections

PARTICULARITIES INVOLVED IN THE SUPERVISION OF INTERMEDIARIES

Intermediaries are not subject to ongoing supervision and therefore have to be brought under the ACP's jurisdiction if they are to be inspected on-site. Concretely, this translates into sending the entity a decision notice signed by the ACP's Secretary General.

The intermediaries inspection unit at the ACP's Business Practices Supervision Directorate carries out inspections of all types of intermediaries, from insurance brokers to general agents, wholesale brokers and credit institutions acting as insurance intermediaries.

Intermediaries in banking transactions and payment services (IOBSP) are also included in the scope of supervision.

Intermediaries may be inspected either by ACP teams alone, by the ACP and AMF acting together through the Joint Unit, or for those based outside of Paris, in conjunction with the Banque de France network.

The ACP takes part in numerous conferences in order to explain the way it supervises intermediaries to professionals unfamiliar with this process.

Inspections of intermediaries covered all aspects of customer protection, from the professional qualifications of the entities and individuals carrying out the intermediation, to issues relating to the information and advice given to customers.

With the aim of reassuring customers that they can be trusted, insurance intermediaries are required by regulation to register with the insurance intermediary Registry, ORIAS, before they start doing business. **To register, intermediaries have to demonstrate that they meet a number of minimum standards, including technical expertise. The regulation also states that insurance firms cannot pay commissions to intermediaries unless they are duly registered.** Intermediaries have to supply customers with details of their identity, give their registration number and describe the nature of their relationship with their provi-

ders. They must also explain both the complaints procedure and the avenues of appeal to their customers.

Inspections revealed a number of deficiencies. Some entities were intermediating insurance without prior registration with ORIAS; others were not explaining to customers how they could check their insurance intermediary status or paid out commissions to unregistered intermediaries. It also appears that in certain cases the professional qualification standards required of employees were not respected at the time of hire, and customers were not always informed of complaints procedures before signing their first insurance policy. Several inspections revealed cases where professional liability insurance or financial guarantees were inadequate with respect to the transactions involved, creating a financial risk for the intermediary and the customer alike.

With the aim of guaranteeing a high standard of information for customers, intermediaries are under a regulatory obligation to sign agreements with their insurance services suppliers in which it is stipulated that the intermediary has a duty to submit any advertising materials intended for customers and that the insurance company must provide the intermediary with information relevant to understanding the policy. On-site inspections brought several shortcomings to light, with the signed agreements not being systematically updated with these provisions.

Insurance intermediaries also have a duty of advice, which must be adapted to the complexity of the product proposed. They also have to document

the subscriber's demands and requirements as well as the reasons for the advice they have given.

On this point, and particularly in connection with life insurance broking, inspectors paid close attention to the match between the investor's profile as defined by the intermediary (type, experience, financial knowledge) and the asset allocation established, to sales personnel's understanding of the products they are proposing, to the quality of the sales pitch with respect to the policy's terms, and to documentary evidence of compliance with formal obligations. The process of marketing of the complex financial instruments used for unit-linked policies was examined particularly carefully, in connection with the ACP's publication of a specific recommendation on this subject.

Overall, inspections revealed failings in the information and advice given, that call for corrections and improvements to the practices concerned. But positive points were also regularly noted, such as the frequent use of documents formalising customer needs and the reasons for giving a particular advice, a concern for customer satisfaction and therefore the provision of good quality advice.



2

Switching banks: checking credit institutions' commitments, taken in the frame of the Financial Sector Consultative Committee

The Banking and Financial Regulation Act of 22 October 2010 introduced a procedure (see Article L. 612-29-1 of the Monetary and Financial Code) that enables the Finance Minister to ask the ACP to investigate whether the individuals and entities it supervises respect the commitments made by one or more professional associations in response to measures proposed by the Financial Sector Consultative Committee (CCSF, *Comité consultatif du secteur financier*).

In a letter dated 20 January 2011, the Finance Minister Christine Lagarde asked the ACP to check that firms member of the French Banking Federation (FBF) were respecting commitments they had made on promoting banking

mobility. More specifically, this exercise concerned the professional standard adopted by the FBF on 6 July 2009, subject to the FBF's full compliance with the CCSF measures of 26 May 2008.

The ACP's Business Practices Supervision Directorate therefore drafted a questionnaire that was referred to the ACP's Business Practices Consultative Committee on 7 February 2011. The questionnaire concerned implementation of each of the commitments made under the FBF standard of 6 July 2009 as well as the arrangements made for monitoring compliance.

An online survey was conducted of 344 active FBF member institutions.

2.1 Mobility to facilitate switching bank

In a bid to promote competition between credit institutions for the benefit of consumers, banking mobility – the ease with which consumers can switch from one bank to another – has been a topic of discussion between professionals and consumer associations at both national and European level for a number of years. In France, these discussions have mainly taken place within the CCSF, which took up the issue in 2004. Following these various initiatives, the FBF adopted a professional standard on 6 July 2009.

The standard calls for the establishment of a mobility assistance service, based on the following principles:

- each bank offers this service to every individual customer opening a deposit account, upon simple request and unconditionally;
- the new bank informs the potential customer of the existence of this service and the way it works *via* appropriate documentation, notably on its website;
- the new bank asks customers wishing to change bank for formal approval to act in their name; the customer then supplies the information and documents needed to change the account;
- on the customer's behalf, the new bank completes any formalities required to ensure that regular direct debits and credit transfers are switched to the new account;
- the new bank communicates these alterations to the counterparties in these transactions within 5 business days of receiving all the necessary information and documentation from the customer;
- the new bank also establishes any standing orders that the customer wishes to set up from his or her deposit account within 5 business days of receiving all the necessary information from the customer;
- once counterparties have taken note of the new banking details, the customer can then close his or her old account if they wish. The old bank will do so within 10 business days. If non-sufficient funded cheques are drawn on the closed account, the bank will do everything it can to notify its former customer before refusing them so that the customer can resolve the situation;
- the original bank offers a statement of automatic and recurrent transactions on the account over its final 13 months at a reasonable price. It makes this statement available upon the request of the customer or his or her new bank within 5 business days at most.

The CCSF supplemented this standard with a notice dated 9 December 2010 that reviewed progress on introducing banking mobility services and pointed out the need for better dissemination of information about those services, both to new customers and staff in contact with the public.

2.2 Results of the ACP's investigation of banking mobility

The ACP's investigation sought to establish whether the standard adopted by the FBF on 6 July 2009, complied with the CCSF notice of 26 May 2008 and whether each of the commitments cited in the standard had been fulfilled.

The FBF standard was found to be generally compliant with the CCSF notice but incomplete in certain respects. The detail contained in the standard has led to the better integration of the CCSF commitments at operational level. But points of divergence from the standard, notably on informing customers of the risks of closing their accounts when transactions could still be in progress and of the possibility of retaining the same mortgage while repaying it by direct debit from an account at another bank, could be an obstacle to consumers seeking to change banks if the institution does not itself take the initiative to resolve them.

Checks of each of the commitments and the ways in which they are implemented and monitored led the ACP to conclude that FBF members' compliance with the standard is incomplete. In some respects, these institutions have fallen well short of what they had planned.

In terms of making information available and not charging for account closures, the commitments appear to be largely respected. Most banks offer a mobility assistance service that at least makes contact with direct debit counterparties; banks also supply summaries of recurrent transactions at no cost to customers wishing to switch banks.

In contrast, slightly over half of banks, representing 70% of deposits, systematically offer a mobility assistance service when a customer opens an account. Despite the standard, more than half of banks do not specify time limits in their internal procedures for the establishment of new customers' recurrent transaction and do not monitor them. Respect for the commitment to take care of relations with the former bank is rare, and the summary of recurrent transactions provided by the former bank usually does not cover the full 13-month period specified in the standard.

The investigation also revealed that although the mobility assistance service is free, customers still pay to change their bank. This is because they bear the cost at their former bank of cancelling transactions and transferring the account balance, and at their new bank of establishing recurrent transactions.

In more than two thirds of banks, the various commitments are not monitored with indicators or within the internal control framework. The vast majority of banks are unable to make sure that they are honouring their commitments and cannot say how many accounts have been opened with the help of the mobility service.

In light of the observations made while investigating banks' lack of awareness of the extent to which their mobility assistance services are actually used, attention is drawn to the need for better monitoring of the commitments made when becoming an FBF member. Improvements are needed in informing customers of the existence of such a service, of the applicable procedures and the

costs involved in changing bank. Similarly, institutions should introduce relevant indicators to assess the use of the service and its practical implementation. Lastly, checks of banks' respect for their commitments should be better integrated in the scope of internal control, in accordance with Article 5 of CRBF Regulation 97-02.

The results of this investigation are included in a report that shows the proportion of FBF member institutions respecting each commitment. The report is published on the ACP's website

In response to these results, the CCSF published a notice on 6 December 2011 urging credit institutions to abide more closely by their commitments to make it easier for customers to change banks.



3

Processing customer requests to the ACP

3.1 Organisation of request processing

A The ACP's help to customers

The customers of banks and insurance companies can send requests for information, complaints and opinions on business practices to the ACP. These communications are processed and analysed by ACP teams organised around four specialities: banking, non-life insurance, life insurance and health/personal risk insurance.

Upon receipt, requests are logged in a computer system on the basis of several criteria (institution name, type of product concerned, etc.) and then allocated to legal experts for a reply within 15 business days.

The ACP's first duty consists in sending the customer clear information on the out-of-court procedures for obtaining a response to a complaint, such as the details of internal complaints departments and of the competent ombudsman or ombudsmen. Regular meetings and dialogue are organised with the banking and insurance ombudsmen in order to enable ACP teams to obtain up-to-date information on the ombudsmen's skills and the affiliation chosen by the firms concerned.

To supplement the practical information given to the claimant, and depending on the information it has on the case, the ACP makes sure that it specifies the applicable regulation so that the claimant can appreciate the relevance of his or her request.

In the event of a flagrant breach of the law, regulations or a contract, the ACP's information and claims department can intervene directly with the firm concerned to obtain additional information and if necessary ask that the customer's claim be re-examined.

B Monitoring that is useful to inspections

By processing and analysing the requests it receives, the ACP is able to identify customer protection issues, both thematic and structural, that are specific to certain supervised entities. Requests received from customers are a source of information on the practices liable to harm the interests of the customers and/or entity concerned. In life insurance, for example, legal risks related to management or payment deadlines have been identified in this way.

The ACP is able to measure changes in business practices over time, such as the development of group non-life policies (particularly insurance for mobile phones or loss of rental income) and the terms of certain entities' policies with respect to false claims in terms of proof and penalty, especially in loan insurance. **This monitoring activity can prompt the ACP to suggest changes in the regulations.**

Furthermore, particular attention is paid to the time firms take to deal with complaints, as an excessively long period can create a risk for customers. In personal risk insurance, for example, the ACP seeks swift application of the Évin Act of 31 December 1989, as it notes that all

too many policyholders still suffer delays in their insurers' admissions of liability, and therefore in payouts, in the case of a chain of insurers.

The ACP also analyses the relevance of its own observations with respect to those made by the ombudsmen that it meets on a regular basis.

Request processing is also an effective tool for regulatory purposes, making it possible to determine whether a reform has been properly implemented, as with the "de-linking" of payment protection insurance and real estate loans following the adoption of the Lagarde Act of 1 July 2010.

3.2 Lessons learned from requests

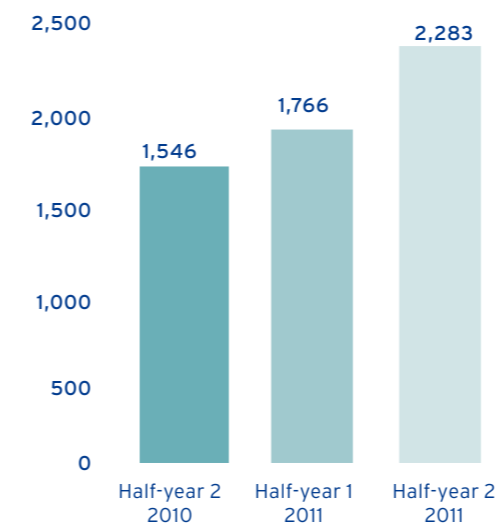
A Customers' written requests to the ACP

Since it was established, the ACP has received a growing number of written requests from the financial sector's customers. Note that the figures for the second half of 2011 were affected by an accumulation of requests concerning the same issue and the same insurer (577 cases).

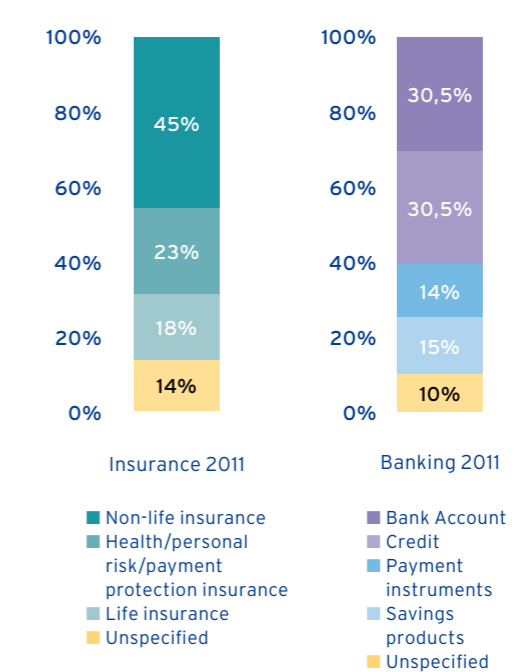
B Breakdown of requests by category

The main categories of requests received did not change between 2010 and 2011. The number of requests concerning non-life insurance rose by a steep 9% because of the specific situation mentioned above (577 cases concerning the same issue and insurer). In banking, account management and credit represent two thirds of requests.

Number of requests received by the ACP, 2010 to 2011



Breakdown of requests in 2011 by category

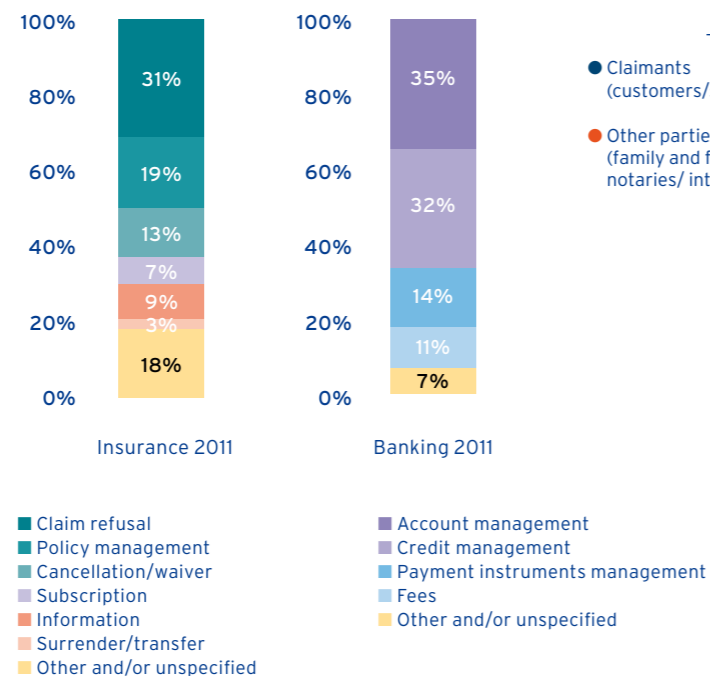


C Breakdown of requests by subject

As far as subject is concerned, policy management still represents a quarter of insurance requests. Cases related to payout refusals account for about one third of the total, up 15%, and are now the single largest cause of requests that the ACP receives.

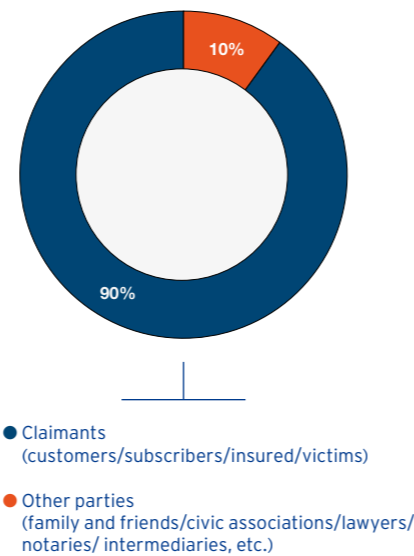
In the case of complaints concerning banks, issues related to account management and credit represent two-thirds of the sources of complaint.

Breakdown of requests in 2011 by subject



D Sources of requests

As in previous years, the vast majority (90%) of complaint letters sent to the ACP in 2011 came from customers themselves. The remaining 10% were sent by other parties, mainly family, associations and lawyers.



4

Recommendations published in 2011

The ACP published five recommendations on customer protection in 2011.

- *Recommendation on management by credit institutions of trustee accounts on behalf of joint ownerships (15 February 2011), 2011-R-01.*

The ACP has noted the existence of credit institutions' practices liable to harm customers' interests concerning the management of accounts opened in the name of certain property managing agents. It has therefore recommended that credit institutions that hold managing agents' accounts containing housing association funds should not allow the money to be transferred to other credit institutions and should not sign an amalgamation agreement that would allow credit balances on these accounts to offset debit balances on other accounts.

- *Recommendation concerning advertising communication for unit-linked life insurance contracts, with bonds and other debt securities as underlying assets (23 March 2011), 2011-R-02.*

The ACP has observed that advertising materials relating to unit-linked life insurance policies based on bonds and other debt securities can be ambiguous or misleading. This recommendation is

aimed at eliminating any risk of confusion in advertising documents on the nature of the underlying units (between non-unit linked and unit-linked funds composed of debt securities) and on the returns from those units.

- *Recommendation concerning the marketing of unit-linked life insurance contracts, with debt securities issued by an entity that is financially linked to the insurance undertaking as underlying assets (6 May 2011), 2011-R-03.*

The ACP's inspection and monitoring activities have revealed that in certain groups, a banking parent company can issue bonds that are offered to a life insurance subsidiary, which then markets them as an underlying asset for its unit-linked policies. The recommendation details the precautions that should be taken to cover potential conflicts of interest in this situation, notably in terms of informing policyholders and ensuring independent valuation of the bonds upon issue and during the term of the policy.

- *Recommendation concerning the marketing of life insurance policies linked to funeral payment plans (17 June 2011), 2011-R-04.*

The ACP observed that policyholders did not have a clear understanding of the cover provided, notably because in some cases the beneficiary of the payment policy is not required to use the money to finance the policyholder's funeral. The ACP therefore recommends that when the type of policy justifies it, insurance entities and intermediaries draw policyholders' attention *via* advertising material and advice to the nature and the scope of guarantees proposed to subscribers and their relatives.



- *Recommendation on complaints handling (15 December 2011), 2011-R-05.*

Work carried out by the ACP on the handling of complaints has shown that certain procedures for submitting and handling complaints do not sufficiently protect customers.

This recommendation was formulated as a result of joint work with the AMF and is aimed at guaranteeing the following to any person interested in or liable to be interested in a policy:

- clear and transparent information on procedures for handling complaints and easy access to the complaints handling system;
- an efficient, fair and harmonised complaints handling process;
- the implementation of any corrective actions for addressing any problems identified during the complaints handling process.

5

The Consultative Committee on Business Practices

The Consultative Committee on Business Practices (*Commission consultative Pratiques commerciales*) is one of the four consultative committees set up to advise the ACP College in its decision-making.

In connection with customer protection in both banking and insurance, it has the following duties:

- submit an opinion on the ACP's draft recommendations or positions in this area before they are adopted;
- deepen understanding of business practices issues identified by the Authority;
- gather information and suggestions from its members on issues related to the ACP's customer protection mission.

At the Consultative Committee on Business Practices' three meetings in 2011, the following ACP documents gave rise to wide-ranging and constructive debate:

- proposed recommendations on the marketing of unit-linked life insurance policies based on bonds and other debt securities, on the marketing of life insurance policies related to funeral payment plans and on complaints handling procedures;

- presentation of the questionnaire designed to check FBF member institutions' respect for commitments made to the CCSF on banking mobility;
- position on the legal status of rolling spot forex transactions;
- instruction on codes of conduct approvals.

The Consultative Committee on Business Practices is also a forum for dialogue on topical French and international customer protection issues.

6

The activities of the ACP/AMF Joint Unit

6.1 Duties

The growing overlap between banking products and investment products such as unit-linked life insurance policies and the emergence of entities capable of delivering the whole range of insurance, banking and savings products has led legislators to establish formal coordination between ACP and AMF initiatives through the Joint Unit.

The Joint Unit's duties are defined in Article L. 612-47 of the Monetary and Financial Code:

- coordinating proposals for supervision priorities;
- analysing the results of supervisory activities;
- coordinating the supervision of all banking and insurance transactions, investment services and savings products and monitoring advertising campaigns;
- offering a common point of entry for all customers.

The ACP and AMF supplemented these provisions with an agreement signed on 30 April 2010 that states the ways that the Joint Unit is to carry out its duties.

The Joint Unit is both an institutional coordination mechanism between the two authorities in their supervision and advertising monitoring tasks and a single entry point for customers.

The entry point is the *Assurance Banque Épargne Info Service* (ABE-IS), which has two components:

- a website (www.abe-infoservice.fr) that provides practical advice and information on the various products and services, lists authorised entities and products and warns against the practices of certain institutions and companies. It also contains a news section where information relating to insurance, banking and savings products is published regularly (30 editions in 2011);
- a telephone number (0 811 301 801²⁴) for individual queries related to insurance, banking and savings.

²⁴ At the price of a local call from any fixed line in metropolitan France.

6.2 Activity in 2011

Joint ACP and AMF teams carried out twelve inspections in firms acting both as insurance intermediaries and as investment advisers or investment services providers.

The ACP and AMF noted a sharp increase in Foreign Exchange (Forex) investment proposals to individuals. Aggressive advertising on the internet concerning Forex trading is often followed up with strong sales pressure in the form of frequent emails, telephone calls, and other contacts. In a succession of press releases over the year, the two authorities alerted the public to websites where no authorised service provider could be clearly identified.

The Joint Unit also hosted discussions on the standardisation of the legal framework for financial contracts and rolling spot Forex transactions. Following these discussions, and in the light of European legislation²⁵ and practices, the ACP and AMF decided that Forex contracts maturing at the end of the day are financial instruments when they provide for or result in tacit rollovers of positions. This position on the part of the two regulators was explained on their respective websites on 31 May 2011.

Inspections and the analysis of information gathered from such sources as the *Assurance Banque Épargne Info Service* platform revealed certain complaints submission and handling procedures that did not protect customers sufficiently. To improve professionals' practices, the ACP and AMF decided to take joint action in this area. The Joint Unit's work resulted in:

- an ACP recommendation applicable on 1 September 2012;
- an amendment to the AMF General Regulation supplemented with an implementing instruction.

Both the ACP and the AMF addressed the training of all customer-facing staff, i.e. intermediaries and employees, and irrespective of their level of seniority. Staff training is one of the keys to improved customer protection; it must enable the personnel that advise customers to take proper account of customer protection issues when they learn sales techniques.

²⁵ Directive 2004/39/EC of 21 April 2004 concerning markets in financial instruments (MiFID) and the European Commission Regulation 1287/2006 of 10 August 2006 for its implementation, effective 1 November 2007.

The Joint Unit launched three main initiatives in this area:

- dialogues with Masters degree course directors on the possibility and practicalities of cooperation on teaching customer protection issues to students intending to become banking or insurance executives. These discussions resulted in the establishment of a guide covering the main points related to customer protection that could be incorporated into the course syllabus;
- exchanging with the National Education's general inspectors responsible for vocational training certificates in banking and insurance, certificates in client relationship and management of commercial staff, with a view to expanding their syllabuses or participating in their revision;
- establishing relations with professional training institutions such as the banking industry training centre, CFPB, to study the possibility of strengthening the "best practices" content of their diplomas with respect to marketing savings products and understanding customer protection regulations.



7

ACP coordination with other customer protection bodies at national level

Several public and private-sector bodies are involved in the vast field of consumer protection. They all have specific supervision, monitoring, mediation, information or representation prerogatives.

The ACP's Business Practices Supervision Directorate shares information and collaborates with these bodies and authorities in order to increase the overall effectiveness of protection arrangements and its own actions.

To coordinate its activities with these other participants, the ACP holds regular meetings with bodies as diverse as the Competition General Directorate (DGC-CRF) of the Ministry of Finance and the Professional Regulator on Advertising ARPP. It offers technical assistance to the Treasury, for example in the drafting of regulation concerning intermediaries

in banking transactions and payment services (IOBSP). It assumes a secretarial role for the AERAS mediation board, which aims at improving access to insurance and credit for individuals with serious health issues, and participates as an observer in Financial Sector Consultative Committee meetings.

Apart from the institutional relations that the ACP maintains with consumer and professional associations, informal consultation has taken place on a regular basis.

8

Supervising business practices: the international dimension

8.1 The ACP and European bodies

The three European Supervisory Authorities – for insurance, banking and the financial markets – established on 1 January 2011 have an explicit customer protection role, described identically in the Regulations that created them.

Committees dedicated to consumer protection and financial innovation have been set up at both the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA). The ACP chairs EIOPA's consumer protection committee.

This committee has specific roles:

- analysing consumer trends;
- coordinating financial literacy initiatives;
- developing industry training standards;
- contributing to the development of common rules on information.

The ACP has contributed actively to these authorities' reports, particularly those on the major consumer trends across the European Union, complaints handling, best practices in the marketing of variable annuity products and financial literacy.

Despite national differences, the European supervisors have identified trends common to all of Europe's banking and insurance markets. As part of its duty to supervise business practices, the ACP is placing growing emphasis on analysing underlying trends in banking and insurance as a means of preventing or correcting abuses and the risk of unfair mis-selling.

In the insurance sector, the ACP has noted the increasing complexity of the units of account offered under certain life insurance policies. The associated risks and costs are not necessarily presented clearly enough to consumers.

Still in the insurance sector, the European supervisors have studied the practices of comparison websites. They play a growing role on European markets, making it easier for consumers to compare offers and thus fostering competition. But questions have been raised over the excessive importance attributed to prices, sometimes to the detriment of the coverage offered in the policy, over the possibility of conflicts of interest arising

from a cosy relationship between an insurance undertaking and a comparison website and over the appropriateness of online distribution of certain products, such as life insurance.

The ACP's programme for the year ahead has been structured around an active contribution to the work of the European Commission, which includes the revision of the insurance mediation directive and legislation on Packaged Retail Investment Products.

8.2 International bodies

The Business Practices Supervision Directorate has contributed to international consumer protection initiatives. In 2011, under the French G-20 presidency, the OECD's consumer protection task force drafted ten "high-level principles" that were approved by heads of state and

government in October. The Business Practices Supervision Directorate also participates in consumer protection working parties at the Joint Forum and the International Association of Insurance Supervisors (IAIS).

THE HIGH-LEVEL PRINCIPLES ON FINANCIAL CONSUMER PROTECTION APPROVED BY THE G-20

At the November 2011 Cannes summit, G-20 leaders approved the **High-Level Principles on Financial Consumer Protection** produced jointly by the OECD and Financial Stability Board. The principles were drafted in close cooperation with international associations (IAIS for insurance, IOSCO for financial markets and the Basel Committee for banks) and were the subject of several consultations, notably with consumer and professional associations. **The ACP contributed actively to formulating and articulating an ambitious French position. The document has ten high-level principles that are intended to supplement existing regulations and to be adapted to national and sector contexts.** Consumer protection has to be an integral part of the legal and regulatory provisions applicable

to professionals and their intermediaries and of the supervisory authorities' duties. Financial inclusion and financial education have to be an integral part of the wider regulatory framework for the financial industry. Moreover, financial sector professionals and their intermediaries must have a responsible attitude and seek to work in their customers' best interests. In concrete terms, these provisions are reflected in duties of information and advice, expertise (hence the training of sales personnel in contact with customers) and managing potential conflicts of interest. The OECD and FSB have been asked to monitor implementation of all these principles and keep the G-20 informed on progress.



Contents

- 153 Effects of the Banking and Financial Regulation Act on the membership and operation of the Sanctions Committee
- 157 Activity of the Sanctions Committee in 2011

CHAPTER 4

Punishing violations: activity of the Sanctions Committee

The Sanctions Committee is responsible for punishing violations of the laws and regulations applicable to reporting institutions. It was established to fulfil the requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights, by drawing a clear distinction between the enforcement, investigation and sanction functions in the exercise of the authority's jurisdiction.

Activity of the Sanctions Committee: Key figures

5 rulings handed down in 2011

Average time taken to reach a decision:
approximately **8** months²⁶

By passing Banking and Financial Regulation Act 2010-1249 of 22 October 2010, the French legislature continued the process set in train by the Executive Order of 21 January 2010 of merging ACP and AMF disciplinary procedures. Under the new legislation, the AMF Board can now appeal against AMF Enforcement Committee rulings that it deems too lenient, an option already enjoyed by the ACP College. The act also created the function of *rapporteur*, a position akin to that of an examining magistrate²⁷, within the ACP Sanctions Committee. The AMF has had *rapporteurs* since 2003.

²⁶ In 2011, the average time taken to reach a decision in disciplinary cases with a hearing was approximately 8 months, including Case n° 2010-06, which involved an exceptionally large case file. The average time taken to reach a decision in the other cases that were heard in 2011, whose files were of a more usual size, was between 6 and 7 months.

²⁷ Report by Senator Philippe Marini, General Rapporteur, for the Finance Committee (1) on the Banking and Financial Regulations Bill adopted by the National Assembly - Volume I, p. 169.

1

Effects of the Banking and Financial Regulation Act on the membership and operation of the Sanctions Committee

1.1 Impact on committee membership

Since the *rapporteur* is excluded from deliberations, to enable the Sanctions Committee to continue to sit with 5 members, the number of committee members was raised to 6²⁸. Accordingly, the committee now includes a second *Conseiller d'État*, who acts as chair if the actual chair is absent or unable to attend. The

Vice-Chairman of the *Conseil d'État* appoints the *Conseiller d'État* and his or her alternate. Following the appointment of new members and alternates by the Order of 16 March 2011, the composition of the committee is as indicated on the next page.

²⁸ Article L. 612-9 of the Monetary and Financial Code.

Membership of the Sanctions Committee



Back row, from left to right:
Jean Cellier, Jean-Claude Hassan, Louis Vours, Pierre Florin, Bruno Martin Laprade, Charles Cornut,
Marc Sanson, Francis Crédot.

Front row, from left to right:
Yves Breillat, Claudie Aldigé, Rémi Bouchez, André Icard.

MEMBERSHIP OF THE SANCTIONS COMMITTEE AT END-2011 (cases opened following the entry into force of the Banking and Financial Regulation Act)

Appointed by the Vice-Chairman
of the Conseil d'État:

Bruno Martin Laprade, *Conseiller d'État*,
Chairman, and Jean-Claude Hassan,
Conseiller d'État, alternate;

Rémi Bouchez, *Conseiller d'État*, committee
member, and Marc Sanson, *Conseiller
d'État*, alternate;

Appointed by the Chairman of the Cour
de Cassation:

Claudie Aldigé, Counsellor, committee
member, and Yves Breillat, Counsellor,
alternate;

Appointed for their expertise in matters that
are helpful for the ACP to meet its statutory
objectives:

Francis Crédot, committee member,
and Louis Vours, alternate;

Pierre Florin, committee member,
and Jean Cellier, alternate;

André Icard, committee member,
and Charles Cornut, alternate.

1.2 Impact on committee operations

Decree 2011-769 of 28 June 2011 on certain powers of the ACP sets out the implementing provisions referred to in Article 15 of the Banking and Financial Regulation Act.

A Involvement of the *rapporteur* during the pre-hearing phase

Decree 2011-769 amended Sub-Section I on disciplinary procedures of Section 7 of Chapter II of Title I of Book VI of the Monetary and Financial Code, which contains Articles R. 612-35 to R. 612-51. Article R. 612-38 now describes the procedures for involving the *rapporteur* and sets down his or her investigating powers. When the College decides to open disciplinary proceedings, and once the Chairman of the College has sent a statement of objections, the Chairman of the Sanctions Committee appoints a *rapporteur* from among the members of the committee; the Chairman may also appoint as *rapporteur* the alternate of a member who has decided to refrain from "taking part at all stages of the proceedings in the committee's work regarding the complaints". The respondent and the representative of the College are informed of the *rapporteur's* appointment. The *rapporteur* may ask one or more employees of the committee secretariat to provide assistance in conducting the investigation and to take part in the proceedings under the *rapporteur's* authority (Article 2 of the Sanctions Committee rules of procedure²⁹ supplementing the provisions of the Decree of 28 June 2011). Employees appointed under these arrangements may ask the parties, on the *rapporteur's* behalf, to provide documents

or information and they may also participate in any interviews that the *rapporteur* decides to conduct.

To ensure the independence of the employees that the ACP General Secretariat makes available to the committee to investigate cases, and thus guarantee their impartiality vis-à-vis the General Secretariat whose staff are assisting the College representative, the ACP Secretary General and the Chairman of the Sanctions Committee co-signed a document on 21 December 2011³⁰ that specifies the requirements for managing these members of staff, notably in terms of recruitment, assessment, supplementary remuneration, career advancement, business conduct and disciplinary rules.

The first stage of the investigation consists, for the *rapporteur*, in informing the respondent of the time allowed to submit written observations, which may not be less than 30 clear days following notification of the charges. During the investigation, the *rapporteur* may perform any relevant tasks, including holding such hearings as are deemed necessary. The *rapporteur* makes sure that both sides are heard and sends the case file materials to the parties. Once this stage is over, the *rapporteur* adds to the case file a written report that reviews the investigation, summarises the facts and the arguments put forward by the parties, gives an opinion on the charges and indicates the nature and level of sanctions deemed appropriate³¹. As at the AMF, the *rapporteur* may refer the case to the College if he or she believes that there are additional grounds for complaint or that the charges concern one or more persons other than the respondents.

²⁹ www.acp.banque-france.fr/fileadmin/user_upload/acp/Commission_des_sanctions/20110317-reglement-interieur-de-la-commission-des-sanctions.pdf.

³⁰ www.acp.banque-france.fr/fileadmin/user_upload/acp/Commission_des_sanctions/gestion_du_personnel_du_SCS.pdf.

³¹ Committee rules of procedure, Article 3.

B Clarification on exercising challenge and withdrawal rights

The provisions covering the option of challenging the inclusion of a committee member were supplemented to reflect the new *rapporteur* function. Article R. 612-41, amended by the abovementioned Decree of 28 June 2011, clarifies the time period for putting in a challenge application. Specifically, an application referring to the rapporteur must be presented within 15 clear days of notification of the *rapporteur's* appointment, while an application referring to a committee member that will rule on the case must be presented within 8 clear days of notification of the composition of the group that will rule on the case.

C Involvement of the rapporteur at the hearing

When the case is heard, the *rapporteur* briefly reviews the conclusions of his or her report at the start of the hearing³². If the committee feels that more information is needed, it will ask the rapporteur to continue with the investigation, following the procedure set down in Article R. 612-38 of the Monetary and Financial Code³³.

³² Sanctions Committee rules of procedure, Article 12.

³³ Art. R. 612-38 of the Monetary and Financial Code: "[...] The rapporteur may refer the case to the College if he or she believes that there are additional grounds for complaint or that the charges concern one or more persons other than the respondents. The College will consider this request by the rapporteur in accordance with Articles L. 612-12, L. 612-13 and L. 612-38."

2

Activity of the Sanctions Committee in 2011

2.1 Cases referred to the committee

The Sanctions Committee was established on 9 March 2010, and 7 disciplinary cases were brought before it in that year. Of the 7, 3 were combined because they involved related facts. The respondents were 3 credit institutions and 2 entities operating in the insurance sector (one guarantee company and one intermediary, along with its senior managers).

In 2011, following substantial amendments introduced by the Banking and Financial Regulation Act of 22 October 2010 to Sanctions Committee procedures, the late introduction (28 June 2011) of the implementing decree prevented any new cases from being opened until September 2011. In the last 4 months of the year, 3 new cases, all involving credit institutions, were brought before the committee.

The committee was established too recently to conduct a statistical assessment of the number or growth rate of disciplinary cases. Furthermore, these aspects cannot be analysed without taking ac-

count of the new administrative enforcement powers assigned to the ACP, including the power to issue warnings or instructions to take action, which, when complied with, prevent the need to open disciplinary cases.

The following observations may nevertheless be made:

- cases relating to banking involved institutions of various size, while the 2 cases involving insurance bodies involved very small entities;
- no cases resulted from supervision of marketing practices or non-compliance with administrative enforcement measures.

2.2 Decisions

A Number

In 2011, after 3 cases involving related facts were combined, the committee returned 5 rulings (1 of which was appealed before the *Conseil d'État*³⁴). This completed the committee's work on the 7 cases initiated under the regime in place prior to the Banking and Financial Regulation Act.

B Time taken to reach decisions

No decisions were rendered on cases in 2010, the year that the ACP was established. The average time taken to reach a decision was between 6 and 7 months. It took just over one year to investigate and reach a decision on one case with an exceptionally large file of over 18,000 pages. At 31 December 2011, the committee had just 3 cases outstanding, all opened at the end of 2011 (following the entry into force of the Banking and Financial Regulation Act).

C Types of complaint

Banks

The complaints that led to disciplinary cases against banking organisations can be grouped into two main categories: those based on the provisions of CRBF Regulation 97-02 (amended) of 21 February 1997 on the internal control of credit institutions and investment firms³⁵ and those based on laws and regulations governing anti-money laundering and counter-terrorist financing³⁶.

Insurers

Two cases had been opened against insurance institutions since the Sanctions Committee was established. The first concerned compliance with the provisions of Article R. 336-1 of the Insurance Code on internal control systems. The second concerned compliance with the fitness and propriety³⁷ and professional capacity³⁸ requirements needed to operate as an insurance intermediary.

D Previous decisions of the Sanctions Committee

Every decision by the Sanctions Committee is published on the official website of the ACP (www.acp.banque-france.fr/commission-des-sanctions/recueil-de-jurisprudence.html, where necessary with the names removed to preserve anonymity). To make previous rulings more understandable and easier to use, this compendium of decisions will be supplemented with an "enhanced" version of the decisions, including keywords, abstracts, summaries, links to cited legislation and information about related commentaries on policy and appeals (and their outcomes).

In addition to the exhaustive compendium, the annual report also presents an opportunity to highlight certain elements of past decisions in terms of the obligations placed on reporting institutions as well as the circumstances justifying the publication of decisions with names removed to preserve anonymity.

1) Internal control obligations of insurance entities (Article R. 336-1 of the Insurance Code)

In its ruling against *Groupeement Français de Caution (GFC)*, the committee stressed that the obligation under Article R. 336-1 of the Insurance Code to "establish a permanent internal control system (...) that may be used [in particular] to identify, assess, manage and control the risks arising from the undertaking's exposures (...)", while formulated in general terms, created "a sufficient legal basis for bringing an action if the breach of obligations concerns an essential condition for carrying on the business of insurance". The committee felt that this was the case when a mutual insurance company guaranteeing a network of property management agents failed to react to the information provided by the network's banks that "property management trustee accounts (recording the sources and uses of the funds of each housing association) and the mirror account opened in the agent's name at its request for the purpose of making investments in our institution and/or transferring funds to other bank institutions, may be merged in terms of capital", whereas the size of the on-demand guarantees provided by the insurer to the network (57% of its total exposures), which reflected a long-established and aggressive policy of this small insurance undertaking, necessitated special vigilance towards potential widespread irregular behaviour by its members that could cause the cessation of payments (GFC ruling of 15 July 2011, p. 5³⁹).

This decision highlights the general nature of the regulatory provisions governing the internal control obligations of insurance entities, in contrast with the

close detail of CRBF Regulation 97-02 (amended) of 21 February 1997 –described below– on the internal control of banks.

2) Internal control obligations of banking and financial entities (CRBF Regulation 97-02 (amended) of 21 February 1997 on the internal control of credit institutions and investment firms)

The committee was asked in November 2010 to consider a case in which a trading room was accused of numerous trade control failings. On 16 December 2011, the respondent institution was given a warning and a €800,000 fine. The committee clarified its interpretation of the obligations of institutions in this area, with respect to their trading activities, and particularly on:

- the scope of level 2 controls⁴⁰:
 - economic profit calculated daily in a trading room should be checked daily by a department independent of the front office to ensure the reliability of this crucial benchmark as quickly as possible;
 - banks should conduct level 2 controls on all data used to prepare the prudential disclosures submitted to the supervisor. They may deviate from this obligation by carrying out a standard level 1 control only in the case of information whose accuracy can be easily verified with reference to a clear and precise methodology that may be used to easily retrace the calculations used to compile the disclosures.
- permanent control resources and organisation⁴¹: the committee said that the unit in charge of controlling the risks resulting from the activities of a tra-

³⁴ Decision 2010-01 regarding *Caisse de Crédit Municipal de Toulon (CCMT)* - 10 January 2011.

³⁵ Cases 2010-01, 2010-05 and 2010-06.

³⁶ Cases 2010-01 and 2010-05.

³⁷ Insurance Code, I to VI of Article L. 322-2 and Article L. 512-4.

³⁸ Insurance Code, Article L. 512-5.

³⁹ http://www.acp.banque-france.fr/fileadmin/user_upload/acp/publications/registre-officiel/20110715-Decision-de-la-commission-des-sanctions-GFC.pdf.

⁴⁰ Regulation 97-02, Article 6.

⁴¹ Regulation 97-02, Article 9.

ding room should be in a position to exercise staff authority over the middle office and have appropriate resources for this purpose.

- periodic control resources⁴²: internal audit should have a sufficient number of trading specialists to be able to carry out these audits by itself or, at the very least, help to prepare the annual inspection programme, assess the need for outside assistance and provide guidance to management.
- implementing recommendations⁴³: banks must implement, within a reasonable and clearly defined period, all recommendations made by the supervisor following an on-site inspection, as well as those made following an internal audit, unless management explicitly chooses not to follow the recommendations, giving a reasoned explanation for this.
- measuring the risk associated with market transactions⁴⁴: the complex nature of market transactions, no matter how small, means that the associated risk, particularly counterparty risk, must be fully measured by the institution conducting the trade. While the accuracy of the risk measurement may be adjusted to reflect the nature and scale of the trades in question, the requirement to fully measure all the components of market risk means that a bank cannot opt out of measuring – even approximately – certain transactions, no matter how marginal they may be; (cf. press release, 2 January 2012)⁴⁵.

3) *Circumstances justifying the publication of decisions with the names removed to preserve anonymity*

The committee clarified the circumstances under which it would agree to issue its decisions with the names removed.

For example, it agreed to do this in its decision of 26 May 2011⁴⁶, even though this ruling concerned anti-money laundering and counter-terrorist financing measures, because the breaches that were punished concerned few individual cases, none of which involved a failure to “*meet reporting obligations or obligations relating to enhanced supervision for certain transactions*”.

Regarding other types of breaches, in particular those involving internal control requirements, the committee specified in its decision of 16 December 2011 that it would be mindful of the disproportionate harm that could be caused by the publication of its decision under circumstances that would make it possible for the institution to be identified owing to the seriousness of the charges. **The committee felt that this applied in one case, where publication of the decision at a time of financial instability, when it was hard to predict reactions towards banks, might have undermined the confidence of customers or counterparties to an extent that was not commensurate with the seriousness of the charges made against the bank about internal control shortcomings⁴⁷.**

⁴² Regulation 97-02, Articles 6 b) and 9.

⁴³ Regulation 97-02, Article 5.

⁴⁴ Regulation 97-02, Article 17.

⁴⁵ To read the decision, with the names removed to preserve anonymity, go to: http://www.acp.banque-france.fr/fileadmin/user_upload/acp/publications/registre-officiel/20111216-Decision-de-la-commission-des-sanctions.pdf.

⁴⁶ (http://www.acp.banque-france.fr/fileadmin/user_upload/acp/publications/registre-officiel/20110526-Decision-de-la-commission-des-sanctions.pdf).

⁴⁷ http://www.acp.banque-france.fr/fileadmin/user_upload/acp/publications/registre-officiel/20111216-Decision-de-la-commission-des-sanctions.pdf.

2.3 Technical resources

From the outset, the committee established the means to take a completely paperless approach to investigating all the cases brought before it⁴⁸. Accordingly, all those working on a case, including committee members, the secretariat, but also the parties and, where applicable, their counsel, can quickly obtain a personal copy of the file, which is updated to reflect developments, complete with bookmarks and hyperlinks.

Sophisticated software allows participants to add annotations directly on the screen, making it easier to immediately share work. By using this method, the committee was able, in just over a year, to complete a complex case involving a file that contained more than 18,000 pages by the end of the extensive adversarial process.

On the day of the hearing, every person summoned was provided with a system that could comfortably display 3 windows from the case simultaneously, while an overhead projector displayed information to support the comments being made by the speaker.

The Sanctions Committee is pleased to note that the lawyers of the respondents in cases opened since 2010 have agreed to use this method (which includes supplying a digitised copy of the evidence that they present, with bookmarks and links to other items already in the case file). This is helping to promote a higher standard of files and faster processing times.

⁴⁸ See 2010 Annual Report, p. 23.



Contents

- 165 ACP involvement in European and international bodies
- 178 Ongoing reform of accounting standards
- 187 Developments in French laws and regulations

CHAPTER 5

Playing an influential role in developing the international, European and French regulatory framework

The ACP contributes to the stability of the financial system and gives France a stronger voice on the international scene.

The International Affairs Directorate was set up in September 2011 with this twin role in mind.

The new directorate was created when the former Research and International Relations Directorate was split into two divisions: Research and International Affairs. The International Affairs Directorate is responsible for cross-cutting issues affecting the banking and insurance sectors in the areas of prudential and accounting regulations. It represents the General Secretariat on domestic, European and international bodies that deal with prudential and accounting questions.

CONSULTATIVE COMMITTEE ON PRUDENTIAL AFFAIRS

ACP Decision 2010-C-20 of 21 June 2010 established a Consultative Committee on Prudential Affairs, which is responsible for providing opinions on ACP instructions prior to adoption.

The committee has 19 members, all from the banking and insurance sectors.

They include 11 individuals from entities under ACP supervision, 7 representatives of professional organisations and one representative of the *Caisse des dépôts et consignations*. The Chairman and the Vice-Chairman are appointed from among the members of the College (cf. its membership on Chapter 1).

In 2011, the committee, whose secretariat is provided by the International Affairs Directorate, met three times and considered 17 draft measures submitted by seven departments or directorates of the ACP General Secretariat.

Among the main topics covered were:

- the introduction of new reporting templates for the coverage ratio of real estate credit and home financing companies, new home lending and international exposures (these templates were drafted in conjunction with the *Banque de France* Balance of Payments Directorate);
- modifications introduced following adoption of the CRD 3 Directive;
- monitoring of internal models;
- technical notices on calculating liquidity and solvency ratios, as well as a guide to COREP methodology;
- the introduction, by the Licensing, Authorisation and Regulation Directorate, of disclosure forms and standard application packages for affiliation;
- the submission of codes of business conduct by professional organisations to the Business Practices Supervision Directorate.

1

ACP involvement in European and international bodies

The ACP had another busy year on the international front in 2011, amid preparations for major regulatory changes affecting banks (Basel III) and insurers (Solvency II).

In Europe, the ACP operates within the now fully operational European System of Financial Supervisors, which comprises the European Insurance and Occupational Pensions Authority (EIOPA), the European Banking Authority (EBA)⁴⁹ and the European Securities and Markets Authority (ESMA). The three authorities have wide-ranging responsibilities and powers to set and enforce prudential regulations and to identify and measure microprudential

risk. They also have powers in the areas of consumer protection and financial innovation⁵⁰. In addition to carrying out work in the sectors that come under their respective jurisdiction, the European supervisors cooperate on cross-sector initiatives through a Joint Committee and also collaborate with the European Systemic Risk Board (ESRB).

⁴⁹ The ACP is a member of EBA and EIOPA. It is represented on the Board of the two authorities by Danièle Nouy, ACP Secretary General, who also sits on the EBA Managing Board.

⁵⁰ Cf. Chapter 3.

INTERNATIONAL ACTIVITY OF THE ACP GENERAL SECRETARIAT: KEY STATISTICS

In 2011, ACP representatives took part in many meetings of different international working groups - **around 200 dealing with insurance sector questions, chiefly within the framework of EIOPA and to a lesser extent the International Association of Insurance Supervisors (IAIS) and for the banking sector, mainly within the framework of EBA and Basel Committee relating to banking supervision issues.**

As well as participating in meetings, the ACP worked on the many written procedures prepared by various international bodies. The ACP endorsed or commented on positions in 71 insurance-related procedures within EIOPA and in around 170 written procedures for the banking sector.

THE ACP'S CONTRIBUTION TO THE EBA INFORMATION SYSTEM

Following a consultation that was begun at the end of 2009, in 2010 EBA selected the joint proposal made by the *Banque de France* and the ACP to supply its information system. Since 2011, the *Banque de France* has provided an infrastructure system hosted by its data centres, including a messaging system, a set of collaborative sites and system offering secure remote access to a number of applications.

Business-area aspects are supervised and coordinated by the ACP's IT departments (IT project management, project ownership, XBRL experts, data parameters and management).

The ACP has been collaborating for more than a year on this project with the IT departments of the *Banque de France*, to deliver the following:

- a system for collecting and consolidating data on authorised credit institutions in the 30 European Economic Area countries, to provide EBA with a list of all the entities along with the requisite information.

The system uses the OneGate gateway provided by the *Banque de France* and Fireg (Financial Register) to create the lists needed by EBA. The service is scheduled to be implemented in the first quarter of 2012;

- a system for collecting, controlling and analysing prudential data provided by domestic supervisors based on samples that already cover the largest institutions in 17 countries. This system, developed by the ACP's IT departments, has been up and running since May 2011. It provides EBA with a set of tools (also using OneGate, the Surfi application, and SAS Basetu, a laboratory for studies) that enable the Authority to analyse prudential data and prepare quarterly Key Risk Indicators, which are passed on to the ESRB.

The ACP's IT departments act as the permanent liaison with EBA staff, to coordinate the activities of ACP and *Banque de France* teams.

1.1 Insurance

A In Europe

The ACP is an active participant in EIOPA's main initiatives. In 2011, these included ongoing efforts to establish the new **Solvency II** framework.

The main projects being taken forward by EIOPA include efforts to prepare implementation measures for the Solvency II Directive adopted on 17 December 2009. For this project, EIOPA relies heavily on 4 working groups comprising experts from national supervisors and in which the ACP plays a very active role:

- the Financial Requirements Expert Group (FinReq) for aspects relating to Pillar 1 (quantitative requirements);
- the Internal Model Expert Group (Int-Mod);
- the Internal Governance, Supervisory Review and Reporting Expert Group (IGSRR) for aspects relating to Pillars 2 and 3;
- the Insurance Groups Supervision Committee (IGSC).

These groups⁵¹ worked on drafting **58 binding technical standards (Level 3 measures) and will pursue these efforts in 2012.**

As regards Solvency II, 2011 also featured the publication in March of the results of the Fifth Quantitative Impact Study (QIS 5), which should be the final such exercise before the new prudential

regime is effectively implemented. The study looked in particular at technical reserves, the solvency capital requirement (SCR) and capital classification.

The ACP was actively involved in preparing and conducting QIS 5, notably by participating in the task force set up by EIOPA. French entities responded enthusiastically and receptively to the study. **In fact, France was the largest contributor in Europe, with over 500 individual responses received, or about twice as many as for QIS 4.**

The QIS 5 results confirmed the soundness of the French market and its ability to move to Solvency II without major difficulties, even if considerable preparatory work remains to be done. The overall SCR for participants, measured by applying the standard formula at individual level, is €101 billion. This requirement is comfortably covered by capital, with a €82 billion surplus identified at the aggregate level.

To ensure that the future European Market Infrastructure Regulation (EMIR) interacts smoothly with Solvency II, and to ensure that issues specific to insurance are properly addressed in these joint efforts, in November 2011 EIOPA established a dedicated working group, in which the ACP participates.

⁵¹ For more information on these groups, cf. the 2010 Annual Report of the ACP, page 91.

Level 1 - Directives

- In January 2011, the European Commission published a proposal for an Omnibus II Directive, aimed at bringing the Solvency II Directive adopted in November 2009 (Level 1 text) into compliance with Europe's new system of financial supervision, and notably the creation of EIOPA. The Omnibus II Directive also amends the Solvency II Directive by adding new provisions.
- As it currently stands, in addition to building EIOPA's new powers into the Solvency II Directive, the proposed Omnibus II Directive also provides for the following:
 - postponing the Solvency II Directive's entry into force until **1 January 2014**;
 - introducing a "global" transitional measure, which France was the first to bring to the negotiating table and which provides for the Solvency II regime to be gradually phased in over 2013;
 - introducing several targeted transitional measures (for example for subordinated notes or the measurement of capital charges on equities);
 - introducing a countercyclical premium to adjust the risk-free interest-rate term structure in stressed market conditions;
 - the list of technical standards that come under the jurisdiction of EIOPA.

However, the provisions contained in the European Commission's final proposal for an Omnibus II Directive will not be finalised until they are approved by the European Parliament and the Council of the European Union. In fact, at this stage, there are two versions of the initial proposal: the first, adopted by the Council in September 2011, contains the amendments made by the Committee of Permanent Representatives, while the second, adopted in March 2012, contains the amendments made by the European Parliament's Economic and Monetary Affairs Committee. These two versions take different approaches to many key provisions of the directive, such as the form of the risk-free interest-rate term structure and the reporting burden for small and medium organisations.

- Following the last vote, in March, by the Parliament, a series of three-way discussions is taking place between the Commission, the Parliament and the Council. The purpose of these meetings, which are

expected to run until June 2012, is to bring the views of the three institutions together so that they can agree on a single, consensual piece of legislation. Given this situation, the Omnibus II Directive and, by extension, the Solvency II Directive, are likely to be considerably amended.

Level 2 - Delegated acts

- After several months of discussions with Member States, and following the opinions of CEIOPS and then EIOPA, in the second half of 2011 the European Commission made the final adjustments to the Level 2 measures on:
 - inclusion in Tier 1 of expected profits in future premiums and the definition of contract boundaries;
 - calibration of non-life and health risks;
 - eligibility criteria for the matching premium (or matching adjustment), i.e. the premium that may be added to the risk-free rate used to discount the technical reserves of certain life insurance policies.
- The Commission sent out a consolidated version of the measures at the end of the year to stakeholders, including the industry, EIOPA, and Member State Treasuries.
- The European Commission will propose a final version of the Level 2 measures to the European Council and Parliament over the course of 2012, for final adoption in late 2012.

Level 3 - Binding technical standards and EIOPA recommendations

- Once the Level 2 measures are published by the Commission and the list of binding technical standards is adopted for the Omnibus II Directive, EIOPA will be able, in 2012, to finalise the draft Level 3 measures and begin public consultations on them. This process is expected to take place mainly in the final quarter of 2012.
- The European Commission has however authorised EIOPA to hold public consultations on reporting templates and on own risk and solvency assessments (ORSA) from November 2011. These two questions are crucial to ensuring that entities are able to get ready in time.

B International Association of Insurance Supervisors (IAIS)

The IAIS⁵² works to improve the local and international supervision of insurance entities, in order to promote the stability, fairness and integrity of insurance markets as well as the protection of policyholders. The IAIS also promotes the development of market regulation to contribute to global financial stability. The IAIS prepares principles, standards and guidance to meet these goals.

The ACP participates actively in technical work led by the specialised committees of the IAIS, including the Solvency Sub-Committee and the Insurance Groups Sub-Committee, and by the working parties that report directly to the Executive Committee, particularly:

- the Financial Stability Committee (FSC), whose role is to coordinate the activities of the IAIS with those of the FSB and the G20 and to develop, with the Technical Committee, macroprudential tools to promote financial stability;

- the Common Framework (ComFrame) Task Force set up in July 2010 and tasked with preparing an overall framework for the supervision of internationally active insurance groups (IAIGs). Once established, this framework should become a key multilateral instrument for supervising these types of groups, and thus promote greater consistency, convergence and comparability in the supervision of IAIGs around the world.

Key IAIS projects in 2011 included the ongoing development of the ComFrame and the review of Insurance Core Principles (ICPs) applicable to the activities of insurance supervisors. Initially adopted in 2003, the ICPs were totally recast, notably to tailor them to changes in the issues related to supervising groups. The new version of the principles was adopted in October 2011. The IMF is conducting a detailed assessment of its application by supervisors. The ACP contributed actively to the work done in these areas.

⁵² The International Association of Insurance Supervisors (IAIS) was established in 1994. It represents insurance supervisors from 190 jurisdictions in some 140 countries. More than 120 organisations representing associations of insurers and reinsurers, international financial institutions and consultants participate in the IAIS as observers.

1.2 Banking

A In Europe

a. The CRD 4 package

In Europe, Basel III standards are to be implemented through a two-part CRD 4 package comprising a directive, which will have to be transposed into domestic law, and a directly applicable regulation. The draft proposals, which were published by the Commission on 20 July 2011, are subject to the co-decision legislative procedure, as part of three-way negotiations between the European Commission, Council and Parliament.



The ACP contributed directly to the preparation of the draft legislation by taking part in several technical working groups and by providing support to the Treasury in discussions at European Council level.

CRD 4 UPDATE

The European Commission published its Capital Requirements Directive (CRD 4) proposals on 20 July 2011. A final version is expected in summer 2012 once the co-decision legislative procedure is complete. The three-way negotiations between the European Commission, Council and Parliament will last for 18 months. Following the initial discussions, which took place under the Polish Presidency of the European Council, Denmark, which holds the Presidency in the first half of 2012, proposed a compromise version in early January. At the same time, the Parliament got its work underway with the publication on 16 December 2011 of a report by the Economic and Monetary Affairs Committee, which proposed a series of amendments.

The CRD 4 package consists of the directly applicable Capital Requirements Regulation (CRR) and a directive (CRD).

These are maximum harmonisation texts, which will limit differences in implementation by Member States. That being said, in certain clearly defined cases, Member States are allowed to introduce tougher requirements.

- The regulation incorporates the provisions of Pillars 1 and 3 of the solvency ratio, i.e. the core rules of Basel II, Basel "2.5" and Basel III. It contains detailed and prescriptive provisions on calculating capital, whose quality is enhanced, and it also sets out requirements on risk diversification. The regulation also incorporates reporting requirements for liquidity (LCR and NSFR ratios) and the leverage ratio, which are needed during the observation phase prior to their introduction as binding standards.
- The directive, which has to be transposed into domestic law, deals with the powers and responsibilities of national authorities, internal control requirements and governance provisions.

The CRD 4 package has a two-fold objective:

- **implement the Basel III framework in European law** (definition of capital, level of requirements, liquidity standards, leverage ratio, counterparty risk and countercyclical measures);
- **more complete harmonisation of the single market through the introduction of a single rule book**, which, by doing away with national options and discretions, should provide the European banking sector with a uniform set of rules.

In addition to transposing Basel III, the CRD 4 package contains provisions designed to further enhance supervision and governance rules, including:

- new requirements on governance organisation and processes, as well as rules to make risk supervision by boards of directors more effective (enhanced status for the risk management function and effective monitoring of governance risk by the institution's supervisors);
- fines and the possibility of temporarily suspending senior managers;
- the package institutionalises measures to strengthen supervisory practices. Supervisors must, in particular, prepare an annual examination programme for each institution based on a risk assessment, more extensive and systematic use of on-site inspections, robust standards and intrusive and forward-looking evaluations;
- CRD 4 is also designed to make entities' investment decisions less reliant on external ratings.

CRD 4 puts EBA in charge of drafting the technical standards that will facilitate application of the new rules. **The ACP is already working actively to draft the 112 technical standards that have to be prepared before 2017 (41 have to be ready before 2013).** These standards, which will subsequently be adopted by the European Commission and translated into all EU languages, will be directly applicable under national law. In France, the standards will replace orders issued by the Finance Minister and ACP instructions. The financial and prudential reporting arrangements provided for under the CRR will be fully harmonised across the EU and covered by an EBA technical standard that is directly applicable in France.

b. Work by EBA on drafting technical standards

Changes to solvency (COREP) and financial statement (FINREP) reporting templates

In 2011, the ACP was involved, within EBA, in finalising the adjustments to the COREP⁵³ harmonised reporting framework to accommodate changes under the CRD 3 Directive⁵⁴, which seek to ensure better recognition of market risk. EBA published the revised European reporting format in April 2011. Following in-depth discussions with the banking industry, the review was introduced into national regulations by ACP Instruction 2011-I-12 amending Instruction 2007-02 on the capital requirements applicable to credit institutions and investment firms. The new instruction came into force on 31 December 2011.

As part of the CRD 4 package, the COREP framework, which is harmonised at European level, must be established as binding technical standards (BTS) prepared by EBA's Standing Committee on Accounting, Reporting and Auditing (SCARA), which is chaired by the ACP. These standards have to be approved by the European Commission before they are applied.

The changes to the COREP templates meet the twin goals of accommodating the amendments to the solvency ratio linked to the draft CRD 4 and of collecting the information required to compile the key indicators monitored by the ESRB. These efforts led in December 2011 to the publication for consultation of a draft implementing technical standard (ITS) on the COREP and FINREP⁵⁵ frameworks.

The new reporting formats are expected to be adopted by EBA in 2012 and will enter into force on 1 January 2013. During this process, in which the ACP is directly involved, regular briefing and discussion sessions will be organised with the banking industry, so that the changes can be anticipated as far as possible.

Convergence of internal models (Stress VaR, IRC, CRM)

The Basel "2.5" framework, which was finalised in 2010 and published in February 2011⁵⁶, aims to provide enhanced management, closer surveillance and better capital coverage of market risk. Capital requirements in relation to market risk have thus been bolstered, with:

- an additional capital requirement linked to a stressed VaR (sVaR) measurement;
- an incremental risk [capital] charge (IRC) for default and migration risk;
- a specific capital requirement for correlation trading, based on the comprehensive risk measure (CRM);
- and a capital requirement for securitisation positions calculated using the rules for the banking book.

Directive 2010/76/EU of 24 November 2010 (CRD 3), which incorporates these provisions into European law, was transposed into French law by the Order of 23 November 2011.

Furthermore, CRD 3 provided that EBA would monitor sVaR and IRC practices and that, as part of this role, it would prepare guidelines to ensure convergence among supervisors' methods and thus deliver harmonised treatment across Europe.

In 2011, the ACP chaired the EBA technical group⁵⁷ that produced these guidelines. These were published on 30 November 2011⁵⁸ as part of a consultation that ended on 15 January 2012. All affected European credit institutions are thus provided with common guidance on applying CRD 3 sVaR and IRC provisions.

B The Basel Committee on banking supervision

Building on the publication in December 2010 of two documents comprising the Basel III framework, one essentially containing risk coverage and capital strengthening measures, the other dealing with liquidity, the Basel Committee conducted additional work in these areas in 2011, while pursuing semi-annual quantitative impact studies. It also worked with the Financial Stability Board in preparing and publishing proposed methodology for assessing global systemically important banks and determining the capital requirement applicable to them.

The ACP played an active part in the Basel Committee's work on these aspects.

a. Definition of capital instruments

Basel III, which will be phased in gradually from 2013, seeks to harmonise the definition of regulatory capital at international level, while improving the quality and level of capital, in order to enhance loss absorbency and hence bank resilience.

Since the above-mentioned documents were published in December 2010, the Basel Committee has:

- provided clarification on eligibility criteria for certain capital instruments. To be included in Additional Tier 1 or Tier 2, for example, these instruments must be governed by terms and conditions with a provision that requires such instruments, at the option of the supervisor, either to be written off or converted into common equity upon the occurrence of the trigger event, known as the point of non-viability (Basel Committee press release of 13 January 2011);
- as part of Pillar 3, strengthened the requirements for financial reporting of banks' capital instruments, so that investors can be confident about their quality, through a consultative document published on 19 December 2011. Banks are thus expected to include the following in their disclosures:
 - full reconciliation of regulatory capital elements back to the balance sheet,
 - regulatory adjustments and elements not deducted from capital,
 - a description of all regulatory thresholds and minima,
 - a description of the main features of capital instruments,

⁵³ COREP: Common Reporting Framework for the Basel II solvency ratio.

⁵⁴ Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010.

⁵⁵ FINREP: consolidated financial reporting framework under IFRS.

⁵⁶ Revisions to the Basel II market risk framework - Updated as of 31 December 2010.

⁵⁷ Sub-Group on Market Risk - SGMR.

⁵⁸ <http://www.eba.europa.eu/News-Communications/Year/2011/EBA-consultation-papers-on-guidelines-to-the-Incre.aspx>.

- for banks that publish ratios involving components of regulatory capital, a detailed explanation of the method used to calculate these ratios.

- established and supported a public FAQ process designed to clarify the terms for applying the framework. An initial set of FAQs was published on 5 July 2011; these were then revised twice, on 20 October and 16 December 2011⁵⁹.

b. Liquidity

Having worked on the capital framework, the Basel Committee began a work programme at end-2010 aimed at refining certain aspects of the liquidity framework, which is based on two ratios (the LCR, a one-month ratio applicable from 2015, and the NSFR, a one-year ratio applicable in 2018) and monitoring tools designed to provide supervisors with a more complete view of liquidity risk.

The ACP continued to take part in work on examining the adjustments that might be made to the framework as part of the observation period provided for in the agreement. In particular, the observation period is intended to make it possible to identify and correct any unintended consequences of the ratios on the functioning of financial markets, credit distribution and economic growth (the LCR can be revised up until mid-2013, the NSFR until mid-2016).

As part of these efforts, the ACP conducted in-depth individual discussions with each of the main French banking groups in order to gather information about their proposed strategies for complying with the future liquidity ratios and about operational problems in implementing the ratios. To reduce market uncertainty about calibration and the final technical details of the LCR, the Basel Commit-

tee decided in September 2011 to bring forward the timetable for the observation phase.

c. Leverage ratio

Since 1 January 2011, the leverage ratio has been the subject of an observation period that is scheduled to run until the end of 2016. The main purpose of this period is to assess the appropriateness of the ratio's calibration and composition, but also monitor its interaction with accounting standards and the solvency ratio. Depending on the findings of the observation period, adjustments will be made if necessary to the definition and calibration of the ratio, with a view to its eventual inclusion as a binding standard in Pillar 1 from 1 January 2018.

For the most part, 2011 was given over to defining the reporting templates and analysing data submitted by banks. This work will be supplemented over the course of the observation phase, using a regularly enhanced and expanded database.

d. Exposures to central counterparties

In September 2009, the G-20 summit in Pittsburgh agreed on the need to improve over-the-counter (OTC) derivatives markets, notably by creating a prudential framework that would provide incentives for banks to increase their use of central counterparties. Based on this mandate, the Secretariat of the Basel Committee put together a series of proposals to establish a new approach to the prudential treatment of bank exposures to central counterparties.

A consultative document on the capitalisation of bank exposures to central counterparties, published in December 2010, was used to gather industry views. Based on the consultation feedback, and

in close partnership with the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organisation of Securities Commissions (IOSCO), the committee made adjustments to the initial framework, which were presented in a second consultative document released on 25 November 2011.

The new framework recognises the key role that central counterparties will play in reducing systemic risk in OTC derivatives markets, notably through the multilateral netting of exposures and the mutualisation of losses should a clearing member fail.

However, this expanded role for central counterparties means that they also face additional risks, notably at operational level. For this reason, the new framework seeks to:

- reduce the risk of failure of central counterparties by making them subject to strengthened risk management rules and regulation; CPSS-IOSCO have been asked to prepare new standards in this area;
- mitigate the systemic consequences of the failure of a clearing member and potentially of the failure of the clearing house itself through adequate calibration of the capital requirement applicable to bank exposures to central counterparties, *via* the new prudential treatment proposed by the Basel Committee.

The new prudential treatment distinguishes two types of exposure:

- exposures to central counterparties arising from the transactions that banks conduct with counterparties. These carry a low weighting (2% generally);

- exposures to central counterparties arising, for clearing member banks, from default fund contributions. These are subject to a more complex framework, based on the difference between the clearing house's hypothetical capital in the aggregate (calculating by considering each transaction by the clearing house with one of its members as a bilateral transaction) and the capital available at the level of the clearing house.

The Basel Committee is now finalising the framework. In particular, the need to maintain, over and above the new capital requirements for banks, an incentive for banks to trade *via* central counterparties means that the framework's calibration will play a determining role. The final regulatory framework is scheduled to be published in the course of 2012.

C Other bodies: the Joint Forum and the Financial Stability Board

a. Joint Forum

The ACP participated actively in work led by the Joint Forum, particularly the revision of the principles for the supervision of financial conglomerates, which were put out to consultation in December 2011⁶⁰. The new principles, which will provide the basis for the European Commission's fundamental review of the Directive on Financial Conglomerates, were drawn up by a Joint Forum working group chaired by the ACP. They are designed to strengthen the supervision of conglomerates, notably through improved recognition of risks arising from lightly or unregulated activities and through enhanced requirements for governance, risk management and the monitoring of solvency and liquidity risk.

⁵⁹ <http://www.bis.org/publ/bcb211.htm>.

⁶⁰ <http://www.bis.org/press/p111219b.htm>.

b. Financial Stability Board

Definition of a specific framework for systemically important institutions

In 2010, at the request of the Financial Stability Board (FSB), the Basel Committee undertook work to establish a methodology for assessing global systemically important banks (G-SIBs) and to prepare specific measures that could be applied to such institutions, notably to make them more resilient.

During this work, the ACP called for measures that would strengthen the overall supervision of G-SIBs while ensuring fair treatment and a level playing field for international banks.

In the second half of 2011, the international bodies – the Group of Governors and Heads of Supervision of the Bank for International Settlements, the FSB and the Basel Committee – approved the assessment methodology for G-SIBs.

G-SIBs are assessed and classified according to their systemic importance using a set of indicators (cf. inset). The aim is to be able to compare and classify banks at international level.

On 4 November 2011, the FSB published the first list of 27 banks identified as systemically important financial institutions, following the methodology and proposals made by certain countries⁶¹.

These banks are divided into 5 “buckets” according to their systemic importance, with each bucket subject to a capital surcharge of between 1% and 2.5% of risk-weighted assets. Banks that reach an even higher level of systemic importance than that currently observed will be subject to a surcharge of 3.5%.

G-SIBs will be required to phase in this additional loss absorbency gradually from 1 January 2016, with full implementation by 1 January 2019.

As the Basel Committee was preparing the new framework, the ACP organised meetings with the affected institutions to tell them about the goals of the methodology and the requirements applicable to G-SIBs.

More generally, the French authorities stressed that the new framework should not have the effect of encouraging shadow banking, which could negatively impact financial stability and consumers.

⁶¹ In alphabetical order: BANK OF AMERICA, BANK OF CHINA, BANK OF NEW YORK MELLON, BANQUE POPULAIRE CAISSE D'ÉPARGNE, BARCLAYS, BNP PARIBAS, CITIGROUP, COMMERZBANK, CRÉDIT SUISSE, DEUTSCHE BANK, DEXIA, GOLDMAN SACHS, GROUP CRÉDIT AGRICOLE, HSBC, ING BANK, JP MORGAN CHASE, LLOYDS BANKING GROUP, MITSUBISHI UFJ FG, MIZUHO FG, MORGAN STANLEY, NORDEA, ROYAL BANK OF SCOTLAND, SANTANDER, SOCIÉTÉ GÉNÉRALE, STATE STREET, SUMITOMO MITSUI FG, UBS, UNICREDIT GROUP, WELLS FARGO.

ASSESSMENT OF SYSTEMICALLY IMPORTANT BANKING AND INSURANCE GROUPS

The methodology for banks, which was adopted and published on 4 November 2011 by the Basel Committee⁶², seeks, based on an initial sample of 73 institutions, to identify global systemically important banks (G-SIBs) and to classify them according to their systemic importance using a series of 5 indicators, covering cross-jurisdictional activity, size, interconnectedness, non-substitutability and complexity, which are further broken down into sub-indicators. The data used to calculate the indicators will be revised every 3 to 5 years.

The rankings of the banks for a given indicator depend on the weighted share of each institution in the total population of banks selected for that indicator:

[indicator amount for a bank / indicator amount for all banks] x indicator weighting = bank's score for that indicator.

The bank's scores for each indicator are then summed to give the bank's individual score and overall ranking.

The IAIS is currently working on the methodology for the insurance sector, analysing the appropriateness of the banking sector indicators to assess whether they may be applied to insurers. A public consultation on this methodology is scheduled for spring 2012.

In both sectors, the question of membership of the same geographical or monetary area was raised. For the time being, however, owing to opposition from the other geographical areas, European countries and the euro area cannot be considered as single entities, notably for the purposes of the indicator on cross-jurisdictional activity.

c. Peer review of bank remuneration practices

In 2011, the ACP took part in the FSB-led peer review of remuneration policies and practices at credit institutions. **The report published by the FSB on 11 October 2011 reveals that France belongs to the group of countries with the strictest remuneration regulations.**

The FSB principles were strictly transposed by European Directive 2010/76/EU and by the guidelines on remuneration practices adopted on 10 December 2010 by the Committee of European Banking Supervisors (CEBS, replaced in early 2011 by EBA). The ACP also took part in the

peer review organised by EBA in 2011, which will give rise to publication of a report in 2012.

Furthermore, starting in 2012, FSB Member States are introducing arrangements to gather observations from banks about inconsistent application of the principles by banks headquartered in other jurisdictions. The new arrangements should promote convergence in remuneration practices among FSB members and thus ensure that all financial centres enjoy a level playing field.

⁶² Global Systemically Important Banks: Assessment Methodology and the Additional Loss Absorbency Requirement. Rules text: <http://www.bis.org/publ/bcb207.pdf>; Cover note: <http://www.bis.org/publ/bcb207cn.pdf>.

2

Ongoing reform of accounting standards

2.1 Ongoing reform of international accounting standards

The work of the International Accounting Standards Board (IASB) in 2011 continued to focus largely on advancing convergence between International Financial Reporting Standards (IFRS) and US Generally Accepted Accounting Principles (US GAAP). This agenda is consistent with the G-20's aim – set in June 2011 and reiterated at the end of that year – of having a single set of high quality global accounting standards. However, in certain critical convergence areas no consensus was found, for example as regards the exposure draft on offsetting, i.e. presenting certain financial instrument transactions on a net basis in the balance sheet. Uncertainties also linger as regards the ability of the IASB and the Financial Accounting Standards Board (FASB) in the USA to converge on the accounting treatment of financial instruments and insurance contracts.

The ACP continued to monitor developments in this area, ensuring that converging accounting standards took due note of the lessons learned from the financial crisis and that the convergence process did not compromise the standards' quality or relevance. The ACP exercised its monitoring role by participating in working groups on accounting standards in France (the national accounting standards board, ANC⁶³) and Europe (European Banking Authority, EBA, and the European Insurance and Occupational Pensions Authority, EIOPA) and on an international scale (the Basel Committee and the International Association of Insurance Supervisors).

⁶³ See the ANC's website: <http://www.anc.gouv.fr/>

2.2 Proposed standards and exposure drafts

A Review of IAS 39 on financial instruments

Launched in 2009 as a response to the G-20's comments on the inadequacy of certain IAS 39 provisions during the financial crisis, the comprehensive review of IAS 39 on financial instruments (due to be replaced by IFRS 9) is ongoing. Only the first of its three phases (on the classification and measurement of financial instruments) has so far resulted in a series of new definitive provisions, although their effective date was postponed to 1 January 2015 following a public consultation. The IASB recently decided to reconsider some aspects of these provisions, mainly to take account of decisions expected from the FASB on the classification and measurement of financial instruments and to reflect developments in the accounting treatment of insurance contracts. The ACP is in favour of revisiting Phase I but will seek to ensure that any changes made address the existing difficulties:

- insufficient consideration is given to the business model, i.e. trading activities, when classifying financial instruments at fair value through profit or loss, leading to wholly or partly illiquid instruments being classified in this category when fair value cannot be reliably measured;
- the fair value through equity category is restricted to shares. The ACP would like to see this category used for illiquid and complex debt instruments that cannot be classified at amortised cost to prevent dividends or bonuses being paid out on uncertain unrealised income. These changes should not result in a closer alignment with US GAAP or in more instruments being classified

at fair value (the FASB is considering restricting the amortised cost category mainly to loans).

Phase II of the comprehensive review of IAS 39 sets out to develop an expected loss impairment model allowing costs relating to credit risk to be booked earlier than in the current incurred loss model. Both the IASB and FASB had initially chosen to work separately on the definition of an expected loss model. This had led them to issue diverging proposals in 2009, particularly in terms of when expected losses should be recognised in the income statement. In response to strong demand from market participants – particularly international financial groups – for greater convergence and less operational complexity of the models proposed, the IASB and FASB published a common solution in a supplementary document dated January 2011. These new proposals were based on a distinction between:

- a “good book” of financial assets for which expected losses would be calculated and recognised over several reporting periods, with a requirement to establish a minimum allowance balance (“floor”);
- a “bad book” for which incurred losses would be recognised immediately in profit or loss.

In their respective responses to the IASB's consultative paper, the EBA and the Basel Committee expressed their support for a joint IASB-FASB approach as a further step towards convergence and a means of better anticipating cost of risk in financial statements. The joint approach was also seen to encourage the use of best risk management and monitoring practices (e.g. dynamic loan

management at the level of loan books, a distinction between good and bad loans based on banks' internal management practices, etc.). However, the supervisory authorities stressed that, like the previous model put forward, the new model risked generating earnings volatility (since entities would have to reestimate expected losses at the end of each reporting period in light of the economic climate and outlook for the economic cycle) and would ultimately prove pro-cyclical.

As this approach was again widely criticised by other market participants, the two standard-setters are working to design a new model based on a finer degree of risk segmentation. Under this model, loans would be classified in three categories: good, average and bad, depending on changes in their credit quality over time. The ACP will make an in-depth review of the new proposal, which is due to be published in the second quarter of 2012.

Following on from the proposals published by the IASB⁶⁴, Phase III of the project to review IAS 39 hedge accounting gave rise to much to-ing and fro-ing in late 2010 between the different bodies concerned, at international level (IASB, Basel Committee, EBA) as well as in France (ANC).

The ACP was extensively involved in helping draft the responses of the Basel Committee, the EBA and the ANC, which welcomed the IASB's proposals in that they represented a better alignment with banks' own risk management practices. However, a number of reservations were expressed regarding the application of the new concepts contained in the proposals, particularly for analysing hedge effectiveness. Concerns were also raised about the impossibility of hedging certain risk components such as prepayment options, or documenting hedging relationships involving equities. The supervisory authorities regretted that the proposals did not address macro-hedging (dynamic hedging of financial instrument portfolios), which the IASB has decided to deal with separately and about which discussions are still underway.

The ACP will closely monitor the proposals to be issued in late 2012, particularly since these issues are critical for French insurance institutions and banks. Banks in France currently account for their macro-hedging transactions in accordance with the carve-out provisions of IAS 39 adopted by the European Union, which allow demand deposits to be designated as hedged items. The ACP will also ensure that the macro-hedging model put forward reflects the risk management practices of European banks as accurately as possible.

B Failure of the IAS 39 comprehensive review to achieve convergence on the offsetting financial assets and financial liabilities

At the beginning of 2011, the IASB and FASB published a joint exposure draft aimed at harmonising offsetting (netting) rules between IFRS and US GAAP. The approach put forward was very similar to the current IFRS requirements and favoured the presentation of financial assets and liabilities on a gross basis with only limited offsetting permitted in an entity's balance sheet. Offsetting was only permitted when an entity had an unconditional and legally enforceable right of set-off and intended either to settle on a net basis or to realise the financial asset and settle the financial liability simultaneously. Through its participation in French and international working groups, the ACP played an active role in the consultation, supporting the joint approach put forward by the two standard-setters. Convergence on this issue is particularly important for banking supervisors in France as it has a significant impact on banks' total assets (and hence their leverage). The IASB and FASB revisited their joint proposals following the comment letters they received (US banks, whose balance sheets would increase considerably were the proposals to be adopted, were especially critical). However, they failed to reach an agreement, each ultimately deciding to maintain their current provisions. As a result, IFRS will continue to prefer a highly restrictive approach to offsetting, while US GAAP will allow more derivatives to be offset. The standard-setters merely agreed to harmonise the disclosures required in the notes, which allows the differences

between IFRS and US GAAP in this respect to be eliminated.

In the ACP's view, this solution is unsatisfactory. It perpetuates a difference in treatment between US banks, on the one hand and European banks, on the other hand (the latter being at a disadvantage because of their larger balance sheets). In all probability, the regulatory leverage ratio will continue to be calculated based on prudential offsetting rules, which differ considerably from those applied for accounting purposes.

C Exposure draft on insurance contracts

The ACP monitored fresh discussions between the IASB and FASB and was actively involved in the work of EIOPA and IAIS on the exposure draft regarding insurance contracts. Published in July 2010, the draft was widely criticised – chiefly for creating volatility in earnings which would not necessarily reflect insurers' long-term management approach. The exposure draft is set to replace Phase I of the interim standard IFRS 4. This standard, which resulted from a compromise pending a comprehensive review, means in practice that local accounting standards continue to apply, making it difficult to establish comparisons between insurance institutions. The aim of the IASB (endorsed by the FASB) is to establish a single model for measuring insurance liabilities under both life and non-life contracts. Under the new standard, liabilities would continue to be measured under the principle set out in the original IFRS 4 (current fulfilment of contracts based on a discounted cash

⁶⁴ The IASB favours a principles-based approach that takes better account of banks' own risk management practices. The three hedge accounting methods along with the documentation requirement were maintained, but changes were introduced to the definition of hedging transactions, effectiveness tests, and the characteristics of hedging instruments and hedged items. In particular, recognition of hedge accounting has been made easier as the proposals permit qualitative effectiveness tests to be performed on inception of the hedging relationship. They also allow certain components of risks arising from non-financial instruments to be hedged, non-derivative instruments to be used as hedging instruments and net positions to be hedged under certain conditions.

flow model incorporating many different inputs). However, the Board took various comments into account and has begun to revise certain aspects of the contract valuation model. This has led it to redefine the basis for determining the discount rate and the residual margin.

The IASB has also drawn up application guidance to clarify these new principles and the rationale behind them. Some of the IASB's proposals are not endorsed by the FASB, which is working on these issues in parallel. Besides convergence issues, in forthcoming discussions and in the new exposure draft expected mid-2012, the ACP will be particularly attentive as to how IFRS 4 Phase II (insurance liabilities) relates to IFRS 9 (financial assets) and will seek to ensure that the volatility resulting from the different treatment of insurance liabilities and insurance assets is eliminated.

D Publication of the definitive standards on consolidation and fair value measurement

Some progress was made on these convergence issues in 2011. IFRS and US GAAP now have similar criteria for consolidation, including for special-purpose entities, as a result of the new IFRS 10 – *Consolidated Financial Statements*. The new consolidation approach based on the notion of control is likely to impact the scope of consolidation of banking and insurance groups. These standards have yet to be adopted by the European Union. The ACP will in any case make sure that entities revise their scope of consolidation in light of the new definition of control. It will also look to ensure that entities provide the requisite documentation to support their

choices. This particularly concerns special-purpose entities, which are no longer automatically consolidated if the entity holds substantially all the risks and rewards, since this criterion is now just one of several to be considered. In the ACP's view, it is important that convergence does not lead to greater flexibility in consolidation rules.

During the consultation process on IFRS 11, the ACP identified the risk of a mismatch in the treatment of joint ventures under accounting and prudential rules. Following the publication of the definitive IFRS 11, these concerns seem to have been vindicated, with proportionate consolidation no longer permitted in IFRS 11 but maintained in the draft EU Capital Requirements Directive (CRD 4). The supervisors will analyse in depth the consequences of this inconsistency.

In June 2011, the IASB adopted IFRS 13 – *Fair Value Measurement*, which aims to establish a single IFRS framework for measuring fair value by aligning all existing fair value provisions within IFRS (e.g. IAS 39 on the fair value of financial instruments) with the existing model in US GAAP. IFRS 13 defines fair value as an exit price and reiterates the concept of measurement from a market-based perspective. The ACP welcomes this convergence and is satisfied that the current treatment applied to day one profit⁶⁵ is maintained. However, it regrets that the IASB has taken a less conservative approach to fair value measurement than to prudential rules and that it has confirmed that an entity's own credit risk is to be considered in measuring non-derivative liabilities, despite the counter-intuitive impact of this treatment. The ACP will ensure that the guidance for applying the new standard, to be prepared and published by the IASB

⁶⁵ Day one profit or loss arises on the difference between the transaction price and the fair value of a financial instrument. Under IFRS, day one profit or loss is booked on initial recognition of the instrument concerned when the valuation inputs used are observable on the market. US GAAP permits immediate recognition of day one profit or loss, including on instruments whose fair value cannot be reliably measured, i.e. estimated using unobservable inputs.

in mid-2012, is not confined to matters involving emerging markets. In the ACP's view, IFRS 13 fails to address the issues highlighted by the crisis and discussed above, for example measuring the fair value of illiquid instruments in practice.

It also believes that due consideration should be given to the clarity and relevance of the complex note disclosures required by IFRS 13, as part of an overall review of IFRS note disclosure relevance.

OWN CREDIT RISK AND ITS COUNTER-INTUITIVE IMPACTS ON EARNINGS

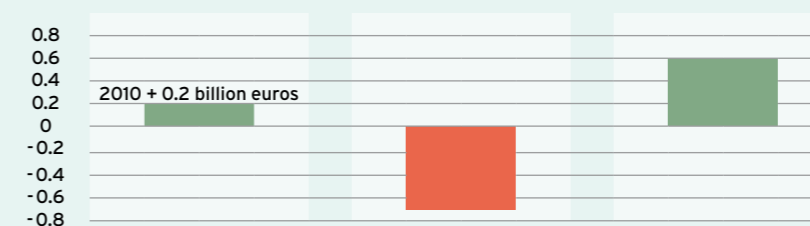
IFRS requires an entity's own credit risk to be taken into account when measuring liabilities (e.g. debt instruments issued) at fair value. In fact, this results in an accounting paradox, where entities can benefit from a decline in their own financial position. Worsening credit risk leads to a fall in the value of debt and the recognition of gains, which in turn increases earnings and equity. A large number of market participants including supervisors have long sought to draw the IASB's attention to the questionable, counter-intuitive impacts of taking account of an entity's own credit risk and have decided to neutralise its impact when calculating regulatory capital.

Illustrative example: An entity issues debt which it chooses to classify at fair value under the fair value option in order to reduce a mismatch in the accounting treatment of the debt and the related financial asset. Its fair value at DO (issue date) is 100. At the end of D1, the risk-free interest rate remains unchanged. However, the entity's financial position has significantly deteriorated, with the result that the markets assign the entity a higher credit risk and its credit spread widens. The fair value of the entity's debt therefore decreases from 100 to 80 at D1.

Carrying amount of liabilities in the balance sheet			Earnings		Common equity		Capital	
DO	D1	Change DO-D1	DO	D1	DO	D1	DO	D1
100	80	-20	0	+20	0	+20	0	0

As in 2008, some European banks booked large gains of up to €650 million in 2010 following an escalation in their own credit risk.

Average gains and losses relating to own credit risk for a sample of 10 European banks (31/12/2008 to 31/12/2010)



2.3 IASB governance and agenda

Following the review of the IASB Constitution in 2009 and 2010, the primary focus in 2011 was on two parallel projects looking at IASB governance issues. The first, conducted by the IFRS Foundation's Trustees, reviewed the strategy of the Foundation. It sought to redefine the rules of governance from an operational perspective in order to optimise procedures, while respecting the public accountability and independence of the international standard-setter. The second project was set up by the Monitoring Board to address more institutional aspects of governance, particularly the composition and respective roles and responsibilities of the Monitoring Board, Trustees and the IASB. The ACP participated in meetings of the EBA, EIOPA, Basel Committee, IAIS and ANC to draft comments to these two projects. These comments emphasized the need to include financial stability as an objective of financial statements. The ACP stressed that all market participants including prudential supervisors (who should themselves be recognised as users of financial statements) should be involved in developing the IASB's accounting standards and governance arrangements.

The ACP was involved in drafting the responses of the ANC, EBA, EIOPA, Basel Committee and IAIS to the first consultation on the IASB's agenda for the next three years, launched in July. In their responses, supervisors stressed the need to prioritise the various projects in progress and concentrate on finalising the big-impact projects on financial instruments (IFRS 9) and insurance contracts (IFRS 4), and then on leases (IAS 17) and revenue (IAS 18). Supervisors also thought that it was important to finalise the revision of the conceptual framework and to take stock of the issues arising from applying recent changes to standards. Supervisors are in favour of a more widespread, methodical use of prospective and retrospective impact assessments to gauge the impacts of accounting standards on financial stability.

2.4 Further analyses of Pillar 3 disclosures

For the third year running, the EBA continued to analyse the Basel II Pillar 3 disclosures published by around 20 European banks at 31 December 2010. The 2011 analysis focused more closely on issues or weaknesses with respect to CRD requirements that had been identified in the previous review report (disclosures regarding equity capital, credit risk and securitisation) and on new executive compensation disclosures. The report published by the EBA as a result of its analysis notes an improvement in Pillar 3 disclosures as compared to previous years. However, efforts still need to be made in terms of reconciling prudential disclosures with financial statement information, the degree of detail provided for each component of equity capital, sensitivity analyses, credit risk, derivatives pricing and the effectiveness

of risk mitigation techniques. The review also noted that the information reported varied widely from one bank to the next: the EBA will try to limit the range of disclosures by encouraging banks to adopt best practices.

In France, the ACP along with the AMF and French Banking Federation decided to adapt the disclosure requirements relating to the subprime crisis first introduced in 2008 in the wake of the FSF's 7 April 2008 report. Detailed disclosures will now only need to be published twice a year compared to four times a year previously (quarterly information will continue to be published at three-monthly intervals but in a more concise format), and half-yearly and yearly reporting requirements – particularly concerning LBOs and conduits – have been simplified.

2.5 Work on auditing

As prudential ratios are calculated largely on the basis of accounting data, the ACP places great importance on the quality of institutions' auditing. For this reason, it has played an active part in various projects carried out by the EBA, Basel Committee and IAIS seeking to establish audit best practices at a time when disclosure requirements are becoming increasingly complex and demands on auditors increasingly stringent.

Following the discussion paper on disclosure and its audit implications published in early 2011 by the International Auditing and Assurance Standards Board (IAASB), the ACP was involved in drafting responses from the EBA, Basel Committee and IAIS. These responses expressed a wish for International Standards on Auditing (ISA) to focus more closely on this issue.

Supervisors indicated that the ISAs should clearly identify separate audit procedures for note disclosures and consider adapting certain general audit concepts such as materiality to the specific nature of notes to financial statements. They also looked ahead to a joint project that should be conducted with accounting standard-setters to increase the auditability of note disclosures and facilitate audit work. According to the supervisors, note disclosures should be audited in the same way as financial statements, with the same discipline and questioning approach to reported information.

Through its involvement in different European (EBA) and international (IAIS, Basel Committee) working groups, the ACP also lent its support to the IAASB in developing specific instructions for auditing financial instruments. These call for stricter procedures in order to assess whether accounting provisions are properly applied, such as fair value measurement for complex financial instruments, own credit risk and the fair value hierarchy.

Throughout 2011, the ACP was also involved in the Basel Committee's project to update guidelines on banks' internal audit function and on the interaction of this function with supervisors. The consultative paper on the internal audit function was published in December 2011 and looks at the expectations of supervisors in terms of the organisation and work of internal audit as well as the relationship between supervisors and internal auditors. A second set of Basel Committee guidelines on the relationship between banking supervisors and external auditors (statutory auditors) is to be updated in 2012 and will include input from the ACP.

3

Developments in French laws and regulations

The *Autorité de contrôle prudentiel* contributes to the drafting of national regulations. Several provisions introduced in 2011 had a direct impact on its statutory objectives.

A Specific rules for the banking sector

a. Transposition of the CRD 3 Banking Directive

The Decree of 23 November 2011 amending the Banking Regulation Committee Regulations 90-02 on own funds and 93-05 on large exposures and the Decree of 20 February 2007 on capital requirements for credit institutions and investment firms and the Decree of 5 May 2009 on liquidity risk identification, measurement, management and control transposes into French law the provisions in Directive 2010/76/EU of 24 November 2010 (CRD 3) on prudential supervision of market risk, securitisation, own funds and large exposures. These provisions were to be transposed into French law by 31 December 2011.

The Decree amends several regulations in force:

- the provisions dealing with prudential supervision of market risk and those dealing with securitisation and resecuritisation were transposed by amending the Decree of 20 February 2007 on capital requirements for credit

institutions and investment firms;

- the provisions dealing with own funds were transposed by amending Regulation 90-02 on own funds;
- the provision dealing with large exposures was transposed by amendments to the Decree of 20 February 2007 and to Regulation 93-05 on the control of large exposures.

The Decree also includes amendments to regulations in force that are not related to the transposition of CRD 3.

b. Transposition of the amended "Finality" and "Collateral" Directives

Executive Order 2011-398 of 14 April 2011 transposes Directive 2009/44/EC of 6 May 2009, which amends two Directives:

- Directive 98/26/EC on settlement finality in payment and securities settlement systems (Finality Directive);
- Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims (Collateral Directive).

The Collateral Directive 2002/47/EC created a uniform European legal framework for the cross-border use of financial collateral and abolished most of the formal requirements imposed on collateral arrangements. Directive 2009/44/EC harmonised the legal framework for the use of credit claims as collateral for cross-border transactions, following the ECB's decision to introduce credit claims as an eligible type of collateral for Eurosystem credit operations as of 1 January 2007, whereas only cash and financial securities had previously been eligible. Article L. 211-38 of the Monetary and Financial Code already dealt with credit claims and the Executive Order does not change the Code on this point.

- The Finality Directive 98/26/EC established rules under which the finality of transfer orders and their enforceability are ensured for participants in payment and securities settlement systems. Directive 2009/44/EC makes some technical changes to the existing legal framework to ensure interoperability between several payment or securities settlement systems, as well clarifying the status of indirect participants in payment and securities settlement systems.

These new provisions resulted in amendments to Articles L. 330-1 and L. 330-2 of the Monetary and Financial Code.

The Monetary and Financial Code also stipulates that payments and deliveries of financial securities cannot be cancelled until after the end of day of the court ruling opening insolvency proceedings.

- The Executive Order also updates Articles L. 440-7 and L. 440-8 of the Monetary and Financial Code, which stipulate that deposits lodged with a clearing house to cover or collateralise securities positions are beyond the reach of the laws governing insolvency proceedings as a matter of principle.

c. Collective Investment Schemes (CIS)

Executive Order 2011-915 of 1 August 2011 on collective investment schemes and the modernisation of the legal framework for asset management transposes Directive 2009/65/EC of 13 July 2009 (UCITS IV) into French law.

It further clarifies France's legal framework by organising the provisions of the Monetary and Financial Code into two parts. The first part deals with UCITS as defined in UCITS IV and the second part deals with "measures relating to French non-UCITS collective investment schemes". Decrees 2011-922 and 2011-923 of 1 August 2011 were issued to implement the Executive Order.

d. Mortgage credit institutions and home loan companies

Decree 2011-205 of 23 February 2011 on mortgage credit institutions (SCF) and on home loan companies (SFH) amended some of the regulations applying to SCFs. The Decree calls for overcollateralisation of 102% and covering cash needs for 180 days.

The Decree of 23 February 2011 recasts Banking and Financial Regulation Committee Regulation 99-10 on mortgage credit institutions and, more specifically the rules for calculating the overcollateralisation ratio.

e. Livret A and Sustainable Development passbooks

Decree 2011-275 of 16 March 2011 on compensation of entities taking deposits on Livret A and Sustainable Development passbook savings accounts, the rules for the centralisation of deposits and the interest paid on People's Passbook savings accounts sets the ratio of Livret A and Sustainable Development deposits to be deposited with the *Caisse des Dépôts et Consignations* savings fund at 65%. A provision in the Decree increases the centralisation ratio for a given month, when the centralised share is less than 125% of the social housing loans made by *Caisse des Dépôts et Consignations*. A convergence period running up to 2022 has been planned to harmonise the centralisation ratios of the different banking networks. During this period, the ratios will be calculated according to the market share of each bank and the total deposits of each bank.

f. Systemic risk bank tax

Decree 2011-2112 of 30 December 2011 sets the reporting requirements for the systemic risk bank tax applying to banking entities reporting to the ACP and with capital requirements in excess of €500 million.

g. Regulated markets

Decree 2011-1254 of 7 October 2011, issued for the enforcement of Article 9 of the Banking and Financial Regulation Act, stipulates that the regulations on investment recommendations apply to non-financial assets, including carbon emission allowances traded on a regulated market for financial instruments.

h. Guarantee funds

The Decree of 21 October 2011 sets the overall annual contribution to the deposit guarantee fund for 2011 at €105 million.

The Decree of 21 October 2011 sets the overall annual contribution to the securities guarantee fund for 2011 at €8 million.

i. Payment instruments

Decree 2011-243 of 4 March 2011 amending the provisions of the Monetary and Financial Code on bad cheques, for the purposes of the Act of 1 July 2010, abolishes the penalties payable to the Treasury for each bad cheque incident.

B Specific provisions applying to insurance companies and mutual insurance companies

a. Insurance companies

Decree 2011-1418 of 31 October 2011 amending the rules for covering the regulated liabilities of insurance companies changes the list of assets that insurance companies may hold to cover their liabilities to policyholders by adding a new category of investments. This category is made up of securitisation vehicles that meet strict criteria. In addition to representing very high-quality claims (on the government or public corporations), these assets must be subject to periodic public valuations by an independent third party. This additional category of investments should make it possible for insurance companies to refinance public-private partnerships. These assets cannot represent more than 5% of the insurers' liabilities in order to ensure minimum diversification of their assets.

b. Mutual insurance companies

Decree 2011-733 of 27 June 2011 introduces a national guarantee fund, FNG, for mutual insurance companies. The Fund has the same characteristics as the existing guarantee funds for insurance companies and provident institutions. It will also cover "life" transactions. The Decree also enshrines the existence of federal guarantee systems that provide members with a guarantee in the event of insolvency, especially for the coverage of "non-life" risks. The ACP issues the license for such a fund at the request of the union responsible for managing it. Any mutual insurance company or union that does not belong to a voluntary federal guarantee system must join the national guarantee fund.

Decree 2011-1192 of 26 September 2011 on registration of mutual insurance companies, unions and federations sets out the new registration procedure for mutual insurance companies, unions and federations. The national register of mutual insurance companies has been abolished and, from now on, the Secretary General of the Superior Mutual Insurance Council must inform the ACP of the registration of or the refusal to register mutual insurance companies under its jurisdiction.

c Specific rules on customer protection

Decree 2011-136 of 1 February 2011 on pre-contract disclosures and on consumer loan contract terms defines new obligations for banks, including the dissemination of a "pre-contract information sheet".

Decree 2011-135 of 1 February 2011 on calculating the Annual Percentage Rate of Charge (APRC) defines the procedures for calculating the APRC on personal loans.

Decree 2011-457 of 26 April 2011 sets the terms for phasing in consumer credit reforms applying to existing revolving credit contracts.

Decree 2011-471 of 29 April 2011 on pre-contract disclosures and contract terms for pawn loans granted by municipal credit banks brings the rules on pawn loans contained in the Monetary and Financial Code largely into line with the rules in the Consumer Code on ordinary consumer loans. It also provides for specific disclosure of the rights attached to the articles pawned and the fact that there is no cooling-off period for borrowers. Before Act 2010-737 of 1 July 2010, none of the disclosure rules for consumer loans applied to pawn loans.





Contents

- 194 Budget of the ACP
- 196 Summary of the ACP
2011 budget outturn

CHAPTER 6 Budget

The ACP has specific budgetary resources in the form of contributions for supervisory collected by the *Banque de France* from licensed entities and handed over to the ACP in full. These contributions may be supplemented by additional allocations from the *Banque de France*.

1

Budget of the ACP

In accordance with Article L. 612-18 of the Monetary and Financial Code, the ACP, as an independent administrative authority, is financially independent, within the limits of the contributions paid by the entities under its supervision. The *Banque de France* may allocate additional funds to the ACP.

Under the terms of Article L. 612-19 of the Monetary and Financial Code, the ACP relies on support functions provided by the *Banque de France* in order to promote synergies and benefit from pooling certain costs (property management, IT, HR, accounting, etc.) It also relies on certain operating functions of the *Banque de France*, especially the use of databases necessary for the performance of its duties.

The services that the *Banque de France* provides to the ACP are valued on the basis of the central bank's cost accounting in accordance with the financial agreement it has with the ACP. The ACP recognises these services as an expense and the *Banque de France* recognises them as income in its general budget. The services that the ACP provides to the *Banque de France* are also valued on the basis of cost accounting. The ACP recognises them as income and the *Banque de France* recognises them as an expense. The *Banque de France* also incurs capital expenditure on behalf of the ACP and the Authority budget records the related depreciation and amortisation.

All the ACP's receipts and expenditures in 2011 make up its budget. Under the terms of the Monetary and Financial Code, this budget is an annex to the budget of the *Banque de France* and is ultimately incorporated into the latter's financial statements.

The report on the ACP budget outturn for 2011 was submitted to the Audit Committee, which approved it during its meeting on 2 April 2012. It was then validated by the plenary meeting of the College on 11 April 2012.

In 2011, the ACP set up an operational and strategic oversight mechanism for its activities to ensure the effectiveness of its action, the adequacy of its resources and the efficient use of the resources raised.

This mechanism relies on performance indicators used for management by objectives of the ACP's tasks. It gives an account of the ACP's action (cf. section 4 of Chapter 1) and management control for the operational oversight of its activity.

This approach was strongly supported by the ACP Audit Committee. It is also in line with the broader framework urged by the report on the operations of independent administrative authorities dated November 2010, which was drafted at the request of the Parliament by the public policy assessment and oversight committee, CEC.

THE ACP AUDIT COMMITTEE

The ACP College named an Audit Committee made up of College members to ensure the proper use of the ACP's resources, in accordance with Article R. 612-12 of the Monetary and Financial Code.

The ACP Audit Committee is an advisory body that provides its opinions on:

- the ACP's preliminary budget, before it is adopted by the College;
- the budget outturn report for the previous year, which sets out all the ACP's income and expenses for this period and analysis the rebilling of resources and services sourced by the *Banque de France*, in accordance with Article R. 612-14 of the Monetary and Financial Code, as well as variances between the original budget and the outturn.

The ACP Rules of Procedure stipulate that the Audit Committee "shall be informed of proposals for material changes to the budget in the course of the year" to ensure that the Committee has the up-to-date information it needs to discharge its duties. When the Audit Committee is presented with such information, it may submit its observations, which are then "communicated to the College".

As required for the performance of its duties, the Audit Committee is informed of the implementation and operation of the ACP's internal control and management control system. The ACP Chairman has also given the Audit Committee the task of implementing performance indicators to evaluate the ACP's capacity to perform its tasks and make efficient use of its resources.

The Audit Committee is also consulted about the programmes and findings of the audits carried out by the General

Inspectorate of the *Banque de France* in so far as they concern the ACP. It may also request to take part in the meetings between the *Banque de France* Audit Committee and the statutory auditors of the *Banque de France*.

The ACP Audit Committee has 4 members:

- Lucien Uzan, Chairman,
- Jean-Philippe Vachia, *Conseiller-maître* (senior auditor) at the *Cour des comptes*,
- Jérôme Haas, Chairman, of the *Autorité des normes comptables*,
- François Lemasson.

The Committee Chairman may invite the representative of the Director General of the Treasury to attend the Audit Committee meetings as a non-voting member.

The Audit Committee held 6 meetings in 2011. In addition to examining the annual budget documents and the interim outturn report, the Committee's work focused on:

- closer examination of certain budget items, such as IT projects and communications;
- examination of three-year budget projections;
- monitoring the implementation of the ACP General Secretariat management system;
- implementation of the performance indicators for the ACP;
- formalising the breakdown of costs billed by the *Banque de France*;
- examination of an agreement for billing services provided by the *Banque de France*, the call center for customers of insurance, banking and savings products (ABE Info Service) run jointly by the ACP and the AMF.

2

Summary of the ACP 2011 budget outturn

The budget outturn report approved by a plenary meeting of the ACP College on 11 April 2012 shows a negative balance of €8.3 million, compared with a positive balance of €2.8 million⁶⁶ in 2010.

This balance stems from net receipts that were virtually stable compared to 2010 at €163.8 million and expenditure

of €172.1 million, up 7.2% because of the ACP's rapidly growing workload.

The negative budget balance is smaller than the projected deficit in the updated ACP budget approved by a plenary meeting of the College, mainly because personnel, IT and mission expenses were lower than expected.

Expenditure and receipts (€ millions)	2010 expenditure and receipts	Updated 2011 budget	2011 expenditure and receipts	Variance from updated budget		Change in expenditure 2011/2010	
				Amount	%	Amount	%
Personnel expenditure	83.7	96.3	94.9	-1.3	-1.4%	11.3	13.5%
IT expenditure	25.2	24.5	22.5	-2.0	-8.2%	-2.6	-10.4%
Expenditure on buildings	23.5	23.0	23.3	0.3	1.2%	-0.2	-1.0%
Other expenditure	28.2	34.0	31.3	-2.6	-7.8%	3.1	11.2%
Total expenditure (A)	160.5	177.8	172.1	-5.7	-3.2%	11.6	7.2%
Contributions from reporting entities	160.7	162.1	160.6	-1.5	-0.9%	-0.1	0.0%
Other receipts	2.6	2.8	3.1	0.4	13.3%	0.5	19.4%
Total receipts (B)	163.3	164.9	163.8	-1.1	-0.7%	0.4	0.3%
Surplus or deficit (B - A)	2.8		-8.3				

2.1 Receipts of the ACP

Contributions for the cost of supervision in 2011 came to €162.4 million (compared to €160.6 million after provisions).

The receipts of the ACP from contributions for the cost of supervision (before provisions) came to €162.4 million in 2011, up by €0.7 million compared to 2010. This increase stems from the rise

in contributions from insurance companies (+€1.5 million), resulting from the growth of insurance premiums between 2009 and 2010, and the decrease of nearly €0.8 million in contributions from banks because of the cut in capital requirements between the end of 2009 and the end of 2010.

Contributions (€ millions)	Receipts 2010	Receipts 2011	Variation 2011/2010	
			Amount	%
Credit institutions and investment firms	126.0	125.2	-0.8	-0.6%
Money changers	0.1	0.2	0.0	19.2%
Insurers, mutual insurance companies and provident institutions	28.6	30.1	1.5	5.1%
Intermediaries in banking transactions and payment services	4.5	4.2	-0.3	-7.3%
Brokers/microcredit associations	2.5	2.8	0.2	9.4%
Total	161.8	162.4	0.7	0.4%

⁶⁶ The final assessment of the Banque de France's costs made in the second quarter of each year, in accordance with the billing agreement, shows that the amount of services provided to the ACP by the Banque de France was revised and cut by €0.1 million, which means that ACP's actual expenditure in 2010 was €160.5 million, the budget balance was €2.8 million (compared with €2.7 million in the semi-final version). The 2010 data in this document are compiled on the basis of the final costs and may therefore be slightly different from the data compiled on the basis of the semi-final costs and published in the 2010 ACP Annual Report.

CONTRIBUTIONS FOR THE COST OF SUPERVISION

Entities subject to *Autorité de contrôle prudentiel* supervision are required to pay an annual contribution to the cost of supervision, as stipulated in Article L. 612-20 of the Monetary and Financial Code.

The same article defines the procedures for calculating the contributions from each category of supervised entities. Three Decrees of 9 and 26 April 2010 specify the provisions and set the contribution rates, minimum contribution amounts and lump-sum contribution amounts:

- the contribution rate for the cost of supervision applied to banks' capital adequacy requirements or minimum capital requirements

is 0.6 per thousand, with the minimum contribution set at €500;

- the contribution rate for the cost of supervision applied to insurance companies' premiums is 0.12 per thousand, with the minimum contribution set at €500;
- the lump-sum contribution applied to money changers is €1,000, the lump-sum contribution applied to mutual insurance companies and unions governed by Book I of the Mutual Insurance Code that manage mutual insurance payments and contracts for entities governed by Book II of the same code is €500, the lump-sum contribution applied

to insurance and reinsurance brokers, along with intermediaries in banking transactions and payment services is €150, and the lump-sum contribution applied to reporting not-for-profit associations is €100.

The *Banque de France* issues the calls for contributions on behalf of the ACP by 15 April each year and the deadline for payment is 30 June. However, insurance companies' contributions are called in two instalments: a call for 75% of the contribution due in the previous year is issued by 15 February, and the remainder is called by 15 July. The respective payment deadlines are 31 March and 30 September.

Credit institutions, investment firms, insurance companies, mutual insurance companies and provident institutions account for 96% of receipts from contributions for the cost of supervision. Intermediaries in banking transactions and payment services, insurance and reinsurance brokers, money changers and microcredit associations account for the remaining €7.1 million.

The total proceeds of contributions for the cost of supervision was reduced slightly by €0.3 million because the ACP General Secretariat cancelled improperly collected contributions for 2010 and 2011, such as the contribution for the intermediary in banking transactions and payment services declared by a credit institution on 1 January 2011 that had already ceased trading on that date.

In mid-March 2012, the ACP had already collected a very large share of the contributions for the cost of supervision owed for 2011. The collection rate stood at 99.2%, leaving only €1.3 million still to be collected. This represents a significant improvement in the collection rate over the same period in 2010, when the collection rate stood at 98.5% and the amount remaining to be collected at €2.4 million.

The ACP General Secretariat also continued the collection process in 2011 for contributions owed for 2010 and the relevant collection rate now stands at 99.1%. A first set of nearly 900 unpaid contributions was sent to the Directorate General of Public Finance, in accordance with Article L. 612-20-VIII of the Monetary and Financial Code, so that legal proceedings can be initiated to collect the amounts due.

Data from mid-March 2012 including contributions paid and cancelled in the first quarter of 2012	2010 contributions		2011 contributions	
	Receivables (€ thousands)	Collection rate	Receivables (€ thousands)	Collection rate
Credit institutions and investment firms	1	100%	2	100%
Money changers	4	97.3%	17	90.2%
Insurers, mutual insurance companies and provident institutions	0	100%	1	100%
Intermediaries in banking transactions and payment services	1,293	71.3%	1,069	74.7%
Brokers/microcredit associations	161	93.7%	215	92.3%
	1,459	99.1%	1,304	99.2%

Provisions for unpaid contributions were increased in 2011 to account for the risk of non-collection, but this had no impact on efforts to collect unpaid contributions.

Consequently, the 2011 receipts of the ACP from contributions for the cost of supervision, net of provisions, stood at 160.6 million. This amount is stable compared to 2010.

MAIN COLLECTION FIGURES FOR CONTRIBUTIONS FOR THE COST OF SUPERVISION IN 2011

The 49,287 calls for contributions issued break down as follows:

- 305 credit institutions and investment firms,
- 174 money changers,
- 341 insurers (excluding mutual insurance companies and provident institutions; the joint social security and family benefit collection structure (URSSAF) had collected their contributions up until 2011),
- 29,935 intermediaries in banking transactions and payment services,
- 18,529 insurance and reinsurance brokers,
- 3 microcredit associations.

12,922 reminders sent

The ACP General Secretariat received nearly 4,200 challenges or information requests.

A call center opened for 6 weeks with an average of 4 operators and up to 6 on the busiest days handled nearly 4,500 calls about calls for contributions and reminder letters.

The other receipts of the Autorité de contrôle prudentiel

In addition to the contributions for the cost of supervision, the other income item recorded €3.1 million.

2.2 Expenditure

As an offshoot of the *Banque de France*, the ACP's operating expenses are either incurred directly by the ACP General Secretariat or by the *Banque de France* units providing services.

The largest expenditure items incurred by the *Banque de France* on behalf of the ACP include the wages of permanent staff, rent and upkeep of the ACP premises, spending on IT and training. Except for expenditure on staff and IT projects, the expenses paid by the *Banque de France* on behalf of the ACP are billed at their full cost (as determined by the cost accounting of the *Banque de France*).

Expenditure (€ millions)	2010 expenditure	%	2011 expenditure	%
Personnel expenditure	83.7	52%	94.9	55%
IT expenditure	25.2	16%	22.5	13%
Expenditure on buildings	23.5	15%	23.3	14%
Other expenditure	28.2	18%	31.3	18%
Total expenditure	160.5	100%	172.1	100%

As was the case in 2010, much of this income stemmed from billing services that the ACP provided to the *Banque de France* and other bodies, such as the AMF and the European Banking Authority (EBA), and the investment income on proceeds carried forward.

The expenditure of the ACP for 2011 stood at €172.1 million, representing an increase of 7.2%, which is primarily a result of the increase in headcount. On the other hand, IT expenditure declined by 8.2% because of the postponement of certain projects and non-recurring expenses paid in 2010. Expenditure on buildings and amortization were virtually stable. All in all, overheads increased by only 0.3%, despite an increase of nearly 10% in the headcount.

A Personnel expenditure (€94.9 million)

Personnel expenditure rose by 13.5% compared to 2010, primarily because of the increase in the headcount (average annual full-time equivalent employees increased by 10.4%) and the impact of integrating the staff from the former insurance supervisory authority, ACAM, into

the permanent personnel of the *Banque de France* (see below).

For various reasons, such as a slightly slower pace of hiring than projected in the budget (946.8 average annual full-time equivalent employees, instead of the expected 952.2, overestimated expenses on some items, etc.), personnel expenditure was €1.3 million less than projected for 2011.

Personnel expenditure categories (€ millions)	Actual 2010	Updated 2011 budget	Actual 2011	Variance from budget		Change in actual expenditure 2011/2010	
				Amount	%	Amount	%
Base pay, special allowances, bonuses	39.1	44.4	43.2	-1.2	-2.7%	4.1	10.4%
Other pay components for all employees	11.1	13.2	13.3	0.1	0.5%	2.1	19.1%
Profit-sharing and incentives	1.9	3.2	3.2	0.0	0.7%	1.3	65.0%
Abondement to company saving plan	0.7	0.8	0.8	0.0	4.9%	0.1	14.7%
Other personnel expenses	1.6	2.6	2.2	-0.4	-15.3%	0.7	43.4%
Social charges	19.6	21.5	21.5	0.0	-0.1%	1.9	9.7%
Other social charges	1.2	1.4	1.5	0.0	0.9%	0.2	17.2%
Tax charges	8.4	9.2	9.3	0.1	1.6%	0.9	10.9%
Total	83.7	96.3	94.9	-1.3	-1.4%	11.3	13.5%

The structure of the ACP General Secretariat staff changed significantly in 2011 because large numbers of ACAM employees accepted the offer to join the

Banque de France permanent staff with effect on 1 July 2011, in accordance with the provisions of the Executive Order of 21 January 2010 that created the ACP.

Average annual FTE by category	2010	2011 updated	2011	Change 2011/2010	
Permanent and private-law contract employees	622.5	771.2	766.4	143.8	+ 23.1
Civil servants and public-law contract employees	199.1	139.8	139.5	- 59.6	- 29.9
Consultants and PhD students	35.8	41.2	40.9	5.1	14.2
Sub-total	857.5	952.2	946.8	89.3	10.4
Interns and summer jobs	12.5	12.3	12.5	0.0	- 0.1

The headcount at the end of 2011 (976.3 FTEs, excluding interns) broke down into 87% permanent and private-law contract employees, 9% civil servants and public-law contract employees and 4% employees on fixed-term contracts.

Outlook for personnel expenses in 2012

Personnel expenses should continue to rise in 2012 because of the aggressive hiring policy aimed at increasing the number of supervision employees until the target set in 2010 is reached. The target of the ACP General Secretariat has been set at 1,121 FTEs. This was the figure that the Parliament set as a cap on jobs at the ACP as part of a common approach to all independent administrative authorities. In addition, hiring in 2011 will not produce its full effect on personnel expenses until 2012.

B IT expenditure (€22.5 million)

The ACP incurred IT expenses of €22.5 million in 2011, down by €2.6 million from 2010, when IT expenses included start-up costs (€3.2 million). They were also €2 million lower than budgeted and broke down as follows:

- cost of services subcontracted to outside providers for development projects carried out by the ACP for the performance of its supervisory duties and maintenance of existing applications (€6.2 million).

A significant share of the expenses incurred in 2011 is related to the modernisation of the information system of the ACP General Secretariat, following the recasting of the accounting and prudential statements filed by credit institutions and investment firms as part of the SURFI project, which went live in July 2010.

These expenses declined by some €1.2 million compared to 2010, primarily because of the postponement of phases of several projects;

- cost of IT services provided by the *Banque de France*, determined according to the 2010 billing agreement between the ACP and the *Banque de France* (€16.3 million).

These services included running the ACP information system on the *Banque de France* infrastructure, as well as advice and design assistance in areas such as information system architecture and project management.

This item also includes all of the expenses incurred in supplying employees of the ACP General Secretariat with individual IT tools (including collaboration tools and telephony). These expenses increased by some €1.2 million compared to 2010, primarily because of the increase in headcount.

The IT Strategy Group (GSI) was set up as part of the ACP General Secretariat in July 2011 to inform the ACP College's decisions on overall IT strategy and to inform the choices that determine the human and financial resources allocated to various projects. The Group is chaired by the Deputy Secretary General in charge of IT and its members are the Deputy Secretary General in charge of Budget and Strategy for the ACP, the leaders of the operational teams in charge of IT projects, the Financial Manager and the Head of the Financial Management Division, along with representatives of the IT Directorates at the *Banque de France*. The Group held 2 meetings in 2011 to decide on its opinion of the draft budget update for 2011 and the draft 2012 budget.

Outlook for IT expenses in 2012

Expenditure on IT projects should be much higher in 2012, compared to 2011, because of the postponement of several phases of projects originally scheduled for 2011 until 2012. The overall expenditure for these projects should remain the same, however. Similarly, the cost of IT services that the *Banque de France* provides to the ACP General Secretariat and, more specifically, personal computing services, should rise as new employees are hired.

C Expenditure on buildings (€23.3 million)

As of February 2011, all of the ACP Secretariat General employees had been brought together in the Paris-Victoire business centre and the building at 53 Rue de Châteaudun in the 9th district of Paris.

The sustained pace of hiring means that the net usable area per workstation in January 2012 was 11.7 square metres, as opposed to 12.9 square metres in January 2011. When hiring is complete, the net usable area per workstation will be reduced further to 11.2 square metres. The continuation of an aggressive hiring strategy in 2012 should help reach this target.

Main characteristics of the two ACP buildings

Gross leased usable area	27,661 sq. metres
Approximate number of workstations in January 2012	1,100
Rent excluding tax and charges / square metre	€618
Net usable area per workstation in January 2012	11.7 sq. metres (12.9 sq. metres in January 2011)
Target net usable area per workstation for the end of 2012	11.2 sq. metres

The ACP's expenditure on buildings in 2011 came to €23.3 million, which was slightly less (- €0.2 million) than in 2010. This expenditure includes:

- rent and charges for the various premises occupied during the year, prorated to the occupancy period: €20.9 million, including €0.5 million for the previous premises used by the *Commission bancaire* General Secretariat up until February 2011;
- the cost of services provided by the *Banque de France*, assessed in accordance with the billing agreement, which include upkeep and electricity expenses;

- depreciation of building improvements, and removal expenses.

Outlook for expenditure on buildings in 2012

As expected with the leasing of the second ACP premises, expenditure on buildings will increase significantly in 2012, especially since the ACP was able to occupy the building in the rue de Châteaudun rent free for 8 months in 2011. The ACP will incur the full cost of its new premises over an entire year for the first time in 2012.

D Other expenditure (€31.3 million)

Other expenditure in € millions	2010 expenditure	2011 expenditure	Change 2011/2010	
			Amount	%
Non-IT sub-contracting	13.3	14.8	1.5	11.6%
Travelling expenses	4.2	4.2	0.0	0.7%
Other overheads	10.7	12.3	1.6	14.7%
Total other expenditure	28.2	31.3	3.1	11.2%

The non-IT sub-contracting item grew by 11.6%. This is largely due to the ACP's increasing workload. This item covers all the other services, other than buildings, that the *Banque de France* provides to the ACP for its operations. These may be specific services, such as collection of contributions for the cost of supervision, services provided by *Banque de France* branches, such as monitoring sales practices, assistance that the Inspectorate General provides to on-site supervision teams in credit institutions, and data provided by the *Banque de France* Companies Directorate, or else services that are common to all *Banque de France* units.

The latter services include human resources management (payroll, hiring, pension scheme, occupational healthcare, social services, etc.), financial management and accounting, internal auditing, as well as logistical services provided by the *Banque de France*, (security advice, purchasing, vehicle fleet, archives, etc.)

The non-IT sub-contracting item also includes expenditure on training and skills development (€2.6 million), representing more than 54,000 hours of training, up 16% on 2010. Sustained training efforts were made for employees hired after the formation of the ACP in 2010, but training was offered to all employees given the major changes in regulations currently under way in both the banking industry (Basel III) and in the insurance industry (Solvency II).

Travelling expenses (€4.2 million) cover all of the expenses incurred for on-site supervision and the representation of the ACP General Secretariat on various European and international bodies. This item was broadly stable in 2011.

The other overheads item also includes the membership fees that the ACP pays to take part in various bodies (€1.1 million). These expenses increased by more than 50% because of the rapid deployment of the European Banking Authority and the European Insurance and Occupational Pensions Authority, which were formed in 2010.

E Amortization

The actual amortization expense came to €2,691,000, which was consistent with projections. The expense consisted primarily of amortization of IT applications developed in house and depreciation of IT hardware. To a lesser extent, it also consisted of amortization of software and depreciation of furniture because of moving employees to the two new premises.

CONCLUSION

The balance for 2011 is negative at €8.3 million. This deficit is fully funded by drawing down contributions carried forward from previous years, which stood at €28.2 million at the end of 2011.



Contents

208 Main findings of the examination
of planned variable pay awards for 2011

CHAPTER 7 Annex

Main findings of the examination of planned variable pay awards for 2011

At the 2 November 2011 meeting with the leading institutions in the French market, the prime minister asked banks to show utmost restraint with regard to senior management remuneration policy and variable remuneration awards in general for 2011, given the current context and the need to reinforce their capital. More specifically, the prime minister asked the ACP Chairman, who is the Governor of the *Banque de France*, to pay particular attention to this point verifying beforehand the amounts under consideration and by using the ACP's powers when necessary.

The ACP General Secretariat surveyed the 6 banking groups represented at the 2 November 2011 meeting in order to fulfil these requests. The six account for the bulk of the institutions covered by the survey of variable pay awards for 2010, carried out after the fact in 2011. The findings of this survey are published in the 2010 Annual Report (French banking and insurance market figures). The survey did not look at individual variable pay awards but at overall remuneration packages, taking into account changes in the fixed component.

The survey questionnaires were sent to the institutions at the end of November 2011. The questionnaires contained detailed questions about the fixed and variable remuneration of regulated personnel⁶⁷, along with questions about the variable awards to employees in jobs that are not deemed to have a significant impact on the institution's risk profile.

The objective was to measure the variation in total remuneration paid to bank employees and variations in total mean remuneration of employees (fixed plus variable) by breaking down the *pro forma* changes in the fixed and variable components. These variations were then compared to economic indicators of the banks' performances, including total gross operating income and gross operating income by business sector for the institutions under consideration. The variable remuneration awards to unregulated personnel are instructive, but they do not show much change since they are paid to very large numbers of employees. The average individual variable awards may differ from bank to bank, but they are usually for amounts of less than €5,000. Analysing the pay of "regulated" personnel is

much more relevant, since, in contrast to many other countries, this population is larger in France and the amounts awarded are higher.

With the consent of the banks being surveyed, a specific timetable was defined for providing the information in several stages to obtain a rapid overview, followed by more and more precise data. The objective of the exercise was to enable the ACP to compile all of the information necessary for its assessment of the planned variable remuneration awards before the banks' compensation committees held their meetings in February 2012.

The ACP conducted a preliminary examination of each institution in mid-December 2011, using the information available at the time. This first stage relied primarily on updated budget data and was followed by further analyses throughout January and the first days of February 2012, as the earnings data of the banking groups were aggregated and refined. Banks were asked to provide further explanations of any atypical situations that arose.

Variable remuneration awards take into consideration qualitative matters related to the risk-taking and the operating conditions of the various business lines concerned, along with quantitative criteria based on earnings weighted by the risks incurred and the capital and liquidity consumed. The rules set by each banking group are used to determine pay awards by business units and sub-units and then for individual employees.

The ACP took special care to ensure that the banks' planned variable remuneration awards showed the restraint requested and that the reduced earnings posted by most banks in 2011, especial-

ly in the case of earnings from market activities, were reflected by similarly reduced variable pay awards.

Market activities are where most of the personnel whose professional activities have a material impact on the institution's risk profile are employed. The purpose of the ACP's analysis was not to examine individual awards, or even awards to business units. The purpose was to ensure that the planned variable remuneration awards, at the level of each bank and the level of each major personnel category or business line, are consistent with the banks' reduced earnings. The ACP also made sure that institutions that were less affected than others in the conduct of their business showed restraint in their variable awards as well.

The preliminary analysis shows that the banks surveyed did reduce their variable remuneration awards very significantly, or at least the variable awards to employees in the business units that showed the largest falls in earnings in 2011. This meant that employees in corporate finance and investment banking, which cover trading and market activities, saw the biggest cuts in variable remuneration, since these awards were determined according to the earnings of the business lines concerned, as well as the overall earnings of the institutions. Variable remuneration awards in other sectors were also cut. Some of the institutions surveyed by the ACP were not affected or less affected than others by the fall in earnings in 2011. These institutions also showed the restraint requested by not distributing the full amounts available for variable remuneration.

The analysis also showed that most institutions granted rises in fixed remuneration but that these increases were in

⁶⁷ Defined by Article 31-4 of Banking and Financial Regulation Committee Regulation n°97-02 as risk-takers: "persons performing control functions and any employee who by virtue of their overall income is in the same remuneration bracket, whose professional activities have a material influence on the risk profile of the reporting entity, as well as employees of non-reporting subsidiaries within a group supervised on a consolidated basis, whose activities have a material impact on the risk profile".

line with their general policies on pay increases and cannot be seen as offsetting the cuts in variable remuneration.

On the whole, banks took special care in their decisions on variable remuneration awards, a difficult exercise combining measure and restraint. The aim was not to discourage their top employees or lose them to competitors, while at the same time adjusting variable remuneration to reflect the fall in earnings. Decisions on the amounts available and who should receive them were clearly the focus of intense discussions and led to inevitable trade-offs within institutions coping with internal constraints and the restraint required of them.

The ACP General Secretariat also examined the plans for variable remuneration awards to corporate officers. Overall, this examination shows that banks' boards of directors or supervisory boards have cut these awards substantially and that the cuts are, on the whole, in keeping with the decline in earnings.

However, there is a new tendency to award "long-term profit sharing or incentive plans" that are reserved for corporate officers, and senior managers in some cases, instead of the former awards of stock options. These plans, which are usually correlated to variable remuneration, are subject to achieving specific targets and generally the awards vest after two, three or five years.

As part of the ACP's general responsibility for supervising variable remuneration, the General Secretariat will continue to analyse the effective impact of these changes over time in light of French and international requirements.



Glossary

ACTUARY

Specialist who applies statistics and probability to financial and insurance operations. In life and non-life insurance, actuaries analyse mortality patterns; they use probabilities to assess risks and to calculate premiums and technical and mathematical reserves.

ADD-ON

Additional requirement.

AERAS agreement (*Assurer et emprunter avec un risque aggravé de santé*)

Agreement that aims to offer solutions to facilitate access to insurance and credit for persons who have, or have had, serious health problems.

AFS (Available for sale)

Securities that are non-strategic, that are neither held for trading, nor held to maturity, nor held for strategic reasons, and that have a readily available market price.

AMF (*Autorité des marchés financiers*)

French securities regulator.

ANC (*Autorité des normes comptables*)

The French accounting standards authority (cf. CNC).

BANKING BOOK

All assets and off-balance sheet items that are not included in a bank's trading portfolio.

CAPITAL (accounting definition)

All capital resources available to a company.

CAPTIVE

Insurance or reinsurance company set up by an industrial or commercial group exclusively for the purpose of covering its own risks. By creating a captive, the parent group is able to pool its insurance and reinsurance programmes to obtain better cover at more competitive prices in the international insurance market.

CCSF (*Comité consultatif du secteur financier*)

Consultative committee that addresses issues relating to how credit institutions, payment institutions, investment firms and insurance companies deal with their customers. It takes appropriate measures in these areas, notably by issuing opinions or general recommendations.

CDS (Credit default swap)

Contract whereby an institution wishing to protect itself against risk of non-repayment of a loan makes a series of regular payments to a third party in exchange for receiving a predetermined amount if a default event occurs.

CEBS (Committee of European Banking Supervisors)

Replaced 1 January 2011 by the European Banking Authority.

CEIOPS (Committee of European Insurance and Occupational Pensions Supervisors)

On 5 November 2003, the former insurance supervisor for European Union member states became the Committee of European Insurance and Occupational Pension Supervisors (CEIOPS). As part of the reform of Europe's financial supervisory structure, CEIOPS was replaced on 1 January 2011 by the European Insurance and Occupational Pensions Authority (EIOPA).

CESR (Committee of European Securities Regulators)

Replaced on 1 January 2011 by the European Securities and Markets Authority (ESMA).

CFA (Call for Advice)

Procedure whereby the European Commission seeks a technical opinion from the former CEIOPS, now EIOPA.

CIMA (*Conférence interafricaine des marchés d'assurance - Inter-African Conference on Insurance Markets*)

Conference that set up uniform controls for its member states, i.e. the 14 nations in sub-Saharan Africa that are part of the "franc" zone.

CMU FUND

Fund set up to finance supplementary protection under the Universal Health Cover (CMU) scheme in France.

CNC (*Conseil national de la comptabilité*)

The body responsible for setting accounting standards applicable in France. Executive Order 2009-79 of 22 January 2009 merged the CNC with the *Comité de la Réglementation Comptable* (CRC) to form *Autorité des Normes Comptables* (ANC), the accounting standards authority.

CNIL (*Commission nationale de l'informatique et des libertés*)

Independent administrative authority responsible for data privacy in France.

COREP (Common Reporting Framework)

Standardised reporting framework for Basel II solvency requirements.

CVA (Credit Valuation Adjustment)

Estimated credit component of counterparty exposure to derivatives (e.g. *via* the counterparty's rating). The CVA is determined daily by incorporating changes in ratings and market prices, netting agreements and collateral. The higher the counterparty risk, the higher the CVA.

DAMPENER APPROACH

Alternative approach proposed under the Solvency II framework that aims to modulate the capital charge according to the position in the stock market cycle and the planned holding period for the assets.

DEFERRED ACQUISITION COST RESERVE (life insurance)

An amount less than or equal to the difference between the amounts of the mathematical reserves on the balance sheet and the amount that would be recorded if acquisition costs had not been included in insured commitments.

DEL CREDERE

A clause making a commercial agent jointly liable for sums owed by customers of his principal, i.e. the company on whose behalf he is selling a product or service.

DE-NOTCHING

As part of a stress test on credit risk, de-notching is a simulation consisting in measuring the effects on risk-weighted assets and/or the cost of risk of downgrading a counterparty by one or more notches.

DGTPE

General Directorate of the Treasury and Economic Policy. Renamed *Direction Générale du Trésor* (DGT) pursuant to Decree 2010-291 of 18 March 2010.

DIVERSIFICATION RESERVE (life insurance)

Technical reserve designed to absorb asset price fluctuations in so-called "diversified" contracts.

DRASS (*Direction des affaires sanitaires et sociales*)

Regional health and social affairs directorate of the Ministry of Health.

DROC (*Date réglementaire d'ouverture du chantier*)

Date, set by regulation, on which a construction project begins and the contractor's insurance policy takes effect.

DURATION

Average life of financial flows from a product, weighted by their present value.

EFRAG (European Financial Reporting Advisory Group)

Consultative body that makes recommendations to the European Council concerning adoption of International Financial Reporting Standards in Europe.

EIOPA (European Insurance and Occupational Pensions Authority)

Replaced CEIOPS on 1 January 2011.

EIOPC (European Insurance and Occupational Pensions Committee)

In 2005 the Insurance Committee became the European Insurance and Occupational Pensions Committee (EIOPC) pursuant to Directive 2005/1/EC of 9 March 2005. Chaired by the European Commission, which also provides for the secretariat, the EIOPC is made up of the European Union's 27 regulators (France is represented by the Ministry for the Economy and Finance), with the three other States of the European Economic Area and the chairman of CEIOPS (EIOPA) acting as observers. The EIOPC was created following the application of the Lamfalussy process to the insurance industry and is thus a "Level 2" committee. It advises the Commission, on request, on policy matters concerning insurance, reinsurance and occupational pensions, as well as the Commission's proposals in these areas.

EMIR (European Market Infrastructure Regulation)

European regulation on over-the-counter (OTC) derivatives, central counterparties and trade repositories.

EQUALISATION RESERVE

Reserve to deal with fluctuations in the loss experience. It covers natural disaster risks and group accidental death policies.

ESMA (European Securities and Markets Authority)

Replaced the Committee of European Securities Regulators (CESR) on 1 January 2011.

ESRB (European Systemic Risk Board)

Organisation set up in the wake of the 2009 economic crisis and tasked with implementing macro-prudential oversight and early assessment of systemic risk.

EBA (European Banking Authority)

Supervisory authority for the European banking sector, established by Regulation (EC) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010.

EUROPEAN COMMUNITY - EUROPEAN UNION

The European Economic Community (EEC) was founded by the Treaty of Rome in 1957 with the main objective of creating a major common market without internal borders. The Maastricht Treaty, which came into effect on 1 November 1993, replaced the EEC with the European Community. The Lisbon Treaty, which entered into force on 1 December 2009, abolished the pillar-based structure of the European Community, merging the pillars and transferring their legal persona to a new entity, the European Union (EU). The EU's remit is to promote development, growth, employment, competitiveness and a high level of social and environmental protection throughout Europe, based on solidarity between member states. To this end, the EU frames sector policies, notably in the areas of transport, competition, agriculture and fisheries, asylum and immigration, energy and the environment. These policies are implemented through the decision process set forth in the founding treaties, in particular co-decision.

EUROPEAN DIRECTIVE

Legislative instrument issued by European institutions to promote harmonisation of member states' domestic laws. A directive requires member states to meet certain objectives, while allowing them to choose the ways and means of doing so.

EUROPEAN ECONOMIC AREA

Association set up for the purpose of extending the European Union's internal market to member States of the European Free Trade Association (EFTA) that do not wish, or are not ready, to join the EU. The EEA aims to "remove all obstacles to the creation of an area of complete freedom of movement similar to a national market". It is therefore based on the four freedoms of the European Community, i.e. the free movement of goods, persons, services and capital among member countries.

EUROPEAN REGULATION

A law or regulation made by European institutions that is obligatory and directly applicable in all Member States.

FASB (Financial Accounting Standards Board)

Group responsible for issuing accounting rules applicable in the USA.

FATF (Financial Action Task Force)

Intergovernmental organisation set up to develop and promote national and international policies to combat money laundering and terrorism financing.

FINANCIAL CONTINGENCY RESERVE (life insurance)

Reserve to offset a decrease in asset returns relating to guaranteed-rate commitments on contracts other than unit-linked contracts. Insurance companies with a stock of high-rate guaranteed contracts may generate returns that are lower than or equal to the amount payable to policyholders. Because of the shortfall, the company would be unable to cover its future operating expenses. Insurers therefore set aside provisions for the difference between the present value of their commitments, using a prudent interest rate relative to the return on their assets, and the previously calculated commitments.

FREEDOM TO PROVIDE SERVICES

The right of an organisation having its registered office or a branch in a Member State of the European Economic Area to provide services in another EEA Member State. Thus, a company located in one Member State can insure a risk in another Member State.

FREG (Financial Requirements Expert Group)

Working group reporting to EIOPA to prepare for Solvency II.

FSAP (Financial Services Action Plan)

Multi-year European Commission plan to modernise and open up financial services. Adopted in 1999, the FSAP consists of 42 measures aimed at harmonising Member States' regulations on securities, banking, insurance and mortgage lending and all other forms of financial transactions. It was implemented between 1999 and 2005 and evaluated by the European Commission. Following action taken under the FSAP, the European Commission published a White Paper setting out its priorities for financial services policies for the European Union for 2005-2010.

FSB (Financial Stability Board)

Established in April 2009 as the successor to the Financial Stability Forum (FSF).

GAAP (Generally Accepted Accounting Principles)

Standard framework of guidelines for financial accounting used in a jurisdiction. US GAAP are determined by the FASB.

HFT (high frequency trading)

Financial transactions executed at very high speed through computer algorithms.

IAIS (International Association of Insurance Supervisors)

Organisation that aims to promote cooperation between its members, chiefly insurance supervisors or regulators, and to foster collaboration with supervisory authorities in other financial sectors, such as banks and securities markets. Cooperation has become increasingly necessary due to the international expansion of insurance groups and their diversification into banking and asset management.

IASB (International Accounting Standards Board)

Organisation that draws up international accounting standards, ratified by the European Union, for consolidated financial statements.

IASCF

International Accounting Standards Committee Foundation.

IFRS (International Financial Reporting Standards)

International accounting standards proposed by the IASB, which are gradually replacing International Accounting Standards (IAS).

IGRS (Institution de gestion de retraite supplémentaire)

Institution that manages a supplementary pension scheme.

IGSC

Insurance Groups Supervision Committee.

IGSRR

Internal Governance, Supervisory Review and Reporting Expert Group.

IMEG

Internal Model Expert Group.

INTEREST MAINTENANCE RESERVE

Reserve composed of gains realised on sales of bonds and reversed in the same amount only if losses are realised on assets of the same type. It is used to smooth gains and losses realised on bonds sold prior to maturity, in the event of changes in interest rates. Accordingly, if interest rates fall, insurance companies have no incentive to sell their high-coupon bonds and generate one-off gains while buying other bonds that do not perform as well in the long term. This special reserve is considered a provision with regard to requirements on covering underwriting liabilities. It is a one of the items constituting the solvency margin. Also known as "reserve for depreciation of securities".

INTERMEDIARY

In insurance, an individual or entity on a restricted list that offers or helps to conclude insurance or reinsurance contracts, in exchange for payment. Activities consisting solely in managing, estimating or settling claims are not considered intermediation.

IOPS (International Organisation of Pension Supervisors)

Independent organisation of representatives and observers from around 50 countries at all levels of economic development. IOPS aims to establish international standards, promote best practices in oversight of private pensions (regimes that are not part of a social security scheme), foster international cooperation and provide a forum for exchanging information. IOPS cooperates closely with the other international organisations concerned by retirement issues: the IAIS, the International Monetary Fund and the World Bank. The OECD provides the secretariat.

IOSCO (International Organization of Securities Commissions)

Association of organisations that regulate global securities and futures markets.

IRP (Institutions de retraite professionnelle)

Occupational pension institutions.

JOINT FORUM

Body established in 1996 under the auspices of the IAIS and its fellow supervisors in charge of banking (Basel Committee) and securities markets (International Organization of Securities Commissions – IOSCO), to address issues common to the insurance, banking and securities sectors, including regulation of financial conglomerates.

LAMFALUSSY PROCESS

Approach to developing European regulatory standards for the financial sector. The process breaks down into four levels. Level 1 consists of directives adopted by the European Council and the Parliament and setting forth the principles to be developed in Level 2 (regulations) adopted by the European Commission, under the aegis of the Council and the Parliament. Level 3 texts are non-binding recommendations. At Level 4, the European Commission is concerned with strengthening compliance and dealing with potential misconduct.

LCR (Liquidity Coverage Ratio)

One-month liquidity ratio provided for the Basel III reforms.

LIQUIDITY RISK RESERVE

Reserve to be set aside when the company's total non-fixed income assets show an unrealised loss relative to acquisition cost (bonds are not taken into account in this calculation because, unless the counterparty defaults, no loss should be realised if the assets are held to maturity). Since 2003 companies meeting prudential standards (regulatory commitments, capital adequacy requirements) can create the liquidity risk reserve gradually (over a period of three to eight years, depending on the remaining life of the liability). The reserve should be calculated net of the reserve for permanent impairment, which is calculated for each individual holding and corresponds to the share of unrealised capital losses that the company considers to have a high probability of becoming permanent losses.

MARGIN NET OF EXPECTED LOSS

Difference between the narrow interest rate margin on loans (q.v.) and the percentage expected loss over the life of the loan.

MATHEMATICAL RESERVES (life insurance)

Amount included in technical reserves and corresponding to the share of premiums disbursed by the policyholder as savings deposits. The insurance institution must hold this amount in reserve to meet its commitment to the policyholder at a pre-determined date.

MCR (Minimum Capital Requirement)

Under Solvency II, the minimum amount of regulatory capital below which an institution's authorisation would be withdrawn. The MCR is expected to be calculated in a simpler and more robust manner than the Solvency Capital Requirement and cannot be less than a fixed absolute amount in euros.

MINIMUM GUARANTEED RATE

Minimum interest rate granted by an insurer for annual revaluation of mathematical reserves.

MMOU or MOU (Multilateral Memorandum of Understanding)

Multilateral agreement on cooperation and exchange of information.

NARROW INTEREST RATE MARGIN

For loans, the difference between the interest rate excluding fees, i.e. the narrowly defined effective rate, and the funds transfer pricing rate (FTPR). The lower the FTPR relative to the funding rate, the higher the institution's profits. For deposits, the difference between the replacement rate (i.e. FTPR) for the bank and the investment income rate for the customer. The higher the FTPR, the higher the institution's profits.

NSFR (Net Stable Funding Ratio)

One-year liquidity ratio provided for in the Basel III reforms.

OPERATING EXPENSE RESERVE (life insurance)

Reserve designed to cover future management expenses not covered by other reserves. Its amount is based on the projected income and expense of a homogeneous group of contracts, according to rules set forth in Article A. 331-1-1 of the French insurance code. For each such group, the amount of the reserve is equal to the present value of future management expenses less the present value of future income from contracts.

ORIAS (Organisme pour le registre des intermédiaires d'assurance)

Non-profit organisation responsible for establishing, maintaining and updating the register of authorised insurance and reinsurance intermediaries in France, as specified in Article R. 512-1 et seq. of the French insurance code.

ORIGINATOR

Company that originally creates debts or assets (the original lender in the case of debt) as part of a securitisation transaction.

OVERALL LOAN MARGIN

Difference between the Annual Percentage Rate of Charge, including interest and fees, and the funds transfer pricing rate (FTPR).

ORSA (Own Risk and Solvency Assessment)

Internal assessment by an institution of its risks and solvency, defined in Article 45 of the Solvency II Directive.

PBA (Principes de base d'assurance)

Basic principles of insurance in France.

PCG (Plan comptable général)

General chart of accounts.

PIOB (Public Interest Oversight Body)

Organisation that oversees global accountancy auditing and ethics standards.

PROFIT SHARING (life insurance)

Investment of insurance premiums produces income known as technical and financial profits. French insurers are required to allocate a portion of these profits to holders of life insurance policies.

PROFIT SHARING RESERVE (life insurance)

Life insurance companies have the option of not fulfilling their statutory profit sharing requirement immediately; they may wait up to eight years to make the payout. Instead of distributing the amount immediately, the insurer may record it in an account titled "profit sharing reserve."

PROVISIONAL ADMINISTRATION

Legal procedure whereby the powers of administration, management and representation of the company are transferred to a designated administrator. This measure, which derogates from general company law, removes the authority of the existing corporate bodies.

PSNEM (Provision pour sinistres non encore manifestés)

Specific loss reserve required by French insurance regulations for future claims that have not yet materialised.

QIS (Quantitative Impact Study)

The European Commission requested CEIOPS (now EIOPA) to conduct quantitative studies in order to measure the impact of Solvency II on the evaluation of the regulatory balance sheet and capital requirements.

REGULATORY CAPITAL

Amount consisting of two levels of capital: Core (or Tier 1) capital and supplementary (Tier 2) capital. Core capital must be equivalent to at least 50% of regulatory capital.

REINSURANCE

Technique whereby an insurer transfers all or part of the risks it has underwritten to another entity. Article 2(1) of Directive 2005/68/EC gives a precise definition of reinsurance: "activity consisting in accepting risks ceded by an insurance undertaking or by another reinsurance undertaking." From a business point of view, reinsurance enables insurance companies to insure risks that exceed what their capital alone would permit. This form of cover is legally represented by a contract traditionally known as a reinsurance treaty. In return for payment, a reinsurer, known as the transferee, commits to reimburse an insurer, known as the cedant, under stated conditions for all or part of amounts due or to be paid by the insurer to the insured in the event of a claim. In all cases where the insurer is reinsured for the risks it has underwritten, it remains solely liable to the insured (Art. L. 111-3 of the French insurance code).

RWA (risk-weighted assets)

Risk-weighted assets are based on banks' exposures and their associated risk levels, which depend on counterparties' creditworthiness, measured using the methods provided for in Basel II.

SCR (Solvency Capital Requirement)

Target capital requirement under Solvency II. The SCR corresponds to the amount of capital estimated necessary to absorb the shock of an event that produces exceptional claims. It is calculated based on exposure to risks linked to insurance companies' activities, i.e. mainly underwriting, credit, operational, liquidity and market risks. Companies can calculate the SCR in either of two ways: with a standard approach or an internal model.

SEC (Securities and Exchange Commission)

US financial regulator.

SGAM (Société de groupe d'assurance mutuelle)

Group of mutual insurers offering synergy and financial solidarity between its members.

SOLVENCY MARGIN REQUIREMENT

The regulatory capital that an insurance company must hold in order to meet the commitments resulting from its business. In life insurance, the solvency margin requirement depends on the mathematical reserves for unit-linked and non-linked contracts, as well as capital at risk. In non-life insurance, it depends on the amount of premiums or claims. Reinsurance may also be taken into account. Note that the vocabulary has changed: Solvency II refers to "a level of equity" or "capital requirement."

SOLVENCY II

Reform implemented through the Solvency II Directive approved by the European Parliament on 22 April 2009 and currently being transposed into domestic law. Governed by the Lamfalussy process, Solvency II places risk management at the core of the prudential system applicable to insurance companies. It is noteworthy for its quantitative requirements, designed to better reflect the risks borne by insurers. In particular, these requirements cover prudential valuation, calculation of technical reserves and capital requirements (MCR and SCR), rules governing investments and the definition of assets eligible for inclusion in regulatory capital (Pillar 1). The directive also introduces stronger supervision for companies (Pillar 2) and prudential reporting and public disclosure requirements (Pillar 3). The new solvency rules were scheduled to take effect on 31 October 2012, but the date may be postponed to 31 December 2012.

SOLVENCY II PILLARS

The three Solvency II Pillars are:

- Pillar 1: quantitative requirements, particularly for capital and technical reserves
- Pillar 2: supervisory activities and qualitative requirements
- Pillar 3: regulatory reporting and public disclosure requirements.

SPONSOR

Financial institution, separate from the originator, that establishes and manages an asset-backed commercial paper programme or any other transaction or securitisation through which it purchases third parties' exposures.

TECHNICAL INTEREST RATE

Minimum revaluation of mathematical reserves that an insurer guarantees annually to its policyholders. This rate is used to calculate the rate of insurance cover and the amount of mathematical reserves. For prudential reasons, it is determined by regulations and may not exceed a certain number of thresholds, decreasing with the time period for which it is guaranteed.

TME (Taux moyen des emprunts d'État)

Average interest rate on French government bonds.

TRACFIN (Traitement du renseignement et action contre les circuits financiers clandestins)

French financial intelligence unit, run by the finance ministry and responsible for preventing money laundering and terrorist financing.

VAR (Value at Risk)

Maximum potential loss caused by unfavourable change in market prices, in a specified time period and at a given probability level (the "confidence level"). VAR is an overall probability measure of market risk.

Editorial Director: Danièle Nouy

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